

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. 2:07-cv-05359-SVW-AGR

Date June 25, 2018

Title *Glenn Tibble, et al. v. Edison International, et al.*

Present: The Honorable STEPHEN V. WILSON, U.S. DISTRICT JUDGE

Paul M. Cruz

N/A

Deputy Clerk

Court Reporter / Recorder

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

N/A

N/A

Proceedings: DENYING PLAINTIFF’S MOTION FOR REIMBURSEMENT OF EXPERT WITNESS FEES AND INCENTIVE AWARDS [574, 576]

I. INTRODUCTION

Pending before the Court is Plaintiffs’ Motion for Reimbursement of Expert Witness Fees and for Incentive Awards. (Dkt. 576). For the foregoing reasons, the Court DENIES Plaintiffs’ motion.

II. BACKGROUND

After obtaining victory for the class at trial, and proving damages of over \$13 million, class counsel Schlichter, Bogard & Denton LLP (“SBD”) seeks \$964,212 in reimbursement for expert fees for testifying and non-testifying experts utilized during the ten-year litigation. Plaintiffs also request that the class representatives -- Glenn Tibble, William Bauer, William Izral, Henry Runowiecki, Frederick Suhadolc, and Hugh Tinman, Jr – each receive \$25,000 as an incentive award.

III. DISCUSSION

A. Reimbursement for Expert Witness Fees

A district court should reimburse expert fees in excess of the statutory limits only if the services were “crucial or indispensable in establishing the prevailing party’s case or defense.” *United States v. City of Twin Falls, ID.*, 806 F.2d 862, 878 (9th Cir. 1986), overruled in part on other grounds as recognized by *Ass’n of Flight Attendants v. Horizon Air Indus., Inc.*, 976 F.2d 541, 551–52 (9th Cir. 1992); see also Pls.’ Mot., Dkt. 576-1 at 9:21–23. But as this Court previously held, “Plaintiffs

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succeeded minimally on only part of one of ten of their claims.” Dkt. 469 at 1–2. Plaintiffs’ partial victory last year represented only a fraction of Plaintiffs’ damages claims. The Court thus limits its expert fee award to work that was “crucial or indispensable” to Plaintiffs’ sole successful claim—that the Edison Plan did not offer the cheapest share class of certain mutual funds.¹

Plaintiffs’ motion offers no evidence regarding which, if any, expert’s work was “crucial or indispensable” to the share class claim. Plaintiffs have not met their burden to show that any of their expert work was “crucial or indispensable” to the share class claim and properly reimbursable out of the class’s recovery. *See Rodriguez v. Farmers Ins. Co. of AZ.*, 649 F. App’x 620, 620–21 (9th Cir. May 12, 2016) (district court properly denied expert fees where motion “failed to disclose (1) how many hours the experts worked, (2) what precisely each expert did, (3) why each expert was crucial to the settlement, or (4) which experts actually worked on the case”). As Defendants’ Opposition accurately notes, Plaintiffs’ motion concedes that much of the expert work was unrelated to the sole claim.

The Court also finds that it did not rely on any particular expert’s conclusions in coming to a decision in this matter. The Court’s Findings of Facts and Conclusions of Law (Dkt. 567) do not rely at all on Plaintiff’s expert testimony as provided during trial. Accordingly, the Court cannot find that any expert was “crucial or indispensable” to the one claim on which Plaintiffs prevailed. The Court DENIES Plaintiffs’ Motion for Reimbursement of Expert Fees.

B. Reimbursement for Expert Witness Fees

“Incentive awards that are intended to compensate class representatives for work undertaken on behalf of a class are fairly typical in class actions.” *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 943 (9th Cir. 2014) (internal quotation marks and citation omitted). Such awards recognize class representatives’ “willingness to act as a private attorney general.” *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 959 (9th Cir. 2009). Glenn Tibble, William Bauer, William Izral, Henry Runowiecki, and Frederick Suhadolc were active participants in this litigation (as was Hugh Tinman, Jr. prior to his passing), spending significant time to benefit the Class.

¹ Plaintiffs claim that *United States v. City of Twin Falls* holds that expert expenses are reimbursable if the experts testimony was “crucial or indispensable” to the prevailing party’s “case;” it does not hold that the expert’s work must have related to a specific claim. 806 F.2d 862, 878 (9th Cir. 1986); *see also Rodriguez v. Farmers Ins. Co.*, 649 Fed.App’x 620 (9th Cir. May 12, 2016) (“District courts have discretion to reimburse expert witness fees if the expert’s services were ‘crucial or indispensable’ to the action.”). Here, even if such a holistic understanding is taken, the prevailing party is only the prevailing party because of the one part of one of ten claims that succeeded. Every expert witness was not and could not have been relevant to that claim. Furthermore, each of the cases cited by Plaintiff note that the Court has discretion and—even upon a finding of crucial or indispensable work—does not have to grant such a motion for attorney’s fees.

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The \$25,000 award SBD requests for each of the class representatives is only .19% of the total damages the parties have stipulated to, and combined are only 1.14%. The Ninth Circuit and this Court have approved similar incentive awards. *Online DVD-Rental*, 779 F.3d at 948 (approving incentive awards that were “a mere .17% of the total settlement fund”); *Ingalls v. Hallmark Retail, Inc.*, No. 08-4342-VBF-Ex, 2009 U.S. Dist. LEXIS 131078, *6 (C.D. Cal. Oct. 16, 2009) (awarding total of \$60,000 to 6 named plaintiffs out of \$5.625 million settlement). The Court has read a letter by Wanda Beavers, a member of the class, objecting to the \$25,000 fee. While Ms. Beavers is technically correct that this award would technically “lessen the amount” of others who participated in these investments, the amount is quite small and would not have a substantial effect on individual class-members’ settlement.

Accordingly, the Court GRANTS Plaintiff’s Motion for Incentive Awards.

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