

**In the United States District Court
for the District of Kansas**

Case No. 19-cv-02449-TC-ADM

BUDICAK INC., ET AL.,

Plaintiffs

v.

LANSING TRADE GROUP, LLC, ET AL.,

Defendants

ORDER

On December 19, 2022, a proposed settlement between Plaintiffs and Defendants was preliminarily approved. Doc. 358. After the members of the putative class were given notice and an opportunity to opt out of the settlement, Plaintiffs filed an uncontested Motion for Final Approval of Class Action Settlement, Doc. 364, and a final settlement hearing was held, *see* Doc. 376. Final approval was entered on the settlements between Plaintiffs and Lansing, Doc. 379, and between Plaintiffs and Cascade, Doc. 378, and Class Counsel were awarded attorney fees, Doc. 380. Class Counsel also request service awards of \$20,000 for each Class Representative, totaling \$60,000, to be paid from the settlement fund. Doc. 365 at 19. For the following reasons, that request is denied.

1. Subject-matter jurisdiction exists over this matter and personal jurisdiction exists over the parties and all Settlement Class Members who have not timely and validly requested exclusion. *See* Doc. 378 at ¶ 1.

2. Notice of the Fee and Expense Application was provided to potential Settlement Class Members in a reasonable manner, and such notice complies with Rule 23(h)(1) of the Federal Rules of Civil Procedure and due process requirements.

3. No statute or Rule of Civil Procedure expressly authorizes service or incentive awards for named plaintiffs in a class action. 5 William B. Rubenstein, *Newberg and Rubenstein on Class Actions* § 17:2 (6th ed. 2022). But incentive awards may nevertheless be awarded to named plaintiffs “for personal risk incurred or additional effort and expertise provided for the benefit of the class.” *UFCW Local 880-Retail Food Emps. Joint Pension Fund v. Newmont Mining Corp.*, 352 F. App’x 232, 235 (10th Cir. 2009) (citing *Parker v. Time Warner Entm’t Co.*, 631 F. Supp. 2d 242, 279 (E.D.N.Y. 2009)). Those risks and efforts may be documented by affidavits, declarations, or other evidence on the record that identifies “the particular services performed, the risks encountered, and any other facts pertinent to the award.” *Chieftan Royalty Co. v. Enervest Energy Institutional Fund XIII-A, et al.*, 888 F.3d 455, 469 (10th Cir. 2017) (quoting Newberg § 17:12). And courts “regularly reject awards where the relevant facts are not sufficiently documented.” *Id.*

4. The Class Representatives’ alleged contributions to this lawsuit, briefly discussed in Class Counsel’s memorandum in support of their motion for attorney fees, are not sufficient to merit a service award. Class Counsel broadly claim that the Class Representatives contributed by supplying information, contributing to pleadings, and reviewing documents. Doc. 365 at 19. They also allege the Class Representatives “took a risk to protect the interests of the Class” without explaining what risk they took or what harm they might have faced by participating. *Id.*

The declarations the Class Representatives themselves filed is likewise light on substance. Blue Marlin Arbitrage’s representative, Edward Dolinar, claims he has “been kept fully informed of case developments and procedural matters . . . including regular correspondence with [his] lawyers,” that Blue Marlin Arbitrage “aided in the creation of pleadings and searched for and provided information in response to discovery requests from Defendants,” and that it served as a class representative “despite the risk that there was no guarantee of compensation for the work performed on behalf of the Class.” Doc. 372 at ¶¶ 3–6. Michael Budicak’s declaration is almost identical to Dolinar’s and makes identical claims. Doc. 373 at ¶¶ 3–6. Prime Trading’s representative, Thomas Chalda, provided much more detailed claims of work expended, including spending “several days . . . discussing the nature and scope” of the injury Prime Trading suffered, responding to “over 20 document requests” by producing “more than 36,500 pages of trading records, communications, and other documents,” and

spending “several hours . . . to prepare for the deposition and . . . independently reviewing relevant information.” Doc. 374.

5. The record lacks sufficient evidence to justify a service award. *See* Newberg § 17:12. This is not to say that the class representatives’ efforts have been inconsequential or their efforts insufficient. To the contrary, but for these plaintiffs initiating this litigation, the significant settlement would not have happened. But the parties have provided no objectively measurable basis to quantify the value of that effort. No party has, for example, documented the number of hours worked by whom. *See, e.g., Chieftan Royalty*, 888 F.3d at 469–70 (reversing incentive award that was based on counsel’s estimation of hours expended). Nor has there been any basis on which to assign a monetary value, such as an hourly rate, to the work that was performed. *See, e.g., McClintock v. Continuum Producer Servs., LLC*, No. 17-cv-0259, 2020 WL 3022744, at *3 (E.D. Okla. June 4, 2020) (noting that the evidence demonstrates a class representative “seeking payment at a reasonable hourly rate of \$50.00”). No records have been provided to document the work done. And the number of pages of documents a named plaintiff provides to Class Counsel does not establish the amount of work performed or the relative value of the work that plaintiff has undertaken. *Contra* Doc. 374 at 4. Moreover, no party has explained what risk these plaintiffs faced, if any, by agreeing to be named as a class representative. *See* Newberg §§ 17:6, 17:11. The declarations appear to make much of their “willingness to represent the Class,” Doc. 372 at ¶ 6, but beyond merely stating so, they have not shown that they “have expended *significant* time and effort in direct support of this Action on behalf of the Class,” Doc. 374 at ¶ 17 (emphasis added). Absent a quantification of the amount of work and a basis on which to value it, no service award will be given to the class representatives.

6. This Court retains continuing jurisdiction over the Parties and the Class Members for all matters relating to this Action, including the administration, interpretation, effectuation, or enforcement of this Order.

7. Pursuant to the Settlement Agreements, Service Awards are independent of the Court’s consideration of the fairness, reasonableness, and adequacy of the Settlements and are also independent of the Court’s consideration of the Distribution Plan.

Class Counsel’s motion for service awards for named Plaintiffs, Doc. 365 at 14–15, is therefore DENIED.

It is so ordered.

Date: June 20, 2023

s/ Toby Crouse
Toby Crouse
United States District Judge