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SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

In re EXPEDIA HOTEL TAXES AND FEES
LITIGATION

CONSOLIDATED CIVIL ACTION

Master File No. 05-2-02060-1 SEA

This Document Relates To: ALL ACTIONS

~~PROPOSED~~ ORDER AWARDING
ATTORNEYS' FEES, COSTS AND
INCENTIVE AWARDS

This matter having come before the Court for hearing, pursuant to the Order of this Court, dated August 10, 2009, on the petition of Plaintiffs' Counsel for an award of Attorneys' Fees and Costs and Incentive Awards for the Plaintiffs pursuant to the Settlement Agreement dated as of July 29, 2009 (the "Settlement Agreement" or the "Agreement"), and due and adequate notice having been given to the Class (as defined in the Agreement) as required in said Order, and the Court having considered all papers filed and proceedings had herein and otherwise being fully informed in the premises and good cause appearing therefore, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. This Order incorporates by reference the definitions in the Agreement, and all capitalized terms herein shall have the same meanings as set forth in the Agreement.

2. For the reasons provided in the separate Order Granting Final Approval of Class Action Settlement And Judgment Of Dismissal With Prejudice, the Court finds the Settlement to be fair, reasonable and adequate, and has granted Final Approval to the Settlement.

1 3. The Court has considered Plaintiffs' Counsel's request for Attorneys' Fees and
2 Costs reasonably incurred in the prosecution of this action, and for the reasons provided in this
3 Order, hereby awards the following amount as a lump sum to cover Attorneys' Fees and
4 Expenses: \$9,587,096.11 and costs \$412,903.89.

5 4. The Court has considered and rejected the objections to the fees and expense
6 award of Plaintiffs' Counsel. Under Washington law, it is well-established that "the size of the
7 recovery constitutes a suitable measure of the attorneys' performance." *Bowles v. Washington*
8 *Dep't of Retirement Sys.*, 121 Wn.2d 52, 72, 847 P.2d 440 (1993); *see also Vizcaino v. Microsoft*
9 *Corp.*, 290 F.3d 1043, 1047 (9th Cir 2002) (applying Washington law and noting that 25%
10 percent of the fund is the "benchmark" recovery).

11 5. Significantly, the Settlement makes a cash award available at each Class
12 Members' option; if all Class Members chose the cash option, the total recovery would be
13 \$123.4 million. Given that it is well under ten percent of the funds made available under the
14 Settlement, Class Counsel's fee request is eminently reasonable. *See, e.e., Williams v. MGM-*
15 *Pathe Communs. Co*, 129 F.3d 1026, 1027 (9th Cir. 1997) (citing *Boeing Co. v Van Gemert*, 444
16 U.S. 472, 480-81 (1980)) ("attorneys for a successful class may recover a fee based on the entire
17 common fund created for the class," even if class members choose not to claim the entire amount
18 made available).

19 6. Here, the Settlement was obtained solely through the contingent work of
20 Plaintiffs' counsel who vigorously litigated this long-pending and hotly-contested action to the
21 eve of trial. From its inception, the action was fraught with risk. These factors, again, counsel in
22 favor of the award sought by Plaintiffs.

23 7. Finally, a lodestar cross-check supports the award sought by Plaintiffs' Counsel.
24 According to their contemporaneous records, the unreimbursed expenses incurred by Plaintiffs'
25 Counsel total \$412,903.89. These expenses are plainly compensable, and mean that the fees
26 portion of the requested award totals \$9,587,096.11.

1 8. Again according to their contemporaneous records, Plaintiffs' Counsel expended
2 7,288.69 hours in litigating this case. At their hourly rates, the total lodestar of Plaintiffs'
3 Counsel is \$3,123,247.25. Hence, the \$9,587,096.11 fee sought by Plaintiffs' Counsel reflects a
4 multiplier of 3.07.

5 9. The Court finds that a multiplier of 3.07 is reasonable given the complex
6 and hard-fought nature of this case, and the result achieved for the Class. *See, e.g., Vizcaino*, 290
7 F.3d at 1051 (approving multiplier of 3.65 in class action settlement); *Bowles*, 121 Wn.2d at 72
8 (approving a multiplier of 3); *see generally In re Sulzer Hip Prosthesis & Knee Prosthesis Liab.*
9 *Litig.*, 268 F. Supp. 2d 907, 938 n.45 (N.D. Ohio 2003) (relying on a 2003 study of fee awards in
10 1,120 cases to conclude that "the courts' effective multipliers averaged ... 3.89 across all 1,120
11 cases").

12 10. Judge Infante, the neutral mediator who presided over the negotiations in this
13 case, opines that "based upon my understanding of the long and hard-fought nature of this
14 litigation and the remedy obtained for the Class, a fees and expense award up to \$10 million also
15 appears to be fair and reasonable." Infante Decl., ¶ 12. The Court agrees.

16 11. The Court has also considered the request for Incentive Awards for the Named
17 Plaintiffs, and hereby awards the following amounts: Named Plaintiffs Michelle Huggins and
18 Jose Alba, shall each receive Incentive Awards in the amount of \$7,500.00.

19 12. In so ordering the payment of these Incentive Awards, the Court has considered
20 and rejected the general objection to the awards. Indeed, "[i]ncentive awards are not uncommon
21 in class action litigation where, as here, a common fund has been created for the benefit of the
22 class. Incentive awards compensate named plaintiffs for the services they provided and the risks
23 they incurred during the course of the class action litigation." *Hughes v. Microsoft Corp.*, 2001
24 U.S. Dist. Lexis 5976, at *34 (W.D. Wash. Mar. 21, 2001) (approving incentive awards of from
25 \$7,500 to \$40,000 per Class Representative) (citing *In re Southern Ohio Corr. Facility*, 175
26

1 F.R.D. 270, 272-76 (S.D. Ohio 1997)); *see also In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454,
2 463 (9th Cir. 2000).

3 13. Without the efforts of the Plaintiffs, the private attorney general function of the
4 CPA statute would not have been fulfilled, and the Class Members would receive nothing.
5 Under these circumstances, the modest \$7,500 incentive awards sought for the Plaintiffs are
6 eminently fair. *See, e.g., Barnett v. Wal-Mart Stores, Inc.*, No. 01-2-24553-8 SEA (King Cty.
7 Super. Ct. July 20, 2009) (ordering incentive awards of \$10,000 for each class representative);
8 *Phoenix Creative Inc. v. U.S. West*, No. C95-5229-RJB, slip op. (W.D. Wash. May 2, 1997)
9 (award of \$10,000 to each of two named plaintiffs); *In re Immunex Sec. Litig.*, 864 F. Supp. 142,
10 145 (W.D. Wash. 1994) (approving incentive awards for named plaintiffs who obtained benefits
11 for fellow shareholders); *In re Aldus Sec. Litig.*, No. C-92-885C, slip op. (W.D. Wash. Feb. 25,
12 1994) (award of \$45,000 to three class representatives). *See also, e.g., In re US Bancorp Litig.*,
13 276 F.3d 1008 (8th Cir. 2002) (affirming \$10,000 incentive awards as appropriate); *Spicer v.*
14 *Chicago Bd. Options Exch.*, 844 F. Supp. 1226, 1266-68 (N.D. Ill. 1993) (approving incentive
15 awards of \$10,000 for each class representative and citing seventeen other courts where incentive
16 awards were approved).

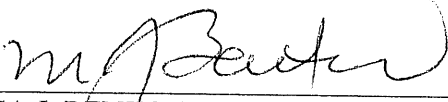
17 14. Without affecting the finality of this Order in any way, this Court retains
18 continuing jurisdiction over (a) implementation, enforcement and administration of the
19 Agreement until each and every act agreed to be performed by the parties to the Agreement shall
20 have been performed; (b) any award or distribution of the Settlement Benefits or any other
21 payments to be made by Expedia under the terms of the Agreement; and (c) all other proceedings
22 related to the implementation, administration and enforcement of the terms of the Settlement
23 Agreement.

24 15. In the event that the Effective Date does not occur, this Order shall be rendered
25 null and void, and shall be vacated *nunc pro tunc* and the Action will for all purposes revert to its
26 status as of the close of business (Pacific Time) on July 2, 2009.

1 16. Without further order of the Court, the parties may agree to reasonable extensions
2 of time to carry out any of the provisions of the Agreement.

3 IT IS SO ORDERED.

4 Dated this 1 day of December, 2009.

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6 
7 MONICA J. BENTON
8 King County Superior Court Judge

9 Presented by:

10 **Hagens Berman Sobol Shapiro LLP**

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