LINK: 43

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 13-02823 GAF (VBKx)	Date	October 7, 2014
Title	Payam Ahdoot v. Babolat VS North America		

Present: The Honorable	**GARY ALLEN FEESS**	
Stephen Montes Kerr	None	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.
Attorneys Present for Plaintiff:	Attorneys Present for Defendant:	
None	None	

Proceedings: **(In Chambers)**

ORDER RE: PRELIMINARY SETTLEMENT APPROVAL

I.
INTRODUCTION & BACKGROUND

Plaintiffs Payam Ahdoot and Brandon Clark and Defendant Babolat filed a joint stipulation to amend the first amended complaint. (See Docket No. 51 [Stip. to Amend First Amended Complaint]; See also id. at Exhibit A [Second Amended Complaint ("SAC")].) As no Party has objected, the SAC is hereby **DEEMED FILED** and is the operative complaint.

Plaintiffs now bring this putative class action against Defendant Babolat VS North America, alleging that Defendant has engaged in false and misleading advertising with respect to its AeroPro Drive tennis racquets ("AeroPro"), endorsed by Rafael Nadal ("Nadal"), its Pure Drive tennis racquets ("Pure Drive"), endorsed by Andy Roddick ("Roddick"), and a number of other racquets associated with professional tennis players. (SAC ¶¶ 4-11.) Plaintiffs insist Defendant misrepresented to consumers that the racquets available for purchase by the public are identical to those used on the professional tennis tour by professional players when, in reality, "[t]he racquets which many of the Babolat-sponsored pros actually use are much different than [those racquets] and [are] not available to the public." (Id. ¶ 4.) Specifically, Plaintiffs allege that Babolat's use of the phrase "Nadal's racquet of choice" is misleading and that "[p]rior to major professional tennis tournaments, Babolat paints and otherwise modifies these pros' customized racquets so that they appear to be identical to the ones sold in stores and on the internet." (Id.) Plaintiff's SAC also describes what they characterize as a "long-term and pervasive advertising campaign [by Babolat] . . . designed to deceive consumers about the racquets it sells." (Id. ¶ 5.)

LINK: 43

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On or about January 15, 2011, Plaintiff Ahdoot, believing he was purchasing the same AeroPro racquet used by Nadal, purchased an AeroPro Drive racquet for a total of $222.92 from Westwood Sporting Goods in Los Angeles, California. (Id. ¶ 30.) In April 2012, Plaintiff Clark, believing he was purchasing the same Pure Drive racquet used by Roddick, purchased two Pure Drive Roddick racquets for a total between $250 and $300. (Id.) Plaintiff Clark, believing he was then purchasing the same AeroPro racquet used by Nadal, purchased two AeroPro racquets directly from Babolat in May 2010 for $254. (Id.)

Plaintiffs allege that they have therefore "suffered injury in fact and lost money by purchasing racquets they otherwise would not have purchased" but for Defendant's allegedly deceptive advertising. (Id. ¶ 42.) On this basis, Plaintiffs assert claims against Babolat for: (1) violation of California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200; (2) violation of the Consumer Legal Remedies Act ("CLRA"), Cal. Civ. Code § 17500; (3) breach of express warranty; (4) violation of False Advertising Law ("FAL"), Cal Bus. & Prof. Code §§17500 et seq.; (5) fraud; and (6) negligent misrepresentation. (See SAC.)

The Parties reached agreement on the terms of a settlement of the class claims after discovery, exchange of more than 30,000 documents, multiple depositions of Defendant's employees, and arm's length negotiations with the assistance of a mediator. (See Docket No. 43-1 [Memorandum of Points and Authorities in Support of Motion for Preliminary Approval of Class Action Settlement ("Mem.") at 1, 4-5].) The Parties have entered into a Stipulation and Agreement of Settlement, and Plaintiffs seek the following: (1) preliminary approval of the proposed class settlement (the "Proposed Settlement" or "Settlement Agreement"); (2) approval of the form and content of the Short Form and Long Form Publication Notices, substantially in their proposed forms; (3) to certify the Class for settlement purposes; (4) the appointment of Payam Ahdoot and Brandon Clark as Class Representatives for the Class; (5) the appointment of Hamner Law Offices, APC; the Olsen Law Offices, and Wootton Law Group, LLP as Class Counsel for settlement purposes; (6) leave for Plaintiffs to amend their complaint; (7) enjoinment of Settlement Class Members from commencing or continuing any action asserting any claims encompassed by the Settlement Agreement unless the Class Member submits a valid Request for Exclusions, with the exception of Plaintiffs' filing the Second Amended Complaint, proceedings related to final approval of the Settlement and consideration of Class Counsel's Fee and Cost Application; (8) preliminary approval of administration costs to be paid to the Settlement Administrator; (9) issue of an immediate stay of the Action, with the exception of proceedings relating to the Settlement Agreement; and (10) to schedule a final approval hearing. (Mem. at 1-2; See also Docket No. 43-2 [Declaration of Christopher J. Hamner ("Hamner Decl.")] at Exhibit 1 [Stipulation and Agreement of Settlement ("Settlement Agmt.")].)

LINK: 43

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 13-02823 GAF (VBKx)	Date	October 7, 2014
Title	Payam Ahdoot v. Babolat VS North America		

The Settlement Agreement provides that Babolat VS North America, Inc. will establish a non-reversionary fund of $4,500,000 including the following payment, "subject to Court approval: (1) attorneys' fees of $1,125,000, which is 25% of the GSF; (2) past, present and future costs of $150,000.00; (3) incentive awards in the amount of $5,000 to each named Plaintiff in consideration for serving as Class Representative; and (4) estimated Settlement Administration expenses of $133,000-$240,000." (Mem. at 7.) The "Net Settlement Fund is estimated to be approximately "$2,975,000-$3,082,000." (Id.) If the aggregate of all Valid Claims exceeds the Net Settlement Fund, each reimbursement "will be adjusted downward on a Qualifying Racquet *pro rata* basis." (Settlement Agmt. at 14, ¶ 3.) Should the Net Settlement Fund exceed the amount of Valid Claims submitted, remaining funds "shall be distributed *cy pres* as follows: (a) fifty percent (50%) to St. Jude's Children's Research Hospital . . . and (b) fifty percent (50%) to USTA Serves." (Settlement Agmt. at 14, ¶ 4.) The Parties have also agreed to non-monetary benefits, including: (1) Babolat's implementation of disclaimers in connection with professional endorsements; (2) Babolat ceasing to reference in any US advertisements that any of its racquets contain tungsten; (3) Babolat ceasing to refer to tungsten in "their advertising, marketing, communications and labeling in the United States in connection with 'GT Technology.'" (Mem. at 8-9.) Defendants have filed a notice of non-opposition to Plaintiff's motion (Docket No. 44 [Defendant's Statement of Non-Opposition].) Because the Court concludes that the Settlement Agreement meets the requirements of Federal Rule of Civil Procedure 23, the motion is **GRANTED**, the Settlement Class is provisionally **CERTIFIED**, and the Settlement Agreement is preliminarily **APPROVED**.

II.
PROPOSED SETTLEMENT

The Proposed Settlement is the result of "extensive discovery, including the production and review of tens of thousands of pages of documents, many of which were in French and required translation into English . . . taking depositions of the parties, . . . [and] a day long mediation in San Francisco with mediator Antonia Piazza." (Mem. at 1.)

Class Counsel "is convinced that the proposed Settlement is in the best interests of the Class based on the negotiations and a detailed knowledge of the issues present in this Action." (Mem. at 9.) "The length and risks of trial and other normal perils of litigation that may have impacted the value of the claims were all weighed in reaching the proposed Settlement." (Id.) "In addition, the uncertainty of class certification, the difficulties of complex litigation, the lengthy process of establishing specific damages and various possible delays and appeals were also carefully considered by Class Counsel in agreeing to the proposed Settlement." (Id.; see also Hamner Decl., ¶¶ 3, 18.)

LINK: 43

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 13-02823 GAF (VBKx)	Date	October 7, 2014
Title	Payam Ahdoot v. Babolat VS North America		

The Proposed Settlement encompasses a Settlement Class defined as

> all Persons who engaged in a Qualifying Transaction with the exception of employees, principals, officers, directors, agents, affiliated entities, legal representatives, successors, or assignees of Babolat VS North America, Inc.; distributors, dealers, and retailers of Babolat VS North America, Inc. or its parent, Babolat VS SA, to the extent the Qualifying Racquets were purchased by the distributors, dealers, and retailers for resale and not for personal use; and the District Court and any other judges who may be assigned to the Action and any members of their immediate families.

(Settlement Agmt. at 9, § EE.) A Qualifying Transaction is the "purchase of a Qualifying Racquet(s) for personal use, and not for resale during the Class Period." (Id. at 8, § X.) A Qualifying Racquet includes

> the following Babolat tennis racquets: Pure Drive, Pure Drive +, Pure Drive 107, Pure Drive Roddick, Pure Drive + Roddick, Pure Drive Roddick Junior, Pure Drive Lite, Pure Drive French Open, Pure Drive Lite French Open, Pure Drive 260 French Open, Pure Drive Junior 26 French Open, Pure Drive Lite Pink, Pure Drive Wimbledon, Pure Drive Junior Wimbledon, Pure Drive Play, AeroPro Drive, AeroPro Drive +, AeroPro Drive Junior, AeroPro Team, AeroPro Lite, AeroPro Drive French Open, AeroPro Drive Junior French Open, AeroPro Lite French Open, AeroPro Team Wimbledon, Aero Storm, Aero Storm Tour, Pure Storm, Pure Storm Limited, Pure Storm Limited +, Pure Storm Tour, Pure Storm Tour +, Pure Storm Team, Pure Control, Pure Control Tour, Pure Control Tour +, Pure Control 95 and Pure Control 95 +.

(Id. at 7-8, § W) The Class Period is defined as "the period beginning on January 1, 2009, and ending on November 11, 2014, or, if later, the actual date of publication of the November/December issue of Tennis Magazine containing the Short Form Publication Notice." (Id. at 5, § G.)

The Parties have agreed to settle the claims of the Settlement Class for the Gross Fund Value of $4,500,000. (Id. at 11-12.) Subject to the Court's approval, this figure includes: "(1) attorneys' fees of $1,125,000, which is 25% of the GSF; (2) past, present and future costs of $150,000.00; (3) incentive awards in the amount of $5,000 to each named Plaintiff in consideration for serving as Class Representative; and (4) estimated Settlement Administration

LINK: 43

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 13-02823 GAF (VBKx)	Date	October 7, 2014
Title	Payam Ahdoot v. Babolat VS North America		

expenses of $133,000-$240,000." (Mem. at 7; Settlement Agmt. at 6, § O.) After deducting the payment of attorneys' fees, costs, Class Representative incentive awards, and Settlement Administration expenses, the remaining Net Settlement Fund shall be available to pay Valid Claims submitted by Class Members. (Settlement Agmt. at 6-7, § Q; Id. at 13, ¶ 1.)

The Parties have agreed that the Gross Fund Value will be funded in installments: (1) the first installment of $300,000; (2) additional deposits of $200,000 per month for the following six months; and (3) in the eight months from the approval and entry of the Preliminary Approval Order, additional deposits as necessary "to bring the total of deposits and accrued interest to four million five hundred thousand U.S. dollars ($4,500,000)." (Settlement Agmt. at 11-12.) These payments will be made to "an escrow account with a reputable financial institution" who will administer those funds "as approved by the Parties and the Settlement Administrator." (Id. at 11.) Each Settlement Class Member who submits a Valid Claim with a proof of purchase "will be entitled to a reimbursement of fifty U.S. dollars ($50) for each adult racquet and twenty five U.S. dollars ($25) for each junior racquet for each Qualifying Transaction." (Id. at 13, ¶ 2.) Each Settlement Class Member who does not have a proof of purchase but who can provide the Qualifying Racquet's serial number will "be entitled to a reimbursement of fifty U.S. dollars ($50) for each adult racquet for each Qualifying Transaction . . . up to a maximum of ten (10) Qualifying Racquets per Person." (Id. at 13-14, ¶ 2.) All junior racquets and some adult racquets do not have serial numbers and thus do not qualify for such reimbursement. (Id. at 14, ¶ 2.) For junior racquets and adult racquets without a serial number or proof of purchase, each "Settlement Class Member who submits a Valid Claim will be entitled to a reimbursement of twenty U.S. dollars ($20) for each adult racquet and ten U.S. dollars ($10) for each junior racquet obtained through a Qualifying Transaction up to a maximum of three (3) Qualifying Racquets per Person." (Id. at 14, ¶ 2.)

After preliminary approval, the settlement administrator will: (1) "provide copies of the Settlement Account's monthly statements to Class Counsel and Babolat's Counsel no later than the fifteenth (15th) day of each month" until the Final Effective Date of the Settlement; (2) examine and verify submitted claims; (3) administer the publication of the Short Form Publication Notice in Tennis Magazine; (4) administer the placement of the banner advertisement regarding the Settlement on Tennis.com; (5) administer the creation, operation, maintenance, and cessation of the Settlement website Babolatsettlement.com; (6) "prepare a declaration affirming compliance with the notice requirements," and provide such declaration "to Babolat's Counsel and Class Counsel no later than fourteen (14) days prior to the Final Approval Hearing;" (7) "prepare and deliver to Babolat's Counsel and Class Counsel a report stating the total number of Persons who submitted valid Requests for Exclusion from the Settlement Class and the names and contact information of such Persons as well as the quantity

LINK: 43

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 13-02823 GAF (VBKx)	Date	October 7, 2014
Title	Payam Ahdoot v. Babolat VS North America		

and type of the Qualifying Racquets each Person purchased;" (8) "provide periodic updates to Class Counsel and Babolat's Counsel regarding Claim Form submissions" no later than one week after the Claims Period begins and at least once monthly thereafter; (9) provide to Babolat or other Person as Babolat may direct an electronically searchable alphabetical list of the Settlement Class Members who were paid out of the Net Settlement Fund, their contact information, and the amount paid to them. (Settlement Agmt. at 12, 14, 16-17.) The Settlement website is to be operational on or before the first day on the Short Form Publication Notice appears in Tennis Magazine. (Id. at 15.)

Members of the Settlement Class may opt out of the settlement by submitting a written request postmarked no later than twenty-one days before the Final Approval Hearing to the Settlement Administrator to be excluded from the class. (Id. at 8, § Z.) This letter must contain: (1) the Class Member's name, current mailing address, and phone number; (2) the racquet(s) the Class Member purchased, the approximate dates of such purchase(s), and location of such purchase(s); (3) the statement "I want to be excluded from the proposed Class Action Settlement in the Babolat lawsuit;" and (4) the Class Member's signature. (Hamner Decl., at Exhibit E [Long Form Publication Notice] at 8, ¶ 13.)

The Short Form Publication Notice, Long Form Publication Notice, and banner advertisement containing a link to the Settlement website, Babolatsettlement.com, on the United States version of websites Babolat.com and Tennis.com proposed by the Parties will provide Settlement Class members with appropriate information about: (1) the nature of the action; (2) the class definition; (3) a description of the claims at issue; (4) a summary of the proposed settlement terms; (5) a description of the settlement formula and distribution including Plaintiff's enhancement award and Class Counsel's attorney's fee award and costs, the terms of the release; and (6) the right of Settlement Class members to be excluded from the class or to object to the Settlement Agreement and the procedures for doing so. (See Long Form Publication Notice; Hamner Decl., at Exhibit D [Short Form Publication Notice].) The Settlement website, Babolatsettlement.com shall contain: (1) the Short Form Publication notice; (2) the Long Form Publication Notice; (3) the Claim Form; (4) the Settlement Agreement, without exhibits; (5) the Second Amended Complaint; and (6) the Preliminary Approval Order. (Settlement Agmt. at 16, § A) The Long Form Publication Notice and the Settlement website also include contact information for the Settlement Administrator and Class Counsel. (See Hamner Decl., at Exhibit E; Settlement Agmt. at 16, § A.)

In exchange for the Settlement benefits, Settlement Class members are deemed to have "fully, finally, and forever released, relinquished and discharged each and all of the Babolat Releasees from any and all of the Class Representatives' and each and every Settlement Class

LINK: 43

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 13-02823 GAF (VBKx)	Date	October 7, 2014
Title	Payam Ahdoot v. Babolat VS North America		

Member's . . . respective claims, actions, demands, suits, and causes of action, whether class, individual or otherwise in nature. . . ." (Settlement Agmt. at 23, § B.) This release includes

> costs, expenses, penalties and attorneys' fees, known or unknown, suspected or unsuspected, direct or indirect, contingent or absolute, existing or potential, in contract or in tort, in law or equity, that the Class Representatives and each and every Settlement Class Member . . . ever had, now has, or hereafter can, will, or may have, arising out of (i) advertising, marketing and conduct of whatever kind by the Babolat Releasees related to any and all professional athletes and their connection with, affiliation with, association with or endorsement of the Qualifying Racquets and any components thereof; (ii) the use of the term "GT Technology

and

> 'tungsten' in the Babolat Releasees' advertising, marketing materials, labeling, and any other communication or information of whatever kind related to the Qualifying Racquets, (iii) factual allegations or claims made in the Second Amended Complaint, and (iv) any violation or alleged violation of any federal or state law and any federal or state statute, including but not limited to California Business & Professions Code §§ 17200, et seq., 17500 et seq., and California Civil Code §1750, predicated on (i), (ii) or (iii) (the 'Released Claims').

(Id. at 24.)

"Based on their own independent investigation and evaluation of the pending case, including a review of the pleadings and discovery, the deposition testimony, the actual racquets at issue, the sales documentation, and the law, Plaintiffs' Counsel is of the opinion that the $4.5 million Settlement reached in this Action is fair, reasonable, and in the best interest of the Class in light of all known facts and circumstances." (Mem. at 4.)

/ / /

LINK: 43

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 13-02823 GAF (VBKx)	Date	October 7, 2014
Title	Payam Ahdoot v. Babolat VS North America		

III.
DISCUSSION

A. CLASS CERTIFICATIONS

Where, as here, a settlement involves a proposed class that has not yet been certified, a court must preliminarily certify the proposed settlement class before it can preliminarily approve the class settlement. See Amchem Products, Inc. v. Windsor, 521 U.S. 591, 619 (1997); Hanlon v. Chrysler Corp., 150 F.3d 1011, 1019–23 (9th Cir. 1998). A class may be certified only if a plaintiff has met all four requirements of Federal Rule of Civil Procedure 23(a), as well as at least one of the three requirements of Rule 23(b). See Fed. R. Civ. P. 23(a)–(b); Hanlon, 150 F.3d at 1019–22. Here, Plaintiffs seek certification of the proposed Settlement Class for settlement purposes. (Mem. at 1.)

Rule 23(a) requires: (1) that the proposed class be "so numerous that joinder of all members is impracticable;" (2) that there be "questions of law or fact common to the class;" (3) that the representative plaintiff's claims be typical of the class's claims; and (4) that the representative plaintiff will "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a). These four elements are mandatory prerequisites to a class being certified. Id.

"In addition to meeting the conditions imposed by Rule 23(a), the parties seeking class certification must also show that the action is maintainable under Fed. R. Civ. P. 23(b)(1), (2) or (3)." Hanlon, 150 F.3d at 1022. Plaintiffs seek certification under Rule 23(b)(3), and in order to qualify under that subsection, "a class must satisfy two conditions in addition to the Rule 23(a) prerequisites: common questions must 'predominate over any questions affecting only individual members,' and class resolution must be 'superior to other available methods for the fair and efficient adjudication of the controversy.'" Id.; Fed. R. Civ. P. 23(b)(3); (Mem. at 22-23.). In making this determination, the courts are advised to consider: (1) the class members' interests, if any, in individually controlling the prosecution of separate actions; (2) the extent and nature of any lawsuits concerning the controversy already begun by members of the proposed class; (3) the desirability of concentrating the litigation in the particular judicial forum; and (4) "the likely difficulties in managing a class action." Fed. R. Civ. P. 23(b)(3).

As discussed in detail below, the Court concludes that Plaintiffs have met the requirements of Rules 23(a) and 23(b)(3). The Court will therefore preliminarily certify the proposed Settlement Class.

LINK: 43

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 13-02823 GAF (VBKx)	Date	October 7, 2014
Title	Payam Ahdoot v. Babolat VS North America		

1. RULE 23(A)

First, Plaintiffs have demonstrated that Rule 23's numerosity requirement is met here. Rule 23(a)(1) requires that the class be so numerous that joinder of all members would be infeasible. Here, the proposed Settlement Class is defined as Persons who engaged in a Qualifying Transaction during the Class Period. (Settlement Agmt. at 9, § EE.) The Class Period is defined as "beginning on January 1, 2009, and ending on November 11, 2014 or, if later, the actual date of publication of the November/December issue of Tennis Magazine containing the Short Form Publication Notice." (Settlement Agmt., at 5, § G.) Plaintiffs estimate that "evidence indicates there are thousands of Class Members during the Class Period." (Mem. At 19, § A.) This number satisfies the numerosity requirement. See, e.g., Krzesniak v. Cendant Corp., 2007 U.S. Dist. LEXIS 47518, at *19 (N.D. Cal. June 20, 2007) ("Although there is no exact number, some courts have held that numerosity may be presumed when the class comprises forty or more members.").

The "commonality" and "typicality" requirements set forth in Rule 23 are also satisfied. For an adequate showing of commonality, Rule 23(a)(2) requires that "claims [] depend upon a common contention . . . that is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." Wal-Mart Stores, Inc. v. Dukes, 131 S.Ct. 2541, 2551 (2011). And Rule 23(a)(3)'s typicality requirement is satisfied where the representative plaintiff's claims are "typical of the claims or defenses of the class." Hanlon, 170 F.3d at 1019 (quoting Fed. R. Civ. P. 23(a)(3)). Here, common questions of law exist among the proposed class members including:

> (1) whether Babolat had adequate substantiation for its claims prior to making them; (2) whether Babolat engaged in false or misleading advertising; (3) whether Babolat's alleged conduct violates public policy; (4) whether the alleged conduct constitutes violations of the laws asserted; (5) whether Plaintiffs and Class Members have sustained monetary loss and the proper measure of that loss; and (6) whether Plaintiffs and Class Members are entitled to an award of punitive damages, declaratory and injunctive relief, and/or restitution.

(Mem. at 20.) And with respect to the typicality requirement, "Plaintiffs suffered injury from the same specific actions that harmed other members of the Class and their claims are typical of the Class as a whole because they arise from the same factual basis and are based on the same legal

LINK: 43

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 13-02823 GAF (VBKx)	Date	October 7, 2014
Title	Payam Ahdoot v. Babolat VS North America		

theory as those applicable to the Class Members." (Id. at 21.) The Court therefore concludes that the commonality and typicality requirements are met here.

Finally, Plaintiffs have demonstrated—as required by Rule 23(a)(4)—that the representative Plaintiffs and Plaintiffs' Counsel "will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). In the Ninth Circuit, courts look for any conflicts of interest that the representative plaintiff and his or her counsel might have with the other class members, and evaluate whether the representative plaintiff will "prosecute the action vigorously on behalf of the class." Staton v. Boeing Co., 327 F.3d 938, 957 (9th Cir. 2003); Hanlon, 150 F.3d at 1020. There is no standard to assess "vigor," but "considerations include competency of counsel and, in the context of a settlement-only class, an assessment of the rationale for not pursuing further litigation." Hanlon, 150 F.3d at 1021. Here, Plaintiffs' Counsel has "served as lead or co-counsel in numerous other class actions demonstrating their substantial litigation and consumer protection experience." (Mem. at 21-22; Hamner Decl., ¶¶ 12, 17.) Additionally, there do not appear to be appear to be any conflicts of interest between Plaintiffs and the other Class Members as they all were "subject to the same advertising and marketing representations and purchased a racquet that was falsely labeled as containing tungsten and/or GT Technology." (Mem. at 22-23.) Moreover, Plaintiffs' Counsel state that Plaintiffs "are committed to putting the needs and interests of the Class ahead of their own." (Hamner Decl., ¶ 11.) The Court therefore concludes that the "adequacy of representation" requirement of Rule 23(a)(4) is satisfied.

In sum, Plaintiffs proposed Settlement Class satisfies the requirements of Rule 23(a).

2. RULE 23(B)(3)

In addition to meeting the requirements set forth in Rule 23(a), plaintiff "must also show that the action is maintainable under Fed. R. Civ. P. 23(b)(1), (2), or (3)." Hanlon, 150 F.3d at 1022. Here, Plaintiffs assert that Rule 23(b)(3) applies to the Settlement Class. (Mem. at 22-23.) Rule 23(b)(3) requires that the court find "that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

Plaintiffs maintain that "[c]ommon issues of law and fact predominate." (Mem. at 22.) Indeed, as discussed above, common questions of law and fact exist among the proposed Settlement Class Members, who all were "subject to the same advertising and marketing

LINK: 43

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 13-02823 GAF (VBKx)	Date	October 7, 2014
Title	Payam Ahdoot v. Babolat VS North America		

representations and purchased a racquet that was falsely labeled as containing tungsten and/or GT Technology." (Mem. at 22-23).

Plaintiffs also argue that the "superiority" requirement is met here. (Id. at 23.) In determining whether class resolution is superior to other methods of adjudication, the Court considers four factors: (1) the class members' interests, if any, in individually controlling the prosecution of a separate action; (2) the extent and nature of any lawsuits concerning the controversy already begun by members of the proposed class; (3) the desirability of concentrating the litigation in the particular judicial forum; and (4) "the likely difficulties in managing a class action." Fed. R. Civ. P. 23(b)(3); Zinser v. Accufix Research Inst., Inc., 253 F.3d 1180, 1190 (9th Cir. 2001).

These factors favor certification of the proposed Settlement Class. With respect to the first factor, as Plaintiffs point out, "[a] class action is superior to all other available means for the fair and efficient adjudication of this controversy . . . . [in part because the] damages or other financial detriment suffered by individual Class Members is relatively small compared to the burden and expense that would be entailed by individual litigation of their claims against the defendant." (SAC at 25, ¶ 54.) Additionally, individual litigation would "be virtually impossible for the Class," and if possible, "would create the danger of inconsistent or contradictory judgments arising from the same set of facts . . . . [and] would also increase the delay and expense to all parties and the court system from the issues raised by this action." (Id. at 25-26, § 54.) As to the second factor, the Court is unaware of any individual lawsuits brought by members of the proposed Settlement Class. With respect to the third factor, concentration of this litigation in California is desirable, as the claims against Defendants arise out of the California Business & Professions Code. (Hamner Decl. at 3, ¶ 4.) And finally, because this case is poised for settlement, the fourth factor does not apply because the case will not be going to trial. See Amchem, 521 U.S. at 620.

3. CONCLUSION RE: CLASS CERTIFICATION

The Court therefore concludes that the proposed Settlement Class complies with Rule 23's requirements and should therefore be certified for purposes of the Proposed Settlement.

/ / /

LINK: 43

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 13-02823 GAF (VBKx)	Date	October 7, 2014
Title	Payam Ahdoot v. Babolat VS North America		

B. NOTICE

Rule 23(c)(2)(B) requires a court to ensure that the Proposed Notice to the potential class be "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). The notice must state the following in "plain, easily understood language": (1) the nature of the class action; (2) the definition of the certified class; (3) the class's claims; (4) that a class member may appear through an attorney; (5) that this Court will exclude from the class any member so requesting; (6) the time and manner for requesting exclusion; and (7) the binding effect on class members of a final judgment. Id.

Plaintiff's proposed Class Notice meets the requirements of Rule 23. The proposed Class Notice is "designed to meaningfully reach the largest possible number of Settlement Class Numbers." (Mem. at 25.) According to Plaintiff, the proposed Class Notice "complies fully with applicable case law that the notice given should have a reasonable chance of reaching a substantial percentage of the class." (Mem. at 25; Hamner Decl., ¶ 10.) Additionally, the "Parties have agreed that such proposed Notice is the best possible notice in light of the circumstances." (Hamner Decl., at 9 ¶ 10.; Settlement Agmt. at 16, § C.) After receiving Court approval: (1) the Short Form Publication Notice will be published in the November/December 2014 issue of Tennis Magazine; (2) a banner advertisement referencing the Settlement will be published on the United States versions of Babolat.com and Tennis.com contemporaneously with the appearance of the Short Form Publication Notice in Tennis Magazine and will remain until the day after the final day in the Claim Period; and (3) a settlement website, Babolatsettlement.com will be established and be operational on or before the first day the Short Form Publication notice appears in Tennis Magazine and will be disabled immediately upon conclusion of the Claim Period. (Settlement Agmt. at 15-16, § A.)

The proposed Notice of Settlement meets the requirements of Rule 23(c)(2)(B). It sets forth in "plain, easily-understood language": (1) a "Description of the Lawsuit;" (2) the definition of the Settlement Class; (3) a description of the class's claims; (4) notice of the right to opt out of the settlement; (5) the procedure and time period for opting out of the Settlement Agreement, and (6) the binding effect of Final Approval. (See Short Form Publication Notice.)

In addition, the proposed Claim Form can be downloaded from the Settlement website and can be requested by mail. (To receive reimbursement, Class Members must submit to the Settlement Administrator by mail or via the Settlement website "a fully completed Claim Form

signed under penalty of perjury." (Mem. at 10, § GG.) Submissions by mail must be postmarked no later than the final day of the Claims Period. (Id.) "The Notice is organized and formatted so as to be as clear as possible." (Mem. at 25; Hamner Decl. at 9, ¶10.)

The Court therefore concludes that the proposed Class Notice complies with Rule 23's requirements and should therefore be certified for purposes of the Proposed Settlement.

C. PRELIMINARY APPROVAL OF SETTLEMENT

1. THE LEGAL STANDARD

Finally, Rule 23(e) provides that the claims of a certified class shall be settled or compromised only with the court's approval. Fed. R. Civ. P. 23(e). This approval is a "two-step process in which the Court first determines whether a proposed class action settlement deserves preliminary approval and then, after notice is given to class members, whether final approval is warranted." Nat'l Rural Telecomms. Coop. v. DirecTV, Inc., 221 F.R.D. 523, 525 (C.D. Cal. 2004). This Order pertains to a preliminary approval; "[c]loser scrutiny is reserved for the final approval hearing." Harris v. Vector Marketing Corp., 2011 WL 1627973, at *7 (N.D. Cal. Apr. 29, 2011).

The central concern of judicial supervision at this stage of the settlement process is to ensure that "[1] the proposed settlement appears to be the product of serious, informed, noncollusive negotiations, [2] has no obvious deficiencies, [3] does not improperly grant preferential treatment to [C]lass [R]epresentatives or segments of the class, and [4] falls within the range of possible approval." In re Tableware Antitrust Litig., 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007) (internal quotations and citation omitted).

"Although Rule 23(e) is silent respecting the standard by which a proposed settlement is to be evaluated, the universally applied standard is whether the settlement is fundamentally fair, adequate and reasonable." Officers for Justice v. Civil Svc. Comm'n, 688 F.2d 615, 625 (9th Cir. 1982). In the Ninth Circuit, district courts consider at least eight factors in determining whether a proposed class action settlement is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2); Staton, 327 F.3d at 959; Officers for Justice, 688 F.2d at 625. These factors include: (1) the strength of Plaintiff's case; (2) "the risk, expense, complexity, and likely duration of further litigation;" (3) "the risk of maintaining class action status throughout the trial;" (4) "the amount offered in settlement;" (5) the extent of discovery completed and the stage of the legal proceedings; (6) the experience and opinions of counsel; (7) whether a governmental entity is a

LINK: 43

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 13-02823 GAF (VBKx)	Date	October 7, 2014
Title	Payam Ahdoot v. Babolat VS North America		

participant in the proceedings; and (8) the reaction of the class to the proposed settlement. Staton, 327 F.3d at 959. However, these factors are not exhaustive, and courts have not identified which factors are more salient to the analysis; rather, the relative weight to give each factor varies on a case-by-case basis. Officers for Justice, 688 F.2d at 625.

The proposed settlement must also "fall[] within the range of possible approval." Tableware, 484 F. Supp. 2d at 1079. As case law has defined it, the "range of possible approval" is typically a balancing of the plaintiff's "expected recovery . . . against the value of the settlement offer." See id. at 1079-80; Vasquez v. Coast Valley Roofing, Inc., 670 F. Supp. 2d 1114, 1125 (E.D. Cal. 2009). In short, the fundamental inquiry is "substantive fairness and adequacy." Vasquez, 670 F. Supp. 2d at 1125 (quoting Tableware, 484 F. Supp. 2d at 1080). This determination entails a weighing of many of the eight factors listed above. See Tableware, 484 F. Supp. 2d at 1080 (noting that the expected recovery would be lowered by the anticipated expense and complexity of litigation); 6A Fed. Proc., L. Ed. § 12:378 (2011).

Having considered the Proposed Settlement and Supplemental Briefing, the Court concludes that the Proposed Settlement should be preliminarily approved. It is not the product of fraud or overreaching; it lacks any obvious deficiencies; it does not give any improperly preferential treatment to Plaintiff; and it falls within the range of possible approval. The factors and considerations that support this conclusion are discussed in turn.

2. THE PROPOSED SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

There can be little doubt that the negotiations in this case, which were conducted at arm's-length by counsel with the assistance of an experienced mediator, were serious, informed, and non-collusive. The Parties were represented by experienced counsel who bargained in an adversarial manner, "each with a comprehensive understanding of the strengths and weaknesses of each party's respective claims and defenses . . . ." Tableware, 484 F. Supp. 2d at 1080. The Court is therefore satisfied that the settlement in this case was the result of good faith negotiations.

Furthermore, the Court finds that the settlement is reasonable. As discussed above, Defendant has agreed to pay $4,500,000 to resolve this litigation, all of which will be distributed to the proposed Settlement Class, less attorney's fees and costs, enhancement award to named Plaintiffs, and the costs of settlement administration. (Settlement Agmt. at 6-7.) The remaining amount will be distributed to the Settlement Class members who "engaged in a Qualifying Transaction with the exception of employees, principals, officers, directors, agents, affiliated

LINK: 43

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 13-02823 GAF (VBKx)	Date	October 7, 2014
Title	Payam Ahdoot v. Babolat VS North America		

entities, legal representatives, successors, or assignees of Babolat VS North America, Inc.; distributors, dealers, and retailers of Babolat VS North America, Inc. or its parent, Babolat VS SA, to the extent the Qualifying Racquets were purchased by the distributors, dealers, and retailers for resale and not for personal use; and the District Court and any other judges who may be assigned to the Action and any members of their immediate families." (Settlement Agmt. at 9, § EE.) Settlement Class members must submit a claim to be paid under the Settlement Agreement. (Id.) Given the general risk, delay, and costs of further litigation, the settlement amount represents a fair and reasonable resolution and gives certain and immediate recovery to the class members.

Plaintiffs Supplemental Briefing establishes the estimated cost of administering the settlement. (See Docket No. 52 [Supplemental Briefing ("Supp. Mem.")] at 13.) The estimated Settlement Administrator expenses range from $133,068-$238,606, including $19,849 for print and online media Notice. (Id.) The cost of claims administration is estimated to be between $113,219 and $218,757, including the Class Action Fairness Act of 2005 ("CAFA") notices. (Id.) All of these costs are based on estimates of between 50,000 and 150,000 claimants. (Id.) This figure appears to be reasonable for these services.

And the Court also finds that Plaintiffs' request for an attorneys' fees of $1,125,000, which is 25% of the GSF, is reasonable. (See id. at 1.) In cases where, as here, the attorneys seek a percentage of the common fund, the Ninth Circuit has established 25% of the common fund as the "benchmark" award for attorney's fees. Torrisi v. Tucson Elec. Power Co., 8 F.3d 1370, 1376 (9th Cir. 1993). Plaintiffs' proposed attorney's fee figure represents 25% of the GSF, which comports with the Ninth Circuit's "benchmark" percentage. The lodestar method, multiplying reasonable hours worked by a reasonable rate, may be used as a cross-check on the reasonableness of fees awarded through a percentage method. Id. at 1048-50. To reach the 25% asked for here, the lodestar would need to be subject to a multiplier of approximately 1.8. (See id. at 3.) Based on the difficulty of this case and the benefit Plaintiffs' Counsel achieved for the Class, such a multiplier would be reasonable here. Thus, the lodestar cross check supports the award of 25% of the GSG as attorney's fees to Plaintiffs' Counsel as stated in the Proposed Settlement. The final award of attorney's fees and expenses has yet to be approved, but at this preliminary stage, the Court does not see any "special circumstances" that would warrant an adjustment of the benchmark percentage. Torrisi, 8 F.3d at 1376–77.

And the Court also finds that the proposed enhancement award to each named Plaintiff is reasonable. Plaintiffs' request that an enhancement award of $5,000 be paid out of the Gross Fund Value for their services to the Settlement Class as Class Representatives. (Mem. at 7;

LINK: 43

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 13-02823 GAF (VBKx)	Date	October 7, 2014
Title	Payam Ahdoot v. Babolat VS North America		

Settlement Agmt. at 21, § B.) Plaintiffs assert that they "have served as [C]lass [R]epresentatives with diligence and dedication . . . . [by] respond[ing] to written discovery, produc[ing] responsive documents, s[itting] for deposition, participat[ing] in settlement negotiations, and . . . [being] fully engaged in investigations with counsel and the expert regarding the allegations in this Action." (Mem. at 22.) The Court agrees that the named Plaintiffs should be recognized and compensated for their assistance and involvement throughout the litigation, and that a $5,000 incentive award for each named Plaintiff is appropriate.

The Court therefore concludes the Proposed Settlement is fair, reasonable, and adequate.

3. THE PROPOSED SETTLEMENT "FALLS WITHIN THE RANGE OF POSSIBLE APPROVAL"

As a preliminary matter, the Court notes that the seventh factor set forth by the Ninth Circuit in Staton, whether a governmental entity is part of the proceedings, is not at issue in this case. The eighth factor is also not at issue as the Class Members have not yet received notice of the Proposed Settlement.

The first, second, and third factors—which encompass the risks of proceeding with litigation as opposed to settling— demonstrate that preliminary approval of the settlement is appropriate here.

> Plaintiffs' Counsel recognizes the inherent risk associated with prosecuting this matter through trial including the fact that issues presented in the Action are likely only to be resolved with extensive and costly pretrial proceedings that further litigation will cause inconvenience, distraction, disruption, delay and expense disproportionate to the potential benefits of litigation and have taken into account the risk and uncertainty of the outcome inherent in any litigation.

(Mem. at 14.) Plaintiffs' Counsel contends that due to time and monetary costs that "would severely deplete any eventual recovery" the "resolution of this case before trial will substantially benefit the Settlement Class." (Mem. at 15.) Despite maintaining that the instant action is distinct, Plaintiffs' Counsel is cognizant of the potential for denial of certification, especially with the recent decision of from Brandon Kramer v. Wilson Sporting Goods Co., Case No. 2:13-cv-06330-JFW-SH, "which involved some of the same issues as the instant case," and where "the District Court denied class certification, finding that Kramer failed to meet his burden of

LINK: 43

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 13-02823 GAF (VBKx)	Date	October 7, 2014
Title	Payam Ahdoot v. Babolat VS North America		

demonstrating that questions of law or fact common to class members predominate[d] over any questions affecting only individual members." (Id. at 13, § 1.)

D. RUST CONSULTING, INC. IS AN APPROPRIATE SETTLEMENT ADMINISTRATOR

The Parties have agreed upon and recommend that the Court appoint Rust Consulting, Inc., to serve as the Settlement Administrator. (Settlement Agmt. at 9, § BB.) As stated above, the estimated Settlement Administrator expenses range from $133,068-$238,606, including $19,849 for print and online media Notice, and the estimated cost of claims administration ranges between $113,219 and $218,757, including the CAFA notices. (Supp. Mem. at 13.) All of these costs are based on estimates of between 50,000 and 150,000 claimants. (Id.) The Court finds that Rust Consulting, Inc., is an appropriate Settlement Administrator.

IV.
CONCLUSION

For the reasons set forth above:

(1) The Second Amended Complaint appearing as Exhibit F to the Hamner Declaration is deemed **FILED**;

(2) Plaintiff's motion is **GRANTED**;

(3) The Settlement Class is provisionally **CERTIFIED**;

(4) The proposed Settlement Agreement is preliminarily **APPROVED**;

(5) The Short Form and Long Form Publication Notices and the banner for the Babolat.com and Tennis.com are also preliminarily **APPROVED**;

(6) Named Plaintiffs Payam Ahdoot and Brandon Clark are appointed as Class Representatives;

(7) Hamner Law Offices, APC; The Olsen Law Offices, and Wootton Law Group, LLP are appointed as Class Counsel; and

(8) Rust Consulting, Inc., is appointed as the Settlement Administrator and is directed to mail the Notice of Settlement and Share Forms by first class mail to

LINK: 43

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 13-02823 GAF (VBKx)	Date	October 7, 2014
Title	Payam Ahdoot v. Babolat VS North America		

members of the Settlement Class.

The Court hereby establishes the following **SCHEDULE**:

Deadline for Settlement Class members to submit written objections to the Settlement Agreement: **No less than 21 days before the hearing for final approval.**

Deadline for Settlement Class members to opt out of the Settlement Agreement: **No less than 21 days before the hearing on the motion for final approval.**

Deadline for filing briefs in support of motion for final approval: **At least 7 days prior to the hearing on the motion for final approval**.

Final Approval hearing: As Plaintiffs request that the Court schedule the Final Approval hearing for approximately 120 days after preliminary approval, the Final Approval hearing on this matter is hereby scheduled for **Monday, November 10, 2014, at 9:30 a.m.**

IT IS SO ORDERED.