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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	SACV 17-1397 JVS (JDEx)	Date	April 8, 2020
Title	**Meghan Schmitt, et al v. Younique, LLC**		

Present: The Honorable	**James V. Selna, U.S. District Court Judge**

Lisa Bredahl	Not Present
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
Not Present	Not Present

Proceedings: **[IN CHAMBERS] Order Regarding Motions for Final Approval of Class Action Settlement and for Attorneys' Fees**

Before the Court are two motions.

First, Plaintiffs Megan Schmitt ("Schmitt"), Deana Williams ("Williams"), Carol Orlowsky ("Orlowsky"), and Stephanie Miller Brun ("Brun") (together—"Plaintiffs") filed an unopposed motion for final approval of a proposed class action settlement ("Settlement"), certification of the Settlement Class, approval of the notice plan, and appointment of a Settlement Administrator. (Mot., Docket No. 269.)

Second, Plaintiffs filed a motion for attorneys' fees, litigation expenses, and for service awards. (Mot., Docket Nos. 258-59.)

For the following reasons, the Court **GRANTS** the motion for final approval of the settlement and **GRANTS IN PART and DENIES IN PART** the motion for attorneys' fees, expenses, and service awards.

I. BACKGROUND

A. Allegations and Procedural History

The facts of this case are well-known to the parties and the Court. The Court relies on the background facts from its order on class certification.

This case concerns the marketing and sales of Younique's mascara product,

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Moodstruck 3D Fiber Lashes (the "Lash Enhancer") from October 2012 until July 2015. (SAC, Docket No. 58 ¶ 1.) The Lash Enhancer consists of two components, a "Transplanting Gel" and "Natural Fibers." (Id. ¶ 3.) Younique represented that the Natural Fiber component was "natural" and consisted of "100% Natural Green Tea Fibers" on the Lash Enhancer's label. (Id. ¶ 8.) However, Plaintiffs allege that the Natural Fiber component did not actually contain any green tea leaves and instead was composed of ground-up nylon. (Id.) Plaintiffs allege that a reasonable person would not consider nylon "natural." (Id. ¶ 7.)

Younique's products are not sold in retail stores. (Opp'n, Docket No. 105-1 at 1.) The Lash Enhancer was sold by individual independent contractors ("Presenters") who marketed the Lash Enhancer via online platforms including "virtual" parties. (Id. at 1–2.) Customers can purchase products from Younique's website or from a Presenter's individual webpage, which is also connected to Younique's website. (Docket No. 111-4, Ex. 25, 235:24-236:7; Docket No. 111-5, Ex. 26, 90:7-91:12; Docket No. 111-6, Ex. 27, 42:17-44:8, 102:4-104:2, 107:8-108:5)

The Lash Enhancer contained tubes that were packaged inside a hard, black case (akin to an eyeglass case). (Henry Decl., Docket No. 111-1, Images 3, 15.) The case was shrink-wrapped in plastic. (Id., Image 4.) The ingredients were listed on a label stuck to the shrink-wrap on the back of the case. (Id., Image 5.) The two labels used featured one of the following representations:

> TRANSPLANTING GEL
> & NATURAL FIBERS
> ...
> Natural Fibers
> Net Wt. .02 oz/ .5g
> ...
> NATURAL FIBERS INGREDIENTS:
> 100% Natural Fibers taken from the
> Campanulaceae of Green Tea

(Henry Decl., Docket No. 111-1, Image 6.) or

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TRANSPLANTING GEL
& NATURAL FIBERS
...
Natural Fibers
Net Wt. .02 oz/ .5g
...
NATURAL FIBERS INGREDIENTS:
100% Natural Green Tea Fibers

(Id., Image 4.) Younique promotes itself as a company specializing in natural cosmetics. (Ranallo Depo., Docket No. 105-8, 67:13-24; August 2013 website capture, Docket No. 77-6, Ex. 2; August 2014 website capture, Docket No. 77-7, Ex. 3; Younique website capture, Docket No. 106-4, Ex. 16 "Nature. Love. Science.")

Plaintiffs filed a purported class action against Younique alleging eleven causes of action, including violations of the Magnuson-Moss Warranty Act ("MMWA"), 15 U.S.C. § 2301, et seq., the California Unfair Competition Law ("UCL"), California Bus.& Prof. Code § 17200, et seq., the California Consumers Legal Remedies Act ("CLRA"), Cal. Civ. Code § 1750, et seq., the Florida Unfair and Deceptive Trade Practices Act ("FUDTPA"), Fla. Stat. § 501.201, et seq., the Ohio Consumer Sales Practices Act, Ohio Rev. Code § 1345.01, the Ohio Deceptive Trade Practices Act ("ODTPA"), Ohio Rev. Code § 4165.01, et seq., and the Tennessee Consumer Protection Act ("TCPA"), Tenn. Code Ann. § 47-18-101, et seq.; breaches of an express warranty under California, Ohio, and Tennessee laws and breaches of the implied warranties of merchantability under California, Ohio, and Tennessee laws. (See generally SAC, Docket No. 58.)

In its ruling on the class certification motion, the Court denied Plaintiffs' motion to certify the Tennessee class, but granted the motion to certify the California, Florida, and Ohio classes. (Order, Docket No. 149 at 18.) The Court determined that on the evidence before it, there was "a methodologically plausible theory of classwide recovery." (Id. at 17.)

On December 12, 2018, Plaintiffs served Dr. May's Rule 26 report revealing his opinions for three classwide damages models. (Henry Decl., Docket No. 209-2 ¶ 11.) For his models, Dr. May obtained sales data from Information Resources, Incorporated

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("IRI") and coded the data for 1,126 products sold in California, 1,084 products sold in Florida, and 1,011 products sold in Ohio. (Report, Dkt. No. 214-6, Ex. H., Ex.3.) Dr. May also calculated R Square[1] numbers for California (.059), Florida (.067), and Ohio (.079). (Id.)

Plaintiffs sought a Preliminary Approval Order: (1) conditionally certifying the class under Fed. R. Civ. P. 23(b)(3) for settlement purposes; (2) preliminarily approving the Settlement as fair, reasonable, and adequate; (3) approving the Notice and Election of the Opt-Out Form to be disseminated to the Class Members in the form and manner proposed by the Parties as set forth in the Settlement Agreement and Exhibits C, D, and E, (4) appointing Heffler Claims Group as the Settlement Administrator, and (5) appointing Class Counsel as counsel to the Settlement Class. (Docket No. 251-1, § II. Q.) The Court granted the motion on September 16, 2019. (Order, Docket No. 255.)

B. Summary of the Settlement

1. The Proposed Settlement Class

Pursuant to the Settlement Agreement, the proposed settlement class consists of:

> all persons who (1) during the Class Period, resided in one of the following states: California, Ohio, Florida, Michigan, Minnesota, Missouri, New Jersey, Pennsylvania, Tennessee, Texas, and Washington; and (2) purchased one or more Products for

[1] According to Dr. May, "R square refers to what's called the goodness of fit of the regression equation as a whole in terms of – one way to think about it in two dimensional space is how tight are the dots, the observations on the line that you're fitting to them. If they're very close, then you have a very good fit for their regression as a whole. If they're scattered far from the line, then it's – the fit for the line as a whole is not as good." (May Depo., Dkt. No. 214-5, 92:18-93:6.) Dr. May explained that an R square of .059920703 (the R square associated with the California regression model) indicates that "if you're looking at the explaining or predicting the price with the equation as a whole, you're explaining about six percent of the variation in price, 5.99 percent. . . . A perfect fit would be 1.0. So that would be a hundred. So, the R square is basically looking at the fit of the model as a whole, but it's not necessarily what we're interested in here. We're interested in certain coefficients, specifically Z one. . . . The short answer is it's not a great fit for the regression as a whole, but what we care more about is the fit on the Z one coefficient." (Id., 93:8-94:9.)

> personal, family or household use and not for resale. Presenters will not be excluded from the Class but only their purchases for personal, family or household use and not for resale will be subject to this Agreement as set forth in Section V. Excluded from the Settlement Class are: (a) Younique's board members or executive-level officers, including its attorneys; (b) governmental entities; (c) the Court, the Court's immediate family, and the Court's staff; and (d) any person that timely and properly excludes himself or herself from the Settlement Class in accordance with Section VIII(B) of this Agreement or as approved by the Court.

(Settlement Agreement, Docket No. 251-1, Gonnelli Decl., Ex. 1, § II. Z.) The "Class Period" runs from October 1, 2012 to July 31, 2015. (Id. § II. I.)

2. Settlement Amount and Injunctive Relief

The proposed settlement provides for the creation of a Settlement Fund in the amount of $3,250,000.00. (Id. § IV. A.)

The Settlement Fund shall be applied to pay in the following order: (i) any necessary taxes and tax expenses; (ii) all costs and expenses associated with Class Notice, including all fees and expenses of the Settlement Administrator; (iii) all costs and expenses associated with the administration of the Settlement, including all fees and expenses of the Settlement Administrator; (iv) any Attorneys' Fees award made by the Court to Class Counsel; (v) any award of Expenses made by the Court to Class Counsel; (vi) any Service Awards made by the Court to Plaintiffs; (vii) cash payments distributed to Settlement Class members who have submitted timely, valid, and approved claims pursuant to the claims process; and (viii) the Residual Funds, if any. (Id. § IV. A. 1.)

Within ten bank days after the Preliminary Approval Order is entered, Younique shall transfer $200,000.00 into the Settlement Fund which shall be used to pay costs and expenses of the Settlement Administrator, including to effectuate Class Notice pursuant to the Notice Plan. (Id. § IV. A. 2.)

In addition, Younique agrees that, for three years, if it elects to describe an ingredient in its current or future fiber lash products as "natural," it will have the product tested by a reputable U.S.-based laboratory every six months to confirm the ingredients

identified as "natural" are as described. (Id. § IV.B.1.)

3. Attorneys' Fees and Costs

Class Counsel's attorneys' fees shall not exceed an amount equal to 33.33% of the Settlement Fund of $3,250,000.00. (Id. § X. A.) This amount shall be paid from the Settlement Fund and shall be the sole aggregate compensation paid by Younique to Class Counsel for representing Plaintiffs and the Settlement Class, for prosecuting the Action, the *Bowers* Action and any Related Action and relating to this Agreement. (Id.)

4. Administrative Expenses and Service Awards

The Settlement Agreement indicates that the Settlement Administrative Costs shall not exceed $175,000. (Id. § X. B.)

In addition, Class Counsel will make an application for Service Awards to the Megan Schmitt, Stephanie Miller-Brun and Deana Williams that will not exceed $45,000 ($15,000 each). (Id. § X. C.) Class Counsel also intends to make an application for a Service Award to Kristen Bowers, Brenna Kelly-Starkebaum, and Aschley Willey. (Id.) The Service Awards, if granted, shall be paid from the Settlement Fund and shall be the only Service Awards paid by Younique. (Id.)

5. Calculation of Settlement Payments

The relief to be provided to each member of the Settlement Class who submits a timely and valid Claim Form pursuant to the terms and conditions of this Agreement shall be a payment in the form of a cash refund. (Id. § V. J.) Payment will be based on the number of Products purchased by the member of the Settlement Class and the total amount of valid claims submitted. (Id.) Cash refunds will be paid by the Settlement Administrator via check, pursuant to Section V(K). (Id.) The Settlement Administrator shall determine each authorized Settlement Class member's pro rata share based upon each Settlement Class member's Claim Form and the total number of valid claims. (Id.) Accordingly, the actual amount recovered by each Settlement Class member who submits a timely and valid claim will not be determined until after the Claim Period has ended and the number of Products purchased by the member of the Settlement Class and the total

amount of valid claims submitted is determined. (Id.)

The Settlement Administrator shall begin paying timely, valid, and approved claims via first-class mail no later than 30 days after the Effective Date. (Id. § V. K. 1.) The Settlement Administrator shall have completed the payment to Settlement Class members who have submitted timely, valid, and approved claims pursuant to the claim process no later than 45 days after the Effective Date. (Id. § V. K. 2.)

6. Release

Upon the Effective Date of this Agreement, Plaintiffs and each member of the Settlement Class, and each of their successors, assigns, heirs, and personal representatives, shall be deemed to have, and by operation of the Final Approval Order and Judgment shall have, fully released, relinquished, and discharged all Released Claims against the Released Persons. (Id. § IX. A.)

7. Notice

Class Counsel and Younique retained Heffler Claims Group to be the Settlement Administrator for this Agreement. (Id. § VI. A.)

The Settlement Administrator shall establishing a website, www. FiberLashesSettlement.com that contains the Complaint, this Agreement, the long form of the Class Notice (Exhibit D hereto), a Claim Form capable of being completed and submitted online or printed, the documents to be filed supporting a motion for preliminary approval of this settlement, the documents to be filed supporting an application for an award of Attorneys' Fees, Expenses and Service Awards, and the documents to be filed supporting a motion for Final Approval Order and Judgment. (Id. § VI. A. 1. c.) The Settlement Website shall be activated according to the Notice Plan, and shall remain active until 90 calendar days after the Effective Date. (Id.)

The Settlement Administrator will also send the Class Notice and/or Claim Form to any potential member of the Settlement Class who so requests, via electronic or U.S. mail. (Id. § VI. A. 1. d.)

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8. Unpaid Funds

If, after the payment of the items set forth in Section IV(A)(1)(i)-(vi) and the expiration of checks mailed to members of the Settlement Class, value remains in the Settlement Fund, it shall be called the Residual Fund. (Id. § V. L.) Any value remaining in the Residual Fund shall increase eligible Settlement Class members' relief on a pro rata basis until the Residual Fund is exhausted, unless the Parties mutually agree that a supplemental distribution is economically unfeasible. (Id.) Should the Parties mutually agree that a supplement distribution is economically unfeasible, then the parties will meet and confer in good faith to reach an agreement on a *cy pres* recipient approved by the Court. (Id.) If the Parties are unable to reach an agreement on a *cy pres* recipient, then Younique, on the one hand, and Plaintiffs, on the other hand, may submit alternative proposals for the cy pres recipient to the Court and the Court will select the recipient. (Id.) There shall be no reverter to Younique. (Id.)

9, Opt-Out and Objection Process

A member of the Settlement Class may object to this Agreement or request exclusion from this Agreement. (Id. § VIII.) Any member of the Settlement Class who does not request exclusion from the Settlement has the right to object to the Settlement. (Id.) Members of the Settlement Class may not both object to and opt out of the Settlement. (Id.) Any member of the Settlement Class who wishes to object must timely submit an objection as set forth in Section VIII(A). (Id.) If a member of a Settlement Class submits both an objection and a written request for exclusion, he or she shall be deemed to have complied with the terms of the procedure for requesting exclusion as set forth in Section VIII(B) and shall not be bound by the Agreement if approved by the Court, and the objection will not be considered by the Court. (Id.)

10. Revocation of Agreement

Pursuant to the Settlement Agreement, the parties shall each have the right to terminate this Agreement if (1) the Court denies preliminary approval or final approval of this Agreement, or (2) the Final Approval Order and Judgment does not become final by reason of a higher court reversing the Final Approval Order and Judgment, and the Court thereafter declines to enter a further order approving settlement

on the terms in this Agreement. (Id. § XII. A.)

In addition, Younique has the right to terminate the Agreement if, prior to the entry of the Final Approval Order and Judgment, .1% or more members of the Settlement Class for whom the parties have class contact information submit timely and valid requests for exclusion. (Id. § XII. B.)

C. Preliminary Approval

On September 16, 2019, the Court granted Plaintiffs' motion certifying the proposed Settlement Class, granted preliminary approval of the proposed settlement, directed dissemination of notice to the Class pursuant to the proposed Notice Plan, and appointing Heffler Claims Group as the Settlement Administrator for the dissemination of notice. (Order, Docket No. 255.)

D. Notice and Objections

Since receiving preliminary approval, the Court-approved Notice Plan was successfully executed by the Settlement Administrator, Heffler Claims Group. (See generally Declaration of Michael E. Hamer ("Hamer Decl."), Docket No. 259-2, Ex A.)

Heffler caused the Published Notice to be published in the San Jose Mercury on multiple dates and implemented a targeted notice program online. (Id. ¶¶ 4-5.) It also established the Settlement Website. (Id. ¶ 11.)

The Notice Plan commenced on October 23, 2019, with the sending of 790,247 emails to all persons on the Class List. (Id. ¶ 6.) A total of 105,486 emails were ultimately unsuccessful. (Id.) Between November 1 and 8, 2019, a total of 132,088 Postcard Notices were mailed to Class Members for whom the email notice was rejected and a physical street address was provided. (Id. ¶ 7.) Heffler re-mailed Postcard Notices to those postcards returned as undeliverable with forwarding addresses, and performed skip-tracing research on those returned without a forwarding address. (Id. ¶ 8.)

Pursuant to the Preliminary Approval Order, requests for exclusion were to be postmarked no later than January 21, 2020. (Id. ¶ 9.) Heffler has received four requests

for exclusion. (Id.)

Heffler received no objections to the settlement by January 21, 2020, the deadline to do so. (Id. ¶ 10.)

Through March 5, 2020, Heffler has received and logged a total of 68,458 Claim Forms. (Id. ¶ 13.) Heffler anticipates its claims review will be completed by April 30, 2020. (Id.)

Heffler estimates that its total fees and costs for notice and claims administration will amount to approximately $285,000. (Id. ¶ 15.)

II. LEGAL STANDARD

Federal Rule of Civil Procedure Rule 23(e) requires court approval for class-action settlements. Fed. R. Civ. P. 23(e). When the parties reach a settlement agreement before class certification, a court uses a two-step process to approve a class-action settlement. Staton v. Boeing Co., 327 F.3d 938, 952 (9th Cir. 2003). First, the court must certify the proposed settlement class. Id. Second, the court must determine whether the proposed settlement is fundamentally fair, adequate, and reasonable. Id.

III. DISCUSSION

A. Class Certification

The Court preliminarily certified the proposed Class in its prior order. (Order, Docket No. 255.) Nothing has changed in the interim that would warrant a deviation from the Court's prior ruling. Therefore, for the reasons specified in its preliminary approval order, the Court certifies the Settlement Class for final approval of the Settlement.

B. Approval of the Class Settlement

1. The Fairness Factors Support Settlement Approval

Rule 23(e) requires a district court to determine whether a proposed class action settlement is "fundamentally fair, adequate, and reasonable." Staton, 327 F.3d at 959. For this analysis, a court typically considers the following factors: (1) strength of the plaintiff's case; (2) risk, expense, complexity, and likely duration of further litigation; (3) risk of maintaining class action status throughout the trial; (4) amount offered in settlement; (5) extent of discovery completed and the stage of the proceedings; (6) experience and views of counsel; (7) presence of a governmental participant; and (8) reaction of the class members to the proposed settlement. In re Bluetooth Headset Prods. Liab. Litig., 654 F.3d 935, 946 (9th Cir. 2011).

a. Strength of Plaintiffs' Case and the Risk, Expense, Complexity, and Likely Duration of Further Litigation

Plaintiffs claim that Defendant adopted, promulgated, and benefitted from the representation that the Product was composed of natural ingredients. (Mot. at 20.) Plaintiffs believe there is ample evidence that the fibers were not "natural." (Id.) Testing by the Plaintiffs' liability expert demonstrated that the Product contained synthetic ingredients rather than "100% Natural Green Tea Fibers" as represented by Defendant. (See Docket No. 157.) In addition, in January 2014, Defendant received an ingredient list from its China-based vendor, Six Plus, which stated that the sole ingredient in the fibers was not natural green tea but was instead polyvinyl alcohol fiber. (See Docket No. 111 at 9.) During the subsequent 18 months that Defendant continued selling the Product, Defendant did not disclose that the Product's fibers were synthetic. (Mot. at 20.) Plaintiffs believe that they could prove Defendant's deceptive conduct using this evidence, while Defendant contends that it had no obligation to make disclosures because it had already changed suppliers by the time it received the Six Plus email. (Id.) The Court denied Defendant's motion for summary judgment with respect to a number of Plaintiffs' claims. (See Docket No. 136.)

Plaintiffs and their counsel believe their claims are meritorious, but Defendant has raised, and would continue to raise, challenges to the legal and factual basis for such claims. (Mot. at 15.) Defendant has filed a number of pre-trial motions, including challenges to the admissibility of the reports of both Plaintiffs' damages expert and liability expert. (Id.) Even if Plaintiffs' damages calculations were not excluded, Defendant would vigorously challenge the accuracy of those calculations and it would be

Plaintiffs' burden to prove how much, if any, of the Product's price is based on the "natural" representations at issue. (Id.) Defendant also filed a motion for class decertification. (Id.; see Docket No. 214.) The risk of decertification in this case supports final approval.

The Court finds that these factors weigh in favor of final approval.

b. Amount Offered in the Proposed Settlement

"It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair." In re Mego Fin. Corp. Sec. Litig., 213 F.3d 454, 459 (9th Cir. 2000) (quoting Officers for Justice v. Civil Serv. Comm'n of City & Cty. of San Francisco, 688 F.2d 615, 628 (9th Cir. 1982)). As a result, district courts should not judge the proposed settlement "against a hypothetical or speculative measure of what might have been achieved by the negotiators." In re Toys R Us-Delaware, Inc.--Fair & Accurate Credit Transactions Act (FACTA) Litig., 295 F.R.D. 438, 453 (C.D. Cal. 2014) (quoting Officers for Justice, 688 F.2d at 625). Instead, courts should consider the settlement in conjunction with "factors such as the risk of losing at trial, the expense of litigating the case, and the expected delay in recovery (often measured in years)." Id.

The Total Settlement Amount is $3,250,000. If the Court grants Class Counsel's requested attorneys' fees and expenses (totaling $1,236,078.12), requested Service Awards (totaling $49,000), and the Settlement Administrator incurs costs up to the currently anticipated $285,000, see Hamer Decl. ¶ 15, approximately $1,679,921.88 will remain to pay for valid claims by Settlement Class members. As of March 5, 2020, based on the claims submitted so far, the Settlement Administrator currently estimates that there may ultimately be 65,631 valid claims seeking refunds for a total of 346,024 Products, or an average of 5.27 Products per claim. (See id. ¶ 13.) If these were the final calculations, and based on a retail value of $29 per Product, the total refunds sought would be $10,034,696. (Mot. at 17.) This would mean that each Settlement Class member submitting a valid claim would receive a refund of 17.1% of their $29 purchase price for each Product purchased, or an average of $4.85 per claimed Product and $25.60 per claimant. (Id.)

Since Plaintiffs could risk losing on the merits and recovering less than this amount should litigation continue, the Court finds that this factor weighs in favor of final approval.

c. Extent of Discovery Completed and the Stage of the Proceedings

"A court is more likely to approve a settlement if most of the discovery is completed because it suggests that the parties arrived at a compromise based on a full understanding of the legal and factual issues surrounding the case. The more the discovery [is] completed, the more likely it is that the parties have 'a clear view of the strengths and weaknesses of their cases.'" In re Toys R Us, 295 F.R.D. at 454 (C.D. Cal. 2014) (internal quotations omitted) (quoting Young v. Polo Retail, LLC, 2007 WL 951821, at *4 (N.D. Cal. Mar. 28, 2007)). Likewise, mediation suggests that the parties know their relative strengths and weaknesses. See id. at 455.

The parties have exchanged extensive discovery. (See Declaration of Adam Gonnelli, Docket No. 260 ¶¶ 17-40.) Defendant provided almost 6,000 documents in discovery regarding the sales, marketing and composition of the Product. (See id. ¶¶ 21-25.) Plaintiffs conducted depositions of Defendant's corporate representatives and Defendant deposed Plaintiffs and Plaintiffs' experts. (See id. ¶¶ 26, 37.)

This factor weighs in favor of final approval. The Court finds that the parties have engaged in an appropriate amount of discovery, suggesting that the settlement is fair, reasonable, and adequate.

d. Experience and Views of Counsel

Class Counsel have substantial experience litigating complex class actions. (See, e.g., Gonnelli Decl. ¶ 92, Ex B.) Therefore, this factor also supports final approval.

e. Reaction of the Class Members to the Settlement

"It is established that the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members." Nat'l Rural Telecomms., 221

F.R.D. at 529 (citations omitted); see also Barbosa v. Cargill Meat Sols. Corp., 297 F.R.D. 431, 448 (E.D. Cal. 2013) ("Where a settlement agreement enjoys overwhelming support from the class, this lends weight to a finding that the settlement agreement is fair, adequate, and reasonable.").

Following the Court's preliminary approval of the Settlement, no objections were filed. (Hamer Decl. ¶ 10.)

The Court finds that the reaction by Class Members to the Settlement has been positive. See Churchill, 361 F.3d at 577 (affirming district court's approval of settlement where 500 of 90,000 class members opted out (.56%) and 45 class members objected to the settlement (.05%)). Accordingly, the absence of any objections weighs in favor of final approval.

Overall, the weight of the factors supports the Court's conclusion that the Settlement is fair, reasonable, and adequate.

C. Notice

Rule 23(c)(2)(B) requires that the Court "direct to class members 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). Similarly, Rule 23(e)(1) requires that a proposed settlement may only be approved after notice is directed in a reasonable manner to all class members who would be bound by the agreement. Fed. R. Civ. P. 23(e)(1).

"Notice is satisfactory if it generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard." Rodriguez v. West Publ'g Corp., 563 F.3d 948, 962 (9th Cir. 2009) (internal quotation marks and citation omitted). "Settlement notices are supposed to present information about a proposed settlement neutrally, simply, and understandably[.]" Id. "That standard does not require detailed analysis of the statutes or causes of action forming the basis for the plaintiff class's claims, and it does not require an estimate of the potential value of those claims." Lane, 696 F.3d at 826.

The Notice approved by the Court and implemented by the Settlement Administrator satisfies the applicable standard. Accordingly, the Court finds that the notice to the Settlement Class was fair, adequate, and reasonable.

D. Class Representative Incentive Award

Courts have discretion to issue incentive awards to class representatives. Rodriguez v. West Publ'g Corp., 563 F.3d 948, 958–59 (9th Cir. 2009). The awards are "intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." Id. An unreasonable incentive award may indicate that a settlement was reached through fraud of collusion. Staton, 327 F.3d at 975.

Courts evaluate incentive awards relative to named plaintiff's efforts, considering "the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, . . . the amount of time and effort the plaintiff expended in pursuing the litigation . . . and reasonabl[e] fear[s of] workplace retaliation." Id. at 977 (alterations in original) (quoting Cook v. Niedert, 142 F.3d 1004, 1016 (7th Cir. 1998)). Courts also compare the incentive awards to the total settlement by looking at "the number of named plaintiffs receiving incentive payments, the proportion of the payments relative to the settlement amount, and the size of each payment." In re Online DVD-Rental Antitrust Litig., 779 F.3d 934, 947 (9th Cir. 2015) (quoting Staton, 327 F.3d at 977).

Plaintiffs seek an order granting Service Awards of $15,000 each to Plaintiffs Megan Schmitt, Stephanie Miller-Brun, and Deana Williams, $2,500 to Kristen Bowers, and $500 each to Brenna Kelly-Starkebaum, Aschley Willey and Meagan Nelson for their efforts and contributions to this litigation. (Gonnelli Decl. ¶ 113.)

Plaintiffs submitted evidence that they spent time and effort assisting in the prosecution of the action. See Vandervort v. Balboa Capital Corp., 8 F. Supp. 3d 1200, 1208 (C.D. Cal. 2014). Named Plaintiff Megan Schmitt spent approximately 80 hours assisting with the litigation. (Gonnelli Decl., Docket No. 260-8, Ex. H ¶ 39.) Named Plaintiff Deana Williams spent approximately 65 hours. (Gonnelli Decl., Docket No.

260-10, Ex. J ¶ 37.) And Named Plaintiff Stephanie Miller-Brun spent approximately 56 hours. (Gonnelli Decl., Docket No. 260-9, Ex. I ¶ 36.) Their work included responding to document requests and interrogatories and traveling to Los Angeles for depositions.

Plaintiffs also seek an award of $2,500 for Kristen Bowers, in light of her spending approximately 10 hours in pursuing the parallel *Bowers* action, including by consulting with Class Counsel numerous times regarding the initial complaint, litigation strategy and the Agreement. (See Gonnelli Decl. ¶¶ 73-76; Docket No. 260-11, Ex. K ¶ 4.)

Settlement Class members Brenna Kelly-Starkebaum, Aschley Willey, and Maegan Nelson each seek a Service Award of $500 each. (Gonnelli Decl., Docket Nos. 260-12, 260-13, 260-14, Exs. L-N). Each spent time consulting with Class Counsel about bringing a potential class action on behalf of others injured in their states, and each were prepared to do so when they were included in the Agreement after consultation with Class Counsel. (See id.) They spent an average of three hours participating in this litigation, and by entering into the Agreement with Defendant and providing a release of their claims, they contributed to purchasers of the Products from their states being included in the Settlement. (See id.)

The Court finds that the service award payments of $15,000 to the Named Plaintiffs are excessive, and declines to approve any award in excess of $7,500 in light of the fact that the average recovery for members of each subclass is $25.60 per claimant. Even at this reduced rate, the Named Plaintiffs would receive between $94 and $133 per hour for their time. The Court also believes that the proposed award to Bowers is excessive, and will approve no more than $1,000 ($100 per hour). The Court approves the service award payments for the other plaintiffs.

E. Attorneys' Fees and Costs

1. Fees

A court may award reasonable attorneys' fees and costs in certified class actions where they are authorized by law or by the parties' agreement. Fed. R. Civ. P. 23(h). Even when parties have agreed to a fee award, "courts have an independent obligation to ensure that the award, like the settlement itself, is reasonable." In re Bluetooth, 654 F.3d

at 941.

In the Ninth Circuit, there are two methods of determining attorneys' fees: the percentage of the benefit method and the lodestar method. Under the percentage of the benefit method, the Court awards attorneys' fees equal to a percentage of the total value provided or available to the Class. In re Hyundai and Kia Fuel Economy Litig., -- F.3d --, 2019 WL 2376831, at *16 (June 6, 2019). In comparison, under the lodestar method, the Court will multiply the number of attorney hours incurred by a reasonable hourly rate. Id. The Court may then raise or lower the lodestar based on several factors. Id.; Kerr v. Screen Extras Guild, Inc., 526 F.2d 67, 70 (9th Cir. 1975); Fischel v. Equitable Life Assurance Soc'y, 307 F.3d 997, 1007 n. 7. Courts routinely cross-check their "percentage of the fund" calculation with the lodestar method to ensure that class counsel is not overcompensated. Vizcaino v. Microsoft Corp., 290 F.3d 1043, 1050 (9th Cir. 2002).

Class Counsel seek an award of $1,083,333.33 for attorneys' fees, which is one-third of the total settlement amount. (Gonnelli Decl. ¶ 92.)

a. Percentage of the Fund

In the Ninth Circuit, the benchmark for fee awards in common fund cases is 25% of the common fund. In re Bluetooth, 654 F.3d at 942 ("Where a settlement produces a common fund for the benefit of the entire class, . . . courts typically calculate 25% of the fund as the 'benchmark' for a reasonable fee award, providing adequate explanation in the record for any 'special circumstances' justifying a departure."). The percentage may be adjusted according to several factors, including: (1) the results achieved; (2) the risk involved in undertaking the litigation; (3) the generation of benefits beyond the cash settlement fund; (4) the market rate for services; (5) the contingent nature of the fee; (6) the financial burden to counsel; (7) the skill required; (8) the quality of the work; and (9) the awards in similar cases. Vizcaino, 290 F.3d at 1048–49; Six Mexican Workers v. Ariz. Citrus Growers, 904 F.2d 1301, 1311 (9th Cir. 1990).

Here, Plaintiffs' counsel seek an award of $1,083,333.33. (Gonnelli Decl. ¶ 92.) This amount is above the Ninth Circuit's established benchmark. "[C]ourts in this circuit, as well as other circuits, have awarded attorneys' fees of 30% or more in complex class

actions" In re Heritage Bond Litig., 2005 WL 1594403, at *19, 19 n.14 (C.D. Cal. June 10, 2005) (collecting cases).

i. Results Achieved

"The result achieved is a significant factor to be considered in making a fee award." Id. (citing Hensley v. Eckerhart, 461 U.S. 424, 436 (1983)); Vizcaino, 290 F.3d at 1048 ("Exceptional results are a relevant circumstance."); In re Omnivision Techs., Inc., 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008) ("The overall result and benefit to the class from the litigation is the most critical factor in granting a fee award.").

The Court found that the settlement is fair, adequate, and reasonable. The Court finds that, overall, the result weighs in favor of the requested award.

ii. Risks Involved

Another significant factor to be considered in determining attorney fees is the risk that counsel took of "not recovering at all, particularly [in] a case involving complicated legal issues." In re Omnivision Techs., 559 F. Supp. 2d at 1046–47; Vizcaino, 290 F.3d at 1048; In re Heritage Bond, No. 02-ML-1475, 2005 WL 1594389, at *14 (C.D. Cal. June 10, 2005) ("The risks assumed by Class Counsel, particularly the risk of non-payment or reimbursement of costs, is a factor in determining counsel's proper fee award.").

As explained above, Plaintiffs undertook significant risks in pursuing this litigation. Therefore, this factor supports the requested award.

iii. Skill of Counsel and Contingent Fees

"The single clearest factor reflecting the quality of class counsels' services to the class are the results obtained." Id., at *12 (quoting Cullen v. Whitman Med. Corp., 197 F.R.D. 136, 149 (E.D. Pa. 2000)). Class Counsel has competently litigated this case, diligently investigating and developing the claims. The settlement was not reached lightly. Cf. Navarro v. Servisair, 2010 WL 1729538, at *3 (N.D. Cal. Apr. 27, 2010) (finding proposed award of 30 percent of settlement fund unjustifiably departed from

benchmark due in part to speed with which parties reached a settlement).

Class Counsel have significant experience in these types of class actions. (Gonnelli Decl. ¶ 91; Kilpela Decl. ¶¶ 4-5; Hershewe Decl. ¶¶ 4-5; Levota Decl. ¶¶ 4-5; Pastor Decl. ¶¶ 4-8; Walsh Decl. ¶ 10; Bernal Decl. ¶ 11.) Therefore, this factor supports the requested award.

Attorneys also are entitled to a larger fee award when their compensation is contingent in nature, as here. See Vizcaino, 290 F.3d at 1048–50; see also In re Omnivision Techs., 559 F. Supp. 2d at 1047. "It is an established practice in the private legal market to reward attorneys for taking the risk of non-payment by paying them a premium over their normal hourly rates for contingency cases." In re Wash. Pub. Power Supply Sys. Sec. Litig., 19 F.3d 1291, 1299 (9th Cir. 1994). Therefore, this factor also supports the requested award.

iv. Results in Similar Cases

The requested fee is generally in line with awards made in similar sized common fund class actions litigated in California. See, e.g., Vasquez, 266 F.R.D. at 492 (detailing cases awarding one-third of common fund and awarding counsel one-third of common fund in case with total recovery of $300,000); see also Craft v. Cty. of San Bernardino, 624 F. Supp. 2d 1113, 1127 (C.D. Cal. 2008) (noting that cases of under $10 million often result in fees about 25%). Therefore, this factor supports the requested award.

v. Reaction of the Class

The Court may also consider the reaction of the class to the proposed fee award. In re Omnivision Techs., 559 F. Supp. 2d at 1048; In re Heritage Bond, 2005 WL 1594389, at *15 ("The presence or absence of objections from the class is also a factor in determining the proper fee award.").

As noted above, there were no objections. (Hamer Decl. ¶ 10.) Therefore, this factor supports the requested award.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. SACV 17-1397 JVS (JDEx) Date April 8, 2020

Title **Meghan Schmitt, et al v. Younique, LLC**

In sum, the Court finds that the factors in this case support an award above the Ninth Circuit's 25% percent bench mark. The Court will next perform a lodestar cross-check to ensure the reasonableness of the percentage award.

b. Lodestar Cross-Check

"Calculation of the lodestar, which measures the lawyers' investment of time in the litigation, provides a check on the reasonableness of the percentage award." Vizcaino, 290 F.3d at 1050; In re Omnivision Techs., 559 F. Supp. 2d at 1048. As noted above, the Ninth Circuit encourages courts to cross-check the reasonableness of a fee award determined using the percentage method with the lodestar method.

"The first step in the lodestar analysis requires the district court to determine a reasonable hourly rate for the fee applicant's services. This determination [involves] examining the prevailing market rates in the relevant community charged for similar services by lawyers of reasonably comparable skill, experience, and reputation." Cotton v. City of Eureka, 889 F. Supp. 2d 1154, 1166 (N.D. Cal. 2012) (internal quotation marks and citation omitted); see also Camacho v. Bridgeport Fin., Inc., 523 F.3d 973, 979 (9th Cir. 2008). "The fee applicant has the burden of producing satisfactory evidence . . . that the requested rates are in line with those prevailing in the community." Jordan v. Multnomah Cnty., 815 F.2d 1258, 1263 (9th Cir. 1987). The fee applicant may provide affidavits from the attorneys who worked on the present case, as well as affidavits from other area attorneys or examples of rates awarded to counsel in previous cases. See Bellinghausen v. Tractor Supply Co., 306 F.R.D. 245, 262 (N.D. Cal. 2015); see also Parkinson v. Hyundai Motor Am., 796 F. Supp.2d 1160, 1172 (C.D. Cal. 2010) ("Courts may find hourly rates reasonable based on evidence of other courts approving similar rates or other attorneys engaged in similar litigation charging similar rates.").

The contingent nature of the case supports the fee award here. Attorneys are entitled to a larger fee award when their compensation is contingent in nature. See Vizcaino v. Microsoft Corp., 290 F.3d 1043, 1048-50 (9th Cir. 2002); see also In re Omnivision Techs., Inc., 559 F. Supp. 2d 1036, 1047 (N.D. Cal. 2008). "It is an established practice in the private legal market to reward attorneys for taking the risk of non-payment by paying them a premium over their normal hourly rates for . . . contingency cases." In re Wash. Pub. Power Supply Sys. Sec. Litig., 19 F.3d 1291, 1299

(9th Cir. 1994). This ensures competent representation for plaintiffs who may not otherwise be able to afford it. Id. Here, Class Counsel faced significant risk from contingent fee litigation because they expended significant time and money without guaranteed payment. (Gonnelli Decl. ¶¶ 108, 110, 112.)

At the Sultzer Law Group ("SLG"), co-Class Counsel for Plaintiffs, Jason P. Sultzer, its founder with 21 years of experience as a trial lawyer and class action litigator, has a billing rate of $795. (Gonnelli Decl. ¶ 95; see Ex. B.) Adam R. Gonnelli, a partner at SLG with 22 years' experience, has a billing rate of $795. (Id.) Janine L. Pollack, a partner at SLG with 30 years' experience, has a billing rate of $795. (Id.) Joseph Lipari, a partner at SLG with 17 years' experience, has a billing rate of $795. (Id.) Michael Liskow, a partner at SLG with 13 years' experience, has a billing rate of $700. (Id.) And Jeremy Francis, an associate at SLG with 8 years of experience, has a billing rate of $450. (Id.)

Overall, Class Counsel attorneys' hourly rates range from $400.00 to $795.00, with an average per hour rate of approximately $670. (See Class Counsel Declarations, Docket Nos. 261-62, 264-67.)

The Court finds that these hourly rates are reasonable.

Class Counsel have collectively devoted over 2095.49 hours in prosecuting this litigation with a total lodestar of $1,403,218.00 when applying Class Counsel's usual and customary rates. (Gonnelli Decl. ¶ 100; see Ex. E.) Given Class Counsel's total lodestar at their regular rates, an award of one-third of the Settlement Fund would result in a multiplier of 0.77. (Id. ¶ 101.)

Next, the Court examines whether the number of hours class counsel expended on the litigation was reasonable. To calculate the Lodestar, Class Counsel submitted their timekeeping records, which the Court has reviewed.[2] (Gonnelli Decl., Ex. C; Kilpela Decl., Ex. 1; Hershewe Decl., Ex. 1; Levota Decl., Ex. 1; Pastor Decl., Ex. 1; Walsh

[2] Class Counsel omitted all attorney travel time. (See Gonnelli Decl. ¶¶ 99-100; Walsh Decl. ¶ 6; Bernal Decl. ¶ 7.) This led to a reduction of Class Counsel's overall lodestar by approximately 14 percent.

Decl., Ex. A; Bernal Decl., Ex. A.) The Court finds that the number of hours expended was reasonable.

On balance, the Court finds that awarding 33% of the Settlement Amount is warranted.

2. Costs

"Attorneys may recover their reasonable expenses that would typically be billed to paying clients in non-contingency matters." In re Omnivision Techs., 559 F. Supp. 2d at 1048.

Class Counsel seek reimbursement for $152,744.79 in litigation costs. (Gonnelli Decl. ¶ 111.) Class Counsel provide adequate documentation of these expenses. (Id., Exs. F-G.) Therefore, the Court awards $152,744.79 for reimbursement of reasonable expenses.

IV. CONCLUSION

For the foregoing reasons, the Court **GRANTS** the motion for final approval of the class settlement, **GRANTS IN PART and DENIES IN PART** the Class Representative incentive awards for Plaintiffs, **GRANTS** the motion for attorneys' fees in the amount of $1,083,333.33, and **GRANTS** the award for $152,744.79 in case-related costs.

IT IS SO ORDERED.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	SACV 17-1397 JVS (JDEx)	Date	April 8, 2020
Title	**Meghan Schmitt, et al v. Younique, LLC**		

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