SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

CURT SCHLESINGER and PETER LO RE, on behalf of themselves and the Class, Plaintiffs, v. TICKETMASTER, a Delaware Corporation, Defendant.	LASC Case No: BC304565 COURT'S RULING AND ORDER RE: 1) PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; 2) PLAINTIFFS' MOTION FOR FEES, COSTS, AND INCENTIVE PAYMENTS; 3) OBJECTORS' MOTIONS FOR ATTORNEYS' FEES Hearing Date: January 13, 2015

I.

BACKGROUND

In this litigation, Plaintiffs have alleged that Defendant Ticketmaster deceived and misled customers by representing: 1) that the Delivery Price charged by Ticketmaster was a pass-through of the amount that UPS (United Parcel Service) charged Ticketmaster for that delivery; and 2) that Ticketmaster's OPF (Order Processing Fee) was also deceptive and misleading, in

that it did not actually represent Ticketmaster's costs in processing orders, but rather was a profit generator which Ticketmaster required customers to pay. There are therefore two (2) fees being challenged – the "UPS fee" and the "OPF." The OPF charged customers $4.00 per transaction, while the UPS Fee ranged from $15 to $20 per transaction. According to Plaintiffs, all of the transactions included an OPF charge, while about 5% involved UPS delivery. Plaintiffs assert claims under the California Unfair Competition Law ("UCL") and False Advertising Law ("FAL"), seeking the full amount of the OPF price, and the difference between what Ticketmaster charged consumers for UPS delivery of their tickets and the amount Ticketmaster actually paid to UPS.

Initially, after the litigation had proceeded, the Court certified a class of persons who purchased tickets on the Ticketmaster.com website. The case settled, but the Court declined to give preliminary approval on June 3, 2011. The Court had expressed reservations that the settlement did not provide for a *cy pres* contribution. The parties re-worked the agreement to include a *cy pres* provision.

Then, on November 2, 2011, the Court granted preliminary approval of the settlement. The Court approved the notice procedure, and set the final hearing date for May 29, 2012. That date was continued to July 24, 2012. Following the notice procedure, which expired February 16, 2012, Plaintiffs filed their motion for final approval, their motion for attorneys' fees and costs, and their request for incentive payments.

The Court denied the motion for final approval in September of 2012. The Court issued a comprehensive ruling, and rejected the settlement on numerous grounds. The Court determined that the settlement was not in the interests of the class pursuant to the factors set forth under *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794. The Court found, *inter alia*, that the settlement was insufficient to compensate class members, and that the *cy pres* provision was insufficient; that the release was overly broad; that there was no breakdown on the number of

UPS and OPF transactions provided in the agreement; that the lodestar on the attorney's fees being requested could not be determined (given the inability of the Court, based on what was presented, to calculate the actual value of the settlement), and that the multiplier was excessive; that the costs requested were not properly documented; and that the incentive payments being requested were excessive.

Following the denial of final approval, the Plaintiffs filed a Fourth Amended Complaint. The parties continued to negotiate a further settlement. Following a mediation with Judge Carl West of JAMS, the parties reached a subsequent settlement of this matter. Plaintiffs moved for an order granting preliminary approval, approving the class notice, and setting a date for the fairness hearing. The Court granted preliminary approval of the revised settlement on April 30, 2014, and set a fairness hearing.

The Plaintiffs now move for final approval of the settlement, and seek an award of attorneys' fees, costs, administration costs, and incentive payments for each of the class representatives. Two sets of objectors – the Sullivan objectors and the Patton objectors – have separately moved for fees, costs, and incentive payments.

For the reasons discussed *infra,* the motion for final approval is granted. The motion for fees, costs, and incentive payments is granted. The motions of the Sullivan objectors and Patton objectors for fees, costs, and incentive payments are denied.

II.

EVENTS SINCE THE LATEST ORDER GRANTING PRELIMINARY APPROVAL

Notice Process

Plaintiffs have submitted the Declaration of Jennifer Keough. Ms. Keough is Chief Operating Officer of The Garden City Group, or "GCG." Ms. Keough estimates that pursuant to §6.2(a) of the Settlement Agreement, GCG was responsible for providing email notice to class

members.[1] Ms. Keough states that Defendant had provided GCG with electronic lists of class members on November 18, 2011 and May 4, 2012.[2] Included in the data were the names, addresses, last known active email addresses, and consumer identification information for class members at those times.[3] Ms. Keough states that since the class lists were provided to GCG, GCG has maintained a combined prior settlement class list, and has updated the class list to the extent the parties or class members provide contact information updates to GCG.[4]

Ms. Keough says that on May 8, 2014, GCG received a supplemental electronic file containing a list of 16,639,202 records from Defendant Ticketmaster.[5] GCG was informed this class list was comprised of class members who placed ticket orders from Ticketmaster using the Ticketmaster Website during the period October 20, 2011 through February 27, 2013, paid money to Ticketmaster for an OPF, and were residents of the 50 United States at the time of the purchase.[6] The supplemental data file received from the Defendant was promptly loaded into the database created for this action and combined with the prior settlement class lists, maintained by GCG since November 2011.[7]

Ms. Keough represents that prior to sending the email notice to the records on the combined class list, GCG removed redundant and invalid email addresses.[8] Where a record for the same class member appeared in both the older 2011/12 data and newer 2014 data and the

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[1] Keough Decl., ¶5.

[2] *Id.*

[3] *Id.*

[4] *Id.*

[5] Keough Decl., ¶6.

[6] Keough Decl., ¶6.

[7] Keough Decl., ¶6.

[8] Keough Decl., ¶7.

new email address differed from the old one, the new address was used to provide email notice. Additionally, GCG removed from the email notice distribution class members who submitted timely and valid exclusion requests before the new data was received and class members who requested removal from further mailings about the action.[9]

Keough states that prior to sending the email notices out, it notified various Internet Service Providers ("ISPs") that it communicates with when an ISP will receive large volumes of class action notice emails.[10] GCG also requested the assistance of the ISPs and cooperation with the distribution process.[11] Ms. Keough notes that GCG caused the email notice to be formatted for electronic distribution by email to class members.[12] The email notice directed recipients to the litigation website to obtain additional information about the settlement.[13]

Ms. Keough says that GCG commenced sending the email notice on May 16, 2014 and completed sending all email notices by June 30, 2014.[14] GCG sent 51,980,510 unique emails to 56,954,366 (the differential being attributed to the fact that 4,973,856 class members shared email addresses).[15] Ultimately, 36,536,024 emails were not returned as undeliverable (representing 40,643,785 class members), which resulted in an estimated reach of 71%.[16]

Ms. Keough notes that to supplement the email notice, GCG determined it was appropriate to provide publication notice through print media and internet notice through banner

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[9] Keough Decl., ¶7.

[10] Keough Decl., ¶8.

[11] *Id.*

[12] Keough Decl., ¶9.

[13] *Id.*

[14] Keough Decl., ¶10.

[15] *Id.*

[16] *Id.*

advertisements.[17] GCG examined data provided by national syndicated media research bureaus, GfK MediaMark Research and Intelligence, LLC ("GfK MRI") and comScore.[18]

Keough states that based on the media research tools, GCG is able to measure what percent of the target audience is estimated to be reached and how many times the target audience will have the opportunity to view the notice.[19] GCG determined that "adults who have purchased tickets online to concerts, sporting events, theater or other events" is an appropriate target to consider when measuring reach to the class members as it closely matches the class definition.[20]

GCG caused the notice to be published in the June 23, 2014 edition of *People* Magazine, which has a readership of 41 million-plus with a total circulation of over 3.5 million.[21] GCG also implemented an internet advertising campaign designed to generate millions of internet banner impressions over a period of four weeks, which commenced on May 19, 2014 and was completed on June 15, 2014.[22] The banner ads ran on targeted websites such as Facebook, Xaxis, and Univision, and allowed internet users to self-identify themselves as potential class members and then click on a link that would take them directly to the litigation website.[23] Ultimately, GCG calculated a total estimated overall reach of 90% with a frequency of 3.71 against the target.[24]

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[17] Keough Decl., ¶11.

[18] *Id.*

[19] Keough Decl., ¶12.

[20] Keough Decl., ¶12.

[21] Keough Decl., ¶13.

[22] Keough Decl., ¶14.

[23] Keough Decl., ¶14.

[24] Keough Decl., ¶15.

Ms. Keough further states that GCG established and maintained an informational litigation website, located at www.ticketfeelitigation.com, providing class members with information regarding the Action and the proposed settlement.[25] The site became publicly available on May 16, 2014, and GCG will continue to maintain and update the site until the last day on which any codes may be used.[26]

There also has been a toll-free Interactive Voice Response (IVR) system made operational to accommodate calls re: the proposed settlement. The IVR will continue to be made available and be updated throughout the administration process.[27]

In California, the notice must have "a reasonable chance of reaching a ***substantial*** percentage of the class members." *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 251 (emphasis added). Importantly, however, the plaintiff need not demonstrate that each member of the class has received notice. As long as the notice had a "reasonable chance" of reaching a substantial percentage of class members, it should be found effective. *Id.* In *Wershba,* the Court of Appeal determined that the notice in that case was effective. Notice was mailed or e-mailed directly to more than 2.4 million class members and also published in USA Today and MacWorld (two publications with a total circulation of over 2.5 million subscribers). *Wershba* at 251. Apple also posted notice on its Internet homepage for over 30 days. *Id.*

The Court determines that notice was effective. While the Court has some concerns about the number of returned emails (15,444,486), Ms. Keough represents that the number of email notices which were *not* returned numbered 36,536,024, which resulted in an estimated reach of 71%. Moreover, the publication notice went out in *People* magazine, and a website was established with respect to the settlement. The standard under *Wershba,* as discussed above, is

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[25] Keough Decl., ¶16.

[26] Keough Decl., ¶16.

[27] Keough Decl., ¶17.

whether the notice had a "reasonable chance" of reaching a substantial percentage of class members. The Court finds that based on the Keough Declaration, the notice did meet this standard, and that notice was effective.

III.

REQUEST FOR JUDICIAL NOTICE

Plaintiffs request judicial notice of the March 15, 2013 Transcript of Proceedings on Eric Fuller's Motion to Intervene. The request is granted pursuant to Evidence Code §452(d), as this is a record of the Court in this litigation. Judicial notice, however, is limited to the existence of the transcript, and not for the truth of the matters stated within the transcript.

IV.

EVIDENTIARY OBJECTIONS

Plaintiffs have lodged evidentiary objections to the Fuller Declarations of September 10 and December 4, 2014. The Court's rulings follow.

Plaintiffs' Evidentiary Objections to September 10, 2014 Fuller Declaration

1. ¶4 at 4:11-13: **Overruled.**
2. ¶4 at 4:21-24: **Sustained.**
3. ¶4 at 4:24-25: **Sustained.**
4. ¶4 at 4:26-28: **Sustained.**
5. ¶4 at 5:2-3: **Sustained.**
6. ¶4 at 5:4-5: **Sustained.**
7. ¶4 at 5:5-7: **Sustained.**
8. ¶4 at 5:7-10: **Sustained.**
9. ¶4 at 5:10-13: **Sustained.**

10. ¶4 at 6:1-4: **Sustained.**

11. ¶4 at 6:4-6: **Overruled.**

12. ¶4 at 6:13-16: **Sustained.**

13. ¶4 at 6:17-18: **Sustained.**

14. ¶4 at 6:18-20: **Overruled.**

15. ¶4 at 6:20-22: **Sustained.**

16. ¶5 at 6:24-25: **Overruled.**

17. ¶5 at 6:25-27: **Overruled.**

18. ¶5 at 6:27: **Overruled.**

19. ¶5 at 6:27-7:2: **Overruled.**

20. ¶5 at 7:2-5: **Overruled.**

21. ¶6 at 7:6: **Overruled.**

22. ¶6 at 7:6-8: **Overruled.**

23. ¶8 at 7:12-14: **Overruled.**

24. ¶10 at 7:25-26: **Sustained.**

25. ¶10 at 7:27-28: **Overruled.**

26. ¶10 at 7:28-8:3: **Sustained.**

27. ¶10 at 8:3-5: **Sustained.**

28. ¶11 at 8:6-10: **Overruled.** The objection goes to the weight, rather than to the admissibility, of the evidence of the SEC form 10-Q.

29. ¶11 at 8:10-13: **Overruled.**

30. ¶11 at 8:13-14: **Sustained.**

31. ¶14 at 9:17-18: **Overruled.**

32. ¶14 at 9:18-21: **Overruled.**

33. ¶14 at 9:21-23: **Overruled.**

34. ¶14 at 9:23-24: **Overruled.**

35. ¶14 at 9:24-25: **Sustained.**

36. ¶18 at 10:5-9: **Sustained.**

37. ¶19 at 10:10: **Sustained.**

38. ¶19 at 10:10-13: **Sustained.**

39. ¶19 at 10:14-17: **Sustained.**

40. ¶20 at 10:20-21: **Sustained.**

41. ¶21 at 10:22-23: **Sustained.**

42. ¶21 at 10:23-26: **Sustained.**

43. ¶23 at 11:1-2: **Sustained.**

44. ¶24 at 11:3-4: **Sustained.**

45. ¶25 at 11:5-8: **Sustained.**

46. ¶26 at 11:9-10: **Overruled.**

47. ¶26 at 11:10-11: **Overruled.**

48. ¶27 at 11:12-14: **Sustained.**

49. ¶27 at 11:14-15: **Sustained.**

50. ¶27 at 11:15-17: **Sustained.**

51. ¶28 at 11:18-19: **Sustained.**

52. ¶30 at 11:22-23: **Sustained.**

53. ¶30 at 11:24-25 and 12:1-3: **Sustained.**

Plaintiffs' Evidentiary Objections to December 4, 2014 Fuller Declaration

1. ¶1 at 2:6-7: **Sustained.**

2. ¶2 at 2:8-9: **Sustained.**

3. ¶3 at 2:10-11: **Sustained.**

4. ¶4 at 2:12-13: **Sustained.**

5. ¶5 at 2:14-17: **Sustained.**

V.

DUNK FACTORS

Any party to a settlement agreement may submit a written notice of motion for preliminary approval of the settlement. The settlement agreement and proposed notice to class members must be filed with the motion, and the proposed order must be lodged with the motion. California Practice Guide, Civil Procedure Before Trial, ¶14:138.21 (The Rutter Group 2014).

It is the duty of the Court, before finally approving the settlement, to conduct an inquiry into the fairness of the proposed settlement. California Practice Guide, Civil Procedure Before Trial, ¶14:139.12 (The Rutter Group 2014). The court may design procedures to ascertain the fairness, including in-chamber conferences, examination of documents or witnesses, consideration of objections by class members, and any other appropriate evidence. CRC 3.769(g).

The trial court has broad discretion in determining whether the settlement is fair. In exercising that discretion, it normally considers the following factors: strength of the plaintiff's case; the risk, expense, complexity and likely duration of further litigation; the risk of maintaining class action status through trial; amount offered in settlement; extent of discovery completed and stage of the proceedings; experience and views of counsel; presence of a governmental participant; and reaction of the class members to the proposed class settlement. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801; *In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723. This list is not exclusive and the Court is free to balance and weigh the factors depending on the circumstances of the case. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244-245.

The proponent bears the burden of proof to show the settlement is fair, adequate, and reasonable. *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1165-1166; *Wershba, supra,* 91 Cal.App.4th at 245. There is a presumption that a proposed fairness is fair and reasonable when it is the result of arm's-length negotiations. 2 Herbert Newburg & Albert Conte, Newburg on Class Actions §11.41 at 11-88 (3d ed. 1992); *Manual for Complex Litigation* (Third) §30.42; *see also In re Microsoft I-V Cases, supra,* 135 Cal.App.4th at 723 (noting a presumption of fairness exists where the settlement is reached through arms-length bargaining; investigation and discovery are sufficient to allow counsel and the court to act intelligently; counsel is experienced in similar litigation; and the percentage of objectors is small). However, the presumption of fairness does *not* mean a court can rubber-stamp a settlement that displays these criteria. The court must still be provided with *sufficient information* to assess the settlement's fairness. California Practice Guide, Civil Procedure Before Trial, The Rutter Group, ¶14:139.15 (2014); *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130; *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 803.

With these standards in mind, the Court examines the *Dunk/Wershba* factors in turn in assessing the fairness of the settlement.

1. Strength of the plaintiff's case

As noted *supra*, Plaintiffs allege that Defendant Ticketmaster deceived and misled customers by representing that the Delivery Price was a pass-through of the amount that UPS (United Parcel Service) charged Ticketmaster for that delivery and that Ticketmaster's OPF (Order Processing Fee) was also deceptive and misleading in that it did not actually represent Ticketmaster's costs in processing orders but rather was a profit generator which Ticketmaster required customers to pay. There are therefore two (2) fees being challenged – the "UPS fee"

and the "OPF." The OPF charged customers $4.00 per transaction, while the UPS Fee ranged from $15 to $20 per transaction.

From the Court's perspective, the case had some merit. Judging from the motion activity in the case, Ticketmaster unsuccessfully fought attempts to have this case removed to federal court, and also unsuccessfully challenged the pleadings numerous times. Plaintiffs were successful in certifying a nationwide class in the case. Thus, Plaintiffs enjoyed significant victories in the litigation, despite substantial opposition from Ticketmaster at every step.

Plaintiffs, for their part, believed they had a strong case for trial, but two of their legal theories were not certified for class treatment. Further, this Court's ruling on the motion for summary judgment called into question the viability of the misrepresentation claim (the only remaining theory) relating to the OPF class.

For these reasons, the Court finds this factor weighs in favor of final approval.

2. The risk, expense, complexity and likely duration of further litigation

This case would have been extended indefinitely if the parties did not reach a settlement (and, in fact, has been proceeding for over eleven years, having been filed October 21, 2003). Again, Ticketmaster litigated this case aggressively, and denied liability at every stage. There was a significant (and almost certain) risk that had the case not settled, the expense of litigating the case would have risen (and, indeed, the case was poised for trial).

The case is complex, and involves a nationwide class of over 50 million class members. There was a risk that Plaintiffs and the class could have recovered nothing had this litigation been prolonged, given Ticketmaster's denial of liability. There is also a risk that substantively, Plaintiffs could not have proven any of their claims or those of the class. As Plaintiffs note, even if they had won at trial, it is likely that Ticketmaster would have appealed any adverse verdict (thereby prolonging the case and creating even further uncertainty). This factor weighs in favor of final approval.

3. The risk of maintaining class action status through trial

There were risks of maintaining class action status through trial. As noted above, a nationwide class was ultimately certified (after previous unsuccessful challenges to the class by Ticketmaster). Importantly, at the time the case settled, there was yet another pending motion to decertify the nationwide class. Thus, it is possible that the class could have been decertified. This factor weighs in favor of final approval.

4. Amount offered in settlement

As part of the Court's analysis of this factor, the Court must take into consideration the admonition in *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133. In *Kullar*, objectors to a class settlement argued the trial court erred in finding the terms of the settlement to be fair, reasonable, and adequate without any evidence of the amount to which class members would be entitled if they prevailed in the litigation, and without any basis to evaluate the reasonableness of the agreed recovery. The Court of Appeal agreed with the objectors that the trial court bore the ultimate responsibility to ensure the reasonableness of the settlement terms. Although many factors had to be considered in making that determination, and a trial court was not required to decide the ultimate merits of class members' claims before approving a proposed settlement, an informed evaluation could not be made without an understanding of the amount in controversy and the realistic range of outcomes of the litigation.

The *Kullar* noted that trial courts have a responsibility to independently evaluate the settlement, stating as follows:

> [T]he court must ... receive and consider enough information about the *nature and magnitude* of the claims being settled, as well as the impediments to recovery, to make an independent assessment of the reasonableness of the terms to which the parties have agreed. We do not suggest that the court should attempt to decide the merits of the case or to substitute its evaluation of the most appropriate settlement for that of the attorneys. However, as the court does when it approves a settlement as in good faith under Code of Civil Procedure section 877.6, the court must at least satisfy itself that the class settlement is within the "ballpark" of reasonableness. (See *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499–500 [213 Cal. Rptr. 256, 698 P.2d 159].)

> While the court is not to try the case, it is "'called upon to consider and weigh the nature of the claim, the possible defenses, the situation of the parties, and *the exercise of business judgment* in determining whether the proposed settlement is reasonable.' " (*City of Detroit v. Grinnell Corporation, supra*, 495 F.2d at p. 462, italics added.) This the court cannot do if it is not provided with basic information about *the nature and magnitude* of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a *reasonable compromise. Kullar, supra,* at 133.

The "amount offered in settlement" consideration was one of the major factors that defeated the prior settlement. Thus, the Court has given special scrutiny to this factor in the current iteration of the settlement.

In the current settlement, Plaintiffs have submitted the Declaration of Rebecca Kirk Fair for purposes of providing consultancy on the projected redemption rates for the discount codes and potential free tickets provided under the settlement.[28] Ms. Fair is the Managing Principal of Analysis Group, Inc. ("AG"), an economics, finance, and strategy consulting firm. She states that she was asked by class counsel to perform the following analysis:

> a) Determine the likely value of the discount codes and free tickets that will be redeemed by class members;
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> b) Determine the minimum value of the discount codes and free tickets that will be redeemed by class members; and
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> c) Determine the expected attrition rate (based on death rates) of class members through 2020.[29]

Ms. Fair states that the result of the analysis requested by Lead Counsel is as follows:

> a) the likely value of the discount codes and free tickets that will be redeemed by class members is $76 million.
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> b) The minimum value of the discount codes and free tickets that will be redeemed by class members is $42 million.[30]

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[28] Fair Decl., ¶3.

[29] Fair Decl., ¶5.

[30] Fair Decl., ¶7.

Ms. Fair gives a comprehensive breakdown on how she arrived at these figures in her Declaration. She notes that research conducted between 2012 and 2014 indicates that redemption rates for digitally distributed coupons for non-food items vary between 4.8% and 11.5%, depending on the year and redemption mechanism which puts the potential redemptions in this case in a range of $76 to $159 million.[31]

Ms. Fair says that she calculated the expected yearly redemption values for the Ticketmaster discount codes using 4.8% annual redemption rates.[32] She bases the 4.8% figure on a publication entitled "2014 Mid-Year CPG Coupon Facts," from *NCH,* August 2014. Fair says the expected annual redeemed value of the discount coupons will be approximately $19 million in year one, $18 million in year two, $17 million in year three, and $17 million in year four, for a total of $71 million or 17.8% of the face value for all of the discount codes.[33] Additionally, $5 million in free tickets will be distributed in the first year.[34] Fair says that assuming all of these free tickets are redeemed, the total redemption is $76 million.[35]

Fair notes that in addition to the $5 million in free tickets in the first year, Ticketmaster will provide further free tickets in the following circumstances:

> At the end of each of the years 1 through 4, a calculation of any surplus or Shortfall shall be made by subtracting the aggregate redemptions of Discount Codes, UPS Codes and distribution of tickets from $10.5 million (year 1); $21 million (year 2), $31.5 million (year 3) and $42 million (year 4). A positive number is a "shortfall," and a negative number is a surplus. In years 2, 3, 4, and 5, Ticketmaster shall contribute tickets in the amount of any cumulative Shortfall, but its obligation shall not exceed $10.5 million in tickets in any year. Ticketmaster will further contribute $10.5 million per year in tickets to the ticket pool for distribution in years 6 and 7 if total distribution of tickets and redemption

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[31] Fair Decl., ¶10.

[32] Fair Decl., ¶12.

[33] Fair Decl., ¶12.

[34] Fair Decl., ¶12.

[35] Fair Decl., ¶12.

of Discount Codes and UPS Discount Codes for order processing fee/UPS credits over the five-year period from Final Approval, does not reach the minimum of $42 million.[36]

Ms. Fair states that she has evaluated the necessary redemption pattern for the settlement to result in the minimum allotted total value of $2 million.[37] Fair presents calculations which show the redemption values and the minimum share of class members to be compensated with free tickets, assuming the extreme outcome of zero redemption of discount coupons.[38] Fair says that under these assumptions, the first year the $5 million in free tickets will be redeemed and distributed, and zero discount codes will be redeemed. However, Fair says that if the same $5 million redemption occurred in the form of discount codes, then the redemption rate would be 1.3%. This rate is about ¼ (26%) of what would be expected based on historic redemption of similar coupons, which makes this scenario "extremely conservative."[39]

Fair says that in the second year, under these assumptions, only the shortfall of $5.5 million in free tickets will be distributed and redeemed, resulting in equivalent of redemption rate of discount codes of 1.4%. In each of the years 3-5, $10.5 million in free tickets will be distributed and redeemed, corresponding to annual redemptive rates 2.7 to 2.9%.[40]

Fair estimates that given that class members can automatically redeem discount codes if they log into their accounts and are reminded of the opportunities.[41] If the discount code

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[36] Fair Decl., ¶13.

[37] Fair Decl., ¶14.

[38] Fair Decl., ¶14.

[39] Fair Decl., ¶14.

[40] Fair Decl., ¶14.

[41] Fair Decl., ¶15.

redemption rates fall sufficiently, class members can get free tickets on a "first come, first served" basis.[42] The total minimum value of the settlement, under this scenario, is $42 million.

Previously, the Court analyzed the settlement amount. The relevant figure in these calculations is the net amount of OPF payments allowing for the $1.09 "offset" as to the entire class (i.e., $505,328,074) and the amount of UPS restitution at $11.64 per UPS transaction as to the entire class ($92,143,288). These would appear to represent the "outliers" in terms of what the class could have hoped to achieve, had they been 100% successful in this litigation.

The settlement also calls for a *cy pres* component of $3 million, which will go to the University of California, Irvine ("UC Irvine") School of Law. Plaintiffs have submitted the Declaration of Erwin Chemerinsky, the Dean of the UC Irvine School of Law. Chemerinsky says that the proposed *cy pres* fund of $3 million will allow the law School to hire an additional clinical professor to establish the existing Consumer Protection Clinic as a permanent clinic within the Law School.[43] The funding will also allow the Law School to create a clinical fellowship position within the Consumer Protection Clinic to train other lawyers to become professors for consumer law clinics at other legal institutions.[44] It is Chemerinsky's opinion that establishing a permanent consumer protection clinic will result in the training of hundreds of law students in the practice of consumer law.[45]

Chemerinsky says that approximately one million dollars of the $3 million fund will be used for the operational costs of the Consumer Protection Clinic for the first three years.[46] This portion of the award will be used to hire one clinical professor and one clinical fellow for three

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[42] Fair Decl., ¶13.

[43] Chemerinsky Decl., ¶3.

[44] *Id.*

[45] *Id.*

[46] Chemerinsky Decl., ¶4.

years (both of whom will be practicing lawyers).[47] The professor and clinical fellow will work with 12 to 16 law students per semester, supervising the students' legal work on behalf of clients with consumer law problems.[48] The award will also be used to pay for the annual costs of operating this clinic.[49] The remainder will be used to establish an endowment for the permanent continuation of the Consumer Protection Clinic, with five percent of those remaining funds being used specifically to develop a larger endowment for this clinic.[50]

Chemerinsky states that the Consumer Protection Clinic will engage in at least three kinds of legal work on behalf of California and national consumers: 1) the clinic will provide direct representation of clients' claims for violations of California's Unfair Competition Law ("UCL") and other unfair and/or deceptive business practices; 2) the clinic will advocate on behalf of consumers concerning issues of national consumer policy; and 3) the clinic will create new educational tools to inform people throughout the country about consumer issues.[51]

In the Court's view, the statements in Mr. Chemerinsky's Declaration demonstrate that the $3 million *cy pres* fund satisfies the requirements under CCP §384.[52] In particular, the *cy*

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[47] *Id.*

[48] *Id.*

[49] *Id.*

[50] *Id.*

[51] Chemerinsky Decl., ¶5.

[52] CCP §384, which governs *cy pres* distributions, provides in pertinent part as follows:

> (a) It is the intent of the Legislature in enacting this section to ensure that the unpaid residuals in class action litigation are distributed, to the extent possible, in a manner designed either *to further the purposes of the underlying causes of action*, or *to promote justice for all Californians*. The Legislature finds that the use of funds collected by the State Bar pursuant to this section for these purposes is in the public interest, is a proper use of the funds, and is consistent with essential public and governmental purposes.
>
> (b) Except as provided in subdivision (c), prior to the entry of any judgment in a class action established pursuant to Section 382, the court shall determine the total amount that will be payable to all class members, if all class members are paid the amount to which they are entitled pursuant to the judgment. The court shall also set a date when the parties shall report to the court

pres donation to UC Irvine's School of Law is designed to further the purposes of the underlying consumer claims in this case. While not benefiting the class directly, the class will benefit from the establishment of the Consumer Protection Clinic and other relief referenced in the Chemerinsky Declaration.

As it stands, the settlement is for a minimum of $42 million in codes, plus the $3 million in the *cy pres* donation to UC Irvine's Law School, for a total minimum of $45 million. This amount does not account for costs, fees, and incentive payments. Nor does this amount account for the non-economic recovery called for in the settlement (the non-economic relief basically is in the form of changes to Ticketmaster's website regarding the OPF fees).

The Court finds the settlement amount falls within the *Kullar* "ballpark." Importantly, coupon settlements are not inherently suspect or improper. *See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 54; *Nordstrom Comm'n. Cases* (2010) 186 Cal.App.4th 576, 590. "Nonetheless, the practice of giving coupons instead of cash to class members (especially while the attorneys are receiving money for their fees) has attracted criticism. The court must determine if the coupons represent real value for the class." California Practice Guide, Civil Procedure Before Trial, ¶14:139.16 (The Rutter Group 2014).

While the Court acknowledges that the settlement figure, in the larger scheme of things, is below what Plaintiffs had hoped to achieve, the settlement represents a compromise of heavily disputed claims over an 11 year period. The $3 million in a tangible *cy pres* donation represents a marked change over the prior settlement (and satisfies CCP §384's strictures), as does the

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the total amount that was actually paid to the class members. After the report is received, the court shall amend the judgment to direct the defendant to pay the sum of the unpaid residue, plus interest on that sum at the legal rate of interest from the date of entry of the initial judgment, to nonprofit organizations or foundations to support projects *that will benefit the class or similarly situated persons*, or that promote the law *consistent with the objectives and purposes of the underlying cause of action, to child advocacy programs*, or to nonprofit organizations providing civil legal services to the indigent. The court shall ensure that the distribution of any unpaid residual derived from multistate or national cases brought under California law shall provide substantial or commensurate benefit to California consumers. (Emphasis added.)

potential for free tickets to the class members. The Declaration of Ms. Fair also carries significant weight as to the valuation of the settlement, and the discount codes represent value for the class.

Another of the Court's concerns in connection with the earlier settlement was that there was essentially no other relief being offered, outside of the discount codes. The parties previously had included tickets to be donated to charity as a component of the prior settlement, but the Court found there was no way to value the tickets. In terms of valuing the tickets, counsel had previously discussed this in connection with the prior final motion for final approval. The instant settlement is markedly different, with the addition of the free ticket component and the *cy pres* component.

In sum, the Court finds the instant settlement falls within the "ballpark" of *Kullar* reasonableness. As such, the settlement is a reasonable compromise of the claims in this litigation. The Court determines this factor therefore weighs in favor of final approval.

5. Extent of discovery completed and stage of the proceedings

Clearly, a significant amount of motion and discovery activity occurred in this case (that is an understatement). The major events in this case were set forth at ¶4 of the Declaration of Robert Stein in Support of the Motion for Preliminary Approval. Mr. Stein has also provides the relevant procedural history at ¶4 of his Declaration in Support of Final Approval.[53]

The major events in the case were as follows. The case was filed on October 21, 2003. Ticketmaster filed a motion to transfer on December 5, 2003, a motion to bifurcate discovery and trial on April 28, 2004, and a motion for summary judgment on July 20, 2004. Ticketmaster removed the case to federal court on September 1, 2005, but the federal court granted the Plaintiffs' motion to remand (an order which was upheld by the 9th Circuit on April 4, 2006).

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[53] See Stein Decl. in Support of Final Approval, ¶4.

On August 14, 2006, Plaintiffs filed their initial motion for class certification. The Court tentatively certified a nationwide class, but then denied that motion without prejudice on December 19, 2007, to be reconsidered when the Supreme Court was to rule in *In re: Tobacco II.*

Ticketmaster unsuccessfully sought to reclassify the case as complex on August 24, 2006, and unsuccessfully moved yet again for judgment on the pleadings on September 25, 2006. Following the Plaintiffs' filing of the TAC, the Court overruled Ticketmaster's demurrer and motion to strike portions of the TAC on July 2, 2009.

On August 31, 2009, Plaintiffs refilled their class certification motion. The Court granted the motion on February 5, 2010 as to the deceptive practices claims, and denied it with respect to the unlawful/unfair practices claims. Ticketmaster's writ petition of the order granting class certification was denied. Plaintiff also unsuccessfully filed a motion for reconsideration of the Court's denial of nationwide certification.

Plaintiffs filed a motion in limine to preclude Ticketmaster's presentation of the offset defense or, in the alternative, to compel restitution discovery. On June 24, 2010, the motions were granted in part and denied in part, resulting in substantial restitution discovery.

Then, on June 4, 2010, Plaintiffs filed a writ petition asking the Court of Appeal to reverse the decision limiting the Class to California purchasers. The petition was granted with the Court of Appeal ordering recertification as a nationwide class on August 31, 2010. Ticketmaster unsuccessfully filed another motion to bifurcate the trial and discovery into liability and damages phases on March 16, 2010.

On June 11, 2010, Ticketmaster filed its second motion for summary judgment (which was amended on September 28, 2010).

On September 28, 2010, Plaintiffs filed a motion for summary adjudication on Ticketmaster's affirmative defenses. Ticketmaster withdrew many of the defenses, and filed an opposition on the remaining defenses. That motion was set for hearing on December 21, 2010.

Ticketmaster filed a motion to decertify, which was set for hearing on December 21, 2010. Both parties filed motions in limine, followed by opposition briefs, directed primarily at the other party's expert witnesses, which were to be ruled on at the January 10, 2011 pretrial conference.

On December 20, 2010, the parties informed the Court they reached a settlement agreement after two days of mediations. The pending motion for summary judgment/adjudication and motion to decertify were taken off-calendar.

On June 3, 2011, this Court denied preliminary approval. The Court found the relief provided to the class members would be reasonable as to those class members who used it, but that only if a small percentage of class members took advantage of the settlement then, absent a cy *pres* requirement, the overall settlement would not be adequate.

On September 2, 2011, the Court heard Defendant's motion for summary judgment/summary adjudication and Plaintiffs' motion for summary adjudication on Defendant's affirmative defenses. The Court denied the motions as to many of the issues asserted by both parties, but granted the motion for summary adjudication as to other issues.

On September 26 and 27, 2011, the parties mediated the case, and reached a settlement. The Court granted preliminary approval, but denied the motion for final approval on September 26, 2012.

Between November 2012 and May 2013, the parties again mediated the case, with Judge Leo Wagner and Judge Carl West, and reached a settlement. A fourth amended complaint was filed on May 30, 2013.[54]

The discovery efforts are chronicled at ¶¶14-17 of the Stein Declaration in Support of Final Approval. Mr. Stein states that the discovery taken was exhaustive. Plaintiffs were personally required to respond to the following:

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[54] See Stein Decl. in Support of Final Approval, ¶4.

a. Schlesinger was deposed 3 times;

b. Mr. Lo Re was deposed twice;

c. The two Plaintiffs each answered four (4) sets of special interrogatories totaling 226 interrogatories and 3 sets of form interrogatories;

d. The two Plaintiffs each answered four (4) sets of document requests totaling 116 requests for production of documents;

e. The two Plaintiffs each answered four (4) sets of requests for admission totaling 157 requests.[55]

On "merits" discovery, Plaintiffs propounded 14 sets of special interrogatories and 5 sets of form interrogatories; 8 sets of document requests; and Plaintiffs were required to file three motions to compel discovery.[56] Further, Plaintiffs took and defended 20 depositions, including those of Ticketmaster's current and former CEOs, its former President, several officers and key employees, and experts.[57] Plaintiffs retained four (4) marketing experts, three of whom conducted independent nationwide consumer surveys regarding Ticketmaster's OPF and/or UPS charges, and one of whom provided independent analysis rebutting the marketing experts retained by Ticketmaster.[58]

Plaintiffs' lead counsel paid over $800,000 in restitution, liability, and trial experts.[59] Further, Plaintiffs note that both they and Defendant retained accounting experts who engaged in extensive analysis to determine the proper measure of any restitution. Plaintiffs' experts analyzed gigabytes of data, involving more than 150 million transactions for more than 50 million individual email addresses, as well as Ticketmaster's financial statements and records in

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[55] Stein Decl., ¶14.

[56] Stein Decl., ¶15.

[57] Stein Decl., ¶16.

[58] Stein Decl., ¶17.

[59] Stein Decl., ¶18.

order to determine both the allocation of any restitution among the class members, as well as the amounts that Ticketmaster paid UPS for delivery of the tickets and what amounts, if any, were actually attributable to order processing costs.[60]

Further, by virtue of the motion activity, discovery, the mediations, and the orders by the Court in this litigation, it is abundantly clear that the settlement was the result of arms-length negotiations. Judging from the statements in the Stein Declaration, there was no further discovery to take in this case.

In sum, significant activity occurred in this case, and this factor weighs in favor of final approval.

6. Experience and views of counsel

As Mr. Stein notes, this Court has previously determined that counsel's experience and ability satisfied this factor, and that this was never contested.[61] Counsel believe the instant settlement is fair and reasonable, and in the interests of the class. This factor weighs in favor of final approval.

7. Presence of a governmental participant

There is no governmental participant in this litigation, and this factor is neutral.

8. Reaction of the class members to the proposed class settlement

Ms. Keough reports that GCG had, as of October 31, 2014, received 477 timely and potentially valid opt-out requests, and one (1) untimely opt-out request. Previously, there were 6,135 timely opt-out requests related to the prior settlement.[62]

There have been a number of objections lodged to the proposed settlement. At the fairness hearing, the Court permitted all objectors to speak. The objectors had also submitted

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[60] Stein Decl., ¶20.

[61] Stein Decl., ¶33.

[62] Keough Decl., ¶18.

written objections to the settlement and/or to the motion for attorneys' fees, costs, and incentive payments. The Court, having fully considered all written and oral objections at the hearing, rules as follows:

List of Objectors

Name of Objector	Residence of Objector	Date Objection Filed	Nature of Objection(s)	Represented by Counsel?	Recommended Ruling on Objection
1. Rick Asherson	Alabama	June 27, 2014	Objects to the form of the relief; does not want to do business with Ticketmaster again; wants direct financial compensation	No	**Overruled.**
2. Michael Booker	Missouri	September 16, 2014	1. Class members must make future ticket purchases to obtain anything from the settlement 2. "All money" in the settlement is going to class counsel, class representatives, and a charity (UC Irvine Law School) 3. Attorneys' fees request is excessive (including an excessive multiplier of 1.9; requests court appoint a "class guardian" on the attorneys' fee issue) 4. Lack of adequate information for class members to determine	Yes (Lawrence Schonbrunn)	All objections **overruled**

			fairness, adequacy, and reasonableness (including a lack of description of the fees charged by Defendant Ticketmaster) 5. Settlement benefits are illusory; no protection against the Defendant raising future ticket prices, future ticket service orders, or future delivery prices 6. Settlement provides no explanation of the significance of the statement in the release that states "the Released Claims shall not extend to any claims relating to the Face Value of Tickets" 7. Existence of "red flags of self dealing" (i.e., structural collusion in the settlement) 8. Class notice is defective (specifically, the language stating "You may hire an attorney to represent you..." and other representations about attorneys' fees and		

			additional alleged defects in the notice) 9. No accounting to the class provided, and merely "lodging" or "providing" such a document with the Court is insufficient 10. Objection to the $3 million to UC Irvine School of Law (including the clinic's past activity, the clients it served, what lawsuits it filed, the identity of the faculty, the connections of the party to the school, and what other consumer law programs were already considered) 11. Language in the notice providing that any counsel retained are to identify all objections they have filed in class action settlements from January 1, 2010 to the present and identify the results of each objection; and requirement of making the class member available for deposition upon 1 days written notice		

			12. Language in the notice stating that class counsel and individual Plaintiffs are not to issue any press releases publicizing the terms of the settlement, and that the sides shall not disparage each other		
3. Aisha Burgess and Jason Haug	Gainesville and Orlando, FL, respectively	September 15, 2014	1.Settlement is a "classic coupon" settlement, where the discounts are applied to only subsequent purchases 2. Non-economic benefits are not specific to class members 3. Absent class members do not have enough information in the published notice to make an informed choice re: whether to remain class members 4. Attorney fees are unreasonable and excessive 5. Attorney's fees consist of a separate fund that reverts to Defendant if all the fund is not paid to class counsel for fees and costs	Yes (Michael D. Luppi)	**Overruled** in full
4. G. Kimberly	Phoenix, AZ	September 15, 2014	1. Settlement does not make	Yes (Sowders	**Overruled** in full.

Carey			class members whole, as it requires a claim to secure a code to get a minimal discount; settlement should pay class members directly 2. Settlement places an artificial cap on 17 transactions 3. Settlement uses a significant portion of the recovery to fund the start-up consumer law efforts of an unrelated third party when the known class members are only receiving minimal discount codes and are capped in their recovery 4. Attorneys' fees and incentive payments are disproportionatel y high in relation to discount code	Law, LLC)	
5. Eric Fuller	Rancho Santa Fe, CA	September 29, 2014	1. Settlement places a limit of 17 discount codes (even though class members who paid more than 17 OPFs represent 13.5% of the transaction volume for which these fees were charged); the $38.25 proposed for each individual class	Yes (Christopher J. Conant and Michael J. Flynn)	**Overruled** in full

			member represents a "tiny fraction" of Mr. Fuller's damages 2. "Coupon Only" settlement unfairly allows Ticketmaster to keep all of its more than $587 million in ill-gotten funds without disgorging them to those directly economically harmed; coupons provided are less than half the value of the $5 off coupons Ticketmaster sends out to entice repeat business 3. Settlement does not limit what OPF Ticketmaster may charge for new orders when settlement coupons are redeemed 4. Settlement does not fairly address *cy pres* requirements under California law, as it does not set a mechanism to deliver the cash value of any unclaimed settlement pool into a proper *cy pres* fund; settlement limits additional cy pres contribution to $2		

			million in the event the discount code redemption does not reach the anticipated $42 million; few codes will be redeemed given the short amount of time consumers have to purchase tickets for high-demand events; *cy pres* fund itself is objectionable 5. Class members are required to make additional purchases to enjoy benefits of settlement 6. Less than $15 million in value will go to the settlement class, which suffered a loss in excess of a half billion dollars 7. Requests a subclass of individuals and ticket brokers whose losses exceed the best $76.50 maximum value offered by the settlement; requests appointment as a class representative		
6. Thomas Groom	Swampscott, MA	September 12, 2014	1. Settlement limits class members' recovery to a	No	**Overruled** in full

			maximum of $38.35, and requires class members to return to Ticketmaster website multiple times to purchase multiple tickets to claim full value of settlement 2. UPS Codes are unfairly capped at 17, limiting recovery to $85 3. Settlement unfairly requires class members to make future purchases 4. Ticket Codes for two free tickets are only applicable to Live Nation general admission tickets to Live Nation owned or operated venues, subject to undefined availability and restrictions 5. Unreasonable to set a settlement value on unknown availability of free tickets to yet-to-be determined concerts at unknown and undisclosed venues 6. Class members likely to spend additional money on parking, food		

				and beverages at the "free concerts" 7. Ticketmaster should be forced to refund fees directly 8. $42 million settlement value is unsupported 9. Release is overbroad, unfair, and unreasonable 10. Notice program is deficient and does not satisfy due process 11. Claims process is confusing, ambiguous, and deficient 12. Attorneys' fees are excessive 13. Nothing in settlement precludes Ticketmaster from increasing its fees by value of the discount codes		
7. Susan M. Kalp	Nashville, TN	September 15, 2014	1. No meaningful provision for any lasting remedy provided in settlement for Ticketmaster's misconduct; actual benefits fall short of losses class members sustained	No (objector is attorney herself)	**Overruled** in full

			2. No injunctive relief provided for 3. Objection period too short, and other procedural deficiencies 4. Settlement amount is too small; Ticketmaster is actually rewarded for its misconduct under the settlement 5. Direct payment should be made to class members in amount of $42 million 6. Payment to UC Irvine is outrageous, and bears no relation to losses suffered by class members 7. Fees are excessive		
8.Erika Kron	Ladera Ranch, CA	September 1, 2014	1. Cy pres distributions are unfair to the class and should be rejected; cy pres recipient does nothing to right the wrongs caused by the underlying suit 2. No documents re: fees and incentive awards were posed to settlement website 3. Court should	No	**Overruled** in full

			calculate fee award as a percentage of the amount of the settlement fund that is distributed to claimants, and distribution of fees should not be made until coupons are redeemed 4. $386 million settlement value is illusory, and Ticketmaster is likely to generate revenue as a result of coupon settlement 5. Fees should be reduced in proportion to any amount distributed via cy pres		
9. Raymond Leeper	Unknown	June 4, 2014	1. Settlement does not fully indemnify class for damages 2. Attorneys' fees are excessive; attorneys should be compensated with ticket credits	No	**Overruled**
10. John Navarette	California	June 2, 2014	1. Never received notice under the Court's preliminary approval order[63] 2. Still a coupon	Yes (Joshua R. Furman)	**Overruled** in full

[63] Ms. Keough has submitted a Declaration, stating that the Settlement Database reflects email notice was sent to John Navarette on May 27, 2014 at the email address JROQ2008@YAHOO.COM, and that the email notice was not returned to GCG as undeliverable. See December 5, 2014 Keough Declaration at ¶3. In any event, though, the standard, as noted under *Wershba, supra,* is that the notice must have a reasonable chance of reaching a substantial percentage of the class members. Class counsel need not demonstrate that notice, in fact, reached every member of the class in order to be found effective. As discussed *supra,* the Court has determined that notice was effective.

			settlement, and does nothing to cure the illegitimate coupon-based nature of the settlement; benefits are illusory (settlement benefits can only be attained when a class member makes another purchase) 3. Ticket codes are issued at Live Nation's discretion; shortfall tickets made available is miniscule and provides no meaningful relief to the class 4. Proposed settlement does not consider redemption rates; only the amount "made available" 5. Incentive awards are unconscionable and indicative of collusion 6. Attorneys' fees are excessive 7. Cy pres recipients are inadequate and cy pres minimum is improperly valued Relative number of opt-outs and objectors are		

				high; to the extent they represent a small percentage of the total class membership, they are meaningless as to the membership's approval 2. *Chavez v. Netflix* does not provide cover for the coupon settlement (since this is a "pure" coupon settlement) 3. Ticketmaster values the cost of the settlement at a substantially discounted amount of *cy pres* guaranty 4. *Cy pres* recipients are not specified 5. Settlement constitutes impermissible, unconstitutional speech restraints on class members (i.e., ¶10.2 of the settlement purports to prohibit class members from "disparaging" the settling parties, their past or present business practices, or their counsel)		
11. Cara L. Patton Glenn J. Kassiotis	Huntsville, AL	January 6, 2012	1. Notice not the best practicable, as it is designed to discourage class member	Yes (Law Office of John W. Davis,	**Overruled** in full

Brooke Everly Russell Cunningham Brice Johnston George Mattison, IV			participation (including the requirement to set forth objections made in prior, unrelated class settlements, and subjecting objectors to deposition) 2. Release is overly broad, as it encompasses claims beyond those concerning the Order Processing Fees and UPS Delivery Fees; notice did not contain proposed release 3. Stated value of "in kind" relief is exaggerated, in light of restrictions placed on "credit" or "code" redemption (including lack of transferability and expiration of the codes after just 48 months); no explanation of how to redeem the free tickets 4. Incentive awards are excessive	Marcus Merchasin, and Helfand Law Offices)	
12. Alexander Skopkis	Chicago, IL	June 2, 2014	1. Class members should be getting cash, not coupons for future use 2. Attorneys' fees are excessive, and should not be	No	**Overruled** in full

			paid until Ticketmaster changes its policies		
13. James Tindall	Marietta, GA	June 9, 2014	1. Settlement and fees provides nothing to class members who were harmed by Ticketmaster, but obligates harmed class members to enter into future transactions with Ticketmaster; lead Plaintiffs and class counsel should share in the award and not receive any special award for their efforts (both should receive future Ticketmaster credits instead of monetary compensation)	No (objector is an attorney himself)	**Overruled** in full
14. Rhadiante Van De Voorde	Boulder Creek, California	September 16, 2014	1. Settlement is an unfair coupon settlement 2. Coupon relief is no relief at all; tickets not available until after settlement is approved and have strict limitations (including the fact Live Nation does not have venues in every state) 2. Class members are unfairly compelled to conduct business with Ticketmaster; settlement should	Yes (Donald A. Green, Esq.)	**Overruled** in full

				provide cash benefits and not coupons or free tickets 3. Coupons are not transferable 4. Coupons are not convertible into cash by redemption 5. Settlement is inflated by the coupon value 6. Release is defective, as it was not included in the class notice and is overly broad		
	15. Michael Wasserman	Davie, FL	September 12, 2014	1. OPF fee is simply a discount on future transactions with Ticketmaster, except for AEG owned or operated venues; members of the class are not fairly and adequately compensated by the settlement 2. "Free tickets" provide no benefit to the class 3. Fees and incentive payments are excessive	No	**Overruled** in full

There are only fifteen (15) total objections to the motion for final approval. While this Court previously recognized that courts are cautious about inferring support for a complex settlement from lack of objections (particularly where the stake of the individual class member is small, class members are unlikely to make their positions known – see California Practice Guide, Civil Procedure Before Trial, ¶14:139.13a (The Rutter Group 2014) (citing *In re General Motors Corp. Pick-up Truck Fuel Tank Prods. Liab. Litig.* (3rd Cir. 1995) 55 F.3d 768, 812)), there were ninety-three (93) such objections to the prior settlement. This represents a significant decrease in the amount of objections, in a national class which numbers in the millions.

Moreover, it is unclear what other remedy the class could have gotten. Again, coupon settlements are not inherently suspect or improper. *See Chavez v. Netflix, Inc., supra,* 162 Cal.App.4th at 54; *Nordstrom Comm'n. Cases* (2010) 186 Cal.App.4th 576, 590. The *cy pres* component, in the Court's view, places this settlement into the realm of benefiting the class. The class members' overriding objection that the settlement does not provide adequate value assumes that Plaintiffs would have been successful at trial. However, this was far from a given, and none of the class members weighed the strength of the Plaintiffs' case against the amount of the settlement. *Chavez v. Netflix, Inc., supra,* 162 Cal.App.4th at 54. Again, the Court's obligation under California law is to ensure that the settlement, as presented, is in the "ballpark of reasonableness" – it is *not* to determine whether the settlement "could have been better," as many of the objectors argue. Importantly, the objectors have not submitted any evidence to address the issues affecting the settlement, nor have they provided any analysis of a valuation of the case.

Mr. Fuller's objections in particular are not persuasive. Mr. Fuller is a ticket broker, who claims that he is eligible for thousands of dollars in recoverable OPF and/or UPS fees. Again, the settlement represents a compromise. Mr. Fuller (whose attempt to intervene in this case was rejected by this Court, and affirmed by the Court of Appeal) had the ability to opt-out of the settlement and represent a class of other ticket brokers. However, he did not do this.

Given the small percentage of objectors and the Court's order overruling the objections, this factor weighs in favor of final approval.

Conclusion on *Dunk* Factors

On balance, while perhaps not an ideal settlement, the *Dunk* factors generally weigh in favor of final approval. The *Dunk* factors reflect that this settlement represents a compromise, and there is a real monetary benefit going to a cause which will ultimately benefit the class (the consumer law clinic at UC Irvine). The Court finds the settlement is fair and in the interests of the class. For all of the foregoing reasons, the motion for final approval is granted.

VII.

ATTORNEY'S FEES, COSTS, AND INCENTIVE PAYMENTS

The fee request is based on a "clear sailing" agreement. That is, Ticketmaster has separately agreed to pay Class Lead Counsel $14.96 million in fees and $1,230,871.11 in costs/disbursement/expenses. In *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, the Court of Appeal specifically noted that California law recognizes such agreements, and that the "clear sailing" agreement is valid under California law. In fact, the Court noted that "'[t]o the extent it facilitates completion of settlements, this practice should not be discouraged.'" *Consumer Privacy Cases,* 175 Cal.App.4th at 553 (citing Newberg on Class Actions (4th ed. 2002) § 15:34, p. 112). However, the *Consumer Privacy Cases* court also recognized that, even where there is a "clear sailing" agreement, "thorough judicial review of fee applications is required in all class action settlements...." *Consumer Privacy Cases*, 175 Cal.App.4th at 555. Accordingly, a review of the fee request is warranted here.

A. Attorneys' Fees

1. Determining the Lodestar Amount and Calculating Counsel's Hourly Rate and Fees

The court's first step in setting a fee award is to calculate the lodestar amount. *Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311; *Serrano v. Priest (Serrano III)* (1977) 20 Cal.3d 25, 48, n.23; Pearl, California Fee Awards (2006 Supp.), §12.1. The lodestar figure is obtained by multiplying the hours worked by each person entitled to compensation by a reasonable hourly rate for those services. That calculation is fundamental to the trial court's determination of the amount of fees to be awarded. Pearl, California Fee Awards (2006 Supp.), §12.1. The starting point in setting the lodestar figure and calculating the ultimate fee award is an assessment of the number of hours reasonably worked by counsel. *Id.* at §12.2.

When determining the amount of a fee award, the court should calculate it using the community's prevailing hourly rate for comparable legal services, even when the litigant did not pay the attorney the prevailing rate. *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1096. The burden is on the successful party to prove the appropriate market rate to be used in calculating the lodestar. Pearl, California Fee Awards (2006 Supp.), §12.33. Among the ways to demonstrate market rates are expert testimony (i.e., testimony from persons with specialized knowledge of billing rates) (*Children's Hosp. & Med. v. Bonta* (2002) 97 Cal.App.4th 740, 783); counsel's own billing rates, which carries a presumption of reasonableness (*Gusman v. & Unisys Corp.* (7th Cir. 1993) 986 F.2d 1146, 1150); rates awarded to the claiming attorneys in previous actions (*Davis v. City of San Diego* (2003) 106 Cal.App.4th 893, 904); rates awarded attorneys of comparable experience in other cases in the same market (*Children's Hosp. & Med. Ctr. v. Bonta, supra,* 97 Cal.App.4th at 783); surveys of billing rates; and opposing counsel's billing rates. Richard M. Pearl, California Fee Awards (2006), §12.33.

"[T]he ' 'reasonable hourly rate [used to calculate the lodestar] is the product of a multiplicity of factors . . . the level of skill necessary, time limitations [imposed by the client or

other limitations], the amount to be obtained in the litigation, the attorney's reputation, and the undesirability of the case.' '[Citation.]" *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1139. "A more difficult legal question typically requires more attorney hours, and a more skillful and experienced attorney will command a higher hourly rate." *Id.* at 1138-1139. "[I]n assessing a reasonable hourly rate, the trial court is allowed to consider the attorney's skill as reflected in the quality of the work, as well as the attorney's reputation and status." *MBNA American Bank, N.A. v. Gorman* (2006) 147 Cal.App.4th Supp. 1, 13. Once the party claiming fees presents evidence supporting the claimed rate, the burden shifts to the party opposing fees to present equally specific countervailing evidence. Pearl, California Fee Awards (2006 Supp.), §12.34 (referencing, *inter alia*, *Gates v. Deukmejian* (9th Cir. 1992) 987 F.2d 1392, 1405).

Class counsel seeks fees under the lodestar/multiplier method, using the percentage of the common fund as a cross-check on the lodestar and multiplier figure. As the Court has customarily employed this method in the past, it does so again here. Class counsel seeks a combined fee award of $14,960,000. This amount is not significantly different than the amount sought in connection with the prior motion for final approval and for fees.

The aggregate lodestar for counsel who have represented Plaintiffs and the class is $8,039,000 (after a "billing judgment" across the board reduction). This is broken down as follows, according to Mr. Stein:

Firm	**Lodestar Amount**
Alvarado Smith	$5,131,305.50
Stein Bogot	$836,258.50
Jackson DeMarco	$321,990.75
DiVincenzo Schoenfield Swartzman	$53,640.00
Much Shelist	$2,118,954.00
TOTAL	$8,039,000 (reduced from $8,462,148.75)

Piecing together the information in the Knapton Declaration (¶¶39 and 41, and Exh. 6 thereto), the lodestar figures are as follows:

Alvarado Smith

Professional	Hours Spent	Hourly Rate	Lodestar Fee
William M. Hensley	1,468.5	$600	$881,100
Robert J. Stein III	4,841.9	$600	$2,905,140
Marc D. Alexander	540.1	$535	$288,953.50
Claire M. Schmidt	1,612.6	$300	$483,780
Aileen Hunter	31.8	$270	$8,586
Macey Chan	20.8	$260	$5,408
Lowell Zeta	39.1	$260	$10,166
Valerie Brennan	30.9	$270	$8,343
Michelle Zehner	446.4	$250	$111,600
Robert Gonzales	23.3	None Given	None Available
Valerie Dimalanta-Segal	5.0	$175	$1,250
Shanna Strader	256.8	$25 (may be a typographical error; should probably be $250)	$64,200
TOTAL HOURS SPENT AND LODESTAR FIGURE	**9,317.2**		**$5,089,306.50**

DiVincenzo Schoenfeld & Swartzman

Professional	Hours Spent	Hourly Rate	Lodestar Fee

Robert J. Stein III	89.4	$600	$53,640
TOTAL HOURS SPENT AND LODESTAR FIGURE	**89.4**		**$53,640**

Jackson Demarco

Professional	Hours Spent	Hourly Rate	Lodestar Fee
William M. Hensley	452.3	$600	$271,380
Robert J. Stein III	79.6	$600	$47,760
Marc D. Alexander	6.45	$535	$3,450.75
TOTAL HOURS SPENT AND LODESTAR FIGURE	**537.35**		**$321,990.75**

Much Shelist

Professional	Hours Spent	Hourly Rate	Lodestar Fee
Michael B. Hyman	380.2	$675	$237,625
Steven P. Blonder	2030.7	$600	$1,218,420
Melinda J. Morales	400.6	$475	$190,285
David T. Brown	169.4	$585	$99,099.00
Joann A. Sarasin	101.5	$525	$53,287.50
Edward D. Shapiro	12.1	$545	$6,594.50
Robert J. Wosniak	42	$300	$12,600
Louis A. Kessler	368.9	$280	$103,292
Jean Janes	11.3	$475	$5,367.50
Autumn Sharp	12.4	$300	$3,720

Cassandra Crane	30.2	$255	$7,701
Gary Krugh	74.3	$175	$13,002.50
Christine M. Ceja Ra	4.0	$175	$700
Katrina Blumenkrants	9.9	$300	$2970
TOTAL HOURS SPENT AND LODESTAR FIGURE	**3647.5**		**$2,118,854**

Stein Bogot

Professional	**Hours Spent**	**Hourly Rate**	**Lodestar Fee**
Robert J. Stein III	1,006.5	$600	$603,900
William J. Bogot	321.5	$535	$172,002.50
John Koltse	58.6	$140	$8,204.00
Erin Anderson	5.1	$150	$765
Christine Kent	38.5	$125	$4812.50
TOTAL HOURS SPENT AND LODESTAR FIGURE	**1,430.2**		**$836,258.50**

In addition to these figures, counsel Knapton had further broken down the type of work performed in the litigation, by firm, at ¶¶31-32 of his Declaration. Mr. Stein provides a brief biography of each of the members of Alvarado Smith who worked on the case.

Thus, the combined lodestar for all firms and attorneys who worked on the case is $8,039,000 based on counsel's calculated figure (reduced by counsel from $8,462,148.75). The combined number of lodestar hours among all of the firms, based on the figures counsel has provided, is 15,007.6.

The hourly rates thus range from $125 (for paralegals) up through a maximum of $675 per hour. Based on the evidence in the Knapton, Stein, and Blonder Declarations, the Court determines these rates are reasonable. Mr. Knapton, who has been proffered as an expert witness on fees, says that the hours are in the range that is typical for medium size class actions that settle and the average rate is within the range he has seen.[64] He also says that the rates proffered for some of the individual timekeepers are lower than he expected.[65]

Mr. Knapton also references the 2012 Real Rate Report, which is not a survey, but a database based on "anonymized" actual invoices that the firm reviews for payment and has the benefit of both large scale and grounding in the reality of what was paid.[66] In Los Angeles, the 2012 hourly mean rate for partners was $620.34, and for associates, that sum was $412.53.[67]

Knapton also references the Laffey Matrix, noting that the rates in the Los Angeles legal market for counsel with 20+ years of experience was $541; 11-19 years, $478; 8-10 years, $385; 4-7 years, $312; 1-3 years, $265; and paralegals, $140.[68] Mr. Knapton also sets forth "anecdotal" rates of other counsel, and sets forth a sampling of attorneys whose rates are higher than those claimed in the instant case.[69] Mr. Knapton also concludes that the 15,007.6 hours requested by class counsel is within the range of hours that are usual and reasonable for similar class action litigation.[70]

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[64] Knapton Decl., ¶35.

[65] *Id.*

[66] Knapton Decl., ¶43.

[67] Knapton Decl., ¶44.

[68] Knapton Decl., ¶46.

[69] Knapton Decl., ¶50.

[70] Knapton Decl., ¶58.

Based on this evidence, the Court finds the hourly rates are within the realm of reason for attorneys practicing in the Los Angeles legal market. Further, the number of hours claimed is reasonable, especially in light of the fact that this litigation is eleven years and given the Court's familiarity with the history of the case.

Turning to the factors referenced in *Ketchum v. Moses, supra,* 24 Cal.4th at 1139 for calculating the lodestar, there was a significant amount of skill involved here in prosecuting this eight-year case. The Stein Declaration in Support of Final Approval demonstrates the extensive procedural and substantive history of this litigation.[71] This case was opposed at every juncture by Ticketmaster, and the procedural and substantive history evidences the significant skill required to litigate the case, at both the trial and appellate levels. Importantly, discovery in this case was exhaustive (which is an understatement).

The legal questions in this case were not easy to resolve, and the case was settled only after a number of mediation sessions and trips up to the Court of Appeal. By all accounts, the attorneys in this case have good reputations. Further, the case was not the most desirable to prosecute, as it involved a nationwide class against a formidable defendant which holds a corner on the ticket market.

As to the "amount of settlement" factor, the lodestar is reasonable. As noted *supra,* the minimum value of the settlement, according to Plaintiffs' expert Ms. Fair, is $42 million (not including the $3 million *cy pres* payment to UC Irvine). The "likely" value of the settlement, according to Fair, is $76 million (the likely value of the discount codes and free tickets that will be redeemed by class members).[72] Since the Court is basing the settlement value on the $42 million figure, then the lodestar represents just over 19% of the settlement value. In any event,

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[71] See Stein Decl. in Support of Final Approval, ¶4, ¶5.

[72] Fair Decl., ¶7.

counsel represents that the fee was negotiated only after negotiation of an agreement as to all other material terms of the settlement, including class compensation issues.

In sum, the Court finds the factors referenced above support a finding that the lodestar figure is reasonable.

2. Multiplier of 1.86 is requested

Based on a hypothetical aggregate lodestar figure of $8,039,000, counsel is effectively requesting a multiplier of approximately 1.86, resulting in total fees sought of $14,960,000.

Once the Court has calculated the lodestar figure, it may consider other relevant factors that could increase or decrease that figure. "The court expresses these factors as a number (or as an equivalent percentage), and the lodestar is multiplied by that number. Thus, the number is referred to as the 'multiplier.'" Pearl, California Fee Awards (2006 Supp.), §13.1. Although there are some objective standards governing what factors may be used to decide whether to apply a multiplier, the trial courts have considerable discretion in determining the size of the multiplier, as long as they consider the proper factors. *Id.* Indeed, "there is 'no mechanical formula [that] dictate[s] how the [trial] court should evaluate all these factors....[Citation.]'" *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41.

"[The lodestar] may be adjusted by the court based on factors including... (1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the extent to which the nature of the litigation precluded other employment by the attorneys, [and] (4) the contingent nature of the fee award. [Citation.] The purpose of such adjustment is to fix a fee at the fair market value for the particular action." *Ketchum v. Moses, supra,* 24 Cal.4th at 1132. *See also Serrano III, supra,* 20 Cal.3d at 49. However, the Court cannot consider the same factors when setting both the multiplier and the lodestar. *See Ketchum, supra,* 24 Cal.4th at 1138; *see also Flannery v. CHP* (1998) 61 Cal.App.4th 629 (reversing the application of a 2.0 multiplier to a fee award, in part because "the skill and experience of counsel" and "the nature of

the work performed" factors were duplicative of factors the trial court had explicitly considered in setting the lodestar).

Given the Court's familiarity with the issues in this case, as well as the work performed by class counsel during the entirety of the litigation, the Court finds the 1.86 multiplier is reasonable, pursuant to the *Ketchum* factors referenced above. In particular, the Court determines the difficulty of the questions involved, the fact that this litigation precluded significant preclusion of other employment by counsel, and the contingent nature of the fee award justify the 1.86 multiplier. In setting the multiplier, the Court has not considered the factors the Court considered in setting the lodestar.

3. Conclusion on Motion for Attorneys' Fees

For these reasons, the Court grants the motion for fees in the amount of $14,960,000 to class counsel, as prayed.

B. Costs

Plaintiffs seek costs in the total amount of $1,230,871.11, among all of the firms who worked on this case. A summary of all expenses sought appears as Exhibit 4 to the Stein Declaration in Support of Final Approval. Plaintiffs state they have excluded charges for computer research, faxes, and in-house copying (except for some documents copied for the court and service list). Plaintiffs also state they have capped their meal costs, including tax and tip, at $60 per person for dinners and $30 for lunches.[73] Airfares were purchased for coach tickets, with limited exceptions.[74] This actually represents a significant reduction from some of the costs requested in connection with the prior motion for final approval.

Counsel represents that the largest category of costs was for experts, who were retained to conduct marketing and survey studies and consultation for the liability issues, forensic

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[73] Stein Decl., ¶16, Blonder Decl., ¶7.

[74] Stein Decl., ¶16; Blonder Decl., ¶7.

accounting for the restitution recovery, and advertising and marketing expertise for the notice and recovery issues relating to the settlement. The expert fees incurred by Plaintiffs are $977,569.05. For each firm involved in the case, counsel has provided an itemized statement of each expense, with summaries by category.[75]

These cost amounts are broken down by firm, as follows:

Firm	Costs Sought
Alvarado Smith	$442,174.57
DiVincenzo & Swartzman	None
Jackson DeMarco	$12,953.99
Much Shelist	$770,896.14
Stein Bogot	$8,446.91
TOTAL	$1,233,871.11

1. Alvarado Smith

Turning to the individual costs sought, Alvarado Smith's costs are attached as Exhibit 9 to the Stein Declaration. There are significant airline travel reimbursement costs requested for litigation activity which occurred all over the country. In addition to the airline travel, there were substantial court reporter fees, the aforementioned expert fees (which, again, comprise the largest portion of the requested costs), filing fees (which are substantial, given the amount of paper generated in the litigation), hotel stays (which again are significant, given the time counsel spent on the road), meal costs (which, as noted above, are capped at $60 for dinners and $30 for lunches), mediation fees (which are also a substantial portion of the costs), mileage, and miscellaneous travel costs (which include public transportation and train costs).

These costs appear to be generally reasonable on their face, and will ultimately be approved, as prayed, in the amount of $442,174.47.

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[75] Stein Decl., ¶¶17-19, Exhs. 3, 7, 9; Blonder Decl., ¶¶5-9, Exh. 3.

2. Jackson DeMarco

The costs sought by Jackson DeMarco[76] are generally straightforward, and will ultimately be approved, as prayed, in the amount of $12,953,99.00.

3. Much Shelist

Much Shelist has, like the other firms, provided a detailed breakdown of costs sought. Many of these costs also seem relatively straightforward. The generalized breakdown is set forth on the sheet entitled "Disbursements Summary," and are as follows:

Cost Description	Amount Sought
Travel	$13,205.08
Airfare	$26,937.46
Meals – Travel	$1,084.28
Auto Rental	$282.70
Filing Fees	$320.01
Recording Fee	$30.00
Court Costs	$120.00
Appearance Fee/Court Fees	$205.00
Witness Fee	$18,310.00
Meals at Meetings	$2,721.41
Outside Professional Services	$667,634.02
Local Transportation	$4,198.58
Court Reporter	$13,415.74
Miscellaneous	$716.40
Outside Photocopying	$1,300.73

[76] Exhibit 3 to Stein Declaration in Support of Fees/Costs.

TOTAL	$731,935.64

The "Outside Professional Services" is the largest block cost, and comprises several high-priced items (some of which are self-explanatory, such as costs of mediation at JAMS). Other items are for the cost of experts in the case. All of the other costs claimed by Much Shelist, both in the general blocks and in the itemized costs, are self-explanatory, and are reasonable in amount, given the amount of time this litigation has progressed. The costs will ultimately be approved.

4. Stein Bogot

As to Stein Bogot, the charges are self-explanatory. These costs are attached as Exhibit 7 to the Stein Declaration. The costs claimed by Stein Bogot essentially encompass meals, travel costs, and costs for Court Call, and are reasonable in amount. They will ultimately be approved in the amount of $8,446.91.

5. Conclusion on costs

For these reasons, the Court grants the motion for costs in the total amount of $1,230,871.11.

C. Incentive Payments

Plaintiffs request incentive payments in the amounts of $19,000 each to class representatives Curt Schlesinger and Peter Lo Re, and $500 each to the remaining class representatives Roth, Russell, and Aghchay.

The court should consider the following factors, among others, in determining whether to pay an incentive or enhancement award to the class representative(s):

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- Whether an incentive was necessary to induce the class representative to participate in the case;
- Actions, if any, taken by the class representative to protect the interests of the class;
- The degree to which the class benefited from those actions;
- The amount of time and effort the class representative expended in pursuing the litigation;
- The risk to the class representative in commencing suit, both financial and otherwise;
- The notoriety and personal difficulties encountered by the class representative;
- The duration of the litigation; and
- The personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. California Practice Guide, Civil Procedure Before Trial, ¶14:146.10 (The Rutter Group 2014) (citing *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804; *Bell v. Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715, 726; *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1394; *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412).

Messrs. Schlesinger, Lo Re, Roth, and Russell and Ms. Aghchay have each submitted Declarations outlining the tasks they have performed as class representatives. The lion's share of the incentive payments are sought on behalf of Messrs. Schlesinger and Lo Re, who each seek $19,000. The other three class representatives – Roth, Russell, and Aghchay – seek $500 each. The class representatives seek a total amount of $39,500 in incentive payments.

Mr. Schlesinger states that during the summer of 2003, he retained Bogot and Stein to investigate and pursue his claims against Ticketmaster.[77] He states that during the past 9 years, he has regularly conferred with his attorneys regarding the status of the case.[78] Schlesinger says that he has remained involved and committed to the best interests of the Class throughout the case, even though doing so required substantial amounts of his time, loss of business

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[77] Schlesinger Decl., ¶3.

[78] Schlesinger Decl., ¶3.

opportunities and additional staffing requirements for his store, and caused him to be threatened by Ticketmaster with the prospect of being bankrupted if the case went to trial and he lost.[79]

Schlesinger claims that the incentive payment was necessary to induce him to serve as class representative, given that a significant portion of his income is tied to the profitability of his store, and that he was required to take substantial time away from work to prepare for and participate in the trial in this case.[80] Schlesinger claims to have suffered not only financial losses as a result of his participation, but has also expended significant amounts of time (including time away from family and friends).[81]

Schlesinger states that throughout each phase of the case, he has regularly consulted with counsel by phone and in person, devoting "many, many hours and numerous weekends" to responding to discovery and being involved with progress of the case.[82] Schlesinger says that he spent "countless" hours looking for documents to produce to Ticketmaster in response to discovery and deposition requests.[83]

Schlesinger proceeds to outline the three primary topics he believes merit consideration: 1) his additional expenses and lost business opportunities as a result of serving as class representative; 2) the additional personal risks he incurred in the case; and 3) the nature of the discovery requests and the time it took him to respond to all of them. He estimates that because of the initial January 2011 trial date, he was required to take one week off from work.[84] Then, with respect to the October 2011 trial date, Schlesinger says that he had, at the very least, an

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[79] Schlesinger Decl., ¶5.

[80] Schlesinger Decl., ¶4.

[81] Schlesinger Decl., ¶7.

[82] Schlesinger Decl., ¶8.

[83] Schlesinger Decl., ¶8.

[84] Schlesinger Decl., ¶9.

immediate revenue loss (since he would have otherwise accompanied customers of his fly-fishing store on fly fishing trips, for which he personally served as an instructor).[85]

As to the personal risks, he sought to be on the hook for over $1 million in expenses due to Ticketmaster's §998 offer.[86] Moreover, Ticketmaster's efforts to depose his family were "very intimidating" to Schlesinger.[87]

As to the time he spent responding to discovery, Schlesinger details all of the discovery to which he responded at ¶¶17-25. He estimates spending several hours in discovery efforts, plus an additional 15 to 20 hours in connection with the settlement process.[88]

Mr. Lo Re has submitted a separate declaration setting forth the efforts he put into the case as class representative. He says that he has also regularly conferred with his attorney, Mr. Stein, during the past 9 years regarding the status of the case.[89] He notes that his only income is derived from his job as a sales representative for Apollo Distributing in Fairfield, New Jersey.[90] On days he is out of the office, he does not receive commissions for any sales.[91]

Lo Re says that during the past 9 years, he has suffered not only financial loss, but has also expended significant amounts of time, and time away from family and friends.[92] Lo Re, like Schlesinger, says that he spent many hours and numerous weekends to responding to discovery requests and being involved with the progress of the case; spent several days in connection with

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[85] Schlesinger Decl., ¶11.

[86] Schlesinger Decl., ¶12.

[87] Schlesinger Decl., ¶13.

[88] Schlesinger Decl., ¶¶26.

[89] Lo Re Decl., ¶3.

[90] Lo Re Decl., ¶4.

[91] Lo Re Decl., ¶4.

[92] Lo Re Decl., ¶5.

his two depositions; and spent countless hours looking for documents to produce to Ticketmaster in response to their discovery requests.[93]

Lo Re says that as a result of missing time from his first deposition, it cost him between $2,000 and $3,000.[94] Due to having to attend his second deposition, he lost another $2000 and $3000 in income.[95] He estimates having lost $1,000 in revenue for having to take a week off in January 2011, with the impending trial date.[96] He also claims to have lost business opportunities in October 2011, as a result of having to keep his calendar open in anticipation of a potential October 2011 trial date.[97]

Lo Re also notes that he, like Schlesinger, was on the hook for significant costs following Ticketmaster's §998 offer.[98] Ticketmaster also had requested information about his business clients, which, Lo Re says, could have disrupted his business.[99] Finally, Lo Re outlines the amount of time he spent on discovery responses, estimating he has spent 24-31 hours responding to discovery.[100] He also estimates having spent 12 to 15 hours between phone calls, personal meetings, and reviewing multiple settlement proposals.[101]

Messrs. Roth and Russell have also submitted Declarations in support of their requests for incentive payments. These two Plaintiffs have only recently come into the case, with the

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[93] Lo Re Decl., ¶6.

[94] Lo Re Decl., ¶7.

[95] Lo Re Decl., ¶8.

[96] Lo Re Decl., ¶9.

[97] Lo Re Decl., ¶10.

[98] Lo Re Decl., ¶13.

[99] Lo Re Decl., ¶15.

[100] Lo Re Decl., ¶¶15-22.

[101] Lo Re Decl., ¶12.

filing of the Fourth Amended Complaint. Both state that they were aware of the substantial discovery, time and financial burdens posed on Plaintiffs Schlesinger and Lo Re.[102] Each joined the litigation as an additional class representative because they believed strongly that Ticketmaster committed wrongful acts which should be vindicated.[103]

With all of these statements by Messrs. Schlesinger and Lo Re in mind, a $19,000 incentive payment is on the high end of incentive payment requests, but the litigation proceeded for approximately 11 years. It is evident that the class representatives faced substantial risks in prosecuting this case, and gave up significant periods of time in this endeavor. Undoubtedly, the prospects for financial ruin by the class representatives were real and significant, given the §998 offer by Ticketmaster. The Court finds that $19,000 is a reasonable incentive payment to class representatives Schlesinger and Lo Re, and that $500 is a reasonable incentive payment to the remaining class representatives. The request for incentive payments is granted, as prayed.

VIII.

OBJECTORS' MOTIONS FOR FEES, COSTS, AND INCENTIVE PAYMENTS

Two sets of objectors - the Sullivan Objectors and the Patton Objectors – seek an order awarding attorneys' fees and costs. The Sullivan Objectors also seek incentive payments. Essentially, the objectors claim that as a result of their efforts, the settlement was revised to benefit the class, and that their counsel therefore deserves a portion of the fee award. The Sullivan Objectors point to the following: 1) their objections to the fact that the class relief included only coupons, with no means to obtain free tickets without paying more money to Defendant; and 2) the objections to the fact that the coupons could not be "stacked" or transferred by class members who had paid deceptive UPS fees multiple times and thus were

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[102] Roth Decl., ¶5; Russell Decl., ¶5.

[103] Roth Decl., ¶7; Russell Decl., ¶7.

entitled to multiple redemption codes. The Sullivan Objectors do not seek a specific amount, but instead request the Court defer calculation of the amount of that award until expiration of the one-year grace period when the total value of the coupons redeemed will be known.

The Patton Objectors similarly argue that their objections to the prior settlement agreement benefited the class and entitle them to a fee award under the common fund/substantial benefit doctrines.

At the outset, objectors are not ordinarily entitled to an attorney fees award. California Practice Guide, Civil Procedure Before Trial, ¶14:146.5 (The Rutter Group 2014). Such an award may be appropriate, however, under the equitable common fund or substantial benefit doctrines where the objection *confers a significant benefit* on the class; e.g., where the ultimate class recovery exceeds that which would have been achieved absent the objector's efforts. California Practice Guide, Civil Procedure Before Trial, ¶14:146.6 (The Rutter Group 2014) (citing *Consumer Cause, Inc. v. Mrs. Gooch's Natural Food Mkts., Inc.* (2005) 127 Cal.App.4th 387, 397–398). The benefit conferred on the other class members need not be pecuniary but must be "actual and concrete and not conceptual or doctrinal." California Practice Guide, Civil Procedure Before Trial, ¶14:146.7 (The Rutter Group 2014) (citing *Robbins v. Alibrandi, supra,* 127 Cal.App.4th at 448).

The court must approve any award of attorney fees to the objector's attorney as part of a class action settlement or judgment. The negotiated fee must be "fair and reasonable" but need not perfectly duplicate the amount that would be awarded under the "substantial benefit doctrine." California Practice Guide, Civil Procedure Before Trial, ¶14:146.8 (The Rutter Group 2014) (citing *Robbins, supra,* 127 Cal.App.4th at 450-451).

Moreover, fees might be recoverable under the "private attorney general" theory under CCP §1021.5, where the objector's actions resulted in the "enforcement of an important right affecting the public interest." California Practice Guide, Civil Procedure Before Trial, ¶14:146.9

(The Rutter Group 2014) (citing *Consumer Cause, Inc. v. Mrs. Gooch's Natural Food Mkts., Inc.*, supra, 127 Cal.App.4th at 400–404).

Here, pursuant to these California authorities, the Court is not persuaded that the objections conferred a significant benefit to the class under the substantial benefit doctrine. In other words, the subsequent settlement was not the product of the objectors' efforts. Instead, the objections previously raised by the Sullivan and Patton Objectors were not unique to these class members. The class was not improved due to these objectors' efforts.

Further, the common fund doctrine is not applicable, as there is no "common fund" which is funding the settlement. The settlement is largely in the form of the coupon/discount codes, as well as the potential for free tickets. The $3 million *cy pres* fund does not constitute a "common fund" (although the $3 million *cy pres* fund benefits the class, that sum is not going directly to individual class members).

For these reasons, the objectors' fee motions are not well-taken, and they are both denied.

VIII.

RULING AND ORDER

For the foregoing reasons, the motion for final approval is granted. The Court finds the settlement is fair, reasonable, and in the interests of the class. The Court grants the Plaintiffs' motion for attorneys' fees, costs, and incentive payments.

All objections are overruled. The motions for fees, costs, and incentive payments brought by the Sullivan and Patton objectors are denied.

Dated: February 27, 2015

KENNETH R. FREEMAN

Kenneth Freeman
Judge of the Superior Court