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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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ALBA MORALES; LANIE COHEN;
LINDA CLAYMAN; and KENNETH
DREW, on behalf of themselves
and all other similarly
situated,

Plaintiffs,

v.

CONOPCO, INC., d/b/a
Unilever,

Defendant.

CIV. NO.: 2:13-2213 WBS EFB

MEMORANDUM AND ORDER RE: FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AND ATTORNEYS' FEES

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Plaintiffs Alba Morales, Lanie Cohen, Linda Clayman,
and Kenneth Drew brought this putative class action against
defendant Conopco, Inc., d/b/a Unilever, asserting claims arising
out of defendant's alleged labeling of certain hair care products
as "TRESemmé Naturals" despite them containing synthetic
ingredients. Presently before the court are plaintiffs' motions
for final approval of the class action settlement and attorneys'
fees. (Docket Nos. 66-67.)

1 I. Factual and Procedural Background

2 Defendant is a multinational consumer goods company
3 whose products include food, beverages, cleaning agents, and
4 personal care products, including the TRESemmé brand.

5 Plaintiffs contend that defendant violated California's
6 Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200 et
7 seq., California's Consumer Legal Remedies Act ("CLRA"), Cal.
8 Civ. Code § 1750 et seq., and various other state consumer
9 protection laws. (See Second Amended Complaint (Docket No. 30).)
10 Plaintiffs brought this lawsuit on behalf of a putative class of
11 consumers in the United States who have purchased TRESemmé
12 Naturals products. (Stipulation of Settlement ("Settlement
13 Agreement") at 2-3 (Docket No. 66-3).) The parties litigated the
14 case for nearly two years before reaching a settlement agreement
15 on February 5, 2016 before mediator Jonathan Marks. (Id. ¶¶ 3-
16 100.)

17 After reaching settlement terms, the parties then filed
18 a motion for preliminary approval of a class action settlement on
19 May 27, 2016. (Docket No. 57.) In its Order granting
20 preliminary approval of the settlement, the court provisionally
21 certified the following class: "All individuals in the United
22 States who purchased the following TRESemmé Naturals products:
23 (a) Nourishing Moisture Shampoo; (b) Nourishing Moisture
24 Conditioner; (c) Radiant Volume Shampoo; (d) Radiant Volume
25 Conditioner; (e) Vibrantly Smooth Shampoo; and (f) Vibrantly
26 Smooth Conditioner." The court appointed Alba Morales, Lanie
27 Cohen, Linda Clayman, and Kenneth Drew as class representatives,
28 the law firm of Kindall & Raabe, LLP as class counsel, the law

1 firm of Bramson, Plutzik, Mahler & Birkhaeuser, LLP as liaison
2 counsel, and KCC Class Action Service LLC as claims
3 administrator. The court also approved the class opt-in form,
4 opt-out form, and notice of settlement; directed the claims
5 administrator to publish notice pursuant to the action by August
6 11, 2016; directed class members to file objections, requests for
7 exclusion, and claim forms by September 19, 2016; directed
8 plaintiffs to file a motion for attorneys' fees by September 12,
9 2016; and directed parties to file briefs in support of final
10 approval of the settlement by September 12, 2016. The court set
11 the final fairness hearing for October 17, 2016, at 1:30 p.m.

12 After conducting the final fairness hearing and
13 carefully considering the settlement terms, the court now
14 addresses whether this class action should receive final
15 certification; whether the proposed settlement is fair,
16 reasonable, and adequate; and whether class counsel's request for
17 attorneys' fees and costs should be granted.

18 II. Discussion

19 The Ninth Circuit has declared that a strong judicial
20 policy favors settlement of class actions. Class Plaintiffs v.
21 City of Seattle, 955 F.2d 1268, 1276 (9th Cir. 1992).
22 Nevertheless, where, as here, "the parties reach a settlement
23 agreement prior to class certification, courts must peruse the
24 proposed compromise to ratify both [1] the propriety of the
25 certification and [2] the fairness of the settlement." Staton v.
26 Boeing Co., 327 F.3d 938, 952 (9th Cir. 2003).

27 The first part of the inquiry requires the court "pay
28 'undiluted, even heightened, attention' to class certification

1 requirements" because, unlike in a fully litigated class action
2 suit, the court "will lack the opportunity . . . to adjust the
3 class, informed by the proceedings as they unfold." Amchem
4 Prods. Inc. v. Windsor, 521 U.S. 591, 620 (1997); see Hanlon v.
5 Chrysler Corp., 150 F.3d 1011, 1019 (9th Cir. 1998). In the
6 second stage, the court holds a fairness hearing where the court
7 entertains any putative class member's objections to (1) the
8 treatment of this litigation as a class action and (2) the terms
9 of the settlement. See Diaz v. Tr. Territory of Pac. Islands,
10 876 F.2d 1401, 1408 (9th Cir. 1989) (holding that a court is
11 required to hold a hearing prior to final approval of a dismissal
12 or compromise of class claims to "inquire into the terms and
13 circumstances of any dismissal or compromise to ensure it is not
14 collusive or prejudicial"). Following such a hearing, the court
15 must reach a final determination as to whether the court should
16 allow the parties to settle the class action pursuant to the
17 terms agreed upon. See Telecomms. Coop. v. DIRECTV, Inc., 221
18 F.R.D. 523, 525 (C.D. Cal. 2004).

19 A. Class Certification

20 A class action will be certified only if it meets the
21 four prerequisites identified in Rule 23(a) and fits within one
22 of the three subdivisions of Rule 23(b). Fed. R. Civ. P. 23(a)-
23 (b). Although a district court has discretion in determining
24 whether the moving party has satisfied each Rule 23 requirement,
25 the court must conduct a rigorous inquiry before certifying a
26 class. See Califano v. Yamasaki, 442 U.S. 682, 701 (1979).

27 1. Rule 23(a) Requirements

28 Rule 23(a) restricts class actions to cases where:

1 (1) the class is so numerous that joinder of all
2 members is impracticable; (2) there are questions of
3 law or fact common to the class; (3) the claims or
4 defenses of the representative parties are typical of
the claims or defenses of the class; and (4) the
representative parties will fairly and adequately
protect the interests of the class.

5 Fed. R. Civ. P. 23(a). In the court's Order granting preliminary
6 approval of the settlement, the court found the putative class
7 satisfied the Rule 23(a) requirements. Since the court is
8 unaware of any changes that would alter its Rule 23(a) analysis,
9 and because the parties indicated that they were unaware of any
10 such developments, the court finds that the class definition
11 proposed by plaintiffs meets the requirements of Rule 23(a).

12 2. Rule 23(b) Requirements

13 An action that meets all the prerequisites of Rule
14 23(a) may be certified as a class action only if it also
15 satisfies the requirements of one of the three subdivisions of
16 Rule 23(b). Leyva v. Medline Indus. Inc., 716 F.3d 510, 512 (9th
17 Cir. 2013). Plaintiffs seeks certification under Rule 23(b)(3),
18 which provides that a class action may be maintained only if (1)
19 "the court finds that questions of law or fact common to class
20 members predominate over questions affecting only individual
21 members" and (2) "a class action is superior to other available
22 methods for fairly and efficiently adjudicating the controversy."
23 Fed. R. Civ. P. 23(b)(3).

24 In its Order granting preliminary approval of the
25 settlement, the court found that both prerequisites of Rule
26 23(b)(3) were satisfied. The court is unaware of any changes
27 that would affect this conclusion, and the parties indicated that
28 they were aware of no such developments. Accordingly, since the

1 settlement class satisfies both Rule 23(a) and 23(b) (3), the
2 court will grant final class action certification.

3 3. Rule 23(c) (2) Notice Requirements

4 If the court certifies a class under Rule 23(b) (3), it
5 "must direct to class members the best notice that is practicable
6 under the circumstances, including individual notice to all
7 members who can be identified through reasonable effort." Fed.
8 R. Civ. P. 23(c) (2) (B). Rule 23(c) (2) governs both the form and
9 content of a proposed notice. See Ravens v. Iftikar, 174 F.R.D.
10 651, 658 (N.D. Cal. 1997) (citing Eisen v. Carlisle & Jacquelin,
11 417 U.S. 156, 172-77 (1974)). Although that notice must be
12 "reasonably certain to inform the absent members of the plaintiff
13 class," actual notice is not required. Silber v. Mabon, 18 F.3d
14 1449, 1454 (9th Cir. 1994) (citation omitted).

15 As provided by the Settlement Agreement, KCC
16 administered the claims process. (Settlement Agreement at 2.)
17 Because defendant does not have records showing who purchased its
18 products, KCC used class demographics to develop a notice plan
19 that it estimated would reach over 70% of the class members.
20 (Id. Ex. D at 10.) Based on its research, KCC believes the
21 notice plan reached over 70% of the class members. (Kindall
22 Decl. Ex. 2 ("Geraci Decl.") ¶ 9 (Docket No. 66-4).)

23 On July 25, 2016, KCC launched a dedicated settlement
24 website and toll-free line that class members could call for
25 information. (Id. ¶ 5.) The website included the Settlement
26 Notice, Complaint, the Settlement Agreement, the Plan of
27 Allocation, and the court's Preliminary Approval Order. (Id.)
28 It also had a page for class members to file claims online or

1 print out claim forms to submit by mail. (Id.) KCC placed over
2 150 million banner advertisements on websites targeted to adults
3 over 18, with 105 million banner advertisements targeted to women
4 over 18. (Id. ¶ 6.) The advertisement campaign began July 26,
5 2016, and lasted approximately one month. (Pls.' Mot. for Final
6 Approval of Class Action Settlement ("Pls.' Mot.") at 5:2-3
7 (Docket No. 66); Geraci Decl. ¶ 5.) Each banner included an
8 embedded link to the settlement website. (Geraci Decl. ¶ 6.)
9 KCC also placed class notices in the August 22, 2016, edition of
10 People magazine and the online and print versions of the
11 Sacramento Bee on July 26, 2016, August 2, 2016, August 9, 2016,
12 and August 16, 2016. (Id. ¶¶ 7-8.)

13 As of September 6, 2016, there have been 249,742
14 website visitor sessions and 253 people have called the toll-free
15 number. (Id. ¶ 10.) This has resulted in 179,676 claims filed
16 by purchasers of TRESemmé Naturals products.¹ (Id. ¶ 11.)

17 The notice explains the proceedings; defines the scope
18 of the class; informs the class member of the claim form
19 requirement and the binding effect of the class action; describes
20 the procedure for opting out and objecting; provides the time and
21 date of the fairness hearing; and directs interested parties to
22 more detailed information on the settlement website. (Settlement
23 Agreement Ex. E.) The notice makes clear that class members may
24 recover for the purchase of up to ten bottles per household
25 without providing proof of purchase and can recover for more than
26 ten bottles if they submit adequate proof of a greater number of

27 ¹ This constitutes approximately seven percent of the
28 class. (See Docket No. 69 at 2:15.)

1 purchases with their claim forms. (Id.) The content of the
2 notice therefore satisfies Rule 23(c)(2)(B). See Fed. R. Civ. P.
3 23(c)(2)(B); see also Churchill Vill., L.L.C. v. Gen. Elec., 361
4 F.3d 566, 575 (9th Cir. 2004) (“Notice is satisfactory if it
5 generally describes the terms of the settlement in sufficient
6 detail to alert those with adverse viewpoints to investigate and
7 to come forward and be heard.” (citation omitted)).

8 B. Rule 23(e): Fairness, Adequacy, and Reasonableness
9 of Proposed Settlement

10 Having determined that class treatment is warranted,
11 the court must now address whether the terms of the parties’
12 settlement appear fair, adequate, and reasonable. In conducting
13 this analysis, the court must balance several factors, including:

14 the strength of the plaintiffs’ case; the risk,
15 expense, complexity, and likely duration of further
16 litigation; the risk of maintaining class action status
17 throughout the trial; the amount offered in settlement;
18 the extent of discovery completed and the stage of the
19 proceedings; the experience and views of counsel; the
20 presence of a governmental participant; and the
21 reaction of the class members to the proposed
22 settlement.

19 Hanlon, 150 F.3d at 1026. But see In re Bluetooth Headset Prods.
20 Liab. Litig., 654 F.3d 935, 946 (9th Cir. 2011) (“The factors in
21 a court’s fairness assessment will naturally vary from case to
22 case.”).

23 1. Strength of Plaintiffs’ Case

24 An important consideration is the strength of
25 plaintiffs’ case on the merits compared to the settlement amount
26 offered. DIRECTV, 221 F.R.D. at 526. The court, however, is not
27 required to reach an ultimate conclusion of the merits “for it is
28 the very uncertainty of outcome in litigation and avoidance of

1 wastefulness and expensive litigation that induce consensual
2 settlements.” Officers for Justice v. Civ. Serv. Comm’n of City
3 & County of S.F., 688 F.2d 615, 625 (9th Cir. 1982).

4 Plaintiffs’ claims that defendant violated various
5 state consumer protection laws survived defendant’s motion to
6 dismiss, indicating plaintiffs’ claims as alleged may have merit.
7 (See April 9, 2014 Order (Docket No. 27).) However, since expert
8 discovery has not commenced, it is unclear whether a reasonable
9 consumer would find defendant’s products were deceptive and
10 whether a reasonable consumer paid a premium for the TRESemmé
11 Naturals label. Further, the only substantive motion the court
12 has ruled on is the motion to dismiss the First Amended
13 Complaint. This limited record precludes the court from
14 assessing the merits of plaintiffs’ case. Accordingly, the court
15 will not consider this factor for settlement purposes.

16 2. Risk, Expense, Complexity, and Likely Duration of
17 Further Litigation

18 Although the court cannot assess the strength of
19 plaintiffs’ case from the record, the presence of substantially
20 disputed legal issues does serve to heighten the risk and
21 uncertainty that both parties would face if this action went to
22 trial. See Hanlon, 150 F.3d at 1026. The parties disagree over
23 whether reasonable consumers would be deceived by the labels.
24 (See April 9, 2014 Order at 14:14-19:20 (describing dispute
25 between plaintiffs and defendant over the reasonable consumer
26 test).)

27 Plaintiffs believe that the product labels are
28 deceptive and would deceive reasonable consumers. (Pls.’ Mot. at

1 13.) However, their individual testimony is insufficient to
2 establish whether defendant's representations on its products
3 would deceive a reasonable consumer and whether these
4 representations were material to a reasonable consumer. See
5 Clemens v. DaimlerChrysler Corp., 534 F.3d 1017, 1025-26 (9th
6 Cir. 2008) (holding individual's belief of deception was
7 insufficient to establish a reasonable consumer would be deceived
8 under the UCL). This would lead to competing surveys and expert
9 testimony to determine whether a reasonable consumer would be
10 deceived. The risk of this dispute weighs in favor of finding
11 this settlement fair. See Weeks v. Kellogg Co., Civ. No. 09-
12 08102 MMM RZX, 2013 WL 6531177, at *13 (C.D. Cal. Nov. 23, 2013)
13 ("The fact that this issue, which is at the heart of plaintiffs'
14 case, would have been the subject of competing expert testimony
15 suggests that plaintiffs' ability to prove liability was somewhat
16 unclear; this favors a finding that the settlement is fair.").

17 Assuming the case progressed further, the complexity
18 and duration of the litigation would be considerable. With a
19 current stipulated class of over 179,000 members, completing
20 discovery in this case would be extremely costly. (See Docket
21 No. 69 at 2:15.) Further litigation of this action would likely
22 include a motion for class certification and a series of
23 dispositive motions. It has been nearly three years since
24 plaintiffs filed the original Complaint, yet only one dispositive
25 motion has been resolved by the court and expert discovery has
26 not commenced. Accordingly, the court finds that the risk of
27 litigation and likely expense and duration of further litigation
28 favor approval of the settlement.

1 3. Risk of Maintaining Class-Action Status Throughout
2 Trial

3 Defendant has stipulated to certification of a
4 nationwide class for settlement purposes only. (Settlement
5 Agreement ¶ 44.) If the Settlement Agreement terminates for any
6 reason, class certification will be vacated. (See July 12, 2016
7 Order at 21:27-22:1 (Docket No. 63).) Plaintiffs would have to
8 file a motion for class certification, which defendant would
9 almost certainly oppose. Plaintiffs believe they would be able
10 to certify a class and maintain it throughout the litigation, but
11 this is not guaranteed. If the class was certified, however, the
12 court is unaware of any foreseeable difficulty the class might
13 have in maintaining the certification at trial. Since class
14 certification is not guaranteed at trial, this factor weighs in
15 favor of accepting the final class action settlement.

16 4. Amount Offered in Settlement

17 “In assessing the consideration obtained by the class
18 members in a class action settlement, it is the complete package
19 taken as a whole, rather than the individual component parts,
20 that must be examined for overall fairness.” Ontiveros v.
21 Zamora, 303 F.R.D. 356, 370 (E.D. Cal. 2014). In determining
22 whether a settlement agreement is substantively fair to the
23 class, the court must balance the value of expected recovery
24 against the value of the settlement offer. See In re Tableware
25 Antitrust Litig., 484 F. Supp. 2d 1078, 1080 (N.D. Cal. 2007).
26 This inquiry may involve consideration of the uncertainty class
27 members would face if the case were litigated to trial. See
28 Ontiveros, 303 F.R.D. at 370-71.

1 The settlement achieved a “key goal” of the litigation
2 in that it resulted in the discontinuance of the TRESemmé
3 Naturals products. (Kindall Decl. ¶ 16 (Docket No. 66-2).) This
4 goal would be achieved regardless of whether the settlement is
5 approved. However, plaintiffs achieved this goal because they
6 brought and litigated this suit for nearly three years.

7 The settlement also provides that defendant pay \$3.25
8 million into an escrow account to pay for class claims, after
9 subtracting expenses, costs, and attorneys’ fees. (Settlement
10 Agreement ¶ 15.) In its previous Order, the court found the
11 settlement amount was on the low-end of the expected recovery
12 range. (July 12, 2016 Order at 18:2-3.) After subtracting the
13 maximum amount of attorneys’ fees, litigation expenses, and costs
14 of Notice and Claims Administration, approximately \$1.75 million
15 would remain in the class claims account. (Kindall Decl. ¶ 29.)

16 Defendant’s line of products only cost several dollars,
17 and plaintiffs’ analysis found the premium paid for a “Naturals”
18 product was approximately sixty-eight cents per product.

19 (Kindall Decl. ¶ 17.) As of October 6, 2016, 179,676 purchasers
20 of defendant’s Naturals products filed claims under the
21 settlement with an aggregate claims value of \$6,964,930. (Docket
22 No. 69 at 2:15.) Based on the value of claims made to date,
23 class counsel states each class member would receive \$1.26 per
24 product purchased, up to ten products.² (Id. at 3:16-20.) This

25 ² The \$1.26 per product recovery was calculated by
26 dividing the estimated \$1.75 million to be distributed to class
27 members after fees, costs, and expenses by the estimated \$7
28 million aggregate value of the class members’ claims and then
multiplying that number by the \$5 per product limit. Class
counsel provided an updated calculation of \$1.14 per product at

1 is almost double the estimated sixty-eight cents premium each
2 consumer paid for each Naturals product. (Id. at 3:19-20); see
3 Brazil v. Dole Packaged Foods, LLC, No. 14-17480, 2016 WL
4 5539863, at *2 (9th Cir. Sept. 30, 2016) (“[A] plaintiff cannot
5 be awarded a full refund unless the product she purchased was
6 worthless.”). Class members claiming more than ten products will
7 receive the same per-product amount if they provide proof of
8 purchase. (Settlement Agreement ¶ 29.) While this is a nominal
9 amount, facilitating such small claims is “[t]he policy at the
10 very core of the class action mechanism.” Windsor, 521 U.S. at
11 617 (quoting Mace v. Van Ru Credit Corp., 109 F.3d 338, 344 (7th
12 Cir. 1997)).

13 This recovery weighs in favor of approving the
14 settlement because class members receive an amount greater than
15 the economic damages suffered per product purchased. The court
16 finds no reason to doubt class counsel’s assertion that a per-
17 product recovery greater than the premium paid for the products
18 is a good result.

19 Given the risk and uncertainty of the litigation, the
20 overall terms of the settlement appear fair. See DIRECTV, 221
21 F.R.D. at 527. Accordingly, the court finds the amount offered
22 favors approving the settlement.

23 5. Extent of Discovery Completed and the Stage of the
24 Proceedings

25 “A settlement that occurs in an advance stage of the
26 proceedings indicates the parties carefully investigated the
27

28 the final fairness hearing.

1 claims before reaching a resolution.” Ontiveros, 303 F.R.D. at
2 371. Plaintiffs first filed their Complaint three years ago.
3 (See Docket No. 1.) Both parties have aggressively litigated the
4 case, briefed several motions, engaged in extensive discovery,
5 and participated in lengthy mediation and settlement discussions.
6 (Kindall Decl. ¶¶ 6-12.) Plaintiffs’ counsel was informed about
7 the strengths and weaknesses of this case when plaintiffs
8 accepted the terms of the settlement agreement. (Kindall Decl. ¶
9 15.) Accordingly, the court finds the extent of discovery and
10 stage of the proceedings favors approving the settlement.

11 6. Experience and Views of Counsel

12 “When approving class action settlements, the court
13 must give considerable weight to class counsel’s opinions due to
14 counsel’s familiarity with the litigation and its previous
15 experience with class action lawsuits.” Murillo v. Pac. Gas &
16 Elec. Co., Civ. No. 2:08-1974 WBS GGH, 2010 WL 2889728, at *8
17 (E.D. Cal. July 21, 2010). Class counsel Mark Kindall and his
18 colleagues at Izard, Kindall & Raabe, LLP have significant
19 experience with litigating class action suits and have been
20 appointed as lead or co-counsel in over sixty class actions.
21 (See Kindall Decl. Ex. 3 at 1 (Docket No. 66-5).) Liaison
22 counsel Bramson, Plutzik, Mahler & Birkhaeuser, LLP is similarly
23 experienced, having recovered hundreds of millions of dollars in
24 class action settlements as lead or co-counsel. (See Pls.’ Mot.
25 for Preliminary Class Action Settlement Ex. 4 at 1 (Docket No.
26 57-5).) Both lead and liaison counsel strongly support the
27 settlement. (Pls.’ Mot. at 19:3-13.) Thus, this factor supports
28 approval of the settlement.

1 7. Presence of a Government Participant

2 No government party participated in this matter; this
3 factor, therefore, is irrelevant to the court's analysis.

4 8. Reaction of the Class Members to the Proposed
5 Settlement

6 "[T]he absence of a large number of objections to a
7 proposed class action settlement raises a strong presumption that
8 the terms of a proposed class settlement action are favorable to
9 the class members." DIRECTV, 221 F.R.D. at 529. The notice
10 complied with Federal Rules of Civil Procedure 23(c)(2) and
11 23(e). It provided the best notice practicable under the
12 circumstances, and it informed potential class members of the
13 settlement amount, the basis of the lawsuit, the definition of
14 the class, the procedure for and consequences of opting-in to the
15 settlement, the procedure for and consequences of objecting or
16 obtaining exclusion from the settlement, and the date of the
17 final fairness hearing.

18 Of the 179,676 individuals who filled out the claim
19 form online or by mail, only one individual requested to opt-out
20 and one objected to the settlement. (Docket No. 69 at 2:20-24.)
21 One individual asked to be excluded due to a mistaken belief
22 about who is in the class, stating: "I have purchased tressme
23 [sic] shampoo and conditioner in the past. But after further
24 evaluation, [the class action] only pertains to the naturals
25 selection. Therefore, I resign my submission [sic] to this
26 action." (Id. Ex. 1.) This is not an opt-out, instead the
27 individual realized she had not purchased a covered product until
28 after filing the claim form. (Kindall Decl. ¶ 26; Geraci Decl.

1 Ex. 1.) A second individual objected to the scope of the release
2 in the Settlement Agreement, but later withdrew the objection
3 after realizing the release did not include release of personal
4 injury claims. (Docket No. 69 Ex. A ("Helfand Objection") at 1;
5 Docket No. 70 Ex. A.) Therefore, the court finds this factor
6 weighs in favor of settlement.

7 Having considered the foregoing factors, the court
8 finds the settlement is fair, adequate, and reasonable pursuant
9 to Rule 23(e).

10 C. Attorneys' Fees

11 If a negotiated class action settlement includes an
12 award of attorneys' fees, that fee award must be evaluated in the
13 overall context of the settlement. Kinsley v. Network Assocs.,
14 312 F.3d 1123, 1126 (9th Cir. 2002). Class counsel whose efforts
15 create "a common fund for the benefit of persons other than
16 himself or his client is entitled to a reasonable attorney's fee
17 from the fund as a whole." Boeing Co. v. Van Gemert, 444 U.S.
18 472, 478 (1980). The Ninth Circuit has approved two methods of
19 assigning attorneys' fees in common fund cases: percentage-of-
20 recovery and lodestar. Vizcaino v. Microsoft Corp., 290 F.3d
21 1043, 1047 (9th Cir. 2002). The court has discretion in common
22 fund cases, such as here, to choose either method. Id.

23 "Despite this discretion, use of the percentage method
24 in common fund cases appears to be dominant." In re Omnivision
25 Techs., Inc., 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008) (citing
26 cases). It is "particularly appropriate in common fund cases
27 where, as here, 'the benefit to the class is easily quantified.'" Syed v. M-I LLC, Civ. No. 1:14-742 WBS BAM, 2016 WL 310135, at *9

1 (E.D. Cal. Jan. 26, 2016) (quoting Bluetooth, 654 F.3d at 942).
2 Here, class counsel agreed to represent plaintiffs on a wholly
3 contingent basis. (Pls.' Mot. for Attorneys' Fees at 7-8.)
4 Because of the ease of calculation and the pervasive use of the
5 percentage-of-recovery method in common fund cases, the court
6 thus adopts this method.

7 Under the percentage-of-recovery method, the court may
8 award class counsel a percentage of the total settlement fund.
9 Vizcaino, 290 F.3d at 1047. The Ninth Circuit "has established
10 25% of the common fund as a benchmark award for attorney fees."
11 Hanlon, 150 F.3d at 1029. The parties negotiated and agreed
12 class counsel shall not apply for a fee award greater than 30%,
13 but class counsel only requests 25% of the total \$3.25 million
14 settlement fund, or \$812,500. (Settlement Agreement ¶ 56; Pls.'
15 Mot. for Attorneys' Fees at 1:11-13 (Docket No. 67).)

16 As previously discussed, there were substantial risks
17 and delays inherent in this litigation and a possibility that
18 class members would not have recovered anything. Since class
19 counsel took this case on a contingency basis, their risk of
20 recovery was the same as the class members and they have
21 aggressively litigated this case for three years. Defendant does
22 not oppose class counsel's application for fees. (Id.; Kindall
23 Decl. ¶ 26.) Further, class counsel seeks a percentage below the
24 maximum class counsel could request under the Settlement
25 Agreement.

26 One class member objects to class counsel's hourly rate
27 and hours worked in class counsel's lodestar cross-check.
28 (Helfand Objection at 2.) As previously discussed, the court is

1 applying the percentage-of-recovery method and thus the hourly
2 rate and hours worked do not affect the percentage of recovery.
3 The court thus finds that class counsel's request for attorney's
4 fees is fair, appropriate, and reasonable under the
5 circumstances. Accordingly, the court will approve class
6 counsel's application for \$812,500 in attorneys' fees.

7 D. Expenses

8 "There is no doubt that an attorney who has created a
9 common fund for the benefit of the class is entitled to
10 reimbursement of reasonable litigation expenses from that fund."
11 In re Heritage Bond Litig., No. 02-1475, 2005 WL 1594403, at *23
12 (C.D. Cal. June 10, 2005). Class counsel has submitted a list of
13 itemized costs relating to court costs, service of process fees,
14 expert fees, electronic research and discovery, transcripts,
15 mediation, travel, photocopying and printing, and postage and
16 delivery. (Kindall Decl. Ex. 8 (Docket No. 66-10).) The court
17 finds these are reasonable litigation expenses, and it therefore
18 will grant class counsel's request for compensation in the amount
19 of \$70,700.54.

20 E. Incentive Payment to Named Plaintiffs

21 The Ninth Circuit has approved the award of "reasonable
22 incentive payments" to named plaintiffs if it does not undermine
23 the adequacy of the class representatives. Staton, 327 F.3d at
24 977-78; see Radcliffe v. Experian Info. Sys., Inc., 715 F.3d
25 1157, 1163 (9th Cir. 2013). Courts have found that \$5,000
26 incentive payments are reasonable. Hopson v. Hanesbrands Inc.,
27 Civ. No. 08-0844 EDL, 2009 WL 928133, at *10 (N.D. Cal. Apr. 3,
28 2009) (citing In re Mego Fin. Corp. Sec. Litig., 213 F.3d 454,

1 463 (9th Cir. 2000)).

2 Here, the incentive awards are to be paid by defendant
3 separately and apart from the settlement fund. (Settlement
4 Agreement ¶ 60.) Clayman seeks an award of \$1,000 based on her
5 involvement in the case. (Kindall Decl. Ex. 7 ¶ 10 (Docket No.
6 66-9).) Plaintiffs Drew and Cohen each seek an award of \$4,000
7 based on their involvement in the litigation. (Kindall Decl. Ex.
8 4 ¶ 10 (Docket No. 66-6); Kindall Decl. Ex. 6 ¶ 10 (Docket No.
9 66-8).) Morales seeks an award of \$6,000 based upon her enhanced
10 case involvement and travel. (Kindall Decl. Ex. 5 ¶ 10 (Docket
11 No. 66-7).) While Morales seeks an award above the general
12 \$5,000 benchmark, this increase is due to missing three days of
13 work as a result of traveling for her deposition. (Id. ¶¶ 7-8.)
14 Defendant does not oppose the incentive awards for named
15 plaintiffs. For reasons discussed above and in the court's July
16 12, 2016 Order, the court orders that incentive payments be paid
17 to the named plaintiffs.

18 Based on the foregoing, the court grants final
19 certification of the settlement class and approves the settlement
20 set forth in the Settlement Agreement as fair, reasonable, and
21 adequate. The court finds an award of \$883,200.54 to be an
22 appropriate amount for attorneys' fees and costs and an award of
23 \$15,000 to be an appropriate amount for plaintiffs' incentive
24 payments. Consummation of the settlement in accordance with the
25 terms and provisions of the Settlement Agreement is therefore
26 approved, and the definitions provided in the Settlement
27 Agreement shall apply to the terms used herein. The Settlement
28 Agreement shall be binding upon all class members who did not

1 timely file a claim and opt-out of the settlement.

2 IT IS THEREFORE ORDERED that plaintiffs' motion for
3 final approval of the class action settlement be, and the same
4 hereby is, GRANTED.

5 IT IS FURTHER ORDERED THAT:

6 (1) Solely for the purpose of this settlement, and
7 pursuant to Federal Rule of Civil Procedure 23, the court hereby
8 certifies the following class:

9 All individuals in the United States who purchased the
10 following TRESemmé Naturals products: (a) Nourishing
11 Moisture Shampoo; (b) Nourishing Moisture Conditioner;
12 (c) Radiant Volume Shampoo; (d) Radiant Volume
13 Conditioner; (e) Vibrantly Smooth Shampoo; and (f)
14 Vibrantly Smooth Conditioner. Specifically excluded
15 from the Class are (1) defendant, (2) the officers,
16 directors, or employees of defendant and their
17 immediate family members, (3) any entity in which
18 defendant has a controlling interest, (4) any
19 affiliate, legal representative, heir, or assign of
20 defendant, (5) all federal court judges who have
21 presided over this action and their immediate family
22 members, (6) all persons who submit a valid request for
23 exclusion from the class, and (7) those who purchased
24 the products for the purpose of resale.

25 (2) the court appoints the named plaintiffs Alba
26 Morales, Lanie Cohen, Linda Clayman, and Kenneth Drew as
27 representatives of the class and finds that they meet the
28 requirements of Rule 23;

(3) the court appoints Mark Kindall of Iazard, Kindall &
Raabe, LLP as counsel to the settlement class, appoints Alan
Plutzik and Michael Strimling of Bramson, Plutzik, Mahler &
Birkhaeuser, LLP as liaison counsel, and finds that they meet the
requirements of Rule 23;

(4) the Settlement Agreement's plan for class notice is
the best notice practicable under the circumstances and satisfies

1 the requirements of due process and Rule 23. The plan is
2 approved and adopted;

3 (5) the parties have executed the notice plan in the
4 court's Preliminary Approval Order, in response to which 179,676
5 class members submitted an opt-in form, and one class member of
6 the settlement submitted an opt-out form. Having found that the
7 parties and their counsel took extensive efforts to locate and
8 inform all class members of the settlement, given that no class
9 members or opt-outs have filed any objections to the settlement,
10 and having found that the number of individuals who opted in and
11 opted out to be reasonable, the court finds and orders that no
12 additional notice to the class is necessary;

13 (6) as of the date of the entry of this Order,
14 plaintiff and all individuals who have not opted-out hereby do
15 and shall be deemed to have fully, finally, and forever released,
16 settled, compromised, relinquished, and discharged defendant of
17 and from any and all settled claims;

18 (7) class counsel and liaison counsel are entitled to
19 fees and costs in the amount of \$883,200.54;

20 (8) plaintiff Clayman is entitled to an incentive award
21 in the amount of \$1,000.00, plaintiff Drew is entitled to an
22 incentive award in the amount of \$4,000.00, plaintiff Cohen is
23 entitled to an incentive award in the amount of \$4,000.00, and
24 plaintiff Morales is entitled to an incentive award in the amount
25 of \$6,000.00; and

26 (9) the action is dismissed with prejudice; however,
27 without affecting the finality of this Order, the court shall
28 retain continuing jurisdiction over the interpretation,

1 implementation, and enforcement of the Settlement Agreement with
2 respect to all parties to this action, and their counsel of
3 record.

4 Dated: October 18, 2016



5 WILLIAM B. SHUBB
6 UNITED STATES DISTRICT JUDGE
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