

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TIMOTHY ELDER,
Plaintiff,

v.

HILTON WORLDWIDE HOLDINGS,
INC., et al.,
Defendants.

Case No. 16-cv-00278-JST

**ORDER REGARDING MOTION FOR
PRELIMINARY APPROVAL**

Re: ECF No. 75

On June 16, 2017, Plaintiff filed a motion for preliminary approval of class action settlement. ECF No. 75. The Court needs additional briefing to consider the motion.

First, the motion provides no information regarding the amount Plaintiff might reasonably expect to recover at trial on behalf of the class if he were to prevail. “To evaluate adequacy, courts primarily consider plaintiffs’ expected recovery balanced against the value of the settlement offer.” In re Tableware Antitrust Litig., 484 F. Supp. 2d 1078, 1080 (N.D. Cal. 2007).

The only reference Plaintiff makes to the overall value of the settlement in relation to what the class may recover at trial in his motion lies in the introduction. See ECF No. 75 at 7-8. Plaintiff claims that the settlement is an “excellent result” for class members because “the settlement provides 50 percent of the maximum recovery they could have hoped to achieve had the case proceeded to trial.” Id. Because the settlement does not compensate the class in cash, however, that statement does not provide the Court with enough information about this variable.¹

¹ The Settlement Agreement states that Settlement Class Members will be given a SANU (“Spend A Night On Us”) certificate for a rebate at the specific brand hotel at which the Settlement Class Member submitted their original SANU certificate but was denied. ECF No. 75-1 at 13. Settlement Class members will have “one opportunity within [a] two-year expiration period to select a different brand certificate” among one of six brands. Id.

Plaintiff should state the amount of money he believes a jury would have awarded had he prevailed at trial, and the monetary value of the coupon settlement, given that (1) the coupons cannot be used as cash and (2) some percentage of the class members will not use the coupons.

Second, Plaintiff must include a justification for compensating class members with new “Spend a Night on Us” certificates instead of money. In addition to the valuation problems just described, the Court notes that Plaintiff alleges that many class members suffered out-of-pocket damages, by spending money they would not otherwise have spent, based on Hilton’s allegedly misleading representations.² A coupon does not provide a remedy for these injuries. Additionally, Plaintiff must explain why the new SANU certificates are still only applicable at certain Hilton properties for a limited two-year period, despite Plaintiff’s claims that the original vouchers were ambiguous regarding which Hilton properties would honor them.

Because this settlement was reached prior to certification of the class, Plaintiff should also address the factors set forth in In re Bluetooth Headset Prod. Liab. Litig., 654 F.3d 935, 946-47 (9th Cir. 2011), including whether (1) counsel will receive a disproportionate distribution of the settlement fund; (2) whether the agreement contains a “clear sailing provision”; and (3) whether any funds designated for settlement will revert to defendants.

Finally, counsel should bear in mind that the Court will evaluate the proposed attorneys’ fee award in light of the value of the settlement, once that value is known.

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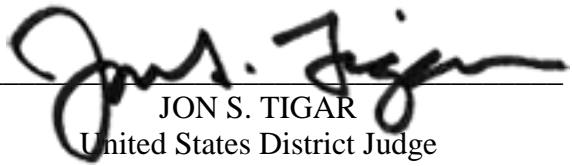
² See, e.g., ECF No. 55 (First Amended Complaint) at 12:

I got the certificate for “Spend a Night on Us” and stayed at a Homewood Suites for \$175 for one night. I was told twice that the certificate was good for any Hilton brand hotel. I got the postcard back saying my claim was invalid because it wasn’t a Hilton. I am beyond angry. I would not spend that kind of money on a hotel. I only did it because it was going to be refunded to me.

1 Plaintiff is ordered to provide additional briefing to the Court by October 31, 2017.

2 IT IS SO ORDERED.

3 Dated: October 10, 2017

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5 JON S. TIGAR
6 United States District Judge

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United States District Court
Northern District of California