UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

Case No. CV 15-4701-MWF (AGRx) **Date: December 7, 2018**
Title: Jose Jacobo, et al. v. Ross Stores, Inc., et al.

Present: The Honorable MICHAEL W. FITZGERALD, U.S. District Judge

Deputy Clerk:	Court Reporter:
Rita Sanchez	Not Reported
Attorneys Present for Plaintiff:	**Attorneys Present for Defendant:**
None Present	None Present

Proceedings (In Chambers): ORDER RE: PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND CERTIFICATION OF SETTLEMENT CLASS [133]

Before the Court is Plaintiffs Jose Jacobo and Theresa Metoyer's Motion for Preliminary Approval of Class Action Settlement and Certification of Settlement Class (the "Motion"), filed on September 29, 2018. (Docket No. 133). Defendant Ross Stores, Inc. ("Ross") does not oppose the Motion.

The Court read and considered the papers on the Motion and deemed the matter appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78(b); Local Rule 7-15. The hearing was therefore vacated and removed from the Court's calendar.

For the reasons discussed below, the Motion is **GRANTED**. The proposed settlement is procedurally and substantively fair, and the proposed class meets the requirements of Federal Rules of Civil Procedure 23(a) and (b)(3). Finally, the proposed notices and dissemination procedure appear effective, and meet the requirements of Federal Rule of Civil Procedure 23(c).

I. BACKGROUND

A. Factual and Procedural Background

Plaintiffs commenced this class action on June 20, 2015. (Complaint (Docket No. 1)). The First Amended Complaint was filed on October 12, 2015. (Docket No. 24).

On October 29, 2015, Ross moved to dismiss the FAC, which the Court granted with leave to amend. (Docket No. 45). On March 28, 2016, Plaintiffs filed their Second Amended Complaint ("SAC"). (Docket No. 49). Ross again moved to dismiss the SAC, which the Court, again, granted with no further leave to amend as to Plaintiffs' claims under California Civil Code section 1770(a) and Plaintiffs' claims under the "unlawful" prong of California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200 *et seq*., to the extent the claims were based on violations of section 1770(a) or the Federal Trade Commission Act. ("June 17 Order" (Docket No. 56)).

On May 26, 2017, Ross moved for summary judgment, which the Court granted but later vacated pursuant to the parties' stipulation and joint motion to vacate the Order granting summary judgment in light of the parties' proposed settlement. (*See* Docket Nos. 99, 125, 131).

Along with this Motion, the parties stipulated to permit Plaintiffs to file the Third Amended Complaint ("TAC") to amend the SAC from a California-only class to a nationwide class for purposes of certification of a settlement class and approval of a class action settlement. (Docket No. 136). The TAC asserts four claims for relief: two claims under the UCL for unfair business practices and fraudulent business practices, as well as one claim for violation of the California False Advertisement Law ("FAL"), Cal. Bus. & Prof. Code § 17500 *et seq.*, and one claim for negligent misrepresentation. (*Id.* ¶¶ 205-37).

Based on the allegations in the TAC:

Plaintiffs are patrons of Ross's department stores that offer good bargains on a wide-variety of items. (TAC ¶ 7). Each of those items is displayed with two prices: a sale price and a "Compare At" price. (*Id.* ¶ 15). Although Plaintiffs allege that reasonable consumers interpret the "Compare At" price to represent the amount charged for an identical product at other stores, Ross defines the term as referring to the "selling price of the same ***or*** similar product." (*Id.* ¶ 49 (emphasis added)). That unintuitive dual definition, Plaintiffs allege, misleads the buyers of Ross's merchandise. (*Id.* ¶¶ 65-66).

Between October 2016 and November 2017, the parties engaged in settlement negotiations and two mediation sessions, one with Bruce Friedman of JAMS and the other through the Ninth Circuit's mediation program with circuit mediator Kyungah Suk. (Mot. at 1). On November 10, 2017, the parties reached a tentative settlement. (*Id.* at 3).

On September 29, 2018, Plaintiffs filed the present Motion, seeking preliminary approval of the parties' settlement and certification of a settlement class pursuant to Rule 23(b)(3).

B. The Settlement

The proposed settlement agreement (the "Settlement Agreement" or "Agreement") is attached to the Declaration of Douglas Caiafa ("Caiafa Decl.") as Exhibit A. (Docket No. 133-2). The Agreement contains the following key class definition, monetary and injunctive relief, notice, and release provisions:

- "Settlement Class" is defined as: "[A]ll persons in the United States who purchased (and who did not receive a refund or credit for all their purchases) from Ross any item with a price tag that included a comparison price that was higher than the sales price during the Settlement Class Period. Excluded from the Settlement Class are Ross's past and present officers, directors, employees, agents or affiliates, and any judge who presides over the Litigation." (Agreement ¶ 1.24);

- "Settlement Class Period" is defined as the period of time between June 20, 2011, and the present. (Agreement ¶ 1.27);

- Ross will pay $4,854,000.00 into a settlement fund (Agreement ¶¶ 1.15, 3.1), which will be used to: (i) pay for notice and administration costs not to exceed $600,000.00 (*id.* ¶ 3.1.2); (ii) pay reasonable attorneys' fees and costs, not to exceed 25% of the settlement amount and $50,000.00, respectively (*id.* ¶ 3.1.3); (iii) pay class representative enhancement payments, not to exceed $5,000.00 to each named Plaintiff (*id.* ¶ 3.1.4); and (iv) pay class members ("Settlement Class Members") who submit a valid claim form ("Claim Form") on a pro rata basis in the form of Ross merchandise certificates ("Merchandise Certificates") (*id.* ¶ 3.1.1);

- Merchandise Certificates are redeemable for the purchase of any product at any Ross store in the United States. (Mot. at 1; Agreement ¶ 1.13). Merchandise Certificates will have no expiration date, no minimum purchase requirement, and need not be used in full at any time. (Mot. at 5; Agreement ¶ 1.13). Merchandise Certificates may also be redeemed for cash in an amount equal to 75% of the value of the Certificate at the time of its issuance by returning the Certificate to the claims administrator within one year after its issuance. (Agreement ¶ 1.13);

- Ross agrees "that its advertising and pricing practices as of the date of the Agreement, and continuing forward, will not violate Federal or California Law, including California's specific price-comparison advertising statutes and FTC regulations . . . ." (Agreement ¶ 3.4);

- Ross will implement changes to its price-comparison advertising practices, such as enhancing and expanding programs intended to promote legal compliance, including periodic monitoring, training, and auditing to ensure compliance with California and federal price comparison laws. (Mot. at 7; Agreement ¶ 3.6);

- No later than 30 days after the effective date of settlement, Ross will also prominently post additional signs in each of its stores throughout the United States describing its comparison pricing practices, and augment its primary signage to direct customers to additional details about Ross's comparison pricing practices. (Agreement ¶¶ 3.5.1-3.5.2);

- Ross will generate a list of Class Members and send that list to the agreed upon claims administrator, CPT Group, Inc. ("CPT"). (Agreement ¶¶ 1.6, 4.2). Within 30 days following the Court's preliminary approval of the Settlement, CPT will email the Email Notice to Class Members, where such information exists, advising them of "the deadline for submitting Claim Forms, their right to opt out of the Settlement or to object to the Settlement, the process by which such opt-outs or objections must be made, and the date set by the Court for a hearing on final approval of the Settlement." (*Id.* ¶¶ 4.1.1, 4.3);

- Within 40 days following the Court's preliminary approval of the Settlement, CPT will also distribute a Publication Notice, which "shall include instructions as to how to access the Settlement Website, how to request a Claim Form, and how to submit it," as well as advise Settlement Class Members of their "right to opt out of the Settlement or to object to the Settlement, the process and deadlines by which such opt-outs or objections must be made, and the date set by the Court for a hearing on final approval of the Settlement." (Agreement ¶ 4.1.2);

- The Publication Notice distribution plan involves causing the Publication Notice to be printed in People Magazine (nationwide edition), and launching an internet banner and social media advertisement campaign (Green Declaration ("Green Decl.") ¶¶ 10, 20-21 (Docket No. 133-6)); creating a settlement website in both English and Spanish to enable potential Settlement Class Members to get information about the litigation and file a claim online, where Settlement Class Members will be able to view and download the Notice, Claim Form, Opt-Out Request Form, TAC, and Settlement Agreement (Agreement ¶ 4.4; Green Decl. ¶¶ 10, 22); creating a dedicated email address to receive and respond to potential Settlement Class Member questions (Green Decl. ¶ 10); and establishing and

maintaining a 24-hour, toll-free telephone line where callers may obtain information about the case in English and Spanish, with call center associates available to answer questions during normal business hours. (*Id.* ¶¶ 10, 23). The settlement website address, toll-free phone number, and email box address will be included in all notices to the Class. (Agreement ¶ 4.4);

- Claimants will have 90 days from the date the Notice is disseminated to submit a Claim Form. (Agreement ¶ 5.1);

- All Settlement Class Members who do not opt out will release all known and unknown claims against Ross that were or could have been asserted in this action. (Agreement ¶ 9).

Plaintiffs also note that Ross has already changed its price advertising by changing the language on all of its price tags nationwide from "Compare At" to "Comparable Value." (Mot. at 7).

II. PRELIMINARY APPROVAL OF SETTLEMENT

"Approval of a class action settlement requires a two-step process — a preliminary approval followed by a later final approval." *Spann v. J.C. Penney Corp.*, 314 F.R.D. 312, 319 (C.D. Cal. 2016). The standard of review differs at each stage. At the preliminary approval stage, the Court need only "evaluate the terms of the settlement to determine whether they are within a range of possible judicial approval." *Wright v. Linkus Enters., Inc.*, 259 F.R.D. 468, 472 (E.D. Cal. 2009).

"[P]reliminary approval of a settlement has both a procedural and a substantive component." *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1080 (N.D. Cal. 2007). Procedurally, the Ninth Circuit emphasizes that the parties should have engaged in an adversarial process to arrive at the settlement. *See Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) ("We put a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution, and have never prescribed a particular formula by which that outcome must be tested.") (citations

omitted). "A presumption of correctness is said to attach to a class settlement reached in arm's-length negotiations between experienced capable counsel after meaningful discovery." *Spann*, 314 F.R.D. at 324 (quoting *In re Heritage Bond Litig.*, 2005 WL 1594403, *9 (C.D. Cal. June 10, 2005)).

Substantively, the Court should look to "whether the proposed settlement discloses grounds to doubt its fairness or other obvious deficiencies such as unduly preferential treatment of class representatives or segments of the class, or excessive compensation of attorneys." *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 666 (E.D. Cal. 2008) (quoting *West v. Circle K Stores, Inc.*, No. 04-cv-0438-WBS, 2006 WL 1652598, at *11 (E.D. Cal. June 13, 2006)).

A. Procedural Component

The proposed settlement appears to be procedurally fair to Settlement Class Members.

Plaintiffs' counsel have extensive experience litigating consumer class actions on behalf of plaintiffs. (*See* Caiafa Decl. ¶¶ 4-5; Declaration of Christopher J. Morosoff ¶¶ 4-5 (Docket No. 133-3)). Plaintiffs' counsel have represented plaintiffs in numerous class action trials in state and federal courts in California. (*See id.*). Plaintiffs' counsel have also been certified to act as class counsel in more than 30 different class actions in California, both in state and federal courts. (*See* Caiafa Decl. ¶¶ 4-5).

The Court is familiar with this action and is confident that it was vigorously litigated on both sides. The parties conducted substantial discovery over the course of this action. (*See* Caiafa Decl. ¶ 9). The parties also filed and opposed numerous dispositive and class-related motions. (*Id.* ¶ 29). Given the parties' vigorous and often contentious litigation of this case, the Court has no doubts that the settlement is "the product of an arms-length, non-collusive, negotiated resolution[.]" *Rodriguez*, 563 F.3d at 965.

Additionally, the parties attended a mediation session in October 2016 with Bruce A. Friedman of JAMS. (*See* Caiafa Decl. ¶ 13). The parties ultimately reached their settlement after another mediation session in November 2017 with Kyungah Suk, a mediator for the Ninth Circuit's mediation program. (Mot. at 19; Caiafa Decl. ¶ 14). The fact that the parties utilized an experienced mediator to reach the settlement agreement supports the notion that it was the product of arms-length negotiation. *See Alberto*, 252 F.R.D. at 666-67 (noting the parties' enlistment of "a prominent mediator with a specialty in [the subject of the litigation] to assist the negotiation of their settlement agreement" as an indicator of non-collusiveness) (citing *Parker v. Foster*, No. 05-cv-0748-AWI, 2006 WL 2085152, at *1 (E.D. Cal. July 26, 2006)); *Glass v. UBS Fin. Servs., Inc.*, No. 06-cv-4068-MMC, 2007 WL 221862, at *5 (N.D. Cal. Jan. 26, 2007)).

The Court concludes that the proposed class is represented by experienced counsel who engaged in meaningful discovery and motion practice while pursuing arms-length settlement negotiations. The procedural component of the inquiry is met.

B. Substantive Component

The proposed settlement also appears to be generally reasonable and fair to Settlement Class Members.

As discussed above, pursuant to the Agreement, Ross has agreed to pay $4,854,000.00 in cash and cash equivalents to Settlement Class Members in Merchandize Certificates redeemable for cash. (Mot. at 1). Ross has also already changed the semantic phrase it uses in its price advertising from "Compare At" to "Comparable Value," and has agreed to augment its signage in its stores and enhance its comparison pricing practices. (*Id.* at 7). The Settlement Class here includes approximately 9,000,000 potential people. (*Id.* at 12). If the Court were to ultimately approve Plaintiffs' counsel's 25% fee request, after deduction of fees ($1,213,500.00), costs ($50,000.00), enhancement payments ($10,000.00), and administrative expenses ($600,000.00) there would be $2,980,500.00 left in the settlement fund to be distributed to Settlement Class Members. (*Id.* at 21). Plaintiffs contend that the

percentage of class members who submit claims in consumer class settlements typically run in the range of 2% to 3%. (*Id.* (citing *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934 (9th Cir. 2015) (3.4% claim rate)). Assuming there is $2,980,500.00 in available funds, a 1% claim rate would yield an approximate benefit of $33.39, a 2% claim rate would yield an approximate benefit of $16.70, and a 3% claim rate would yield an approximate benefit of $11.13. (*Id.*).

As Plaintiffs contend, even if Plaintiffs could reverse this Court's grant of summary judgment in favor of Ross on appeal, "recovering at trial would be speculative" and any monetary amount recovered at trial, if any, "could vary widely depending on a number of factors." (Mot. at 22). Therefore, recovery of between $11.13 and $33.29 per eligible class member is a reasonable level of compensation. *See, e.g.*, *Nat'l Rural Telecommunications Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004) (emphasizing the requirement that courts "consider the vagaries of litigation and compare the significance of immediate recovery by way of the compromise to the mere possibility of relief in the future, after protracted and expensive litigation") (citation omitted).

Additionally, the incentive award to each of the named Plaintiffs, not to exceed $5,000.00 each, does not appear to be unreasonable, as incentive awards typically range between $2,000.00 and $10,000.00. *See Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 267 (N.D. Cal. 2015) (collecting cases). Furthermore, the total $10,000.00 payment to the two class representatives would constitute only 0.2% of the gross settlement amount. (Mot. at 23). And to the extent the Court awards an amount less than what is sought, "the amount that is not awarded will be available for distribution to the Class and shall not affect the validity and enforceability of the Settlement . . . ." (Agreement ¶ 3.1.4).

1. Attorneys' fees

In the Ninth Circuit, there are two primary methods to calculate attorneys' fees: the lodestar method and the percentage-of-recovery method. *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d at 949 (citation omitted).

"The lodestar method requires 'multiplying the number of hours the prevailing party reasonably expended on the litigation (as supported by adequate documentation) by a reasonable hourly rate for the region and for the experience of the lawyer.'" *Id.* (citation omitted). "Under the percentage-of-recovery method, the attorneys' fees equal some percentage of the common settlement fund; in this circuit, the benchmark percentage is 25%." *Id.* (citation omitted). However, the "benchmark percentage should be adjusted, or replaced by a lodestar calculation, when special circumstances indicate that the percentage recovery would be either too small or too large in light of the hours devoted to the case or other relevant factors." *Six Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990).

"The Ninth Circuit has identified a number of factors that may be relevant in determining if the award is reasonable: (1) the results achieved; (2) the risks of litigation; (3) the skill required and the quality of work; (4) the contingent nature of the fee; (5) the burdens carried by class counsel; and (6) the awards made in similar cases." *Martin v. Ameripride Services, Inc*., No. 08-cv-440–MMA, 2011 WL 2313604, at *8 (S.D. Cal. June 9, 2011) (citing *Vizcaino v. Microsoft Corp*., 290 F.3d 1043, 1048–50 (9th Cir. 2002)). The choice of "the benchmark or any other rate must be supported by findings that take into account all of the circumstances of the case." *Vizcaino*, 290 F.3d at 1048.

As noted above, Plaintiffs' counsel indicate that they intend to apply for a fee award of $1,213,500.00, which represents 25% of the $4,854,000.00 total settlement fund. (Agreement ¶ 3.1.3). Plaintiffs' counsel also seeks costs not to exceed $50,000.00. (*Id.*). The Agreement also provides that "the Court's decision [as to reasonable attorneys' fees] shall not affect the validity and enforceability of the Settlement, and it shall not be a basis for anyone to seek to void the Settlement or for rendering the entire Settlement null, void, or unenforceable." (*Id.*). And any remaining portion of the requested attorneys' fees not approved by the Court will be added to the recovery fund for Class Members. (*Id.*).

The Court finds the Agreement to be both procedurally and substantively fair. The Motion is therefore **GRANTED** insofar as the Agreement is preliminarily **APPROVED**.

III. CLASS CERTIFICATION

Plaintiffs seeks certification of a class for settlement purposes only pursuant to Federal Rule of Civil Procedure 23(b)(3). A court may certify a class for settlement purposes only. *See In re Online DVD-Rental Antitrust Litig.*, 779 F.3d at 942. In *Amchem Products, Inc. v. Windsor*, 521 U.S. 591 (1997), the Supreme Court explained the differences between approving a class for settlement and for litigation purposes:

> Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, *see* Fed. Rule Civ. Proc. 23(b)(3)(D), for the proposal is that there be no trial. But other specifications of the Rule — those designed to protect absentees by blocking unwarranted or overbroad class definitions — demand undiluted, even heightened, attention in the settlement context. Such attention is of vital importance, for a court asked to certify a settlement class will lack the opportunity, present when a case is litigated, to adjust the class, informed by the proceedings as they unfold.

Id. at 620.

As discussed above, the proposed Settlement Class is defined in the Agreement as:

> All persons in the United States who purchased (and who did not receive a refund or credit for all their purchases) from Ross any item with a price tag that included a comparison price that was higher than the sales price during the Settlement Class Period. Excluded from the Settlement Class are Ross's past and present officers, directors, employees, agents or affiliates, and any judge who presides over the Litigation.

(Agreement ¶ 1.24).

Federal Rule of Civil Procedure 23(a) requires the putative class to meet four threshold requirements: numerosity, commonality, typicality, and adequacy of representation. *Id.*; *see also Leyva v. Medline Indus. Inc.*, 716 F.3d 510, 512 (9th Cir. 2013). In addition, the proposed class must satisfy Rule 23(b)(3), which requires that "questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). Considering these requirements, the Court concludes that class certification is appropriate.

A. Numerosity

Under Rule 23(a)(1), a class must be "so numerous that joinder of all members is impracticable . . . ." *Id.* As noted above, the Settlement Class consists of a potential nationwide class of 9,000,000 people. (Mot. at 12). This is more than enough to satisfy Rule 23(a)(1)'s numerosity requirement.

B. Commonality

Rule 23(a)(2) requires that the case present "questions of law or fact common to the class." *Id.* The Supreme Court's decision in *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011), clarified that to demonstrate commonality, the putative class must show that their claims "depend upon a common contention . . . that it is capable of classwide resolution — which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Id.* at 350. That requirement is met here, as (if this case were to proceed to trial) each member of the Settlement Class would seek resolution of the same legal and factual issues: whether Ross used "Compare At" price tags in each of its U.S. stores, and whether Ross's price comparison advertising resulted in deceptive price comparisons that were likely to mislead a reasonable consumer. (Mot. at 13). The commonality requirement is satisfied.

C. Typicality

Rule 23(a)(3) requires the putative class to show that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." *Id.* The claims of the representative parties need not be identical to those of the other putative class members; "[i]t is enough if their situations share a 'common issue of law or fact,' and are 'sufficiently parallel to insure a vigorous and full presentation of all claims for relief.'" *California Rural Legal Assistance, Inc. v. Legal Servs. Corp.*, 917 F.2d 1171, 1175 (9th Cir. 1990) (internal citations omitted). Here, the named Plaintiffs' claims are premised on exactly the same practice as those of the absent Settlement Class Members: Ross's allegedly deceptive advertising in its U.S. stores. (Mot. at 14). The typicality requirement is satisfied.

D. Adequacy

Finally, Rule 23(a)(4) requires the representative parties to "fairly and adequately protect the interests of the class." *Id.* "In making this determination, courts must consider two questions: '(1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?'" *Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015, 1031 (9th Cir. 2012) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998)). Additionally, "the honesty and credibility of a class representative is a relevant consideration when performing the adequacy inquiry because an untrustworthy plaintiff could reduce the likelihood of prevailing on the class claims." *Harris v. Vector Mktg. Corp.*, 753 F. Supp. 2d 996, 1015 (N.D. Cal. 2010) (citation omitted).

As to the first prong, the Court perceives no obvious conflicts between Plaintiffs and their counsel on the one hand and the absent Settlement Class Members on the other. As to the second prong, as discussed above, Plaintiffs and their counsel have vigorously prosecuted this action, Plaintiffs' counsel have substantial experience litigating consumer class actions, and there is no reason to believe that Plaintiffs and

their counsel would not vigorously pursue this action on behalf of the Settlement Class. The adequacy requirement is satisfied.

The requirements imposed by Rule 23(a) are thus satisfied. The Court next considers whether the additional requirements of Rule 23(b)(3) are met.

E. Predominance

"The Rule 23(b)(3) predominance inquiry asks the court to make a global determination of whether common questions prevail over individualized ones." *Torres v. Mercer Canyons Inc.*, 835 F.3d 1125, 1134 (9th Cir. 2016). That is, "an individual question is one where members of a proposed class will need to present evidence that varies from member to member, while a common question is one where the same evidence will suffice for each member to make a prima facie showing or the issue is susceptible to generalized, class-wide proof." *Id.* (quoting *Tyson Foods v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016)).

Here, the Agreement provides for injunctive relief and a set amount of money to be placed in a settlement fund and distributed on a pro rata basis to Class Members who submit a valid Claim Form. (Agreement ¶ 3.1.1). Although the focus of the action is the legality of Ross's allegedly deceptive advertising vis-à-vis its uniform use of the semantic phrase "Compare At" on its price tags in each of its U.S. stores, some individualized determination is required. But the existence of individualized damage assessments does not detract from the action's suitability for class certification. *See Yokoyama v. Midland Nat. Life Ins. Co.*, 594 F.3d 1087, 1089 (9th Cir. 2010) (noting that the "amount of damages is invariably an individual question and does not defeat class action treatment"). Accordingly, the predominance requirement is also satisfied.

F. Superiority

Rule 23(b)(3)'s superiority requirement is also met. Rule 23(b)(3) sets out four factors that together indicate that a class action is "superior to other available methods for the fair and efficient adjudication of the controversy":

> (A) the class members' interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action.

Fed. R. Civ. P. 23(b)(3). "The purpose of the superiority requirement is to assure that the class action is the most efficient and effective means of resolving the controversy." *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010) (quoting Charles Wright, Arthur Miller & Mary Kay Kane, *Federal Practice and Procedure*, § 1779 at 174 (3d ed. 2005)).

When deciding whether to certify a settlement class, the fourth superiority factor need not be considered. *See Amchem*, 521 U.S. at 620 ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . ."). The three relevant factors favor certifying the proposed settlement class:

First, individual Settlement Class Members would likely have little interest in prosecuting separate actions. Each putative class member's claim is likely too small to justify the cost or risk of litigation. Thus, a class action is a more efficient means for each individual class member to pursue his or her claims. *See Wolin*, 617 F.3d at 1175 ("Where recovery on an individual basis would be dwarfed by the cost of litigating on an individual basis, this factor weighs in favor of class certification."). Moreover, because the claims of all putative class members are virtually identical, there is no reason that any given class member should need to pursue his or her claims individually. *See Westways World Travel, Inc. v. AMR Corp.*, 218 F.R.D. 223, 240 (C.D. Cal. 2003) ("Here, no one member of the Class has an interest in controlling the prosecution of the action because the claims of all members of the Class are virtually identical.").

Second, there does not appear to be any other litigation currently or previously pending concerning similar claims to those at issue in this action.

Third, Plaintiffs, as residents of California who were patrons of Ross stores in this district, have alleged that Ross's allegedly deceptive advertising violates California law. Therefore, this district court is a proper forum for resolution of the action. *Negrete v. Allianz Life Ins. Co. of N. Am.*, 238 F.R.D. 482, 495 (C.D. Cal. 2006) ("[B]ecause plaintiffs have alleged an overarching fraudulent scheme and include a California sub-class, it is desirable to consolidate the claims in this forum.").

Accordingly, the Motion is **GRANTED** insofar as the proposed class is **CERTIFIED** for purposes of settlement.

IV. NOTICE AND SETTLEMENT ADMINISTRATION

After the Court certifies a class under Rule 23(b)(3), it must direct to class members the best notice practicable under the circumstances. Fed. R. Civ. P. 23(c)(2)(B).

> The notice must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance though an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

Id. Class notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Trust*, 339 U.S. 306, 314 (1950).

The Agreement sets forth a fairly detailed notice and opt-out regime involving, in short, the claims administrator, CPT, emailing the Email Notice to all Settlement Class Members for whom CPT has an email address. (Agreement ¶ 4.1). The Email Notice "shall advise Settlement Class Members of the deadline for submitting Claim Forms, their right to opt out of the Settlement or to object to the Settlement, the process by which such opt-outs or objections must be made, and the date set by the Court for a hearing on final approval of the Settlement." (*Id.* ¶ 4.1.1). The notice regime also contemplates a Publication Notice, which "shall include instructions as to how to access the Settlement Website, how to request a Claim Form, and how to submit it," as well as advise Settlement Class Members of their "right to opt out of the Settlement or to object to the Settlement, the process and deadlines by which such opt-outs or objections must be made, and the date set by the Court for a hearing on final approval of the Settlement." (*Id.* ¶ 4.1.2). The Court has reviewed the contemplated notice regime and the form and substance of the proposed notices, and concludes that the proposed class notice satisfies the requirements set forth in Rule 23(c)(2)(B).

Accordingly, the proposed notices and plan of dissemination are **APPROVED**.

V. CONCLUSION

For the reasons discussed above, the Motion is **GRANTED** insofar as the proposed settlement agreement is preliminarily **APPROVED**; the class is provisionally **CERTIFIED** for purposes of settlement only; and the notices and plan of dissemination are **APPROVED**.

The Proposed Order Granting Plaintiffs' Unopposed Motion For Preliminary Approval of Class Action Settlement and Certification of Settlement Class (Docket No. 133-7) is adopted and incorporated into this Order, as Exhibit A.

The Final Approval Hearing shall be scheduled for **April 15, 2019 at 10 a.m.**

IT IS SO ORDERED.