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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No.	**EDCV 16-00189 JGB (SPx)**	Date	October 7, 2019
Title	***Veda Woodard, et al. v. Lee Labrada, et al.***		

Present: The Honorable	JESUS G. BERNAL, UNITED STATES DISTRICT JUDGE

MAYNOR GALVEZ	Chase Frazier
Deputy Clerk	Court Reporter

Attorney(s) Present for Plaintiff(s):	Attorney(s) Present for Defendant(s):
Michael T. Chouchin Timothy Douglas Cohelan	William C. Haggerty Stacy Weinstein Harrison Matthew L. Marshall

Proceedings: **Order (1) GRANTING Plaintiffs' Motion for Final Approval of Class Action Settlement (Dkt. No. 300); and (2) GRANTING Plaintiffs' Motion for Attorneys' Fees (Dkt. No. 295)**

Before the Court are Plaintiffs Veda Woodard, Teresa Rizzo-Marino, and Diane Morrison's (collectively, "Plaintiffs" or "Named Plaintiffs") motion for final approval of class action settlement between Plaintiffs and Naturex, Inc. ("Naturex") (collectively, "Settling Parties") ("MFA," Dkt. No. 300) and motion for attorneys' fees ("Fees Motion," Dkt. No. 295). The Court held a final approval hearing on October 7, 2019. Upon consideration of the papers filed in support of these motions, as well as oral argument, the Court GRANTS both Motions.

I. BACKGROUND

On February 2, 2016, Plaintiff Woodard filed a complaint against Defendants Lee Labrada, Labrada Bodybuilding Nutrition, Inc., Labrada Nutritional Systems, Inc., Dr. Mehmet C. Oz, Entertainment Media Ventures, Inc. doing business as Oz Media, Zoco Productions, LLC; Harpo Productions, Inc., Sony Pictures Television, Inc., Naturex, Inc., and Interhealth Nutraceuticals, Inc. ("Complaint," Dkt. No. 1.) On June 2, 2016, Plaintiffs Woodard, Rizzo-Marino, and Morrison filed a First Amended Complaint, which contains eleven causes of action: (1) fraud, deceit, and suppression of facts (Cal. Civ. Code §§ 1709-1811 and the common law of all states); (2) negligent misrepresentation (Cal. Civ. Code § 1710(2) and the common law of all states); (3) violations of the Unfair Competition Law ("UCL") (Cal. Bus. & Prof. Code §§

17200, et seq.); (4) violation of the Consumer Legal Remedies Act ("CLRA") (Cal. Civ. Code §§ 1700, et seq.); (5) violation of the False Advertising Law ("FAL") (Cal. Bus & Prof. Code §§ 17500, et seq.); (6) breach of express warranty (Cal. Comm. Code § 2313); (7) breach of implied warranty of merchantability (Cal. Comm. Code § 2314); (8) breach of express warranty (N.Y. U.C.C. § 2-313); (9) breach of implied warranty (N.Y. U.C.C. § 2-314); (10) breach of express warranties to intended third party beneficiaries; (11) violation of the Magnuson-Moss Warranty Act (15 U.S.C. §§ 2301, et seq.); (12) unfair trade practices (N.Y. Bus. Law § 349); and (13) false advertising (N.Y. Bus. Law § 350). ("FAC," Dkt. No. 88.) Of these, the first through fifth and tenth through thirteenth are brought against Naturex. (Id.)

According to the FAC, Plaintiffs purchased Labrada Garcinia Cambogia Dual Action Fat Buster and Labrada Green Coffee Bean Extract Fat Loss Optimizer (collectively, the "Labrada Products"), the latter of which contains Svetol Green Coffee Bean Extract, which is manufactured by Naturex.[1] (Id. ¶¶ 11–12.) Plaintiffs purchased the Labrada Products after watching episodes of *The Dr. Oz Show*, a television show, which referenced garcinia cambogia and green coffee bean extract or reading a fact sheet posted on Doctoroz.com which referenced green coffee bean extract. (Id. ¶¶ 111–25.) Plaintiffs believed the Labrada Products were safe and effective for weight and fat loss as advertised. (Id. ¶¶ 30–35.) Plaintiffs group Defendants into three categories: (1) Defendant Lee Labrada, Defendant Labrada Body Building Nutrition, Inc., Defendant Labrada Nutritional Systems, Inc., and the Labrada Joint Enterprise (collectively, the "Labrada Defendants"); (2) Defendant Dr. Mehmet Oz, M.D. ("Dr. Oz"), Defendant Entertainment Media Ventures, Inc. doing business as Oz Media, Defendant Zoco Productions, LLC, Defendant Harpo Productions, Inc., and Defendant Sony Pictures Television (collectively, "Media Defendants"); and (3) Defendant Naturex, Inc. and Defendant Interhealth Nutraceuticals, Inc. ("Supplier Defendants"). (Id. ¶¶ 36–66.) Plaintiffs allege all competent scientific studies conclude the active ingredients in the Labrada Products do not provide the touted weight loss benefits. (Id. ¶ 87.) Plaintiffs claim Defendants have misled consumers by stating or implying that the Labrada Products are backed by clinical studies; however, these studies are either irrelevant, unreliable, or conducted by Defendants themselves. (Id.) Plaintiffs allege Defendants made false claims and misrepresented the quality of the Labrada Products. (Id. ¶¶ 87–105.)

Plaintiffs filed a notice of settlement with Naturex on January 23, 2019. (Dkt. No. 281.) On February 15, 2016, Plaintiffs filed a motion for preliminary approval of their settlement with Naturex ("MPA," Dkt. No. 284), and Naturex filed a motion for determination of good faith settlement ("MGDF," Dkt. No. 283). On April 23, 2019, the Court issued an order granting preliminary approval. ("MPA Order," Dkt. No. 294, as amended Dkt. No. 294.)

On August 16, 2019, Plaintiffs filed the Fees Motion, accompanied by a memorandum of points and authorities ("Fees Memo," Dkt. No. 295-1), a declaration by Ronald Marron

[1] Only products containing the green coffee bean extract made or sold by Naturex here ("Products") are at issue here. (See Settlement Agreement at 8–9, ¶ 2.1(T), (DD).)

("Marron Fees Decl.," Dkt. No. 295-2), a declaration by Timothy Cohelan ("Cohelan Fees Decl.," Dkt. No. 295-6), and the following exhibits:

- The firm resume of the Law Offices of Ronald A. Marron ("Marron Firm") ("Marron Firm Resume," Dkt. No. 295-3);
- A summary of the National Law Journal surveys of prevailing rates for attorneys ("NLJ Summary," Dkt. No. 295-4);
- The 2014 Report on the State of the Legal Market by the Center for the Study of the Legal Profession at the Georgetown University Law Center and Thompson Reuters Peer Monitor ("Peer Monitor Report," Dkt. No. 295-5);
- Cohelan Khoury & Singer's ("CKS") summary of hours and lodestar fee ("CKS Hours Summary," Dkt. No. 295-7);
- Westlaw Court Express's Legal Billing Report, Volume 14, Number 4, California Region for December 2012 ("Westlaw Report," Dkt. No. 295-8);
- 2014 National Law Journal survey of hourly billing rates for Partners and Associates ("NLJ Survey," Dkt. No. 295-9);
- CKS's itemization of litigation costs ("CKS Costs," Dkt. No. 295-10); and
- CKS's firm resume ("CKS Firm Resume," Dkt. No. 295-11).

On September 9, 2019, Plaintiffs filed the MFA, along with a memorandum of points and authorities ("MFA Memo," Dkt. No. 300-1); declarations by Ronald Marron ("Marron MFA Decl.," Dkt. No. 300-2), Timothy Cohelan ("Cohelan MFA Decl.," Dkt. No. 300-5), Gajan Retnasaba ("Retnasaba Decl.," Dkt. No. 300-7), Veda Woodard ("Woodard Decl.," Dkt. No. 300-13), Diane Morrison ("Morrison Decl.," Dkt. No. 300-14), and Teresa Rizzo-Marino ("Rizzo-Marino Decl.," Dkt. No. 300-15); and the following exhibits:

- An expert report by certified public accountant Charlene Podlipna ("CPA Report," Dkt. No. 300-3),
- The class notice published in *Prevention* magazine (Dkt. No. 300-8),
- Class notice disseminated via Facebook advertisements (Dkt. No. 300-9),
- Press release (Dkt. No. 300-10),
- Notice published in *The Press-Enterprise* in accordance with California's Consumers Legal Remedies Act ("CLRA"), Cal. Civ. Code § 1781 (Dkt. No. 300-11), and
- The cover letter sent to the Attorneys General of the United States and each state and territory in accordance with the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715 ("CAFA Notice," Dkt. No. 300-12).

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II. THE SETTLEMENT AGREEMENT

In January 2019, Plaintiffs and Naturex signed the Settlement Agreement.[2] (See "Settlement Agreement," Dkt. No. 284-3 at 36–37.) The Settlement Agreement resolves in full the class action lawsuit as to Naturex. (Id. at 1.) This agreement does not constitute any admission of liability or wrongdoing by Naturex, nor any concession that this lawsuit lacks merit by Plaintiffs. (Id. at 5, ¶ 1.14.) Nonetheless, Naturex agrees to pay $1,300,000 to resolve the claims against it. (Id. at 11, ¶ 2.1(II).) Additionally, Naturex agrees not to represent, or inform any third party, "that Svetol® will help users lose weight without diet and exercise" or "that Svetol® has weight loss benefits that are not supported by clinical studies." (Id. at 26, ¶ 2(a–c).) In return, Plaintiffs and settlement class members fully release Naturex from all claims that could have been raised in this lawsuit. (Id. at 9–11, ¶ 2.1(EE, FF).)

The Settlement Amount will be divided as follows. The Settlement Agreement allocates up to 33% of the Settlement Amount for an award of attorneys' fees. (Id. at 30, ¶ 8.1.) Additionally, Plaintiffs seek incentive awards in the amount of $5,000 for Plaintiffs Woodard and Morrison and $7,500 for Plaintiff Rizzo-Marino. (Id. at 30, ¶ 8.3.) Classaura, LLC ("Classaura") will serve as the claims administrator. (Id. at 7, ¶ 2.1(H).) Classaura shall be paid out of the settlement fund. (Id. at 12, ¶ 2.1(KK); id. at 27, ¶ 3(b).)

Class members who submit a claim with receipts that show purchase of a Product will receive $30 for each Product purchased. (Id. at 25, ¶ 1(a).) Class members who submit a claim without a receipt will receive $30 for each Product purchased, with a limit of $60 per household. (Id. at 25, ¶ 1(b).) The Settlement Amount is non-reversionary; if the fund is not exhausted, then the amount each claimant will receive will increase proportionally. (Id. at 26, ¶ 1(e)) Conversely, if the amount of eligible claims exceeds the amount of the settlement fund, then each individual award will be proportionately reduced. (Id.) To be eligible for monetary relief, the Settlement Class Member must timely submit a signed and completed claim form containing his or her name, mailing address, and email address within the specified time period. (Id. at 28, ¶ 6(a-b); Claim Form.)

To object to the Settlement Agreement, an individual must file an objection with the Court and serve on Class Counsel and Defense Counsel a written objection. (Id. at 18, ¶ 4.5.) Objections must "be accompanied by any documentary or other evidence and any factual or legal arguments that the objecting Class Member intends to rely upon in making the objection." (Id. at 18, ¶ 4.5(b).) Class members who wish to be excluded from the Settlement Agreement must notify Classaura at least thirty days before the final fairness hearing. (Id. at 17, ¶¶ 4.3(n)(iii), 4.4.)

[2] On page 25 of the Settlement Agreement, the numbering of the paragraphs begins again at 1. As a result, there are multiples of certain paragraph numbers. For the sake of clarity, the Court refers to both the page number and paragraph number when citing the Settlement Agreement. When referring to portions of the Settlement Agreement that are not in numbered paragraphs, the Court refers only to the page number.

The Settlement Agreement purports to release the following claims:

> [A]ll claims, known and unknown, against the Released Naturex Parties . . .[, which] include any and all claims, demands, rights, suits, liabilities, and causes of action of every nature and description whatsoever, known or unknown, matured or unmatured, at law or in equity, existing under federal or state law, asserted in, arising out of, or in connection with any Green Coffee Bean Extract Product or the Naturex Ingredient or any of the matters alleged or that could have been alleged in the Action.

(Settlement Agreement at 9–10, ¶ 2.1, EE.) Each Settlement Class Member, and each of their heirs, spouses, guardians, executors, administrators, representatives, agents, attorneys, insurers, partners, successors, predecessors-in-interest, and assigns agree to release said claims. (Id. at 28, ¶ 7.1.) Naturex reserves the right to withdraw from the Settlement Agreement if requests for exclusion exceed 1,000. (Id. at 19, ¶ 4.5(d).)

III. LEGAL STANDARD

A. Class Action Settlement

Class action settlements must be approved by the Court. See Fed. R. Civ. P. 23(e). Whether to approve a class action settlement is "committed to the sound discretion of the trial judge." Class Plaintiffs v. Seattle, 955 F.2d 1268, 1276 (9th Cir. 1992). A strong judicial policy favors settlement of class actions. See id.

Nevertheless, the Court must examine the settlement as a whole for overall fairness. See Hanlon v. Chrysler Corp., 150 F.3d 1011, 1026 (9th Cir. 1998). Neither district courts nor appellate courts have the power to delete, modify, or substitute provisions in the negotiated settlement agreement. See id. "The settlement must stand or fall in its entirety." Id.

In order to approve the class action settlement herein, the Court must conduct a three-step inquiry. See Adoma v. Univ. of Phoenix, Inc., 913 F. Supp. 2d 964, 972 (E.D. Cal. 2012). First, it assesses whether the parties have met notice requirements under the Class Action Fairness Act. Id. Next, it determines whether the notice requirements of Federal Rule of Civil Procedure 23(c)(2)(B) have been satisfied. Id. Finally, the Court must find that the proposed settlement is fair, reasonable, and adequate under Rule 23(e)(3). Id.

B. Attorneys' Fees

The procedure for requesting attorneys' fees is set forth in Rule 54(d)(2) of the Federal Rules of Civil Procedure. While the rule specifies that requests shall be made by motion "unless the substantive law governing the action provides for the recovery of . . . fees as an element of damages to be proved at trial," the rule does not itself authorize the awarding of fees. "Rather,

[Rule 54(d)(2)] and the accompanying advisory committee comment recognize that there must be another source of authority for such an award . . . [in order to] give[] effect to the 'American Rule' that each party must bear its own attorneys' fees in the absence of a rule, statute or contract authorizing such an award." MRO Communs., Inc. v. AT&T Co., 197 F.3d 1276, 1281 (9th Cir. 1999).

In class actions, statutory provisions and the common fund exception to the "American Rule" provide the authority for awarding attorneys' fees. See Alba Conte and Herbert B. Newberg, Newberg on Class Actions § 14.1 (4th ed. 2005) ("Two significant exceptions [to the 'American Rule'] are statutory fee-shifting provisions and the equitable common-fund doctrine"). Rule 23(h) authorizes a court to award "reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. Proc. 23(h). Under normal circumstances, once it is established that a party is entitled to attorneys' fees, "[i]t remains for the district court to determine what fee is 'reasonable.'" Hensley v. Eckerhart, 461 U.S. 424, 433 (1983).

IV. DISCUSSION

A. Class Action Fairness Act ("CAFA")

When settlement is reached in certain class action cases, CAFA requires as follows:

> Not later than 10 days after a proposed settlement of a class action is filed in court, each defendant that is participating in the proposed settlement shall serve [notice of the proposed settlement] upon the appropriate State official of each State in which a class member resides and the appropriate Federal official. . . .

28 U.S.C. § 1715(b).

The statute provides detailed requirements for the contents of such a notice. Id. A court is precluded from granting final approval of a class action settlement until the notice requirement is met:

> An order giving final approval of a proposed settlement may not be issued earlier than 90 days after the later of the dates on which the appropriate Federal official and the appropriate State official are served with the notice required under [28 U.S.C. § 1715(b)].

28 U.S.C. § 1715(d).

Plaintiffs represent that Classaura sent notice to the appropriate state and federal authorities pursuant to 28 U.S.C. § 1715 on February 20, 2019. (MFA Memo at 8; see also CAFA Notice.) Accordingly, the Court finds that the notice requirements of 28 U.S.C. § 1715 have been satisfied.

B. Rule 23(a) and (b) Requirements

In its MPA Order, the Court certified the Settlement Class in this matter under Rules 23(a) and 23(b)(3). (MPA Order at 5–10.) The Court "need not find anew that the settlement class meets the certification requirements of Rule 23(a) and (b)." Adoma, 913 F. Supp. 2d at 974; see also Harris v. Vector Marketing, 2012 WL 381202 at *3 (N.D. Cal. Feb. 6, 2012) ("As a preliminary matter, the Court notes that it previously certified . . . a Rule 23(b)(3) class . . . [and thus] need not analyze whether the requirements for certification have been met and may focus instead on whether the proposed settlement is fair, adequate, and reasonable."); In re Apollo Group Inc. Securities Litigation, 2012 WL 1378677 at *4 (D. Ariz. Apr. 20, 2012). Here, the Settlement Class has not changed since it was conditionally certified. All the criteria for class certification remain satisfied, and the Court hereby confirms its order certifying the Settlement Class.

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

Rule 23(c)(2)(B) requires that the Court "direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). Similarly, Rule 23(e)(1) requires that a proposed settlement may only be approved after notice is directed in a reasonable manner to all class members who would be bound by the agreement. Fed. R. Civ. P. 23(e)(1). In its MPA Order, the Court approved the notice sent to Settlement Class Members. (MPA Order at 15–17.) Classaura completed notice in accordance with the procedures approved by the Court. (See Retnasaba Decl. ¶¶ 3–12.) The Court therefore finds that notice to the Settlement Class was adequate.

D. Fair, Reasonable, and Adequate

Under Rule 23(e), "the claims, issues, or defenses of a certified class may be settled . . . only with the court's approval." Fed. R. Civ. P. 23(e). "The primary concern of [Rule 23(e)] is the protection of those class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties." Officers for Justice v. Civil Serv. Comm'n of City & Cnty. of San Francisco, 688 F.2d 615, 624 (9th Cir. 1982). The Court's inquiry is procedural in nature. Id. Pursuant to Rule 23(e)(2), "[i]f the proposal would bind class members, the court may approve it only after a hearing and on finding that it is fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). The Court held a final approval hearing on October 7, 2018.

In determining whether a settlement agreement is fair, adequate, and reasonable to all concerned, the Court may consider some or all of the following factors:

(1) the strength of the plaintiff's case;

(2) the risk, expense, complexity, and likely duration of further litigation;

(3) the risk of maintaining class action status throughout the trial;

(4) the amount offered in settlement;

(5) the extent of discovery completed, and the stage of the proceedings;

(6) the experience and views of counsel;

(7) the presence of a governmental participant; and

(8) any opposition by class members.

Linney v. Cellular Alaska P'ship, 151 F.3d 1234, 1242 (9th Cir. 1998). This list of factors is not exhaustive, and a court may balance and weigh different factors depending on the circumstances of each case. See Torrisi v. Tucson Elec. Power Co., 8 F.3d 1370, 1376 (9th Cir. 1993).

1. Strength of Plaintiffs' Case

The initial fairness factor addresses Plaintiffs' likelihood of success on the merits. See Rodriguez v. W. Publ'g Corp., 563 F.3d 948, 964-65 (9th Cir. 2009). In determining the probability of Plaintiffs' success on the merits, there is no "particular formula by which that outcome must be tested." Id. at 965.

In their MPA, Plaintiffs emphasized the difficult hurdles they would need to overcome in order to win on the merits of their case. For example, they would need to prove that Naturex was responsible for misleading representations and that the ingredient in question was actually ineffective, an inquiry that "would like[ly] devolve into an expensive and uncertain 'battle of experts.'" (Dkt. No. 284-1 at 12.) Plaintiffs also point out the difficulty they would face in establishing damages against Naturex. (Id. at 12–13.) Because of these difficulties, the Court finds this factor weighs in favor of approval.

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

In assessing the risk, expense, complexity, and likely duration of further litigation, the Court evaluates the time and cost required. "[U]nless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc., 221 F.R.D. 523, 526 (C.D. Cal. 2004) (quoting 3 Newberg on Class Actions § 11:50 (4th ed. 2012)).

The risk, expense, complexity, and likely duration of further litigation weigh in favor of final approval. Without the Settlement Agreement, the parties would be required to litigate the merits of the case—a process which the Court acknowledges is long, complex, and expensive.

Settlement of this matter will conserve the resources of this Court and the parties, thus weighing heavily in favor of approval.

3. Risk of Maintaining Class Action Status Throughout the Trial

Plaintiffs provide no reason why there might be an elevated risk of decertification in this case. Thus, this factor is neutral.

4. Amount Offered in Settlement

Class Counsel estimate Naturex's maximum potential liability at $3,513,000. (MFA Memo at 15; see also CPA Report at 14.) The Settlement Amount, $1.3 million, represents 37% of the estimated maximum damages amount. (MFA Memo at 15.) However, only $772,997.44 will be available for distribution to class members after the requested amounts for notice and administration costs, attorneys' fees, litigation costs, and incentive awards are deducted. (Id. at 17.) Because Classaura has received 84,110 valid claims, each class member will receive $9.19. (Id.) Plaintiffs argue this amount is reasonable because the average retail price of the Labrada Green Coffee Bean extract is $24.22, so class members will receive approximately 37.94% of the amount they likely paid. The amount available for distribution to class members represents 22% of the estimated maximum potential liability.

"Even a fractional recovery of the possible maximum recovery amount may be fair and adequate in light of the uncertainties of trial and difficulties in proving the case." Millan v. Cascade Water Servs., 310 F.R.D. 593, 611 (E.D. Cal. 2015). A recovery of approximately 22% of the damages the Settlement Class could have recovered is consistent with and exceeds amounts routinely found to be fair and reasonable. See, e.g., In re Celera Corp. Sec. Litig., 2015 WL 1482303, at *6 (N.D. Cal. Mar. 31, 2015) (approving settlement that was approximately thirteen percent of maximum recovery); Deaver v. Compass Bank, 2015 WL 8526982, at *7 (N.D. Cal. Dec. 11, 2015) (approving a settlement that was 10.7 percent of the total potential liability). In light of the difficulties Plaintiffs would likely face if they continued to litigate this case, the Court finds the amount offered here to be appropriate.

5. Extent of Discovery Completed, and the Stage of the Proceedings

This factor requires the Court to evaluate whether "the parties have sufficient information to make an informed decision about settlement." Linney, 151 F.3d at 1239. Here, Class Counsel represent that the parties engaged in substantial discovery, including production of approximately 30,000 pages of documents; exchanging 20 sets of formal written discovery; exchange of initial expert reports; and depositions of class representatives, Naturex's designee, and representatives of the non-settling parties. (MFA Memo at 2–3.)

Based on these facts, the Court finds discovery was sufficiently advanced to allow the parties to make an informed decision about settlement. See DIRECTV, Inc., 221 F.R.D. at 527 ("A court is more likely to approve a settlement if most of the discovery is completed because it suggests that the parties arrived at a compromise based on a full understanding of the legal and

factual issues surrounding the case.") (quoting 5 Moore's Federal Practice § 23.85[2][e] (Matthew Bender 3d ed.). Accordingly, this factor favors settlement.

6. Experience and Views of Counsel

In considering the adequacy of the terms of a settlement, the trial court is entitled to, and should, rely upon the judgment of experienced counsel for the parties. See DIRECTV, Inc., 221 F.R.D. at 528 ("Great weight is accorded to the recommendation of counsel, who are most closely acquainted with the facts of the underlying litigation[.]") (internal quotation marks and citations omitted). This reliance is predicated on the fact that "[p]arties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in the litigation." In re Pac. Enters. Sec. Litig., 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiffs' Counsel have extensive experience serving as counsel in consumer class actions. (Marron MFA Decl. ¶¶ 2–4; Marron Firm Resume; Cohelan MFA Decl. ¶¶ 2–6; CKS Firm Resume.) Additionally, Plaintiffs' Counsel demonstrates a realistic and balanced view of the potential outcome of the litigation based on the facts of the case and the relative positions of the parties. As a result, the experience and views of Plaintiffs' Counsel also weigh in favor of preliminary approval.

7. Presence of a Government Participant

No governmental entity is present in this litigation. Therefore, this factor favors approval.

8. Any Opposition by Class Members

The existence of overwhelming support for a settlement agreement by the class lends weight to a finding that the settlement agreement is fair, adequate, and reasonable. DIRECTV, Inc., 221 F.R.D. at 529 ("It is established that the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members.").

Here, Classaura received 95,993 claims, of which 84,110 were determined to be valid. (Retnasaba Decl. ¶¶ 17, 18.) Six class members opted out of the settlement. (Id. ¶ 21.) There were no objections. (MFA Memo at 20.) The 6 opt-outs represent a low proportion compared to the 84,110 Class Members who submitted valid claims. Thus, the Court finds that this factor weighs in favor of approval.

After considering all of the relevant factors, the Court concludes they favor approval. The Court finds that the Settlement Agreement is "fair, reasonable and adequate to all concerned parties." Ficalora v. Lockheed Cal. Co., 751 F.2d 995, 996 (9th Cir. 1985). Therefore, the Court APPROVES the Settlement Agreement.

E. Attorneys' Fees and Costs

1. Attorneys' Fees

Class Counsel request approval of $325,000 in attorneys' fees, to which they are entitled under the fee-shifting provisions of the CLRA, Cal. Civ. Code § 1780(e), and Private Attorney General Statute, Cal. Code Civ. Proc. § 1021.5. (Fees Motion at 1; Fees Memo at 3.) Courts are obliged to ensure that the attorneys' fees awarded in a class action settlement are reasonable, even if the parties have already agreed on an amount. In re Bluetooth Headset Prods. Liab. Litig., 654 F.3d 935, 941 (9th Cir. 2011).

The Court may exercise discretion to award attorneys' fees in a class action settlement by applying either the lodestar method or the percentage-of-the-fund method. Fischel v. Equitable Life Assurance Soc'y of U.S., 307 F.3d 997, 1006 (9th Cir. 2002). The Court determines the lodestar amount by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate. McGrath v. Cnty. of Nev., 67 F.3d 248, 252 (9th Cir. 1995). The hourly rates used to calculate the lodestar must be "in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation." Blum v. Stenson, 465 U.S. 886, 895 n.11 (1984). Next, the Court must decide whether to adjust the 'presumptively reasonable' lodestar figure based upon the factors listed in Kerr v. Screen Extras Guild, Inc., 526 F.2d 67, 69-70 (9th Cir. 1975), that have not been subsumed in the lodestar calculation, Caudle v. Bristow Optical Co., Inc., 224 F.3d 1014, 1028-29 (9th Cir. 2000).[3] Under the percentage-of-the-fund method, an award of twenty-five percent of the gross settlement amount is the "benchmark" for attorneys' fees calculations. Powers v. Eichen, 229 F.3d 1249, 1256-57 (9th Cir. 2000).

Here, Class Counsel requests attorneys' fees equal to 25% of the $1,300,000 settlement fund. (Fees Memo at 1.) They note that the requested amount is significantly lower than the lodestar based on time spent pursuing the claims against Naturex ($440,610.00) and the maximum they were permitted to request under the Settlement Agreement (33.33%). (Id. at 1, 6; see also CKS Hours Summary; Marron Fees Decl. at 6.) Because Class Counsel request the benchmark of 25%, and because that amount is less than their lodestar figure, the Court finds $325,000 in attorneys' fees to be reasonable.

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[3] In Kerr, the Ninth Circuit adopted the 12-factor test articulated in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974); this analysis identified the following factors for determining reasonable fees: (1) the time and labor required, (2) the novelty and difficulty of the questions involved, (3) the skill requisite to perform the legal service properly, (4) the preclusion of other employment by the attorney due to acceptance of the case, (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time limitations imposed by the client or the circumstances, (8) the amount involved and the results obtained, (9) the experience, reputation, and ability of the attorneys, (10) the "undesirability" of the case, (11) the nature and length of the professional relationship with the client, and (12) awards in similar cases.

2. Costs

"In a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. Proc. 23(h); see Trans Container Servs. v. Sec. Forwarders, Inc., 752 F.2d 483, 488 (9th Cir. 1985). "Expenses such as reimbursement for travel, meals, lodging, photocopying, long-distance telephone calls, computer legal research, postage, courier service, mediation, exhibits, documents scanning, and visual equipment are typically recoverable." Rutti v. Lojack Corp., Inc., 2012 WL 3151077, at *12 (C.D. Cal. July 31, 2012).

Class Counsel seek $61,321.56 in costs. (Fees Motion at 1.) They provide breakdowns of the expenses incurred by in this case by the Marron Firm and CKS, totaling $245,286.25. (Marron Fees Decl. ¶ 26; CKS Costs.) Plaintiffs request one quarter of this amount in relation to the present settlement because they are settling their claims with one of four groups of Defendants. (Fees Memo at 22.) The expenses include filing fees, service of process, postage, printing and copying, expert consultant fees, mediation costs, meals, hotel, and transportation. (Marron Fees Decl. ¶ 26; CKS Costs.) All of these expenses are typically recoverable in litigation. Cf. In re Immune Response Sec. Litig., 497 F. Supp. 2d 1166, 1177-78 (S.D. Cal. 2007) (finding similar categories of expenses reasonable in a class action settlement). The Court therefore approves the requested amount of costs.

F. Incentive Award

Plaintiffs seek incentive payments of $5,000 each for Plaintiffs Woodard and Morrison and $7,500 for Plaintiff Rizzo-Marino. (Fees Motion at 1.) The trial court has discretion to award incentives to the class representatives. See In re Mego Fin. Corp. Sec. Litig., 213 F.3d 454, 463 (9th Cir. 2000); Pelletz v. Weyerhaeuser Co., 592 F. Supp. 2d 1322, 1329 (W.D. Wash. 2009). The criteria courts have used in considering the propriety and amount of an incentive award include: (1) the risk to the class representative in commencing a class action, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort invested by the class representative; (4) the duration of the litigation; and (5) the personal benefit, or lack thereof, enjoyed by the class representative as a result of the litigation. Van Vranken v. Atl. Richfield Co., 901 F. Supp. 294, 299 (N.D. Cal. 1995). An award of $5,000 per named plaintiff is generally considered reasonable in the Ninth Circuit. Richardson v. THD At-Home Servs., Inc., 2016 WL 1366952, at *13 (E.D. Cal. Apr. 6, 2016); Hawthorne v. Umpqua Bank, 2015 WL 1927342, at *8 (N.D. Cal. Apr. 28, 2015).

Named Plaintiffs participated in the case by sitting for depositions, reviewing filings, communicating continuously with Class Counsel, and reviewing the Settlement Agreement. (Fees Memo at 23; Marron Fees Decl. ¶ 34; Woodard Decl. ¶¶ 3–10; Morrison Decl. ¶¶ 3–10; Rizzo-Marino Decl. ¶¶ 3–10.) Plaintiffs request a higher incentive award for Rizzo-Marino because her deposition was continued such that she had to appear for deposition on two different dates. (Fees Memo at 24; Rizzo-Marino Decl. ¶ 8.) Rizzo-Marino avers that she spent four hours on the first day of deposition and an additional two and a half hours on the second day.

(Rizzo-Marino Decl. ¶ 8.) Based on the above, the Court finds that the requested incentive awards are appropriate.

V. CONCLUSION

For the foregoing reasons, the Court

(1) GRANTS final settlement approval;
(2) GRANTS the request for attorneys' fees and AWARDS Class Counsel attorneys' fees in the amount of $325,000 from the gross settlement amount;
(3) GRANTS the request for costs and AWARDS Class Counsel costs in the amount of $61,321.56 from the gross settlement amount;
(4) GRANTS the requests for service awards and AWARDS a total of $7,500 to the Class Representatives from the gross settlement amount, consisting of $5,000 each to Plaintiffs Woodard and Morrison and $7,500 to Plaintiff Rizzo-Marino;
(5) DISMISSES the First Amended Complaint WITH PREJUDICE.

IT IS SO ORDERED.