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.)

I. Factual and Procedural Background

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

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

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

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

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

II. Discussion

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

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

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

A. Class Certification

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

1. Rule 23(a) Requirements

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

> (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or 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.

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

2. Rule 23(b) Requirements

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

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

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

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

If the court certifies a class under Rule 23(b)(3), it "must 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). Rule 23(c)(2) governs both the form and content of a proposed notice. See Ravens v. Iftikar, 174 F.R.D. 651, 658 (N.D. Cal. 1997) (citing Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 172-77 (1974)). Although that notice must be "reasonably certain to inform the absent members of the plaintiff class," actual notice is not required. Silber v. Mabon, 18 F.3d 1449, 1454 (9th Cir. 1994) (citation omitted).

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

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

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

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

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

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

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

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

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

> the strength of the plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement.

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

1. Strength of Plaintiffs' Case

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

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

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

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

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

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

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

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

3. Risk of Maintaining Class-Action Status Throughout Trial

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

4. Amount Offered in Settlement

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

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

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

Defendant's line of products only cost several dollars, and plaintiffs' analysis found the premium paid for a "Naturals" product was approximately sixty-eight cents per product. (Kindall Decl. ¶ 17.) As of October 6, 2016, 179,676 purchasers of defendant's Naturals products filed claims under the settlement with an aggregate claims value of $6,964,930. (Docket No. 69 at 2:15.) Based on the value of claims made to date, class counsel states each class member would receive $1.26 per product purchased, up to ten products.[2] (Id. at 3:16-20.) This

[2] The $1.26 per product recovery was calculated by dividing the estimated $1.75 million to be distributed to class members after fees, costs, and expenses by the estimated $7 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

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

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

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

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

"A settlement that occurs in an advance stage of the proceedings indicates the parties carefully investigated the

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the final fairness hearing.

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

6. Experience and Views of Counsel

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

7. Presence of a Government Participant

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

8. Reaction of the Class Members to the Proposed Settlement

"[T]he 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." DIRECTV, 221 F.R.D. at 529. The notice complied with Federal Rules of Civil Procedure 23(c)(2) and 23(e). It provided the best notice practicable under the circumstances, and it informed potential class members of the settlement amount, the basis of the lawsuit, the definition of the class, the procedure for and consequences of opting-in to the settlement, the procedure for and consequences of objecting or obtaining exclusion from the settlement, and the date of the final fairness hearing.

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

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

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

C. Attorneys' Fees

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

"Despite this discretion, use of the percentage method in common fund cases appears to be dominant." In re Omnivision Techs., Inc., 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008) (citing cases). It is "particularly appropriate in common fund cases 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

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

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

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

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

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

D. Expenses

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

E. Incentive Payment to Named Plaintiffs

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

463 (9th Cir. 2000)).

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

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

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

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

IT IS FURTHER ORDERED THAT:

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

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

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

(3) the court appoints Mark Kindall of Izard, 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

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

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

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

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

(8) plaintiff Clayman is entitled to an incentive award in the amount of $1,000.00, plaintiff Drew is entitled to an incentive award in the amount of $4,000.00, plaintiff Cohen is entitled to an incentive award in the amount of $4,000.00, and plaintiff Morales is entitled to an incentive award in the amount of $6,000.00; and

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

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

Dated: October 18, 2016

WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE