UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

FRANK CAPACI, et al., individually and on behalf of all others similarly situated, Plaintiffs, v. SPORTS RESEARCH CORPORATION, Defendant.	Case No. CV 19-3440 FMO (PDx) **ORDER RE: MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

Having reviewed and considered all the briefing filed with respect to plaintiff Cynthia Ford's ("plaintiff" or "Ford") Motion for Preliminary Approval of Class Action Settlement (Dkt. 183, "Motion"), and the oral argument presented at the hearing on February 15, 2024, the court concludes as follows.

BACKGROUND

Cynthia Ford ("Ford" or "plaintiff"),[1] on behalf of herself and all others similarly situated, filed the operative Second Amended Complaint ("SAC") against Sports Research Corporation ("SR" or "defendant") asserting claims for: (1) violations of California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200, et seq.; (2) violations of California's False Advertising Law ("FAL"), Cal. Bus. & Prof. Code §§ 17500, et seq.; (3) violations of California's Consumer Legal Remedies Act ("CLRA"), Cal. Civ. Code §§ 1750, et seq.; (4) breach of express warranties

[1] This action was brought by an additional plaintiff, Frank Capaci, whose individual claims have since been dismissed. (See Dkt. 51, Court's Order of July 15, 2020).

pursuant to Cal. Com. Code § 2313(1); (5) breach of implied warranties pursuant to Cal. Com. Code § 2314; and (6) negligent misrepresentation.[2] (See Dkt. 44, SAC at ¶¶ 92-145). Plaintiff alleges that SR "markets 'Sports Research Garcinia Cambogia' ('Garcinia Cambogia' or the 'Product'), a dietary supplement that Defendant falsely claims is an effective aid in 'weight management' and 'appetite control,' despite the fact that the Product's only purportedly active ingredients, Hydroxycitric Acid ('HCA') and extra virgin organic coconut oil, are scientifically proven to be incapable of providing such weight loss benefits." (Id. at ¶ 1).

On April 14, 2022, the court granted in part and denied in part plaintiff's motion for class certification, (see Dkt. 139, Court's Order of April 14, 2022 ("Class Cert. Order") at 35), and certified the following classes pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure[3] with respect to plaintiff's claims under the CLRA, FAL, UCL, breach of express warranty and negligent misrepresentation:

> Nationwide Class: All persons who purchased Sports Research Cambogia that was labeled "weight management" and/or "appetite suppression" . . . in the United States since April 26, 2015. The class is limited to those who purchased the Product for personal and household use, and not for resale, and who did not receive a refund or return the Product.
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> California Sub-Class: All persons who purchased Sports Research Cambogia . . . that was labeled "weight management" and/or "appetite suppression" . . . in the State of California since April 26, 2015. The class is limited to those who purchased the Product for personal and household use, and not for resale, and who did not receive a refund or return the Product.

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[2] In addition, the SAC contains two claims for violations of New Jersey's Consumer Fraud Act and Truth-In-Consumer Contract, Warranty, and Notice Act. (See Dkt. 44, SAC at ¶¶ 146-67).

[3] Unless otherwise indicated, all "Rule" references are to the Federal Rules of Civil Procedure.

(See id.). The court denied certification of a Rule 23(b)(2) class, and denied without prejudice certification of plaintiff's implied warranty claim. (See id.). The court appointed Ford as class representative, and the Law Office fo Ronald A. Marron as class counsel. (Id.).

On March 26, 2023, the court denied defendant's motion for reconsideration regarding the class certification order, and plaintiff's motion for attorney's fee, costs, and sanctions. (See Dkt. 149, Court's Order of March 26, 2023, at 7). On July 21, 2023, the court approved plaintiff's proposed class notice and notice plan. (See Dkt. 161, Court's Order of July 21, 2023, at 4-5).

On August 4, 2023, defendant filed a motion for class decertification. (See Dkt. 165, Motion for Decertification"); (Dkt. 166, "Notice of Errata"). The Motion for Decertification was stricken for failure to comply with the Court's Order of July 15, 2019. (See Dkt. 161, Court's Order of August 14, 2023). A deadline to file another motion for decertification was also set. (See id.).

On August 24, 2023, plaintiff filed a motion to strike documents not disclosed during discovery, (see Dkt. 170, Motion to Strike); (Dkt. 173, Notice of Errata), and motion for attorney's fees and costs. (See Dkt. 171, Motion for Attorney's Fees). Before the pending motions were decided, the parties reached a settlement. (See Dkt. 177, Notice of Settlement and Stipulation to Stay Case and Vacate Case Deadlines); (Dkt. 183-1, Memorandum of Points and Authorities ("Memo") at 3).

The parties have defined the settlement class as "All persons who purchased Sports Research Garcinia Cambogia labeled 'weight management,' 'appetite suppression,' and/or 'appetite control' (the 'Product') in the United States on or after April 26, 2015 and until [the date preliminary approval is granted] for personal or household use and not for resale, and who did not receive a refund or return the Product." (Dkt. 183-4, Settlement Agreement at § 6.1).

Pursuant to the settlement, defendant will pay a non-reversionary gross settlement amount of $1,600,000, (see Dkt. 183-4, Settlement Agreement at § 2.3), which will be used to pay class members, administration costs, attorney's fees and expenses, and an incentive payment for plaintiff. (Id. at § 10.6). The Settlement Agreement provides for up to one-third of the settlement fund in attorney's fees, (id. at § 11.1); (Dkt. 183-1, Memo at 7); costs not to exceed $150,000, (see id.); and an incentive award of $5,000 for plaintiff. (Dkt. 183-4, Settlement Agreement at §

11.3). The proposed settlement administrator, Classaura Class Action Administration ("Classaura"), (id. at § 2.30), will be paid no more than $150,000. (See id. at § 9.11).

Class members that submit valid claim forms will receive up to $20.00 in cash irrespective of the size or number of the Product purchased. (See Dkt. 183-4, Settlement Agreement at § 10.2.1). Beyond the completed claim form, no additional proof of purchase will be required. (See id.). The actual amount paid to class members will depend on the number of valid claims. (See id. at § 10.2.2). If the amount of valid claims exceeds the amount of the settlement fund, each cash payment will be reduced pro rata until the funds remaining in the settlement fund are exhausted. (See id. at § 10.2.3). If the amount of valid claims does not exhaust the settlement fund, the payment to class members will increase pro rata. (See id.).

In addition to monetary relief, the settlement provides for injunctive relief. (See Dkt. 183-4, Settlement Agreement at § 10.3). Under the Settlement Agreement, defendant "will agree to discontinue selling the Product with labels that contain the statements 'weight management support,' 'appetite suppression,' and/or 'appetite control' for a period of five . . . years from the Court's entry of the Final Order and Judgment." (Id.). Defendant "estimates" that it has spent approximately $50,000 to remove such labeling statements from the Product's labels.[4] (Id.).

Here, plaintiff seeks an order: (1) certifying the proposed settlement class; (2) appointing Ford as class representative for settlement purposes; (3) appointing the Law Offices of Ronald A. Marron as class counsel; (4) preliminarily approving the proposed settlement; (5) approving the notice plan; and (6) setting a final approval hearing. (See Dkt. 183, Motion at 1).

LEGAL STANDARDS

I. CLASS CERTIFICATION.

At the preliminary approval stage, the court "may make either a preliminary determination that the proposed class action satisfies the criteria set out in Rule 23 . . . or render a final decision

[4] Defendant is permitted to seek modification of the injunction should certain events occur, such as the Food & Drug Administration taking the "unambiguous position" that garcinia cambogia can and does provide "weight management," "appetite suppression," or "appetite control" benefits. (See Dkt. 183-4, Settlement Agreement at § 10.3).

as to the appropriateness of class certification." Smith v. Wm. Wrigley Jr. Co., 2010 WL 2401149, *3 (S.D. Fla. 2010) (citation and footnote omitted); see also Sandoval v. Roadlink USA Pac., Inc., 2011 WL 5443777, *2 (C.D. Cal. 2011) (citing Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 620, 117 S.Ct. 2231, 2248 (1997) ("Amchem")) ("Parties seeking class certification for settlement purposes must satisfy the requirements of Federal Rule of Civil Procedure 23[.]"). In the settlement context, a court must pay "undiluted, even heightened, attention" to the class certification requirements. Amchem, 521 U.S. at 620, 117 S.Ct. at 2248; In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., & Prods. Liab. Litig., 895 F.3d 597, 606 (9th Cir. 2018) (same). "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." Amchem, 521 U.S. at 620, 117 S.Ct. at 2248.

A party seeking class certification must first demonstrate that: "(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). Courts refer to these requirements by the following shorthand: "numerosity, commonality, typicality and adequacy of representation[.]" Mazza v. Am. Honda Motor Co., Inc., 666 F.3d 581, 588 (9th Cir. 2012), overruled on other grounds by Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC, 31 F.4th 651 (9th Cir. 2022) (en banc) ("Olean Wholesale"). In addition to fulfilling the four prongs of Rule 23(a),

the proposed class must meet at least one of the three requirements listed in Rule 23(b).[5] See Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 345, 131 S.Ct. 2541, 2548 (2011) ("Dukes").

"Before it can certify a class, a district court must be satisfied, after a rigorous analysis, that the prerequisites of both Rule 23(a) and" the applicable Rule 23(b) provision have been satisfied. Olean Wholesale, 31 F.4th at 664 (internal quotation marks omitted). A plaintiff "must prove the facts necessary to carry the burden of establishing that the prerequisites of Rule 23 are satisfied by a preponderance of the evidence." Id. at 665. However, Rule 23(b)(3) issues regarding manageability are "not a concern in certifying a settlement class where, by definition, there will be no trial." In re Hyundai and Kia Fuel Econ. Litig., 926 F.3d 539, 556-57 (9th Cir. 2019) (en banc) ("In re Hyundai").

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[5] Rule 23(b) is satisfied if:

> (1) prosecuting separate actions by or against individual class members would create a risk of:
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> (A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or
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> (B) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests;
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> (2) the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole; or
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> (3) the court finds that the 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. The matters pertinent to these findings include:
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> (A) the class members' interests in individually controlling the prosecution or defense of separate actions;
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> (B) the extent and nature of any litigation concerning the controversy already begun by or against class members;
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> (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
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> (D) the likely difficulties in managing a class action.

Fed. R. Civ. P. 23(b)(1)-(3).

II. FAIRNESS OF CLASS ACTION SETTLEMENT.

Rule 23 provides that "[t]he claims, issues, or defenses of a certified class – or a class proposed to be certified for purposes of settlement – 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 th[e] class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties." Officers for Just. v. Civ. Serv. Comm'n of the City & Cnty. of San Francisco, 688 F.2d 615, 624 (9th Cir. 1982). Whether to approve a class action settlement is "committed to the sound discretion of the trial judge." Class Plaintiffs v. City of Seattle, 955 F.2d 1268, 1276 (9th Cir. 1992) (internal quotation marks omitted).

Approval of a class action settlement requires a two-step process – preliminary approval and the dissemination of notice to the class, followed by a later final approval. See Spann v. J.C. Penney Corp., 314 F.R.D. 312, 319 (C.D. Cal. 2016). Although "[c]loser scrutiny is reserved for the final approval hearing[,]" Harris v. Vector Mktg. Corp., 2011 WL 1627973, *7 (N.D. Cal. 2011), "the showing at the preliminary approval stage – given the amount of time, money, and resources involved in, for example, sending out . . . class notice[] – should be good enough for final approval." Spann, 314 F.R.D. at 319; see also 4 Newberg on Class Actions § 13:10 (6th ed. 2024) ("[S]ending notice to the class costs money and triggers the need for class members to consider the settlement, actions which are wasteful if the proposed settlement [is] obviously deficient from the outset."). The court may grant preliminary approval and direct notice in a reasonable manner to all class members who would be bound by the settlement if the parties provide sufficient information to show that the court will likely be able to: (1) "approve the proposal under Rule 23(e)(2);" and (2) "certify the class for purposes of judgment on the [settlement] proposal." Fed. R. Civ. P. 23(e)(1)(B); see Macy v. GC Servs. Ltd. P'ship, 2019 WL 6684522, *1 (W.D. Ky. 2019) ("The standard for preliminary approval was codified in 2018, with Rule 23 now providing for notice to the class upon the parties' showing that the court will likely be able to approve the proposed settlement under the final-approval standard contained in Rule 23(e)(2).") (internal quotation marks omitted); 4 Newberg on Class Actions § 13:10 (6th ed. 2024) ("In 2018,

Congress codified this approach into Rule 23. Rule 23(e)(1)(B) now sets forth the grounds for the initial decision to send notice of a proposed settlement to the class[.]").

"At this stage, the court may grant preliminary approval of a settlement and direct notice to the class if the settlement: (1) appears to be the product of serious, informed, non-collusive negotiations; (2) has no obvious deficiencies; (3) does not improperly grant preferential treatment to class representatives or segments of the class; and (4) falls within the range of possible approval." Spann, 314 F.R.D. at 319 (internal quotation marks omitted); see Bronson v. Samsung Elecs. Am., Inc., 2019 WL 5684526, *7 (N.D. Cal. 2019) (same); see also 2018 Adv. Comm. Notes to Amendments to Rule 23(e)(1) (The types of information that should be provided to the court in deciding whether to send notice – i.e., that it will likely approve the settlement under Rule 23(e)(2) and certify the class for purposes of settlement – "depend on the specifics of the particular class action and proposed settlement." "[G]eneral observations" as to the types of information that should be provided include, but are not limited to, the following: (1) "the extent and type of benefits that the settlement will confer on the members of the class" and if "funds are . . . left unclaimed, the settlement agreement ordinarily should address the distribution of those funds"; (2) "information about the likely range of litigated outcomes, and about the risks that might attend full litigation"; (3) "[i]nformation about the extent of discovery completed in the litigation or in parallel actions"; (4) "information about the existence of other pending or anticipated litigation on behalf of class members involving claims that would be released under the proposal"; (5) "[t]he proposed handling of an award of attorney's fees under Rule 23(h)"; (6) "any agreement that must be identified under Rule 23(e)(3)"; and (7) "any other topic that [the parties] regard as pertinent to the determination whether the proposal is fair, reasonable, and adequate.").

DISCUSSION

I. CLASS CERTIFICATION.

As noted above, the court previously certified two Rule 23(b)(3) classes. (See Dkt. 139, Class Cert. Order at 35). The Settlement Agreement includes a single class, and extends the class period to the date of preliminary approval. (See Dkt. 183-4, Settlement Agreement at § 6.1). It differs from the previously certified class in that the definition of the Product includes the label

statement, "appetite control." (See id.); (Dkt. 183-1, Memo at 15-16). Also, the parties propose that the settlement class be certified pursuant to Rule 23(b)(2) because of the injunctive relief provided as part of the settlement. (See Dkt. 183-4, Settlement Agreement at § 10.3); (Dkt. 183-1, Memo at 16).

Given the court's prior determination, (see Dkt. 139), and the injunctive relief included in the settlement, (see Dkt. 183-4, Settlement Agreement at § 10.3), the court finds that the modified class may be certified for settlement purposes. See, e.g., Negrete v. ConAgra Foods, Inc., 2021 WL 4202519, *6 (C.D. Cal. 2021) (certifying modified class for settlement purposes); see In re Hyundai and Kia Fuel Econ. Litig., 926 F.3d at 558 ("[W]hether a proposed class is sufficiently cohesive to satisfy Rule 23(b)(3) is informed by whether certification is for litigation or settlement. A class that is certifiable for settlement may not be certifiable for litigation if the settlement obviates the need to litigate individualized issues that would make a trial unmanageable.").

II. FAIRNESS, REASONABLENESS, AND ADEQUACY OF THE PROPOSED SETTLEMENT.

A. The Settlement is the Product of Arm's-Length Negotiations.

Pursuant to Rule 23(e)(2)(B), the court must evaluate whether the settlement was negotiated at arm's length. Here, the parties engaged in significant motion practice, including motions for class certification and summary judgment. In addition, the settlement was reached following two mediation sessions, and based on a mediator's proposal.[6] (See Dkt. 183-2, Declaration of Ronald A. Marron [] ("Marron Decl.") at ¶ 9).

Based on the evidence and record before the court, the court is persuaded that the parties thoroughly investigated and considered their own and the opposing party's positions. The parties had a sound basis for measuring the terms of the settlement against the risks of continued litigation, and there is no evidence that the settlement is the product of fraud or overreaching by, or collusion between, the negotiating parties. See, e.g., Spann, 314 F.R.D. at 323-25 (finding no

[6] Plaintiff represents that no agreements were made in connection with the settlement aside from the Settlement Agreement itself. (See Dkt. 183-1, Memo at 14-15); Fed. R. Civ. P. 23(e)(3).

evidence that a class action settlement was the product of fraud or collusion between the parties); Rodriguez v. W. Publ'g Corp., 563 F.3d 948, 965 (9th Cir. 2009) (affirming final approval of class action settlement where there was "no evidence of fraud, overreaching, or collusion").

B. The Amount Offered in Settlement Falls Within a Range of Possible Judicial Approval and is a Fair and Reasonable Outcome for Class Members.

1. **Recovery for Class Members.**

As noted above, class members will share in a non-reversionary gross settlement amount of $1,600,000. (See Dkt. 183-4, Settlement Agreement at § 2.3). Class members who submit timely and valid claim forms will be entitled to $20 in cash, subject to a pro rata reduction if the total amount claimed exceeds the settlement fund, and a pro rata increase if it does not. (See id. at §§ 10.2.1, 10.2.3). Plaintiff states that the settlement amount is "significant considering that the average price of the 90-count Product, which accounts for 93% of the Products sold during the Class Period, was $18.99." (Dkt. 183-1, Memo at 12). Moreover, plaintiff recognizes the risk of further litigation, including the motion for summary judgment that was pending at the time the parties reached a settlement. (See id. at 12-13); (Dkt. 95, Motion for Summary Judgment). Under the circumstances, given the significant risks of litigation coupled with the delays associated with continued litigation, the court is persuaded that the benefits to the class fall within the range of reasonableness. See, e.g., In re Uber FCRA Litig., 2017 WL 2806698, *7 (N.D. Cal. 2017) (granting preliminary approval of settlement that was worth "7.5% or less" of the expected value); see Fed. R. Civ. P. 23(e)(1)(B)(i) & (e)(2)(C)(i); 2018 Adv. Comm. Notes to Rule 23(e)(1) (The types of information that should be provided to the court deciding whether to grant preliminary approval includes, among other things: (1) "the extent and type of benefits that the settlement will confer on the members of the class"; and (2) "information about the likely range of litigated outcomes, and about the risks that might attend full litigation"); see also Linney v. Cellular Alaska P'ship, 151 F.3d 1234, 1242 (9th Cir. 1998) ("The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.") (internal quotation marks omitted).

2. **Release of Claims**.

The court must also consider whether the settlement contains an overly broad release of liability. See 4 Newberg on Class Actions § 13:15 (6th ed. 2024) ("Beyond the value of the settlement, courts have rejected preliminary approval when the proposed settlement contain[s] obvious substantive defects such as . . . overly broad releases of liability."); see, e.g., Fraser v. Asus Comput. Int'l, 2012 WL 6680142, *3 (N.D. Cal. 2012) (denying preliminary approval of proposed settlement that provided defendant a "nationwide blanket release" in exchange for payment "only on a claims-made basis[,]" without the establishment of a settlement fund or any other benefit to the class).

Here, class members who do not exclude themselves from the settlement will release

> all actions, claims, demands, rights, suits, and causes of action of whatever kind or nature whatsoever, including without limitation any and all damages, restitution, loss, statutory relief, bad faith claims, costs, expenses, penalties, attorneys' fees, expert fees, and interest, whether known or unknown, suspected or unsuspected, assigned or unassigned, asserted or unasserted, whether as individual claims or claims asserted on a class basis or on behalf of the general public, in law or equity, arising out of or relating to any claim or allegation made in the Action, including, without limitation, any and all claims or allegations relating to the advertising, marketing, labeling or sale of the Products.

(Dkt. 183-4, Settlement Agreement at § 2.26). The release does "not include claims for personal injury." (Id.).

With the understanding that, under the Release, settlement class members are not giving up any claims unrelated to those asserted in this action, the court finds that the Release adequately balances fairness to absent class members and recovery for the class with defendant's business interest in ending this litigation. See Hesse v. Sprint Corp., 598 F.3d 581, 590 (9th Cir. 2010) ("A settlement agreement may preclude a party from bringing a related claim in the future even though the claim was not presented and might not have been presentable in

the class action, but only where the released claim is based on the identical factual predicate as that underlying the claims in the settled class action.") (internal quotation marks omitted); Fraser, 2012 WL 6680142, at *4 (recognizing defendant's "legitimate business interest in 'buying peace' and moving on to its next challenge" as well as the need to prioritize "[f]airness to absent class member[s]").

C. The Settlement Agreement Does Not Improperly Grant Preferential Treatment to the Class Representative.

Pursuant to Rule 23(e)(2)(D), the court must evaluate whether the settlement "treats class members equitably relative to each other." The Ninth Circuit has "repeatedly held that reasonable incentive awards to class representatives are permitted," In Re Apple Inc. Device Performance Litig., 50 F.4th 769, 785 (9th Cir. 2022) (internal quotation marks omitted), and has instructed "district courts to scrutinize carefully the awards so that they do not undermine the adequacy of the class representatives." Radcliffe v. Experian Info. Sols. Inc., 715 F.3d 1157, 1163 (9th Cir. 2013). The court must examine whether there is a "significant disparity between the incentive awards and the payments to the rest of the class members" such that it creates a conflict of interest. See id. at 1165. "In deciding whether [an incentive] award is warranted, relevant factors include the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, and the amount of time and effort the plaintiff expended in pursuing the litigation." Cook v. Niedert, 142 F.3d 1004, 1016 (7th Cir. 1998).

Here, the Settlement Agreement provides for a service payment of up to $5,000 for plaintiff. (Dkt. 183-4, Settlement Agreement at § 11.3). Under the circumstances here, the court finds that the requested incentive payment is reasonable.

D. Class Notice and Notification Procedures.

Upon settlement of a certified class, "[t]he court must direct notice in a reasonable manner to all class members who would be bound by the proposal[.]" Fed. R. Civ. P. 23(e)(1)(B). Rule 23(c)(2) requires the "best notice that is practicable under the circumstances, including individual notice" of particular information. See Fed. R. Civ. P. 23(c)(2)(B) (enumerating notice requirements for classes certified under Rule 23(b)(3)).

"The standard for the adequacy of a settlement notice in a class action under either the Due Process Clause or the Federal Rules is measured by reasonableness." Wal-Mart Stores, Inc. v. Visa U.S.A., Inc., 396 F.3d 96, 113 (2d Cir. 2005); Low v. Trump Univ., LLC, 881 F.3d 1111, 1117 (9th Cir. 2018) ("The yardstick against which we measure the sufficiency of notices in class action proceedings is one of reasonableness.") (internal quotation marks omitted). A class action settlement 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." Churchill Vill., L.L.C. v. Gen. Elec., 361 F.3d 566, 575 (9th Cir. 2004) (internal quotation marks omitted); see also Gooch v. Life Invs. Ins. Co. of Am., 672 F.3d 402, 423 (6th Cir. 2012) (Settlement notices "are sufficient if they inform the class members of the nature of the pending action, the general terms of the settlement, that complete and detailed information is available from the court files, [and] that any class member may appear and be heard at the hearing[.]") (internal quotation marks omitted). The notice should provide sufficient information to allow class members to decide whether they should accept the benefits of the settlement, opt out and pursue their own remedies, or object to the terms of the settlement but remain in the class. See In re Integra Realty Res., Inc., 262 F.3d 1089, 1111 (10th Cir. 2001) ("The standard for the settlement notice under Rule 23(e) is that it must 'fairly apprise' the class members of the terms of the proposed settlement and of their options.") (internal quotation marks omitted).

Here, class members will receive notice via a noticed that will be published in a newspaper of general circulation, online publication (Facebook), a press release, and in some instances, direct notice. (See Dkt. 183-4, Settlement Agreement at § 2.19); (id., Exh. C, Notice Plan at ¶¶ 6, 15, 20, 22, 25, 26). There will be a class website, which will include the Class Notice. (See Dkt. 183-4, Exh. C, Notice Plan at ¶ 12). The Notice of Proposed Class Litigation Settlement ("Long Notice") describes the nature of the action and the claims asserted in the operative complaint. (See Dkt. 183-4, Settlement Agreement, Exh. B (Long Notice) at 1, 4); see also Fed. R. Civ. P. 23(c)(2)(B)(i) & (iii). It provides the definition of the class, (see Dkt. 183-4, Settlement Agreement, Exh. B (Long Notice) at 4-5); see also Fed. R. Civ. P. 23(c)(2)(B)(ii), and explains the terms of the settlement, including the settlement amount, the distribution of that amount, the

release, and the incentive payment for the class representative.[7] (See Dkt. 183-4, Settlement Agreement, Exh. B (Long Notice) at 5-6, 9). The Notice includes an explanation that lays out the class members' options under the settlement: they may remain in the class, object to the settlement but still remain in the class, or exclude themselves from the settlement and pursue their claims separately against defendant. (See id. at 2, 6-9); see also Fed. R. Civ. P. 23(c)(2)(B)(v) & (vi). Finally, the Notice explains the procedures for objecting to the settlement and provides information about the Final Fairness Hearing. (See Dkt. 183-4, Settlement Agreement, Exh. B (Long Notice) at 8-12).

Based on the foregoing, the court finds there is no alternative method of distribution that would be more practicable here, or any more reasonably likely to notify the class members. In addition, the court finds that the procedure for providing notice and the content of the class notice constitute the best practicable notice to class members and comply with the requirements of due process.

E. Summary.

The court's preliminary evaluation of the settlement does not disclose grounds to doubt its fairness "such as unduly preferential treatment of class representatives or segments of the class, inadequate compensation or harms to the classes, . . . or excessive compensation for attorneys." Manual for Complex Litig. § 21.632 at 321 (4th ed. 2023); see also Spann, 314 F.R.D. at 323 (same).

CONCLUSION

Based on the foregoing, IT IS ORDERED THAT:

1. Plaintiff's Motion for Preliminary Approval of Class Action Settlement **(Document No. 183)** is **granted** upon the terms and conditions set forth in this Order.

2. The court preliminarily certifies the class, as defined in § 6.1 of the Settlement Agreement (Dkt. 183-4), for the purposes of settlement.

[7] The Notice will also disclose how much class counsel will seek in fees and expenses. (See Dkt. 183-4, Settlement Agreement, Exh. B (Long Notice) at 11)

3. The court preliminarily appoints plaintiff Cynthia Ford as class representative for settlement purposes.

4. The court preliminarily appoints the Law Offices of Ronald A. Marron as class counsel for settlement purposes.

5. The court preliminarily finds that the terms of the settlement are fair, reasonable and adequate, and comply with Rule 23(e) of the Federal Rules of Civil Procedure.

6. The court approves the form, substance, and requirements of the Notice. (See Dkt. 183-4, Settlement Agreement, Exh. B (Long Notice)). The proposed manner of notice of the settlement set forth in the Settlement Agreement constitutes the best notice practicable under the circumstances and complies with the requirements of due process.

7. The court appoints Classaura as settlement administrator. Classaura shall complete dissemination of class notice, in accordance with the proposed notice plan, no later than **July 11, 2024**.

8. Plaintiff shall file a motion for attorney's fees and costs, as well as any incentive payment, no later than **July 22, 2024**, and notice it for hearing for the date of the final approval hearing set forth below.

9. Any class member who wishes to either (a) object to the settlement, including the requested attorney's fees, costs and incentive award, or (b) exclude him or herself from the settlement, must file his or her objection to the settlement or request exclusion no later than **September 19, 2024**, in accordance with the Notice and this Order.

10. Plaintiff shall, no later than **September 26, 2024**, file and serve a motion for final approval of the settlement and a response to any objections to the settlement. The motion shall be noticed for hearing for the date of the final approval hearing set forth below.

11. Defendant may file and serve a memorandum in support of final approval of the Settlement Agreement and/or in response to objections no later than **October 3, 2024.**

12. Any class member who wishes to appear at the final approval (fairness) hearing, either on his or her own behalf or through an attorney, to object to the settlement, including the

requested attorney's fees, costs or incentive awards, shall, no later than **October 10 2024**, file with the court a Notice of Intent to Appear at Fairness Hearing.

13. A final approval (fairness) hearing is hereby set for **November 7, 2024,** at **10:00 a.m.** in Courtroom 6D of the First Street Courthouse, to consider the fairness, reasonableness, and adequacy of the Settlement Agreement as well as the award of attorney's fees and costs to class counsel, and incentive award to the named plaintiff.

14. All proceedings in the Action, other than proceedings necessary to carry out or enforce the Settlement Agreement or this Order, are stayed pending the final fairness hearing and the court's decision whether to grant final approval of the settlement.

Dated this 10th day of June, 2024.

/s/
Fernando M. Olguin
United States District Judge