UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JS-6

CIVIL MINUTES - GENERAL

Case No.	8:16-cv-00563-SVW-AFM	Date	7/30/2020
Title	*Demeta Reyes v. Experian Information Solutions, Inc.*		

Present: The Honorable	STEPHEN V. WILSON, U.S. DISTRICT JUDGE	
Paul M. Cruz		N/A
Deputy Clerk		Court Reporter / Recorder
Attorneys Present for Plaintiffs:		Attorneys Present for Defendants:
N/A		N/A

Proceedings: ORDER GRANTING FINAL SETTLEMENT APPROVAL [155] AND GRANTING IN PART PLAINTIFFS' MOTION FOR ATTORNEY'S FEES AND COSTS [154]

Lead Plaintiff, Demeta Reyes ("Plaintiff"), filed this motion seeking final settlement approval, attorneys' fees, costs, and a service award on March 23, 2020 on behalf of Class Counsel, Stueve Siegel Hanson LLP, Robinson Calcagnie, Inc., and Hartley LLP ("Class Counsel"). Dkt. 154. Defendant Experian Information Solutions, Inc. ("Defendant" or "Experian") has not opposed this motion, nor has any class member filed an objection to the settlement. For the reasons articulated below, the Court GRANTS final approval of the settlement and GRANTS IN PART Plaintiff's motion for attorney's fees, awarding Class Counsel $4,000,000 in fees, as well as all requested litigation costs and service awards.

I. Factual and Procedural Background

Plaintiff initially filed this class action lawsuit on February 16, 2016. Dkt. 154 at 4. The parties filed a stipulation for settlement approval with the Honorable Andrew J. Guilford (Ret.), and Judge Guilford granted preliminary approval of the parties' class action settlement on January 20, 2020. *Id.* at 1. After notice to the class and an appropriate claims period, final settlement approval and Counsel's motion for attorneys' fees are now before the Court. Dkt. 154; Dkt. 155.

Plaintiff represents a class of individuals who were adversely affected by Experian reporting delinquent borrowers to a debt collector in states where the loans had been deemed illegal by those states. Dkt. 154 at 1–2. Plaintiff alleged that Experian had willfully violated § 1681e(b) of the Fair Credit Reporting Act. *Id.* at 2. After discovery, each party filed a motion for summary

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judgment. *Id.* at 4. On February 16, 2018, after Judge Guilford entered summary judgment for Experian, Plaintiff filed an appeal with the Ninth Circuit Court of Appeals. *Id.* at 5. The Ninth Circuit reversed the grant of summary judgment for Defendants on May 17, 2019 and remanded the case back to Judge Guilford. *Id.* Following remand, Judge Guilford granted Plaintiff's motion for class certification on October 1, 2019. *Id.* at 6. On October 5, 2019, Defendant appealed the grant of the class certification to the Ninth Circuit. *Id.* On November 13, 2019, after several weeks of working with a mediator, the parties reached a settlement agreement prior to the Ninth Circuit's order on Defendant's appeal. *Id.* at 8.

The settlement agreement between the class and Experian creates a total settlement fund of $24,000,000. *Id.* at 1. The settlement fund is non-reversionary. *Id.* at 12. Plaintiffs request $8,000,000 in attorneys' fees, which is 33.33% of the gross settlement amount. *Id.* Plaintiffs additionally request reimbursement of litigation expenses totaling $130,482.24. *Id.* Lastly, Plaintiff requests a service award of $15,000. *Id.* at 25.

II. Final Settlement Approval

Judge Guilford previously considered the criteria for class certification under Federal Rule of Civil Procedure (FRCP) 23(e) on the motion for preliminary approval. *See* Dkt. 146. In granting preliminary approval to the Settlement, Judge Guilford acknowledged the parties' "extensive litigation efforts" over a multi-year period and concluded that the relevant factors supported a finding at that stage that the proposed settlement is "overall fair, reasonable, and appropriate." *Id.* at 3. Those factors included (i) "that the parties reached the settlement after significant arms-length negotiations with a third-party mediator" (*id.* at 3); (ii) an agreement was reached "only after extensive discovery, motion practice, and an appeal" (*id.*); (iii) the proposed release "appears fair and reasonable" (*id.* at 4); and (iv) the proposed notice is in "plain, easily understood language" and meets the requirements of Rule 23(c)(2)(B). *Id.* at 4–5.

Notice has been provided to Settlement Class Members in accordance with the Settlement Agreement and Notice plan approved by the Preliminary Approval Order. The Notice fully and accurately informed Settlement Class Members of all material elements of the proposed settlement and of their opportunity to object or exclude themselves, was the best notice practicable under the circumstances, and satisfies Rule 23(e) and the due process guarantees of the U.S. Constitution.

The Court concludes that nothing has occurred in the interim that would disturb Judge Guilford's preliminary finding that the Settlement is fair, reasonable, and adequate, especially considering the overwhelmingly positive reaction from the Settlement Class following the dissemination of Notice. Out of the 56,558 Settlement Class Members who were sent Notice, only five excluded themselves from the settlement (0.0088%), and only two objected (0.0035%),[1] both of which were voluntarily withdrawn. With such a large Class, the absence of a large number of objections raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members. *See*, *e.g.*, *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528-29 (C.D. Cal. 2004).

Upon the Effective Date, the Releasing Parties shall fully and finally release and discharge each other as set forth in the Settlement Agreement.[2] Without affecting the finality of this judgment, the Court reserves and retains jurisdiction over the interpretation, implementation, and performance of the Settlement Agreement and this Order. Pursuant to Federal Rule of Civil Procedure 23(e), the Court hereby GRANTS final approval of the Settlement and finds that it is, in all respects, fair, reasonable, and adequate and in the best interests of the Settlement Class. The Court directs the Parties and the Settlement Administrator to implement the Settlement according to its terms and conditions.

III. Attorneys' Fees, Costs, and Service Award

a. Legal Standard

In awarding attorneys' fees under FRCP 23(h), "courts have an independent obligation to ensure that the award, like the settlement itself, is reasonable." *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011). In the Ninth Circuit, there are two primary methods to calculate attorneys' fees: the lodestar method and the percentage-of-recovery method.

[1] The two Settlement Class Members who submitted objections to the Settlement both contended that their individual circumstances may warrant higher payouts, but neither asserted that the settlement is unfair, unreasonable, or inadequate to the Settlement Class as a whole. Accordingly, even if the merits of these objections are considered, they do not provide any grounds to reject the proposed settlement and are hereby overruled. *See Wren v. RGIS Inventory Specialists*, 2011 WL 1230826, at *12 (N.D. Cal. Apr. 1, 2011).

[2] Jennifer Mitchell, Mildred Keys, Sharon Plantz, Valerie Perkins, and Virginia Clemmer, the five individuals listed in Exhibit B to the Settlement Administrator Declaration submitted with Plaintiff's motion for final approval of settlement (Dkt. 155), have validly excluded themselves from the Settlement Class and shall not be bound by the Settlement.

Id. at 941–42. Under the percentage-of-recovery method, the attorneys' fees equal some percentage of the common settlement fund; in the Ninth Circuit, the benchmark percentage is 25%. *Id.* at 942. The lodestar method requires "multiplying the number of hours the prevailing party reasonably expended on the litigation (as supported by adequate documentation) by a reasonable hourly rate for the region and for the experience of the lawyer." *Id.* at 941.

A district court has discretion in calculating fees, or approving a fee request, but it "abuses that discretion when it uses a mechanical or formulaic approach that results in an unreasonable reward." *In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 992 (9th Cir.2010) (internal quotation marks omitted). One way that a court may demonstrate that its use of a particular method or the amount awarded is reasonable is by conducting a cross-check using the other method. For example, a crosscheck using the lodestar method "can 'confirm that a percentage of recovery amount does not award counsel an exorbitant hourly rate.'" *In re Bluetooth.*, 654 F.3d at 945 (quoting *In re Gen. Motors Corp. Pick–Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 821 n. 40 (3d Cir.1995)).

Because the relationship between class counsel and class members turns adversarial at the fee-setting stage, district courts assume a fiduciary role that requires close scrutiny of class counsel's requests for fees and expenses from the common fund. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1052 (9th Cir. 2002); *see also In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 994 (9th Cir. 2010) ("As a fiduciary for the class, the district court must 'act with a jealous regard to the rights of those who are interested in the fund in determining what a proper fee award is.'" (internal quotation marks omitted) (quoting *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1302 (9th Cir. 1994))); 4 William B. Rubenstein, Newberg on Class Actions § 13:40 (5th ed. 2012).

b. Attorneys' Fees

As is customary in large-figure class action settlements, the Court acts within its discretion to first analyze the fee request under the common fund approach, and then cross-check this analysis with reference to the provided lodestar figures submitted by Class Counsel, to ensure the award is reasonable. *See Acosta v. Frito-Lay, Inc.*, 2018 WL 2088278, at *11-12 (N.D. Cal. May 4, 2018); *Smith v. Am. Greetings Corp.*, 2016 WL 362395, at *8-9 (N.D. Cal. Jan. 29, 2016).

i. Common Fund

Plaintiffs seek 33.33% of the total settlement fund in attorneys' fees, for a total fee award of $8,000,000. Dkt. 154 at 9. Plaintiffs acknowledge that the "benchmark" figure for fee award analysis under the percentage of a common fund approach is 25%. *See In re Bluetooth*, 654 F.3d at 942; *see also In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 570 (9th Cir. 2019). However, Plaintiffs argue that "special circumstances" present in this case justify an upwards departure from this benchmark. Dkt 154 at 9–20.

The Ninth Circuit has indicated that factors relevant for consideration of an upwards percentage fee adjustment include (1) the extent to which class counsel achieved exceptional results for the class; (2) whether the case was risky for class counsel; (3) whether counsel's performance generated benefits beyond the cash settlement fund; (4) the market rate for the particular field of law; (5) the burdens class counsel experienced while litigating the case; (6) and the duration during which the case was handled on a contingency basis. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048–50 (9th Cir. 2002); *see also In re Optical Disk Drive Prods. Antitrust Litig.*, 2020 WL 2507359, at *6 (9th Cir. May 15, 2020).

The Court concludes that, given the record, none of these factors justify an upwards adjustment to the 25% benchmark in the Ninth Circuit. Plaintiff argues that they are entitled to an upward adjustment because the quality of the result was "outstanding." Dkt. 154 at 11. Plaintiff contends that the settlement achieved was "the largest settlement Experian has ever agreed to" and that the recovery per class member was "five times the average" for cases similar to this case. *Id.* at 12. The Court finds that while this is a positive litigation outcome, it is not an extraordinary result that justifies an upwards adjustment to the Ninth Circuit benchmark because the class only recovered 42.57% of the maximum possible recovery at trial in the settlement. *Id.* at 13; *See Taylor v. TIC - The Indus. Co.*, 2018 WL 6131198, at *7 (C.D. Cal. Aug. 1, 2018) (declining to conclude that an early settlement for a substantial fraction of potential liability necessarily constituted an "extraordinary" result).

Plaintiff also argues that the risks of the litigation favor an upward adjustment because *Spokeo v. Robins*, 136 S. Ct. 1540 (2016), a case in which the Supreme Court analyzed Article III standing under the statute in this case, was pending before the Supreme Court at the time of filing, making the risk of filing the suit high because of the potential the case could be dismissed after *Spokeo* was decided. Dkt. 154 at 14. Plaintiff also contends that this case "presented a unique fact pattern and novel and untested theory of liability." *Id.* Plaintiff admits themselves,

however, that they first filed in state court so that Plaintiff could remand to state court in the case that the Supreme Court found in *Spokeo* that this Court lacked jurisdiction to hear the case. *Id.* Therefore there was not a risk based on *Spokeo* that Plaintiff would not recover, only a risk that Plaintiff would have to remand the case to state court. Even though Experian was embroiled in substantial controversy at the time of the suit, as one of the three major American credit-reporting bureaus, there was not a significant risk of non-payment if Plaintiffs prevailed. *See Taylor v. TIC*, 2018 WL 6131198, at *8 (explaining that the risk of non-payment in event of a negative outcome is not an "extreme risk" meriting upwards adjustment).

Plaintiff additionally argues that they are entitled to an upward adjustment because of the contingent nature of the case. Dkt. 154 at 18. Plaintiff contends that Class Counsel took this case on a contingency basis and advanced out-of-pocket litigation costs. *Id.* at 18–19. In major class-actions, contingency is the norm not the exception, so this factor does not turn in Plaintiffs favor. *See Taylor v. TIC*, 2018 WL 6131198, at *8.

After considering the factors discussed above, the Court concludes that Plaintiff has not established that this is an exceptional case where Class Counsel is entitled to an upward adjustment of the 25% benchmark. An award of 25% of the gross settlement amount of $24,000,000 would equate to $6,000,000 in attorneys' fees—a windfall for Class Counsel. *See In re Bluetooth*, 654 F.3d at 942 (finding that the 25% benchmark was inappropriate and explaining that courts should "adjust the benchmark percentage" where an award of 25% of the gross settlement amount would create a "megafund" and windfall profits for the attorneys).

The Court instead finds that a downward adjustment from the 25% benchmark to 16.67% of the gross settlement amount, or $4,000,000, is warranted in this case. This adjustment is justified because fees accrued by Class Counsel only amount to $2,085,843.50, and, as explained further below, an award of $6,000,000 would result in nearly a 300% multiplier to Plaintiffs' lodestar calculation. *Fischel v. Equitable Life Assur. Society of U.S.*, 307 F.3d 997, 1007 (9th Cir. 2002) (finding that the district court's downward adjustment of the 25% benchmark was reasonable given that an award of 25% of the settlement amount would have been a windfall). The Court therefore finds that Class Counsel's work justifies a 16.67% fee award rather than the requested 33.33% fee award. The Court calculates this percentage of the $24,000,000 total settlement to be $4,000,000.

ii. Lodestar Cross-Check

A downward adjustment appears to be even more reasonable and fair in light of the lodestar cross-check. As is customary, the Court checks this fee award against the lodestar, "calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation by a reasonable hourly rate." *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996). The declaration submitted by Class Counsel sufficiently documents and justifies their hourly billing rates and shows a combined hourly billing total of 3,030.3 hours incurred during the course of this litigation. Dkt. 154 Siegel Decl. at 18. At the appropriately justified hourly rates for each of the attorneys employed by Class Counsel, this results in a total lodestar figure of $2,085,843.50. Awarding $6,000,000 to Class Counsel would result in a 2.88 lodestar multiplier, which is not justified by this record. The Court therefore awards $4,000,000, which, when compared with the common fund fee award calculated above, results in a more reasonable lodestar multiplier of 1.92. While avoiding a windfall, the award still provides a substantial risk enhancement to Class Counsel and is consistent with many wage and hour cases in the Ninth Circuit. *See In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices, and Prods. Liab. Litig.*, No. 8:10ML 02151 JVS (FMOx), 2013 WL 12327929 at *33 (C.D. Cal. July 24, 2013) (finding that a 2.87 lodestar multiplier was within the range approved by courts in the Ninth Circuit); *Acosta v. Frito-Lay*, 2018 WL 2088278, at *14 (1.94 lodestar multiplier); *Smith v. Am. Greetings Corp.*, 2016 WL 362395, at *8-9 (N.D. Cal. Jan. 29, 2016) (1.8 lodestar multiplier).

c. Litigation Costs

An attorney is entitled to "recover as part of the award of attorney's fees those out-of-pocket expenses that would normally be charged to a fee paying client." *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (citation omitted). To support an expense award, plaintiffs must file an itemized list of their expenses by category and the total amount advanced for each category, allowing the Court to assess whether the expenses are reasonable. *Smith v. Am. Greetings Corp.*, 2016 WL 362395, at *9 (N.D. Cal. Jan. 29, 2016) (citations omitted).

Plaintiffs has submitted evidence adequately documenting litigation costs of $130,482.24 incurred during the course of this litigation. Dkt. 154 at 23. These expenses are properly categorized and reasonable in light of the course of the litigation overall. The Court awards $130, 482.24 in costs to Class Counsel.

d. Service Award

Lastly, Plaintiff requests a service award of $15,000. "Incentive awards are fairly typical in class action cases." *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948 (9th Cir. 2009). "[N]amed plaintiffs, as opposed to designated class members who are not named plaintiffs, are eligible for reasonable incentive payments." *Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003). In determining whether a service award is appropriate, courts consider "the number of named plaintiffs receiving incentive payments, the proportion of the payments relative to the settlement amount, and the size of each payment . . . ." *Id.*

Here, there is one Plaintiff requesting a service award, amounting to less than 0.01% of the gross settlement amount. Plaintiff requests the service award because Plaintiff "participated in the litigation from the outset" and produced documents, prepared and reviewed discovery responses, and traveled to Atlanta, Georgia to meet with Class Counsel and sit for a deposition with Experian. Dkt. 154 at 24. Other courts within the Central District of California have found a service award of $15,000 per named plaintiff to be reasonable. *See Boyd v. Bank of Am. Corp.*, No. SAVC 13-0561-DOC (JPRx), 2014 WL 6473804 at *7 (C.D. Cal. Nov. 18, 2014) (finding that a service award of $15,000 was reasonable where the settlement amount was $5,800,000 and the named plaintiff had spent significant time and effort in the litigation); *Vaccarino v. Midland Nat. Life Ins. Co.*, No. 11 CV-5858-CAS (MANx), 2014 WL 4782603 at *2 (C.D. Cal. Sept. 22, 2014) (approving a service award of $15,000 where the attorneys' fees were $5,850,000); *Edwards v. First Am. Corp.*, No. CV 07-03796 SJO (FFMX), 2016 WL 9176564 at *1 (C.D. Cal. Oct. 14, 2016) (awarding a service award of $15,000 where the named plaintiff spent considerable time and effort on the litigation). The Court therefore GRANTS Plaintiff's request for a $15,000 service award.

IV. Conclusion

The Court GRANTS Plaintiff's motion for final approval of the settlement. The Court GRANTS IN PART Plaintiff's motion for attorney's fees, costs, and service award. Class Counsel is awarded $4,000,000 in attorney's fees and $130,482.24 in costs. Named Plaintiff is awarded a service award of $15,000.

IT IS SO ORDERED.

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