E-Served: Sep 18 2024 2:08PM PDT Via Case Anywhere

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Spring Street Courthouse, Department 14

19STCV24865
RONA KOMINS, et al. vs DAVE YONAMINE, et al.

September 18, 2024
11:00 AM

Judge: Honorable Kenneth R. Freeman
Judicial Assistant: I. Arellanes
Courtroom Assistant: C. Gomez

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): Kas Larene Gallucci via- LACC

For Defendant(s): Carolyn Sing Toto via- LACC; Jeffrey David Wexler via- LACC

NATURE OF PROCEEDINGS: Hearing on Motion for Final Approval of Settlement; Hearing on Motion for Attorney Fees

A copy of the Court's tentative ruling is posted on Case Anywhere for the parties to review.

The matters are called for hearing.

The Court has read and considered all documents in connection to the above titled motions.

There are no objectors present this date.

Counsel submit on the Court's tentative ruling.

The Court's tentative ruling is adopted as the final ruling of the Court and is incorporated herein as follows:

The Plaintiff's Motion for Attorneys' Fees, Costs, and Incentive Award filed by Rona Komins on 08/05/2024 and Plaintiff's Motion for Final Approval of Class Action Settlement filed by Rona Komins on 08/28/2024 are Granted.

Non-Appearance Case Review Re. Distribution is scheduled for 10/24/2025 at 04:00 PM in Department 14 at Spring Street Courthouse.

A Declaration Re. Distribution Report is to be filed and posted by noon on 10/22/2025.

The Final Judgment and Order: (1) Approving Class Counsel Fees and Expenses, (2) Award Class Counsel Fees and Expenses, (3) Awarding Class Representative Incentive Award, and (4) Dismissing Action with Prejudice is signed and filed this date.

Counsel for Plaintiff is directed to give notice.

Clerk's Certificate of Service By Electronic Service is attached.

E-Served: Sep 18 2024 11:05AM PDT Via Case Anywhere

KOMINS v. DAVE YONAMINE, ET AL.
Case No.: 19STCV24865
Hearing Date: 9/18/24
Department 14

MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

MOTION FOR ATTORNEYS' FEES

TENTATIVE RULING

Grant motion for final approval; grant motion for fees in the amount of $729,116.64, and award costs of $63,383.36 and an incentive payment to Plaintiff Komins in the amount of $7500

DISCUSSION

I. Background

This is a putative class action brought by Plaintiff Rona Komins, on behalf of herself and her minor children, B.K. and M.K. Plaintiff brings the action on behalf of parents of children who, while playing online games via a smartphone app, have had their personal identifying information tracked, collected, and shared by MobilityWare and its partners for targeted advertising and other commercial exploitation. [Third Amended Complaint ("TAC"), ¶1.] This conduct allegedly violates California state laws (such as California's Constitutional Right to Privacy; Intrusion Upon Seclusion, the California Online Privacy Protect Act of 2003 (CalOPPA), Cal. Bus. & Prof. Code §22575; the California Consumer Privacy Act (2018) (CCPA), Cal. Civ. Code §1798.120(c)); and the federal Children's Online Privacy Protection Act ("COPPA"), 15 U.S.C. §§6501-6506. [TAC, ¶197.]

Plaintiff alleges that Defendant MobilityWare is a mobile gaming app developer that offers a host of mobile gaming apps (which have been downloaded over 400 million times). [TAC, ¶18.] However, unbeknownst to parents and their children, as users play one of MobilityWare's Gaming Apps, Defendant MobilityWare, in partnership with the SDK Defendants collect Personal Data and track online behavior to profile users for targeted advertising. [TAC, ¶28.] Per the TAC, "[a]s soon as a user downloads and opens up one of the Gaming Apps on his or her mobile device, MobilityWare immediately begins to collect Personal Information, defined in its Privacy Policy as 'information that identifies, relates to, describes, references, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or device.'" [TAC, ¶29.] Targeted advertising is driven by users' Personal Data and employs sophisticated algorithms that interpret the Personal Data to determine the most effective advertising for individual users. [TAC, ¶30.] Ultimately, the TAC alleges, "children's personal information is collected by MobilityWare and its SDK partners, which is then sold to third parties who track and use the collected information and analyze it with sophisticated algorithms to create a user profile of the child. This profile is then used to serve behavioral advertising to children whose profile fits a set of demographic and behavioral traits."

[TAC, ¶33; see also ¶43 (setting forth the categories of information MobilityWare allegedly collects as soon as a user plays one of the Gaming Apps).]

With the combined Personal Data alleged in the TAC, MobilityWare tracks, profiles, and targets users for advertising purposes, and sells this combined information to third-party SDKs who do the same. [TAC, ¶50.] Defendant MobilityWare has allegedly contracted with at least 38 SDKs for advertising purposes during the proposed Class Period. [TAC, ¶51.] The information collected is used to measure the effectiveness of the ads, offer targeting advertising, and undertake web analytics (like Google analytics). [TAC, ¶54.] Defendants collect this information through the use of tracking technologies and share this information with their customers and clients. [*Id.*] Defendants allegedly use such personal information to personalize the Gaming Apps to deliver content and product and service offerings relevant to a user's interests, including targeted offers and ads. [TAC, ¶55.]

Plaintiffs allege that "[w]hen children are tracked over time and across the Internet, various activities are linked to a unique and persistent identifier to construct a profile of the user of a given mobile device. Viewed in isolation, a persistent identifier is merely a string of numbers uniquely identifying a user, but when linked to other data points about the same user, such as app usage, geographic location (including likely domicile), and Internet navigation, it discloses a personal profile that can be exploited in a commercial context." [TAC, ¶59.] Per the TAC, Plaintiffs allege that "Defendants use children's Personal Data to serve them targeted advertising and for other privacy-invasive commercial purposes. Defendants engage in this behavior despite the known risks associated with and ethical norms surrounding advertising to children." [TAC, ¶72.] Defendants allege that this conduct, and the conduct further alleged in the TAC, violates Plaintiffs' expectations of privacy. [TAC, ¶87.]

Plaintiffs allege claims for violation of the California Constitution's Constitutional Right to Privacy (Cal. Const., Art. I, §1); Intrusion upon Seclusion; Violation of the California Unfair Competition Law (B&P Code §§17200, et seq.); Fraud by Omission (Civ. Code §§1709-1711); and Negligent Misrepresentation (Civ. Code §§1709-1710). Plaintiffs bring these claims on behalf of the following classes:

> Parents of California Children Residents Under 13 Years Old: All parents or legal guardian(s) of children residing in the State of California who are younger than 13 years of age, or were younger than the age of 13 when they played the MobilityWare Gaming Apps, from whom Defendants collected, used, or disclosed personal information.
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> Parents of California Children Residents Under 18 Years Old: All parents or legal guardian(s) of children residing in the State of California who are younger than 18 years of age, or were younger than the age of 18 when they played the MobilityWare Gaming Apps, from whom Defendants collected, used, or disclosed personal information.
>
> California Adult Class: All persons residing the United States of America who were older than 18 years of age when they played the MobilityWare Gaming

Apps from whom Defendants collected, used, or disclosed personal information without disclosures, permissions, or consent. [TAC, ¶147.]

Defendants previously moved to compel arbitration of the claims. The Court denied the motion to compel arbitration on August 20, 2020. On October 5, 2020, the Court and the parties conferred telephonically regarding the sufficiency of Plaintiff's pleadings. As a result of that conference, the Court gave Plaintiff twenty-one (21) days from October 5, 2020 to file a further amended complaint, and gave Defendants an additional 30 days after that to file their response. [See October 20, 2020 Order re: Amendment to the Pleadings.]

Plaintiffs filed their SAC on October 26, 2020. Defendants demurred to the SAC, and moved to strike the SAC. The Court overruled the demurrer, and granted the motion to strike the claim for unjust enrichment to allow Plaintiff to substitute a claim for quasi-contract. The Court denied the motion to strike in all other respects. Defendants subsequently moved to transfer venue of the case to Orange County, a motion the Court denied.

Following discovery, the parties entered into a settlement of the case. However, the Court rejected the initial version of the settlement in December 2021. Subsequently, the parties reached an amended settlement. Following certain revisions responding to the Court's concerns with the amended settlement, the Court ultimately granted the motion for preliminary approval of the amended settlement on April 25, 2024.

The parties now move for final approval and for an order granting Plaintiff attorneys' fees in the amount of $729,116.64.

II. Events since preliminary approval

1. Notice process

In addressing the notice process, Plaintiffs have submitted the Declaration of Stephanie Valerio, Assistant Case Manager for RG/2 Claims Administration, LLC.

Ms. Valerio declares that RG/2 established a website in accordance with the March 27, 2024 settlement agreement. [Valerio Decl., ¶4.] The website includes:

a. The "Homepage", which contains a brief summary of the Settlement and advises potential Class Members of their rights under the Settlement. (Exh. A to Valerio Decl.)
b. The "Notice" page, which contains a pdf copy of the Long Form Notice and Summary Notice of Class Action Settlement (Exh. B to Valerio Decl.);
c. The "Court Documents" page, which contains: the Third Amended Class Action Complaint, Defendants' Answer to Third Amended Class Action Complaint, Class Action Litigation Settlement Agreement and Order Granting Plaintiffs' Unopposed Motion For Preliminary Approval of Class Action Settlement;

d. The “Contact” page, which contains the contact information of the Claims Administrator, Class Counsel, and Defense Counsel. [Valerio Decl., ¶4(a-d).]

Valerio attests that RG/2 Claims also made available a toll-free phone number at (866) 742-4955 for Class Members to speak with a live operator or leave a voicemail message requesting a returned call. [Valerio Decl., ¶5.]

Valerio declares that on July 6, 2024 through August 4, 2024, RG/2 Claims launched a digital media notice using banner ads placed on the Google Display network, a social media notice using paid banner ads on the Facebook and Instagram social media platforms and paid search Notice ads placed on Google and Bing search engines. [Valerio Decl,. ¶6.] The ad campaign totaled 3,982,327 impressions. The platform and the impressions are listed below:

Network	Impressions
Paid Social (Facebook & Instagram)	1,974,492
Display (Google Display Network)	2,000,671
Paid Search (Microsoft Bing & Google Search Ads)	7,164

[Valerio Decl., ¶6.]

Valerio declares that the Notice also advised Class Members of their right to object to the Settlement in writing or to exclude themselves from the Settlement, provided that their written objection or exclusion be sent to RG/2 Claims postmarked no later than August 19, 2024. [Valerio Decl., ¶7.] As of the date of her August 28, 2024 Declaration, RG/2 Claims has not received any exclusion requests or any objections. [*Id.*] Valerio attests the notice procedures are consistent with the class-action notice plan that was approved by this Court and constitute the best notice practicable under the circumstances. [Valerio Decl., ¶8.]

In California, the notice must have “a reasonable chance of reaching a *substantial* percentage of the class members.” *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 251 (emphasis added) (disapproved on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260, 269-270). Importantly, however, the plaintiff need not demonstrate that each member of the class has received notice. As long as the notice had a “reasonable chance” of reaching a substantial percentage of class members, it should be found effective.

Here, under the *Wershba* standard above, it is difficult to gauge how successful notice may have been. However, as set forth at ¶6 of the Valerio Declaration, there were approximately 4 million impressions (on Facebook, Instagram, and Google). By that measure, notice was successful. Additionally, there have been no objections or opt-outs following the notice protocol approved by the Court.

2. *Dunk* Factors

It is the duty of the Court, before finally approving the settlement, to conduct an inquiry into the fairness of the proposed settlement. California Practice Guide, Civil Procedure Before Trial, ¶14:139.12 (The Rutter Group 2024); CRC 3.769(g). The trial court has broad discretion in determining whether the settlement is fair. In exercising that discretion, it normally considers the following factors: strength of the plaintiff's case; the risk, expense, complexity and likely duration of further litigation; the risk of maintaining class action status through trial; amount offered in settlement; extent of discovery completed and stage of the proceedings; experience and views of counsel; presence of a governmental participant; and reaction of the class members to the proposed class settlement. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801; *In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723; *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130. *See also Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, 336; *Munoz v BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 407.

This list is not exclusive and the Court is free to balance and weigh the factors depending on the circumstances of the case. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244-245 (disapproved on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260, 269-270).

A class action settlement is presumed to be fair if:

(1) The settlement is reached through arm's-length bargaining between the parties;
(2) Investigation and discovery are sufficient to allow the attorneys and the judge to act intelligently;
(3) The attorneys are experienced in similar litigation; and
(4) The percentage of objectors is small.

California Judges Benchbook: Civil Proceedings – Before Trial, §11.67 (2019) (citing *Reed v United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, 337; *Munoz v BCI Coca-Cola Bottling Co*. (2010) 186 Cal.App.4th 399, 408; *Chavez v Netflix, Inc.* (2008) 162 Cal.App.4th 43, 52–53 (all four factors were established in this case); and *Carter v City of Los Angeles* (2014) 224 Cal.App.4th 808, 822 (judge properly considered that only 30 class members out of 280,000 class members objected to determination that settlement was fair)). An objector has the burden of rebutting this presumption. *Carter v. City of Los Angeles,* 224 Cal.App.4th at 820, 822.

The proponent bears the burden of proof to show the settlement is fair, adequate, and reasonable. *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1165-1166; *Wershba, supra,* 91 Cal.App.4th at 245. There is a presumption that a proposed fairness is fair and reasonable when it is the result of arm's-length negotiations. 2 Herbert Newburg & Albert Conte, Newburg on Class Actions §11.41 at 11-88 (3d ed. 1992); *Manual for Complex Litigation* (Third) §30.42.

Dunk/Wershba factors

1. Strength of the plaintiff's case/magnitude of claims

The Court had considered the *Dunk/Wershba* factors previously in connection with the motion for preliminary approval.

The most important factor in making this determination (i.e., the strength of the plaintiffs' case) is the strength of the plaintiffs' case on the merits, balanced against the amount offered in settlement. California Judges Benchbook: Civil Proceedings – Before Trial, §11.67 (2019). To make an informed evaluation of a proposed settlement a judge must have an understanding of the amount that is in controversy and the realistic range of outcomes in the litigation. California Judges Benchbook: Civil Proceedings – Before Trial, §11.67 (2019) (referencing *Clark*, 175 Cal.App.4th at 801 and *Munoz v. Coca-Cola Bottling Co., supra,* 186 Cal.App.4th at 407-408).

In assessing this factor, the Court "must be satisfied that the consideration the class members will receive for the release of their claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation." California Judges Benchbook: Civil Proceedings – Before Trial, §11.67 (2019) (referencing *Kullar, supra,* 168 Cal.App.4th 116, 129).

The California Judges' Benchbook additionally states as follows in discussing this first factor:

> The judge should give considerable weight to the competence and integrity of the attorneys and the role played by a neutral mediator, if any, in determining that a settlement agreement represents an arm's-length transaction entered without self-dealing or other potential misconduct. [Reference to *Kullar, supra,* at 129.] An agreement reached under these circumstances is presumably fair to all concerned, even when some of the affected class members have expressed objections; but in the final analysis it is the judge who bears the responsibility of ensuring that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the released claims, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing the litigation. [Reference to *Kullar* at 129.] California Judges Benchbook: Civil Proceedings – Before Trial, §11.67 (2019)

As *Kullar* states, while the Court should not attempt to decide the merits of the case or substitute its own evaluation of the most appropriate settlement, it must be satisfied that the class settlement is within the "ballpark" of reasonableness. California Judges Benchbook: Civil Proceedings – Before Trial, §11.67 (2019) (referencing *Kullar* at 133).

Applying these standards, the claims in this case were relatively strong. Plaintiffs challenged Defendants' practice of collecting the data of minors who played Defendants' online gaming apps. Plaintiffs were able to successfully defeat Defendants' pleading challenges, efforts to compel the case to arbitration, and motion to change venue. Plaintiffs, had the case proceeded to trial, would have had a probability of prevailing on at least some of their claims. Accordingly, this factor supports final approval.

2. The risk, expense, complexity, and likely duration of further litigation

Had this case not settled, there certainly would have been additional risks and expenses associated with continuing to litigate. As outlined above, there were complex issues in this case with regard to privacy (and the privacy rights of minors). As with all litigation, there was a risk that Plaintiffs would not prevail. There was a near certain risk of continued litigation if the case had not settled, further adding to the expense and complexity of this case. To deny final approval would indefinitely continue the litigation.

This factor weighs in favor of final approval.

3. The risk of maintaining class action status through trial

There was no class certified in this case. However, had a class been certified, it is likely Defendants would have tried to decertify it. This factor weighs in favor of final approval.

4. Amount offered in settlement

As part of the Court's analysis of this factor, the Court should take into consideration the admonition in *Kullar v. Foot Locker Retail, Inc*., *supra,* 168 Cal.App.4th 116, 133. In *Kullar*, objectors to a class settlement argued the trial court erred in finding the terms of the settlement to be fair, reasonable, and adequate without any evidence of the amount to which class members would be entitled if they prevailed in the litigation, and without any basis to evaluate the reasonableness of the agreed recovery. The Court of Appeal agreed with the objectors that the trial court bore the ultimate responsibility to ensure the reasonableness of the settlement terms. Although many factors had to be considered in making that determination, and a trial court was not required to decide the ultimate merits of class members' claims before approving a proposed settlement, an informed evaluation could not be made without an understanding of the amount in controversy and the realistic range of outcomes of the litigation.

The *Kullar* noted that the Court has a responsibility to independently evaluate the settlement, stating as follows:

> [T]he court must … receive and consider enough information about the *nature and magnitude* of the claims being settled, as well as the impediments to recovery, to make an independent assessment of the reasonableness of the terms to which the parties have agreed. We do not suggest that the court should attempt to decide the merits of the case or to substitute its evaluation of the most appropriate settlement for that of the attorneys. However, as the court does when it approves a settlement as in good faith under Code of Civil Procedure section 877.6, the court must at least satisfy itself that the class settlement is within the "ballpark" of reasonableness. (See *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499–500 [213 Cal. Rptr. 256, 698 P.2d 159].) While the court is not to try the case, it is "'called upon to consider and weigh the nature of the claim, the possible defenses, the situation of the parties, and *the exercise of business judgment* in determining whether the proposed settlement is reasonable.' " (*City of Detroit v. Grinnell Corporation, supra*, 495 F.2d at p. 462, italics added.) This the court cannot do if it is not provided with basic information

about *the nature and magnitude* of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a *reasonable compromise*. *Kullar, supra,* at 133.

To that end, and as noted above, the primary relief provided for under the settlement is injunctive relief. Per the settlement, Defendant will update each of the MobilityWare Gaming Apps to include a permanent, clear, and conspicuous pop-up notification that: (i) informs app users of MobilityWare's privacy policy and collection of personal information, and of app users' ability to opt out of selling of their personal information as applicable based on their regional privacy laws; (ii) informs app users that MobilityWare will delete personal information collected by app users upon request; and (iii) asks users to confirm that they are at least 18 years of age. Agreement § 7.2.

Additionally, MobilityWare will not collect, share, or sell personal information from new app users whose device settings indicate that they are in the United States unless and until the app users have (i) scrolled through the entirety of the notification, (ii) confirmed that they have read the notification, and (iii) confirmed that they are at least 18 years of age. Agreement § 7.2.

Further, Defendants have agreed to make a $100,000.00 cy pres payment, split equally between the Electronic Frontier Foundation, a non-profit digital rights group that champions user privacy (see https://www.eff.org/about), and the Electronic Privacy Information Center, a public interest non-profit research and advocacy organization established to "secure the fundamental right to privacy in the digital age for all people…" See https://epic.org/about/. Agreement § 7.3.

This relief, while not perfect, provides important prospective relief on a going-forward basis, and requires MobilityWare to cease what Plaintiffs had alleged was unlawful data collection. Additionally, the $100,000 cy pres settlement is appropriate, given the uncertainty of any specific monetary damages by the class members.

Based on the evidence before the Court, in support of both preliminary and final approval, the amount offered in settlement is a reasonable compromise for the class's alleged injuries. This factor weighs in favor of final approval.

5. Extent of discovery completed and stage of the proceedings

This case was filed on July 17, 2019. As discussed above, there has been significant litigation in this case, with multiple motions and discovery taken. The parties were prepared to file and argue a motion for class certification. Ultimately, the case went to arbitration, and settled. The case, in short, was at an advanced stage. This factor weighs in favor of final approval.

6. Experience and views of counsel

Counsel Marron concludes that the Settlement provides exceptional results for the Class while sparing the Class from the uncertainties of continued and protracted litigation. [Marron Decl., ¶9.] He declares that his firm has experience handling class action settlements. [Marron

Decl., ¶11.] He sets forth his extensive experience in class actions and other complex litigation at ¶¶16-52 of his Declaration. This factor weighs in favor of final approval.

7. Presence of a governmental participant

There is no governmental participant in this settlement, and this factor is inapplicable.

8. Reaction of the class members to the proposed class settlement

There have been no objections lodged to the settlement, and no requests for exclusion. This factor weighs in favor of final approval.

Conclusion on Motion for Final Approval

For all of these reasons, the *Dunk/Wershba* factors weigh in favor of a finding that the settlement is fair and reasonable. The motion for final approval is granted.

V. Attorneys' Fees

Class counsel requests fees in the amount of $729,116.64.

A. Determining the Lodestar Amount and Calculating Counsel's Hourly Rate and Fees

The court's first step in setting a fee award is to calculate the lodestar amount. *Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311; *Serrano v. Priest (Serrano III)* (1977) 20 Cal.3d 25, 48, n.23; Pearl, California Fee Awards (2024), §9.1. The lodestar figure is obtained by multiplying the hours worked by each person entitled to compensation by a reasonable hourly rate for those services. Pearl, California Fee Awards (2024), §9.1. The court then may adjust that lodestar figure upwards (a "multiplier") or downwards based on other factors that go into the determination of a reasonable attorney fee. *Id.*

The calculation of the lodestar figure is fundamental to the trial court's determination of the amount of fees to be awarded. Pearl, California Fee Awards (2024), §9.2 (citing *Serrano v Priest (Serrano III)* (1977) 20 C3d 25, 48). The lodestar figure is crucial in awarding fees because it anchors the analysis to an objective determination, which ensures that the trial judge does not award an arbitrary amount. Pearl, California Fee Awards (2024), §9.1. (citing *Serrano III, supra,* 20 Cal.3d at 49, n23; *Laffitte v Robert Half Int'l, Inc*. (2016) 1 Cal.5th 480, 498 (reaffirming this rule); *Roth v Plikaytis* (2017) 15 Cal.App.5th 283, 290 (applying rule in contract fee case).

Most courts start their determination of the lodestar figure by determining the number of hours reasonably spent by each biller. Pearl, California Fee Awards (2024), §9.3 (referencing *Serrano III, supra,* 20 Cal.3d 25, 48. "Generally speaking, hours are reasonable if they were 'reasonably expended in pursuit of the ultimate result achieved in the same manner that an attorney traditionally is compensated by a fee-paying client for all time reasonably expended on a matter.'" Pearl, California Fee Awards (2024), §9.4 (citing, *inter alia, Hensley v. Eckhart* (1983) 461 U.S. 424, 431; *Roberts v. City & County of Honolulu* (9th Cir. 2019) 938 F.3d 1020,

1026; *Irvine Unified School Dist. v. K.G.* (9th Cir. 2017) 853 F.3d 1087, 1095); *Baxter v. Bock* (2016) 247 Cal.App.4th 775, 793).

The reasonable market value of the attorney's services is the measure of a reasonable hourly rate. Pearl, California Fee Awards (2024), §9.93 (referencing *Ketchum v. Moses* (2001) 24 Cal.4th 1122; *PLCM Group v. Drexler* (2000) 22 Cal.4th 1084, 1094). "To determine reasonable market value, courts must determine whether the requested rates are 'within the range of reasonable rates charged by and judicially awarded comparable attorneys for comparable work.'" Pearl, California Fee Awards (2024), §9.93 (citing *Children's Hosp. & Med. Ctr. v. Bonta* (2002) 97 Cal.App.4th 740, 783).

When determining the amount of a fee award, the court should calculate it using the community's prevailing hourly rate for comparable legal services, even when the litigant did not pay the attorney the prevailing rate. *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1096. The burden is on the successful party to prove the appropriate market rate to be used in calculating the lodestar. Pearl, California Fee Awards (2024) §9.120.. Among the ways to demonstrate market rates are declarations from local attorneys, counsel's own declaration, expert testimony, counsel's own billing rates, rates awarded to the claiming attorneys in previous actions, rates awarded attorneys of comparable experience in other cases in the same market, surveys of billing rates, and opposing counsel's billing rates. Pearl, California Fee Awards (2024), §9.121.

"[T]he ' 'reasonable hourly rate [used to calculate the lodestar] is the product of a multiplicity of factors . . . the level of skill necessary, time limitations [imposed by the client or other limitations], the amount to be obtained in the litigation, the attorney's reputation, and the undesirability of the case.' '[Citation.]" *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1139. "A more difficult legal question typically requires more attorney hours, and a more skillful and experienced attorney will command a higher hourly rate." *Id.* at 1138-1139. "[I]n assessing a reasonable hourly rate, the trial court is allowed to consider the attorney's skill as reflected in the quality of the work, as well as the attorney's reputation and status." *MBNA American Bank, N.A. v. Gorman* (2006) 147 Cal.App.4th Supp. 1, 13.

This Court employs the lodestar method in awarding fees, as opposed to a "percentage of the common fund" method. This amount would reflect the actual work performed, plus a multiplier (if applicable) to recognize counsel's efforts.

The lodestar calculations and hours for the attorneys who worked on the case are as follows:

Timekeeper	Rate Requested	Total Hours	Total Amount
Ronald Marron, Partner	$845	153.4	$129,623.00
Kas Gallucci, Senior Associate	$605	58.7	$35,513.50
Michael Houchin, Senior Associate	$570	261.2	$148,941.00

Lilach Halperin, Associate	$515	1,036.7	$533,900.50
Elisa Pineda, Associate	$440	21.7	$9,548.00
		1,531.7	TOTAL: $857,526.00

These amounts, according to Mr. Marron, were derived through counsel's firm's practice of keeping contemporaneous records for each timekeeper and to regularly record time records in the normal course of business. [Marron Decl., ¶17.] Counsel further declares that the firm kept time records in this case consistent with that practice. Moreover, his firm's practice is to bill in 6-minute (tenth-of-an-hour) increments. [*Id.*]

Discussion of Lodestar Amounts

Hourly rates of counsel are in the range of what is charged in the Los Angeles legal market for small to mid-sized firms, and appears to be reasonable based on the Marron Declaration. The Court makes this finding. Further, as discussed above and as set forth extensively in his Declaration, Mr. Marron has significant experience in litigating class actions and complex cases.

Counsel employed a high level of skill in prosecuting this case and achieving the settlement. This case is five (5) years old, and as discussed, was the subject of significant litigation. Plaintiff, through the efforts of counsel, prevailed against Defendants' efforts to arbitrate the claim, challenge the pleadings, and transfer venue to Orange County. Extensive discovery was served in the case. Ultimately, the case settled (following the Court's orders requiring revisions to the settlement). By all accounts, counsel for Plaintiffs and the class have good reputations in the legal community.

Moreover, the attorney hours of billed time could have been spent on other cases, had class counsel chosen to prosecute them. The amount of time spent on this case was significant, and achieved a positive result for Plaintiff and the class.

B. Negative Multiplier of approximately 0.85 requested

Based on the $857,526 lodestar, a negative multiplier of approximately 0.85 is being requested, resulting in an actual fee request of $729,116.64.

Once the Court has calculated the lodestar figure, it may consider other relevant factors that could increase or decrease that figure. "The court expresses these factors as a number (or as an equivalent percentage), and the lodestar is multiplied by that number. Thus, the number is referred to as the 'multiplier.'" Pearl, California Fee Awards (2024), §10.1. Although there are some objective standards governing what factors may be used to decide whether to apply a multiplier, the trial courts have considerable discretion in determining the size of the multiplier, as long as they consider the proper factors. Pearl, California Fee Awards (2024), §10.4. Indeed,

“there is ‘no mechanical formula [that] dictate[s] how the [trial] court should evaluate all these factors….[Citation.]’” *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41.

“[The lodestar] may be adjusted by the court based on factors including… (1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the extent to which the nature of the litigation precluded other employment by the attorneys, [and] (4) the contingent nature of the fee award. [Citation.] The purpose of such adjustment is to fix a fee at the fair market value for the particular action.” *Ketchum v. Moses, supra,* 24 Cal.4th at 1132. *See also Serrano III, supra,* 20 Cal.3d at 49. However, the Court cannot consider the same factors when setting both the multiplier and the lodestar. *See Ketchum, supra,* 24 Cal.4th at 1138; *see also Flannery v. CHP* (1998) 61 Cal.App.4th 629 (reversing the application of a 2.0 multiplier to a fee award, in part because “the skill and experience of counsel” and “the nature of the work performed” factors were duplicative of factors the trial court had explicitly considered in setting the lodestar).

Here again, applying a negative multiplier would be required to award the $729,116.64 sum. Considering the factors in assessing the multiplier, this case was probably at least of medium-range difficulty to prosecute (and, truth be told, possibly more difficult, given the privacy concerns involving minors). Counsel used great skill in arriving at the settlement.

While the amount of recovery itself is relevant to the attorney fee award, it cannot be the *sole* factor upon which the Court bases that award. *See Harman v. City and County of San Francisco* (2007) 158 Cal.App.4th 407, 419-421. An award of attorney fees in class action litigation must be tied to counsel's actual efforts *to benefit the class*. *Mark v. Spencer* (2008) 166 Cal.App.4th 219, 229. Here again, there is no real “cross check” for the Court to apply, given that the primary relief here is injunctive relief (with the $100,000 cy pres component).

Ultimately, though, the fee figure sought seems reasonable, relative to the work counsel put in the case and the efforts to benefit the class.

The Court finds the negative multiplier is appropriate here, and the $729,116.64 in attorneys’ fees is awarded, in full.

III. Costs and Costs of Administration

Counsel seeks litigation costs of $63,383.36. Litigation costs are broken down as follows at ¶16, Table 3 of the Marron Declaration:

Category	Amount
Expert Fees	$8,000
Filing, Appearance, Document Access Fees	$5,993.07
Process Servers/Delivery Fees	$1,320.00
Court Reports and Transcripts	$4,411.52
Travel Expenses	$63.37
Mediation Fees	$12,450.00
Calendaring Software	$635.00

Belaire West Notice	$2,055.40
Notice to the Class (RG/2 Claims Administration)	$28,515

These costs appear to be reasonable on their face. and are approved, as prayed.

Incentive Payment

Counsel requests an incentive payment of $7500 for the class representative, Rona Komins. The court considers the following factors, among others, in determining whether to pay an incentive or enhancement award to the class representative(s):

- Whether an incentive was necessary to induce the class representative to participate in the case;
- Actions, if any, taken by the class representative to protect the interests of the class;
- The degree to which the class benefited from those actions;
- The amount of time and effort the class representative expended in pursuing the litigation;
- The risk to the class representative in commencing suit, both financial and otherwise;
- The notoriety and personal difficulties encountered by the class representative;
- The duration of the litigation; and
- The personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. California Practice Guide, Civil Procedure Before Trial, ¶14:146.10 (The Rutter Group 2024) (citing *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804; *Golba v. Dick's Sporting Goods, Inc.* (2015) 238 Cal.App.4th 1251, 1272; *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412); *Roes, 1-2 v. SFBSC Mgmt., LLC* (9th Cir. 2019) 944 F.3d 1035, 1056-1057); *In re Apple Inc. Device Performance Litig.* (9th Cir. 2022) 50 F.4th 769, 786-787.

Plaintiff Komins sets forth the details on her participation in the litigation, including her extensive responses to discovery. [Komins Decl., ¶3.] Plaintiff attests that she, for the past five years, has reviewed copies of the material filings in the action and has communicated with counsel about major case developments. [Komins Decl., ¶2.] Plaintiff also declares that Defendant took her deposition, and prior to her deposition, she spent several hours preparing for it and meeting with counsel. [Komins Decl., ¶4.] She declares she has remained in contact with counsel during the course of the case. [Komins Decl., ¶5.] Additionally, Plaintiff made herself available by telephone during the mediation to discuss settlement proposals, and reviewed both versions of the settlement agreement. [Komins Decl., ¶7.]

Based on the statements in her Declaration, counsel has performed numerous acts resulting in a benefit to the class and protecting the class interests. Plaintiff undertook risks in

commencing suit, and spent significant time in her role as class representative during this 5 year case. Plaintiff also will benefit from the settlement herself. On balance, Plaintiff is entitled to the incentive payment, and $7500 is a reasonable figure.