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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

JAMES KNAPP, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

ART.COM, INC., a California Corporation; and DOES 1 through 50, inclusive,

Defendant.

Case No.: 3:16-cv-00768-WHO

PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Date; August 9, 2017
Time: 2:00 p.m
Courtroom: 2

Complaint filed: February 16, 2016
Trial Date: January 8, 2018

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

State Cases

I. INTRODUCTION

On May 19, 2017, the Court filed a revised order granting preliminary approval of the Settlement. Per the Court-approved notice plan, the Notice of the Settlement was disseminated to the Class on May 24, 2017. Class members have been afforded a period of 60 days to opt out or object to the Settlement and very few have done so. By this Motion, Plaintiff respectfully requests that the Court conduct a final review of the Settlement and approve the Settlement as fair, reasonable, and adequate.

The Settlement is in the best interest of the Class. If granted, the Settlement would provide finality to this contested litigation and afford significant relief to almost two million consumers throughout the country. The Settlement requires Art.com to pay approximately $20 million in the form of $10 Vouchers that will automatically be distributed to Settlement Class members, *i.e.*, those who did not opt out of the Settlement. The average Class member spent $23.80, so the $10 Vouchers represent 42% of the value of each Class member's *total* purchases. Thus, the $10 Voucher represents substantially more than 42% of the damages that Class members actually suffered. Moreover, neither Plaintiff nor any Class member has been dissatisfied with the product that they received.[1] The Vouchers represent real and substantial monetary value.

The Settlement also provides for substantial non-monetary relief, requiring Art.com to implement an auditing and compliance procedure to ensure that its sales practices do not mislead consumers in the manner alleged in the Complaint–namely, by advertising sales that are not bona fide sales because they are perpetual in nature. Therefore, Class members and others shopping on Art.com's e-commerce websites are not likely to be misled as to sales in the future. Achieving this non-monetary relief was Plaintiff's primary purpose in bringing this case.

[1] Indeed, no Class member is waiving their rights to seek legal redress against Art.com for a defective product, as this type of claim was not litigated in this case, and thus not released in the Settlement Agreement.

The relief the Settlement provides is fair and adequate in view of the risks and delays involved in continued litigation. The parties disagree on whether this case may proceed as a class action and as to the merits of Plaintiff's claims. Furthermore, the Settlement is the product of extensive arms-length, adversarial negotiations between the parties and their counsel, which included a full-day mediation session with an experienced and well-respected mediator. Finally, Class Counsel have extensive experience litigating consumer class actions, were well-informed about the legal and factual issues involved in this matter, and support this Settlement as being in the best interest of the Class.

The reaction from the Class thus far demonstrates as much. As of the date of this motion, 452 Class members have made a valid request to be excluded (which amounts to less than 0.3% of Class members receiving notice) and only thirteen purported Class members have filed objections to the Settlement. For the foregoing reasons, and the others detailed below, the Settlement readily meets the standards for final approval and should be approved by the Court.

II. STATEMENT OF FACTS

A more detailed summary of the procedural background of this case leading up to the Settlement is set forth in Plaintiff's motion for preliminary approval. *See* ECF No. 52. In summary, the Court preliminarily approved the Settlement by Order dated April 25, 2017, ECF No. 57, which was subsequently amended on May 18, 2017, ECF No. 61.

Per the Court-approved notice plan, the Notice of the Settlement was disseminated to the Class on May 24, 2017. Declaration of Teresa Y. Sutor in Support of Plaintiff's Motion for Final Approval of Class Action Settlement ("Sutor Decl.") ¶ 9. Of close to two million identified Class members, 1,645,846 received notice via email through an iterative process, such that the notice reached 83.7% of the Class members. *Id.* On June 30, 2017, Plaintiff filed a motion for approval of attorneys' fees and costs and class representative service award, of which Class members were notified through posting of the motion and all supporting documents on the website established for this Settlement. *See* ECF No. 69 and Sutor Decl. ¶ 7. Class members have been afforded 60 days to opt out or object to the Settlement, and thus they

have had substantial time to review all relevant documents (including Plaintiff's fee motion) before the deadline to opt-out or object. *See* ECF No. 61.

III. THE SETTLEMENT TERMS

The terms of the Settlement were set forth in Plaintiff's motion for preliminary approval, ECF No. 34, and fee motion, ECF No. 69. Plaintiff summarizes them again below for the Court's convenience.

A. Settlement Class

The proposed Settlement provides relief to a Class comprised of: "all persons, who between February 12, 2012, to June 9, 2016, purchased any product from Art.com through the e-commerce websites www.art.com, www.posters.com, and/or www.allposters.com, pursuant to a sale by entering a coupon code, and whose product was shipped to an address in the United States." *See* ECF No. 61.

B. Settlement Terms

In exchange for a release of claims against Art.com, in which Class members will only release claims based on claims arising out of, in connection with, or relating to the facts alleged in the operative Complaint (as set forth more fully in the Settlement Agreement), the terms of the Settlement are as follows:

1. Monetary Relief Benefitting the Nationwide Class

If the Court grants final approval, Art.com or the Settlement Administrator will automatically distribute to each Class member who has not opted out of the Settlement ("Releasing Settlement Class Members") a $10 Voucher. Settlement Agreement, ¶¶ 3.17, 5.2.[2] Releasing Settlement Class members are not required to make any claim to receive the Voucher. *Id.*

Based on the estimated number of the Class members receiving notice and not opting out (close to 1.65 million individuals), the total monetary value of the Vouchers is approximately

[2] The Settlement Agreement was submitted in connection with Plaintiff's motion for preliminary approval, ECF No. 53-1, and is incorporated herein by reference.

$16,500,000.00, assuming all Class members redeem their Vouchers. *Id.*, ¶ 3.19. Each Voucher represents substantial value to Class members, as Art.com sells approximately 100,000 items in several diverse categories for $10 or less. Declaration of Gary Takemoto, ¶ 5.[3] Thus, Class members will be able to use the Voucher towards a large selection of items without spending any money. *See id.* The Vouchers also possess the following attributes: (a) they can be used toward the purchase of any product on www.art.com, www.allposters.com, and/or www.posters.com; (b) they can be used multiple times until the balance of the Voucher is extinguished; (c) they are transferrable (i.e., they may be transferred to other persons, including other Class members or non-Class members); (d) they can be used on sale and/or promotional items and can be used for shipping and tax in an amount not to exceed the Voucher amount; (e) they are not valid for prior purchases; (f) only one Voucher may be used in a single transaction; (g) they are not redeemable for cash, nor are they gift cards or gift certificates under California law; and (h) they are valid for eighteen (18) months after issuance. Settlement Agreement, ¶ 3.19.

Based on information about the average value of purchases by Class members and the average number of purchases during the class period by Class members, the $10 Vouchers represent a recovery of 42% of the average value of each Class member's purchase. This is an excellent result, particularly in light of Plaintiff's theory of the case, which was that Class members were harmed due to deceptive sales, not that Class members received a defective product.

2. Non-Monetary Relief Benefitting the Nationwide Class

If the Court grants final approval, Art.com will enact procedures to ensure that, moving forward, its advertising practices are not misleading to consumers. Specifically, Art.com agrees that any regular price to which Art.com refers in any advertising will be the actual, bona fide

[3] The Declaration of Gary Takemoto, Art.com's Senior Vice President of Merchandising, was submitted in connection with Plaintiff's motion for preliminary approval, ECF No. 52, and is incorporated herein by reference.

price at which the item was openly and actively offered for sale, for a reasonably substantial period of time, in the recent, regular course of business, honestly and in good faith. Furthermore, Art.com will implement a compliance program that will consist of periodic (no less than once a year) monitoring, training and auditing to ensure compliance with relevant laws, for a period of at least four (4) years from the Effective Date of the Settlement. Settlement Agreement, ¶ 5.1.

3. Class Release

In exchange for the benefits allowed under the Settlement, Class members who do not opt out will provide a release tailored to the practices at issue in this case. Specifically, they will release all claims "that arise out of or relate" to the allegations pleaded in the operative First Amended Complaint. Settlement Agreement, ¶ 7.1.

4. Attorneys' Fees, Class Representative Service Award, and Settlement Administration Costs

Class Counsel have separately moved the Court for an award of attorneys' fees in the amount of $683,758, litigation costs of $61,242, and a service award to Plaintiff in the amount of $5,000. *See* ECF No. 69. The enforceability of the Settlement is not contingent on Court approval of the full amount of the award of attorneys' fees and costs or the service award. Settlement Agreement, ¶¶ 5.6, 5.7.

IV. CLASS NOTICE HAS BEEN PROPERLY DISSEMINATED

Rule 23(e)(1) requires "notice [of a class settlement] in a reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e). While Rule 23 requires that reasonable efforts be made to reach all class members, it does not require that each individual actually receive notice. *Silber v. Mabon*, 18 F.3d 1449, 1454 (9th Cir. 1994). ("In a majority of class actions at least some unclaimed damages or un-located class members remain."); *Rosado v. Ebay Inc.*, No. 5:12-CV-04005, 2016 WL 3401987, at *2 (N.D. Cal. June 21, 2016); *Il Fornaio (Am.) Corp. v. Lazzari Fuel Co., LLC*, No. C 13-05197, 2015 WL

2406966, at *1 (N.D. Cal. May 20, 2015), *citing Six Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1306 (9th Cir. 1990).

On May 18, 2017, the Court approved the parties' notice plan. *See* ECF No. 61. The Court-approved notice program has been implemented by the parties and Heffler Claims Group in accordance with the Court's direction. The notice has proved successful, as described below.

A. Email Notice

On May 24, 2017, the Settlement Administrator sent notice via email to 1,966,194 Class members. Sutor Decl., ¶ 9. The Settlement Administrator received 326,478 email bouncebacks, many of which were subsequently resolved through alternative email addresses. *Id.*. A total of 1,645,846 notices were successfully emailed. *Id.* Thus, the notice reached 83.7% of the Class members. *Id.* Also on May 24, 2017, the Settlement Administrator established a settlement website (www.knappsettlement.com) where Class members can view all relevant documents. *Id.*, ¶ 7.

B. CAFA Notice

Art.com provided notice of the Settlement to the officials designated pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715, including the Attorneys General of 57 states and territories and the United States' Attorney General. Sutor Decl., ¶ 4. To date, there have been no objections from any of the Attorneys' Generals to the Settlement. Declaration of Jason H. Kim in Support of Plaintiff's Motion for Final Approval of Class Action Settlement ("Kim Decl."), ¶ 12; Sutor Decl., ¶ 4.

C. Settlement Administration Costs

The costs of settlement administration total $75,000, as provided to the Court in Plaintiff's motion for preliminary approval. The Court should approve these costs of $75,000 to be paid to Heffler Claims Group for administering the Settlement.

V. FINAL APPROVAL OF THE SETTLEMENT IS APPROPRIATE

Federal courts strongly favor and encourage settlements, particularly in class actions and other complex matters, where the inherent costs, delays, and risks of continued litigation might

otherwise overwhelm any potential benefit the class could hope to obtain. *See In re Synocor ERISA Litig.*, 516 F.3d 1095, 1011 (9th Cir. 2008) ("[T]here is a strong judicial policy that favors settlements, particularly where complex class action litigation is concerned."). The traditional means for handling claims like those at issue here–individual litigation–would require a massive expenditure of public and private resources. Thus, the proposed Settlement is the best vehicle for Class members to receive the relief recovered for them under this Settlement in a prompt and efficient manner.

A handful of Class members have objected to the proposed Settlement (discussed *infra* section VI). Some of these objectors seek to derail the Settlement on the grounds that the requested attorneys' fees are disproportionate to the Class relief. This complaint is unfounded. Class Counsel is seeking to be paid their lodestar, which is appropriate in light of the contingent risk, the difficulty of this litigation, and other factors. While in an ideal world, Art.com would pay to each of the 2 million Class members the full purchase of the product in cash (which would represent a substantial windfall), this possibility or anything like it was simply not feasible here. With close to two million Class members, Art.com would have to pay about two million dollars just to administer payments to each Class member. Sutor Decl., ¶ 13. For the same reason, it would be impossible for any part of the requested attorneys' fees to be distributed to Class members in an efficient manner.

A. The Settlement is Entitled to a Presumption of Fairness

When a settlement is "a product of informed, arms-length negotiations," a presumption of fairness attaches. *In re Toys R Us-Delaware, Inc.—Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 450 (C.D. Cal. 2014), *citing Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 965 (9th Cir.2009) ("We put a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution."). This Settlement resulted from more than a year of adversarial litigation between capable law firms, and was reached after a full-day mediated settlement conference before David A. Rotman.[4] With that background, the Court

[4] Mr. Rotman will submit a separate Declaration in support of this Motion.

should analyze the relevant factors for approval with the presumption that the Settlement is fair.

B. The Settlement is Fair, Adequate and Reasonable

A proposed class action settlement should be approved if the Court, after allowing absent Class members an opportunity to be heard, finds that the settlement is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). In approving a class action settlement under Rule 23(e), the Court should recognize that "it is the settlement taken as a whole, rather than the individual component parts, that must be examined for overall fairness." *Staton v. Boeing*, 327 F.3d 938, 960 (9th Cir. 2003), *quoting Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998)).

The Ninth Circuit has set forth the following list of factors to be considered in evaluating class settlements: (1) the strength of the plaintiff's case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement. *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 944 (9th Cir. 2015), *citing Churchill Vill, L.L.C v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004). Based on analysis of these factors, which are set forth in order below, the Settlement is fair, reasonable, and adequate.

1. The Strength of Plaintiff's Case

Approval of a class settlement is appropriate when plaintiffs must overcome significant barriers to make their case. *See Chun-Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 851 (N.D. Cal. 2010). Courts "may presume that through negotiation, the Parties, counsel, and mediator arrived at a reasonable range of settlement by considering Plaintiff's likelihood of recovery." *Garner v. State Farm Mut. Auto. Ins. Co.*, No. 08-cv-1365, 2010 WL 1687832, at *9 (N.D. Cal. Apr. 22, 2010). Generally, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain

results." *Ching v. Siemens Indus., Inc.*, No. 11-cv-04838, 2014 WL 2926210, at *4 (N.D. Cal. June 27, 2014) (internal quotations omitted).

Although Plaintiff believes in the merits of his case, he cannot ignore the serious challenges that he and the Class will face if the litigation were to continue. The parties disagree about the propriety of class certification. One of the primary points of contention is Plaintiff's ability to prove restitution stemming from the unlawful conduct. Specifically, Art.com contends in a motion for summary judgment (rendered moot by this Settlement) that Plaintiff cannot put forth a viable restitution model. *See* ECF No 47. Plaintiff retained an expert who offered several ways classwide restitution could be calculated at trial. *See* ECF No. 41-13. However, it is uncertain that the Court would accept these measures of restitution, as district courts have reached competing conclusions on this issue. *Compare Chowning v. Kohl's Department Stores, Inc.*, No. CV 15-08673, 2016 WL 1072129, at *12 (C.D. Cal. Mar. 15, 2016) (denying class certification because the plaintiff failed to present a viable damages model in false perpetual sale case) *with Spann v. J.C. Penney Corp.*, 307 F.R.D. 508, 530 (C.D. Cal. 2015) (granting class certification at least in part on the basis that the plaintiff had presented a viable way to prove restitution in false perpetual sale case).

Moreover, aside from legal and factual arguments specific to this case, the prospect of maintaining certification for a class of millions of consumers located throughout the nation through trial would prove challenging. For example, the Supreme Court's recent decision *Bristol-Myers Squibb Co. v. Super. Ct. of Cal. San Francisco Cty.*, 137 S. Ct. 1773 (2017), calls into question nationwide classes applying the law of a single state.

In agreeing to settle the case at this juncture, Plaintiff also considered the important non-monetary relief that will inure to the entire nationwide Class under the terms of the Settlement. If this case were to proceed to class certification and trial, there is a possibility that Plaintiff could not pursue this relief. This Court, in addition to many others, has held that a plaintiff loses standing to pursue injunctive relief once she becomes aware of the alleged deception. *See*

Khasin v. R.C. Bigelow, Inc., No. 12-cv-02204, 2016 WL 1213767, at *5 (N.D. Cal. Mar. 29, 2016).

In sum, when weighing the substantial relief the Settlement provides to the Class against the appreciable risks presented, the Settlement is fair, adequate, and reasonable.

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

The second factor in assessing the fairness of the proposed Settlement is the complexity, expense, and likely duration of the lawsuit if the parties had not reached a settlement agreement. *See Officers for Justice v. Civil Service Com'n of City and County of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982). Where the parties reach a settlement before the commencement of class certification, expert witness discovery, and trial preparation, this factor generally favors settlement. *See Young v. Polo Retail, LLC*, C 02-4546, 2007 WL 951821, at *3 (N.D. Cal. Mar. 28, 2007). Here, litigation has been pending for well over one year. If the Court were to reject the proposed Settlement, further protracted and costly litigation, including resolution of the pending motions for class certification and summary judgment, expert discovery, trial, and possible appeals, is likely. Thus, this factor weighs in favor of approval.

3. The Risk of Maintaining Class Action Status Through Trial

Although the Court has certified a class, the certification was for settlement purposes only. Under Rule 23(c)(1)(C), an "order that grants or denies class certification may be altered or amended before the final judgment." Fed. R. Civ. P. 23(c)(1)(C). Here, Plaintiff recognizes the serious risk that the Court would find that class certification is not appropriate for several reasons, including for a lack of predominance and the difficulty in presenting a viable damages model at trial. Therefore, this factor weighs in favor of final approval.

4. The Amount Offered in Settlement

The fourth factor in assessing the fairness of the proposed settlement is the amount of the settlement. Any analysis of a fair settlement amount must account for the risks of further litigation and trial, as well as expenses and delays associated with continued litigation. "[T]he very essence of a settlement is compromise, a yielding of absolutes and an abandoning of

highest hopes." *Officers for Justice*, 688 F.2d at 624 (internal quotation omitted). The Ninth Circuit has further explained that "it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements. The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." *Id.* at 625 (citations omitted).

The proposed Settlement provides for substantial monetary relief to the Class in the form of a $10 Voucher. Settlement Agreement, ¶ 4.03. Class members need not submit claim forms in order to receive the Voucher. *Id.* The Settlement represents an excellent recovery particularly when viewed in light of the fact that this case does not challenge the quality of the products offered by Art.com. Moreover, the monetary component of the Settlement represents approximately 42% of Plaintiff's total potential recovery at trial. Kim Decl., ¶ 5. It is highly unlikely that Plaintiff would be able to advance the full purchase price as measure of damages, so in reality, the $10 Voucher represents substantially more than 42% of the total potential recovery. In comparison with other consumer class actions, this is an excellent result. *See*, *e.g.*, *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (affirming approval of class settlement which represented roughly one-sixth of the potential recovery); *Stovall-Gusman v. Granger, Inc.*, No. 13-cv-02540, 2015 WL 3776765, at *4 (N.D. Cal. June 17, 2015) (granting final approval of a net settlement amount representing 7.3% of the plaintiffs' potential recovery at trial).

The Settlement also establishes significant business practice changes to ensure that any advertised sales Art.com implements in the future are not deceptive and fully comply with the laws alleged to have been violated in this case. In deciding to pursue this action, Plaintiff's primary goal was to put an end to Art.com's alleged deceptive sales practices. Declaration of James Knapp, ECF No. 69-5. The Settlement solidifies significant practice changes aimed at doing just that. Specifically, Art.com has agreed to that any regular price to which Art.com refers in any advertising will be the actual, bona fide price at which the item was openly and actively offered for sale, for a reasonably substantial period of time, in the recent, regular

course of business, honestly and in good faith. Furthermore, Art.com will implement a compliance program that will consist of periodic (no less than once a year) monitoring, training and auditing to ensure compliance with relevant laws, for a period of at least four (4) years from the Effective Date of the Settlement. Agreement ¶ 5.01. This relief will benefit a nationwide class, while Plaintiff's claims were based solely on California law (which is generally more protective of consumer rights than many other states). The consideration offered under this Settlement favors final approval.

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

This factor evaluates whether class counsel had sufficient information to make an informed decision about the merits of the case. *See In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d at 459. The more discovery that has been completed, the more likely it is that the parties have "a clear view of the strengths and weaknesses of their cases." *Young v. Polo Retail, LLC*, No. C 02-4546, 2007 WL 951821, at *4 (N.D. Cal. Mar. 28, 2007) (internal quotation marks and citations omitted). The Settlement was informed by Class Counsel's thorough investigation and analysis of the factual and legal issues involved.

Plaintiff conducted an extensive pre-filing investigation, which included monitoring Art.com's website for advertised sales for a period of several months.[5] In addition, Class Counsel conducted legal research into the merits of false advertising claims premised on the theory of perpetual sales. Plaintiff also conducted research on Art.com, including an investigation into its business practices. By the time the parties explored mediation, they had engaged in contested motion practice, including resolution of a motion to dismiss and the filing of a motion for class certification by Plaintiff and a motion for summary judgment by Art.com. The parties completed substantial classwide discovery, which involved serving and responding to written discovery, the production and review of thousands of pages of documents and the

[5] These efforts are further detailed in the Declaration of Jason H. Kim in Support of Plaintiff's Motion for Approval of Attorneys' Fees and Costs and Class Representative Service Award, which is incorporated herein by reference. ECF No. 69-2.

deposition of Plaintiff and Art.com's Rule (30)(b)(6) designee on topics relevant to this case. Plaintiff also retained two expert witnesses to analyze Art.com's sales records and e-commerce website data to determine the scope of damages and to testify as to the materiality of Art.com's perpetual sales on consumer purchasing decisions.

Prior to the mediation, the parties submitted detailed mediation briefs setting forth their respective views on the strengths of their cases. During the mediation session, the parties discussed their relative views of the law and the facts and potential relief for the proposed Class. Counsel exchanged a series of counterproposals on key aspects of the Settlement, including the parameters of the business practice changes and monetary relief for the Class. At all times, the parties' settlement negotiations were adversarial, non-collusive, and at arm's length. This Settlement is the results of hard-fought, arms-length negotiations after the completion of extensive discovery and motions practice. Accordingly, this factor weighs in favor of granting final approval.

6. The Experience and Views of Class Counsel

Class Counsel are experienced in litigating consumer class actions, and have a nuanced understanding of the legal and factual issues involved in this case. Class Counsel endorse the Settlement as fair, adequate, and reasonable. Kim Decl., ¶ 4. The fact that qualified and well-informed counsel endorse the settlement as being fair, reasonable, and adequate weighs heavily in favor of the Court approving the settlement. *In re Omnivision Technologies, Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2007), *quoting Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 622 (N.D. Cal. 1979)) ("The recommendations of plaintiffs' counsel should be given a presumption of reasonableness."). Thus, this factor weighs in favor of approving the Settlement.

7. The Presence of a Governmental Participant

There is no governmental participant in this case. Art.com has notified the officials designated pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715 of the proposed settlements. Sutor Decl., ¶ 4. To date, no governmental entity has raised objections or concerns about the settlement, and thus, this factor is either neutral or weighs in favor of approval. Kim

Decl., ¶ 12. *See Schuchardt v. Law Office of Rory W. Clark*, 314 F.R.D. 673, 685 (N.D. Cal. 2016) ("While there is no governmental entity party to this action, neither state nor federal officials lodged any objection after receiving notice of the Settlement Agreement. Thus, this factor favors the Settlement Agreement.").

8. Reaction of Class Members

In evaluating the fairness, adequacy, and reasonableness of settlement, courts also consider the reaction of the class to the settlement. *See Molski v. Gleich*, 318 F.3d 937, 953 (9th Cir. 2003). The response from the Class to the Settlement has been positive. Less than 0.3% of the Class members receiving notice opted out of the Class. Sutor Decl. ¶ 9. And only thirteen purported Class members filed objections to the Settlement.

The minuscule number of opt-outs and objections favor approval of the Settlement. *See Hanlon*, 150 F.3d at 1027 ("[T]he fact that the overwhelming majority of the class willingly approved the offer and stayed in the class presents at least some objective positive commentary as to its fairness."); *Rodriguez v. W. Publ'g Co.*, 563 F.3d 948, 967 (9th Cir. 2009) ("The court had discretion to find a favorable reaction to the settlement among class members given that, of 376,301 putative class members to whom notice of the settlement had been sent, 52,000 submitted claims forms and only fifty-four submitted objections.").

Thus, the reaction of Class members weighs in favor of approval of the Settlement.

9. The Settlement is the Result of Arms-Length Negotiations

In addition to considering the above factors, the Ninth Circuit has indicated that courts should carefully review class action settlements for signs of collusion or conflicts of interest. *See In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011). As detailed above, the Settlement is the result of adversarial, arm's-length negotiations between attorneys experienced in the litigation, certification, trial, and settlement of class action cases. The parties only reached this Settlement after a full-day mediation with David A. Rotman, an experienced and well-respected mediator. In addition, the Court has already found that the negotiations

were the "result of arm's length negotiations." *See* ECF No. 61. Accordingly, this factor weighs in favor of approval of the Settlement.

VI. RESPONSE TO OBJECTORS

Out of 1,645,846 Class members, only thirteen purported Class members filed objections. These objectors are Eric Larson (ECF No. 62), James P. Costello (ECF No. 63), Linell Mary Bailey (ECF No. 64), Jenean McBrearty (ECF No. 65), Elizabeth Ann Hoelting (ECF No. 66), Benedict W. Moshier (ECF No. 67), Michael Resch (ECF No. 68), Victoria Johnson (ECF No. 70), Mary A. Moriarty (ECF No. 71), Jonathan Burchfield (ECF No. 72), Joshua Pater (ECF No. 73), Timothy Sandefur (ECF No. 74), and Cassandra Morris (ECF No. 75).

Of the thirteen objections, only nine appear to be valid. Ms. Moriarty, Mr. Larson, and Mr. Burchfield were not identified as Class members.[6] Sutor Decl. ¶ 12. And Ms. Hoetling opted out of the Settlement, thus mooting her objection. ECF No. 66. Only one objector, Mr. Sandefur, objects through counsel, but lacks standing in part to pursue his main complaint for the reasons set forth below.

A. Standing to Object

In order to have standing, a litigant must demonstrate either an injury that "is . . . concrete and particularized and . . . actual or imminent, not conjectural or hypothetical" or that it is "likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992) (internal citations, quotation marks and alterations omitted). "In the class action context, simply being a member of the class does not automatically confer standing to challenge a fee award to class counsel—the objecting class member must be 'aggrieved' by the fee award." *Glasser v. Volkswagen of America, Inc.*, 645 F.3d 1084, 1088 (9th Cir.2011), *quoting In re First Capital Holdings Corp. Financial Prods. Sec. Litig.*, 33 F.3d 29, 30 (9th Cir. 1994)). Here, Mr. Sandefur lacks standing to object to the attorney fee aspect of the Settlement, and specifically whether the fee request

[6] Even if these are considered valid objections, the substance is addressed below as they raised objections similar to those of verified Class members.

should be deemed to arise from a coupon settlement under the Class Action Fairness Act ("CAFA"), because such a finding would not grant him any tangible relief.

B. Mr. Sandefur's Objection Focuses on the Attorneys' Fee Request, in Which He Has No Interest

Although Mr. Sandefur styles his objection as being to the Settlement, most of his objection revolves around the attorneys' fee payment. As set forth above, under Rule 23, a class action settlement must be "fair, reasonable, and adequate," and district courts must evaluate several factors in making this determination. But Mr. Sandefur does not even address any of the relevant factors in a meaningful way. For example, Mr. Sandefur does not contend that the amount of the Vouchers is unreasonable in light of the strength of Plaintiff's case based on applicable precedents. Rather, he makes a legal argument about whether the Vouchers are coupons under CAFA and levels vague charges of collusion, supported by nothing but boilerplate purported "red flags."

This is not a common fund settlement. Art.com is liable for Plaintiff's attorneys' fees separate and apart from the class recovery. Class members lack standing to challenge attorneys' fee requests when fees are not being paid out of the common fund because any change to the attorney fee award will not impact them. *Glasser*, 645 F.3d at 1088 ("If modifying the fee award would not actually benefit the objecting class member, the class member lacks standing …."). Here, Mr. Sandefur's argument regarding CAFA should be rejected for lack of standing because neither he nor any Class member will benefit if the Court deems this Settlement a coupon settlement under CAFA such that any part of the payment of attorneys' fees will be determined based on the redemption rate of the Vouchers. This issue goes only to the amount and timing of the attorneys' fee award. Even if any payment of attorneys' fees is reduced or delayed due to CAFA, this would not create any additional benefit to the Class.[7]

[7] In *Stetson v. Grissom*, 821 F.3d 1157, 1162-3 (9th Cir. 2016), the Ninth Circuit held that the objector had standing to challenge the fee award. But this case is distinguishable because there

A class member may still have standing to challenge an attorneys' fee request that will not be paid out of an actual common fund under a "constructive common fund theory" if he alleges that the class counsel breached its fiduciary duty to the class. *See Lobatz v. U.S. W. Cellular of Cal., Inc.*, 222 F.3d 1142, 1146 (9th Cir. 2000). The Ninth Circuit has interpreted this type of breach to be akin to colluding with the defendant to "orchestrate an excessively high fee award in exchange for an *unfair settlement for the class*." *Glasser*, 645 F.3d 1084 at 1089 (emphasis added). Here, the fee award is not excessive (discussed *infra*) and there was no collusion because the settlement negotiations were conducted at arm's length, after extensive investigation and discovery, and were overseen by a highly-regarded mediator. No attorneys' fees were discussed until after relief to the Class had been agreed upon. Kim Decl., ¶ 7. *See Ingram v. The Coca-Cola Company*, 200 F.R.D. 685, 693 (N.D. Ga. 2010) (no evidence of collusion because an experienced mediator oversaw the settlement discussions and the attorneys' fee was negotiated separately from the settlement).

Although the thrust of Mr. Sandefur's objection is based on suspicion of collusion, he does not provide any specific facts to support such an assertion.[8] Moreover, there can only be collusion where excessive fees are negotiated in exchange for an unfair settlement to the class. Mr. Sandefur has not argued the $10 Vouchers are unfair to the Class for any reason other than the nebulous assertion that the requested fees are excessive. But the $10 Voucher represents an excellent recovery as explained above. And the amount to be paid in attorneys' fees and costs could not even in theory have reduced the amount available to the Class. Even if every dollar

the objector was challenging an award of attorneys' fees from the common fund, and thus, a reduction in fees would directly impact the objector.

[8] Mr. Sandefur refers to signs of collusion. Importantly, however, Art.com has committed to paying $745,000; none of this sum will revert back to Art.com. Thus, there is no "kicker" and, contrary to Mr. Sandefur's characterization, no signs of collusion. *See Klee v. Nissan N. Am., Inc.*, No. CV 12-08238, 2015 WL 4538426, *10 (C.D. Cal. July 7, 2015), *aff'd* No. 15-56201 (9th Cir. 2015) ("the absence of a 'kicker provision' stating that all fees not awarded would revert to defendant[], weighs against a finding of collusion."). Moreover, a settlement can be fair, adequate, and reasonable even if such factors are present. *See Allen v. Bedolla,* 787 F.3d 1218, 1225 (9th Cir. 2015).

of the fee and cost award were paid to Class members, the administrative costs of making such payment would far exceed the amount to be distributed. Sutor Decl., ¶ 13.

C. Mr. Sandefur Has Disclaimed any Concrete Stake in this Litigation

Furthermore, Mr. Sandefur is not a typical class member who may have standing to object to an attorney fee request. In his declaration, Mr. Sandefur asserts: "Unlike many objectors who attempt or threaten to disrupt a settlement unless plaintiffs' attorneys buy them off with a share of attorneys' fees, it is my understanding and belief that CCAF does not engage in *quid pro quo* settlements and will not withdraw an objection or appeal in exchange for payment." Sandefur Decl., ¶ 7, ECF No. 74-1. Mr. Sandefur further states, "Thus, if contrary to CCAF's practice and recommendation, I agree to withdraw my appeal for a payment by plaintiffs' attorneys the defendant(s) paid to me or an person or entity related to me in any way without court approval, I hereby irrevocably waive any and all defense to a motion seeking disgorgement to the class of any and all funds paid in exchange for dismissing my appeal." *Id.*, ¶ 8. Mr. Sandefur's counsel summarizes the intent and the legal implication of these statements: "To *avoid any doubts about his motives*, Sandefur is willing to stipulate to an injunction *prohibiting him from accepting compensation* in exchange for the settlement of his objection. ECF No. 74, pp. 4:3-7 (emphasis added).

By preemptively relinquishing the right to receive any monetary compensation, Mr. Sandefur's self-proclaimed motive in objecting to the Settlement is revealed to be purely ideological. Whatever the merits of this ideological commitment, when it is the only issue at stake, there is no standing to object.

Ninth Circuit cases support the conclusion that Mr. Sandefur lacks standing. In *In re First Capital Holdings Corp. Financial Prods. Sec. Litig.*, the appellant opposing the settlement was a class member, but under circumstances unique to her received additional payments that rendered her whole. As a result, the Ninth Circuit held she lacked standing to challenge the settlement because "[s]he suffered no injury 'likely to be redressed by a favorable decision.'" 33 F.3d 29 at 30, *citing Valley Forge Christian College v. Americans United for Separation of*

Church & State, Inc., 454 U.S. 464, 472 (1982). Similarly, in *Knisley v. Network Assocs., Inc.*, 312 F.3d 1123, 1126 (9th Cir. 2002), the Ninth Circuit stated that where a class member did not submit a claim and settled his appeal of the underlying settlement, he had no standing to appeal the attorney fee award. Mr. Sandefur has preemptively settled his objections to the attorney fee aspect of the Settlement by disclaiming any financial benefit in the attorney fee award and thus cannot challenge any award of attorneys' fees and costs, including but not limited to whether the fee award should be determined under CAFA's coupon settlement provision.

D. The Arguments Made By the Objectors

The arguments of the objectors can be distilled down to seven issues: 1) Plaintiff's claims have no merit; 2) the settlement benefits Art.com; 3) the settlement consideration is insufficient; 4) the Vouchers are coupons under CAFA; 5) the attorneys' fees are disproportionate to the benefit to the Class; 6) the non-monetary relief has no value; and 7) the residual of the requested attorney fee and cost award should not go to the designated recipient. Plaintiff addresses each of these issues in turn.

1. Plaintiff's Claims Have No Merit

Respectfully, the objectors' opinions about the merits of this action should not be afforded more weight than the views of Plaintiff and Class Counsel, who are familiar with the facts and legal issues, and have determined that the Settlement is in the best interest of the Class. If anything, these assertions support approval of the Settlement, as the weakness of Plaintiff's case would make the Settlement more beneficial to the Class.

2. The Settlement Benefits Art.com

These objections are not based on the actual terms of the Settlement. As set forth above, a key feature of the Vouchers that will be offered to Class members is that they will have the option of purchasing approximately 100,000 items without any charge. Thus, the Vouchers are not the equivalent of Art.com's advertised sales. Furthermore, contrary to some of the objections, this Settlement *does* penalize Art.com, as it is required to offer merchandise for free

to Class members and is subject to broad changes to its previous business practices. Some of the objectors also complain that it is anomalous for the Vouchers to cause Class members to do further business with Art.com if they believe they were misled. As indicated by a number of objections, however, many Class members do not feel misled and continue to support Art.com. Furthermore, a key feature of the Vouchers is that they are not required to do further business in the sense of turning over more of their own money to Art.com.

3. The Settlement Consideration is Insufficient

The average Class member spent $23.80, so the $10 Vouchers represent 42% of the value of each Class member's total purchase. Here, the only harm (and damages stemming from the harm) that Plaintiff and the Class suffered was purchasing a product on the belief that they were getting a discount. As argued above, it is highly doubtful that a full rescission of the product would be permissible. Thus, the $10 Voucher represents substantially more than 42% of the damages that Class members actually suffered. Moreover, neither Plaintiff nor any Class member has been dissatisfied with the product that they received. So the Voucher–which enables Class members to receive a free product out of a selection of over 100,000 products–has real and substantial monetary value. Furthermore, these objections largely disregard the non-monetary relief obtained by Plaintiff.

4. The Vouchers are Coupons Under CAFA

The bulk of Mr. Sandefur's objection is based on the mistaken contention that this Settlement is a coupon settlement subject to the Class Action Fairness Act. This is incorrect for several reasons, as set forth in the Memorandum in Support of Plaintiff's Motion for Approval of Attorneys' Fees and Costs and Class Representative Service Award, ECF No. 69-1, which is incorporated herein by reference.

Mr. Sandefur also makes certain arguments that have not previously been addressed by Plaintiff. First, Mr. Sandefur distinguishes the number and range of products available through Walmart.com versus Art.com's e-commerce websites. While it is true that Walmart likely offers a greater number and variety of low cost items, this is an issue of degree rather than

kind. For example, Mr. Sandefur acknowledges that Walmart sells at least 38 million products. *See* ECF No. 74 at 9:10-11. Art.com sells fewer products, so there is little value to comparing the two companies for the purposes Mr. Sandefur does here. Similarly, Mr. Sandefur's counsel cherry picks some categories of posters for under $10 on www.art.com to argue this "option is far removed the $12 gift card that can purchase 'one of many different types of products' on Walmart.com." This is disingenuous, as there are a wide range of products including posters of various genres offered for under $10 on Art.com's e-commerce websites. Furthermore, nothing in *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 952 (9th Cir. 2015) ("*Online DVD*") suggests that only enormous general retailers such as Walmart have the option of structuring a settlement that allows credits for purchasers from that retailer without the settlement being deemed a coupon settlement. In fact, numerous district court cases both before and after *Online DVD* have held that vouchers are not CAFA coupons in a wide variety of contexts. *See* ECF No. 69-1, pp. 5-9. Indeed, Mr. Sandefur cites one of these cases, *Johnson v. Ashley Furniture Indus., Inc.*, No. 13cv2445, 2016 WL 866957, at *4 (S.D. Cal. Mar. 7, 2016) and notes that class members could obtain products such as "plates, bowls, glasses, wall art, trays, vases, candleholders, figurines, table decorations, picture frames, clocks, towels, artificial flowers, pillows, and rugs." This is however about the same range of products (if not narrower) than those available from Art.com.

Mr. Sandefur also complains about the eighteen-month expiration period of the Vouchers here. But an expiration date is not dispositive of coupon status. *See In re: Easysaver Rewards Litig.*, No. 09-cv-02094, 2016 WL 4191048, at *3 (S.D. Cal. Aug. 9, 2016).[9] An eighteen month period is more than enough to allow any Class Member to use the Voucher. Indeed, an expiration date cannot be dispositive based on a simple analysis of 28 U.S.C. § 1712(a). Because this provision ties attorneys' fees to the redemption of coupons, it would be

[9] Although Mr. Sandefur is appealing the district court's order approving the settlement in *In re: Easysaver Rewards Litig.*, he points to no binding authority to support his position that a lengthy expiration date results in a coupon.

impossible for any attorneys' fees to ever be finally determined in a situation where a coupon had no expiration date. As a practical matter, even if there is no express expiration date on a coupon, there must be some final date for determining attorneys' fees and that date is likely far less than eighteen months from issuance.

Furthermore, even assuming the Court determines that 28 U.S.C. § 1712 applies because the Vouchers are coupons, Mr. Sandefur incorrectly asserts that the Court must examine the value of the redeemed coupons, and then award at most the 25% benchmark based on that value. This argument is not supported by the law. If the Court were to assess the value of the redeemed coupons, the Court is not limited to awarding attorneys' fees of 25% of that amount. To the contrary, district courts retain substantial discretion to grant attorneys' fees awards and should not mechanically apply a 25% benchmark recovery. *See Fischel v. Equitable Life Assur. Soc'y of the U.S.*, 307 F.3d 997, 1007 (9th Cir.2002) ("[A] mechanical or formulaic application of either [the lodestar or the percentage-of-the-fund] method, where it yields an unreasonable result, can be an abuse of discretion."). This remains true in the CAFA context. For example, in *Dardarian v. OfficeMax N. Am., Inc.*, No. 11-cv-00947, 2014 WL7463317, at *3 (N.D. Cal. Dec. 30, 2014), the district court analyzed *In Re Inkjet Printer Litig.* and determined that 28 U.S.C. § 1712(a) applied. Nonetheless, the Court awarded $200,000 in attorneys' fees where only $40,020 in coupons were redeemed and there was no injunctive relief. *Id.* at *4. Thus, the court awarded attorneys' fees of roughly five times the value of the redeemed coupons. Mr. Sandefur acknowledges that a 3% redemption rate is well within the range of possibility. Assuming a 3% redemption rate, the value of redeemed coupons would be $493,754. The requested attorneys' fees represent approximately 1.5 times that amount, far less than in *Dardarian*, and the Court is well within its discretion to award that amount here.

5. Disproportionate Benefit to Class Counsel

Mr. Sandefur and other objectors also claim that Class Counsel will obtain a disproportionate benefit from the Settlement. This is untrue for several reasons. First, Plaintiff's fee request is justified based on application of the well-accepted lodestar

methodology. ECF No. 69-1, pp. 10-20. In both *In re Bluetooth Headset Products Liability Litig.*, 654 F.3d 935, 943-44 (9th Cir. 2011) and *Staton v. Boeing Co.*, 327 F.3d 938, 963-66 (9th Cir. 2003), the Ninth Circuit *suspected* disproportionate benefit to class counsel and thus a collusive settlement where the district courts had failed to make detailed findings to justify the attorney fees. It is premature to raise such an issue here, where this Court has not yet determined what award of attorneys' fee is reasonable. Moreover, unlike in *In Re Bluetooth* and *Staton*, this is not a case where class counsel are reaping a windfall. Class Counsel dedicated substantial time and effort to litigating this case. The Court can and should award the requested fees based on the lodestar. The court may also cross-check the lodestar based on the common fund. Class Counsel is only requesting payment of their lodestar, plus a modest multiplier, which does not account for the additional time spent through final approval.[10] Thus, by the time this Settlement is finally approved (if ever), Class Counsel will likely be requesting no multiplier, or even a negative multiplier. And if the Vouchers are valued at their face value, as they should be pursuant to *Online DVD*, the requested fee amount is less than 3.5% of the value to the Class. Finally, neither of these calculations take into account the value of the non-monetary relief.

6. Value of Non-Monetary Relief

Mr. Sandefur claims that the non-monetary relief obtained by Plaintiff is essentially valueless because it purportedly merely requires Art.com to comply with the law. This is untrue in two respects. First, this ignores the provision requiring regular compliance training for Art.com's employees and auditing for a period of four years. Second, it ignores the fact that the nationwide non-monetary relief is modeled on a prohibition specific to *California* and, as set forth above, it is not settled that California law applies to all of Art.com's nationwide sales.

[10] District courts "must apply a risk multiplier to the lodestar 'when (1) attorneys take a case with the expectation they will receive a risk enhancement if they prevail, (2) their hourly rate does not reflect that risk, and (3) there is evidence the case was risky.'" *Grissom*, 821 F.3d at 1166.

The non-monetary relief obtained here is practically identical to that approved in *Spann v. J.C. Penney Corp.*, 211 F. Supp. 3d 1244 (C.D. Cal. 2016). There, the court cited these provisions as part of the "exceptional result" obtained on behalf of the Class. *Id.* at 1263. Moreover, the majority of the cases that Mr. Sandefur are out of circuit cases, and many of them are distinguishable. For example, in *Pearson v. NBTY, Inc.*, 772 F.3d 778, 785 (7th Cir. 2014), the injunction made only "cosmetic" changes to the challenged misrepresentations. As to *Boyd*, nothing in that opinion indicates that this Court would always find prospective injunctive relief valueless because it would not provide relief to class members who have already suffered injury. Rather, the Court scrutinized all aspects of the settlement to find it inadequate. The Court's observation about prospective relief was in that context.

In addition, a large number of Class members are likely to shop with Art.com in the future, and thus injunctive relief does directly benefit them. Furthermore, Mr. Sandefur's argument that the business practice changes are unrelated to the Settlement is belied by the language of the settlement itself. *See also Zapeda v. PayPal, Inc.*, No. C 10-2500, 2017 WL 1113293, at *13 (N.D. Cal. Mar. 24, 2017) (finding that prospective injunctive relief provided value to the class and dismissing objection that this relief was purely voluntary).

The non-monetary relief is especially significant here because the California law claims Plaintiff brings here prioritize prospective relief over restitution or damages. *Kwikset Corp. v. Super Court*, 51 Cal. 4th 310, 337, 246 P.3d 877, 895 (Cal. 2011). These statutes also provide for an award of attorneys' fees so consumers act as private attorney generals' in enforcing consumer protection legislation for the benefit of the public. The presence of such statutes distinguishes this case from *In re HP Inkjet Printer Litig.*, 716 F.3d 1173 (9th Cir. 2013), which as the dissent by Judge Berzon notes, did not involve any statutory fee shifting provision. *Id.* at 1189 ("There are no statutory fees at issue here, as there are in some civil rights class actions. So the attorney's payment had to come from a constructive or 'putative' common fund.")

7. Designation of the National Consumer Law Center as Cy Pres Recipient

Mr. Sandefur's complains that the Settlement Agreement designates the National Consumer Law Center ("NCLC")[11] as the *cy pres* recipient of any amount of the attorney fee and cost award. At least five courts in this district, however, have approved the NCLC as a *cy pres* recipient for consumer protection claims.[12]

Relatedly, Mr. Sandefur objects to the Class Notice, which was approved by the Court, on the ground that it did not inform the Class Members that any amount of attorneys' fees and costs not approved would be distributed to the NCLC. The class notice, however, is only required to provide sufficient detail "to alert those with adverse viewpoints to investigate and to come forward and be heard." *Online DVD*, 779 F.3d at 946 (overruling objection to class notice where it "provides simple and straightforward information about the class action …. about what action class members may take in either case, and … the need to check the website for more detail"). Here, the Class Notice provided the class with the maximum amount of attorneys' fees and costs that would be awarded to Plaintiff and directed Class members to a website for more detail. The website contained the full text of the Settlement Agreement, which would have alerted Class members about the *cy pres* provision. Thus, the Class Notice was sufficient to "alert those with adverse viewpoints to investigate."

[11] One of Plaintiff's counsel's firms is co-counsel with the NCLC in *Stromberg v. Ocwen Loan Servicing, LLC*, No. 15-cv-04719, pending in this Court. Counsel for Plaintiff who suggested NCLC as the *cy pres* recipient is not involved in that case and was not aware at the time that NCLC was co-counsel with this firm in any matter. Kim Decl., ¶ 13. Plaintiff does not believe this provides any reason to object to designating the NCLC as the *cy pres* recipient in this case given the extensive precedent cited below. If the Court believes this raises any conflict, this can be easily remedied by selecting a different *cy pres* recipient.

[12] *See, e.g., Tadepalli v. Uber Techs., Inc.*, No. 15-cv-04348, 2015 WL 9196054, *10 (N.D. Cal. Dec. 17, 2015); *Miller v. Ghirardelli Chocolate Co.*, No. 12-CV-04936, 2015 WL 758094, at *8-9 (N.D. Cal. Feb. 20, 2015); *Custom LED, LLC v. eBay, Inc.*, No. 12-cv-00350, 2014 WL 2916871, *10 (N.D. Cal. June 24, 2014); *Lymburner v. U.S. Fin. Funding, Inc.*, No. C-08-00325, 2012 WL 398816, at *4 (N.D. Cal. Feb. 7, 2012). Indeed, in *Gross v. Symentec Corp.*, No. 3:12-CV-00154, 2014 WL 12641996, at *2 (N.D. Cal. Mar. 21, 2014), the court itself designated the NCLC as one of five *cy pres* recipients.

VII. CONCLUSION

For the reasons set forth above, Plaintiff respectfully requests that the Court grant final approval of the Settlement and direct the Settlement Administrator to finally administer the Settlement. A proposed order granting final approval is submitted herewith.

DATED: July 27, 2017

SCHNEIDER WALLACE COTTRELL KONECKY WOTKYNS LLP

By: /s/ Jason H. Kim
JASON H. KIM

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above including the referenced attachments was sent this 27th day of July 2017 via ECF to all ECF participants of record and that all counsel of record are ECF participants.

/s/ Jason H. Kim