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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

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

Plaintiff,

v.

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

Defendants.

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

[Honorable William H. Orrick]

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR APPROVAL
OF ATTORNEYS' FEES AND COSTS AND
CLASS REPRESENTATIVE SERVICE
AWARD**

1 Plaintiff has moved for awards of attorneys' fees and costs to Class Counsel and a class
2 representative service award to the Named Plaintiff, notice of which was given to all Class
3 members. The Court heard argument regarding the request for fees and costs and class
4 representative service award at the Fairness Hearing held on August 9, 2017. Based upon all
5 papers filed with the Court and oral argument at the hearing, the Court makes the following
6 findings of fact and conclusions of law pursuant to Fed. R. Civ. Proc. 52 as follows:

7 FINDINGS OF FACT

8 1. On June 30, 2017, Plaintiff filed his Unopposed Motion for Approval of
9 Attorneys' Fees and Costs and Class Representative Service Award ("Motion"). The Motion
10 was directed to Class members by posting the complete contents of the Motion and all
11 supporting documents on the website established for this case, www.knappsettlement.com. The
12 Class Notice informed Class members that the Motion would be so posted on this website.

13 2. The Motion is based upon a Settlement preliminarily approved by the Court by
14 Amended Order dated May 18, 2017, ECF No. 61. The Settlement Agreement provides that
15 Plaintiff would seek an award of attorneys' fees and costs of \$745,000 and to seek a service
16 award to Plaintiff of \$5,000. Settlement Agreement, ¶ 5.6.

17 3. The Settlement Agreement provides for injunctive relief in that Defendant
18 Art.com has agreed that any regular price to which Art.com refers in any advertising will be the
19 actual, bona fide price at which the item was openly and actively offered for sale, for a
20 reasonably substantial period of time, in the recent, regular course of business, honestly and in
21 good faith. *Id.*, ¶ 5.1. Furthermore, pursuant to the terms of the Settlement Agreement,
22 Defendant Art.com will implement a compliance program, which will consist of periodic (no
23 less than once a year) monitoring, training and auditing to ensure compliance with relevant
24 laws, for a period of at least four (4) years from the Effective Date of the Settlement. *Id.*

25 4. The Settlement Agreement provides for monetary relief to the Class in the form
26 of \$10 Vouchers, which can be used for any product available on any of Defendant Art.com's e-
27 commerce websites, including the taxes and shipping and handling associated with a product.
28 Settlement Agreement, ¶ 3.19. The Vouchers are freely transferable and may be used multiple

1 times until the amount is exhausted. The Vouchers have an expiration date of 18 months after
2 issuance. *Id.*

3 5. Plaintiff seeks an award of attorneys' fees based on detailed invoices filed with
4 the Motion. The total amount of recorded time multiplied by the reported hourly rates of
5 Plaintiff's counsel equals \$520,214. Exhibit "1" to Declaration of Jason H. Kim; Exhibit "A" to
6 Declaration of Aubry Wand. The total amount of litigation costs incurred by Plaintiff's counsel
7 is \$61,242. Exhibit "3" to Declaration of Jason H. Kim; Declaration of Aubry Wand, ¶ 14.

8 CONCLUSIONS OF LAW

9 1. The Motion complies with the notice requirements of Fed. R. Civ. Proc. 23(h).

10 2. This is not a coupon settlement within the meaning of the Class Action Fairness
11 Act ("CAFA") because no part of Plaintiff's fee request is "attributable to the award of
12 coupons." *See* 28 U.S.C. § 1712(a). Rather, the award for attorneys' fees is based on the
13 "amount of time class counsel reasonably expended working on the action." *See* 28 U.S.C.
14 § 1712(b)(1). In addition, the Court finds that the Settlement provides for substantial injunctive
15 relief that will benefit the Class, which also serves as a basis for ruling on Plaintiff's fee request
16 at this time. *See* 28 U.S.C. § 1712(c). Therefore, it is not necessary to assess the value of
17 redeemed coupons as provided under 28 U.S.C. § 1712(a).

18 3. Moreover, the Vouchers in this Settlement are not coupons within the meaning of
19 28 U.S.C. § 1712(a). The Vouchers provide Class members with the ability to choose from
20 thousands of products from Defendant Art.com without spending any of their own money to
21 redeem the benefit of the Voucher, which distinguishes the Vouchers from coupons. *See In re*
22 *Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 951 (9th Cir. 2015) (holding \$12 gift card
23 was not a coupon primarily because class members could use it to redeem different products
24 without spending additional money). The secondary characteristics of a coupon also do not
25 apply to the Vouchers here, in that the Vouchers: (1) may be used multiple times until the
26 balance of the Voucher is extinguished; (2) they are freely transferrable (i.e., they may be
27 transferred to other persons, including other Class members or non-Class members); (3) they
28 can be used on sale and/or promotional items and can be used for shipping and tax in an amount

1 not to exceed the Voucher amount; and (4) they may be redeemed for a period of up 18 months
2 – a substantial period of time. Accordingly, the Court concludes that the Vouchers are not
3 coupons within the meaning of 28 U.S.C. § 1712.

4 4. The Settlement provides for classwide resolution of claims for alleged violations
5 of the California False Advertising Law (“FAL”), the California Consumer Legal Remedies Act
6 (“CLRA”), and the California Unfair Competition Law (“UCL”), and unjust enrichment and
7 common law restitution. Plaintiff is entitled to an award of reasonable attorneys’ fees and costs
8 under Cal. Civ. Code § 1780(e) and Cal. Code of Civ. Proc. § 1021.5 as the prevailing party on
9 these claims.

10 5. Class Counsel’s request for attorneys’ fees in the amount of \$683,758 is granted
11 based on the lodestar method, with application of a positive multiplier of 1.314. *See Hanlon v.*
12 *Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998) (district courts can utilize lodestar or
13 percentage of fund method in granting fee requests in class actions). The lodestar method
14 requires multiplying the number of hours the prevailing party reasonably expended on the
15 litigation (as supported by adequate documentation) by a reasonable hourly rate for the region
16 and for the experience of the lawyer.” *In re Online DVD-Rental Antitrust Litig.*, 716 F.3d at 949.
17 The Court may then enhance the lodestar with a “multiplier.” *See In re Washington Public*
18 *Power Supply System Securities Litig.*, 19 F.3d 1291, 1294 n.2 (9th Cir. 1994).

19 6. In light of the work Class Counsel performed, the result they achieved on behalf
20 of Class members, the contingent nature of the litigation, the experience and skill Class Counsel
21 displayed in the litigation, the risks involved in the litigation, and the preclusion of other
22 employment occasioned by the hours Class Counsel devoted to this litigation, the Court finds
23 that an award of \$683,758 in attorneys’ fees is fair and reasonable.

24 7. Class Counsel has submitted detailed time records of the work they performed in
25 this case. The Court finds that the hours Class Counsel dedicated to the prosecution of this
26 action are reasonable and consistent with the litigation in this case. The Court further finds that
27 Class Counsel’s hourly rates are reasonable for their skill and the work they performed. *See*
28 *Gonzalez v. City of Maywood*, 729 F.3d 1196, 1200 (9th Cir. 2013) (“[T]he court must compute

1 the fee award using an hourly rate that is based on the prevailing market rates in the relevant
2 community.”) (citation omitted).

3 8. The \$683,758 in attorneys’ fees represents application of a positive multiplier of
4 1.314 based on a gross lodestar amount of \$520,214. The lodestar multiplier of 1.314 is fair and
5 reasonable. The requested multiplier is far less than multipliers found in other cases. *See, e.g.,*
6 *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 n. 6 (9th Cir. 2002) (affirming 28% fee award
7 where multiplier equaled 3.65 and finding “most” common fund cases apply a multiplier of 1.0-
8 4.0); *Steiner v. Am. Broad. Co.*, 248 Fed. Appx. 780, 783 (9th Cir. Cal. 2007) (upholding 25%
9 fee award yielding multiplier of 6.85, finding that it “falls well within the range of multipliers
10 that courts have allowed”); *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 244, 255 (2001)
11 (observing that multipliers can range from 2 to 4 or even higher).

12 9. The Court also considers the following factors in assessing the reasonableness of
13 the requested multiplier: (1) the risks presented by the contingent nature of the case; (2) the
14 result obtained and the importance of the lawsuit to the public; (3) the novelty and difficulty, of
15 the questions involved and the skill requisite to perform the legal service properly; and (4) the
16 preclusion of other employment by the attorney due to acceptance of the case. *See Parkinson v.*
17 *Hyundai Motor America*, 796 F. Supp. 2d 1160, 1173-75 (C.D. Cal. 2010). The Court finds that
18 each of these factors supports application of the 1.314 multiplier.

19 a. Contingent nature of the case. Class Counsel undertook this matter on a
20 contingent-basis and they shouldered the risk of expending substantial costs and time in
21 litigating the action without any monetary gain in the event of an adverse judgment.
22 Accordingly, this factor weighs in favor of application of the requested multiplier.

23 b. The result obtained. The Settlement provides for payment of up to \$20
24 million to approximately 2 million Class members. Class Counsel’s fee request is also well-
25 justified given the value of the injunctive relief. Under the Settlement, Defendant Art.com to
26 implement a compliance program, which will consist of periodic (no less than once a year)
27 monitoring, training and auditing to ensure compliance with relevant laws, for a period of at
28 least four (4) years from the Effective Date of the Settlement. By settling at this stage of the

1 litigation, Class Counsel ensured that such prospective changes would inure to the benefit of the
2 Class as soon as possible. The Court finds that the result obtained weighs in favor of application
3 of the requested multiplier.

4 c. The skill required. The Court finds that this case presented several difficult
5 questions of law and fact. Class Counsel had to overcome several major obstacles in prosecuting
6 this case, including surviving a motion to dismiss, litigating this case efficiently, and
7 successfully negotiating this Settlement without undertaking unnecessary work. Based on the
8 skill and difficulty of questions presented in the case, the Court finds that application of the
9 1.314 multiplier is appropriate.

10 d. Preclusion of other employment. Class Counsel has devoted substantial time
11 to litigating this case that could have been spent on other fee-generating matters, but were
12 declined, during the pendency of this action in order to devote the attention necessary to achieve
13 the Settlement. Thus, this factor weighs in favor of awarding the multiplier.

14 10. As a cross-check to test the reasonableness of the fee award, the requested
15 attorneys' fee award represents far less than the Ninth Circuit's benchmark of 25% of the
16 common fund. *See Vizcaino*, 290 F.3d at 1047 (noting that 25% is benchmark for fees); *In re*
17 *Omnivision Techs.*, 559 F.Supp.2d 1036, 1047 (N.D. Cal. 2007) (awarding attorneys' fees in
18 excess of the 25% benchmark plus costs). Here, Class Counsel's fee request of \$683,758
19 represents less than 3.5% of the monetary value of the Settlement.

20 11. In addition to attorneys' fees, Class Counsel requests reimbursement of expenses
21 in the amount of \$61,242. The Court is satisfied that the costs are reasonable, and therefore, the
22 Court grants Plaintiffs' request for costs in the amount of \$61,242.

23 12. The total amount of attorneys' fees and costs approved by the Court is \$745,000,
24 which is the amount agreed upon by the parties aided by an experienced mediator, as
25 memorialized in the Settlement Agreement. The fact that these attorneys' fees and costs were
26 the result of arms-length negotiation further supports the reasonableness of this award.
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1 13. Accordingly, the Court approves the award of attorneys’ fees and costs in the
2 amount of \$745,000 to Plaintiff pursuant to Fed. R. Civ. Proc. Rule 23(h) based on the findings
3 of fact and conclusions of law set forth above.

4 14. Plaintiff has additionally moved for a class representative service award of
5 \$5,000. Plaintiff seeks this payment as compensation for the time, effort, and risk that he spent
6 on behalf of the Class. Plaintiff devoted substantial time to responding to discovery, producing
7 documents, sitting for deposition, and otherwise being involved in the case. Declaration of
8 James Knapp. The award of \$5,000 represents just 0.025% of the monetary component of the
9 Settlement. *See In re Online DVD-Rental Antitrust Litig.*, 779 F.3d at 947-48 (approving \$5,000
10 service award to nine class representatives – which represented 0.17% of the settlement fund –
11 because in assessing propriety of service award, courts should focus on the “number of class
12 representatives, the average incentive award amount, and the proportion of the total settlement
13 that is spent on incentive awards.”). The service award is also less than or equivalent to amounts
14 frequently awarded to class representatives in class actions. *See, e.g., Hopson v. Hanesbrands*
15 *Inc.*, No. CV-08-0844 EDL, 2009 WL 928133, at *27-28 (N.D. Cal. Apr. 3, 2009) (awarding
16 \$5,000 incentive payment, constituting 1.25% of the settlement fund, and finding that, “in
17 general, courts have found that \$5,000 incentive payments are reasonable”) (citations omitted).
18 Accordingly, the Court approves the requested class representative service award of \$5,000 to
19 the Named Plaintiff.

20 **IT IS SO ORDERED.**

21 DATED: _____

22 HONORABLE WILLIAM H. ORRICK
23 UNITED STATES DISTRICT COURT JUDGE