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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 a second time for awards of attorneys' fees and costs to Class
2 Counsel and has also moved to designate Public Justice Foundation and Public Counsel as
3 substitute *cy pres* recipients. The Court heard argument regarding this motion on October 3,
4 2018. Based upon all papers filed with the Court and oral argument at the hearing, the Court
5 makes the following findings of fact and conclusions of law pursuant to Fed. R. Civ. Proc. 52 as
6 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 was
10 directed to Class members by posting the complete contents of the Motion and all supporting
11 documents on the website established for this case, www.knappsettlement.com. The Class Notice
12 informed Class members that the Motion would be so posted on this website.

13 2. The Motion was 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, Defendant
22 Art.com will implement a compliance program, which will consist of periodic (no less than once
23 a year) monitoring, training and auditing to ensure compliance with relevant laws, for a period of
24 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 of
26 \$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. On August 22, 2017, the Court filed an order granting final approval of the
4 settlement and authorizing payment of the class representative service award and Class
5 Counsel's litigation costs. See ECF No. 82; *Knapp v. Art.com, Inc.*, 283 F. Supp. 3d 823, 838
6 (N.D. Cal. Aug. 22, 2017). Pursuant to the Court's Order, the vouchers were distributed via
7 email to all known class members and Art.com has paid \$61,242 to Class Counsel for their
8 litigation costs and \$5,000 to Plaintiff for a service award.

9 6. In its August 22, 2017 Order, the Court also determined that the relief provided to
10 Class members constituted coupons within the meaning of the Class Action Fairness Act, 28
11 U.S.C. § 1712. Based on this determination, the Court ordered that Class Counsel could refile a
12 motion for attorneys' fees and costs after the voucher redemption rate had been determined.

13 7. Plaintiff has now filed his Renewed Motion for Attorneys' Fees and Costs
14 ("Renewed Motion") and provided information about the voucher redemption rate. As set forth
15 in the Declaration of David Tjen, as of August 14, 2018, the total value of the vouchers
16 redeemed pursuant to the Settlement is \$142,940 and the vouchers were used in 14,567
17 transactions.

18 8. To encourage the redemption of outstanding vouchers, Plaintiff separately
19 contracted with the Settlement Administrator for a second email distribution on February 10,
20 2018 to remind Class members about the vouchers, at a cost of \$22,858.

21 9. Plaintiff has incurred additional costs since the first fee application in the total
22 amount of \$1,858 for travel costs for the final approval hearing, filing and messenger costs for
23 various motions filed since Plaintiff's previous request for costs, and fees for computerized legal
24 research and Pacer

25 10. The Renewed Motion and all supporting documents were posted on the website
26 established for this matter soon after it was filed.

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CONCLUSIONS OF LAW

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

2. Pursuant to *In re HP Inkjet Printer Litig.*, 716 F.3d 1173, 1179 (9th Cir. 2013), the Court performs the following calculation under 28 U.S.C. § 1712 based on information about voucher redemptions:

The district court must perform two separate calculations to fully compensate class counsel. First, under subsection (a), the court must determine a reasonable contingency fee based on the actual redemption value of the coupons awarded. Second, under subsection (b), the court must determine a reasonable lodestar amount to compensate class counsel for any non-coupon relief obtained. This lodestar amount can be further adjusted upwards or downwards using an appropriate multiplier. In the end, the total amount of fees awarded under subsection (c) will be the sum of the amounts calculated under subsections (a) and (b).

3. Pursuant to subsection (a), the Court calculates a reasonable attorney fee of \$119,246 calculated as 25% of the sum of: (1) the \$142,940 value of redeemed vouchers; (2) \$75,000 in notice and administration costs; and (3) the \$259,042 *cy pres* award, for a total of \$476,982.

4. Pursuant to subsection (b), the Court calculates a reasonable attorney fee of \$280,754 to account for the substantial non-monetary relief obtained through the Settlement. This is approximately 50% of Class Counsel’s total lodestar in this matter. The Court concludes that 50% of the lodestar is appropriate given the importance of injunctive relief as a remedy under the California consumer protection laws under which this action was brought.

5. The Court concludes that the hours expended by Class Counsel in this matter were reasonable and that their hourly rates are reasonable based on the documentation provided by Class Counsel. The detailed time reports of Class Counsel show that collectively they devoted close to 1000 hours to this litigation and have a lodestar of \$564,652.

1 6. In light of the work Class Counsel performed, the result they achieved on behalf
2 of Class members, the contingent nature of the litigation, the experience and skill Class Counsel
3 displayed in the litigation, the risks involved in the litigation, and the preclusion of other
4 employment occasioned by the hours Class Counsel devoted to this litigation, the Court finds
5 that an award of \$ 280,754 in attorneys' fees is fair and reasonable to account for the non-
6 monetary relief obtained through the Settlement pursuant to 28 U.S.C. § 1712(b).

7 7. In addition to attorneys' fees, Class Counsel requests reimbursement of expenses
8 in the amount of \$24,716 for expenses that were not previously reimbursed. The Court is
9 satisfied that the costs are reasonable, and therefore, the Court grants Plaintiffs' request for costs
10 in the amount of \$24,716.

11 8. Accordingly, the Court approves the award of attorneys' fees and costs in the
12 amount of \$424,716 to Plaintiff from the \$745,000 fund established pursuant to the Settlement
13 for Plaintiff's attorneys' fees and costs pursuant to Fed. R. Civ. Proc. Rule 23(h) based on the
14 findings of fact and conclusions of law set forth above.

15 9. Plaintiff has additionally moved to substitute Public Justice Foundation and
16 Public Counsel as *cy pres* recipients in light of this Court's holding that the National Consumer
17 Law Center was not an appropriate *cy pres* recipient due to its current co-counsel relationship
18 with one of Class Counsel. *Knapp*, 283 F. Supp. 3d at 835. The Court finds that both entities are
19 appropriate *cy pres* recipients because of their nationwide legal work on behalf of consumers.
20 Class Counsel and counsel for Art.com have disclosed their relationships with these two entities,
21 and the Court does not find that any of these relationships are disqualifying.

22 10. Thus, the Court orders that the amount of \$259,042 be distributed in equal shares
23 to the Public Justice Foundation and Public Counsel from the \$745,000 fund established pursuant
24 to the Settlement for Plaintiff's attorneys' fees and costs.

25 **IT IS SO ORDERED.**

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27 DATED: _____

HONORABLE WILLIAM H. ORRICK
UNITED STATES DISTRICT COURT JUDGE

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