UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES -- GENERAL

Case No. **CV 18-3093-JFW(ASx)** Date: June 19, 2019

Title: Lisa Kim *-v-* Tinder, Inc., et al.

PRESENT:
HONORABLE JOHN F. WALTER, UNITED STATES DISTRICT JUDGE

Shannon Reilly	**None Present**
Courtroom Deputy	**Court Reporter**

ATTORNEYS PRESENT FOR PLAINTIFFS:	**ATTORNEYS PRESENT FOR DEFENDANTS:**
None	None

PROCEEDINGS (IN CHAMBERS): **ORDER GRANTING PLAINTIFF LISA KIM'S MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT [filed 5/13/19; Docket No. 71]; and**

ORDER GRANTING PLAINTIFF LISA KIM'S MOTION FOR ATTORNEYS' FEES, COSTS, AND INCENTIVE AWARDS [filed 4/22/19; Docket No. 63]

On April 22, 2019, Plaintiff Lisa Kim ("Plaintiff") filed a Motion for Attorneys' Fees, Costs, and Incentive Awards ("Motion for Attorneys' Fees"). Docket No. 63. On May 13, 2019, Plaintiff filed a Motion for Final Approval of Class Settlement ("Motion for Final Approval"). Docket No. 71. On May 24, 2019, Objectors Rich Allison ("Allison") and Steve Frye ("Frye") (collectively, the "Objectors") filed their Opposition. Docket No. 78. On June 3, 2019, Plaintiff filed a Reply. Docket No. 80. On June 3, 2019, Defendants Tinder, Inc., Match Group, LLC, and Match Group, Inc. (collectively, "Defendants") filed a Response to Objections to Proposed Class Settlement ("Response"). Docket No. 81. On June 10, 2019, the Objectors filed a Sur-Reply. Docket No. 85. On June 11, 2019, Plaintiff filed an Objection to the Candelore Objectors' Unauthorized Surreply. Docket No. 86. In addition to the moving, opposing, and reply papers, objections were also filed by six class members: (1) On May 6, 2019, Allison filed his Objection to Class Action Settlement (Docket No. 65); (2) On May 6, 2019, Frye filed his Objection to Class Action Settlement[1] (Docket No. 66); (3) On May 6, 2019, Jay Rodriguez ("Rodriguez"), Sabrina Johnson ("Johnson"), Luis Pena ("Pena"), and Richard Mojica ("Mojica") filed their Objection to Class Action Settlement (Docket No. 70).

[1] On May 6, 2019, Allison and Frye filed a Memorandum of Law in Support of Objections. Docket No. 67.

The Court conducted a Final Fairness Hearing on Plaintiff's Motion for Final Approval and Plaintiff's Motion for Attorneys' Fees on June 17, 2019. For the reasons stated herein, the Court **GRANTS** Plaintiff's Motion for Final Approval and Plaintiff's Motion for Attorneys' Fees:

I. Factual and Procedural Background[2]

A. Factual Background

Tinder is a smartphone based dating application that is used by consumers throughout the world, including in California. Plaintiff is a user over the age of 29 who alleges that when she and other users over the age of 29 purchased Tinder premium services, such as Tinder Plus or Tinder Gold, Defendants discriminated against them based on their age by charging them a higher price for the same services that Defendants charged consumers who were under the age of 29.

On April 12, 2018, Plaintiff filed her class action Complaint against Defendants. Docket No. 1. On June 22, 2018, Plaintiff filed a First Amended Complaint, alleging claims for: (1) violation of the Unruh Civil Rights Act, California Civil Code §§ 51 *et seq.*; and (2) violation of the Unfair Competition Law, California Business & Professions Code §§ 17200, *et seq.* Docket No. 30.

On June 11, 2018, Defendants filed a Motion to Compel Arbitration, claiming that because Plaintiff agreed to Tinder's Terms of Use ("TOU") which included an arbitration agreement, Plaintiff's claims were subject to arbitration. Docket No. 24. On July 12, 2018, the Court granted Defendants' Motion to Compel Arbitration and entered its Order on July 12, 2018. Docket Nos. 43 and 44. On July 13, 2018, Plaintiff appealed the Court's ruling granting Defendants' Motion to Compel Arbitration. Docket No. 46. On June 17, 2019, Plaintiff dismissed her appeal. *See* Docket No. 87.

On November 29, 2018, the parties attended an all day mediation with the Honorable Louis M. Meisinger (Ret.). Although the case did not completely settle on November 29, 2018, the parties engaged in additional settlement discussions with Judge Meisinger and the parties reached a settlement on December 1, 2018 (the "Settlement"). The Settlement was memorialized in the Class Action Settlement Agreement (the "Settlement Agreement"), which was entered into on December 31, 2018 and is attached as Exhibit A to the January 18, 2019 Declaration of Todd M. Friedman (Docket No. 52-1). On March 1, 2019, the Court granted Plaintiff's Motion for Preliminary Approval of Class Settlement and Class Certification of Settlement Class ("Motion for Preliminary Approval") and entered its Order on March 12, 2019. Docket Nos. 60 and 62.

B. The Settlement Class

The "Settlement Class" is defined in the Settlement Agreement as:

Every California subscriber to Tinder Plus or Tinder Gold during the Class Period

[2] To the extent that the Court has relied on evidence to which the parties have objected, the Court has considered and overruled those objections. As to the remaining objections, the Court finds that it is unnecessary to rule on those objections because the disputed evidence was not relied on by the Court.

> who at the time of subscribing was at least 29 years old and was charged a higher rate than younger subscribers, except those who choose to opt out of the Settlement Class.

Settlement Agreement, § 2.21. The Class Period is from March 2, 2015 through March 1, 2019 (the date that the Court granted preliminary approval of the Settlement). The Settlement Class contains approximately 240,000 members.

C. The Terms of the Settlement

Pursuant to the Settlement Agreement, every Class Member who has a current Tinder account, or reactivates a Tinder account associated with the same email address used in their prior account, will automatically receive 50 Super Likes (equivalent to $50 in value). Settlement Agreement, §§ 1.4 and 4.3-4.4. This benefit will be automatically issued to each and every Class Member regardless of whether the Class Member submits a Claim Form. *Id.* In addition, each Class Member may submit a Claim Form to obtain one of the following additional benefits: (1) $25.00 in cash; (2) 25 Super Likes (but only if the Class Member has a current Tinder account); or (3) a one-month subscription to Tinder Plus or Tinder Gold, depending on which of those services the Class Member had previously purchased (this option is not available to any Class Member who has a current subscription to Tinder Plus or Tinder Gold). Settlement Agreement, § 3.2-3.3. In addition, Defendants have agreed to change Tinder's pricing model and will no longer charge different prices based on age. Settlement Agreement, § 3.4. Plaintiff estimates this revision to Tinder pricing policy is worth at least $6 million to the Settlement Class. Declaration of Todd M. Friedman ("Friedman Decl.") (Docket No. 71-1), ¶ 43.

D. The Scope of the Release

The Settlement Agreement provides that Class Members who do not request exclusion from the Settlement will release any and all claims, known or unknown, against the Released Parties arising from the claims that subscribers to Tinder Plus or Tinder Gold were charged a higher price depending on their age. Settlement Agreement, § 8.1.

E. Notice to the Settlement Class

Because Defendants maintain email addresses for the majority of Tinder's users, on April 5, 2019, Class Notice was emailed by the Settlement Administrator, Epiq Class Action & Claims Solutions, Inc. (the "Settlement Administrator"), to 240,592 Class Members. Declaration of Brian Pinkerton ("Pinkerton Decl."), ¶¶ 4-9. A total of 203,741 of those Class Notices, or approximately 85 percent, were successfully delivered. Pinkerton Decl., ¶ 9. A second Class Notice was emailed to Class Members on May 17, 2019, with approximately the same delivery success rate. Pinkerton Decl., ¶ 12.

As of June 3, 2019, the Settlement Administrator had received 1,794 Claim Forms from Class Members. Pinkerton Decl., ¶ 20. A third Class Notice will be emailed after final approval of the Settlement.[3] During the Notice and Claims Period, the Settlement Administrator has

[3] The Claims Period does not expire until July 17, 2019.

maintained, and will continue to maintain, a Settlement Website that contains relevant documents pertaining to the Settlement and through which Claim Forms may be submitted. Settlement Agreement, §§ 4.5 and 5.2; Pinkerton Decl., ¶¶ 13-14. In addition, the Settlement Administrator has processed, and will continue to process, inquiries from Class Members via email and telephone. Pinkerton Decl., ¶¶ 15-17.

F. Opt Outs and Objections

The Class Notice informed Class Members that they had 30 days – until May 6, 2019 – to submit a request to opt out of the Settlement or to submit an objection to the Settlement. A total of 238 Opt Outs were submitted (one of them after the May 6, 2019 deadline). 236 of the opt outs were submitted by Class Members who are represented by counsel in other proceedings pending against Tinder (with 235 of them represented by the law firm of Davis & Norris). Defendants contend that 49 of the individuals represented by Davis & Norris who submitted Opt Outs do not qualify as Class Members.

In addition, six individuals objected to the Settlement, all of whom are represented by counsel in other proceedings against Defendants. Two objectors, Allison and Frye, are represented by the same counsel as Allan Candelore ("Candelore"), a Class Member who opted out of this case. Candelore is a Plaintiff in another lawsuit against Defendants involving similar claims. The other four objectors – Rodriguez, Pena, Mojica, and Johnson – are represented by Davis & Norris. Defendants contend that none of the objectors qualify as Class Members because they have already litigated claims against Defendants in arbitration proceedings, and that three of the objectors do not qualify as Class Members for the additional reason that they did not make a qualifying purchase.

G. Application for Incentive Awards, Fees, Costs, and Expenses

Pursuant to the Settlement Agreement, Plaintiff has requested an Incentive Award in the amount of $5,000.00. Settlement Agreement, § 7.2. In addition, pursuant to the Settlement Agreement, Class Counsel has applied to the Court for an award of attorneys' fees in the amount of $1,200,000.00 plus reimbursement of costs, which represents 5 percent of the total estimated value of the Settlement, including the value of the injunctive component. Settlement Agreement, § 7.1. Defendants do not oppose either Plaintiff's requested Incentive Award or Class Counsel's requested award of attorneys' fees.

II. Legal Standard

The settlement approval procedures take place over three stages. First, the parties present a proposed settlement asking the Court to provide "preliminary approval" for both (a) the settlement class and (b) the settlement terms. *See, e.g., Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004) (discussing the district court's use of a preliminary approval order). Second, if the court does preliminarily approve the settlement and class: (1) notice is sent to the class describing the terms of the proposed settlement; (2) class members are given an opportunity to object or opt out; and (3) the court holds a fairness hearing at which class members may appear and support or object to the settlement. *Id.* Third, taking account of all of the information learned during the aforementioned processes, the Court decides whether or not to give final approval to

the settlement and class certification. *Id.*

III. Discussion

In her Motion for Final Approval, Plaintiff seeks final approval of the class action settlement that was preliminarily approved by this Court on March 1, 2019. In her Motion for Attorneys' Fees, Plaintiff seeks: (1) an award of attorneys' fees of $1,200,000; (2) a payment of $12,137.51 in costs; and (3) an Incentive Award of $5,000 for Plaintiff.

A. The Settlement Class Meets the Requirements for Class Certification

Before granting final approval of a class action settlement agreement, the Court must first determine whether the proposed class can be certified. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997) (holding that a district court must apply "undiluted, even heightened, attention [to class certification] in the settlement context" in order to protect absentees). In this case, the Court previously preliminarily certified the Settlement Class for settlement purposes only. Because nothing has changed to affect the propriety of certification of the Settlement Class, the Court's analysis is largely the same as set forth in its March 12, 2019 Order Granting Plaintiff's Motion for Preliminary Approval of Class Settlement and Certification of Settlement Class ("Preliminary Settlement Order").

1. Legal Standard for Class Certification

Class actions are governed by Federal Rule of Civil Procedure 23. In order to certify a class, each of the four requirements of Rule 23(a) must first be met. *Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1186 (9th Cir. 2001). Rule 23(a) allows a class to be certified only if: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.

In addition to Rule 23(a)'s requirements, the proposed class must satisfy the requirements of one of the subdivisions of Rule 23(b). *Zinser,* 253 F.3d at 1186. In this case, Plaintiff seeks to certify the Settlement Class under subdivision Rule 23(b)(3), which permits certification if "questions of law or fact common to class members predominate over any questions affecting only individual members," and "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

2. Numerosity is Satisfied

Federal Rule of Civil Procedure 23(a)(1) requires that a class must be "so numerous that joinder of all members is impracticable." "[C]ourts generally find that the numerosity factor is satisfied if the class comprises 40 or more members and will find that it has not been satisfied when the class comprises 21 or fewer." *Celano v. Marriott Int'l, Inc.*, 242 F.R.D. 544, 549 (N.D. Cal. 2007).

In this case, the numerosity requirement is easily satisfied as Plaintiff's proposed Class

consists of approximately 240,000 members.

3. Commonality is Satisfied

Federal Rule of Civil Procedure 23(a)(2) requires that there be "questions of law or fact common to the class." Commonality requires that "the class members 'have suffered the same injury.'" *Wal–Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349–50 (2011) (*quoting Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 157 (1982)). "The existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class." *Hanlon v. Chrysler Corp*., 150 F.3d 1011, 1019 (9th Cir. 1998).

In this case, the Court concludes that Plaintiff has met her burden of demonstrating that there are common questions of law and fact. For example, the Class Members' claims all arise from the same factual circumstances, specifically that consumers age 29 and older who subscribed to Tinder Plus or Tinder Gold paid a higher price than those under the age of 29. In addition, whether or not this pricing policy violated the Unruh Act and the UCL is common to all Class Members and does not depend on individual factual or legal issues.

4. Typicality is Satisfied

To satisfy Federal Rule of Civil Procedure 23(a)(3), Plaintiff's claims must be typical of the claims of the Class. The typicality requirement is "permissive" and requires only that Plaintiff's claims "are reasonably coextensive with those of absent class members." *Hanlon*, 150 F.3d at 1020. "The test of typicality 'is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct.'" *Hanon v. Dataproducts Corp*., 976 F.2d 497, 508 (9th Cir. 1992) (*quoting Schwartz v. Harp*, 108 F.R.D. 279, 282 (C.D. Cal. 1985)). "[C]lass certification should not be granted if 'there is a danger that absent class members will suffer if their representative is preoccupied with defenses unique to it.'" *Id*. (citation omitted).

In this case, the Court concludes that Plaintiff's claims are typical of the claims of the Class because they arise from the same factual circumstances and raise the same legal issues.

5. Adequacy is Satisfied

Federal Rule of Civil Procedure 23(a)(4) requires that the named representatives fairly and adequately protect the interests of the class. "To satisfy constitutional due process concerns, absent class members must be afforded adequate representation before entry of judgment which binds them." *Hanlon*, 150 F.3d at 1020 (*citing Hansberry v. Lee*, 311 U.S. 32, 42–43 (1940)). To determine legal adequacy, the Court must resolve two questions: "(1) do the named plaintiffs and their counsel have any conflicts of interest with other class members, and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *Id*.

Plaintiff and Class Counsel have no conflicts of interest with other Class Members because, for purposes of the Settlement, Plaintiff's claims are typical of those of other Class Members. Plaintiff and other Class Members share the common goal of protecting and improving consumer and privacy rights throughout California, and there is no conflict among them. In addition, Plaintiff

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and Class Counsel have been prosecuting this action vigorously on behalf of the Class. In fact, since the Court preliminarily approved the Class and the Settlement, Plaintiff and Class Counsel have obtained Defendant's agreement to provide two additional rounds of Class Notices to be sent to Class Members to remind them of their right to submit claims. Based on Class Counsel's extensive experience in business and corporate litigation, including the successful prosecution of numerous class actions seeking to protect privacy and consumer rights, the Court concludes that Class Counsel is qualified to represent the interests of the Class. Accordingly, the Court concludes that Plaintiff and Class Counsel adequately represent the members of the Settlement Class, and, thus, Rule 23(a)(4)'s adequacy requirement is met.

6. Certification Under 23(b)(3) is Appropriate

Federal Rule of Civil Procedure 23(b)(3) permits certification if "questions of law or fact common to class members predominate over any questions affecting only individual members," and "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." The Rule 23(b)(3) predominance inquiry tests whether the proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem*, 521 U.S. at 623. Whether a class is being certified for litigation or settlement affects the predominance inquiry. As the Ninth Circuit recently explained in *In re Hyundai and Kia Economy Litigation ("In re Hyundai")*, __ F.3d __ (9th Cir. 2019), 2019 WL 2376831, *7 (9th Cir. June 6, 2019):

> In *Amchem*, the district court found that predominance was satisfied based in part on class members' common interest in the settlement benefits – prompt and fair compensation without the risk and cost of litigation. 521 U.S. at 622. The Supreme Court held that this was error because predominance looks at the cohesiveness of "the legal or factual questions that qualify each class member's case as a genuine controversy, questions that preexist any settlement." *Id*. at 623. But whether a proposed class is sufficiently cohesive to satisfy Rule 23(b)(3) is informed by whether certification is for litigation or settlement. A class that is certifiable for settlement may not be certifiable for litigation if the settlement obviates the need to litigate individualized issues that would make a trial unmanageable. *See* 2 William B. Rubenstein, *Newberg on Class Actions* § 4:63 (5th ed. 2018) ("Courts . . . regularly certify settlement classes that might not have been certifiable for trial purposes because of manageability concerns").

The final requirement for certification pursuant to Federal Rule of Civil Procedure 23(b)(3) is "that a class action [be] superior to other available methods for fairly and efficiently adjudicating the controversy." The superiority inquiry requires the Court to consider the four factors listed in Rule 23(b)(3): (A) the class members' interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action. *See also Zinser*, 253 F.3d at 1190. However, a court need not consider the fourth factor when certification is solely for the purpose of settlement. *See Amchem*, 521 U.S. at 620 ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, for the proposal is that there be no trial"); *see also In re Hyundai*, __ F.3d __, 2019 WL 2376831, at *6 ("These factors

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must be considered in light of the reason for which certification is sought – litigation or settlement – which "is relevant to a class certification") (*quoting Amchem*, 521 U.S. at 619). The superiority inquiry focuses "'on the efficiency and economy elements of the class action so that cases allowed under [Rule 23(b)(3)] are those that can be adjudicated most profitably on a representative basis.'" *Zinser*, 253 F.3d at 1190 (quoting 7A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure,* § 1780, at 562 (2d ed. 1986)). A district court has "broad discretion" in determining whether class treatment is superior. *Kamm v. Cal. City Dev. Co.*, 509 F.2d 205, 210 (9th Cir. 1975).

In this case, the Court concludes that Plaintiff has demonstrated that common issues predominate and that a class action is superior for the proposed Class. The central inquiry for purposes of the Settlement is whether Defendants violated the Unruh Act and the UCL with their pricing scheme. "When common questions present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication, there is clear justification for handling the dispute on a representative rather than on an individual basis." *Hanlon,* 150 F.3d at 1022; *see also In re Hyundai*, __ F.3d __, 2019 WL 2376831, at *8 ("We have held that these types of common issues, which turn on a common course of conduct by the defendant, can establish predominance in nationwide class actions"). In addition, individual cases would consume a significant amount of the Court's and the Class Members' resources. It is also likely that Class Members would not pursue litigation on an individual basis due to the high costs of pursuing individual claims. The interests of the Class Members in individually controlling the litigation are minimal, especially given the same broad-based policy and practices would be at issue. Moreover, although the Court has received a few objections to the Settlement, which are addressed in more detail below, none seriously challenge the resolution of this matter on a class-wide basis.

Accordingly, because the requirements of Rule 23(a) and 23(b)(3) have been satisfied, the Court finds certification of the Settlement Class proper and reaffirms certification of the Settlement Class for settlement purposes only.

B. The Settlement Agreement Meets the Requirements for Final Approval

Having certified the Settlement Class, the Court must next determine whether the proposed settlement is "fair, reasonable, and adequate" pursuant to Federal Rule of Civil Procedure 23(e). Relevant factors to this determination include:

> The strength of the plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement.

Hanlon, 150 F.3d at 1026. In addition, due to the "dangers of collusion between class counsel and the defendant, as well as the need for additional protections when the settlement is not negotiated by a court designated class representative," any "settlement approval that takes place prior to formal class certification requires a higher standard of fairness." *Id*.

1. The Strength of Plaintiff's Case, the Risk and Expense of Further Litigation, and the Risk of Maintaining Class Action Status Throughout Trial

In this case, the parties dispute who would prevail on the merits if this litigation continued. The initial challenge for Plaintiff would be to prevail in her appeal of the Court's Order granting Defendants' Motion to Compel Arbitration. Defendants have provided evidence that over 95 percent of the Class Members entered into the identical or similar arbitration agreement. The Ninth Circuit has recently held that such arbitration agreements can be a bar to class certification under the right circumstances. *See O'Connor v. Uber Technologies, Inc.*, 904 F.3d 1087 (9th Cir. 2018).

In addition, even if Plaintiff prevails on her appeal, in order to succeed on the merits, Plaintiff would have to prove that Defendants violated the Unruh Act. The parties vigorously disagree on whether Unruh Act liability can be proven and, in fact, there is a split of authority regarding whether an age-based price discount, such as the one offered by Defendants, is unlawful under the Unruh Act. *See, e.g., Candelore v. Tinder, Inc.*, 19 Cal. App. 5th 1138 (2018) (holding that the plaintiff's allegations based on Tinder's age based price discounts state a claim for age discrimination in violation of the Unruh Act); *see also Javorsky v. Western Athletic Clubs, Inc.*, 242 Cal. App. 4th 1386 (2015) (affirming trial court and holding that age-based price discount at health club did not violate Unruh Act or UCL).[4]

Moreover, Defendants have raised several other defenses to Plaintiff's claims[5], and clearly

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[4] The Court finds the holding of *Javorsky* to be more compelling and more in line with the weight of authority than the holding in *Candelore*. The Court was unable to locate and the objectors have failed to cite any case where damages were awarded under the Unruh Act for an individual who did not qualify for an age based discount. Defendants have cited numerous cases finding no violation of the Unruh Act based on age based discounts. *See, e.g.*, *Starkman v. Mann Theatres*, 227 Cal. App. 3d 1491 (1991) (holding that age discounts for movie tickets are permissible); *Sargoy v. Resolution Trust Corp.*, 8 Cal. App. 4th 1039 (1992) (holding that reduced interest rates for seniors are permissible); *Lazar v. Hertz Corp.*, 69 Cal. App. 4th 1494 (1999) (holding that higher car rental fees for younger drivers are permissible); *Pizarro v. Lamb's Players Theatre*, 135 Cal. App. 4th 1171 (2006) (holding that "baby boomer" discount for theater tickets are permissible). In addition, the only issue decided in *Canedelore* was whether a claim for age discrimination in violation of the Unruh Act based on an age related discount could survive demurrer, whereas the Court of Appeal in *Javorsky* concluded on a motion for summary judgment that an age based discount did not violate the Unruh Act. Moreover, contrary to Allison's and Frye's suggestion (*see* Memorandum of Points and Authorities in Support of Objections [Docket No. 67], 8:5-9), Judge Meisinger was fully aware of the *Candelore* decision and the decision was extensively discussed during the mediation. *See* Declaration of Hon. Louis M. Meisinger (Ret.) ("Meisinger Decl.") [Docket No. 72], ¶ 2.

[5] For example, Defendants argue, among other defenses, that Plaintiff's claims are governed by Texas, not California, law and that Tinder's Terms of Use include a limitation of liability provision that would bar Class Members from recovering statutory damages under the Unruh Act.

state that although they agree "certification of a class is appropriate for settlement purposes, [Defendants] would aggressively oppose class certification in any contested proceeding." Defendant's Response, 18:16-17.

Accordingly, if this case had not settled, the parties would each bear a significant risk and a strong likelihood of protracted and contentious litigation, which would be costly to the parties. As a result, the Court concludes that the risk and expense of further litigation weighs strongly in favor of the Court's conclusion that the Settlement is fair, reasonable, and adequate. *See, e.g., Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) ("Avoiding such a trial and the subsequent appeals in this complex case strongly militates in favor of settlement rather than further protracted and uncertain litigation."); *see also Bond v. Ferguson Enters., Inc.*, 2011 WL 284962, at *7 (E.D. Cal. Jan. 25, 2011) ("Even if Plaintiffs were to prevail, they would be required to expend considerable additional time and resources potentially outweighing any additional recovery obtained through successful litigation"). The Court's conclusion that the Settlement is fair, reasonable, and adequate is strengthened by the fact that Defendants do not object to a finding that the class elements are met for purposes of this Settlement, but would vigorously oppose class certification in the absence of the Settlement. *See, e.g., Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 966 (9th Cir. 2009); *Couser v. Comenity Bank*, 125 F.Supp.3d 1034, 1042 (S.D. Cal. 2015) ("Where there is a risk of maintaining class action status throughout the trial, this factor favors approving the settlement") (citation omitted).

2. The Settlement Provides a Fair and Substantial Benefit to Class Members.

In this case, the Settlement resulted from the parties' participation in an all day mediation session and subsequent settlement discussions with Judge Meisinger. Meisinger Decl., ¶¶ 2-3. The Settlement provides all Class Members with both an automatic universal benefit and the option to receive an additional cash or non-monetary benefits if they submit a Claim Form that includes certain information. Each Class Member who does not opt out and, as of the Effective Date of the Settlement, still has, or has reactivated, their Tinder account will automatically receive 50 Super Likes, which is equivalent to $50.00 in value, regardless of whether the Class Member submits a claim form. *See* Agreement, § 3.2. In addition, each Class Member may submit a Claim Form to obtain one of the following additional benefits: (1) $25.00 in cash; (2) 25 additional Super Likes (if the Member has a Tinder account); or (3) a one-month subscription to Tinder Plus or Tinder Gold, depending on which of those services the Member had previously purchased (the third option will not be available to any Class Members who are already subscribers as of the Effective Date).[6]

[6] The Claim Form requires each Class Member to provide contact and Tinder account information; an authorization for Defendants to obtain from Apple or Google, as applicable; verification that the Class Member had purchased a subscription to Tinder Plus or Tinder Gold and had not received a refund or chargeback; and confirmation under penalty of perjury that the Class Member resided in California when he or she purchased the subscription. Agreement, § 5.1. Because Defendants' business records did not contain all of the information necessary to distribute a cash payment to the Class Members, a claim form was necessary and the Claim Form used is not overly burdensome. *See In re Hyundai*, 2019 WL 2376831, at *14 (holding that use of claim form was not overly burdensome where the defendants "lacked complete information to determine the identities of all class members and the amounts of their claims").

Agreement, § 3.3.

The Settlement also provides that after the Effective Date, Defendants will no longer charge different prices based on age for new Tinder Plus or Tinder Gold subscriptions purchased in California (but Defendants reserve the right to offer a youth discount to subscribers age 21 or younger). Settlement Agreement, § 3.3. The Settlement provides for an exception in the event of subsequent legislation in California that specifically addresses age-based pricing and, reasonably interpreted, would permit age-based pricing using other age cut-offs, or an appellate opinion by any court in California to the same effect, or legislation that expresses a public policy in favor of or benefitting a particular age group.

With an estimated Class size of 240,000 Members, the Settlement has an approximate value of $18 million in monetary benefits. Of the $18 million in monetary benefits, $12 million is guaranteed under the universal participation component (not requiring submission of a Claim Form), and the remaining $6 million in potential cash or cash-equivalent benefits that is available to every Class Member who submits a Claim Form. In addition to the monetary benefits, Class Counsel estimates that the injunctive relief negotiated on behalf of the Class and the public has a value of at least $6 million. Thus, the Settlement has a total value of $24 million. The $24 million settlement value does not include costs of Notice and Administration, which Defendants agreed to pay as part of the Settlement, or a proposed Attorneys' Fee Award in the amount of $1,200,000.00 plus reimbursement of reasonable costs to Class Counsel and a $5,000 Incentive Award to Plaintiff, which must be approved by the Court. Settlement Agreement, §§ 5.4, 7.1-7.4.

The Court concludes that especially in light of the fact that no Class Member suffered any monetary harm or damages as a result of Defendants' pricing model, the Settlement will provide direct and meaningful benefits to the Settlement Class. *See Shames v. Hertz Corp.*, 2012 WL 5392159, *13 (S.D. Cal. Nov. 5, 2012) (settlement was fair where the parties "negotiated a settlement that provide[d] direct payment to class members"). In addition, although the Unruh Act provides for statutory damages of $4,000.00 per violation, it is well settled that a proposed settlement may be acceptable even though it amounts to a percentage of the potential recovery that might be available to the class members at trial. *See e.g., National Rural Tele. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004). In addition, the California Court of Appeal has upheld the reasonableness of Unruh Act class action settlements that provided for no monetary relief, but only injunctive relief. *See Carter v. City of Los Angeles*, 224 Cal. App. 4th 808 (2014).

Moreover, this Settlement was the result of intensive arms-length negotiation, including an all day mediation session and subsequent settlement discussions with Judge Meisinger. The time and effort spent examining and investigating the claims in preparation for the mediation and other settlement discussions weighs in favor of final approval of the Settlement, because the process strongly indicates that there was no collusion. Meisinger Decl., ¶ 4 ("I believe that the entire settlement, including the fees and costs for Class Counsel, was negotiated by the parties in good faith and that a fair settlement was achieved"); *see In re Wireless Facilities, Inc. Sec. Litig. II*, 253 F.R.D. 607, 610 (S.D. Cal. 2008) (holding that settlements that follow "genuine arms-length negotiation are presumed fair").

In addition, "[t]he recommendations of plaintiff's counsel should be given a presumption of

reasonableness." *Boyd v. Bechtel Corp.,* 485 F. Supp. 610, 622 (N.D. Cal. 1979). Class Counsel have extensive experience in complex class actions and particular expertise in class actions relating to consumer protection, and they opine that the Settlement is fair, reasonable, adequate, and in the best interest of the Settlement Class. Given the judgment of these experienced counsel, this factor weighs in favor of the Court's conclusion that the Settlement is fair, reasonable, and adequate. *See, e.g., Rodriguez*, 563 F.3d at 967 ("[P]arties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation") (citation omitted); *see also Lane v. Facebook, Inc*., 696 F.3d 811, 821–23 (9th Cir. 2012) ("[T]he district court properly declined to undermine [the parties'] negotiations by second-guessing the parties' decision as part of its fairness review over the settlement agreement"); *Vasquez v. Coast Valley Roofing, Inc*., 266 F.R.D. 482, 490 (E.D. Cal. 2010) ("[T]he trial judge, absent fraud, collusion, or the like, should be hesitant to substitute its own judgment for that of counsel") (*quoting Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977)).

Therefore, the Court concludes that the Settlement provides fair and substantial benefits to Class Members and, thus, the Settlement is fair, reasonable, and adequate.

2. The Reaction of Class Members to the Settlement

"The reactions of the members of a class to a proposed settlement is a proper consideration for the trial court." *Vasquez*, 266 F.R.D. at 490 (*quoting Nat'l Rural Telecomms. Coop.*, 221 F.R.D. at 528). "Class representatives' opinions of the settlement are especially important because '[t]he representatives' views may be important in shaping the agreement and will usually be presented at the fairness hearing; they may be entitled to special weight because the representatives may have a better understanding of the case than most members of the class.'" *Id.* (*quoting Nat'l Rural Telecomms. Coop*., 221 F.R.D. at 528 (*citing Manual for Complex Litigation, Third*, § 30.44 (1995))). "Generally, 'the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class action settlement are favorable to the class members.'" *Wren v. RGIS Inventory Specialists*, 2011 WL 1230826, at *11 (N.D. Cal. Apr. 1, 2011) (*quoting Nat'l Rural Telecomm. Coop*., 221 F.R.D. at 529).

Class Notice was sent to 240,592 Class Members, and only 238 – or less than 0.1 percent of the Class – opted out.[7] In addition, a total of six Class Members – or 0.002 percent of the Class – filed objections. The overwhelming positive response to the Settlement and the extremely low number of Class Members either opting out or objecting to the Settlement indicates significant overall support for the Settlement and strongly supports final approval. *See, e.g., Churchill Vill., L.L.C. v. Gen. Elec*., 361 F.3d 566, 577 (9th Cir. 2004) (affirming final approval where approximately 0.61% of class members either opted out or objected); *In re Lifelock, Inc. Mktg. & Sales Practices Litig*., 2010 WL 3715138, at *6 (D. Ariz. Aug. 31, 2010) (holding that low number of timely written objections and requests for exclusion supported settlement approval).

In addition to the small number of Class Members who decided to opt out, only six individuals objected to the Settlement. Four of the objectors – Johnson, Mojica, Pena, and Rodriguez – are represented by the same law firm (Davis & Norris LLP) and are involved in

[7] Of the 238 Class Members who have opted out, 236 are pursing claims against Defendants in either other class actions or arbitrations.

arbitration proceedings against Defendants based on similar claims. However, only one of these four objectors – Pena – appears to have made a purchase that would qualify him as a Class Member.[8] As a result, Johnson, Mojica, and Rodriguez have no standing to challenge the settlement. *See Esslinger v. HSBC Bank Nevada, N.A.*, 2012 WL 5866074, at *7 (E.D. Pa. Nov. 20, 2012) ("However, because the AGs are not Class members, they do not have standing to object to the settlement"). Moreover, these four objectors submitted boilerplate identical one page form objections that failed to comply with the Class Notice, which specifically required Class Members who were objecting to the Settlement to include in their objection "an explanation of why you object to the settlement, including any supporting documentation." The boilerplate objections also failed to comply with Rule 23, which specifically requires that an objection "must state whether it applies only to the objector, to a specific subset of the class or to the entire class, and also state with specificity the grounds for the objection." Fed. R. Civ. Proc. 23(e)(5). Accordingly, the Court overrules these objections for failure to follow the objection procedures outlined in the Court–approved Class Notice. *See, e.g., Noll v. eBay, Inc.*, 309 F.R.D. 593, 612 (N.D. Cal. 2015) (discounting objection for failure to timely file); *see also Moore v. Verizon Commc'ns Inc.*, 2013 WL 4610764, at *12 (N.D. Cal. Aug. 28, 2013) (overruling several objections for failure to meet various noticed procedural requirements).

Defendants argue that the other two objectors – Allison and Frye – are also suspect.[9] The Court agrees that Allison's and Frye's objections should be viewed with skepticism. With respect to Allison, Defendants were unable to find a Tinder account associated with the email address or phone number provided with his objection. However, Defendants were able to find another account that, based on the account holder's photo, purchase date of the account, and area of residence – appears to belong to Allison, but is under another name, which violates Tinder's Terms of Use. With respect to Frye, based on the date that he purchased a subscription to Tinder Plus and his lack of usage of the application, it appears that Frye may have only subscribed to Tinder Plus for the purpose of bringing litigation.

In addition, even considering the substance of the objections, none of the objections persuade the Court that the Settlement is not fair, reasonable, and adequate.[10] In assessing these

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[8] Johnson and Mojica purchased subscriptions for Tinder Plus at the youth discount rate and Rodriguez purchased his subscription to Tinder Plus in Texas, rather than California.

[9] In addition to filing objections and a Memorandum of Law in support of those objections, Allen and Frye filed an Opposition to Plaintiff's Motion for Final Approval and a Sur-Reply. Docket Nos. 78 and 85. Although Allen and Frye were not given leave to file their Opposition or their Sur-Reply, the Court has considered the arguments raised in their Opposition and Sur-Reply in addressing the objections made to the Settlement. *Allen v. Bedolla*, 787 F.3d 1218, 1223 (9th Cir. 2015) (holding that "settlement class actions present unique due process concerns for absent class members, and the district court has a fiduciary duty to look after the interests of those absent class members") (internal citations and quotation marks omitted).

[10] Several of the objections raised by the objectors have been addressed elsewhere in this Order and the Court's conclusions on those issues will not be repeated again here. For example, the Court has addressed elsewhere in this Order the adequacy of Plaintiff and Class Counsel, the risk to the parties of continued litigation, the burdensomeness of the Claims Form, and whether the

objections, the Court "keep[s] in mind that objectors to a class action settlement bear the burden of proving any assertions they raise challenging the reasonableness of a class action settlement." *Noll*, 309 F.R.D. at 611 (*citing United States v. Oregon*, 913 F.2d 576, 581 (9th Cir. 1990)).

Pena, Johnson, Mojica, and Rodriguez argue that the Settlement is inadequate because Class Members' claims would be better resolved in arbitration and Plaintiff should not be allowed to waive other Class Members' right to arbitrate. However, any Class Member who prefers to arbitrate their claims may reserve that right by simply opting out of this Settlement. The fact that, after meaningful notice was provided, only 238 Class Members – 236 of whom are represented by Davis & Norris and are involved in actions pending against Defendants – opted out of the Settlement indicates that the Class Members prefer the certainty and convenience of the Settlement. In addition, as Defendants correctly point out, Pena, Johnson, Mojica, and Rodriguez have failed to point to any actual recovery in arbitration by a Tinder Plus or Tinder Gold subscriber, despite some arbitration having been filed over a year ago, because there has been no such recovery.

Allison and Frye also argue that the value of the Settlement is unreasonably inflated and, thus, the amount of the Settlement is too low. However, this objection is unpersuasive because to the extent a Class Member concludes the settlement amount is insufficient, that Class Member was free to opt out and pursue separate claims against Defendants. Moreover, although Allison and Frye argue that the value of a Super Like is less than the $1.00 value agreed to by the parties and that Super Likes do not have any meaningful value to Tinder Plus and Tinder Gold subscribers, Allison and Frye fail to support these arguments with any persuasive evidence. On the other hand, Defendants produced undisputed evidence that many Tinder users, including Tinder Plus and Tinder Gold subscribers, regularly purchase Super Likes at the price of $1.00 per Super Like, which amply supports the $1.00 value agreed to by the parties. Similarly, Allison and Frye argue that the Settlement will not benefit Class Members who do not currently maintain a Tinder account because they will not benefit from the free Super Likes. However, in addition to the free Super Likes, every Class Member may submit a Claim Form to obtain a cash benefit. Furthermore, receiving the free Super Likes simply requires these Class Members to reactivate their Tinder accounts. Allison and Frye also speculate, without any evidence, that Defendants conducted a "reverse action" in settling this action by looking for a class action plaintiff and counsel that would provide them with the lowest settlement costs. *See In re Hyundai*, __ F.3d __, 2019 WL 2376831, 15-16 (holding that the objectors had "floated out the specter of a reverse action, but brought forth no facts to give that eidolon more substance") (citation omitted); *see also* Meisinger Decl., ¶ 4 ("I believe that the entire settlement, including the fees and costs for Class Counsel, was negotiated by the parties in good faith and that a fair settlement was achieved").

Therefore, the Court concludes that Allison's and Frye's argument that the Settlement is too low and that Class Members will not benefit from the Settlement is based on nothing more than speculation and is insufficient to rebut the parties' contrary evidence that the Settlement is fair, adequate, and free of collusion. Indeed, the question before the Court "is not whether the final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from collusion.' Even if every suggestion represents an actual potential 'improvement,' and even considering all the suggestions cumulatively, they do not support a conclusion that *this* settlement

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Settlement is the result of collusion.

is the product of collusion, or otherwise fails to meet the minimum threshold of fairness and adequacy." *Fraley v. Facebook, Inc*., 966 F.Supp. 2d 939, 948 (N.D. Cal. 2013), *aff'd sub nom. Fraley v. Batman*, 638 Fed. Appx. 594 (9th Cir. 2016) (*citing Hanlon*, 150 F.3d at 1027).

Therefore, the Court overrules the objections because they raise concerns that are not supported by evidence or facts, are already adequately addressed by the Settlement Agreement, or are specific to the individual objectors such that they do not raise a genuine concern as to all Class Members.

Accordingly, the Court **GRANTS** Plaintiff's Motion for Final Approval.

C. Plaintiff's Motion for Attorneys' Fees

1. Class Counsel's Request for Attorneys' Fees is Reasonable.

Class Counsel requests attorneys' fees of $1,200,000.00, which Defendants have agreed not to contest.

Federal Rules of Civil Procedure provide that "[i]n a certified class action, the court may award reasonable attorneys' fees and nontaxable costs that are authorized by law or by the parties agreement." Fed. R. Civ. P. 23. In the Ninth Circuit, a district court has discretion to apply either a lodestar method or a percentage of the fund method in calculating a class fee award in a common fund case. *Fischel v. Equitable Life Assur. Soc'y of U.S.*, 307 F.3d 997, 1006 (9th Cir. 2002). When applying the percentage of the fund method, an attorneys' fees award of "twenty-five percent is the 'benchmark' that district courts should award." *In re Pac. Enters. Sec. Litig*., 47 F.3d 373, 379 (9th Cir. 1995) (*citing Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990)); *see also Fischel*, 307 F.3d at 1006. However, a district court "may adjust the benchmark when special circumstances indicate a higher or lower percentage would be appropriate." *In re Pac. Enters. Sec. Litig*., 47 F.3d at 379 (*citing Six (6) Mexican Workers*, 904 F.2d at 1311). "Reasonableness is the goal, and mechanical or formulaic application of either method, where it yields an unreasonable result, can be an abuse of discretion." *Fischel*, 307 F.3d at 1007.

Although attorneys' fee provisions included in class action settlements are subject to the determination of whether the provision is fundamentally fair, adequate and reasonable, the Ninth Circuit has held that "the court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Hanlon*, 150 F.3d at 1027 (*citing Officers for Justice v. Civil Serv. Comm'n of City & Cnty. of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982)); *see also Lundell v. Dell, Inc*., 2006 WL 3507938 (N.D. Cal. Dec. 5, 2006). In *Hanlon*, the Ninth Circuit also held that where settlement terms, including attorneys' fees, are reached through formal mediation, the Court may rely upon the mediation proceedings "as independent confirmation that the fee was not the result of collusion or a sacrifice of the interests of the class." *Hanlon*, 150 F.3d at 1029; *see also Milliron v. T-Mobile USA, Inc*., 2009 WL 3345762, at *5 (D.N.J. Sept. 14, 2009) (holding that "the participation of an independent mediator in settlement negotiation virtually

insures that the negotiations were conducted at arm's length and without collusion between the parties"); *Sandoval v. Tharaldson Emp. Mgmt., Inc*., 2010 WL 2486346, at *6 (C.D. Cal. June 15, 2010) (holding that "the assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive"); *Dennis v. Kellogg Co.*, 2010 WL 4285011, at *4 (S.D. Cal. Oct. 14, 2010) (holding that the parties engaged in a "full-day mediation session," which helped to establish that the proposed settlement was noncollusive); 2 *McLaughlin on Class Actions*, § 6:7 (8th ed.) ("A settlement reached after a supervised mediation receives a presumption of reasonableness and the absence of collusion").

In this case, the Settlement resulted from extensive arm's length negotiations. Specifically, as discussed above, the parties attended a full day mediation session with Judge Meisinger, and it was only after this full day mediation and subsequent settlement discussions that the parties were able to agree on the terms of the Settlement. Meisinger Decl., ¶¶ 2-3. The parties had also conducted extensive informal and formal discovery surrounding Plaintiff's claims and Defendants' defenses prior to engaging in the settlement talks. Most importantly, the attorneys' fees sought by Class Counsel were not raised or discussed during the mediation until after the Class Members' recovery had been fully negotiated in principle. Given these circumstances, the Court concludes that it may give deference to the mediation proceedings and the judgment of the parties regarding the reasonableness of fees.

However, the Court also concludes that the requested attorneys' fees are supported by both the percentage of the fund and lodestar methods. Courts consider a number of factors to determine the appropriate percentage of the fund to awarding as attorneys' fees in a common fund case including: (a) the results achieved; (b) the risk of litigation; (c) the skill required and the quality of work; (d) the contingent nature of the fee; and, (e) awards made in similar cases. *Vizcaino v. Microsoft Corp*., 290 F.3d 1043, 1047, 1048-1050 (9th Cir. 2002).

The first two factors – results achieved and the risks of litigation – were addressed above in discussing the adequacy of the Settlement for the Class. With respect to the third factor, the "prosecution and management of a complex . . . class action requires unique legal skills and abilities" that are to be considered when evaluating fees. *In re Omnivision Technologies, Inc.*, 559 F. Supp. 2d 1036, 1047 (N.D. Cal. 2008). Class Counsel are experienced class action litigators who have been appointed "class counsel" in numerous UCL and related consumer protection class actions and have successfully litigated such cases. With respect to the fourth and fifth factors, Class Counsel undertook this case entirely on a contingency basis, and the $1,200,000 in attorneys' fees sought equates to approximately 5 percent of the estimated $24,000,000 in settlement benefit provided to the Class, the majority of which is not subject to the claims process. This is well below the Ninth Circuit's benchmark percentage of 25 percent for attorneys' fee awards.

In addition, Class Counsel worked a combined total of 669.95 hours litigating this action for a combined lodestar of $411,237.75, as of the date of the filing of the Motion for Attorneys' Fees.[11] Class Counsel also worked an additional 187.5 hours through the filing of their Reply in Support of Plaintiff's Motion for Final Approval. Therefore, Class Counsel estimates their final lodestar after judgment is entered will be approximately $783,187.75. Taking into account all the hours

[11] The Court finds that Class Counsel's hourly rates are reasonable.

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reasonably worked by Class Counsel, the attorneys' fee request represents a lodestar multiplier of 1.53. Because "[m]ultipliers in the 3-4 range are common in lodestar awards for lengthy and complex class action litigation," a lodestar of 1.53 is reasonable. *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 298 (N.D. Cal. 1995).

Therefore, the Court concludes that the $1.2 million in attorneys' fees requested by Class Counsel is reasonable in light of the fact that the attorneys' fee award was negotiated with a well respected neutral mediator after the Class Members' portion of the Settlement was negotiated and the fact that the attorneys' fee award is reasonable under both the percentage of the fund and the lodestar methods.

2. Class Counsel's Request for Costs is Reasonable.

Class Counsel requests costs of $12,137.51.

"Reasonable costs and expenses incurred by an attorney who creates or preserves a common fund are reimbursed proportionately by those class members who benefit from the settlement." *In re Media Vision Tech. Sec. Litig.*, 913 F.Supp. 1362, 1366 (N.D. Cal. 1996) (*citing Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 391-392 (1970)).

The Court concludes that the costs incurred by Class Counsel – which include the cost of filing the case, service, courier fees, mediation expenses, and appeal fees – are fair, reasonable, and recoverable. *See, e.g., In re Immune Response Sec. Litig.*, 497 F.Supp.2d 1166, 1177 (S.D. Cal. 2007) (holding that "filing fees and photocopies are also a necessary expense of litigation"; that "'[t]he reimbursement for travel expenses, both under 28 U.S.C. § 1920 and [Rule] 54(d), is within the broad discretion of the Court'"; and that "mediation expenses in this case are both reasonable and necessary"). These costs were necessary to advance this action on behalf of the Class and, ultimately, secure the resolution of this action. In addition, Class Counsel advanced these costs without assurance that Class Counsel would ever be recovered. *See, e.g., Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (noting an attorney usually may recover "out-of-pocket expenses that 'would normally be charged to a fee paying client'" and holding that facts of the case demonstrated the reasonableness of costs for "service of summons and complaint, service of trial subpoenas, fee for defense expert at deposition, postage, investigator, copying costs, hotel bills, meals, messenger service and employment record reproduction"). Furthermore, none of these costs were or will be borne by Class Members because Defendants have agreed to separately pay these costs.

Therefore, the Court concludes that the $12,137.51 in costs requested by Class Counsel are fair, reasonable, and recoverable.

3. Plaintiff's Requested Incentive Award is Reasonable.

The Ninth Circuit recognizes that named plaintiffs in class action litigation are eligible for reasonable incentive payments. *Staton*, 327 F.3d at 977. The district court must evaluate each incentive award individually, using "'relevant factors includ[ing] the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, . . . the amount of time and effort the plaintiff expended in pursuing the litigation...and reasonabl[e]

fear[s of] workplace retaliation.'" *Id*. (*quoting Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998)). This individualized inquiry naturally means that "a court need not award all named plaintiffs the same incentive payment." *In re High–Tech Emp. Antitrust Litig*., 2015 WL 5158730, at *17 (N.D. Cal. Sept. 2, 2015).

In this case, the Settlement Agreement provides for a $5,000 Incentive Award to Plaintiff. The Court concludes that the Incentive Award in the amount of $5,000 is reasonable in light of other incentive awards in class actions in this Circuit and given the time and effort Plaintiff has devoted to this case, which ultimately resulted in the Settlement. *See Faigman v. AT & T Mobility LLC*, 2011 WL 672648, *5 (N.D. Cal. Feb. 16, 2011) (approving incentive payment of $3,333.33 and noting that "[i]n [the Northern] [D]istrict, incentive payments of $5,000 are presumptively reasonable"); *In re Toys R Us–Delaware, Inc—Fair & Accurate Credit Transactions Act (FACTA) Litig*., 295 F.R.D. 438, 472 (C.D. Cal. 2014) (approving $5,000 incentive award).

Accordingly, the Court **GRANTS** Plaintiffs' Motion for Attorneys' Fees. Class Counsel is awarded $1.2 million in attorneys' fees and $12,137.51 in costs. Plaintiff is awarded a $5,000 Incentive Award.

IV. Conclusion

For all the foregoing reasons, Plaintiff's Motion for Final Approval and Plaintiff's Motion for Attorneys' Fees are **GRANTED**. The Court signs, as modified, the Proposed Order Granting Motion for Final Approval of Class Action Settlement, lodged with the Court on May 13, 2019 (Docket No. 71-2) and the Proposed Order Granting Motion for Attorneys' Fees, Costs and Incentive Award, lodged with the Court on April 22, 2019 (Docket No. 63-5). The parties shall submit a joint proposed Judgment that is consistent with the Court's Orders by June 21, 2019.

IT IS SO ORDERED.