UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	2:17-cv-03679-SVW	Date	February 18, 2021
Title	*In Re Snap Inc. Securities Litigation*		

Present: The Honorable	STEPHEN V. WILSON, U.S. DISTRICT JUDGE	
Paul M. Cruz		N/A
Deputy Clerk		Court Reporter / Recorder
Attorneys Present for Plaintiffs:		Attorneys Present for Defendants:
N/A		N/A

Proceedings: ORDER GRANTING [384] MOTION FOR SETTLEMENT APPROVAL AND [385] MOTION FOR ATTORNEY FEES AND LITIGATION EXPENSES.

Before the Court is a motion for settlement approval and a separate motion for attorney fees and litigation expenses filed by the class representatives. For the below reasons, both motions are GRANTED.

I. Motion for Settlement Approval.

Federal Rule of Civil Procedure 23(e)(2) requires judicial approval of class action settlements pending before a court. Courts have discretion to approve such settlements. *See In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig.*, 895 F.3d 597, 611 (9th Cir. 2018).

"Under [Rule] 23(e)(2), a district court may approve a class action settlement only after finding that the settlement is fair, reasonable, and adequate." *Campbell v. Facebook, Inc.*, 951 F.3d 1106, 1120–21 (9th Cir. 2020). Rule 23 provides the following factors to guide courts in determining whether a settlement is fair, reasonable, and adequate:

> (A) the class representatives and class counsel have adequately represented the class;
>
> (B) the proposal was negotiated at arm's length;

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(C) the relief provided for the class is adequate, taking into account:

(i) the costs, risks, and delay of trial and appeal;

(ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;

(iii) the terms of any proposed award of attorney's fees, including timing of payment;

(iv) any agreement required to be identified under Rule 23(e)(3); and

(D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23.

In light of these factors, the Court finds the proposed settlement is fair, reasonable, and adequate.

First, the Court finds that the class representatives and class counsel have adequately represented the class. In certifying a class, the Court already found that the class representatives and class counsel satisfied the adequacy requirements of Rule 23(a)(4). *See* Dkt. 341 at 26. Since then, both the class representatives and class counsel have prosecuted the case with diligence and success.

Second, the fact that the settlement was negotiated at arm's length and reached after discovery renders the agreement presumptively fair. *See Taylor v. Shippers Transp. Express, Inc.*, 2015 WL 12658458, at *10 (C.D. Cal. May 14, 2015) ("A settlement following sufficient discovery and genuine arms-length negotiation is presumed fair.").

Third, the Court finds that the relief provided for the class is adequate. The settlement amount in the agreement—$154,687,500—represents approximately 7.8% of the class's maximum potential aggregate damages, which is similar to the percent recovered in other court-approved securities

settlements. *See, e.g.*, *In re Extreme Networks, Inc. Sec. Litig.*, 2019 WL 3290770, at *9 (N.D. Cal. July 22, 2019) (approving settlement representing between 5% and 9.5% of "maximum potential damages"); *In re LJ Int'l, Inc. Sec. Litig.*, 2009 WL 10669955, at *4 (C.D. Cal. Oct. 19, 2009) (approving settlement where recovery was 4.5% of maximum damages); *In re Broadcom Corp. Sec. Litig.*, 2005 WL 8153007, at *6 (C.D. Cal. Sept. 14, 2005) (approving settlement representing 2.7% of damages and finding such percentage was "not [] inconsistent with the average recovery in securities class action[s]").

Finally, the Court finds that the class members are treated equitably relative to each other. This is established by the proposed method of distribution outlined by the class representatives, and there is no indication that the settlement favors certain members over others.

The Court has also reviewed both objections to the settlement. The first objection by Shaun C. does not include any documentation to establish his membership in the class, and he therefore lacks standing to object. *See In re Hydroxycut Mktg. & Sales Practices Litig.*, 2013 WL 5275618, at *2 (S.D. Cal. Sept. 17, 2013) (objectors bear "burden of establishing that they are class members and therefore have standing to object to the proposed class settlement").

Second, the objection from Douglas Davis is also overruled. Davis essentially objects to the amount of the settlement, suggesting that investors should be compensated for all lost value of their shares if they qualify as a class member, without regard to whether the lost value was caused by the alleged misrepresentation by defendants. The Court overrules Davis' objection because "securities laws are not meant to provide investors with broad insurance against market losses, but to protect them against those economic losses that misrepresentations actually cause." *Peace Officers' Annuity & Benefit Fund of Ga. v. DaVita Inc.*, 372 F. Supp. 3d 1139, 1154 (D. Co. 2019)

For the foregoing reasons, the Court finds that the settlement and the plan for allocating funds are fair, adequate, and reasonable.[1]

[1] The Court also finds that the class representatives' notice campaign provided sufficient information for class members to make informed decisions regarding the settlement. Accordingly, the notice requirements are satisfied. *See Silber v. Mabon*, 18 F.3d 1449, 1454 (9th Cir. 1994); *see also* Fed. R. Civ. P. 23(c)(2)(B), (e)(1)(B).

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II. Motion for Attorney's Fees.

In the Ninth Circuit, "a private plaintiff, or his attorney, whose efforts create, discover, increase or preserve a fund to which others also have a claim is entitled to recover from the fund the costs of his litigation, including attorneys' fees." *Vincent v. Hughes Air W., Inc.*, 557 F.2d 759, 769 (9th Cir. 1977).

When a settlement results in a common fund, courts in this Circuit have discretion to employ either a percentage-of-recovery method or the traditional lodestar method to determine attorney's fees. *See In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1300 (9th Cir. 1994). Once the particular method is chosen, courts apply the following factors to determine whether a requested fee is fair and reasonable: (1) results achieved; (2) risks of litigation; (3) skill required and quality of work; (4) contingent nature of the fee and financial burden carried by the plaintiffs; (5) awards made in similar cases; and (6) reaction of the class. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048–50 (9th Cir. 2002).

At the outset, the Court notes that the lack of opposition to the instant motion makes it difficult for the Court to adequately assess the requested fee. Although class counsel's arguments are helpful, they have not been subjected to the rigorous testing of the adversarial process. Without meaningful opposition, the Court is left without any arguments to chew on regarding crucial issues, including but not limited to the methodology the Court should use (*i.e.*, percentage-of-recovery or traditional lodestar), the merits of class counsel's arguments regarding the risks of litigation, and whether the requested fee is ultimately "reasonable."

This is an unfortunate consequence of common fund settlements. Where a settlement produces a common fund and attorney's fees will be awarded from that fund, a defendant has little incentive to oppose the requested fee because the amount the defendant owes is fixed—*i.e.*, the defendant is not impacted by any finding regarding attorney's fees. Indeed, a defendant is incentivized to *not* oppose, as opposing would simply increase attorney's fees on the defendant's end. *Cf. Staton v. Boeing Co.*, 327 F.3d 938, 964 (9th Cir. 2003) (quoting *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768, 820 (3d Cir. 1995)(("Ordinarily, 'a defendant is interested only in disposing of the total claim asserted against it . . . the allocation between the class payment and the attorneys' fees is of little or no interest to the defense . . . .'").

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One might argue that class members have an incentive to oppose. *See id.* ("Given these economic realities, the assumption in scrutinizing a class action settlement agreement must be, and has always been, that the members of the class retain an interest in assuring that the fees to be paid class counsel are not unreasonably high."). Yet, that assumption does not always withstand scrutiny. Indeed, it is impractical to expect class members to meaningfully oppose a fee request—*i.e.*, hire counsel and expend their own attorney's fees—that may only be adjusted, if at all, by five to ten percent. That reality is clear in this case: while class counsel sent notices to 828,000 potential class members, only two objected to the proposed settlement, and none objected to the requested attorney's fees.

Of course, the Ninth Circuit has sought to avoid this problem by requiring an independent judicial review of fee applications. *See id.* at 963 ("[T]o avoid abdicating its responsibility to review the agreement for the protection of the class, a district court must carefully assess the reasonableness of a fee amount spelled out in a class action settlement agreement."). Yet, this requirement can only go so far. Courts are faced with hundreds of cases per year and must allocate limited time across those cases. The parties in common fund cases, by contrast, are intensely focused on the matter before them and intimately familiar with the facts of the case and the arguments advanced by each side. The lack of meaningful assistance from those parties will inevitably limit a court's assessment. *Cf. Marathon Oil Co. v. E.P.A.*, 564 F.2d 1253, 1262 (9th Cir. 1977) ("Adversarial hearings will be helpful, therefore, in guaranteeing both reasoned decisionmaking and meaningful judicial review.").

Ultimately, the process fails to create any incentive to ensure that requests for attorney's fees in these cases face meaningful opposition and rigorous testing, thereby rendering a court's task in these situations unusually difficult.

Regardless, and notwithstanding the above, the Court finds that the fee requested here is reasonable. First, the Court finds that, because this is a common fund settlement, a percentage of recovery method is appropriate. *See Ellison v. Steven Madden, Ltd.*, 2013 WL 12124432, at *8 (C.D. Cal. May 7, 2013) (explaining percentage of recovery method is "dominant approach in common fund cases"); *In re OmniVision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2007) (same).

Second, the Court finds that the requested amount—25% of the common fund—is reasonable. The requested percentage is equal to the Ninth Circuit's well-established "benchmark" for percentage

fees in common fund cases. *See In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 949 (9th Cir. 2015). The benchmark is "presumptively reasonable," *In re Anthem, Inc. Data Breach Litig.*, 2018 WL 3960068, at *4 (N.D. Cal. Aug. 17, 2018), and it should only be adjusted upward or downward for "unusual circumstances," *Paul, Johnson, Alston & Hunt v. Graulty*, 886 F.2d 268, 272 (9th Cir. 1989). The Court is not aware of any such circumstances here.

Finally, some of the factors courts traditionally apply to assess reasonableness supports an award of the requested fee. In particular, in light of the length of the litigation, a comparison to awards made in similar cases, and the minimal reaction from the class, the requested fee here is reasonable.[2]

Accordingly, the motion for attorney's fees will be granted. In addition, the Court will award class counsel its litigation expenses and the class representatives their reasonable costs and expenses.

III. Conclusion.

For the foregoing reasons, both motions are GRANTED. Additionally, class representatives are ORDERED to file new versions of the proposed judgment and the proposed orders approving the plan of allocation and the attorney's fee award. Said versions should eliminate any reference to the retention of jurisdiction, as the Court declines to retain jurisdiction over this matter. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 381 (1994) (court's retention of jurisdiction following settlement is discretionary).

IT IS SO ORDERED.

[2] The Court would be engaging in a legal fiction if it were to "assess" the remaining factors. For example, the risks of the litigation here are difficult to determine, given that the class never filed an opposition to defendants' summary judgment motion, and that most of the arguments made by the class regarding risk could apply to any case—*i.e.*, there is a risk in *every* class action that the Ninth Circuit will decertify or that defendants will prevail on summary judgment. Additionally, comparing the multiplier that would be required under a lodestar method with the fee requested here is not particularly helpful, given that the assessment relies on an estimate of hours expended—50,000—that has not been challenged in any meaningful way.

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