

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JEFFREY CHEN,
Plaintiff,
v.
CHASE BANK USA, N.A.,
Defendant.

Case No. [19-cv-01082-JSC](#)

**ORDER RE: PLAINTIFF’S MOTION
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT, MOTION
FOR ATTORNEYS’ FEES AND COSTS,
AND AN INCENTIVE AWARD**

Re: Dkt. Nos. 53 & 56

Plaintiff Jeffrey Chen brings a class action against Chase Bank USA, N.A. (now J.P. Morgan Chase) (“Chase”) alleging violations of the Equal Credit Opportunity Act (“ECOA”) under 15 U.S.C. § 1691 *et seq.* Now before the Court is Plaintiff’s unopposed motion for final approval of the parties’ class action settlement agreement and motion for attorneys’ fees and costs.¹ (Dkt. Nos. 53, 56.) After reviewing the proposed settlement, moving papers, and supporting evidence, and as no objections to the settlement have been made, the Court VACATES the June 25, 2020 hearing, *see* N.D. Cal. Civ. L.R. 7-1(b), and GRANTS the motion for final approval and motion for attorneys’ fees and costs and an incentive award.

BACKGROUND

Plaintiff filed a class action against Chase in the Superior Court of State of California, County of Alameda on January 28, 2019 alleging violations of the ECOA under 12 C.F.R. § 1002.2, and seeking punitive damages under the ECOA, injunctive relief, and attorney’s fees and costs. (Dkt. No. 1-1 (“Complaint”) at 1, 9, Prayer for Relief ¶¶ 1-3.²) Chase removed the action

¹ Both parties consented to the jurisdiction of a magistrate judge pursuant to 28 U.S.C. § 636(c). (*See* Dkt. Nos. 9 & 15.)

² Record citations are to material in the Electronic Case File (“ECF”); pinpoint citations are to the

1 to this Court because the action arises under ECOA, a federal law. (Dkt. No. 1 at ¶ 7.) Chase
 2 then moved to dismiss the complaint for lack of statutory standing and failure to state a claim.
 3 (Dkt. No. 8.) The Court denied the motion to dismiss, and two months later, the parties
 4 participated in a mediation with retired magistrate judge Wayne D. Brazil. (Dkt. No. 22; Dkt. No.
 5 43-1 at ¶ 6.) While the parties did not settle, they made “substantial progress and continued to
 6 negotiate over the following weeks.” (*Id.* at ¶ 7.) On August 9, 2019, the parties reached a
 7 settlement in principle. (*Id.*) After two months of “extensive negotiations concerning the final
 8 terms of the Settlement,” Plaintiff filed an unopposed motion for preliminary approval of the class
 9 action settlement on November 22, 2019. (*Id.* at ¶ 8.) At the preliminary approval hearing, the
 10 Court raised concerns regarding the settlement agreement, in particular the costs of settlement
 11 administration, and the notice. The parties thereafter filed a revised class action settlement
 12 agreement and release, and supporting declaration to address the Court’s concerns. (Dkt. No. 51.)
 13 On January 16, 2020, the Court approved the motion for preliminary approval. (Dkt. No. 52.)
 14 Plaintiff thereafter filed the now pending motion for attorneys’ fees and costs, and motion for final
 15 approval of the class action settlement. (Dkt. Nos. 53, 56.)

16 **I. Complaint Allegations**

17 Plaintiff applied for a credit card issued by Chase. (Complaint at ¶ 5.) On or about
 18 September 19, 2018, Chase sent Plaintiff a letter denying his credit application stating that Chase
 19 “can’t approve your request at this time because: Previous unsatisfactory relationship with this
 20 bank.” (*Id.* at ¶¶ 18-19.) Plaintiff alleges that Chase’s denial of his credit application constitutes
 21 an “adverse action” for which a “statement of specific reasons for the action taken” or a
 22 “disclosure of the applicant’s right to a statement of specific reasons” is required within 30 days of
 23 receiving Plaintiff’s credit application. (*Id.* at ¶¶ 16-17.) Plaintiff insists that the letter he received
 24 fails to meet the “specific reason” requirement under the ECOA and does not disclose the specific
 25 reasons for which Plaintiff’s application was denied. (*Id.* at ¶¶ 19, 22.)

26 //

1 **II. Settlement Agreement**

2 **A. Proposed Class**

3 The settlement class consists of “all natural persons to whom Chase sent a letter giving
4 either ‘previous unsatisfactory relationship with this bank’ or ‘previous unsatisfactory relationship
5 with us or one of our affiliates’ as the only reason for taking adverse action in connection with a
6 credit card account during the period beginning January 28, 2014 and ending on November 22,
7 2019.” (Dkt. No. 43-1, Ex. A (Settlement Agreement) § 1.29.) The class excludes “officers and
8 directors of Chase and its parents, subsidiaries, affiliates, and any entity in which Defendant has a
9 controlling interest; and all judges assigned to hear any aspect of this litigation, as well as their
10 immediate family members.” (*Id.*) The class is comprised of approximately 18,183 persons. As
11 of June 18, 2020, 2,982 individuals have submitted valid claim forms, 10 individuals requested
12 exclusion from the settlement, and no objections have been filed. (Dkt. No. 56-2 at ¶¶ 20-22; Dkt.
13 No. 58 at ¶ 4.)

14 **B. Payment Terms**

15 Chase agrees to pay \$244,659 for: “(1) payments to the Settlement Class, (2) a Class
16 Representative Incentive Award of up to \$5,000, and (3) Notice and Settlement Administration
17 Costs.” (Dkt. No. 43-1 at §§ 2.3, 3.2, 3.3, 4.8.) The Settlement Agreement refers to this amount
18 as the “Settlement Class Consideration.” (*Id.* at § 1.30.) The Settlement Class Consideration is
19 “non-reversionary.” (*Id.* § 4.10(f).) The settlement administration costs were estimated at
20 \$50,102, but ended up totaling \$59,242.46. (Dkt. No. 43-1 at ¶ 10; Dkt. No. 56-2 at ¶ 23.) The
21 costs were higher than anticipated because the 16 percent claims rate is substantially higher than
22 the 7 percent claims rate predicted, 1,357 individuals who are not class members filed claim
23 forms, and notice packets were mailed to twice as many individuals as predicted. (Dkt. Nos. 43-1
24 at ¶ 11; Dkt. No. 56-2 at ¶ 24.) Given this, the Net Settlement Class Consideration is estimated to
25 be \$180,416.54, which yields a payment of \$60.89 for each claiming class member. (Dkt. No. 56-
26 1 at ¶ 13.)

27 In addition to the Settlement Class Consideration, the Settlement Agreement provides that
28 Plaintiff’s counsel may move for attorneys’ fees and costs of up to \$185,000, to be paid by Chase.

1 (Dkt. No. 43-1, Ex. A, Agreement § 3.4(a).) Plaintiff has filed a motion for attorneys' fees and
 2 costs seeking \$176,473.93 in fees and \$8,526.07 in costs. (Dkt. No. 53.) Plaintiff contends that
 3 counsels' actual attorneys' fees total \$263,957.50.

4 Finally, the Settlement Agreement also provides that the Court will enjoin Chase, for five
 5 years from the date of final approval, from using the phrases “‘previous unsatisfactory relationship
 6 with this bank’ and ‘previous unsatisfactory relationship with us or one of our affiliates’ in adverse
 7 action notices as the sole reason for denying credit card applications or otherwise taking an
 8 adverse action in connection with a Chase credit card account.” (Dkt. No. 43-1 at 19 § 3.5.)

9 **C. Release**

10 Plaintiff and class members agree to release Chase, together with the other “Released
 11 Parties,” from the “Released Claims” (Dkt. No. 43-1 at 19-20 § 3.6(a); namely, claims arising out
 12 of or related to:

13 (a) Chase’s use of the language “previous unsatisfactory
 14 relationship with this bank” or “previous unsatisfactory
 15 relationship with us or one of our affiliates” in an adverse
 16 action notice sent pursuant to the ECOA in connection with a
 credit card account on or before November 22, 2019; or (b)
 the acts and omissions alleged in the Complaint occurring on
 or before November 22, 2019.

17 (*Id.* § 1.24.) In addition, Plaintiff and class members waive “any and all rights” under California
 18 Civil Code § 1542 as to the Released Claims; §1542 excludes from release those claims which are
 19 unknown at the time of the release. (*Id.* § 3.6(d).)

20 **D. Notice**

21 On January 24, 2020, the Settlement Class Administrator, KCC Class Action Services,
 22 LLC (“KCC”), received a list of 18,183 persons from Chase identified as the class list. (Dkt. No.
 23 56-2 at ¶ 7.) The list included names, addresses, and emails. (*Id.*) KCC processed the names and
 24 addresses through the National Change of Address Database and updated 2,903 addresses. (*Id.*)
 25 On February 28, 2020, KCC emailed notice to the 17,926 individuals on the class list who had
 26 email addresses. (*Id.* at ¶¶ 8-9.) On that same date, KCC mailed copies of the notice to the
 27 individuals who did not have an email address listed. (*Id.* at ¶ 9.) Of the emailed notices, 1,557
 28 were determined to be undeliverable and 13,557 were delivered, but not opened within 7 days of

1 receipt. (*Id.* at ¶¶ 10-11.) KCC mailed notice to all these individuals. (*Id.*) Since mailing notice,
 2 KCC received 215 notice packets with forwarding addresses. KCC re-mailed the notice packets to
 3 191 of these individuals (the forwarding information for 24 was incomplete). (*Id.* at ¶ 12.) KCC
 4 received 1,832 notice packets returned as undeliverable. KCC did further searching and re-mailed
 5 notice to 479 of these individuals. (*Id.* at ¶ 13.)

6 KCC also created a website (www.ECOASettlement.com) which was published at the
 7 same time notice was mailed. (*Id.* at ¶ 14.) From the website, individuals could download copies
 8 of the notice, claim form, and other documents. (*Id.*) Plaintiff's motion for attorneys' fees and
 9 costs was published on the website on the same date it was filed. (*Id.*) As of May 2, 2020, the
 10 website had received 9,216 visits. (*Id.*) KCC also established and maintains a dedicated email
 11 address and telephone hotline for individuals to call for information regarding the settlement. (*Id.*
 12 at ¶¶ 15-16.)

13 As of the April 28, 2020 deadline to submit claim forms, KCC received 4,675 claim forms.
 14 (*Id.* at ¶ 17; Dkt. No. 58 at ¶ 4.) An additional 40 claims were submitted after the deadline. (Dkt.
 15 No. 56-2 at ¶ 17; Dkt. No. 58 at ¶ 4.) Of the 4,675 claims, 333 were duplicate submissions and
 16 1,356 were submitted by individuals not on the class list. (Dkt. No. 56-2 at ¶ 18; Dkt. No. 58 at ¶
 17 4.) Of the 40 late claims, 2 were duplicate submissions and one was submitted by someone not on
 18 the class list. (Dkt. No. 56-2 at ¶ 19; Dkt. No. 58 at ¶ 4.) The parties have agreed to accept the
 19 remaining 37 late claims. (Dkt. No. 56-2 at ¶ 19; Dkt. No. 58 at ¶ 4.) As of May 21, 2020, KCC
 20 had determined that there were 2,982 valid claims. (Dkt. No. 58 at ¶ 4.)

21 **E. Opt-Out and Objections to the Settlement**

22 Ten individuals have requested exclusion from the class. There have been no objections.
 23 (*Id.* at ¶¶ 21-22.)

24 **DISCUSSION**

25 A class action settlement agreement must be fair, adequate, and reasonable. Fed. R. Civ.
 26 P. 23(e)(2). Where, as here, parties reach an agreement before class certification, "courts must
 27 peruse the proposed compromise to ratify both the propriety of the certification and the fairness of
 28 the settlement." *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003). The approval of a class

1 action settlement takes place in two stages. In the first stage of the approval process, the Court
 2 preliminarily approves the settlement pending a fairness hearing, temporarily certifies a settlement
 3 class, and authorizes notice to the class. *See Villegas v. J.P. Morgan Chase & Co.*, No. CV 09–
 4 00261 SBA (EMC), 2012 WL 5878390, at *5 (N.D. Cal. Nov. 21, 2012). The Court has done so
 5 here. (Dkt. No. 52.) At the second stage, “after notice is given to putative class members, the
 6 Court entertains any of their objections to (1) the treatment of the litigation as a class action and/or
 7 (2) the terms of the settlement.” *Ontiveros v. Zamora*, 303 F.R.D. 356, 363 (E.D. Cal. Oct. 8,
 8 2014) (citing *Diaz v. Tr. Territory of Pac. Islands*, 876 F.2d 1401, 1408 (9th Cir. 1989)).
 9 Following the final fairness hearing, the Court must reach a final determination as to whether the
 10 parties should be allowed to settle the class action pursuant to their agreed upon terms. *See Nat’l*
 11 *Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 525 (C.D. Cal. 2004).

12 **I. Motion for Final Approval**

13 **A. Final Certification of the Settlement Class**

14 Class actions must meet the following requirements for certification:

15 (1) the class is so numerous that joinder of all members is
 16 impracticable; (2) there are questions of law or fact common to the
 17 class; (3) the claims or defenses of the representative parties are
 18 typical of the claims or defenses of the class; and (4) the
 19 representative parties will fairly and adequately protect the interests
 20 of the class.

21 Fed. R. Civ. P. 23(a). In addition to meeting the requirements of Rule 23(a), a putative class
 22 action must also meet one of the conditions outlined in Rule 23(b)—as relevant here, the condition
 23 that “questions of law or fact common to class members predominate over any questions affecting
 24 only individual members, and that a class action is superior to other available methods for fairly
 25 and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). Prior to certifying the
 26 class, the Court must determine that Plaintiff has satisfied his burden of demonstrating that the
 27 proposed class satisfies each element of Rule 23.

28 **1) Rule 23(a)**

The Preliminary Approval Order found that the putative class satisfied the numerosity,
 commonality, typicality, and adequacy of representation requirements under Rule 23(a). Since

1 that time, the Court is unaware of any developments that would change its analysis, and neither
2 Plaintiff nor Chase has indicated that such developments have occurred. Accordingly, the Rule
3 23(a) requirements are met.

4 **2) Rule 23(b)(3)**

5 The Preliminary Approval Order likewise found that the prerequisites of Rule 23(b)(3)
6 were satisfied. The Court is unaware of any changes that would alter its analysis, and there was no
7 indication in Plaintiff's papers or at the fairness hearing that any such developments had occurred.
8 Accordingly, the Rule 23(b) requirements are met.

9 **3) Rule 23(c)(2) Notice Requirements**

10 If the Court certifies a class under Rule 23(b)(3), it "must direct to class members the best
11 notice that is practicable under the circumstances, including individual notice to all members who
12 can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). Rule 23(c)(2) governs
13 both the form and content of the notice. *See Ravens v. Iftikar*, 174 F.R.D. 651, 658 (N.D. Cal.
14 1997). Although the notice must be "reasonably certain to inform the absent members of the
15 plaintiff class," Rule 23 does not require actual notice. *Silber v. Mabon*, 18 F.3d 1449, 1454 (9th
16 Cir. 1994) (internal quotation marks and citation omitted).

17 As noted in the Preliminary Approval Order, the notice requirements under Rule
18 23(c)(2)(B) are met here. The Notice describes the allegations and claims in plain language,
19 defines a class member, includes contact information for Class Counsel and the Settlement
20 Administrator, and summarizes the settlement amount and its distribution. The Notice further
21 describes the options available to class members, including instructions for opting out of the
22 settlement and filing an objection. It also informs class members that receiving a settlement award
23 will release certain claims against certain parties and defines both "Released Claims" and
24 "Released Parties." The Notice informs class members that they may appear at the final fairness
25 hearing in person or through an attorney. Finally, it directs class members to a website with more
26 information, including the settlement documents, motion for attorneys' fees, and pleadings.

27 The Court is satisfied that the content of the Notice was sufficient under Rule 23(c)(2)(B).
28 *See Churchill Village, L.L.C. v. General Electric*, 361 F.3d 566, 575 (9th Cir. 2004) ("Notice is

1 satisfactory if it generally describes the terms of the settlement in sufficient detail to alert those
 2 with adverse viewpoints to investigate and to come forward and be heard.”) (internal quotation
 3 marks and citation omitted).

4 ***

5 Because the settlement class satisfies Rules 23(a) and 23(b)(3), and notice was sufficient in
 6 accordance with Rule 23(c), the Court grants final class certification.

7 **II. Final Approval of the Settlement Agreement**

8 Having certified the settlement class, the Court now addresses whether the terms of the
 9 parties’ settlement are fair, adequate, and reasonable under Rule 23(e). In making this
 10 determination, courts generally must consider the following factors: “(1) the strength of the
 11 plaintiff’s case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the
 12 risk of maintaining class action status throughout the trial; (4) the amount offered in settlement;
 13 (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and
 14 views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class
 15 members to the proposed settlement.” *Churchill*, 361 F.3d at 575. “This list is not exclusive and
 16 different factors may predominate in different factual contexts.” *Torrisi v. Tucson Elec. Power*
 17 *Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993). However, when “a settlement agreement is negotiated
 18 prior to formal class certification, consideration of these eight ... factors alone is [insufficient].” *In*
 19 *re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011). In such cases, courts
 20 must also ensure that the settlement did not result from collusion among the parties. *Id.* at 946-47.

21 As discussed below, a review of the fairness and *Bluetooth* factors indicates that the
 22 settlement is fair, adequate, and reasonable.

23 **A. The Fairness Factors**

24 **1) Strength of Plaintiff’s Case and Risk, Expense, Complexity, and Likely** 25 **Duration of Further Litigation**

26 The Court first considers “the strength of the [P]laintiffs’ case on the merits balanced
 27 against the amount offered in the settlement.” See *DIRECTV, Inc.*, 221 F.R.D. at 526 (internal
 28 quotation marks and citation omitted). Although this action reached settlement before the Court

1 had occasion to consider the merits of Plaintiff’s claims, the Court need not reach an ultimate
 2 conclusion about the merits of the dispute now, “for it is the very uncertainty of outcome in
 3 litigation and avoidance of wasteful and expensive litigation that induce consensual settlements.”
 4 *Officers for Justice v. Civil Serv. Comm’n of City & Cty. of San Francisco*, 688 F.2d 615, 625 (9th
 5 Cir. 1982). To that end, there is no “particular formula by which th[e] outcome must be tested.”
 6 *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009). Rather, the Court’s assessment
 7 of the likelihood of success is “nothing more than an amalgam of delicate balancing, gross
 8 approximations and rough justice.” *Id.* (internal quotation marks and citation omitted). “In reality,
 9 parties, counsel, mediators, and district judges naturally arrive at a reasonable range for settlement
 10 by considering the likelihood of a plaintiffs’ or defense verdict, the potential recovery, and the
 11 chances of obtaining it, discounted to a present value.” *Id.*

12 Here, the Complaint alleges that Chase violated the violated ECOA’s notice provision, 15
 13 U.S.C. § 1691(d), by sending class members adverse action notices that did not include the
 14 specific reason(s) for the adverse action taken or disclose the right to a statement of those reasons.
 15 (Dkt. No. 1-1 ¶¶ 12-17, 35.) The Complaint seeks punitive damages of up to \$500,000 (the
 16 statutory cap), injunctive relief, and attorneys’ fees and costs. (*Id.* at Prayer for Relief ¶¶1-3.)
 17 Although Plaintiff believes his claims are meritorious, he concedes that further litigation of the
 18 action involves risk. First, because Plaintiff only seeks punitive damages, any monetary recovery
 19 in this action would require proving that Chase acted recklessly, wantonly, maliciously, or
 20 oppressively. *See Anderson v. United Fin. Co.*, 666 F.2d 1274, 1278 (9th Cir. 1982). Second,
 21 Chase contends that whether an applicant is “aggrieved” under 15 U.S.C. § 1691e(a) and whether
 22 a statement of reasons is “specific” under 15 U.S.C. § 1691(d) should be determined based on the
 23 applicant’s unique knowledge or other individualized circumstances. Chase insists that unless
 24 each class member is aggrieved, Plaintiff cannot establish Article III standing for the class. Third,
 25 Chase contends that its notice is protected by ECOA’s “good faith” safe harbor provision. Finally,
 26 Plaintiff concedes that litigating these issues would involve significant discovery and motion
 27 practice such that both sides fees and costs could exceed the \$500,000 cap on punitive damages.

28 The challenges Plaintiff would face should this case move forward instead of settling, in

1 contrast to the finality and speed of recovery under the parties' agreement, weighs in favor of
2 approving the settlement.

3 **2) Risk of Maintaining Class Action Status Throughout Trial**

4 In considering the third factor, the Court looks to the risk of maintaining class certification
5 if the litigation were to proceed. As discussed above, Chase has raised a number of issues
6 regarding Plaintiff's ability to recover punitive damages and proceed on a class-wide basis. (*See*
7 *also* Dkt. No. 57.) In light of these difficulties in certifying the class, the Court finds that this
8 factor weighs in favor of approving the settlement.

9 **3) Settlement Amount**

10 The fourth fairness factor, the amount of recovery offered, also favors final approval of the
11 settlement. When considering the fairness and adequacy of the amount offered in settlement, "it is
12 the complete package taken as a whole, rather than the individual component parts, that must be
13 examined for overall fairness." *DIRECTV, Inc.*, 221 F.R.D. at 527. "[I]t is well-settled law that a
14 proposed settlement may be acceptable even though it amounts to only a fraction of the potential
15 recovery that might be available to the class members at trial." *Id.* (collecting cases).

16 As discussed above, 15 U.S.C. § 1691e(b) caps Chase's potential liability on class
17 members' punitive damages claims at \$500,000. At preliminary approval, Plaintiff's counsel
18 projected Net Settlement Class Consideration of \$187,659, which amounts to approximately 38%
19 of Settlement Class Members' potential recovery. (Dkt. No. 52 at 13.) Due to the higher than
20 anticipated administration costs, Net Settlement Class Consideration is now projected at
21 \$180,416.54, representing approximately 36% of Settlement Class Members' potential recovery.
22 (Dkt. No. 56-1 at ¶ 14.) In granting preliminary approval the Court concluded that the estimated
23 payout to class members was fair in relation to the risks of continued litigation, and there is
24 nothing in the final approval materials that changes the Court's analysis on that score. Further, the
25 settlement includes an injunctive relief component which prohibits Chase from engaging in the
26 challenged conduct for five years. The Court therefore concludes that the amount offered in
27 settlement also weighs in favor of final approval.

28 //

4) Extent of Discovery Completed and Stage of Proceedings

In the context of class action settlements, as long as the parties have sufficient information to make an informed decision about settlement, “formal discovery is not a necessary ticket to the bargaining table.” *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1239 (9th Cir. 1998). Rather, a court’s focus is on whether “the parties carefully investigated the claims before reaching a resolution.” *Ontiveros*, 303 F.R.D. at 371. Here, the parties exchanged discovery in advance of private mediation with an experienced mediator in July 2019. ((Dkt. No. 56-1 at ¶ 6.) As part of that production, Chase provided 650 pages of records regarding Plaintiff, information regarding the class size, and the number of letters Chase sent during the relevant period. (*Id.*) Because Plaintiff’s claim is based on Chase’s use of similar language in its denial letters, the number of letters Chase sent containing this language was the crucial fact for purposes of valuing Plaintiff’s claim. (*Id.*) Under these circumstances, the extent of discovery in this case favors approval of the settlement.

5) Experience and Views of Counsel

The experience and views of counsel also weigh in favor of approving the settlement. Plaintiff’s counsel consists of three attorneys, Ray Gallo, Dominic Valerian, and Alexander Darr, who have experience litigating class actions and ECOA cases on behalf of consumers. (Dkt. No. 53-1 at ¶¶ 33-36.) Mr. Gallo graduated from UCLA Law School in 1991, has been litigating in consumer class actions since 2004, and has been appointed as class counsel multiple times. (*Id.* at ¶¶ 33-34.) Mr. Valerian graduated from USC Law School in 2005, spent five years defending complex cases, including consumer class actions, and since 2009, has focused primarily on prosecuting consumer and employment class and mass actions, including two cases where he was appointed co-counsel with Mr. Gallo. (*Id.* at ¶ 35.) Lastly, Mr. Darr graduated from Ohio State University Law School in 2010 and after clerking and working briefly at a law firm, he founded Darr Law LLC where he prosecutes consumer protection actions. (*Id.* at ¶ 36.) Mr. Darr “has pursued more than 100 consumer arbitrations, many alleging claims under the Equal Credit Opportunity Act.” (*Id.*)

Class Counsel believes that the settlement is fair, reasonable, and adequate, and in the best

1 interests of the Class. (Dkt. No. 56-1 at ¶ 16.) Given Class Counsel’s extensive experience in this
 2 field, and their assertion that the settlement is fair, adequate, and reasonable, this factor supports
 3 final approval of the Settlement Agreement. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026
 4 (9th Cir.1998); *Rodriguez v. West Pub. Corp.*, No. CV05–3222 R(MCx), 2007 WL 2827379, at *8
 5 (C.D.Cal. Sept. 10, 2007) (“The trial court is entitled to, and should, rely upon the judgment of
 6 experienced counsel for the parties.”).

7 **6) Presence of a Government Participant**

8 No government entity is a party to this action; however, because Chase removed this case
 9 pursuant to CAFA, it was required to provide notice of the proposed settlement to the relevant
 10 state and federal officials pursuant to 28 U.S.C. § 1715(b). *See Chan Healthcare Grp., PS v.*
 11 *Liberty Mut. Fire Ins. Co.*, 844 F.3d 1133, n.2 (“In addition to §§ 1332(d) and 1453, CAFA also
 12 includes §§ 1711-1715, which relate to approval of settlements in class actions.”). The Settlement
 13 Claims Administrator served the requisite notice on November 26, 2019, January 13, 2020, and
 14 January 17, 2020. (Dkt. No. 56-2 at ¶¶ 2-5.) As of the date of this Order, no government entity has
 15 raised an objection to the proposed settlement. *See* 28 U.S.C. § 1715(d) (providing that a court
 16 may not grant final approval of a class action settlement in a CAFA case until 90 days after the
 17 parties give the notice required by section 1715(b)). (Dkt. No. 56-2 at ¶ 6.)

18 **7) Reaction of Class Members**

19 As of the final approval hearing, no objections have been received and only 10 individuals
 20 requested exclusion from the class. (Dkt. No. 56-2 at ¶¶ 21-22.) “Courts have repeatedly
 21 recognized that the absence of a large number of objections to a proposed class action settlement
 22 raises a strong presumption that the terms of a proposed class settlement action are favorable to the
 23 class members.” *Garner v. State Farm Mut. Auto. Ins. Co.*, No. CV 08 1365 CW (EMC), 2010
 24 WL 1687832, at *14 (N.D. Cal. Apr. 22, 2010) (internal quotation marks and citation omitted).
 25 Thus, the Court “may appropriately infer that a class action settlement is fair, adequate, and
 26 reasonable when few class members object to it. *Id.* (internal quotation marks and citation
 27 omitted).

28 ***

1 In sum, the fairness factors weigh in favor of granting Plaintiff’s motion for final approval
2 of the class action settlement.

3 **B. The *Bluetooth* Factors**

4 Given that this settlement was reached prior to class certification, the Court must look
5 beyond the *Churchill* factors and examine the settlement for evidence of collusion with an even
6 higher level of scrutiny. *See Bluetooth*, 654 F.3d at 946. The question here is whether the
7 settlement was the result of good faith, arms-length negotiations or fraud and collusion. *See id.* In
8 determining whether the settlement is the result of collusion, courts “must be particularly vigilant
9 not only for explicit collusion, but also for more subtle signs that class counsel have allowed
10 pursuit of their own self-interest and that of certain class members to infect the negotiations.” *Id.*
11 at 947. The Ninth Circuit has identified three such signs:

12 (1) when counsel receive a disproportionate distribution of the
13 settlement, or when the class receives no monetary distribution but
14 class counsel are amply rewarded;

15 (2) when the parties negotiate a “clear sailing” arrangement providing
16 for the payment of attorneys’ fees separate and apart from class funds,
17 which carries the potential of enabling a defendant to pay class
18 counsel excessive fees and costs in exchange for counsel accepting an
19 unfair settlement on behalf of the class; and

20 (3) when the parties arrange for fees not awarded to revert to
21 defendants rather than be added to the class fund.

22 *Id.* at 947 (internal quotation marks and citations omitted).

23 For the first *Bluetooth* factor, the Court compares the payout to the class (actual and
24 expected) to class counsel’s unopposed claim for fees. *See Harris v. Vector Mktg. Corp.*, No. C–
25 08–5198 EMC, 2011 WL 4831157, at *6 (N.D. Cal. Oct. 12, 2011). The total payout to the Class
26 is \$180,416.54. (Dkt. No. 56-1 at ¶ 13.) Class Counsel’s unopposed fees and costs claim is
27 \$185,000 (Dkt. No. 53)—nearly the same as the class member payout.³ This ratio taken alone
28 may be sign of collusion. *See Bluetooth*, 654 F.3d at 947. However, here, the attorneys’ fees and
class member recovery do not come from a common fund. Thus, this *Bluetooth* warning sign,

³ In discussing the first *Bluetooth* factor, Plaintiff compares the Settlement Class Consideration of \$244,659 to the attorneys’ fees of \$176,473.93. This comparison, however, is inaccurate. The \$244,659 includes the \$59,242.46 for the settlement administrator and the \$5,000 incentive payment for Mr. Chen—neither of these are part of the payment to the class.

1 although perhaps initially a red flag, is not a sign of collusion.

2 The second warning sign—a “clear sailing” provision—is also present here. A clear sailing
3 arrangement provides “for the payment of attorneys’ fees separate and apart from class funds,
4 which carries the potential of enabling a defendant to pay class counsel excessive fees and costs in
5 exchange for counsel accepting an unfair settlement on behalf of the class[.]” *Bluetooth*, 654 F.3d
6 at 947 (internal quotation marks and citation omitted). Thus, the Court “has a heightened duty to
7 peer into the provision and scrutinize closely the relationship between attorneys’ fees and benefit
8 to the class, being careful to avoid unreasonably high fees simply because they are uncontested.”
9 *Id.* (internal quotation marks and citation omitted). The Settlement Agreement provides that
10 “Chase has no present intention to oppose any [] motion [for attorneys’ fees] that does not exceed
11 \$185,000” and that [s]ubject to Court approval, Chase agrees to pay Settlement Class Counsel’s
12 fees and costs in an amount awarded by the Court, provided that any such award of such fees and
13 costs does not exceed \$185,000.” (Dkt. No. 43-1 at 18-19, § 3.4(a).) And, in fact, Chase did not
14 file an opposition to Plaintiff’s motion for attorneys’ fees and costs. However, under the
15 circumstances presented here, the Settlement Agreement does not appear to be an example of
16 Chase agreeing to pay Class Counsel excessive fees and costs in exchange for accepting an unfair
17 settlement for the Class; instead, as discussed above, given the cap on any damages recovery, the
18 risks of continuing to litigate this action, and the injunctive relief, the class member recovery is
19 fair, and as discussed below, the amount of fees and costs is reasonable. Thus, the clear sailing
20 provision, though a *Bluetooth* warning sign, does not signal collusion under the circumstances
21 presented here.

22 The third warning sign—whether the parties have arranged for fees not awarded to the
23 class to revert to defendant rather than be added to the settlement fund, *see Bluetooth*, 654 F.3d at
24 948—is not present here. The Settlement Agreement is non-reversionary and the Settlement Class
25 Administrator will make a second disbursement to the class if there are funds remaining after the
26 first distribution. (Dkt. No. 43-1 at 25, § 4.10(e)-(f).)

27 Notwithstanding the existence of two of the three *Bluetooth* factors, the Court concludes
28 that the Settlement Agreement did not result from, nor was influenced by, collusion because the

1 Settlement Agreement adequately satisfies the Class Members' claims. Specifically, there are no
2 objections to the Settlement Agreement, and the Settlement Agreement provides injunctive relief
3 in addition to the monetary relief. As explained below, the amount of fees sought is reasonable.

4 * * *

5 In sum, the *Churchill* fairness factors support approval, and the *Bluetooth* factors do not
6 indicate collusion. The Court is therefore satisfied that the Settlement Agreement was not the
7 result of collusion between the parties and instead is the product of arms-length negotiations
8 between experienced and professional counsel. There are no objections to address. For each of
9 these reasons, the Settlement Agreement passes muster under Rule 23(e) and final approval is
10 appropriate.

11 **III. Motion for Attorneys' Fees, Costs, and Class Representative Incentive Award**

12 As previously discussed, the Settlement Agreement provides that Chase will pay Plaintiff's
13 attorneys' fees and costs of no more than \$185,000 as ordered by the Court. (Dkt. No. 43-1 at 18,
14 § 3.4(a).) The Settlement Agreement also provides that Plaintiff as the Settlement Class
15 Representative shall receive an incentive award not to exceed \$5,000. (*Id.* at § 3.3(a).) The Court
16 addresses in turn Plaintiff's motion for attorneys' fees, costs, and an incentive award.

17 **A. Attorneys' Fees**

18 "While attorneys' fees and costs may be awarded in a certified class action where so
19 authorized by law or the parties' agreement, Fed. R. Civ. Pro. 23(h), courts have an independent
20 obligation to ensure that the award, like the settlement itself, is reasonable, even if the parties have
21 already agreed to an amount." *Bluetooth*, 654 F.3d at 941.

22 ECOA authorizes an award of attorneys' fees and costs in a successful action. *See* 15
23 U.S.C. § 1691e(d). Where, as here, Plaintiff is entitled to attorneys' fees under the statute and the
24 fees are to be paid out of a fund separate from the common fund, the lodestar method is the
25 appropriate method for calculating attorneys' fees. *See Tahara v. Matson Terminals, Inc.*, 511
26 F.3d 950, 955 (9th Cir. 2007). "The lodestar figure is calculated by multiplying the number of
27 hours the prevailing party reasonably expended on the litigation (as supported by adequate
28 documentation) by a reasonable hourly rate for the region and for the experience of the lawyer."

1 *Bluetooth*, 654 F.3d at 941.

2 **1) Reasonable Rate**

3 “The first step in the lodestar analysis requires the court to determine a reasonable hourly
4 rate for the fee applicant’s services.” *Cotton v. City of Eureka*, 889 F.Supp.2d 1154, 1167
5 (N.D.Cal.2012) (internal quotation marks and citation omitted). “A reasonable hourly rate is
6 ordinarily the prevailing market rate in the relevant community.” *Kelly v. Wengler*, 822 F.3d 1085,
7 1099 (9th Cir. 2016) (internal quotation marks and citation omitted). “[T]he burden is on the fee
8 applicant to produce satisfactory evidence—in addition to the attorneys’ own affidavits—that the
9 requested rates are in line with those prevailing in the community for similar services by lawyers
10 of reasonably comparable skill, experience and reputation.” *Camancho v. Bridgeport Fin., Inc.*,
11 523 F.3d 973, 980 (9th Cir. 2008) (internal quotation marks and citation omitted). In addition,
12 Civil Local Rule 54-5(b)(3) requires the party seeking fees to submit “[a] brief description of
13 relevant qualifications and experience and a statement of the customary hourly charges of each
14 such person or of comparable prevailing hourly rates or other indication of value of the services.”

15 Plaintiff submits a joint declaration from Class Counsel Ray Gallo, Alexander Darr, and
16 Dominic Valerian in support of his motion for attorneys’ fees and costs. (Dkt. No. 53-1.) Mr.
17 Gallo’s standard litigation rate is \$750 per hour. (*Id.* at ¶ 34.) Mr. Valerian’s standard litigation
18 rate is \$550. (*Id.* at ¶ 35.) Mr. Darr’s standard litigation rate is \$475. (*Id.* at ¶ 36.) Plaintiff also
19 seeks fees for work performed by Marc van Anda who is a paralegal with Mr. Gallo’s office. (*Id.*
20 at ¶ 37.) His hourly rate is \$225. (*Id.*)

21 These billing rates are reasonable and in line with prevailing rates in this district for
22 lawyers of comparable experience, skill, and reputation. *See, e.g., Roberts v. Marshalls of CA,*
23 *LLC*, No. 13-cv-04731-MEJ, 2018 WL 510286, at *14-15 (N.D. Cal. Jan. 23, 2018) (approving
24 rates between \$300 and \$750 per hour); *In re Magsafe Apple Power Adapter Litig.*, No. 5:09-CV-
25 01911-EJD, 2015 WL 428105, at *12 (N.D. Cal. Jan. 30, 2015) (“In the Bay Area, reasonable
26 hourly rates for partners range from \$560 to \$800, for associates from \$285 to \$510, and for
27 paralegals and litigation support staff from \$150 to \$240.”) (collecting cases).

28 //

1 **2) Hours Expended**

2 As to the number of hours billed, they must equal the number of hours that can reasonably
3 be billed to a private client. *Gonzalez v. City of Maywood*, 729 F.3d 1196, 1202 (9th Cir. 2013).
4 Thus, the court should only award fees based on “the number of hours reasonably expended on the
5 litigation” and should exclude “hours that are excessive, redundant, or otherwise unnecessary[.]”
6 *Hensley*, 461 U.S. at 433–34. “There is no precise rule or formula for making these
7 determinations[.]” and the court “necessarily has discretion in making this equitable judgment.”
8 *Id.* at 436–37.

9 Class counsel attest that they spent a total of 510.5 hours on this case with the three
10 attorneys billing 21.7 (Gallo), 306.7 (Valerian), and 152.1 (Darr) hours respectively. (Dkt. No.
11 53-1 at ¶ 27.) Class counsel attached detailed billing records to their declaration which reflect the
12 hours Class Counsel billed for the case. (Dkt. No. 53-1, Exhibit 1, ECF 16-36.) While the billing
13 records reflect some excessive duplication of work between the three attorneys—for example, the
14 three attorneys collectively billed 68 hours preparing an opposition to the motion to dismiss (*Id.* at
15 ECF 18-19)—because the attorneys’ fees requested here are nearly \$100,000 less than those
16 billed, the Court finds it unnecessary to make deductions based on excessive or duplicative billing.

17 **3) Lodestar Calculation**

18 Class Counsel attest that their lodestar is \$263,957.50 which represents 510.5 hours of
19 work through March 9, 2020. (Dkt. No. 53-1 at ¶¶ 27-29.) After determining the lodestar, the
20 Court divides the total fees sought by the lodestar to arrive at the multiplier. *See Hopkins v.*
21 *Stryker Sales Corp.*, No. 11–CV–02786–LHK, 2013 WL 496358, at *4 (N.D. Cal. Feb. 6, 2013)
22 (citation omitted). “The purpose of this multiplier is to account for the risk Class Counsel assumes
23 when they take on a contingent-fee case.” *Id.* (citation omitted). If the multiplier falls within an
24 acceptable range, it further supports the conclusion that the fees sought are, in fact, reasonable. *Id.*
25 In determining whether a multiplier is appropriate, courts consider the following factors:

26 (1) the time and labor required, (2) the novelty and difficulty of the
27 questions involved, (3) the skill requisite to perform the legal service
28 properly, (4) the preclusion of other employment by the attorney due
to acceptance of the case, (5) the customary fee, (6) whether the fee
is fixed or contingent, (7) time limitations imposed by the client or

1 the circumstances, (8) the amount involved and the results obtained,
 2 (9) the experience, reputation, and ability of the attorneys, (10) the
 3 “undesirability” of the case, (11) the nature and length of the
 professional relationship with the client, and (12) awards in similar
 cases.

4 *Id.* (citations omitted). Class Counsel argue that a lodestar multiplier would be warranted here
 5 based on the quality of the representation, the benefit obtained for the class, the complexity and
 6 novelty of the issues presented, the risk of nonpayment, and the preclusion of other employment.
 7 (Dkt. No. 53 at 12:7-12.) However, their request for \$176,473.93 in attorneys’ fees represents a
 8 negative multiplier of .67. A negative multiplier “suggests that the negotiated fee award is a
 9 reasonable and fair valuation of the services rendered to the class by class counsel.” *Chun-Hoon v.*
 10 *McKee Foods Corp.*, 716 F. Supp. 2d 848, 854 (N.D. Cal. 2010); *see also Schuchardt v. Law*
 11 *Office of Rory W. Clark*, 314 F.R.D. 673, 690 (N.D. Cal. 2016) (“[C]ourts view self-reduced fees
 12 favorably.”). The Court thus concludes that the negative multiplier of 0.67 supports the
 13 conclusion that the requested fees are reasonable.

14 Accordingly, the court awards Class Counsel attorneys’ fees in the amount of \$176,473.93.

15 **B. Litigation Costs**

16 “There is no doubt that an attorney who has created a common fund for the benefit of the
 17 class is entitled to reimbursement of reasonable litigation expenses from that fund.” *Ontiveros v.*
 18 *Zamora*, 303 F.R.D. 356, 375 (E.D. Cal. 2014) (internal quotation marks and citation omitted). To
 19 that end, courts throughout the Ninth Circuit regularly award litigation costs and expenses—
 20 including photocopying, printing, postage, court costs, research on online databases, experts and
 21 consultants, and reasonable travel expenses—in securities class actions, as attorneys routinely bill
 22 private clients for such expenses in non-contingent litigation. *See Harris v. Marhoefer*, 24 F.3d 16,
 23 19 (9th Cir. 1994) (noting that a prevailing plaintiff may be entitled to costs including, among
 24 other things, “postage, investigator, copying costs, hotel bills, meals,” and messenger services).
 25 Here, the Settlement Agreement provides that Plaintiff’s counsel may obtain up to \$185,000 in
 26 attorneys’ fees and costs, and, specifically, requests \$7,685 in costs. (Dkt. No. 43-1 at ¶ 21.) This
 27 amount is separate from the class recovery. Class counsel has submitted an itemized summary of
 28 these costs with its motion for attorneys’ fees as instructed in the preliminary approval order.

1 (Dkt. No. 53-1, Exhibit 2, ECF 38.) The Court has reviewed this summary and concludes that the
2 costs are reasonable litigation expenses incurred for the benefit of the class.

3 Accordingly, the Court awards Plaintiff \$8,526.07 in costs.

4 **C. Administration Costs**

5 The Settlement Agreement also requests that the settlement administrative costs be paid
6 out of the Settlement Class Consideration. According to KCC, the Settlement Claims
7 Administrator, the settlement administration costs here totaled \$59,242.46 which is over \$7,000
8 more than the amount preliminarily approved by the Court. (Dkt. No. 56-2 at ¶¶ 23-24.) The costs
9 were higher than anticipated because the 16 percent claims rate is substantially higher than the 7
10 percent claims rate predicted, 1,357 individuals who are not class members filed claim forms, and
11 notice packets were mailed to twice as many individuals as predicted. (Dkt. Nos. 43-1 at ¶ 11;
12 Dkt. No. 56-2 at ¶ 24.) Further, as detailed above, the Settlement Claims Administrator provided
13 both email and mail notice, including re-mailing notice to 670 individuals, created a website, a
14 hotline, and an email address which were all monitored. (Dkt. No. 56-2 at ¶¶ 8-16.) Courts
15 regularly award administrative costs associated with providing notice to the class. *See, e.g.,*
16 *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 266 (N.D. Cal. 2015). The Court therefore
17 concludes that KCC's costs were reasonable incurred for the benefit of the class and approves the
18 full amount to be deducted from the Settlement Class Consideration.

19 **D. Incentive Award**

20 "Incentive awards are fairly typical in class action cases." *Rodriguez v. W. Publ'g Corp.*,
21 563 F.3d 948, 958 (9th Cir. 2009) (distinguishing incentive awards from incentive agreements, the
22 latter of which are "entered into as part of the initial retention of counsel" and "put class counsel
23 and the contracting class representatives into a conflict position from day one"). However, the
24 decision to approve such an award is a matter within the Court's discretion. *In re Mego Fin. Corp.*
25 *Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000). Incentive awards "are intended to compensate class
26 representatives for work done on behalf of the class, to make up for financial or reputation risk
27 undertaken in bringing the action, and, sometimes to recognize their willingness to act as a private
28 attorney general." *Rodriguez*, 563 F.3d at 958-59. "Incentive awards typically range from \$2,000

1 to \$10,000.” *Bellinghausen*, 306 F.R.D. at 267. Service awards of \$5,000 are presumptively
 2 reasonable in this judicial district. *See, e.g., Camberis v. Ocwen Loan Serv. LLC*, Case No. 14-cv-
 3 02970-EMC, 2015 WL 7995534, at *3 (N.D. Cal. Dec. 7, 2015).

4 Here, Plaintiff seeks a \$5,000 incentive award. While he has not submitted a declaration
 5 himself attesting to the adequacy of the amount sought, Class Counsel attests that Mr. Chen was
 6 the one who initially brought the matter to counsel’s attention, he participated in discovery, and
 7 settlement negotiations, and has spent more than 40 hours on this case. (Dkt. No. 53-1 at ¶ 42.)
 8 Given the amount of time and effort Mr. Chen put into the case and the success of the recovery, an
 9 incentive award in the amount of \$5,000 is proportional and reasonable. *See In re Online DVD-*
 10 *Rental Antitrust Litig.*, 779 F.3d 934, 947 (9th Cir. 2015) (approving \$5,000 incentive awards
 11 where individual class members each received \$12).

12 Accordingly, the Court approves the requested \$5,000 incentive award here.

13 CONCLUSION

14 For the reasons stated above, the Court GRANTS Plaintiff’s motion for final approval of
 15 the parties’ class action settlement. In addition, the Court GRANTS Plaintiff’s motion for
 16 attorneys’ fees and costs; specifically, the Court awards the following: \$176,473.93 in attorneys’
 17 fees; \$8,526.07 in litigation costs; and \$5,000 as incentive award to Plaintiff.

18 In accordance with the Northern District’s Procedural Guidance for Class Action
 19 Settlements, “[w]ithin 21 days after the distribution of the settlement funds and payment of
 20 attorneys’ fees,” Class Counsel shall file “a Post-Distribution Accounting” that provides the
 21 following:

22 The total settlement fund, the total number of class members, the total
 23 number of class members to whom notice was sent and not returned
 24 as undeliverable, the number and percentage of claim forms
 25 submitted, the number and percentage of opt-outs, the number and
 26 percentage of objections, the average and median recovery per
 27 claimant, the largest and smallest amounts paid to class members, the
 28 method(s) of notice and the method(s) of payment to class members,
 the number and value of checks not cashed, the amounts distributed
 to each cy pres recipient, the administrative costs, the attorneys’ fees
 and costs, the attorneys’ fees in terms of percentage of the settlement
 fund, and the multiplier, if any.

<https://www.cand.uscourts.gov/forms/procedural-guidance-for-class-action-settlements/>. Class

1 Counsel shall “summarize this information in an easy-to-read chart that allows for quick
2 comparisons with other cases,” and “post the Post-Distribution Accounting, including the easy-to-
3 read chart, on the settlement website.” *See id.*

4 The Clerk is directed to close this case.

5 This Order disposes of Docket Nos. 53 and 56.

6 **IT IS SO ORDERED.**

7 Dated: June 23, 2020

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9 
10 JACQUELINE SCOTT CORLEY
11 United States Magistrate Judge
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United States District Court
Northern District of California