UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 10-5484-GW(JCGx) Date June 13, 2011

Title *In Re Quantcast Advertising Cookie Litigation*

Present: The Honorable GEORGE H. WU, UNITED STATES DISTRICT JUDGE

Javier Gonzalez	Wil Wilcox	
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
Scott A. Kamber David C. Parisi	Jeffrey S. Jacobson Michael H. Page Whitty Somvichian Daniel H. Lee Saro Balian

PROCEEDINGS: **PLAINTIFFS' MOTION FOR (1) FINAL APPROVAL OF CLASS ACTION SETTLEMENT; AND (2) APPROVAL OF ATTORNEYS FEES AND COSTS AND INCENTIVE AWARDS (filed 04/20/11)**

The tentative circulated and attached hereto, is adopted as the Court's final ruling. Plaintiffs' Motion for (1) Final Approval of Class Action Settlement; and (2) Approval of Attorneys Fees and Costs and Incentive Awards is **granted.** Judgment is approved.

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Initials of Preparer JG

In re Clearspring Flash Cookie Litigation, Case No. CV-10-5948
In re Quantcast Advertising Cookie Litigation, Case No. CVC-10-5484
Tentative Ruling on Motion for Final Approval of Class Action Settlement

I. INTRODUCTION

Before the Court are motions for orders granting final approval of a proposed settlement and awarding attorneys' fees and costs and attorneys expenses, and awarding incentive fees to the Representative Plaintiffs ("Motions for Final Approval") in In Re Quantcast Advertising Cookie Litigation, Case No. 2:10-cv-05484-GW-JCG, and In Re Clearspring Flash Cookie Litigation, Case No. 2:10-cv-05948-GW-JCG. Each of these consolidated actions is comprised of three separate cases. The two defendants named in the captions of the consolidated cases - i.e., Quantcast Corporation ("Quantcast") and Clearspring Technologies, Inc. ("Clearspring") - are online third-party service providers. The other defendants - American Broadcasting Companies, Inc., Demand Media, Inc., ESPN, Inc., Fox Entertainment Group, Inc., Hulu, LLC, JibJab Media, Inc., MTV Networks, a division of Viacom International Inc., MySpace, Inc., NBC Universal, Inc, Scribd, Inc., Soapnet, LLC, Walt Disney Internet Group, and Warner Bros. Records Inc. and certain of their affiliated entities which utilized the services of Quantcast and/or Clearspring ("Undertaking Parties") - provide web-based content to consumers. Both consolidated actions arise from Defendants' alleged employment of Adobe Flash local shared objects ("LSOs" or "Flash Cookies") to track class members' use of the Internet without their knowledge or consent. The proposed settlement provides for 2.4 million dollars in cy pres payments by Defendants to various non-profit organizations, an agreement not to engage in the offending conduct alleged by Plaintiffs, and an agreement by some parties to take certain affirmative steps related to Internet privacy. For the following reasons, the Motions for Final Approval would (with certain reservations to be discussed at the hearing) be GRANTED.

II. BACKGROUND

On March 3, 2011, the Court entered an order approving a preliminary settlement in each of the consolidated actions. Quantcast Doc. No. 72; Clearspring Doc. No. 49. The key terms of the settlement, as reflected in the Settlement Agreements executed in each case, Quantcast Doc. No. 42-2; Clearspring Doc. No. 26-2, are as follows:

A. Class Definition

On March 3, 2011, this Court certified the following Class for the purposes of Settlement:

> All persons in the United States who, during the Class Period, used any web browsing program on any device to access one or more web sites or online content controlled, operated or sponsored by Defendants; Undertaking Parties News Corporation, Viacom, Inc., The Walt Disney Company, or Warner Music Inc. or subsidiaries or affiliates thereof; or any other internet site employing any of Clearspring's or Quantcast's technologies involving the use of

HTTP "cookies" ("Cookies" or local shared objects stored in Adobe Flash Media local storage "LSOs").

Quantcast Doc. No. 72; Clearspring Doc. No. 49.

B. Settlement Benefits

1. General relief

Under the terms of the settlement, individual class members will not receive direct compensation. Rather, Defendants Quantcast and Clearspring will establish a cash settlement fund of $2,400,000, the net value of which will be distributed to the previously identified non-profit organizations and educational institutions to fund research and education projects and activities to promote consumer awareness and choice regarding the privacy, safety, and security of electronic information from and about consumers, and which projects and activities shall exclude the sponsorship or funding of litigation or lobbying efforts regarding specific legislation. All attorneys' fees, costs, incentive payments to the named Plaintiffs, settlement administration costs, and notice and administration costs will be paid out of the $2,400,000 fund.

2. Additional relief

In addition to the payments described above, the Defendants provided the following relief after Preliminary Approval was granted by the Court:

a. Quantcast and Clearspring have agreed not to employ LSOs to: (i) "respawn" HTTP cookies; and/or (ii) serve as an alternative method to HTTP cookies for storing information about a user's web browsing history, unrelated to the delivery of content through the Flash Player or the performance of the Flash Player in delivering such content, without adequate disclosure; and/or (iii) otherwise counteract any computer user's decision to either prevent the use of or to delete previously created HTTP cookies. Settlement Agreement § 4.19.

b. The Undertaking Parties have sent a request to at least one of the industry groups charged with receiving comments to the Self-Regulatory Principles that those Self-Regulatory Principles should be amended to include express prohibitions on the use of LSOs or any similar technology to regenerate, without disclosure, HTTP cookies that a user affirmatively deleted. Additionally, the Undertaking Parties shall request that the Self-Regulatory Principles be amended to include guidance to member firms that LSOs should not be used without disclosure as an alternative method to HTTP cookies for storing information about a user's web browsing history across unaffiliated domains, unrelated to the delivery of content through the Flash Player or the performance of the Flash Player in delivering such content. If an Undertaking Party is a member of the Network Advertising Initiative ("NAI"), the Undertaking Party shall also inform the Network Advertising Initiative of its preference that the NAI Principles be similarly amended. Settlement Agreement § 4.20.1.

c. The Undertaking Parties agree that they shall not, in any official capacity in any public or industry forum, take a position contrary to those stated above. Settlement Agreement § 4.20.2.

d. Each Undertaking Party shall, (i) in its online Privacy Policy or an opt-out page clearly linked thereto maintain a link to the NAI "Opt Out of Behavioral Advertising" tool presently located at http://www.networkadvertising.org/manag-ing/opt_out.asp[1] or, once it is fully

[1] The Court has a question as to whether this purported cite is/was functional.

implemented for consumers, to the industry-developed website page currently represented by http://www.about-ads.info/consumers/; or, on the Undertaking Party's own Internet home page, maintain a link to a page with substantially the same information and consumer options; or (ii) once it is fully implemented for consumers, display the "Advertising Option Icon" discussed in the Self-Regulatory Principles, which links to an OBA disclosure statement and opt-out mechanism. A link to the Undertaking Party's online Privacy Policy or the Advertising Option Icon shall be displayed on the home page of each Undertaking Party's U.S. consumer-oriented website(s) and on at least a significant number of those consumer-oriented web pages of the Undertaking Party's U.S. consumer-oriented website(s) on which consumer data is collected or used for advertising. Settlement Agreement §4.20.3.

e. If, after the Settlement becomes final, an Undertaking Party or its agents deposit LSOs on the computers of users who visit one or more of its U.S. consumer-oriented websites or interact with its widgets or other applications on such websites, the Undertaking Party shall include, in its online Privacy Policy, a disclosure of its use of LSOs and a link to at least one website or utility offering users the ability to manage LSOs, if such website or utility is available. By linking to such a third-party website or utility in order to comply with this Agreement, the Undertaking Party will not assume responsibility for the functionality or any other aspect of such website or utility. If one or more of the Undertaking Party's websites, widgets, or application components may not maintain its or their full user functionality unless the user's settings permit full acceptance of LSOs, the Undertaking Party shall so disclose in its Privacy Policy. Settlement Agreement § 4.20.4.

f. An Undertaking Party's Privacy Policy links (to which shall appear as specified above) shall include an email address or other online reporting mechanism to which members of the public can send any privacy-related concerns respecting the operation of the Undertaking Party's websites. The Undertaking Party will regularly review messages sent to this address or mechanism, but need not individually review duplicative or cumulative messages appearing to have emanated from or at the behest of the same source. Settlement Agreement § 4.20.5.

g. These provisions shall remain in effect until June 30, 2013. Settlement Agreement § 4.20.6.

3. Payment of notice and administrative fees

The full cost of notice and administration and effectuation of the Settlement Agreement shall be paid out of the settlement fund.

4. Compensation of Class Representatives

In addition to any benefits afforded under the Settlement, subject to Court approval, representative Plaintiffs shall each receive $1,500 as appropriate compensation for their time and effort serving as class representatives in the litigation against Defendants.

5. Attorneys' fees and expenses

Defendants have agreed that a payment out of the Settlement Fund to Plaintiffs' counsel, subject to Court approval, of up to 25% of the settlement fund in attorneys' fees and for the reimbursement of Plaintiffs' counsel's costs is fair and reasonable, and Defendants will not object or otherwise challenge Plaintiffs' attorneys' application for payment of fees from the Settlement Fund if limited to such an amount. Plaintiffs' counsel has, in turn, agreed not to seek more than said amount from the Court.

C. Release

Upon entry of a final order approving the Settlement and following the expiration of the time for appeal or the entry of a decision on such appeal, class representatives and each and every member of the Class who have not timely filed a request to be excluded from the settlement class will release and forever discharge Quantcast, Clearspring, any of their customers which deployed the technology at issue in this case, as well as the Undertaking Parties and their subsidiaries and affiliates, for their deployment of Quantcast and Clearspring technologies in any of their online content, as well as their deployment of similar technologies not provided by Quantcast or Clearspring in any of their online content, as further explained for in the Settlement Agreement.

D. Notice

As approved by this Court in its March 3, 2011 Hearing Order re preliminary approval, Notice was placed in Parade A, Newsweek, Information Week, and Computer World magazines. Notice was further published through Internet advertisements using banner and text ads on websites with the largest number of unique viewers per month according to Google Adwords network.[2] A press release was also distributed on PR Newswire's National Circuit. The Notice was also published on the Settlement website, www.flashcookiesettlement.com.

III. LEGAL STANDARDS

A. Legal Standards Governing Settlement

Settlement of a class action law suit requires approval of the court. See Fed. R. Civ. P. 23(e). Thus, at hearings to approve final settlement, after notice is given to class members, a court is to entertain any objections by putative class members to (1) the treatment of this litigation as a class action and/or (2) the terms of the settlement. See Diaz v. Trust Territory of Pac. Islands, 876 F.2d 1401, 1408 (9th Cir.1989) (holding that prior to approving the dismissal or compromise of claims containing class allegations, district courts must, pursuant to Rule 23(e), hold a hearing to "inquire into the terms and circumstances of any dismissal or compromise to ensure that it is not collusive or prejudicial"). The court must find that the proposed settlement is fundamentally fair, adequate, and reasonable. See Staton v. Boeing Co., 327 F.3d 938, 959 (9th Cir. 2003) (citing Hanlon v. Chrysler Corp., 150 F.3d 1011, 1026 (9th Cir.1998)). In making this determination, the court may consider any or all of the following factors, if applicable:

> (1) the strength of plaintiffs' case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed, and the stage of the proceedings; (6) the experience and views of

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[2] The Court would require Plaintiffs to re-submit a list of the websites on which the notice appeared and the dates on which it ran, and a declaration to the effect that such notice did appear on those sites on said dates.

> counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement.

Molski v. Gleich, 318 F.3d 937, 953 (9th Cir. 2003); Officers for Justice v. Civil Serv. Comm'n, 688 F.2d 615, 625 (9th Cir.1982), cert. denied sub nom., Byrd v. Civil Serv. Comm'n, 459 U.S. 1217 (1983). This list is not intended to be exhaustive; the court must consider the applicable factors in the context of the case at hand. See Officers for Justice, 688 F.2d at 625.

Despite the importance of fairness, the court must also be mindful of the Ninth Circuit's policy favoring settlement, particularly in class action lawsuits. See, e.g., Officers for Justice, 688 F.2d at 625 ("Finally, it must not be overlooked that voluntary conciliation and settlement are the preferred means of dispute resolution. This is especially true in complex class action litigation . . . ."). While balancing all of these interests, the court's inquiry is ultimately 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." Id. The court, in evaluating the agreement of the parties, is not to reach the merits of the case or to form conclusions about the underlying questions of law or fact. See id.

"It is the settlement taken as a whole, rather than the individual component parts, that must be examined for overall fairness." Hanlon, 150 F.3d at 1026. "The settlement must stand or fall in its entirety." Id. The court may not delete, modify, or rewrite particular provisions of the settlement. See id. "Settlement is the offspring of compromise; the question . . . is not whether the final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from collusion." Id. at 1027.

Where, as here, the parties agree to settle the dispute prior to certification of the class, the court must be particularly vigilant in its scrutiny of the settlement. See Hanlon, 150 F.3d at 1026. Thus, "in the context of a case in which the parties reach a settlement agreement prior to class certification, courts must peruse the proposed compromise to ratify both the propriety of the certification and the fairness of the settlement." Staton, 327 F.3d at 952. In other words, in determining whether to approve a class action settlement, a district court must (1) "assess whether a class exists," and (2) "carefully consider 'whether a proposed settlement is fundamentally fair, adequate, and reasonable,' recognizing that '[i]t is the settlement taken as a whole, rather than the individual component parts, that must be examined for overall fairness.'" Id. (quoting Hanlon, 150 F.3d at 1026).

B. Legal Standards Governing Class Certification

Federal Rule of Civil Procedure 23 governs class actions and provides that a party seeking class certification must demonstrate the following prerequisites: (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. Fed. R. Civ. P. 23(a). A district court must engage in a "rigorous analysis" to determine whether the party seeking certification has met the prerequisites of Rule 23(a). See Valentino v. Carter-Wallace, Inc., 97 F.3d 1227, 1233 (9th Cir.1996) (quoting In re Am. Med. Sys., Inc., 75 F.3d 1069, 1078-79 (6th Cir.1996)). After satisfying the four prerequisites of numerosity, commonality, typicality, and adequacy, a party must also

demonstrate that either: (1) a risk that separate actions would create incompatible standards of conduct for the defendant or prejudice individual class members not parties to the action; (2) the defendant has treated the members of the class as a class, making appropriate injunctive or declaratory relief with respect to the class as a whole; or (3) common questions of law or fact predominate over questions affecting individual members and that a class action is a superior method for fairly and efficiently adjudicating the action. See Fed.R.Civ.P. 23(b).

IV. ANALYSIS

A. Certification of the Class is Appropriate

As noted at the hearing on preliminary approval of this settlement, it appears that this case would satisfy the requirements of Fed. R. Civ. P. 23(a) and (b) in regards to certifying a class for the purpose of settlement.

1. Rule 23(a) factors

The numerosity prerequisite is met when "the class is so numerous that joinder of all members is impractical. Fed. R. Civ. P. 23(a)(1). Here, the class is estimated to include a large portion of the Internet users in the United States.

"[P]laintiffs may demonstrate commonality by showing that class members have shared legal issues by divergent facts or that they share a common core of facts but base their claims for relief on different legal theories." Dukes v. Wal-Mart, Inc., 509 F.3d 1168, 1177 (9th Cir. 2007). All of the class members share the common issue of having had LSOs downloaded onto their computers. The common factual and legal questions in this case include the following: (1) whether Defendants, without authorization, created and/or manipulated Adobe Flash Player local stored objects on computers to which Class Members' enjoyed rights of possession superior to those of Defendants; (2) for what purposes Defendants created and/or manipulated Adobe Flash Player local stored objects on Class Members' computers; (3) whether Defendants violated (i) the Computer Fraud and Abuse Act, 18 U.S.C. § 1030; (ii) the California Uniform Trade Secrets Act, Civil Code § 3426; (iii) the California Computer Crime Law, Penal Code § 502; (iv) the California Unfair Competition Law, Business and Professions Code § 17200; (v) the California Consumer Legal Remedies Act, Civil Code § 1750; (4) whether Defendants misappropriated valuable information assets of Class Members; (5) whether Defendants continue to retain valuable information assets from and about Class Members; (6) what uses of such information were exercised and continue to be exercised by Defendants; and (7) whether Defendants have been unjustly enriched. The commonality requirement is satisfied.

The Complaint alleges that Plaintiffs and each proposed class member were all subjected to Defendants' identical wrongful conduct in a nearly identical manner. As such, Plaintiffs' claims are typical of those of the proposed class. Thus, Fed. R. Civ. P. 23(a)(3) is satisfied.

The final Rule 23(a) prerequisite requires that the proposed class representatives have and will continue to "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). "This factor requires: (1) that the proposed representative Plaintiffs do not have conflicts of interest with the proposed class, and (2) that Plaintiffs are represented by qualified and competent counsel." Dukes, 509 F.3d at 1185. Here, Plaintiffs do not appear to have any interests antagonistic to the interests of the proposed class. Class counsel, KamberLaw, LLC, have had extensive experience in consumer class action lawsuits that are similar in size, scope

and complexity to the present case, and are qualified and competent to represent the class.

2. Rule 23(b)

Federal Rule of Civil Procedure 23(b)(3) provides that a class action can be maintained where the questions of law and fact common to members of the class predominate over any questions affecting only individuals, and the class action mechanism is superior to the other available methods for the fair and efficient adjudication of the controversy. Fed. R. Civ. P 23(b)(3); Pierce v. County of Orange, 519 F.3d 985, 991 n.5 (9th Cir. 2008). Defendants' alleged practice of using LSO's to circumvent users' blocking or deleting of Quantcast and Clearspring browser cookies and failure to provide adequate notice or choice about the use of LSOs is alleged to have resulted in Plaintiffs and the proposed settlement class having their privacy rights violated in breach of the state and federal law and is common to the class members' claims and their purported damages and predominates over any issues applicable to any individual members of the class. In addition, the instant class action is superior to any other method available to fairly, adequately, and efficiently resolve the class members' claims. Absent a class action, most members of the class would find the cost of litigating their claims to be prohibitive, and such multiple individual actions would be judicially inefficient. Rule 23(b)(3) is easily satisfied.

B. The Settlement is Fair

For the following reasons, it appears likely that the Molski factors, see supra § III-A, militate in favor of approving the settlement of these consolidated actions.

1. Strength of Plaintiffs' Case

The first relevant factor in the present matter is the risk of continued litigation balanced against the certainty and immediacy of recovery from the Settlement. See Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.), 213 F.3d 454, 458 (9th Cir.2000). If the Court were to refuse to approve the settlement, there is a possibility that the unrepresented potential plaintiffs would lose their chance at recovery entirely. Even if the Court were to certify the class, there is no guarantee the certification would survive through trial, as Defendants might have sought decertification or modification of the class. It is uncertain whether Plaintiffs would be able to prevail at trial and obtain any benefit whatsoever. Plaintiffs have brought a number of novel claims and theories in an untested area of law. A variety of defenses would appear to be readily available to Defendants. Defendants have indicated that, in absence of the settlement, they would mount an aggressive defense. Against all of this, the Settlement, which at least offers some tangible benefit to the class, appears a much better option.

2. Risk, Expense, and Complexity of Continued Litigation

The next factor for the Court's analysis is "the risk of continued litigation balanced against the certainty and immediacy of recovery from the Settlement." In re OmniVision, 559 F. Supp.2d at 1041 (citing Dunleavy v. Nadler, 213 F.3d 454, 458 (9th Cir. 2000)). Here, in the absence of the Settlement, and assuming Plaintiffs prevailed in obtaining certification of the class, Plaintiffs would face a number of obstacles in litigating this matter. The factual and legal issues in this case involve an evolving technology and unique issues of law. The expense, duration and complexity that would result from the claims and defenses would be substantial.

Further, proving actual damages as to individual Plaintiffs or the Plaintiff class was a whole would be highly problematic. It would be necessary to undertake extensive discovery, and extensive motion practice is likely. Thus, the expense, complexity and likely duration of the litigation support final approval of the Settlement.

3. Risks of Maintaining Class Action Status

While it is somewhat apparent that this case easily meets the requirements for class certification, it is likely that Defendants would attempt to oppose certification and/or later seek decertification in the event that the Court's conditional certification of the class becomes void. This factor weighs in favor of approval of the Settlement.

4. Amount Offered in the Settlement

In addition to injunctive relief, the settlement provides for a fund of $2.4 million which will be distributed to one or more non-profit organizations to fund research and education projects and activities to promote consumer awareness and choice regarding the privacy, safety, and security of electronic information from and about consumers. Such cy pres distribution is acceptable where notice is provided to each class member. See Six Mexican Workers v. Arizona Citrus Growers, 904 F.2d 1301, 1305 (9th Cir. 1990). The Ninth Circuit has cautioned that Plaintiffs cannot use cy pres recovery "to avoid the difficulty of proving each class members' specific injury," see id., but this settlement does not appear to involve the kinds of concerns that were discussed in that case. Here, the reason for the cy pres award is not necessarily the difficulty of proving damages (though they may in fact be difficult to prove), but, rather, that they are likely to be de minimis. The likely recovery by each class member in relation to the enormous size of the class would make distribution to class members impracticable because of the burden and expense of distribution. The proposed amount of settlement is fair and reasonable. Therefore, this factor weighs in favor of approving the settlement.

5. Extent of Discovery Completed and Stage of Proceeding

Federal courts are inherently skeptical of pre-certification settlements, precisely because such settlements tend to be reached quickly before the plaintiffs' counsel has had the benefit of the discovery necessary to make an informed evaluation of the case and, accordingly, to strike a fair and adequate settlement. See, e.g., In re GMC Pick-Up Truck Fuel Tank Prods. Liab. Litig., 55 F.3d 768, 788 (3d Cir. 1995); Weinberger v. Kendrick, 698 F.2d 61, 73 (2d Cir.1982); Polar Int'l Brokerage Corp., 187 F.R.D. 108, 113 (S.D.N.Y.1999) ("An early settlement will find the court and class counsel less informed than if substantial discovery had occurred. As a result, the court will find it more difficult to access the strengths and weaknesses of the parties' claims and defenses, determine the appropriate membership of the class, and consider how class members will benefit from settlement.") (quoting Manual for Complex Litigation 2d § 30.45 (3d Ed. 1995)). In this case, Plaintiffs' counsel, working with "certain Class Representatives," conducted an extensive factual and technical investigation for over 9 months before filing their Complaints. See Declaration of David A. Stampley ¶ 3. Further information was obtained in the course of mediation and throughout the negotiation process. The Court is confident that counsel in this matter are thoroughly familiar with the facts of this case and were therefore able to help Plaintiffs make an informed decision regarding the merits of the Settlement. Accordingly, this factor favors approval of the Settlement.

6. Experience and Views of Counsel

The next factor for the Court to consider is Plaintiffs' counsel's experience and views about the adequacy of the Settlement. In assessing the adequacy of the terms of a settlement, the trial court is entitled to, and should, rely upon the judgment of experienced counsel for the parties. Nat'l Rural Telecomms. Coop v. DIRECTV, Inc., 221 F.R.D. 523, 528 (C.D.Cal.2004). Reliance on such recommendations is premised on the fact that "parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in the litigation." In re Pacific Enters. Sec. Litig., 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiffs' counsel, as well as other members of KamberLaw, LLC, and other counsel involved in this litigation of this matter, have regularly engaged in major complex litigation, and are experienced in prosecuting consumer class action lawsuits of similar size and complexity. Through their investigation, consultation with experts, mediation and settlement, Plaintiffs' counsel have an intimate understanding of the instant litigation and believe the settlement to more than exceed the "fair, adequate, and reasonable" standard required for the Court's approval. Stampley Decl. ¶ 3. This fact, therefore, also favors the Court's final approval of the Settlement Agreement.

7. Presence of Governmental Participant

This factor does not apply in this matter.

8. Reaction of the Class

"It is established that 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 settlement action are favorable to the class members." DIRECTV, 221 F.R.D. at 529. As of May 31, 2011, the settlement administrator had received one request for exclusion and one objection to the proposed settlement (which is addressed below).[3] Doc. No. 79. Such a low rate of objections is somewhat surprising to the Court, and may suggest that the Court should conduct some kind of inquiry into the actual efficacy of the notice that was provided to the class. (Certainly, the notice procedures that the Court approved seemed to the Court to be reasonable.) Assuming that notice was sufficient, however, this factor obviously favors approval of the settlement.

C. Objection to the Settlement Have Been Withdrawn

On June 8, 2011, Plaintiffs filed a Proposed Final Order and Judgment ("Proposed Order") that indicates in part that the sole objection to the settlement has been voluntarily withdrawn by the objecting class member "prior to the Fairness Hearing after previewing Plaintiff's opposition papers and correspondence from the Defendants that collectively demonstrated the lack of factual basis for the objection. Proposed Order 10:5-8. Thereafter, on June 9, 2011, a copy of a letter from the lone objector which withdrew his objections was filed with the Court. Doc. No. 81.

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[3] The last day to exclude oneself from a related class action (i.e., Davis v. VideoEgg, Inc., CV-10-7112) was June 10, 2011. The Court would inquire of Plaintiffs' counsel as to whether the numbers of excluding and/or objecting class members there were similar.

D. Request for Attorneys' Fees

Plaintiffs' counsel seeks a total of $600,000 in combined fees and costs which represents 25% of the settlement fund, and a multiplier of just over one times the lodestar expended in this matter. Plaintiffs represent that the prosecution of this action has required Plaintiffs' counsel to perform 1,171 hours of work yielding a lodestar of $544,887, and incur $10,319 in expenses.

"[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). In the Ninth Circuit, district courts presiding over common fund cases have the discretion to award attorneys' fees based on either the lodestar method (essentially a modification of hourly billing) or the percentage method Plaintiff and her counsel propose here. See Class Plaintiffs v. City of Seattle (In re Wash. Pub. Power Supply Sys. Sec. Litig.), 19 F.3d 1291, 1296 (9th Cir. 1994) ("[W]e restate the law of our circuit that, in common fund cases, no presumption in favor of either the percentage or the lodestar method encumbers the district court's discretion to choose one or the other."). "As always, when determining attorneys' fees, the district court should be guided by the fundamental principle that fee awards out of common funds be 'reasonable under the circumstances.'" Id. (emphasis in original) (quoting Florida v. Dunne, 915 F.2d 542, 545 (9th Cir. 1990) (emphasis in original)).

Despite this discretion, use of the percentage method in common fund cases appears to be dominant. See, e.g., Vizcaino v. Microsoft Corp., 290 F.3d 1043, 1047 (9th Cir.), cert. denied sub nom., Vizcaino v. Waite, 537 U.S. 1018 (2002); Six Mexican Workers, 904 F.2d at 1311; Paul, Johnson, 886 F.2d at 272. The advantages of using the percentage method have been described thoroughly by other courts. See, e.g., In re Activision Sec. Litig., 723 F.Supp. 1373, 1374-77 (N.D.Cal.1989) (collecting authority and describing benefits of the percentage method over the lodestar method). Here, however, an award of the lodestar figure with no multiplier may arguably be more appropriate than a percentage.

The ultimate goal under either method of determining fees is to reasonably compensate counsel for their efforts in creating the common fund. See Paul, Johnson, 886 F.2d at 271-72. It is not sufficient to arbitrarily apply a percentage; rather the district court must show why that percentage and the ultimate award are appropriate based on the facts of the case. See Vizcaino, 290 F.3d at 1048. The Ninth Circuit has approved a number of factors which may be relevant to the district court's determination: (1) the results achieved; (2) the risk of litigation; (3) the skill required and the quality of work; (4) the contingent nature of the fee and the financial burden carried by the plaintiffs; and (5) awards made in similar cases. See id. at 1048-50.

Plaintiffs have submitted the following summary chart purporting to represent the base lodestar for both the Quantcast and Clearspring actions:

Firm	Hours	Lodestar
KamberLaw, LLC	455.0	$239,850
Parisi & Havens LLP	212.5	$85,827
Law Offices of Joseph H. Malley, P.C.	360.7	$165,855
Fears Nachawati Law Firm	104.0	$36,400
Wilson Trosclair & Lovins, P.L.L.C.	39.0	$16,955
TOTAL	1171.2	$544,887

It is noted that the evidence supporting this summary chart is rather deficient. Plaintiffs have not submitted any detailed billing records, but only the total number of hours expended by each lawyer in each firm. Although Plaintiffs' motion makes reference to a Declaration of Joseph H. Malley, it is not reflected on the Court's docket. Finally, although two of the declarations that were submitted (namely, those of Jeremy Wilson and Majed Nachwati) indicate that they are accompanied by their firms' resumes, no firm resumes are attached.

Assuming that the $544,887 figure appearing in the above chart bears some relation to reality, the lodestar would appear to be adequate compensation for counsel. Plaintiffs argue that the settlement achieved, risk of contingent litigation, and complexity of this matter all warrant an upwards multiplier. However, the speed at which the settlement that was reached in these cases and the tangential nature of the benefit to the class (at least with respect to the monetary aspect of the settlement) should also be considered. The actual lodestar of $544,887 (whether or not the Court requires more documentation of it) plus costs of $10,319 would certainly appear to be sufficient compensation.

E. Incentive Payments to Class Representatives

The incentive fees of $1500 for each of the named class representatives are reasonable and would be approved. Reasonable incentive fees for class representatives are favored and encouraged. California courts have recognized the appropriateness of incentive awards in similar actions. See In re Mego Fin. Corp. Sec. Litig., 213 F.3d 454, 463 (9th Cir. 2000) (approving $5,000 incentive awards to two class representatives in a settlement of $1,725,000). The incentive awards in this case are reasonable and well within the range of similar awards.

V. CONCLUSION

Subject to the above caveats regarding the amount of attorneys' fees requested and the efficacy of the plan for notice (which the Court previously approved), Plaintiffs' Motion for Final Approval would be GRANTED. The Court would adopt the findings set forth in the Proposed Final Order and Judgment submitted by Plaintiffs.