UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

----oo0oo----

ALBA MORALES; LANIE COHEN; LINDA CLAYMAN; and KENNETH DREW, on behalf of themselves and all others similarly situated, Plaintiffs, v. CONOPCO, INC., d/b/a UNILEVER, Defendant.	CIV. NO. 2:13-2213 WBS EFB MEMORANDUM AND ORDER RE: MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

----oo0oo----

Plaintiffs Alba Morales, Lanie Cohen, Linda Clayman, and Kenneth Drew brought this putative class action against defendant Conopco, Inc., d/b/a Unilever, asserting claims arising out of defendant's alleged labeling of certain hair care products as "TRESemmé Naturals" despite them containing synthetic ingredients. Presently before the court is plaintiffs' motion for preliminary approval of the class action settlement. (Docket

No. 57.)

I. Factual and Procedural Background

Defendant is a multinational consumer goods company whose products include food, beverages, cleaning agents, and personal care products, including the TRESemmé brand.

Plaintiffs contend that defendant violated California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200 et seq., California's Consumer Legal Remedies Act ("CLRA"), Cal. Civ. Code § 1750 et seq., and various other state consumer protection laws. (See Second Amended Complaint ("SAC") (Docket No. 30).) The parties litigated the case for nearly two years before reaching a settlement agreement on February 5, 2016 before mediator Jonathan Marks. (Stipulation of Settlement ("Settlement Agreement") ¶¶ 3-10 (Docket No. 57-2).)

Plaintiffs brought this lawsuit on behalf of a putative class of consumers in the United States who have purchased TRESemmé Naturals products. (Id. at 2-3.) Plaintiffs now seek preliminary approval of the parties' stipulated class-wide settlement, pursuant to Federal Rule of Civil Procedure 23(e). (Id. at 4.)

II. Discussion

Rule 23(e) provides that "[t]he claims, issues, or defenses of a certified class may be settled . . . only with the court's approval." Fed. R. Civ. P. 23(e). "Approval under 23(e) involves a two-step process in which the Court first determines whether a proposed class action settlement deserves preliminary approval and then, after notice is given to class members, whether final approval is warranted." Nat'l Rural Telecomms.

Coop. v. DIRECTV, Inc., 221 F.R.D. 523, 525 (C.D. Cal. 2004) (citing Manual for Complex Litig., Third, § 30.41 (1995)).

This Order is the first step in that process and analyzes only whether the proposed class action settlement deserves preliminary approval. See Murillo v. Pac. Gas & Elec. Co., 266 F.R.D. 468, 473 (E.D. Cal. 2010). Preliminary approval authorizes the parties to give notice to putative class members of the settlement agreement and lays the groundwork for a future fairness hearing, at which the court will hear objections to (1) the treatment of this litigation as a class action and (2) the terms of the settlement. See id.; Diaz v. Trust Territory of Pac. Islands, 876 F.2d 1401, 1408 (9th Cir. 1989) (stating that a district court's obligation when considering dismissal or compromise of a class action includes holding 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 will reach a final determination as to whether the parties should be allowed to settle the class action on their proposed terms after that hearing.

The Ninth Circuit has declared a strong judicial policy favoring settlement of class actions. Class Plaintiffs v. City of Seattle, 955 F.2d 1268, 1276 (9th Cir. 1992). Nevertheless, where, as here, "the parties reach a settlement agreement prior to class certification, courts must peruse the proposed compromise to ratify both [1] the propriety of the certification and [2] the fairness of the settlement." Staton v. Boeing Co., 327 F.3d 938, 952 (9th Cir. 2003).

The first part of this inquiry requires the court to

"pay 'undiluted, even heightened, attention' to class certification requirements" because, unlike in a fully litigated class action suit, the court "will lack the opportunity . . . to adjust the class, informed by the proceedings as they unfold." Amchem Prods. Inc. v. Windsor, 521 U.S. 591, 620 (1997); see Hanlon v. Chrysler Corp., 150 F.3d 1011, 1019 (9th Cir. 1998). The parties cannot "agree to certify a class that clearly leaves any one requirement unfulfilled," and consequently the court cannot blindly rely on the fact that the parties have stipulated that a class exists for purposes of settlement. See Windsor, 521 U.S. at 621-22 (stating that courts cannot fail to apply the requirements of Rule 23(a) and (b)).

The second part of this inquiry obliges the court to "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 . . . .'" Staton, 327 F.3d at 952 (quoting Hanlon, 150 F.3d at 1026); see also Fed. R. Civ. P. 23(e) (outlining class action settlement procedures).

A. Class Certification

A class action will be certified only if it meets the four prerequisites identified in Rule 23(a) and additionally fits within one of the three subdivisions of Rule 23(b). Fed. R. Civ. P. 23(a)-(b). Although a district court has discretion in determining whether the moving party has satisfied each Rule 23 requirement, the court must conduct a rigorous inquiry before certifying a class. See Califano v. Yamasaki, 442 U.S. 682, 701

(1979); Gen. Tel. Co. of Sw. v. Falcon, 457 U.S. 147, 161 (1982).

1. Rule 23(a) Requirements

Rule 23(a) restricts class actions to cases where:

> (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). These requirements are more commonly referred to as numerosity, commonality, typicality, and adequacy of representation.

a. Numerosity

Under the first requirement, "[a] proposed class of at least forty members presumptively satisfies the numerosity requirement." Avilez v. Pinkerton Gov't Servs., 286 F.R.D. 450, 456 (C.D. Cal. 2012); see also, e.g., Collins v. Cargill Meat Solutions Corp., 274 F.R.D. 294, 300 (E.D. Cal. 2011) (Wanger, J.) ("Courts have routinely found the numerosity requirement satisfied when the class comprises 40 or more members."). Here, plaintiffs estimate that the proposed class will contain thousands of members because thousands of people purchased TRESemmé Naturals products. (Kindall Decl. ¶ 21 (Docket No. 57-1).) This easily satisfies the numerosity requirement.

b. Commonality

Commonality requires that the class members' claims "depend upon a common contention" that is "capable of classwide resolution--which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." Wal-Mart Stores, Inc. v.

Dukes, 131 S. Ct. 2541, 2550 (2011). "[A]ll questions of fact and law need not be common to satisfy the rule," and the "existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class." Hanlon, 150 F.3d at 1019.

The proposed class includes "all individuals in the United States who purchased the following TRESemmé Naturals products: (a) Nourishing Moisture Shampoo; (b) Nourishing Moisture Conditioner; (c) Radiant Volume Shampoo; (d) Radiant Volume Conditioner; (e) Vibrantly Smooth Shampoo; and (f) Vibrantly Smooth Conditioner" while they were still being sold. (Pls.' Mot. for Prelim. Approval ("Pls.' Mot.") at 2, 18 (Docket No. 57).) The class would be comprised of individuals alleging, like the named plaintiffs, that they purchased a Unilever product labeled "TRESemmé Naturals" that contained synthetic ingredients in violation of state consumer protection laws. Due to the common core of salient facts and legal contentions, the proposed class meets the commonality requirement.

c. Typicality

Typicality requires that named plaintiffs have claims "reasonably coextensive with those of absent class members," but their claims do not have to be "substantially identical." Hanlon, 150 F.3d at 1020. The test for typicality "is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." Hanon v. Dataproducts Corp., 976 F.2d 497,

508 (9th Cir. 1992) (citation omitted).

The putative class members allege a simple set of facts that is essentially identical to those alleged by the named plaintiffs. Both the class members and the named plaintiffs were allegedly injured by paying a premium for the TRESemmé Naturals products over comparable products that are not represented to be natural. (SAC ¶ 63.) Although class members may have purchased varying amounts of the products and therefore have claims for different amounts, the class members' claims appear to be reasonably coextensive with those of the named plaintiffs. Moreover, the differences in amounts purchased are taken into account by the settlement agreement's "Plan of Allocation," which allots payments based on the number of products each class member purchased. (Settlement Agreement Ex. A, Plan of Allocation at 1 (Docket No. 57-2).) The proposed class therefore meets the typicality requirement.

d. Adequacy of Representation

To resolve the question of adequacy, the court must make two inquiries: "(1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" Hanlon, 150 F.3d at 1020. These questions involve consideration of a number of factors, including "the qualifications of counsel for the representatives, an absence of antagonism, a sharing of interests between representatives and absentees, and the unlikelihood that the suit is collusive." Brown v. Ticor Title Ins., 982 F.2d 386, 390 (9th Cir. 1992).

First, there do not appear to be any conflicts of interest. The named plaintiffs' interests are generally aligned with the putative class members. The putative class members suffered a similar injury as the named plaintiffs, and the definition of the class is narrowly tailored and aligns with the named plaintiffs' interests. See Windsor, 521 U.S. at 625-26 ("[A] class representative must be part of the class and possess the same interest and suffer the same injury as the class members."); Murillo, 266 F.R.D. at 476 (finding that an appropriate class definition ensured that "the potential for conflicting interests will remain low while the likelihood of shared interests remains high").

In this case, the settlement agreement provides a collective incentive award of up to $15,000 to the named plaintiffs, at the court's discretion. (Settlement Agreement ¶ 60.) While the provision of an incentive award raises the possibility that the named plaintiffs' interest in receiving that award will cause their interests to diverge from the class's interest in a fair settlement, the Ninth Circuit has specifically approved the award of "reasonable incentive payments." Staton, 327 F.3d at 977-78. The court, however, must "scrutinize carefully the awards so that they do not undermine the adequacy of the class representatives." Radcliffe v. Experian Info. Sys., Inc., 715 F.3d 1157, 1163 (9th Cir. 2013).

Courts have generally found that $5,000 incentive payments are reasonable. Hopson v. Hanesbrands Inc., Civ. No. 08-0844 EDL, 2009 WL 928133, at *10 (N.D. Cal. Apr. 3, 2009) (citing In re Mego Fin. Corp. Sec. Litig., 213 F.3d 454, 463 (9th

Cir. 2000); In re SmithKline Beckman Corp., 751 F. Supp. 525, 535 (E.D. Pa. 1990); Alberto v. GMRI, Inc., 252 F.R.D. 652, 669 (E.D. Cal. 2008). Here, the incentive awards average $3,750 to each named plaintiff and are to be paid separate and apart from the settlement fund. (Settlement Agreement ¶ 60.) The max recovery per bottle of TRESemmé Naturals per class member is $5. (Settlement Agreement Ex. A, Plan of Allocation at 1.) Class members may recover for the purchase of up to ten bottles per household without providing proof of purchase and can recover for more than ten bottles if they submit adequate proof of a greater number of purchases along with their claim forms. (Id.) While the incentive award is relatively high in comparison to class recovery, it is well below the $5,000 benchmark and does not appear on its face to create a conflict of interest given that it does not detract from the settlement fund. Accordingly, the court preliminarily finds that the proposed incentive awards do not render plaintiffs inadequate representatives of the class.

The second prong of the adequacy inquiry examines the vigor with which the named plaintiffs and their counsel have pursued the common claims. "Although there are no fixed standards by which 'vigor' can be assayed, considerations include competency of counsel and, in the context of a settlement-only class, an assessment of the rationale for not pursuing further litigation." Hanlon, 150 F.3d at 1021.

Plaintiffs' counsel Mark Kindall and his colleagues at Izard, Kindall & Raabe, LLP have significant experience with litigating class action suits and have been appointed as lead counsel or co-counsel in over sixty class actions. (See Pls.'

Mot. Ex. 3, Firm Resume of Izard, Kindall & Raabe, LLP ("Izard Resume") at 1 (Docket No. 57-4).) Plaintiffs' liaison counsel Bramson, Plutzik, Mahler & Birkhaeuser, LLP is similarly experienced with class actions, having recovered hundreds of millions of dollars in class action settlements while serving as lead or co-counsel. (See Pls.' Mot. Ex. 4, Firm Resume of Bramson, Plutzik, Mahler & Birkhaeuser, LLP ("Bramson Resume") at 1 (Docket No. 57-5).) The court finds no reason to doubt that plaintiffs' attorneys are qualified to conduct the proposed litigation and assess the value of the settlement.

In addition, plaintiffs' counsel seems to have seriously considered the risks of continued litigation in deciding to settle this action. Both parties have aggressively litigated the case, filing and briefing numerous motions, engaging in extensive discovery, and participating in mediation. (Kindall Decl. ¶¶ 2-14.) Plaintiffs' counsel was therefore informed about the strengths and weaknesses of this case when they decided to accept the terms of the mediator's proposed settlement agreement. (Pls.' Mot. at 17.)

Accordingly, the court concludes that the absence of conflicts of interest and the vigor of counsel's representation satisfy Rule 23(a)'s adequacy assessment for the purpose of preliminary approval.

2. Rule 23(b)

An action that meets all the prerequisites of Rule 23(a) may be certified as a class action only if it also satisfies the requirements of one of the three subdivisions of Rule 23(b). Leyva v. Medline Indus. Inc., 716 F.3d 510, 512 (9th

Cir. 2013). Plaintiffs seek certification under Rule 23(b)(3), which provides that a class action may be maintained only if (1) "the court finds that questions of law or fact common to class members predominate over questions affecting only individual members" and (2) "that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

"Because Rule 23(a)(3) already considers commonality, the focus of the Rule 23(b)(3) predominance inquiry is on the balance between individual and common issues." Murillo v. Pac. Gas & Elec. Co., 266 F.R.D. 468, 476 (E.D. Cal. 2010) (citing Hanlon, 150 F.3d at 1022); see also Windsor, 521 U.S. at 623 ("The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.").

The class members' contentions appear to be similar, if not identical. Although there are differences in the total number of bottles of TRESemmé Naturals products purchased by class members, there is no indication that those variations are "sufficiently substantive to predominate over the shared claims." See id. Accordingly, the court finds that common questions of law and fact predominate over the class members' claims.

Rule 23(b)(3) also sets forth four non-exhaustive factors to consider in determining whether "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy":

> (A) the class members' interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation

> concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action.

Fed. R. Civ. P. 23(b) (3). The parties settled this action prior to certification, making factors (C) and (D) inapplicable. See Murillo, 266 F.R.D. at 477 (citing Windsor, 521 U.S. at 620).

Here, class members likely have little interest in individually pursuing litigation. Plaintiffs allege that they suffered injury based on paying a premium for "natural" products. (SAC ¶¶ 6-9.) Defendant's line of products only cost several dollars and the premium paid constituted only a small portion of the total cost of each product. (Pls.' Mot. at 12.) As a result, the damages for each individual class member would be nominal compared to the costs of litigation. Even though class members could conceivably have an interest in individually controlling prosecution given that plaintiffs estimated the damages sustained by the class as a whole are approximately $12.65 million and the $3.25 million settlement fund is only 25% of this "best case" recovery amount, the costs and risks associated with pursuing litigation would likely outweigh recoverable damages for each individual class member. (Id. at 12, 18; Kindall Decl. ¶ 17.)

The court is also unaware of any concurrent litigation already begun by class members regarding the TRESemmé Naturals products sold by defendant. Objectors at the final fairness hearing may reveal otherwise. See Alberto, 252 F.R.D. at 664. At this stage, the class action device appears to be the superior method for adjudicating this controversy.

3. Rule 23(c)(2) Notice Requirements

If the court certifies a class under Rule 23(b)(3), it "must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). Rule 23(c)(2) governs both the form and content of a proposed notice. See Ravens v. Iftikar, 174 F.R.D. 651, 658 (N.D. Cal. 1997) (citing Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 172–77 (1974)). Although that notice must be "reasonably certain to inform the absent members of the plaintiff class," actual notice is not required. Silber v. Mabon, 18 F.3d 1449, 1454 (9th Cir. 1994) (citation omitted).

The settlement agreement provides that KCC Class Action Service LLC ("KCC") will provide notice to the class and administer the claims process. (Settlement Agreement at 2.) "KCC has successfully served as the notice and claim administrator [in] a number of other consumer class action settlements where it has employed similar notice plans." (Pls.' Mot. at 15.) Because defendant does not have records showing who purchased its products, KCC used class demographics to develop a notice plan that it estimates will reach over 70% of the class members. (Id. at 14; Settlement Agreement Ex. D, Settlement Notice Plan at 10 (Docket. No. 57-2).) KCC will place month-long banner advertisements on websites that class members are likely to visit, an advertisement in People magazine for one week's issue, and a four-week advertisement in the Sacramento Bee. (Id. at 7.) Further, KCC will provide ongoing toll-free telephone support and a dedicated class action website where class members

can obtain additional information and fill out online claim forms. (Settlement Agreement Ex. D, Settlement Notice Plan at 14.)

The notice explains the proceedings; defines the scope of the class; informs the class member of the claim form requirement and the binding effect of the class action; describes the procedure for opting out and objecting; provides the time and date of the fairness hearing; and directs interested parties to more detailed information on the settlement website. (Settlement Agreement Ex. E, Proposed Notice.) The notice makes clear that class members may recover for the purchase of up to ten bottles per household without providing proof of purchase and can recover for more than ten bottles if they submit adequate proof of a greater number of purchases along with their claim forms. (Id.) The content of the notice therefore satisfies Rule 23(c)(2)(B). See Fed. R. Civ. P. 23(c)(2)(B); see also Churchill Vill., L.L.C. v. Gen. Elec., 361 F.3d 566, 575 (9th Cir. 2004) ("Notice is satisfactory if it 'generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard.'" (quoting Mendoza v. Tucson Sch. Dist. No. 1, 623 F.2d 1338, 1352 (9th Cir. 1980)).

The court is also satisfied with the claim form, which allows each class member to specify his or her total number of bottles purchased of each eligible TRESemmé Naturals product. (Settlement Agreement Ex. F, Claim Form at 2 (Docket No. 57-2).) Further, the claim form specifies the deadline for submission and clarifies that completion of the form is necessary for receipt of

payment. (Id. at 1.)

Given that there is no record of potential class members and that KCC is experienced in providing similar notice plans in consumer class action settlements, the court is satisfied that this system is reasonably calculated to provide notice to class members and is the best form of notice available under the circumstances as required under Rule 23(c)(2).

B. Preliminary Settlement Approval

After determining that the proposed class satisfies the requirements of Rule 23, the court must determine whether the terms of the parties' settlement appear fair, adequate, and reasonable. See Fed. R. Civ. P. 23(e)(2); Hanlon, 150 F.3d at 1026. This process requires the court to "balance a number of factors," including:

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

Hanlon, 150 F.3d at 1026. Many of these factors cannot be considered until the final fairness hearing, so the court need only conduct a preliminary review at this time to resolve any "glaring deficiencies" in the settlement agreement before authorizing notice to class members. Ontiveros v. Zamora, Civ. No. 2:08-567 WBS DAD, 2014 WL 3057506, at *12 (E.D. Cal. July 7, 2014) (citing Murillo, 266 F.R.D. at 478).

At the preliminary stage, "the court need only 'determine whether the proposed settlement is within the range of

possible approval.'" Murillo, 266 F.R.D. at 479 (quoting Gautreaux v. Pierce, 690 F.2d 616, 621 n.3 (7th Cir. 1982)). This generally requires consideration of "whether the proposed settlement discloses grounds to doubt its fairness or other obvious deficiencies, such as unduly preferential treatment of class representatives or segments of the class, or excessive compensation of attorneys." Id. (quoting W. v. Circle K Stores, Inc., Civ. No. 04-0438 WBS GGH, 2006 WL 1652598, at *11-12 (E.D. Cal. June 13, 2006)).

1. Negotiation of the Settlement Agreement

Courts often begin by examining the process that led to the settlement's terms to ensure that those terms are "the result of vigorous, arms-length bargaining" and then turn to the substantive terms of the agreement. See, e.g., West, 2006 WL 1652598, at *11-12; In re Tableware Antitrust Litig., 484 F. Supp. 2d 1078, 1080 (N.D. Cal. 2007) ("[P]reliminary approval of a settlement has both a procedural and a substantive component."). Plaintiffs' counsel states that the parties reached the settlement after two years of litigation involving "substantial discovery," an "extensive and contentious mediation process before a highly experienced and well-regarded mediator," and thorough motions practice. (Pls.' Mot. at 17.; Kindall Decl. ¶ 15.); see La Fleur v. Med. Mgmt. Int'l, Inc., Civ. No. 5:13-00398, 2014 WL 2967475, at *4 (N.D. Cal. June 25, 2014) ("Settlements reached with the help of a mediator are likely non-collusive."). Plaintiffs' counsel declares that his decision to accept the settlement agreement takes into account the "significant risks" and delays associated with continuing

litigating. (Kindall Decl. ¶¶ 18-19.)

In light of these considerations, the court finds no reason to doubt the parties' representations that the settlement was the result of vigorous, arms-length bargaining.

2. Amount Recovered and Distribution

In determining whether a settlement agreement is substantively fair to the class, the court must balance the value of expected recovery against the value of the settlement offer. See Tableware, 484 F. Supp. 2d at 1080. This inquiry may involve consideration of the uncertainty class members would face if the case were litigated to trial. See Ontiveros, 2014 WL 3057506, at *14.

Here, the settlement achieved a "key goal" of the litigation in that it resulted in the discontinuance of the TRESemmé Naturals line of products. Further, as discussed above, the $3.25 million settlement fund is more than 25% of the "best case" damages of $12.65 million, as calculated by plaintiffs. (Pls.' Mot. at 18.; Kindall Decl. ¶ 17.)

The court however notes that the settlement agreement requires class members to take the affirmative step of opting in to receive payment and opting out if they do not wish to be part of the settlement class. (Settlement Agreement Ex. E, Notice of Class Action Settlement ("Notice") at 2-4 (Docket No. 52-2).) Class members who do not request to be excluded will release defendant from any underlying claims. (Id. at 3-4) Therefore, there is a risk that some members of the class will opt into the judgment by default, thus releasing defendant, despite receiving no recovery simply because they fail to timely return the claim

form.

While the settlement amount is on the low-end of the expected recovery range and the agreement contains a potentially unfair opt-in/opt-out requirement, there are many uncertainties associated with pursuing litigation that justify this recovery. Plaintiffs' counsel contends that plaintiffs would have been required to prove both that the TRESemmé Naturals labeling was likely to deceive or confuse reasonable persons and that those representations are material to reasonable persons. (Kindall Decl. ¶ 18.) Further, establishing that all class members paid a price premium that was directly related to the product being "natural," rather than because of some other characteristic of the product, and quantifying this premium would have involved a battle of the experts. (Id.) Finally, "[w]hichever party did not prevail would likely have appealed the judgment." (Id. at ¶ 19.)

In light of the uncertainties associated with pursuing litigation, the court will grant preliminary approval to the settlement because it is within the range of possible approval. Murillo, 266 F.R.D. at 479 (quoting Gautreaux v. Pierce, 690 F.2d 616, 621 n.3 (7th Cir. 1982)).

3. Attorney's Fees

If a negotiated class action settlement includes an award of attorney's fees, that fee award must be evaluated in the overall context of the settlement. Knisley v. Network Assocs., 312 F.3d 1123, 1126 (9th Cir. 2002); Monterrubio, 291 F.R.D. at 455. The court "ha[s] an independent obligation to ensure that the award, like the settlement itself, is reasonable, even if the

parties have already agreed to an amount." In re Bluetooth Headset Prods. Liab. Litig., 654 F.3d 935, 941 (9th Cir. 2011).

The settlement agreement provides that plaintiffs' counsel will apply to the court for a fee award of up to 30% of the gross settlement amount, or $975,000. (Settlement Agreement ¶ 56.) Attorney's fees are to be paid from the settlement fund. (Id. ¶ 15.) Defendant agrees not to oppose plaintiffs' petition for the fee award so long as it does not exceed 30%. (Id. ¶ 56.) If the court does not approve the fee award in whole or in part, it will not prevent the settlement agreement from becoming effective or be grounds for termination. (Id. ¶ 58.)

In deciding the attorney's fees motion, the court will have the opportunity to assess whether the requested fee award is reasonable by multiplying a reasonable hourly rate by the number of hours counsel reasonably expended. See Van Gerwen v. Gurantee Mut. Life. Co., 214 F.3d 1041, 1045 (9th Cir. 2000). As part of this lodestar calculation, the court may take into account factors such as the "degree of success" or "results obtained" by plaintiffs' counsel. See Cunningham v. County of Los Angeles, 879 F.2d 481, 488 (9th Cir. 1988). If the court, in ruling on the fees motion, finds that the amount of the settlement warrants a fee award at a rate lower than what plaintiffs' counsel requests, then it will reduce the award accordingly. The court will therefore not evaluate the fee award at length here in considering whether the settlement is adequate.

IT IS THEREFORE ORDERED that plaintiffs' motion for preliminary certification of a conditional settlement class and preliminary approval of the class action settlement be, and the

same hereby is, GRANTED.

IT IS FURTHER ORDERED THAT:

(1) The claims administrator shall notify class members of the settlement in the manner specified within the Settlement Notice Plan;

(2) Class members who want to receive a settlement payment under the settlement agreement must accurately complete and submit the online claim form or deliver the claim form to the claims administrator no later than September 19, 2016;

(3) Class members who want to object to the settlement agreement must either deliver written objections to the Clerk of Court for the Eastern District of California, the law firm of Izard, Kindall & Raabe, LLP, and the law firm of Kirkland & Ellis LLP postmarked no later than September 19, 2016 or appear in person at the final fairness hearing. The objection must include the objecting person's full name, current address, telephone number, signature, a statement that the class member purchased one of the products, all objections and reasons for the objections, and any supporting papers. Any class member who submits an objection remains eligible to submit a claim form and receive monetary compensation;

(4) Class members who fail to object to the settlement agreement in the manner specified above shall be deemed to have waived their right to object to the settlement agreement and any of its terms;

(5) Class members who want to be excluded from the settlement must submit the request for exclusion to the claims administrator no later than September 19, 2016. Class members

who opt out shall not receive any settlement proceeds or be bound by any of the terms of the settlement, including the release provisions;

(6) The following TRESemmé Naturals Settlement Class is provisionally certified:

> All individuals in the United States who purchased the following TRESemmé Naturals products: (a) Nourishing Moisture Shampoo; (b) Nourishing Moisture Conditioner; (c) Radiant Volume Shampoo; (d) Radiant Volume Conditioner; (e) Vibrantly Smooth Shampoo; and (f) Vibrantly Smooth Conditioner (collectively, the "products"). Specifically excluded from the Class are (1) defendant, (2) the officers, directors, or employees of defendant and their immediate family members, (3) any entity in which defendant has a controlling interest, (4) any affiliate, legal representative, heir, or assign of defendant, (5) all federal court judges who have presided over this action and their immediate family members, (6) all persons who submit a valid request for exclusion from the class, and (7) those who purchased the products for the purpose of resale.

(7) Plaintiffs Alba Morales, Lanie Cohen, Linda Clayman, and Kenneth Drew are conditionally certified as the class representatives to implement the parties' settlement in accordance with the settlement agreement. The law firm of Izard, Kindall & Raabe, LLP, through Mark Kindall, is conditionally appointed as class counsel. The law firm of Bramson, Plutzik, Mahler & Birkhaeuser, LLP, through Alan Plutzik and Michael Strimling, is conditionally appointed as liaison counsel. Plaintiffs and counsel must fairly and adequately protect the class's interests;

(8) The parties agree that KCC will serve as the claims administrator;

(9) If the settlement agreement terminates for any reason, the following will occur: (a) class certification will be

automatically vacated; (b) plaintiffs will stop functioning as class representatives; and (c) this action will revert to its previous status in all respects as it existed immediately before the parties executed the settlement agreement;

(10) All discovery and pretrial proceedings and deadlines are stayed and suspended until further notice from the court, except for such actions as are necessary to implement the settlement agreement and this Order;

(11) The final fairness hearing is set for October 17, 2016 at 1:30 p.m., in Courtroom No. 5, to determine whether the settlement agreement should be finally approved as fair, reasonable, and adequate;

(12) The following are the certain associated dates in this settlement:

(a) The claims administrator shall publish notice pursuant to the notice plan by August 11, 2016;

(b) Class members shall file objections, requests for exclusion, and claim forms by September 19, 2016;

(c) Plaintiffs shall file a motion for attorney's fees no later than September 12, 2016;

(13) The parties shall file briefs in support of the final approval of the settlement no later than September 12, 2016.

Dated: July 11, 2016

WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE