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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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ALBA MORALES; LANIE COHEN;  
LINDA CLAYMAN; and KENNETH  
DREW, on behalf of themselves  
and all other similarly  
situated,  
  
                                Plaintiffs,  
  
                                v.  
  
CONOPCO, INC., d/b/a  
Unilever,  
  
                                Defendant.

CIV. NO.: 2:13-2213 WBS EFB  
  
MEMORANDUM AND ORDER RE: FINAL  
APPROVAL OF CLASS ACTION  
SETTLEMENT AND ATTORNEYS' FEES

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                                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 are plaintiffs' motions  
for final approval of the class action settlement and attorneys'  
fees. (Docket Nos. 66-67.)

1 I. Factual and Procedural Background

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

5 Plaintiffs contend that defendant violated California's  
6 Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200 et  
7 seq., California's Consumer Legal Remedies Act ("CLRA"), Cal.  
8 Civ. Code § 1750 et seq., and various other state consumer  
9 protection laws. (See Second Amended Complaint (Docket No. 30).)  
10 Plaintiffs brought this lawsuit on behalf of a putative class of  
11 consumers in the United States who have purchased TRESemmé  
12 Naturals products. (Stipulation of Settlement ("Settlement  
13 Agreement") at 2-3 (Docket No. 66-3).) The parties litigated the  
14 case for nearly two years before reaching a settlement agreement  
15 on February 5, 2016 before mediator Jonathan Marks. (Id. ¶¶ 3-  
16 100.)

17 After reaching settlement terms, the parties then filed  
18 a motion for preliminary approval of a class action settlement on  
19 May 27, 2016. (Docket No. 57.) In its Order granting  
20 preliminary approval of the settlement, the court provisionally  
21 certified the following class: "All individuals in the United  
22 States who purchased the following TRESemmé Naturals products:  
23 (a) Nourishing Moisture Shampoo; (b) Nourishing Moisture  
24 Conditioner; (c) Radiant Volume Shampoo; (d) Radiant Volume  
25 Conditioner; (e) Vibrantly Smooth Shampoo; and (f) Vibrantly  
26 Smooth Conditioner." The court appointed Alba Morales, Lanie  
27 Cohen, Linda Clayman, and Kenneth Drew as class representatives,  
28 the law firm of Kindall & Raabe, LLP as class counsel, the law

1 firm of Bramson, Plutzik, Mahler & Birkhaeuser, LLP as liaison  
2 counsel, and KCC Class Action Service LLC as claims  
3 administrator. The court also approved the class opt-in form,  
4 opt-out form, and notice of settlement; directed the claims  
5 administrator to publish notice pursuant to the action by August  
6 11, 2016; directed class members to file objections, requests for  
7 exclusion, and claim forms by September 19, 2016; directed  
8 plaintiffs to file a motion for attorneys' fees by September 12,  
9 2016; and directed parties to file briefs in support of final  
10 approval of the settlement by September 12, 2016. The court set  
11 the final fairness hearing for October 17, 2016, at 1:30 p.m.

12 After conducting the final fairness hearing and  
13 carefully considering the settlement terms, the court now  
14 addresses whether this class action should receive final  
15 certification; whether the proposed settlement is fair,  
16 reasonable, and adequate; and whether class counsel's request for  
17 attorneys' fees and costs should be granted.

## 18 II. Discussion

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

27 The first part of the inquiry requires the court "pay  
28 'undiluted, even heightened, attention' to class certification

1 requirements" because, unlike in a fully litigated class action  
2 suit, the court "will lack the opportunity . . . to adjust the  
3 class, informed by the proceedings as they unfold." Amchem  
4 Prods. Inc. v. Windsor, 521 U.S. 591, 620 (1997); see Hanlon v.  
5 Chrysler Corp., 150 F.3d 1011, 1019 (9th Cir. 1998). In the  
6 second stage, the court holds a fairness hearing where the court  
7 entertains any putative class member's objections to (1) the  
8 treatment of this litigation as a class action and (2) the terms  
9 of the settlement. See Diaz v. Tr. Territory of Pac. Islands,  
10 876 F.2d 1401, 1408 (9th Cir. 1989) (holding that a court is  
11 required to hold a hearing prior to final approval of a dismissal  
12 or compromise of class claims to "inquire into the terms and  
13 circumstances of any dismissal or compromise to ensure it is not  
14 collusive or prejudicial"). Following such a hearing, the court  
15 must reach a final determination as to whether the court should  
16 allow the parties to settle the class action pursuant to the  
17 terms agreed upon. See Telecomms. Coop. v. DIRECTV, Inc., 221  
18 F.R.D. 523, 525 (C.D. Cal. 2004).

19 A. Class Certification

20 A class action will be certified only if it meets the  
21 four prerequisites identified in Rule 23(a) and fits within one  
22 of the three subdivisions of Rule 23(b). Fed. R. Civ. P. 23(a)-  
23 (b). Although a district court has discretion in determining  
24 whether the moving party has satisfied each Rule 23 requirement,  
25 the court must conduct a rigorous inquiry before certifying a  
26 class. See Califano v. Yamasaki, 442 U.S. 682, 701 (1979).

27 1. Rule 23(a) Requirements

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

1 (1) the class is so numerous that joinder of all  
2 members is impracticable; (2) there are questions of  
3 law or fact common to the class; (3) the claims or  
4 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.

5 Fed. R. Civ. P. 23(a). In the court's Order granting preliminary  
6 approval of the settlement, the court found the putative class  
7 satisfied the Rule 23(a) requirements. Since the court is  
8 unaware of any changes that would alter its Rule 23(a) analysis,  
9 and because the parties indicated that they were unaware of any  
10 such developments, the court finds that the class definition  
11 proposed by plaintiffs meets the requirements of Rule 23(a).

## 12 2. Rule 23(b) Requirements

13 An action that meets all the prerequisites of Rule  
14 23(a) may be certified as a class action only if it also  
15 satisfies the requirements of one of the three subdivisions of  
16 Rule 23(b). Leyva v. Medline Indus. Inc., 716 F.3d 510, 512 (9th  
17 Cir. 2013). Plaintiffs seeks certification under Rule 23(b)(3),  
18 which provides that a class action may be maintained only if (1)  
19 "the court finds that questions of law or fact common to class  
20 members predominate over questions affecting only individual  
21 members" and (2) "a class action is superior to other available  
22 methods for fairly and efficiently adjudicating the controversy."  
23 Fed. R. Civ. P. 23(b)(3).

24 In its Order granting preliminary approval of the  
25 settlement, the court found that both prerequisites of Rule  
26 23(b)(3) were satisfied. The court is unaware of any changes  
27 that would affect this conclusion, and the parties indicated that  
28 they were aware of no such developments. Accordingly, since the

1 settlement class satisfies both Rule 23(a) and 23(b) (3), the  
2 court will grant final class action certification.

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

4           If the court certifies a class under Rule 23(b) (3), it  
5 “must direct to class members the best notice that is practicable  
6 under the circumstances, including individual notice to all  
7 members who can be identified through reasonable effort.” Fed.  
8 R. Civ. P. 23(c) (2) (B). Rule 23(c) (2) governs both the form and  
9 content of a proposed notice. See Ravens v. Iftikar, 174 F.R.D.  
10 651, 658 (N.D. Cal. 1997) (citing Eisen v. Carlisle & Jacquelin,  
11 417 U.S. 156, 172-77 (1974)). Although that notice must be  
12 “reasonably certain to inform the absent members of the plaintiff  
13 class,” actual notice is not required. Silber v. Mabon, 18 F.3d  
14 1449, 1454 (9th Cir. 1994) (citation omitted).

15           As provided by the Settlement Agreement, KCC  
16 administered the claims process. (Settlement Agreement at 2.)  
17 Because defendant does not have records showing who purchased its  
18 products, KCC used class demographics to develop a notice plan  
19 that it estimated would reach over 70% of the class members.  
20 (Id. Ex. D at 10.) Based on its research, KCC believes the  
21 notice plan reached over 70% of the class members. (Kindall  
22 Decl. Ex. 2 (“Geraci Decl.”) ¶ 9 (Docket No. 66-4).)

23           On July 25, 2016, KCC launched a dedicated settlement  
24 website and toll-free line that class members could call for  
25 information. (Id. ¶ 5.) The website included the Settlement  
26 Notice, Complaint, the Settlement Agreement, the Plan of  
27 Allocation, and the court’s Preliminary Approval Order. (Id.)  
28 It also had a page for class members to file claims online or

1 print out claim forms to submit by mail. (Id.) KCC placed over  
2 150 million banner advertisements on websites targeted to adults  
3 over 18, with 105 million banner advertisements targeted to women  
4 over 18. (Id. ¶ 6.) The advertisement campaign began July 26,  
5 2016, and lasted approximately one month. (Pls.' Mot. for Final  
6 Approval of Class Action Settlement ("Pls.' Mot.") at 5:2-3  
7 (Docket No. 66); Geraci Decl. ¶ 5.) Each banner included an  
8 embedded link to the settlement website. (Geraci Decl. ¶ 6.)  
9 KCC also placed class notices in the August 22, 2016, edition of  
10 People magazine and the online and print versions of the  
11 Sacramento Bee on July 26, 2016, August 2, 2016, August 9, 2016,  
12 and August 16, 2016. (Id. ¶¶ 7-8.)

13 As of September 6, 2016, there have been 249,742  
14 website visitor sessions and 253 people have called the toll-free  
15 number. (Id. ¶ 10.) This has resulted in 179,676 claims filed  
16 by purchasers of TRESemmé Naturals products.<sup>1</sup> (Id. ¶ 11.)

17 The notice explains the proceedings; defines the scope  
18 of the class; informs the class member of the claim form  
19 requirement and the binding effect of the class action; describes  
20 the procedure for opting out and objecting; provides the time and  
21 date of the fairness hearing; and directs interested parties to  
22 more detailed information on the settlement website. (Settlement  
23 Agreement Ex. E.) The notice makes clear that class members may  
24 recover for the purchase of up to ten bottles per household  
25 without providing proof of purchase and can recover for more than  
26 ten bottles if they submit adequate proof of a greater number of

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27 <sup>1</sup> This constitutes approximately seven percent of the  
28 class. (See Docket No. 69 at 2:15.)

1 purchases with their claim forms. (Id.) The content of the  
2 notice therefore satisfies Rule 23(c)(2)(B). See Fed. R. Civ. P.  
3 23(c)(2)(B); see also Churchill Vill., L.L.C. v. Gen. Elec., 361  
4 F.3d 566, 575 (9th Cir. 2004) (“Notice is satisfactory if it  
5 generally describes the terms of the settlement in sufficient  
6 detail to alert those with adverse viewpoints to investigate and  
7 to come forward and be heard.” (citation omitted)).

8 B. Rule 23(e): Fairness, Adequacy, and Reasonableness  
9 of Proposed Settlement

10 Having determined that class treatment is warranted,  
11 the court must now address whether the terms of the parties’  
12 settlement appear fair, adequate, and reasonable. In conducting  
13 this analysis, the court must balance several factors, including:

14 the strength of the plaintiffs’ case; the risk,  
15 expense, complexity, and likely duration of further  
16 litigation; the risk of maintaining class action status  
17 throughout the trial; the amount offered in settlement;  
18 the extent of discovery completed and the stage of the  
19 proceedings; the experience and views of counsel; the  
20 presence of a governmental participant; and the  
21 reaction of the class members to the proposed  
22 settlement.

23 Hanlon, 150 F.3d at 1026. But see In re Bluetooth Headset Prods.  
24 Liab. Litig., 654 F.3d 935, 946 (9th Cir. 2011) (“The factors in  
25 a court’s fairness assessment will naturally vary from case to  
26 case.”).

27 1. Strength of Plaintiffs’ Case

28 An important consideration is the strength of  
plaintiffs’ case on the merits compared to the settlement amount  
offered. DIRECTV, 221 F.R.D. at 526. The court, however, is not  
required to reach an ultimate conclusion of the merits “for it is  
the very uncertainty of outcome in litigation and avoidance of

1 wastefulness and expensive litigation that induce consensual  
2 settlements.” Officers for Justice v. Civ. Serv. Comm’n of City  
3 & County of S.F., 688 F.2d 615, 625 (9th Cir. 1982).

4 Plaintiffs’ claims that defendant violated various  
5 state consumer protection laws survived defendant’s motion to  
6 dismiss, indicating plaintiffs’ claims as alleged may have merit.  
7 (See April 9, 2014 Order (Docket No. 27).) However, since expert  
8 discovery has not commenced, it is unclear whether a reasonable  
9 consumer would find defendant’s products were deceptive and  
10 whether a reasonable consumer paid a premium for the TRESemmé  
11 Naturals label. Further, the only substantive motion the court  
12 has ruled on is the motion to dismiss the First Amended  
13 Complaint. This limited record precludes the court from  
14 assessing the merits of plaintiffs’ case. Accordingly, the court  
15 will not consider this factor for settlement purposes.

16 2. Risk, Expense, Complexity, and Likely Duration of  
17 Further Litigation

18 Although the court cannot assess the strength of  
19 plaintiffs’ case from the record, the presence of substantially  
20 disputed legal issues does serve to heighten the risk and  
21 uncertainty that both parties would face if this action went to  
22 trial. See Hanlon, 150 F.3d at 1026. The parties disagree over  
23 whether reasonable consumers would be deceived by the labels.  
24 (See April 9, 2014 Order at 14:14-19:20 (describing dispute  
25 between plaintiffs and defendant over the reasonable consumer  
26 test).)

27 Plaintiffs believe that the product labels are  
28 deceptive and would deceive reasonable consumers. (Pls.’ Mot. at

1 13.) However, their individual testimony is insufficient to  
2 establish whether defendant's representations on its products  
3 would deceive a reasonable consumer and whether these  
4 representations were material to a reasonable consumer. See  
5 Clemens v. DaimlerChrysler Corp., 534 F.3d 1017, 1025-26 (9th  
6 Cir. 2008) (holding individual's belief of deception was  
7 insufficient to establish a reasonable consumer would be deceived  
8 under the UCL). This would lead to competing surveys and expert  
9 testimony to determine whether a reasonable consumer would be  
10 deceived. The risk of this dispute weighs in favor of finding  
11 this settlement fair. See Weeks v. Kellogg Co., Civ. No. 09-  
12 08102 MMM RZX, 2013 WL 6531177, at \*13 (C.D. Cal. Nov. 23, 2013)  
13 ("The fact that this issue, which is at the heart of plaintiffs'  
14 case, would have been the subject of competing expert testimony  
15 suggests that plaintiffs' ability to prove liability was somewhat  
16 unclear; this favors a finding that the settlement is fair.").

17 Assuming the case progressed further, the complexity  
18 and duration of the litigation would be considerable. With a  
19 current stipulated class of over 179,000 members, completing  
20 discovery in this case would be extremely costly. (See Docket  
21 No. 69 at 2:15.) Further litigation of this action would likely  
22 include a motion for class certification and a series of  
23 dispositive motions. It has been nearly three years since  
24 plaintiffs filed the original Complaint, yet only one dispositive  
25 motion has been resolved by the court and expert discovery has  
26 not commenced. Accordingly, the court finds that the risk of  
27 litigation and likely expense and duration of further litigation  
28 favor approval of the settlement.

1           3.    Risk of Maintaining Class-Action Status Throughout  
2                    Trial

3           Defendant has stipulated to certification of a  
4 nationwide class for settlement purposes only. (Settlement  
5 Agreement ¶ 44.) If the Settlement Agreement terminates for any  
6 reason, class certification will be vacated. (See July 12, 2016  
7 Order at 21:27-22:1 (Docket No. 63).) Plaintiffs would have to  
8 file a motion for class certification, which defendant would  
9 almost certainly oppose. Plaintiffs believe they would be able  
10 to certify a class and maintain it throughout the litigation, but  
11 this is not guaranteed. If the class was certified, however, the  
12 court is unaware of any foreseeable difficulty the class might  
13 have in maintaining the certification at trial. Since class  
14 certification is not guaranteed at trial, this factor weighs in  
15 favor of accepting the final class action settlement.

16           4.    Amount Offered in Settlement

17           “In assessing the consideration obtained by the class  
18 members in a class action settlement, it is the complete package  
19 taken as a whole, rather than the individual component parts,  
20 that must be examined for overall fairness.” Ontiveros v.  
21 Zamora, 303 F.R.D. 356, 370 (E.D. Cal. 2014). In determining  
22 whether a settlement agreement is substantively fair to the  
23 class, the court must balance the value of expected recovery  
24 against the value of the settlement offer. See In re Tableware  
25 Antitrust Litig., 484 F. Supp. 2d 1078, 1080 (N.D. Cal. 2007).  
26 This inquiry may involve consideration of the uncertainty class  
27 members would face if the case were litigated to trial. See  
28 Ontiveros, 303 F.R.D. at 370-71.

1           The settlement achieved a “key goal” of the litigation  
2 in that it resulted in the discontinuance of the TRESemmé  
3 Naturals products. (Kindall Decl. ¶ 16 (Docket No. 66-2).) This  
4 goal would be achieved regardless of whether the settlement is  
5 approved. However, plaintiffs achieved this goal because they  
6 brought and litigated this suit for nearly three years.

7           The settlement also provides that defendant pay \$3.25  
8 million into an escrow account to pay for class claims, after  
9 subtracting expenses, costs, and attorneys’ fees. (Settlement  
10 Agreement ¶ 15.) In its previous Order, the court found the  
11 settlement amount was on the low-end of the expected recovery  
12 range. (July 12, 2016 Order at 18:2-3.) After subtracting the  
13 maximum amount of attorneys’ fees, litigation expenses, and costs  
14 of Notice and Claims Administration, approximately \$1.75 million  
15 would remain in the class claims account. (Kindall Decl. ¶ 29.)

16           Defendant’s line of products only cost several dollars,  
17 and plaintiffs’ analysis found the premium paid for a “Naturals”  
18 product was approximately sixty-eight cents per product.

19 (Kindall Decl. ¶ 17.) As of October 6, 2016, 179,676 purchasers  
20 of defendant’s Naturals products filed claims under the  
21 settlement with an aggregate claims value of \$6,964,930. (Docket  
22 No. 69 at 2:15.) Based on the value of claims made to date,  
23 class counsel states each class member would receive \$1.26 per  
24 product purchased, up to ten products.<sup>2</sup> (Id. at 3:16-20.) This

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25           <sup>2</sup> The \$1.26 per product recovery was calculated by  
26 dividing the estimated \$1.75 million to be distributed to class  
27 members after fees, costs, and expenses by the estimated \$7  
28 million aggregate value of the class members’ claims and then  
multiplying that number by the \$5 per product limit. Class  
counsel provided an updated calculation of \$1.14 per product at

1 is almost double the estimated sixty-eight cents premium each  
2 consumer paid for each Naturals product. (Id. at 3:19-20); see  
3 Brazil v. Dole Packaged Foods, LLC, No. 14-17480, 2016 WL  
4 5539863, at \*2 (9th Cir. Sept. 30, 2016) (“[A] plaintiff cannot  
5 be awarded a full refund unless the product she purchased was  
6 worthless.”). Class members claiming more than ten products will  
7 receive the same per-product amount if they provide proof of  
8 purchase. (Settlement Agreement ¶ 29.) While this is a nominal  
9 amount, facilitating such small claims is “[t]he policy at the  
10 very core of the class action mechanism.” Windsor, 521 U.S. at  
11 617 (quoting Mace v. Van Ru Credit Corp., 109 F.3d 338, 344 (7th  
12 Cir. 1997)).

13 This recovery weighs in favor of approving the  
14 settlement because class members receive an amount greater than  
15 the economic damages suffered per product purchased. The court  
16 finds no reason to doubt class counsel’s assertion that a per-  
17 product recovery greater than the premium paid for the products  
18 is a good result.

19 Given the risk and uncertainty of the litigation, the  
20 overall terms of the settlement appear fair. See DIRECTV, 221  
21 F.R.D. at 527. Accordingly, the court finds the amount offered  
22 favors approving the settlement.

23 5. Extent of Discovery Completed and the Stage of the  
24 Proceedings

25 “A settlement that occurs in an advance stage of the  
26 proceedings indicates the parties carefully investigated the  
27

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28 the final fairness hearing.

1 claims before reaching a resolution.” Ontiveros, 303 F.R.D. at  
2 371. Plaintiffs first filed their Complaint three years ago.  
3 (See Docket No. 1.) Both parties have aggressively litigated the  
4 case, briefed several motions, engaged in extensive discovery,  
5 and participated in lengthy mediation and settlement discussions.  
6 (Kindall Decl. ¶¶ 6-12.) Plaintiffs’ counsel was informed about  
7 the strengths and weaknesses of this case when plaintiffs  
8 accepted the terms of the settlement agreement. (Kindall Decl. ¶  
9 15.) Accordingly, the court finds the extent of discovery and  
10 stage of the proceedings favors approving the settlement.

11 6. Experience and Views of Counsel

12 “When approving class action settlements, the court  
13 must give considerable weight to class counsel’s opinions due to  
14 counsel’s familiarity with the litigation and its previous  
15 experience with class action lawsuits.” Murillo v. Pac. Gas &  
16 Elec. Co., Civ. No. 2:08-1974 WBS GGH, 2010 WL 2889728, at \*8  
17 (E.D. Cal. July 21, 2010). Class counsel Mark Kindall and his  
18 colleagues at Izard, Kindall & Raabe, LLP have significant  
19 experience with litigating class action suits and have been  
20 appointed as lead or co-counsel in over sixty class actions.  
21 (See Kindall Decl. Ex. 3 at 1 (Docket No. 66-5).) Liaison  
22 counsel Bramson, Plutzik, Mahler & Birkhaeuser, LLP is similarly  
23 experienced, having recovered hundreds of millions of dollars in  
24 class action settlements as lead or co-counsel. (See Pls.’ Mot.  
25 for Preliminary Class Action Settlement Ex. 4 at 1 (Docket No.  
26 57-5).) Both lead and liaison counsel strongly support the  
27 settlement. (Pls.’ Mot. at 19:3-13.) Thus, this factor supports  
28 approval of the settlement.

1           7.    Presence of a Government Participant

2           No government party participated in this matter; this  
3 factor, therefore, is irrelevant to the court's analysis.

4           8.    Reaction of the Class Members to the Proposed  
5                Settlement

6           "[T]he absence of a large number of objections to a  
7 proposed class action settlement raises a strong presumption that  
8 the terms of a proposed class settlement action are favorable to  
9 the class members." DIRECTV, 221 F.R.D. at 529. The notice  
10 complied with Federal Rules of Civil Procedure 23(c)(2) and  
11 23(e). It provided the best notice practicable under the  
12 circumstances, and it informed potential class members of the  
13 settlement amount, the basis of the lawsuit, the definition of  
14 the class, the procedure for and consequences of opting-in to the  
15 settlement, the procedure for and consequences of objecting or  
16 obtaining exclusion from the settlement, and the date of the  
17 final fairness hearing.

18           Of the 179,676 individuals who filled out the claim  
19 form online or by mail, only one individual requested to opt-out  
20 and one objected to the settlement. (Docket No. 69 at 2:20-24.)  
21 One individual asked to be excluded due to a mistaken belief  
22 about who is in the class, stating: "I have purchased tressme  
23 [sic] shampoo and conditioner in the past. But after further  
24 evaluation, [the class action] only pertains to the naturals  
25 selection. Therefore, I resign my submission [sic] to this  
26 action." (Id. Ex. 1.) This is not an opt-out, instead the  
27 individual realized she had not purchased a covered product until  
28 after filing the claim form. (Kindall Decl. ¶ 26; Geraci Decl.

1 Ex. 1.) A second individual objected to the scope of the release  
2 in the Settlement Agreement, but later withdrew the objection  
3 after realizing the release did not include release of personal  
4 injury claims. (Docket No. 69 Ex. A ("Helfand Objection") at 1;  
5 Docket No. 70 Ex. A.) Therefore, the court finds this factor  
6 weighs in favor of settlement.

7 Having considered the foregoing factors, the court  
8 finds the settlement is fair, adequate, and reasonable pursuant  
9 to Rule 23(e).

10 C. Attorneys' Fees

11 If a negotiated class action settlement includes an  
12 award of attorneys' fees, that fee award must be evaluated in the  
13 overall context of the settlement. Kinsley v. Network Assocs.,  
14 312 F.3d 1123, 1126 (9th Cir. 2002). Class counsel whose efforts  
15 create "a common fund for the benefit of persons other than  
16 himself or his client is entitled to a reasonable attorney's fee  
17 from the fund as a whole." Boeing Co. v. Van Gemert, 444 U.S.  
18 472, 478 (1980). The Ninth Circuit has approved two methods of  
19 assigning attorneys' fees in common fund cases: percentage-of-  
20 recovery and lodestar. Vizcaino v. Microsoft Corp., 290 F.3d  
21 1043, 1047 (9th Cir. 2002). The court has discretion in common  
22 fund cases, such as here, to choose either method. Id.

23 "Despite this discretion, use of the percentage method  
24 in common fund cases appears to be dominant." In re Omnivision  
25 Techs., Inc., 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008) (citing  
26 cases). It is "particularly appropriate in common fund cases  
27 where, as here, 'the benefit to the class is easily quantified.'" Syed v. M-I LLC, Civ. No. 1:14-742 WBS BAM, 2016 WL 310135, at \*9

1 (E.D. Cal. Jan. 26, 2016) (quoting Bluetooth, 654 F.3d at 942).  
2 Here, class counsel agreed to represent plaintiffs on a wholly  
3 contingent basis. (Pls.' Mot. for Attorneys' Fees at 7-8.)  
4 Because of the ease of calculation and the pervasive use of the  
5 percentage-of-recovery method in common fund cases, the court  
6 thus adopts this method.

7 Under the percentage-of-recovery method, the court may  
8 award class counsel a percentage of the total settlement fund.  
9 Vizcaino, 290 F.3d at 1047. The Ninth Circuit "has established  
10 25% of the common fund as a benchmark award for attorney fees."  
11 Hanlon, 150 F.3d at 1029. The parties negotiated and agreed  
12 class counsel shall not apply for a fee award greater than 30%,  
13 but class counsel only requests 25% of the total \$3.25 million  
14 settlement fund, or \$812,500. (Settlement Agreement ¶ 56; Pls.'  
15 Mot. for Attorneys' Fees at 1:11-13 (Docket No. 67).)

16 As previously discussed, there were substantial risks  
17 and delays inherent in this litigation and a possibility that  
18 class members would not have recovered anything. Since class  
19 counsel took this case on a contingency basis, their risk of  
20 recovery was the same as the class members and they have  
21 aggressively litigated this case for three years. Defendant does  
22 not oppose class counsel's application for fees. (Id.; Kindall  
23 Decl. ¶ 26.) Further, class counsel seeks a percentage below the  
24 maximum class counsel could request under the Settlement  
25 Agreement.

26 One class member objects to class counsel's hourly rate  
27 and hours worked in class counsel's lodestar cross-check.  
28 (Helfand Objection at 2.) As previously discussed, the court is

1 applying the percentage-of-recovery method and thus the hourly  
2 rate and hours worked do not affect the percentage of recovery.  
3 The court thus finds that class counsel's request for attorney's  
4 fees is fair, appropriate, and reasonable under the  
5 circumstances. Accordingly, the court will approve class  
6 counsel's application for \$812,500 in attorneys' fees.

7 D. Expenses

8 "There is no doubt that an attorney who has created a  
9 common fund for the benefit of the class is entitled to  
10 reimbursement of reasonable litigation expenses from that fund."  
11 In re Heritage Bond Litig., No. 02-1475, 2005 WL 1594403, at \*23  
12 (C.D. Cal. June 10, 2005). Class counsel has submitted a list of  
13 itemized costs relating to court costs, service of process fees,  
14 expert fees, electronic research and discovery, transcripts,  
15 mediation, travel, photocopying and printing, and postage and  
16 delivery. (Kindall Decl. Ex. 8 (Docket No. 66-10).) The court  
17 finds these are reasonable litigation expenses, and it therefore  
18 will grant class counsel's request for compensation in the amount  
19 of \$70,700.54.

20 E. Incentive Payment to Named Plaintiffs

21 The Ninth Circuit has approved the award of "reasonable  
22 incentive payments" to named plaintiffs if it does not undermine  
23 the adequacy of the class representatives. Staton, 327 F.3d at  
24 977-78; see Radcliffe v. Experian Info. Sys., Inc., 715 F.3d  
25 1157, 1163 (9th Cir. 2013). Courts have found that \$5,000  
26 incentive payments are reasonable. Hopson v. Hanesbrands Inc.,  
27 Civ. No. 08-0844 EDL, 2009 WL 928133, at \*10 (N.D. Cal. Apr. 3,  
28 2009) (citing In re Mego Fin. Corp. Sec. Litig., 213 F.3d 454,

1 463 (9th Cir. 2000)).

2 Here, the incentive awards are to be paid by defendant  
3 separately and apart from the settlement fund. (Settlement  
4 Agreement ¶ 60.) Clayman seeks an award of \$1,000 based on her  
5 involvement in the case. (Kindall Decl. Ex. 7 ¶ 10 (Docket No.  
6 66-9).) Plaintiffs Drew and Cohen each seek an award of \$4,000  
7 based on their involvement in the litigation. (Kindall Decl. Ex.  
8 4 ¶ 10 (Docket No. 66-6); Kindall Decl. Ex. 6 ¶ 10 (Docket No.  
9 66-8).) Morales seeks an award of \$6,000 based upon her enhanced  
10 case involvement and travel. (Kindall Decl. Ex. 5 ¶ 10 (Docket  
11 No. 66-7).) While Morales seeks an award above the general  
12 \$5,000 benchmark, this increase is due to missing three days of  
13 work as a result of traveling for her deposition. (Id. ¶¶ 7-8.)  
14 Defendant does not oppose the incentive awards for named  
15 plaintiffs. For reasons discussed above and in the court's July  
16 12, 2016 Order, the court orders that incentive payments be paid  
17 to the named plaintiffs.

18 Based on the foregoing, the court grants final  
19 certification of the settlement class and approves the settlement  
20 set forth in the Settlement Agreement as fair, reasonable, and  
21 adequate. The court finds an award of \$883,200.54 to be an  
22 appropriate amount for attorneys' fees and costs and an award of  
23 \$15,000 to be an appropriate amount for plaintiffs' incentive  
24 payments. Consummation of the settlement in accordance with the  
25 terms and provisions of the Settlement Agreement is therefore  
26 approved, and the definitions provided in the Settlement  
27 Agreement shall apply to the terms used herein. The Settlement  
28 Agreement shall be binding upon all class members who did not

1 timely file a claim and opt-out of the settlement.

2 IT IS THEREFORE ORDERED that plaintiffs' motion for  
3 final approval of the class action settlement be, and the same  
4 hereby is, GRANTED.

5 IT IS FURTHER ORDERED THAT:

6 (1) Solely for the purpose of this settlement, and  
7 pursuant to Federal Rule of Civil Procedure 23, the court hereby  
8 certifies the following class:

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

25 (2) the court appoints the named plaintiffs Alba  
26 Morales, Lanie Cohen, Linda Clayman, and Kenneth Drew as  
27 representatives of the class and finds that they meet the  
28 requirements of Rule 23;

(3) the court appoints Mark Kindall of Izard, Kindall &  
Raabe, LLP as counsel to the settlement class, appoints Alan  
Plutzik and Michael Strimling of Bramson, Plutzik, Mahler &  
Birkhaeuser, LLP as liaison counsel, and finds that they meet the  
requirements of Rule 23;

(4) the Settlement Agreement's plan for class notice is  
the best notice practicable under the circumstances and satisfies

1 the requirements of due process and Rule 23. The plan is  
2 approved and adopted;

3 (5) the parties have executed the notice plan in the  
4 court's Preliminary Approval Order, in response to which 179,676  
5 class members submitted an opt-in form, and one class member of  
6 the settlement submitted an opt-out form. Having found that the  
7 parties and their counsel took extensive efforts to locate and  
8 inform all class members of the settlement, given that no class  
9 members or opt-outs have filed any objections to the settlement,  
10 and having found that the number of individuals who opted in and  
11 opted out to be reasonable, the court finds and orders that no  
12 additional notice to the class is necessary;

13 (6) as of the date of the entry of this Order,  
14 plaintiff and all individuals who have not opted-out hereby do  
15 and shall be deemed to have fully, finally, and forever released,  
16 settled, compromised, relinquished, and discharged defendant of  
17 and from any and all settled claims;

18 (7) class counsel and liaison counsel are entitled to  
19 fees and costs in the amount of \$883,200.54;

20 (8) plaintiff Clayman is entitled to an incentive award  
21 in the amount of \$1,000.00, plaintiff Drew is entitled to an  
22 incentive award in the amount of \$4,000.00, plaintiff Cohen is  
23 entitled to an incentive award in the amount of \$4,000.00, and  
24 plaintiff Morales is entitled to an incentive award in the amount  
25 of \$6,000.00; and

26 (9) the action is dismissed with prejudice; however,  
27 without affecting the finality of this Order, the court shall  
28 retain continuing jurisdiction over the interpretation,

1 implementation, and enforcement of the Settlement Agreement with  
2 respect to all parties to this action, and their counsel of  
3 record.

4 Dated: October 18, 2016



5 WILLIAM B. SHUBB  
6 UNITED STATES DISTRICT JUDGE  
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