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28United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

GREGORY M. JORDAN, ELI GOLDHABER
and JOSEPHINA GOLDHABER individually
and on behalf of all others similarly situated,

No. C 07-04496 SI

**ORDER GRANTING MOTION FOR
ATTORNEYS' FEES AND INCENTIVE
AWARDS**

Plaintiffs,

v.

PAUL FINANCIAL, LLC, LUMINENT
MORTGAGE CAPITAL, INC., HSBC BANK
USA, N.A., AS TRUSTEE OF LUMINENT
MORTGAGE TRUST 2006-2, RBS
FINANCIAL PRODUCTS INC., and DOES 2
through 10 inclusive,

Defendants.

Currently before the Court is class counsels' motion for award of attorneys' fees and incentive awards to the named plaintiffs. Dkt. No. 433. On November 15, 2013, the Court conducted a fairness hearing and in a separate order, granted the parties' joint motion for final approval of the settlement agreement. After carefully considering all papers filed and proceedings held herein and otherwise being fully informed in the premises, the Court has determined that attorneys' fees and incentive awards should be awarded and allocated as directed by this Order. For the following reasons, the Court GRANTS motion for attorneys' fees and incentive awards as detailed below.

BACKGROUND

The present case concerns the Option Adjustable Rate Mortgage loans ("Option ARM loans") acquired by RBS from Paul Financial, LLC. In 2005, plaintiff Gregory Jordan ("Jordan") and plaintiffs Eli and Josephina Goldhaber, ("the Goldhabers") entered into Option ARM loans with defendant Paul Financial, LLC ("Paul Financial"). Fourth Amended Complaint ("4AC"), ¶¶ 2, 3. Like all adjustable rate loans, the interest rates on the plaintiffs' loans were pegged to a variable index and thus changed

1 over time. *See, e.g., Plascencia v. Lending 1st Mortg.*, 259 F.R.D. 437, 440 (2009). The Paul Financial
2 loans also contained a few idiosyncratic features, including an initial “teaser” rate. The Goldhabers' loan
3 had an initial rate of 1.375%. 4AC ¶ 74. These teaser rates were dubbed the “yearly rate” on the
4 plaintiffs’ Promissory Notes (the “Notes”). *See* Weiss Decl., Ex. 1. Despite their name, however, these
5 “yearly rates” lasted for only one month, after which the loan’s interest rate substantially increased
6 pursuant to the variable index rate. *Id.* at ¶ 25. This variable rate, disclosed in the Notes, was the sum
7 of 3.825% plus the federal reserve index. As a result, after one month, the interest accruing on the loans
8 more than doubled from an amount near 1% to an amount between 4 and 8%. 4AC ¶ 25.

9 At the same time, the Truth in Lending Disclosure Statement (“TILDS”) that Paul Financial
10 provided plaintiffs along with the Note listed a payment schedule outlining the amount of plaintiffs'
11 minimum monthly payments for the first five years. *Id.* at ¶ 28. The TILDS payment schedule was
12 tethered to the teaser rate, while the actual interest rate after the first month was tethered to the far-
13 higher variable rate. Therefore, the minimum monthly payments did not cover the interest incurred after
14 the first month of the loan. *Id.* The interest left outstanding would be added to the principal of the loan
15 and begin accumulating interest itself. Thus, if plaintiffs paid only the monthly payment listed on the
16 payment schedule, the principal on the loan would increase, and plaintiffs would lose equity with each
17 payment - a process known as negative amortization.

18 One month after originating the Goldhabers’ loan, Paul Financial sold it to Greenwich Capital
19 Financial Products, Inc., now called RBS Financial Products, Inc. *Id.* at ¶ 7. RBS purchased loans from
20 Paul Financial pursuant to a January 1, 2004 Master Mortgage Loan Purchase and Interim Servicing
21 Agreement (“MLPA”), which set forth the terms and conditions under which RBS would later purchase
22 loans from Paul Financial. Jordan’s loan was also sold less than one month after origination, though
23 instead to Luminent Mortgage Trust 2006-2, the trustee of which is HSBC. Both HSBC and Luminent
24 have been dismissed as defendants in this case. *See* Dkt. No. 385. Therefore, only the Goldhabers’ loan
25 documents are still at issue in this case.

26 Jordan filed a putative class action complaint against Paul Financial on August 30, 2007. The
27 complaint was amended to add the Goldhabers as plaintiffs as well as defendants Luminent Capital,
28 Luminent Trust, HSBC, and RBS. The operative complaint is now the Fourth Amended Complaint, filed

1 on October 13, 2009, which states three causes of action: 1) violations of the Truth in Lending Act
2 ("TILA"), 15 U.S.C. §1601, et seq.; 2) fraudulent omissions; and 3) unlawful, unfair, and fraudulent
3 business practices in violation of California's Unfair Competition Law ("UCL"), Bus. & Prof Code
4 §17200, et seq. On January 27, 2009, the Court denied plaintiff's motion for class certification. Dkt.
5 No. 152. On September 30, 2010 the Court granted RBS's motion to dismiss the 4AC in part, dismissing
6 plaintiffs' TILA claims as time barred, as well as the unlawful prong of plaintiffs' business practices
7 claim, with leave to amend. Dkt. No. 295.

8 On March 18, 2011, plaintiffs moved for class certification as to the Goldhabers' remaining
9 claims against RBS for common law fraudulent omission and violation of the California's UCL under
10 its "fraud" and "unfair" prongs; and on April 7, 2011, RBS moved for summary judgment on the same
11 claims. Dkt. Nos. 315 & 330.¹ On August 23, 2012, the Court granted plaintiffs' motion for class
12 certification and denied RBS' motion for summary judgment. Dkt. No. 413. The parties were referred
13 to private alternative dispute resolution in November 2012 and filed a motion for preliminary approval
14 of their settlement agreement in May 2013. Dkt. Nos. 420 & 427. On June 14, 2013, the Court granted
15 the parties' joint motion for preliminary approval of the settlement agreement. Dkt. No. 429. On
16 November 14, 2013, class counsel submitted supplemental briefing and declarations to support their
17 lodestar calculation, pursuant to the Court's order. Dkt. Nos. 440 & 442. A fairness hearing was
18 conducted on November 15, 2013.

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20 **DISCUSSION**

21 **1. Attorneys' Fees**

22 "While attorneys' fees and costs may be awarded in a certified class action where so authorized
23 by law or the parties' agreement, Fed. R. Civ. P. 23(h), courts have an independent obligation to ensure
24 that the award, like the settlement itself, is reasonable, even if the parties have already agreed to an
25 amount." *In re Bluetooth Headset Products Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011). The Ninth
26 Circuit has approved two different methods to calculate reasonable attorneys' fees. *Id.* Depending on
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28 ¹ On July 27, 2011, following the parties' joint request for dismissal, the Court ordered the dismissal of defendants Luminent Trust and HSBC. Dkt. No. 385.

1 the circumstances, a district court may employ the percentage-of-recovery or the lodestar method. *Id.*
2 Under the lodestar method, the “figure is calculated by multiplying the number of hours the prevailing
3 party reasonably expended on the litigation (as supported by adequate documentation) by a reasonable
4 hourly rate for the region and for the experience of the lawyer.” *Id.* “Where a settlement produces a
5 common fund for the benefit of the entire class, courts have discretion to employ either the lodestar
6 method or the percentage-of-recovery method.” *Id.* at 942. *Id.* 25% of the common fund is typically
7 the “benchmark” for a reasonable fee award. *See Id.*; *Six Mexican Workers v. Arizona Citrus Growers*,
8 904 F.2d 1301, 1311 (9th Cir. 1990). The Ninth Circuit has “encouraged courts to guard against an
9 unreasonable result by cross-checking their calculations against a second method.” *Id.* at 944; *see also*
10 *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050-51 (9th Cir. 2002).

11 RBS has agreed to pay \$1,750,000 into a settlement fund to provide a cash payout to all of the
12 RBS subclass members. Berns Decl. ¶ 13. Class counsel seeks 25% of the settlement fund as an award
13 for attorneys’ fees and litigation expenses (\$437,500.00). Viewing this as a common fund case, the
14 Court first applies the percentage-of-recovery calculation method. In common fund cases, “[s]election
15 of the benchmark or any other rate must be supported by findings that take into account all of the
16 circumstances of the case.” *Vizcaino*, 290 F.3d at 1048. The Court has considered the relevant
17 circumstances of the case, including the results counsel achieved for the class, the risk of litigation,
18 counsel’s performance, the contingent nature of the fee and the financial burden. *See Id.* at 1050-51;
19 *see also Six Mexican Workers*, 904 F.2d at 1311. The Court has also reviewed class counsel’s
20 supplemental declarations describing the time spent by each firm on this litigation, the qualifications
21 of the attorneys, and the submitted schedules detailing the number of hours spent and hourly billing rate
22 for each attorney and paralegal involved in the case. Having compared counsel’s lodestar with the
23 percentage-of-fund amount as a cross-check,² the Court finds the 25% fee request reasonable. *See*,
24 *Vizcaino*, 290 F.3d at 1050.

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27 ² Counsel aver (*see* Berns Decl, ¶ 26) that “based on contemporaneous daily time records
28 regularly prepared and maintained by the [plaintiff] firms, the total hourly billing amount for the work
performed by the partners, associates and professional support staff of the [plaintiff] firms from the
inception of the case through May 1, 2013 is well over \$2 million.”

1 **2. Incentive Awards to Class Representatives**

2 The Court may, at its discretion, award incentive or service awards to named plaintiffs to
3 compensate them for work done on behalf of the class and in consideration of the risk undertaken in
4 bringing the action. *Rodriguez v. West Pub. Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009). Courts often
5 assess the reasonableness of the award by taking into consideration: “(1) the risk to the class
6 representative in commencing a class action, both financial and otherwise; (2) the notoriety and personal
7 difficulties encountered by the class representative; (3) the amount of time and effort spent by the class
8 representative; (4) the duration of the litigation; and (5) the personal benefit, or lack thereof, enjoyed
9 by the class representative as a result of the litigation.” *Van Vranken v. Atlantic Ritchfield Co.*, 901
10 F.Supp. 294, 299 (N.D.Cal. 1995).

11 The parties have agreed that a \$5,000 service award to each named plaintiff be paid from the
12 \$1,750,000 settlement fund RBS has agreement to fund. The litigation of this case against RBS was
13 lengthy, lasting over four years, and was challenging. Class counsel’s declaration states the class
14 representatives “have worked with their counsel, as the representatives of the RBS Subclass, for over
15 four years” and have “responded to Class Counsel’s requests for information, responded to RBS’s
16 written discovery, reviewed relevant court filings, provided documents in response to RBS’s discovery
17 requests, and have each been deposed . . .” Berns Decl. ¶ 30. Although the class representatives have
18 not submitted their own declarations attesting to their involvement in the case, their counsel has stated
19 that they performed “valuable services” and “have helped to secure” substantial recovery for the
20 subclass. *Id.* In general, courts have found incentive awards of \$5,000 for service to a class to be
21 presumptively reasonable. *See e.g., In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir.
22 2000); *Jacobs v. California State Auto. Ass’n Inter-Ins. Bureau*, 2009 WL 3562871 (N.D.Cal. Oct 27,
23 2009); *Hopson v. Hanesbrands Inc.*, 2009 WL 928133 (N.D.Cal. Apr. 3, 2009). Accordingly, the Court
24 finds the requested \$5,000 service award to the class representatives is reasonable.

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CONCLUSION

For the foregoing reasons, the Court hereby awards:

1. Class counsel fees in the amount of \$437,500.00.
2. Named plaintiffs' service award in the amount of \$5,000 each to be paid in accordance with the Settlement Agreement.

IT IS SO ORDERED.

Dated: November 19, 2013



SUSAN ILLSTON
UNITED STATES DISTRICT JUDGE