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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ALAN BRINKER, AUSTIN RUGG, and
ANA SANDERS, individually and on behalf
of all others similarly situated,

Plaintiffs,

v.

NORMANDIN’S, a California corporation,
d/b/a NORMANDIN CHRYSLER JEEP
DODGE RAM, and ONECOMMAND, INC.,

Defendants.

NO. 5:14-cv-03007-EJD-HRL

~~PROPOSED~~ FINAL APPROVAL
ORDER OF JUDGMENT AND
DISMISSAL WITH PREJUDICE

JURY TRIAL DEMAND

HON. EDWARD J. DAVILA

Complaint Filed: July 1, 2014

DATE: March 29, 2018

TIME: 10:00 a.m.

LOCATION: Courtroom 4 – 5th Floor

This matter came before the Court upon consideration of Plaintiffs’ Motion for Final Approval of Class Action Settlement and Class Counsel’s Motion for an Award of Fees, Costs, and Class Representative Service Awards. After considering the motions and the declarations and exhibits submitted with the motions, the Court enters this Final Approval Order of Judgment and Dismissal with Prejudice (“Final Approval Order”), which constitutes a final adjudication on the merits of all claims of the Settlement Class. It is **HEREBY ORDERED** that the motions are **GRANTED IN PART**, the Settlement Class is certified, the Settlement Agreement and Release (“Settlement Agreement” or “Agreement”)¹ is approved, Class Counsel are awarded \$150,000 in

¹ Capitalized terms shall have the meaning ascribed to them in the Settlement Agreement.

~~PROPOSED~~ FINAL APPROVAL ORDER OF JUDGMENT AND DISMISSAL
WITH PREJUDICE - 1
CASE NO. 5:14-cv-03007-EJD-HRL

1 fees and costs, and service awards are approved in the amount of \$7,500 for Plaintiff Alan
2 Brinker, and \$1,000 each for Plaintiffs Austin Rugg and Ana Sanders.

3 **WHEREAS**, on or about October 5, 2017, the Parties filed the Agreement (Docket No.
4 166) which sets for the terms and conditions of the settlement and release of certain claims
5 against Defendants Normandin's and OneCommand, Inc. ("Settlement");

6 **WHEREAS**, Plaintiffs and Class Counsel have filed motions, pursuant to Rule 23 of the
7 Federal Rules of Civil Procedure, for orders finally approving the Agreement, which will dismiss
8 this Action with prejudice, and granting Class Counsel's request for an award of fees and costs,
9 and service awards to the Plaintiffs;

10 **WHEREAS**, the Court preliminary approved the Settlement on November 16, 2017 and
11 Class Notice was given to Settlement Class Members pursuant to that Preliminary Approval
12 Order;

13 **WHEREAS**, the Court has reviewed and considered all papers filed in support of the
14 Settlement, and all exhibits thereto, and held a hearing after Class Notice to the Settlement Class
15 in order to confirm that the Settlement is fair, reasonable, and adequate, and to determine
16 whether the Final Approval Order should be entered in this Action pursuant to the terms and
17 conditions set forth in the Agreement ("Final Approval Hearing") on March 29, 2018, at which
18 time the Parties and all interested persons were heard in support of and in opposition to the
19 Settlement; and

20 **WHEREAS**, upon consideration of all of the above, the Court finds that the Settlement is
21 fair, adequate, and reasonable to the Settlement Class, within the authority of the parties, and the
22 result of extensive arm's length negotiations with the guidance of an experienced mediator.

23 **THEREFORE**, the following is **HEREBY ORDERED**:

24 1. This Court has jurisdiction over the subject matter of this Action and personal
25 jurisdiction over the Parties and the Settlement Class. The definitions and provisions of the
26 Agreement are incorporated in this Order as though fully set forth herein.

1 2. The definitions and provisions of the Agreement are incorporated in this Order as
2 though fully set forth herein.

3 3. Pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure, and for the
4 purposes of Settlement only, the Settlement Class is certified as follows:

5 All persons who owned one or more of the 8,313 cellular telephone
6 numbers to which calls were placed by OneCommand on
7 Normandin's behalf on or after October 16, 2013, through the
8 alleged use of any automatic telephone dialing system or with an
9 artificial or prerecorded voice, which calls allegedly were not made
for emergency purposes or with the recipient's prior express
consent.

10 Excluded from the Settlement Class are the Judge to whom the Action is assigned, any member
11 of the Judge's staff and immediate family, and all persons who validly request exclusion from
12 the Settlement Class.

13 4. For purposes of settlement, Plaintiffs are hereby appointed "Class
14 Representatives."

15 5. For purposes of settlement, the attorneys at Terrell Marshall Law Group PLLC
16 are hereby appointed as Class Counsel.

17 6. This Court finds that the Class Notice given to members of the Settlement Class
18 pursuant to the terms of the Agreement fully and accurately informed such members of all
19 material elements of this Settlement and constituted valid, sufficient, and due notice to all such
20 members. The Class Notice fully complied with due process, Rule 23 of the Federal Rules of
21 Civil Procedure, and with all other applicable law. Accordingly, this Court makes final the
22 conditional certification set forth in the Preliminary Approval Order.

23 7. The Court finally approves this Settlement, and finds that it is fair, reasonable,
24 and adequate.

25 8. The Parties, their counsel, and the Claims Administrator shall fulfill their
26 obligations and duties under the Agreement.

1 9. The Court dismisses with prejudice this Action, the Released Claims, and the
2 Released Parties, and adjudges that the Released Claims are released against the Released
3 Parties.

4 10. The Court adjudges that Plaintiffs and the Settlement Class Members are deemed
5 to have fully, finally, completely, and forever released, relinquished, and discharged the
6 Released Claims against the Released Parties.

7 11. Plaintiffs and the Settlement Class Members are permanently enjoined and barred
8 from asserting, initiating, prosecuting, or continuing any of the Released Claims against the
9 Released Parties.

10 12. The Claims Administrator completed the delivery of Class Notice according to
11 the terms of the Agreement. The Class Notice given by the Claims Administrator to the
12 Settlement Class, which set forth the principal terms of the Agreement and other matters, was the
13 best practicable notice under the circumstances. The notice program prescribed by the
14 Agreement was reasonable and provided due and adequate notice of these proceedings and of the
15 matters set forth therein, including the terms of the Agreement, to all parties entitled to such
16 Class Notice. The Class Notice given to members of the Class satisfied the requirements of
17 Federal Rule of Civil Procedure 23 and the requirements of constitutional due process. The Class
18 Notice was reasonably calculated under the circumstances to apprise Settlement Class Members
19 of the pendency of this Action, all material elements of the Settlement, and their opportunity to
20 exclude themselves from, object to, or comment on the Settlement and appear at the final
21 fairness hearing. The Court has afforded a full opportunity to all Settlement Class Members to be
22 heard. Accordingly, the Court determines that all members of the Settlement Class are bound by
23 this Final Approval Order.

24 13. Notice of the proposed Settlement was served upon the appropriate state official
25 of each State in which a Settlement Class Member resides and upon the Attorney General of the
26 United States. The Court finds that the Class Notice provided satisfied the requirements of 28
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1 U.S.C. § 1715(b) and that more than ninety (90) days have elapsed since the required Class
2 Notice was provided, as required by 28 U.S.C. § 1715(d).

3 14. The Court approves payment of attorneys' fees and costs to Class Counsel in the
4 amount of \$150,000. These amounts shall be paid by Defendants pursuant to the terms of the
5 Agreement. The Court finds these amounts to be appropriate and reasonable in light of the work
6 performed by Class Counsel and the benefits obtained by the Settlement Class Members.² In
7 addition, the Court finds that the Agreement was negotiated at arms' length and without
8 collusion.

9 15. The Court approves payment of service awards to Plaintiffs in the amount of
10 \$7,500 for Plaintiff Alan Brinker, and \$1,000 each for Plaintiffs Austin Rugg and Ana Sanders.
11 Defendants shall pay these amounts pursuant to the terms of the Agreement.

12 16. Neither this Final Approval Order nor the Agreement is an admission or
13 concession by Defendants of the validity of any claims or of any liability or wrongdoing or of
14 any violation of law. This Final Approval Order and the Agreement do not constitute a
15 concession and shall not be used as an admission or indication of any wrongdoing, fault or
16 omission by Defendants or any other person in connection with any transaction, event or
17 occurrence, and neither this Final Approval Order nor the Agreement nor any related documents
18 in this proceeding, nor any reports or accounts thereof, shall be offered or received in evidence in

19 ² The Court reaches this determination by first calculating the "lodestar figure," or presumptive award, by
20 multiplying the hours reasonably spent on the litigation by the attorneys' reasonable hourly rates. *See Hensley v.*
21 *Eckerhart*, 461 U.S. 424, 433 (1983). Then, the Court may enhance or reduce the lodestar figure based on the factors
22 articulated in *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975), that were not subsumed in the initial
23 lodestar determination. *Fischer*, 214 F.3d at 1119. Here, counsel spent over 1,200 hours on this case, with
24 timekeepers whose hourly rates range from \$225 to \$850. Dkt. No. 172 at 8-11. In total, this amounts to \$745,920
25 in fees. *Id.* at 1. Counsel also paid \$41,065.40 in out-of-pocket expenses, bringing the total effort to \$786,985.40.
26 *Id.* The Court finds the hours expended reasonable, as this case was litigated over the course of several years and
27 involved substantial discovery and motion practice. *See, e.g.*, Dkt. Nos. 86, 90, 130, 145. The requested rates are
also reasonable, as courts in this District have approved similar rates for attorneys of similar experience in the San
Francisco Bay Area. *See, e.g., In re Magsafe Apple Power Adapter Litig.*, No. 5:091-CV-01911-EJD, 2015 WL
428105, at *12 (N.D. Cal. Jan. 30, 2015) (citing *Armstrong v. Brown*, 805 F. Supp. 2d 918, 920-21 (N.D. Cal.
2011)) (rates of \$560 to \$800 reasonable for partners, rates of \$285 to \$510 reasonable for associates, rates of \$200
to \$240 reasonable for paralegals, and rates of \$150 to 185 reasonable for litigation support staff). In light of this,
counsel's overall request for \$150,000 in fees and costs is reasonable. This amount falls well below the lodestar
amount, and the downward adjustment is appropriate and sufficient to bring the award in line with the benefits
obtained for Class Settlement Members.

1 any civil, criminal, or administrative action or proceeding, other than such proceedings as may
2 be necessary to consummate or enforce this Final Approval Order, the Agreement, and all
3 releases given thereunder, or to establish the affirmative defenses of *res judicata* or collateral
4 estoppel barring the pursuit of claims released in the Agreement. This Final Approval Order also
5 does not constitute any opinion or position of this Court as to the merits of the claims and
6 defenses related to this Action.

7 17. This Court retains jurisdiction to consider all further matters arising out of or
8 connected with the Settlement, including the implementation and enforcement of the Agreement.

9 18. There were no objections to the Settlement and no requests for exclusion. Thus,
10 the Court finds that no justifiable reason exists for delaying entry of this Final Approval Order.

11 **HEREFORE**, the Clerk of the Court is **HEREBY ORDERED** to enter this Final
12 Approval Order. The Clerk shall close this file.

13 IT IS HEREBY ORDERED.

14 DATED this 4th day of April, 2018.

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17 _____
18 UNITED STATES DISTRICT JUDGE