

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PHIL SHIN,
Plaintiff,
v.
PLANTRONICS, INC.,
Defendant.

Case No. 18-cv-05626-NC

**ORDER GRANTING IN PART
PLAINTIFF’S MOTION FOR
ATTORNEYS’ FEES**

Re: Dkt. No. 85

In this consumer class action, plaintiff Phil Shin represented a class of headphone buyers against defendant Plantronics, Inc., alleging that Plantronics’s BackBeat FIT wireless headphones did not work as advertised. After Plantronics moved to dismiss, the parties reached a settlement. In a separate order, the Court granted final approval of the settlement. Here, the Court addresses Class Counsel’s request for attorneys’ fees and the class representative’s service award.

I. Legal Standard

When a class action settlement awards attorneys’ fees, the fee award must be evaluated in the overall context of the settlement. *Knisley v. Network Assocs.*, 312 F.3d 1123, 1126 (9th Cir.2002). 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 Headsets Prods. Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011).

1 The lodestar method is often used to calculate reasonable attorneys’ fees in class
2 actions without a common fund. See, e.g., *Schuchardt v. Law Office of Roy W. Clark*, 314
3 F.R.D. 673, 688 (N.D. Cal. 2016). Although the lodestar figure is generally presumed to
4 be a reasonable fee award, a district court “may, if circumstances warrant, adjust the
5 lodestar to account for other factors which are not subsumed within it.” *Id.* (internal
6 citation and quotation marks omitted). *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973,
7 978 (9th Cir. 2008). The lodestar is calculated by multiplying the number of hours
8 reasonably expended by the prevailing party by a reasonable hourly rate. *Bluetooth*, 654
9 F.3d at 941. Then, the district court may adjust the lodestar by an appropriate multiplier to
10 reflect “reasonableness factors, including the quality of representation, the benefit obtained
11 for the class, the complexity and novelty of the issues presented, and the risk of
12 nonpayment.” *Id.* at 941–42 (internal quotation marks and citation omitted).

13 **II. Discussion**

14 **A. Reasonableness of Attorneys’ Fees and Expenses**

15 Class Counsel seek \$650,000, inclusive of \$42,210.24 in costs. See Dkt. No. 85.
16 Class Counsel estimates their lodestar at \$743,099. See *id.* at 11. Class Counsel calculated
17 their lodestar by multiplying the number of hours expended in this litigation—1,427.9
18 hours—with hourly rates for attorneys and staff across four firms ranging from \$125 for
19 legal assistants to \$850 for senior attorneys. *Id.* at 10–11. The requested award therefore
20 represents a negative lodestar of approximately 0.8.

21 The Court finds that the requested hourly rates are reasonable and reflect Class
22 Counsel’s experience. The rates are also well within rates approved by other courts in this
23 district. See, e.g., *Superior Consulting Servs., Inc. v. Steeves-Kiss*, No. 17-CV-06059-
24 EMC, 2018 WL 2183295, at *5 (N.D. Cal. May 11, 2018).

25 However, the Court is not persuaded by the number of hours purportedly expended
26 by Class Counsel. As explained above, this class action settled remarkably early—before
27 the Court even ruled on Plantronics’s motion to dismiss. Although Class Counsel certainly
28 engaged in informal discovery and extensive preparations for settlement, no formal

1 discovery was taken and there was almost no adversarial motion practice over the course
2 of this litigation. The Court is not convinced that Class Counsel’s use of 1,427.9 hours
3 across four law firms, 16 attorneys, and eight supporting staff represents a reasonable
4 expenditure of time.

5 Review of Class Counsel’s supporting declarations reinforce this view. Class
6 Counsel’s declarations record hours spent on investigation, discovery, motion practice,
7 legal research, case conferences/strategy, mediation, travel, settlement, and “other.” See,
8 e.g., Dkt. No. 85-2. Although counsel did not provide detailed time records, a broad
9 overview of the declarations plainly show that the hours expended are not reasonable.

10 For example, Goldenberg Schneider, LPA reported spending 191.90 hours on
11 motion practice (including hearings) and 31.20 hours on legal research. See Dkt. No. 85-2.
12 Shepherd, Finkelman, Miller & Shah, LLP reported spending 23.30 hours on motion
13 practice and 4.80 hours on legal research. See Dkt. No. 85-5. Markovits, Stock &
14 DeMarco LLC reported spending 30.1 hours on motion practice and 74.1 hours on legal
15 research. See Dkt. No. 85-8. And Finney Law Firm reported spending 36.1 hours on
16 motion practice and 36.5 hours on legal research. See Dkt. No. 85-11. This amounts to a
17 total of 281.4 hours on motion practice and 146.6 hours on legal research. The only
18 substantive motion practice in this lawsuit, however, was a single motion to dismiss, three
19 unopposed motions for settlement approval, and the instant motion for attorneys’ fees. In
20 essence, Class Counsel purportedly billed over 400 hours to draft and compile five
21 briefs—three of which were relatively formulaic motions for settlement approval. Cf. Eric
22 B. Fromer Chiropractic, Inc. v. N.Y. Life Ins. & Annuity Corp., No. 15-cv-04767-AB
23 (JCx), 2017 U.S. Dist. LEXIS 155506, at *6–8, 11–15 (C.D. Cal. Sept. 22, 2017) (finding
24 that hours billed for preparing an opposition to a motion to dismiss and settlement approval
25 motions were excessive). And in light of Class Counsel’s decades of experience, such
26 routine motion practice should not require so many hours.

27 Likewise, Class Counsel also reported spending a combined total of 251 hours for
28 strategy conferences. See Dkt. Nos. 85-2, 85-5, 85-8, 85-11. The relatively short duration

1 of this lawsuit and the dearth of substantial litigation do not reasonably warrant such
2 significant expenditures of time. In short, the lodestar is unreasonable.

3 Accordingly, the Court reduces all hours by 30 percent as detailed in the chart
4 below:

5	Timekeeper	Hourly Rate	Hours Billed	Adjusted Hours	Adjusted Lodestar
6	Jeffrey Goldenberg	\$650	382.5	267.8	\$174,070.00
7	Todd B. Naylor	\$600	18.9	13.2	\$7,920.00
8	Robert Sherwood	\$550	194.2	135.9	\$74,745.00
9	Cheryl Pence	\$125	52.1	36.5	\$4,562.50
10	Stephanie Vaaler	\$150	50.2	35.1	\$5,265.00
11	James Shah	\$850	105.3	73.7	\$62,645.00
12	Ronald Kravitz	\$750	0.9	0.6	\$ 450.00
13	Nathan Zipperian	\$700	1.0	0.7	\$ 490.00
14	Chiharu Sekino	\$200	0.8	0.6	\$ 120.00
15	Sue Moss	\$200	3.5	2.5	\$ 500.00
16	Christine Mon	\$200	5.2	3.6	\$ 720.00
17	Alexa White	\$200	8.4	5.9	\$1,180.00
18	Bill Markovits	\$700	124.5	87.2	\$61,040.00
19	Louise Roselle	\$700	3.4	2.4	\$1,680.00
20	Christopher Stock	\$650	0.1	0.1	\$ 65.00
21	Terence Coates	\$530	36.2	25.3	\$13,409.00
22	Justin Walker	\$530	47.6	33.3	\$17,649.00
23	Zachary Schaengold	\$375	39.4	27.6	\$10,350.00
24	Dylan Gould	\$300	6.8	4.8	\$1,440.00

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1	Diane Pendygraft ¹	\$150	1.2	0.8	\$ 120.00
2	Laura Linneman	\$150	12.0	8.4	\$1,260.00
3	Jenna Pottschmidt	\$150	41.3	28.9	\$4,335.00
4	Justin Walker	\$500	184.9	129.4	\$64,700.00
5	Laura Linneman	\$150	62.6	43.8	\$6,570.00
6	Total Adjusted Lodestar				\$515,285.50

7 District courts are encouraged to cross-check attorneys’ fees calculations against a
8 second method “to guard against an unreasonable result.” Bluetooth, 654 F.3d at 944. In
9 fee-shifting cases like this one, however, a percentage cross-check is less useful. See
10 Congdon v. Uber Techs., Inc., No. 16-cv-02499-YGR, 2019 WL 2327922, at *3 (N.D. Cal.
11 May 31, 2019); see also Parkinson v. Hyundai Motor Am., 796 F. Supp. 2d 1160, 1171
12 (C.D. Cal. 2010) (“[W]hile the Court has discretion to perform a ‘cross-check’ against the
13 total class recovery, it is not required.”). A cross-check is particularly difficult here
14 because the parties have yet to determine the precise breakdown of class members’
15 submitted claims.

16 In any case, the total monetary value of the class’s recovery ranges from \$1,247,425
17 to \$2,494,850.² Applying the Ninth Circuit’s 25% benchmark yields an attorneys’ fees
18 recovery range of \$311,856.25 to \$623,712.5. See In re Coordinated Pretrial Proceedings
19 in Petroleum Prods. Antitrust Litig., 109 F.3d 602, 607 (9th Cir. 1997) (“It is reasonable
20 for the district court to compare the lodestar fee, or sum of lodestar fees, to the 25%

21 _____
22 ¹ There is a discrepancy between Ms. Pendygraft’s billed hours in Markovits, Stock &
23 DeMarco, LLC’s supporting exhibit and as reported in Class Counsel’s motion. Compare
24 Dkt. No. 85 at 10 with Dkt. No. 85-8. In the motion, Ms. Pendygraft purportedly billed
25 46.1 hours (see Dkt. No. 85 at 10), but the supporting exhibit lists only 1.2 hours and
instead attributes 44.9 hours to unnamed “Paralegal Support” (see Dkt. No. 85-8).
Because the 44.9 hours are inadequately supported, the Court will only consider the 1.2
hours specifically attributed to Ms. Pendygraft.

26 ² Class Counsel reports that the settlement administrator has received 49,897 claims. See
27 Dkt. No. 95-1 at 2. The low end was calculated by assuming each claim is a valid claim
for the \$25 cash payout, while the high end was calculated by assuming each claim is a
28 valid claim for the \$50 cash payout. If any claim is a valid claim for the extended
warranty, the monetary value of the class’ recovery would be lower. See Dkt. No. 85 at 16
(Class Counsel opining that the extended warranty is worth approximately \$10).

1 benchmark, as one measure of the reasonableness of the attorneys’ hours and rates.”). The
2 Court’s reduced lodestar falls in the upper end of that range.

3 The Court further finds that a lodestar multiplier is not warranted. This is not one
4 of the “rare” and “exceptional” cases that warrant a multiplier. *Van Gerwen v. Guarantee*
5 *Mut. Life Ins. Co.*, 214 F.3d 1041, 1045 (9th Cir. 2000). While the results achieved for the
6 class were significant, the issues in this case are not novel or complex. Likewise, given the
7 early settlement, the merits of the class’s claims had not yet been tested. Thus, the Court
8 adjusts Class Counsel’s lodestar to \$515,285.50 and declines to apply a multiplier.

9 Including Class Counsel’s request for \$42,210.24 in litigation expenses (see Dkt.
10 No. 85-3, 85-6, 85-9, 85-12), the Court awards Class Counsel a total of **\$557,495.74** in
11 attorneys’ fees and costs.

12 **B. Service Award**

13 Class representative awards or service awards “are discretionary . . . and are
14 intended to compensate class representatives for work done on behalf of the class, to make
15 up for financial or reputational risk undertaken in bringing the action, and, sometimes, to
16 recognize their willingness to act as a private attorney general.” *Rodriguez v. West*
17 *Publishing Corp.*, 563 F.3d 948, 958–959 (9th Cir. 2009). In making the discretionary
18 determination whether to grant such an award, the district court considers relevant factors
19 including “the actions the plaintiff has taken to protect the interests of the class, the degree
20 to which the class has benefitted from those actions, . . . [and] the amount of time and
21 effort the plaintiff expended in pursuing the litigation.” *Staton v. Boeing Co.*, 327 F.3d
22 938, 977 (9th Cir. 2003).

23 Here, Shin requests a service award of \$5,000. See Dkt. No. 85 at 18–19. Shin
24 actively participated in this case (see Dkt. No. 85-13 ¶ 3) and the Court agrees that his
25 participation merits a service award.

26 The Court finds that Shin’s requested award \$5,000 is reasonable and appropriate
27 compensation for the work and risk undertaken by spearheading this litigation as class
28 representatives. See, e.g., *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir.

1 2000) (approving \$5,000 to two plaintiff representatives of 5,400 potential class members
2 in \$1.75 million settlement); Hopson v. Hanesbrands, Inc., No. 08-cv-0844-EDL, 2009
3 WL 928133, at *10 (N.D. Cal. Apr. 3, 2009) (approving \$5,000 award to one member of
4 217-member class from \$408,420 settlement amount).

5 **III. Conclusion**

6 The Court GRANTS IN PART Shin’s motion for attorneys’ fees. The Court awards
7 Class Counsel **\$557,495.74** in fees and costs. The Court also awards Shin a service award
8 of **\$5,000**.

9 **IT IS SO ORDERED.**

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11 Dated: January 31, 2020



NATHANAEL M. COUSINS
United States Magistrate Judge