UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

IN RE APPLE iPHONE 4 PRODUCTS LIABILITY LITIGATION	Case No. 5:10-md-02188-RMW

[PROPOSED] ORDER GRANTING MOTION FOR AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES AND SERVICE AWARDS FOR CLASS REPRESENTATIVES

On July 13, 2012, the Court held a hearing on plaintiffs' motion for approval of the Settlement Agreement and Release ("Settlement") and on class counsel's motion for an award of attorneys' fees, reimbursement of expenses, and service awards for the class representatives. The Court heard from counsel for the parties, and considered all objections to the Settlement and the application for fees, expenses, and service awards. This is the Court's ruling on the payment of attorneys' fees, reimbursement of expenses, and service awards.

A. Attorneys' Fees

Co-Lead Counsel, on behalf of themselves and all other plaintiffs' counsel in this Action and the related actions pending and coordinated in California State Court, seek an award of attorneys' fees and the reimbursement of expenses in the combined amount of five million, nine hundred thousand dollars ($5,900,000). Apple has agreed not to oppose an award up to this amount. After subtracting the reported expenses of plaintiffs' counsel of $140,638.11 from the fee and expense award sought, the fee amount sought by plaintiffs' counsel in this action, $5,759,361.89, equates to a combined lodestar multiplier of two (2.0). *See* detailed calculations set forth in the Declaration of Ira P. Rothken in Support of Motion for Final Approval of Class Action Settlement ("Rothken Decl."), [Dkt. No. 46-1], ¶ 25. The Court concludes that an award of $5,900,000 for combined fees and expenses is reasonable in view of the circumstances of this case and for the following reasons overrules the objections to the fee motion:

1) The litigation has already conferred a substantial benefit on Class members of at least seventy five million dollars ($75,000,000.00) in bumpers pursuant to Apple, Inc.'s ("Apple") so called "Bumper Program." As has been established in the record, (i) Apple created the Bumper Program following plaintiffs' filing of lawsuits to alleviate the reported signal attenuation problem, (ii) direct notice of the bumper program was given to settlement class members pursuant to the settlement so they were aware that they could continue to take advantage of it and (iii) Apple has agreed, pursuant to the Settlement, to continue its Bumper Program for at least 18 months following Apple's discontinuation of the sales of the iPhone 4. As a result, this benefit amount will continue to increase because the

Settlement Agreement provides, *inter alia*, for notice and that Apple will continue the Bumper Program until at least 18 months after sales of the iPhone 4 cease. Plaintiffs' requested fee award of $5,759,361.89 is less than eight percent of the $75,000,000 value already conferred on Class members as a result of this litigation, and would obviously be less than that if one takes into account future bumpers claimed. Rothken Decl., ¶¶ 14, 20. Thus, under a percentage of recovery method, the requested fee award is far below the twenty-five percent benchmark commonly accepted by in the Ninth Circuit. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002) (citing *Paul, Johnson, Alston & Hunt v. Graulty*, 886 F.2d 268, 272 (9th Cir. 1989)).

2) The further cash benefits achieved by the plaintiffs' counsel are not in the form of a traditional "common fund," but rather come in the form of an agreement by defendant Apple to pay $15.00 for all valid claims submitted by any of the Settlement Class Members. Moreover, the fees and expenses awarded to Co-Lead Counsel, on behalf of all plaintiffs' counsel, will be paid directly by Apple, in addition to, and separate and apart of, the consideration to be paid to Class members, and thus will not reduce the benefits available to the Class. *See* Settlement at 10; Rothken Decl., ¶ 24. In such circumstances, the Ninth Circuit not only supports parties reaching an agreement on a separately negotiated fee, *see Staton v. Boeing Co.*, 327 F.3d 938, 966 (9th Cir. 2003); *Lobatz v. U.S. W. Cellular of Cal., Inc.*, 222 F.3d 1142 (9th Cir. 2000), but advises the Court to apply the lodestar/multiplier method present in Class Counsel's application to this Court. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029-30 (9th Cir. 1998).

3) The billing rates applied by plaintiffs' counsel in this case to calculate their lodestar are reasonable and in line with prevailing rates in this District for personnel of comparable experience, skill, and reputation. *See* Rothken Decl., Exs. A at 2-3, B at 1-2, C at 2, & D at 1-2. *Blum v. Stenson*, 465 U.S. 886, 895 n.11, 104 S. Ct. 1541, 79 L. Ed. 2d 891 (1984). Further, the number of hours billed and documented by Co-Lead Counsel and their attorneys and staff is reasonable under the circumstances of this complex class action case. Co-Lead Counsel and California State Liaison Counsel spent a substantial amount of time,

over numerous mediation sessions under the auspices of the Honorable Daniel Weinstein (Ret.) and Cathy Yanni, Esq. of JAMS, negotiating the Settlement. *See* Declaration of Hon. Daniel Weinstein (Ret.) and Catherine A. Yanni in Further Support of Final Approval of Settlement ("Weinstein Supp. Decl."), [Dkt. No. 58-2], ¶ 4. As part of this process, the parties exchanged information and argued legal positions in the context of the mediation sessions, rather than before the Court. As such, the Settlement negotiated by Class Counsel here fosters the "strong judicial policy that favors settlements, particularly where complex class action litigation is concerned." *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992); *see also Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982) ("[V]oluntary conciliation and settlement are the preferred means of dispute resolution.").

4) The two times (2x) lodestar multiplier applied for by plaintiffs' counsel is within the range of reasonableness for complex class action litigation. *See Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 298 (N.D. Cal. 1995).

5) The $15.00-per claimant monetary award, available to the entire class with no class-wide cap (or ceiling) on the class's recovery, represents a significant collective benefit for Class members given the nature of the alleged harm and the potential risks of further litigation. *See Hensley v. Eckerhart*, 461 U.S. 424, 437, 103 S. Ct. 1933, 76 L. Ed. 2d 40 (1983) (district court must consider "the relationship between the amount of the fee awarded and the results obtained."). Thus, this factor supports the fees requested by Co-Lead Counsel.

6) Apple's initiation of the Bumper Program following the filing of these lawsuits, which has resulted in approximately $75 million dollars worth of bumpers being provided to Class Members to date, and Apple's agreement to continue the program for 18 months after the iPhone 4 is discontinued, confers a very substantial benefit on Class members. Rothken Decl., ¶¶ 14, 20. Whether these benefits are considered additional monetary benefits (*i.e.*, the bumpers retail for $29 each), or are therapeutic benefits is of no moment for the Court's consideration of the fee and expense application. *See Vizcaino*, 290

F.3d at 1049 ("Incidental or nonmonetary benefits conferred by the litigation are a relevant circumstance [in considering the reasonableness of fees awards.]").

7) The requested award amounts were arrived at through arms-length negotiations between well-regarded and experienced counsel, and also with the assistance of Judge Weinstein (Ret.) and Ms. Yanni, and were separately negotiated only after the parties reached agreement in principle on the other key terms of the Settlement. Rothken Decl., ¶ 24; Declaration of Hon. Daniel Weinstein (Ret.) and Catherine A. Yanni in Support of Final Approval, attached as Exhibit F to the Rothken Decl., ¶ 6; Weinstein Supp, Decl., ¶ 4.

8) The requested award amount was approved by mediators Hon. Daniel Weinstein (Ret.) and Cathy Yanni, Esq., which serves as "independent confirmation that the fee was not the result of collusion or a sacrifice of the interests of the class." *Hanlon*, 150 F.3d at 1029.

9) This case involved numerous complex and novel issues of both fact and law, as evidenced by the detailed Master Consolidated Complaint filed in this case and the prolonged and intensive negotiations needed to reach a resolution.

10) Co-Lead Counsel prosecuted this case and advanced all necessary expenses, knowing that they would only receive a fee if there were a recovery. *See* Rothken Decl., Exs. A-E; *cf. In re "Agent Orange" Prod. Liab. Litig.*, 818 F.2d 226, 236 (2d Cir. 1987) ("We have labeled the risk-of-success factor as perhaps the foremost factor to be considered under the second prong of the lodestar analysis.") (internal citation omitted).

11) Regardless of the actual claims rate in this Settlement, the Supreme Court and the Ninth Circuit have concluded that an award of attorneys' fees should be based on the amount of funds made available to class members, not the amount of money actually paid out to claimants. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 480-82 (1980); *Williams v. MGM-Pathe Commc'ns Co.*, 129 F.3d 1026, 1027 (9th Cir. 1997). In this regard, since plaintiffs and Co-Lead Counsel have made both the notice regarding and extension of the bumper program and the $15 dollar cash payment available to the Class in the Settlement, the fee and expense award sought by Co-Lead Counsel is reasonable.

Accordingly, the court finds that the requested attorneys' fees of $5,759,361.89 is reasonable and will be approved.

B. Reimbursement of Out–of–Pocket Expenses

Co-Lead Counsel have reported expenses and costs in the amount of $140,638.11. Rothken Decl., ¶ 25. As set forth in the Settlement Agreement, Co-Lead Counsel are not seeking additional reimbursement of their and other plaintiffs' counsel's out-of-pocket expenses from Apple in this litigation. Rather, the $5,900,000 sought by Co-Lead Counsel include Co-Lead Counsel's collective out-of-pocket expenses and costs. Settlement at 10. As with the attorneys' fees, these expenses and costs are to be paid directly by Apple and do not reduce the funds or benefit available to the Class under the Agreement. *See* Settlement at 10; Rothken Decl., ¶ 24. This Court finds that the out-of-pocket costs incurred by Co-Lead Counsel were reasonably incurred investigating and prosecuting this case, and should be reimbursed in full, as provided for under the Agreement.

C. Service Awards for Class Representatives

"[N]amed plaintiffs, as opposed to designated class members who are not named plaintiffs, are eligible for reasonable incentive payments." *Staton*, 327 F.3d at 977; *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009) (service awards "are fairly typical in class action cases."). Such awards are "intended to compensate class representatives for work done on behalf of the class [and] make up for financial or reputational risk undertaken in bringing the action." *Id.*; *see also Van Vranken*, 901 F. Supp. at 299. The requested service awards here are justified. In addition to lending their names to this case, and thus subjecting themselves to public attention, each of the Class Representatives were willing to and did in some measure participate in the litigation, including submitting declarations in support of the Settlement [Dkt. No. 58-1, Comp. Ex. B]. Moreover, the $500 awards requested here will be paid directly by Apple and will not reduce the recovery for the Class, and are fair and reasonable in the amount requested. *See In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 457, 463 (9th Cir. 2000) (approving service awards of $5,000); *Hughes v. Microsoft Corp.*, No. C93-0178C, 2001 WL 34089697, at *12-*13 (W.D. Wash. Mar. 26, 2001) ($7,500, $25,000,

and $40,000 awards). The Court, therefore, finds that Class Representatives listed below are entitled to receive service awards in the amount of $500 each for their efforts on behalf of the Class.

The court thus GRANTS plaintiffs' and Class Counsel's Motion for Award of Attorneys' Fees and Expenses and Award of Service Awards for Class Representatives, and orders as follows:

1. Class Counsel, on behalf of all plaintiffs' counsel, are hereby awarded attorneys' fees in the amount of $5,759,361.89, which shall be allocated among all plaintiffs' counsel by Class Counsel in a manner which reflects each such counsel's contribution to the institution, prosecution and resolution of the captioned action, are also awarded expenses in the total amount of $140,638.11; and

2. The following Class Representatives are hereby awarded service awards of $500 each: Stacey Milrot, Christopher DeRose, Steve Tietze, Jeffrey Rodgers, Hung Michael Nguyen, Anthony Cologna, Joy Bearden, David Popik, Charles Fasano, Greg Aguilera II, Thomas Gionis, Christopher Bensberg, David Purdue, Michael James Goodglick, Karen Young, Joshua Gilson, Brandon Ellison Reininger, Trevor Antunez, Jessica Lares, Jaywill Sands, Bryan Colver, Jaclyn Badolato, Nicole Stankovitz, Vinny Curbelo, Kevin McCaffrey, James Blackwell, and Jethro Magat.

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3. The comments and objections to the attorneys' fee application by Class members Jordan D. Maglich, Esq., Burke Fort, Bert (Humberto) Chapa, Michael J. Schulz, and the eight Class members represented by attorney Thomas L. Cox, Jr., Esq. (Frank

Aldridge, John Davis, Jenny Dowdy, Larry Lavine, Paige Nash, Katie Sibley, Warren Sibley and David Stevens) and Class member Alison Paul represented by attorney Joseph Darrell Palmer, have been considered and are overruled.

The aforementioned fees, expenses and service awards shall be paid pursuant to the terms of the parties' Settlement.

IT IS SO ORDERED.

Dated: _____, 2012

By: Order of the United States District Court for the Northern District of California

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The Honorable Ronald M. Whyte
DISTRICT JUDGE