

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL**

MINUTE ORDER

DATE: 07/12/2024

TIME: 1:30 PM

DEPT: C-69

JUDICIAL OFFICER: KATHERINE A. BACAL

CLERK: Annie Yim

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT: J. Palomo

CASE NO: **37-2022-00016328-CU-BC-CTL** CASE INIT.DATE: 04/29/2022

CASE TITLE: **Ward Howie vs Frontwave Credit Union [EFILE]**

CASE CATEGORY: Civil CASE TYPE: (U)Breach of Contract/Warranty: Breach of Contract

HEARING TYPE: Motion Hearing

MOVING PARTY:

APPEARANCES

Sophia Goren Gold, Attorney for Plaintiff Elaine Ward Howie, present in person.

Camille Brooks, attorney for Frontwave Credit Union, Defendant, present via remote audio appearance.

HEARING ON PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT

All parties submit(s) on the Court's tentative ruling.

The Court CONFIRMS AS MODIFIED the tentative ruling as follows:

Plaintiff's motion for final approval of class settlement is **GRANTED**.

Discussion

Fairness Determination

The Court finds the \$2,000,000.00 settlement to be fair, adequate and reasonable. See, e.g., *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800–1801; Cal. Rules of Court, rule 3.769(g). Additionally, email and/or postcard notice was sent to 22,071 of the 22,234 settlement class members, resulting in very few undeliverable notices. Cameron Azari Decl. [ROA # 93] ¶ 14. No objections have been made to the settlement and no one has opted out. *Id.* ¶ 18. This adds further support to finding the settlement is a fair and reasonable resolution of the parties' dispute.

Administration Costs

The claims administrator provided evidence that \$129,450.00 in claims administration costs was incurred. MPA at 19, citing Agreement ¶ 84.c. The request for approval on the claims administration costs is granted.

Class Representative

Incentive payments to class representatives “must not be disproportionate to the amount of time and energy expended in pursuit of the lawsuit.” *Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1395. The Court must also consider the “risk to the class representative in commencing suit” and any “personal difficulties” encountered because of the litigation. *Id.* at 1394. The request for a class representative incentive award of \$5,000.00 was supported by declaration and is granted. Sophia Gold and Jeff Ostrow Joint Decl. [ROA # 89] ¶¶ 63-65.

Attorney Fees

A percentage method may be used to calculate a reasonable fee in a common fund case. *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 503. The reasonableness may be double checked against the lodestar. *Id.* at 504 (courts may, but are not required to, double check the reasonableness of a percentage fee through a lodestar calculation). Additionally, the lodestar may be increased or decreased “by applying a positive or negative ‘multiplier’ to take into account a variety of other factors, including the quality of the representation, the novelty and complexity of the issues, the results obtained, and the contingent risk presented.” *Laffitte, supra*, 1 Cal.5th at 489.

Here, plaintiff requests class counsel fees in the amount of \$666,666.00, which is one-third of the gross settlement amount. As to the lodestar crosscheck, the claimed hourly rates by counsel, who are located in Berkeley, California, Washington D.C. and Fort Lauderdale, Florida, are overly high and outside the range of this local market. *Nishiki v. Danko Meredith, APC* (2018) 25 Cal.App.5th 883, 898-899; Joint Decl. ¶ 56 (claimed hourly rates of Jeff Ostrow (Partner) - \$1,057; Jonathan M. Stresfeld - \$1,057; Jason H. Alperstein - \$878; Daniel E. Tropin - \$878; Steven P. Sukert - \$538; Todd M. Becker, Paralegal - \$239); *id.* ¶ 46 (claimed hourly rates of Jeffrey D. Kaliel (Partner) - \$878.00; Sophia G. Gold (Partner) - \$777.00; Brittany Casola (Associate) - \$777.00; Neva R. Garcia (Paralegal) - \$239.0). Plaintiff also did not present undisputed evidence that qualified local representation that would accept reduced rates was unavailable. *Caldera v. Dept. of Corr. and Rehab.* (2020) 48 Cal.App.5th 601, 609 (a counsel’s home market rate is considered when undisputed evidence is presented showing the unusual circumstances that qualified local representation is unavailable).

Moreover, even when using the overly high hourly rates for the lodestar cross-check, it results in a lodestar of \$248,064.80. MPA at 18. The cross-check thus shows a 2.69 positive multiplier would be needed to equate to the one-third gross settlement amount. *Id.* Counsel also argues including the value of the defendant’s forgiveness of uncollected relevant fees is appropriate when considering the percentage of the common fund. MPA at 13, fn. 3. Yet counsel does not cite any binding case law authority to support their argument.

On the other hand, counsel has obtained a substantial benefit for the class and taken on the contingent risks. Joint Decl. ¶¶ 25, 37. The favorable response from the class to the settlement also shows support for the fee award, as zero objections and zero requests for exclusion have been made. On balance and given the particularly favorable circumstances here of obtaining approximately 46% of the settlement class’s alleged damages from relevant fees assessed during the class period for such large classes, the

Court concludes the requested fees in the amount of \$666,666.00 are reasonable. Joint Decl. ¶ 25. The request for attorney fees is granted.

Class counsel state they seek litigation costs of \$11,736.19. Joint Decl. ¶ 52. The request is supported and granted.

Conclusion

For the reasons stated, the motion for final approval and motion for fees, costs, and incentive award is **GRANTED**.

The proposed order will be the order of the Court. Court to sign the proposed order.

~~Plaintiff to serve notice on all parties within two court days of this ruling.~~ Parties waive notice.

Katherine A. Bacal

Judge Katherine A. Bacal