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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PAYAM AHDOOT, etc.,
Plaintiffs,
v.
BABOLAT VS NORTH
AMERICA, INC., etc.,
Defendants,
BRANDON CLARK, etc.,
Plaintiffs,
v.
BABOLAT VS NORTH
AMERICA, INC., etc.,
Defendants.

Case Nos.
CV 13-02823-VAP (VBKx)
CV 13-07898-VAP (VBKx)
**ORDER GRANTING MOTION FOR
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT (DOC. NO.
62) AND GRANTING MOTION FOR
ATTORNEY FEES, COSTS,
INCENTIVE AWARDS, AND
ADMINISTRATION COSTS (DOC.
NO. 63)**
**[Motions filed on February
27, 2015]**

On February 27, 2015, Plaintiffs Payam Ahdoot ("Ahdoot") and Brandon Clark ("Clark") (collectively, "Plaintiffs") filed a "Motion for Final Approval of Class Action Settlement" ("Approval Mot.") and a "Motion for Attorney Fees, Costs, Incentive Awards, and Settlement Administration Expenses" ("Fee Mot."). (Doc. Nos. 62-

63.) Plaintiffs seek final judicial approval of an agreement to settle claims that Defendant Babolat VS North America, Inc. ("Babolat"), used deceptive advertising to sell tennis racquets; Babolat has filed a Notice of Non-Opposition to Plaintiffs' motions. (See Doc. No. 67.) The motions came before the Court for hearing on April 6, 2015. After consideration of the papers filed in support of the motions, the Court GRANTS the motions, and enters final approval of the settlement between Plaintiffs and Babolat, and approves Class Counsel's request for attorneys' fees and other associated litigation costs.

I. BACKGROUND¹

A. Plaintiffs' Allegations and Preliminary Approval of the Settlement

Ahdoot filed his action on April 22, 2013.² (Doc. No. 1.) Ahdoot's action was consolidated with Clark's action on December 19, 2013. (Doc. No. 32.) Plaintiffs brought this putative class action against Babolat, alleging it had engaged in false and misleading advertising with respect to its AeroPro Drive tennis

¹ On December 2, 2014, this case was randomly reassigned to the docket of the undersigned from the docket of the judge initially assigned to this case, Judge Gary A. Feess, pursuant to Order of the Chief Judge 14-083. (Doc. No. 60.)

² Ahdoot filed a similar action on January 11, 2013, but dismissed it before Babolat answered the complaint. (Approval Mot. at 3.)

1 racquets ("AeroPro"), endorsed by Rafael Nadal ("Nadal"),
2 its Pure Drive tennis racquets ("Pure Drive"), endorsed
3 by Andy Roddick ("Roddick"), and a number of other
4 racquets associated with professional tennis players.
5 (Second Amended Complaint (Doc. No. 55) ¶¶ 4-11.)
6

7 Plaintiffs allege that Babolat misrepresented to
8 consumers that the racquets available for purchase by the
9 public were identical to those used on the professional
10 tennis tour by professional players when, in reality,
11 "[t]he racquets which many of the Babolat-sponsored pros
12 actually use are much different than [those racquets] and
13 [are] not available to the public." (Id. ¶ 4.)
14 Moreover, Plaintiffs aver that Babolat's use of the
15 phrase "Nadal's racquet of choice" is misleading and that
16 "[p]rior to major professional tennis tournaments,
17 Babolat paints and otherwise modifies these pros'
18 customized racquets so that they appear to be identical
19 to the ones sold in stores and on the internet." (Id.)
20 The SAC also describes what Plaintiffs characterize as a
21 "long-term and pervasive advertising campaign [by
22 Babolat] . . . designed to deceive consumers about the
23 racquets it sells." (Id. ¶ 5.)
24

25 Specifically, on or about January 15, 2011, Plaintiff
26 Ahdoot, believing he was purchasing the same AeroPro
27 racquet used by Nadal, purchased an AeroPro Drive racquet
28

1 for a total of \$222.92 from Westwood Sporting Goods in
2 Los Angeles, California. (Id. ¶ 30.) In April 2012,
3 Plaintiff Clark, believing he was purchasing the same
4 Pure Drive racquet used by Roddick, purchased two Pure
5 Drive Roddick racquets for a total between \$250 and \$300.
6 (Id.) Plaintiff Clark, believing he was then purchasing
7 the same AeroPro racquet used by Nadal, purchased two
8 AeroPro racquets directly from Babolat in May 2010 for
9 \$254. (Id.)

10
11 Plaintiffs allege that they have therefore "suffered
12 injury in fact and lost money by purchasing racquets they
13 otherwise would not have purchased" but for Babolat's
14 deceptive advertising. (Id. ¶ 42.) On this basis,
15 Plaintiffs assert claims against Babolat for: (1)
16 violation of California's Unfair Competition Law ("UCL"),
17 Cal. Bus. & Prof. Code § 17200; (2) violation of the
18 Consumer Legal Remedies Act ("CLRA"), Cal. Civ. Code
19 § 17500; (3) breach of express warranty; (4) violation of
20 False Advertising Law ("FAL"), Cal Bus. & Prof. Code
21 §§ 17500 et seq.; (5) fraud; and (6) negligent
22 misrepresentation. (See SAC.)

23
24 The parties reached an agreement on the terms of a
25 settlement of the class claims after discovery -- which
26 included an exchange of more than 30,000 documents and
27 multiple depositions of Babolat's employees -- and arm's
28

1 length negotiations with the assistance of a mediator.
2 (See Approval Mot. at 3-6.) As a result, the partes
3 entered into a Stipulation and Agreement of Settlement.
4 (See Declaration of Christopher J. Hamner in Support of
5 Approval Mot. ("Hamner Decl.") (Doc. No. 62-2) at Ex. 1
6 ("Settlement Agmt.") (Doc. No. 62-3).)

7
8 In the motion for preliminary approval of class
9 settlement, the Plaintiffs sought and received the
10 following: (1) preliminary approval of the proposed class
11 settlement; (2) approval of the form and content of the
12 Short Form and Long Form Publication Notices,
13 substantially in their proposed forms; (3) certification
14 of the Class for settlement purposes; (4) the appointment
15 of Payam Ahdoot and Brandon Clark as Class
16 Representatives for the Class; (5) the appointment of
17 Hamner Law Offices, APC; the Olsen Law Offices, and
18 Wootton Law Group, LLP as Class Counsel for settlement
19 purposes; (6) leave for Plaintiffs to amend their
20 complaint; (7) enjoinder of Settlement Class Members
21 from commencing or continuing any action asserting any
22 claims encompassed by the Settlement Agreement unless the
23 Class Member submits a valid Request for Exclusions, with
24 the exception of Plaintiffs filing the Second Amended
25 Complaint, proceedings related to final approval of the
26 Settlement and consideration of Class Counsel's Fee and
27 Cost Application; (8) preliminary approval of

1 administration costs to be paid to the Settlement
2 Administrator; (9) an immediate stay of the Action, with
3 the exception of proceedings relating to the Settlement
4 Agreement; and (10) the scheduling of a final approval
5 hearing. (Order Granting Preliminary Approval of Class
6 Action Settlement ("Approval Order") (Doc. No. 54) at 2.)
7 Judge Feess approved preliminarily the terms of the
8 Settlement Agreement on October 7, 2014. The Approval
9 Order was modified twice to correct minor typographical
10 errors and omissions. (See Doc. Nos. 56, 59.)
11

12 **B. The Settlement Agreement**

13 The Settlement Agreement is the result of "extensive
14 discovery, including the production and review of tens of
15 thousands of pages of documents, many of which were in
16 French and required translation into English . . . taking
17 depositions of the parties, . . . [and] a day long
18 mediation in San Francisco with mediator Antonio Piazza."
19 (Approval Mot. at 6; Approval Order at 3.) Class Counsel
20 "is convinced that the proposed Settlement is in the best
21 interests of the Class based on the negotiations and a
22 detailed knowledge of the issues present in this Action."
23 (Approval Mot. at 9; Approval Order at 3.) "The length
24 and risks of trial and other normal perils of litigation
25 that may have impacted the value of the claims were all
26 weighed in reaching the proposed Settlement." (Id.) "In
27 addition, the uncertainty of class certification, the
28

difficulties of complex litigation, the lengthy process of establishing specific damages and various possible delays and appeals were also carefully considered by Class Counsel in agreeing to the proposed Settlement." (Id.)

1. The Settlement Class

The Proposed Settlement encompasses a Settlement Class defined as

all Persons who engaged in a Qualifying Transaction with the exception of employees, principals, officers, directors, agents, affiliated entities, legal representatives, successors, or assignees of Babolat VS North America, Inc.; distributors, dealers, and retailers of Babolat VS North America, Inc. or its parent, Babolat VS SA, to the extent the Qualifying Racquets were purchased by the distributors, dealers, and retailers for resale and not for personal use; and the District Court and any other judges who may be assigned to the Action and any members of their immediate families.

(Settlement Agmt. at 9, § EE.) A Qualifying Transaction is the "purchase of a Qualifying Racquet(s) for personal use, and not for resale during the Class Period." (Id. at 8, § X.) A Qualifying Racquet includes the following Babolat tennis racquets:

Pure Drive, Pure Drive +, Pure Drive 107, Pure Drive Roddick, Pure Drive + Roddick, Pure Drive Roddick Junior, Pure Drive Lite, Pure Drive French Open, Pure Drive Lite French Open, Pure Drive 260 French Open, Pure Drive Junior 26 French Open, Pure Drive Lite Pink, Pure Drive Wimbledon, Pure Drive Junior Wimbledon, Pure Drive Play, AeroPro Drive, AeroPro Drive +, AeroPro Drive Junior, AeroPro Team, AeroPro

1 Lite, AeroPro Drive French Open, AeroPro Drive
2 Junior French Open, AeroPro Lite French Open,
3 AeroPro Team Wimbledon, Aero Storm, Aero Storm
4 Tour, Pure Storm, Pure Storm Limited, Pure Storm
5 Limited +, Pure Storm Tour, Pure Storm Tour +,
6 Pure Storm Team, Pure Control, Pure Control
7 Tour, Pure Control Tour +, Pure Control 95 and
8 Pure Control 95 +.

9 (Id. at 7-8, § W.)

10 The Class Period is defined as "the period beginning
11 on January 1, 2009, and ending on November 11, 2014, or,
12 if later, the actual date of publication of the
13 November/December issue of Tennis Magazine containing the
14 Short Form Publication Notice." (Id. at 5, § G.)

15 **2. The Terms of the Settlement**

16 Each Settlement Class Member who submits a Valid
17 Claim with a proof of purchase "will be entitled to a
18 reimbursement of fifty U.S. dollars (\$50) for each adult
19 racquet and twenty five U.S. dollars (\$25) for each
20 junior racquet for each Qualifying Transaction."
21 (Settlement Agmt. at 13, ¶ 2.) Each Settlement Class
22 Member who does not have a proof of purchase but who can
23 provide the Qualifying Racquet's serial number will "be
24 entitled to a reimbursement of fifty U.S. dollars (\$50)
25 for each adult racquet for each Qualifying Transaction .
26 . . up to a maximum of ten (10) Qualifying Racquets per
27 Person." (Id. at 13-14, ¶ 2.) All junior racquets and
28 some adult racquets do not have serial numbers and thus

1 do not qualify for such reimbursement. (Id. at 14,
2 ¶ 2.) For junior racquets and adult racquets without a
3 serial number or proof of purchase, each "Settlement
4 Class Member who submits a Valid Claim will be entitled
5 to a reimbursement of twenty U.S. dollars (\$20) for each
6 adult racquet and ten U.S. dollars (\$10) for each junior
7 racquet obtained through a Qualifying Transaction up to a
8 maximum of three (3) Qualifying Racquets per Person."
9 (Id. at 14, ¶ 2.)

10
11 The Settlement Agreement provides that Babolat will
12 establish a non-reversionary fund of \$4,500,000³
13 including the following payments, subject to Court
14 approval: (1) attorneys' fees of \$1,125,000, which is 25%
15 of the Gross Settlement Fund ("GSF"); (2) costs of up to
16 \$150,000.00, of which Plaintiffs' counsel is requesting
17 \$78,134.65; (3) incentive awards in the amount of \$5,000
18 to each named Plaintiff in consideration for serving as
19 Class Representative; and (4) estimated Settlement

20
21

 ³ The parties also agreed that the Gross Fund
22 Value will be funded in installments: (1) the first
23 installment of \$300,000; (2) additional deposits of
24 \$200,000 per month for the following six months; and (3)
25 in the eight months from the approval and entry of the
26 Preliminary Approval Order, additional deposits as
27 necessary "to bring the total of deposits and accrued
28 interest to four million five hundred thousand U.S.
dollars (\$4,500,000)." (Settlement Agmt. at 11-12;
Approval Order at 5.) These payments will be made to "an
escrow account with a reputable financial institution"
who will administer those funds "as approved by the
Parties and the Settlement Administrator." (Settlement
Agmt. at 11; Approval Order at 5.)

1 Administration expenses of up to \$133,000-\$240,000, of
2 which Plaintiffs' counsel is requesting \$194,524.78.
3 (Approval Order at 3; Approval Mot. at 6-7.) After all
4 Court-approved deductions, the Net Settlement Fund⁴ is
5 estimated to be \$3,092,340.57. (Approval Mot. at 7.) If
6 the aggregate of all Valid Claims exceeds the Net
7 Settlement Fund, each reimbursement "will be adjusted
8 downward on a Qualifying Racquet *pro rata* basis."
9 (Settlement Agmt. at 14, ¶ 3.) Should the Net Settlement
10 Fund exceed the amount of Valid Claims submitted,
11 remaining funds "shall be distributed *cy pres* as follows:
12 (a) fifty percent (50%) to St. Jude's Children's Research
13 Hospital . . . and (b) fifty percent (50%) to USTA
14 Serves." (*Id.* at 14, ¶ 4.) The parties have also agreed
15 to non-monetary benefits, including: (1) Babolat's
16 implementation of disclaimers in connection with
17 professional endorsements; (2) Babolat ceasing to
18 reference in any US advertisements that any of its
19 racquets contain tungsten; (3) Babolat ceasing to refer
20 to tungsten in "their advertising, marketing,
21 communications and labeling in the United States in
22 connection with 'GT Technology.'" (Approval Mot. at 8-9;
23 Approval Order at 3.)

24
25 ⁴ After deducting the payment of attorneys' fees,
26 costs, Class Representative incentive awards, and
27 Settlement Administration expenses, the remaining Net
28 Settlement Fund shall be available to pay Valid Claims
submitted by Class Members. (Settlement Agmt. at 6-7, §
Q; Approval Order at 5.)

1 In exchange for the Settlement benefits, Settlement
2 Class members are deemed to have "fully, finally, and
3 forever released, relinquished and discharged each and
4 all of the Babolat Releasees from any and all of the
5 Class Representatives' and each and every Settlement
6 Class Member's . . . respective claims, actions, demands,
7 suits, and causes of action, whether class, individual or
8 otherwise in nature. . . ." (Settlement Agmt. at 23, §
9 B; Approval Order at 6-7.) This release includes

10 costs, expenses, penalties and attorneys' fees,
11 known or unknown, suspected or unsuspected,
12 direct or indirect, contingent or absolute,
13 existing or potential, in contract or in tort,
14 in law or equity, that the Class Representatives
15 and each and every Settlement Class Member . . .
16 ever had, now has, or hereafter can, will, or
17 may have, arising out of (i) advertising,
18 marketing and conduct of whatever kind by the
19 Babolat Releasees related to any and all
20 professional athletes and their connection with,
21 affiliation with, association with or
22 endorsement of the Qualifying Racquets and any
23 components thereof; (ii) the use of the term "GT
24 Technology" and "tungsten" in the Babolat
25 Releasees' advertising, marketing materials,
26 labeling, and any other communication or
27 information of whatever kind related to the
28 Qualifying Racquets, (iii) factual allegations
or claims made in the Second Amended Complaint,
and (iv) any violation or alleged violation of
any federal or state law and any federal or
state statute, including but not limited to
California Business & Professions Code §§ 17200,
et seq., 17500 et seq., and California Civil
Code §1750, predicated on (i), (ii) or (iii)
(the "Released Claims").

(Settlement Agmt. at 24.)

1 **3. The Settlement Administration and Notice**

2 After preliminary approval, the settlement
3 administrator was required to: (1) "provide copies of the
4 Settlement Account's monthly statements to Class Counsel
5 and Babolat's Counsel no later than the fifteenth (15th)
6 day of each month" until the Final Effective Date of the
7 Settlement; (2) examine and verify submitted claims; (3)
8 administer the publication of the Short Form Publication
9 Notice in Tennis Magazine; (4) administer the placement
10 of the banner advertisement regarding the Settlement on
11 Tennis.com; (5) administer the creation, operation,
12 maintenance, and cessation of the Settlement website
13 Babolatsettlement.com; (6) "prepare a declaration
14 affirming compliance with the notice requirements," and
15 provide such declaration "to Babolat's Counsel and Class
16 Counsel no later than fourteen (14) days prior to the
17 Final Approval Hearing;" (7) "prepare and deliver to
18 Babolat's Counsel and Class Counsel a report stating the
19 total number of Persons who submitted valid Requests for
20 Exclusion from the Settlement Class and the names and
21 contact information of such Persons as well as the
22 quantity and type of the Qualifying Racquets each Person
23 purchased;" (8) "provide periodic updates to Class
24 Counsel and Babolat's Counsel regarding Claim Form
25 submissions" no later than one week after the Claims
26 Period begins and at least once monthly thereafter; and
27 (9) provide to Babolat or other Person as Babolat may
28

1 direct an electronically searchable alphabetical list of
2 the Settlement Class Members who were paid out of the Net
3 Settlement Fund, their contact information, and the
4 amount paid to them. (Settlement Agmt. at 12, 14, 16-17.)
5 The Settlement website was required to be operational on
6 or before the first day on the Short Form Publication
7 Notice appears in Tennis Magazine. (Id. at 15.)
8

9 Members of the Settlement Class may opt out of the
10 settlement by submitting a written request postmarked no
11 later than twenty-one days before the Final Approval
12 Hearing to the Settlement Administrator to be excluded
13 from the class. (Id. at 8, § Z.) This letter must
14 contain: (1) the Class Member's name, current mailing
15 address, and telephone number; (2) the racquet(s) the
16 Class Member purchased, the approximate dates of such
17 purchase(s), and location of such purchase(s); (3) the
18 statement "I want to be excluded from the proposed Class
19 Action Settlement in the Babolat lawsuit;" and (4) the
20 Class Member's signature. (Approval Order at 6.)
21

22 The Short Form Publication Notice, Long Form
23 Publication Notice, and banner advertisement containing a
24 link to the Settlement website, Babolatsettlement.com, on
25 the United States version of websites Babolat.com and
26 Tennis.com proposed by the Parties will provide
27 Settlement Class members with appropriate information
28

1 about: (1) the nature of the action; (2) the class
2 definition; (3) a description of the claims at issue; (4)
3 a summary of the proposed settlement terms; (5) a
4 description of the settlement formula and distribution
5 including Plaintiff's enhancement award and Class
6 Counsel's attorney's fee award and costs, the terms of
7 the release; and (6) the right of Settlement Class
8 members to be excluded from the class or to object to the
9 Settlement Agreement and the procedures for doing so.
10 (Id.) The Settlement website, Babolatsettlement.com shall
11 contain: (1) the Short Form Publication notice; (2) the
12 Long Form Publication Notice; (3) the Claim Form; (4) the
13 Settlement Agreement, without exhibits; (5) the Second
14 Amended Complaint; and (6) the Preliminary Approval
15 Order. (Settlement Agmt. at 16, § A.) The Long Form
16 Publication Notice and the Settlement website also
17 include contact information for the Settlement
18 Administrator and Class Counsel. (Approval order at 6;
19 Settlement Agmt. at 16, § A.)
20

21 **II. LEGAL STANDARD**

22 Under Rule 23(e) of the Federal Rules of Civil
23 Procedure, "claims, issues, or defenses of a certified
24 class may be settled, voluntarily dismissed, or
25 compromised only with the court's approval." Fed. R.
26 Civ. P. 23(e). A court must engage in a two-step process
27 to approve a proposed class action settlement. First, the
28

1 court must determine whether the proposed settlement
2 deserves preliminary approval. Nat'l Rural Telecomms.
3 Coop. v. DirecTV, Inc., 221 F.R.D. 523, 525 (C.D. Cal.
4 2004). Second, after notice is given to class members,
5 the Court must determine whether final approval is
6 warranted. Id. A court should approve a settlement
7 pursuant to Rule 23(e) only if the settlement "is
8 fundamentally fair, adequate and reasonable." Torrisi v.
9 Tucson Elec. Power Co., 8 F.3d 1370, 1375 (9th Cir. 1993)
10 (internal quotation marks omitted); accord In re Mego
11 Fin. Corp. Sec. Litig., 213 F.3d 454, 458 (9th Cir. 2000)
12 (citing Hanlon v. Chrysler Corp., 150 F.3d 1011, 1026
13 (9th Cir. 1998)).

14
15 Circuit law teaches that the court must balance the
16 following factors to determine whether a class action
17 settlement is fair, adequate, and reasonable:

- 18
19 (1) the strength of the plaintiff's case;
20 (2) the risk, expense, complexity, and likely
21 duration of further litigation;
22 (3) the risk of maintaining class action status
23 throughout the trial;
24 (4) the amount offered in settlement;
25 (5) the extent of discovery completed and the
26 stage of the proceedings;
27 (6) the experience and views of counsel;
28

1 (7) the presence of a governmental participant;
2 and
3 (8) the reaction of the class members to the
4 proposed settlement.
5

6 Torrise, 8 F.3d at 1375; accord Linney v. Cellular Alaska
7 Partnership, 151 F.3d 1234, 1242 (9th Cir. 1998); Hanlon,
8 150 F.3d at 1026. "In addition, the settlement may not be
9 the product of collusion among the negotiating parties."

10 In re Mego Fin. Corp. Sec. Litig., 213 F.3d at 458.

11 These factors are not exclusive, and one factor may
12 deserve more weight than the others depending on the
13 circumstances. Torrise, 8 F.3d at 1376. In some
14 instances, "one factor alone may prove determinative in
15 finding sufficient grounds for court approval." Nat'l
16 Rural Telecomms. Coop., 221 F.R.D. at 525-26 (citing
17 Torrise, 8 F.3d at 1376). In addition, "[t]he involvement
18 of experienced class action counsel and the fact that the
19 settlement agreement was reached in arm's length
20 negotiations, after relevant discovery had taken place
21 create a presumption that the agreement is fair." Linney
22 v. Cellular Alaska Partnership, 1997 WL 450064, *5 (N.D.
23 Cal. July 18, 1997), aff'd, 151 F.3d at 1234.
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1 **III. DISCUSSION**

2 **A. Final Approval of the Settlement**

3 **1. Approval of the Settlement Terms**

4 As discussed below, the Torrise factors favor final
5 approval of the settlement.

6
7 **a. Strength of Plaintiffs' Case**

8 According to Plaintiffs' counsel, "Plaintiffs
9 strongly believe that the Class claims are legally
10 meritorious and present more than a reasonable
11 probability of a favorable determination on behalf of the
12 Class." (Approval Mot. at 14.) Each member of the class
13 will receive a 25%-34% refund of the purchase price paid
14 for each racquet, provided they can provide a proof of
15 purchase. (Id. at 1-2.) Should a class member not have
16 a proof of purchase, he or she can still receive a
17 refund. (Id. at 2.) As a result of the settlement,
18 Babolat has changed its advertising and business
19 practices. All of this suggests that Plaintiffs' case
20 had merit. Thus, this factor weighs in favor of
21 approval.

22
23 **b. The Risk, Expense, Complexity, and Likely**
24 **Duration of Further Litigation**

25 Plaintiffs' counsel notes that there are always
26 inherent risks associated with prosecuting a matter
27 through trial, and this case is no exception. (Approval
28

1 Mot. at 15.) "While Babolat has agreed to settle the
2 action, if this case were to proceed, Babolat would
3 undoubtedly continue to assert a vigorous defense on
4 liability." (Id. at 16.) In addition, even if
5 Plaintiffs were able to succeed at trial, the burden of
6 proving damages would remain; there is no guarantee that
7 members of the Class would receive more than the
8 Settlement Agreement provides if this case went to trial.
9 (Id.) As further litigation would undoubtedly be
10 expensive and complex, and because there are significant
11 risks to members of the class regarding their ability to
12 succeed on the merits or to prove damages, this factor
13 weighs in favor of approval. (Id. at 16-17.)
14

15 **c. The Risk of Maintaining Class Action Status**
16 **Throughout the Trial**

17 The Court may revisit the certification of the class
18 at any time before entry of final judgment. See Fed. R.
19 Civ. P. 23(c)(1)(C). Where there is a risk that class
20 certification might not be maintained before entry of
21 final judgment, this factor favors approving the proposed
22 settlement.
23

24 Class Counsel contends that class certification is
25 difficult to obtain in false advertising cases. (Id. at
26 14-15.) Recently, a judge of this district denied a
27 motion for class certification in a factually similar
28

1 case concerning a professional tennis player's use of a
2 similar racquet for sale to the public. (See id. at 15
3 (citing Kramer v. Wilson, case no. 2:13-cv-06330-JFW-
4 SH).) Class certification was denied in that case
5 because the court found the plaintiff failed to meet his
6 burden of demonstrating that questions of fact and law
7 common to all class members predominated over questions
8 affecting only individual class members. (Id.) Though
9 counsel maintain that the instant case is factually
10 distinguishable, there nevertheless is the risk that
11 continued class certification presents a risk to
12 Plaintiffs. (Id.)

13
14 Moreover, Babolat only assented to the Settlement
15 Agreement with the assumption that it would be approved;
16 should the Court not approve the settlement, Babolat has
17 the right to terminate the agreement. (Settlement Agmt.
18 at 20, § D.) In addition, should the Court not approve
19 the settlement, the "Settlement Agreement [cannot] be
20 offered, or received into evidence in any matter" other
21 than for purposes of approval. (Id. at 27-28, § IX.)

22
23 Given the uncertainty regarding Plaintiffs' ability
24 to maintain class certification throughout the case, this
25 factor also favors approving the proposed settlement.
26
27
28

1 **d. The Amount Offered in Settlement**

2 As noted above, the Settlement Agreement requires
3 Babolat to create a settlement fund of \$4.5 million. The
4 agreement was "negotiated after extensive discovery and
5 an all day mediation" and it "resulted in substantial
6 monetary benefits and significant changes to Babolat's
7 advertising." (Approval Mot. at 19.) "The Class
8 Recovery is significant in that it contemplates
9 reimbursement in the range of 25%-34% of the purchase
10 price with respect to the racquets at issue. The
11 settlement not only falls within the range of
12 possible judicial approval, but represents an excellent
13 recovery on behalf of the Class." (Hamner Decl. at ¶ 7.)
14 Given the risks and uncertainty attendant to this
15 litigation as previously discussed, the Court finds that
16 the amount of recovery each class member may recover
17 weighs in favor of the Settlement Agreement's overall
18 reasonableness.

19
20 **e. The Extent of Discovery Completed and**
21 **the Stage of the Proceedings**

22 Throughout the course of litigation, "[v]oluminous
23 written discovery has been propounded, reviewed and
24 responded to by the Parties. Babolat produced, and
25 Plaintiffs' Counsel reviewed over 30,000 pages of
26 documents, many of which were in French and required
27 translation into English." (Approval Mot. at 4, 18.)
28

1 Moreover, numerous Babolat representatives were deposed
2 and product inspections were conducted. (Id. at 4, 18.)
3 The record is clear that significant discovery was
4 undertaken by both parties. As Class Counsel had
5 "sufficient information to make an informed decision
6 about settlement," this factor weighs in favor of
7 approval. See Linney, 151 F.3d at 1239.

8
9 **f. The Experience and Views of Counsel**

10 As noted above, Class Counsel contends that the
11 Settlement Agreement "not only falls within the range of
12 possible judicial approval, but represents an excellent
13 recovery on behalf of the class." (Hamner Decl. at ¶ 7.)
14 Class Counsel have significant experience litigating
15 class action cases. (Id. at ¶¶ 18-19.) Counsel's
16 experience litigating class action cases, along with
17 their view that the Settlement Agreement presents a
18 significant recovery for the Plaintiffs', persuades the
19 Court that the Settlement Agreement is fair, reasonable,
20 and adequate in this case. This weighs in favor of
21 approval.

22
23 **g. The Reaction of the Class Members to the**
24 **Proposed Settlement**

25 According to Class Counsel, "[a]s of February 24,
26 2014, 17,203 Class Members filed valid claim forms, and
27 not a single Class Member objected to the settlement or
28

1 requested to be excluded." (Approval Mot. at 21 (bolding
2 omitted).) The lack of any objection whatsoever by Class
3 Members to the Settlement Agreement weighs in favor of
4 approval.

5
6 **h. Whether the Settlement Was a Product of Non-**
7 **Collusive Bargaining**

8 Finally, as noted above, the Settlement Agreement was
9 reached with the assistance of a mediator. (Approval
10 Mot. at 5.) Settlements reached with the help of a
11 mediator are likely non-collusive. Satchell v. Fed.
12 Express Corp., 2007 WL 1114010, at *4 (N.D. Cal. Apr. 13,
13 2007) ("The assistance of an experienced mediator in the
14 settlement process confirms that the settlement is non-
15 collusive."). The parties have presented no reason to
16 find that the Settlement Agreement was anything other
17 than the product of arm's-length negotiations.
18 Accordingly, the Court finds this factor weighs in favor
19 of approval.

20
21 As all of the above factors weigh in favor of final
22 approval, the Court finds the Settlement Agreement to be
23 fair, reasonable, and adequate.

24
25 **2. Approval of the Notice Procedures**

26 Rule 23 requires the court to direct to Class Members
27 "the best notice that is practicable under the
28

1 circumstances, including individual notice to all members
2 who can be identified through reasonable effort." Fed.
3 R. Civ. P. 23(c)(2)(B). In addition, Rule 23(e)(1)
4 requires the court to "direct notice in a reasonable
5 manner to all class members who would be bound by the
6 proposal." The notice must explain in easily understood
7 language the nature of the action, definition of the
8 class, class claims, issues and defenses, ability to
9 appear through individual counsel, procedure to request
10 exclusion, and binding nature of a class judgment. Fed.
11 R. Civ. P. 23(c)(2)(B). Plaintiff must provide notice to
12 potential opt-in class members that is "timely, accurate,
13 and informative." See Hoffmann-La Roche Inc. v.
14 Sperling, 493 U.S. 165, 172 (1989). Likewise, claim
15 forms must be informative and accurate. Id. at 172;
16 Churchill Village, L.L.C. v. Gen. Elec., 361 F.3d 566,
17 575 (9th Cir. 2004) (notice is satisfactory if it
18 "generally describes the terms of the settlement in
19 sufficient detail to alert those with adverse viewpoints
20 to investigate and to come forward and be heard").

21
22 The Court previously found that "the proposed Class
23 Notice complies with Rule 23's requirements and should
24 therefore be certified for purposes of the Proposed
25 Settlement." (Approval Order at 13.) The Court now
26 evaluates whether the parties executed class notice in
27 accordance with the Court's Preliminary Approval Order.

28

1 According to Class Counsel, the Notice was
2 disseminated in conformity with the Court's Preliminary
3 Approval Order. (See Approval Mot. at 9-11 (citations
4 omitted).) Given Class Counsel's representation that the
5 Notice was disseminated in accordance with the Court's
6 previous order and the number of Class Members who have
7 responded to the Notice, the Court finds that the Notice
8 was reasonable as to its content and the method of
9 communication.

10
11 As the terms of the Settlement Agreement were fair,
12 reasonable, and adequate, and because the procedures for
13 dissemination of the Class Notice were the reasonable,
14 the Court finds that the Settlement Agreement should be
15 approved.

16
17 **B. Approval of the Attorneys' Fees Awards, Costs,**
18 **Incentive Awards and Settlement Administrative**
19 **Expenses**

20 The Approval Order approved allocation of settlement
21 funds for attorneys' fees, costs, incentive award
22 payments, and settlement administrative expenses. As
23 noted above, Class Counsel filed a separate motion (the
24 Fee Mot.) requesting final approval of these
25 expenditures. The Court addresses each in turn. Staton
26 v. Boeing Co., 327 F.3d 938, 963 (9th Cir. 2003) ("[T]o
27 avoid abdicating its responsibility to review the
28

1 agreement for the protection of the class, a district
2 court must carefully assess the reasonableness of a fee
3 amount spelled out in a class action settlement
4 agreement.").

6 **1. Attorneys' Fees**

7 The Settlement Agreement sets aside \$1.125 million,
8 or 25% of the settlement proceeds as attorneys' fees.
9 (Fee Mot. at 1; Settlement Agreement at 21, § B.) To
10 calculate the reasonableness of an award of attorney's
11 fees, the Court may use either the percentage-of-the-fund
12 method⁵ or the lodestar/multiplier method.⁶ In re
13 Washington Pub. Power Supply Sys. Sec. Litig., 19 F.3d
14 1291, 1295 (9th Cir. 1994) ("[T]he district court has
15 discretion to use either method in common fund cases.").
16 Regardless of the method used, "the district court should
17 be guided by the fundamental principle that fee awards
18 out of common funds be *"reasonable under the*
19 *circumstances."* In re Washington Pub. Power Supply Sys.

22 ⁵ Under the percentage-of-the-fund method, the
23 court calculates the fee award by designating a
24 percentage of the total common fund. Six Mexican Workers
v. Ariz. Citrus Growers, 904 F.2d 1301, 1311 (9th Cir.
1990).

25 ⁶ Under the lodestar method, the court calculates
26 the fee award by multiplying the number of hours
27 reasonably spent by a reasonable hourly rate and then
28 enhancing that figure, if necessary to account for the
risks associated with representation. Paul, Johnson,
Alston & Hunt v. Graulity, 886 F.2d 268, 272 (9th Cir.
1989).

1 Sec. Litig., 19 F.3d at 1296 (quoting State of Florida v.
2 Dunne, 915 F.2d 542, 545 (9th Cir. 1990)).

3
4 Twenty-five percent, the amount requested by
5 Plaintiffs' counsel here, is the "'benchmark' award that
6 should be given in common fund cases." Six Mexican
7 Workers, 904 F.2d at 1311. "The benchmark percentage
8 should be adjusted, or replaced by a lodestar
9 calculation, when special circumstances indicate that the
10 percentage recovery would be either too small or too
11 large in light of the hours devoted to the case or other
12 relevant factors." Id.

13
14 The Court elects to use the percentage-of-the-fund
15 method to determine if the proposed attorney's fees are
16 reasonable. As Class Counsel agree that 25% is
17 reasonable here, and there is no evidence that an award
18 of 25% would be a windfall to Plaintiffs' counsel (see
19 Fischel v. Equitable Life Assur. Soc'y of U.S., 307 F.3d
20 997, 1007 (9th Cir. 2002)), the Court agrees that the
21 Settlement Agreement's attorneys' fees request is
22 reasonable.

23
24 Moreover, assuming the Court used the lodestar
25 method, a review of the billing records submitted by
26 Class Counsel (see Fee Mot. at 11; Declaration of
27 Christopher J. Hamner in Support of Fee Mot. (Doc. No.
28

63-2) at Ex. 3 (Doc. No. 63-5); Declaration of Chad B. Wootton in Support of Fee Mot. (Doc. No. 63-7) at Ex. 5 (Doc. No. 63-8); Declaration of Christopher A. Olsen in Support of Fee Mot. (Doc. No. 63-9) and its attachment (Doc. No. 63-10)), shows that the fees as calculated by the lodestar approach would also be reasonable.

2. Costs

The Approval Order approved up to \$150,000.00 in actual litigation costs. (Approval Order at 2, 4.) Rule 23(h) provides that the Court may award reasonable costs. Fed. R. Civ. P. 23(h). Class Counsel has provided an accounting for its costs, which total \$78,134.65. (Fee Mot. at 1; Declaration of Christopher J. Hamner in Support of Fee Mot. at Ex. 4) The Court finds these costs to be reasonable.

3. Incentive Awards

"[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. Factors the court should consider when assessing whether individual incentive payments are reasonable include: (1) the actions the plaintiff has taken to protect the interests of the class; (2) the degree to which the class has benefitted from those actions; (3) the amount of time and effort the plaintiff expended in pursuing the

1 litigation; and (4) and reasonable fears of workplace
2 retaliation. Id. Courts may also consider: the risk to
3 the class representative in commencing suit, both
4 financial and otherwise; the notoriety and personal
5 difficulties encountered by the class representative; the
6 amount of time and effort spent by the class
7 representative; the duration of the litigation; and the
8 personal benefit (or lack thereof) enjoyed by the class
9 representative as a result of the litigation. Van
10 Vranken v. Atl. Richfield Co., 901 F. Supp. 294, 299
11 (N.D. Cal. 1995). "Courts have generally found that
12 \$5,000 incentive payments are reasonable." Alberto v.
13 GMRI, Inc., 252 F.R.D. 652, 669 (E.D. Cal. 2008).

14
15 The Court approved preliminarily an incentive award
16 of \$5,000 for Ahdoot and Clark as named Plaintiffs.
17 (Approval Order at 7-8.) The Court stated "that the
18 named Plaintiffs should be recognized and compensated for
19 their assistance and involvement throughout the
20 litigation, and that a \$5,000 incentive award for each
21 named Plaintiff is appropriate." (Id. at 16.) Along
22 with the Fee Mot., Ahdoot and Clark submitted
23 declarations explaining the work they have done in this
24 case from its inception to the parties' assent to the
25 Settlement Agreement. (See Declaration of Payam Ahdoot
26 in Support of Fee Mot. (Doc. No. 63-12); Declaration of
27 Brandon Clark in Support of Fee Mot. (Doc. No. 63-13).)

28

1 The Court agrees that a \$5,000 incentive payment to each
2 named Plaintiff is reasonable.

3
4 **4. Settlement Administration Costs**

5 The Court previously approved of the appointment of
6 Rust Consulting, Inc., to serve as the Settlement
7 Administrator. (Approval Order at 17.) Expenses in the
8 range of \$113,219 to \$218,757 were approved, as 50,000 to
9 150,000 claimants were expected. (Id.) According to
10 Class Counsel, the amount invoiced to date is \$104,941.78
11 and it is estimated that an additional \$89,583.00 will be
12 invoiced to complete the administration of the
13 Settlement, for a total of \$194,524.78.⁷ (Fee Mot. at
14 24.) As these costs are within the approved range, and
15 an explanation of the costs is supported by a declaration
16 from a Rust Consulting Employee (see Declaration of Tore
17 Hodne in Support of Fee Mot. (Doc. No. 63-11)), the Court
18 approves of the stated Settlement Administrator costs.

19
20 As all the fees and costs as noted in the Fee Mot.
21 are fair, reasonable, and supported by the supplied
22 evidence, the Court GRANTS the Fee Mot.

23
24
25
26 ⁷ Class Counsel filed a Notice of Errata
27 explaining that the initial amount requested in the
28 motions for settlement administration costs was in error,
and that the correct amount was \$194,524.78. (See Doc.
No. 65.)

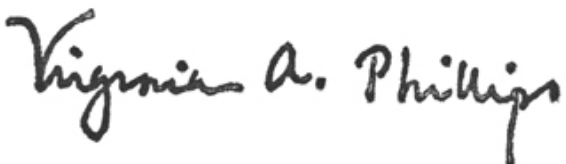
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IV. CONCLUSION

For the reasons stated above, the COURT APPROVES the settlement terms and GRANTS the Motion for Final Approval of Class Action Settlement. Moreover, the Court GRANTS the Motion for Attorney Fees, Costs, Incentive Awards, and Settlement Administration Costs.

IT IS SO ORDERED.

Dated: April 6, 2015_____



VIRGINIA A. PHILLIPS
United States District Judge