

SUPERIOR COURT OF CALIFORNIA - COUNTY OF FRESNO Civil Department - Non-Limited	Entered by:
TITLE OF CASE: Dhillon Manmohan vs. Donaghy Sales, LLC / CLASS ACTION / STAYED	
LAW AND MOTION MINUTE ORDER	Case Number: 14CECG03039

Hearing Date: **November 5, 2024** Hearing Type: **Motion - Final Approval Class Settlement;
Motion - Attorney Fees; Status Conference**

Department: **403** Judge/Temp. Judge: **Skiles, Jon M**
Court Clerk: **Xiong, Jenny** Reporter/Tape:

Appearing Parties:	
Plaintiff: Not Present	Defendant:
Counsel:	Counsel via Zoom: P. Toole

Off Calendar

Continued to January 28, 2025 at 3:30 PM in Department 403 for Status Conference.

Submitted on points and authorities with/without argument. Matter is argued and submitted.

Upon filing of points and authorities.

Motion is granted in part and denied in part. Motion is denied with/without prejudice.

Taken under advisement

No party requested oral argument pursuant to Local Rule 2.2.5 and CRC 3.1308(a)(1).

Tentative ruling becomes the order of the court. No further order is necessary.

Pursuant to CRC 3.1312(a) and CCP section 1019.5(a), no further order is necessary. The minute order adopting the tentative ruling serves as the order of the court.

Service by the clerk will constitute notice of the order.

See attached copy of the Tentative Ruling.

Judgment debtor ___ sworn and examined.

Judgment debtor ___ failed to appear.
Bench warrant issued in the amount of \$ ___

JUDGMENT:

Money damages Default Other ___ entered in the amount of:
Principal \$___ Interest \$___ Costs \$___ Attorney fees \$___ Total \$___
 Claim of exemption granted denied. Court orders withholdings modified to \$___ per ___

FURTHER, COURT ORDERS:

Monies held by levying officer to be released to judgment creditor. returned to judgment debtor.
 \$___ to be released to judgment creditor and balance returned to judgment debtor.
 Levying Officer, County of ___, notified. Writ to issue

Other: If the Motion for Final Approval is re-filed, the Case Management Conference can be continue to the motion court date. Counsel is to file an updated joint status report with the court 10 days before the next hearing. Upon Court's own motion, Zoom is authorized for the next status conference hearing.

(03)

Tentative Ruling

Re: ***Dhillon v. Donaghy Sales, LLC***
Case No. 14CECG03039

Hearing Date: November 5, 2024 (Dept. 403)

Motion: Plaintiffs' Motion for Final Approval of Class Settlement

Tentative Ruling:

To deny plaintiffs' motion for final approval of class settlement, without prejudice, as plaintiffs' counsel has not provided any evidence about the class administrator's fees or whether those fees will be deducted from the gross settlement amount.

Explanation:

1. General Principles: A settlement of a class action requires court approval after a hearing. (Cal. Rules of Court, rule 3.769, subd. (a).) "If the court has certified the action as a class action, notice of the final approval hearing must be given to the class members in the manner specified by the court. The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement. (Cal. Rules of Court, Rule 3.769, subd. (f).) "Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement." (Cal. Rules of Court, Rule 3.769, subd. (g).) "If the court approves the settlement agreement after the final approval hearing, the court must make and enter judgment. The judgment must include a provision for the retention of the court's jurisdiction over the parties to enforce the terms of the judgment. The court may not enter an order dismissing the action at the same time as, or after, entry of judgment." (Cal. Rules of Court, Rule 3.769, subd. (h).)

2. Settlement

a. Legal Standards

"When, as here, a class settlement is negotiated prior to formal class certification, there is an increased risk that the named plaintiffs and class counsel will breach the fiduciary obligations they owe to the absent class members. As a result, such agreements must withstand an even higher level of scrutiny for evidence of collusion or other conflicts of interest than is ordinarily required under Rule 23(e) before securing the court's approval as fair." (*Koby v. ARS National Services, Inc.* (9th Cir. 2017) 846 F. 3d 1071, 1079.) "[I]n the final analysis it is the Court that bears the responsibility to ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing litigation. The court has a fiduciary responsibility as guardians of the rights of the absentee class members when deciding whether to approve a settlement agreement . . . The courts are supposed to be the guardians of the class." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116, 129.) "[T]o protect

the interests of absent class members, the court must independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interests of those whose claims will be extinguished . . . [therefore] the factual record must be before the... court must be sufficiently developed." (*Id.* at p. 130.) The court must be leery of a situation where "there was nothing before the court to establish the sufficiency of class counsel's investigation other than their assurance that they had seen what they needed to see." (*Ibid.*)

b. Fairness of the Settlement: The court has already granted preliminary approval of the settlement. Since that time, the class administrator has sent out notices to the class members, and no objections or opt out requests have been received. The lack of objections supports the court's finding that the settlement is fair, adequate, and reasonable. Nothing else has happened since the court granted preliminary approval, so the court intends to find that the settlement is fair, adequate, and reasonable.

c. Attorney's Fees: Plaintiffs' counsel request fees of \$625,000, which is 25% of the total gross settlement. The evidence indicates that the settlement represents a solid recovery for the class, and the requested fees are fair and reasonable under the applicable standards, and well within the range of fees approved in other class actions. Courts usually award fees of about one-third of the total gross recovery in class action cases. Here, counsel seeks only 25% of the total settlement, which is on the low end of the range of fees for class actions.

The fees are also reasonable under a lodestar analysis. Counsel devoted over 10,900 hours and a collective lodestar of roughly 3.98 million without pay for nearly 10 years during the pendency of the case before obtaining a favorable settlement for the class. Therefore, the requested fees of \$625,000 is only 16% of the lodestar, which is well below counsel's normal hourly rates.

The settlement is an excellent result for the class, as it is a significant percentage of the potential damages in the case. Plaintiffs' damages expert calculated two alternative scenarios for the overcharges: \$12.4 million under one calculation and \$5.8 million under the other. The settlement here is \$2.5 million, which is 20% of the higher damages figure and 43% of the lower figure. Defendants hotly contested the damages calculations based on their experts' figures. The theories for damages were untested and disputed. There was a real possibility that plaintiffs might have succeeded on liability, but the trier of fact might have found that they had no damages.

Also courts have approved settlements that range between 4.5% and 23.2% of claimed damages. The settlement here is somewhere between 20% and 43% of the claimed possible damages, so it is well within the ranges approved by courts in other cases.

The settlement was obtained through the vigorous efforts of plaintiffs' counsel throughout the litigation at the trial court level, as well as appeal. Without their efforts, there would have been no recovery at all. However, counsel have yet to be compensated for their work. Therefore, the court intends to approve the requested amount of fees.

Likewise, counsel incurred court costs of \$748,147.66 for all expenses, including their expert witnesses. Therefore, their requested costs of \$748,147.66 should also be awarded.

Plaintiffs' counsel has provided sufficient evidence to support their requested fees and costs, which are reasonable given the lengthy and hard-fought nature of the case, which was litigated for about ten years through multiple certification motions and appeals. In fact, plaintiffs' counsel actually expended significantly more hours than the amount they are now requesting. Also, while the requested amount of costs is unusually high, again the case was hotly litigated for about ten years and required extensive discovery, motion work, and expert witness analysis. Therefore, the court intends to grant final approval of the requested fees and costs.

d. Class Administrator's Fees: The court previously granted preliminary approval of the class administrator's fees of \$40,000 to \$42,000. The class administrator has now sent out class notices and received no objections or opt out requests, so it appears that the administrator has probably incurred at least \$40,000 in fees. However, the administrator's declarations in support of the final approval motion do not state what their final fees were, and there is no provision for an award of administrator's fees in the proposed judgment. Therefore, there is no evidence before the court at this time regarding the administrator's fees and whether those fees are being deducted from the gross settlement before granting final approval of the settlement. As a result, the court will require a supplemental declaration from the class administrator regarding the amount of fees they incurred, as well as a proposed judgment that reflects the final amount to be paid to the administrator.

e. Incentive Award to Class Representative: Plaintiffs also request that each of the five class representatives be awarded an incentive fee of \$5,000, for a total of \$25,000.

"While there has been scholarly debate about the propriety of individual awards to named plaintiffs, '[i]ncentive awards are fairly typical in class action cases.' These awards 'are discretionary, [citation], and are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.'" (*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1393–1394, quoting *Rodriguez v. West Publishing Corp.* (9th Cir.2009) 563 F.3d 948, 958.) " '[C]riteria courts may consider in determining whether to make an incentive award include: 1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation.' These 'incentive awards' to class representatives must not be disproportionate to the amount of time and energy expended in pursuit of the lawsuit." (*Id.* at pp. 1394–1395, internal citations omitted.)

Here, the evidence indicates that the class representatives have been cooperative and helpful in the litigation, including pursuing pre-litigation efforts to resolve the case without filing a lawsuit. When those efforts failed, the class representatives hired counsel and engaged in nearly ten years of litigation. They had to find counsel, educate counsel on the industry and practices at issue, consult with counsel on issues of strategy throughout the case, produce documents, respond to discovery requests, review pleadings and court orders, provide deposition testimony (sometimes more than once), and discuss settlement negotiations with counsel. Thus, the award of \$5,000 for each representative is clearly reasonable, especially since the average recovery to each class

<p style="text-align: center;">SUPERIOR COURT OF CALIFORNIA - COUNTY OF FRESNO Civil Department, Central Division 1130 "O" Street Fresno, California 93724-0002 (559) 457-2000</p>	<p style="text-align: center;"><i>FOR COURT USE ONLY</i></p>
<p>TITLE OF CASE: Dhillon Manmohan vs. Donaghy Sales, LLC / CLASS ACTION / STAYED</p>	
<p style="text-align: center;">CLERK'S CERTIFICATE OF MAILING</p>	<p>CASE NUMBER: 14CECG03039</p>

I certify that I am not a party to this cause and that a true copy of the:

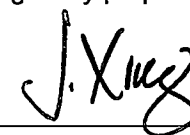
Minute Order and Tentative Ruling]

was placed in a sealed envelope and placed for collection and mailing on the date and at the place shown below following our ordinary business practice. I am readily familiar with this court's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service with postage fully prepaid.

Place of mailing: Fresno, California 93724-0002

On Date: 11/06/2024

Clerk, by _____, Deputy



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Clerk's Certificate of Mailing Additional Address Page Attached