UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

Case No. CV 15-6457 MWF (JEMx) **Date: June 22, 2017**
Title: Rachel Cody, et al. -*v*- SoulCycle Inc.

Present: The Honorable MICHAEL W. FITZGERALD, U.S. District Judge

Deputy Clerk:	Court Reporter:
Rita Sanchez	Not Reported
Attorneys Present for Plaintiff:	**Attorneys Present for Defendant:**
None Present	None Present

Proceedings (In Chambers): ORDER APPROVING PRELIMINARILY THE SETTLEMENT OF A CLASS ACTION [221]

This matter is before the Court on the Unopposed Motion for Preliminary Approval of Class Action Settlement (the "Motion"), filed by Plaintiffs Rachel Cody and Lindsey Knowles on behalf of a putative class (the "Class") on June 16, 2017. (Docket No. 221). The Court has read and considered the papers filed on the Motion and held a hearing on **June 19, 2017**.

For the reasons set forth below, the Motion is **GRANTED**. The proposed settlement is substantively and procedurally fair, and the proposed class meets the requirements of Federal Rules of Civil Procedure 23(a) and (b)(3). Finally, the proposed notice and dissemination procedure appear effective, and meet the requirements of Federal Rule of Civil Procedure 23(c).

I. BACKGROUND

A. Factual Background

On a motion for class certification, "a court must accept the substantive allegations in the complaint as true . . . ." *Vinh Nguyen v. Radient Pharm. Corp.*, 287 F.R.D. 563, 568 (C.D. Cal. 2012). The following allegations are drawn from the Second Amended Complaint ("SAC," Docket No. 33) and the Court's prior orders re dismissal. (*See* Docket Nos. 30, 40).

SoulCycle, a corporation that describes itself as a "lifestyle brand that strives to empower riders in an immersive fitness experience," operates indoor cycling studios throughout the nation. (SAC ¶ 34). At each studio, SoulCycle offers indoor, stationary-bike fitness classes (commonly known as "spin classes") taught and led by SoulCycle instructors. (*Id.* ¶ 35). To attend a class, customers must purchase what the Second Amended Complaint terms a "Series Certificate." (*Id.*). The Court has previously noted that SoulCycle disputes the "Series Certificate" nomenclature (SoulCycle prefers the term "class"), but the Court continues to use "Series Certificate" for clarity and consistency. (*See* Docket No. 33 at 1 n.1). Customers may redeem the Series Certificate for a spot in their preferred class. (*Id.* at ¶¶ 35, 56).

SoulCycle sells Series Certificates in groups of one to fifty sessions with price increments of $30, $34, $40, and $70 per session. (SAC ¶ 35). The value of a given Series Certificate is the number of sessions multiplied by the price per session. (*Id.*). So, for example, a customer could purchase a ten-session Series Certificate for $300, or $30 per session. (*Id.*).

Accordingly, as the Second Amended Complaint explains, "[w]hen buying a Series Certificate, the customer gives SoulCycle an amount of money that is then credited to the Series Certificate and may be drawn against to purchase exercise sessions"; "[e]ach redemption of an exercise session is a debit from the balance associated with the customer's Series Certificate." (SAC ¶ 37). When a customer views the webpage associated with their account, the cash value of the Series Certificate and the number of classes it entitles the customer to redeem are displayed on the screen. (*Id.* ¶ 63).

SoulCycle sets an expiration date on classes, which varies depending on the number of classes purchased. (SAC ¶ 51). The more a customer pays, the longer the expiration period lasts — so, for example, a $30 Series Certificate for a single class expires after only 30 days, whereas a $780 Series Certificate for 30 classes expires after a year. (*Id.*; *see also id.* ¶ 39, fig. 1). When a Series Certificate expires, the customer can no longer use it to redeem a class. (*Id.* ¶ 8). SoulCycle does not refund unused portions of a Series Certificate upon expiration. (*Id.* ¶ 43).

SoulCycle also prices its classes differently based on geographic region. (*Id.* ¶ 56). A class in San Francisco may cost $30, while a class in New York costs $34. (*Id.*). Under SoulCycle's "Class Transfer" program, customers may use Series Certificates to redeem classes in any other region, so long as the class is priced at an equal or lesser value. (*Id.*). If a customer purchases a lower-value class — for example, if the customer uses a $40 Series Certificate to purchase a $30 class — SoulCycle states that "the customer . . . forfeits any amount paid in excess of the price of a single class at the location at which the class is redeemed." (*Id.* ¶ 58). However, a class of lesser value cannot be redeemed for a class of greater value, or even applied toward the purchase of a greater value class. (*Id.* ¶¶ 56–58). That is, a customer could not use a $34 New York class to redeem a $40 class in the Hamptons. (*Id.* ¶ 57, fig.8).

Putative Lead Plaintiff Rachel Cody is a resident of Los Angeles County who, in June 2015, purchased a $30 Series Certificate for a single class. (SAC ¶¶ 11–12). The Series Certificate had a 30-day expiration period, and Cody was unable to redeem the Series Certificate before it expired. (*Id.* ¶ 16). Upon expiration, the Series Certificate was removed from Cody's online user account page. (*Id.* ¶ 17). Although Cody tried to redeem her Series Certificate, she was unable to do so. (*Id.*). Cody forfeited the unused balance and the "the expired funds went straight to SoulCycle." (*Id.* ¶ 19).

Putative Lead Plaintiff Lindsey Knowles is also a resident of Los Angeles County who, in May 2015, purchased a $30 Series Certificate for a single class through SoulCycle's website. (*Id.* ¶¶ 22–23). Like Cody's Series Certificate, Knowles' Series Certificate had a 30-day expiration period, and Knowles was unable to redeem it before it expired. (*Id.* ¶ 27). The day the Series Certificate expired, it was removed from Knowles' online user account page. (*Id.* ¶ 28). Although Knowles tried to book a class with the expired Series Certificate, she was unable to do so. (*Id.*). Knowles was unable to recover the money she had paid for the Series Certificate. (*Id.* ¶ 31).

B. Procedural History

Cody filed this action on August 25, 2015 (Docket No. 1), and filed the First Amended Complaint on October 9, 2015 (Docket No. 12), asserting seven claims

including violations of the Electronic Funds Transfer Act ("EFTA") as amended by the Credit Card Accountability and Disclosure Act ("CARD") and violations of the California's gift certificate law, California Civil Code section 1749.5 ("Gift Certificate Law"). On January 11, 2016, the Court denied SoulCycle's motion to dismiss, concluding that the FAC sufficiently alleged that the Series Certificates were gift certificates, as defined under the EFTA and California law. ("January Order," Docket No. 30). Several other claims were dismissed. (*Id.*).

On February 10, 2016, Plaintiffs filed their Second Amended Complaint. (Docket No. 33). On April 22, 2016, the Court granted SoulCycle's renewed motion to dismiss as to Plaintiffs' claim under the Gift Certificate Law after Plaintiffs agreed to withdraw it. ("April Order," Docket No. 40). The Court otherwise permitted Plaintiffs to proceed on their EFTA and California Business and Professions Code section 17200 *et seq*. (the "UCL") claims. The Court reserved the question of whether Plaintiffs had properly alleged a violation of the UCL based on the Gift Certificate Law. (*Id.* at 7).

On October 31, 2016, Plaintiff filed a Motion for Class Certification. (Docket No. 71). On March 13, 2017, the Court held a hearing on the Motion for Class Certification. (Docket No. 190). Before the Court issued its final ruling on the Motion for Class Certification, the parties filed a Joint Report and Notice of Settlement in Principle (Docket No. 217), following which the Court vacated and stayed all pending deadlines and denied as moot all pending motions (Docket No. 218).

C. Summary of the Settlement Terms

The Settlement Agreement is attached to the Declaration of Daniel P. Hipskind ("Hipskind Decl.") as Exhibit 1. (Docket No. 221-2). In short, the Settlement Agreement (1) requires SoulCycle to maintain for at least two years alterations made to its business practices in response to the litigation, and (2) permits class members to choose between reinstatement of up to two expired classes or cash reimbursement for up to two expired classes.

SoulCycle does not oppose certification of a class (the "Settlement Class") for purposes of settlement. (Mot. at 7). The Settlement Class is proposed to be comprised of:

> SoulCycle customers nationwide who purchased, during the period commencing on August 25, 2014 and ending on February 10, 2017, a SoulCycle class that expired unused; and
>
> SoulCycle customers with a California billing address who purchased, during the period commencing February 1, 2012 and ending February 10, 2017, a SoulCycle class that expired unused.

(Settlement Agreement at ¶ 2). Excluded from the Settlement Class are: (1) SoulCycle, any entity or division in which SoulCycle has a controlling interest, and its legal representatives, officers, directors, employees, assigns and successors; (2) the judge to whom this case is assigned, the judge's staff, and any member of the judge's immediate family; and (3) all individuals who make a timely election to be excluded from this proceeding using the correct protocol for opting out of the Class pursuant to Fed. R. Civ. P. 23.

The Settlement Agreement provides class members with both injunctive and compensatory relief. The Settlement Agreement further sets out a plan for providing potential class members with notice of their claims.

1. Injunctive Relief

SoulCycle has agreed to change the manner in which it refers to Series Certificates (the Settlement Agreement reverts to using the term "classes"): Rather than referring to a dollar value (*i.e.* "SOUL30" or "SOUL34"), the revised designation refers to a particular geographical region. The new designations will be as follows:

- SOUL-NYC, usable in New York City;
- SOUL-NYS-NJ (NON-NYC), usable in the state of New York, excluding New York City, and in New Jersey;

- SOUL-DC, usable in Washington, D.C.;
- SOUL-CT, usable in Connecticut;
- SOUL-WA, usable in Washington;
- SOUL-NORCAL, usable in a region defined by SoulCycle as Northern California; and
- SOUL-FL-IL-TX-MA-MD-PA-SOCAL, usable in Florida, Illinois, Texas, Massachusetts, Maryland, Pennsylvania, and a region defined by SoulCycle as Southern California. (Settlement Agreement at 12–13).

Additionally, SoulCycle eliminated its class transfer features. As a result, classes purchased in a more expensive region will no longer be transferrable to less expensive regions. (*Id.*). Finally, SoulCycle has revised the Terms and Conditions and Frequently Asked Questions ("FAQs") sections of its website and smartphone app. Changes include the addition or clarification of the following information: (1) SoulCycle classes and gift cards are not the same product; (2) although SoulCycle's gift cards never expire, classes do; and (3) although classes have an expiration date, any person who has purchased a class that has subsequently expired may contact SoulCycle for "help." (*See id.*; Hipskind Decl., Ex. 2 (Revised Terms and Conditions and FAQs) (Docket No. 221-3)).

2. Compensatory Relief

SoulCycle has also agreed to provide compensatory relief to the Settlement Class, as follows:

- Each member of the Settlement Class who purchased one SoulCycle class that expired unused during the class period will receive a "Reinstated Class," *i.e.* a new class automatically placed into his or her SoulCycle account. Class Members who had more than one class expire unused during the class period will receive two Reinstated Classes.

- In lieu of the foregoing, class members may elect a payment of $25 cash in lieu of restatement for each class that expired unused, up to a maximum

of $50. SoulCycle has capped its potential cash liability at $500,000. Class members may elect this option by submitting a form designated the "Cash Claim Form." (Settlement Agreement at 10–11).

3. Proposed Class Notice

The parties have selected Dahl Administration LLC ("Dahl") to administrate the settlement notice and class members' eventual claims. (Settlement Agreement at 14). Dahl's notice expert testifies that the notice plan should reach at least 91% of the Settlement Class. (Hipskind Decl., Ex. 4 ("Kratz Declaration") (Docket No. 221-5)). The parties propose that notice to the class should be accomplished as follows:

1. Upon preliminary approval of the Settlement Agreement, Dahl will disseminate the Class Notice (Settlement Agreement, Ex. A–B) to class members via email. SoulCycle collects and maintains the email addresses of all of its customers, and SoulCycle attests that email is the best means of communication with class members. (Mot. at 10). If the email is returned as undeliverable, Dahl will send via first class mail a postcard to the potential class member containing the summary form of class notice. (Settlement Agreement at 15).

2. Dahl will disseminate the Cash Claim Form to potential class members along with the Class Notice. (Settlement Agreement at 16; *see also* Hipskind Decl., Ex. E ("Proposed Cash Claim Form")).

3. Dahl will create and maintain a settlement website (the "Settlement Website"), to be activated within five days of issuance of the Court's Preliminary Approval Order. The website will include the Preliminary Approval Order, the Class Notice, the Settlement Agreement, and other relevant information regarding the Court's approval process. The Settlement Website will also maintain a "frequently asked questions" section and procedural information regarding the status of the approval process, including the final hearing date, copies of any Final Order and

Judgment, and the time in which the Settlement Agreement will become effective. (Settlement Agreement at 15–16).

4. Dahl will also establish a toll-free telephone number, where potential class members may access pre-recorded messages regarding the Settlement Agreement. (Settlement Agreement at 16).

5. Ten days after filing of the Settlement Agreement, SoulCycle will mail federal and state officials notice of the settlement, as required by the Class Action Fairness Act, 28 U.S.C. § 1715 ("CAFA Notice"). SoulCycle will pay for the costs associated with the foregoing notice plan, as well as the CAFA Notice, over and above the $500,000 set aside for payment of class members' claims. (Settlement Agreement at 16).

In exchange for the foregoing, Plaintiffs and members of the Settlement Class agree to release SoulCycle from liability for any related claims, or any other claims arising under California Civil Code Section 1542, and any similar state or federal law. (Settlement Agreement at 8). The action will be dismissed with prejudice. (*Id.*).

II. PRELIMINARY APPROVAL OF SETTLEMENT

"Approval of a class action settlement requires a two-step process — a preliminary approval followed by a later final approval." *Spann v. J.C. Penney Corp.*, 314 F.R.D. 312, 319 (C.D. Cal. 2016). The standard of review differs at each stage. At the preliminary approval stage, the Court need only "evaluate the terms of the settlement to determine whether they are within a range of possible judicial approval." *Wright v. Linkus Enters., Inc.*, 259 F.R.D. 468, 472 (E.D. Cal. 2009).

"[P]reliminary approval of a settlement has both a procedural and a substantive component." *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1080 (N.D. Cal. 2007). Procedurally, the Ninth Circuit emphasizes that the parties should have engaged in an adversarial process to arrive at the settlement. *See Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) ("We put a good deal of stock in the

product of an arms-length, non-collusive, negotiated resolution, and have never prescribed a particular formula by which that outcome must be tested." (citations omitted)). "A presumption of correctness is said to attach to a class settlement reached in arm's-length negotiations between experienced capable counsel after meaningful discovery." Spann, 314 F.R.D. at 324 (quoting *In re Heritage Bond Litig.*, 2005 WL 1594403, *9 (C.D. Cal. June 10, 2005)).

Substantively, the Court should look to "whether the proposed settlement discloses grounds to doubt its fairness or other obvious deficiencies such as unduly preferential treatment of class representatives or segments of the class, or excessive compensation of attorneys." *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 666 (E.D. Cal. 2008) (quoting *West v. Circle K Stores, Inc.*, No. 040438, 2006 WL 1652598, at *11 (E.D. Cal. June 13, 2006)).

A. Procedural Component

Proposed co-lead class counsel Berger & Hipskind have experience litigating complex, plaintiff-side actions against large companies, as attested to in the Hipskind Declaration. (Hipskind Decl. ¶ 11). Berger & Hipskind have served as co-lead class counsel in at least one other consumer class action, which resulted in a $13 million payment to class members and changes to corporate policy. (*Id.*). Proposed co-lead class counsel Lieff Cabraser is well-known in the Central District and has an extensive history of successfully representing plaintiffs in class actions. (Hipskind Decl. ¶ 13, Ex. 3). This factor thus weighs in favor of preliminary settlement approval.

The parties engaged in meaningful discovery before reaching the proposed settlement. For example, Plaintiffs' Motion for Extension of Deadline to Respond to Discovery and Relief from Admissions (Docket No. 215), filed April 12, 2017, indicates that the parties exchanged the first round of requests for admission and other discovery responses by March 14, 2017. (*Id.* at 1–2).

Moreover, the parties engaged in vigorous, hotly-contested motion practice before this Court prior to reaching an accord. As discussed above, the parties fully litigated two motions to dismiss, had fully briefed and attended a hearing on the

Motion for Class Certification, and had fully briefed a motion brought by SoulCycle seeking leave to amend its answer. The settlement appears to be "the product of an arms-length, non-collusive, negotiated resolution[.]" *Rodriguez*, 563 F.3d at 965.

Additionally, two experienced and respected mediators supervised the settlement negotiations: Randall W. Wulff presided over the April 2017 formal mediation session that led to the settlement agreement in principle, while Antonio Piazza presided over an initial mediation session in September 2016, following which the parties continued their settlement negotiations for several weeks. (Mot. at 14; Hipskind Decl. ¶ 18). The fact that the parties utilized experienced mediators to reach the settlement agreement indicates that the settlement was properly the product of arms-length negotiation. *See Alberto*, 252 F.R.D. at 666–67 (noting the parties' enlistment of "a prominent mediator with a specialty in [the subject of the litigation] to assist the negotiation of their settlement agreement" as an indicator of non-collusiveness) (citing *Parker v. Foster*, No. 05–0748, 2006 WL 2085152, at *1 (E.D. Cal. July 26, 2006); *Glass v. UBS Fin. Servs., Inc.*, No. 06–4068, 2007 WL 221862, at *5 (N.D. Cal. Jan. 26, 2007)). This factor weighs in favor of preliminarily approving the settlement.

In sum, the Court concludes that the proposed class is represented by experienced counsel, who engaged in meaningful discovery and motion practice while pursuing arms-length settlement negotiations with Defendants. The procedural component of the inquiry is met.

B. Substantive Component

The proposed settlement also appears to be generally reasonable and fair to class members. As discussed above, putative class members will receive one to two Reinstated Classes as compensation for Series Certificates/classes that previously expired unused. Putative class members who no longer wish to take classes at SoulCycle, or who for any other reason would prefer it, can opt to receive up to $50 instead. Additionally, the Settlement Agreement obligates SoulCycle to make changes to its business practices, to bring them into better compliance with federal and California statutes, and to more clearly inform customers about SoulCycle's flexible

policy regarding expired classes. The proposed relief has value, and when compared with the likely difficulties of litigating this action past summary judgment it is an appropriate level of compensation for class members. *See, e.g., Nat'l Rural Telecommunications Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004) (emphasizing the requirement that courts "consider the vagaries of litigation and compare the significance of immediate recovery by way of the compromise to the mere possibility of relief in the future, after protracted and expensive litigation" and noting that "[i]t has been held proper to take the bird in hand instead of a prospective flock in the bush") (quoting *Oppenlander v. Standard Oil Co. (Indiana)*, 64 F.R.D. 597, 624 (D. Colo. 1974)).

As discussed at the hearing, the parties have agreed to request attorneys' fees and any special award to the named Plaintiffs separately from the award to the class. (Mot. at 15). In this regard, too, the Settlement Agreement appears to be substantively fair, and to put the interests of the class first.

Finding the Settlement Agreement both substantively and procedurally fair, the Court determines that the proposed Settlement Agreement must be preliminarily **APPROVED.**

III. CLASS CERTIFICATION

A court may certify a class for settlement purposes only. *See In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 942 (9th Cir. 2015). In *Amchem Products, Inc. v. Windsor*, 521 U.S. 591 (1997), the Supreme Court explained the differences between approving a class for settlement and for litigation purposes:

> Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, *see* Fed. Rule Civ. Proc. 23(b)(3)(D), for the proposal is that there be no trial. But other specifications of the Rule — those designed to protect absentees by blocking unwarranted or overbroad class definitions — demand undiluted, even heightened, attention in the settlement context. Such attention is of vital importance, for a court asked

> to certify a settlement class will lack the opportunity, present when a case is litigated, to adjust the class, informed by the proceedings as they unfold.

Id. at 620.

> As discussed above, the proposed class is defined as:
>
> SoulCycle customers nationwide who purchased, during the period commencing on August 25, 2014 and ending on February 10, 2017, a SoulCycle class that expired unused; and
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> SoulCycle customers with a California billing address who purchased, during the period commencing February 1, 2012 and ending February 10, 2017, a SoulCycle class that expired unused.

(Settlement Agreement at ¶ 2).

Federal Rule of Civil Procedure 23(a) requires the putative class to meet four threshold requirements: numerosity, commonality, typicality, and adequacy of representation. *Id.*; *see also Leyva v. Medline Indus. Inc.*, 716 F.3d 510, 512 (9th Cir. 2013). In addition, the proposed class must satisfy Rule 23(b)(3), which requires that "questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). Considering these requirements, the Court concludes that class certification is appropriate.

A. Numerosity

Under Rule 23(a)(1), a class must be "so numerous that joinder of all members is impracticable . . . ." *Id.* The Settlement Class includes more than 146,000 people, satisfying numerosity. (Hipskind Decl. ¶ 19).

B. Commonality

Rule 23(a)(2) requires that the case present "questions of law or fact common to the class." *Id.* The Supreme Court's decision in *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011), clarified that to demonstrate commonality, the putative class must show that their claims "depend upon a common contention . . . that it is capable of classwide resolution — which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Id.* at 350. That requirement is met here. Plaintiffs sought resolution of common factual questions, including whether what Plaintiffs deemed "Series Certificates" were in fact gift certificates with expiration dates of fewer than five years. *Compare*, 15 U.S.C. § 16931-1(c)(1) *with* (SAC ¶¶ 39, 51). Resolution of this issue would establish SoulCycle's liability "in one stroke" and therefore meets the requirement of commonality.

C. Typicality

Rule 23(a)(3) requires the putative class to show that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." *Id.* The claims of the representative parties need not be identical to those of the other putative class members; rather, "[i]t is enough if their situations share a 'common issue of law or fact,' and are 'sufficiently parallel to insure a vigorous and full presentation of all claims for relief.'" *California Rural Legal Assistance, Inc. v. Legal Servs. Corp.*, 917 F.2d 1171, 1175 (9th Cir. 1990) (internal citations omitted). Here, the named Plaintiffs' claims are premised on exactly the same policy as those of the absent class members: SoulCycle's alleged practice of imposing expiration dates on classes in violation of state and federal law. Any individual defenses SoulCycle might have brought as against the named Plaintiffs are not relevant when certifying a class for settlement purposes, and thus the Court concludes that the typicality requirement is met.

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D. Adequacy

Finally, Rule 23(a)(4) requires the representative parties to "fairly and adequately protect the interests of the class." *Id.* "In making this determination, courts must consider two questions: '(1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?'" *Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015, 1031 (9th Cir. 2012) (quoting *Hanlon*, 150 F.3d at 1020). Additionally, "the honesty and credibility of a class representative is a relevant consideration when performing the adequacy inquiry because an untrustworthy plaintiff could reduce the likelihood of prevailing on the class claims." *Harris v. Vector Mktg. Corp.*, 753 F. Supp. 2d 996, 1015 (N.D. Cal. 2010) (quoting *Searcy v. eFunds Corp.*, 2010 WL 1337684, at *4 (N.D. Ill. Mar. 31, 2010)).

SoulCycle vigorously disputed named Plaintiffs' adequacy in the briefing on the class certification motion. Essentially, SoulCycle was concerned that Plaintiffs had an improperly close relationship with their attorneys, making Plaintiffs more likely to put the interests of their attorneys ahead of the interests of the class. (*See* Docket No. 135 at 9). However, in the Court's view Plaintiffs appear to be reasonably knowledgeable about the claims at issue and their responsibilities as lead plaintiffs. Nor is Plaintiffs' acquaintance with putative lead counsel from Berger & Hipskind sufficient to call into question Plaintiffs' loyalties — especially considering that Lieff Cabraser, a firm with whom Plaintiffs apparently have no prior connection, is serving as co-lead counsel.

Accordingly, the Court finds the requirements for Rule 23(a) to be met. The Court next considers whether the additional requirements of Rule 23(b) are met.

E. Predominance

"The Rule 23(b)(3) predominance inquiry asks the court to make a global determination of whether common questions prevail over individualized ones." *Torres v. Mercer Canyons Inc.*, No. 15-35615, 2016 WL 4537378, at *5 (9th Cir. Aug. 31, 2016). That is, "an individual question is one where members of a proposed class will need to present evidence that varies from member to member, while a common

question is one where the same evidence will suffice for each member to make a prima facie showing or the issue is susceptible to generalized, class-wide proof." *Id.* (quoting *Tyson Foods v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016)).

Here, the Settlement Agreement provides for a set amount of compensatory damages and injunctive relief, both of which are susceptible to generalized, class-wide proof that the expiration dates on SoulCycle's classes violated the relevant state and federal statutes governing gift certificates. Because the focus is on a common question of SoulCycle's conduct, and Plaintiffs need not prove individualized actual damages, the predominance requirement is easily met in this case.

F. Superiority

Rule 23(b)(3)'s superiority requirement is also met. Rule 23(b)(3) sets out four factors that together indicate that a class action is "superior to other available methods for the fair and efficient adjudication of the controversy":

> (A) the class members' interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action.

Fed. R. Civ. P. 23(b)(3). "The purpose of the superiority requirement is to assure that the class action is the most efficient and effective means of resolving the controversy." *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010) (quoting Charles Wright, Arthur Miller & Mary Kay Kane, *Federal Practice and Procedure*, § 1779 at 174 (3d ed. 2005)).

All four factors favor certifying the proposed settlement class:

First, individual class members have little interest in prosecuting separate actions. Each putative class member's claim is likely too small to justify the cost of

litigation, considering that a single expired class is worth only about $30 on average. Thus, the class action is likely a more efficient means for each individual class member to bring his or her claims. *See Wolin*, 617 F.3d at 1175 ("Where recovery on an individual basis would be dwarfed by the cost of litigating on an individual basis, this factor weighs in favor of class certification."). Moreover, because the claims of all putative class members are virtually identical, there is no reason that any given class member should need to pursue his or her claims individually. *See Westways World Travel, Inc. v. AMR Corp.*, 218 F.R.D. 223, 240 (C.D. Cal. 2003) ("Here, no one member of the Class has an interest in controlling the prosecution of the action because the claims of all members of the Class are virtually identical.").

Second, there does not appear to be any other litigation currently or previously pending concerning similar claims to those at issue in this action.

Third, Plaintiffs have alleged a single course of conduct as the basis for Defendants' liability, along with related, California-specific claims, and therefore this forum is desirable for resolution of the action. *Negrete v. Allianz Life Ins. Co. of N. Am.*, 238 F.R.D. 482, 495 (C.D. Cal. 2006) ("[B]ecause plaintiffs have alleged an overarching fraudulent scheme and include a California sub-class, it is desirable to consolidate the claims in this forum.").

Fourth, as discussed above, a settlement class need not meet the manageability requirement. *See Amchem Products, Inc.*, 521 U.S. at 620. Moreover, the simplicity of the issues raised by this litigation, and the lack of actual damages, indicates that the action would be relatively manageable if it were to proceed to trial.

Accordingly, for the foregoing reasons, the proposed class is **CERTIFIED** for purposes of settlement.

IV. NOTICE AND SETTLEMENT ADMINISTRATION

After the Court certifies a class under Rule 23(b)(3), it must direct to class members the best notice practicable under the circumstances. Fed. R. Civ. P. 23(c)(2)(B).

> The notice must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance though an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

Id. Class notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Trust*, 339 U.S. 306, 314 (1950).

As discussed above, the proposed notice will be sent to class members at their email addresses, the primary means of communication used by SoulCycle to contact its customers. Additionally, the notice will be posted online at a website to be established for that purpose.

The proposed notice is written in relatively plain language. (*See generally*, Settlement Agreement, Exs. A–B). The proposed notice describes the nature of the action and the claims at issue; provides a definition of the certified class as well as a hotline and website for determining if the individual is a class member; explains that the potential class member may retain his or her own attorney; that the individual may be excluded from the class upon request; how and when to request exclusion; and that failing to opt out will bind the class member to the judgment, precluding class members from further litigation. The proposed class notice is detailed and thorough, and it meets the requirements of Rule 23(c)(2)(B). The proposed notice and plan of dissemination are **APPROVED**.

V. CONCLUSION

For the foregoing reasons, the preliminary settlement is **APPROVED**; the class is provisionally **CERTIFIED** for purposes of settlement only; and the notice and plan

of dissemination are **APPROVED.** The Court will hold a Final Approval Hearing pursuant to Fed. R. Civ. P. 23(e) on **October 2, 2017** in Courtroom 5A, United States District Court, 350 West First Street, Los Angeles, California 90012, at **11:30 a.m.**

The Proposed Order Granting Plaintiffs' Motion for Preliminary Approval of Class Action Settlement (Docket No. 221-7) is adopted and incorporated into this Order, as Exhibit A.

IT IS SO ORDERED.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

Case No. CV 15-6457 MWF (JEMx) **Date: June 22, 2017**
Title: Rachel Cody, et al. -*v*- SoulCycle Inc.

EXHIBIT A

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

Case No. CV 15-6457 MWF (JEMx) **Date: June 22, 2017**
Title: Rachel Cody, et al. -*v*- SoulCycle Inc.

ORDER PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT AND DIRECTING NOTICE TO CLASS

WHEREAS, Plaintiffs Rachel Cody and Lindsey Knowles ("Plaintiffs") filed a putative class action against SoulCycle, Inc. ("SoulCycle") on behalf of themselves and all others similarly situated, alleging that SoulCycle's sale of indoor cycling classes constitutes the sale of "gift certificates" as defined under state and federal law, and expiration dates contained on SoulCycle's classes violate the EFTA, the California Gift Card Statute and the UCL;

WHEREAS, Plaintiffs and SoulCycle entered into a Settlement Agreement and Release ("Settlement Agreement") on June 16, 2017, which is attached as Exhibit A to Plaintiffs' Memorandum of Points and Authorities in Support of their Unopposed Motion for Preliminary Approval of Class Action Settlement filed on June 16, 2017, and sets forth the terms and conditions of the proposed settlement and the dismissal of the Litigation[1] against SoulCycle with prejudice;

WHEREAS, Plaintiffs have moved the Court for an Order preliminarily approving the proposed Settlement pursuant to Federal Rule of Civil Procedure 23, certifying a Settlement Class for purposes of settlement, and approving notice to the Settlement Class as more fully described herein;

WHEREAS, SoulCycle does not contest certification of the Settlement Class solely for purposes of settlement;

WHEREAS, the Court is familiar with and has reviewed the record and has

[1] Capitalized terms not defined herein are given the meaning assigned to them in the Settlement Agreement.

reviewed the Settlement Agreement and its exhibits, Plaintiffs' Memorandum of Law in Support of Motion for Preliminary Approval of Class Settlement, and the supporting Declaration of Daniel P. Hipskind, and found good cause for entering the following Order.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. For purposes of this Order, the Court adopts all defined terms as set forth in the Settlement Agreement.

Settlement Class Certification

2. The Court finds, upon preliminary evaluation and for purposes of the Settlement only, that the requirements of Federal Rules of Civil Procedure 23(a) and (b)(3) have been met. The Court preliminarily certifies the following class for purposes of the Settlement only: (1) SoulCycle customers nationwide who purchased, during the period commencing on August 25, 2014 and ending on February 10, 2017, a SoulCycle Class that expired unused; and (2) SoulCycle customers with a California billing address who purchased, during the period commencing on February 1, 2012 and ending on February 10, 2017, a SoulCycle Class that expired unused (the "Settlement Class").

3. The Court preliminarily finds, for purposes of the Settlement only, that the requirements of Federal Rules of Civil Procedure 23(a) and (b)(3) have been satisfied for the Settlement Class in that: (a) the number of Settlement Class Members is so numerous that joinder of all members is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) Plaintiffs' claims are typical of the claims

of the Settlement Class; (d) Plaintiffs and Class Counsel will fairly and adequately represent the interests of the Settlement Class; (e) the questions of law and fact common to the Settlement Class predominate over any questions affecting only individual members of the Settlement Class; and (f) a class settlement is superior to other available methods for the fair and efficient adjudication of the controversy.

4. The Court finds that pursuant to Federal Rule of Civil Procedure 23, and for purposes of the Settlement only, that Plaintiffs Rachel Cody and Lindsey Knowles are adequate class representatives and appoints them to serve as representatives for the Settlement Class.

5. The Court also finds that the law firms of Berger & Hipskind LLP, and Lieff Cabraser Heimann & Bernstein, LLP have significant expertise and knowledge in prosecuting class actions involving consumer claims, and have committed the necessary resources to represent the Settlement Class. The Court, for purposes of settlement, appoints Berger & Hipskind, LLP, and Lieff Cabraser Heimann & Bernstein, LLP as Class Counsel for the Settlement Class pursuant to Federal Rule of Civil Procedure 23(g).

Preliminary Approval of the Settlement

6. The Court finds that the Settlement is the product of non-collusive, arm's-length negotiations between experienced counsel who were thoroughly informed of the strengths and weaknesses of the case through discovery and motion practice, and whose negotiations were supervised by an experienced mediator. The Court also finds that the Settlement is within the range of possible approval because it compares

favorably with the expected recovery balanced against the risks of continued litigation and does not grant preferential treatment to the Plaintiffs and their counsel, and has no obvious deficiencies.

7. The Court hereby preliminarily approves the Settlement, as memorialized in the Settlement Agreement, as fair, reasonable, and adequate, and in the best interest of the Plaintiffs and the other Settlement Class Members, subject to further consideration at the Final Approval Hearing to be conducted as described below.

8. The Court hereby stays this Litigation pending final approval of the Settlement, and enjoins, pending final approval of the Settlement, any actions brought by Settlement Class Members concerning a Released Claim.

Manner and Form of Notice

9. The Court approves the Notice substantially in the form attached as Exhibits 2-4 to the Settlement Agreement. The Court also finds that the proposed Notice Program, which includes e-mail dissemination of Class Notice to the Settlement Class, first-class mail service of postcard Summary Notice to those Settlement Class Members for whom e-mail notice has been undeliverable and the posting of the Notice on the Settlement Website, will provide the best notice practicable under the circumstances. The Notice is reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Litigation, the effect of the proposed Settlement (including the Released Claims contained therein), and any motion for attorneys' fees, costs, and expenses, and service awards, and of their right to submit a claim form and object to any aspect of the proposed Settlement. The

Notice constitutes due, adequate and sufficient notice to Settlement Class Members; and satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure, due process, and all other applicable law and rules. The date and time of the Final Approval Hearing shall be included in the Notice before it is mailed or posted.

10. The Court hereby appoints Dahl Administration LLC to serve as the Settlement Administrator to supervise and administer the notice procedures, establish and operate a Settlement Website and a toll-free number, administer the Claims processes, distribute cash payments according to the processes and criteria set forth in the Settlement Agreement, and perform any other duties of the Settlement Administrator provided for in the Settlement Agreement.

11. SoulCycle shall provide the Settlement Administrator with the email addresses of the Settlement Class Members (the "Class List") for the purpose of disseminating e-mail Notice, at no expense to the Settlement Class or Class Counsel. SoulCycle shall take appropriate measures to ensure that the Class List is transferred to the Settlement Administrator in a secure manner, and the Settlement Administrator shall maintain the Class List in a secure manner.

12. The Settlement Administrator shall provide notice of the Settlement and the Final Approval Hearing to Settlement Class Members as follows:

a. Dahl will disseminate Class Notice to Settlement Class Members via email.

b. Dahl will send first-class mail service of postcard Summary Notice to the last known address (if one was provided) for those Settlement Class Members associated with an undeliverable e-mail address; and

c. As soon as practicable following the entry of this Order, and no later than the commencement of the Notice Program, the Settlement Administrator shall establish the Settlement Website pursuant to the terms of the Settlement Agreement. The Notice shall be posted on the Settlement Website on or before the Notice Deadline.

The Final Approval Hearing

13. The Court will hold a Final Approval Hearing on **October 2, 2017, at 11:30 a.m.** in the United States District Court for the Central District of California, First Street Courthouse, 350 West First Street, Los Angeles, CA 90012, Courtroom 5A, for the following purpose: (i) to finally determine whether the Settlement Class satisfies the applicable requirements for class action treatment under Rules 23(a) and 23(b) (3); (ii) to determine whether the Settlement should be approved as fair, reasonable, and adequate and in the best interests of the Settlement Class; (iii) to rule upon Class Counsel's application for an award of attorneys' fees, costs, and expenses; (iv) to rule upon Class Counsel's application for service awards to Plaintiffs; and (v) to consider any other matters that may properly be brought before the Court in connection with the Settlement.

14. The Court reserves the right to (a) adjourn or continue the Final Approval Hearing without further notice to Settlement Class Members and (b) approve the

Settlement Agreement with modification and without further notice to Settlement Class Members. The parties retain their rights under the Settlement Agreement to terminate the Settlement if the Court rejects, materially modifies, materially amends or changes, or declines to finally approve the Settlement.

15. Class Counsel's application for an award of attorneys' fees, expenses, and costs, and Class Counsel's application for service awards, will be considered separately from the fairness, reasonableness, and adequacy of the Settlement. Any appeal from any orders relating solely to Class Counsel's application for an award of attorneys' fees, costs, and expenses, or Class Counsel's application for service awards, or any reversal or modification thereof, shall not operate to terminate or cancel the Settlement, or affect or delay the finality of the judgment approving the Settlement and Agreement.

16. If the Settlement is approved, all Settlement Class Members who do not exclude themselves will be bound by the proposed Settlement provided for in the Settlement Agreement, and by any judgment or determination of the Court affecting Settlement Class Members. All Settlement Class Members who do not exclude themselves shall be bound by all determinations and judgments in the Litigation concerning the Settlement, whether favorable or unfavorable to the Settlement Class.

17. Papers in support of final approval of the Settlement and Class Counsel's application for attorneys' fees, expenses and costs and service awards shall be filed no later than fourteen (14) calendar days prior to the Objection Deadline. Papers in opposition shall be filed in accordance with paragraph 19 below. Reply papers shall be filed no later than seven (7) calendar days prior to the Final Approval Hearing.

Objections and Appearance at the Final Approval Hearing

18. Any member of the Settlement Class may appear at the Final Approval Hearing and show cause why the proposed Settlement should or should not be approved as fair, reasonable, and adequate and in the best interests of the Settlement Class, or why judgment should or should not be entered, or to present opposition to Class Counsel's application for attorneys' fees, costs, and expenses or to Class Counsel's application for service awards. No Settlement Class Member or any other person shall be heard or entitled to contest the approval of the terms and conditions of the Settlement, or if approved, the judgment to be entered approving the Settlement, or Class Counsel's application for an award of attorneys' fees, costs, and expenses, or for service awards, unless that Settlement Class Member or person (i) filed objections with the Clerk of the United States District Court for the Central District of California, electronically or by first-class mail, no later than twenty-one (21) calendar days before the Final Approval Hearing; and (ii) has served written objections, by first-class mail, including the basis for the objection(s), as well as copies of any papers and briefs in support of his or her position upon each of the following no later than twenty-one (21) calendar days before the Final Approval Hearing: Clerk of the Court, Class Counsel, and SoulCycle's Counsel, as set forth in the Notice.

19. For an objection to be considered by the Court, the objection must set forth: (a) the name of this Litigation; (b) the objector's full name, address, email address, and telephone number; (c) an explanation of the basis upon which the objector claims to be a Settlement Class Member; (d) all grounds for the objection,

accompanied by any legal support for the objection; (e) the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement, Class Counsel's fee application, or the application for service awards; (f) the identity of all counsel representing the objector who will appear at the Final Approval Hearing; (g) a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection; (h) a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and (i) the objector's signature, even if represented by counsel.

20. Any Settlement Class Member who does not make his or her objection in the manner provided for herein shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the Settlement, or to Class Counsel's application for an award of attorneys' fees, costs, and expenses or for service awards. By objecting, or otherwise requesting to be heard at the Final Approval Hearing, a person shall be deemed to have submitted to the jurisdiction of the Court with respect to the objection or request to be heard and the subject matter of the Settlement, including but not limited to enforcement of the terms of the Settlement.

21. Any Settlement Class Member may enter an appearance in the Litigation, at his or her own expense, individually or through counsel of his or her own choice. If a Settlement Class Member does not enter an appearance, he or she will be represented by Class Counsel.

Exclusion from the Settlement Class

22. Any requests for exclusion must be postmarked no later than twenty-one (21) calendar days before the Final Approval Hearing ("Opt-Out Deadline"). Any person who would otherwise be a member of the Settlement Class who wishes to be excluded from the Settlement Class must notify the Settlement Administrator in writing of the intent to exclude himself or herself from the Settlement Class, postmarked no later than the Opt-Out Deadline. The written notification must include the individual's (i) name, (ii) address, (iii) a statement that the person wishes to be excluded from the Settlement in this Litigation, and (iv) signature. All persons who submit valid and timely notifications of exclusion in the manner set forth in this paragraph shall have no rights under the Settlement Agreement, shall not share in the forms of relief provided by the Settlement, and shall not be bound by the Settlement Agreement or any orders of the Court, or any final judgment.

23. Any person who would otherwise be a member of the Settlement Class and who does not notify the Settlement Administrator of his/her intent to exclude himself or herself from the Settlement Class in the manner stated in this Order shall be deemed to have waived his or her right to be excluded from the Settlement Class, and shall forever be barred from requesting exclusion from the Settlement Class in this or any other proceeding, and shall be bound by the Settlement and the judgment, including but not limited to, the release of the Released Claims against the Released Parties provided for in the Settlement Agreement and the judgment, if the Court approves the Settlement.

24. The Settlement Administrator shall also provide a final report to Class Counsel and SoulCycle, no later than fourteen (14) calendar days before the Final Approval Hearing, that summarize the number of opt-out notifications received to date, and other pertinent information.

25. Class Counsel shall move to file copies of all completed opt-out notifications under seal with the Court no later than seven (7) calendar days prior to the Final Approval Hearing.

Termination of the Settlement

26. If the Settlement fails to become effective in accordance with its terms, or if the judgment is not entered or is reversed, vacated or materially modified on appeal (and, in the event of material modification, if either Party elects to terminate the Settlement), this Order shall be null and void, the Settlement Agreement shall be deemed terminated (except for any paragraphs that, pursuant to the terms of the Settlement Agreement, survive termination of the Settlement Agreement), and the Parties shall return to their positions without prejudice in any way, as provided for in the Settlement Agreement.

The Use of this Order

27. As set forth in the Settlement Agreement, the fact and terms of this Order and the Settlement, all negotiations, discussions, drafts and proceedings in connection with this Order and the Settlement, and any act performed or document signed in connection with this Order and the Settlement, shall not, in this or any other Court, administrative agency, arbitration forum or other tribunal, constitute an admission, or

evidence, or be deemed to create any inference (i) of any acts of wrongdoing or lack of wrongdoing, (ii) of any liability on the part of SoulCycle to the Class Representatives, the Settlement Class or anyone else, (iii) of any deficiency of any claim or defense that has been or could have been asserted in this Litigation, (iv) of any damages or lack of damages suffered by the class representatives, the Settlement Class or anyone else, or (v) that any benefits obtained by the Settlement Class pursuant to the Agreement or any other amount represents the amount that could or would have been recovered in this Litigation against SoulCycle if it was not settled at this point in time. The fact and terms of this Order and the Settlement, all negotiations, discussions, drafts and proceedings in connection with this Order and the Settlement, including but not limited to, the judgment and the release of the Released Claims provided for in the Settlement Agreement and the judgment, shall not be offered or received in evidence or used for any other purpose in this or any other proceeding in any court, administrative agency, arbitration forum or other tribunal, except as necessary to enforce the terms of this Order and/or the Settlement.

28. The Court retains exclusive jurisdiction over the Litigation to consider all further matters arising out of or connected with the Settlement.

IT IS SO ORDERED.