UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

Case No. CV 15-6457 MWF (JEMx) **Date: October 3, 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 GRANTING PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT [237] AND MOTION FOR ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND SERVICE AWARDS [238]

Before the Court is lead Plaintiffs Rachel Cody and Lindsey Knowles' Motion for Final Approval of Class Action Settlement ("Settlement Motion" (Docket No. 237)), and Motion for Attorneys' Fees, Reimbursement of Expenses, and Service Awards ("Fee Motion" (Docket No. 238)), both filed on August 28, 2017. On **October 2, 2017**, the Court held a hearing on the Settlement Motion and the Fee Motion.

Having reviewed the briefs and considered the arguments presented at the hearing and raised by objectors in written objections, the Court **GRANTS** the Settlement Motion. The proposed settlement is fair, reasonable, and adequate to serve the interests of the class members. The Court also **GRANTS** the Fee Motion. The requested attorneys' fees and costs constitute fair compensation for counsel's efforts and reimbursement for their expenses, and the service awards requested are reasonable.

I. BACKGROUND

The Court discussed the background facts extensively in its previous Order Approving Preliminarily the Settlement of a Class Action. ("Preliminary Approval Order" (Docket No. 225)).

On February 10, 2016, the Lead Plaintiffs filed the operative Second Amended Complaint in this action on behalf of purchasers of SoulCycle cycling classes whose cycling class credits expired unused. (Second Amended Complaint ("SAC") (Docket No. 33)). The SAC alleges violations of the Electronic Funds Transfer Act ("EFTA") and California Business and Professions Code section 17200 *et seq*. ("UCL"). The claims centered on Defendant SoulCycle's requirement that customers purchase class credits in order to use them to book cycling classes. Those credits often expired before customers could use them, and customers could not obtain refunds of the money they had paid to SoulCycle for those expired class credits.

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).

The Court preliminarily approved the Settlement Agreement on June 22, 2017. (Docket No. 225). Shortly thereafter, Marko Cavka filed a Motion to Intervene (Docket No. 227), which the Court denied after a hearing. (Docket No. 245). Mr. Cavka also filed an Objection to the Class Action Settlement. (Docket No. 240). Objector Lori Kilgannon also filed a materially identical Objection. (Docket No. 241). Both Objectors intended to appear through counsel at the Final Approval Hearing, but filed notices withdrawing their Objections prior to the hearing. (Docket Nos. 251, 252). Neither Mr. Cavka nor Ms. Kilgannon appeared at the hearing.

II. THE SETTLEMENT

The Proposed Settlement contains an economic component and a non-economic component. The non-economic component requires SoulCycle to make substantial alterations to its business practices in response to the litigation. Those changes are intended to clarify SoulCycle's policies going forward. For example, SoulCycle has clarified where purchased class credits can be used, and updated the Terms and

Conditions and Frequently Asked Questions on its Website and smartphone App to reinforce the facts that class credits do expire while gift certificates do not, and that customers may contact SoulCycle to request or discuss extensions or reinstatements of expired classes. (Settlement Mot. at 8–9).

The economic component of the Proposed Settlement permits class members to choose between reinstatement of up to two expired classes or cash reimbursement for up to two expired classes. (Settlement Mot. at 7–8). The classes will be automatically reinstated to class members' online SoulCycle accounts, unless the class members elect the Cash Option, which allows payment of up to $50 (or $25 for up to two reinstated classes each). (*Id.*). In other words, Class members do not need to submit a claim form to receive the reinstated classes, but if they elect the Cash Option, they must submit a Cash Claim Form. (*Id.* at 8).

In exchange for the economic and noneconomic consideration described above, the Settlement Class agrees to release "any and all causes of action, claims, damages, equitable relief, legal relief, and demands or rights . . . arising out of or related to the claims asserted by Plaintiffs and the Settlement Class Members in the Litigation or arising from the purchase of a SoulCycle class that expired unused during the Class Period." (Settlement Mot. at 9–10).

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 Mot. at 7).

Notice was provided to settlement class members in the manner approved by the court in the Preliminary Approval Order. The Court-approved notice was emailed to

152,013 Class members, mailed to 3,990 class members, and posted on the Settlement website. The notice program was overseen by Dahl Administration, an experienced claims administrator. (*See* Settlement Mot. at 20; Declaration of Kelly Kratz Regarding Notice and Settlement Administration (Docket No. 237-1)).

Each of the two Lead Plaintiffs seek a Service Award of $5,000 each, for a total of $10,000. (Fee Mot. at 1). Class Counsel seek an award of $1,790,000, inclusive of costs. (*Id.*).

III. DISCUSSION

A. Class Certification

The Court preliminarily certified the settlement class pursuant to Federal Rule of Civil Procedure 23(b)(3). (Preliminary Approval Order at 11–16). There have been no relevant changes since that time, apart from the fact that eight of approximately 150,000 potential class members have opted out, and three class members have submitted objections (two now withdrawn). Therefore, the Court now **CERTIFIES** the settlement class for the reasons set forth in the Preliminary Approval Order.

B. Final Approval of Class Action

Before approving a class action settlement, Rule 23 of the Federal Rules of Civil Procedure requires the Court to determine whether the proposed settlement is fair, reasonable, and adequate. Fed. R. Civ. P. 23(e)(2). "To determine whether a settlement agreement meets these standards, a district court must consider a number of factors, including: (1) the strength of plaintiffs' case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed, and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement." *Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003) (internal citation and quotation marks omitted) (applying the factors announced in *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)).

"The relative degree of importance to be attached to any particular factor will depend upon and be dictated by the nature of the claim(s) advanced, the type(s) of relief sought, and the unique facts and circumstances presented by each individual case." *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982). "It is the settlement taken as a whole, rather than the individual component parts, that must be examined for overall fairness, and the settlement must stand or fall in its entirety." *Staton*, 327 F.3d at 960 (quoting *Hanlon*, 150 F.3d at 1026). "The involvement of experienced class action counsel and the fact that the settlement agreement was reached in arm's length negotiations, after relevant discovery had taken place create a presumption that the agreement is fair." *Linney v. Cellular Alaska P'ship*, Nos. C–96–3008 DLJ, C–97–0203 DLJ, C–97–0425 DLJ, C–97–0457 DLJ, 1997 WL 450064, *5 (N.D. Cal. July 18, 1997), *aff'd*, 151 F.3d 1234, 1234 (9th Cir. 1998).

"In addition, the settlement may not be the product of collusion among the negotiating parties." *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th Cir. 2000).

The Proposed Settlement is the outcome of an arms-length negotiation conducted with the help of experienced mediators Antonio Piazza and Randall W. Wulff. (Settlement Mot. at 6). "The assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive." *Satchell v. Fed. Express Corp.*, No. C 03 2878 SI, 2007 WL 1114010, at *4 (N.D. Cal. Apr. 13, 2007). Moreover, Class Counsel are experienced class action litigators who recommend the Proposed Settlement as fair and in the best interests of the class. (Settlement Mot. at 14). The Court is satisfied that the proposed settlement is not the product of collusion between the parties. The arms-length nature of the negotiation resulting in the proposed settlement and the recommendation of experienced class action counsel supports final approval. *See Linney*, 1997 WL 450064, at *5.

Moreover, consideration of the *Hanlon* factors dictates final approval of the proposed settlement:

1. Strength of Plaintiff's case and risk, expense, complexity, and likely duration of further litigation

When assessing the strength of a plaintiff's case, the court does not reach "any ultimate conclusions regarding the contested issues of fact and law that underlie the merits of this litigation." *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 720 F. Supp. 1379, 1388 (D. Ariz. 1989). Plaintiffs acknowledge that continued litigation of this action would present risks both as to class certification and ultimate findings of liability. (Settlement Mot. at 14–18). Plaintiffs recognize that there is a dearth of legal precedent related to the EFTA, which makes the outcome of their action less certain. Moreover, Defendant SoulCycle's expert testified to the difficulty of Plaintiffs' establishing that all consumers who failed to use their SoulCycle class credits did so because of the credits' expiration dates. The difficulty of establishing that Plaintiffs' harm was ***caused*** by the alleged EFTA violation poses a risk both as to liability and class certification. (*Id.* at 14–15).

Plaintiffs also recognize that Defendant SoulCycle raised strong arguments that the predominance of individual issues weighs against class certification. (Settlement Mot. at 16). For example, Plaintiffs sought to certify a class that included both natural persons and businesses, though Defendant SoulCycle argued that EFTA claims could only be brought on behalf of natural persons. (*Id.*). And, Defendant SoulCycle argued that fact-specific analysis would be required to determine if each member of the California class was properly included, because their billing addresses might not correspond to their residence addresses. (*Id.*).

Therefore, whether the ultimate outcome of this litigation would be (1) class certification, (2) a finding of liability, and (3) a class award superior to the one achieved in the Proposed Settlement is highly uncertain, weighing in favor of final settlement approval.

2. Amount offered in settlement

The Court concludes $6.9–9.2 million offered in the Proposed Settlement is fair and reasonable, especially in light of the considerable non-economic consideration the

Proposed Settlement also provides. The Court looks at "the complete package taken as a whole, rather than the individual component parts" in making this determination. *Officers for Justice*, 688 F.2d at 628 (9th Cir. 1982). The Settlement allows class members to receive up to two reinstated classes (worth $30–40 each), or elect a Cash Option and receive $25 each for up to two reinstated classes instead. (Settlement Mot. at 7–8). As of September 25, 2017, class members submitted 275 valid and timely Cash Claim forms electing the Cash Option. (Supplemental Declaration of Kelly Kratz at 3 (Docket No. 249-1)). The reason the amount of the Settlement is expressed as a range of value is that there are 229,646 reimbursable classes in the Settlement, each of which are valued between $30 and $40. (Mot. at 8 n.2).

Moreover, class members have obtained non-monetary benefits from the Settlement in the form of the substantial business changes the Settlement requires Defendant SoulCycle to make. These changes clarify Defendant SoulCycle's business practices going forward. (Settlement Mot. at 8). Considering the risk and expense of continued litigation, the Proposed Settlement represents fair, reasonable, and adequate compensation to Class Members. (*Id.* at 19). The Court finds this factor weighs in favor of final settlement approval.

3. Extent of discovery completed and stage of the proceedings

This factor requires the Court to evaluate whether "the parties have sufficient information to make an informed decision about settlement." *Linney*, 151 F.3d at 1239. Plaintiffs contend that the parties have engaged in substantial adversarial motion practice and discovery, which has led to a "comprehensive evaluation of the case's strengths and weaknesses and to well-informed settlement discussions." (Settlement Mot. at 13). The parties performed substantial formal discovery over the course of the past two years. In addition, the Settlement discussions were informed by the Court's prior rulings on Defendant SoulCycle's two motions to dismiss. (*Id.* at 14). The Court concludes the parties had ample information with which to make informed settlement decisions. This factor weighs in favor final settlement approval.

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4. Experience and views of Lead Counsel

Plaintiffs' counsel has extensive class action litigation experience, including in the area of consumer protection. (Declaration of Daniel P. Hipskind in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ¶¶ 11–13, Ex. 3 (Docket No. 221-1)). Counsel conducted detailed investigations and discovery in the course of this action, and engaged in both direct negotiations as well as mediated negotiations before ultimately reaching and recommending this Proposed Settlement. (*Id.* at ¶¶ 14–18). This factor weighs in favor of final settlement approval.

5. Reaction of the class members to the proposed settlement

Eight out of approximately 150,000 potential class members opted out and three class members have objected (though two have since indicated they withdrew their objections). "It is established that the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members." *Nat'l Rural Telecomm'cns Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528–29 (C.D. Cal. 2004); *see also Churchill Village LLC v. Gen. Elec.*, 361 F.3d 566, 577 (9th Cir. 2004) (affirming settlement with 45 objections out of 90,000 notices sent).

As discussed above, Marko Cavka and Lori Kilgannon have filed notices withdrawing their Objections. (Docket Nos. 251, 252). However, Rule 23 does not permit withdrawal of objections without the Court's approval. Fed. R. Civ. P. 23(e)(5) ("Any class member may object to the proposal if it requires court approval under this subdivision (e); the objection may be withdrawn only with the court's approval."). Both Objectors indicate that their reason for withdrawing their Objections is that, after mediation, they reached settlements in their separate lawsuits against SoulCycle, and that the terms of those settlements included withdrawal of their Objections in this action. (*Id.*) The Court finds that this explanation is likely sufficient for it to approve the withdrawals, but out of an abundance of caution, the Court considers and heard from Class Counsel at the hearing on the arguments raised in the Cavka and Kilgannon Objections anyway. *See In re Diet Drugs (Phentermine, Fenfluramine, Dexfenfluramine) Prods. Liability Litig.*, 226 F.R.D. 498, 523 n.43 (E.D. Pa. 2005)

("The class members raising this objection have subsequently filed a notice to withdraw their objections. However, because counsel representing these objectors did not file a motion for approval of the withdrawal as required by Rule 23(e)(4)(B) of the Federal Rules of Civil Procedure, we will address this objection.")).

The Cavka and Kilgannon Objections essentially allege that the release of claims in the Proposed Settlement is impermissibly broad because it releases claims for "direct customer contracts" with SoulCycle, not just claims related to gift card purchases. (Cavka Objection at 7; Kilgannon Objection at 7). The Objectors argue that the litigation in this action has always concerned one thing: gift cards. (*Id.*) As a result, the broad release in the Proposed Settlement risked impairing the (previously) pending claims in the separate putative class actions Mr. Cavka and Ms. Kilgannon had brought against SoulCycle. (*Id.*). As this Court noted when it denied Mr. Cavka's prior Motion to Intervene in this action, Mr. Cavka's concerns seemed primarily related the settlement value of his own lawsuit rather than the fairness and adequacy of the Proposed Settlement in this action. (Order Denying Motion to Intervene at 1–2 (Docket No. 245)). That Mr. Cavka and Ms. Kilgannon have withdrawn their Objections now that their own actions have settled reinforces this point.

Regardless of why Mr. Cavka and Ms. Kilgannon objected to the breadth of the release in the Proposed Settlement, the Court finds that the release is appropriate because, as Class Counsel argued in the briefing and at the hearing, it is rooted in the factual allegations of Plaintiffs' Complaint: SoulCycle customers were unable to use their class credits before they expired, and thus were forced to forfeit the money they paid for the credits. *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1287 (9th Cir. 1992) ("The weight of authority holds that a federal court may release not only those claims alleged in the complaint, but also a claim "based on the identical factual predicate as that underlying the claims in the settled class action . . . .") (quotations and citations omitted); *Rodriguez v. W. Publishing Corp.*, 563 F.3d 949, 957 (9th Cir. 2009) (affirming settlement that provide for "release [of] all claims . . . related to conduct alleged in the complaint"). The Court thus overrules the Cavka and Kilgannon Objections.

Class counsel received one other Objection from pro se Objector Kerry Ann Sweeney. ("Sweeny Objection" (Declaration of Daniel P. Hipskind in Support of Plaintiffs' Reply in Support of Motion for Final Approval of Class Action Settlement and Motion for Attorneys' Fees ("Hipskind Declaration"), Ex. 1 (Docket No 248-3)). The Sweeney Objection relates to the Motion for Attorneys' Fees, so will be addressed below.

C. Attorney's Fees and Reimbursement of Litigation Expenses

In the Ninth Circuit, there are two primary methods to calculate attorney's fees: the lodestar method and the percentage-of-recovery method. *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 949 (9th Cir. 2015) (citation omitted). "The lodestar method requires 'multiplying the number of hours the prevailing party reasonably expended on the litigation (as supported by adequate documentation) by a reasonable hourly rate for the region and for the experience of the lawyer.'" *Id.* (citation omitted).

"Under the percentage-of-recovery method, the attorneys' fees equal some percentage of the common settlement fund; in this circuit, the benchmark percentage is 25%." *Id.* (citation omitted). However, the "benchmark percentage should be adjusted, or replaced by a lodestar calculation, when special circumstances indicate that the percentage recovery would be either too small or too large in light of the hours devoted to the case or other relevant factors." *Six Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990). "The Ninth Circuit has identified a number of factors that may be relevant in determining if the award is reasonable: (1) the results achieved; (2) the risks of litigation; (3) the skill required and the quality of work; (4) the contingent nature of the fee; (5) the burdens carried by class counsel; and (6) the awards made in similar cases." *Martin v. Ameripride Services, Inc.*, No. 08cv440–MMA (JMA), 2011 WL 2313604, at *8 (S.D. Cal. June 9, 2011) (citing *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, at 1048–50 (9th Cir. 2002)). The choice of "the benchmark or any other rate must be supported by findings that take into account all of the circumstances of the case." *Vizcaino*, 290 F.3d at 1048.

Class Counsel seeks fees and costs in the amount of $1,790,000, separate and apart from the Settlement amount. The total value of the Settlement amount is between

$6.9 and $9.2 million. $1,790,000 represents 25% of $7,160,000, which is on the lower end of the Settlement value range. In light of the substantial additional value of the injunctive relief provided by the Proposed Settlement, this fee amount is reasonable and fair, especially considering that it is inclusive of costs. *See Vizcaino*, 290 F.3d at 1049 (considering non-monetary benefits conferred by the litigation in evaluating attorneys' fees request).

Counsel have achieved significant benefits for class members in the form of both monetary and non-monetary relief. As discussed above, the risks of an inferior award – if any – if the parties were to continue litigation are high. A class certification order, as well as a finding of liability, remains uncertain. The two law firms representing the class in this action exercised considerable skill in the litigation of two motions to dismiss, the motion for class certification, and substantial discovery (including discovery disputes), and they did so on an entirely contingent basis.

The one Objection to the fee amount comes from Ms. Sweeney, who argues in her written objection that the cash portion of the Settlement amount is minimal, since most of the consideration comes in the form of class reinstatements. (Sweeney Objection at 2). She contends that the class reinstatements are more like "coupons," which weighs against the requested fee amount under the Class Action Fairness Act ("CAFA"). (*Id.* at 3–5). Ms. Sweeney did not appear at the hearing.

However, as Class Counsel emphasized in the briefing and at the hearing, there is a crucial difference between ***coupons*** and ***vouchers***. Class Counsel argues that the class reinstatements provided by the Proposed Settlement are vouchers, not coupons, because they give class members a free product or service. The Ninth Circuit has clarified the difference between coupons and vouchers:

> The settlement gives every class member the option to receive its share of the settlement proceeds in cash or cash-equivalent forgiveness of indebtedness already incurred. This is not a "coupon settlement" and therefore does not trigger the Class Action Fairness Act of 2005's limitations on contingent fees awarded in connection with such settlements.

CLRB Hanson Indus., LLC v. Weiss & Assocs., PC, 465 Fed. Appx. 617, 619 (9th Cir. 2012). "[C]ourts have distinguished between 'coupons,' which provide 'discounts on merchandise or services offered by the defendant,' and 'vouchers,' which provide 'free merchandise or services.'" *Tchoboian v. Fedex Office & Print Servs., Inc.*, No. SA CV 10-01009 JAK (MLGx), 2014 WL 10102826, at *6 (C.D. Cal. Mar 25, 2014). Because class members here may elect the "Cash Option" or keep the "cash-equivalent" of the reinstated classes, without spending any money of their own or receiving any "discount," this Settlement is not a "coupon settlement" and therefore not subject to CAFA's limitations on contingent fees. The Sweeney Objection is overruled.

Accordingly, the Court finds that Class Counsel's fee request is fair and reasonable.

D. Incentive Awards

Plaintiffs seek $5,000 each for the two named plaintiffs in this action. "[N]amed plaintiffs . . . are eligible for reasonable incentive payments" as part of a class action settlement. *Staton*, 327 F.3d at 977 (9th Cir. 2003). When evaluating the reasonableness of an incentive award, courts may consider factors such as "the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, . . . the amount of time and effort the plaintiff expended in pursuing the litigation . . . and reasonabl[e] fear[s of] workplace retaliation." *Id.*

The Fee Motion cites to numerous cases in which service awards of $5,000 are found reasonable. (Fee Mot. at 20 (citing, *e.g.*, *Hawthorne v. Umpqua Bank*, No. CV 11-6700 JST, 2015 WL 1927342, at *8 (N.D. Cal. Apr. 28, 2015) ("Many courts in the Ninth Circuit have also held that a $5,000 incentive award is 'presumptively reasonable.'") (collecting cases))). In light of the extensive caselaw supporting a $5,000 incentive award, and the significant time and effort the named plaintiffs expended to support this litigation (including assisting with discovery responses, sitting for all-day depositions, and participating in the settlement negotiations) (Fee

Mot. at 20–21), the Court finds the award of $5,000 to each of the two named plaintiffs appropriate.

IV. CONCLUSION

The Court **GRANTS** the Settlement Motion and the Fee Motion.

The Court awards class counsel $1,790,000 in fees and costs. This award is separate and apart from the $6.9–9.2 million settlement fund, and will not be deducted from or reduce the settlement amount. The Court awards Rachel Cody and Lindsey Knowles an incentive payment of $5,000 each.

A separate judgment will issue.

IT IS SO ORDERED.