UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No.	**EDCV 16-189 JGB (SPx)**	Date	July 7, 2022
Title	***Veda Woodard et al. v. Lee Labrada et al.***		

Present: The Honorable	JESUS G. BERNAL, UNITED STATES DISTRICT JUDGE

MAYNOR GALVEZ	Not Reported
Deputy Clerk	Court Reporter

Attorney(s) Present for Plaintiff(s):	Attorney(s) Present for Defendant(s):
None Present	None Present

Proceedings: **Order (1) GRANTING Plaintiff's Motion for Preliminary Approval of Class Action Settlement (Dkt. No. 468); and (2) VACATING the July 11, 2022 Hearing (IN CHAMBERS)**

Before the Court is a motion for preliminary approval of class action settlement filed by Plaintiff Veda Woodard on behalf of the certified class. ("Motion," Dkt. No. 468.) The Court finds this matter appropriate for resolution without a hearing. See Fed. R. Civ. P. 78; L.R. 7-15. After considering the papers filed in support of the Motion, the Court **GRANTS** the Motion and **VACATES** the July 11, 2022 hearing.

I. BACKGROUND

On February 2, 2016, Woodward filed a putative class action complaint alleging violations of consumer protection laws against Naturex, Inc.; Lee Labrada; Labrada Bodybuilding Nutrition, Inc.; and Labrada Nutritional Systems, Inc. (collectively, "Labrada Defendants"); as well as InterHealth Nutraceuticals Inc.; Zoco Productions, LLC; Harpo Productions, Inc.; and Dr. Mehmet C. Oz, M.D. (collectively, "Media Defendants"). ("Complaint," Dkt. No. 1.) The Complaint alleges claims arising from Defendants' alleged misrepresentations concerning the effectiveness of the weight-loss supplement products manufactured by Labrada, including the Labrada Green Coffee Bean Extract Product and the Labrada Garcinia Combogia Product. (Id.)

On June 2, 2016, Woodard, along with former plaintiffs Teresa Rizzo-Marino and Diane Morrison, filed a first amended complaint alleging 11 causes of action: (1) fraud, deceit, and suppression of facts under Cal. Civ. Code §§ 1709-1811 and the common law of all states; (2) negligent misrepresentation under Cal. Civ. Code § 1710(2) and the common law of all states; (3)

violations of the Unfair Competition Law under Cal. Bus. & Prof. Code § 17200, et seq.; (4) violation of the Consumer Legal Remedies Act under Cal. Civ. Code § 1700, et seq.; (5) violation of the False Advertising Law under Cal. Bus & Prof. Code § 17500, et seq.; (6) breach of express warranty under Cal. Comm. Code § 2313; (7) breach of implied warranty of merchantability under Cal. Comm. Code § 2314; (8) breach of express warranty under N.Y. U.C.C. § 2-313; (9) breach of implied warranty under N.Y. U.C.C. § 2-314; (10) breach of express warranties to intended third-party beneficiaries; (11) violation of the Magnuson-Moss Warranty Act under 15 U.S.C. § 2301, et seq.; (12) unfair trade practices under N.Y. Bus. Law § 349; and (13) false advertising under N.Y. Bus. Law § 350. ("FAC," Dkt. No. 88.)

Last year, on August 31, 2021, the Court certified two classes:

(1) "All persons in California who purchased the Labrada Green Coffee Bean Extract Product for personal and household use and not for resale from February 2, 2012 until the date class notice is disseminated"; and

(2) "All persons in California who purchased the Labrada Garcinia Cambogia Product for personal and household use and not for resale from February 2, 2012 until the date notice is disseminated."

("Class Certification Order," Dkt. No. 444, at 57.)

Woodard is the sole remaining named plaintiff and class representative in this action; and Labrada Bodybuilding Nutrition, Inc. ("Labrada"), is the only remaining defendant. (See Motion at 3.) Woodard filed the unopposed Motion and supporting papers on June 1, 2022.

II. LEGAL STANDARD

Approval of a class action settlement requires certification of a settlement class. La Fleur v. Med. Mgmt. Int'l, Inc., 2014 WL 2967475, at *2–3 (C.D. Cal. June 25, 2014). A court may certify a class if the plaintiff demonstrates that the class meets the requirements of Federal Rule of Civil Procedure 23(a) and at least one of the requirements of Rule 23(b).[1] See Fed. R. Civ. P. 23; see also Valentino v. Carter-Wallace, Inc., 97 F.3d 1227, 1234 (9th Cir. 1996). Rule 23(a) contains four prerequisites to class certification: (1) the class must be so numerous that joinder is impracticable; (2) there must be questions of law or fact common to the class; (3) the claims of the class representative must be typical of the other class members; and (4) the representative parties must fairly and adequately protect the interests of the class. See Fed. R. Civ. P. 23(a). Rule 23(b) requires one of the following: (1) prosecuting the claims of class members separately would create a risk of inconsistent or prejudicial outcomes; (2) the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive or declaratory relief benefitting the whole class is appropriate; or (3) common questions of law or

[1] All references to "Rule" in this Order refer to the Federal Rules of Civil Procedure, unless otherwise noted.

fact predominate so that a class action is superior to another method of adjudication. Fed. R. Civ. P. 23(b).

Class action settlements must be approved by the court. See Fed. R. Civ. P. 23(e). At the preliminary approval stage, the Court "must make a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms." Id. "The settlement need only be potentially fair, as the Court will make a final determination of its adequacy at the hearing on Final Approval." Acosta v. Trans Union, LLC, 243 F.R.D. 377, 386 (C.D. Cal. 2007). To determine whether a settlement agreement is potentially fair, a court considers the following factors: the strength of the plaintiff's case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed, and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement. Staton v. Boeing Co., 327 F.3d 938, 959 (9th Cir. 2003).

III. SETTLEMENT AGREEMENT

The parties finalized and executed the settlement agreement ("Settlement" or "Agreement") on June 1, 2022. ("Agreement," Dkt No. 468-3, at 29-30.)

A. Class Members

The Agreement defines "Settlement Classes" or "Class Members" as the following two certified classes:

(1) Green Coffee Bean Extract Class: "All persons in California who purchased the Labrada Green Coffee Bean Extract product for personal and household use and not for resale from February 2, 2012, until the date class notice is disseminated"; and

(2) Garcinia Cambogia Class: "All persons in California who purchased the Labrada Garcinia Cambogia product for personal and household use and not for resale from February 2, 2012, until the date notice is disseminated."

(Id. § 2.1(II).) The Court certified those classes on August 31, 2021. (Class Certification Order at 57.) Accordingly, for purposes of settlement only, the Court finds that the prerequisites for a class action under Rule 23(a) and 23(b)(3) have been preliminarily satisfied for the same reasons set forth in the Class Certification Order. (Id. at 42-56.)

B. Monetary Relief

Under the Agreement, Labrada will pay $625,000 into a settlement fund ("Settlement Fund"). (Agreement § 2.1(HH).) The Settlement Fund will pay for the following, among other things: authorized claims to Class Members, the costs of settlement administration and notice to

Class Members, Class Counsel's fees and expenses, and an incentive award to Woodard. (Id. § 5.1(3)(b).)

Class Members who submit a claim with proof of purchase for one or more Class Products will receive $5 in cash from the Settlement Fund for each purchase reflected on the proofs of purchase—for up to ten products purchased during the class period. (Id. § 5.1(1)(a).) Meanwhile, Class Members who submit a claim without proof of purchase will receive $5 in cash from the Settlement Fund for each product purchased during the class period—for up to four products. (Id. § 5.1(1)(b).) No Class Member shall receive over $50 in cash from the Settlement Fund. (Id. § 5.1(1)(c).)

If the number of valid claims timely submitted by Class Members exceeds the amount allocated for cash payments to Class Members from the Settlement Fund, then cash payments to participating Class Members who submit timely and valid claims will be reduced pro rata until the funds allocated for Class Member cash payments remaining in the Settlement Fund are exhausted. (Id. § 5.1(1)(d).) If the payments allocated or made from the Settlement Fund are less than $625,000, then 50% of the difference will revert to Labrada and the remaining 50% of the difference will be transmitted to Smile Train or, alternatively, Consumers Union, as a cy pres beneficiary. (Id. § 5.1(3)(c).)

C. Injunctive Relief

Under the Agreement, Labrada will cease selling both the Labrada Green Coffee Bean Extract product and the Labrada Garcinia Cambogia product (jointly, the "Products") by August 1, 2022. (Id. § 5.1(2)(a).)

D. Attorneys' Fees and Costs

The Agreement provides that Class Counsel shall apply for attorneys' fees and expenses not to exceed 30% of the Settlement Fund or $187,500—whichever is less. (Id. § 7.1.

E. Class Representative

The Agreement also provides for an incentive award of $5,000 to Woodard from the Settlement Fund. (Id. § 7.3.)

F. Settlement Administration

The parties request that the Court appoint Classaura, LLC, as the Notice and Settlement Administrator. (See Motion at 6.) The Settlement Administrator will provide the Class Notice and administer the claims process. (Agreement § 2.1(H).)

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G. Release

Class Members agree to release all Class Released Claims against the Released Parties, as defined in the Agreement. (Id. § 6.1.)

H. Notice Program and Settlement Administration

The notice procedure consists of (1) a settlement website; (2) direct email notice to class members who purchased Class Products from the Labrada website; (3) online notice; (4) print publication notice in compliance with California Civil Code § 1781(d); and (5) a press release via PR Newswire. ("Retnasaba Decl.," Ex. E to Agreement, ¶¶ 6-19.) The Notice Administrator will establish a settlement website and toll-free number that will remain accessible through the claim deadline. (Id.) The notice program is designed to provide Class Members with information on their rights and the Agreement, including a description of its material terms; a date by which Class Members may opt-out of the Settlement Class; a date by which Class Members may object to the Agreement; Class Counsel's fee application or the request for a service award; the date of the final approval hearing; and information about the settlement website, where Class Members may access the Agreement and other important documents. (Motion at 6.)

E. Opt-out and Objection Procedures

Class Members may opt-out of the Settlement through the settlement website or by sending a written request to the Settlement Administrator at the address designated in the Notice. (Agreement § 3.3(a).) The Agreement details the opt-out requirements. (Id.) Class Members who timely opt-out of the Settlement will preserve their rights to individually pursue claims they may have against Labrada, subject to defenses Labrada may have against those claims. (Id.) A Class Member must opt-out of the Settlement Class by the Objection/Exclusion Deadline. (Id.)

Class Members who wish to object to the Settlement must do so by the Objection/Exclusion Deadline. (Id. § 3.4.) For the Court to consider an objection, it must be in writing and accompanied by any documentary or other evidence and any factual or legal arguments that the objecting Class Member intends to rely upon in her objection. (Id. § 3.4(a), (b).) Objections must also (1) clearly identify the case name and number; (2) be filed with the Court and mailed to both the Settlement Administrator and to counsel for the settling parties; and (3) be postmarked on or before the Objection/Exclusion Deadline. (Id. § 3.4(b).)

I. Claims Process

To make a claim, Class Members must submit a valid and timely Claim Form to the Settlement Administrator. (Id. §§ 5.1(4)-(6).) Claim Forms may be submitted by hard copy or electronically via the Settlement Website. (Id. § 5.1(5)(a).) The Claim Form requires basic information from Class Members, including name; current physical address; email address;

identification and date of the Class Products purchased; location from which the Products were purchased; and a contact phone number. ("Claim Form," Exhibit A to Agreement.) If the Settlement Administrator approves a Claim Form, the Class Member automatically receives a cash payment. (Agreement § 5.1(4)(b).)

IV. PRELIMINARY APPROVAL OF THE SETTLEMENT

Rule 23 "requires the district court to determine whether a proposed settlement is fundamentally fair, adequate, and reasonable." Hanlon v. Chrysler Corp., 150 F.3d 1011, 1026 (9th Cir. 1998). To do so, courts consider several factors, including "the strength of plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout trial; the amount offered in settlement; the extent of discovery completed, and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement." Staton, 327 F.3d at 959 (citations omitted). Moreover, the settlement may not be a product of collusion among the negotiating parties. In re Mego Fin, Corp. Sec. Litig., 213 F.3d 454, 458 (9th Cir. 2000).

"At the preliminary approval stage, some of the factors cannot be fully assessed. Accordingly, a full fairness analysis is unnecessary." Litty v. Merrill Lynch & Co., 2015 WL 4698475, at *8 (C.D. Cal. Apr. 27, 2015). Rather, the court need only decide whether the settlement is potentially fair, Acosta, 243 F.R.D. at 386, in light of the strong judicial policy favoring settlement of class actions. Class Plaintiffs v. City of Seattle, 955 F.2d 1268, 1276 (9th Cir. 1992). "[T]he court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." Hanlon, 15 F.3d at 1027.

A. Extent of Discovery and Stage of the Proceedings

To receive settlement approval, "[t]he parties must . . . have engaged in sufficient investigation of the facts to enable the court to intelligently make an appraisal of the settlement." Acosta, 243 F.R.D. at 396 (quotations omitted). Here, the parties have vigorously litigated the action for over six years, and they reached this settlement after intensive arms-lengths negotiation under the supervision of the Honorable Leo S. Papas (Ret.). (Motion at 3, 4, 10, 11, 17.) The parties did not settle until they had briefed class certification and summary judgment motions. (Id. at 11.) In fact, settlement discussions did not begin until after the parties had engaged in substantial discovery, including multiple rounds of written discovery, depositions, and the exchange of expert reports. (Id.) Because "[a] settlement following sufficient discovery and genuine arms-length negotiation is presumed fair," Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc., 221 F.R.D. 523, 528 (C.D. Cal. 2004), this factor weighs in favor of preliminary approval.

B. Amount Offered in Settlement

To determine whether the amount offered in settlement is fair, a court compares the settlement amount to the parties' estimates of the maximum amount of damages recoverable in a successful litigation. In re Mego, 213 F.3d at 459. Here, Plaintiffs' damages expert, Charlene L. Podlipna, prepared a class-wide damages calculation. (See "Podlipna Expert Report," Dkt. No. 445-13.) Her calculation is based on the full-refund model, which multiples the total units sold by an average retail price.[2] See Lambert v. Nutraceutical Corp., 870 F.3d 1170, 1183 (9th Cir. 2017), rev'd and remanded, 139 S. Ct. 710 (2019) ("The full refund model measures damages by presuming a full refund for each customer, on the basis that the product has no or only a de minimis value.").

After reviewing Podlipna's estimated damages amount—which was filed under seal (see "Motion Under Seal," Dkt. No. 466-1, at 12)—the Court finds that the $625,000 settlement fund constitutes a reasonable percentage of the estimated damages recoverable at trial. See, e.g., Stovall-Gusman v. W.W. Granger, Inc., 2015 WL 3776765, at *4 (N.D. Cal. June 17, 2015) (granting final approval of a net settlement amount representing 7.3% of the plaintiffs' potential recovery at trial); Balderas v. Massage Envy Franchising, LLC, 2014 WL 3610945, at *5 (N.D. Cal. July 21, 2014) (granting preliminary approval of a net settlement amount representing 5% of the projected maximum recovery at trial); Ma v. Covidien Holding, Inc., 2014 WL 360196, at *5 (C.D. Cal. Jan. 31, 2014) (finding a settlement worth 9.1% of the total value of the action "within the range of reasonableness").

C. Plaintiff's Strength of Case; and Expense, Complexity, and Likely Duration of Litigation

Woodard "acknowledge[s] the risk of proceeding and continuing to litigate this matter." See Woodard v. Labrada, 2019 WL 4509301, at *9 (C.D. Cal. Apr. 23, 2019). Without the settlement, the parties must litigate the ultimate merits of the case—a "long, complex, and expensive" process. Id. Therefore, the "risk, expense, complexity, and likely duration of further litigation weigh in favor of preliminary approval" here. See id.

The strength of Woodard's case also favors preliminary approval. Woodard acknowledges the hurdles she would need to overcome to succeed on the merits of her case. (Motion at 16.) As one example, determining whether the products at issue are actually ineffective "would like[ly] devolve into an expensive and uncertain 'battle of the experts.'" Woodard v. Labrada, 2019 WL 4509301, at *10 (C.D. Cal. Apr. 23, 2019).

Accordingly, these factors weigh in favor of preliminary approval.

[2] Podlipna's estimated damages amount to the California Classes was filed under seal. (See Motion at 12.)

D. Experience and Views of Counsel

"Great weight is accorded to the recommendation of counsel, who are most closely acquainted with the facts of the underlying litigation." Nat'l Rural Telecomms. Coop., 221 F.R.D. at 528 (citation and quotations omitted). Here, Class Counsel recommends the settlement. They believe it "provides exceptional results for the class." (Motion at 11.) This factor therefore weighs in favor of preliminary approval.

E. Collusion Between the Parties

"To determine whether there has been any collusion between the parties, courts must evaluate whether 'fees and relief provisions clearly suggest the possibility that class interests gave way to self interests,' thereby raising the possibility that the settlement agreement is the result of overt misconduct by the negotiators or improper incentives for certain class members at the expense of others." Litty, 2015 WL 4698475, at *10 (quoting Staton, 327 F.3d at 961).

Here, the settlement negotiations were conducted at arms-length. (Motion at 11.) Moreover, the "use of a mediator experienced in the settlement process"—like here (id. at 3, 4, 11)—"tends to establish that the settlement process was not collusive." Woodard, 2019 WL 4509301, at *10.

The Court next evaluates the settlement's financial terms. Under the Agreement, Class Counsel may ask for a $5,000 service award for Woodard. (Motion at 9.) In one of our sister districts, "a $5,000 payment is presumptively reasonable." Bellinghausen v. Tractor Supply Co., 306 F.R.D. 245, 266 (N.D. Cal. 2015) (collecting cases). The Court finds no reason to presume otherwise here.

As to attorneys' fees, the Agreement provides that Class Counsel shall apply for attorneys' fees and expenses (1) not to exceed 30% of the Settlement Fund or (2) of $187,500—whichever is less. (Agreement § 7.1.) Class Counsel expects that their request for attorneys' fees will be below 25% of the Settlement Fund. (Motion at 8.) Typically, 25% of a settlement fund is the benchmark for a reasonable fee award. In re Bluetooth Headset Prod. Liab. Litig., 654 F.3d 935, 942 (9th Cir. 2011). As such, the amount requested raises no concerns about collusion. See Woodard, 2019 WL 4509301, at *11.

On balance, these factors support preliminary approval of the Agreement. The Agreement is potentially fair, adequate, and reasonable.

V. CLASS NOTICE

Rule 23(c)(2)(B) requires that the Court "direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). Similarly, a proposed settlement may be approved only after notice is directed in a reasonable manner to all class

members who would be bound by the agreement. Fed. R. Civ. P. 23(e)(1). Notice must also be "timely, accurate, and informative." Woodard, 2019 WL 4509301, at *11 (citations and quotations omitted).

"When class members' addresses are unknown, notice by publication may be reasonable." Id. (collecting cases). Here, the Court finds notice by publication appropriate "because there are no centralized records of the names and contact information of all individuals who purchased the Products." Id. at *12.

The Court next considers whether the notice is the best notice practicable under the circumstances. As noted earlier, the notice procedure consists of (1) a settlement website; (2) direct email notice to class members who purchased Class Products from the Labrada website; (3) online notice ("disseminated through Facebook targeted at the demographics most likely to purchase the Products"); (4) print publication notice—"in a newspaper of general circulation over four consecutive weeks in Riverside County, where [Woodard] resides"—in compliance with California Civil Code § 1781(d); and (5) a press release via PR Newswire. (Retnasaba Decl. ¶¶ 6-19; Motion at 18.) The Notice Administrator will establish a settlement website and toll-free number that will remain accessible through the claim deadline. (Retnasaba Decl. ¶¶ 6-19.)

The notice program is designed to provide Class Members with information on the Settlement and their rights, including a description of the Settlement's material terms; a date by which Class Members may opt-out of the Settlement Class; a date by which Class Members may object to the Settlement; Class Counsel's fee application or the request for a service award; the date of the Final Approval Hearing; and information about the Settlement Website, where Class Members may access the Agreement and other important documents. (Motion at 6.) The class notice website will include (1) links to the Class Notice; (2) the Agreement; (3) the motion for preliminary approval; (4) the Court's Order granting preliminary approval (if applicable); (5) the fee motion; and (6) instructions on opting out and filing objections. (Retnasaba Decl. ¶ 16.) The Notice is written in plain language, contains the information required by Rule 23(c)(2)(B), and features a user-friendly "Frequently Asked Questions" format. (Exs. B and C to Agreement.)

The Court finds that the proposed forms of notice are "likely to reach a large number of class members." See Woodard, 2019 WL 4509301, at *12. For example, Classaura's representative recommends publishing a California-targeted release on PR Newswire—a national press-release service used by journalists as a news source. (Retnasaba Decl. ¶ 13.) Classaura's representative also recommends publishing 15 million Facebook ads targeted at the demographics most likely to purchase the Products. (Retnasaba Decl. ¶ 12; Motion at 18.) Although he does not estimate how many Products users the ads will target, "targeted Facebook ads are likely one of the most effective methods of reaching class members" here. See Woodard, 2019 WL 4509301, at *12.

Accordingly, the Court finds the proposed notice to be the best notice practicable under the circumstances. Fed. R. Civ. P. 23(c)(2)(B).

VI. CAFA NOTICE

The parties are instructed to include information in their final approval papers showing compliance with the notice requirements of the Class Action Fairness Act ("CAFA"). See 28 U.S.C. § 1715(b) ("Not later than 10 days after a proposed settlement of a class action is filed in court, each defendant that is participating in the proposed settlement shall serve [notice of the proposed settlement] upon the appropriate State official of each State in which a class member resides and the appropriate Federal official . . . ."). A court cannot grant final approval of a class action settlement until the CAFA notice requirements are met. 28 U.S.C. § 1715(d).

VII. CONCLUSION

For the foregoing reasons, the Court **GRANTS** Plaintiff's Motion for Preliminary Approval and **VACATES** the July 11, 2022 hearing. The Court **ORDERS** as follows:

1. The Agreement is preliminarily approved as potentially fair, reasonable, and adequate.

2. The following classes are certified for settlement purposes only:

    a. Green Coffee Bean Extract Class: "All persons in California who purchased the Labrada Green Coffee Bean Extract product for personal and household use and not for resale from February 2, 2012, until the date class notice is disseminated"; and

    b. Garcinia Cambogia Class: "All persons in California who purchased the Labrada Garcinia Cambogia product for personal and household use and not for resale from February 2, 2012, until the date notice is disseminated."

3. The Law Offices of Ronald A. Marron and the law firm of Cohelan Khoury & Singer are appointed as class counsel for purposes of settlement only.

4. Plaintiff Veda Woodard is preliminary appointed as class representative.

5. Classaura LLC is appointed as the Notice and Settlement Administrator.

6. The Court approves the methods for giving notice of the settlement to Class Members, as reflected in the Agreement and attached documents, and as proposed in the motion for preliminary approval.

7. Classaura is directed to publish all notices required by **Friday, July 29, 2022.**

8. Class Members will have until **Friday, November 11, 2022**, to file a claim, opt-out, or file an objection to the Agreement.

9. The parties must file papers supporting final approval, applying for attorneys' fees, and responding to objections by **Monday, November 21, 2022.**

10. The final approval hearing is hereby set for **Monday, December 19, 2022**, at 9:00 a.m. in Courtroom 1 of the United States District Court for the Central District of California, Eastern Division, located at 3470 12th Street, Riverside, California 92501.

IT IS SO ORDERED.