UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

HIROYAKI ODA, a California resident; COREY ROTH, a California resident, individually, and on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

DeMARINI SPORTS, INC.; DeMARINI SPORTS GROUP LIMITED PARTNERSHIP; WILSON SPORTING GOODS CO.; VARI-WALL TUBE SPECIALISTS, INC.; JACKSON TUBE SERVICE, INC., and DOES 1 to 10, inclusive,

Defendants.

CASE NO. 8:15-cv-02131-JLS-JCG

ORDER (1) GRANTING PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT(Doc. 154); AND (2) SETTING A FINAL FAIRNESS HEARING

Before the Court is an unopposed Motion for Preliminary Approval of Class Action Settlement filed by Plaintiffs Hiroyaki Oda and Corey Roth. (Mot., Doc. 154.) Plaintiffs ask the Court to (1) preliminarily approve the terms of the Settlement Agreement; (2) certify the proposed Class for settlement purposes only; (3) approve KCC as the Settlement Administrator; (4) approve the form and content of the proposed Class Notice; (5) appoint as Class Counsel Brian Chase and Jerusalem Beligan of Bisnar | Chase LLP and Jesse Bablove of Dickson, Kohan, & Bablove, LLP; (6) appoint Oda and Roth as Class Representatives; and (7) schedule a final fairness hearing. (Mot.; Mem. at 14.) The Court finds this matter appropriate for decision without oral argument. Fed. R. Civ. P. 78(b); C.D. Cal. R. 7-15. Accordingly, the hearing set for June 8, 2018, at 2:30 p.m., is VACATED. For the following reasons, the Court GRANTS Plaintiffs' Motion and sets a Final Fairness Hearing for October 19, 2018, at 2:30 p.m.

I. BACKGROUND

Defendant Wilson Sporting Goods, Co. ("Wilson") is a sporting goods retailer that manufactured and sold a model of softball bat called the "White Steel" from 2013 to 2014 (the "13/14 White Steels"). (Mem. at 1, Doc. 154-1.) Plaintiffs are purchasers of the 13/14 White Steels. (Second Amended Complaint ("SAC") ¶ 10, Doc. 81.) They allege that the 13/14 White Steels "fail prematurely due to common defects" that include the chemical composition of the steel, an improperly placed seam in the middle of the barrel, insufficient thickness of the wall, and Wilson's lack of quality control. (*Id.* ¶ 108.) On December 23, 2015, Plaintiffs filed suit against Wilson, DeMarini Sports, Inc., and DeMarini Sports Group Limited Partnership. (Compl., Doc. 1.) On December 2, 2016, Plaintiffs filed a First Amended Complaint ("FAC"). (FAC, Doc. 43.) Wilson filed a motion to dismiss certain causes of action in the FAC, which the Court granted with leave to amend. (Doc. 70 at 4.) Thereafter, on February 15, 2017, Plaintiffs filed their Second Amended Complaint ("SAC"). (SAC.) Plaintiffs alleged claims for (1) violation of the

Consumers Legal Remedies Act, California Civil Code §§ 1750, *et seq.* (the "CLRA"); (2) violation of California Business & Professions Code §§ 17200, *et seq.* (the "UCL"); (3) violation of the Song-Beverly Warranty Act, California Civil Code §§ 1792, *et seq.* (the "Song-Beverly Act"); (4) breach of implied warranty; (5) strict products liability—defective design or manufacture; (6) strict products liability—failure to warn; (7) violation of the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301(1), *et seq.*; (8) violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. §§ 201-1, *et seq.*; (9) violation of the New Jersey Consumer Fraud Act, N.J.S.A. §§ 56:8-1, *et seq.*; (10) violation of the Tennessee Consumer Protection Act, Tenn. Code Ann. §§ 47-18-101, *et seq.*; (11) violation of the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. Ann. §§ 42-110A, *et seq.*; (12) violation of the Massachusetts Consumer Protection Act, Mass. Gen. Laws Ch. 93A; and (13) violation of the Florida Unfair and Deceptive Trade Practices Act, Fla. Stat. §§ 501.201, *et seq*. (*Id.* ¶ 11.)

On March 15, 2017, Wilson filed a motion to dismiss and strike portions of the SAC. (MTD, Doc. 85.) The Court granted in part and denied in part the motion. Specifically, the Court struck counts eight through thirteen. (Order re: MTD at 6, Doc. 96.) The Court dismissed count four with leave to amend and dismissed counts five and six with prejudice. (*Id.*) Plaintiffs did not amend. Accordingly, Plaintiffs' claims under the CLRA, the UCL, the Song-Beverly Warranty Act, and the Magnum-Moss Warranty Act are the sole remaining claims.

On March 28, 2017, Plaintiffs filed a motion for class certification. (MCC, Doc. 97.) Before Wilson opposed the motion, the parties reached a settlement agreement and filed a motion for preliminary approval. (First MPA, Doc. 134.) The settlement agreement provided that the putative class would receive non-transferrable, single-transaction, expiring vouchers that could be used online to purchase Wilson's products. (First Suppl. Briefing Order at 2, Doc. 135.) The Court then ordered two rounds of supplemental briefing, requesting Plaintiffs to address deficiencies in the briefing and

explain whether the vouchers were "coupons" governed by the Class Action Fairness Act's coupon settlement provision, 28 U.S.C. § 1712 ("Section 1712"). (*Id.* at 2–4; Second Suppl. Briefing Order, Doc. 146.) During the supplemental briefing period, the parties renegotiated several terms of the settlement agreement and filed significant additional information for the Court to consider in determining the fairness of the proposed settlement. Accordingly, the Court denied the motion for preliminary approval without prejudice and directed Plaintiffs to file a renewed motion that incorporated the parties' supplemental briefing and the revised settlement agreement. (Order Denying MPA at 2, Doc. 152.) The instant Motion followed.

The Settlement Agreement defines the "Settlement Class" as "[a]ll individual consumers, … who purchased from Wilson or an authorized retailer of Wilson in the United States, one or more new 13/14 White Steels within four years of the filing of the original Complaint (*i.e.* after December 23, 2011) to the date the Court grants preliminary approval of the settlement," excluding presiding judges, Plaintiffs' counsel, and Wilson's employees. (Settlement Agreement § 2, Doc. 154-3.)

Under the Agreement, each Class Member will receive a transferrable, non-expiring voucher of either $35.00 or $85.00 for online purchases on the websites of either Wilson or DeMarini. (*Id.* § 3.) If a consumer uses less than the stated value of the voucher in the initial purchase, she will be re-issued a voucher valued at the remaining balance. (*Id.*) The $85.00 voucher, "Benefit A," is available to Class Members who either started[1] or completed the warranty claim process with Wilson for their 13/14 White Steels. (*Id.* § 3(a).) The $35.00 voucher, "Benefit B," is available to Class Members who purchased a 13/14 White Steel and have a proof of purchase but did not start or complete a warranty

[1] In order to qualify as an individual who "started" the warranty claim process, the Class Member must have at least "contacted Wilson and provided their [contact information] … and identified the White Steel bat as the reason for their claim." (Settlement Agreement § 3(a)(ii).)

claim. (*Id.* § 3(b).) The Settlement Agreement authorizes a total of 10,240 vouchers, the total number of 13/14 White Steels manufactured and sold by Wilson. (*Id.* § 3(c).)

Class Members who wish to receive a voucher must submit a Claim Form no later than 60 days after the date of issuance of the Class Notices, either by mail, email, or publication. (*Id.* § 10(d).) Class Members who wish to object or opt out must also do so within the 60-day claims period. (*Id.* § 10(d)(3).) Within fourteen days of the Court's final approval of the Settlement Agreement, the Settlement Administrator will issue vouchers to Class Members who submitted timely and valid Claim Forms. (*Id.* § 12(c).) The parties estimate that there are approximately 6,000 known Class Members, 2,903 of whom qualify for Benefit A. (Mem. at 14.)

Further, Wilson agrees not oppose a request from Class Counsel for attorneys' fees not to exceed $440,000 and for Class Representative enhancement awards of up to $10,000 for each Plaintiff. (Settlement Agreement § 10(a)–(b).) The parties also estimate that the costs of administration will be approximately $62,500, payable to the Settlement Administrator. (*Id.* § 4.)

In return for the consideration described above, the Class Members release:

> any and all claims or causes of action that are asserted, that were at any time asserted, or that could have been asserted in the Lawsuit including, but not limited to, the Released Claims,[2] violations of the CLRA, UCL, Song-Beverly Warrant Act and the Magnuson Moss Warranty Act and any and all provisions, rights and benefits of any similar state or federal laws or the common law.

(*Id.* § 5(b).) In addition to this release, Plaintiffs specifically release all claims, "whether known or unknown," that they may have against Wilson. (*Id.* § 5(a).)

[2] The "Released Claims" are defined as all causes of action "that in any way arise from or relate to the 13/14 White Steels … ." (Settlement Agreement § 5(a).)

The Settlement Agreement also enumerates the process for Class Notice. Within fourteen days following preliminary approval of the Settlement Agreement, the Settlement Administrator will email the Class Notice and the Claim Form (the "Notice Package") to Class Members for whom the parties have an email address. (*Id.* § 6(a).) To those Class Members for whom the parties do not have an email address or the initial email is returned as undeliverable, within fourteen days of either preliminary approval or the date of the email's return as undeliverable, the Settlement Administrator will mail the Notice Package via U.S. mail to Class Members with known mailing addresses. (*Id.* § 6(b).) Finally, no later than fourteen days following preliminary approval, the Settlement Administrator will begin Publication Notice. (*Id.* § 6(c).) Publication Notice will proceed through the dissemination of 20 million banner ads across the Google Display Network, which includes more than two million websites. (*See* Class Notice Plan at 6, Doc. 154-3.) The banner ads state, "If you bought a Wilson-DeMarini 2013 or 2014 White Steel softball bat, you could get a Wilson Voucher from a class action settlement," and invite viewers to click the ad to "Learn More." (*See* Publication Notice, Doc. 154-3.) The ads link to the case Website, which includes all relevant information about the case, provides case documents, and allows Class Members to file claims online or request to have the Notice Package mailed to them. (Mem. at 13; Class Notice Plan at 7.)

On April 13, 2018, Plaintiffs filed the instant Motion.

II. CONDITIONAL CERTIFICATION OF THE CLASS

Plaintiffs ask the Court to conditionally certify the Settlement Class for settlement purposes under Rule 23(a) and 23(b)(3). (Mem. at 14–17.)

"A party seeking class certification must satisfy the requirements of Federal Rule of Civil Procedure 23(a) and the requirements of at least one of the categories under Rule 23(b)." *Wang v. Chinese Daily News, Inc.*, 737 F.3d 538, 542 (9th Cir. 2013). Rule 23(a) "requires a party seeking class certification to satisfy four requirements: numerosity,

commonality, typicality, and adequacy of representation." *Id.* (citing *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349 (2011)). Rule 23(a) provides:

> One or more members of a class may sue or be sued as representative parties on behalf of all members only if:
>
> (1) the class is so numerous that joinder of all members is impracticable;
>
> (2) there are questions of law or fact common to the class;
>
> (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
>
> (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a).

"Rule 23 does not set forth a mere pleading standard. A party seeking class certification must affirmatively demonstrate his compliance with the Rule—that is, he must be prepared to prove that there are *in fact* sufficiently numerous parties, common questions of law or fact, etc." *Dukes*, 564 U.S. at 350. This requires a district court to conduct a "rigorous analysis" that frequently "will entail some overlap with the merits of the plaintiff's underlying claim." *Id.* at 350–51.

"Second, the proposed class must satisfy at least one of the three requirements listed in Rule 23(b)." *Id*. at 345. Here, Plaintiffs seek certification of the class under Rule 23(b)(3), which permits maintenance of a class action if "the court finds that the 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).

A. The Proposed Class Meets All Rule 23(a) Requirements

1. Numerosity

Rule 23(a)(1) requires that the class be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). There are up to 10,240 putative Class Members based on the total number of 13/14 White Steels manufactured and sold by Wilson. (Settlement Agreement §3(c)), approximately 6,000 of whom are known to the parties. (Mem. at 14.) Therefore, numerosity is plainly met for the proposed Class.

2. Commonality

Rule 23(a)(2) requires that "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). "Commonality requires the plaintiff to demonstrate that the class members have suffered the same injury." *Dukes*, 564 U.S. at 349–50 (citation and internal quotation marks omitted). The plaintiff must allege that the class injuries "depend upon a common contention" that is "capable of classwide resolution." *Id.* at 350. In other words, the "determination of [the common contention's] truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Id.* "What matters to class certification . . . is not the raising of common questions—even in droves—but, rather the capacity of a classwide proceeding to generate common *answers* apt to drive the resolution of the litigation." *Id.* (internal quotation marks and citation omitted).

Here, Plaintiffs' claims stem from their purchase of the allegedly defective 13/14 White Steels. (*See* Mem. at 15.) Questions such as whether the 13/14 White Steels actually fail prematurely and whether Wilson fulfilled the duties under the terms of its warranties are common to each Class Member. Because the 13/14 White Steels were manufactured and sold uniformly with uniform warranties, "resolution of these questions will resolve 'in one stroke' issues that are 'central to the validity' of each [C]lass [M]ember's claims." *Guido v. L'Oreal, USA, Inc.*, 284 F.R.D. 468, 477 (C.D. Cal. 2012) (*citing Dukes*, 564 U.S. at 350).)

Plaintiffs have therefore satisfied the commonality requirement.

3. Typicality

Rule 23(a)(3) requires "the claims or defenses of the representative parties [to be] typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). "[U]nder the rule's permissive standards, representative claims are 'typical' if they are reasonably coextensive with those of absent class members; they need not be substantially identical." *Dukes v. Wal-Mart Stores, Inc.*, 603 F.3d 571, 613 (9th Cir. 2010) (en banc) (quoting *Hanlon v. Chrysler Corp*, 150 F.3d 1011, 1020 (9th Cir. 1998)), *rev'd on other grounds*, 564 U.S. 338 (2011). As to the representative, "[t]ypicality requires that the named plaintiffs be members of the class they represent." *Id.* (citing *Gen. Tech. Co. of Sw. v. Falcon*, 457 U.S. 147, 156 (1982)). The commonality, typicality, and adequacy-of-representation requirements "tend to merge" with each other. *Dukes*, 564 U.S. at 349 n.5 (citing *Falcon*, 457 U.S. at 157–58 n.13).

Here, Plaintiffs' claims, like those of the proposed Settlement Class, are based on their purchase of the 13/14 White Steels and Wilson's alleged breach of warranties as to the bats' merchantable quality. Because the claims arise from the same alleged conduct, and Plaintiffs fall within the Settlement Class definition, (*see* Mem. at 15–16), typicality is met.

4. Adequacy

Rule 23(a)(4) permits certification of a class action only if "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). "Resolution of two questions determines legal adequacy: (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?" *Hanlon*, 150 F.3d at 1020.

Plaintiffs' claims arise out of the same set of facts as the claims for the proposed Class, and their interests in obtaining the maximum recovery are coextensive with the interests of the Class Members. However, the Court does note that Plaintiffs seek enhancement awards of $10,000 each, an amount which far exceeds the value of the

vouchers that Class Members will receive. (*See* Settlement Agreement § 10(b).) Courts recognize a potential conflict of interest between the named plaintiffs and the class "when, as here, there is a large difference between the enhancement award and individual class member recovery." *Mansfield v. Sw. Airlines Co.*, No. 13CV2337 DMS (KSC), 2015 WL 13651284, at *7 (S.D. Cal. Apr. 21, 2015). However, the concern is tempered where, as here, there is no common fund and therefore the enhancement awards do not reduce the funds available for payments to class members. *Cf. Campbell v. Best Buy Stores, L.P.*, No. LACV-1207794-JAK (SHX), 2015 WL 12744268, at *4 (C.D. Cal. June 23, 2015). Recognizing these principles, at the final approval stage, the Court will "be vigilant in scrutinizing all incentive awards to determine whether they destroy the adequacy of the class representatives." *Radcliffe v. Experian Info. Sols. Inc.*, 715 F.3d 1157, 1163 (9th Cir. 2013). Nevertheless, at this preliminary stage and in the absence of any apparent actual conflict, the Court concludes that Plaintiffs are adequate class representatives.

As to the adequacy of Plaintiffs' counsel, the Court must consider "(i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class." Fed. R. Civ. P. 23(g)(1)(A). Plaintiffs ask the Court to appoint Brian Chase and Jerusalem Beligan of Bisnar | Chase LLP and Jesse Bablove of Dickson, Kohan, & Bablove, LLP. (Mot. at 1.) Chase, Beligan, and Bablove have provided declarations describing their experience litigating class actions, as well as a "Firm Resume" for Bisnar | Chase LLP, which describes the firm's experience in consumer class action matters. (Beligan Decl ¶¶ 16–18, 154-2; Chase Decl. ¶¶ 3–4, Doc. 154-3; Bablove Decl. ¶¶ 4–6, Doc. 154-6; "Firm Resume," Ex. B to Beligan Decl., Doc. 154-4.) From this experience, it appears that Chase, Beligan, and Bablove have knowledge of the applicable law in this area. They also identify the results they have obtained in many of these consumer class actions, including

class certification, final approval of class settlements, and favorable jury verdicts. (Bablove Decl. ¶ 4; Firm Resume at 6–7.) Based on the experience and work of Plaintiffs' proposed Class Counsel, the Court concludes that they have satisfied the adequacy requirement. The Court therefore appoints Brian Chase and Jerusalem Beligan of Bisnar | Chase LLP and Jesse Bablove of Dickson, Kohan, & Bablove, LLP as Class Counsel in this action.

B. The Proposed Class Meets the Rule 23(b) Requirements

Plaintiffs seek certification under Rule 23(b)(3). (Mem. at 16.) For the reasons set forth below, the Court holds that certification of the proposed Settlement Class is appropriate under Rule 23(b)(3).

Under Rule 23(b)(3), a class action may be maintained if: "[1] the court finds that the questions of law or fact common to class members *predominate* over any questions affecting only individual members, and [2] that a class action is *superior* to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. R. 23(b)(3) (emphases added). When examining a class that seeks certification under Rule 23(b)(3), the Court may consider:

> (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.

Id. The Court finds that Plaintiffs' proposed Class satisfies both the predominance and superiority requirements.

1. Predominance

"[T]he predominance analysis under Rule 23(b)(3) focuses on the relationship between the common and individual issues in the case, and tests whether the proposed class is sufficiently cohesive to warrant adjudication by representation." *Abdullah v. U.S. Sec. Associates, Inc.*, 731 F.3d 952, 964 (9th Cir. 2013) (citations and internal quotation marks omitted). "Rule 23(b)(3) requires [only] a showing that questions common to the class predominate, not that those questions will be answered, on the merits, in favor of the class." *Id*. (alterations in original).

Here, as discussed above, Class Members' claims turn on whether the 13/14 White Steels were actually defective and whether Wilson breached its warranties regarding the merchantable quality of the 13/14 White Steels. These common questions and the common legal remedies will predominate in this action.

2. Superiority

The Court further finds that a class action would be a superior method of adjudicating Plaintiffs' claims for the proposed Class. "The superiority inquiry under Rule 23(b)(3) requires determination of whether the objectives of the particular class action procedure will be achieved in the particular case." *Hanlon*, 150 F.3d at 1023. "This determination necessarily involves a comparative evaluation of alternative mechanisms of dispute resolution." *Id.* Here, each member of the proposed Class pursuing a claim individually would burden the judicial system and run afoul of Rule 23's focus on efficiency and judicial economy. *See Vinole v. Countrywide Home Loans, Inc.*, 571 F.3d 935, 946 (9th Cir. 2009) ("The overarching focus remains whether trial by class representation would further the goals of efficiency and judicial economy."). Further, litigation costs would likely exceed potential recovery if each Class Member litigated individually. "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." *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010) (citations omitted).

Considering the non-exclusive factors under Rule 23(b)(3)(A)–(D), the Court finds that Class Members' potential interests in individually controlling the prosecution of separate actions and the potential difficulties in managing the class action do not outweigh the desirability of concentrating this matter in one litigation. *See* Fed. R. Civ. P. 23(b)(3)(A), (C), (D). Therefore, the Court finds that the proposed Class may be certified under Rule 23(b)(3).

C. Rule 23(g) – Appointment of Class Counsel

Under Rule 23(g), "a court that certifies a class must appoint class counsel." Fed. R. Civ. P. 23(g)(1). As previously stated in this Order, the Court is satisfied that Plaintiffs' counsel is adequate and thus may be appointed as Class Counsel in this case.

Having found that the proposed Class satisfies the remaining elements of Rule 23(a), the Court conditionally certifies the Class for settlement purposes only.

III. PRELIMINARY APPROVAL OF CLASS SETTLEMENT

To preliminarily approve a proposed class action settlement, Rule 23(e)(2) requires the Court to determine whether the proposed settlement is fair, reasonable, and adequate. Fed. R. Civ. P. 23(e)(2). In turn, review of a proposed settlement typically proceeds in two stages, with preliminary approval followed by a final fairness hearing. Federal Judicial Center, *Manual for Complex Litigation*, § 21.632 (4th ed. 2004).

"To determine whether a settlement agreement meets these standards, a district court must consider a number of 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 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;[3] and 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). "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 of City & Cty. of S.F.*, 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) (alterations omitted).

In addition to these factors, where "a settlement agreement is negotiated *prior* to formal class certification," the Court must also satisfy itself that "the settlement is not the product of collusion among the negotiating parties." *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946–47 (9th Cir. 2011) (quotation marks and citation omitted). Accordingly, the Court must look for explicit collusion and "more subtle signs that class counsel have allowed pursuit of their own self-interests and that of certain class members to infect the negotiations." *Id.* at 947. Such signs include (1) "when counsel receive a disproportionate distribution of the settlement," (2) "when the parties negotiate a 'clear sailing' arrangement providing for the payment of attorneys' fees separate and apart from class funds," and (3) "when the parties arrange for fees not awarded to revert to defendants rather than be added to the class fund." *Id.* (quotation marks and citations omitted).

At this preliminary stage and because Class Members will receive an opportunity to be heard on the Settlement Agreement, "a full fairness analysis is unnecessary." *Munday v. Navy Fed. Credit Union*, No. SACV-151629-JLS (KESx), 2016 WL 7655807, at *7 (C.D. Cal. Sept. 15, 2016). Instead, preliminary approval and notice of the settlement

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[3] This factor does not apply in this case.

terms to the proposed Class are appropriate where "[1] the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, [2] has no obvious deficiencies, [3] does not improperly grant preferential treatment to class representatives or segments of the class, and [4] falls within the range of *possible* approval . . . ." *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007) (internal quotation marks and citation omitted) (emphasis added); *see also Acosta v. Trans Union, LLC*, 243 F.R.D. 377, 386 (C.D. Cal. 2007) ("To determine whether preliminary approval is appropriate, the settlement need only be *potentially* fair, as the Court will make a final determination of its adequacy at the hearing on the Final Approval, after such time as any party has had a chance to object and/or opt out.") (emphasis in original).

In evaluating all applicable factors below, the Court finds that the proposed Settlement Agreement should be preliminarily approved.

A. Strength of Plaintiffs' Case

The principal claims at issue here involve the alleged defectiveness of the 13/14 White Steels and Wilson's warranties. While Plaintiffs are confident they would prevail on the merits of their claims, Wilson disputes the above claims and would "vigorously assert that it performed its warranty obligations to consumers …. ." (*See* Mem. at 19.) For example, Wilson claims that consumers were aware that the 13/14 White Steels had a higher-than-average incidence of denting and cracking, but that they knowingly paid a premium because the 13/14 White Steels were especially "high performing" and increased a user's "prospect of hitting a winning home run." (Wilson's First Mem. in Support at 5, Doc. 140.) Moreover, Wilson cites to evidence that the 13/14 White Steels continued to increase in market value because of their performance, and thus Plaintiffs would be unable to show damages. (Ryan Decl. ¶¶ 5–16, Doc. 142-3.) The Court finds that given these potential obstacles, this factor weighs in favor of granting preliminary approval.

B. Risk, Complexity, and Likely Duration of Further Litigation

Plaintiffs argue that continued litigation would be time-consuming and uncertain. (Mem. at 18–19.) Plaintiffs point to the risks of losing on their motion for class certification or at the summary judgment stage as well as the possibility of Wilson appealing a jury verdict. (*Id.* at 19.) Settlement eliminates the risks inherent in certifying a class, prevailing at trial, and withstanding any subsequent appeals, and it may provide the last opportunity for class members to obtain relief. This factor therefore weighs in favor of granting preliminary approval. *See Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004) ("In most situations, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." (citation omitted)).

C. Risk of Maintaining Class Certification

Plaintiffs have identified some specific risks involved in obtaining and maintaining class certification. Namely, Wilson contends that whether the 13/14 White Steels are "defective" is a question that must be considered "individually, class member by class member … ." (Wilson's First Mem. in Support at 3.) According to Wilson, each class member purchases the bat for individual reasons, and many found the bats to be effective for their intended purpose – hitting homeruns. (*Id.* at 3–4.) Additionally, some putative Class Members already obtained new bats after filling out their warranty forms and thus have no damages. (*Id.* at 4.) Therefore, the Court finds that there is some risk of maintaining class certification in this action and that this factor weighs in favor of preliminary approval.

D. Amount Offered in Settlement

Upon reviewing Plaintiffs' Memorandum in support of their Motion and the accompanying declarations, and for the purpose of preliminary approval, the Court finds sufficient indicia that the amount offered in settlement is reasonable.

As an initial matter, the Court must determine whether the vouchers offered to Class Members should be considered "coupons" under the Class Action Fairness Act (the "CAFA"). Section 1712 of the CAFA places special restrictions on the use of coupon settlements because they "decoupl[e] the interests of the class and its counsel … ." (First Suppl. Briefing Order at 1.) However, CAFA does not define the word "'coupon,' leaving courts to decipher the scope of section 1712." (*Id.* at 1–2.) In *In re HP Inkjet Printer Litigation*, the Ninth Circuit classified a defendant's "e-credits" as "coupons," observing that they "expire six months after issuance, are non-transferable, and cannot be used with other discounts or coupons." 716 F.3d 1173, 1180 (9th Cir. 2013). By contrast, in *In re Online DVD-Rental Antitrust Litigation*, the Ninth Circuit found that a defendant's gift cards were not coupons because the gift cards were freely transferrable, did not expire, and did not require consumers to spend their own money. 779 F.3d 934, 950–51 (9th Cir. 2015). The vouchers in this settlement more closely resemble the gift cards in *In re Online* than the e-credits in *In re HP*. The vouchers are transferrable and non-expiring. (Settlement § 3(b).) Moreover, they may be used in multiple transactions and may be spent on thousands of products on Wilson's and DeMarini's websites without forcing Class Members to spend their own money.[4] (*Id.*) "Under these circumstances, the gift cards are more like 'cash' than 'coupons.'" *Reibstein v. Rite Aid Corp.*, 761 F. Supp. 2d 241, 256 (E.D. Pa. 2011). *Cf. Hofmann v. Dutch LLC*, 317 F.R.D. 566, 575 (S.D. Cal.

[4] The parties have provided the Court with evidence that Wilson.com and DeMarini.com offer 1,600 products that cost less than $85.00 and 1,200 products that cost less than $35.00. (Ryan Decl. ¶ 19.)

2016). Accordingly, the Court determines that the instant settlement is not a "coupon settlement" within the meaning of Section 1712 of the CAFA.

The Court next considers whether the amount offered in settlement is fair. Plaintiffs' economic expert opined that Wilson's maximum potential liability is $1,078,374.40 based on the average value lost by purchasers. (Wilson's Second Mem. in Support at 2, Doc. 149.) Wilson conducted an economic analysis of the actual value of the vouchers to Class Members and determined that the $85.00 vouchers have an actual value of $72.25 and the $35.00 vouchers have an actual value of $29.75; these conclusions are based primarily on the price that consumers are willing to pay for similar sporting goods vouchers. (Mem. at 10, *citing* Dudy Report at A-5–A-8, Doc. 149-1.) Thus, the parties calculate that the total value of the settlement to the Settlement Class is the $428,017.50,[5] which is approximately 39.6% of Wilson's maximum potential liability. (Mem. at 20.) Of course, this figure is inflated insofar as it presumes that a claim will be filed for every single 13/14 White Steel manufactured and sold by Wilson over the Class Period. However, as the Court previously recognized, the Ninth Circuit instructs district courts to calculate the value of a claims based settlement by its total potential value, not the total value of claims actually filed. (First Suppl. Briefing Order at 3 n.1.) *See also Lee v. Enter. Leasing Co.-W.*, No. 3:10-CV-00326-LRH, 2015 WL 2345540, at *5 n.5 (D. Nev. May 15, 2015) ("[T]he Ninth Circuit considers the value *available* to the class in determining total value, rather than merely the amount redeemed.")

A "settlement amounting to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair." *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (internal quotation marks and citation omitted). The Court finds that a 39.6 percentage of recovery is consistent with recoveries that courts have found reasonable in other consumer class actions. *Weeks v. Kellogg Co.*, No. CV 09-08102

[5] This total is based on the approximately 2,903 Class Members eligible for Benefit A ($72.25 x 2,903) and the 7,337 Class Members eligible for Benefit B (7,337 x $29.75). (Mem. at 14.)

MMM RZX, 2013 WL 6531177, at *15 n.85 (C.D. Cal. Nov. 23, 2013) (approving settlement amount of 10% of consumers' average total damages); *Retta v. Millennium Prod., Inc.*, No. CV15-1801 PSG AJWX, 2017 WL 5479637, at *5 (C.D. Cal. Aug. 22, 2017) (finding settlement amount of 21% of estimated damages to be reasonable and beneficial to the class); *In re Linkedin User Privacy Litig.*, 309 F.R.D. 573, 588 (N.D. Cal. 2015) (approving a settlement of approximately 30% of what consumers could have expected to receive at trial); *Knapp v. Art.com, Inc.*, 283 F. Supp. 3d at 833 (approving a consumer settlement of 42% of the plaintiffs' total potential recovery).

Finally, the amount of the settlement also appears fair, adequate, and reasonable in light of the claims released by Plaintiffs and Class Members. Each Class Member will release the claims that were or could have been asserted in this action, including all of those "that in any way arise from or relate to the 13/14 White Steels." (Settlement Agreement § 5(a)–(b).) The scope of this release weighs in favor of preliminary approval. *See Retta*, 2017 WL 5479637, at *8 (approving a similar release in a consumer class action). *See also Hesse v. Sprint Corp.*, 598 F.3d 581, 590 (9th Cir. 2010) ("A settlement agreement may preclude a party from bringing a related claim in the future even though the claim was not presented and might not have been presentable in the class action, but only where the released claim is based on the identical factual predicate as that underlying the claims in the settled class action." (internal quotation marks and citation omitted)).

1. The Court's Concerns

Although the Court does not approve the proposed attorneys' fees and service enhancements to Plaintiffs at this stage, the Court raises its concerns with Plaintiffs' proposed awards. The settlement provides for attorneys' fees of $440,000, subject to court approval, an amount which *exceeds* the value of the settlement to the Class. (Settlement Agreement § 10(a).) As the Court already indicated in its first Order for Supplemental Briefing, the Court will likely apply the percentage-of-recovery method to determine any award of attorneys' fees. (First Suppl. Briefing Order at 3.) In the Ninth Circuit, the

benchmark for fees is 25% of the value of the settlement. *See In re Bluetooth*, 654 F.3d at 942. Accordingly, before final approval, the court will "scrutinize closely the relationship between attorneys' fees and benefit to the class" and will not "award[] unreasonably high fees simply because they are uncontested." *In re Bluetooth*, 654 F.3d at 948. Class Counsel is reminded that they must make a sufficient showing to justify an award of fees, particularly an award that exceeds the Ninth Circuit's benchmark, and they should identify relevant legal authority that supports the percentage of the award that they propose.

As already discussed, Plaintiffs seek representative enhancements of $10,000, an amount which is more than 135 times the value of Benefit A. (Settlement Agreement § 10(b).) The enormous disparity between these proposed enhancement awards and the recovery of individual Class Members raises the specter of conflict between Plaintiffs and the Class. *Mansfield*, 2015 WL 13651284, at *7. Accordingly, Plaintiffs must similarly justify why such large awards would be warranted, particularly in light of the risk of conflict.

E. Stage of the Proceedings and Extent of Discovery Completed

This factor requires the Court to evaluate whether "the parties have sufficient information to make an informed decision about settlement." *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1239 (9th Cir. 1998). Discovery can be both formal and informal. *See Clesceri v. Beach City Investigations & Protective Servs., Inc.*, No. CV-10-3873-JLS (RZx), 2011 WL 320998, at *9 (C.D. Cal. Jan. 27, 2011). Here, the parties engaged in extensive discovery and investigation, including exchanging almost 3,000 pages of documents, issuing 25 subpoenas to third-party retailers, retaining liability and damages experts, interviewing class members, and taking several depositions. (Mem. at 3–4; Beligan Decl. ¶¶ 3, 5–7.) Armed with this information, the parties engaged in settlement discussions through a mediator. (Beligan Decl. ¶ 9.) At the time of settlement, Plaintiffs had filed their motion for class certification with the Court. (*Id.* ¶ 8.)

Given these facts, the Court concludes that the parties possess sufficient information to make an informed settlement decision. *See In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d at 459 (finding plaintiffs had "sufficient information to make an informed decision about the [s]ettlement" where formal discovery had not been completed but class counsel had "conducted significant investigation, discovery and research, and presented the court with documentation supporting those services."). Accordingly, this factor weighs in favor of granting preliminary approval.

F. Experience and Views of Counsel

"The recommendations of plaintiffs' counsel should be given a presumption of reasonableness." *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2008) (citation omitted). As discussed above, Class Counsel have experience serving as plaintiffs' counsel in consumer class actions, and they have endorsed the Settlement Agreement as fair, reasonable, and adequate. (Beligan Decl. ¶ 17.) Thus, this factor favors preliminary approval.

G. Reaction of Class Members to Proposed Settlement

Plaintiffs have not provided evidence of the Class Members' reactions to the proposed Settlement Agreement. However, the Court recognizes that the lack of such evidence is not uncommon at the preliminary approval stage. Before the final fairness hearing, Class Counsel shall submit a sufficient number of declarations from Class Members discussing their reactions to the proposed Settlement Agreement. A small number of objections at the time of the fairness hearing may raise a presumption that the Settlement Agreement is favorable to the Class. *See In re Omnivision Techs., Inc.*, 559 F. Supp. 2d at 1043.

H. Signs of Collusion

As noted above, because this settlement was reached prior to certification of the class, the Court must be "particularly vigilant" for signs of collusion, including: (1) a disproportionate distribution of the settlement fund to counsel, or when the class receives no monetary compensation but counsel receive an ample award of attorneys' fees[6]; (2) negotiation of a "clear sailing provision" according to which defendants agree not to oppose an attorney's fee award up to a certain amount; and (3) an arrangement for funds not awarded to revert to defendants rather than to be added to the common settlement fund. *In re Bluetooth*, 654 F.3d at 946–47. Ultimately, the Court must determine whether class counsel "permitted self-interest to trump their obligation to ensure a fair settlement for the class as a whole." *In re Toys R Us-Delaware, Inc.--Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 457 (C.D. Cal. 2014).

As to the first sign of collusion, the Court has already noted its concerns with the amount of attorneys' fees that Class Counsel plans to request and will ensure a reasonable relationship between attorneys' fees awarded and the benefit of the settlement to the Class. *See In re Bluetooth*, 654 F.3d at 948. The second sign of collusion is present, as the parties have negotiated a clear sailing provision. (*See* Settlement Agreement § 10(a).) The third sign of collusion is also present, as any unawarded fees will revert to Wilson. (*Id.*) However, this "kicker" provision is of less concern where, as here, the "attorneys' fees payment is separate and is not deducted from the calculated class recovery." *Georgino v. Sur la Table, Inc.*, No. CV-11-03522-MMM (JEMx), 2013 WL 12122430, at *16 (C.D. Cal. May 9, 2013). While it is certainly possible that the value of the vouchers was determined, in part, with reference to the amount Wilson was going to have to pay Class

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[6] Because the vouchers have monetary value, the Court considers "whether the settlement terms result in class counsel receiving a disproportionate share of the settlement, and does not treat this as a situation in which the class receives no monetary compensation… ." *In re Toys R Us-Delaware, Inc.--Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 457 n.87 (C.D. Cal. 2014).

Counsel, "the fact that the settlement does not contemplate a common fund from which both class members and counsel will be paid mitigates, to some extent, the collusive nature of the kicker provision." *Id.*

The Court concludes that "despite the clear sailing and kicker provisions, the [C]lass stands to receive a sufficiently large award that these indications of collusion do not warrant invalidating the agreement as a whole." *Id.* *See also Knapp*, 283 F. Supp.3d at 835 (finding that the *Bluetooth* factors did not indicate collusion when fully analyzed, even though "[t]he potential for two of the three signs of collusion" existed). Moreover, the settlement was the result of arm's length negotiations during a full-day mediation with an experienced mediator. (*See* Beligan Decl. ¶ 9.) A "mediator's involvement in the settlement supports the argument that it is non-collusive." *Graham v. Capital One Bank (USA), N.A.*, No. SACV-13743 JLS (JPRx), 2014 WL 12579809, at *6 (C.D. Cal. July 29, 2014).

Considering all of the factors together, the Court preliminarily concludes that the Settlement Agreement is fair, reasonable, and adequate.

IV. APPROVAL OF THE PROPOSED SETTLEMENT ADMINISTRATOR

The parties agreed to appoint Kurtzman Carson Consultants ("KCC") as the Settlement Administrator in this action, subject to the Court's approval. (*See* Mot. at 1.) Plaintiffs have provided sufficient documentation of KCC's competence in carrying out the duties of a settlement administrator. (*See* Perry Decl., Doc. 154-7.) Moreover, this Court has previously approved KCC as Claims Administrator in other class action settlements. *See, e.g., Tawfilis et al. v. Allergan, Inc.*, 8:15-cv-00307-JLS (JCG), ECF No. 388 at 13 (C.D. Cal. Mar. 8, 2018). Accordingly, the Court approves KCC as the

Settlement Administrator in this action.[7]

V. PRELIMINARY APPROVAL OF CLASS NOTICE FORM AND METHOD

For a class certified under Rule 23(b)(3), "the court must 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). However, actual notice is not required. *See Silber v. Mabon*, 18 F.3d 1449, 1454 (9th Cir. 1994).

Pursuant to the Settlement Agreement, within fourteen days following preliminary approval, the Claims Administrator will email the Notice Package to Class Members for whom the parties have an email address on file. (Settlement Agreement § 6(a).) To those Class Members for whom the parties do not have an email address or the initial email is returned as undeliverable, within fourteen days of either Preliminary Approval or the date of the email's return as undeliverable, the Settlement Administrator will mail the Notice Package via U.S. mail to Class Members with known mailing addresses. (*Id.* § 6(b).) Finally, no later than fourteen days following preliminary approval, the Settlement Administrator will begin Publication Notice. (*Id.* § 6(c).) As described above, Publication Notice will supplement the individual notice through 20 million banner ads that will be distributed across more than two million websites. (*See* Class Notice Plan at 6.) The banner ads state, "If you bought a Wilson-DeMarini 2013 or 2014 White Steel softball bat, you could get a Wilson Voucher from a class action settlement," and invite viewers to click the ad to "Learn More." (*See* Publication Notice.) The ads link to the case Website, which includes all relevant information about the case, provides case documents, and allows Class Members to file claims online or request to have the Notice Package mailed

[7] The Court does not approve any award of costs to KCC at this time. Plaintiffs shall apply for approval of an award of costs for claims administration concurrently with their application for attorneys' fees and service payments.

to them. (Mem. at 13; Class Notice Plan at 7.) Claims, objections, and requests for exclusion must be filed no later than 60 days after notice is issued either by email, mail, or publication notice, or, where the initial email is returned as undeliverable, 60 days after mailing. (Settlement Agreement § 10(d).)

The Supreme Court has found notice by mail to be sufficient if the notice is "reasonably calculated . . . to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950); *accord Sullivan v. Am. Express Publ'g Corp.*, No. SACV 09-142-JLS ANx, 2011 WL 2600702, at *8 (C.D. Cal. June 30, 2011) (quoting *Mullane*). Notice by email satisfies the "reasonably calculated" standard where, as here, the parties previously provided their email addresses to facilitate their business dealings. *See Kissel v. Code 42 Software, Inc.*, No. SACV-151936 JLS (KESx), ECF No. 47 at 20 (C.D. Cal. Oct. 4, 2017); *D.Light Design, Inc. v. Boxin Solar Co.*, No. C-13-5988 EMC, 2015 WL 526835, at *3 (N.D. Cal. Feb. 6, 2015) (finding service by email appropriate, in part, because it was a past mode of communication between the parties and the emails did not bounce back as undeliverable). Thus, the parties' proposed plan for providing notice by email and mail is sufficient as to known Class Members. Further, the proposed Publication Notice is reasonably calculated to reach unknown Class Members, as it provides sufficient information to induce eligible consumers to follow the link to the website where they can access all of the necessary information regarding the Settlement and their options. (*See* Publication Notice, Doc. 154-3.) Thus, the Court finds that the proposed procedure for class notice satisfies Due Process.

Plaintiffs have provided the Court with a copy of the proposed Class Notice. (Class Notice, Doc. 156.[8]) Under Rule 23, the notice must include, in a manner that is

[8] Plaintiffs initially filed a copy of the proposed Class Notice that omitted two sections. (*See* Exhibit A, Doc. 154-3.) Thereafter, pursuant to the Court's order, Plaintiffs filed a revised copy that corrected the omission. (Doc. 156.)

understandable to potential class members: "(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 through 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)." Fed. R. Civ. P. 23(c)(2)(B). The Court notes several deficiencies in the proposed Class Notice. First, the proposed Class Notice does not make clear that Class Members may enter an appearance through an attorney. Thus, the Court requires that Section 13 ("How do I get out of the Settlement?"), Section 18 ("How Do I tell the Court that I do not like the Settlement?"), Section 20 ("When and where will the Court decide whether to approve the Settlement?"), and Section 22 ("May I speak at the hearing") be modified to notify Class Members that they may enter an appearance through an attorney if they so choose.

The Court also requires the Class Notice to be modified as follows:

- The "Exclude Yourself" option in the textbox titled "Your Legal Rights and Options in this Settlement" should clearly instruct Class Members that they must write to the Claims Administrator in order to be excluded from the settlement. The current language does not explain what action Class Members must take in order to be excluded.
- The "Object" option in the textbox titled "Your Legal Rights and Options in this Settlement" must eliminate any reference to filing a written objection with the Court and should instruct Class Members to file written objections with the Claims Administrator.
- Section 16 ("Do I have a lawyer in this case?") should include the contact information for Class Counsel.
- Section 18 ("How do I tell the Court that I do not like the Settlement?") should be revised to include only the address of the Claims Administrator, as this is the

only address to which Class Members are instructed to submit their objections. The Claims Administrator will then be responsible for disseminating the objections to counsel and the Court.

- Section 24 ("How do I get more information?") should also state that all papers filed in this action, including a copy of the application for fees and costs and service awards, will be available for review via the Public Access to Court Electronic Resources System (PACER), available online at http://www.pacer.gov.

Subject to the changes discussed above, the Court approves the form and method of class notice. The Court ORDERS the parties to file a revised version of the Class Notice **within 10 days** of entry of this Order.

The Court also requires that any motion for attorneys' fees, costs, and service payments be filed with the Court **no later than 15 days before** the latest exclusion deadline. Plaintiffs shall file their motion for final approval no later than **September 21, 2018**, including a brief responding to any submitted objections and otherwise summarizing Class Members' participation in the settlement to date.

Finally, the Court notes that its jurisdiction over this matter arises in part from the Class Action Fairness Act. (*See* SAC ¶ 1.) In their papers for final approval of the settlement, the parties must also include a declaration reflecting that they provided appropriate notice of the proposed settlement to relevant state and federal authorities per the terms of 28 U.S.C. § 1715(b) at least 90 days prior to the date for the final fairness hearing. 28 U.S.C. § 1715(d). *True v. Am. Honda Motor Co.*, 749 F. Supp. 2d 1052, 1059 n.5 (C.D. Cal. 2010) (recognizing that the Class Action Fairness Act "requires that notice [of a proposed settlement] be sent to 'the appropriate State official of each State in which a class member resides and the appropriate Federal official.'" (quoting 28 U.S.C § 1715(b)).

VI. CONCLUSION

For the reasons discussed above, the Court (1) preliminarily approves the Settlement Agreement, (2) conditionally certifies the Class for settlement purposes only, (3) approves KCC as Settlement Administrator, (4) appoints as Class Counsel Brian Chase and Jerusalem Beligan of Bisnar | Chase LLP and Jesse Bablove of Dickson, Kohan, & Bablove, LLP, (5) appoints Oda and Roth as Class Representatives, and (6) approves the form and method of class notice, subject to the changes discussed above. The Court ORDERS the parties to file a revised version of the Class Notice **within 10 days** of this Order.

The Court sets a final fairness hearing for **October 19, 2018, at 2:30 p.m.**, to determine whether the settlement should be finally approved as fair, reasonable, and adequate to Class Members. Plaintiffs shall file their motion for final approval no later than **September 21, 2018**. Class Counsel shall file applications for fees and representative enhancement awards **no later than 15 days before** the latest exclusion deadline. The Court reserves the right to continue the date of the final fairness hearing without further notice to class members.

DATED: June 06, 2018

JOSEPHINE L. STATON
UNITED STATES DISTRICT JUDGE