UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	LA CV13-03972 JAK (PLAx)	Date	February 25, 2015
Title	Isadora Lopez-Venegas, et al. v. Jeh Johnson, et al.		

Present: The Honorable	JOHN A. KRONSTADT, UNITED STATES DISTRICT JUDGE

Andrea Keifer	Not Reported
Deputy Clerk	Court Reporter / Recorder
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
Not Present	Not Present

Proceedings: **(IN CHAMBERS) ORDER RE REPRESENTATIVE CLASS PLAINTIFFS' MOTION FOR ATTORNEY'S FEES AND COSTS (DKT. 99) AND MOTION FOR SETTLEMENT APPROVAL OF CLASS-WIDE PORTIONS OF AGREEMENT (FINAL APPROVAL) (DKT. 101)**

I. Introduction

This putative class action was brought by 11 individuals (the "Individual Plaintiffs") and three non-profit organizations (the "Organizational Plaintiffs") (collectively, "Plaintiffs"). They brought claims arising from a voluntary departure program (the "Program") for foreign nationals who were present in the United States without permission. The Program was administered by immigration enforcement agencies in Southern California. First Amended Complaint ("FAC"), Dkt. 28.[1] Under the Program, foreign nationals could agree to leave the United States voluntarily by signing expulsion orders. *Id*. The FAC alleges that implementation of the Program deprived the deportees of their rights under federal statutes and the Constitution. The FAC advances the following causes of action: (1) violation of the Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*; (2) violation of the Immigration and Nationality Act, 8 U.S.C. §§ 1101 *et seq.*; (3) violation of procedural due process rights under the Fifth Amendment; and (4) violation of substantive due process rights under the Fifth Amendment. FAC, Dkt. 28.

After several months of litigation, exchange of discovery materials and substantial arms-length negotiations, the parties reached a settlement agreement (the "Agreement"). Agreement, Dkt. 90-4,

[1] Plaintiffs' First Amended Complaint (the "FAC") named the following senior, federal officials as Defendants: Rand Beers, Acting Secretary of the Department of Homeland Security ("DHS"); Thomas Winkowski, the Deputy Commissioner of CBP, who performs the duties of CBP Commissioner; and John Sandweg, Acting Director of U.S. Immigration and Customs Enforcement ("ICE"). *Id*. ¶¶ 24-26. The FAC also named the following local federal, officials as Defendants: Paul Beeson, Chief Patrol Agent for CBP's San Diego Sector; Gregory Archambeault, ICE Field Office Director for San Diego; and Dave Marin, Acting ICE Field Office Director for Los Angeles. *Id*. ¶¶ 27-30. After the filing of the FAC, pursuant to Fed. R. Civ. P. 25(d), Jeh Johnson, the current secretary of the DHS, was named as a defendant in place of Rand Beers. *See* Dkt. 70 at 6 n.1. Collectively, they are called "Defendants" throughout this Order.

Ex. 1. On August 18, 2014, Plaintiffs filed a motion seeking an order: (i) provisionally certifying a settlement class; (ii) appointing certain plaintiffs as class representatives; (iii) appointing Plaintiffs' counsel as Class Counsel; (iv) granting preliminary approval of the class-wide terms of the Agreement; (v) approving the plan for notice to class members; (vi) staying all proceedings in the litigation other than those necessary to effect the terms of the Agreement; and (vii) setting a hearing for final approval of the class settlement. Dkt. 90. Applications were also filed on behalf of Individual Plaintiffs Marta Mendoza and Yadira Felix for approval of the settlement, by and through representatives acting on their behalf. Dkt. 91, 92. The motion was unopposed. On August 28, 2014, the motion for preliminary approval of the class-wide portion of the Agreement was granted. Dkt. 94.[2] Plaintiffs were ordered to file a motion for final approval, including applications for attorney's fees and costs, on or before January 5, 2015. *Id.*

On December 17, 2014, Plaintiffs' counsel filed a motion for attorney's fees and costs. Motion for Attorney's Fees and Costs ("Fee Application"), Dkt. 99. On January 5, 2015, Plaintiffs filed a motion for final approval of the class-wide portions of the Agreement. Motion for Settlement Approval of Class-Wide Portions of Agreement ("Motion"), Dkt. 101. Both the Fee Application and the Motion are unopposed.

A hearing on the Fee Application and Motion was held on February 9, 2015 and the matter was taken under submission. For the reasons set forth in this Order, the Fee Application and Motion are **GRANTED**.

II. Factual Background

The factual background of this matter is set forth in the August 28, 2014 Order granting preliminary approval of the Agreement. That Order is incorporated by this reference. Dkt. 94. The central facts are as follows. On June 4, 2013, Plaintiffs brought this putative class action against federal immigration enforcement agencies in Southern California. *See* FAC ¶¶ 1-6, Dkt. 28. They alleged that Defendants were employing deceptive and threatening tactics to coerce non-citizens to sign their own expulsion orders, and that this denied them due process. *Id.* The specific conduct challenged by the FAC is the following: (i) Defendants caused a pre-marking of the term "voluntary departure" on a common form before presenting it to non-citizens; (ii) Defendants failed to disclose to putative class members certain consequences of accepting voluntary departure; and (iii) Defendants failed to provide non-citizens with access to counsel while they were deciding whether to accept voluntary departure. *Id.*

III. Procedural Background

On June 4, 2013, Plaintiffs filed their original complaint. Complaint ("Compl."), Dkt. 1.[3] On July 1, 2013, the original defendants moved to transfer the matter to the Southern District of California. Dkt. 11. The matter was set for hearing on September 23, 2013. *Id.* On September 11, 2013, before the hearing, the original defendants moved to dismiss the Complaint. Dkt. 20. That motion was set for hearing on

[2] The August 28, 2014 Order granting preliminary approval of the class-wide portions of the Agreement is incorporated by this reference.

[3] The Complaint named the following defendants: Janet Napolitano (then Secretary of DHS); Thomas Winkowski; John Morton (Director of ICE); Paul Beeson; Gregory Archambeault; and Dave Marin. Compl., Dkt. 1.

November 4, 2013. Dkt. 21. On September 23, 2013, the Court continued the motion to transfer venue to November 4, 2013, which was the date set for the hearing on the pending motion to dismiss the Complaint. Dkt. 26. Thereafter, on September 26, 2013, the original defendants filed a second motion to dismiss the Complaint. Dkt. 27.

On October 2, 2013, Plaintiffs filed the FAC. This made moot the pending motions to dismiss (Dkt. 20, 27). Dkt. 32. On October 23, 2013, the Court continued the motion to transfer venue to December 9, 2013. *Id.*

On October 31, 2013, Defendants filed a motion to dismiss the FAC. Dkt. 35. On November 5, 2013, Plaintiffs filed a motion for a preliminary injunction. Dkt. 37. Plaintiffs sought relief only as to certain Individual Plaintiffs. That relief included that the voluntary departure orders they had signed would be stayed so that they could reenter the United States without suffering adverse consequences. *See* Proposed Order, Dkt. 37-11. On December 2, 2013, Defendants withdrew their motion to transfer venue. Dkt. 45.

On December 27, 2013, Defendants' motion to dismiss the FAC was granted in part and denied in part. Dkt. 53.[4] The motion was granted with respect to Plaintiffs' second cause of action under 8 U.S.C. § 1229c(a)(1) and denied as to all other claims. *Id.* at 22. Plaintiffs' motion for a preliminary injunction was denied in the same Order. *Id.* Although that motion was denied, the Order stated that Plaintiffs had made a showing of likely success on the merits. *Id.* at 28-29.

Thereafter, the parties engaged in substantial discovery. Plaintiffs served numerous document requests, interrogatories and deposition notices. Decl. of Sean Riordan ("Riordan Decl.") ¶ 3, Dkt. 90-3. Defendants produced over 8000 pages of documents in response to these requests. *Id.* Plaintiffs took 10 depositions. *Id.* Plaintiffs also produced over 2000 pages of documents in response to Defendants' requests. *Id.* ¶ 4. Defendants also deposed eight Individual Plaintiffs and three witnesses designated by the Organizational Plaintiffs. *Id.* In the course of the discovery process, the parties filed motions with respect to certain disputes, including as to the appropriate terms of a protective order and whether the production of certain documents would be required. *See* Dkt. 58, 75.

On April 10, 2014, the parties attended a settlement conference with Magistrate Judge Abrams. Riordan Decl. ¶ 5. The parties did not reach an agreement at that time. *Id.* On April 25 and May 23, 2014, the parties participated in further settlement conferences with Judge Abrams. *Id.* ¶ 6. Between these conferences, counsel for the parties engaged in extensive discussions on open issues. *Id.* Ultimately, with the assistance of Judge Abrams, the parties reached an agreement in principle to settle all of the pending claims. *Id.* On June 10, 2014, the parties met again with Judge Abrams to discuss and resolve certain open issues, including as to an award of attorney's fees. *Id.* The parties succeeded in resolving all issues and then prepared and executed a written settlement agreement. *Id.* ¶ 7.

On August 28, 2014, the Court granted preliminary approval of the Agreement. Dkt. 94. Consistent with

[4] The December 27, 2013 Order is incorporated by this reference.

that Order, notice to class members was then provided by Dahl Administration, LLC ("Dahl"). Agreement §§ 1.25; 3.2(e); 3.3(a). Dahl posted 13 out-of-home "billboard" publication notices along "high-traffic roadways in the Tijuana, Tecate, and Mexicali regions of Mexico during November and the first week of December, 2014." Decl. of Jeffrey D. Dahl ("Dahl Decl.") ¶ 6, Dkt. 101-4. The text of the billboard notices was approved by counsel for both parties and "included both the domain name for the Settlement website and the phone number of Class counsel." *Id.*; *see also* Dahl Decl., Exs. B, C. Dahl also broadcasted 538 "30-second radio announcements" on seven radio stations in San Diego, California; Tijuana, Mexico; and Baja, Mexico. *Id.* ¶ 7. The radio announcements were broadcast in Spanish and the message was approved by counsel for both parties. *Id.* The broadcast occurred at several times during the day on a series of weekdays and weekends. *Id.* Dahl placed "banner-style notices" on several websites with "readership profiles matching those of the Settlement Class." *Id.* ¶ 8. The text was approved by counsel for both parties. *Id.* Those who clicked on the banner were re-directed to www.SalidaVoluntariaAcuerdo.com. *Id.*[5] The banners appeared between October 14, 2014 and November 7, 2014. *Id.* Dahl displayed notices on Facebook from October 13, 2014 to November 7, 2014. *Id.* ¶ 9. Finally, keyword searches were programmed on Google and Bing websites for users located in the "border regions of California and Mexico" from October 16, 2014 through December 15, 2014. *Id.* ¶ 10. Dahl declares that "by producing more than 50 million impressions targeted to Class Members using methods universally employed in the advertising industry," adequate notice was provided. *Id.* ¶ 17.

No objections to the settlement have been received, although several inquiries have been made by persons who may be class members. Decl. of Bardis Vakili ("Vakili Decl.") ¶ 4, Dkt. 101-3; *see also* Dahl Decl. ¶ 14. During the recent hearing on the Motion, counsel for both parties confirmed that no objections have been received.

IV. Terms of the Proposed Settlement

The terms of the Agreement were outlined in the August 28, 2014 Order granting preliminary approval of the class-wide portions of the Agreement (Dkt. 94). For convenience, they are also summarized here.

A. Settlement Class

The parties agree that the "Class" is defined as:

> All Individuals who returned to Mexico pursuant to a Qualifying Voluntary Return,[6] and

[5] As of February 20, 2015, the home page for this website is in English. Lopez-Venegas v. Johnson Settlement, http://www.salidavoluntariaacuerdo.com (last visited Feb. 20, 2015). Two pages are in Spanish, however: "frequently asked questions" and "contact us." *Id.* A link to these pages is located in a side-bar in the upper left corner of the website.

[6] As used in the Class definition, the term "Qualifying Voluntary Return" means "any Voluntary Return that occurred within the Relevant Area during the period starting June 1, 2009, and [the date the Court preliminarily approves the class-wide settlement relief], on which a potential Class Member relies when applying to be a member of the Settlement Class." Agreement § 1.21. The term "Relevant Area" means, "with regard to Border Patrol, the geographic area covered by Border Patrol's San Diego Sector, and with regard to ICE, the geographic area covered

who are described in both paragraphs (a) and (b) of this section:

(a) Based on the facts as they existed at the time of his or her Qualifying Voluntary Return, the Individual:

(i) Last entered the United States with inspection prior to his or her Qualifying Voluntary Return and satisfied the non-discretionary criteria for submitting an approvable application to adjust status under 8 U.S.C. § 1255(a), based on a *bona fide* immediate relative relationship defined in 8 U.S.C. § 1151(b)(2)(A)(i);

(ii) Was the beneficiary of a properly filed Form I-130 Petition for Alien Relative based on a *bona fide* family relationship, which was pending or approved at the time of the Qualifying Voluntary Return;

(iii) Satisfied the non-discretionary criteria to apply for cancellation of removal under 8 U.S.C. § 1229b; or

(iv) His or her Qualifying Voluntary Return occurred on or after June 15, 2012, and at that time he or she satisfied the bulleted criteria for consideration for Deferred Action for Childhood Arrivals ("DACA") listed on page one of the June 15, 2012 memorandum from former Secretary of Homeland Security Janet Napolitano; and

(b) At the time of application for class membership, the Individual:

(i) Is physically present within Mexico; and

(ii) Is inadmissible under 8 U.S.C. § 1182(a)(9)(B), due to his or her Qualifying Voluntary Return, except that this requirement does not apply to an Individual seeking recognition as a Class Member under § 1.26(a)(i) above.

Agreement § 1.26.[7]

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by ICE's San Diego and Los Angeles Field Offices." *Id.* § 1.22. The term "Voluntary Return" means "the process by which an Individual in the custody of ICE or Border Patrol admits being unlawfully present in the United States, and returns to his or her country of citizenship or nationality under 8 U.S.C. § 1229c(a), in lieu of formal removal proceedings. This term does not include voluntary departure granted by an immigration judge during or at the conclusion of formal removal proceedings." *Id.* § 1.27.

[7] This class definition varies slightly from the one alleged in the FAC. However, Plaintiffs represent that the categories of individuals described in the proposed Settlement Class comprise most of the persons described in the FAC and who have "a plausible basis to seek the opportunity to reside legally in the United States[.]" FAC ¶ 164. This slight variation in the definitions of the class does not affect the substance of the fairness inquiry. *See McBean v. New York,* 233 F.R.D. 377, 384 (S.D.N.Y. 2006) ("It was perfectly reasonable . . . for class counsel to define the class in a way that, in their opinion, would lead to the best recovery *for the class.* Fairness does not require class counsel to act on behalf of individuals not in the class, even if at one time those individuals were included in a pretrial

B. Procedures to Petition to Return to the United States

Beginning four months after the Court grants final approval, Defendants will accept applications from class members who wish to return to the United States. With certain exceptions, Defendants will permit the physical return of a class member upon a showing that he or she meets the criteria for class membership. *Id.* §§ 2.2, 2.3. If an application is granted, a class member will be permitted to return to the United States through the San Ysidro Port of Entry. If a Class member is allowed to return to the United States, Defendants agree to place the individual in the same position with respect to the applicable immigration laws and regulations that he or she had immediately prior to the Qualifying Voluntary Return. *Id.* § 2.2(e). Thus, the class member may be admitted or may be placed in parole or removal proceedings. Agreement §§ 2.2(a)-(c), 2.3(a).

Defendants will accept applications for a period of 180 days. *Id.* § 2.3(b). Applications may be submitted by any of the following: (i) Plaintiffs' counsel; (ii) persons employed by or affiliated with the Organizational Plaintiffs; and (iii) up to 12 other non-profit organizations, law school clinics, law firms or immigration practitioners. *Id.* §§ 1.2; 2.3(c). The Agreement also provides for a dispute resolution procedure if a disagreement arises with respect to whether an individual qualifies for the benefits of Class membership. *Id.* § 2.4.

C. Release of Claims

Plaintiffs have agreed to release all claims for injunctive and declaratory relief against all Defendants arising from, or related to, the events in the FAC that occurred on or before the entry of an order of preliminary approval. Agreement §§ 6.1-6.2. The Individual, Representative and Organizational Plaintiffs also have waived any claims for monetary damages. *Id.* However, the Agreement does not include a release by other Class members of any individual claims for monetary relief. *Id.* § 6.2.[8]

D. Notice and Claim Procedures

The parties agreed to the selection of Dahl to provide notice to the members of the proposed Class. Agreement §§ 1.25; 3.2(e); 3.3(a). Defendants are responsible for Dahl's costs and fees for providing such notice up to an amount that is the lesser of: (i) 50% of the total costs and fees; or (ii) $150,000. *Id.* § 3.3(b). Class Counsel is responsible for Dahl's costs and fees that exceed that amount. *Id.* If the total costs and fees of Dahl exceed $300,000, plaintiffs may seek to renegotiate the apportionment of such costs with Defendants. *Id.*

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class definition.") (emphasis in original).

[8] If a Class member is not permitted to return to the United States under the Agreement, he or she is not bound by the release and may raise claims through separate litigation. The parties have agreed that there will be a tolling of any limitations periods with respect to such claims between the filing of the instant action and the conclusion of the dispute resolution process as to the applications by individual Class members to return to the United States. *Id.* § 2.4.

E. Attorneys' Fees and Costs, and Administration.

The proposed settlement provides that Class Counsel may petition the Court for an award of reasonable attorney's fees and costs, not to exceed $700,000. Agreement § 7.1. The parties agree that the relief afforded to the Class will not be affected should the Court award less than the amount requested. *Id.* § 7.2.[9]

V. Analysis

A. Motion for Final Approval

1. Whether the Class Should be Certified

a) Legal Standard

The "threshold task" when deciding a motion for final approval of a class action settlement is to "ascertain whether the proposed settlement satisfies the requirements of Rule 23(a) of the Federal Rules of Civil Procedure applicable to all class actions, namely: (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998). A court must also determine whether "the action is maintainable under Fed. R. Civ. P. 23(b)(1), (2) or (3)." *Id.* at 1022. Rule 23(b)(2) requires that the "party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." "Civil rights cases against parties charged with unlawful, class-based discrimination are prime examples." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 614 (1997).

Cases alleging due process violations in connection with immigration proceedings have also been considered appropriate for certification under Rule 23(b)(2). *See, e.g.*, *Walters v. Reno*, 145 F.3d 1032, 1047 (9th Cir. 1998) (affirming certification for a class that challenged Immigration and Naturalization Service ("INS") procedures used to obtain waivers in document fraud cases). To qualify for certification under Rule 23(b)(2), it is "sufficient if class members complain of a pattern or practice that is generally applicable to the class as a whole." *Id.*

b) Application

The August 28, 2014 Order determined that the Class, as defined, met the requirements of Fed. R. Civ. P. 23. Dkt. 94 at 9-10. Nothing has changed since its issuance. Therefore, for the reasons states in the prior Order, the requirements of both Rule 23(a) and (b)(2) have been satisfied, and the class is certified.

[9] Defendants also have agreed to certain prospective relief. Thus, they have agreed to do each of the following: provide certain additional information to non-class members about possible voluntary return to the United States; modify Form I-826 to include certain information; implement an advisory hotline with information relevant to individuals who have or will be offered the opportunity to request voluntary return; post notices of rights; and modify other voluntary return procedures. *See* Settlement Agreement §§ 4-4.7. Because these terms do not apply to Class members, they are not considered as part of this Order.

2. Whether the Agreement Should Receive Final Approval

a) Legal Standard

Fed. R. Civ. P. 23(e) requires that a court engage in a two-step process when considering whether to approve the settlement of a class action. First, in the preliminary approval process, a court must determine whether the proposed settlement provides benefits to the class members that are within the range of what might have been recovered through litigation such that they are fair, reasonable and adequate. *See Acosta v. Trans Union*, 243 F.R.D. 377, 386 (C.D. Cal. 2007). In the second step of the process, which occurs after preliminary approval, notification to class members, and the consideration of any objections by class members, a court determines whether final approval of the settlement should be granted.

A court is to consider and evaluate several factors as part of its assessment of a proposed classwide settlement. In the Ninth Circuit, the following eight, non-exclusive factors are among those that may be considered during both the preliminary and final approval processes:

1) the strength of the plaintiff's 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 view of counsel;
7) the presence of a governmental participant; and
8) the reaction of the class members to the proposed settlement.

See Linney v. Cellular Alaska P'ship, 151 F.3d 1234, 1242 (9th Cir. 1998). Each factor does not necessarily apply to every class action settlement, and other factors may be considered. For example, courts often consider whether the settlement is the product of arms-length negotiations. *See Rodriguez v. West Publ'g Corp.,* 563 F.3d 948, 965 (9th Cir. 2009) ("We put a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution.").

b) Application

The August 28, 2014 Order concluded that the Agreement had the potential to be deemed fair, reasonable and adequate. Dkt. 94 at 8. Based on the evidence now presented, these tests have been met for several reasons.

First, this settlement agreement was the product of extensive negotiations informed by meaningful discovery. That Judge Abrams participated with the parties in four separate mediation sessions is also significant. It reflects that the Agreement has the necessary indicia of fairness toward class members. Further, these were arm's length negotiations conducted by experienced counsel. This factual setting confirms that the parties were aware of the complex legal issues presented and reached an agreement

while mindful of the risks and expenses of further litigation. These facts support a finding that the settlement negotiations were fair and reasonable. *See Hanlon v. Chrysler Corp.,* 150 F.3d 1011, 1027 (9th Cir. 1998) (affirming approval of settlement after finding "no evidence to suggest that the settlement was negotiated in haste or in the absence of information illuminating the value of plaintiffs' claims"); *Harris v. Vector Mktg. Corp.*, No. C-08-5198, 2011 WL 1627973, at *8 (N.D. Cal. Apr. 29, 2011) ("With the Court's prior rulings as guidance, the parties were in a position to assess the strengths and weaknesses of their arguments and evidence, and make an informed decision about the risks associated with proceeding . . . to trial."); *Cicero v. DirecTV, Inc*., No. ED CV07-1182, 2010 WL 2991486, at *3 (C.D. Cal. July 27, 2010); *In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1171 (S.D. Cal. 2007).

Second, in light of the uncertainty as to the outcome of further litigation, the Agreement provides significant benefits to Class members. In the FAC, Plaintiffs sought, among other things, an order that they be allowed to return to the United States in "a manner that restores them to the legal position that they occupied prior to their respective voluntary departures[.]" FAC, Prayer for Relief ¶ 4, Dkt. 28 at 59. The Agreement provides that relief. For these reasons, the relief afforded is reasonable.

Third, counsel for both parties have extensive experience with civil rights actions related to immigration procedures. Riordan Decl. ¶ 11. Thus, their support of the proposed settlement provides further support for approval. *See In re Lorazepam & Clorazepate Antitrust Litig. Advocate Health Care*, No. MDL 1290, 2003 WL 22037741, at *6 (D.D.C. June 16, 2003) (the opinion of experienced counsel "should be afforded substantial consideration by a court in evaluating the reasonableness of a proposed settlement"); *Lyons v. Marrud, Inc.,* No. 66 Civ. 415, 1972 WL 327, at *2 (S.D.N.Y. June 6, 1972) ("The parties' decision regarding the respective merits of their positions has an important bearing on this case."). Given that attorney's fees were negotiated after the parties reached the substance of the Agreement, there is no evidence to suggest any conflict between the interests of the Class members and their counsel.

Fourth, there have been no objections to the Agreement by any member of the Class. There were no objections during the hearing on February 9, 2015. Given the significant, multi-faceted notice that was given to Class members, the lack of objections is significant and supports a finding that the Agreement is fair, reasonable and adequate.

A consideration of all the foregoing factors shows that the Agreement is sufficiently fair, reasonable and adequate to warrant final approval. The Motion is **GRANTED**.

B. Motion for Attorney's Fees and Costs

Class Counsel argue that attorney's fees and costs of $700,000 are authorized under both prongs of Fed. R. Civ. P. 23(h). Thus, they are authorized by party agreement and by statute under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d)(1)(A) and (d)(2)(C). Because the fees requested are reasonable in light of the Agreement, the issue whether fees would be awarded under the EAJA is not

addressed.[10]

1. Legal Standard

Attorney's fees and costs "may be awarded in a certified class action where so authorized by law or the parties' agreement"; however, "courts have an independent obligation to ensure that the award, like the settlement itself, is reasonable, even if the parties have already agreed to an amount." *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011); *see also* Fed. R. Civ. P. 23(h). "If fees are unreasonably high, the likelihood is that the defendant obtained an economically beneficial concession with regard to the merits provisions, in the form of lower monetary payments to class members or less injunctive relief for the class than could otherwise have [been] obtained." *Staton v. Boeing Co.*, 327 F.3d 938, 964 (9th Cir. 2003). Thus, a district court must "assure itself that the fees awarded in the agreement were not unreasonably high, so as to ensure that the class members' interests were not compromised in favor of those of class counsel." *Id.* Factors considered in examining the reasonableness of the fee include: (1) whether the results achieved were exceptional; (2) risks of litigation; (3) non-monetary benefits conferred by the litigation; (4) customary fees for similar cases; and (5) the contingent nature of the fee and financial burden carried by counsel. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-50 (9th Cir. 2002).

"The 'lodestar method' is appropriate in class actions brought under fee-shifting statutes (such as federal civil rights, securities, antitrust, copyright, and patent acts), where the relief sought—and obtained—is often primarily injunctive in nature and thus not easily monetized, but where the legislature has authorized the award of fees to ensure compensation for counsel undertaking socially beneficial litigation." *Bluetooth*, 654 F.3d at 941. To calculate fees under the lodestar method, a court multiplies "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.* This figure is "presumptively reasonable" but may be adjusted "by an appropriate positive or negative multiplier reflecting a host of 'reasonableness' factors[.]" *Id.* at 941-42. Such factors include quality of representation, benefit obtained for the class, complexity and novelty of issues presented and the risk of nonpayment. *Id.* at 942. If only limited success is achieved, "counting *all* hours expended on the litigation--even those reasonably spent--may produce an excessive amount" and courts are to "award only that amount of fees that is reasonable in relation to the results obtained." *Id.* (emphasis in original) (internal quotation marks omitted).

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[10] Under the EAJA, "attorney fees shall not be awarded in excess of $125 per hour unless the court determines that an increase in the cost of living or special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee." 28 U.S.C. § 2412(d)(2)(A)(ii). Plaintiffs argue that the rates under the EAJA for work performed in 2013 are $187.02 and $189.78 for 2014. The rates for 2014 increased to $190.06. Statutory Maximum Rates under the Equal Access to Justice Act, http://www.ca9.uscourts.gov/content/view.php?pk_id=0000000039 (last visited Feb. 20, 2015). Plaintiffs argue that, for some attorneys, the EAJA rates should not be used and that market rates should instead be used to calculate the lodestar amount. The applicable rates are discussed below.

2. Application

Plaintiffs argue that the requested fees are reasonable because they were negotiated at arm's length. They also contend that they achieved exceptional results for the Class while taking on this litigation without any assurance of payment. Plaintiffs also argue that, considering the risks taken in pursuing this litigation and the results achieved, the requested fees fall well below the lodestar amount. Having reviewed the fee requests as well as the detailed descriptions of the work performed by each attorney, and having considered the quality and nature of the work performed by the attorneys during the course of the litigation, as well as the rates charged by others in this District, the Court finds that most of the hourly rates requested by Plaintiffs' counsel are reasonable. However, the Court also finds that certain reductions in the hours charged are necessary in light of the time spent on certain tasks and the overlap in hours charged by different attorneys.

The rates that the Court deems reasonable for each counsel are set forth in the following table:

Name	Position	Requested Rate	Approved Rate
ACLU ATTORNEYS & STAFF			
Ahilan Arulanantham	Senior Staff Attorney	$665-690/hr	$600/hr
Lucero Chavez	Staff Attorney	$180.59/hr	$180.59/hr
Mitra Ebadolahi	Staff Attorney	$187.02-189.78/hr	$187.02-189.78/hr
Belinda Escobosa	Director, OC	$180.59/hr	$180.59/hr
Maria Esquivel	Paralegal	$200/hr	$200/hr
David Loy	Legal Director	$700/hr	$650/hr
Sean Riordan	Senior Staff Attorney	$420-500/hr	$425/hr
Gabriela Rivera	Staff Attorney	$187.02-189.78/hr	$187.02-189.78/hr
Bardis Vakili	Staff Attorney	$420-510/hr	$425/hr
Adrienna Wong	Staff Attorney	$189.78/hr	$189.78/hr
COOLEY ATTORNEYS			
Brandon Brett	Associate	$187.02-189.78/hr	$187.02-189.78/hr
Lindsay Chapman	Associate	$187.02-189.78/hr	$187.02-189.78/hr
Peter Dahlquist	Associate	$187.02-189.78/hr	$187.02-189.78/hr
Matthew Krengel	E-Discovery Staff Attorney	$187.02-189.78/hr	$187.02-189.78/hr
Michael Nieto	Associate	$187.02-189.78/hr	$187.02-189.78/hr
Leo Norton	Special Counsel	$187.02-189.78/hr	$187.02-189.78/hr
Jose Rodriguez	Associate	$187.02-189.78/hr	$187.02-189.78/hr
Anthony Stiegler	Partner	$870-920/hr	$650/hr
Craig TenBroeck	Associate	$189.78/hr	$189.78/hr
Darcie Tilly	Associate	$670-710/hr	$425/hr
Neda Weems	E-Discovery Staff Attorney	$187.02/hr	$187.02/hr
Blake Zollar	Associate	$187.02/hr	$187.02/hr

Using these rates and the hours worked in performing the Lodestar analysis shows that its amount is substantially greater than the $700,000 fee request. Thus, the Lodestar amount is $1,389,011.57.

Although the Court finds that an overall reduction of 25% of the hours charged is appropriate based on a review of the time charges to account for redundancy and inefficiency, this would reduce the Lodestar to $1,041,758.67. Both amounts are well above the $700,000 requested in the Fee Application. Further, its reasonableness is confirmed because the $700,000 will be paid by the sophisticated federal Defendants who have a responsibility to assess such fees. It is also significant that the fees are not being paid from a common fund that is being allocated between counsel and Class members. Thus, there was no potential for conflict in the allocation negotiated by counsel with Defendants after the substantive terms of the Agreement had been reached. Finally, Plaintiffs' counsel achieved a significant portion of the relief sought in the FAC. For all of these reasons, the Court finds that an attorney's fee award of $700,000 is reasonable and the Fee Application is **GRANTED**.

VI. Conclusion

For these reasons, the Motion for Final Approval of the Class-Wide Portions of the Settlement Agreement is **GRANTED**. The Motion for Attorney's Fees of $700,000 is **GRANTED**. Plaintiffs are ordered to submit a proposed judgment in accordance with the terms of this Order and the Agreement on or before March 3, 2015.

IT IS SO ORDERED.

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