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

Case No.	**EDCV 20-1016 JGB (SPx)**	Date	August 13, 2021
Title	***Cristie Ramirez, et al. v. HB USA Holdings, Inc.***		

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 Plaintiffs' Motion for Preliminary Approval of Class Action Settlement (Dkt. No. 46; 48); and (2) VACATING the August 16, 2021 Hearing (IN CHAMBERS)**

Before the Court is Cristie Ramirez and Natalie Linarte's (collectively, "Plaintiffs") motion for preliminary approval of class action settlement. ("Motion," Dkt. No. 46; 48.) 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 this matter, the Court GRANTS the Motion and VACATES the August 16, 2021 hearing.

I. BACKGROUND

On May 12, 2020, Plaintiff Cristie Ramirez filed a complaint against Defendant HB USA Holdings, Inc. (doing business as Huda Beauty) ("Huda Beauty") on behalf of a putative class. (Dkt. No. 1.) On November 20, 2020, Ramirez filed a motion to consolidate this action with a subsequently filed putative class action, Linarte v. HB USA Holdings, Inc., Case No. 2:20-cv-09748-JGB-SHKx (filed on October 23, 2020). (Dkt. No. 26.) On January 15, 2021, the Court granted the motion to consolidate, consolidated the Ramirez and Linarte actions into one action, and granted Plaintiffs leave to file a consolidated complaint. (Dkt. No. 34.)

On January 25, 2021, Plaintiffs filed a consolidated complaint, which is the operative complaint. ("Complaint," Dkt. No. 35.) The Complaint asserts nine causes of action: (1) breach of implied warranty; (2) unjust enrichment (in the alternative); (3) violation of California False Advertising Law ("FAL"), Cal. Bus. & Prof. Code § 17500, et seq.; (4) violation of California Legal Remedies Act ("CLRA"), Cal. Bus. & Prof. Code § 1750, et seq.; (5) violation of California

Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200, et seq.; (6) common law fraud; (7) negligent failure to test; (8) negligent failure to warn; and (9) strict liability – defective design and/or manufacture. (See Compl.)

Plaintiffs filed the Motion on July 9, 2021. In support of the Motion, Plaintiffs include the Declaration of Peter J. Farnese ("Farnese Decl.," Dkt. No. 46-2), along with the following exhibits:

- Settlement Agreement ("Agreement," Dkt. No. 46-3);
- Claim Form (Dkt. No. 46-4);
- Long Form Notice (Dkt. No. 46-5);
- Summary Notice (Dkt. No. 46-6);
- Beshada Farnese LLP Firm Resume ("BF Firm Resume," Dkt. No. 46-11).

Plaintiffs also filed the Declaration of Jonathan Cohen ("Cohen Decl." Dkt. No. 46-12), along with two additional exhibits: the Greg Coleman Law Firm Resume ("GC Firm Resume," Dkt. No. 46-13), and the Whitfield Bryson LLP Firm Resume ("WB Firm Resume," Dkt. No. 46-14).

On August 9, 2021, Plaintiffs filed a Supplemental Statement in support of the Motion ("Suppl. Statement," Dkt. No. 48), along with the Declaration of Mark Schey ("Schey Decl.," Dkt. No. 48-1). The Motion is unopposed.

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) (internal quotation marks omitted). A court may certify a class if the plaintiff demonstrates the class meets the requirements of Federal Rules 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 fact predominate so that a class action is superior to another method of adjudication. Fed. R. Civ. P. 23(b).

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

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) (emphasis in original). 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

A. Settlement Summary

The Agreement provides for cash payments and injunctive relief:

- "Full Refund" Cash Payments: Class Members who receive a direct notice or provide Proof of Purchase may claim cash payments of $29.00 per unit (up to a maximum of 3 units or $87.00). (Agreement ¶¶ 5.1.1-5.1.2.) Class Members without a proof of purchase may claim cash payments of $10.00 per unit (up to a maximum of 3 units or $30.00). (Id. ¶ 5.1.3.) There is no cap on the number of Valid Claims.
- Injunctive Relief: If Huda Beauty re-releases the Products, or any substantially similar products, it will add clear and prominent disclosures to future advertising and labeling of those products. (Id. ¶ 5.2.)

Huda Beauty will pay the costs of settlement notice and administration up to $545,000, plus any actual postage or check processing. (Id. ¶ 6.2.) Huda Beauty will also pay the attorneys' fees and expenses to Plaintiffs' Counsel awarded by the Court. (Id. ¶ 8.1.)

B. Financial Terms

1. Settlement Class Members

The "Settlement Class" is defined as "[a]ll persons residing in the United States (including all territories and/or possessions) who purchased the Products for personal use (and not for resale) through the date of Preliminary Approval." (Agreement ¶ 1.25.) In turn, the Products are defined as Huda Beauty's "Neon Obsession Palette – Neon Green," "Neon Obsession Palette – Neon Pink," and "Neon Obsession Palette – Neon Orange." (Id. ¶ 1.21.)

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2. Payment and Distribution of Funds

Subject to final approval, Huda Beauty will deliver the settlement funds to the Settlement Administrator on the later of: (a) 21 calendar days after the time for appeal or writ of the Final Approval Order and Final Judgment has expired; or (b) if there is an appeal and the Settlement is affirmed, within 30 calendar days after the expiration of the last day after the time for hearing, appeal, or writ of certiorari has expired. (Id. ¶ 6.11.)

The Settlement Administrator will transfer these funds to a non-interest-bearing account. (Id. ¶ 6.12.) Within 21 days after receiving the Settlement Funds, the Settlement Administrator will substantially complete issuance of the payments to Settlement Class Members with approved claims. (Id. ¶ 6.13.) Settlement Class Members may choose to receive claims payments via digital payments (e.g., PayPal, Venmo, Cryptocurrency wallet, etc.), or a traditional paper check. (Id. ¶ 5.1.4.)

3. Class Representative

The Agreement does not provide for an incentive award for named plaintiffs. (Mot. at 22-23.)

4. Settlement Administration Costs

Plaintiffs request that the Court appoint Digital Settlement Group ("DSG") as the Settlement Administrator. (Mot. at 2; Agreement ¶ 1.27.) Huda Beauty agrees to pay the actual costs of settlement notice and administration, up to $545,000. (Agreement ¶ 6.1.)

5. Attorneys' Fees and Costs

The Agreement provides that Huda Beauty will pay for attorneys' fees and expenses to Plaintiffs' Counsel awarded by the Court. (Id. ¶ 8.1.) The parties have not discussed or agreed on any amount. (Id.)

6. Injunctive Relief

The Agreement includes injunctive relief. While the Products at issue are no longer for sale in the United States, if Huda Beauty re-releases the Products, or any substantially similar products, it agrees to:

> (a) include a visible disclosure on the packaging of U.S. Products stating: "*WARNING for U.S. Customers: may contain color additives that are not approved by the F.D.A. for use in the eye area" or similar language, to the extent consistent with current regulatory guidance in the United States;
> (b) append a "*" symbol to each specific shade at issue that links to the above disclaimer;
> (c) include the disclosure on the U.S. version of its website;

(d) include the disclosure specified in (a) on all U.S.-facing marketing and advertising where the Products are shown being used around the eye.

(Id. ¶ 5.2.) These provisions will remain in place for five years. (Id.)

7. Release

All Settlement Class Members agree to release all claims against Huda Beauty that were made or could have been made in the Complaint. (Id. ¶ 9.1.) This excludes personal injury claims. (Id.) Named Plaintiffs agree to a broader release, including claims related to personal injury, such as eye irritation. (Id. ¶ 9.2.)

8. Notice

The Class Notice plan includes the following elements: (a) direct e-mail and mail notice, (b) publication notice via internet advertisements, (c) a press release, and (d) settlement website. (Id. at ¶ 6.2.) Huda Beauty possesses the contact information for purchasers of the Products from its website and Plaintiffs have subpoenaed purchaser contact information from Sephora USA ("Sephora"), requesting that Sephora provide the relevant contact information (including email and physical addresses) from its records to the Settlement Administrator. (Mot. at 7.) Sephora has agreed to produce the request contact information directly to the Settlement Administrator, pending entry of a protective order and coordination of the appropriate security protocols. (Suppl. Statement at 1.)

Settlement Class Members who wish to receive a cash payment will be required to submit a Claim Form, where they must certify that they purchased the Products for individual use in the United States. (Id. ¶ 6.3.) Claim Forms must be submitted within 90 calendar days from the notice date. (Id. ¶ 6.4.) Settlement Class Members may submit a request to opt out or file objections with the Court within 90 calendar days from the notice date. (Id. ¶¶ 6.5-6.6.)

IV. CONDITIONAL CERTIFICATION OF THE PROPOSED SETTLEMENT CLASS

The parties seek certification of the proposed Settlement Class for purposes of the Agreement. (Mot. at 8.) The Agreement defines the Settlement Class as follows: "[a]ll persons residing in the United States (including all territories and/or possessions) who purchased [Huda Beauty's "Neon Obsession Palette – Neon Green," "Neon Obsession Palette – Neon Pink," and "Neon Obsession Palette – Neon Orange"] for personal use (and not for resale) through the date of Preliminary Approval." (Agreement ¶¶ 1.21; 1.25.)

The Court first addresses the Rule 23(a) requirements and then turns to the Rule 23(b) requirements.

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C. Requirements of Rule 23(a)

1. Numerosity

A class satisfies the prerequisite of numerosity if it is so large that joinder of all class members is impracticable. Hanlon v. Chrysler Corp., 150 F.3d 1011, 1019 (9th Cir. 1998). To be impracticable, joinder must be difficult or inconvenient, but need not be impossible. Keegan v. Am. Honda Motor Co., 284 F.R.D. 504, 522 (C.D. Cal. 2012). There is no numerical cutoff for sufficient numerosity. Id. However, 40 or more members will generally satisfy the numerosity requirement. Id. A plaintiff has the burden to establish that this requirement is satisfied. United Steel, Paper & Forestry, Rubber, Mfg. Energy v. Conoco Phillips Co., 593 F.3d 802, 806 (9th Cir. 2010). Here, the proposed class includes thousands of consumers who purchased the Products. (Complaint ¶ 96; Farnese Decl. ¶ 14.) Accordingly, the Court concludes that the numerosity requirement is satisfied.

2. Commonality

The commonality requirement is satisfied when plaintiffs assert claims that "depend upon a common contention . . . capable of classwide resolution—which means that a determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 350 (2011). Here, Plaintiffs argue that there are common issues as to: (1) whether Huda Beauty unlawfully sold the Products as adulterated cosmetics intended for use in the eye area, in violation of the California Health & Safety Code and Food, Drug & Cosmetic Act; and (2) whether Huda Beauty misrepresented, concealed, and/or omitted material information from consumers on the product label and advertising. (Mot. at 10.) Plaintiffs' claims are therefore subject to common legal theories. Accordingly, Plaintiffs have established commonality.

3. Typicality

"The purpose of the typicality requirement is to assure that the interest of the named representative aligns with the interests of the class." Hanon v. Dataproducts Corp., 976 F.2d 497, 508 (9th Cir. 1992). "The test of typicality is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiff, and whether other class members have been injured by the same course of conduct." Wolin v. Jaguar Land Rover No. Am., 617 F.3d 1168, 1175 (9th Cir. 2010) (quoting Hanon, 976 F.2d at 508). Because typicality is a permissive standard, the claims of the named plaintiff need not be identical to those of the other class members. Hanlon, 150 F.3d at 1020.

Here, Plaintiffs claim that their claims are typical of the class because they assert the same claims arising from the same conduct: Defendant's advertising, labeling, and sale of Products for use in the eye area, despite the fact that the Products contained color additives not approved for such use. (Mot. at 10.) Plaintiffs also seek the same relief (refunds and injunctive relief), for the

same alleged wrongful conduct. (Id.) Accordingly, the Court is satisfied that Plaintiffs have met the typicality requirement.

4. Adequacy

In determining whether a proposed class representative will adequately protect the interests of the class, the court should ask whether the proposed class representative and her counsel have any conflicts of interest with any class member and whether the proposed class representative and her counsel will prosecute the action vigorously on behalf of the class. Johnson v. General Mills, Inc., 275 F.R.D. 282, 288 (C.D. Cal. 2011).

Class Counsel asserts that they are experienced in class action litigation, and in particular, in the litigation of false advertising and product labeling cases. (Farnese Decl. Ex. 2; Cohen Decl. Exs. 1-2.) Moreover, Plaintiffs assert that there is no intra-class conflict between the class representatives and the class members, as they allege the same claims and seek the same redress. (Mot. at 11.)

Accordingly, the Court concludes that both the class representatives and Class Counsel will adequately represent the interests of the proposed class.

D. Requirements of Rule 23(b)

"In addition to satisfying Rule 23(a)'s prerequisites, parties seeking class certification must show that the action is maintainable under Rule 23(b)(1), (2), or (3)." Amchem Prod., Inc. v. Windsor, 521 U.S. 591, 614 (1997). Here, Plaintiffs assert the Agreement satisfies the requirements of Rule 23(b)(3). (Mot. at 11.)

Rule 23(b)(3) requires (1) issues common to the whole class to predominate over individual issues and (2) that a class action be a superior method of adjudication for the controversy. See Fed. R. Civ. P. 23(b)(3). As to predominance, the "inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." Hanlon, 150 F.3d at 1022 (quoting Amchem, 521 U.S. at 623). "[T]he examination must rest on 'legal or factual questions that qualify each class member's case as a genuine controversy, questions that preexist any settlement.'" Id. (same). A class should not be certified if the issues of the case require separate adjudication of each individual class member's claims. Id.

Here, adjudication by representation is warranted because the central questions concerning Huda Beauty's liability can be established through generalized evidence. That is because all the Class Members' claims arise from Defendant's advertisement and labeling of the Products, and are based on the same legal theories. (Mot. at 12.) The Court is satisfied that common questions predominate.

A class action must also be superior to other methods of adjudication for resolving the controversy. Fed. R. Civ. P. 23(b)(3). To determine superiority, a court's inquiry is guided by the following pertinent factors:

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

Fed. R. Civ. P. 23(b)(3)(A)–(D). However, "[confronted] with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial." Amchem, 521 U.S. at 620.

Here, Plaintiffs assert that litigating each claim individually would impose extraordinary burdens on the parties, and would therefore be unrealistic. (Mot. at 12.) In particular, Plaintiffs point out that the amount in dispute for individual class members ($29 per unit) is too small, and the required expert testimony and document review too costly, to justify individual litigation. (Id. at 13.) The Court concludes the superiority requirement is satisfied.

V. PRELIMINARY APPROVAL OF THE SETTLEMENT

"[Rule 23] requires the district court to determine whether a proposed settlement is fundamentally fair, adequate, and reasonable." Hanlon, 150 F.3d at 1026. To determine whether a settlement agreement meets these standards, the court considers a number of factors, including "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 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." Stanton, 327 F.3d at 959 (internal citations omitted). 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) (citing Class Plaintiffs v. City of Seattle, 955 F.2d 1268, 1290 (9th Cir. 1992)).

"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, *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 in favor of settlement of class actions. Class Plaintiffs, 955 F.2d 1276. "[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

For a court to approve a proposed settlement, "[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 (internal quotation marks omitted).

Here, Plaintiffs engaged in extensive investigation prior to settlement discussions. (Farnese Decl. ¶ 10.) Plaintiffs worked with a cosmetic chemist consultant and cosmetics manufacturing consultant to understand the formulation and regulatory issues related to the Product; reviewed packaging and advertisements of the Products; conducted field research at various Sephora locations to obtain evidence of in-store displays, marketing, and placement of the Products; reviewed sales and related documents; and reviewed information regarding the chemical formulation of the products, among other investigation. (Id. ¶ 11.) Plaintiffs then engaged in discussions with Huda Beauty, and confirmed where the Products were sold, the sales price, and the product life cycle. (Id. ¶¶ 13-14.) Huda Beauty agreed to provide confirmatory discovery to verify its representations. (Id. n.1.)

Based on the Motion, it appears that each side maintains a clear idea of the strengths and weaknesses of their respective cases, such that the extent of discovery completed and the stage of the proceedings weighs at least somewhat in favor of preliminary approval. See Lewis v. Starbucks Corp., 2008 WL 4196690, at *6 (E.D. Cal. Sept. 11, 2008) ("[A]pproval of a class action settlement is proper as long as discovery allowed the parties to form a clear view of the strengths and weaknesses of their cases.").

B. Amount Offered in Settlement

In determining 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.

The Agreement provides for a full refund of $29.00 per unit, with a maximum of three units. Plaintiffs represent that this is more than Class members could realistically hope to recover through a favorable trial verdict. (Mot. at 17; Farnese Decl. ¶¶ 24-30.) For instance, damages under the CLRA are measured as the difference between the price paid and what the market value would have been had the appropriate disclosures been made. (Id. (citing Colgan v. Leatherman Tool Grp., Inc., 135 Cal. App. 4th 663, 675 (2006).) Under the UCL, Plaintiffs are limited to restitution, which must consider the value of the product. In re Tobacco Cases II, 240 Cal. App. 4th 779, 792 (2015). Thus, a consumer only receives a full refund if she "received no value" from the product. Id. at 802.

"'It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair.'" In re Mego, 213 F.3d at 459 (quoting Officers for Justice v. Civil Serv. Comm'n, 688 F.2d 615, 628 (9th Cir. 1982)). In In re Mego, the Ninth Circuit considered the difficulties in proving the case and determined the settlement amount, which was one-sixth of the potential recovery, was fair and adequate. Id. The Court finds that the Agreement appears to provide meaningful relief to the Class Members, which supports preliminary approval.

C. Strength of Case and Risk, Expense, Complexity, and Likely Duration of Litigation

Plaintiffs argue that they face risks at class certification, summary judgment, and trial, and that in any event, the monetary award through this Agreement is likely greater than what they could realistically achieve if they prevail. (Mot. at 19-20; Farnese Decl. ¶¶ 24-33.) In particular, Plaintiffs would have to prevail over Defendant's likely arguments that:

> 1) Plaintiffs' adulterated/misbranding claims were subject to the primary jurisdiction of the FDA; 2) different websites depicted differing claims for the Products during the time they were on the market; 3) Huda Beauty never expressly made any claims on the Product packaging about application to the eye area (thereby preventing any presumption of consumer reliance); 4) Huda Beauty did disclose on the packaging (albeit via the "Hidden Disclaimer") that the Products are not "intended" for the eye area (and thereby preventing any finding of liability or certification of a class); 5) Plaintiffs cannot establish that the Products are "worthless", nor can they certify a class under a "full refund" damages model; and 6) the Products are "specialty" products (intended as part of the "neon" fashion trend in spring 2019) marketed to highly sophisticated makeup enthusiasts.

(Farnese Decl. ¶ 26.) The Court believes the risk, expense, and likely duration of further litigation weigh in favor of preliminary approval. Without the Agreement, the parties would be required to litigate class certification, as well as the ultimate merits of the case—a process which the Court acknowledges is long and expensive. Overall, these factors weigh in favor of preliminary approval.

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. v. DIRECTV, Inc., 221 F.R.D. 523, 528 (C.D. Cal. 2004) (internal citation and quotation marks omitted). Here, Class Counsel attests to the view that the Agreement is fair, reasonable, and in the best interests of the class. (Farnese Decl. ¶¶ 29, 38.) The Court finds this factor weighs in favor of preliminary approval.

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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).

As an initial matter, Plaintiffs represent that settlement negotiations were conducted at arms-length. (Mot. at 15.) Plaintiffs engaged in investigation and informal discovery, and represent they had all information necessary to evaluate the case, including relevant sales information. (Farnese Decl. ¶¶ 10-15; Cohen Decl. ¶¶ 3-5 (discussing Class Counsel's investigation and discovery).) The Court is persuaded that "sufficient discovery has been taken or investigation completed to enable counsel and the court to act intelligently." Barbosa v. Cargill Meat Solutions Corp., 297 F.R.D. 431, 447 (E.D. Cal. 2013) (internal quotation marks omitted).

The Court thus turns to the financial terms of the Settlement Agreement. While courts may grant a modest incentive award to class representatives, In re Mego, 213 F.3d at 463, Plaintiffs do not request any incentive fee awards for the class representatives. Additionally, there is no reversion – Huda Beauty will pay all valid claims, notice and administration costs, and any attorneys' fees awarded by the Court. The amount of attorneys' fees has not been discussed between the Parties, and there is no clear-sailing provision. (Mot. at 16.)

Class Counsel has yet to file their request for attorneys' fees and costs. In general, courts in the Ninth Circuit find that a benchmark of 25% of the common fund is a reasonable fee award. Hanlon, 150 F.3d at 1029 ("This circuit has established 25% of the common fund as a benchmark award for attorney fees."). The Court may exercise discretion to award attorneys' fees in a class action by applying either the lodestar method or the percentage-of-the-fund method. Fischel v. Equitable Life Assurance Soc'y of U.S., 307 F.3d 997, 1006 (9th Cir. 2002). The Court determines the lodestar amount by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate. McGrath v. Cty. of Nev., 67 F.3d 248, 252 (9th Cir. 1995). The hourly rates used to calculate the lodestar must be "in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation." Blum v. Stenson, 465 U.S. 886, 895 n.11 (1984). Next, the Court must decide whether to adjust the "presumptively reasonable" lodestar figure based upon the factors listed in Kerr v. Screen Extras Guild, Inc., 526 F.2d 67, 69–70 (9th Cir. 1975), abrogated on other grounds by City of Burlington v. Dague, 505 U.S. 557 (1992), that have not been subsumed in the lodestar calculation. See Caudle v. Bristow Optical Co., Inc., 224 F.3d 1014, 1028–29 (9th Cir. 2000).[2]

[2] In Kerr, the Ninth Circuit adopted the 12–factor test articulated in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974) which identified the following factors for determining reasonable fees: (1) the time and labor required, (2) the novelty and difficulty of the

Here, the Court will consider Class Counsel's lodestar, how the requested fees compare to the total recovery, and the amount of class members who opt out or object in considering whether the requested attorneys' fees are reasonable.

F. Remaining Factors

In addition to the factors discussed above, the Court may consider the presence of a governmental participant, and the reaction of the class members to the proposed settlement. Staton, 327 F.3d at 959 (internal citations omitted). At this stage, the Court cannot fully analyze the remaining factors. For example, there is no governmental participant in this action. Additionally, the Settlement Class Members have yet to receive notice of the Agreement and have not had an opportunity to comment or object to its terms. The Court directs Plaintiffs, in the motion for final approval, to provide briefing on these issues.

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

VI. CONCLUSION

For the foregoing reasons, the Court GRANTS Plaintiffs' Motion for Preliminary Approval, and VACATES the August 16, 2021 hearing. The Court ORDERS as follows:

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

2. The following Settlement Class is certified for settlement purposes only:

   "All persons residing in the United States (including all territories and/or possessions) who purchased the Products for personal use (and not for resale) through the date of Preliminary Approval."

3. The Court appoints Peter J. Farnese (of Beshada Farnese LLP); William A. Ladnier and Jonathan B. Cohen (of Milberg Coleman Bryson Phillips Grossman, PLLC); and Alex R. Straus and Caroline Ramsey Taylor (of Milberg Coleman Bryson Phillips Grossman, PLLC) to serve as counsel on behalf of the Settlement Class for purposes of settlement only.

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questions involved, (3) the skill requisite to perform the legal service properly, (4) the preclusion of other employment by the attorney due to acceptance of the case, (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time limitations imposed by the client or the circumstances, (8) the amount involved and the results obtained, (9) the experience, reputation, and ability of the attorneys, (10) the "undesirability" of the case, (11) the nature and length of the professional relationship with the client, and (12) awards in similar cases. Kerr, 526 F.2d at 70.

4. Plaintiffs Cristie Ramirez and Natalie Linarte are appointed as the representatives of the Settlement Class for purposes of settlement only.

5. The Court appoints Digital Settlement Group as the settlement administrator.

6. The Class Notice forms are approved.

7. The Court authorizes distribution of Class Notice to the Settlement Class members by pursuant to the Agreement.

8. The hearing date for the Final Fairness Hearing is hereby set for **Monday, February 21, 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.