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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

KELLY MERGENS, on behalf of
herself and all others similarly situated,

Plaintiff,

v.

SLOAN VALVE COMPANY, and
DOES 1-10, inclusive,

Defendants.

Case No. 2:16-cv-05255-SJO-SK

The Honorable S. James Otero

**[PROPOSED] ORDER
REGARDING MOTION FOR
ATTORNEYS' FEES,
REIMBURSEMENT OF
EXPENSES, AND INCENTIVE
AWARD TO CLASS
REPRESENTATIVE**

Date: September 18, 2017

Time: 10:00 a.m.

Dept.: Courtroom 10C

Action Filed: July 15, 2016

Related Case:

*United Desert Charities, et al. v.
Sloan Valve Company, et al.*
Case No. 2:12-cv-06878-SJO-SH

1 Pursuant to Fed. R. Civ. P. 23(h), 54(d), and 52(a), Class Counsel have filed
2 an application for attorneys’ fees and expenses and for an Incentive Award¹ to the
3 class representative (the “Application”). The Application duly came on for hearing
4 on September 18, 2017. Having reviewed the papers, pleadings and files in this
5 Action, and good cause appearing,

6 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

7 Class Counsel’s Application for an award of attorneys’ fees of \$600,000,
8 established pursuant to the Class Action Settlement Agreement and Release
9 (“Settlement”) with Defendant, is fair, appropriate and reasonable. The Court
10 awards the above amount, in addition to \$9,601.05 in costs and expenses, plus an
11 incentive award of \$5,000 to the Class Representative which shall be paid
12 separately by Defendant in accordance with Sections VII and VIII of the
13 Settlement. In support of this Order, the Court makes the following findings of fact
14 and conclusion of law.

15 1. Capitalized terms used in this Order have the same definition as used
16 in the Settlement.

17 2. The Class was provided with due and adequate notice, in compliance
18 with the requirement of constitutional due process and Rule 23 of the Federal
19 Rules of Civil Procedure, pursuant to the Notice Program approved by the Court in
20 its Order Granting Plaintiff’s Unopposed Motion for Preliminary Approval of the
21 Class Action Settlement Agreement and Release (“Preliminary Approval Order”)
22 (ECF No. 44). The Class Notice informed the Class that Class Counsel intended to
23 apply for an award of attorneys’ fees in an amount not to exceed \$600,000 and for
24 costs and expenses incurred by Class Counsel during the prosecution of the Action
25 which would be paid separately by Defendant.

26
27 ¹ Initial capitalized terms utilized herein have the same definitions as set forth in the Class
28 Action Settlement Agreement and Release filed March 1, 2017 (ECF No. 33-1, Exhibit A) unless
otherwise indicated.

1 3. The Settlement confers substantial benefits on the Class. The use of
2 the lodestar method is appropriate for a claims made settlement of this sort. *In re*
3 *Bluetooth Headset Prod. Liab. Litig.* 2012 WL 6869641, at *2. However, the
4 requested attorneys' fees are fair, appropriate, and reasonable whether under a
5 lodestar-multiplier analysis based on the total lodestar reported by Class Counsel,
6 or as considered under a cross-check based on a percentage of the constructive
7 common fund.

8 4. The Court finds and concludes that the fees requested by Class
9 Counsel are fully justified by, *inter alia*, (a) the difficulty and complexity of the
10 litigation and resulting settlement; (b) the results achieved by the Settlement;
11 (c) the experience, skill and labor of Class Counsel as well as the attorneys' fee
12 lodestar incurred in prosecuting the Action; (d) the contingent nature of the fees
13 and the financial burden carried by Class Counsel; (e) fee awards made in similar
14 cases in this Court; (f) the additional benefits obtained in the Settlement beyond the
15 settlement fund by educating and motivating the Class to reduce a safety risk; and
16 (g) the reaction of the Class to the Settlement.

17 5. The Court finds that the Settlement was reached following extensive
18 arm's length negotiations between the parties, and further finds that the Settlement
19 was negotiated in good faith and in the absence of collusion.

20 6. Efforts by Class Counsel in this complex class action litigation have
21 been without compensation or reimbursement of any kind. The fees incurred and
22 the costs advanced, as noted in the record, have been wholly contingent upon the
23 result achieved. The requested fee is more than justified under the applicable law.

24 7. As a result of Class Counsel's prosecution of this case and subsequent
25 negotiation of the Settlement, Class Counsel secured a valuable benefit for the
26 Class. *Hensley v. Eckerhart*, 461 U.S. 424, 436, 103 S. Ct. 1933, 76 L. Ed. 2d 40
27 (1983) (the "most critical factor is the degree of success obtained"). The cash
28 payments will reimburse Class members for reasonable out-of-pocket installation

1 expenses connected with the repair and/or replacement of the affected toilets and
2 for Property Damage sustained. The Settlement achieves the key goals of this
3 litigation: providing full compensation to owners of Flushmate Toilets, and
4 promoting the safety of the general public and Class members.

5 8. Pursuant to Section IV of the Settlement, the UDC Settlement Fund
6 will be utilized to make payments to the Class. If the UDC Settlement Fund falls
7 below \$50,000 before the end of the Claims Period, Defendant will deposit such
8 necessary additional funds into the UDC Settlement Fund to pay all valid claims
9 filed by Settlement Class Members during the Claims Period.

10 9. Class Counsel's efforts in the Action achieved substantial benefits for
11 the Class and involved a relatively complex issue regarding the use of *cy pres*
12 funds in the related case, *United Desert Charities, et al. v. Flushmate, et al.*, Case
13 No. CV12-06878 SJO (SHx) (C.D. Cal.). Class Counsel's effective and efficient
14 work in resolving this complex matter should be appropriately rewarded.

15 10. The reasonableness of the requested fee is confirmed by an analysis of
16 Class Counsel's reported lodestar. Class Counsel and their staffs have spent 489.8
17 hours investigating, analyzing, litigating, and negotiating a resolution of the
18 Action. Class Counsel estimates an additional 100 hours will be incurred as part of
19 their ongoing responsibility to oversee the administration of the Settlement.

20 11. The Court finds that Class Counsel's hourly rates (used to calculate
21 the lodestar here) are consistent with prevailing rates in this District, and have been
22 approved by other federal courts.

23 12. The total reported lodestar amount in the Action is \$350,402.08. This
24 does not include an estimated \$56,000 that will be incurred as part of Class
25 Counsel's ongoing responsibility to oversee the administration of the Settlement,
26 which would bring the lodestar to \$406,402.08. The requested fee constitutes a
27 multiplier of approximately 1.48 or 1.71, which supports the Court's finding that
28 the amount requested by Class Counsel is reasonable. *See Chambers v. Whirlpool*

1 *Corp.*, 214 F. Supp. 3d 877, 901–02 (C.D. Cal. 2016), judgment entered, No.
2 SACV111733FMOMLGX, 2016 WL 5921765 (C.D. Cal. Oct. 11, 2016), and
3 appeal dismissed sub nom. *Steve Chambers, et al. v. Whirlpool Corporation, et al.*
4 (Nov. 10, 2016) (approving a 1.68 multiplier based solely on the lodestar method);
5 *Parkinson v. Hyundai Motor Am.*, 796 F. Supp. 2d 1160, 1170 (C.D. Cal. 2010)
6 (“Where appropriate, multipliers may range from 1.2 to 4 or even higher.”).

7 13. The appropriateness of the requested fee is further confirmed by an
8 analysis under the constructive common fund method. The Ninth Circuit has
9 directed that twenty-five percent (25%) of the class benefit should be the
10 “benchmark” attorneys’ fee where counsel’s efforts have led to the creation of a
11 common fund. Here, Class Counsel negotiated an uncapped claims-made
12 settlement which confers substantial monetary benefits to the Class. There are
13 453,000 units with the potential to receive up to \$127.50 for installation costs
14 incurred to repair and/or replace their Flushmate Toilet. The total potential value of
15 the settlement assuming a 75% claims rate exceeds \$43,318,125 including
16 attendant administration costs. In that vein, the requested fee of \$600,000 is well
17 below 25% of the constructive common fund.

18 14. Using a more realistic approach to the constructive common fund
19 analysis, the Court-appointed Claims Administrator opines that given the
20 anticipated claims rate of 2.4%, the minimum value of the Settlement is
21 \$2,700,000. Accordingly, the requested fees of \$600,000 is well within the
22 “benchmark” award at 22.22%.

23 15. In addition, under applicable case law and the terms of the Settlement,
24 Class Counsel are entitled to recover the out-of-pocket costs and expenses
25 reasonably incurred in investigating, prosecuting, and settling this Action. As
26 documented with this Court, Class Counsel have incurred \$9,601.05 in
27 unreimbursed, out-of-pocket expenses. The Court finds that these costs and
28 expenses were both reasonable and necessary, and shall be reimbursed as set forth

1 in accordance with Section VII of the Settlement.

2 16. Finally, “named plaintiffs, as opposed to designated class members
3 who are not named plaintiffs, are eligible for reasonable incentive payments.”
4 *Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003). The incentive award of
5 \$5,000 to the Class representative is reasonable and justified given the
6 circumstances here. *See, e.g., In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 457,
7 463 (9th Cir. 2000) (approving service awards of \$ 5,000).

8 **CONCLUSION**

9 For the foregoing reasons, Class Counsel’s Application for an award of
10 attorneys’ fees in the amount of \$600,000, reimbursement of expenses in the
11 amount of \$9,601.05, and an incentive award in the amount of \$5,000 for the Class
12 Representative is GRANTED. Class Counsel’s attorneys’ fees, reimbursement of
13 expenses, and the incentive award shall be paid separately by Defendant in
14 accordance with the terms of Sections VII and VIII of the Settlement.

15 IT IS SO ORDERED.

16 Dated:

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THE HONORABLE S. JAMES OTERO
UNITED STATES DISTRICT JUDGE

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