EXHIBIT 2

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

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

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

Class Counsel's Application for an award of attorneys' fees of $600,000, established pursuant to the Class Action Settlement Agreement and Release ("Settlement") with Defendant, is fair, appropriate and reasonable. The Court awards the above amount, in addition to $10,491.48 in costs and expenses, plus an incentive award of $5,000 to the Class Representative which shall be paid separately by Defendant in accordance with Sections VII and VIII of the Settlement. In support of this Order, the Court makes the following findings of fact and conclusion of law.

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

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

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

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

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

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

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

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

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

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

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

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

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

12. The total reported lodestar amount in the Action is $350,402.08. This does not include an estimated $56,000 that will be incurred as part of Class Counsel's ongoing responsibility to oversee the administration of the Settlement, which would bring the lodestar to $406,402.08. The requested fee constitutes a multiplier of 1.48 (if the projected time spent overseeing the administration of the Settlement is included) or 1.71 (if the projected time spent overseeing the

administration of the Settlement is not included), which supports the Court's finding that the amount requested by Class Counsel is reasonable. *See Chambers v. Whirlpool Corp.*, 214 F. Supp. 3d 877, 901–02 (C.D. Cal. 2016), judgment entered, No. SACV111733FMOMLGX, 2016 WL 5921765 (C.D. Cal. Oct. 11, 2016), and appeal dismissed sub nom. *Steve Chambers, et al. v. Whirlpool Corporation, et al.* (Nov. 10, 2016) (approving a 1.68 multiplier based solely on the lodestar method); *Parkinson v. Hyundai Motor Am.*, 796 F. Supp. 2d 1160, 1170 (C.D. Cal. 2010) ("Where appropriate, multipliers may range from 1.2 to 4 or even higher.").

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

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

15. In addition, under applicable case law and the terms of the Settlement, Class Counsel are entitled to recover the out-of-pocket costs and expenses reasonably incurred in investigating, prosecuting, and settling this Action. As documented with this Court, Class Counsel have incurred $10,491.48 in

unreimbursed, out-of-pocket expenses. The Court finds that these costs and expenses were both reasonable and necessary, and shall be reimbursed as set forth in accordance with Section VII of the Settlement.

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

CONCLUSION

For the foregoing reasons, Class Counsel's Application for an award of attorneys' fees in the amount of $600,000, reimbursement of expenses in the amount of $10,491.48, and an incentive award in the amount of $5,000 for the Class Representative is GRANTED. Class Counsel's attorneys' fees, reimbursement of expenses, and the incentive award shall be paid separately by Defendant in accordance with the terms of Sections VII and VIII of the Settlement.

IT IS SO ORDERED.

Dated:

THE HONORABLE S. JAMES OTERO
UNITED STATES DISTRICT JUDGE