UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 8:17-cv-01605-JLS-DFM Date: January 4, 2021
Title: Antonio Hurtado et al v. Rainbow Disposal Co., Inc. Employee Stock Ownership Plan Committee et al

Present: **Honorable JOSEPHINE L. STATON, UNITED STATES DISTRICT JUDGE**

Melissa Kunig — Deputy Clerk
N/A — Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF: Not Present

ATTORNEYS PRESENT FOR DEFENDANT: Not Present

PROCEEDINGS: (IN CHAMBERS) ORDER (1) GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT (Doc. 209) AND (2) SETTING FINAL FAIRNESS HEARING

Before the Court is an unopposed Motion for Preliminary Approval of a Class Action Settlement filed by Plaintiffs Antonio Hurtado, Christopher Ortega, Jose Quintero, Maritza Quintero, Maritza Quintero, Jorge Urquiza, Maria Valadez ("Plaintiffs") and the certified class. (Mot., Doc. 209; Mem., Doc. 209-1.)

The Motion asks the Court to (1) preliminarily approve the proposed settlement; (2) approve the form and method of class notice; and (3) set dates for final approval. The Court ordered supplemental briefing, which Plaintiffs timely provided. (Supp. Brief, Doc. 212.) Having taken the matter under submission, reviewed and considered the papers, and for the reasons below, the Court GRANTS Plaintiffs' Motion and sets a final fairness hearing for **May 21, 2021, at 10:30 a.m.**

I. BACKGROUND

A. Factual Background

The facts giving rise to this action have been summarized at length in the Court's order granting Plaintiffs' motion for class certification. (Class Certification Order, Doc. 77.) This Order therefore summarizes the necessary facts at a high level.

Defendant Rainbow Disposal Co., Inc. ("Rainbow") was a California company engaged in the transport and disposal of trash and rubbish materials from residential and

commercial properties. (Second Amended Complaint, Doc. 153 ¶ 49.)[1] Prior to October 1, 2014, the Rainbow Disposal Co., Inc. Employee Stock Ownership Plan (the "ESOP" or "Plan") owned 100% of Rainbow Disposal Co., Inc. ("Rainbow"), and Rainbow stock constituted 97% of the Plan's assets. (*Id.* ¶¶ 5, 81.) Rainbow's Articles of Incorporation restricted ownership to the ESOP or Rainbow employees. (*Id.* ¶ 55.) In 2014, the ESOP fiduciaries were (1) GreatBanc, the Trustee, (2) Rainbow CEO Gerald Moffat, the sole member of the Committee, and (3) the Rainbow Board, which consisted of Moffatt, Rainbow President Jeff Snow, and Greg Range. (*Id.* ¶¶ 17-21, 28.)

Beginning in 2010, Rainbow's management engaged in business ventures outside California in which they allegedly had a personal interest. (*Id.* ¶¶ 62-65.) Plaintiff allege that these self-dealing activities caused Rainbow to default on its loan covenants and incur significant losses, and led to a decline in the value of Rainbow stock and the ESOP assets. (*Id.* ¶ 77.) Plaintiffs allege that while the value of Rainbow began to recover by 2014, no ESOP fiduciary took any action to remedy these breaches and had Rainbow not incurred or had recovered these losses, its stock price would have been higher. (*Id.* ¶ 80.)

In 2014, Rainbow's Board and the Rainbow Disposal Co., Inc. Employee Stock Ownership Plan Committee (the "Committee") sought to sell Rainbow. During the sales process, Moffat and Snow allegedly secretly negotiated $5 million in noncompete bonuses for themselves as part of the sale—and rejected more competitive offers for the Company that did not include such side-payments. (*Id.* ¶¶ 144, 153.) At the time he served on the Rainbow Board, Range was employed by the investment banking firm Stout Risius Ross, LLC ("Stout"). With Range as a member of the Rainbow Board, the Board voted to engage Stout to perform investment banking services for Rainbow. Range abstained from that vote. (*Id.* ¶ 283.) By July 2014, the Rainbow Board selected a proposed buyer—Republic. On August 25, 2014, Moffat executed an amendment to the Plan to allow GreatBanc, an ESOP trustee that previously had limited authority, to sell

[1] The First Amended Complaint was the operative pleading when this Motion was filed. During the pendency of this Motion, the Court granted Plaintiffs' unopposed Motion for Leave to Amend the Complaint, in which Plaintiffs sought only to add newly identified ESOP fiduciaries as Defendants. (*See* Order re Leave to Amend, Doc. 152.) The amendments did not alter the substance of the allegations, causes of action, or other aspects of the pleading relevant to the instant Motion.

the ESOP's Rainbow stock. (*Id.* ¶ 101.) One day after the Amendment, Rainbow, the Rainbow ESOP, and Republic entered into a Stock Purchase Agreement. (*Id.* ¶¶ 132-34.)

An October 2014 letter from GreatBanc informed ESOP participants that Rainbow ESOP stock had been sold to Republic. (*Id.* ¶ 144.) Participants were not permitted to vote on the transaction. (*Id.* ¶ 143.) The summary plan description for the ESOP promised that participants could vote on "important corporate matters." (*Id.* ¶ 245.) Rainbow had also stated in filings with the DOL that ESOP participants were "entitled to exercise voting rights" for the stock in their ESOP accounts. (*Id.* ¶ 247.)

After the sale, the members of the Committee (and the Board) were high level Republic employees. (*Id.* ¶¶ 22-27.) These new ESOP fiduciaries allegedly provided incomplete, contradictory and misleading information about the sale and its terms, and the value of their ESOP shares. In October 2014, participants were told that the ESOP stock was sold for $17.66 per share (or at least $64.8 million). (*Id.* ¶ 147.) But participants ultimately received approximately $15.10 per share. (*Id.* ¶ 221.) In 2017, Rainbow's DOL filings and ERISA-mandated disclosures revealed that $15 million of the sale proceeds, which had not been distributed and remained in the ESOP, had been left in undiversified investments for nearly three years, with a return of virtually zero (and expenses exceeding returns). (*Id.* ¶¶ 7, 321.)

B. The Present Suit

On September 15, 2017, Plaintiffs filed the instant action. (*See* Compl., Doc. 1.) The operative Second Amended Complaint brings fourteen causes of action against pre-sale ESOP fiduciaries, post-sale ESOP fiduciaries, and Republic for their respective roles in alleged violations of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. § 1001 *et seq.*, in connection with the October 1, 2014 sale of ESOP assets to Republic.

On December 14, 2018, Plaintiffs moved for certification of the class. On April 22, 2019, the Court granted class certification, appointed Plaintiffs as Class Representatives, and appointed R. Joseph Barton of Block & Leviton LLP and Joseph A. Creitz of Creitz & Serebin LLP as Class Counsel. (Doc. 177 at 20.) The Court also certified the following Rule 23(b)(1) class:

> All persons who were vested participants in the Rainbow Disposal Co., Inc. Employee Stock Ownership Plan as of October 1, 2014 and the beneficiaries of any such participants, excluding Defendants and persons who were named fiduciaries of the Rainbow Disposal Co., Inc. Employee Stock Ownership Plan, who are alleged in this action to have engaged in prohibited transactions or breaches of corporate fiduciary duties, or who had decision-making or administrative authority relating to the administration, modification, funding, or interpretation of the Rainbow Disposal Co., Inc. Employee Stock Ownership Plan, or who had such authority relating to the decision to sell assets of the Rainbow Disposal Co., Inc. Employee Stock Ownership Plan on or about October 1, 2014.

C. Settlement and Plan of Allocation

The parties represent that, after class certification, they propounded and responded to extensive discovery. Plaintiffs served more than 72 individual requests for production of documents and directed more than 20 interrogatories to each Defendant. (Downes Decl., Doc. 209-3, ¶¶ 2-10.) Defendants collectively produced more than 150,000 pages of documents, and nonparties produced more than 100,000 pages. (*Id.* ¶¶ 11-12.) Class Counsel took thirteen depositions. (*Id.* ¶ 13.)

The parties reached a settlement after two facilitated mediations before Robert Meyer of JAMS. (Doc. 193-1). The parties entered into the formal Settlement Agreement on July 23, 2020. (*Id.*)

The Settlement Agreement provides for a payment of $7.9 million (with $7.5 million to be paid by the Republic Defendants and $400,000 to be paid by GreatBanc), inclusive of payments to the Class, Class Counsel's attorneys' fees and litigation expenses, and incentive awards to the Class Representatives. (Settlement Agreement, Doc. 209-3 §§ III.1, VII.1.) Defendants will pay $7.9 million into the Settlement Fund within 30 days of preliminary approval. (*Id.* § III.1.) In addition to the settlement payment, Republic will pay any costs associated with distributions from the Republic 401(k) Plan once funds are deposited into the Republic 401(k) Plan, as well as the cost of an independent fiduciary. (*Id.* §§ IV.6-7, IX.) Republic will not pay any costs related to the administration of the Republic 401(k) Plan (aside from distributions). (*Id.* § IV.7.)

In exchange, the Class will dismiss the claims asserted in the Second Amended Complaint with prejudice and release Defendants from any and all claims that the Class could have asserted that relate to or arise out of the facts alleged or the claims set forth in the Second Amended Complaint, including: (a) Defendant Rainbow Disposal Co., Inc.'s investments before October 1, 2014, including but not limited to the Southeast Renewables, LLC, Rainbow West Florida, LLC, and/or the West Florida Recycling, LLC ventures, (b) the 2009 Summary Plan Description for the ESOP, (c) the 2014 ESOP Transaction, (d) the negotiation and resolution by GreatBanc on behalf of the ESOP regarding disputes with Republic related to the Holdback Escrow Funds, (e) the investment of the ESOP funds post-transaction through January 15, 2020, (f) disclosures or alleged failure to disclose by Defendants relating to the 2014 ESOP Transaction or the investment of the ESOP funds post-transaction through January15, 2020, and (g) any alleged action or alleged inaction taken by the ESOP's trustee based on facts or events alleged in Plaintiffs' Second Amended Complaint. (Settlement Agreement § XIII.1.)

On July 27, 2020, Plaintiffs filed this unopposed Motion for Preliminary Approval. The Court subsequently ordered supplemental briefing on the preliminary approval factors the Ninth Circuit set forth in *Staton v. Boeing Co*., 327 F.3d 938, 959 (9th Cir. 2003) and a reasonable breakdown of Defendants' maximum potential exposure. Plaintiffs' timely filed the requested briefing. (Doc. 212.)

II. 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. *See* Fed. R. Civ. P. 23(e)(2). 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). "The decision to [grant preliminary approval and] give notice of a proposed settlement to the class is an important event. It should be based on a solid record supporting the conclusion that the proposed settlement will likely earn final approval after notice and an opportunity to object." Fed. R. Civ. P. 23, Advisory Committee's Note to 2018 Amendment.

"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[2]; and the reaction of the class members to the proposed settlement." *Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003) (internal 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*, 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 (internal quotation marks and brackets omitted).

A. Strength of Plaintiffs' Case

Though Plaintiffs survived Defendants' motion to dismiss, Defendants have vigorously defended this action and Plaintiffs acknowledge that "ERISA actions are notoriously complex cases, and ESOP cases are often cited as the most complex of ERISA cases." (Supp. Brief at 4 (citing *Pfeifer v. Wawa, Inc.*, No. CV 16-497, 2018 WL 4203880, at *7 (E.D. Pa. Aug. 31, 2018)).) Plaintiffs have brought fourteen counts against twelve Defendants, several of which depend on an underlying fiduciary breach by one Defendant and another Defendant's knowing participation in or failure to remedy that breach or their failure to monitor the breaching fiduciary. (Second Amended Complaint ("FAC"), Doc. 153, ¶¶ 334-67.) The overlapping nature of the claims against various defendants would present challenges at trial. Moreover, Plaintiffs' burden to prove that certain Defendants' acted with the requisite intent when they participated in or failed to remedy fiduciary breaches will pose a challenge. Accordingly, this factor therefore weighs in favor of preliminary approval.

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

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

Class Counsel represent that they have previously tried class action ESOP cases, and are familiar with the risk, complexity, and expense involved. (Supp. Brief at 3-4.) Plaintiffs acknowledge that even if they prevail on all claims, the potential range of recovery could vary widely depending on this Court's determination of the appropriate measure of loss and that Plaintiffs, and the Class, face the risk of protracted and costly litigation with no certainty as to the potential recovery if they prevail. (Downes Decl., Doc. 209-2, ¶ 3.) Plaintiffs further state that, if litigation were to continue, Defendants would likely bring a motion for summary judgment, and that they would likely appeal any judgment in Plaintiffs' favor. (Supp. Brief at 5.) Moreover, the parties had yet to conduct expert discovery when they settled and Plaintiffs recognize that, given five groups of Defendants are sued in this action, the process would be costly and protracted. (Supp. Brief at 3.)

The Court finds that this factor weighs in favor of preliminary approval.

C. Risk of Maintaining Class Action Status Throughout Litigation

As this Court has previously held, where there appear no specific risks to maintaining class action status throughout the litigation, the Court need not consider this factor for settlement purposes. *In re Biolase, Inc. Sec. Litig.*, No. SACV 13-1300-JLS-FFMX, 2015 WL 12697736, at *7 (C.D. Cal. June 5, 2015) (Staton, J.)

D. Amount Offered in Settlement

The Court finds that the $7.9 million offered in settlement is reasonable.[3] Based on analysis by Plaintiffs' expert, Class Counsel estimate the maximum potential liability here to be between $23.3 million and $33.8 million. (Supp. Brief at 8; Downes Decl. ¶ 17.) The $7.9 million Settlement Fund in this matter therefore represents approximately 23.4%-34% of the maximum amount that the Class Members could recover if the liability were successfully litigated through trial on all counts, the trier of

[3] This amount is inclusive of attorneys' fees, litigation costs, service awards, and costs of administering class notice. (Settlement Agreement § VII.)

fact agreed with Plaintiffs on the proper measure of recovery, and the resulting judgment could be collected. (Downes Decl. ¶ 17.)[4]

The settlement achieved here compares favorably with settlements approved in other ERISA actions. *See In re Mego Fin. Corp. Sec. Litig*., 213 F.3d 454, 459 (9th Cir. 2000) (holding 16% recovery fair and adequate in ERISA class action); *Carter v. San Pasqual Fiduciary Tr. Co.,* No. SA CV 15-1507, 2018 WL 6174767, at *4 (C.D. Cal. Feb. 28, 2018) (finding a settlement offer equal to 35% of potential exposure strongly favored approval of settlement in ESOP valuation case). Thus, the Court finds that the amount offered in settlement weighs in favor of preliminary approval.

E. Stage of Proceedings and Extent of Discovery Completed

This case was initiated on September 15, 2017 and has survived a motion to dismiss. (*See* Compl., Doc. 1; Doc. 110.) Moreover, the parties reached a settlement after close of fact discovery. Plaintiffs conducted extensive discovery, including dozens of requests for production of documents, interrogatories, requests for admission, depositions, and non-party subpoenas. (Downes Decl. ¶¶ 4-12.) The parties also participated in two mediation sessions with Robert Meyer of JAMS, and this Settlement Agreement is the result of those mediations. (*See* Meyer Decl., Doc. 198.)

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). Here, the discovery process, numerous mediation sessions, and the advanced stage of the proceedings ensure that the parties have had the opportunity to properly evaluate the merits of this action and the risks and benefits of continuing with litigation. This factor therefore weighs in favor of preliminary approval.

[4] Pursuant to this Court's order, Plaintiffs also filed a supplemental brief that sets forth a count-by-count breakdown of the maximum potential recovery if judgment were to enter for the Plaintiffs. (Supp. Brief at 6-9.) As Plaintiffs acknowledge, the count-by-count breakdown is not fully cumulative—that is the amount stated for some of the claims might be duplicative of others—but, on review, the Court is satisfied that Plaintiffs carefully considered the potential recovery associated with each claim.

F. The Experience and Views of Counsel

As discussed in the Court's Class Certification Order, Class Counsel have extensive experience litigating complex ERISA class actions. (*See* Doc. 177 at 17.) Class Counsel are experienced and knowledgeable in this area of the law and they have endorsed the Settlement as fair, reasonable, and adequate.

Parties represented by competent counsel are well-positioned "to produce a settlement that fairly reflects each party's expected outcome in litigation." *See Munday v. Navy Fed. Credit Union*, No. SACV 15-1629 JLS (KESX), 2016 WL 7655807, at *9 (C.D. Cal. Sept. 15, 2016) (Staton, J.) Accordingly, Class Counsel's endorsement also weighs in favor of approving the settlement.

G. Reaction of Class Members to Proposed Settlement

Plaintiffs have not provided evidence of Class Members' reactions to the Settlement Agreement, which is not uncommon at the preliminary approval stage. In moving for final approval, Class Counsel are ORDERED to submit a sufficient number of declarations from Class Members discussing their reactions to the 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 1036, 1043 (N.D. Cal. 2008).

III. APPROVAL OF CLASS ADMINISTRATOR

Class Counsel represent that they solicited bids for class notice and administration services from seven reputable providers, and that they negotiated the terms and conditions of the proposals they received to include more favorable terms, including deferral of payment until after final approval. (Downes Decl., Doc. 209-2, ¶¶ 25-26.) Class Counsel have submitted the two lowest bids—both approximately $11,000—for the Court's review, and they represent that either of the two providers is qualified and capable of serving the needs of the Class. (*See* Doc. 210; *see also* Bids at Docs. 209-7 and 209-8.) Having reviewed the submitted materials and being informed that CPT Group was the first of the two providers to agree to Class Counsel's requests for modification of its terms and conditions, the Court APPOINTS CPT Group as Settlement Administrator. CPT Group estimates that the administration would usually cost

$12,207.70 but has offered Class Counsel a discounted rate of $11,500.00. (*See* Doc. 209-7.)

IV. APPROVAL OF CLASS NOTICE FORM AND METHOD

Once the parties obtain preliminary approval of the settlement, Rule 23(e) requires that the court direct notice in a reasonable manner to all Class Members who would be bound by the settlement. Here, the Settlement Agreement requires the Settlement Administrator to send notice by first class mail and to maintain a website with the Notice, and other relevant documents and information about the settlement. (Settlement Agreement § II.3.) Because the names and addresses of Class Members are known, notice by first class mail is sufficient here. *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173-77 (1974); *Peters v. Nat'l R.R. Passenger Corp*., 966 F.2d 1483, 1486 (D.C. Cir. 1992) ("It is beyond dispute that notice by first class mail ordinarily satisfies rule 23(c)(2)'s requirement that class members receive 'the best notice practicable under the circumstances.'"). The Court therefore APPROVES the notice method here and requires that notice to be sent to Class Members no later than **sixty (60) days** before the final fairness hearing. Moreover, Class Members must send any objections to the Settlement terms and/or any challenges to data to Class Counsel or the Settlement Administrator no later than **twenty-one (21) days** before the final fairness hearing.

As to the form of the notice, a proper notice should inform Class Members of "(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); *see Manual for Complex Litigation*, supra, § 21.312.

Here, Plaintiffs have provided the Court with a Proposed Notice that includes information about the nature of the litigation, the claims against Defendants, and the scope of the class, including its non-opt-out nature. (*See* Proposed Notice, Exhibit 2 to Mot., Doc. 209-4.) The Proposed Notice also clearly explains that the Administrator will transfer settlement payments into Class Members' existing Republic 401(k) Plan account and that the Administrator will create an account for any Class Members who do not

already participate in the Republic 401(k) Plan. (*Id.* at 1.) Moreover, the Proposed Notice informs Class Members that they may submit a challenge to the data presented (*e.g*., incorrect data about the class member's shares or inclusion in the class) or object to the terms of the Settlement. (*Id.* at 2.)

The Court also requires the following modifications to the Proposed Notice:

1. On page 7, the Notice should add—under the section entitled "How will the lawyers get paid?"—that "Class Counsel will file a Motion for Attorneys' Fees, Litigation Costs and Expenses, and Class Representative's Enhancement Award no later than [insert date], 15 days before the date by which you must [] object to the settlement's terms." *See In re Mercury Interactive Corp. Sec. Litig*., 618 F.3d 988, 994-95 (9th Cir. 2010) (holding that district court must set a settlement schedule that provides the class an adequate opportunity to review and prepare objections to class counsel's completed fee motion);
2. Similarly, on page 7, the Notice should add at the end of the first full paragraph under the section entitled "How will the lawyers get paid?" that the Motion for Attorneys' Fees, Litigation Costs and Expenses, and Class Representative's Enhancement Award will be available for review on the website maintained by the Administrator or via PACER, and that Class Members may object to the fees motion by the same deadline as their general objections to the Settlement are due;
3. On page 8, the Clerk of the Court should be deleted as the party to receive the "Notice of Intention to Appear at Final Fairness Hearing." Class Members shall send notice of their intention to attend or speak at the final fairness hearing to Class Counsel and/or the Settlement Administrator no later than **fourteen (14) days** prior to the final fairness hearing date. The Settlement Administrator or Class Counsel should, in turn, file a notice no later than **seven (7) days** prior to the final fairness hearing date, providing the Court with a list of Class Members who wish to speak at the hearing, if any. Moreover, because the COVID-19 pandemic is ongoing and the Court may conduct the final fairness hearing in this matter via Zoom, the Settlement Administrator and/or Class Counsel are responsible for providing Class Members who wish to attend the hearing with the Zoom information the Clerk will distribute in advance of the hearing;
4. On page 8, the Clerk of the Court should be deleted as the party to receive objections. Objections should be sent to Class Counsel, who is responsible

for filing with the Court no later than 10 days after the deadline for objections all objections that were submitted, along with a brief responding to any submitted objections and otherwise summarizing the class members' participation in the Settlement and the settlement administration to date.

Accordingly, the Court ORDERS Class Counsel file revised versions of the Notice, incorporating these changes, within **fourteen (14) days** of this Order.

Beyond notice to Class Members, the Class Action Fairness Act of 2005 ("CAFA") requires that certain government authorities receive notice of any class action settled in federal court. *See* 28 U.S.C. § 1715(b). Under the Settlement Agreement, Republic was to fulfill this requirement no later than **ten (10) days** after execution of the Settlement Agreement. (*See* Settlement Agreement § XII.2.) The parties have not filed proof of having fulfilled this notice requirement and are therefore ORDERED to file such proof **within fourteen (14) days** of this Order.

V. MOTIONS FOR FINAL APPROVAL, COSTS, FEES, AND ENHANCEMENT AWARDS

In accordance with the Settlement Agreement, the Court will determine an award of attorneys' fees; litigation costs and expenses; and any enhancement awards to Plaintiffs following a motion to be filed. (Settlement Agreement §VII. 1.) The parties request that the Court set dates for these filings. The Court requires that the Motion for Final Approval of the Settlement and the Motion for Attorneys' Fees, Litigation Costs and Expenses, and Class Representative's Enhancement Award be filed with the Court no later than **fifteen (15) days** before the class members' deadline to object to the Settlement. This timeline will give class members adequate opportunity to object to the fees motion by the same objection deadline. *In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 993-94 (9th Cir. 2010) (Rule 23(h) requires that class members be given "an adequate opportunity to object to the [fee] motion itself").

VI. CONCLUSION

For the reasons discussed above, the Court preliminarily (1) approves the Settlement Agreement, (2) approves the form and method of the Class Notice, subject to the changes discussed above, and (3) sets the deadlines discussed above.

The Court sets a Final Fairness Hearing and a hearing on the Motion for Attorneys' Fees, Litigation Costs and Expenses, and Class Representative's Enhancement Award for **May 21, 2021, at 10:30 a.m**., to determine whether the settlement should be finally approved as fair, reasonable, and adequate to Class Members. The Court further ORDERED as follows:

- Plaintiffs shall file a revised and redlined version of their Proposed Notice, incorporating the changes herein, with **fourteen (14) days** of this Order;
- Upon approval of the notice by this Court, the Settlement Administrator shall send notice to class members no later than **sixty (60) days** prior to the Final Fairness Hearing and shall inform class members therein that the deadline to send objections and/or challenges to data is **twenty-one (21) days** prior to the Final Fairness Hearing;
- Plaintiffs shall file their Motion to Final Approval and their Motions for Attorneys' Fees, Costs, and Enhancement Awards no later than **fifteen (15) days** prior to the objection deadline. Plaintiffs shall include, with their Final Approval Motion, sufficient number of declarations as to Class Members' reactions to the settlement;
- Counsel or the Settlement Administrator are responsible for filing with the Court, no later than **ten (10) days** after the objection deadline, any objections that were submitted, if any, along with a brief responding to any submitted objections and otherwise summarizing the class members' participation in the Settlement and the settlement administration to date;
- Counsel or the Settlement Administrator shall file a notice no later than **seven (7) days** prior to the final fairness hearing date, providing the Court with a list of Class Members who wish to speak at the hearing, if any;
- Finally, the parties are ordered to file proof of compliance with the CAFA notice requirement within **fourteen (14) days** of this Order.

The Court reserves the right to continue the date of the fairness hearing without further notice to class members. The Court retains jurisdiction to consider all further matters arising out of or in connection with the Settlement Agreement.

Initials of Deputy Clerk: mku