

FILED
SAN MATEO COUNTY

JUL 14 2021

Clerk of the Superior Court

By *M. Belsch*
DEPUTY CLERK

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN MATEO

SELENA SCOLA, ERIN ELDER, GABRIEL RAMOS, APRIL HUTCHINS, KONICA RITCHIE, ALLISON TREBACZ, JESSICA SWARNER, and GREGORY SHULMAN,
individually and on behalf of all others similarly situated,

Plaintiffs,

v.

FACEBOOK, INC.,

Defendant.

Civil Action No. 18CIV05135

~~PROPOSED~~ ORDER GRANTING
PLAINTIFFS' RENEWED AND
UNOPPOSED MOTION FOR ATTORNEYS'
FEES, REIMBURSEMENT OF COSTS, AND
SERVICE AWARDS

Assigned for All Purposes to
Hon. V. Raymond Swope, Dept. 23

Date: June 21, 2021

Dept.: 23

Trial Date: None Set

2nd Amended Complaint Filed: June 30, 2020

Civil Action No. 18-CIV-05135

~~PROPOSED~~ ORDER GRANTING PLAINTIFFS' RENEWED AND UNOPPOSED MOTION FOR ATTORNEYS' FEES,
REIMBURSEMENT OF COSTS, AND SERVICE AWARDS

1 This matter came before the Court after a duly noticed hearing on June 21, 2021, on Plaintiffs'
2 Motion for Attorney Fees, Costs Reimbursement, and Service Awards. The Court has reviewed and
3 considered all the pleadings filed in connection therewith, and all of the arguments and evidence
4 presented at the hearing.

5 Accordingly, it is hereby ORDERED and DECREED that: Plaintiffs' Motion for Attorney Fees,
6 Costs Reimbursement, and Service Awards is GRANTED.

7 Plaintiffs request an award of \$15,600,000.00 in attorney fees, which is equal to 30% of the
8 gross settlement, and \$180,881.06.00 in expenses to Class Counsel; and service awards of \$20,000.00
9 to the three of the class representatives and \$7,500.00 for the remaining five class representatives who
10 they claim were integral to settlement. (MPA ISO Fees, filed Oct. 9, 2020, p. 11:4-11 ["Fees MPA"].)

11 **A. Plaintiffs' Request for Attorneys' Fees Is Granted.**

12 Plaintiffs request attorney fees be approved under the percentage-of-the-recovery method, rather
13 than the lodestar. (Fees MPA, p. 12:4–13:21.) "The fairness of the fees must be assessed independently
14 of determining the fairness of the substantive settlement terms." (*Roos v. Honeywell International, Inc.*
15 (2015) 241 Cal.App.4th 1472, 1489 (internal citations, quotations omitted) ("*Roos*").) "The court has a
16 duty, independent of any objection, to assure that the amount and mode of payment of attorneys' fees
17 are fair and proper, and may not simply act as a rubber stamp for the parties' agreement." (*Id.* at 1489.
18 *See also In re Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1119 ("In reviewing an
19 attorney fee provision in a class action settlement agreement, the trial court has an independent duty to
20 determine the reasonableness of the award."); *Garabedian v. Los Angeles Cellular Telephone Co.*
21 (2004) 118 Cal.App.4th 123, 127 ["Even where the parties agree as to the amount of attorney fees in ...
22 a settlement agreement, courts properly review and modify the agreed-upon fees if the amount is not
23 reasonable"].)

24 Class action litigation can result in an attorney fee award pursuant to a statutory fee shifting
25 provision or through the common fund doctrine when, as in this case, a class settlement agreement
26 establishes a relief fund from which the attorney fee is to be drawn. Two primary methods of
27 determining a reasonable attorney fee in class action litigation have emerged and been elaborated in
28 recent decades. The percentage method calculates the fee as a percentage share of a recovered common

1 fund or the monetary value of plaintiffs' recovery. The lodestar method, or more accurately the
2 lodestar-multiplier method, calculates the fee "by multiplying the number of hours reasonably
3 expended by counsel by a reasonable hourly rate. Once the court has fixed the lodestar, it may increase
4 or decrease that amount by applying a positive or negative 'multiplier' to take into account a variety of
5 other factors, including the quality of the representation, the novelty and complexity of the issues, the
6 results obtained, and the contingent risk presented. [Citation.] The two approaches to determining a fee
7 contrast in their primary foci: 'The lodestar method better accounts for the amount of work done, while
8 the percentage of the fund method more accurately reflects the results achieved.' [Citation.]" (*Laffitte*,
9 *supra*, 1 Cal.5th at 489 (internal citations omitted) (holding "trial courts have discretion to conduct a
10 lodestar cross-check on a percentage fee . . . [and] also retain the discretion to forgo a lodestar cross-
11 check and use other means to evaluate the reasonableness of a requested percentage fee").) "Some
12 courts have employed a benchmark percentage, with upward or downward adjustments justified by a
13 multifactor analysis. The Ninth Circuit has approved a 25 percent benchmark." (*Id.* at p. 495.)

14 The Ninth Circuit percentage is a starting point, but the proposed fee award of 30% falls within
15 the typical range for class action contingency fee awards.

16 The evidence shows a base lodestar of \$3,901,860.00 in fees by the three firms representing
17 Plaintiffs.

18 Saveri Law Firm: "The total lodestar amount for my firm's work at current rates is \$1,930,141
19 based upon 3,075.3 hours billed." (Williams Dec. ISO Fees, filed Oct. 9, 2020, ¶ 13, Ex. 2 ["Williams
20 Fees Dec."].)

21 Burns Charest: "The total lodestar amount for my firm's work at current rates is \$1,911,624,
22 based upon 2792.44 hours billed." (Charest Dec. ISO Fees, filed Oct. 9, 2020, ¶ 6., Ex. 1 ["Charest
23 Fees Dec."].)

24 Law Office of William Most: "The total lodestar amount for my firm's work at current rates is
25 \$60,095, based upon 70.7 hours billed." (Most Dec. ISO Fees, filed October 9, 2020, ¶ 14, Ex. 1
26 ["Most Fees Dec."].)

27 Based on a lodestar of \$3,901,860,00, awarding \$15,600,000.00 would include a multiplier of
28 4.00x [$15,600,000 / 3,901,860 = 3.998$].

1 California courts regularly award fees with multipliers ranging from 2 to 4, or even higher.
2 (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255 [collecting cases], disapproved on
3 another ground in *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260.) These multipliers
4 play an important role in contingent cases because they “bring the financial interests for [attorneys . . .]
5 into line with incentives they have to undertake claims for which they are paid on a fee-for-service
6 basis.” *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132. Based on the factors discussed above, a
7 multiplier of 4 is appropriate and justified.

8 **B. Plaintiffs’ Request for Costs Is Granted.**

9 Plaintiffs have proffered evidence to demonstrate actual costs of \$180,881.06.

10 Saveri Law Firm: “[Saveri] has incurred a total of \$118,930.76 in unreimbursed expenses
11 during the period inception through October 7, 2020.” (Williams Fees Dec., at p. 5:24-25. *See also id.*
12 at ¶ 15, Ex. 4.)

13 Burns Charest: “Burns Charest has incurred a total of \$60,935.30 in unreimbursed expenses
14 during the period from inception to September 2020.” (Charest Fees Dec., at p. 4:4:19-20. *See also id.*
15 at ¶ 8, Ex. 3.)

16 Law Office of William Most: “Law Office of William Most, L.L.C. has incurred a total of
17 \$1,015.00 in unreimbursed expenses during the period from inception to September 2020.” (Most Fees
18 Dec., at p. 4:9-10. *See also id.* at ¶ 16, Ex. 3.)

19 These attorney costs appear reasonable.

20 **C. Plaintiffs’ Request for Service Awards Is Granted.**

21 Plaintiffs seek service awards of \$97,500.00 for the eight class representatives, as follows:

22 Class Counsel request that the Court approve service awards to the eight class representatives in
23 the following amounts: Selena Scola (\$20,000); Erin Elder (\$20,000); Gabriel Ramos (\$20,000); April
24 Hutchins (\$7,500); Konica Ritchie (\$7,500); Allison Trebacz (\$7,500); Jessica Swarner (\$7,500);
25 Gregory Shulman (\$7,500). If awarded, the total deduction from the Settlement Fund is \$97,500, an
26 amount equal to 0.006% of the Settlement Fund. (Fees MPA, *supra*, at p. 21:16-21.)

27 “The rationale for making enhancement or incentive awards to named plaintiffs is that they
28 should be compensated for the expense or risk they have incurred in conferring a benefit on other

1 members of the class.” (*In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1394
2 (internal citations, quotations omitted).)

3 Criteria courts may consider in determining whether to make an incentive award include: 1) the
4 risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and
5 personal difficulties encountered by the class representative; 3) the amount of time and effort spent by
6 the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof)
7 enjoyed by the class representative as a result of the litigation. These “incentive awards” to class
8 representatives must not be disproportionate to the amount of time and energy expended in pursuit of
9 the lawsuit. (*In re Cellphone Fee Termination Cases*, 186 Cal.App.4th at 1394-1395 (internal citations,
10 quotations omitted).)

11 Based on the declarations and other facts set forth in the moving papers and applying the factors
12 set forth above, the class representative service awards appear reasonable.

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14 Dated: **JUL 14 2021**


15 Hon. W. Raymond Swope
16 Judge of the Superior Court
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