William S. Callaway et al. v. Mercedes-Benz USA, LLC et al.
8:14-cv-02011-JVS-DFM

ORDER REGARDING MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Plaintiff William S. Callaway ("Callaway") moved for preliminary approval of class action settlement with Defendant Mercedes-Benz USA, LLC ("Mercedes"). (Mot., Docket No. 216.) He requests that the Court enter an order:

> 1. Granting preliminary approval of the Settlement Agreement and release (the "Settlement"), reached with Mercedes, attached as Exhibit A to the Memorandum in Support of Plaintiff's Unopposed Motion for Preliminary Approval;
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> 2. Appointing Epiq Systems Class Action and Claims Solutions ("Epiq") as the Claims Administrator;
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> 3. Approving the form and manner of notice to the Settlement Class;
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> 4. Approving Jason M. Frank and Scott H. Sims of Frank Sims & Stolper LLP, Eric F. Yuhl and Colin A. Yuhl of Yuhl Carr LLP, and Patrick M. McNicholas as Class Counsel; and
>
> 5. Scheduling a hearing for final approval of the Settlement.

(Mot., Docket No. 216 at 1.) For the following reasons, the Court **grants** the motion.

I. BACKGROUND

In this lawsuit, Callaway alleges that Mercedes failed to disclose a seat heater defect in certain Mercedes automobiles. (See Second Amended Complaint, Docket No. 44 at 1 ("SAC").) Callaway alleges that the seat heaters in Mercedes

vehicles "have been known to spark, smoke, overheat and/or catch on fire when used in a foreseeable manner and as directed." (Id.) Mercedes has denied and continues to deny these allegations. (Mot., Docket No. 216-1 at 1.) The parties resolved this dispute after extensive legal briefing by both parties related to Callaway's Motion for Class Certification, depositions of the parties' experts, and the close of fact discovery. (Id. at 2.) The parties reached the Settlement after extensive, arms-length negotiations and four mediation sessions with the Honorable Layn Phillips (Ret.). (Id.)

A. Summary of the Settlement

1. Plaintiff's Proposed Settlement Class

Pursuant to the Settlement Agreement, the proposed class consists of all current and former owners and lessees of Mercedes-Benz model year 2000-2007 M-Class, model year 2006-2007 R-Class, and model year 2007 GL-Class vehicles (the "Subject Vehicles") with original-equipment seat heaters who purchased or leased their vehicle in the United States. (Mot., Docket No. 216-2 at 5.) This Class covers approximately 270,000 vehicles. (Frank Decl., Docket No. 216-6 at 5.) However, the number of Class Members will be larger because the Class includes current and former owners who experienced the seat heater defect. (Id.; Mot., Docket No. 216-1 at 5.) Those excluded from the Settlement Class include:

> a) Persons who have settled with, released, or otherwise had claims adjudicated on the merits against [Mercedes] that are substantially similar to those alleged in this matter;
> b) Former owners and lessees whose SUV Class Vehicle did not experience a seat heater malfunction during the time they owned or leased their SUV Class Vehicle;
> c) Employees of [Mercedes];
> d) Insurers or other providers of extended service contracts or warranties for the vehicles owned by Settlement Class Members; and
> e) The Honorable James V. Selna and the Honorable Douglas F. McCormick, and members of their respective families.

(Mot., Docket No. 216-2 at 5-6.)

2. Proposed Settlement Terms

The Settlement provides three benefits to the Settlement Class at their option: (1) a free bypass wire repair; (2) an extended warranty on seat heaters; and (3) reimbursement for past repairs. (Id. at 8-11.)

i. *Free Repair for Current Owners*

Class Members who submit a valid claim form electing this option will receive a free bypass wire repair procedure at a Mercedes authorized, independently owned and operated dealership of their choice. (Id. at 8.) The repair procedure will be covered by Mercedes' standard two-year parts warranty. (Id.)

ii. *Extended Warranty on Seat Heaters*

Class Members who do not select the repair procedure will automatically receive warranty coverage on a future seat heater repair to the extent the repair is made to address an issue alleged in this lawsuit, subject to certain mileage limitations related to the age of the automobiles. (Id. at 8-10.)

iii. *Reimbursement for Past Repairs*

Current and former owners or lessees who previously paid for seat heater repairs caused by the alleged defect will receive reimbursement for any costs they paid for the repairs up to a maximum amount of $1,000 per repair. (Id. at 10-11.)

iv. *Attorneys' Fees, Incentive Awards, and Administration Costs*

The Settlement provides that Mercedes will separately pay for any attorneys' fees and costs awarded by the Court to Class Counsel, so long as the amount of attorneys' fees does not exceed $5,662,387.50 and the amount of costs does not exceed $584,085.21. (Id. at 11-12.) Mercedes will also separately pay for any incentive award approved by the Court for Callaway, so long as the amount does not exceed $10,000. (Id. at 11.) Mercedes will be solely responsible for the notice and claims administration costs. (Id. at 19.) Mercedes' payments of these amounts will not in any way reduce the total benefits available to the Class. (Mot., Docket No. 216-1 at 7.)

v. *Release*

In exchange for the Settlement benefits, all Class Members who do not timely opt-out will release all claims against Mercedes and its related entities which are "on account of or related to claims that the seat heaters in the Subject Vehicles are inadequate or of poor or insufficient quality or defective, due to wear or otherwise, which were alleged or could have been alleged as to the Subject Vehicles in the Litigation or in similar actions." (Mot., Docket No. 216-2 at 14-15.) However, the release expressly excludes claims for personal injury or wrongful death. (Id. at 15.)

vi. *The Notice Plan*

The proposed Claims Administrator agreed to by the parties is Epiq. (Mot., Docket No. 216-1 at 7.) The Notice Plan requires direct mail notice to the Class. (Mot., Docket No. 216-2 at 20.) The Claims Administrator will also establish a Settlement Website, which will include copies of relevant case documents. (Id.)

vii. *The Claims Procedure*

In order to receive the free seat heater repair, Class Members will be required to complete a claim form and make an appointment with the Mercedes Benz authorized dealership of their choice. (Id. at 8.) In order to receive the reimbursement for a past repair, Class Members will be required to complete a claim form and provide a copy of documentation supporting their claim. (Id. at 10.) Class Members who do not elect the free seat heater repair will automatically receive the extended warranty and no claim form is required. (Id. at 8-10.)

II. LEGAL STANDARD

Rule 23(e) requires that a court approve a class action settlement. Fed. R. Civ. P. 23(e). When a class action reaches a settlement agreement before class certification, a court uses a two-step process to approve a class action settlement. Staton v. Boeing Co., 327 F.3d 938, 952 (9th Cir. 2003). First, the court must certify the proposed settlement class. Id. Second, the court must determine whether the proposed settlement is fundamentally fair, adequate, and reasonable. Id.

III. PRELIMINARY CERTIFICATION OF THE PROPOSED SETTLEMENT CLASS

For the reasons discussed below, the Court preliminarily certifies the proposed settlement class. The Court will now discuss the requirements under Rule 23.

A. Prerequisites Under Rule 23(a)

The Court finds that the proposed Settlement Class meets the prerequisites of Rule 23(a).

Rule 23(a) imposes four prerequisites for class actions: (1) the class is so numerous that a joinder of all members is impracticable (numerosity); (2) there are questions of law or fact common to the class (commonality); (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class (typicality); and (4) the representative parties will fairly and adequately protect the interests of the class (adequacy). Fed. R. Civ. P. 23(a); United Steel, Paper & Forestry, Rubber, Mfg. Energy, Allied Indus. & Serv. Workers Int'l Union, AFL-CIO v. ConocoPhillips Co., 593 F.3d 802, 806 (9th Cir. 2010).

1. Numerosity

Under Rule 23(a)(1), a class must be so numerous that joinder of all members is impracticable. Fed. R. Civ. P. 23(a)(1). Because this requirement is not tied to a fixed numerical threshold, a court needs to examine the specific facts of each case. Rannis v. Recchia, 380 Fed. App'x 646, 651 (9th Cir. 2010). Typically, courts have found that the numerosity requirement is satisfied when the proposed class includes at least forty members. Id.

Here, Callaway asserts that there are approximately 270,000 Subject Vehicles and that the Class will be even larger because it includes both current and former owners. (Mot., Docket No. 216-1 at 10; Frank Decl., Docket No. 216-6 at 5). Accordingly, Callaway has demonstrated that the class meets the numerosity requirement.

2. Commonality

Rule 23(a)(2) requires that there are questions of law or fact common to the class. Fed. R. Civ. P. 23(a)(2). However, to satisfy this rule, all questions of fact and law do not need to be common. Hanlon v. Chrysler Corp., 150 F.3d 1011, 1019 (9th Cir. 1998). For instance, a class meets the commonality requirement if members share the same legal issues but have different factual foundations. Id. In addition, commonality is satisfied if members of the class share a common core of facts but have different legal remedies. Id.

Here, the questions common to the class include: (1) "Does the seat heater defect exist in the Subject Vehicles?"; (2) "Was [Mercedes] aware that the seat heaters in the Subject Vehicles were malfunctioning?"; (3) "Would the seat heater problem be considered important to a 'reasonable consumer' when determining whether to purchase an SUV Class Vehicle and pay the offered price?"; (4) "Does the seat heater problem present an unreasonable safety risk that needed to be disclosed at the time of sale?"; and (5) "Did [Mercedes] have a legal duty to disclose the alleged safety defect?" (Mot., Docket No. 216-1 at 12.) In conclusion, Callaway has proven that the Class meets the commonality requirement.

3. Typicality

Rule 23(a)(3) requires that the claims or defenses of the representative parties is typical of the claims or defenses of the class. Fed. R. Civ. P. 23(a)(3). Rule 23(a)(3) has a permissive standard: the representative claims are typical if they are reasonably comparable to the claims of the absent class members; substantial identicalness between the claims is not required. Hanlon, 150 F.3d at 1020. The test for typicality is (1) whether other members have a similar injury, (2) whether the action is based on conduct that is not unique to the named plaintiffs, and (3) whether the same course of conduct has injured other class members. Hanon v. Dataproducts Corp., 976 F.2d 497, 508 (9th Cir. 1992).

Here, Callaway's claims are typical of the claims of the other Class Members. (Callaway Decl., Docket No. 168-1 at 1-2; Zamiski Decl., Docket No. 168-4 at 2-4; Mot., Docket No. 216-1 at 13.) He contends that, like all of the other proposed Class Members, he "purchased an SUV Class Vehicle with the alleged seat heater defect," and "[Mercedes] did not disclose the problem with the seat heater to [him]." (Callaway Decl., Docket No. 168-1 at 2.) Thus, Callaway has demonstrated that his claims are typical of the class claims.

4. Adequacy

Rule 23(a)(4) requires that a representative party fairly and adequately protects the interest of the class. Fed. R. Civ. P. 23(a)(4). Representation is fair and adequate when (1) the representative plaintiffs and counsel have no conflicts of interest with other class members and (2) representative plaintiffs and counsel will prosecute the action vigorously on behalf of the class. Staton, 327 F.3d at 957.

Here, Callaway asserts that he is an adequate class representative and that his counsel is qualified. (Callaway Decl., Docket No. 216-9 at 1; Mot., Docket No. 216-1 at 13.) Callaway claims that he has no interests antagonistic to those of other Class Members. (Callaway Decl., Docket No. 216-9 at 1.) He also contends that he has retained counsel experienced in class action. (Id.; Frank Decl., Docket No. 216-6 at 2-4; Yuhl Decl., Docket No. 216-7 at 1-3; McNicholas Decl., Docket No. 216-8 at 1-5.) Therefore, Callaway meets the adequacy requirement.

B. Requirements Under Federal Rule of Civil Procedure 23(b)(3)

Because Callaway satisfied the prerequisites under Rule 23(a), the Court must now consider whether the proposed class also satisfies Rule 23(b)(3), and based on the following analysis, the Court finds that it does.

Under Rule 23(b), a plaintiff must show (1) that common factual and legal issues predominate over individual questions and (2) that a class action is a superior method to resolve the class claims. Fed. R. Civ. P. 23(b)(3). There are several relevant factors to consider during this analysis: (1) the class members' interest in individually controlling the prosecution or defense of separate actions, (2) the extent and nature of any litigation concerning the controversy already begun by or against class members, (3) the desirability or undesirability of concentrating the litigation of the claims in the particular forum, and (4) the likely difficulties in managing a class action. Id. 23(b)(3)(A)–(D). Here, the Court finds (1) that common factual and legal issues predominate over individual questions and (2) that a class action is a superior method to resolve the class claims.

1. Common Factual and Legal Issues Predominate Over Individual Questions

To meet the predominance requirement, common questions must be so

significant that a single suit resolves all the issues at dispute for all of the class members. Berger v. Home Depot USA, Inc., 741 F.3d 1061, 1067 (9th Cir. 2014), abrogated on other grounds by Microsoft Corp. v. Baker, 137 U.S. 1702 (2017). This predominance inquiry is a more rigorous analysis, and it presumes that there is commonality. Gold v. Midland Credit Mgmt., Inc., 306 F.R.D. 623, 633 (N.D. Cal. 2014).

Here, the Court has already found commonality. Callaway contends that because the lawsuit deals with the uniform failure to disclose, the predominant factual and legal issue is whether Mercedes' non-disclosure is misleading. (Mot., Docket No. 216-1 at 14.) Thus, the Court finds that common factual and legal issues predominate.

2. A Class Action Is a Superior Method to Resolve the Class Claims

A class action is a superior method to resolve the claims. If Callaway and the other Class Members each brought individual actions, they would need to prove the same wrongdoing by Mercedes, using the same evidence, under the same legal theories. Resolving these claims through a class action avoids the inefficiency of repetitious litigation. Moreover, a class action would also avoid the potential risk of inconsistent rulings. In addition, requiring individual Class Members to bring suit against Mercedes would impose substantial additional burdens and expense on them. Accordingly, a class action is a superior method to resolve the class claims.

IV. PRELIMINARY APPROVAL OF THE PROPOSED CLASS SETTLEMENT

For the reasons discussed below, the Court finds that preliminary approval of the Settlement is appropriate.

Rule 23(e) requires a district court to determine whether a proposed class action settlement is "fundamentally fair, adequate, and reasonable." Staton, 327 F.3d at 959. For this analysis, a court typically considers the following factors: (1)

strength of the plaintiff's case; (2) risk, expense, complexity, and likely duration of further litigation; (3) risk of maintaining class action status throughout the trial; (4) amount offered in settlement; (5) extent of discovery completed and the stage of the proceedings; (6) experience and views of counsel; (7) presence of a governmental participant; and (8) reaction of the class members to the proposed settlement. In re Bluetooth Headset Prods. Liab. Litig., 654 F.3d 935, 946 (9th Cir. 2011).

However, when a settlement agreement is formed before formal class certification, simply considering these factors alone is insufficient. Id. Courts also need to examine whether the settlement is a result of collusion among the parties. Id. at 947. When examining whether collusion has occurred, a court needs to look for subtle signs of self-interest. Id. In Bluetooth, the Ninth Circuit identified three signs: (1) class counsel receives a disproportionate distribution of the settlement; (2) the parties negotiate a "clear sailing" arrangement providing for the payment of attorneys' fees separate from class funds without objection by the defendant; and (3) the parties arrange for unearned attorneys' fees to revert to defendants rather than to the class fund. Id.

At the preliminary approval stage, a court cannot fully assess some of these factors, so a full fairness analysis is unnecessary. See Alberto v. GMRI, Inc., 252 F.R.D. 652, 665 (E.D. Cal. 2008). Instead, a court simply needs to ensure that the settlement is potentially fair because a court will make a final determination regarding its adequacy at a hearing on final approval, which occurs after any class member has had an opportunity to object or opt-out. Acosta v. Trans Union, LLC, 243 F.R.D. 377, 386 (C.D. Cal. 2007). At this time, "[p]reliminary approval of a settlement and notice to the class is appropriate if (1) the proposed settlement appears to be the product of serious, informed, noncollusive negotiations, (2) has no obvious deficiencies, (3) does not improperly grant preferential treatment to class representatives or segments of the class, and (4) falls within the range of possible approval." Cruz v. Sky Chefs, Inc., 2014 WL 2089938, at *7 (N.D. Cal. May 19, 2014) (quoting In re Tableware Antitrust Litig., 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007)). "[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, 150 F.3d at 1027 (quoting Officers for Justice v. Civil

Service Comm'n, 688 F.2d 615, 625 (9th Cir. 1982)) (internal quotation marks omitted). The Ninth Circuit has declared that a strong judicial policy favors settlement of class actions. Class Plaintiffs v. City of Seattle, 955 F.2d 1268, 1276 (9th Cir. 1992).

A. The Product of Serious, Informed, Noncollusive Negotiations

The proposed Settlement appears to be the product of serious, informed, and noncollusive negotiations. The parties reached the proposed Settlement after four mediation sessions with Judge Phillips and numerous in-person and telephonic meetings among counsel. (Frank Decl., Docket No. 216-6 at 6-7; Mot., Docket No. 216-1 at 16.) The Settlement appears to be well informed, for example: (1) Callaway's "Motion for Class Certification is fully briefed"; (2) "both parties' experts were deposed in connection with the class certification motion"; (3) "Daubert motions regarding those experts are fully briefed"; (4) Mercedes "moved for summary judgment, which was denied as to [Callaway]"; and (5) "fact discovery – which included extensive written and deposition discovery – is closed." (Mot., Docket No. 216-1 at 16.) The extensive mediation process demonstrates to the Court that the proposed settlement is the product of serious, informed, noncollusive negotiations.

B. No Obvious Deficiencies

A court needs to consider whether (1) class counsel receives a disproportionate distribution of the settlement; (2) the parties negotiate a "clear sailing" arrangement providing for the payment of attorney's fees separate from class funds without objection by the defendant; and (3) the parties arrange for fees to revert to defendants rather than to the class fund. Bluetooth, 654 F.3d at 946.

Here, the first sign of collusion is difficult to assess. The Settlement provides that Mercedes will separately pay for any attorneys' fees and costs awarded by the Court to Class Counsel, so long as the amount of attorneys' fees does not exceed $5,662,387.50 and the amount of costs does not exceed $584,085.21. (Mot., Docket No. 216-2 at 11-12.) The Settlement provides that Mercedes will provide Class Members with a free bypass wire repair procedure, developed as part of the Settlement. (Id. at 8.) Callaway estimates that based on the number of Subject Vehicles, the "collective monetary value of this relief for the

Class is over $54,000,000."[1] (Frank Decl., Docket No. 216-6 at 5; Mot., Docket No. 216-1 at 1-2.) This figure does not include the estimated value of the extended warranty or reimbursement for past repairs. Mercedes' future liability under the Settlement is uncertain. However, assuming Callaway's estimation is accurate, Class Counsel's requested fees and costs represent approximately 11.56% of this total. This is nowhere near the disproportionate fee award in Bluetooth, in which the attorneys' fees were 83.2% of the total settlement amount. 654 F.3d at 945. Moreover, any fees paid will not reduce the benefits available to Class Members. Consequently, the Court does not find that the fees Class Counsel seeks are disproportionate to the benefits Class Members will receive.

The second sign of collusion noted in Bluetooth is present. The Settlement includes a "clear sailing" provision, as it provides that Mercedes agrees not to oppose the requested attorneys' fees. (Mot., Docket No. 216-2 at 12.) This kind of "clear sailing" agreement requires the Court to exercise a "heightened duty to peer into the provision and scrutinize closely the relationship between attorneys' fees and benefit to the class." Bluetooth, 654 F.3d at 947. However, the Ninth Circuit has noted that "the inference of collusion drawn from a clear sailing provision is reduced when the agreement lacks a reversionary or 'kicker provision.'" Asghari v. Volkswagen Grp. of Am., Inc., No. CV 13-02529 MM (VBKx), 2015 WL 12732462 (C.D. Cal. May 29, 2015) (citing Bluetooth, 654 F.3d at 949). Therefore, despite the clear sailing provision, the absence of a "kicker provision" in the Settlement reduces the likelihood that Callaway and Mercedes colluded to confer benefits on each other at the expense of Class Members. Accordingly, this provision does not give the Court cause for concern.

The third sign of collusion is not present. As discussed above, the Settlement does not contain a reversion provision.

C. No Preferential Treatment to Class Representatives or Segments of the Class

It appears as though the Settlement does not improperly grant preferential treatment to segments of the Class. The Settlement provides that all Class

[1] "Under the Settlement, [Mercedes] will reimburse its dealers for each bypass wire repair they perform for a Class Member. The estimated cost of the repair is approximately $200 for parts and labor." (Frank Decl., Docket No. 216-6 at 5.)

Members are entitled to the free bypass wire repair procedure. (Mot., Docket No. 216-2 at 8.) Moreover, all Class Members can receive a reasonable reimbursement up to $1,000 per repair to the extent that they paid out-of-pocket for a prior repair. (Id. at 10.) The extended warranty coverage provided under the Settlement does contain certain mileage limitations related to the age of the automobiles. (Id. at 9-10.) However, "[o]ther courts have upheld similar class action settlement agreements which place age and mileage restrictions." Sadowska v. Volkswagen Grp. of Am., Inc., No. CV 11-00665-BRO (AGRx), 2013 WL 9600948 (C.D. Cal. Sept. 25, 2013).

Moreover, the anticipated request of a $10,000 incentive award for Callaway may be reasonable if, before final approval of the incentive award, Callaway provides evidence that he spent significant time assisting the prosecution of the action.[2] See Vandervort v. Balboa Capital Corp., 8 F. Supp. 3d 1200, 1208 (C.D. Cal. 2014).

D. Range of Possible Approval

To determine whether a settlement falls within the range of possible approval, courts consider (1) substantive fairness and adequacy and (2) plaintiffs' expected recovery balanced against the value of the settlement offer. Tableware, 484 F. Supp. 2d at 1080.

Here, the Settlement appears to fall within the range of possible approval. The Settlement provides for a free proactive repair, an extended warranty, and reimbursement for past repairs, which is sufficient to remedy the alleged defect and failure to disclose. (Mot., Docket No. 216-2 at 8-11.) Callaway asserts that automotive class action settlements typically provide the class with an extended warranty and/or reimbursement for past repairs only, and that such settlements are routinely approved as fair and adequate. (Mot., Docket No. 216-1 at 16.) He asserts that the free bypass repair procedure, which was not previously available and is a direct result of the Settlement, is an extraordinary result to the Class. (Id.) Furthermore, as asserted by Callaway, further litigation would be complex, costly, and uncertain. Therefore, this factor favors approval.

[2] The Court notes that Callaway provided some such evidence in the Callaway Declaration. (Callaway Decl., Docket No. 216-9 at ¶ 2).

V. APPROVAL OF PROPOSED NOTICE PLAN

For the following reasons, the Court approves the proposed notice plan.

A class notice must meet the notice requirements in Rule 23(c)(2)(B). Rule 23(c)(2)(B) requires the notice to be the "best notice . . . practicable under the circumstances," and the notice must provide individual notice "to all members who can be identified through reasonable effort." However, actual notice is not required under Rule 23(c)(2)(B). See Silber v. Mabon, 18 F.3d 1449, 1454 (9th Cir. 1994).

Rule 23(c)(2)(B) also contains specific substantive requirements for the notice. The notice needs to state in clear language (1) the nature of the action; (2) the definition of the certified class; (3) the class claims, issues, or defenses; (4) that a class member may enter an appearance through an attorney if that member desires; (5) that the court will exclude any member who requests to be excluded from the class; (6) the time and manner for requesting exclusion; and (7) the binding effect of a class judgment on members. Fed. R. Civ. P. 23(c)(2)(B).

The Court finds that the Proposed Class Settlement Notice is clear and adequately conveys necessary relevant information regarding the Settlement and provides clear instructions regarding the claim and opt-out procedures. The Notice is being directly mailed to all Class Members. (Mot., Docket No. 216-1 at 21.) The Notice Form states: (1) the nature of the action; (2) the definition of the Class; (3) the Class claims; (4) how a Class Member may enter an appearance through an attorney if the member so desires; (5) how the Court will exclude from the Class any member who requests exclusion; (6) the time and manner for requesting exclusion; and (7) the binding effect of a class judgment on members under Rule 23(c)(3). (Id.) Therefore, the method of class notice meets the requirements of Rule 23(c)(2)(B).

VI. SCHEDULING

The Court adopts the following dates for scheduling:

Event	**Date**

Mailing of Class Notice / Publication of Class Notice / Start of Claims Period	November 13, 2017
Deadline for Application for Attorneys' Fees, Costs, and Incentive Awards	October 18, 2017
Deadline for Objections	January 12, 2018
Deadline for Requests for Exclusion	January 12, 2018
Deadline to Submit a Claim	January 12, 2018
Deadline for Claims Administrator Declaration	January 26, 2018
Deadline for Plaintiff to Move for Final Approval	February 5, 2018
Deadline for Parties to Jointly Submit List of Individuals Who Submitted Requests for Exclusion	February 22, 2018
Final Approval Hearing	March 5, 2018

VII. SETTLEMENT ADMINISTRATOR

The Court approves Callaway's request to appoint Epiq as the Claims Administrator.

VII. CLASS COUNSEL

The Court approves Callaway's request to appoint Jason M. Frank and Scott H. Sims of Frank Sims & Stolper LLP, Eric F. Yuhl and Colin A. Yuhl of Yuhl Carr LLP, and Patrick M. McNicholas as Class Counsel for settlement purposes only. As discussed above, Callaway's retained counsel are experienced in class action litigation.

IX. CONCLUSION

For the foregoing reasons, the Motion for Preliminary Approval of Class Action Settlement is **granted**.

IT IS SO ORDERED.