UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 18-6749-GW(SSx)	Date	April 1, 2021
Title	*Halie Bloom, et al. v. ACT, Inc., et al.*		

Present: The Honorable	GEORGE H. WU, UNITED STATES DISTRICT JUDGE	
Javier Gonzalez	Terri A. Hourigan	
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
Jesse M. Creed	Ronald D. Balfour

PROCEEDINGS: **TELEPHONIC HEARING ON PLAINTIFFS' MOTION FOR (1) FINAL APPROVAL OF CLASS ACTION SETTLEMENT UNDER FED. R. CIV. P. 23(e), (2) FOR APPROVAL OF AWARD OF ATTORNEY'S FEES AND COSTS, AND (3) FOR APPROVAL OF CLASS REPRESENTATIVE SERVICE AWARDS [276]**

Court and counsel confer. The Tentative circulated and attached, is adopted as the Court's Final Ruling. The Court GRANTS the motion. Plaintiff will email the clerk an updated proposed order and final judgment.

: 04

Initials of Preparer JG

Halie Bloom et al v. ACT, Inc., et al; Case No. 2:18-cv-06749-GW-(KSx)
Tentative Rulings on Plaintiff's Motion for (1) Final Approval of Class Action Settlement; (2) Approval of Attorney's Fees and Costs; and (3) Approval of Class Representative Service Awards

I. Background[1]

Defendant ACT, Inc. administers the ACT exam, a standardized test widely used for college admissions in the United States. In 2018, the plaintiffs, various individuals who have taken the ACT exam (collectively, "Plaintiffs"), brought this putative class action against Defendant ACT, alleging that it discriminated against examinees with disabilities in violation of, among other things, the Americans with Disabilities Act ("ADA") and California's Unruh Civil Rights Act.

The parties have engaged in intense litigation, involving a motion for preliminary injunction, multiple motions to stay pending arbitration, multiple motions to dismiss, and an interlocutory appeal to the Ninth Circuit. However, after engaging in mediation, Plaintiffs and ACT have reached an agreement to settle all claims. The agreement includes a consent decree enjoining ACT from continuing the challenged practices as well as a settlement award of $16 million. Plaintiffs previously moved for preliminary approval of the proposed settlement, which the Court approved. *See* Prelim. Approval. Plaintiffs now move for final approval of the proposed settlement, as well as approval of attorney's fees and costs and class representative service awards. For the reasons discussed below, the Court **GRANTS** the motion.

A. Factual Background

The factual background of this action was extensively covered in the preliminary approval ruling. *See* Prelim. Approval. In short, Plaintiffs challenge three ACT policies that they allege unlawfully discriminate against ACT examinees with disabilities. First, Defendant ACT allegedly includes information about an examinee's disabilities on the examinee's ACT score report that is sent to colleges (the "Score Flagging Practice"). The score report includes an indication of whether or not the examinee sat for the ACT with Special Testing, requiring test accommodations that cannot be provided at the regular test centers. Second, ACT allegedly makes it more difficult for

[1] The following abbreviations are used for the filings: (1) Third Amended Complaint ("TAC."), ECF No. 205; (2) Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Prelim. Mot."), ECF No. 273; (3) Final Ruling on Motion of Plaintiff's for Preliminary Approval of Class Action Settlement ("Prelim. Approval"), ECF No. 275; (4) Plaintiff's Motion for Final Approval of Class Action Settlement ("Mot."), ECF No. 276; (5) Declaration of Michell Robinson ("Robinson Decl."), ECF No. 276-1; (6) Declaration of Jesse Creed ("Creed Decl."), ECF No. 276-2; (7) Settlement Agreement ("Settlement Ag."), ECF No. 276-3, Exh. 1; (8) Proposed Consent Decree ("Consent Dec."), ECF No. 276-3, Exh. 1.

examinees with disabilities to participate in EOS (the "Special Testing EOS Practice"). The EOS, or Educational Opportunity Service, is a student search service offered by ACT that is used by colleges to help identify prospective students for recruitment. Third, ACT allegedly discriminates against examinees with disabilities by making information about their disabilities accessible as a search criteria to colleges participating in EOS (the "EOS Disability Search Practice"). Specifically, Defendant's EOS service allows colleges to search for prospective students using the existence of a disability as a search criteria or filter.

B. Procedural History

Plaintiffs filed a complaint in August 2018. *See* ECF No. 1. Plaintiffs sought a preliminary injunction, but as ACT stipulated that it would cease the Score Flagging Practice for the duration of the action, the Court denied Plaintiffs' motion. *See* ECF No. 45.

The parties engaged in extensive motion practice. In December 2018, the Court granted Defendant's motion to compel arbitration of several of Plaintiffs' claims and stay the case pending arbitration. *See* ECF No. 86. New plaintiffs were then added and Plaintiffs also filed a motion for interlocutory appeal of the Court's arbitration ruling. In March 2019, the Court denied Defendant's motion to compel arbitration of the newly added plaintiffs and granted Plaintiffs' motion to certify the December 2018 ruling compelling arbitration. *See* ECF No. 126. Parties also sparred over the complaint, with Plaintiffs filing three amended complaints, and Defendant filing two motions to dismiss that resulted in the dismissal of two causes of action. *See* ECF No. 243.

After the hearing on Defendant's latest motion to dismiss, the parties engaged in settlement discussions. They participated in two mediation sessions before the Honorable Louis Meisinger, and in September 2020, the parties entered into the proposed settlement agreement. *See* Settlement Ag. The Court granted preliminary approval of the proposed settlement agreement soon after. *See* Prelim. Approval. Plaintiffs now seek final approval of the settlement agreement, approval of attorney's fees and costs, and approval of class representative service awards. *See* Mot.

C. Proposed Settlement

The proposed settlement consists of a Consent Decree and an award of monetary damages.

i. The Consent Decree

The Consent Decree enjoins Defendant from the three allegedly discriminatory practices: the Score Flagging Practice, Special Testing EOS Practice, and EOS Disability Search Practice. Consent Dec. ¶¶ 7-8. The Consent Decree benefits every member of the proposed Injunctive Relief

Class, defined as:

> All individuals in the United States who meet either of the following criteria: (a) took the ACT Test through Special Testing at any time or (b) provided an Eligible SPS Question 8[2] response at any time.

Settlement Ag. ¶ 3(b)(ii); Consent Dec. ¶ 5a. This class would be certified as an injunctive relief class under Rule 23(b)(2), and therefore the parties do not seek to provide notice. *See* Fed. R. Civ. P. 23(c)(2)(A) (making notice for injunctive relief classes optional).

ii. The Award of Monetary Damages

Defendant will pay a gross settlement amount of $16 million to a common fund in return for a release of all claims against it related to the facts alleged in the third amended complaint. The proposed settlement approval award is largely unchanged from the preliminary settlement:

- Attorney fees of $3,921,365.77, approximately 24.5% of the gross settlement amount, and reimbursement of litigation expenses of $78,634.23.
- Administrative costs of $208,030.22.
- Class representatives service awards of $5,000. There are ten class representatives, so the total amount is $50,000.
- The Net Settlement Amount, which is defined as the gross settlement amount minus the attorney fees, administrative costs, and class service awards listed above, is $11,741,969.78 and will be distributed on a pro rata basis.

See Mot. at 8-9.

The Net Settlement Amount is to be distributed to the following two subclasses (the "California Subclasses") of the Injunctive Relief Class:

> *California Disclosure Subclass*: All individuals who meet all of the following criteria in connection with any single administration of the ACT Test according to ACT's records: (a) took an ACT Test on or after September 1, 2002, and on or before August 2, 2020; (b) resided in California at the time they took the ACT Test or took the ACT Test in California; and (c) satisfies at least one of the following criteria: (i) such individual provided an Eligible SPS Question 8 Response or (ii) such individual was administered the exam through Special Testing.
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> *California EOS Subclass*: All individuals who meet the following criteria in connection with any single administration of the ACT Test according to ACT's records: (a) took an ACT Test through Special Testing on or after September 1, 2007, and before August 2, 2020; (b) resided in California at the time they took the ACT Test or took the ACT Test in California; and (c) left the response to the EOS

[2] An individual who provided an "Eligible SPS Question 8" refers to all examinees who indicated they had a disability while filling out the Student Profile Section during ACT test registration.

> enrollment question blank on the Special Testing answer folder for at least one exam.

Settlement Ag. ¶ 3(b)(i). Members of the California Disclosure Subclass by definition were subject to the Score Flagging Practice and the EOS Disability Search Practice. Members of the California EOS Subclass were further subject to the Special Testing EOS Disability Practice. The California EOS Subclass is therefore a subset of the larger California Disclosure Subclass.

Each claimant is entitled to one or two shares of the Net Settlement Amount – one for each of the California Subclasses that she is a member of. As of now, there are 56,049 unique individuals in the California Disclosure Subclass and 9,699 unique individuals in the California EOS Subclass. Using the figures for the attorney fee and service awards described above, a member of both California subclasses would receive $357.18, while a member of only the California Disclosure Subclass would receive $178.59. *See* Mot. at 9.

II. Legal Standard

There is "a strong judicial policy that favors settlements, particularly where complex class action litigation is concerned." *Allen v. Bedolla*, 787 F.3d 1218, 1223 (9th Cir. 2015) (internal quotation marks omitted). Nonetheless, district courts are required to approve class action settlements before they can become effective. "[S]ettlement class actions present unique due process concerns for absent class members[.]" *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998), *overruled on other grounds by Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011); *see also Allen*, 787 F.3d at 1223 ("[T]he district court has a fiduciary duty to look after the interests of those absent class members."). In cases such as this one where the parties arrive at a settlement before class certification, "courts must peruse the proposed compromise to ratify both the propriety of the certification and the fairness of the settlement." *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003).

Under Federal Rule of Civil Procedure 23, after preliminary approval of a proposed settlement and notice is given to class members, a court must determine if final approval is warranted. *See Nat'l Rural Telecommc'ns Coop. v. DirecTV, Inc.*, 221 F.R.D. 523, 525 (C.D. Cal. 2004). To grant final approval, the court must find that the proposed settlement is "fundamentally fair, adequate, and reasonable." *See Staton*, 327 F.3d at 959 (citing *Hanlon*, 150 F.3d at 1026). In making this determination, the court may consider any or all of the following factors: "(1) the strength of plaintiffs' case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered

in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement." *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004); *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982). Courts examine "the settlement taken as a whole, rather than the individual component parts . . . for overall fairness." *Hanlon*, 150 F.3d at 1026.

III. Discussion

A. Settlement Class Certification

The proponent of class treatment bears the burden of demonstrating that class certification is appropriate. *Meyer v. Portfolio Recovery Assocs., LLC*, 707 F.3d 1036, 1041 (9th Cir. 2012). Rule 23 requires the party seeking certification to satisfy all four requirements of Rule 23(a) and at least one of the subparagraphs of Rule 23(b). *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1233-34 (9th Cir. 1996).

Plaintiffs seek final certification of the Injunctive Relief Class, for settlement purposes, under Rule 23(b)(2). Plaintiff seek final certification of the California Disclosure Subclass and the California EOS Subclass, for settlement purposes, under Rule 23(b)(3). As noted in the preliminary approval, class certification is warranted here. *See* Fed. R. Civ. P. 23; Prelim. Approval at 7-9. Each class has thousands of class members, with the smallest California EOS Subclass still consisting of 9,749 unique individuals, and each class shares common issues of fact and law, as outlined in the preliminary approval. *See* Prelim. Approval at 8. Each class seeks remedies under common theories, and there is no reason to believe class representatives will not (or have not) fairly and adequately protect the interests of the class. *See id.* at 9.

As discussed in the preliminary approval, this action seems particularly well suited for class action treatment given that it involves the administration of a standardized exam, and as far as the Court can tell, does not require individualized inquiries for any class members. *See* Prelim. Approval at 12. Therefore, the Court finds that Defendant's alleged unlawful practices – the Score Flagging Practice, Special Testing EOS Practice, and EOS Disability Search Practice – apply uniformly to the members of the Injunctive Relief Class such that injunctive relief is appropriate respecting the class as a whole. *See id.* at 10-11; Fed. R. Civ. P. 23(b)(2). For similar reasons, the Court finds that common questions of law or fact predominate the California Disclosure Subclass and California EOS Subclass such that a class action is superior to other available methods for fair

and efficient adjudication of the controversy. *See* Prelim. Approval at 11-12; Fed. R. Civ. P. 23(b)(3).

B. Notice

Under Rule 23(e), district courts must "direct notice in a reasonable manner to all class members who would be bound" by the proposed settlement. *See* Fed. R. Civ. P. 23(e)(1). Due process mandates that notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 174 (1974) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). Class notice "is satisfactory if it generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard." *Churchill,* 361 F.3d at 575.

In accord with the preliminary approval order, the parties appointed KKC Class Action Services LLC ("KKC") as the settlement administrator. *See* Prelim. Approval at 17; Mot. at 16-17; Robinson Decl ¶ 1. KKC received a list of interested persons from Defendant and formatted the list for mailing purposes, removed duplicates, and attempted to retrieve updated address and email information. *See* Robinson Decl ¶¶ 2-3. KKC printed and mailed 26,289 Post Card Notices to class members, and reasonable efforts were made to find new addresses for those that were returned with undeliverables addresses. *See* Robinson Decl ¶ 4-6, Exh. A. KKC also sent out email notices and reminder emails to 43,006 class members. *See* Robinson Decl. ¶¶ 7-8, Exh. B-C. KKC published a notice advertisement in the October 22, 2020 edition of *USA Today*, created and advertised a website dedicated to providing information to class members, and maintained a toll-free telephone number for potential class members to call and obtain information about the settlement. *See* Robinson Decl. ¶¶ 9-11, Exh. D.

The Court finds that the notice issued here was reasonably calculated to apprise interested parties of the pendency of this action and to afford them the opportunity to object. *See* Fed. R. Civ. P. 23(e). The Notices informed class members of the settlement terms, provided information about the case, and provided contract information for further information. Such notice satisfies the due process requirements of the Fifth Amendment. *See Rodriguez v. W Publ'g Corp.*, 563 F.3d 948, 962 (9th Cir. 2009) ("Settlement notices are supposed to present information about a proposed settlement neutrally, simply, and understandably"); *Churchill*, 361 F.3d at 575 (approving a similar notice).

C. The Merits of the Settlement

In determining whether a settlement is fundamentally fair, adequate, and reasonable, the court may consider any or all of the following factors: (1) the strength of plaintiffs' case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed, and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement. *See Churchill*, 361 F.3d at 575; *Officers for Justice*, 688 F.2d at 625. When a settlement is negotiated prior to formal class certification, the court must assess whether there are any signs of collusion or other conflicts of interest. *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011).

At the threshold, the Court recognizes that the settlement was the result of extensive arms-length negotiations by competent and skilled attorneys under the guidance of a respected mediator following a highly contested litigation process and extensive discovery. *See* Mot. at 13-14; Creed Decl. ¶¶ 4-15. "[T]he fact that the settlement agreement was reached in arm's length negotiations after relevant discovery [has] taken place create[s] a presumption that the agreement is fair." *Linney v. Cellular Alaska P'ship*, No. C-96-3008 DLJ, 1997 WL 450064, at *5 (N.D. Cal. July 18, 1997), *aff'd*, 151 F.3d 1234 (9th Cir.1998). The Court also finds no signs of collusion or other conflicts of interest.

Turning to the several factors set forth above, the Court finds that the strength of the case and settlement considerations weigh in favor of fairness. *See Nat'l Rural*, 221 F.R.D. at 526 ("An important consideration in judging the reasonableness of a settlement is the strength of the plaintiffs' case on the merits balanced against the amount offered in the settlement"). Plaintiffs have a relatively strong case with multiple remaining causes of action that have survived two rounds of motions to dismiss, and Defendant has already stipulated to ceasing its practice of score flagging, making a preliminary injunction unnecessary. The settlement will result in Defendant's paying $16 million dollars to a common fund, and a consent decree will permanently enjoin the ACT from continuing the three allegedly discriminatory practices. While the California's Unruh Civil Rights Act allows a possible recovery of statutory damages of $4,000, Plaintiffs realistically face several large hurdles before possibly obtaining statutory damages for all its class members. Several class members may have their claims arbitrated, with several complex issues still pending

under interlocutory appeal, and statute of limitations may be an issue for other class members. *See* Prelim. Approval at 15. Factual questions also remain as to whether the alleged discriminatory practices could have been used to benefit the disabled students, and all victories will likely have to survive appeal. *Id.* While the settlement award of $178.59 or $357.18 for class members falls short of the possible value of statutory damages, the $16 million overall settlement value with injunctive relief appears reasonable given the complexity of the case and the case's strengths and weaknesses.

The Court also finds that the extent of discovery and experience and views of class counsel weigh in favor of fairness. Class counsel for plaintiff have a long history of prosecuting and settling class actions, and counsel find the settlement to be fair, adequate, and reasonable. *See* Creed Decl. ¶¶ 32-33, Exh. 6; Mot. at 12-13. Class counsel note that pending issues before the Ninth Circuit could result in potential delay or outright denial of judicial relief for thousands of class members, while settlement would provide adequate relief instantly. *See* Mot. at 14; Creed Decl. ¶ 39. The parties have also engaged in extensive discovery, with multiple rounds of interrogatories and requests for production. *See* Creed Decl. ¶ 7. Before settlement discussions, parties had eight separate discovery disputes teed up for the magistrate judge. *See* Creed Decl. ¶ 8. The parties have also engaged in heated motion practice, involving several rounds of revisions to the pleadings. All indications are that counsel has the experience and sufficient information to reach a fair settlement in light of the case's strengths and weaknesses. Thus, the Court finds that the extent of discovery and the views of class counsel weight in favor of fairness.

The risk of maintaining class status and likelihood of further litigation also weigh in favor of fairness. While the Court has commented that this matter is particularly well suited for class action treatment because it involves the administration of a standardized exam, Plaintiffs have never achieved a non-settlement-based class certification of the class. There is again the strong possibility that thousands of class members will have to enter arbitration, pending a decision by the Ninth Circuit on appeal. The risks of maintaining class status or losing class members weighs in favor of settlement. The risk, expense, complexity, and likely duration of further litigation also strongly weigh in favor of settlement. The likelihood of continued, heated litigation is high with an interlocutory appeal already pending before the Ninth Circuit and several discovery disputes teed up. *See* Creed Decl. ¶ 8; Mot. at 2, 18. Against this backdrop of heated, expensive litigation, settlement offers class members immediate and certain relief, so this factor also weighs in favor of

settlement.

Finally, the reaction of the class weighs in favor of settlement. "It is established that the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members." *Nat'l Rural*, 221 F.R.D. at 529. KKC reports that there have only been two requests for exclusion and zero objections to the settlement. *See* Robinson Decl. ¶¶ 14-15. Class members have responded in a positive manner, again supporting a finding that the settlement is fair.

In conclusion, after careful analysis of the above factors, the Court finds the settlement is fair, adequate, and reasonable.

D. Attorney's Fees and Expenses

"[A] private plaintiff, or his attorney, whose efforts create, discover, increase or preserve a fund to which others also have a claim is entitled to recover from the fund the costs of his litigation, including attorneys' fees." *Vincent v. Hughes Air W., Inc.*, 557 F.2d 759, 769 (9th Cir. 1977). The rule prevents unjust enrichment by distributing the costs of litigation among those who benefit from the efforts of the litigants and their counsel. *See Paul, Johnson, Alston, & Hunt v. Graulty*, 886 F.2d 268, 271 (9th Cir. 1989). "As always, when determining attorneys' fees, the district court should be guided by the fundamental principle that fee awards out of common funds be '*reasonable under the circumstances*.'" *In re Washington Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1296 (emphasis in original) (quoting *Florida v. Dunne*, 915 F.2d 542, 545 (9th Cir. 1990)).

In the Ninth Circuit, district courts presiding over common fund cases have the discretion to award attorney's fees based on either the lodestar method or a percentage method. *See id*. The percentage method, however, is used far more often in common fund cases. See, e.g., *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002); *Six Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990); *Paul, Johnson,* 886 F.2d at 272. The Ninth Circuit has established 25% of the common fund as the "benchmark" award for attorneys' fees in the class action setting. *See, e.g., Laguna v. Coverall N. Am., Inc*., 753 F.3d 918, 922 (9th Cir. 2014); *Six Mexican Workers*, 904 F.2d at 1311. While "district court[s] may depart from the benchmark," a district court must make clear "how it arrives at the figure ultimately awarded," whether above benchmark or not. *Powers v. Eichen*, 229 F.3d 1249, 1256-57 (9th Cir. 2000) (internal quotations and citation omitted). In determining an appropriate percentage, the Ninth Circuit has approved a

number of factors: (1) the results achieved; (2) the risk of litigation; (3) the skill required, counsel's experience, and the quality of work; (4) the contingent nature of the fee and the financial burden carried by the plaintiffs; and (5) awards made in similar cases. *See Vizcaino*, 290 F.3d at 1048-50.

Plaintiffs request a benchmark fee award of 24.5% of the common fund, which amounts to $3,921,375.77. *See* Mot. at 3. The Court finds that such a benchmark fee is appropriate. This is a complex case involving several disparate legal theories and statutes, and litigation has been heated between the two parties. Plaintiff fought through several motions to dismiss, motions to compel arbitration, motion for interlocutory appeal, and a whole slate of discovery issues. Despite these possible pitfalls, Plaintiff has achieved a settlement resulting in injunctive relief for all future ACT examinees with disabilities and monetary rewards for members of the California Subclasses. The results achieved support the reward of a benchmark award. The risks in this action were high, involving unsettled issues relating to arbitration and extensive motion practice. The risk that some class members would be delayed or denied any rewards remains particularly high given the pending appeal and justifies the reward of a benchmark award. The skill and experience of counsel also justified a benchmark award. Counsel has performed well in handling the complex issues involved in this matter and were a benefit to the class. The Court also recognizes that counsel have invested three years of work into this case on contingency, which supports the reward of a benchmark award. Finally, the 24.5% award is in line with award approved in other civil rights cases. *See* Mot. at 20.

While not required, a lodestar cross-check confirms the reasonableness of the $3,921,375.77 award. To determine whether a fee request is reasonable under the lodestar method, courts: (1) multiply the number of hours reasonably expended on the litigation by a reasonable hourly rate for the region and experience of the lawyer; then (2) adjust the lodestar up or down "by an appropriate . . . multiplier reflecting a host of reasonableness factors," including "the quality of representation, the benefit obtained for the class, the complexity and novelty of the issues presented, and the risk of nonpayment." *In re Bluetooth Headset*, 654 F.3d at 941-42. Here, class counsel has devoted a total of 3843.5 hours on this matter over the course of three years, and the total lodestar is $2,591,330.20. *See* Creed Decl., Exh. 4; Miller Decl. ¶ 5; Bennett Decl. ¶¶ 10, 12. Plaintiffs then apply an upward multiplier of 1.51 to arrive at the requested fee of $3,921,375.77. The Court finds the upward multiplier of 1.51 reasonable given the contingent nature of the case and the results achieved on an action that involved complex and novel issues. Class counsel

worked for three years on a purely contingent matter, battling through the possibility that arbitration barred nearly all claims. The issues involving arbitration were novel and complex, resulting in certification for interlocutory appeal, and class counsel were able to achieve a settlement. Finally, the 1.51 multiplier corresponds to the median multiplier awarded in cases with a recovery between 14.3 and 22.8 million, falling under the mean of 1.68, and supporting the finding of reasonableness. *See* Mot. at 23. In sum, the Court finds the requested attorney's fees of $3,921,375.77 reasonable under the circumstances.

Plaintiffs also seek reasonable litigation expenses of $78,634.23 and provide sufficient documentation in support. Creed Decl. ¶ 43, Exh. 5; Miller Decl. ¶ 6; Bennett Decl. ¶ 13. Settlement administrator KKC also requests $208,030.22 for administrative costs. *See* Robinson Decl. ¶ 17. In common fund cases, the Ninth Circuit has stated that the reasonable expenses of acquiring the fund can be reimbursed to counsel who has incurred the expense. *See Vincent*, 557 F.2d at 769; *Wininger v. SI Mgmt. L.P.*, 301 F.3d 1115, 1120–21 (9th Cir. 2002). The Court approves the award of $3,921,375.77 and $78,634.23 in attorney's fees and costs, and the award of $208.030.22 in administrative costs.

E. Service Awards for Class Representatives

The decision to award service awards for class representatives is within the trial court's discretion. *See In re Toys R Us-Delaware, Inc.--Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 470 (C.D. Cal. 2014). In determining whether to award a service award, courts may consider: "(1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation." *Id.* Plaintiffs seek service awards of $5,000 for each of the ten class representatives. No class members have opposed the award. Plaintiffs report that the class representatives were each interviewed before filing suit and kept involved regarding relevant complaints or other motions that concerned them. *See* Creed Decl. ¶¶ 50-56. Class representatives also assisted with the preparation and finalization of multiple declarations filed for motion practice and were the target of voluminous discovery requests targeted personally at the class representatives. The action has gone on for over three years, and many of the class representatives were minors at the beginning of the action. The Court also recognizes that class representatives

received little personal benefit in the face of possible difficulties in the disclosure of their disabilities to the public or college admissions officers. For the above reasons, a service award is warranted here for class representatives, and the sum of $5,000 is reasonable given the circumstances. *See, e.g., Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294, 299 (N.D. Cal. 1995) (awarding $50,000 to class representative from a fund of over $76 million); *Fulford v. Logitech, Inc.*, No. 08-CV-02041 MMC, 2010 WL 807448, at *3 (N.D. Cal. Mar. 5, 2010) (collecting cases with service awards between $5,000 and $40,000).

IV. Conclusion

Based on the foregoing discussion, the Court **GRANTS** the motion.