

THE HONORABLE RICARDO S. MARTINEZ

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

CLYDE STEPHEN LEWIS, JAMES PRESTI,
and MICHAEL RALLS, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

CF ARCIS VII LLC d/b/a THE CLUB AT
SNOQUALMIE RIDGE, d/b/a TPC AT
SNOQUALMIE RIDGE, and d/b/a
SNOQUALMIE RIDGE GOLF CLUB, CF
ARCIS IV HOLDINGS, LLC, ARCIS
EQUITY PARTNERS, LLC, BLAKE S.
WALKER, individually and on behalf of the
marital community of BLAKE S. WALKER
and JANE DOE WALKER, and
BRIGHTSTAR GOLF SNOQUALMIE, LLC,

Defendants.

NO. 2:17-CV-01932-RSM

**PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES AND COSTS**

**Noted for Consideration:
February 7, 2020, 9:00 a.m.**

TABLE OF CONTENTS

Page No.

I. INTRODUCTION 1

II. RELEVANT FACTS..... 1

 A. Plaintiffs and Class Counsel diligently pursued relief for the Settlement Class despite challenges 1

 B. The Settlement..... 3

III. AUTHORITY AND ARGUMENT 3

 A. Class Counsel are entitled to recover reasonable litigation costs..... 4

 B. Class Counsel’s lodestar fee request is reasonable..... 4

 1. The hours Class Counsel devoted to the case are reasonable 5

 2. Class Counsel’s hourly rates are reasonable 8

 C. Class Counsel’s requested fee reflects a “negative” multiplier..... 8

IV. CONCLUSION 9

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

TABLE OF AUTHORITIES

Page No.

FEDERAL CASES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

Blum v. Stenson,
465 U.S. 886 (1984)8

Camacho v. Bridgeport Fin., Inc.,
523 F.3d 973 (9th Cir. 2008)5, 8

Dennings v. Clearwire Corp.,
No. C10-1859JLR, 2013 WL 1858797 (W.D. Wash. May 3, 2013),
aff'd (Sept. 9, 2013)9

Eagle View Techs., Inc. v. Xactware Sols., Inc.,
No. C12-1913-RSM, 2013 WL 5945810 (W.D. Wash. Nov. 6, 2013).....6

In re Immune Response Sec. Litig.,
497 F. Supp. 2d 1166 (S.D. Cal. 2007)4

In re Online DVD-Rental Antitrust Litig.,
779 F.3d 934 (9th Cir. 2015)4

In re Wash. Pub. Power Supply Sys. Sec. Litig.,
19 F.3d 1291 (9th Cir. 1994)5

Kerr v. Screen Extras Guild, Inc.,
526 F.2d 67 (9th Cir. 1975)5

Moreno v. City of Sacramento,
534 F.3d 1106 (9th Cir. 2008)7

Pelletz v. Weyerhaeuser Co.,
592 F. Supp. 2d 1322 (W.D. Wash. 2009)7

Quezada v. Schneider Logistics Transloading & Distribution, Inc.,
No. CV122188CASDTBX, 2014 WL 12584436 (C.D. Cal. May 12, 2014).....6

Quesada v. Thomason,
850 F.2d 537 (9th Cir. 1988)5

Six Mexican Workers v. Ariz. Citrus Growers,
904 F.3d 1301 (9th Cir. 1990)4

1 *Staton v. Boeing Co.*,
 327 F.3d 938 (9th Cir. 2003)5

2

3 *Van Skike v. Dir., Office of Workers’ Comp. Programs*,
 557 F.3d 1041 (2009)8

4

5 *Wilbur v. City of Mount Vernon*,
 C11-1100RSL, 2014 WL 11961980 (W.D. Wash. April 15, 2014).....8

6 *Yamada v. Nobel Biocare Holding AG*,
 825 F.3d 536 (9th Cir. 2016)4, 5

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

I. INTRODUCTION

Plaintiffs and Class Counsel efficiently litigated this class action, engaged in mediation and extensive negotiations with Arcis, and ultimately achieved a favorable settlement on behalf of the Settlement Class. The Settlement requires Arcis to pay a total of \$240,000, \$181,000 of which will pay immediate refunds, and to provide valuable prospective relief for the Settlement Class. The prospective relief requires Arcis to make refunds based on the sale of both refundable and non-refundable memberships, accelerates the rate at which Arcis makes refunds, and eliminates Arcis's ability to establish an artificially low price for refundable memberships. To compensate them for their efforts, Class Counsel request an award of \$59,000 in attorneys' fees and out-of-pocket costs. Class Counsel's request accounts for the favorable result they obtained for the Settlement Class given the risks they faced in this action.

II. RELEVANT FACTS¹

A. Plaintiffs and Class Counsel diligently pursued relief for the Settlement Class despite challenges.

In December 2017, Lawrence Hart, Clyde Stephen Lewis, James Presti, and Michael Ralls, filed suit against Arcis alleging that Arcis had improperly amended Club Rules governing individual golf memberships at the Club at Snoqualmie Ridge by introducing non-refundable memberships. Mr. Hart and others had purchased refundable golf memberships and subsequently placed themselves on the Club's Refund List, pursuant to a provision in the Rules that allowed members to voluntarily resign and receive a partial refund of their membership fee. With the introduction of non-refundable memberships, the sale of refundable memberships effectively ended, and Arcis stopped paying refunds to those on the Refund List.

From the outset, the case was actively litigated. Arcis moved to dismiss, asserting among other things that Arcis's behavior was not deceptive or unfair, and that Plaintiffs could

¹ The "Relevant Facts" in this section are based on the Declaration of Beth E. Terrell in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement, incorporated by reference. *See* ECF 40.

1 not satisfy the public interest element of the CPA. Arcis also argued that Plaintiffs' breach of
2 contract claim failed because the Rules authorize the Club's owner to add other classes of
3 membership, Plaintiffs could not show their refunds would have been paid had the Rules never
4 been changed, and even if they could, the Rules did not require Arcis to pay refunds from the
5 sale of non-refundable memberships. Arcis also explained it had adopted a Voluntary Refund
6 Policy ("VRP") in 2016, which accelerated refunds without regard to the sale of refundable
7 memberships. Arcis suggested that by implementing the VRP, under which Arcis paid refunds
8 with proceeds from the sale of both non-refundable and refundable memberships, Arcis had
9 addressed member concerns.

10 Plaintiffs disagreed with Arcis's arguments, but despite their vigorous opposition, on
11 August 2, 2018, the Court partially granted Arcis's motion. Because there were no allegations
12 that persons outside the Club were injured by the amendment of the Rules, the Court held that
13 Plaintiffs "failed to show a public interest impact" and dismissed Plaintiffs' CPA claim. ECF
14 26 at 6:9-10. The Court also dismissed Plaintiffs' conversion claim and all claims against
15 Arcis's CEO. The Court allowed Plaintiffs' remaining claim for breach of contract to proceed
16 against the Arcis entities but noted that if successful, Plaintiffs' damages would be limited:
17 "Plaintiffs never held Non-Refundable memberships, and therefore would not have been
18 entitled to a refund after the sale of such memberships under the Rules they claim govern their
19 refunds." ECF No. 26 at 9:2-8.

20 As a result of the Court's decision, the scope of relevant discovery narrowed. The
21 parties' communications centered on the limited scope of damages. Informal discovery
22 regarding the Refund List, the number of memberships Arcis sold, and the number of refunds
23 Arcis paid provided the parties with the necessary parameters to negotiate a class wide
24 settlement. Arcis provided a list of refunds requested by members prior to Arcis's purchase,
25 and a current list that showed the number of requested refunds since Arcis bought the Club.
26 Arcis also provided membership statistics and information regarding refunds the Club made
27

1 both before and after Arcis's adoption of the VRP, as well as a list of memberships sold since
2 Arcis acquired the Club, including date, price, and type.

3 By the time the parties engaged in mediation with Jim Smith of Smith & Hennessey,
4 PLLC, on May 8, 2019, Plaintiffs and their counsel were armed with sufficient information to
5 understand the scope of possible damages. However, Plaintiffs required additional details
6 describing how Arcis calculated the data provided to Class Counsel regarding the sale of golf
7 memberships and refunds made since Arcis's 2013 purchase of the Club. As a result, the parties
8 did not reach agreement that day. However, with the mediator's assistance, and confirmatory
9 discovery, the parties continued their efforts and entered into the Settlement Agreement.

10 **B. The Settlement.**

11 The Settlement Agreement requires Arcis to pay \$181,000 to fund eight refunds
12 immediately upon final approval. The Settlement Agreement also provides valuable
13 prospective relief superior to any injunctive relief Settlement Class Members were likely to
14 have obtained at trial. First, although the Court found that the Rules would not have required
15 Arcis to pay refunds from the sale of non-refundable memberships, the Settlement requires
16 Arcis to pay refunds from *both* the sale of refundable and non-refundable memberships.
17 Second, separate and apart from paying eight immediate refunds, the Settlement requires Arcis
18 to issue to Settlement Class Members no fewer than four refunds per year in 2020, 2021, and
19 2022, regardless of how many memberships the Club sells in those years. Third, the Settlement
20 establishes a price ratio of refundable to non-refundable memberships that prevents Arcis from
21 artificially discounting the price of refundable memberships. Finally, Arcis must report semi-
22 annually the number and amount of new membership fees and refunds it makes.

23 **III. AUTHORITY AND ARGUMENT**

24 The Settlement Agreement provides separately negotiated amounts for the payment of
25 attorneys' fees and costs. After working on this case for nearly two years, with no remuneration
26
27

1 of any kind, Class Counsel seek an award of \$59,000 in attorneys' fees and costs. For the
 2 reasons set forth below, the requested award is fair and reasonable.

3 **A. Class Counsel are entitled to recover reasonable litigation costs.**

4 Federal Rule of Civil Procedure 23(h) provides: "In a certified class action,² the court
 5 may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the
 6 parties' agreement." Class Counsel have incurred \$9,102 in litigation costs. *See* Declaration of
 7 Beth E. Terrell in Support of Plaintiffs' Motion for Attorneys' Fees and Costs ("Second Terrell
 8 Decl.") ¶ 24. These costs include filing fees, service of process and courier expenses, copying
 9 expenses, and mediation expenses. *Id.* The expenses were reasonable and necessary to secure
 10 the successful resolution of this litigation. *See In re Immune Response Sec. Litig.*, 497 F. Supp.
 11 2d 1166, 1177–1178 (S.D. Cal. 2007) (finding costs such as filing fees, messenger fees,
 12 photocopy costs, class action notices, expert fees, travel expenses, postage, online legal
 13 research fees, and mediation expenses are relevant and necessary expenses in class action
 14 litigation). Class Counsel thus request reimbursement of these costs.

15 **B. Class Counsel's lodestar fee request is reasonable.**

16 After costs are deducted from the \$59,000 total request covering both fees and costs,
 17 Class Counsel's request for attorneys' fees is \$49,898. The Ninth Circuit generally uses two
 18 methods to determine attorneys' fees: the percentage-of-recovery method or the lodestar
 19 method. *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 949 (9th Cir. 2015) (quoting *In*
 20 *re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 941 (9th Cir.2011)). Either test may be
 21 appropriate under the circumstances of the particular case. *See Six Mexican Workers v. Ariz.*
 22 *Citrus Growers*, 904 F.3d 1301, 1311 (9th Cir. 1990) ("the choice between lodestar and
 23 percentage calculation depends on the circumstances"). However, "[t]he 'lodestar method' is
 24 appropriate in class actions where the relief sought and obtained is not easily monetized,
 25 ensuring compensation for Counsel who undertake socially beneficial litigation." *Yamada v.*

26 _____
 27 ² On September 9, 2019, the Court conditionally certified the settlement class. ECF 43.

1 *Nobel Biocare Holding AG*, 825 F.3d 536, 546 (9th Cir. 2016) (citing *In re Bluetooth*, 654 F.3d
2 at 941). Here, a large part of the relief obtained under the Settlement Agreement is prospective.
3 Thus, a lodestar method of calculation is appropriate for determining whether the requested
4 award is fair and reasonable.

5 1. The hours Class Counsel devoted to the case are reasonable.

6 “Under the lodestar/multiplier method, the district court first calculates the ‘lodestar’ by
7 multiplying the reasonable hours expended by a reasonable hourly rate.” *In re Wash. Pub.*
8 *Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1295 n.2 (9th Cir. 1994); *see also Staton v. Boeing*
9 *Co.*, 327 F.3d 938, 965 (9th Cir. 2003). The lodestar figure is “presumptively a reasonable fee
10 award.” *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 978 (9th Cir. 2008) (internal marks
11 omitted). However, in assessing reasonableness, courts in the Ninth Circuit also consider the
12 factors articulated in *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975): (1) the
13 time and labor required, (2) the novelty and difficulty of the questions involved, (3) the skill
14 required, (4) the preclusion of other employment, (5) the customary fee, (6) whether the fee is
15 fixed or contingent, (7) time limitations imposed by the client or circumstances, (8) the amount
16 involved and results obtained, (9) the experience, reputation, and ability of the attorneys, (10)
17 the “undesirability” of the case, (11) the nature and length of the relationship with the client,
18 and (12) awards in similar cases. A court “need not discuss each of the guidelines, so long as it
19 discusses those most relevant to the particular case.” *Quesada v. Thomason*, 850 F.2d 537, 539
20 (9th Cir. 1988) (citation omitted). The relevant *Kerr* factors support Class Counsel’s fee
21 request.

22 *Factor One: The time and labor required.* Class Counsel litigated this case for nearly
23 two years and have spent more than 458.7 hours prosecuting this case on behalf of the
24 Settlement Class. Second Terrell Decl. ¶¶ 20-21. And Class Counsel will continue to incur
25 additional fees to see this case through final approval and settlement administration. *Id.* ¶ 21.
26 Their detailed time records show Class Counsel took care to best utilize the various talents of
27

1 the lawyers and staff involved to efficiently manage and prosecute this case. *Id.* ¶ 20.
2 Nevertheless, in computing their lodestar amount Class Counsel carefully exercised billing
3 judgment and made reductions for duplicative time or where time arguably could have been
4 more efficiently spent. *Id.* As a result, the fees sought by Class Counsel represent a significant
5 reduction from the firm’s recorded time on the matter. *Id.* Thus, the hours of work devoted to
6 this litigation were reasonable and necessary to secure a favorable outcome for the Settlement
7 Class.

8 *Factor Two: The novelty and difficulty of the questions involved.* Class actions are
9 inherently complex and involve risk. *Quezada v. Schneider Logistics Transloading &*
10 *Distribution, Inc.*, No. CV122188CASDTBX, 2014 WL 12584436, at *5 (C.D. Cal. May 12,
11 2014) (quoting *In re Austrian and German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 174
12 (S.D.N.Y. 2000) (“Most class actions are inherently complex and settlement avoids the costs,
13 delays and multitude of other problems associated with them.”)). This case is no exception.
14 Contract actions carry two major equitable remedies: specific performance, which “orders a
15 party to comply with the terms of the contract” and injunctive relief, which “typically orders a
16 party to refrain from a particular act.” *Eagle View Techs., Inc. v. Xactware Sols., Inc.*, No. C12-
17 1913-RSM, 2013 WL 5945810, at *2 (W.D. Wash. Nov. 6, 2013). Had Plaintiffs prevailed at
18 trial, neither remedy would have provided the valuable and comprehensive benefits the
19 Settlement Agreement affords. Moreover, the Court noted that class members would not be
20 entitled to refunds from the sale of non-refundable memberships. ECF No. 26 at 9:2-8. Thus,
21 this factor supports Class Counsel’s fee request.

22 *Factor Three: The skill required.* Class Counsel are experienced attorneys in the area of
23 consumer class actions who have litigated, settled, and/or have been appointed class counsel in
24 dozens of class actions locally in the Western District of Washington and nationwide. ECF 40
25 (First Terrell Decl.) ¶¶ 16-20. The hours Class Counsel devoted to this case are representative
26 of Class Counsel’s skill and experience.
27

1 *Factor Five: The customary fee.* This factor, which supports Class Counsel’s fee
2 request, is addressed below in Section (B)(2).

3 *Factor Six: The contingent nature of the fee.* Class Counsel litigated these matters on a
4 contingent basis, with no assurance of recovering expenses or attorneys’ fees. This also weighs
5 in favor of the requested fee award, which will compensate counsel for the risk involved
6 throughout this representation. ECF 40 (First Terrell Decl.) ¶ 31. Because there was no
7 guarantee of payment in this contingency case, Class Counsel were incentivized to work
8 efficiently and with minimal duplication of effort to avoid performing work for which they
9 would never be paid. *See Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008)
10 (“[L]awyers are not likely to spend unnecessary time on contingency cases in the hope of
11 inflating their fees. The payoff is too uncertain, as to both the result and the amount of the
12 fee.”).

13 *Factor Eight: The results obtained.* The Settlement provides substantial benefits by
14 providing both immediate monetary relief, and permanent prospective relief. Moreover, Class
15 Counsel achieved this result in an expeditious manner, without the delay, expense and risk of
16 litigation. The result achieved, and the efficiencies used, support the fee request. *Pelletz v.*
17 *Weyerhaeuser Co.*, 592 F. Supp. 2d 1322, 1328 (W.D. Wash. 2009) (“Class Counsel avoided
18 considerable burden and expense to the parties and the judicial system by conducting a
19 thorough investigation, facilitating informal discovery that proceeded smoothly and effectively
20 without Court intervention, and achieving a favorable Settlement in a timely fashion”).

21 *Factor Nine: The experience, reputation, and ability of the attorneys.* Class Counsel’s
22 substantial experience in consumer class action litigation also supports their fee request. *See*
23 *First Terrell Decl.* (ECF 40) ¶¶ 16-20; *see also Pelletz*, 592 F. Supp. 2d at 1329 (“The Court is
24 satisfied that the reputation, experience, and ability of Class Counsel were essential to success
25 in this litigation.”).

2. Class Counsel's hourly rates are reasonable.

“For purposes of the lodestar determination, reasonable fees are “calculated according to the prevailing market rates in the relevant community....” *Blum v. Stenson*, 465 U.S. 886, 895 (1984). “The relevant community is generally defined as the forum in which the district court sits.” *Van Skike v. Dir., Office of Workers' Comp. Programs*, 557 F.3d 1041, 1046 (2009) (quotation marks and citation omitted). Thus, in assessing the rates requested by Class Counsel, the Court should look to market rates in the Western District of Washington. “[A]ffidavits of the plaintiffs’ attorneys and other attorneys regarding prevailing fees in the community and rate determinations in other cases are satisfactory evidence of the prevailing market rate.” *Camacho*, 523 F.3d at 980 (internal marks omitted) (quoting *United Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990)).

Class Counsel’s requested rates are reasonable. Class Counsel set their rates for attorneys and staff members based on a variety of factors, including among others: the experience, skill and sophistication required for the types of legal services typically performed; the rates customarily charged in the markets where legal services are typically performed; and the experience, reputation and ability of the attorneys and staff members. Second Terrell Decl. ¶ 19. The hourly rates charged for attorneys and law clerks on this matter range from \$275 to \$580, and \$75 to \$200 for staff members, legal secretaries and paralegals. *Id.* ¶¶ 7-16. Rates within these ranges have been approved in this district. *See Wilbur v. City of Mount Vernon*, C11-1100RSL, 2014 WL 11961980 (W.D. Wash. April 15, 2014) (finding attorney rates between \$190–\$580, and support staff rates at \$90, reasonable). And courts have routinely approved Class Counsel’s rates at higher ranges. Second Terrell Decl. ¶ 23. The rates charged here are reasonable in light of the work performed and the experience of the attorneys and staff performing the work.

C. Class Counsel’s requested fee reflects a “negative” multiplier.

Class Counsel do not ask the Court to enhance their lodestar upward. Rather, Class Counsel’s requested fee award of \$49,898, which is less than thirty percent (30%) of their

1 lodestar of \$171,302.50, reflects a “negative” multiplier of .29 [$\$49,898 \div \$171,302.50$]. The
2 negative multiplier will continue to go down as Class Counsel spend additional hours seeing
3 this case through to final resolution. Second Terrell Decl. ¶ 22. Class Counsel’s fee request,
4 reflecting a negative multiplier of their lodestar is reasonable. *See Dennings v. Clearwire*
5 *Corp.*, No. C10-1859JLR, 2013 WL 1858797, at *5-6 (W.D. Wash. May 3, 2013), *aff’d* (Sept.
6 9, 2013) (finding reasonable a fee request with a negative multiplier).

7
8 **IV. CONCLUSION**

9 For the reasons stated above, Class Counsel respectfully request that the Court grant this
10 motion and award Class Counsel \$59,000 in attorneys’ fees and expenses.

11 RESPECTFULLY SUBMITTED AND DATED this 13th day of November, 2019.

12 TERRELL MARSHALL LAW GROUP PLLC

13 By: /s/ Beth E. Terrell, WSBA #26759

14 Beth E. Terrell, WSBA #26759

15 Email: bterrell@terrellmarshall.com

16 Adrienne D. McEntee, WSBA #34061

17 Email: amcentee@terrellmarshall.com

18 936 North 34th Street, Suite 300

19 Seattle, Washington 98103

20 Telephone: (206) 816-6603

21 Facsimile: (206) 319-5450

22 *Attorneys for Plaintiffs and the Proposed Class*

CERTIFICATE OF SERVICE

I, Beth E. Terrell, hereby certify that on November 13, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Stephen M. Rummage, WSBA #11168
Email: steverummage@dwt.com
Rebecca J. Francis, WSBA #41196
Email: rebeccafrancis@dwt.com
DAVIS WRIGHT TREMAINE LLP
920 Fifth Avenue, Suite 3300
Seattle Washington 98104-1610
Telephone: (206) 622-3150
Facsimile: (206) 757-7700

Attorneys for Arcis Defendants

DATED this 13th day of November, 2019.

TERRELL MARSHALL LAW GROUP PLLC

By: /s/ Beth E. Terrell, WSBA #26759
Beth E. Terrell, WSBA #26759
Email: bterrell@terrellmarshall.com
936 North 34th Street, Suite 300
Seattle, Washington 98103
Telephone: (206) 816-6603
Facsimile: (206) 319-5450

Attorneys for Plaintiffs