

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	2:24-cv-03697-WLH (BFM)	Date	January 29, 2025
Title	Rogelio Esqueda v. Kinecta Federal Credit Union		
Present: The Honorable	WESLEY L. HSU, United States District Judge		
	Holidae Crawford		None
	Deputy Clerk		Court Reporter
Attorneys Present for Plaintiffs:		Attorneys Present for Defendants:	
	None		None

Proceedings: (IN CHAMBERS) ORDER RE MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT [21]

The Court is in receipt of Plaintiff’s unopposed Motion for Preliminary Approval of Class Action Settlement. (“Mot.”), Docket No. 21). No party filed a written request for oral argument stating that an attorney with five years or less of experience would be arguing the matter. (See Standing Order, Docket No. 22 at 16). Further, pursuant to Federal Rule of Civil Procedure 78 and Local Rule 7-15, the Court finds this matter appropriate for decision without oral argument. The hearing calendared for January 31, 2025, is **VACATED**, and the matter taken off calendar.

I. BACKGROUND

Plaintiff Rogelio Esqueda is a Deferred Action for Childhood Arrivals (“DACA”) recipient who was allegedly denied an auto loan for lack of an Individual Taxpayer Identification Number. (Complaint (“Compl.”), Docket No. 1 ¶¶ 6, 17). Plaintiff alleges that Defendant Kinecta Federal Credit Union has a policy of denying applicants for financial products based on their alienage and/or immigration status (“Challenged Practice”). (*Id.*). On May 3, 2024, Plaintiff filed a putative class action alleging

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violations of the Civil Rights Act of 1964, 42 U.S.C. § 1981 (“Section 1981”), and the California Unruh Civil Rights Act, California Civil Code §§ 51, et seq. (the “Unruh Act”). (*See generally, Id.*). Parties engaged in good faith negotiations to resolve the claims and filed a joint notice of settlement on November 11, 2024. (Docket No. 19). Plaintiff now asks the Court to conditionally certify the class for settlement purposes only, appoint Plaintiff as class representative, appoint Plaintiff’s attorneys as class counsel, preliminarily approve the settlement, approve proposed notice to class members, appoint RG2 Claims Administration LLC as the settlement administrator and schedule a hearing for final approval of the settlement. (Mot. at 1). Defendant does not oppose the Motion. (*Id.*). For the following reasons, the Court **ORDERS** one condition on the Notice Plan but otherwise **GRANTS** the Motion.

II. PROPOSED SETTLEMENT

A. Settlement Class

The proposed settlement defines the settlement class as: the 31 individuals who, according to Kinecta’s records, applied for a Financial Product from May 3, 2022, through May 2, 2024, were legally residing in the United States at the time they applied and were denied such Financial Product solely due to their alienage or immigration status. (Exhibit A to Mot. (“Settlement Agreement”), Docket No. 21-2 § 1(e)). Plaintiff seeks conditional approval of this settlement class in the present motion. (*See generally* Mot.).

B. Settlement Overview

i. Corrective Action

The proposed settlement aims to eliminate any present or future risk of the Challenged Practice through comprehensive corrective action. Specifically, Kinecta agrees that it has ceased the Challenged Practice, and agrees that it will not deny

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Financial Product applications based solely on an applicant's alienage or immigration status, unless required by binding law, rule or regulation. (*Id.* § 2). Kinecta also agrees that it will train its managers, supervisors and staff on the corrective action set forth in the Settlement Agreement. (*Id.*)

ii. Monetary Relief and Distribution to Class Members

Under the Settlement Agreement, Kinecta agrees to create a \$77,500 Settlement Fund that will be used to make individual payments in the amount of \$2,500 to each class member. (*Id.* §1(n)). Class members need not submit a claim or take any action to claim monies they are entitled to under the proposed settlement. (*Id.* § 11(d)(iv)). The settlement administrator will mail a check to each class member's last known address. (*Id.*) The administrator will update addresses through skip-trace or other means. (*Id.*)

iii. Cy Pres Distribution of Unclaimed Settlement Funds

If any checks mailed to class members remain uncashed for 150 days after the checks are sent, those funds will not revert to Kinecta. (*Id.* § 12). Instead, any unclaimed settlement funds will be paid to a cy pres recipient proposed by class counsel and approved by the Court. (*Id.*)

iv. Attorneys' Fees and Expenses and Settlement Administrator's Costs

In addition to payments to class members, Kinecta will separately pay attorneys' fees, and costs of litigation. (§ 11(d)(i)). Class counsel will file a motion seeking approval for its attorneys' fees and costs. (*Id.* § 9). Kinecta will not oppose an application for attorneys' fees of up to \$50,000 (*Id.* § 11(d)(i)), and class counsel estimates that the fees will not exceed \$50,000.¹ (Mot. at 5).

¹ This estimate of attorneys' fees encompasses "any work conducted by class counsel prior to settlement, and any future work conducted following the Court's order granting preliminary approval, including but not limited to: answering questions from class members; reviewing

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The proposed settlement provides that Kinecta will pay costs of notice to the class and costs of settlement administration, including a settlement administrator's fees and costs. (Settlement Agreement §§ 5(e); 11(d)(iii)). The present Motion includes a request that the Court appoint RG2 Claims Administration, LLC as settlement administrator. (Mot. at 5).

v. Notice to Class Members

The proposed settlement includes proposed English and Spanish-language short-form and long-form notices to the class members to inform them of the terms of the settlement and their rights to object to, or opt-out of, the settlement, or to do nothing and receive the benefits of the settlement and be bound by it. (*Id.* § 5; Exs. 1-2). Defendant will provide the settlement administrator with the last known mailing addresses and email addresses for all class members. (*Id.* § 5). The settlement administrator will send notice by mail and email to each class member, updating mailing addresses as appropriate by running the class member's name through the National Change of Address Registry and deploying standard skip tracing devices. (*Id.* §§ 5(b), 5(d))). The settlement administrator will create a website with additional information relating to the settlement. (*Id.* § 5(c)).

vi. Incentive Award

Finally, the Settlement Agreement provides for an incentive award to Plaintiff Esqueda, if so ordered by the Court. (*Id.* § 511(d)(ii)). Class counsel will ask the Court to approve an award of up to \$5,000 and Kinecta has agreed to not oppose an award of that amount. *Id.*

documentation; drafting and submitting a motion for attorneys' fees and cost, and a motion for final approval." (Mot. at 5).

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III. CONDITIONAL CLASS CERTIFICATION

A. Legal Standard

Approval of a proposed class action settlement requires conditional certification of a settlement class. *LaFleur v. Med. Mgmt. Int’l, Inc.*, 2014 WL 2967475, at *2–3 (C.D. Cal. June 25, 2014). “[T]he Ninth Circuit has taught that a district court should not avoid its responsibility to conduct a rigorous analysis [just] because certification is conditional[.]” *Arabian v. Sony Elecs., Inc.*, No. 05-CV-1741-WQH, 2007 WL 627977, at *2 n.3 (S.D. Cal. Feb. 22, 2007). A court may certify a class when the class meets the requirements of Federal Rules of Civil Procedure 23(a) and fulfills at least one requirements of Rule 23(b).

B. Analysis

i. Rule 23(a) is satisfied

Rule 23(a) imposes three requirements on a putative class: (1) the class must be so numerous that joinder is impracticable; (2) there must be questions of law or fact common to the class; (3) the claims of the class representative must be typical of the other class members; and (4) the representative parties must fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a). Plaintiff seeks to conditionally certify a class of 31 individuals who, according to Kinecta’s records, applied for a financial product from May 3, 2022, through May 2, 2024, were legally residing in the United States at the time they applied and were denied such financial product solely due to their alienage or immigration status. (Exhibit A to Mot. (“Settlement Agreement”), Docket No. 21-2 § 1(e)). This proposed class satisfies all four Rule 23(a) requirements.

Under Rule 23(a)(1), a class may be certified only if it “is so numerous that joinder of all members is impracticable.” Fed. R. Civ. Pro. 23(a)(1). Plaintiffs discovered records identify 31 individual applicants who applied for financial products and were

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denied based solely on their alienage or immigration status during the class period. (Exhibit A to Mot. (“Settlement Agreement”), Docket No. 21-2 § 1(e)). Requiring joinder of 31 plaintiffs is impracticable, so numerosity is satisfied. Fed. R. Civ. P. 23(a)(1).

Under Rule 23(a)(2), a class may be certified only if there are “questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). In the civil rights context, “commonality is satisfied where the lawsuit challenges a system-wide practice or policy that affects all of the putative class members.” *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001), *abrogated on other grounds by Johnson v. California*, 543 U.S. 499 (2005). Here, Plaintiff alleges that Kinecta’s practice and policy was to deny class members financial products because of their alienage or immigration status. As such, commonality is satisfied.

Under Rule 23(a)(3), a class may only be certified if the claims of the representative parties are typical of the claims of the class. Fed. R. Civ. P. 23(a)(3). Plaintiff’s claims are typical of the class he seeks to represent because he alleges that he was legally residing in the United States, applied for a Kinecta financial product and Kinecta denied his application solely because of his alienage or immigration status.

Rule 23(a)’s final pre-requisite is that representative parties “will fairly and adequately protect the interest of the class.” Fed. R. Civ. P. 23(a)(4). The Ninth Circuit instructs this Court to ask two questions: “(1) Do the representative plaintiffs and their counsel have any conflicts of interest with other class members, and (2) will the representative plaintiffs and their counsel prosecute the action vigorously on behalf of the class?” *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003). There is no evidence that Plaintiff Esqueda or proposed class counsel has a conflict of interest with other class members. Plaintiff Esqueda’s counsel, The Mexican American Legal Defense and

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Educational Fund (“MALDEF”), has extensive experience litigating complex civil rights class actions, and has vigorously prosecuted this action, including by participating in the settlement conversations that led to the proposed agreement. (Saenz Decl., Docket No. 21-1). As such, the adequacy requirement is met. For the same reasons, Plaintiff Esqueda is an appropriate class representative.

ii. Rule 23(b) is satisfied

In addition to meeting the four requirements of Federal Rule of Civil Procedure 23(a), a class must fall into one of three categories of Rule 23(b) to be certified. Plaintiff Esqueda seeks class certification pursuant to Rule 23(b)(3), which requires a showing that “the questions of law or fact common to class members predominate over any questions affecting only individual members” and that “a class action is superior to other available methods of fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3).

The “predominance inquiry asks whether the common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues.” *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 626 (1997) (quotation marks omitted). Plaintiff challenges Kinecta’s underwriting criteria and policies that apply to all putative class members. Common questions as to their nature and legality can therefore be adjudicated collectively and will drive the resolution of class claims. *See Ellis v. Costco Wholesale Corp.*, 285 F.R.D. 492, 509 (N.D. Cal. 2012) (predominance is satisfied as to discrimination claims where plaintiffs challenged “specific employment practices” that applied “companywide”).

Whether Rule 23’s superiority factor is met rests on factors like individual class members’ desire to bring individual actions and the utility of concentrating the litigation in one forum. Fed. R. Civ. P. 23(b)(3). Here, “there is no indication[] that

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class members seek to individually control their cases, that individual litigation is already pending in other forums, or that this particular forum is undesirable for any reason.” *Tierno v. Rite Aid Corp.*, No. C 05-02520 TEH, 2006 WL 2535056, at *11 (N.D. Cal. Aug. 31, 2006). Superiority is therefore met because the class mechanism will achieve economies of scale for putative class members and conserve judicial resources.

The putative class comports with the requirements outlined in Federal Rules of Civil Procedure 23(a) and 24(b). As such, the Court conditionally **CERTIFIES** the settlement class.

IV. APPOINTMENT OF CLASS COUNSEL

A. Legal Standard

Under Federal Rule of Civil Procedure 23(g), any court which certifies a class must appoint a class counsel. Fed. R. Civ. P. 23(g)(1). In deciding whether to appoint MALDEF as class counsel, the Court must consider (1) the work MALDEF has done in identifying or investigating potential claims in this action; (2) MALDEF’s experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (3) MALDEF’s knowledge of the applicable law; and (4) the resources MALDEF will commit to representing clients. Fed R. Civ. P. 23(g)(1)(A). The Court must also find that MALDEF will fairly and adequately represent the interests of the conditionally approved settlement class. Fed R. Civ. P. 23(g)(2); Fed R. Civ. P. 23(g)(4).

B. Analysis

In Section III(b)(2), *supra*, the Court held that MALDEF will fairly and adequately represent the interests of the class. For similar reasons, the Court **APPOINTS** MALDEF to serve as class counsel. MALDEF diligently worked to investigate claims in this action both before and after filing the Complaint. (Saenz Decl., Docket No. 21-1 ¶¶ 11-13). MALDEF has expertise in the rights of DACA recipients in consumer affairs (*Id.* ¶ 7) and

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has represented parties in complex civil rights cases and class actions. (*Id.* ¶¶ 5-6). MALDEF’s work on the case so far demonstrates that it can dedicate adequate resources to representing the class (*see generally id.*), and MALDEF is prepared to litigate the matter if the Court does not approve the settlement. (*Id.* ¶ 14).

V. PRELIMINARY APPROVAL OF SETTLEMENT

A. Legal Standard

Because the Court has found that conditional class certification is proper, the Court now evaluates, on a preliminary basis, whether the settlement is fair, reasonable and adequate such that notice of the settlement should be sent to the proposed class. Fed. R. Civ. P. 23(e)(2). In addition to finding that the class representative and class counsel have adequately represented the class, which the Court has already done, the Court must consider whether the proposed settlement was negotiated at arm’s length, whether the proposal treats class members equitably relative to each other and whether the relief provided for the class is adequate, taking into account five specific factors listed in Federal Rule of Civil Procedure 23. Fed. R. Civ. P. 23(e)(2). When considering whether relief is adequate, the Court must consider: the costs, risks and delay of trial and appeal; the effectiveness of the proposed method of distributing relief to the class; and the terms of any proposed award of attorney’s fees. Fed. R. Civ. P. 23(e)(2)(C).²

B. Analysis

i. *Relief in light of Costs, risks and delay of trial*

The proposed relief of corrective action and monetary payments to class members is adequate in light of the costs, risks and delay of trial and appeal. Fed. R. Civ. P.

² Courts typically must also consider any agreement required to be identified under Federal Rule of Civil Procedure 23(e)(3). Fed. R. Civ. P. 23(e)(2)(C)(iv). Class counsel declares that there are no agreements to connected to the settlement that require identification under the Rule. (Saenz Decl. ¶ 27).

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23(e)(2)(C)(i). Class members will receive individual payments of \$2,500, which is 62.5% of the \$4,000 statutory damages available under the Unruh Act for each discriminatory act. Cal. Civil Code § 52(a). This provides a significant recovery to class members, *see In re Heritage Bond Litig.*, No. 02-ML-1475 DT, 2005 WL 1594403, at *19 (C.D. Cal. June 10, 2005) (referring to a settlement fund representing less than 40% of actual loss as an “exceptional result”), particularly in light of the risks, costs and delay of trial and appeal.³ In shaping the terms of the settlement proposal, class counsel considered the risks and uncertainties of the case (Saenz Decl. ¶¶ 12-13), including the potential defenses that Kinecta could raise and the fact that favorable trial outcome would require resolution of unsettled issues such as whether immigration-status discrimination is cognizable under § 1981. (Mot. at 9; Saenz Decl. ¶¶ 12-13). Class counsel also considered the desirability of “consummating this settlement promptly to provide substantive relief to class members without unnecessary delay and expense during the course of this litigation.” (Saenz Decl. ¶ 13).

The fact that the proposed relief is commensurate with the relief provided in other preliminarily approved settlement agreements in similar cases lends further support to the Court’s finding that the relief is adequate in light of risks and costs of further litigation. *Juarez v. Soc. Fin., Inc.*, No. 20-CV-03386-HSG, 2022 WL 17722382, at *2 (N.D. Cal. Dec. 15, 2022) (providing \$3,000 payments to DACA recipients who were denied access to credit, but requiring class members to submit verified claims to receive payment).

ii. *Effectiveness of Proposed Method of Distributing Relief*

The effectiveness of the proposed method of distributing relief also weighs in favor of preliminary approval. Fed. R. Civ. P. 23(e)(2)(C)(ii). Class members need not take

³ The Court notes that the corrective action provided for in the Settlement Agreement—which includes a policy change and training—also provides benefit to the class and such corrective action might also be difficult to secure through further litigation.

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any action to claim the \$2,500 to which they are entitled to under the terms of the settlement. Instead, the settlement administrator will mail checks to the class member's last known address (Settlement Agreement § 11(d)(iv)), which will be updated by the settlement administrator during the notice process. (*Id.* §§ 5(b), 5(d)). This constitutes an effective method of distributing monetary relief, particularly considering the Court's specific order regarding notice outlined in Section VI.

iii. *Terms of Proposed Attorneys' Fees*

The terms of proposed attorneys' fees also weigh in favor of preliminary approval. Fed. R. Civ. P. 23(e)(2)(C)(iii). Attorneys' fees and costs will be paid separately by Defendant and will therefore not cut into the monetary relief provided to class members. (*Id.* § 11(d)(i)). Parties did not negotiate the *amount* of class counsel's fees and costs as part of the settlement; the Court will ultimately decide the proper amount on a Motion for Attorney's Fees. (Saenz Decl. ¶ 19; Proposed Settlement § 11(d)(i)). Though, as part of the settlement, Defendants agreed to not oppose a Motion for Fees up to \$50,000. (Saenz Decl. ¶ 19; Proposed Settlement § 11(d)(i)).

iv. *Arm's Length Negotiations*

That the settlement was secured through "hard-fought, arm's length" (Saenz Decl. ¶ 16) negotiations also weighs in favor of preliminary approval. Fed. R. Civ. P. 23(e)(2)(B). Through counsel, the Parties exchanged informal discovery, and Plaintiff secured information on credit application and loan records, copies of Kinecta's policies and procedures and records regarding customers. (*Id.* ¶ 12). Based on a review of these documents and an evaluation of court-approved class action settlements in similar cases, the Parties negotiated the terms of the settlement through email, phone calls and Zoom meetings. (*Id.* ¶ 13). The parties exchanged multiple offers and counteroffers until a settlement was reached. (*Id.*)

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v. *Equitable Treatment of Class Members*

The proposed Settlement Agreement also comports with the requirement that a settlement treat class members equitably relative to each other. Fed. R. Civ. P. 23(e)(2)(D). Per the proposed Settlement Agreement, each of the 31 class members will receive the same payment for \$2,500 in monetary relief. (Settlement Agreement § 11(d)(iv)).

As noted in the proposed Settlement Agreement, class counsel intends to apply for a \$5,000 incentive award for Plaintiff Esqueda and Kinecta will not oppose the application. (*Id.* § 11(d)(iii)). Because any incentive award will not be drawn from the funds earmarked for class relief (*see id.* § 11(a)), it does not compromise the equitable treatment of class members. (*See Id.*). An incentive award is likely appropriate to compensate Plaintiff Esqueda for the work done on behalf of the class and to recognize his willingness to act as a private attorney general, despite the risk he took in publicizing his immigration status. *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958–59 (9th Cir. 2009) (noting that discretionary incentive awards are “intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.”).

For the foregoing reasons, the Court finds that the proposed settlement is fair, reasonable and adequate. Fed. R. Civ. P. 23(e)(2). The Court, therefore, **GRANTS** preliminary approval of Settlement Agreement.

VI. APPROVAL OF NOTICE PLAN

Rule 23(c)(2) requires that class notice be the “best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). “Notice is satisfactory if it ‘generally

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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 Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004) (citation omitted). Federal Rule of Civil Procedure 23(c)(2)(B) outlines seven specific pieces of information which notice must include. Fed. R. Civ. P. 23(c)(2)(B).⁴ The proposed notice plan comports with these requirements.

Notice will be sent directly by mail and email to the individual class members identified in Kinecta’s records. (Settlement Agreement § 5). To ensure notice is mailed to the best available mailing address, the settlement administrator will run the names and addresses of the class members through the National Change of Address Registry. (*Id.* § 5(b)). In the event notice is returned undeliverable, the settlement administrator will use standard skip tracing devices to obtain forwarding address information. (*Id.*). The proposed long and short form notices are easily understandable and clearly and concisely state information required by Federal Rule of Civil Procedure 23(c)(2)(B). (Settlement Agreement at Exhibit 1, Exhibit 2).

Given that some class members may only understand Spanish, the settlement administrator will send the notice in both Spanish and English. (Settlement Agreement § 5). Questions from non-English speaking class members will be directed to MALDEF attorneys who have experience working with non-English speaking clients. (*Id.*).

The Court imposes one condition on the notice plan. The Court **ORDERS** that emails sent to class members (a) note the mailing address to which a check will be sent;

⁴ “(i) [T]he nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).” Fed. R. Civ. P. 23(c)(2)(B).

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and (b) provide the class member with an opportunity to update the mailing address. The Court **APPROVES** the notice plan with this additional condition. Given RG2 Claims Administration LLC's experience administrating class action settlements (Saenz Decl. ¶ 26), the Court **APPOINTS** RG2 Claims Administration LLC as settlement administrator.

VII. CONCLUSION

The Court conditionally **CERTIFIES** the settlement class for settlement purposes only, **APPOINTS** Plaintiff Esqueda as class representative, **APPOINTS** MALDEF as class counsel and **PRELIMINARILY APPROVES** the proposed Settlement Agreement. The Court **ORDERS** one condition regarding the proposed notice plan and **APPROVES** the plan with the condition, **APPOINTS** RG2 Claims Administration LLC as the settlement administrator and sets a hearing for final approval of the settlement on May 30, 2025, at 8:30 a.m. The Court **ORDERS** the following schedule:

- RG2 Claims Administration LLC shall provide mail and email notice to class members within 30 days of this Order;
- Settlement class members must opt out or object to the settlement within 75 days of this Order. Any objections must state whether it applies only to the objector, to a specific subset of the class or to the entire class, and also state with specificity the grounds for the objection pursuant to Fed. R. Civ. P. 23(e)(5)(A);
- The class representative and class counsel must file a Motion for Final Approval and Motion for Award of Fees, Costs and Service Award within 90 days of this Order. The Motion for final approval must include a proposed cy pres recipient.

IT IS SO ORDERED.