UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No.	**CV 09-06786 JGB (AJWx)**	Date	January 13, 2014
Title	***Rene R. Rodriguez v. Farmers Insurance Co. of Arizona, et al.***		

Present: The Honorable	JESUS G. BERNAL, UNITED STATES DISTRICT JUDGE

MAYNOR GALVEZ	Not Reported
Deputy Clerk	Court Reporter
Attorney(s) Present for Plaintiff(s):	Attorney(s) Present for Defendant(s):
None Present	None Present

Proceedings: **Order (1) GRANTING Plaintiff's Motion for Final Approval (Doc. No. 70) and (2) ORDERING Further Evidence Regarding Plaintiff's Motion for Attorneys' Fees (IN CHAMBERS)**

On September 9, 2009, Plaintiff Rene R. Rodriguez ("Plaintiff") filed a class action Complaint against Farmers Insurance Co. of Arizona, Farmers Insurance Exchange, Truck Insurance Exchange, Fire Insurance Exchange, Mid-Century Insurance Co., and Farmers Group Inc. (collectively, "Defendants" or "Farmers"),[1] seeking reimbursement for allegedly miscalculated insurance payments. ("Complaint," Doc. No. 1.) On August 4, 2013, the Court conditionally certified the class for purposes of settlement and preliminary approved the parties' class action settlement. ("Prelim. App. Order," Doc. No. 73.) Now before the Court is Plaintiff's Motion for Final Approval of Class Action Settlement and for Attorneys' Fees and Service Award filed on December 13, 2013. ("Motion," Doc. No. 74.) Defendants do not oppose the Motion. The Court held a final approval hearing on January 13, 2014. No class member appeared at the hearing. For the reasons stated below, the Court GRANTS Plaintiff's Motion for Final Approval and ORDERS further evidence regarding attorneys' fees.

[1] On April 20, 2012, pursuant to a stipulation by the parties, the Court ordered the dismissal of Defendant Farmers Group, Inc. (Doc. No. 58.)

I. BACKGROUND

A. The Complaint

In May 2008, Plaintiff had a homeowner's insurance policy with Farmers and paid his premiums on time and in full. (Compl. ¶¶ 13, 16.) On May 18, 2008, a structure fire broke out at Plaintiff's home, resulting in a total loss. The Farmers insurance policy fully covered the amounts of loss for debris removal, landscaping, and the contents of Plaintiff's home. (Id. ¶ 16.) However, the amount of loss on the primary building exceeded the coverage limit on Plaintiff's policy. (Id. ¶ 17.) Plaintiff alleges that Farmers improperly deducted Plaintiff's $500 deductible from the amount of loss due to Plaintiff when the deductible should have instead been absorbed by the amount of loss on the primary building. (Id. ¶ 19.) On September 9, 2009, Plaintiff brought this action on behalf of himself and a putative nationwide class of Farmers insureds who were similarly compensated for losses that exceeded their coverage limits. Plaintiff reached a Settlement Agreement with Defendants in June 2013. ("Settlement," Doc. No. 70-1.)

B. The Settlement

The Settlement defines the class as all persons who: (1) are insured by a policy; (2) suffered a loss on or after March 16, 2007 that was covered under the policy; (3) submitted a claim to Farmers for their loss; (4) had a determination by Farmers that one category of loss exceeded the coverage limit; and (5) received a payment from Farmers that was calculated by either (a) subtracting the deductible from the coverage limit or (b) by applying the deductible to a category of loss that did not exceed the coverage limit when another category did exceed the coverage limit. (Settlement ¶ 27.) The Settlement entitles each class member to receive 100 percent of the amount of the underpayment resulting from the calculation formula, plus 4.2 percent interest from the date the claim was closed. (Id. ¶ 41.)

Farmers agreed to identify from its business records all potential class members. (Id. ¶ 54.) Potential class members include all insureds named in a policy who (1) suffered a covered loss on or after March 16, 2007, (2) submitted an insurance claim to Farmers which was closed on or before March 31, 2013, and (3) who received payment from Farmers in an amount greater than zero dollars in connection with the claim. (Id. ¶ 56.) Farmers agreed to pay all costs associated with notice and administration of the Settlement. (Id. ¶ 57.)

Farmers also agreed not to contest a request by class counsel for a maximum attorneys' fees award of $985,000.00, inclusive of all fees and costs. (Id. ¶ 60.) A $2,500 service award to the class representative would be paid out of class counsel's attorneys' fees award. (Id.)

Upon final approval of the Settlement, Plaintiff agreed to dismiss the suit with prejudice. (Id. ¶ 73.) Further, the class members and their agents, legal representatives, trustees, parents, estates, heirs, executors, and administrators shall release all claims against Farmers "relating in any way whatsoever to Farmers' review, handling, payment, adjustment or denial of Insurance Claims, based on assertions that Farmers improperly applied or subtracted policy deductibles

from payments made to Insureds in connection with claims involving losses exceeding any applicable Coverage Limit in a Policy . . . ." (Id. ¶ 74.)

C. Preliminary Approval

On August 4, 2013, the Court granted preliminary approval of the Settlement. (Doc. No. 73.) The Court conditionally certified the class (the "Class"), appointed Rene Rodriguez as the class representative ("Class Representative"), and appointed Caddell & Chapman as class counsel ("Class Counsel"). (Id. at 8.) The Court approved the Class Notice and Claim Form and ordered they be distributed to potential class members by October 17, 2013. (Id. at 8-9.) Rust Consulting ("Rust") was appointed class administrator and was ordered to establish a class website and a toll-free telephone number. (Id. at 9.) The deadline to object, opt-out, or intervene was December 30, 2013. (Id. at 9-10.) The parties' deadline to respond to objections was January 6, 2014. (Id. at 10.)

Potential class members have until March 14, 2014 to submit a valid Claim Form. (Id. at 2, 7.) Potential class members who submit a valid Claim Form will receive a Notice of Determination, i.e., written notice advising a claimant of its claims evaluation determination, within 250 days after March 14, 2014. (Settlement ¶ 33.) If eligible, the class member will receive a Settlement Class Payment by check included with the Notice of Determination. (Id. ¶ 34.) Both Class Counsel and individual claimants have access to a review process if they believe Farmers erred in determining eligibility. (Id. ¶¶ 37-38, 43-48.) Class members whose claims are denied have a right to object, and the objections will be determined by a referee. (Id. ¶¶ 42-52.)

D. Performance of the Settlement Agreement

Rust received data on the potential class members from Farmers and cross referenced those records with information from the United States Postal Service National Change of Address database. (Declaration of Kimberly K. Ness ("Ness Decl.") ¶ 5, Doc. No. 75.) Rust formatted and printed the Class Notice and Claim Form. (Id. ¶ 6.) Between October 15, 2013 and October 17, 2013, Rust mailed 1,054,823 Class Notices and Claim Forms via first-class mail to potential class members. (Id. ¶ 8.) Fifty thousand of these mailing were returned as undeliverable.

On October 15, 2013, Rust established and currently maintains a toll free number available Monday to Friday from 8 a.m. to 5 p.m., Central Time to enable potential class members to receive general information about the Settlement. (Id. ¶ 9.) As of December 14, 2013, the call center received 6,367 calls. (Id.) On October 15, 2013, Rust also established a website to provide information to potential class members including the Class Notice. (Id. ¶ 10.) The website received 7,300 visitors through December 14, 2013. (Id.)

As of the end of December 27, 2013, 30,166 class members filed claims. (Plaintiff's Response to Objections ("Resp.") at 2, Doc. No. 76.) Class members have until March 14, 2014 to file a claim, and therefore the number of claims is expected to increase significantly. (Declaration of Cory S. Fein ("Fein Decl.") ¶ 39, Doc. No. 74-2.) As of the date of the hearing, 80 class members opted out and one objected.

II. LEGAL STANDARD[2]

Whether to approve a class action settlement is "committed to the sound discretion of the trial judge." Class Plaintiffs v. Seattle, 955 F.2d 1268, 1276 (9th Cir. 1992). A strong judicial policy favors settlement of class actions. Id.

Nevertheless, the Court must examine the settlement as a whole for overall fairness. Hanlon v. Chrysler Corp., 150 F.3d 1011, 1026 (9th Cir. 1998). Neither district courts nor appellate courts have the power to delete, modify, or substitute provisions in the negotiated settlement agreement. Id. "The settlement must stand or fall in its entirety." Id.

In order to approve the class action settlement herein, the Court must conduct a three-step inquiry. Adoma v. Univ. of Phoenix, Inc., 913 F. Supp. 2d 964, 972 (E.D. Cal. 2012). First, it assesses whether the parties have met notice requirements under the Class Action Fairness Act. Id. Next, it determines whether the notice requirements of Federal Rule of Civil Procedure 23(c)(2)(B) have been satisfied. Id. Finally, the Court must find that the proposed settlement is fair, reasonable, and adequate under Rule 23(e)(3). Id.

III. DISCUSSION

A. Class Action Fairness Act

When settlement is reached in certain class action cases, CAFA requires as follows:

> Not later than 10 days after a proposed settlement of a class action is filed in court, each defendant that is participating in the proposed settlement shall serve [notice of the proposed settlement] upon the appropriate State official of each State in which a class member resides and the appropriate Federal official. . . .

28 U.S.C. § 1715(b). The statute provides detailed requirements for the contents of such a notice. Id. The court is precluded from granting final approval of a class action settlement until the notice requirement is met. Specifically:

> An order giving final approval of a proposed settlement may not be issued earlier than 90 days after the later of the dates on which the appropriate Federal official and the appropriate State official are served with the notice required under [28 U.S.C. § 1715(b)].

28 U.S.C. § 1715(d). Here, Rust states that it sent the notice required by CAFA to "the Attorney General of the United States and the State Insurance Commissioners or equivalent state-level officials." (Ness Decl. ¶ 4.) The notices were sent by certified mail on June 26, 2013.

[2] Unless otherwise noted, all mentions of "Rule" refer to the Federal Rules of Civil Procedure.

(Supplemental Declaration of Kimberly K. Ness ¶ 4, Doc. No. 77.) None of the governmental entities objected to the Settlement. (Motion at 10.)

Accordingly, the Court finds that the notice requirements under 28 U.S.C. § 1715 are satisfied.

B. Rule 23

1. Rule 23(a) and (b)

In its Preliminary Approval Order, the Court certified the Class in this matter under Rules 23(a) and 23(b)(3). (Prelim. App. Order at 3-6.) Accordingly, the Court "need not find anew that the settlement class meets the certification requirements of Rule 23(a) and (b)." Adoma, 913 F. Supp. 2d at 974; see also Harris v. Vector Marketing, No. C–08–5198, 2012 WL 381202 at *3 (N.D. Cal. Feb. 6, 2012) ("As a preliminary matter, the Court notes that it previously certified . . . a Rule 23(b)(3) class . . . [and thus] need not analyze whether the requirements for certification have been met and may focus instead on whether the proposed settlement is fair, adequate, and reasonable."); In re Apollo Group Inc. Securities Litigation, Nos. CV 04–2147–PHX–JAT, CV 04–2204–PHX–JAT, CV 04–2334–PHX–JAT, 2012 WL 1378677 at *4 (D. Ariz. Apr. 20, 2012). All the criteria for class certification remain satisfied, and the Court hereby confirms its order certifying the Settlement Class.

2. Rule 23(c)(2) Notice Requirements

Rule 23(c)(2)(B) requires that that Court "direct to class members the best notice that is 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). Similarly, Rule 23(e)(1) requires that a proposed settlement may only be approved after notice is directed in a reasonable manner to all class members who would be bound by the agreement. Fed. R. Civ. P. 23(e)(1). In its Preliminary Approval Order, the Court approved the Class Notice and Claim Form sent to potential class members. (Prelim. App. Order at 9.) The Class Notice was timely sent via first-class mail to all potential class members, and it provided information on the Final Approval Hearing, objecting, opting out, and submitting a claim form. (Doc. No. 70-1, Exh. A.) Further, potential class members had access to a toll-free number and website to obtain information about the Settlement. The Court finds that notice to the Settlement Class was proper.

C. Fair, Reasonable, and Adequate Under Rule 23(a)

Under Rule 23(e), "the claims, issues, or defenses of a certified class may be settled . . . only with the court's approval." Fed. R. Civ. P. 23(e). "The primary concern of [Rule 23(e)] is the protection of those class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties." Officers for Justice v. Civil Service Com., 688 F.2d 615, 624 (9th Cir. 1982). The Court's inquiry is procedural in nature. Id. Under Rule 23(e)(2), "[i]f the proposal would bind class members, the court may approve it only after a hearing and on finding that it is fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). The Court held a Final Approval Hearing on January 13, 2014.

In determining whether a settlement agreement is fair, adequate, and reasonable to all concerned, the Court may consider some or all of the following factors:

(1) the strength of the plaintiff's 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) any opposition by class members.

Linney v. Cellular Alaska Partnership, 151 F.3d 1234, 1242 (9th Cir. 1998). This list of factors is not exclusive and the court may balance and weigh different factors depending on the circumstances of each case. Torrisi v. Tucson Elec. Power Co., 8 F.3d 1370, 1376 (9th Cir. 1993).

1. Strength of the Plaintiff's Case

The initial fairness factor addresses Plaintiff's likelihood of success on the merits and the range of possible recovery. See Rodriguez v. West Publ'g Corp., 563 F.3d 948, 964–65 (9th Cir. 2009). In determining the probability of Plaintiff's success on the merits, there is no "particular formula by which that outcome must be tested." Id. at 965.

After examining a sample of Farmers' claim files, Plaintiff presented substantive evidence that Farmers improperly subtracted deductibles. (Motion at 9.) On May 15, 2012, Farmers responded to Plaintiff's requests for admission and admitted that it repeatedly underpaid its insureds in absorbed deductible situations. (Fein Decl. ¶ 25.) After engaging in a statistical review of Farmers' claim files and completing several depositions, the parties began arms' length settlement negotiations with a mediator in September 2012. (Fein Decl. ¶ 30.) See Rodriguez, 563 F.3d at 965 ("We put a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution . . .").

The Settlement represents a 100 percent recovery for the Class. Accordingly, litigation of this case to its final conclusion would be time-consuming, expensive, and result in the same or similar recovery achieved via settlement. (Id. ¶ 36.) Balancing Plaintiff's strong evidence of error with the substantial recovery for the Class, the Court finds this factor weighs in favor of approval. See Barbosa v. Cargill Meat Solutions Corp., 1:11-CV-00275-SKO, 2013 WL 3340939, at *12 (E.D. Cal. July 2, 2013) ("Plaintiffs' likelihood of success appears to have been properly accounted for in the settlement amount.").

2. Risk, Expense, Complexity, and Likely Duration of Further Litigation

In assessing the risk, expense, complexity, and likely duration of further litigation, the Court evaluates the time and cost required. "[U]nless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc., 221 F.R.D. 523, 526 (C.D. Cal. 2004) (quoting 3 Newberg on Class Actions § 11:50 (4th ed. 2012)).

There is risk that Plaintiff would have been unsuccessful in certifying a class or unsuccessful on the merits. This would have been a complex and expensive case to take to trial due to the number of potential class members and the complicated statistical and numerical analysis required to evaluate insurance claims. (Fein Decl. ¶ 37.)

Settlement occurred at a relatively early stage of litigation: immediately after Plaintiff filed his class certification motion, but before Farmers' opposition or a ruling. (Doc. No. 62.) Class certification, additional discovery, potentially dispositive motion practice, and trial would likely have been necessary for the Class to obtain a remedy. Therefore, settlement substantially shortened the likely duration of further litigation.

Accordingly, the Court finds that this factor weights in favor of settlement approval.

3. Risk of Maintaining Class Action Status Throughout the Trial

Because the Court is not aware of any risks to maintaining class-action status throughout trial, this factor is neutral. Barbosa, 2013 WL 3340939 at *13; see also In re Veritas Software Corp. Sec. Litig., No. 03–0283, 2005 WL 3096079, at *5 (N.D. Cal. Nov. 15, 2005) (vacated in part on other grounds, 496 F.3d 962 (9th Cir. 2007)) (favoring neither approval nor disapproval of settlement where the court was "unaware of any risk involved in maintaining class action status"); Vasquez v. Coast Valley Roofing, Inc., 266 F.R.D. 482, 489 (E.D. Cal. 2010) (finding that there were no facts that would defeat class treatment, the factor was considered "neutral" for purposes of final approval of class settlement).

4. Amount Offered in Settlement

The Settlement does not provide a cap on the amount recoverable by the Class. Class Counsel estimates a maximum amount available to the Class as $9.9 million, plus another $1.4 million in attorneys' fees and costs. (Fein Decl. ¶ 40.) Even assuming that only 40 percent of class members file claims, the total settlement amount would be about $5.4 million. (Id. ¶ 41.)

Class members are entitled to receive 100 percent of the amount improperly deducted, plus interest at a rate of 4.2 percent. Even if they pursued this action to trial or brought individual claims, class members would have received remedies similar to those provided in the Settlement. Accordingly, the Settlement amount reasonably compensates the Class for the alleged deductible subtraction error.

The Court finds this factor weighs strongly in favor of approval.

5. Extent of Discovery Completed, and the Stage Of the Proceedings

This factor requires that the Court evaluate whether "the parties have sufficient information to make an informed decision about settlement." Linney, 151 F.3d at 1239.

Beginning on May 28, 2010, the Court permitted class discovery to go forward. (Doc. No. 33.) Plaintiff deposed Sylvia Ting regarding Farmers' computer systems and claims databases and retained a statistics expert to formulate the method of sampling Farmers' claim files. (Doc. No. 41.) Plaintiff also deposed Charlie Horn in September 2011 on topics related to the merits of the case. (Doc. No. 69, ¶ 23.) After substantial back and forth, Farmers provided a sampling of its 1 million claim files, including key data on each file. (Motion at 9.) Plaintiff reviewed the sample files to identify other instances of improper subtraction of deductibles in absorbed deductible situations and estimated the frequency of these errors. (Id.) Plaintiff further served Farmers' with requests for admission, and Farmers responded on May 15, 2012. (Motion at 9-10.)

Based on these facts, the Court finds that discovery was sufficiently advanced to allow the parties to make an informed decision about settlement. See DIRECTV, Inc., 221 F.R.D. at 527 ("A court is more likely to approve a settlement if most of the discovery is completed because it suggests that the parties arrived at a compromise based on a full understanding of the legal and factual issues surrounding the case.") (quoting 5 Moore's Federal Practice, § 23.85[2][e] (Matthew Bender 3d ed). This factor favors settlement.

6. Experience and Views of Counsel

In considering the adequacy of the terms of a settlement, the trial court is entitled to, and should, rely upon the judgment of experienced counsel for the parties. See DIRECTV, Inc., 221 F.R.D. at 528 ("Great weight is accorded to the recommendation of counsel, who are most closely acquainted with the facts of the underlying litigation[.]") (internal quotation marks and citations omitted). This reliance is predicated on the fact that "[p]arties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in the litigation." In re Pacific Enters. Sec. Litig., 47 F.3d 373, 378 (9th Cir. 1995).

Class Counsel has substantial experience litigating class actions. (Fein Decl. ¶¶ 7-12.) The Court accords weight to Class Counsel's recommendation that the Court approve this Settlement, since Class Counsel is familiar with this litigation and its likelihood of success

during litigation and trial. (Id. ¶ 29.) Class Counsel understood the complex risks and benefits of settlement and concluded that the Settlement was a reasonable recovery that confers a substantial benefit on the class members. (Id. ¶¶ 34-37.)

Moreover, settlements are afforded a presumption of fairness if the negotiations occurred at arm's length. 4 Newberg on Class Actions § 11.41 (4th ed. 2013). Here, the Settlement was reached through the efforts of experienced counsel following several days of mediation sessions conducted by a mediator who has experience handling complex civil litigation disputes. (Motion at 11-12.) The negotiations did not include discussions of attorneys' fees, expenses, or an award to the Class Representative until after agreement was reached on the benefits to the class. (Id.)

This factor weighs in favor of approval.

7. Presence of a Governmental Participant

No governmental entity is present in this litigation. Notice of the settlement was provided to the Attorney General and appropriate state insurance officials as required by CAFA. None objected, and therefore this factor favors approval.

8. Any Opposition by Class Members

Where a settlement agreement enjoys overwhelming support from the class, this lends weight to a finding that the settlement agreement is fair, adequate, and reasonable. DIRECTV, Inc., 221 F.R.D. at 529 ("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.").

Only 80 class members opted out of the Settlement. Based on Class Counsel's representations, the number of opt outs equals approximately 0.741 percent of class members. (See Fein Decl. ¶ 38.) Moreover, Plaintiff received only one objection to the Settlement. (Declaration of Core S. Fein ¶ 4, Doc. No. 76-1.) Although the document was label "Objection to Class Action Suit," the substance of the letter demonstrates that the sender is not a class member and does not have an objection to the Settlement. (Id. ¶ 5.) Accordingly, there were no substantive objections to the Settlement. The Class Representative, Rene Rodriguez, supports final approval of the Settlement. (Declaration of Rene Rodriguez ¶¶ 8-9, Doc. No. 74-1.)

Given the low percentage of opt outs, the absence of any objections, and the support of the Class Representative, the Court finds this factor weighs in favor of final approval.

After considering all of the relevant factors, the Court finds seven factors favor approval and one is neutral in the analysis. Accordingly, the relevant factors weigh strongly in favor of approval. Of particular importance here is the amount of the Settlement, which provides class members with 100 percent of the incorrectly subtracted deductible, plus interest. In addition, the low number of opt outs and lack of objections strongly supports a finding of reasonableness. After reviewing all of the evidence presented, the Motion, and the arguments presented at the final approval hearing, the Court finds that the Settlement is "fair, reasonable and adequate to all

concerned parties." Ficalora v. Lockheed California Co., 751 F.2d 995, 996 (9th Cir. 1985). Accordingly, the Court approves the Settlement.

D. Attorneys' Fees and Costs

Class Counsel also moves for approval of its fees and costs. Courts are obliged to ensure that the attorneys' fees awarded in a class action settlement are reasonable, even if the parties have already agreed on an amount. In re Bluetooth Headset Products Liability Litigation, 654 F.3d 935, 941 (9th Cir. 2011). Although in many class settlements attorneys may be awarded their fees and costs as a percentage of the common fund, here, the Settlement places no cap on Farmers' liability, thus there is no common fund from which to calculate the fees. See Fischel v. Equitable Life Assurance Soc'y of U.S., 307 F.3d 997, 1006 (9th Cir. 2002). In cases such as this, the Court must apply the lodestar method to determine Farmers' attorneys' fees. See, e.g., Goldkorn v. Cnty. of San Bernardino, EDCV 06-707-VAP OPX, 2012 WL 476279, at *9 (C.D. Cal. Feb. 13, 2012) ("[S]ince there is no common fund, the Court will apply the lodestar method to determine whether the amount of attorneys' fees and costs agreed to under the settlement is fair and reasonable.").

The Court determines the lodestar amount by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate. McGrath v. Cnty. of Nevada, 67 F.3d 248, 252 (9th Cir. 1995). Next, the Court must decide whether to adjust the 'presumptively reasonable' lodestar figure based upon the factors listed in Kerr v. Screen Extras Guild, Inc., 526 F.2d 67, 69–70 (9th Cir. 1975), that have not been subsumed in the lodestar calculation. Caudle v. Bristow Optical Co., Inc., 224 F.3d 1014, 1028–29 (9th Cir. 2000).

Although Class Counsel provides some support for the hourly rates of its attorneys, it does not provide any evidence from which the Court could conclude that the hours worked are reasonable. Class Counsel provides only the following statement with regard to the hours worked: "Caddell & Chapman contemporaneously tracked out time expended working for the Class in this matter, as is our normal practice. . . . I reviewed a compilation of my firm's billing records and, after removing mistaken and duplicative entries, I tabulated Caddell & Chapman's total lodestar for all work performed as of the filing of this Declaration . . . ." (Fein Decl. ¶¶ 46-47.)[3] Class Counsel does not provide any breakdown of its tasks or the amount of time spent per activity. No time records or even general descriptions are offered. The Court finds that Class Counsel provided insufficient documentation to support the 1410.4 hours of time it allegedly spent litigating and settling this action. (Id. ¶ 53.)

In a single footnote, Class Counsel cites to Winterrowd v. Am. Gen. Annuity Ins. Co., 556 F.3d 815, 827 (9th Cir. 2009), to argue that testimony of an attorney as to the number of hours worked on a particular case is sufficient evidence to support an award of attorneys' fees

[3] Associated counsel, Joseph Watkins, submitted a separate declaration, which is similarly vague and conclusory regarding hours worked. (Declaration of Joseph W. Watkin ¶ 4, Doc. No. 74-3) ("The total number of hours I expended on this case through November 2013 is 160.2 hours.").

"without the submission of detailed time record." (Motion at 15 n. 8.) Winterrowd is clearly inapplicable to the instant action as it applies California law to determine the required showing for attorney's fees in an action in diversity. Winterrowd, 556 F.3d at 827. This action was not brought in diversity. Rather, this Court has subject matter jurisdiction pursuant to the Class Action Fairness Act. (Compl. ¶ 8.) As Winterrowd made clear, "[w]hile some federal courts require that an attorney maintain and submit contemporaneous, complete and standardized time records . . . . , [i]n California, an attorney need not submit contemporaneous time records in order to recover attorney fees." Id. (internal citations and quotations omitted). The federal standard applies here, and Class Counsel must submit "contemporaneous, complete, and standardized time records" in order for the Court to ensure that Class Counsel's hours are reasonable. Id. Class Counsel has not met its burden of documenting the appropriate hours expended in this action, nor has it submitted evidence in support of those hours worked. See Hensley v. Eckerhart, 461 U.S. 424, 433 (1983) ("The party seeking an award of fees should submit evidence supporting the hours worked and rates claimed. Where the documentation of hours is inadequate, the district court may reduce the award accordingly.").

Accordingly, the Court ORDERS Class Counsel to submit evidence to support the hours worked in this action by **February 10, 2014**.

IV. CONCLUSION

For the reasons stated above, the Court GRANTS final settlement approval. Class Counsel shall file time records documenting the work performed and the hours expended on each task during this litigation by January 27, 2014. The Court DEFERS ruling on Plaintiff's motion for attorneys' fees, costs, and the Class Representative service award pending Class Counsel's submission of the required documentation. The Court does **not** enter judgment until these issues are resolved.

IT IS SO ORDERED.