UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

MARGARET STEVENS, individually and on behalf of all others similarly situated, Plaintiff, v. BRITAX CHILD SAFETY INC., Defendant.	Case No. 2:20-cv-07373-MCS-AS **ORDER GRANTING MOTION FOR CERTIFICATION OF A SETTLEMENT CLASS, PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, APPROVAL OF NOTICE PLAN, APPOINTMENT OF SETTLEMENT ADMINISTRATOR, AND APPOINTMENT OF SETTLEMENT CLASS COUNSEL AND CLASS REPRESENTATIVE (ECF NO. 64)**

Plaintiff Margaret Stevens filed a motion for preliminary approval of a class action settlement. Mot., ECF No. 64; *see also* Mem., ECF No. 64-1. Defendant joins the motion. Mem. 1. The Court deems the motion appropriate for decision without oral argument. Fed. R. Civ. P. 78(b); C.D. Cal. L.R. 7-15.

I. BACKGROUND

This is a product defect class action. Defendant sells car seats. SAC ¶ 1, ECF No. 44. Plaintiff alleges two of Defendant's car seats, the Frontier ClickTight Harness-2-Booster Seat and the Pioneer Harness-2-Booster Seat, have a harness capable of

detaching during moderate impacts, leaving the child with no effective upper torso restraint. *Id.* ¶¶ 1, 3. Plaintiff contends Defendant violated the California Consumer Legal Remedies Act, violated the California False Advertising Law, breached the implied warranty of merchantability, and breached a quasi-contract between her and Defendant. *Id.* ¶¶ 81–128. Plaintiff seeks damages on behalf of herself and a class of California residents who purchased the car seats within the four years prior to this suit. *Id.* ¶¶ 56–80, Prayer for Relief.

The parties reached an agreement on classwide settlement. The agreement requires Defendant to make a cash payment of $40 for each car seat purchased to approximately 21,097 known and 45,608 unknown class members in exchange for a release of claims. Nelson Decl. ¶ 3, ECF No. 64-5; Nelson Decl. Ex. A ("Settlement Agreement") ¶ 14(b), ECF No. 64-5.

II. CLASS CERTIFICATON

A. Legal Standard

At the preliminary approval stage, the Court "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).

The Court first considers whether a settlement class may be certified. *See Amchem Prods. v. Windsor*, 521 U.S. 591, 621 (1997) ("[T]he 'class action' to which Rule 23(e) refers is one qualified for certification under Rule 23(a) and (b)."). A plaintiff must demonstrate that the four requirements of Rule 23(a) are met: (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation. The plaintiff also must show the class meets one of the three alternative provisions in Rule 23(b). *Comcast Corp. v. Behrend*, 569 U.S. 27, 33 (2013). Where, as here, the plaintiff seeks certification under Rule 23(b)(3), the plaintiff must show "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 for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). "The

criteria for class certification are applied differently in litigation classes and settlement classes," *Espinosa v. Ahearn (In re Hyundai & Kia Fuel Econ. Litig.)*, 926 F.3d 539, 558 (9th Cir. 2019), and the Court must apply "undiluted, even heightened, attention" to the specifications of Rule 23 when considering whether to certify a settlement class, *Amchem*, 521 U.S. at 620.

B. Discussion

1. Numerosity

Rule 23(a)(1) requires the class to be "so numerous that joinder of all members is impracticable." "Impracticability does not mean impossibility, but only the difficulty or inconvenience of joining all members of the class." *Harris v. Palm Springs Alpine Ests., Inc.*, 329 F.2d 909, 913–14 (9th Cir. 1964) (internal quotation marks omitted). Here, there are approximately 66,705 individuals in this proposed class. Nelson Decl. ¶ 3. Joinder of all members would be impracticable, so this requirement is satisfied. *Villalpando v. Exel Direct Inc.*, 303 F.R.D. 588, 606 (N.D. Cal. 2014) ("[C]ourts have routinely found the numerosity requirement satisfied when the class comprises 40 or more members.").

2. Commonality

Rule 23(a)(2) requires "questions of law or fact common to the class." Courts construe this requirement permissively. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998). Even a single common question of law or fact will do. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 359 (2011). Here, class members share common questions of law and fact, foremost whether class members paid more for the car seats because of their alleged design defect. Mem. 12. The claims here present common legal issues based on a common core of salient facts. *See Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1172 (9th Cir. 2010) (holding commonality is satisfied where a class of car buyers purchased vehicles with the same alleged defect). This requirement is met.

3. Typicality

Rule 23(a)(3) requires that "the claims or defenses of the representative parties

are typical of the claims or defenses of the class." "[R]epresentative claims are 'typical' if they are reasonably co-extensive with those of absent class members; they need not be substantially identical." *Hanlon*, 150 F.3d at 1020. "The test of typicality is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 984 (9th Cir. 2011) (internal quotation marks omitted). Plaintiff, like other class members, allegedly paid more than she should have for the car seats given the alleged defect. *See generally* SAC ¶¶ 47–54. This requirement is met. *See Wolin*, 617 F.3d at 1175.

4. Adequacy

Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." "To determine whether named plaintiffs will adequately represent a class, courts must resolve two questions: '(1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?'" *Ellis*, 657 F.3d at 985 (quoting *Hanlon*, 150 F.3d at 1020). Plaintiff persuasively states that she and her counsel have no conflicts of interest with other class members because she seeks monetary relief under the same legal facts and theories. Mem. 13; *see Anchem*, 521 U.S. at 625–26 ("A class representative must be part of the class and possess the same interest and suffer the same injury as the class members." (cleaned up)). Counsel represents that she, her firm, and co-counsel have extensive experience in consumer and personal injury class litigation. Nelson Decl. ¶¶ 20–22. The Court deems these representations sufficient to show Plaintiff and class counsel will fairly and adequately represent the class's interests.

5. Predominance

"The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem*, 521 U.S. at

623. The inquiry "focuses on whether the 'common questions present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication.'" *Espinosa*, 926 F.3d at 557 (quoting *Hanlon*, 150 F.3d at 1022). For certification of a settlement-only class, "'a district court need not inquire whether the case, if tried, would present intractable management problems'"; instead, "[t]he focus is 'on whether a proposed class has sufficient unity so that absent members can fairly be bound by decisions of class representatives.'" *Id.* at 558 (quoting *Amchem*, 521 U.S. at 620–21). Here, the Court concurs with Plaintiff's analysis that common questions of law and fact predominate as to all of Plaintiff's claims. Mem. 14. All class members bought the same allegedly defective car seat. While there may be individualized issues, they do not outweigh the many common questions because the alleged defect is the same for all car seats. *See Wolin*, 617 F.3d at 1173 (finding predominance where a defect was susceptible to proof by generalized evidence). The predominance element is met.

6. Superiority

"The superiority inquiry under Rule 23(b)(3) requires determination of whether the objectives of the particular class action procedure will be achieved in the particular case." *Hanlon*, 150 F.3d at 1023. Plaintiff purchased her car seat for $272. SAC ¶ 47. The expense and burden of litigating a claim for potential recovery of only up to $272 would not justify the expense. Thus, aggregate litigation is a superior form of litigation for these claims. *Hanlon*, 150 F.3d at 1023 ("Even if efficacious, [individual litigation of] these claims would not only unnecessarily burden the judiciary, but would prove uneconomic for potential plaintiffs. In most cases, litigation costs would dwarf potential recovery."). The class action procedure is superior.

C. Conclusion

The Court determines that the class satisfies the requirements of Rule 23(a) and Rule 23(b)(3) and conditionally certifies the proposed class for settlement purposes.

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1 **III. FAIRNESS OF PROPOSED SETTLEMENT**

2 **A. Legal Standard**

3 Federal Rule of Civil Procedure 23(e) provides that "[t]he claims, issues, or
4 defenses of a certified class—or a class proposed to be certified for purposes of
5 settlement—may be settled, voluntarily dismissed, or compromised only with the
6 court's approval." "[S]trong judicial policy . . . favors settlements, particularly where
7 complex class action litigation is concerned." *Class Plaintiffs v. City of Seattle*, 955
8 F.2d 1268, 1276 (9th Cir. 1992). "The purpose of Rule 23(e) is to protect the unnamed
9 members of the class from unjust or unfair settlements affecting their rights." *Pilkington*
10 *v. Cardinal Health, Inc. (In re Syncor ERISA Litig.)*, 516 F.3d 1095, 1100 (9th Cir.
11 2008). Review of the settlement is "extremely limited," and courts should examine "the
12 settlement taken as a whole, rather than the individual component parts, . . . for overall
13 fairness." *Hanlon*, 150 F.3d at 1026.

14 At the preliminary approval stage, courts in this circuit consider whether the
15 settlement: "(1) appears to be the product of serious, informed, non-collusive
16 negotiations; (2) has no obvious deficiencies; (3) does not improperly grant preferential
17 treatment to class representatives or segments of the class; and (4) falls within the range
18 of possible approval." *Spann v. J.C. Penney Corp.*, 314 F.R.D. 312, 319 (C.D. Cal.
19 2016) (internal quotation marks omitted). Further, "[t]he court must direct notice in a
20 reasonable manner to all class members who would be bound by the proposal." Fed. R.
21 Civ. P. 23(e)(1)(B).

22 **B. Discussion**

23 1. <u>Serious, Informed, and Non-Collusive Negotiations</u>

24 The parties reached a settlement after multiple separate mediation sessions led by
25 Phillip Cook, an experienced litigator and mediator and a member of the Court's
26 mediation panel, from October 2021 to January 2022. Nelson Decl. ¶ 11. After the
27 parties agreed to a settlement in principle, Mr. Cook and the parties spent weeks to
28 finalize drafting the settlement. *Id.* ¶ 12. Based on these facts, the Court finds that "the

procedure for reaching this settlement was fair and reasonable and that the settlement was the product of arms-length negotiations." *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1080 (N.D. Cal. 2007); *see also* Fed. R. Civ. P. 23(e)(A)–(B) advisory committee's note to 2018 amendment ("[T]he involvement of a neutral or court-affiliated mediator or facilitator in those negotiations may bear on whether they were conducted in a manner that would protect and further the class interests.").

The proposed settlement also releases participating class members from:

> All claims, demands, rights, liabilities, costs, expenses, attorneys' fees, damages, and causes of action, of every nature and description whatsoever, whether known or unknown, that were or could have been asserted in the Lawsuit arising from their purchase or use of Frontier ClickTight Harness-2-Booster Seat or Pioneer Harness-2-Booster Seat, whether in tort, contract, statute, rule, ordinance, order, regulation, or otherwise, including but not limited to those for violations of California Civil Code § 1750 (Consumers Legal Remedies Act); violations of California Business & Professions Code § 17500 (False Advertising Law); California Civil Code §§ 1891-1794 [sic] (Implied Warranty) and; [sic] quasi-contract.

Settlement Agreement ¶ 14(b). The release excludes any claims for personal injury or wrongful death. *Id.* A release of claims is not collusive only when the released claim is "based on the identical factual predicate as that underlying the claims in the settled class action." *Hesse v. Sprint Corp.*, 598 F.3d 581, 590 (9th Cir. 2010) (quoting *Williams v. Boeing Co.*, 517 F.3d 1120, 1133 (9th Cir. 2008)). The Settlement Agreement specifically releases only those claims that were or could have been asserted in this lawsuit, which requires the same factual transaction or occurrence. *See* Fed. R. Civ. P. 13(a)(1)(A) (compulsory counterclaim); *Owens v. Kaiser Found. Health Plan, Inc.*, 244

F.3d 708, 714 (9th Cir. 2001) (res judicata). This release is thus not collusive under *Hesse*.

2. No Obvious Deficiencies and No Preferential Treatment

The proposed settlement is not the model of equitable treatment. Each class member receives the same recovery for the purchase of car seats that had disparate average prices of $139 and $200. Nelson Decl. ¶ 18. "[T]he [C]ourt's goal is to ensure that similarly situated class members are treated similarly and that dissimilarly situated class members are not arbitrarily treated as if they were similarly situated." 4 Newberg on Class Actions § 13:56 (5th ed. 2021). The parties provided no explanation why class members who purchased different car seats at different prices receive the same recovery. While this settlement does not provide the kind of arbitrary division between economic and noneconomic relief that usually gives courts pause, *see, e.g.*, *True v. Am. Honda Motor Co.*, 749 F. Supp. 2d 1052, 1068–69 (C.D. Cal. 2010), the failure to explain this undifferentiated relief surprises the Court. An explanation of why undifferentiated relief is impracticable would assuage the Court's worries, but on this record, the settlement apparently provides preferential treatment to class members who purchased the cheaper car seat. *See Spann*, 314 F.R.D. at 319. Because it seems likely the parties can explain this decision in the motion for final approval, the Court does not consider this a barrier to preliminary approval of the settlement.

The proposed service award of at most $3,000 to Plaintiff as class representative is reasonable in light of the time and effort she expended pursuing the litigation and the size of the enhancement relative to other class members' recovery. *See* Nelson Decl. ¶ 14 (minimum payment by Defendant of $675,104); *see Staton*, 327 F.3d at 977 (outlining factors to consider in evaluating proposed enhancements). The Court, considering these factors, preliminarily approves $3,000 as a service award.

Although counsel has not yet provided information substantiating its contemplated motion for fees and costs, counsel indicates it will seek a fee award not to exceed 25% of the overall recovery. Mot. 7; Settlement Agreement ¶ 13. Given the

limited information presented here, Class Counsel's anticipated request for fees and costs appears reasonable. *See Jones v. GN Netcom, Inc. (In re Bluetooth Headset Prods. Liab. Litig.)*, 654 F.3d 935, 942 (9th Cir. 2011) ("[C]ourts typically calculate 25% of the fund as the 'benchmark' for a reasonable fee award . . . ."). The Court preliminarily approves this fee request as reasonable.

3. Range of Possible Approval

To determine whether a settlement falls within the range of possible approval, courts focus on "substantive fairness and adequacy," including "plaintiffs' expected recovery balanced against the value of the settlement offer." *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d at 1080. "[A] proposed settlement may be acceptable even though it amounts only to a fraction of the potential recovery that might be available to class members at trial." *Uschold v. NSMG Shared Servs., LLC*, 333 F.R.D. 157, 171 (N.D. Cal. 2019) (internal quotation marks omitted).

The Court finds persuasive Plaintiff's assessment of the strength of her case, the risk of further litigation, and the potential exposure to Defendant. Mem. 20–21. The estimated gross settlement of $843,880 results in a payment of approximately 20 to 29% of the purchase price of the car seats to each class member. *Id.* at 22. While the parties do not provide an estimate of total possible exposure by Defendant, Defendant would be liable for no more than the price of the car seats. The settlement thus is within the range of approved settlements for class actions. *E.g.*, *Walters v. Target Corp.*, No. 3:16-cv-1678-L-MDD, 2020 WL 6277436, at *6 (S.D. Cal. Oct. 26, 2020) (deeming reasonable settlement representing 33 to 66% of probable damages for deceptive marketing and breach of contract claims); *Edwards v. Nat'l Milk Producers Fed'n*, Nos. 11-CV-04766-SJW, 11-CV-04791-JSW, 11-CV-05253-JSW, 2017 WL 3623734, at *7 (N.D. Cal. June 26, 2017) (deeming reasonable settlement representing almost 30% of the total damages); *see Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 628 (9th Cir. 1982) ("It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery will not *per se* render the settlement inadequate or unfair.").

For the purpose of preliminary approval, the Court finds that the settlement falls within the range of possible approval.

4. Adequate Notice

For a Rule 23(b)(3) class, "the court must 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). "The yardstick against which we measure the sufficiency of notices in class action proceedings is one of reasonableness." *Low v. Trump Univ., LLC*, 881 F.3d 1111, 1117 (9th Cir. 2018) (quoting *In re Bank of Am. Corp.*, 772 F.3d 125, 132 (2d Cir. 2014)). "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 Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004) (internal quotation marks omitted). Notice "does not require detailed analysis of the statutes or causes of action forming the basis for the plaintiff class's claims, and it does not require an estimate of the potential value of those claims." *Lane v. Facebook, Inc.*, 696 F.3d 811, 826 (9th Cir. 2012).

The parties agreed upon notice forms that provide information about the nature of the action and the claims asserted, the terms and provisions of the settlement, the distribution of the relief, and the release of claims. The notices also explain class members' options to remain in the class, object to the settlement, or opt out of the settlement. Settlement Agreement Exs. 1-A to 1-D. The settlement contemplates that the settlement administrator, CPT Group, will send notice to known settlement class members by first-class mail after performing a National Change of Address search and will send notice by email to any email addresses for any known class members. Settlement Agreement ¶ 7(a)–(b).

The Court finds that the proposed notice procedure provides all the information required by Rule 23(c)(2)(B), constitutes the best practicable notice to class members, and comports with the requirements of due process.

5. Cy Pres Provision

A *cy pres* provision in a class action settlement is a tool for "distribut[ing] unclaimed or non-distributable portions of a class action settlement fund to the 'next best' class of beneficiaries." *In re Google Inc. St. View Elec. Commc'ns Litig.*, 21 F.4th 1102, 1111 (9th Cir. 2021) (alteration in original) (quoting *Nachshin v. AOL, LLC*, 663 F.3d 1034, 1036 (9th Cir. 2011)). "[D]istrict courts may approve settlements with *cy pres* provisions that affect only a portion of the total settlement fund." *Id.* When evaluating *cy pres* payments, the Court first considers whether it is feasible to distribute funds directly to the class members. *Id.* at 1113. Second, the Court considers whether it should not certify the class in light of the difficulty of distributing funds to class members. *Id.* Third, the Court considers whether the total value of the settlement to absent class members is enough to justify approval of the settlement agreement. *Id.*

Defendant shall only pay any money to the *cy pres* recipient, Safe Kids Worldwide®, if less than 80% of the Known Class Members cash their checks. If this happens, Defendant shall pay the value of the uncashed checks up to 80% of the Known Class Members' settlement value to the *cy pres* recipient. Settlement Agreement ¶ 5(a). This would only affect the portion of the settlement fund that was distributed to Known Class Members but that Known Class Members did not claim. The concern about the difficulty of distributing the funds to class members does not apply because this provision only applies to uncashed checks delivered to Known Class Members. Finally, the total value of the settlement to absent class members is not affected by the *cy pres* provision. Defendant agrees to pay $40 to any Unknown Class Member who submits a claim form before the submission date detailed below.

The Court finds the *cy pres* provision is reasonable under the circumstances.

C. Conclusion

The Court concludes that the proposed settlement as a whole appears fair and reasonable, notwithstanding the concerns outlined above.

Satisfied that conditional certification of the classes is proper and that the

settlement is fair, the Court preliminarily approves of the settlement.

IV. CONCLUSION

The Court grants the motion.

The Court conditionally certifies the class for settlement purposes only. The Settlement Class shall consist of:

All persons who when they were residents of California purchased for personal or household use a new Frontier ClickTight Harness-2-Booster Seat or Pioneer Harness-2-Booster Seat (the "Class Child Seats") between August 14, 2016 up to and including August 14, 2020 and the seat has a manufacturing date from August 14, 2016 to no later than September 30, 2019. Excluded from the class are: (a) Britax and its board members, executive-level officers, attorneys, and immediate family members of any such persons; (b) governmental entities; (c) the Court, the Court's immediate family, and the Court staff; (d) any person who purchased a Class Child Seat that caused an injury or death or any person asserting a claim for injury or wrongful death as a result of the use of a Class Child Seat; and (e) any person who timely and properly excludes himself or herself from the class.

The Court conditionally approves, for settlement purposes only, Margaret Stevens as class representative; Christine Spagnoli of Greene Broillet & Wheeler, LLP, Gretchen M. Nelson and Gabriel S. Barenfeld of Nelson & Fraenkel LLP, and Troy Rafferty of Levin, Papantonio, Rafferty, Proctor, Buchanan, O'Brien, Barr & Mougey, P.C. as class counsel; and CPT Group as settlement administrator.

The Court approves the form and substance of the proposed notices attached to the Settlement Agreement as Exhibits 1-A through -D. The form and method for notifying Settlement Class Members of the Settlement and its terms and conditions satisfies the requirements of Federal Rule of Civil Procedure 23(c)(2)(B) and (e).

Requests for Exclusion from the Settlement must be faxed or postmarked no later than 90 days from the Notice Date (the "Submission Date"). The Submission Date to submit a Request for Exclusion will be extended 15 calendar days for any Settlement

Class Member who is re-mailed a Class Notice by the Administrator in accordance with the notice procedure described in the Settlement Agreement. If the Response Deadline falls on a Saturday or Federal Holiday, the Response Deadline will be extended to the next day which the U.S. Postal Service is open.

Objections to the Settlement must be signed by the Settlement Class Member and state: (1) the full name of the Settlement Class Member, address, email address, and signature; (2) the name and case number of this lawsuit; (3) the basis for the objection; (4) whether the objector is represented by counsel and if so the name and address of counsel; and (5) whether the objector intends to appear at the Final Approval Hearing either in person or through counsel. All papers in support of the objections must be filed as described in the Settlement Agreement and Notice and no later than 90 days from the Submission Date. The Submission Date to submit an Objection will be extended 15 calendar days for any Settlement Class Member who is re-mailed a Class Notice by the Administrator in accordance with the notice procedure described in the Settlement Agreement. If the Response Deadline falls on a Saturday or Federal Holiday, the Response Deadline will be extended to the next day which the U.S. Postal Service is open.

In the event the proposed Settlement is not consummated for any reason, the conditional class certification shall be of no further force or effect. Should the Settlement not become final, the fact that the Parties were willing to stipulate to class certification as part of the Settlement shall have no bearing on, nor be admissible in connection with, the issue of whether a class should be certified in a non-settlement context.

The Court preliminarily approves the class action settlement set forth in the Settlement Agreement subject to the issues discussed in this order.

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The Court sets the following dates and deadlines:

Event	Date
Last day for Defendant to produce the class list to the settlement administrator	14 days from the date of this order
Last day for the settlement administrator to mail class notice to class members	14 days from the production of the class list
Last day for class members to submit requests for exclusion from or objections to the settlement	90 days from the date of mailing the Notice
Last day for Plaintiff to file motion for attorney fees, costs, and class representative enhancement	28 days prior to the Final Approval Hearing
Last day for Plaintiff to file a motion for final approval of the class action settlement	28 days prior to the Final Approval Hearing
Final Approval Hearing	August 29, 2022 at 9:00 a.m.

IT IS SO ORDERED.

Dated: April 14, 2022

MARK C. SCARSI
UNITED STATES DISTRICT JUDGE