

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Almada v. Krieger Law Firm, A.P.C.

Almada · No. 19-cv-2109-MMP · Decided May 6, 2025

OPINION

1 2 3 4 5 UNITED STATES DISTRICT COURT 6 SOUTHERN DISTRICT OF CALIFORNIA 7
8 JEFFREY A. ALMADA, on behalf of Case No.: 19-cv-2109-MMP himself and all others
similarly situated 9 class members, ORDER GRANTING IN 10 SUBSTANTIAL PART
PLAINTIFF’S Plaintiff, UNOPPOSED MOTION FOR THIRD 11 v. DISTRIBUTION FROM
THE 12 RESIDUAL COMMON FUND AND KRIGER LAW FIRM, A.P.C., FINAL APPROVAL
OF CY PRES 13 Defendant.

BENEFICIARIES 14 [ECF No. 87] 15 16 17 Before the Court is Plaintiff’s Unopposed Motion
for a Third Distribution from the 18 Residual Common Fund and Final Approval of Cy Pres
Beneficiaries. ECF No. 87. No 19 opposition was filed.¹ For the reasons stated herein, the Court
GRANTS IN 20 SUBSTANTIAL PART Plaintiff’s motion. 21 I. RELEVANT BACKGROUND
22 The Court described the background in detail in its May 16, 2024 Order.

ECF No. 23 86. In 2019, Plaintiff filed a putative class action against the Kriger Law Firm, A.P.C.
24 25 1 Civil Local Rule 7.1(f)(3)(c) provides “Waiver: If an opposing party fails to file the papers
26 in the manner required by Civil Local Rule 7.1.e.2, that failure may constitute a consent to 27
the granting of a motion or other request for ruling by the Court.” By virtue of this rule, because
Defendant did not file an opposition, the Court may conclude Defendant consents 28 1
 (“Defendant”) for violations of the Fair Debt Collection Practices Act (“FDCPA”), 15 2 U.S.C. §
1692, et seq., and the Rosenthal Fair Debt Collection Practices Act (“RFDCPA”), 3 California
Civil Code sections 1788 to 1788.32.

ECF Nos. 1, 15. 4 In January 2023, the Court issued final approval of the parties’ Settlement.²
ECF No. 5 83 (“Final Approval Order”). The Court also preliminarily approved the National 6
Consumer Law Center (“NCLC”) and Public Justice as the proposed cy pres recipients to 7 share
any remaining funds in equal parts. Id. Thereafter, Settlement checks in the amount 8 of \$507.11
were mailed to the 260 participating Settlement Class Members.

After the 180- 9 day check-cashing period, sixty-five checks remained uncashed and were voided,
leaving 10 \$32,962.15 in the Common Fund. 11 In March 2024, Plaintiff filed an Unopposed
Motion for a Second Distribution from 12 the Residual Common Fund and Final Approval of Cy
Pres Beneficiaries. ECF No. 85.

On 13 May 16, 2024, the Court approved a second distribution, finding it was administratively 14 and economically feasible to make a second distribution to the 195 participating Settlement 15 Class Members who cashed their initial checks, and an additional distribution was both 16 consistent with and indeed specifically contemplated by the Settlement Agreement.

ECF 17 No. 86 at 6. The Court denied without prejudice Plaintiff's request to approve the cy pres 18 recipients, finding it premature prior to completing the second distribution. Id. at 6–8. 19 Pursuant to this Court's May 16, 2024 Order, on June 28, 2024, checks in the amount 20 of \$154.90 were mailed to each the 195 participating Settlement Class Members who 21 cashed their initial check.

ECF No. 87-2 ¶ 3. The check cashing period expired on 22 December 25, 2024 (180 days from issuance). Id. ¶ 4. Thirty-six checks³ remained 23 uncashed for a total of \$5,576.40 remaining the Common Fund. Id. ¶ 5. 24 25 2 The Agreement has been filed with the Court at ECF No. 75-3. Unless otherwise 26 specified, defined terms or capitalized terms in this Order have the same meaning as in the 27 Settlement Agreement.

See ECF No. 83 ¶ 7, n. 1. 28 1 Plaintiff now moves the Court to approve a third distribution from the Common 2 Fund to the 159 Settlement Class Members who cashed their second distribution check. 3 ECF No. 87. In support of the current motion, Plaintiff filed a declaration from the 4 Settlement Administrator explaining the administrative cost of completing a third 5 distribution is \$2,717, so a third distribution is anticipated to result in an additional payment 6 of approximately \$17.98.

ECF No. 87-2 ¶¶ 6–7. In addition, Plaintiff seeks approval of two 7 cy pres recipients, NCLC and Public Justice, for distribution of any unclaimed funds 8 remaining after the third distribution. ECF No. 87. 9 II. THIRD DISTRIBUTION 10 The Ninth Circuit has recognized “additional pro rata distributions to those class 11 members who did claim funds” is a potential alternative for distributing unclaimed 12 settlement funds.

In re Google Inc. St. View Elec. Commc'ns Litig., 21 F.4th 1102, 1110– 13 11 (9th Cir. 2021) (hereinafter “In re Google”). A district court has “broad discretionary 14 powers in shaping equitable decrees for distributing unclaimed class action funds” and its 15 “choice among distribution options should be guided by the objectives of the underlying 16 statute and the interests of the silent class members.” Six (6) Mexican Workers v. Ariz. 17 Citrus Growers, 904 F.2d 1301, 1307 (9th Cir.

1990). “Although the terms of a settlement 18 agreement may dictate how unclaimed settlement funds should be allocated, a district court 19 may otherwise exercise its equitable powers in managing the distribution of the settlement 20 proceeds.” Connor v. JPMorgan Chase Bank, N.A., No. 10-cv-1284-GPS-BGS, 2021 WL 21 1238862, at *1 (S.D. Cal. Apr. 2, 2021). 22 As this Court

previously found in its May 16, 2024 Order, the Settlement Agreement 23 specifically contemplates a cy pres distribution only after it is no longer administratively 24 feasible to provide an additional distribution to Settlement Class Members.

ECF No. 86 at 25 4 (citing ECF No. 75-3, Settlement Agreement § III.U). Plaintiff asserts because it is 26 economically feasible to conduct a third distribution to the 159 Settlement Class Members 27 who cashed their second distribution check, a third distribution must occur before a 28 distribution to the proposed cy pres beneficiaries is appropriate. ECF No. 87-1 at 9–10.

1 The Court finds a third distribution is administratively feasible given the amount of 2 uncashed funds (\$5,576.40) remaining in the Common Fund following the second 3 distribution. This amount would cover the administrative costs associated with the third 4 distribution in the amount of \$2,717.

The Court also agrees the third distribution should be 5 limited to the 159 Settlement Class Members who cashed their second distribution 6 Settlement checks. See *In re Google Inc.*, 21 F.4th at 1110–11; *Malta v. Fed. Home Loan 7 Mortg. Corp.*, No. 10-cv-1290-BEN-NLS, 2017 WL 11837070, at *3 (S.D. Cal. Aug. 1, 8 2017).

Accordingly, a third distribution would result in a non-de minimis payment of 9 approximately \$17.98 to participating Settlement Class Members. Finally, a third 10 distribution is consistent with the Settlement’s terms and directly benefits class members; 11 thus, it is preferable to a cy pres distribution in these circumstances. See *Klier v. Elf 12 Atochem N. Am.*

Inc., 658 F.3d 468, 475 (5th Cir. 2011); see also *Connor*, 2021 WL 13 1238862 at *2 (“Ninth Circuit precedent regarding cy pres distributions affirms the Court’s 14 view that a second distribution to class members, where possible and not contrary to the 15 aims of the settlement agreement, is often preferable to a cy pres distribution”) (footnote 16 omitted).

Accordingly, the Court GRANTS Plaintiff’s motion for a third distribution to 17 participating Settlement Class Members who cashed their second distribution check. 18 III. CY PRES DISTRIBUTION 19 Plaintiff also moves for an order approving NCLC and Public Justice as cy pres 20 recipients to share in equal parts any funds remaining in the Common Fund after the third 21 distribution.

ECF No. 87. Plaintiff asserts the Settlement’s terms provide for a cy pres 22 distribution to approved beneficiaries for any unclaimed funds, a fourth distribution is not 23 economically feasible, and the Court already preliminarily approved NCLC and Public 24 Justice as cy pres beneficiaries. ECF No. 87-1 at 12. 25 “In the class action context, cy pres refers to the practice of distributing settlement 26 funds not amenable to individual claims or meaningful pro rata distribution to nonprofit 27 organizations whose work is determined to indirectly benefit class members.” *Frank v. 28 Gaos*, 586 U.S. 485, 490–91 (2019).

Under the cy pres doctrine, class members “benefit— 1 albeit indirectly—from a defendant’s payment of funds to an appropriate third party.” In *re Google Inc.*, 21 F.4th at 1116; *Nachshin v. AOL, LLC*, 663 F.3d 1034, 1038 (9th Cir. 3 2011) (“In the context of class action settlements, a court may employ the cy pres doctrine 4 to put the unclaimed fund to its next best compensation use, e.g., for the aggregate, indirect, 5 prospective benefit of the class.”) (citation and quotation marks omitted).

6 In determining whether a proposed cy pres distribution is appropriate, the Court must 7 consider whether the distribution accounts for: (1) the nature of Plaintiff’s lawsuit, (2) the 8 objectives of the underlying statutes, and (3) the interests of the silent class members. See 9 *In re Google Inc.*, 21 F.4th at 1116 (quoting *Nachshin*, 663 F.3d at 1036, 1040).

The Ninth 10 Circuit has recognized these factors “guide judicial oversight of cy pres settlement 11 provisions” and “are designed to ensure that cy pres payments particularly ‘benefit the 12 plaintiff class.’” *Id.* Overall, the cy pres award must have a “direct and substantial nexus 13 to the interests of absent class members[.]” *Id.* (quoting *Lane v. Facebook, Inc.*, 696 F.3d 14 811, 821 (9th Cir.

2012)). 15 As described above, the Settlement Agreement provides for a cy pres distribution of 16 any remaining funds in the Common Fund when an additional pro rata distribution is no 17 longer administratively feasible. ECF No. 75-3, Settlement Agreement §§ III.G, III.U. 18 Plaintiff contends a fourth distribution is not administratively and economically feasible.

19 ECF No. 87-1 at 13. Based on the Settlement Administrator’s analysis of the check-cashing 20 rates for the initial and second distributions, an estimated \$719.20 to \$575.36 would remain 21 uncashed after a third distribution. ECF No. 87-2 ¶¶ 8–10.

The Settlement Administrator 22 estimates a fourth distribution would have administrative costs of \$1,211. *Id.* ¶11. As the 23 anticipated administrative costs are likely to exceed the anticipated uncashed funds 24 remaining after a third distribution, the Court is persuaded a fourth distribution would not 25 be economically or administratively feasible. 26 Accordingly, the Court must determine whether NCLC and Public Justice are 27 appropriate cy pres beneficiaries in this action.

Plaintiff filed this class action lawsuit to 28 obtain relief for alleged violations of the FDCPA and RFDCPA. The FDCPA was enacted 1 in response to “abundant evidence of the use of abusive, deceptive, and unfair debt 2 collection practices by many debt collectors” which “contribute to the number of personal 3 bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual 4 privacy.” 15 U.S.C. § 1692(a).

The FDPCA found existing laws at the time of its enactment 5 were inadequate to protect consumers; thus, its stated purpose is to “eliminate abusive debt 6 collection practices by debt

collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.” 15 U.S.C. § 1692(b), (e).

Similarly, the FDCPA’s purpose is “to prohibit debt collectors from engaging in unfair or deceptive acts or practices in the collection of consumer debts and small business debts and to require debtors to act fairly in entering into and honoring those debts.” Cal. Civ. Code § 1788.1. A. NCLC is a 501(c)(3) nonprofit organization “dedicated to consumer protection and the promotion of fairness and justice in the marketplace” and has “a goal of protecting consumers from, and redressing injuries caused by inaccurate, false and misleading statements or omissions by businesses[.]” ECF No. 87-4 ¶¶ 4, 5.

NCLC offers resources and trainings to educate consumers and attorneys about unfair debt collection practices including the FDCPA specifically through a legal manual, conferences, trainings, and other publications. *Id.* ¶¶ 6, 9, 12–13. According to a declaration filed by NCLC’s Executive Director, any cy pres funds awarded from this litigation “would provide training and education to private and legal service attorneys as well as housing counselors related to issues in unfair debt collection, bankruptcy and mortgage servicing as well as keeping related resources up to date.” *Id.* ¶ 2.

Plaintiff contends NCLC funds education programs and other resources that inform consumers about their rights and how to protect themselves from unfair, fraudulent, and abusive debt collection practices, which is in line with the nature of this lawsuit. ECF No. 87-1 at 17.

The Court agrees the interests of the silent class members would be advanced through a cy pres award to NCLC, as it offers numerous resources and trainings specifically tailored to unfair debt collection practices—the basis of Plaintiff’s claims—and the cy pres funds would be used for this purpose.

Finally, other district courts have approved cy pres awards to NCLC in consumer class actions like this one. See, e.g., *McKnight v. Uber Techs., Inc.*, No. 14-cv-05615-JST, 2017 WL 3427985, at *6 (N.D. Cal. Aug. 7, 2017) 6 (collecting cases); *Karcauskas v. Regreso Fin. Servs. LLC*, No. 15-cv-9225-FMO-RAOX, 2019 WL 13031925, at *6 (C.D. Cal. Nov. 12, 2019) (approving NCLC as cy pres beneficiary in FDCPA class action); *Durham v. Cont’l Cent.*

Credit, Inc., No. 07-cv-1763- 9 BTM-WMC, 2011 WL 2173769, at *1 (S.D. Cal. June 2, 2011) (same). 10 Accordingly, the Court finds NCLC is an appropriate cy pres recipient, as a distribution of any funds remaining after a third distribution would have a direct and substantial nexus to the interests of absent Class Members in this case. 13 B. Public Justice Foundation is a 501(c)(3) non-profit charitable organization that supports the

legal work of Public Justice, P.C., a national public interest law firm, and 16 “educates the public about the critical issues that legal work addresses.” ECF No. 87-3 ¶ 9.

17 Though the declaration filed by Public Justice’s Executive Director indicates generally it 18 “also engage[s] in a variety of legal educational efforts and informal consulting efforts 19 aimed at assisting attorneys who serve consumers seeking redress” and cites to numerous 20 cy pres awards in cases that “involved debt collection or other statutory consumer 21 claims[,]” Id. ¶¶ 10, 12, 13–20, the Court is not convinced a cy pres award to Public Justice 22 would properly account for the nature of Plaintiff’s lawsuit, the objectives of the FDCPA 23 and RFDCPA, or the interest of the silent class members in this case.

The declaration 24 vaguely states Public Justice will use awarded funds “to help advance the rights of 25 consumers throughout the country to be free of illegal practices and to enforce—and help 26 others enforce—consumer rights and consumer protection laws.” Id. ¶ 3. According to its 27 website, Public Justice “is a nonprofit legal advocacy organization that takes on purveyors 28 of corporate corruption, sexual abusers and harassers, and polluters who ravage the 1 environment.” Who We Are, <https://www.publicjustice.net/who-we-are/mission/> (last 2 visited May 6, 2025).

Although protecting consumers is one of the areas in which Public 3 Justice focuses its work, the settlement provides no assurance any funds would be used to 4 protect California consumers from unfair debt collection practices specifically, which is 5 the objective of Plaintiff’s lawsuit and the underlying statutes. See *Dennis v. Kellogg Co.*, 6 697 F.3d 858, 865 (9th Cir.

2012) (“Not just any worthy recipient can qualify as an 7 appropriate cy pres beneficiary. To avoid the many nascent dangers to the fairness of the 8 distribution process, [the Ninth Circuit] require[s] that there be a driving nexus between 9 the plaintiff class and the cy pres beneficiaries.”) (quotation marks and citation omitted). 10 The Court finds Plaintiff has failed to show distribution to Public Justice would have 11 a direct and substantial nexus to the interests of silent Class Members; thus, Plaintiff has 12 not established Public Justice is an appropriate cy pres beneficiary in this case.

13 IV. CONCLUSION 14 For the reasons set forth above, the Court GRANTS IN SUBSTANTIAL PART 15 Plaintiff’s Unopposed Motion for a Third Distribution from the Residual Common Fund 16 and Final Approval of Cy Pres Beneficiaries, ECF No. 87, and ORDERS as follows: 17 1. No later than May 14, 2025, payment in the amount of \$2,717 shall be 18 distributed from the Common Fund to Simpluris, Inc., the Court appointed third-party 19 Settlement Administrator, for the purpose of administering a third distribution.

20 2. No later than June 20, 2025, a third distribution in equal parts shall be made 21 from the remainder of the Common Fund to the 159 Settlement Class Members who cashed 22 their second

distribution Settlement checks. 23 3.

The Court APPROVES the National Consumer Law Center as a cy pres 24 recipient. 25 4. Should any funds remain following this third distribution (provided that the 26 check cashing rate is higher than 50%), any uncashed funds SHALL be distributed to 27 National Consumer Law Center. 28 / / 1 5. Plaintiff shall file a final accounting with the Court following the third 2 || distribution.

3 IT IS SO ORDERED. 4 ||Dated: May 6, 2025 4 Lf belo. th. 8a 5 ON. MICHELLE M. PETTIT ‘
United States Magistrate Judge 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28