

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

T.K., THROUGH HER MOTHER
SHERRI LESHORE, and A.S.,
THROUGH HER MOTHER, LAURA
LOPEZ, *individually and on behalf
of all others similarly situated,*

Plaintiffs,

v.

BYTEDANCE TECHNOLOGY CO.,
LTD., MUSICAL.LY INC. MUSICAL.LY
THE CAYMAN ISLANDS
CORPORATION,

Defendants.

Case No. 19-CV-7915

Judge John Robert Blakey

MEMORANDUM OPINION AND ORDER

Plaintiffs T.K., through her mother Sherri Leshore, and A.S., through her mother Laura Lopez, move for final approval of a proposed class action settlement (the “Proposed Settlement Agreement”), [81], and attorneys’ fees, costs, and service awards, [69]. Separately, Mark S., a member of the Proposed Settlement Class, objects to the settlement proposal. [24]; [74]. Mark S. also moves for attorneys’ fees and a service award. [71]. For the reasons explained below, this Court grants Plaintiffs’ motion for final approval, [81], and, subject to the modifications described herein, grants Plaintiffs’ motion for attorneys’ fees, costs, and service awards, [69]. This Court denies Mark S.’ motion for attorneys’ fees and service award, [71], and denies Plaintiffs’ motion for sanctions, [75].

I. Background¹

On May 12, 2020, Plaintiffs filed their initial motion [28] for final approval of the Proposed Settlement, a settlement this Court had preliminarily approved in December 2019, [13]. In March 2020, after finding that the Proposed Settlement Class had not received adequate notice of the settlement within the meaning of Federal Rule of Civil Procedure 23, this Court denied Plaintiffs' motion for final approval, along with Plaintiffs' related motion for attorneys' fees, costs, and service awards, [29], without prejudice. [62]. This Court required that Plaintiffs provide additional notice to the class before filing any renewed motion for final approval or renewed motion for fees, costs, and service awards. *Id.* In the same opinion and order, this Court denied Mark S.' motion to intervene. *Id.*

The following month, the parties reached an agreement regarding potentially overlapping claims in this action and in *In re TikTok, Inc., Consumer Privacy Litigation*, No. 20-CV-4699, MDL No. 2948 (N.D. Ill.) (the "TikTok MDL"), whereby Defendants confirmed that they would not seek to enforce their rights under the Proposed Settlement Agreement's release clause against members of the Proposed Settlement Class in the event class members also sought recovery in the TikTok MDL. [68]. Given that agreement, this Court denied Mark S.' motion to enforce this Court's preliminary injunction and for reassignment of the related TikTok MDL [51].

¹ This Court assumes familiarity with the factual background explained in its Memorandum Opinion and Order denying Plaintiff's first motion for class certification. [62]. This Court incorporates by reference the facts and findings explained therein.

In accordance with this Court’s March 2020 order, Plaintiffs launched their Supplemental Notice Program (“SNP”) on May 5, 2021. [81-2] at 2. During the SNP, Angeion Group LLC, the settlement administrator, received an additional 89,316 claim forms, bringing the total number of claim forms received to 193,928. *Id.* at 4. The launch of the SNP also triggered additional windows for members of the Proposed Settlement Class to submit objections to the Proposed Settlement or opt-out of the class entirely. *Id.* at 4–5. During the SNP no additional class members submitted objections or requested exclusion. *Id.*² The costs of the SNP amounted to \$30,035. [81-1] ¶ 10.

Plaintiffs now move for final approval of the Proposed Settlement. [81]. Plaintiffs and Mark S. both move for attorneys’ fees and service awards, with Plaintiffs also seeking costs. [69]; [71]. In connection with Mark S.’ motion for attorneys’ fees and service award, Plaintiffs’ have filed a motion for sanctions pursuant to Federal Rule of Civil Procedure 11. [75].

II. Plaintiffs’ Motion for Final Approval

A. Legal Standard

The class action suit constitutes “an ingenious device for economizing on the expense of litigation and enabling small claims to be litigated,” *Thorogood v. Sears, Roebuck & Co.*, 547 F.3d 742, 744 (7th Cir. 2008), one ideal for “situations . . . in which the potential recovery is too slight to support individual suits, but injury is substantial in the aggregate,” *Beaton v. SpeedyPC Software*, 907 F.3d 1018, 1030 (7th

² Mark S. supplemented his objections to the Proposed Settlement during the SNP. [74].

Cir. 2018) (quoting *Murray v. GMAC Mortg. Corp.*, 434 F.3d 948, 953 (7th Cir. 2006)). But with these economies come a significant risk. Defendants, who have the goal of “minimizing the sum of the damages they pay the class and the fees they pay the class counsel,” may find themselves “willing to trade small damages for high attorneys’ fees,” creating a “community of interest between class counsel, who control the plaintiff’s side of the case, and the defendants.” *Thorogood*, 547 F.3d at 744–45. And the class members may have stakes in the class action “too small to motivate them to supervise the lawyers in an effort to make sure that the lawyers will act in their best interests.” *Id.* at 744.

To help mitigate this risk, Rule 23 lays out requirements for settlement. Before approving a proposed settlement, a court must first find that the settlement is “fair, reasonable, and adequate.” *In re Subway Footlong Sandwich Mktg. & Sales Practices Litig.*, 869 F.3d 551, 555–56 (7th Cir. 2017) (quoting Fed. R. Civ. P. 23(e)(2)). This Court’s assessment of the Proposed Settlement under Rule 23 follows.

B. Analysis

1. Certification of the Settlement Class

Federal Rule of Civil Procedure 23 states that the “claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court’s approval.” Fed R. Civ. P. 23(e) (emphasis added). Accordingly, before approving the Proposed Settlement, this Court must certify the Proposed Settlement Class. This means that the Proposed Settlement Class has to satisfy Rule 23(a)’s requirements of numerosity, commonality, typicality, and adequacy. The class at

issue here must also meet Rule 23(b)(3)'s requirements that "questions of law or fact common to class members predominate over any questions affecting 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). Finally, the Seventh Circuit imposes an additional requirement: "the class must be 'identifiable as a class,'" meaning that the class definition "must be 'definite enough that the class can be ascertained.'" *Greene v. Mizuho Bank, Ltd.*, 327 F.R.D. 190, 194 (N.D. Ill. 2018) (alteration in original) (quoting *Oshana v. Coca-Cola Co.*, 472 F.3d 506, 513 (7th Cir. 2006)).

a. Definiteness and Ascertainability

To satisfy the requirement of definiteness and ascertainability, a class must "be defined clearly and based on objective criteria." *Mullins v. Direct Digital, LLC*, 795 F.3d 654, 659 (7th Cir. 2015). Under the "weak" version of ascertainability employed by the Seventh Circuit, courts worry most about "the adequacy of the class definition itself," not "whether, given an adequate class definition, it would be difficult to identify particular members of the class." *Id.* A class definition that "identifies a particular group of individuals . . . harmed in a particular way . . . during a specific period in particular areas" indicates a definite and ascertainable class. *Id.* at 660–61.

Here, the Proposed Settlement defines the class as "all persons residing in the United States who registered for or used the Musical.ly and/or TikTok software application prior to the Effective Date when under the age of 13 and their parents

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