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Ninth Circuit Confirms Heightened "Fair, Reasonable and Adequate" Standard and Knocks Attorneys' Fees (Again)

by Michele Floyd

In an unreported but nonetheless instructive opinion, the Ninth Circuit took another swipe at negotiated attorneys' fees in class action settlements. In *Maree v. Deutsche Lufthansa, AG*, Case No. 23-55795, 2025 WL 2268254 (9th Cir. Aug. 8, 2025), the Court vacated the District Court's final approval order and remanded for further consideration in part because the negotiated attorneys' fees seemed disproportionate in light of the "subtle signs of collusion" identified in *In re Bluetooth Headset Products Liability Litigation*, 654 F.3d 935, 947 (9th Cir. 2011)—i.e., the proportionality of attorneys' fees, a "clear sailing arrangement" under which the defendant agrees not to challenge the plaintiff's fee request, and the reversion of unclaimed funds to the defendant—and the recognized 25% fee benchmark.

The *Maree* plaintiff alleged that Lufthansa failed timely to provide refunds to customers after cancelling flights during the Covid pandemic. 2025 WL 2268254, at *1. Lufthansa was already providing refunds when the litigation was filed, so the parties settled quickly after an early mediation. The settlement, which was characterized as providing "interest" on already refunded flights, consisted of $10 cash or a $45 travel voucher that was subject to a host of limitations and a two-year expiration. *Id.* The total settlement payout was capped at $3.5 million, inclusive of administration costs and fees of $875,000. *Id.*

The Court concluded that the District Court gave short-shrift to *Bluetooth*'s required proportionality analysis by measuring the 25% benchmark against the $3.5 million cap rather than Lufthansa's actual $290,511 payments to the class. *Id.* at *3. The Court discounted a $500,000 distribution floor that Lufthansa voluntarily agreed to provide after preliminary approval. *Id.* The Court was similarly unimpressed with the value of the vouchers, finding that they looked a lot like coupons after applying CAFA's "coupon" test and noted that they inflated the overall value of the settlement. *Id.* at *4.

Takeaway: Class settlements are subject to "a higher level of scrutiny" and require an "exacting review" to ensure that class counsel does not secure a disproportionate benefit at the expense of the unnamed plaintiffs. *Id.* at *2 (citing *Roes, 1–2 v. SFBSC Mgmt., LLC*, 944 F.3d 1035, 1048–49 (9th Cir. 2019)). The *Maree* decision confirms that the District Court must make a reasoned and specific finding that a negotiated fee is proportional to the actual, not anticipated, value of the settlement.