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17
18 **UNITED STATES DISTRICT COURT**
CENTRAL DISTRICT OF CALIFORNIA
19 **WESTERN DIVISION**

20 **AMY FRIEDMAN, JUDI**
MILLER, KRYSTAL HENRY-
21 **MCARTHUR, and LISA**
22 **ROGERS on behalf of themselves**
and all others similarly situated,

23 **Plaintiffs,**

24 **v.**

25 **GUTHY-RENKER LLC and**
26 **WEN BY CHAZ DEAN, INC.,**

27 **Defendants.**
28

Case No. 2:14-cv-06009-ODW-AGR

SUPPLEMENTAL JOINT REPORT
RE: PLAINTIFFS' UNOPPOSED
MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT

Judge: Hon. Otis D. Wright II
Motion Date: July 24, 2017
Time: 1:30 p.m.
Location: Courtroom 11

1 **I. INTRODUCTION**

2 Pursuant to the Court’s June 5, 2017, Order (Dkt. No. 226), Named
3 Plaintiffs¹ Amy Friedman, Judi Miller, Krystal Henry-McArthur and Lisa Rogers,
4 on behalf of themselves and the Settlement Class, hereby submit the following
5 Joint² Report, advising the Court of the Parties’ plans to address the three issues
6 raised by the Court. First, the Parties have a plan to ensure that each Settlement
7 Class Member that made a valid Tier 1 claim will receive \$25, without reducing
8 the claims of Tier 2 claimants. Second, Named Plaintiffs Friedman and Miller
9 have voluntarily agreed to reduce their incentive award request by 20% to \$20,000
10 each, an amount that does not exceed the top amount available to Settlement Class
11 Members. Finally, Class Counsel have reduced their fee request by \$1,000,000,
12 which now equates to less than 21% of the common fund—well below the 25%
13 benchmark regularly deemed acceptable.

14 **II. ALL TIER 1 CLAIMS WILL BE FULLY FUNDED**

15 During the Final Approval Hearing, the Court made clear that Tier 1 must be
16 funded at \$25 per claimant without any *pro rata* reduction, stating: “Give them \$25
17 like you promised them. That’s what I want you to do.” *See* Exhibit A to
18 Supplemental Declaration of William Anderson (“Anderson Declaration”),
19 Excerpted Transcript of June 5, 2017, Hearing at Page 32, Lines 5-6.

20 The Court also made clear that Tier 2 claims that are filed without
21 supporting documentation should not receive more than undocumented Tier 1
22 claimants, because, in essence, each claimant has offered “the same quantum of
23 proof.” *See* Anderson Declaration, Exhibit A at Page 10, Line 20. This statement

24 _____

25 ¹ Unless otherwise indicated, all capitalized terms in this document shall have the
meaning ascribed to them in the Settlement Agreement. Dkt. No. 170-1.

26 ² Although this Joint Report is being submitted by Class Counsel, Defendants have
no opposition to the requests to reduce the Incentive Awards and Attorney’s Fees
27 ² Although this Joint Report is being submitted by Class Counsel, Defendants have
no opposition to the requests to reduce the Incentive Awards and Attorney’s Fees
28 and Costs, and join in the request to remove the cap on Tier 1 claims and increase
the cap for the Special Master payment.

1 is consistent with the Settlement Agreement, which states: “[a]ny Class Member
2 whose Tier 2 Claim is denied shall be considered to have submitted a Tier 1 Claim
3 ...” See Settlement Agreement at Section 6.B.1.

4 Because nearly 16,000 Tier 2 claims did not provide the Supporting
5 Documentation required by Section 6.B.2 of the Settlement Agreement, reverting
6 those claims to Tier 1 claims as the Court advised materially increases the funds
7 necessary to fully fund Tier 1, while still permitting properly documented Tier 2
8 claims to be fully funded.

9 In order to fully fund Tier 1 and ensure that each claimant receives \$25 as
10 instructed by the Court, the Parties request that the Court permit revision of the
11 Settlement Agreement to remove the \$5,000,000 cap on Tier 1 claims. As set forth
12 in the supplemental declarations of Settlement Administrator, Jeffrey Dahl
13 (Anderson Exh. B) and Special Master, Nan Nolan (Anderson Exh. C), removal of
14 the cap on Tier 1—when combined with the reduction of the Attorney’s Fees and
15 Costs request by \$1,000,000—will ensure that the common fund is large enough to
16 fully fund Tier 1 claims with no *pro rata* reduction. These changes still leave
17 sufficient funds to ensure that Tier 2 is also fully funded and paid consistent with
18 the Special Master’s scoring system, which was developed and implemented based
19 upon the Court approved Long Form Notice. As explained in the Nolan and Dahl
20 Declarations, none of the documented Tier 2 claims will be reduced or impacted at
21 all as a result of reallocating settlement funds to fully compensate all Tier 1
22 claimants. See Nolan Declaration at Paragraph 2 and Dahl Declaration at
23 Paragraph 2. Accordingly, this Court’s first enumerated concern has been resolved
24 by the Parties.

25 **III. VOLUNTARY REDUCTION OF FRIEDMAN AND MILLER**
26 **INCENTIVE AWARDS**

27 Named Plaintiffs Amy Friedman and Judi Miller originally requested
28 Incentive Awards of \$25,000 each. During the Final Approval Hearing, the Court

1 expressed concern about the amount Named Plaintiffs Friedman and Miller stand
2 to receive. After reviewing the Court's June 5, 2017 Order and transcript, Named
3 Plaintiffs Friedman and Miller agreed to reduce their Incentive Award request by
4 20% to \$20,000 each. This amount now mirrors the maximum amount that a
5 Settlement Class Member is eligible to receive through the proposed settlement.
6 Named Plaintiffs believe this request is reasonable when considered in light of the
7 substantial personal contributions they have made for the benefit of the entire
8 Settlement Class. Plaintiffs also recognize that ultimately the Incentive Award
9 amount is within the discretion of the Court. *See In re Mego Fin. Corp. Sec. Litig.*,
10 213 F.3d 454, 463 (9th Cir. 2000). This reduction should satisfy the second of this
11 Court's stated issues.

12 **IV. CLASS COUNSEL WILL SUBSTANTIALLY REDUCE THEIR FEE**
13 **REQUEST**

14 In light of the Court's statements at the Final Approval Hearing and in order
15 to ensure that all Tier 1 and Tier 2 claimants receive full value for their claims,
16 Class Counsel hereby reduce their fee request by \$1,000,000. This reduces the
17 total Attorney's Fees and Costs request to \$5,500,000, or 20.9% of the Settlement
18 Fund. As discussed in greater detail in Section III of the Memorandum of Law in
19 Support of Class Counsels' Unopposed Motion for Attorneys' Fees and Costs and
20 Class Representatives' Fee Award in Class Action Settlement (Dkt. No. 218-1),
21 Class Counsel assert that this reduced amount is fair, reasonable and adequate, in
22 light of the risks and costs associated with this litigation, the substantial full-value
23 recovery for the Settlement Class, and the fact that the revised request is well
24 below the 25% benchmark for common fund cases. As a result, the final issue
25 raised by the Court has also been addressed by the Parties.

26 **V. THE CAP ON SPECIAL MASTER FEES SHOULD BE REMOVED**

27 Additionally, the Parties further request that this Court approve an
28 amendment to the Settlement Agreement to remove the \$250,000 cap on fees

1 awarded to the Special Master. As set forth in the Special Master’s Declaration,
2 the number of Tier 2 claims submitted in this case far exceeded the expectations of
3 the Parties, the Settlement Administrator and the Special Master. (Anderson, Exh.
4 C). While the relatively modest harm suffered by the majority of Settlement Class
5 Members allows all Settlement Class Members to receive full value for their
6 claims, the amount of time required to review each Tier 2 claim has increased
7 substantially. Adjustment of the cap from \$250,000 to \$400,000 will allow the
8 Special Master to be fairly compensated for her time in this matter.

9 **VI. CONCLUSION**

10 For the foregoing reasons, the Parties respectfully request that the Court
11 permit the foregoing requested changes, grant Final Approval to the proposed
12 settlement, and enter the Proposed Final Approval Order attached as Exhibit D to
13 the Anderson Declaration.

14
15 DATED: June 30, 2017

JOHNSON & JOHNSON

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