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**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION**

JILL BRUNELLE, an Oregon resident, on behalf of herself and all similarly situated persons, **HEATHER DEWITT**, a Washington resident, on behalf of herself and all similarly situated persons

Plaintiffs,

v.

MY PILLOW, INC., a Minnesota Corporation,

Defendant.

Case No. 3:16-CV-02007-AC

MOTION TO STAY FURTHER PROCEEDINGS PENDING SETTLEMENT APPROVAL OF ALL RELATED MY PILLOW CASES IN SAN BERNARDINO COUNTY, CALIFORNIA

Motion

Plaintiffs Jill Brunelle (“Brunelle”) and Heather Dewitt (“Dewitt”) (“Plaintiffs”) and Defendant My Pillow, Inc. (“Defendant”), through their respective counsel seek to stay this case pending final approval of a settlement of this and all related cases filed against Defendant in a proceeding to be scheduled before the Superior Court of California, San Bernardino County. The parties request a stay of 180 days. This time period should allow the California court time to determine preliminary approval, hold hearings on objections, grant final approval, and allow the settlement to be funded.

After the final settlement approval in the San Bernardino County court, and concurrent with funding of the settlement, the *Brunelle* parties intend to file a motion with this court to lift the requested 180-day stay, and move for dismissal of all *Brunelle* claims with prejudice.

Relevant Facts

Plaintiffs’ counsel, Rick Klingbeil P.C., Brady Mertz P.C., and Foley Bezek Behle & Curtis, LLP are the lead firms in a coordinated effort to prosecute this national class action against Defendant. Plaintiffs’ counsel filed the first My Pillow BOGO class action claim before this court in October 2016 *Brunelle v. My Pillow*, 3:16-CV-02007-AC, Dkt. 1 (the “*Brunelle* case”). Declaration of Rick Klingbeil (“Klingbeil Decl.”), ¶ 2.

Plaintiffs conducted research and concluded that because My Pillow was a Minnesota corporation, Minnesota’s Consumer Protection statute and case law provided an opportunity to allege a national class against it based on Minnesota’s unlawful trade practice claims. On that basis, Plaintiff’s counsel, along with local Minnesota counsel Lockridge Grindal Nauen P.L.L.P., filed a national class action case against My Pillow in January 2017 in the Minnesota District court alleging nationwide claims under Minnesota’s consumer protection statutes. *Puckett v. My Pillow*, 17-00029-MJD-BRT, Dkt. 1 (the “*Puckett* case”). Klingbeil Decl., ¶ 3.

At approximately the same time, Plaintiffs learned for the first time that My Pillow had been sued in a class action proceeding in the state court of California, San Bernardino, over

statements that its pillow had improved health benefits and that case had tentatively settled. *Amiri v. My Pillow*, Case No. CIVDS1606479 (filed April 26, 2016). Reviewing the *Amiri* docket, Plaintiffs discovered that settlement of that case was preliminarily approved, the objection deadline had passed, and there was an upcoming hearing for final approval. *Id.* ¶ 4.

Plaintiffs concluded that the BOGO issues and claims underlying the *Brunelle* and *Puckett* cases were not pleaded in the *Amiri* case and that the release being granted by the class in *Amiri* was broad enough to cover Plaintiffs' BOGO lawsuit. Klingbeil Decl. Because of that, Plaintiffs made a motion to the *Amiri* Court for leave to file a belated objection, and then Plaintiffs filed an objection based on the breadth of the *Amiri* release. Klingbeil Decl. ¶ 5. At the final approval hearing, the *Amiri* Court denied final approval. *Id.*, ¶ 6.

After the *Amiri* Court denied final approval, My Pillow and the *Amiri* counsel continued their settlement efforts to include the BOGO claims asserted in the *Brunelle* and *Puckett* actions. Plaintiffs objected again. *Id.* ¶ 7. At a final approval hearing, the *Amiri* Court again denied final approval. Klingbeil Decl., ¶ 8.

While this was occurring, an additional BOGO case was filed in Montana in the United States District Court for the District of Montana, Billings Division. *Kautsky v. My Pillow, Inc.* No. 1:17-CV- 00006-SPW- TJC. Klingbeil Decl. ¶ 9. Plaintiffs in *Brunelle* and *Puckett* reached out to Montana counsel who then joined with Plaintiffs' team in the prosecution of this national class action. Klingbeil Decl. ¶ 10. My Pillow then filed comprehensive Motions to Dismiss in Oregon, Minnesota and Montana and a Motion to Stay in Minnesota. Klingbeil Decl. ¶ 11; *Brunelle*, Dkt. 18.

Plaintiffs filed a motion to appoint lead counsel in Minnesota and lengthy opposition briefs in response to the Motions to Dismiss in all three jurisdictions. Klingbeil Decl. ¶ 12; *Brunelle*, Dkt. 22. In addition, the District Court in Minnesota denied My Pillow's motion to stay. Klingbeil Decl. ¶ 13. (This court had similarly lifted a stay and placed this case on its

active docket. (Dkt. 14)). Shortly after that, Plaintiffs and My Pillow agreed to mediate. Klingbeil Decl. ¶ 14.

Settlement negotiations spanned approximately four months. During that time the parties exchanged informal settlement discovery including production of documents and calculations of class size. Klingbeil Decl. ¶ 15. They also exchanged lengthy legal briefs where both sides discussed their respective views on the status of the law on damages as a result of these BOGO claims. The parties did so to inform each other as to the strength and weakness of their respective legal positions. *Id.* Defendant denied, and continues to deny, any liability or wrongdoing of any kind associated with the claims alleged. *Id.*

The parties participated in a formal mediation on August 18, 2017 with the Honorable Peter Lichtman of Los Angeles, California (ret.). Judge Lichtman supervised numerous back and forth negotiations and finally resolved the matter when both sides agreed to his recommended “mediator’s compromise.” The result of the negotiations was a fair settlement based on the strengths and weaknesses of each party’s positions. Klingbeil Decl. ¶ 16.

At mediation, the parties and Judge Lichtman gave careful consideration to, and engaged in significant discussion regarding the proper venue to apply for settlement approval of the several cases filed against Defendant in this series of cases. The parties and settlement judge agreed that the most efficient and legally appropriate process would be to file a *Complaint in Intervention* for all BOGO class members in the *Amiri* matter pending in San Bernardino County, California court. Klingbeil Decl. ¶ 17.

This would allow the *Amiri* court to consider the motions for preliminary and final approval, and all other issues related to the settlement and settlement administration of both the underlying *Amiri* case, and the constellation of BOGO cases against Defendant filed elsewhere. The *Amiri* court has the most experience with the somewhat complicated procedural history in

this matter. Also, it has already considered the merits and valuation of the type of claims present in both *Amiri* and the *Brunelle*, *Puckett*, and *Kautsky* cases from its review of two proposed settlements to date. Overall, the *Amiri* court is in the best position to evaluate the fairness and adequacy of a settlement in the various inter-related cases pending against Defendant. Klingbeil Decl. ¶ 18.

Conclusion

For the reasons set forth above, Plaintiffs and Defendant jointly request that proceedings in this case be stayed for 180 days, subject to the right of any party to terminate the stay upon 30 days written notice to all counsel of record, and motion before this Court.

DATED: August 29, 2017.

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/s/ Rick Klingbeil

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