UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

DONALD PUCKETT, an Oregon resident, on behalf of himself and all similarly situated persons, **PATRICK KAVANAGH**, a Washington resident, on behalf of himself and all similarly situated persons, **THERESA CORDERO**, a California resident, on behalf of herself and all similarly situated persons,

Plaintiffs,

v.

MY PILLOW, INC.,

Defendant.

Case No. 17-cv-00029 (MJD/BRT)

DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO STAY

INTRODUCTION

Defendant My Pillow, Inc. ("My Pillow") brings this Motion to Stay ("Motion")[1] because a nationwide class settlement agreement has been executed in a separate lawsuit and a motion for preliminary approval has been granted. Both this case and the settled lawsuit, *Amiri v. My Pillow, Inc.*, San Bernardino Superior Court Case No. CIVDS1606479 (the "California Lawsuit"), involve the same My Pillow brand pillow products (the "Product") and consumer fraud-based causes of action against My Pillow based upon the marketing, advertising, and sale of the Product. On August 8, 2016, the California Superior Court granted preliminary approval of the proposed nationwide

[1] The instant Motion constitutes My Pillow's responsive pleading, as it is "addressed to the inherent power of the district court to control its own docket." *P.S.I. Nordic Track, Inc. v. Great Tan, Inc.*, 686 F. Supp. 738, 739 (D. Minn. 1987). *See also, Rogovsky Enter., Inc. v. Masterbrand Cabinets, Inc.*, 88 F.Supp. 3d 1034, 1039-40 (D. Minn. 2015).

settlement. Notice was thereafter provided to the class, with over 40,000 class members making claims. The class allegations here are essentially the same in both cases—i.e. that My Pillow's marketing, advertising, and sale of My Pillow was false and deceptive and violated certain state consumer protection laws. It is undisputed that Plaintiffs in this matter (the "Minnesota Plaintiffs") are members of the certified Settlement Class in the California Matter, as they entered an appearance as class members and objected to that settlement.

On January 30, 2017, the *Amiri* Court conducted a final approval hearing on the proposed settlement. The Minnesota Plaintiffs submitted objections to the proposed settlement with respect to the class notice and proposed release of claims by the Settlement Agreement. While the Court sustained the objections, it denied final approval without prejudice so that the parties could resubmit class notice documents for approval and re-noticing of the Settlement Class to provide more information about the released claims. The *Amiri* Court further scheduled a follow-up hearing to take place on April 24, 2017. The parties in the California Lawsuit are in the process of finalizing the revised notice documents (as per the Court's instruction) and plan to resubmit the notice for Court approval within the next two weeks. My Pillow believes that the revised notice will be sent to all class members prior to the currently-scheduled hearing date of April 24, 2017, in the California Lawsuit.

Given the fact the proposed class in this case and the California Lawsuit overlap, the Court should exercise its discretion to stay this matter pending approval of the revised notice program in the California Lawsuit. As further discussed below, courts have held

that where a duplicate proceeding may resolve or potentially impact a case in federal court, particularly where unnecessary judicial and party resources may be expended if the federal case proceeds, the federal court matter should be stayed. *See Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936); *Kramer v. NCS Pearson, Inc.*, No. 03-1166 (JRT/FLN), 2003 WL 21640494 (D. Minn. July 9, 2003). Moreover, further support for a stay comes from the doctrines of *res judicata* and release that are triggered by the settlement of the California Lawsuit. A temporary ninety (90) day stay is appropriate and will benefit the Court and the parties.

FACTUAL BACKGROUND

I. THE *PUCKETT* ACTION.

The Minnesota Plaintiffs filed this action on January 4, 2017. Dkt No. 1. The Minnesota Plaintiffs subsequently served Defendant on January 6, 2017.

The Minnesota Plaintiffs allege that My Pillow's advertising practices are fraudulent and violate the common law, as well as the Minnesota Consumer Fraud Act (Minn. Stat. § 325F.69, subd. 1), the False Statement in Advertising Act (Minn. Stat. § 325F.67), and the Uniform Deceptive Trade Practices Act (Minn. Stat. § 325D.44, subd. 1). *See* Dkt No. 1. My Pillow denies those allegations.

II. THE NATIONWIDE SETTLEMENT IN *AMIRI V. MY PILLOW, INC.*

On April 26, 2016, Armin Amiri filed a class action complaint against My Pillow in the Superior Court of the State of California, County of San Bernardino. Amiri's Complaint alleged that My Pillow's advertising practices were fraudulent and that they violated the common law, as well as the California Unfair Competition Law and the

California Consumer Legal Remedies Act. The class in the California Lawsuit included purchasers of the Product nationwide. My Pillow denied those allegations.

On August 5, 2016 – after several months of negotiations – Amiri and My Pillow executed an Amended Settlement Agreement (which replaced an earlier version of the Settlement Agreement) that provided for a nationwide settlement of all marketing, labeling and sales claims made by My Pillow from April 26, 2012 through the date of the Preliminary Approval Order (the "Settlement"). The Amended Settlement Agreement contains a Release that provides for the release of all these claims by Amiri and the nationwide class. (A copy of the Amended Settlement Agreement is attached as Exhibit A to the Declaration of Leah C. Janus ("Janus Decl.").)

On August 8, 2016, the California Superior Court granted preliminary of the proposed nationwide settlement. A Preliminary Approval Order was entered on October 13, 2016. (Janus Decl. Ex. B.) Thereafter, direct notice of the Settlement was provided to 1,355,462 class members (the same people who the Minnesota Plaintiffs seek to represent through this duplicative action). The summary notice was also published in the New York Times and Wall Street Journal, reaching an additional 1,800,000 potential class members, and was also extensively published on the internet. In total, approximately 40,000 class members made claims in the California Lawsuit.

On January 9, 2017, the Minnesota Plaintiffs filed an *Ex Parte* Application seeking leave to file objections to the Settlement. The Minnesota Plaintiffs' application and objections claim that they are members of the Settlement Class and would be bound by any judgment and release of claims in the *Amiri* case. A final fairness hearing was

held on January 30, 2017.[2] *See* Declaration of Jeffrey L. Richardson at ¶3. The court denied final approval of the settlement without prejudice, finding that additional notice to the class was required. *Id.* at ¶4. However, the court stated that the released claims in the Settlement would cover the Minnesota Plaintiffs' claims. *Id.*

The parties in the California Lawsuit are finalizing the revised notice paperwork for submission to the court for approval, and a hearing in the California Lawsuit is set for April 24, 2017. *Id.*

LEGAL STANDARD

A district court has the inherent power to stay proceedings in an action to control its docket, to conserve judicial resources, and to ensure that each matter is handled "with economy of time and effort for itself, for counsel, and for litigants." *Landis*, 299 U.S. at 254; *Lunde v. Helms*, 898 F.2d 1343, 1345 (8th Cir. 1990) (noting that power to stay proceedings is incidental to court's power to manage its docket); *Scheffler v. Equifax Info. Servs., LLC*, No. 15-3340 (JRT/FLN), 2016 WL 424969, (D. Minn. Feb. 3, 2016); *Kemp v. Tyson Seafood Grp., Inc.*, 19 F. Supp. 2d 961, 964 (D. Minn. 1998).

The party moving "for a stay has the burden of showing specific hardship or inequity if he or she is required to go forward." *Jones v. Clinton*, 72 F.3d 1354, 1364 (8th Cir. 1996) (citing *Landis*, 299 U.S. at 254-56), *aff'd*, 520 U.S. 681. The Court will also "weigh the competing interests of the parties, and the hardship or inequity a party may

[2] My Pillow has requested the transcript of the January 30, 2017 final approval hearing and, upon receipt, will file the transcript with the court for consideration in connection with this Motion.

suffer if a stay is granted." *In re Belinda Hanson*, No. 13-2991, 2013 WL 6571594, at *1 (D. Minn. Dec. 13, 2013) (quoting *Robinson v. Bank of Am., N.A.*, No. 11-2284, 2012 WL 2885587, at *1 (D. Minn. July 13, 2012)).

ARGUMENT

I. THE COURT SHOULD GRANT A TEMPORARY STAY OF THIS ACTION PENDING CLASS NOTICE AND FINAL APPROVAL OF THE SETTLEMENT.

Courts in the Eight Circuit and throughout the country have granted temporary stays in class actions where there is a pending settlement in a factually similar (but separate) case. *Kramer*, 2004 WL 21640494 (granting stay of proceedings on all issues, including those of class certification, in order to maximize judicial resources, until California court issued its final rulings on class settlement agreement in related action). *See also In re JPMorgan Chase LPI Hazard Litig.*, No. C-11-03058 JCS, 2013 WL 3829271 (N.D. Cal. July 23, 2013); *Wince v. Easterbrooke Cellular Corp*., 681 F. Supp.2d 688, 692 (N.D. W.Va. 2010) ("Courts routinely exercise this power and grant stays when a pending nationwide settlement could impact the claims [in the case before them]."); *Lindley v. Life Inv'rs Ins. Co*., 2009 WL 3296498 (N.D. Okla. Oct. 9, 2009) (granting stay pending result of fairness hearing of classwide settlement in similar case); *In Re RC2 Corp. Toy Lead Paint Prods. Liab. Litig.*, 2008 WL 548772 (N.D. Ill. Feb. 20, 2008) (granting stay pending final approval of settlement in another action involving similar putative classes and claims).

A stay of class action proceedings asserting claims "potentially barr[ed]" by a pending settlement in another class action will avoid a needless waste of litigation and

judicial resources. *See, e.g.*, *Meints v. Regis Corp*., No. 09-cv-2061, 2010 WL 625338, at *3 (S.D. Cal. Feb. 16, 2010) (granting motion to stay class action where pending class action settlement in another matter "may prevent Plaintiff from proceeding with this case as a class action as to any of her claims"); *Packer v. Power Balance, LLC*, 2011 WL 1099001, at *2 (D.N.J. Mar. 22, 2011) (granting stay pending consideration of nationwide class settlement, and noting "[i]t would be a waste of judicial resources for this Court to consider the merits of Plaintiff's Complaint at the same time [another judge] "is considering the nationwide settlement"); *see also Lessard v. Volkswagen Grp. of Am., Inc*., No. 16-cv-0754 (WMW/TNL), 2016 WL 3004631 (D. Minn. May 24, 2016) (staying case pending transfer to MDL proceeding and stating "[o]n balance, the interests of conserving judicial resources, avoiding duplicative or inconsistent results, and reducing the hardship to [defendant] outweigh the minimal prejudice that a stay may impose on Plaintiff").

Accordingly, and as described herein, each of the *Landis* factors applied here establishes this matter should be stayed.

A. The Orderly Course of Justice Will Be Promoted by Issuing a Stay.

1. The Settlement Will Simplify the Issues, Proof and Questions of Law

A compelling reason for a stay is to "preserve judicial economy and ensure the smooth progress of both cases." *Kramer*, 2003 WL 21640494. "[A] district court possesses inherent powers that are 'governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and

expeditious disposition of cases.'" *Dietz v. Bouldin*, 136 S. Ct. 1885, 1891, (2016).

Accordingly, where issues pending in state court or another proceeding will resolve or potentially impact issues or a case in federal court, a stay of the federal case is warranted under the *Landis* "orderly course of justice" analysis. *Kramer*, WL 21640494 (staying all proceedings pending approval of class settlement in another court); *see also Int'l Ass'n of Entrepreneurs of Am. v. Angoff*, 58 F.3d 1266, 1271 (8th Cir. 1995) (A motion to stay may be warranted when a similar action is pending in another court.).

Furthermore, the "parties and claims need not be identical in order for one action to be stayed or dismissed in deference to an earlier action." *Albert v. Blue Diamond Growers*, 2017 WL 213242 (S.D.N.Y. Jan. 9, 2017) (citation omitted); *Barapind v. Reno*, 72 F.Supp.2d 1132, 1147 (E.D.Cal. 1999)("[N]either the parties nor the issues must be identical.") (citing *Lecor, Inc. v. United States Dist. Ct., Central District of Cal.*, 502 F.2d 104, 105 (9th Cir. 1974)).

Here, a stay will promote the orderly course of justice. This matter and the California Lawsuit involve the same Class Members, same consumer fraud-based claims, and same defendant. If the California court approves the Settlement, it is possible this entire case will be resolved, with the exception of the execution of a voluntary dismissal. Thus, it would certainly conserve judicial resources to have the Settlement approved or least considered before this case progresses. In addition, if a stay is not issued, there is a risk of inconsistent rulings on identical issues.

2. The Application of the *Res Judicata* Doctrine will Simplify the Issues, Proof, and Questions of Law.

The doctrine of *res judicata* bars a claim if "(1) the first suit resulted in a final judgment on the merits; (2) the first suit was based on proper jurisdiction; (3) both suits involve the same parties (or those in privity with them); and (4) both suits are based upon the same claims or causes of action." *Jorgensen v. Stewart, Zlimen & Jungers, Ltd.*, No. 16-450(DSD/KMM), WL 6080200 (D. Minn. Oct. 17, 2016); *see also Banks v. Int'l Union Elec., Elec., Tech., Salaried & Mach. Workers*, 390 F.3d 1049, 1052 (8th Cir. 2004) (Eighth Circuit applies transactional test in determining whether two causes of action are the same for *res judicata* purposes); *Frank v. GE Capital Corp.*, No. 09-1892(DSD/SRN), 2010 WL 411132 (D. Minn. Jan. 28, 2010) ("[A] claim is barred by res judicata if it arises out of the same nucleus of operative facts as the prior claim.").

In the class action context, the doctrine of res judicata applies to bar class actions that are precluded by a prior judgment issued in a class action settlement. *Frankle v. Best Buy Stores, L.P.*, No. 08-5501 (JRT), 2015 WL 506265 (D. Minn. Feb. 6, 2015) ("Generally, principles of res judicata, or claim preclusion, apply to judgments in class actions as in other cases.")(quoting *Twigg v. Sears, Roebuck & Co.*, 153 F.3d 1222, 1226 (11th Cir. 1998)); *Roussel v. Wells Fargo Bank*, 2012 WL 5301909 (N.D. Cal. Oct. 25, 2012) ("[A] judgment in a class suit, including a judgment based on settlement of a class claim, binds members of the class."), citing *Matsushita Elec. Indus. Co. v. Epstein*, 516 U.S. 367, 373–74 (1996); *Cooper v. Fed. Reserve Bank*, 467 U.S. 867, 874 (1984), and *Hansberry v. Lee*, 311 U.S. 32, 41 (1940)); *Valerio v. Boise Cascade Corp.*, 80 F.R.D.

648-49 (N.D.Cal. 1978)("restricting the *res judicata* effect of class action settlements would lessen a defendant's incentive to settle").

Courts have applied *res judicata*, in part, based upon the assumption that the presiding court analyzed the settlement for fairness. *Valerio*, 80 F.R.D. at 648 (citing *Gibson v. Local 40, Supercargoes & Checkers of ILWU*, 543 F.2d 1259, 1265 (9th Cir. 1976) ("There is 'a duty upon the court to consider carefully the requirement of fair and adequate protection in view of the serious consequences of res judicata in class actions.'"); *Pittman v. Yoh Servs., LLC*, No. 08-1278, 2009 WL 1371004 (C.D.Cal. May 13, 2008) (refusing to analyze class settlement agreement for fairness during *res judicata* analysis because that was the duty of the court approving the settlement); *Blair v. Equifax Check Servs., Inc*., 181 F.3d 832, 838 (7th Cir. 1999) ("When the cases proceed in parallel, the first to reach judgment controls the other, through claim preclusion (res judicata).").

Moreover, a court's approval of a class action settlement constitutes a final judgment on the merits. *Frankle*, 2015 WL 506265. ("The Court entered a final judgment incorporating the parties' settlement in the . . . class action, and it is widely agreed that an earlier dismissal based on a settlement agreement constitutes a final judgment on the merits in a res judicata analysis.") (internal citations omitted); *see also Larken, Inc. v. Wray*, 189 F.3d 729, 732 (8th Cir. 1999) ("When the parties to a previous lawsuit agree to dismiss a claim with prejudice, such a dismissal constitutes a 'final judgment on the merits' for purposes of *res judicata*.").

If the Settlement is finally approved, the doctrine of *res judicata* will apply to bar the allegations in this case. Again, the claims, class, and defendant all overlap. During the hearing on the final approval of the Settlement, the Court stated that the Minnesota Plaintiffs claims would be covered by the release of claims in the Settlement Agreement. *See* Richardson Decl. at ¶4 ("[T]he proposed release language in the settlement agreement covers the BOGO claims"). If the Minnesota Plaintiffs wish to seek relief, they can submit a claim during the Settlement process, opt-out, or object after receiving revised Settlement notice. However, proceeding with this action now would be wasteful since this case could be barred if the Settlement is granted final approval and a concurrent judgment is entered. The Court should conserve resources by issuing a stay.

3. The Release of Class Claims will Simplify the Issues, Proof and Questions of Law.

The weight of authority holds that a court may "release not only those claims alleged in the complaint, but also a claim 'based on the identical factual predicate as that underlying the claims in the settled class action....'" *Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 748 (9th Cir. 2006) (citing *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268 (9th Cir. 1992); *TBK Partners, Ltd. v. Western Union Corp.*, 675 F.2d 456, 460 (2d Cir.1982)); *see also Hesse v. Sprint Corp.*, 598 F.3d 581, 590 (9th Cir. 2010) ("[F]ederal district courts [have] properly released claims not alleged in the underlying complaint where those claims depended on the same set of facts as the claims that gave rise to the settlement."); *Banks,* 390 F.3d at 1052 (Eighth Circuit applies transactional test for *res judicata*); *Frank*, 2010 WL 411132 ("[A] claim is barred by res judicata if it arises

out of the same nucleus of operative facts as the prior claim.")(citation omitted), and *Epstein v. MCA, Inc*., 179 F.3d 641, 644-45 (9th Cir. 1999) (discussing the Supreme Court's holding that members of a settlement class were bound by the Delaware Court of Chancery's release of federal claims) (citing *Matsushita,* 516 U.S. at 377, 379).[3]

This rule extends to any "factually related claims against parties not named as defendants…" *Reyn's Pasta Bella*, 442 F.3d at 748. It also extends to claims that were not asserted in the proceeding where the release was executed so long as the claims are factually related. *Hesse*, 598 F.3d at 591 (citing *Howard v. Am. Online Inc*., 208 F.3d 741 (9th Cir. 2000) (holding that a state court's approval of a settlement agreement could release not only the state law fraudulent billing claims before it, but also federal claims arising from the same billing practices)); *Lovell v. Mixon,* 719 F.2d 1373, 1376 (8th Cir. 1983) ("[R]es judicata. . . bars the relitigation of issues which were actually litigated or which *could* have been litigated in the first suit.)

The released claims in the California Matter Settlement provide another reason to stay this matter. *See* Janus Decl., Exhibit A at I.X. ("Settled Claims"). In objecting to the Settlement, the Minnesota Plaintiffs (and the California Court) agreed that their "BOGO" claims in this action would be covered by the Settlement. *See* Richardson Decl.

[3] Although the California Lawsuit is pending in California state court, the doctrine of release in a class settlement is the same. *Villacres v. ABM Indus. Inc.,* 189 Cal. App. 4th 562, 586, (Cal. Ct. App. 2010) ("[A] judgment pursuant to a class settlement can bar [subsequent] claims based on the allegations underlying the claims in the settled class action. This is true even though the precluded claim *was not presented*, and *could not have been presented*, in the class action itself." (emphasis in original) (quoting *In re Prudential Ins. Co. of Am.*, 261 F.3rd 355, 366 (3rd Cir. 2001)).

at ¶4. This broad release will cover the claims in this case should the Settlement be approved following the revised notice to the Settlement Class. Under the case law above, such a release is proper and, in fact, is a routine part of class settlements. Therefore, again, a stay to await a decision on the Settlement will promote judicial efficiency.

B. There Will Be Substantial Damage and Hardship to My Pillow Without a Stay.

Incurring duplicative litigation costs is one factor weighing in favor of a stay. *Frable v. Synchrony Bank*, No. 16-cv-0559 (DWF/HB), 2016 WL 6123248 (D. Minn. Oct. 17, 2016) ("[P]arties could incur unnecessary litigation fees and expenses if a stay is not granted."). Similarly, the possibility of unnecessary duplicative hearings or proceedings has been found to create hardship or damage weighing in favor of the stay. *Scheffler*, 2016 WL 424969 ("If the case is not stayed, the Court and the parties may spend time and effort on claims that later become moot."); *see also Velasquez v. Horel*, 2009 WL 2251612, at *1 (E.D. Cal. July 28, 2009) (granting stay where a possibility of duplicate hearings in proceedings existed); *Rounds v. Sisto*, 2009 WL 1346053, at *1 (E.D. Cal. May 11, 2009); *Castelan v. Campbell*, 2009 WL 1162964, at *1 (E.D. Cal. Apr. 29, 2009) (same); *Minor v. FedEx*, 2009 WL 1955816 (N.D. Cal. July 6, 2009) (stating that it "certainly appears to be a hardship to conduct pointless discovery that may well be moot…"); *Negotiated Data Solutions, LLC v. Dell Inc.*, 2008 WL 4279556, at *1-2 (N.D. Cal. Sept. 16, 2008) (finding hardships associated with unnecessary discovery outweighed other concerns).

As discussed above, this case and the California Lawsuit are duplicative proceedings by virtue of the Settlement. However, the California Lawsuit is in a more developed stage and is nearing a point where a Settlement may be finally approved and a judgment entered. Without a stay, My Pillow may incur the unnecessary costs of proceeding with discovery, hearings, and other litigation expenses. Such a situation would certainly impose hardship on My Pillow and a stay should be issued.

C. There Will Be No Damage and Hardship to the Minnesota Plaintiffs With a Stay.

A party who is merely required to delay resolution of a claim does not show sufficient damages or hardship to prevent a stay. *Scheffler*, 2016 WL 424969 ("delay in pursuing money damages does not outweigh the hardship to [defendant] of defending claims that may disappear in a matter of months."); *Kramer*, 2003 WL 21640494 (granting stay where plaintiffs would have "the opportunity to present argument regarding the settlement agreement, and presumably will be a participant in [the] fairness hearing. [That] court, not this one, is the proper venue for [plaintiff's] arguments about the merits of the settlement agreement."); *Witherspoon v. Bayer Healthcare Pharms. Inc.*, No. 4:13CV01912 ERW, 2013 WL 6069009 (E.D. Mo. Nov. 18, 2013)("Although Plaintiffs may be subjected to some — likely minimal — amount of prejudice, that prejudice is greatly outweighed by the judicial economy interests outlined by Defendant. The Court concludes both parties will benefit from coordinated pretrial management."); *ASIS Internet Servs. v. Member Source Media, LLC*, 2008 WL 4164822, at *2 (N.D.Cal. 2008), (citing *CMAX, Inc. v. Hall*, 300 F.2d 265 (9th Cir. 1962) (upholding district

court's decision to stay where "[d]elay of CMAX's suit would result, at worst, in delay in monetary recovery")).

In this case the only potential allegation of "damage" that the Minnesota Plaintiffs could credibly assert from a stay would be that their monetary claims are potentially delayed. This case is still in infancy, whereas the California Lawsuit has been pending since April 2016. Plaintiffs will have the opportunity to submit a claim in the Settlement pending approval of the revised notice and preliminary approval order and they will suffer no prejudice if the agreement if found to be fair and reasonable. The Minnesota Plaintiffs would also have the opportunity to opt-out of the proposed California Matter Settlement or object. In sum, a brief stay pending the court's decision on final approval in the California Lawsuit would narrow the issues if granted, and likely would make this case no longer viable.

CONCLUSION

For the foregoing reasons, this Motion should be granted and a temporary stay of at least ninety days should be issued pending approval of the Settlement.

Dated: February 13, 2017

s/ Leah C. Janus

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WORD COUNT
COMPLIANCE CERTIFICATE

I certify that this brief conforms to the requirements of LR 7.1(f) for a brief produced with a proportional font. The length of this brief is 3,996 words. This brief was prepared using Microsoft Word 2010 and the word processing program has been applied specifically to include all text, including headings, footnotes, and quotations for word count purposes.

Dated: February 13, 2017

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