

EXHIBIT A

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**Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse**

Gomez

Plaintiff/Petitioner(s)

VS.

Mi Pueblo San Jose, Inc.

Defendant/Respondent(s)

(Abbreviated Title)

No. RG07354914

Order

Motion for Preliminary Approval of Class
Settlement
Denied

The Motion for Preliminary Approval of Class Settlement was set for hearing on 07/22/2009 at 03:00 PM in Department 17 before the Honorable Steven A. Brick. The Tentative Ruling was published and has not been contested.

IT IS HEREBY ORDERED THAT:

The tentative ruling is affirmed as follows: The unopposed motion for preliminary approval is DENIED without prejudice to being refiled. The principal problems that the Court sees are as follows:

Documentation: Although plaintiffs brought a copy of their individual settlement agreement and of a partially executed memorandum of settlement with respect to the class claims at the last hearing, they have not provided the Court with an authenticated, fully executed final settlement agreement.

Fairness: The Court appreciates that plaintiffs have supplemented their motion with a declaration of mediator Michael Loeb. Given the nature of this settlement that declaration is very helpful. However, plaintiffs did not provide the Court with a clear explanation of the potential recovery for the claims that are being settled including all interest and penalties that are potentially recoverable. More is required under *Kullar v. Foot Locker Retail, Inc.*, (2008) 168 Cal. App. 4th 116, and *Clark v. American Residential Services LLC* (July 6, 2009) ___ Cal. App. 4th ___ (2009 WL 1912713). Given Mr. Loeb's view that resolution of the claims plaintiffs propose to dismiss without prejudice is reasonable, the Court will not require an assessment of the value of those claims at this time but will require better notice to the class about them.

Notice Issues: The proposed notice, in English and Spanish, should be revised as follows:

The class is entitled to know with more specificity the nature of the claims being dismissed without prejudice and that should they choose to pursue them individually they must act promptly. CRC 3.770(c).

The class is entitled to know of plaintiffs' individual settlements and that they were achieved in a way that did not prejudice the interests of the class.

The explanation of total recovery, less expenses, should include the dollar amounts sought for fees and costs, as well as the minimum net funds expected to be available to the class and to each member.

Order

A clear statement of the law of non-retaliation and defendant's commitment to comply should be made.

The sections of the notice describing the right to opt out should be separated from the right to object so that both are more clear and understandable.

A redlined version of the revised notice should accompany plaintiffs' new motion papers.

Plaintiffs must supply an exemplar of the envelope they propose to use for mailing of the notice. The exterior of the envelope must clearly inform the class members that it concerns a class action and that they might be entitled to receive money.

The notice must specify that as an alternative to coming to the court to review the pleadings and motion papers, the class members can examine the pleadings and papers by accessing the Court's Domain website at Alameda.courts.ca.gov. Clear instructions should be provided. In addition, it is the better practice for plaintiffs' counsel to have and utilize a website that contains all court filings and orders related to the proposed settlement, with clear instructions on how class members can access it.

Cy Pres recipients: It is preferable for the parties to identify the proposed cy pres recipients as part of the preliminary approval process. Recipients must comply with C.C.P. § 384. Worthwhile charities and other non-profits that are not permitted under § 384 will not be approved. Unless the parties select recipients who are identified in the statute, such as legal aid programs, or whose programs "will benefit the class or similarly situated persons, or that promote the law consistent with the objectives and purposes of the underlying cause of action . . ." the parties should submit materials explaining why a proposed recipient fits within § 384.

Attorneys fees: The Court will not approve the amount of attorneys' fees until final approval hearing. The Court cannot award attorneys fees without reviewing information about counsel's hourly rate and the time spent on the case. This is the law even if the parties have agreed that Defendants will not oppose the motion for fees. *Robbins v. Alibrandi* (2005) 127 Cal. App. 4th 438, 450-451. The Court will require counsel to provide sufficient information for a lodestar analysis, and recommends that counsel provide contemporaneous time records and task-based summaries. Given the interaction between the individual and class claims, the Court will require counsel to provide records of the hours spent on the individual claims as well as the class claims and an accounting of the amount of fees and costs taken by counsel in connection with the settlement of the individual claims.

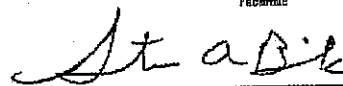
Service awards: The Court will not decide the amount of any incentive award until final approval hearing. In light of the modest requests made by plaintiffs the evidence submitted is adequate to support their requests. *Clark v. American Residential Services LLC* (July 6, 2009) ____ Cal. App. 4th ____ (2009 WL 1912713)]

When a further motion is prepared consistent with this order plaintiffs may contact Dept. 17 to obtain a new reservation. All papers in support of the motion must be filed and a complete set of courtesy copies delivered to Dept. 17 one week before the hearing.

The Court will CONTINUE the case management conference of this date to August 31, 2009 at 3:00 PM in Department 17 for tracking purposes. This conference date may be adjusted at a later time, to coincide with the hearing date for the motion.

Dated: 07/22/2009

Facsimile:



Judge Steven A. Brick