



January 18, 2005

COURT DISAPPROVES CLASS ACTION SETTLEMENT AND REMANDS CASE TO SPECIAL MASTER

(Azizian v. Federated Dept. Stores, Inc.)

Last week, U.S. District Court Judge Sandra B. Armstrong of the Northern District of California unexpectedly disapproved a class action settlement between cosmetic manufacturers and major department stores that would have provided consumers with \$175 million worth of cosmetics. While approving of the concept in general, she faulted the settlement's "first-come, first-served" feature that would leave most of the 38 million class members without any in-kind compensation. She also deferred ruling on the proposal that would pay up to \$24 million in attorney's fees until class members received the products, a move that the Washington Legal Foundation (WLF) had urged her to take. She then sent the matter back to the Special Master, former federal judge Charles Renfrew, who had initially recommended approval of both the settlement package and attorney's fees, and scheduled another hearing on any revised settlement for March 8, 2005.

In *Azizian v. Federated Department Stores*, a nationwide class action was filed five years ago in California against a group of department stores such as Lord & Taylor's, Nordstrom's, Saks Fifth Avenue, and Target, for antitrust violations with respect to the sale of cosmetics manufactured by companies such as Estee Lauder, L'Oreal, Christian Dior, and Chanel. The complaint claims that the defendants unlawfully agreed not to sell the cosmetics and fragrances at discount prices and to limit gift with purchase offers.

The companies and stores denied any liability, but agreed to pay up to \$24 million to class counsel to settle the case, and to give away to class members \$175 million in cosmetic products that have an average retail value of \$18-\$25 during a one-week giveaway period at the department stores. Many objectors, including the attorneys general of 11 states, sharply criticized this "first-come, first-served" scheme which would likely leave many class members without any compensation. Class action settlements usually include monetary compensation or, with respect to consumer class action cases, coupons or vouchers that allow class members to redeem them as a credit for future purchases of the consumer item that was the very subject of the class action lawsuit. The proposed settlement in this case was unique in that consumers would be given pre-selected products, such as perfume or lotion, only if they showed up at the department store during the specified period and only if giveaway products were still available.

On behalf of 33 Objectors, most of whom are women who purchased cosmetics during the specified time period, WLF filed several sets of objections and supplemental briefs, focusing

on the excessiveness of the attorney fee request in light of the weakness of the case. The plaintiffs' attorney's own consultant indicated that the case had only a seven percent chance of prevailing at trial. At the recent hearing, Judge Armstrong duly noted the weakness of the plaintiffs' case. WLF argued that awarding fees of \$24 million (which is almost double the hourly rate of the dozens of plaintiffs' lawyers who are participating in this case) would encourage the filing of meritless class actions. WLF argued that fees should be capped on the lodestar amount, which in this case, amounts to approximately \$13.5 million. The judge will determine what the fees should be after the giveaway program is over.

The Special Master is expected to hold another hearing in the next few weeks as he did on June 1, 2004, and to consider suggestions to improve the settlement to satisfy the concerns of Judge Armstrong and the other objectors.

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For further information contact WLF Senior Executive Counsel Paul Kamenar at 202-588-0302. WLF's briefs in the case are available on WLF's website at www.wlf.org.