

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DANIEL SCHAFFER,

No. 06-0310 MMC

Plaintiff

**ORDER DENYING ROBERT
ANDERSON'S MOTION TO APPROVE
LATE CLAIM**

v.

COUNTY OF ALAMEDA, et al.,

Defendants

_____ /

Before the Court is claimant Robert Anderson's ("Anderson") letter, dated January 7, 2009 and filed by the Clerk of the Court on January 9, 2009, which letter the Court has construed as a motion to approve a late claim in the above-titled class action. (See Order, filed January 30, 2009.) Anderson argues that because he did not learn of the instant action until after the deadline to file a claim had passed, the Court should exercise its discretion to allow his late claim.¹ At the Court's direction, class counsel has filed two responses to Anderson's motion, and Anderson, with leave of court, has filed a reply. Having read and considered the parties' respective submissions, the Court rules as follows.

¹According to class counsel, if Anderson's claim had been timely submitted, he likely would have received a payment of \$35.00.

1 The deadline to file claims in the above-titled class action was October 11, 2007.
2 Notice of the settlement, including notice of said deadline, was provided by mail to the last
3 known address defendants had available for each class member,² and was also provided in
4 four newspapers of general circulation. (See Order, filed November 26, 2007, ¶ 1.)
5 Additionally, reminder postcards were mailed by the Settlement Administrator to thousands
6 of potential claimants who had not submitted claims. (See Fitzgerald Decl., filed November
7 5, 2007, ¶ 10.) Consequently, to the extent Anderson’s motion may be construed as
8 implicitly challenging the form of notice provided, the Court finds the methods employed
9 were “the best notice that [was] practicable under the circumstances.” See Fed. R. Civ. P
10 23(c)(2)(B).

11 Turning to the issue of whether there exists sufficient grounds to allow a late claim,
12 the Court initially observes that “in the distribution of a large class action settlement fund, a
13 cutoff date is essential and at some point the matter must be terminated.” See In re
14 Gypsum Antitrust Cases, 565 F.2d 1123, 1127-28 (9th Cir. 1977) (internal quotation and
15 citation omitted). Here, consistent with the Court’s having set a deadline to submit claims,
16 and the best practicable method of providing notice of the deadline having been employed,
17 no late claims received to date have been paid by the Settlement Administrator. (See
18 Class Counsel’s Supp. Response, filed February 19, 2009, at 2:18-19.) Although there
19 may exist circumstances under which it may be proper to grant a late claim, such as where
20 a claimant requests a claim form before the deadline and does not receive the form until
21 after the deadline has passed, see, e.g., In re Gypsum, 565 F.2d at 1128 n.7, a class
22 member’s lack of actual notice of the deadline until after it has passed is, standing alone,

24 ²The Settlement Administrator, who mailed the notices to class members, did not
25 simply rely on the addresses provided by defendants. Rather, the Settlement Administrator
26 processed the names and addresses it received from defendants through the National
27 Change of Address Database and updated the addresses before the initial mailing, (see
28 Fitzgerald Decl., filed November 5, 2007, ¶ 2), remailed notices returned by the United
States Postal Service with updated addresses (see id. ¶ 8), and, to the extent notices were
returned as undeliverable, employed a “third party locator” who was able to locate updated
addresses for the majority of claimants whose notices had been returned as undeliverable
(see id. ¶ 9).

1 insufficient to warrant relief, particularly where, as here, no late claims have been paid.
2 See id. at 1128 (affirming district court's denial of late claim where claimant "made no
3 showing that its claim was treated in a fashion inconsistent with those of other claimants
4 similarly situated"; stating that although it is "regrettable" late claims were not paid, "there
5 has to be a cutoff point").

6 Accordingly, Anderson's motion is hereby DENIED.

7 **IT IS SO ORDERED.**

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9 Dated: March 17, 2009

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11 MAXINE M. CHESNEY
12 United States District Judge
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