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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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11 JOSEPH GLASS, et al.,

No. C-06-4068 MMC

12 Plaintiffs,

**ORDER RE: LETTER FROM CLAIMANT
MARK R. HURWITZ; DIRECTIONS TO
PARTIES**

13 v.

14 UBS FINANCIAL SERVICES, INC.,

15 Defendants
16 _____/

17 The Court is in receipt a letter from claimant Mark R. Hurwitz ("Hurwitz"), dated
18 December 14, 2009 and filed December 15, 2009. In his letter, Hurwitz, who states he was
19 referred to the Court by counsel for one of the parties hereto, requests that he be
20 "approved for inclusion," which request the Court construes as a request that the claim
21 form he submitted to the Claims Administrator be approved.

22 According to emails and other documentation attached to Hurwitz's letter,
23 (1) Hurwitz did not receive the claim form sent to him in 2006 because he had moved from
24 the address in defendants' files (see Letter, sixth unnumbered page attached thereto);
25 (2) in 2008, Hurwitz, having belatedly learned of the settlement in the above-titled action,
26 contacted the office of Kevin McNerney ("McNerney"), counsel for plaintiffs,¹ and was
27 _____

28 ¹In his letter, Hurwitz refers to McNerney as counsel for defendants, but, in fact,
McNerney represents the class.

1 advised to send a claim form to the Claims Administrator along with an explanation as to
2 why the form was being submitted late (see id.); (3) on or about August 2, 2008, Hurwitz
3 sent to the claims administrator his claim form and explanation (see id., first through fourth
4 unnumbered pages attached thereto); (4) on December 11, 2009, Hurwitz contacted
5 McInerney's office to request the Court's address, having been told by McInerney the night
6 before, according to Hurwitz, that Hurwitz should "write" to the Court and "explain
7 [Hurwitz's] circumstance" (see id., eighth unnumbered page attached thereto); and (5) on
8 December 14, 2009, a paralegal in McInerney's office provided Hurwitz with the Court's
9 address, stating, "I wish you the best of luck" (see id.). Additionally, Hurwitz's letter states
10 that between August 2, 2008 and December 11, 2009, he had contacted McInerney,
11 apparently on multiple occasions, about the status of his claim form and was advised that
12 "the case was pending appeal" and that "they would not know about [Hurwitz's] inclusion
13 until that was resolved." (See Letter at 1.) Further, Hurwitz's letter continues, "Now that
14 this is out of appeal, I was instructed to write to you." (See id. at 2.)

15 The Court's order approving the parties' Amended Joint Stipulation of Settlement
16 and Release ("Settlement") provides that the Court "retains continuing jurisdiction over the
17 interpretation, implementation, administration and enforcement of the terms of the
18 Settlement." (See Order Granting Joint Mot. for Final Approval; Judgment, filed January
19 27, 2007, ¶ 15.) The Settlement provides that the "Claims Administrator will timely notify
20 claimants whose claims are untimely or denied for other reasons." (See Settlement, filed
21 August 21, 2006, ¶ 46.) The Settlement agreement also provides that "[t]he parties shall
22 use their best efforts . . . to effectuate the terms of [the] Settlement." (See id. ¶ 56.)

23 The precise nature of any controversy that may exist between Hurwitz and either or
24 both of the parties is not clear. Specifically, it is unclear whether the Claims Administrator
25 has notified Hurwitz that his claim has been denied or whether the Claims Administrator
26 has failed to take any action on the claim, whether at the request of any party or otherwise.
27 Nor is it clear why plaintiff's counsel was of the view that Hurwitz should directly contact the
28 Court, instead of the parties' themselves using their best efforts to resolve any controversy

1 that may exist.

2 Accordingly, the Court hereby DIRECTS the parties to meet and confer, no later
3 than January 8, 2010, for the purpose of determining what action, if any, has been taken by
4 the Claims Administrator regarding Hurwitz's claim. Further, the Court hereby DIRECTS
5 the parties to file and serve on Hurwitz, no later than January 22, 2010, a joint statement
6 advising the Court as to the status of Hurwitz's claim. If the claim has not been approved,
7 the parties should provide a copy of the notice of denial sent to Hurwitz by the Claims
8 Administrator, and, further, should state why, in light of the particular facts presented, the
9 claim should not be approved. See, e.g., In re Gypsum Antitrust Cases, 565 F.2d 1123,
10 1127-28 (9th Cir. 1977). Alternatively, if the claim remains pending, the parties should
11 provide the reason(s) the Claims Administrator has been unable to make a determination,
12 and what specific steps the parties intend to take to resolve the matter.

13 **IT IS SO ORDERED.**

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15 Dated: December 18, 2009

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17 MAXINE M. CHESNEY
18 United States District Judge
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