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28United States District Court
For the Northern District of California

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

MICHELLE SIMS,

No. C-07-1510 MMC

Plaintiff,

v.

**ORDER RE: JOINT SUPPLEMENTAL
SUBMISSION REGARDING
CHARITABLE DISTRIBUTION;
VACATING OCTOBER 2, 2009 HEARING**

CELLCO PARTNERSHIP, d/b/a VERIZON
WIRELESS,

Defendant

Before the Court is the parties' Joint Supplemental Submission Regarding Charitable Distribution in Support of Final Approval of Settlement, filed September 29, 2009. Having read and considered said filing, as well as the parties' Joint Submission Regarding Charitable Distribution Pursuant to Settlement Agreement, filed August 24, 2009, the Court rules as follows.¹

In the first of the above-described supplemental filings, the parties, relying, in essence, on the doctrine of cy pres, seek approval of their proposal that excess funds be distributed to specified charities in the form of cash rather than in the form of goods and services, which the parties had initially proposed. See, e.g., In re Compact Disc Minimum Advertised Price Antitrust Litigation, 236 F.R.D. 48, 50-52 (D. Me. 2006) (approving, in context of class action settlement, parties' agreement that excess monies remaining in

¹The hearing scheduled for October 2, 2009 is hereby VACATED.

1 settlement fund would be “subject to cy pres distribution”); see also Estate of Puckett, 111
2 Cal. App. 3d 46, 48, 50-53 (1980) (noting cy pres “is an equitable power” that allows courts
3 “to meet unexpected contingencies” by directing disposition of property to a “related
4 charitable purpose”; holding where terms of trust provided interest earned thereby was to
5 be used to fund two scholarships, and thereafter interest earned “substantially exceed[ed]”
6 amount to be used therefor,” trial court should “determine the use of the surplus income
7 applying the cy pres doctrine”).

8 In the second of the above-described supplemental filings, the parties assert it is
9 unnecessary to provide notice to the class of the proposed revision. A district court has the
10 discretion, in order to “protect class members and fairly conduct the action,” to direct the
11 parties to provide “appropriate notice to some or all class members” of “any step in the
12 action,” see Fed. R. Civ. P. 23(d)(1)(B), and must direct such notice if “due process” so
13 requires with respect to the particular “step” in question, see In re Gypsum Antitrust Cases,
14 565 F.2d 1123, 1127 (9th Cir. 1977). “In [the latter] respect the trial court has an obligation
15 to those not before it to ensure that they are apprised of proceedings that may finally affect
16 them.” See id.²

17 Here, as the parties correctly observe, the class has been given notice that in the
18 event of an excess of funds, such excess would be used to make charitable donations; no
19 class member filed an objection to that term, or to any other term, of the proposed
20 settlement. The proposed revision, specifically, distribution of the excess funds in the form
21 of cash rather than in goods and services, would have no effect on the amount of funds
22 that will be distributed to any class member. Consequently, the Court finds due process
23 does not require further notice be provided to the class members, nor will the Court
24 exercise its discretion to require such notice, given the delay in the distribution of payments
25 to the class and additional expenditures attendant thereto.

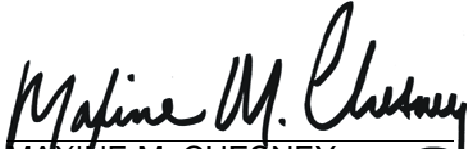
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27 ²Where, as here, the parties propose to settle claims on behalf of a class, the class
28 must be given notice of the proposed settlement and of the right to opt out of the
proceedings. See id. at 1125-26. The instant class previously received such notice. (See
Waugh Decl., filed July 10, 2009, ¶¶ 4-6, Ex. A.)

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Accordingly, the parties will not be ordered to provide notice to the class of the proposed revision, and by separate order, the Court will approve the settlement as presently proposed.

IT IS SO ORDERED.

Dated: October 1, 2009


MAXINE M. CHESNEY
United States District Judge