

United States District Court
the Northern District of California

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District Court
of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

8 BRIAN MAS, No. C-10-1396 EMC
9 Plaintiff,
10 v. **ORDER RE ADDITIONAL
11 CUMULUS MEDIA INC.,
12 Defendant.**
Court
nia

**ORDER RE ADDITIONAL BRIEFING
FOR OCTOBER 28, 2011 HEARING**

United States
For the Northern
15 The parties' joint motion for preliminary approval is currently set for hearing on October 28,
16 2011. The Court has reviewed the papers submitted with respect to that motion. Having reviewed
17 the papers, the Court hereby orders that the parties be prepared to discuss the following issues at the
18 October 28 hearing. In addition, where additional briefing is requested, it is so noted below. Any
19 additional briefing shall be filed by October 19, 2011.

20 A. Claims Procedure and Claims Rate

21 The parties should be prepared to discuss the necessity of having a claims procedure. In
22 addition, the parties should be prepared to discuss what they anticipate the claims rate will be.

23 B. Time to Submit Claim, Object, and/or Opt Out

24 In the motion, the parties state that a class member may submit a claim or opt out by *faxing*
25 or *postmarking* the claim or request for exclusion within 60 days of the date of the notice; however,
26 a class member who objects must ensure that the objection is *received* within 60 days of the date of
27 the notice. *See* Mot. at 12, 19. The notice is not consistent. It states that not only objectors but also
28 opt-outs must ensure that their objections or requests for exclusion are *received* within 60 days. *See*

1 Not. at 2. (In addition, the notice refers only to mailing as an option on page 2, and not faxing as an
2 alternative. *See* Not. at 2.) The parties should be prepared to address this inconsistency at the
3 hearing.

4 In addition, the parties should address in supplemental briefing why, as a matter of fairness,
5 objectors and/or opt-outs should not also be entitled to have their objections or requests for
6 exclusion faxed or postmarked within 60 days.

7 C. Deficient Claim Form

8 In paragraph D.15.e.iv of the settlement agreement, deficient claim forms are addressed. A
9 class member who submits a deficient claim form is to be notified of such; however, he or she may
10 correct the form only if the submission can be done within 60 days of the original class notice. *See*
11 Stip. ¶ D.15.e.iv. It is not clear why a class member who submits a deficient claim form on, *e.g.*, the
12 60th day should not be given a brief time period thereafter to correct the deficiency. The parties
13 should address this issue in supplemental briefing.

14 D. Reverter

15 In their motion, the parties state that any undisbursed funds (“residuum”) shall revert back to
16 Defendant. However, the settlement agreement provides that undisbursed funds shall revert to a cy
17 pres account. *See* Stip. ¶ D.14. Presumably, the settlement agreement governs. If not, then the
18 parties should in supplemental briefing explain the discrepancy and why a reversion rather than cy
19 press is provided.

20 E. Amount Offered in Settlement

21 The motion identifies the amount of the settlement, but it is not clear from the papers what
22 are the maximum damages that Plaintiff and/or the class could have obtained, assuming that they
23 prevailed after a trial on the merits. Additional briefing on this issue is requested.

24 F. Strengths and Weaknesses of Plaintiff’s Case

25 In the motion, the parties have not provided any specifics about the strengths and/or
26 weaknesses of the various claims asserted in the class action complaint. Additional briefing on this
27 issue is requested.

28

1 G. Depositions

2 In their motion, the parties assert that numerous depositions were taken. In supplemental
3 briefing, the parties shall provide a more detailed description as to the exact number of depositions,
4 identity of the deponents, and the relevance of the witness.

5 H. Incentive Awards

6 The settlement agreement provides that Mr. Mas may be awarded \$20,000, Ms. Stanton
7 \$15,000, and Ms. Phillips \$10,000 as incentive awards. The parties should address in supplemental
8 briefing why awards in these amounts are justified. As part of this supplemental briefing, the parties
9 should specify the number of hours each individual has spent on the litigation and what specific
10 claims are being given up by each individual that are different from those being given up by the
11 class.

12 I. Class Notice

13 1. Objecting and Submitting Claim

14 On pages 1, 2, and 7 of the notice, it is not clear that a class member may both object and
15 submit a claim at the same time – and that, if a class member objects but fails to submit a claim, then
16 he or she risks getting no settlement share if the Court approves the settlement. The Court
17 acknowledges that these points are made in a subsequent part of the notice (pages 9 and 10) but,
18 arguably, they should be made at the outset of the notice as well. In addition, on pages 9 and 10,
19 these same points should arguably be highlighted by using bold and/or underlining.

20 2. Summary of Release

21 On page 7 of the notice, it is not clear why the summary of the release does not include a
22 statement that claims that *could* have been asserted are also being released. The summary should
23 be enhanced.

24 3. Incorrect Courtroom

25 On pages 8 and 10 of the notice, the wrong courtroom is identified (Courtroom C instead of
26 Courtroom 5). In addition, for purposes of clarity, it may be useful to include the floor of the correct
27 courtroom (*i.e.*, 17th floor).

4. Objectors

2 On page 10 of the notice, the notice suggests that an objector must submit a notice of intent
3 to appear in order to object. *See* Not. at 10. However, the parties' settlement agreement indicates
4 that an objector may – but is not required to – appear. *See* Stip. ¶ 21. This inconsistency should be
5 addressed in supplemental briefing or removed from the proposed notice.

5. Review of Court File

7 On page 11, the notice states that a class member may review the Court file from 9:00 a.m. to
8 1:00 p.m. *See* Not. at 11. However, a file may be reviewed up until only 12:45 p.m. in the Clerk's
9 Office.

10 || J. Claim Form

11 At the top, the claim form states that “**Incomplete and/or late Claim Forms will be**
12 **rejected.**” Arguably, the claim form should state: “**Incomplete, unsigned, and/or late Claim**
13 **Forms will be rejected.**”

14 At the end, the claim form notes: “[Note: You must complete, sign and timely submit this
15 original Claim Form or your claim may be denied.]” Arguably, the claim form should state that
16 the claim *will* be denied to be consistent with the above. In addition, this particular statement should
17 arguably be broken out in a separate paragraph and put in ALL CAPS so that it will be highlighted
18 to the class members.

19 | K. Rule 23(a) and (b) Requirements

20 The proposed order should include language about the Rule 23(a) and (b) requirements.

22 || IT IS SO ORDERED.

24 | Dated: October 12, 2011


EDWARD M. CHEN
United States District Judge