

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3
4 RACHEL HOCHSTETLER, et al.,

5 Plaintiffs,

6 v.

7 PACIFIC GATEWAY CONCESSIONS
8 LLC,

9 Defendant.

Case No. 14-cv-04748-TEH

**ORDER RE: CY PRES RECIPIENT
LETTER**

10 On June 7, 2016, the Court granted the Parties' Motions for Final Approval of Class
11 Action Settlement, for Award of Attorney's Fees and Costs, and for Incentive Payments.
12 ECF No. 57. In granting the motions, the Court ordered: "[i]f any residual funds from the
13 Settlement Fund remain after payments are made to the settlement Class members through
14 the distribution of [Pacific Gateway Concession ("PGC")] Gift Cards, any and all such
15 residual funds will be distributed to Consumers Union of the United States." Id. ¶ 18. The
16 parties' Joint Settlement Agreement clarifies that all residual funds are to be paid "in the
17 form of PGC Gift Cards." ECF No. 37-1 at 3. Additionally, the Court "retain[ed]
18 continuing jurisdiction to interpret, implement, and enforce the Settlement, and all orders
19 and judgment entered in connection therewith." Id. ¶ 20.

20 The Court is now in receipt of a letter directed to the Court from Elisa Obdabashian
21 of Consumers Union. See ECF No. 58. Pursuant to the Settlement Agreement, Consumers
22 Union received a cy pres distribution of \$793,000 in the form of 7,993 gift cards worth
23 \$100 each. Consumers Union "accepted the award with the hope of being able to use
24 proceeds from the sale of the cards to advocate on behalf of consumer protections in the
25 financial marketplace." However, the organization has found most PGC stores have said
26 they would not accept the gift cards¹, thus leaving Consumer Union "unable to responsibly

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28 ¹ In support of these statements, Ms. Obdabashian submitted a spreadsheet noting the organization's efforts in clarifying which PGC stores accepted the gift cards that

1 sell the cards in order to use the proceeds for [its] consumer advocacy work.” In short,
2 Consumers Union claims Defendant PGC “has ended up paying very little, if anything,
3 toward remedying the abuses outlined in this settlement.” Id.

4 These findings are particularly worrisome and troubling to the Court. Indeed, the
5 entire settlement agreement would be greatly undermined should Consumers Union not be
6 able to purposefully use the gift cards for promoting consumer advocacy work. See
7 *Nachshin v. AOL, LLC*, 663 F.3d 1034, 1036 (9th Cir. 2011) (“Cy pres distributions must
8 account for the nature of the plaintiffs’ lawsuit, the objectives of the underlying statutes,
9 and the interests of the silent class members”).

10 Fortunately, counsel for Defendant, upon receiving a copy of Ms. Odabashian’s
11 letter, submitted its own letter seeking “to assure the Court that PGC will honor all gift
12 cards and is taking immediate steps to address the issues raised in Ms. Odabashian’s letter
13 and the enclosed spreadsheet.” ECF No. 59. The Court accepts Defendant’s invitation to
14 “file a declaration attesting to the efforts described [in its letter] to ensure that the gift cards
15 are honored.” Id. at 2.

16 Defendant shall submit the declaration by **April 12, 2017** and shall include in its
17 declaration a date by which the problem shall be fully and completely resolved. The Court
18 advises Defendant to make the resolution of this problem a matter of the highest priority.

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20 **IT IS SO ORDERED.**

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22 Dated: 4/5/17



THELTON E. HENDERSON
United States District Judge

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28 Consumers Union was awarded. See ECF No. 58-1. The spreadsheet lists several PGC
stores which stated they do not accept PGC gift cards.