

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

IN RE SENA WEIGHT LOSS LITIGATION,

Case No. 11-CV-1650-YGR

And consolidated actions

**ORDER RE: *IN CAMERA* REVIEW OF
SETTLEMENT AGREEMENTS**

At the joint status conference conducted on Friday, April 13, 2012, the Court inquired regarding the stipulations of dismissal submitted by individual plaintiffs and named class representatives Linda Breeding (Dkt. No. 121), Melanie Gordon (Dkt. No. 120) and Polin Mahboubian (Dkt. No. 22 in related action 4:11-cv-5516). The stipulations are for dismissal of each person's individual claims only, pursuant to individual settlement agreements reached between them and Defendant Sensa Products, LLC.

District courts have the obligation to oversee class actions in order to safeguard the integrity of the class mechanism and ensure it is not abused by named plaintiffs or their counsel. *See Shelton v. Pargo, Inc.*, 582 F.2d 1298, 1306 (4th Cir. 1978); *Diaz v. Trust Territory of the Pacific Islands*, 876 F.2d 1401, 1408 (9th Cir. 1989). The 2003 revisions to Rule 23(e) of the Federal Rules of Civil Procedure do not require notice and court approval of a settlement prior to certification of a class. On the other hand, under Rule 23(d)(1), "the Court may require notice of 'any step in the action' 'to protect class members and fairly conduct the action.'" *Mahan v. Trex Co., Inc.*, 5:09-CV-00670 JF PVT, 2010 WL 4916417 (N.D. Cal. Nov. 22, 2010). Thus this court retains some authority to review

1 pre-certification settlements to determine whether there is evidence of collusion or prejudice to the
2 class, and to require notice to putative class members as a condition of settlement where appropriate.
3 *Id*; see also 4 NEWBERG ON CLASS ACTIONS §§ 11:74, 15:19 (4th ed.).


4 Here, dismissal of the individual claims does not appear to prejudice prosecution of the class
5 claims, since Plaintiff Jeanette McClendon continues to assert the same claims on behalf of the class
6 even if other named plaintiffs in the consolidated actions are dismissed. While the timing of the
7 settlement agreements – coming shortly after counsel for Gordon, Breeding, and Mahboubian
8 expressed objections to a class-wide settlement of nearly-identical claims in *Correa v. Sensa*
9 *Products*, currently pending in Los Angeles Superior Court – might give rise to concerns of collusion,
10 it is by no means dispositive of that question.

11
12 In an abundance of caution, the Court ORDERS counsel for Gordon, Breeding, and
13 Mahboubian to produce copies of the settlement agreements between Sensa and their respective
14 clients for *in camera* review, by the Court only, within **four calendar days** of the date of this Order.

15
16 Counsel shall hand-deliver to the Clerk’s office one hard copy in an envelope marked
17 “Courtesy Copy for Chambers – For In Camera Review – Not to Be Filed.” The Court will review
18 the settlements. If nothing relevant is found, the Court will destroy the agreements and they will not
19 be made part of the record.

20 **IT IS SO ORDERED.**

21
22 Dated: April 18, 2012

23
24
25
26
27
28

YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE