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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Evangeline Red, et al.,

NO. C 10-00387 JW

Plaintiffs,

v.

**ORDER DENYING PLAINTIFFS’
MOTION TO TERMINATE BECK & LEE
AND REESE RICHMAN AS COUNSEL OF
RECORD; APPOINTING SPECIAL
MASTER**

Unilever PLC, et al.,

Defendants.

I. INTRODUCTION

Presently before the Court is a Notice of Termination of Beck & Lee and Reese Richman LLP by Plaintiffs Evangeline Red, Jennifer Red, and Rachel Whitt.¹ (Docket Item No. 70.) Various parties have filed Oppositions and Responses. (Docket Item Nos. 71-94.) The Court conducted a hearing on September 13, 2010. Based on the papers submitted to date and oral argument, the Court DENIES Plaintiffs’ Motion to Terminate Beck & Lee and Reese Richman as counsel of record.

II. BACKGROUND

This is a class action in which Plaintiffs allege, *inter alia*, that Defendants engaged in false advertising for the product “I Can’t Believe It’s Not Butter!” Defendants filed a Motion to Dismiss which was scheduled for a hearing on June 21, 2010. (Docket Item No. 11.) At that hearing, the parties informed the Court that they had signed a term sheet settling the case. (Docket Item No. 68.)

¹ The Court construes this Notice as a Motion for Termination of Counsel.

1 Based on the parties' representations, the Court vacated Defendants' Motion to Dismiss and set a
2 hearing for Preliminary Approval of Class Settlement for September 27, 2010. (Id.)

3 However, on August 16, 2010, Mr. Weston, one of Plaintiffs' attorneys of record, filed a
4 Notice of Termination, effectively moving to terminate the Reese Richman and Beck & Lee firms as
5 co-counsel for Plaintiffs. (Docket Item No. 70.) Two days later, Beck & Lee filed an Opposition to
6 the Notice, charging the Weston Firm with engaging in "a shocking course of unethical and bad faith
7 conduct." (Docket Item No. 71 at 1.) Beck & Lee's Opposition contends, *inter alia*, that:

- 8 (1) Mr. Weston offered a "kickback" to at least one individual, a "Ms. June
9 Higginbotham," in return for serving as a named plaintiff in class actions;
- 10 (2) Mr. Weston promised Ms. Sutton, one of his paralegals, a "finder's fee" in exchange
11 for "signing up" Ms. Higginbotham as a named plaintiff; and
- 12 (3) The Weston Firm has agreed to compensate its non-lawyer employees on a
13 percentage basis from settlement proceeds.

14 (Id.) Beck & Lee's Opposition also indicates that Mrs. Beck unsuccessfully attempted to contact the
15 named Plaintiffs in this case to determine whether or not they had been offered any improper
16 kickbacks or finder's fees. (Id.)

17 Given the seriousness of these allegations, the Court ordered all effected parties, including
18 Plaintiffs, to appear for a hearing and submit any supplemental briefing regarding the Motion to
19 Terminate counsel. (Docket Item No. 75.) In response to that Order, several parties filed
20 supplemental briefing, attaching dozens of accompanying declarations. (Docket Item Nos. 78-94.)
21 In its Supplemental Brief, the Weston Firm denies any misconduct, and alleges a pattern of
22 interference and bad faith conduct on the part of certain attorneys at Beck & Lee. (Docket Item No.
23 93.) The Weston Firm also submitted declarations from Ms. Higginbotham and Ms. Sutton, denying
24 the alleged misconduct. (Docket Item Nos. 86, 87.)

25 The Court conducted a hearing on the Motion to Terminate counsel on September 13, 2010.
26 At the hearing it became clear to the Court that the Motion was motivated by circumstances
27 extraneous to the settlement. For the reasons discussed below, the Court DENIES Plaintiffs' Motion
28 to Terminate counsel, orders the parties to proceed with the settlement of the case and appoints a

1 Special Master to hold any settlement funds being paid for attorney fees and to make
2 recommendations to the Court with respect to the disposition of that portion of the settlement.

3 **III. DISCUSSION**

4 **A. Plaintiffs' Motion to Terminate Counsel**

5 At issue is whether the Court should grant Plaintiffs' Motion to Terminate Beck & Lee and
6 Reese Richman as counsel of record.

7 This case was filed as a class action. Although a class has not been certified, Rule 23 of the
8 Federal Rules of Civil Procedure gives the trial court broad administrative powers to protect the
9 putative class, including the power to designate interim counsel, and to impose conditions on the
10 conduct of named plaintiffs seeking certification as representative parties. See Fed. R. Civ. P. 23(d),
11 23(g)(3).

12 Here, pursuant to a Joint Prosecution Agreement,² three law firms undertook representation
13 of the named Plaintiffs and the putative class. On behalf of Plaintiffs, some of the attorneys
14 commenced settlement negotiations with Defendants. The negotiations resulted in a "term sheet"
15 that the parties believed settled the case. Apparently, in due course, the parties contemplated
16 moving the Court to approve the settlement, certify a class for purposes of the settlement, and
17 approve the payment of attorney fees.

18 Before such a motion was made, a dispute developed between and among the attorneys with
19 respect to the sharing of attorney fees. The Weston firm took the position that the Joint Prosecution
20 Agreement was void, filed a lawsuit in a court seeking a declaration to that effect,³ and demanded
21 that Defendants deposit all settlement funds for attorney fees into the Weston client trust account.
22 The other attorneys objected to Mr. Weston's position that the Joint Prosecution Agreement was

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24 ² (Declaration of Jared H. Beck in Support of Beck & Lee's Opposition to Plaintiffs' Notice
25 of Termination, Ex. A, Docket Item No. 73.)

26 ³ At the hearing, Mr. Weston stated that he had filed a lawsuit against Beck & Lee in San
27 Diego federal court seeking to declare their joint prosecution agreement invalid and adjudicate the
28 division of any shared attorney fees. See Weston Firm, P.C. v. Beck & Lee, P.A., No. 3:2010-cv-
01694 (S.D. Cal.).

1 void and objected to depositing the funds for attorney fees into the Weston trust account.
2 Defendants also objected to proceeding with the settlement under these circumstances. Ultimately,
3 on behalf of Plaintiffs, the Weston firm filed the present Motion to Terminate the other attorneys.

4 At the hearing, it became clear to the Court that, notwithstanding the dispute between
5 Plaintiffs' attorneys, Plaintiffs, all three Plaintiffs' law firms and Defendants desire to proceed with
6 the settlement. The Court's primary duty is to ensure that the named Plaintiffs and their lead counsel
7 adequately represent the class. See, e.g., Manual for Complex Litigation, Fourth (2004) § 21 at 244.

8 With respect to the adequacy of the named Plaintiffs, the Court does not find that the
9 accusations being made by the attorneys against their colleagues concern conduct directly related to
10 this case and its settlement. Beck & Lee's accusations concern parties involved in a different class
11 action not before the Court. (Docket Item No. 71 at 1.) The Court is therefore satisfied that the
12 alleged conduct in Beck & Lee's Opposition has not tarnished the ability of the named Plaintiffs to
13 adequately represent the class.

14 With respect to the adequacy of class counsel, the Court finds insufficient cause to terminate
15 Beck & Lee and Reese Richman from this case.⁴ The Court finds that granting the Motion to
16 Terminate two of the law firms who were involved in negotiating the settlement could jeopardize the
17 settlement. Their termination would deprive Plaintiffs of the knowledge of these attorneys about the
18 provisions of the term sheet.

19 Thus, because of the unanimous interest in proceeding with the settlement, the Court
20 concludes that it would be in the best interest of the class if the Court established a procedure that
21 would permit the settlement to proceed and that would defer the attorney fees division to a later
22 proceeding.

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25 ⁴ In its response, the Weston firm relies on a line of cases for the proposition that "[a]
26 client's power to discharge an attorney, with or without cause, is absolute." Fed. Sav. & Loan Ins.
27 Corp. v. Angell, Holmes & Lea, 838 F.2d 395, 395 (9th Cir. 1988) (quoting Fracasse v. Brent, 6 Cal.
28 3d 784, 790 (1972)). These cases are inapplicable, as they do not deal with the representation of a
class, nor the Court's countervailing obligation to protect the interests of that class.

1 Accordingly, the Court DENIES Plaintiffs' Motion to Terminate Beck & Lee and Reese
2 Richman as counsel of record and orders that these attorneys proceed to bring the settlement to a
3 conclusion.

4 **B. Appointment of Special Master**

5 At the hearing, the parties represented to the Court that the only roadblock to settlement was
6 a provision in the term sheet regarding who should hold the attorney fees from the settlement fund in
7 trust pending the attorneys' disputes over proper allocation of the fees. Mr. Weston does not dispute
8 that he has asked Defendants to deposit these funds in his firm's trust account. In fact, despite the
9 Weston firm's filing of a separate federal action to determine the validity the parties' Joint
10 Prosecution Agreement, at the hearing, Mr. Weston unilaterally declared that the agreement is
11 "void" on its face. Mr. Weston's statements at the hearing raise serious concerns for the Court with
12 respect to his ability to hold the attorney fees from the settlement in trust. Thus, the Court finds that
13 it is in the interest of the class and the firms involved for a neutral third party to administer and
14 allocate any attorney fees from the settlement funds pending the resolution of the firms' disputes or
15 any subsequent fees motion in this action.

16 Accordingly, pursuant to Fed. R. Civ. P. 53, the Court appoints Mr. George Fisher as Special
17 Master.

18 **1. Scope of Appointment**

19 Subject to Court's approval of the settlement, Defendants shall separate any portion of any
20 settlement funds for attorney fees, payable to "George Fisher in Trust." Mr. Fisher shall deposit the
21 attorney fees allocated by the settlement into a trust account. Mr. Fisher shall determine the
22 positions of any claimant of those funds; seek a stipulation to an agreed division and if no stipulation
23 is reached, make a report and recommendation to the Court with respect to the funds held in trust.

24 **2. Fees and Costs of the Special Master**

25 The Special Master will bill at the rate of \$400.00 per hour. No portion of the fees of the
26 Master shall be paid from any funds payable to the named Plaintiffs or members of the class. The
27 fees and costs of the Master shall be paid from the settlement fund allocated for attorney fees. Ten
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1 days before the date of the Final Approval hearing, the Special Master shall file a motion with the
2 Court for approval and award of fees and costs. Any objections shall be filed five days after such
3 submission.

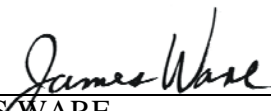
4 To complete the appointment, Mr. Fisher shall file the affidavit required by Rule 53(b)(3) of
5 Federal Rules of Civil Procedure within five (5) days from the date of this Order.

6 **IV. CONCLUSION**

7 Accordingly, the Court DENIES Plaintiffs' Motion to Terminate (Notice of Termination)
8 Beck & Lee and Reese Richman as counsel of record. In light of this Order, the Preliminary
9 Approval Hearing currently set for September 27, 2010 is continued to **November 1, 2010 at 9 a.m.**

10 On or before **October 18, 2010**, the parties' shall file their Joint Motion for Preliminary
11 Approval of the Settlement. Consistent with this Order, the Proposed Order shall include a
12 provision naming Mr. Fisher as the Special Master to oversee the allocation of attorney fees from the
13 settlement funds.

14
15 Dated: September 14, 2010



JAMES WARE
United States District Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 Elizabeth Lee Beck elizabeth@beckandlee.com
3 Gregory Steven Weston greg@westonfirm.com
4 Janelle Jad Sahouria jsahouria@mofo.com
5 Jared Harrison Beck jared@beckandlee.com
6 John Joseph Fitzgerald jack@westonfirm.com
7 Michael Robert Reese michael@reerichman.com
8 William Lewis Stern wstern@mofo.com

9 **Dated: September 14, 2010**

Richard W. Wieking, Clerk

10 **By: /s/ JW Chambers**

Elizabeth Garcia
Courtroom Deputy

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