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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN FRANCISCO

COORDINATION PROCEEDING
SPECIAL TITLE (RULE 1550(b))

VITAMIN CASES,

This Document Relates To:
ALL ACTIONS

Judicial Council Coordination Proceedings No.
4076

Master File No. 301803 (San Francisco County)

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' REQUESTS CONCERNING
CONSUMER AND COMMERCIAL
SETTLEMENT FUNDS**

Date: November 15, 2005
Time: 4:00 p.m.
Dept.: 505
Judge: Hon. John E. Munter

Plaintiffs, through Plaintiffs' Co-Liaison Counsel ("PCC"), have filed a motion for an order granting five separate requests:

1. For a second distribution of Consumer Class Settlement Funds;
2. For a third distribution of Consumer Class *Cy Pres* Settlement Funds;
3. For a payment to the Settlement Administrator Gilardi & Company;

1 4. For a payment to Consumer *Cy Pres* Settlement Administrator Harry
2 Snyder; and

3 5. For leave to conduct a further distribution of consumer *cy pres* funds.

4 After reviewing all papers submitted, hearing the argument of counsel, and for the
5 reasons set forth by the Court at the hearing on November 15, 2005, the Court grants Plaintiffs'
6 motion as follows:

7 **I. Second Distribution of Commercial Class Settlement Funds**

8 By Order of April 12, 2004, this Court approved an initial distribution from the
9 Commercial Class Settlement Fund to the Commercial Class Members whose claims were
10 approved—a distribution that constituted approximately 93.5% of the Commercial Class Fund.
11 The remaining amount of the Fund was left in reserve to pay for taxes, accounting costs,
12 administrative expenses, Court-awarded litigation costs, and other charges. Plaintiffs now request
13 that an additional \$1.1 million be distribution from the Fund to the Commercial Class Members
14 who previously submitted valid claim forms.

15 The Court-approved Settlement Administrator, Gilardi & Company, has calculated
16 the amount of funds that need to be reserved for the remaining taxes, fees, and other charges. If
17 \$1.1 million is distributed at this time, the amount remaining in the Fund (approximately
18 \$724,000) should be more than sufficient to cover future administrative expenses, taxes, and other
19 charges. The Court, therefore, hereby orders that \$1.1 million from the Fund be distributed on a
20 *pro rata* basis to the 189 valid Commercial Class Settlement Fund claimants who received the
21 initial distribution in June 2004 pursuant to this Court's Order of April 12, 2004. The amounts of
22 each individual distribution to these claimants is listed on Attachment A to this Order.

23 As it was at the time of the previous distribution, the claim of Defendant DuCoa
24 has not been paid because DuCoa is a named defendant—and an alleged co-conspirator—in this
25 litigation. Funds sufficient to pay the DuCoa claim shall be held in the account along with the
26 estimated future administrative expenses and taxes until the litigation against DuCoa in this action
27 is completed. At that time, the Court will determine the disposition of DuCoa's settlement claim.

1 **II. Consumer Class *Cy Pres* Settlement Fund Distribution**

2 Plaintiffs have requested a third distribution from the Consumer *Cy Pres*
3 Settlement Fund. The Court previously approved two rounds of distribution of *cy pres* funds.
4 The first round focused on state-wide food delivery to the needy and anti-trust enforcement and
5 public policy; the second round focused on nutritional and health outreach, professional
6 education, and food safety and quality. Round Three involved scientific proposals for funding
7 nutritional and health research. Based on the work of health and nutrition experts Professor
8 Marion Nestle and Professor Malden Nesheim, as well as the recommendation of *Cy Pres*
9 Administrator Harry Snyder, the Court grants the motion of Plaintiffs that Round Three *Cy Pres*
10 Funds be distributed to the following applicants in the following amounts:

11 University California, Davis, Department of Nutrition to
12 Establish a Center for Health and Nutrition (Proposal 15) \$5,006,903

13 Loma Linda University, Department of Nutrition:

14 (1) research regarding effects of almonds on cardiovascular
15 disease (Proposal 8); and (1) \$71,467¹

16 (2) research regarding effects of walnuts and fish on coronary
17 artery disease (Proposal 9) (2) \$809,004

18 University of California, Davis, study of metabolic, and genetic
19 consequences of flavanoid-rich diets during pregnancy (Proposal
20 14) \$569,168

21 University of California, San Diego, School of Medicine: study of
22 how vitamins A and D relate to cancer therapy (Proposal 23) ... \$ 708,750

23 The total amount of these distributions is \$7,165,292. Further information concerning these
24 projects is contained in the Declaration of Harry M. Snyder, Fund Administrator, the Declaration
25 of Professors Nestle and Nesheim, and the exhibits attached thereto, filed with the Court on
26 October 21, 2005.

27 **III. Request for Payment to Settlement Administrator**

28 The Court has reviewed the request to pay fees and costs to Settlement

1 ¹ As indicated above, in PCC’s motion and Mr. Snyder’s recommendation, Proposals 8, 9, and 14
2 will be merged with and conducted under the auspices of the new Center for Health and Nutrition
3 to be established under Proposal 15.

1 Administrator Gilardi & Company for the work it has performed to date administering the
2 Commercial and Consumer Class Settlements in this action. The Court has reviewed the
3 declaration of Dennis A. Gilardi, Jr., with regard to these fees and costs and finds that it is
4 appropriate. The Court hereby authorizes the following payments to Gilardi & Company out of
5 the following funds: \$67,044 in fees and \$75,084 in costs from the Commercial Class Fund and
6 \$6,395 in costs from the Consumer Class Fund.

7 **IV. Payment to *Cy Pres* Settlement Fund Administrator and Expert Consultants**

8 PCC requests payment for *Cy Pres* Fund Administrator Harry Snyder for the work
9 performed to date. The Court has reviewed the declarations of Mr. Snyder, his associate Carl
10 Oshiro, and his staff member Matthew Iverson, detailing the hours spent on Round Three and for
11 ongoing administration regarding Rounds One and Two. The Court notes that Mr. Snyder has
12 devoted 380 hours to this matter, Mr. Oshiro 351.7 hours, and Mr. Iverson 238.4 hours. At their
13 respective hourly rates, the total “lodestar” of their work to date is \$246,795. For this period,
14 however, Plaintiffs are requesting that they be paid only \$57,750 for this time, which works out to
15 a blended rate of \$59 per hour for the 970.1 hours that have been spent on the project. The Court
16 finds that this is more than reasonable. In addition, Mr. Snyder requests that \$5,000 be paid to
17 him to reimburse him for the payments that he made to outside experts relating to the Round
18 Three distribution. The Court finds that this is appropriate. The Court finds further that it is
19 appropriate to pay Professors Nestle and Nesheim \$23,992.40 for their time and costs expended
20 in reviewing the Round Three research proposals.

21 **V. A Further Round of *Cy Pres* Distributions**

22 After the Round Three distributions (totaling \$7,165,292) are made, approximately
23 \$10.4 million of the Consumer *Cy Pres* Fund will remain to be distributed. The original plan for
24 *cy pres* distribution anticipated only three rounds of distribution. Because the substantial amount
25 of money remains in the *cy pres* fund, however, a process to distribute these funds for the benefit
26 of the consumer class must take place. Plaintiffs seek leave to engage Mr. Snyder to conduct a
27 Round Four distribution along lines similar to the first three rounds of distribution. The Court has
28 reviewed Mr. Snyder’s proposal for a Round Four grant-making process. Mr. Snyder proposes a

1 total budget of \$257,526 for this process. This amount appears to be reasonable in light of the
2 amounts ranging from 5 to 10% that community foundations often charge to re-grant funds to
3 other non-profit organizations.

4 The Court hereby authorizes Mr. Snyder to conduct a Round Four distribution in
5 accordance with his proposal. Mr. Snyder requests that 34% of his budget, or \$88,464 be paid at
6 this time to allow him to begin work on Round Four. The Court finds this to be reasonable and
7 grants this request. When Mr. Snyder seeks additional money for continuing the Round Four
8 process, he should be prepared to submit a declaration indicating the time he has spent conducting
9 the Round Four distribution process and the tasks he performed in doing so.

10 IT IS SO ORDERED.

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12 Date: _____, 2005

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14 HONORABLE JOHN E. MUNTER
15 SUPERIOR COURT JUDGE
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