

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION
HONORABLE JOHN A. KRONSTADT
UNITED STATES DISTRICT JUDGE PRESIDING

- - -

NATALIE PAPPAS, ET AL.,)	
)	
PLAINTIFFS,)	
)	
VS.)	CV11-08007-JAK
)	CV11-08276-JAK
NAKED JUICE COMPANY, ET AL.,)	CV11-01701-JAK
)	CV11-09412-JAK
DEFENDANTS.)	CV11-09677-JAK
_____)	
)	
AND ALL CONSOLIDATED ACTIONS)	
_____)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS
LOS ANGELES, CALIFORNIA
MONDAY, DECEMBER 2, 2013, 8:30 AM

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APPEARANCES OF COUNSEL:

FOR PLAINTIFF SANDYS: YVETTE GOLAN
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FOR PLAINTIFF PAPPAS: TINA WOLFSON
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FOR PLAINTIFF MARCHEWKA:
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APPEARANCES (CONTINUED)

FOR DEFENDANT NAKED JUICE COMPANY:

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CHRISTOPHER CHORBA
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FOR OBJECTOR ROSSIGNOL:

JOSHUA FURMAN
15260 VENTURA BLVD
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SHERMAN OAKS, CA 91403

1 LOS ANGELES, CALIFORNIA; MONDAY, DECEMBER 2, 2013

2 8:30 AM

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6 THE COURT: ITEM NO. 5, CV11-08276, NATALIE
7 PAPPAS V. NAKED JUICE COMPANY.

8 MS. WOLFSON: GOOD MORNING, YOUR HONOR. TINA
9 WOLFSON, AHDOOT WOLFSON, ON BEHALF OF NATALIE PAPPAS
10 AND THE CLASS.

11 MR. AHDOOT: GOOD MORNING, YOUR HONOR. ROBERT
12 AHDOOT ON BEHALF OF PLAINTIFFS.

13 MR. RIDOUT: GOOD MORNING, YOUR HONOR.
14 CHRISTOPHER RIDOUT, RIDOUT, LYON AND OTTOSON ON BEHALF
15 OF THE PLAINTIFFS.

16 MS. RIVAS: GOOD MORNING, YOUR HONOR.
17 ROSEMARY RIVAS OF FINKELSTEIN THOMPSON ON BEHALF OF THE
18 PLAINTIFFS.

19 MR. GODINO: GOOD MORNING, YOUR HONOR. MARK
20 GODINO FROM GLANCY BINKOW & GOLDBERG ON BEHALF OF
21 PLAINTIFFS.

22 MR. CHORBA: GOOD MORNING, YOUR HONOR. CHRIS
23 CHORBA ON BEHALF OF DEFENDANT NAKED JUICE.

24 AND I BELIEVE MY COLLEAGUE,
25 MR. TULUMELLO, IS ON THE LINE ON BEHALF OF NAKED JUICE

1 AS WELL.

2 MR. MANTHRIPRAGADA: GOOD MORNING, YOUR HONOR.
3 DHANANJAY MANTHRIPRAGADA ON BEHALF OF DEFENDANT NAKED
4 JUICE.

5 MR. FURMAN: GOOD MORNING, YOUR HONOR. JOSHUA
6 FURMAN FOR OBJECTOR JOANNE ROSSIGNOL.

7 MS. GOLAN: GOOD MORNING, YOUR HONOR. YVE
8 GOLAN ON BEHALF OF CONSOLIDATED PLAINTIFF SARA SANDYS.

9 THE COURT: GOOD MORNING.

10 YOU CAN BE SEATED.

11 MR. TULUMELLO: ANDREW TULUMELLO OF GIBSON,
12 DUNN AND CRUTCHER IN WASHINGTON DC FOR NAKED JUICE.

13 THANK YOU FOR ALLOWING ME TO APPEAR BY
14 TELEPHONE, YOUR HONOR.

15 THE COURT: GOOD MORNING, MR. TULUMELLO.

16 WE'RE HERE ON THE PLAINTIFF'S MOTION
17 FOR -- WELL, THE MOTION FOR FINAL APPROVAL OF THE
18 SETTLEMENT OF THE CLASS ACTION, THE MOTION FOR
19 INCENTIVE AWARDS AND ATTORNEY'S FEES, SANDYS' MOTIONS
20 FOR -- A MOTION FOR ATTORNEY'S FEES AND REIMBURSEMENT
21 OF EXPENSES.

22 THERE ARE ALSO -- I THINK, MR. FURMAN, I
23 THINK YOU'RE THE ONLY PERSON APPEARING IN PERSON --
24 WHERE IS MR. FURMAN -- ON BEHALF OF AN OBJECTOR; IS
25 THAT RIGHT?

1 MR. TULUMELLO: IT APPEARS TO BE THE CASE,
2 YOUR HONOR.

3 THE COURT: THERE WERE OTHER OBJECTORS --
4 CLASS MEMBERS WHO OBJECTED.

5 MR. FURMAN, LET ME ASK YOU THIS QUESTION:
6 WHAT IS THE DIFFERENCE BETWEEN THE OBJECTIONS THAT YOU
7 HAVE MADE IN CONNECTION WITH THE FINAL CLASS APPROVAL
8 AND THOSE THAT WERE MADE IN CONNECTION WITH THE
9 PRELIMINARY CLASS APPROVAL?

10 MR. FURMAN: MY UNDERSTANDING IS THAT THERE
11 WERE OBJECTIONS ON BEHALF OF ORIGINAL PLAINTIFF SANDYS
12 TO THE PRELIMINARY APPROVAL.

13 OUR BIG DISTINGUISHING OBJECTION -- I
14 THINK THE PRIMARY ISSUE THAT WE'RE HAVING IS THIS
15 QUESTION OF TIERED DISTRIBUTION.

16 THE COURT: RECEIPT/NO RECEIPT?

17 MR. FURMAN: RECEIPT/NO RECEIPT, YOUR HONOR.

18 WE DON'T HAVE INFORMATION FROM THE --
19 ANYWHERE IN THE CLASS CERTIFICATION OR SETTLEMENT
20 DOCUMENTS ABOUT, DO THESE CLASS REPRESENTATIVES HAVE
21 RECEIPTS OR DO THEY NOT HAVE RECEIPTS?

22 THE ONLY JUSTIFICATION WE HAVE FOR THE
23 RECEIPT/NO RECEIPT DISTINCTION IS THE ONE THAT WAS
24 OFFERED IN THE REPLY BRIEF SAYING, "WELL, IT'S TO
25 REDUCE FRAUD." THAT'S -- THERE'S NO SUPPORT FOR THAT.

1 ALL WE HAVE IS THE OPINION OF MR. SHERWOOD WHO DOESN'T
2 STATE THE BASES FOR HIS OPINION. HE JUST SAYS, "IN MY
3 ESTEEMED OPINION, THIS HELPS REDUCE FRAUD."

4 WHEN WE LOOK AT -- ELSEWHERE IN HIS
5 DECLARATION, IN PARAGRAPH 30, THERE'S NOTHING ABOUT
6 USING THAT METHOD TO REDUCE FRAUD.

7 THEY HAVE OTHER MEANS TO REDUCE FRAUD,
8 AND THERE'S NO INDICATION OF WHY IT'S NECESSARY TO HAVE
9 THIS ADDITIONAL HURDLE FOR NON-RECEIPT-BEARING CLASS
10 MEMBERS TO HAVE TO JUMP THROUGH OR TO BE SUBJECT TO IN
11 TERMS OF A REDUCED AMOUNT OF RECOVERY JUST FOR THE
12 PURPOSES OF REDUCING FRAUD.

13 THERE'S NOTHING IN ANY OF THE PAPERS IN
14 RESPONSE THAT PROVIDES OTHER CASES WHERE THIS HAS BEEN
15 AN APPROVED METHOD. IT DOES MAKE SENSE ON A BASIC
16 LEVEL. BUT WHEN YOU LOOK AT WHAT IT DOES TO THE
17 NON-RECEIPT-BEARING CLASS, WHICH I HAVE TO POINT OUT TO
18 THE COURT IS --

19 THE COURT: DO WE HAVE ANY DATA ON THIS IN
20 TERMS OF THOSE CLASS MEMBERS WHO HAVE RESPONDED --
21 WHICH IS SEVERAL HUNDRED THOUSAND; CORRECT?

22 MR. FURMAN: RIGHT.

23 THE COURT: DO WE HAVE DATA AS TO HOW MANY
24 CLAIMED TO HAVE RECEIPTS?

25 MR. FURMAN: YES.

1 THE COURT: WHAT PERCENTAGE?

2 MR. FURMAN: ACCORDING TO THE INFORMATION THAT
3 WAS PROVIDED, I BELIEVE, IN THE DEFENSE REPLY BRIEF,
4 WE'RE TALKING ON THE ORDER OF A FRACTION OF A PERCENT
5 OF DOLLAR AMOUNTS. \$22 MILLION IN TOTAL CLAIMS WERE
6 MADE. AND OF THOSE, \$163,000 WORTH HAD PROOF OF
7 PURCHASE.

8 MR. CHORBA: YOUR HONOR, IT'S APPROXIMATELY
9 ONE-HALF OF A PERCENT -- ONE-HALF OF 1 PERCENT OF ALL
10 CLAIMANTS SOUGHT AN AMOUNT WITH PROOF OF PURCHASE.

11 THE COURT: JUST A MINUTE.

12 IS THERE A -- WHAT EFFECT, IF ANY, IS
13 THERE ON THE DEFENDANT IN TERMS OF WHETHER THE
14 AMOUNT -- LET ME PUT IT DIFFERENTLY.

15 IF THE AMOUNTS -- IF THE LIMIT IS -- IF
16 THE CURRENT LIMIT IS APPLIED FOR RECEIPT AND
17 NON-RECEIPT, WILL THE EFFECT BE THAT THERE WOULD BE A
18 GREATER AMOUNT THAT WOULD GO INTO THE CY PRES FUND THAN
19 IF THERE WERE NO DISTINCTION?

20 MR. CHORBA: YOUR HONOR, I CAN ANSWER THAT.
21 THERE WOULD BE NO AMOUNT LEFT OVER FOR CY PRES. THE
22 TOTAL RESPONSIVE CLASS MEMBERS HAS BEEN OVERWHELMINGLY
23 POSITIVE SUCH THAT THE FULL AMOUNT OF THE \$9 MILLION
24 CASH FUND AFTER DEDUCTION FOR ANY FEES AND THE NOTICE
25 AND ADMINISTRATION COSTS WOULD BE DELIVERED DIRECTLY TO

1 CLASS MEMBERS.

2 AND IT'S A CAPPED AMOUNT TO ANSWER

3 YOUR --

4 THE COURT: NO, IT'S \$9 MILLION; CORRECT?

5 MR. CHORBA: CORRECT.

6 AND IF I MAY, YOUR HONOR, THAT HALF A

7 PERCENT, THE OVERWHELMING MAJORITY OF CLASS MEMBERS

8 SOUGHT AN AMOUNT WITHOUT PROOF OF PURCHASE.

9 I CAN SAY, AND CLASS COUNSEL CAN SPEAK TO

10 THIS, DURING THE DISCOVERY, SEVERAL OF THE NAMED

11 PLAINTIFFS DID PRODUCE SOME FORM OF PROOF OF PURCHASE.

12 THE COURT: BASED ON THE PERCENTAGE THAT YOU

13 JUST STATED, LESS THAN 1 PERCENT OF THE CLAIMANTS HAVE

14 CLAIMED TO HAVE RECEIPTS?

15 MR. CHORBA: CORRECT, YOUR HONOR.

16 THE COURT: HOW MANY PEOPLE IS THAT?

17 MR. CHORBA: YOUR HONOR, IT'S PERHAPS AROUND

18 3,000 TOTAL.

19 ONE OF THE ISSUES IS, GIVEN THE VOLUME OF

20 CLAIMS, THE ADMINISTRATOR IS CONTINUING TO REVIEW

21 THOSE.

22 I CAN TELL YOU THAT SOME CLASS MEMBERS,

23 FOR EXAMPLE, UPLOADED A DOCUMENT. AND IT WAS A PICTURE

24 OF A STORE, FOR EXAMPLE. THAT'S NOT A VALID PROOF OF

25 PURCHASE. SO THAT WOULD BE NOT A VALID CLAIM WITH

1 PROOF OF PURCHASE. BUT IT'S APPROXIMATELY 3,000 THAT
2 HAVE SUBMITTED A VALID PROOF OF PURCHASE AS SPECIFIED
3 IN THE STIPULATION OF SETTLEMENT.

4 THE COURT: IS THE NUMBER OF CLAIMS THAT HAVE
5 BEEN SUBMITTED APPROXIMATELY 600,000?

6 MR. CHORBA: JUST UNDER, YOUR HONOR.

7 THE COURT: DO YOU AGREE WITH THAT?

8 MR. CHORBA: I SHOULD SAY, YOUR HONOR, THAT IT
9 WAS ACTUALLY OVER. BUT AFTER YOU REDUCE THE NUMBER OF
10 INVALID OR FRAUDULENT CLAIMS, IT'S JUST UNDER 600,000.

11 THERE'S APPROXIMATELY 92,000, AS WE
12 STATED IN THE PAPERS. AND THAT REVIEW PROCESS IS
13 ONGOING.

14 THE COURT: OKAY. WHAT'S THE RATIONALE --
15 INASMUCH AS -- WHAT'S THE RATIONALE FOR TREATING THIS
16 LESS THAN 1 PERCENT WITH THE HIGHER NUMBER?

17 MS. WOLFSON: FIRST OF ALL, YOUR HONOR, IT'S
18 THE OBJECTOR'S BURDEN TO PROVE THEIR VALID OBJECTION.

19 THE WAY THAT THE OBJECTION APPEARS TO BE
20 FRAMED IS THAT MS. ROSSIGNOL IS ATTACKING CERTIFICATION
21 BASED ON THE TIERED APPROACH TO SETTLEMENT. YOUR
22 HONOR, WE SUBMIT TO YOU THAT'S A DISTINCTION WITHOUT A
23 DIFFERENCE FOR THE PURPOSES OF CLASS CERTIFICATION AND
24 FOR THE PURPOSES OF ADEQUACY.

25 IN FULL DISCLOSURE, SOME OF OUR

1 PLAINTIFFS HAD PROOFS OF PURCHASE AND ALSO HAD MADE
2 PURCHASES WITHOUT PROOF OF PURCHASE. SO, THEREFORE,
3 THEY'RE ADEQUATE REPRESENTATIVES FOR BOTH TYPES OF
4 PLAINTIFFS.

5 WITH RESPECT TO THE SETTLEMENT, YOUR
6 HONOR, WE HAD VALID REASONS, SUCH AS THOSE OUTLINED IN
7 MR. MARKHAM SHERWOOD'S DECLARATION, HAVING TO DO WITH
8 FRAUD.

9 AND, ALSO, WE BELIEVED THAT IT MADE SENSE
10 TO COMPENSATE THOSE WITH PROOF OF PURCHASE WITH A
11 SLIGHTLY HIGHER AMOUNT BECAUSE PROOF DOES MAKE A
12 DIFFERENCE WHEN IT COMES TO TRIAL.

13 AND SO UNDER THE CONSIDERATION OF THE
14 TOTALITY OF THE CIRCUMSTANCES, THIS WAS ONE OF THE
15 TERMS THAT WAS VERY HEAVILY NEGOTIATED THROUGH THE
16 SEVEN MONTHS AFTER THE PRINCIPAL TERMS OF THE
17 SETTLEMENT WERE REACHED AT THE FOURTH MEDIATION. I'M
18 SORRY, THE THIRD MEDIATION.

19 AND WE BELIEVE THAT OUR BURDEN ON PROVING
20 WHY THE SETTLEMENT WAS FASHIONED THIS WAY IS VERY
21 SMALL, AND WE'VE MET IT.

22 THE OBJECTOR IS COMPLAINING ABOUT THE
23 FACT THAT WE SHOULD HAVE FASHIONED IT SOME OTHER WAY.
24 HOWEVER, THAT DOES NOT CONTRADICT THE FACT THAT THE
25 SETTLEMENT OVERALL IS FAIR AND ADEQUATE.

1 MR. CHORBA: YOUR HONOR, MAY I BE HEARD ON
2 THIS POINT AS WELL?

3 THE COURT: GO AHEAD.

4 MR. CHORBA: THERE'S REALLY TWO -- I GUESS WE
5 HAVE TWO PRINCIPAL RESPONSES TO MS. ROSSIGNOL'S
6 OBJECTION ON THIS GROUND. FIRST, AND I THINK
7 MS. WOLFSON ALLUDED TO THIS POINT, IS THE NINTH CIRCUIT
8 HELD IN THE HANLON CASE, "SETTLEMENT IS THE OFFSPRING
9 OF COMPROMISE. THE QUESTION WE ADDRESS IS NOT WHETHER
10 THE FINAL PRODUCT COULD BE PRETTIER, SMARTER OR
11 SNAZZIER, BUT WHETHER IT IS FAIR, ADEQUATE AND FREE
12 FROM COLLUSION."

13 SO AS A THRESHOLD MATTER, WE WOULD SUBMIT
14 THAT THIS ISN'T JUST A VALID OBJECTION. IT'S REALLY A
15 QUASI-MONDAY-MORNING-QUARTERBACKING "WHY DID YOU DO IT
16 THIS WAY INSTEAD OF THAT WAY?"

17 SECOND, AND PERHAPS MOST IMPORTANTLY, THE
18 REASON WHY IT WAS TIERED THIS WAY, IN ADDITION TO WHAT
19 MS. WOLFSON SAID, IS THERE ARE SEVERAL CASES, THE
20 CARRERA CASE, THE HODES CASE AND THE WEINER VERSUS
21 SNAPPLE CASE, WHERE COURTS HAVE REJECTED CLASS
22 CERTIFICATION ON THE GROUNDS THAT CLASS MEMBERS DID NOT
23 RETAIN RECEIPTS. SO THERE WOULD BE A VALID BASIS HERE,
24 WE BELIEVE, TO REQUIRE ALL CLASS MEMBERS TO SUBMIT
25 RECEIPTS TO OBTAIN ANY PURCHASE.

1 AND WE, FRANKLY, SUBMIT THAT IF THIS CASE
2 WERE TO PROCEED TO LITIGATION, WHICH IS ONE OF THE
3 FACTORS THIS COURT MUST EVALUATE IN CONSIDERING THE
4 SETTLEMENT, THAT MOST CLASS MEMBERS, BY VIRTUE OF THE
5 NUMBERS THAT WE JUST GAVE YOU, 99.5 PERCENT, WOULD NOT
6 BE ENTITLED TO ANYTHING, OR AT LEAST THAT WOULD BE AN
7 ARGUMENT THAT THE PARTIES WOULD HAVE TO LITIGATE.

8 BUT BECAUSE THIS IS A SETTLEMENT, WE'RE
9 ACTUALLY PROVIDING THOSE AMOUNTS AS A RESULT OF THE
10 COMPROMISE IN THIS CASE. WE'RE ACTUALLY PROVIDING
11 PEOPLE WITH AN OPPORTUNITY TO CLAIM AN AMOUNT WITHOUT
12 ANY PROOF OF PURCHASE. SO THE FACT THAT THERE IS THIS
13 TIERED APPROACH, WE THINK IS LEGITIMATE.

14 WE THINK IF THIS CASE WERE TO PROCEED
15 THROUGH LITIGATION, THERE'S A VERY STRONG LIKELIHOOD
16 THAT THE MAJORITY OF CLASS MEMBERS WOULD NOT GET ANY
17 MONETARY RECOVERY. SO IT'S THIS VERY SMALL GROUP THAT
18 HAVE SUBMITTED WITH PROOF OF PURCHASE, WE DON'T BELIEVE
19 THAT THAT'S IN ANY WAY ILLEGITIMATE. IT WAS AN
20 APPROPRIATE BARGAIN. AND IT'S KEYED OFF THE CASE LAW
21 IN THIS AREA.

22 MR. FURMAN: IF IT MAKES NO DIFFERENCE TO THE
23 TOTAL AMOUNT THAT THE DEFENSE IS GOING TO END UP PAYING
24 TO FUND THE SETTLEMENT FUND, THEN WHY DO WE HAVE TO
25 HAVE A TIERED DISTRIBUTION AMONG CLASS MEMBERS? WHY

1 ARE CERTAIN CLASS MEMBERS GETTING PREFERENCE AND
2 CERTAIN CLASS MEMBERS ARE NOT GETTING PREFERENCE? WHY
3 IS THAT ARBITRARY DISTINCTION BEING MADE?

4 THIS CONCEPT OF PROOF AT TRIAL BEING AN
5 ISSUE THAT IS REFLECTED LEGITIMATELY IN THIS DIFFERENCE
6 IS NON-SENSE. YOUR HONOR --

7 THE COURT: JUST A MINUTE.

8 THE DIFFERENCE BETWEEN THE TIERS IS A
9 MAXIMUM OF \$45 AND \$75; CORRECT?

10 MR. CHORBA: CORRECT.

11 THE COURT: THAT'S \$30.

12 THERE ARE APPROXIMATELY HOW MANY PEOPLE
13 THAT HAVE FILED CLAIMS WITH RECEIPTS, ABOUT 1,000?

14 MR. CHORBA: ABOUT 3,000, YOUR HONOR.

15 THE COURT: JUST A MINUTE.

16 MR. FURMAN: TO DATE, YOUR HONOR.

17 OF COURSE, THE CLAIMS PERIOD IS OPEN.

18 THE COURT: OKAY. YOU HAVE SOMETHING NEW ON
19 THIS?

20 MR. FURMAN: ONLY TO SAY, YOUR HONOR, ON THIS
21 PARTICULAR POINT, YOUR HONOR ALREADY HAS, LOOKING AT
22 THE PAPERS, IN CAMERA REVIEW OF THE PROFITS DOCUMENTS
23 THAT WOULD SHOW THIS BURDEN OF PROOF.

24 THE COURT: WELL, AS I RUN THE NUMBERS HERE,
25 THE AMOUNT AT ISSUE -- OF THE \$9 MILLION TOTAL FUND,

1 THE AMOUNT AT ISSUE IS APPROXIMATELY \$90,000, WHICH IS
2 1 PERCENT.

3 IF THE \$90,000 WERE ALLOCATED ACROSS THE
4 ENTIRE CLASS, THE DIFFERENCE WOULD BE -- I DIDN'T DO
5 ALL OF THE MATH HERE, BUT IT WOULD BE UNDER 20 CENTS.
6 IT WOULD BE -- PROBABLY BE BETWEEN 10 AND 15 CENTS PER
7 CLASS MEMBER. I DON'T THINK THAT'S A MATERIAL
8 DIFFERENCE.

9 AND IN LIGHT OF THE ISSUES THAT ARE
10 RAISED BY THE RECEIPT/NO RECEIPT MATTER, MY TENTATIVE
11 VIEW, ALTHOUGH I'LL GIVE THIS FURTHER THOUGHT, WOULD BE
12 THAT I WOULD NOT -- THAT THIS WOULD NOT BE A SUFFICIENT
13 BASIS TO DEFEAT THE MOTION OR TO REQUIRE A
14 MODIFICATION. BUT I'LL REFLECT ON IT IN LIGHT OF YOUR
15 COMMENTS. THANK YOU.

16 MR. CHORBA: THANK YOU, YOUR HONOR.

17 THE COURT: THE OTHER OBJECTIONS THAT WERE
18 RAISED BY OTHERS WHO ARE NOT REPRESENTED TODAY, I THINK
19 WERE MATTERS THAT WERE PREVIOUSLY ADDRESSED BECAUSE
20 CERTAIN PERSONS OBJECTED, NOT JUST THE -- THERE WERE
21 CERTAIN OBJECTIONS MADE IN CONNECTION WITH THE
22 PRELIMINARY APPROVAL THAT WERE ADDRESSED.

23 IS THERE SOMETHING MORE, MR. FURMAN?

24 MR. FURMAN: MAY I ADDRESS A FEW POINTS IN THE
25 REPLY BRIEFS THAT CAME UP?

1 THE COURT: IS THIS NEW?

2 MR. FURMAN: YES, YOUR HONOR. AS TO THE WAY
3 THAT THE CLAIMS WERE HANDLED AND WHICH CLAIMS WERE
4 REJECTED.

5 THE COURT: GO AHEAD.

6 MR. FURMAN: YOUR HONOR, JUST QUICKLY LOOKING
7 AT MR. SHERWOOD'S DECLARATION, AGAIN, AT PARAGRAPH 30,
8 THERE WERE SEVERAL ISSUES IN REJECTING SEVERAL HUNDRED
9 THOUSAND CLAIMS, IT LOOKS LIKE.

10 FIRST OF ALL, WITH REGARD TO DUPLICATES,
11 MR. SHERWOOD SAID THAT THEY REJECTED ALL CLAIMS WHERE
12 THE NAME AND THE ADDRESS WERE THE SAME. WELL, THAT
13 POINTS TO A PROBLEM BECAUSE THERE APPEARS TO HAVE BEEN
14 SIGNIFICANT CONFUSION BY CLASS MEMBERS TRYING TO MAKE
15 CLAIMS. THERE'S NO INFORMATION AS TO WHETHER OR NOT
16 THOSE CLAIMS THAT WERE ALLEGEDLY DUPLICATES WERE FROM
17 MULTIPLE PURCHASES BY THE SAME PERSON, AND THEY DIDN'T
18 UNDERSTAND THAT THEY COULD SUBMIT IT ALL IN ONE CLAIM.
19 WE DON'T KNOW THE AMOUNTS OF THE CLAIMS THAT WERE
20 DUPLICATES. WE JUST DON'T HAVE ENOUGH INFORMATION. IT
21 SEEMS THERE'S A POTENTIAL DISCREPANCY THERE.

22 THAT ALSO COMES UP BECAUSE 50,000 CLAIMS
23 WERE REJECTED BASICALLY ON THE FACT THAT THE PERSON
24 FILLING OUT THE CLAIM FORM WAS APPARENTLY CONFUSED AS
25 TO WHETHER THEY'RE SUBMITTING A PROOF OF PURCHASE OR A

1 NOT-PROOF-OF-PURCHASE CLAIM. THAT REPRESENTS OVER \$2
2 MILLION WORTH OF CLAIMS, APPROXIMATELY 10 PERCENT OF
3 THE SETTLEMENT FUND IN TERMS OF PROPORTION. ALL THOSE
4 WERE JUST FLATLY REJECTED. YOU KNOW, WE DIDN'T GO
5 THROUGH ANY SORT OF HANGING CHAD PROCESS OR SOMETHING
6 LIKE THAT TO PROTECT THOSE CLASS MEMBERS.

7 15,000 OF THE CLAIMS WERE REJECTED AS
8 FRAUDULENT. THERE WAS NO USE OF RECEIPTS OR NOT
9 RECEIPTS TO DETERMINE WHICH WERE FRAUDULENT AND
10 REJECTING THOSE CLAIMS BASED SOLELY ON TECHNICAL
11 MEASURES, LOOKING AT THE IP ADDRESSES OF THE CLAIMANT.

12 AND ANOTHER 16,000 OF THE CLAIMS WERE
13 REJECTED FOR SO-CALLED "INADEQUATE PROOF OF PURCHASE."
14 THE BASES UPON WHICH THAT WAS DONE, IT LOOKS LIKE SOME
15 PEOPLE SENT IN PHOTOS. WELL, OKAY, SO THEY SENT IN A
16 PHOTO OF THE STORE. WHY IS THAT NOT AN ADEQUATE CLAIM
17 JUST BECAUSE IT'S INADEQUATE PROOF OF PURCHASE?

18 THE COURT: I UNDERSTOOD THAT TO BE A COMMENT
19 AS TO SUBSTITUTE FOR A RECEIPT.

20 MR. CHORBA: CORRECT, YOUR HONOR. THE
21 SETTLEMENT AGREEMENT SPECIFIED THE REQUIRED PROOF OF
22 PURCHASE. IF THEY DIDN'T SUBMIT --

23 THE COURT: I UNDERSTAND.

24 MR. FURMAN: WHY ARE THOSE CLASS MEMBERS NOT
25 ENTITLED TO GET ANY MONEY WHATSOEVER?

1 THE COURT: THEY'RE NOT ENTITLED TO THE HIGHER
2 LEVEL BECAUSE THAT'S NOT A RECEIPT.

3 MR. FURMAN: WITH ALL DUE RESPECT,
4 MR. SHERWOOD'S DECLARATION APPEARS TO BE QUITE
5 UNEQUIVOCAL. THOSE CLAIMS WERE REJECTED. 16,000 OF
6 THOSE CLAIMS WERE --

7 THE COURT: WAIT A MINUTE.

8 I UNDERSTOOD YOU TO SAY TWICE NOW THAT
9 YOU'RE REPRESENTING TO ME THAT THE PHOTOGRAPH CLAIMANTS
10 WERE REJECTED AS RECEIPT -- AS AN ALTERNATIVE TO A
11 RECEIPT.

12 WERE THEY FULLY REJECTED?

13 MR. CHORBA: THEY WERE, YOUR HONOR, IF THE
14 CLAIMANT SELECTED -- AGAIN, THE CLAIM FORM HERE WAS
15 EXCEEDINGLY SIMPLE. 600,000 PEOPLE WERE ABLE TO FIGURE
16 IT OUT, WHICH IS AN ASTOUNDINGLY LARGE NUMBER.

17 THE COURT: SO IF SOMEBODY SENT A PHOTOGRAPH
18 AND IT WERE REJECTED BECAUSE THEY WERE CLAIMING A
19 RECEIPT, WERE THEY PERMITTED TO RESUBMIT AS A
20 NON-RECEIPT CLASS MEMBER?

21 MR. CHORBA: NO, YOUR HONOR. BECAUSE THERE
22 WERE TWO -- AGAIN, A VERY SIMPLE CLAIM FORM. IT HAD
23 TWO SECTIONS. IT HAD SECTION A WITH PROOF. IT HAD
24 SECTION B WITHOUT PROOF.

25 IF SOMEBODY OPTED TO SELECT "WITH PROOF,"

1 AND THEY UPLOADED AN INVALID FORM OF PROOF, SUCH AS MY
2 EXAMPLE EARLIER, A PICTURE OF A STORE, THAT'S AN
3 INVALID CLAIM. THAT'S ALL WE HAVE. THERE'S NOTHING IN
4 THE CLAIM FORM OR THE SETTLEMENT THAT ALLOWS US TO JUST
5 INFER -- TO USE COUNSEL'S HANGING CHAD EXAMPLE --

6 THE COURT: I WANT TO KNOW WHETHER THEY CAN
7 REFILE A CLAIM AS A NON-RECEIPT?

8 MR. CHORBA: IF THEY FILE A CLAIM BEFORE THE
9 DECEMBER 17TH DEADLINE, IT'S POSSIBLE, YOUR HONOR, YES.

10 THE COURT: OKAY. GO AHEAD.

11 MR. CHORBA: IF IT WAS JUST WITH PROOF AND IT
12 WAS AN INVALID PROOF --

13 THE COURT: I UNDERSTAND.

14 MR. CHORBA: THERE ARE COSTS. THERE ARE COSTS
15 ASSOCIATED WITH THIS. IF WE HAVE TO GO THROUGH AND
16 START CONTACTING -- YOU KNOW, IT'S EXPENSIVE TO DO
17 THAT. SO THE JUDGMENT WAS MADE TO MAKE THIS A VERY
18 SIMPLE CLAIM FORM.

19 THE COURT: THANK YOU.

20 MR. FURMAN: SO THE LAST POINT JUST ON THE
21 NUMBERS THERE, YOUR HONOR, TALKING ABOUT APPROXIMATELY
22 600,000 CLAIMS TO DATE, 575,000 OF WHICH ARE
23 REFLECTED -- ALMOST 575,000 ARE REFLECTED ON THE
24 DOCUMENTS THAT WE HAVE, OVER 81,000 ADDITIONAL CLAIMS
25 HAVE BEEN REJECTED, NOT IN COUNTING THE DUPLICATE

1 CLAIMS. SO IT IS A SIGNIFICANT NUMBER, YOUR HONOR.

2 THE COURT: OKAY. THANK YOU, MR. FURMAN.

3 MR. FURMAN: THANK YOU, YOUR HONOR.

4 THE COURT: DID ANY OF THE LEAD PLAINTIFFS
5 SUBMIT A DECLARATION STATING HOW MUCH TIME HE OR SHE
6 SPENT AS A LEAD PLAINTIFF?

7 MS. WOLFSON: YOUR HONOR, EACH LEAD PLAINTIFF
8 SUBMITTED A DECLARATION DESCRIBING THEIR EFFORTS.
9 THOSE DO NOT CONTAIN HOUR AMOUNTS.

10 THE COURT: WHY NOT?

11 MS. WOLFSON: WE THOUGHT THAT GIVEN THE VERY
12 RATIONAL AMOUNT THAT'S BEING REQUESTED, \$2,500, IT WAS
13 NOT NECESSARY. BUT, OF COURSE, IF YOUR HONOR THINKS IT
14 IS, WE WOULD LIKE THE OPPORTUNITY TO MODIFY THOSE
15 DECLARATIONS.

16 THE COURT: DO YOU THINK THERE'S A VARIATION
17 IN THE AMOUNT OF TIME DIFFERENT CLASS REPRESENTATIVES
18 SPENT?

19 MS. WOLFSON: I THINK THERE MAY BE, YES.

20 THE COURT: HOW IS THE CALCULATION OF THE
21 ASSIGNED VALUE OF INJUNCTIVE RELIEF MADE?

22 MR. CHORBA: YOUR HONOR, THAT WAS SUBMITTED
23 WITH THE PRELIMINARY APPROVAL PAPERS, AS YOUR HONOR MAY
24 RECALL. WE HAD ANDREA THEODORE, A MARKETING
25 REPRESENTATIVE OF NAKED JUICE. AND WE VALUED THAT, AS

1 STATED IN THAT DECLARATION, THE ACTUAL COSTS TO NAKED
2 JUICE. AND THAT WAS A PRODUCT OF HEAVY NEGOTIATION.
3 IT WAS THE OUT-OF-POCKET COSTS, FOR EXAMPLE, HIRING A
4 NEW OR ASSIGNING SOMEONE WITHIN THE COMPANY TO FULFILL
5 THE NEW ROLE, TO SORT OF OVERSEE THE COMPLIANCE
6 EFFORTS, THE COSTS OF SUBMITTING SAMPLES FOR OUTSIDE
7 VERIFICATION AND TESTING. THESE ARE ACTUAL
8 OUT-OF-POCKET. COSTS, CONSTRUCTING A DATA BASE WAS
9 ANOTHER ELEMENT OF THE INJUNCTIVE RELIEF.

10 THE COURT: JUST A MINUTE.

11 MS. GOLAN, YOU'RE HERE; CORRECT?

12 MS. GOLAN: YES, YOUR HONOR.

13 THE COURT: WHAT EFFORT HAVE YOU MADE TO
14 QUANTIFY THE PORTION OF THE FEES YOU SEEK AS RELATED TO
15 THE GMO MATTER, WHICH YOU CONTEND WAS THE -- IN YOUR --
16 IN THE SANDYS' COMPLAINT, BUT NOT OTHERS?

17 MS. GOLAN: YES, YOUR HONOR. THE SANDYS'
18 COMPLAINT WAS THE ONLY COMPLAINT THAT BROUGHT GMO
19 CLAIMS. WE WERE ALSO THE ONLY COUNSEL TO DO ANY GMO
20 INVESTIGATION. WE'RE ALSO THE ONLY ONE --

21 THE COURT: WHAT EFFORT HAVE YOU MADE TO
22 QUANTIFY THE AMOUNT OF YOUR EFFORTS THAT WERE MADE WITH
23 RESPECT TO GMO? THAT WAS MY QUESTION.

24 MS. GOLAN: I'M NOT UNDERSTANDING THE
25 QUESTION, YOUR HONOR.

1 THE COURT: OKAY. LET ME MAKE IT CLEARER.
2 YOU'RE SEEKING HUNDREDS OF THOUSANDS OF DOLLARS IN
3 FEES. YOU'RE NOT CLASS COUNSEL. THAT WAS -- THAT
4 DECISION WAS PREVIOUSLY MADE.

5 THERE'S A DISPUTE AMONG THE PARTIES AS TO
6 WHETHER THERE'S ANY -- EVEN A BASIS TO AWARD ANY FEES.
7 HOWEVER, THERE'S AUTHORITY THAT SUGGESTS THAT FEES
8 COULD BE AWARDED TO YOU IN CONNECTION -- TO THE EXTENT
9 YOU HAVE ADDED VALUE.

10 THE ONLY AREA, ON MY REVIEW OF THE
11 BILLING STATEMENTS AND BRIEFING, THAT I THINK THERE'S A
12 POTENTIAL FOR HAVING ADDED VALUE IS IN CONNECTION WITH
13 THE GMO ISSUE. THEREFORE, THAT'S WHY I ASKED MY
14 QUESTION.

15 NOW, THERE IS AN ALLOCATION OF TIME -- OF
16 YOUR TIME SPENT ON THE COMPLAINT THAT YOU DRAFTED. AND
17 THERE'S DISPUTES ABOUT WHETHER OR NOT THAT WAS
18 REASONABLE IN TIME. SO THAT'S WHY I ASKED.

19 HAVE YOU THOUGHT ABOUT HOW TO QUANTIFY
20 THE TIME SPENT ON THE GMO ISSUE?

21 MS. GOLAN: WITH MY REGARD TO MY DRAFTING OF
22 THE INITIAL COMPLAINT, I CAN GO BACK TO MY RECORDS AND
23 DIVIDE -- SEE WHICH PART OF IT WAS ON THE GMO
24 ALLEGATIONS AND WHICH PART WAS ON OTHER ALLEGATIONS.

25 THERE'S ALSO THE -- THE TIME SHEETS THAT

1 WE SUBMITTED ALSO SPECIFIED THE WORK THAT WE WERE DOING
2 ON THE DAYS THAT WE WERE DOING IT AND HOW MUCH TIME WE
3 SPENT ON IT, INCLUDING OUR DISCUSSION OF THE CLAIMS AND
4 ALSO THE TESTING OF THE PRODUCTS WITH EXPERTS AND
5 VARIOUS LABS.

6 THE COURT: OKAY. THANK YOU.

7 IS THERE ANYTHING MORE YOU WANT TO ADD AT
8 THIS POINT, MS. GOLAN?

9 MS. GOLAN: NO, YOUR HONOR.

10 THE COURT: THANK YOU.

11 YES?

12 MS. WOLFSON: THANK YOU, YOUR HONOR.

13 I JUST WANT TO STATE THAT IT IS INCORRECT
14 TO SAY THAT MS. SANDYS WAS THE ONLY PLAINTIFF WHO
15 INVESTIGATED THE GMO MATTER. LEAD COUNSEL INVESTIGATED
16 THAT ISSUE. WE DID INCLUDE IT IN THE CONSOLIDATED
17 COMPLAINT.

18 THE COURT: BUT IT WAS ONLY IN THE SANDYS'
19 COMPLAINT INITIALLY?

20 MS. WOLFSON: THAT'S CORRECT.

21 HOWEVER, THE INVESTIGATION WAS ONGOING.
22 WE DID DO OUR OWN EXPERT WORK. EXPERTS WERE DESIGNATED
23 FOR THIS ISSUE. TESTS WERE DONE. AND ALL OF THOSE
24 WERE PROVIDED IN DISCOVERY.

25 THE COURT: WAS THAT PRE OR POST DRAFTING OF

1 THE CONSOLIDATED COMPLAINT?

2 MS. WOLFSON: I DON'T KNOW THE ANSWER TO THAT,
3 YOUR HONOR.

4 THE COURT: OKAY.

5 MS. GOLAN: AFTER YOUR HONOR RULED ON THE
6 INTERIM LEAD MATTER, YOUR HONOR ORDERED INTERIM LEAD
7 COUNSEL TO CONFER WITH US REGARDING THE AMENDED
8 CONSOLIDATED COMPLAINT. AND IT WAS THIS PROCESS THAT
9 HELPED US ENSURE THAT THE GMO ALLEGATIONS WERE MADE IN
10 THE AMENDED CONSOLIDATED COMPLAINT AND THEY WERE MADE
11 AS STRONGLY AS POSSIBLE.

12 THE COURT: OKAY. THANK YOU.

13 MY TENTATIVE THINKING WITH RESPECT TO
14 OTHER ISSUES IS THIS: IN APPLYING THE SETTLEMENT
15 FAIRNESS FACTORS THAT HAVE BEEN RECOGNIZED BY THE NINTH
16 CIRCUIT ON NUMEROUS OCCASIONS, INCLUDING IN THE LINNEY
17 CASE, 151 F.3D 1234, WHICH INCLUDES THE STRENGTH OF THE
18 PLAINTIFF'S CASE, THE RISK, EXPENSE, COMPLEXITY, THE
19 LIKELY DURATION OF FURTHER LITIGATION, THE RISK OF
20 MAINTAINING THE CLASS ACTION STATUS, THE AMOUNT OFFERED
21 IN SETTLEMENT, THE EXTENT OF DISCOVERY COMPLETED, THE
22 EXPERIENCE AND VIEWS OF COUNSEL, THE PRESENCE OF A
23 GOVERNMENTAL PARTICIPANT, THE REACTION OF CLASS MEMBERS
24 TO THE PROPOSED SETTLEMENT.

25 OTHER FACTORS CAN INCLUDE THAT THE

1 SETTLEMENT WAS ACHIEVED THROUGH MEDIATION WITH A
2 NEUTRAL, ARM'S LENGTH NEGOTIATIONS.

3 ANOTHER FACTOR HERE -- OR AMONG THOSE
4 FACTORS THAT IS RECOGNIZED IS, THIS IS NOT A CASE IN
5 WHICH YOU PRESENTED EVIDENCE AS TO WHAT RANGE YOU
6 BELIEVE WOULD HAVE BEEN RECOVERED HAD THERE BEEN A
7 TRIAL; CORRECT?

8 MS. WOLFSON: YOUR HONOR, WITH ALL DUE
9 RESPECT, THAT'S NOT ENTIRELY CORRECT. WE PRESENTED THE
10 COURT -- DOCUMENTS WERE FILED UNDER SEAL REGARDING
11 DEFENDANT'S REVENUES.

12 IF YOU RECALL, THE COURT HAD CONTINUED --
13 THE COURT: WHAT EVIDENCE WAS PRESENTED WITH
14 RESPECT TO A RANGE OF POTENTIAL RECOVERY AS ESTIMATED
15 BY COUNSEL IN CONNECTION WITH THE NEGOTIATED SETTLEMENT
16 OF THIS CASE?

17 MS. WOLFSON: I BELIEVE I'M ANSWERING THE
18 QUESTION, BUT MAYBE I'M MISUNDERSTANDING. THERE WAS --

19 THE COURT: DURING THE NEGOTIATION OF THE
20 SETTLEMENT, WERE RANGES OF SETTLEMENT DISCUSSED?

21 MS. WOLFSON: YES, YOUR HONOR.

22 THE COURT: EXCUSE ME, RANGES OF POTENTIAL
23 RECOVERY WERE DISCUSSED?

24 MS. WOLFSON: YES.

25 THE COURT: WHICH DOCKETED SEALED DOCUMENTS

1 CONTAIN THE INFORMATION?

2 MS. WOLFSON: JUST A MINUTE, YOUR HONOR.

3 DOCKETS 141 AND 142.

4 THE COURT: JUST ONE SECOND, PLEASE.

5 I HAVE IT. THANK YOU.

6 I'VE JUST EXAMINED THE DATA IN EXHIBIT --
7 IN DOCKET 141, WHICH DOES ADDRESS THE QUESTION I
8 RAISED. THANK YOU.

9 I'M MINDFUL OF THE -- THEREFORE, AMONG
10 OTHER FACTORS, THE CALCULATIONS THAT WERE MADE IN TERMS
11 OF POTENTIAL RECOVERY, THE ISSUES ABOUT WHETHER THE
12 ACTION COULD BE MAINTAINED AS A CLASS ACTION, THE
13 AMOUNT OF THE SETTLEMENT, THE USE OF A NEUTRAL, AS I
14 STATED, THE AMOUNT OF DISCOVERY COMPLETED AND THE STAGE
15 OF THE PROCEEDINGS, THE EXPERIENCE OF COUNSEL, THE
16 REACTIONS OF CLASS MEMBERS TO THE SETTLEMENT, THE ARM'S
17 LENGTH NEGOTIATIONS.

18 AND I'M ALSO MINDFUL OF THE OBJECTIONS,
19 SOME OF WHICH HAVE BEEN UNDERSCORED THIS MORNING, SOME
20 OF WHICH, AS I STATED, WERE OF THE SAME NATURE AND TYPE
21 THAT WERE PRESENTED IN CONNECTION WITH THE PRELIMINARY
22 APPROVAL.

23 AND I WILL REFLECT FURTHER IN LIGHT OF
24 THE COMMENTS MADE TODAY AND DIRECT THAT THE -- I WOULD
25 LIKE TO SEE, WITHIN A WEEK, A BRIEF FROM SANDYS'

1 COUNSEL SEEKING TO IDENTIFY THE WORK PERFORMED UP TO
2 THE TIME OF THE APPOINTMENT OF CLASS COUNSEL ON THE GMO
3 ISSUE.

4 AND, SECOND, I'D LIKE TO SEE THE EVIDENCE
5 FROM CLASS COUNSEL ON THE GMO WORK PERFORMED BY CLASS
6 COUNSEL, WHEN THAT WAS PERFORMED. SO I'D LIKE EACH OF
7 YOU TO USE DATES IN ANY DATA SUBMITTED SO I CAN SEE HOW
8 THE WORK OVERLAPS, IF AT ALL.

9 WITH RESPECT TO THE PROPOSED \$2,500
10 AMOUNT TO EACH CLASS REPRESENTATIVE, I'D LIKE TO HAVE
11 DATA SUBMITTED AS TO HOW MUCH TIME EACH OF THESE
12 INDIVIDUALS SPENT IN CONNECTION WITH THIS MATTER.

13 I DO HAVE THE DECLARATIONS AS TO WHAT
14 EACH DID, BUT I'D LIKE TO KNOW APPROXIMATELY HOW MANY
15 HOURS EACH SPENT.

16 WITH RESPECT TO THE COSTS OF CLASS
17 COUNSEL, MY TENTATIVE VIEW IS THAT THE COSTS HAVE BEEN
18 ADEQUATELY AND APPROPRIATELY DOCUMENTED AND ARE
19 REASONABLE AND WERE REASONABLY RELATED TO ACHIEVING THE
20 OUTCOME HERE.

21 WITH RESPECT TO THE REQUEST FOR LEGAL
22 FEES BY CLASS COUNSEL, I'VE LOOKED AT THAT IN SEVERAL
23 DIFFERENT WAYS. FIRST, I HAVE NOTED THAT THERE'S A
24 VARIATION IN THE HOURLY RATES OF DIFFERENT CLASS
25 COUNSEL, THAT'S FINE, IN THE MARKETPLACE. HOWEVER, I'M

1 NOT -- AT THIS POINT, I'M NOT -- I WAS NOT PERSUADED AS
2 TO WHY CERTAIN CLASS COUNSEL COULD JUSTIFY A HIGHER
3 HOURLY RATE AT THE TOP THAN OTHERS.

4 I'M ALSO MINDFUL THAT CERTAIN OF THE
5 UNDERLYING HOURLY RECORDS WHICH WERE DESIGNED TO SHOW
6 AN ABILITY TO DO AN EVALUATION ON THE LODESTAR NUMBER
7 INVOLVED CERTAIN INDIVIDUALS WHO BILLED RELATIVELY
8 SMALL NUMBERS OF HOURS. MR. FINKELSTEIN, 16 HOURS.
9 MR. THOMPSON, I THINK IT WAS 6.8 HOURS. THERE WERE
10 OTHERS WHO WERE IN THIS VERY SMALL -- RELATIVELY SMALL
11 COMPARED TO OTHERS' HOURLY RANGE. AND I -- I -- IN
12 DOING MY ANALYSIS, I WAS INCLINED TO REDUCE SOME OF
13 THESE HOURS OR -- AND IN SOME INSTANCES, POTENTIALLY
14 ELIMINATE THEM BECAUSE I WAS OVERALL CONCERNED ABOUT
15 THE EFFICIENCIES.

16 I ALSO BELIEVE, YOU CAN CORRECT ME ON
17 THIS, THAT THE RECORDS REFLECT THAT MORE THAN 26
18 LAWYERS BILLED TIME. THAT'S NOT INCLUDING THE LEGAL
19 ASSISTANTS AND OTHERS. AND THAT ALSO RAISED AN ISSUE
20 FOR ME IN TERMS OF EFFICIENCY AND EVALUATING THE
21 REASONABLENESS OF FEES.

22 NOW, BASED ON THE TOTAL AMOUNT OF THE
23 SETTLEMENT, WHICH IS IN CASH \$9 MILLION, AND THEN THE
24 ASSIGNED VALUE FOR THE VALUE OF -- OR THE COST OF THE
25 INJUNCTIVE RELIEF, THE PERCENTAGES VARY WHETHER --

1 DEPENDING -- THE PERCENTAGE OF LEGAL FEES REQUESTED --
2 WHICH I BELIEVE IS \$2.6 MILLION; CORRECT?

3 MS. WOLFSON: YES, YOUR HONOR.

4 THE COURT: THAT PERCENTAGE IS A HIGHER --
5 THAT FIGURE IS A HIGHER PERCENTAGE OF \$9 MILLION THAN
6 IT IS OF MORE THAN \$10 MILLION THE ESTIMATED COST,
7 WHICH IS THE APPROXIMATE ESTIMATED ADDITIONAL --
8 INCLUDES THE APPROXIMATE ESTIMATED ADDITIONAL COST OF
9 THE INJUNCTIVE RELIEF. SO THOSE FIGURES CAN BE USED TO
10 EVALUATE CLAIMS OF LEGAL FEES -- LEGAL FEES -- LEGAL
11 FEE CLAIMS.

12 AND THEN THE CROSS-CHECK IS WHAT I
13 DESCRIBED EARLIER, WHICH IS LOOKING AT YOUR HOURLY
14 RATES, LOOKING AT THE NUMBERS OF HOURS AND DETERMINING
15 WHETHER THE PERCENTAGE METHOD IS APPROPRIATE.

16 AND AT THIS POINT -- HAVING REVIEWED THE
17 BILLING STATEMENTS, THE HOURS BILLED, THE NUMBERS OF
18 HOURS BILLED BY CERTAIN INDIVIDUALS AND THE NUMBERS OF
19 LAWYERS, AT THIS POINT, I THINK THAT THE AWARD -- MY
20 TENTATIVE VIEW IS THAT THE AWARD WOULD BE REDUCED. NOT
21 \$2.6 MILLION, WHICH IS APPROXIMATELY 25 PERCENT OF THE
22 \$10.4 MILLION, BUT AT A PLACE BETWEEN 25 PERCENT OF THE
23 \$9 MILLION RECOVERY, WHICH IS \$2.25 MILLION, AND
24 SLIGHTLY MORE THAN THAT. I'M GOING TO GIVE THIS SOME
25 FURTHER THOUGHT. BUT I BELIEVE THAT SOME REDUCTIONS

1 ARE APPROPRIATE. AND IN MY TENTATIVE THINKING BASED ON
2 THE ANALYSIS THAT I HAVE DONE TO THIS POINT, IS THAT
3 THE FIGURE SHOULD BE NO MORE THAN \$2.4 MILLION, BUT IT
4 MIGHT BE SOMEWHAT LESS THAN THAT.

5 AGAIN, BASED ON HOURLY RATES, I'M NOT
6 PERSUADED BY \$850 HOURLY RATES. I'M NOT PERSUADED BY,
7 AS I SAY, CERTAIN OF THE RATES THAT ARE HIGHER THAN
8 THAT. I'M NOT PERSUADED THAT THE WORK THAT WAS
9 PERFORMED, ESPECIALLY WHEN IT WAS OF LIMITED AMOUNT,
10 WARRANTS THE APPLICATION OF SUCH RATES.

11 TO BE SURE, THOSE AMOUNTS DID NOT
12 GENERATE SUBSTANTIAL PORTIONS OF THE TOTAL BILL. BUT
13 WHEN LOOKING THROUGH IT AND COMING THROUGH THESE
14 ANALYSES AND THE 35 LAWYERS ISSUE, I'M -- IT'S -- I'M
15 NOT PERSUADED THAT THE REQUESTED \$2.6 MILLION IS THE
16 RIGHT NUMBER.

17 MS. WOLFSON: IF I MAY BE HEARD, YOUR HONOR?

18 THE \$2.6 MILLION REQUESTED IS 25 PERCENT
19 OF THE \$10.4 MILLION, IF YOU INCLUDED THE INJUNCTIVE
20 RELIEF VALUE. AND IT'S 28 PERCENT OF THE \$9 MILLION
21 VALUE. WE WOULD SUBMIT TO YOU, THAT IS STILL WELL
22 WITHIN THE RANGE OF THE BENCHMARK IN A BENEFIT-TO
23 THE-FUND METHOD.

24 AS YOUR HONOR INDICATED, THE LODESTAR IS
25 A CROSS-CHECK. AND WE WOULD BE HAPPY TO ADDRESS THE

1 CONCERNS THAT YOUR HONOR MENTIONED. HOWEVER, THE NINTH
2 CIRCUIT DOES ALLOW US TO INCLUDE A RISK MULTIPLIER IN
3 CASES LIKE THIS UNDER THE FISCHER CASE, NUMEROUS CASES
4 WE'VE CITED, WPPSS, FLORIN.

5 AND THE LODESTAR THAT WE'VE PRESENTED TO
6 THE COURT, THE FEES -- THE FEES THAT WE ARE REQUESTING
7 IS ACTUALLY LOWER THAN THE ACTUAL LODESTAR WITHOUT ANY
8 MULTIPLIER. SO WE WOULD ASK THE COURT TO CONSIDER THAT
9 IN ITS ANALYSIS.

10 THE COURT: ALL RIGHT. THANK YOU.

11 MS. RIVAS: YOUR HONOR, IN TERMS OF MY
12 PARTNERS, DOUG THOMPSON AND BURT FINKELSTEIN, THEY HAVE
13 30 YEARS OF EXPERIENCE OF DOING THIS TYPE OF WORK.
14 THEY HAVE RELATIVELY A SMALL NUMBER OF HOURS BECAUSE
15 THEY WERE BROUGHT IN IN KEY TIMES DURING THE LITIGATION
16 WHERE I THOUGHT THEIR EXPERIENCE WOULD BE VALUABLE.
17 BUT I UNDERSTAND, YOUR HONOR, IF THE COURT IS INCLINED
18 TO REDUCE THOSE. BUT THAT'S WHY THEY WERE BROUGHT IN.

19 IN TERMS OF THE NUMBER OF BILLERS, MY
20 FIRM -- I DON'T KNOW ABOUT OTHER FIRMS. BUT MY FIRM --
21 AT DIFFERENT POINTS IN THE CASE, DIFFERENT LAWYERS
22 BECOME INVOLVED. FOR INSTANCE, CERTAIN LAWYERS MIGHT
23 START THE INVESTIGATION INITIALLY. AND THEN OTHER
24 FIRMS GET OTHER -- I'M SORRY, OTHER LAWYERS GET
25 INVOLVED WITH THE PLEADINGS AND WHATNOT. SO THAT'S

1 WHY, AT CERTAIN POINTS, THERE MIGHT BE, YOU KNOW,
2 VARIOUS PEOPLE WORKING ON IT.

3 BUT WE DID ALLOCATE, FOR INSTANCE, FACT
4 RESEARCH TO A LOT OF THE PARALEGALS. WE ALLOCATED A
5 LOT OF THE LEGAL RESEARCH TO THE MORE JUNIOR ASSOCIATES
6 SO THAT WE COULD MAKE SURE THAT BILLING WAS EFFICIENT.

7 THE COURT: OKAY. THANK YOU, MS. RIVAS.

8 MS. WOLFSON: YOUR HONOR, IF YOU'LL INDULGE ME
9 FOR A MINUTE?

10 TAKING A STEP BACKWARDS, THIS IS A REALLY
11 GREAT SETTLEMENT FOR THESE TYPES OF CASES. WE ARE
12 SEEKING AN EXTREMELY MODEST AWARD, AN AWARD THAT IS
13 LESS THAN WHAT WAS CONTEMPLATED BY THE AGREEMENT.

14 AND I THINK IF YOU COMPARE THIS CASE TO
15 THE OTHER SETTLEMENTS IN THIS INDUSTRY, IN THIS TYPE OF
16 CASE, THE AWARDS -- THE ATTORNEY'S FEES AWARDS ARE
17 TYPICALLY GREATER WITH, IN MY OPINION, MUCH LESS
18 RESULTS.

19 OTHER THAN THE DANNON CASE AND PURE CASH
20 VALUE, THIS IS THE BIGGEST FOOD FALSE ADVERTISING CLAIM
21 THAT I'M AWARE OF.

22 THE CLASS HAS HAD AN OVERWHELMING
23 RESPONSE. TYPICALLY ONE WORRIES ABOUT A LACK OF
24 CLAIMS.

25 THIS WAS A VERY SUCCESSFUL SETTLEMENT

1 WITH CLOSE TO 600,000 VALID CLAIMS WHERE PEOPLE ARE
2 GETTING DIRECT CASH IN HAND.

3 THE COURT: I UNDERSTAND.

4 THE ESTIMATE OF THE CLASS SIZE WAS
5 BETWEEN 8- AND 16 MILLION; IS THAT RIGHT?

6 MS. WOLFSON: YES.

7 AND THERE WAS A NUMBER USED TO BE EXTRA
8 CONSERVATIVE IN TERMS OF HOW THE NOTICE WAS FASHIONED.
9 THERE WAS -- I BELIEVE IT WAS APPROXIMATELY 21 MILLION
10 APPROXIMATED CLASS MEMBERS FOR THE PURPOSES OF
11 CONSTRUCTING THE NOTICE.

12 THE COURT: OKAY. THANK YOU, MS. WOLFSON.

13 ANYONE ELSE HAVE ANYTHING HE OR SHE
14 WISHES TO ADD AT THIS POINT?

15 MS. GOLAN, AS I THINK I SAID EARLIER,
16 I'VE FOCUSED -- IN TERMS OF THE FEE AWARD THAT'S BEING
17 SOUGHT BY SANDYS' COUNSEL, I'M DISINCLINED TO MAKE AN
18 AWARD THAT APPROACHES THAT LEVEL.

19 I THINK THAT IF THE TIME SPENT INCLUDES
20 WORK ON APPOINTMENT OF COUNSEL, THE DRAFTING OF THE
21 COMPLAINT, THE ISSUES ABOUT CONSOLIDATED LEADERSHIP,
22 THE MOTION TO DISMISS, DISCOVERY, OBJECTIONS TO
23 SETTLEMENT AND CERTAIN MISCELLANEOUS MATTERS, WHICH
24 LEAD TO A TOTAL NUMBER OF HOURS, APPROXIMATELY 1,000
25 HOURS, AND A FEE REQUEST OF APPROXIMATELY \$568,000, AS

1 WELL AS COSTS OF APPROXIMATELY \$19,000, A SUBSTANTIAL
2 AMOUNT OF THESE HOURS WERE SPENT AFTER OTHER CLASS
3 COUNSEL WAS APPOINTED. THERE'S -- I DON'T THINK I'M
4 PERSUADED THAT THERE'S BEEN A SHOWING THAT, OTHER THAN
5 ON THE GMO ISSUE AND THE INITIAL WORK PRIOR TO THE
6 SELECTION OF CLASS COUNSEL, LEAD COUNSEL, THAT THE
7 OTHER WORK IS SUBJECT TO BEING COMPENSATED.

8 THERE WAS NO PARTICIPATION IN THE
9 SETTLEMENT. THERE WAS AN OBJECTION TO THE SETTLEMENT.
10 THERE ARE STATEMENTS ABOUT DISCOVERY AND OTHER WORK.
11 BUT I'M JUST NOT PERSUADED THAT THIS WORK WASN'T
12 ALREADY BEING HANDLED BY THE 35 LAWYERS TO WHICH I'VE
13 ALREADY REFERRED.

14 MS. RIVAS: YOUR HONOR, AFTER THIS COURT
15 APPOINTED INTERIM LEAD CLASS COUNSEL, WE WERE VERY,
16 VERY CAUTIOUS ABOUT DOING -- WELL, BILLING FOR ANY WORK
17 ON THIS CASE.

18 THE TIME THAT WE DID INCLUDE IN OUR FEE
19 REQUEST WAS SPENT ON REVIEWING THE AMENDED CONSOLIDATED
20 COMPLAINT, AS YOUR HONOR ALLOWED US TO DO, AND ALSO ON
21 THE SETTLEMENT OBJECTION, WHICH -- YOUR HONOR, IF YOU
22 RECALL, AT THE TIME WE MADE THOSE OBJECTIONS, WE
23 SUPPORTED THE SETTLEMENT. BUT WE WANTED -- WE FELT
24 THAT THERE WERE SOME ISSUES IN THE SETTLEMENT THAT
25 COULD BE DEALT WITH EARLY, AND THAT MAY POSE A PROBLEM

1 LATER ON BY THE OBJECTIONS THAT WE IN FACT SEE NOW. WE
2 DID NOT -- THE COURT APPROVED THE SETTLEMENT. BUT
3 THROUGH OUR OBJECTIONS, THE CLASS COUNSEL DID SUBMIT AN
4 APPROVED WRITTEN NOTICE.

5 THE MOTION TO DISMISS, YOUR HONOR, THAT
6 WAS FILED BY NAKED JUICE BEFORE THE COURT APPOINTED
7 INTERIM LEAD CLASS COUNSEL. SO THERE WAS VERY, VERY
8 LITTLE WORK DONE ON THAT. BUT THAT WAS SOMETHING THAT
9 WE HAD TO DO.

10 DISCOVERY MATTERS AS WELL. WE DID NOT
11 BILL FOR ANY DISCOVERY WORK AFTER THE COURT APPOINTED
12 INTERIM LEAD CLASS COUNSEL. ALL OF THE DISCOVERY WORK
13 THAT WE DID WAS BEFORE THEN, AS WE HAD TO DO FOR THE
14 RULE 16 REPORT.

15 THE COURT: I UNDERSTAND. THANK YOU.

16 HERE'S THE -- THE THREE -- AS I STATED, I
17 WANT INFORMATION FROM THE -- AS TO -- FROM SANDYS'
18 COUNSEL AND FROM CLASS COUNSEL ON THE GMO IMPACT.

19 DID I SET A DATE FOR THAT?

20 MS. WOLFSON: YOU SAID ONE WEEK.

21 THE COURT: CAN YOU DO THAT?

22 IS THERE ANYTHING ELSE ANYONE WOULD LIKE
23 TO RAISE?

24 OKAY. I'LL ISSUE A WRITTEN RULING UPON
25 RECEIVING THESE THINGS. THANK YOU VERY MUCH.

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MR. CHORBA: THANK YOU, VERY MUCH, YOUR HONOR.

(END OF PROCEEDINGS)