WEN-OBJ 9

Ellen Bentz
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Cincinnati, Ohio 45226

RECEIVED FEB 13 2017

February 9, 2017

Settlement Administrator
WEN Class Action Objections
c/o Dahl Administration
P.O. Box 3614
Minneapolis, MN 55403-0614

Re: *Written Notice of Objection*
Friedman v. Guthy-Rinker, LLC et al.

Dear Sir or Ms.:

My name is Ellen Bentz and I write to object to the proposed settlement in the Wen hair care products matter. I am a member of the class, for I have purchased Wen hair care products between November 1, 2007 and September 19, 2016. Moreover, I received notice of the proposed settlement in a November 27, 2016 email, a copy of which is attached. I am not presently a named party in any litigation, and I do not intend to be present at the final approval hearing since I live in Ohio.

I find the settlement to be unfair for several reasons. First, the total amount of the settlement is insufficient to fully compensate each class member for his or her personal injuries. As I understand it, the total settlement fund is $26,250,000, of which $6,500,000 will go to attorneys' fees, and approximately $825,000 to administrative costs. That leaves $5,000,000 for Tier 1 claims, and the rest (approximately $13,867,500) for the more severe Tier 2 claims. If the claims submitted by class members are greater than the funds set aside to pay the claims, then payments will be proportionally reduced.

The amount of settlement is inherently unfair because the fund will likely be tapped and the 6,000,000 class members will be required to take a proportional share. As I had significant hair loss, I would be a Tier 2 class member. Tier 2 claims fall into four separate ranges: Range 1 ($0 to $2,500), Range 2 ($2,500 to $7,500), Range 3 ($7,500 and $12,500) and Range 4 ($12,500 to $20,000). With only $13,867,500 available for Tier 2 claimants, if just under 700 class members – or 0.011% of the class - fall into the most severe Range 4 and each is entitled to $20,000, then all Tier 2 class members must take a proportional share. Similarly, and as the court pointed out, if the average payout on Tier 2 claims is $2,5000, then only 5,547 class members – or 0.092% of the class – can submit Tier 2 claims before proportional reductions kick in. With nearly 6,000,000 class members, this clearly demonstrates that the settlement fund is underfunded, and likely will not fully compensate potential class members.

In sum, the settlement is based in large part upon an assumption that there will be few claims made. That may be unlikely in light of the fact that these are personal injury claims involving hair loss, which caused embarrassment and distress to individuals. This case differs greatly from a class action for the purchase of a consumer product where the amount of the class action award is nominal to the class member, and to which a claim is inconsequential. To the contrary, hair loss resulting from the use of Wen hair care products is personal, and devastating, and likely there will be significant claims made. Conversely, if the assumption is correct that there will be few claims made, then a $6,500,000 award of attorneys' fees may be excessive in light of a low payout to the class.

Second, the $6,500,000 in attorneys fees is likely unreasonable, although it is impossible to assess since Plaintiffs' motion for attorneys' fees is not due until May 1, 2017. As objections are due nearly three months prior, objectors and class participants are precluding from adequately assessing or objecting to them. Thus, because the attorneys' fee motion is set nearly three months after the deadline for objections, class members do not have an adequate opportunity to object to the fee motion itself, which runs counter to the theory of allowing class members to file objections in the first place. How can a class member object if he or she doesn't know the facts and evidence in support of the fee request?

In any event, simply because class counsel seeks the benchmark 25% of the settlement fund does not make the fees reasonable as a matter of course, for that is a mechanical, formulaic approach that provides for an unreasonable award in this case. Indeed, counsel has not submitted any documents demonstrating the work they actually performed to justify 25% of the settlement. From the court's docket, it doesn't appear that the lawyers did anywhere near $6,500,000 worth of work. From July 2014 through October 2015, class counsel filed a 30-page complaint, an amended complaint, a 19-page opposition to a motion to dismiss, a protective order, a handful of stipulations on scheduling, a "Rule 26(f) Report", a motion to compel discovery, a second amended complaint, a 13-page "Stipulation for ESI Protocol", a second motion to compel discovery and some additional briefing on it. At that point, the court stayed the case to allow the parties to discuss resolution and embark upon mediation. The parties then resolved the matter, which resulted in various filings to memorialize that agreement and to gain preliminary approval from the court. Even assuming a high hourly rate of $650, class counsel would have needed to commit 10,000 hours to this case. That seems highly unlikely, considering the matter was resolved prior to class certification and trial.

Third, if the dollar award of the settlement negotiated between Plaintiff and Wen was decreased based upon the "warning" that Wen agreed to provide, then the settlement is unfair, for the "warning" is useless. The "warning" that one should consult one's doctor if they have an adverse reaction adds nothing.

All of the above are indicia of self-dealing and/or implicit collusion. Class counsel is receiving a disproportionate amount of the settlement fund, which is exacerbated by the fact that the Defendant has agreed in the settlement agreement to not challenge either the amount of attorneys' fees, or the incentive awards. This paves the way for named plaintiff and plaintiffs' counsel to look after themselves at the expense of the class members.

The settlement is also unfair and inappropriate because the opt-out period runs on February 10. Thus, from the time I was given email notice on November 27, 2016, I have had less than 75 days to evaluate my case, collect my evidence, determine the scope of my injuries, potentially retain counsel, and evaluate whether I am better served opting out of the class, or remaining with the class. Considering the Plaintiffs and Defendants have set a range upwards of $20,000 per case, 75 days is simply too short of time to perform such an analysis where significant dollars are at issue. Once again, this differs great from a run of the mill consumer class action involving contract, where damages per class member are minimal. Here, significant personal injuries are at stake, therefore requiring a longer opt-out period.

The settlement is also unfair and unreasonable in that it caps personal injury damages for a class member at $20,000 for the most severe of injuries. However, class members could have extremely significant injuries, hair loss, emotional distress and embarrassment for which $20,000 is insufficient to compensate them for their injuries. This is particularly true when one looks at the guidelines for claims evaluation, where the $12,500 - $20,000 tier requires "loss of more than 50% of hair with minimal regrowth," coupled with visits with healthcare providers to discuss depression. Under those circumstances, a $20,000 settlement seems incredibly low and insufficient. When coupled with the low settlement fund of $13,867,500, it is clear that the settlement is not in the best interests of the class members. Moreover, there is absolutely no evidence at this point to determine the number of people who suffered serious injuries, or the value of those injuries, to make an informed decision on whether the tiers are sufficient, or whether there is enough money in the settlement fund to cover these claims.

The settlement is also unfair in that if a party does not respond to the class action notice by April 28, 2017, they waive forever a significant personal injury claim, for the settlement agreement contains a full and broad release. This will be exacerbated if the claim response rate is particularly low. For this reason alone, these tort based claims are not well-suited for class action treatment, and are better suited for an multidistrict litigation format, where each case stands on its own merits after consolidation for purposes of pretrial discovery and other procedural and substantive issues are hashed out.

Finally, the $25,000 incentive awards of Plaintiffs Friedman and Miller are excessive, in that they are $5,000 more than any individual class plaintiff could recover in this action. These Plaintiffs in this case could be more interested in maximizing those incentive awards to the detriment of the class. In fact, other than baldly stating that these two plaintiffs were deposed and involved in "substantial discovery," Plaintiff does not set forth the time either actually expended to justify such a high incentive award.

For all of these reasons, I respectfully object to the proposed class action settlement in this case.

Very Truly Yours,

Ellen Bentz