LEXINGTON LAW GROUP
Mark N. Todzo, State Bar No. 168389
Abigail Blodgett, State Bar No. 278813
503 Divisadero Street
San Francisco, CA 94117
Telephone: (415) 913-7800
Facsimile: (415) 759-4112
mtodzo@lexlawgroup.com
ablodgett@lexlawgroup.com

HALUNEN LAW
Melissa W. Wolchansky (*admitted pro hac vice*)
Charles D. Moore (*pro hac vice pending*)
80 South Eighth Street, Suite 1650
Minneapolis, MN 55402
Telephone: (612) 605-4098
Facsimile: (612) 605-4099
wolchansky@halunenlaw.com
moore@halunenlaw.com

Court Appointed Class Counsel

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

REBEKAH BAHARESTAN and JENA MCINTYRE, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

VENUS LABORATORIES, INC., dba EARTH FRIENDLY PRODUCTS, INC.,

Defendant.

Case No. 3:15-cv-03578-EDL

PLAINTIFFS' SUPPLEMENTAL BRIEFING IN RESPONSE TO THE OBJECTION OF STEVEN HELFAND TO THE PROPOSED SETTLEMENT

Date: March 15, 2016
Time: 9:00 a.m.
Location: Courtroom E
Judge: Hon. Elizabeth D. Laporte

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

INTRODUCTION

On November 5, 2015, the Court preliminarily approved the Class Action Settlement Agreement entered into between Plaintiffs Rebekah Baharestan and Jena McIntyre ("Plaintiffs") and Venus Laboratories, Inc., d/b/a Earth Friendly Products, Inc.'s, ("Venus" or "Defendant").[1] (ECF No. 23).

On January 17, 2016, Steven Helfand filed an objection to the Settlement ("Helfand Objection") (ECF No. 30). On March 5, 2016, Mr. Helfand withdrew his objection for lack of standing. (ECF No. 32.).

Although there are no longer any objections before the Court, Mr. Helfand raised a number of issues regarding the settlement prior to withdrawing his objection. For the reasons set forth below, the issues raised in the Helfand Objection are without merit.

DISCUSSION

I. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

As detailed above, the Helfand Objection was withdrawn for lack of standing. However, if the Court does consider the merits of the objection, for the reasons set forth below, the Court should find they fail to raise any legitimate issues with the settlement.

A. The Class consists of those with economic injury

Objector Helfand opens his objection with an act of willful ignorance. He provides only a limited quote—taken entirely out of context—as a means to justify his position. Specifically, Helfand wonders aloud whether the term "affected," as used in Class Counsel's declaration, refers to those suffering from physical injury or only those who were misled, and how this relates to the class definition of those who "purchased" the Products. (*See* Helfand Objection at 3; Declaration of Mark N. Todzo in Support of Motion for Preliminary Approval of Class Action Settlement Agreement ("Todzo Prelim. Decl.") (ECF No. 15-1, ¶ 11).)

[1] Unless otherwise noted, all capitalized terms have the same meaning as in the Class Settlement Agreement ("Settlement"). (ECF No. 15-2.)

At all points in this litigation and settlement process, including the Settlement Agreement itself, Class Counsel has made abundantly clear the Settlement provides relief for Defendant's allegedly misleading labeling. The sentence preceding Helfand's partial quote states, "[b]y settling now, Settlement Class Members secure meaningful monetary compensation, plus the certainty of knowing Venus' alleged ***deceptive labeling and marketing practices*** will cease . . . ." (Todzo Prelim. Decl. ¶ 11) (emphasis added); *see* (Settlement § 7.1) ("The Released Claims shall be construed as broadly as possible to effect complete finality over this litigation ***involving the advertising, labeling, and marketing*** of the Earth Friendly Products . . ."). [2] Placed in its full context, the term "affected" refers to those who were deceived by Defendant's labeling and marketing practices.

Further, at multiple points during this litigation and settlement process, Class Counsel made clear the injury sought to be remedied is economic in nature. [3] By way of example, in the paragraph following Helfand's partial quote, Class Counsel discussed class-wide damage models, specifically emphasizing the "premium" charged for "natural" and "organic" labeling.

---

[2] Other filings in this action are replete with discussions of Defendant's misleading and deceptive marketing. *See* Class Action Complaint ("Compl.") (ECF No. 1 ¶¶ 2, 11, 12, 14, 16, 18, 19, 36, 44, 45, 48, 52, 56, 63, 64, 66, 70(c), 98, 110, 122, 125, 127); Memorandum of Points and Authorities in Support of Motion for Preliminary Approval of Class Action Settlement Agreement ("Mem. Prelim. App.") (ECF No. 15 at 1-5, 15-18); Plaintiffs' Unopposed Motion for Final Approval of Class Action Settlement and Request for Entry of Final Judgment and Memorandum of Point and Authorities ("Mem. Final App.") (ECF No. 28 at 2, 9, 19, 21); Declaration of Melissa W. Wolchansky in Support of Plaintiffs' Unopposed Motion for Final Approval of Class Action Settlement and Request for Entry of Final Judgment ("Wolchansky Decl.") (ECF No. 28-1 ¶¶ 5, 7, 30); Notice of Motion and Motion for Award of Attorneys' Fees, and Reimbursement for Costs and Service Awards, Memorandum of Points and Authorities in Support Thereof ("Fee Mem.") (ECF No. 29 at 2, 3, 6, 13, 15); Declaration of Mark N. Todzo in Support of Plaintiffs' Motion for Award of Attorneys' Fees, and Reimbursement for Costs and Service Awards ("Todzo Fee Decl.") (ECF No. 29-1 ¶¶ 2, 5, 7, 16); Settlement §§ 1.1, 1.2, 1.9, 4.8, 7.1.

[3] Other filings in this action are replete with discussions of Defendant's marketing causing economic injury. *See* Compl. ¶¶ 6, 8, 13, 14, 15, 16, 17, 18, 19, 48, 49, 51, 53, 70(c), 73, 74, 77, 112, 114, 124, 125, 126; Mem. Prelim. App. at 1, 3, 12; Mem. Final App. at 12; Wolchansky Decl. at 5-7.

(Todzo Prelim. Decl. ¶ 12; *see* Mem. Prelim. App. at 1 ("The Settlement remedies Plaintiffs' concerns on behalf of purchasers of the Earth Friendly Products nationwide, who allegedly paid a premium for these Products over comparable products that did not purport to be natural.")) Thus, when the documents are examined in their entirety, the meaning of the term "affected" becomes clear.

Since the injury is economic, it occurred upon purchase, and thus the class encompasses "all persons" who purchased the product. Helfand failed to provide any proof for the assertions he makes, and therefore failed to meet is burden. *In re Google Referrer Header Privacy Litig.*, 87 F. Supp. 3d 1122, 1137 (N.D. Cal. 2015) (citing *United States v. Oregon*, 913 F.2d 576, 581 (9th Cir. 1990)) ("[O]bjectors to a class action settlement bear the burden of proving any assertions they raise challenging the reasonableness of a class action settlement.").

B. Class Counsel has been consistent in discussing the potential class size

It is important to note that courts routinely accept class size estimates, particularly in cases where the number of class members is not readily knowable. *See, e.g.*, *Perkins v. Linkedin Corp.*, No. 13-CV-04303-LHK, 2016 U.S. Dist. LEXIS 18649, at *7 (N.D. Cal. Feb. 16, 2016) (grating final approval of a settlement, with an estimated class size, over a Helfand objection); Aboudi v. T-Mobile USA, Inc. (NLS), No. No.: 12cv2169 BTM(NLS), 2015 U.S. Dist. LEXIS 109054, at *15 (S.D. Cal. Aug. 18, 2015) (granting final approval with an estimated class size); *Moore v. PetSmart, Inc.*, No. 5:12-cv-03577-EJD, 2015 U.S. Dist. LEXIS 102804, at *9 (N.D. Cal. Aug. 4, 2015) (granting final approval despite underestimating the class size by over 19,000 individuals); Rosales v. El Rancho Farms, No. Nos.: 1:12-cv-01934-AWI-JLT, 2015 U.S. Dist. LEXIS 95756, at *9-10 (E.D. Cal. July 21, 2015) (granting final approval of the settlement despite changes in the estimated class size); *Schiller v. David's Bridal, Inc.*, No. 1:10-cv-00616-AWI-SKO, 2012 U.S. Dist. LEXIS 80776, at n.3 (E.D. Cal. June 11, 2012) (granting final approval of the settlement despite changes in the estimated size of the class to the number of claimants).

In his objection, Helfand questions the size of the class and the best methods for

notification. However, the record is clear regarding the source of the estimated class size: the estimate was extrapolated "from sales information provided by Venus in settlement discussions." (Dahl Prelim. Decl. ¶ 11.)

Helfand's suggestion that Class Counsel "simply depose Walmart, Mollie Stone, Whole Foods and Costco" evidences a lack of appreciation for the complexity associated with obtaining such confidential information from a non-party to a litigation. (*See* Helfand Objection at 6.) Furthermore, Class Counsel negotiated a reasonable settlement reasonably relying upon discovery produced in the course of pre-litigation discussions.

In addition to mischaracterizing the source of Class Counsel's estimate of the class size, Helfand also questions the estimate of the Claims Administrator. (Helfand Objection at 5.) However, Helfand failed to acknowledge (or perhaps read plainly) that the Claim's Administrator's estimate is based on national sales data for a broad category of products, and not sales data specific to the Products. *See* Affidavit of Jeffrey D. Dahl with Respect to Settlement Notice Plan ("Dahl Aff.") (ECF No. 15-2, Ex. 1, Ex. C, ¶ 11) ("However, estimates from GfK MRI indicate that the total buying population for 'green' or 'natural' household items defined to include surface cleaners & laundry detergent it 15.08 million U.S. adults"). Thus, the 15.08 million estimated class size described the product category, and never purported to be anything different.

Finally, Helfand questions why individual notice was not sent. (Helfand Objection at 6.) Helfand is, again, incorrect. As detailed in the Declaration of Jeffrey D. Dahl with Respect to Implementation of the Notice Plan and Performance of the Required Settlement Administration Activities ("Dahl Decl.") (ECF No. 28-2 ¶ 11), on November 25, 2015, 7,991 individual Notice Packets were sent to those Settlement Class Members for whom mailing addresses were known..

Additionally, because not every Class Member's mailing address was known, publication notice was appropriate. *Torres v. Pet Extreme*, No. 1:13-cv-01778-LJO-SAB, 2015 U.S. Dist. LEXIS 5136, at *10 (E.D. Cal. Jan. 15, 2015) ("Notice by publication has been found to be adequate where identification of individual class members is not possible through

reasonable effort."); *see In re Toys "R" Us-Del., Inc. Fair & Accurate Credit Transactions Act Litig.*, 295 F.R.D. 438, 449 (C.D. Cal. 2014) ("When the court certifies a nationwide class of persons whose addresses are unknown, notice by publication is reasonable").

Publication notice was provided to the Class via a number of techniques, including:

- using a web-based notice campaign with banner-style notices on targeted websites with a link to a Settlement Website;
- employing social media to target Settlement Class Members;
- publishing a national press release for the Settlement via PR Newswire;
- establishing a toll-free Settlement helpline; and
- creating a Settlement website.

(*See* Dahl Decl. ¶¶ 9-26.) Theses publication techniques are in line with similar notice programs which have met due process and Rule 23 requirements. See, e.g., Gaudin v. Saxon Mortg. Servs., No. 11-cv-01663-JST, 2015 U.S. Dist. LEXIS 95720, at *19-20 (N.D. Cal. July 21, 2015); *In re Toys "R" Us*, 295 F.R.D. at 449 (C.D. Cal. 2014); *Beck-Ellman v. Kaz USA, Inc.*, No. 3:10-CV-02134-H-DHB, 2013 U.S. Dist. LEXIS 60182, at *21-23 (S.D. Cal. January 7, 2013); *Nigh* , 2013 U.S. Dist. LEXIS 161215; *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1080 (N.D. Cal. 2007).

Accordingly, the class size was appropriately calculated, and the Settlement provided sufficient notice to meet the due process requirements.

C. Class Counsel had sufficient information to assess the claims and possible damages

Helfand's third objection relates to his conjecture regarding the lack of information on which Class Counsel based their assessment to settle. (*Id.*) He accuses Class Counsel of ignoring key information such as product sales, revenue generated, and scientific evidence. (*Id.*)

Despite Helfand's hollow protestations, formal discovery is unnecessary "where there has been sufficient information sharing and cooperation in providing access to necessary data[.]" *Misra v. Decision One Mortg. Co.*, No. SA CV 07-0994 DOC (RCx), 2009 U.S. Dist. LEXIS

119468, at *23 (N.D. Cal. Oct. 2, 2014). "What is required is that 'sufficient discovery has been taken or investigation completed to enable counsel and the court to act intelligently.'" *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 447 (E.D. Cal. 2013) (citing Herbert B. Newberg, *Newberg on Class Actions* § 11.41 (4th ed. 2013)).

Class Counsel, in fact, obtained discovery necessary to allow them to act informedly in the best interest of the Class. Class Counsel detailed their investigation and review of materials in their Motion for Final Approval. (*See* Mem. Final. App. at 14.) Further, Class Counsel discussed these efforts in greater detail in their supporting documents; including their examination of "information concerning marketing, label design, product formulation, manufacturing processes for the product ingredients, and information regarding Venus' pricing and sales." (Wolchansky Decl. ¶ 10.) Additionally, Class Counsel explained they "examined the chemical structure and production process of 50 different ingredients, found in the Earth Friendly Products—as available in patent applications, scientific literature, and other publically available sources." (*Id* ¶ 6.)

Again, Helfand failed to provide any proof for the assertions he raises, and therefore failed to meet his burden. *In re Google*, 87 F. Supp. 3d at 1137.

D. Notice has been adequate and effective, and it affords Class Members due process

Helfand next contends that the notice was insufficient to meet due process and Rule 23. (Helfand Objection at 9.) Specifically, he argues that because the notice did not mention release of personal injury claims it was misleading. (*Id.*)

In *Brown*, 2016 U.S. Dist. LEXIS 20118, the court overruled a virtually identical objection lodged by Helfand, finding that a similar release was "limited to claims at issue in the case and [did] not (for example) include personal-injury claims." *Brown*, 2016 U.S. Dist. LEXIS 20118, at *31; *see Brown*, No. CV 11-03082 LB (ECF No. 355-2, at 15) (releasing claims "arising out of or related to Defendant's use of the word 'organic' or 'organics' in connection with the Challenged Products, that were asserted or reasonably could have been asserted in the

Action by or on behalf of all Releasing Parties,").

Likewise, at no point does Helfand explain where his assertion that the settlement releases personal injury claims comes from. Rather he simply states it as if it is axiomatic. In actuality, the release is limited to claims "arising out of or relating to the allegations in the Complaint and the labels or advertising of any Earth Friendly Products purchased by Plaintiffs and any members of the Settlement Class." (Settlement, § 2.25).

As discussed above, the wrongful conduct this litigation seeks to remedy is the misleading and deceptive labeling of the Products, while the injury sought to be remedied is an economic injury. *See supra* Part I (A). The causes of action arise from breach of express warranty, California's Unfair and Deceptive Acts Practices Law, California's False Advertising Law, California's Environmental Marketing Claims Act, California's Organic Product Act, California's Unfair Competition Law, and Washington's Consumer Protection Act. (Compl. ¶¶ 72-131.) These causes of action are born of the misleading labeling of Defendant's Products.

Plaintiffs have made no effort to recover on behalf of injured Class Members and the Settlement does not release injury claims.

To meet the due process requirements, "[t]he notice must explain in easily understood language the nature of the action, definition of the class, class claims, issues and defenses, ability to appear through individual counsel, procedure to request exclusion, and binding nature of a class judgment. *Ahdoot v. Babolat VS N. Am., Inc.*, Nos. CV 13-02823-VAP (VBKx) and CV 13-07898-VAP (VBKx), 2015 U.S. Dist. LEXIS 45551, at *24 (C.D. Cal. Apr. 6, 2015). As personal injury claims are not released, they did not need to be, and should not have been, discussed in the Notice.

E. The Attorneys Fees Award is Reasonable

Helfand next objects on the grounds the fund is inadequate and the attorneys' fees are excessive. (Helfand Objection at 10.) In his typical fashion, Helfand makes a number of unsupported blanket assertions. (*Id.*) For example, he states "[t]he Settlement Agreement offers token injunctive relief," yet provides no analysis as to why the extensive label changes and

product reformulations are "token." (*Id.*; *compare* Fee Mem. at 12-13.) Helfand then transitions into a discussion of the attorney fee award, specifically asserting that the fee request by Class Counsel is excessive. (*Id.* at 11.)

In the Ninth Circuit, the guiding principle is that a fee award be "reasonable under the circumstances." *WPPSS*, 19 F.3d at 1295. The value of the injunctive relief alone is sufficient to justify the additional 5 or 7.6 percent of the monetary relief above the 25 percent benchmark as an award. Moreover, it is well established that the benchmark percentage should be adjusted, or replaced by a lodestar calculation, when the percentage recovery would be too small in light of the hours devoted to the case or other relevant factors. *See Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993); Six (6) Mexican Workers v. Ariz. Citrus Growers, 904 F.2d 1301, 1311 (9th Cir. 1990).

There are many common fund cases in this District where the ultimate award exceeds the 25 percent benchmark. *See In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1047 (N.D. Cal. 2008) (*citing In re Activision Secs. Litig.*, 723 F. Supp. 1373, 1377 (N.D. Cal. 1989) ("This court's review of recent reported cases discloses that nearly all common fund awards range around 30%")); *Vizcaino*, 290 F.3d at 1050 (awarding attorneys' fees in the amount of 28 percent of the claim fund); *In re Pacific Enterprises Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming a fee award equal to 33 percent of the settlement fund); *Garner v. State Farm Ins.*, No. CV 08-1365 CW, 2010 WL 1687829, at *1-2 (N.D. Cal. April 22, 2010) (awarding a 30 percent common fund fee); *In re Activision Sec. Litig.*, 723 F. Supp. at 1375 (awarding a 32.8 percent common fund fee); *Linney v. Cellular Alaska P'ship*, Nos. C-96-3008 DLJ *et al.*, 1997 WL 450064, at *7 (N.D. Cal. July 18, 1997) (awarding a 33.3 percent fee); *In re Heritage Bond Litig.*, Case Nos. 02-ML-1475 DT *et al.*, 2005 WL 1594403, at *18 n.12 (C.D. Cal Jun. 10, 2005) (noting that more than 200 federal cases have awarded fees higher than 30 percent of the common fund). These cases show that the Court has an abundance of authority to award Class Counsel the requested fees and costs.

Class Counsel negotiated a settlement benefit to the Class that would result in an award

of attorneys' fees and costs of 30% of the total Settlement value. Class Counsel and Venus worked with the Administrator to craft a notice plan calculated to reach Settlement Class Members and provided a simple claim filing process. In addition to the reasons set forth above, Helfand wholly ignores the arguments put forward as to why the fee award is reasonable, despite filing his objection two days after Class Counsel filed their Motion for Attorneys' Fees. For the reasons discussed herein and in Class Counsel's Motion for Attorneys' Fees, the requested amount for attorneys' fees and costs is reasonable.

F. The *cy pres* recipient closely aligns with goals of the action

Lastly, Helfand's criticism of the Settlement's *cy pres* designee, Consumers Union, is unwarranted.[4] As an initial matter, the settlement fund, inclusive of the $75,000 supplemental payment, was completely exhausted. (*See* Supplemental Declaration of Jeffery D. Dahl with Respect to Implementation of the Notice Plan and Performance of Required Settlement Administration Activities (ECF No. 31 ¶ 5.).) As such, any discussion of *cy pres* is moot.

Nevertheless, it is worth noting that the exact same criticism of cy pres by Mr. Helfand, was recently rejected by two different trial courts in the Northern District. In *Brown v. Hain*, the court flatly rejected his objection, holding "the *cy pres* award is appropriate (as discussed above). The objectors' arguments do not change this conclusion." *See Brown v. The Hain Celestial Grp., Inc.*, No. CV 11-03082 LB (N.D. Cal. Dec. 23, 2015) 2016 U.S. Dist. LEXIS 20118, at *31.

Likewise, in *Perkins,* the court addressed Helfand's First Amendment argument head-on. The court stated:

> [Helfand] argues that donating funds to organizations engaged in political advocacy is effectively a compelled political donation in violation of the First Amendment. (citation omitted). [Helfand] points to no authority—case law or otherwise—addressing free speech in the context of a *cy pres* destitution. (citation omitted). The Court, in its own research, has found none. [Helfand] also fails to

[4] Objector Helfand submitted near verbatim objections against *cy pres* recipients in *Brown v. The Hain Celestial Grp., Inc.*, No. CV 11-03082 LB (N.D. Cal. Dec. 23, 2015) (ECF No. 361), and *Perkins v. Linkedin Corp.*, No. 13-CV-043030 LHK (N.D. Cal. Dec. 11, 2015) (ECF No. 117).

> explain why a *cy pres* distribution upon a court order serves as speech by [Helfand]. Given the lack of relevant authority and the fact that courts consistently approve *cy pres* awards to organizations engaging in advocacy related to the class's claims, the Court declines to find the plan distribution unreasonable based on this objection.

Perkins, 2016 U.S. Dist. LEXIS 18649, at n.9

"'Appropriate cy pres recipients [in UCL an CLRA actions] are . . . organization dedicated to protecting consumers from, or redressing injuries caused by, false advertising.'" *Beck-Ellman v. Kaz USA, Inc.*, No. 3:10-CV-02134-H-DHB, 2013 U.S. Dist. LEXIS 189308, at *22 (S.D. Cal. June 11, 2013) (quoting *Dennis v. Kellogg Co.*, 697 F.3d 858, 865 (9th Cir. 2012).

Consumers Union is unquestionably aligned with the consumer protection goals of this litigation. (*See* Declaration of Elisa Odabashian, attached as Exhibit 1 to the Todzo Supp. Prelim. Decl. (ECF No. 22-1); *see also* http://consumersunion.org/.) In *Beck-Ellman*, the court concluded the *cy pres* recipients, including Consumers Union, "are organizations committed to protecting consumers from false advertising or assisting consumer efforts for redress from false advertising so as to satisfy the Ninth Circuit standard established in *Dennis*." *Id.* at *30. Indeed, Consumers Union has been approved by courts as the *cy pres* recipient in multiple consumer class action settlements.[5]

---

[5] *See, e.g., Miller v. Ghiradelli Chocolate Co.*, No. 12--cv--04936--LB, 2015 WL 758094, at *8 (N.D. Cal. Feb. 20, 2015) (listing other cases approving Consumers Union as *cy pres* recipient in false-advertising lawsuits); *In re LivingSocial Mktg. & Sales Practice Litig.*, 298 F.R.D. 1, 13 (D.D.C. 2013) (finding interests and activities of Consumers Union were "directly aligned with those advanced" in the lawsuit); *see also* Final Order and Judgment at~ 14, *In re Aurora Dairy Corp. Organic Milk Mktg. & Sales Practices Litig.*, No. 4:08-MD-1907-ERW (E.D. Mo. Feb. 26, 2013), ECF No. 356 (alleging false advertising concerning "organic" claims); Final Order Approving Class Action Settlement at *7, *Trammel v. Barbara's Bakery, Inc.*, No. 3: 12-cv-02663-CRB (N.D. Cal. Nov. 8, 2013), ECF No. 70 (alleging false claims of "all natural" food products and incorporating terms of Settlement Agreement, ECF No. 37); Order and Final Judgment Approving Class Action Settlement, Awarding Attorneys' Fees and Expenses, and Awarding Class Representative Service Awards at Ex. A, *Golloher v. Todd Christopher Int'l Inc. Dba Vogue Int'l*, No. 3:12-cv-06002-RS (N.D. Cal. Apr. 25, 2014), ECF Nos. 79, 79-1 (alleging false claims of "organic" hair and skin care products); Order Preliminarily Approving Class Settlement Agreement, Conditionally Certifying the Settlement Class, Providing for Notice, and Scheduling Order at 2, *Baharestan v. Venus Labs., Inc., dba Earth Friendly Products, Inc.*, No. (footnote continued)

This Court has already considered the worthiness of Consumers Union as a *cy pres* recipient, and Class Counsel provided a supplemental declaration on the issue. *See* Minute Entry Nov. 3, 2015; Supplemental Declaration of Mark N. Todzo in Supporting of Motion for Preliminary Approval of Class Action Settlement Agreement ("Todzo Supp. Prelim. Decl.") (ECF No. 22). Following this consideration, the Court entered an order preliminarily approving the Settlement. (*See* ECF No. 23.)

Ultimately, Helfand's criticism is purely a matter of personal and political opinion--in a Settlement he has not filed a claim in nonetheless—and thus, does not bear on the reasonableness, adequacy, or fairness of the Settlement. *See Perkins*, 2016 U.S. Dist. LEXIS 18649, at *37 (quoting *Lane v. Facebook, Inc.*, 969 F.3d 811, 825 (9th Cir. 2012)) ("courts 'do not require as part of [*cy pres*] doctrine that settling parties select a *cy pres* recipient that the court or class members would find ideal'"). As such, his objection should be overruled.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court strike the Helfand Objection for lack of standing, or in the alternative, overrule the objection and enter Final Approval.

DATED: March 7, 2016

Respectfully submitted,

HALUNEN LAW

/s/ Mark N. Todzo

Mark N. Todzo, State Bar No. 168389
LEXINGTON LAW GROUP
Abigail Blodgett, State Bar No. 278813
503 Divisadero Street
San Francisco, CA 94117
Telephone: (415) 913-7800
Facsimile: (415) 759-4112
mtodzo@lexlawgroup.com
ablodgett@lexlawgroup.com

3:15-cv-03579-EDL (N.D. Cal. Nov. 5, 2015), ECF No. 23 (alleging false claims of "natural" products and incorporating Class Settlement Agreement, ECF No. 15-2).

Melissa W. Wolchansky (*admitted pro hac vice*)
Charles D. Moore (*pro hac vice pending*)
80 South Eighth Street, Suite 1650
Minneapolis, MN 55402
Telephone: (612) 605-4098
Facsimile: (612) 605-4099
wolchansky@halunenlaw.com
moore@halunenlaw.com

Court Appointed Class Counsel