

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

MOLLY CRANE, Individually and on
Behalf of All Other Persons Similarly
Situated,

Plaintiff,

v.

SEXY HAIR CONCEPTS, LLC, and ULTA
SALON COSMETICS & FRAGRANCE,
INC.,

Defendants.

Case 1:17-cv-10300

**PLAINTIFF'S MEMORANDUM REGARDING SETTLEMENT
ADMINISTRATION COSTS AND ABSENCE OF OBJECTIONS TO
FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

On October 19, 2018, Plaintiff moved for preliminary approval of the Settlement, which resolves all claims asserted in this action against Defendants. Dkt. No. 87. On November 14, 2018, this Court granted preliminary approval to the Settlement, Dkt. No. 91, and then later modified deadlines relating to the Settlement, Dkt. No. 95. As noted in Plaintiff's motion for final approval, Dkt. No. 97, the Settlement Administrator completed the notice program this Court previously approved, including direct notice to nearly one million class members and a media campaign designed to reach more than 70% of the total class of 3.8 million purchasers.

At the time of Plaintiff's final approval motion, the costs for Settlement Administration had not yet been finalized because the claims period was still open, and there were substantial uncertainties with respect to the rate of claims, which in turn affects the costs for distribution of benefits under the Settlement. Now that the claims period has closed, the Settlement Administrator has finalized information relating to claims, exclusions, and the costs for administration of the Settlement.

The preliminary approval order provided that class members could request exclusion from the Class by mailing an exclusion request pursuant to the terms of the notice (i.e., by sending a written request to Class Counsel) no later than March 20, 2019. Dkt. No. 91 ¶ 25; Dkt. No. 95. The preliminary approval order also provided that class members could object to the Settlement, Class Counsel's fee application, and/or the request for a service award for the Plaintiff by mailing an objection to the Clerk of Court, Class Counsel, and Defendant's Counsel no later than March 20, 2019. Dkt. No. 91 ¶ 27; Dkt. No. 95.

The deadlines for class members to exclude themselves from or object to the Settlement have now passed. Class Counsel received no objections and only two requests for exclusion. Counsel for Defendants and the Settlement Administrator report they have received no objections, and the Settlement Administrator has received only one request for exclusion (for a total of three, including the requests Class Counsel received). And, the Court's docket does not indicate any objections have been filed. Attached hereto as Exhibit 1 is a list of the individuals who have excluded themselves from the Class.

Class Counsel is also pleased to report that the Settlement Administrator is still confirming claims, the Settlement Administrator received more than 95,000 claims for more than 235,000 units, which will be more than sufficient to exhaust the Settlement Fund, as reflected in the affidavit of Andrew Perry, submitted with this memorandum as Exhibit 2. The parties therefore anticipate no *cy pres* distribution will be necessary except for settlement benefits checks that are mailed to claimants but that class members fail to cash.

The absence of any objections, the fact that only three class members have excluded themselves from the Settlement, and the exceptionally high claims rate, each provide further evidence of the fairness of the Settlement.

With respect to Settlement Administration expenses, Plaintiff respectfully requests that the Court award Settlement Administration expenses in the amount of \$430,000. These expenses exceed what Class Counsel originally expected (Class Counsel anticipated Settlement Administration expenses of approximately \$270,000), but the award is justified for two reasons.

First, the exceptionally high claims rate exceeded the Parties' expectations and the original assumptions of the Settlement Administrator. The high claims rate, in turn, necessarily will result in higher costs of distributing Settlement benefits to Class Members (including printing of checks and postage for more than 95,000 claimants). The exceptional claims rate, however, reflects the success of the Notice program implemented by the Settlement Administrator. The Settlement Administrator deserves to be compensated for this unanticipated out-of-pocket expense, which reflects the quality of the services the Settlement Administrator provided.

Second, as the Court will recall, the notice program included direct notice to nearly a million Class Members, most of whom who would receive notice by email, and others who would receive notice sent via regular mail. When the Settlement Administrator sent the notice, however, there was a greater than anticipated rate of email notices that were undeliverable. To address this problem, the Settlement Administrator mailed notice to more than 315,000 Class Members—a far greater number than anticipated. Of course, the practical result of this additional effort at maximizing successful direct notice was the exceptional claims rate in this case. But, the higher than anticipated volume of mailed notice came with increased costs (printing and postage). The Settlement Administrator should be compensated for its efforts and out-of-pocket expenses incurred in mailing direct notice to Class Members.

In summary, the administration of this Settlement has been very successful, ensuring that the Class Members will be the true beneficiaries of this Settlement. But, successful notice and administration of the Settlement required incurring expense. Plaintiff respectfully requests that the Court approve Settlement Administration expenses of \$430,000. To help reduce the impact on the Class from the greater than anticipated costs of Settlement Administration, Class Counsel agrees to reduce their request for attorneys' fees from \$750,000 (approximately 33% of the common fund, and to which no Class Member objected after having received notice of the request) to \$700,000 (approximately 30% of the common fund).

Dated: April 24, 2019

Respectfully submitted,

/s/ Patrick J. Vallely

Edward F. Haber (BBO # 215620)

Patrick J. Vallely (BBO # 663866)

SHAPIRO HABER & URMY LLP

Seaport East

Two Seaport Lane, Floor 6

Boston, MA 02210

(617) 439-3939 – Telephone

(617) 439-0134 – Facsimile

ehaber@shulaw.com

pvallely@shulaw.com

Kenneth D. Quat (BBO # 408640)

QUAT LAW OFFICES

929 Worcester Rd.

Framingham MA 01701

508-872-1261

ken@quatlaw.com

CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing pleading and its attachments was filed electronically through the Court's electronic filing system and that notice of this filing will be sent to all counsel of record in this matter by operation of the Court's ECF system.

Dated: April 24, 2019

/s/ Patrick J. Vallely
Patrick J. Vallely