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13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**
15

16 CARLOS MORENO, individually, and on
17 behalf of all others similarly situated,

18 Plaintiff,

19 v.

20 PRETIUM PACKAGING, L.L.C., a
21 Delaware limited liability company, and
DOES 1 through 10, inclusive,

22 Defendants.
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Case No.: 8:19-cv-02500-SB-DFM

[Hon. Stanley Blumenfeld, Jr.]

**JOINT RESPONSE TO ORDER
GRANTING PLAINTIFF'S
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT [DKT. NO. 54]**

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JOINT RESPONSE

The parties are pleased and appreciate the Court’s detailed Order Granting Preliminary Approval of their class action settlement agreement. However, the parties write to seek clarification regarding the Court’s required modifications to the Class Notice. Specifically, the Order states:

The Notice, however, does not adequately advise the Class of how it can review Class Counsel’s written request for attorneys’ fees and costs. Accordingly, at the end of Section 6.2 of the Notice, the following paragraph shall be added:

Class counsel will apply in writing to the Court on or before July 16, 2021 for their requested attorneys’ fees and costs. Their request shall be made available on the Settlement website within one day of its filing and upon request made to Class Counsel. You may object to the attorneys’ fees and costs sought no later than [60 days after Notice is mailed] in accordance with Section 22 of this Notice.

Dkt. 54, p. 7. However, there are two issues with these proposed modifications.

First, there is no Section 6.2 or Section 22 of the Notice. *See* Dkt. 53-3, pp. 31-34.

Second, scheduling a July 16, 2021 deadline for Plaintiff to file his motion for attorney’s fees and costs means that filing will occur after the anticipated June 24, 2021 deadline for class members to opt-out or object to the settlement. The Ninth Circuit, however, has held that class counsel must apply for attorneys’ fees before the deadline for class members to object to a class action settlement, holding:

the district court abused its discretion when it erred as a matter of law by misapplying Rule 23(h) in setting the objection deadline for class members on a date before the deadline for lead counsel to file their fee motion. Moreover, the practice borders on a denial of due process because it deprives objecting class members of a full and fair opportunity to contest class counsel's fee motion.

The plain text of the rule requires a district court to set the deadline

1 for objections to counsel's fee request on a date after the motion and
2 documents supporting it have been filed.

3 *In re Mercury Interactive Corp. Securities Litigation*, 618 F.3d 988, 993 (9th Cir.
4 2010); *see also* Plaintiff’s Memorandum of Points and Authorities in Support of
5 Motion for Preliminary Approval of Class Action Settlement (Dkt. 53-1), p. 22.

6 Thus, the parties believe that the attorneys’ fees motion must be filed
7 before the anticipated June 24, 2021 opt-out and objection deadline. The parties
8 have arrived on an anticipated June 24, 2021 opt-out and objection deadline as
9 follows:

- 10 • Section 6.2.1 of the Settlement Agreement states that Defendant has
11 to provide the class data to the administrator within 30 days after the
12 court grants preliminary approval;
- 13 • Section 6.2.3 requires the Administrator to mail out notice 14 days
14 after receipt of the class data;
- 15 • Sections 6.2.7 and 6.2.9 give class members 60 days to opt-out or
16 object;
- 17 • Accordingly, the opt-out and objection deadline is not later than 104
18 days after the Court granted preliminary approval on March 12,
19 2021, which is June 24, 2021.

20 In order to address the Court’s concerns identified in its Order, the parties
21 have drafted a proposed Class Notice, which is attached as Exhibit A to the
22 Declaration of Justin F. Marquez that is filed with this Joint Response Statement.
23 Page 3 of the proposed Notice contemplates a June 3, 2021 deadline for
24 Plaintiff’s counsel to apply for attorneys’ fees and costs, as opposed to July 16,
25 2021, but otherwise follows the Court’s required revision, stating:

26 Class counsel will apply in writing to the Court on or before June 3,
27 2021 for their requested attorneys’ fees and costs. Their request shall
28 be made available on the Settlement website within one day of its
filing and upon request made to Class Counsel. You may object to

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1 the attorneys’ fees and costs sought no later than [60 days after
2 Notice is mailed] in accordance with this Notice.

3 Moreover, per the Court’s direction, the parties have added additional language
4 on pages 1 and 4 of the Notice informing class members that the final approval
5 hearing will be conducted through Zoom. For ease of reference, a document
6 comparing changes in redline to the previous Class Notice filed on February 12,
7 2021 is attached to the Marquez Declaration as Exhibit B.

8 The parties respectfully request that the Court modify its Order and
9 approve the parties’ proposed Notice. The parties are also available to discuss
10 this matter with the Court via a telephone or Zoom conference.

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12 Dated: March 24, 2021

Respectfully submitted,
WILSHIRE LAW FIRM

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15 By: /s/ Justin F. Marquez

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Robert J. Dart
Benjamin H. Haber
Rachel J. Vinson

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18 Attorneys for Plaintiff CARLOS MORENO

19 Dated: March 24, 2021

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22 By: /s/ Jeremy M. Brenner*

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25 Attorneys for Defendant PRETIUM PACKAGING, L.L.C.

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27 *The filer attests that the signatory listed above concurs in the content of
28 this document and has authorized its filing.

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