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23 *Co-Lead Counsel for Settlement Class*

24 **UNITED STATES DISTRICT COURT FOR THE**
25 **CENTRAL DISTRICT OF CALIFORNIA**
26 **SANTA ANA DIVISION**

27 IN RE: VIZIO, INC., CONSUMER
28 PRIVACY LITIGATION

Case No. 8:16-ml-02693-JLS (KESx)

This document relates to:

ALL ACTIONS

**Plaintiffs' Memorandum in Support of
Unopposed Motion for
Reimbursement of Settlement
Administration Expenses and
Disbursement of Net Settlement
Funds**

DATE: February 21, 2020

TIME: 10:30 a.m.

DEPT: Courtroom 10-A

JUDGE: Hon. Josephine L. Staton

Introduction

Pursuant to the parties’ settlement agreement, which has won final approval, Plaintiffs seek an order authorizing reimbursement of settlement administration costs in the amount of \$77,420.60, and a reserve of \$200,000 for reimbursement of any remaining such costs that the Court may later approve as reasonable and adequately documented.

Also pursuant to the settlement agreement, Plaintiffs seek an order authorizing distribution of the net settlement sum, in the amount of \$10,777,940.16, to participating settlement class members who have submitted valid claims.

Total Settlement Fund	\$17,000,000
Attorney’s Fees	\$5,610,000
Litigation Costs	\$181,808.59
Incentive Awards	\$30,000
Settlement Administration Costs reimbursed on July 31, 2019	\$122,830.65
Unreimbursed Settlement Administration Costs	\$77,420.60*
Anticipated Settlement Administration Costs through completion of administration	\$200,000* (*subject to court approval)
Net Settlement Proceeds	\$10,777,940.16

If the net settlement sum is \$10,777,940.16, then participating settlement class members can expect to receive approximately \$18 per television.

By February 7, 2020—or two weeks before this Motion is scheduled to be heard on February 21—Plaintiffs will be able to report the exact dollar amount that a participating settlement class member can expect to receive per television (assuming net settlement

1 proceeds of \$10,777,940.16). With only one thousand claims left to be audited, however,
2 the estimated \$18 per television is unlikely to change appreciably.

3 **Background**

4 The Court has entered final judgment in this multi-district litigation and has retained
5 jurisdiction over the administration and enforcement of the parties' settlement agreement,
6 which (among other benefits) establishes a non-reversionary settlement fund of
7 \$17,000,000. *See* Judgment at 2 (Doc. 339).¹

8 Relevant here, the settlement agreement "provides that the Settlement Administrator's
9 services will be paid out of the Settlement Fund." Order (1) Granting Plaintiffs' Motion
10 For Final Approval Of Class Action Settlement (Doc. 311) And (2) Granting Plaintiffs'
11 Motion For Attorneys' Fees, Costs, And Class Representative Incentive Awards (Doc.
12 310), at 10 (citing Settlement Agreement § X.2) (hereinafter "Final Approval Order"). Such
13 reimbursable services include those associated with the disbursement of funds to qualifying
14 class members. (*See* Settlement Agreement § I.30.)

15 Also pertinent, the settlement agreement commands that the "settlement class net
16 settlement sum"—which is the settlement amount of \$17 million, less Court-approved
17 settlement administration costs (among other exactions) (Settlement Agreement § I.35)—
18 "will be distributed to participating settlement class members in accordance with the plan
19 of allocation, as approved by the Court." (Settlement Agreement § XI.1). The plan of
20 allocation is straightforward: "The residual sum will be distributed proportionally to
21 members of the Settlement Class ("Class Members") who submit valid claims." Final
22 Approval Order, at 4 (citing Settlement Agreement § XI.1).

23 **Argument**

24 Settlement administration has reached the stage at which the net settlement sum may
25 be distributed proportionally to class members who have submitted valid claims. Upon this
26 Court's consideration of final data from the Settlement Administrator's audit of claims,
27

28 ¹ Document 339 includes a copy of the parties' settlement agreement.

1 which will be shared no later than February 7, 2020, the Court should authorize
2 reimbursement and a reserve of funds for settlement administration costs, and also the
3 proportional release of a sum certain to participating settlement class members. *See, e.g., In*
4 *re Syngenta AG MIR 162 Corn Litig.*, No. 14-2637, 2019 WL 6134520, at *1, *3 (D. Kan.
5 Nov. 19, 2019) (noting that, about a year after granting final approval, “the Court granted
6 settlement class counsel’s motion to approve disbursements for certain expenses incurred
7 in the administration of the settlement fund and the claims process” (citing Order of
8 November 18, 2019 (Doc. # 4273)); *In re Paracelsus Corp. Sec. Litig.*, No. CIV.A. H-96-3464,
9 2007 WL 433281, at *1 (S.D. Tex. Feb. 6, 2007) (noting that, after entering final judgment
10 and retaining jurisdiction to enforce settlement administration, the court granted an
11 unopposed motion to distribute the settlement fund, to pay “remaining” attorney’s fees,
12 and to reimburse out-of-pocket expenses); *id.* at *1-*2 (approving an amended final motion
13 for disbursement and for reimbursement of additional settlement administration fees).

14 **A. The Court should authorize reimbursement of further settlement**
15 **administration costs.**

16 As discussed, the settlement agreement excludes administration costs from the net
17 settlement sum that may be distributed proportionally to class members who have
18 submitted valid claims. (Settlement Agreement § I.35.) To date, the Court has approved
19 “reimbursement to Class Counsel for \$122,830.65 charged by the Settlement Administrator
20 for such services,” finding such charges “reasonable and adequately documented.” Final
21 Approval Order, at 10. Plaintiffs now seek reimbursement to Class Counsel for \$77,420.60
22 charged by the Settlement Administrator for additional services. These expenses are also
23 reasonable and adequately documented, *see* Decl. of Settlement Administrator at 3, and
24 thus should be reimbursed.

25 The Settlement Administrator estimates that the remainder of settlement administration
26 will cost \$177,501.50, and it has broken down its estimate by task. *Id.* at 4. The Settlement
27 Administrator proposes reserving \$200,000 to cover for these anticipated costs and any
28 unexpected costs. *Id.* The Settlement Administrator would continue to charge Class

1 Counsel for settlement administration, and Class Counsel would apply to this Court for
2 reimbursement, likely at the conclusion of administration. The Court could then consider
3 whether such costs are reasonable and adequately documented. This approach obviates any
4 concern that might arise were Class Counsel to apply for reimbursement of settlement
5 administration costs *before* such costs are incurred. *Cf. Kearney v. Hyundai Motor America*, No.
6 SACV 09–1298–JST (MLGx), 2013 WL 3287996, at *9 (C.D. Cal. June 28, 2013) (denying
7 Plaintiffs’ counsel’s request for “expected” future attorney’s fees and costs, in part because
8 such fees or costs had yet to be incurred and thus could not be substantiated).

9 **B. The Court should authorize disbursement of the net settlement fund to**
10 **participating class members upon consideration of final data from the**
11 **Settlement Administrator.**

12 If the Court authorizes settlement administration costs and a reserve as discussed
13 above, then the net settlement sum is \$10,777,940.16, and qualifying class members will
14 receive approximately \$18 per television.

15 At this time, the Settlement Administrator is not able to report the exact dollar amount
16 that each participating settlement class member can expect to receive. The Settlement
17 Administrator needs one more month to complete its audit of deficiency notices, a small
18 fraction of which were sent on December 17, with a 30-day deadline to respond.² Decl. of
19 Settlement Administrator at 2. The Settlement Administrator will prepare a second
20 declaration that provides the results of its audit by February 7. As part of that submission,
21 the Settlement Administrator will provide a list of all eligible claim numbers and
22 corresponding televisions.

23
24
25 ² Class Counsel has nevertheless decided to file this Motion now for two reasons.
26 First, the Settlement Administrator will have final numbers to report at least two weeks
27 before the earliest hearing date available on the Court’s calendar. And second, it seemed
28 imprudent to wait another month to file this unopposed Motion given the near-final
numbers available at this time. Regardless of Plaintiffs’ timing, the Court (as always)
remains in the driver’s seat: It can proceed with the hearing as scheduled, take the matter
under submission, or reschedule the hearing date. Class Counsel will make themselves
available at the Court’s convenience.

1 In the meantime, the Settlement Administrator's declaration updates the Court on a
2 variety of settlement administration topics, such as claims received and claims status, the
3 deficiency process, and distribution of the net settlement fund.

4 Upon consideration of a second declaration, the Court should authorize distribution of
5 net settlement funds in accordance with the settlement agreement, and in the amount to
6 be calculated by the Settlement Administrator based on its audit of claims and reimbursable
7 costs of administration.

8 **Conclusion**

9 For the foregoing reasons and following consideration of further information from the
10 Settlement Administrator, the Court should grant Plaintiffs' Motion for Reimbursement of
11 Settlement Administration Costs and Disbursement of Net Settlement Funds.

12
13 DATED: December 20, 2019

Respectfully submitted,

14 **GIBBS LAW GROUP LLP**

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