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**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

UNITED DESERT CHARITIES, *et al.*,
Plaintiffs,
vs.
SLOAN VALVE COMPANY, *et al.*,
Defendants

Case No. 2:12-cv-06878 SJO (SHx)
**[PROPOSED] ORDER FINALLY
APPROVING MODIFICATIONS OF
SETTLEMENT AGREEMENT AND
PLAN OF ALLOCATION**

The Honorable. S. James Otero
Date: September 18, 2017
Time: 10:00 a.m.
Courtroom: 10C

Consolidated Cases:
Berube v. Flushmate
2:13-cv-02372-SJO-SH
Brettler v. Flushmate
2:13-cv-02499-SJO-SH
Kubat, et al. v. Flushmate
2:13-cv-02425-SJO-SH
Patel v. Flushmate
2:13-cv-02428-SJO-SH

Related Cases:
Mergens v. Sloan Valve Co.
2:16-cv-05255-SJO-SKx
Dimov v. Sloan Valve Co.
1:12-cv-09700 (N.D. Ill)

1 On September 18, 2017, the Court heard the Joint Motion for Final Approval of
2 Modifications to the Settlement and Plan of Allocation in this consolidated action.

3 Previously, following a hearing on April 10, 2017 (“Conditional Approval
4 Hearing”), this Court entered its Amended Order Conditionally Approving
5 Modifications of Settlement Agreement and Plan of Allocation (“Amended Order”)
6 (ECF No. 164) “as being a fair, reasonable and equitable solution for allowing
7 distribution of some of the unclaimed settlement funds remaining in the Settlement
8 Fund Trust Account following the close of the Claims Period to the Settlement Class.”
9 “By proposing that some of those unclaimed settlement funds also be utilized to resolve
10 the claims of the proposed settlement class in the related *Mergens v. Sloan Valve Co.*
11 case pending before this Court (Case No. 2:16-cv-05255-SJO-SKx),” the Court also
12 found that the proposed modifications apply “some of those settlement funds to their
13 next highest and best use in accordance with the *cy pres* doctrine.”

14 “Because the proposed modifications of the Settlement and Plan of Allocation
15 provide many additional benefits to the Settlement Class, do not provide for a lesser
16 recovery to the Settlement Class than was available under the original Settlement, and
17 do not bargain away rights to enforce portions of that agreement,” this Court also found
18 there is “no requirement that supplemental notice be provided to the Settlement Class or
19 that Settlement Class Members be afforded the opportunity to be heard on the proposed
20 modifications under Rule 23(e) of the Federal Rules of Civil Procedure prior to their
21 adoption.”

22 Nevertheless, upon the parties' request, the Court's Amended Order also approved,
23 as to form and content, notice of the proposed modifications of the Settlement and Plan
24 of Allocation to the Settlement Class, found that the proposed Notice Plan was fair,
25 reasonable and adequate, and ordered that all costs associated with the Notice Plan be
26 paid from the Settlement Fund Trust Account.

27 The Court has now considered the Notice of Motion and Joint Motion for Final
28 Approval of Modifications of Settlement Agreement and Plan of Allocation, and the

1 Declarations of Arnold Rodio, Shannon Wheatman, David M. Birka-White and Steven
2 H. Frankel filed concurrently therewith. In addition, the Court has considered the
3 previously-filed Joint Motion for Conditional Approval of Modifications of Settlement
4 Agreement and Plan of Allocation (ECF No. 154), the accompanying Special Master's
5 Report and Recommendation (ECF No. 154-5) and the Declarations of David M. Birka
6 White (ECF No. 154-1), Steven H. Frankel (ECF No. 154-2), Michael Gembarski (ECF
7 No. 154-3), Arnold Rodio (ECF No. 154-4), Shannon Wheatman (ECF No. 154-6) and
8 William M. Audet (ECF No. 161), and argument of counsel.

9 Based upon the foregoing and being otherwise fully advised in the premises, the
10 Court HEREBY ORDERS, ADJUDGES, and DECREES as follows:

11 1. This Order finally approves the modifications of the Settlement
12 Agreement and Plan of Allocation and incorporates and makes a part hereof the Court's
13 findings and conclusions in the Amended Order. All capitalized terms in this Order
14 shall have the same meanings as in the Settlement and in the modifications, unless
15 separately defined herein.

16 2. This Court has jurisdiction over the subject matter and parties pursuant to
17 28 U.S.C. §1332(d)(2) and 28 U.S.C. §1453. This jurisdiction includes, without
18 limitation, jurisdiction to shape equitable decrees for distributing unclaimed class
19 action settlement funds.

20 3. All conditional findings and conclusions in the Court's Amended Order
21 are hereby made final. This Court finds that the proposed modifications of the
22 Settlement Agreement and Plan of Allocation are a fair, reasonable and equitable
23 solution for allowing distribution of some of the unclaimed settlement funds remaining
24 in the Settlement Fund Trust Account following the close of the Claims Period to the
25 Settlement Class by extending the Claims Period. In recognition of their service, the
26 Incentive Awards to each Class Representative are increased from \$1,000 to \$5,000,
27 and are to be paid from the Settlement Fund Trust Account within ten (10) days
28 following the Effective Date of this Order.

1 4. In addition, by proposing that some of those unclaimed settlement funds
2 also be utilized to resolve the claims of the proposed settlement class in the related
3 *Mergens v. Sloan Valve Co.* case pending before this Court (Case No.
4 2:16-cv-05255-SJO-SKx), the proposed modifications apply some of those settlement
5 funds to their next highest and best use in accordance with the *cy pres* doctrine.

6 5. The Court has been informed that no comments to the proposed
7 modifications have been submitted in accordance with the requirements of the Class
8 Notices and the Amended Order. The Court has evaluated this overall reaction of the
9 Class to the modifications and finds that the overall acceptance of the modifications by
10 Class members supports the Court's conclusion that the modifications are in all respects
11 fair, reasonable, adequate, and in the best interests of the Class.

12 6. Based upon the foregoing, the Court hereby finally approves the
13 modifications to the Settlement and the Plan of Allocation as set forth in Exhibits A and
14 B to the Declaration of David M. Birka White In Support of Joint Motion for Final
15 Approval of Modifications of Settlement and Plan of Allocation.

16 7. The parties and the Claims Administrator are directed to implement the
17 modifications to the Settlement and the Plan of Allocations according to their terms and
18 conditions. The Claims Administrator is directed to begin processing all validly filed
19 claims in accordance with the modifications to the Settlement and the Plan of
20 Allocation.

21 IT IS SO ORDERED.

22
23 Dated:

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25 _____
26 THE HONORABLE S. JAMES OTERO
27 UNITED STATES DISTRICT JUDGE