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## **COURT APPROVES CLASS ACTION SETTLEMENT AND AWARDS \$24 MILLION WINDFALL IN FEES**

*(Azizian v. Federated Dept. Stores, Inc.)*

U.S. District Court Judge Sandra B. Armstrong of the Northern District of California approved a class action settlement this week between consumers, cosmetic manufacturers, and department stores that would provide class members with \$175 million worth of cosmetics after previously rejecting the unusual "first-come, first-served" giveaway proposal in January. She also awarded the plaintiffs' attorneys \$24 million in fees, the full amount that they requested with no questions asked, despite her previous position that an award should only be made after the giveaway program has been completed to assess its effectiveness, and thereby enable the court to determine what fee amount would be reasonable. The fee awarded, however, will be placed in an interest-bearing account and doled out once the giveaway program is completed. The court rejected WLF's objections that the fee request was excessive, and that both the amount awarded and the payment should be deferred until class members receive their products.

In *Azizian v. Federated Department Stores*, a nationwide class action was filed five years ago in California against a group of department stores such as Lord & Taylor, Nordstrom, and Saks Fifth Avenue, for antitrust violations with respect to the sale of cosmetics manufactured by companies such as Estee Lauder, L'Oreal, Christian Dior, and Chanel. The complaint claims that the defendants unlawfully agreed not to sell the cosmetics and fragrances at discount prices and to limit gift with purchase offers.

The companies and stores denied any liability, but agreed to pay up to \$24 million to class counsel to settle the case, and to give away \$175 million in unspecified products, with an average retail value of \$18-\$25, to class members during a one-week giveaway period at the department stores. Many objectors, including the attorneys general from Pennsylvania and 10 other states, sharply criticized this "first-come, first-served" scheme which would likely leave many class members without any compensation. Class actions are usually settled with monetary compensation or, with respect to consumer class action cases, coupons or vouchers that allow class members to redeem them as a credit for future purchases of the consumer item that was the very subject of the class action lawsuit. The proposed settlement in this case was "unprecedented" according to Judge Armstrong in that consumers would be able to claim their compensation only if they showed up at the department store during the specified period, and only if giveaway products were still available.

On behalf of 33 objectors, most of whom are women who purchased cosmetics during the specified time period, WLF filed several sets of objections and supplemental briefs, focusing on the excessiveness of the attorney fee request in light of the weakness of the case. The consultant for the plaintiffs' attorneys indicated that the case had only a seven percent chance of prevailing at trial. WLF argued that awarding fees of \$24 million would encourage the filing of meritless class actions. WLF argued that fees should be capped on the lodestar amount, which in this case, amounts to approximately \$15 million.

At the first settlement hearing in January, the judge expressed concerns about the "first-come, first-served" feature of the giveaway program where, under the terms of the settlement, consumers would receive a "gift" of cosmetics, valued up to \$25, from each cosmetic defendant from whom they purchased cosmetics over the years. Because there were nine defendants, a class member could potentially receive up to \$225 in products. Objections were made by the 11 states attorneys general to this plan because most of the 38 million class members would receive nothing. To address this problem, the parties revised the product distribution plan, limiting each class member to only one product, thereby increasing the possibility that more class members will receive a product. Several other objectors continued to oppose such a plan at the hearing this week because (1) it still does not guarantee that all class members will receive products, and (2) class members were not properly notified of the change that sharply limited their compensation.

The so-called "lodestar" fee, which is used to cross-check the award on a percentage of the value of the products, was based on hourly rates of up to \$650 an hour for attorneys, and \$190 an hour for file clerks and paralegals. WLF's brief noted that the base fee for paralegals for just one attorney was billed at \$1.3 million. With the lodestar "enhanced" by a conservative factor of 1.4, paralegals are being awarded fees at a staggering annualized rate of over \$550,000 a year.

"We're very disappointed that the court awarded the fees in full at this time despite the court's previous indication that the fee award should be postponed until after the giveaway program," said Paul Kamenar, WLF's Senior Executive Counsel. "What's more troubling is that the judge, whose salary is \$162,100 a year, is willing to award fees for a paralegal who never graduated from law school a sum that represents an annual salary over \$500,000."

Several objectors have indicated that they will appeal the decision to the U.S. Court of Appeals for the Ninth Circuit. It is estimated that the product giveaway will not be implemented for at least two or more years.

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For further information contact WLF Senior Executive Counsel Paul Kamenar at 202-588-0302. WLF's briefs in the case are available on WLF's website at [www.wlf.org](http://www.wlf.org).