

COPY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Peter J. Bezek, State Bar No. 102310
Robert A. Curtis, State Bar No. 203870
Kevin Gamarnik, State Bar No. 273445
FOLEY, BEZEK, BEHLE & CURTIS, LLP
15 West Carrillo Street
Santa Barbara, CA 93101
Telephone: (805) 962-9495
Facsimile: (805) 962-0722
Email: pbezek@foleybezek.com
rcurtis@foleybezek.com
kgamarnik@foleybezek.com

Attorneys for Objectors Jill Brunelle,
Tandy Kenward, Donald Puckett,
Patrick Kavanagh, and Theresa Cordero

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JAN 30 2018

BY *Karina Venegas*
KARINA VENEGAS, DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO**

ARMIN AMIRI, individually, and on behalf of
all others similarly situated,

Plaintiff,

v.

MY PILLOW, INC., a Minnesota corporation,
and DOES 1 through 10, inclusive,

Defendants.

Case No. CIVDS 1606479

(Assigned to Hon. Bryan Foster, S22)

**DECLARATION OF MARK
SCHEY REGARDING CLASS
NOTICE AND ADMINISTRATION**

I, MARK SCHEY, declare:

1. I am a founding partner of Digital Settlement Group, LLC (“DSG”), a company that provides class action notice and claims administration. The following statements are based on my personal knowledge and information provided by other DSG principals and employees working under my supervision, and if called upon to do so, I could and would testify competently about these issues.

2. Pursuant to the Court’s Order Granting Preliminary Approval of Settlement (“Order”), DSG was appointed to serve as the Class Action Settlement Administrator for the Settlement in the above-captioned case. Our duties and responsibilities for administering the Settlement include arranging for the mailing or other distribution of the Class Notice, Claim Forms to Settlement Class Members, answering written inquiries from Settlement Class Members and/or forwarding such inquiries to Class Counsel or their designee, receiving and maintaining on behalf of the Court and the Parties any Settlement Class Member correspondence regarding requests for exclusion to the Settlement, establishing the Settlement Website that posts notices, Claim Forms and other related documents, establishing a toll-free hotline, receiving and processing claims and submitting a declaration attesting to the dissemination of the Class Notice and the number of claims received. *See* Stipulation of Settlement (the “Agreement”). The purpose of this Declaration is to provide information regarding the dissemination of Class Notice and the claims received.

EXPERIENCE

3. I have served as a court-approved notice provider in a dozen state and federal court class actions. I have worked in the class action category for approximately six years and have managed and have provided my expertise in Internet notice to some of the largest class action administration companies in the industry, including the following class actions: *Eggnatz v. Kashi Company*, Case No. 12-21678 (U.S. Dist. Ct., Southern Dist.); *Pearson, et al. v. NBTY, Inc*, No. CV11-07972 (N.D. Ill); *Keller v. Gaspari Nutrition*, No. CV11-06158 (U.S. Dist. Ct., Central Dist.); *Taromina, v. Gaspari Nutrition*, No. CV12-05424 (U.S. Dist. Ct., Central Dist.); *Wike v. HCG Platinum, LLC*, No. BC451080 (Los Angeles County Superior Court). Additionally, I have over twenty years of marketing experience with a specialty in television and Internet advertising, including managing the official online sites for 20th Century Fox on behalf of News Corporation from 1993 to 1996. I have served as a marketing consultant to a variety of consumer product companies, where my responsibilities included creative directing national marketing campaigns and producing and directing national television commercials (which have been featured in trade magazines, like *Advertising Age*, and generated hundreds of millions of dollars in retail revenue). I have also personally managed tens of millions of dollars in Internet advertising for consumer products. Due to my extensive Internet marketing experience, my area of specialty is providing class notice in cases where the identities of individual Class Members is not known, including classes comprised of purchasers of consumer products. *See Pearson, et al. v. NBTY, Inc*, No. CV11-07972 (N.D. Ill.) (National class of purchasers of top-selling glucosamine supplements). DSG's notice experience is further exemplified by the services provided in a national, multi-district false advertising case, *In Re Wellnx Sales and Marketing Practices Litigation*, MDL NO. 1861 (RGS) (D. Mass.) (the Court noted "went well beyond what due process would require at its minimum").

4. DSG has provided class action settlement services in cases of varying sizes and complexity. DSG is comprised of Internet marketing and class action noticing experts, each with between ten to twenty years of experience. The principals have provided Internet marketing for clients including Fortune 500 companies. The principals of DSG have successfully executed hundreds of television and Internet campaigns. This experience is leveraged to execute the most efficient notice strategies and administration.

OVERVIEW OF THE NOTICE PLAN

5. This Litigation involves all two classes. The Non-Direct Purchaser Subclass - All persons who purchased Covered Products in the United States, its territories, or at any United States military facility or exchange from a source other than My Pillow, Inc. during the time period April 26, 2012 to October 13, 2016. The term "Covered Product" means the products bearing the labeled brand name My Pillow that are marketed and/or distributed by Defendant, including all sizes. The Direct Purchaser Subclass - All persons who purchased Covered Products in the United States and its territories or at any United States military facility or exchange directly from Defendant My Pillow, Inc. during the time period April 26, 2012 through September 25, 2017.

NOTICE PLAN OBJECTIVE

6. In the present case, the objective of the Notice Plan is to execute the most effective plan using a combination of direct email and postcard notice to the known class. The notices directed potential Class Members to a Settlement Website, where they were able to view important

documents, review frequently asked questions, and file a claim with their unique id and pin. A toll-free number with an Interactive Voice Response (“IVR”) system has also been available to answer potential questions.

Case Background and Targeted Class

7. In this case, the Plaintiff alleges the marketing, packaging, and sale of the My Pillow products, including but not limited to Defendant’s use of health claims, buy one get one free (BOGO) and other sales promotions and pricing, and the use of third party endorsements and logos, was inappropriate. The parties reached an agreement to avoid the time and expense associated with further litigation.

Direct Noticing

8. DSG targeted Class Members with Emails and Postcards. Both notices were designed to “command class members’ attention” and “be written in clear, concise, easily understood language.”¹ Clicking or visiting the links directed the Class Member to the Settlement Website. Examples of the email sent can be seen in Appendix A and B.

9. The initial list provided included 2,956,173 emails. After cleansing the email list, the notice was emailed to 2,540,962 customers. First Class Postcards were sent to the 415,211 cleansed emails and the 249,022 Class Members had emails “bounce” (returned as undelivered). In total 539,517 postcards were sent through the United States Postal Service.

10. Red text and a link to pillowbogosettlement.com was added to the top of

1 See Claims Guide at 1, 5.

mypillowsettlement.com to help with anyone who visited that site for information. The text read “Please note there is a supplemental My Pillow notice authorized by the Court. Even if you have already read and/or responded to a prior notice please [click here](#) to learn more.”

OVERVIEW OF ADMINISTRATION

11. DSG created the Settlement Website, pillowbogsettlement.com, and posted important Settlement-related documents and answers to “Frequently Asked Questions. It also included the Long Form Notice, Second Amended Settlement Agreement and the Preliminary Approval Order. The Website also listed out all important dates, including the deadline for Class Members to Submit Claims, Opt-Out or Object (January 23, 2018) and the Settlement Hearing (February 26, 2018). The Settlement Website went live on November 20th, 2017 and since then has had no downtime. The Settlement Website is still online and will show the link to submit an online claim form until the deadline has passed.

12. As of January 29, 2018, the Settlement Website has received 268,601 unique visitors.

13. DSG has received a total of 21,498 requests for “more info, claim form or other” 207 via mail, 6217 requests via phone and 15074 requests via email.

14. DSG set up a toll-free telephone number 1-877-395-8158 to provide Class members with an additional opportunity to learn more about the settlement. The toll-free number provides answers to frequently asked questions and allows Class Members to request more information or have a Claim Form mailed directly to them. Through January 29, 2018 DSG has received 27,678 in-bound calls totaling 579,644 call minutes. Of those calls, 6,217 left messages and 100% have been handled. We are still receiving roughly 15-30 incoming calls per day.

15. DSG has received 5 objections as of January 29, 2018.

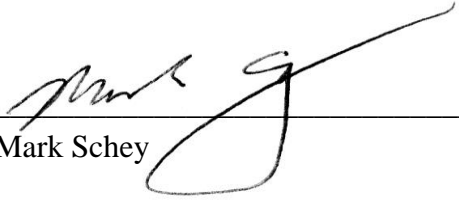
16. To date, DSG has received 888 exclusion requests.
17. To date, DSG has received 105,220 total claims via web and mail.
18. DSG will provide updated statistics following the deadline to submit claims in advance of the Settlement Hearing on February 26, 2018.

CONCLUSION

19. Based on my class action notice planning experience, described above, the methods utilized in this Notice Program are consistent with other effective class action settlement notice plans that DSG has developed.
20. We are confident the notice plan (including direct notice emails and postcards) was comparable to other Class Action Notice Programs developed by DSG.
21. It is my professional opinion that the Class Action Notice Plan has provided the best notice practicable.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated: January 29, 2018



Mark Schey

Appendix A – Email Notice

From: My Pillow Settlement Claims Administrator <info@Pillowbogosettlement.com>
Subject: My Pillow Class Action Settlement Supplemental Notice

To view this message in your browser, [click here](#)

The San Bernardino Superior Court has ordered this email to be sent.

LEGAL NOTICE

If you purchased one or more products bearing the labeled brand name My Pillow directly from My Pillow, Inc. between April 26, 2012 and September 25, 2017, you could get payment from a class action settlement.

A settlement has been proposed in a class action regarding the advertising, packaging, and sale of My Pillow products, including but not limited to health claims, buy one get one free (BOGO) and other sales promotions and pricing, and the use of third party endorsements and logos. The claims are strongly disputed and the parties have reached an agreement to avoid the time and expense of litigation. The San Bernardino Superior Court authorized this notice and will decide whether to approve the settlement.

WHAT DOES THE SETTLEMENT PROVIDE? If approved, the proposed settlement will provide for notice/administration costs, class representative payments, monetary and non-monetary benefits, and fees and costs for the lawyers who represented the settlement class.

HOW DO YOU ASK FOR AN INDIVIDUAL SETTLEMENT BENEFIT? To qualify for an individual benefit under the settlement, visit www.PillowBogoSettlement.com for directions on how to submit a claim form with your Unique ID and Pin below. The deadline is January 23, 2018.

Unique ID: 41460F27UD
Pin: S8VGT%3FB@

WHAT ARE YOUR OTHER OPTIONS? You may exclude yourself from the settlement by sending a letter to the Claims Administrator at P.O. Box 1561, West Palm Beach, Florida 33402, by January 23, 2018. The settlement and judgment, whether favorable or not, will bind you if you do not request exclusion. If you do not request exclusion, you may, if you desire, enter an appearance through counsel. You may also object by sending your objection to the Court and to the attorneys for the Plaintiff by January 23, 2018 as set forth in the more detailed notice. If you do object, you may still file a claim. The notice available at www.PillowBogoSettlement.com explains these options in more detail.

The Court will hold a hearing in this case (*Armin Amirj, et al. v. My Pillow, Inc.*, Case No. CIVDS1606479) on February 26, 2018, to consider whether to approve the settlement and the request for attorney' fees and costs by settlement class counsel. You may ask to appear at the hearing, but you do not have to. For more information, visit www.PillowBogoSettlement.com.

The San Bernardino Superior Court has ordered this email to be sent. If you wish to UNSUBSCRIBE from future email messages from the Settlement Administrator with regard to this Settlement, please click on [this link](#).

