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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO  
BEFORE THE HONORABLE CURTIS KARNOW, JUDGE PRESIDING  
DEPARTMENT NUMBER 304

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IAN D'SA, )  
 )  
Plaintiff, )  
 ) Case No.  
vs. ) CGC-15-544578  
 )  
AMBER INDIA CORPORATION, et )  
al, )  
 )  
Defendants. )  
 )

Reporter's Transcript of Proceedings  
TUESDAY, JUNE 20, 2017  
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Reported By: Tamara Willat, CSR No. 4609  
File No. AB06BD1

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1 TUESDAY, JUNE 20, 2017

9:00 A.M.

2 P R O C E E D I N G S

3 THE COURT: Good Morning.

4 MR. HICKS: Good morning, your Honor.

5 MR. TA: Good morning, your Honor.

6 THE COURT: I will appreciate a copy of the  
7 transcript today. The reason I suggested a court  
8 reporter is that I am going to through some of the  
9 problems with the motion, I am sure all of which can  
10 be fixed, but this way we will have a record as to  
11 what my initial impressions were, at least of what  
12 the problems are.

13 We will just go through these. There are  
14 one or two where I will pause because I think you  
15 can sort of fill me in on what the answer is today.  
16 Basically what I will suggest at the end is we will  
17 pick a date for a supplemental finding, where you  
18 can explain these sorts of situations. It may be --  
19 for some of these points it may be that it is a  
20 really -- it's already been handled in the papers  
21 and I have just missed it or I have misunderstood  
22 something along those lines, and that is fine. And  
23 you will just point me to that, or I will say  
24 something is a problem, but your research will point  
25 out that it is actually not a problem, and here is a

1 case or here's an argument that points out that is  
2 not an issue. And I am perfectly happy to take  
3 that.

4 My general understanding of the overall  
5 deal is that we have a gross settlement amount, X  
6 dollars, and that everything is going to be coming  
7 out of that. So basically the defendants are going  
8 to be paying up to a maximum of X, whatever that is,  
9 in here and everything else comes out of that.

10 Typically, what happens is that money is given to  
11 the administrator. The administrator then disburses  
12 those funds to the lawyers in the end, to the class  
13 and so on and so forth. They pay themselves for  
14 their fees. But it is unclear as to whether that is  
15 really what is happening here.

16 If you look at, for example, the settlement  
17 agreement at page 20 at line 23, it is unclear what  
18 the, quote, "additional consideration" here is. I  
19 think there is just one lump sum, which is going to  
20 be paid down in a variety of different ways.

21 So how is that going to happen? Where does  
22 the money go, or is it just the defendant is going  
23 to be cutting 10, 20, 30 additional checks or 480  
24 checks?

25 MR. HICKS: The administrator will handle

1 all of the disbursement.

2 THE COURT: Okay. So, basically, the  
3 defendant is agreeing to settle for X dollars  
4 all-inclusive, that money gets sent to the  
5 administrator and the administrator takes it from  
6 there, right?

7 MR. HICKS: That is correct.

8 MR. TA: That is correct.

9 THE COURT: So what does this mean to say  
10 that paying these costs constitutes additional  
11 consideration to the class. Why -- what am I  
12 supposed to understand from that?

13 MR. HICKS: I think that is just surplusage  
14 language that can probably be removed, your Honor.

15 THE COURT: There will be a number of  
16 things you may be changing here. I always recommend  
17 taking out everything that is surplusage, because it  
18 just leads to confusion.

19 With respect to the Kullar analysis, I will  
20 confess that this case is sort of the guinea pig.  
21 This is the first time that I have insisted on the  
22 following. And I will be from here on out on all of  
23 the cases, and it will actually going to the class  
24 action materials that I have on the website that are  
25 designed to assist lawyers in putting together their

1 class action settlements. I am going to need a  
2 completely different discussion that justifies on  
3 the one hand the PAGA, all in caps, piece of the  
4 settlement, and the class piece of the settlement  
5 for two, at least two different reasons. One is I  
6 found the discussion here completely confusing. I  
7 couldn't figure out what the plaintiff thought the  
8 plaintiff would get on a good day on all of these  
9 claims. There are at least two different numbers.  
10 And I will go into more detail on that in just a  
11 moment.

12 But, secondly, maybe not in this case, but  
13 in some cases, PAGA claims are touted by the  
14 plaintiff as worth an enormous amount of money  
15 because it is possible to calculate penalties at a  
16 very high level, but then when it comes time to  
17 settlement, the PAGA claims are valued at almost  
18 nothing. So that is not a tolerable situation.

19 So I need to know from the plaintiff what  
20 you think the PAGA case is worth, and why, and then  
21 why you settled it for what you did. And with  
22 respect to the class claims, what you think it is  
23 worth and why. I may approve one and not the other.

24 And, of course, if I do that, the parties  
25 reserve the right to withdraw the settlement. That

1 will be fine, too.

2 But those two are two different analyses,  
3 so each has to be separately justified. And with  
4 respect to each what I would expect you to do, for  
5 example, in the class claims, is on the merits say  
6 on a good day the class claims as such are worth X.  
7 If everything got certified, if we won on the  
8 merits, it is worth about this. But when we got to  
9 settlement, we thought we had the following problems  
10 with certification so that generated a reduction of  
11 about X percent. We thought that on the meal claims  
12 or the rest claims or whatever the claims were, we  
13 had these specific problems so that we reduced the  
14 numbers in such and such a way.

15 When it comes to PAGA, I would expect to  
16 see an analysis, for example, on the best of all  
17 possible days we probably would get about X in  
18 penalties, but we don't think that is likely because  
19 A, the merit of some of these things, and maybe you  
20 will then have a reference to earlier discussion.  
21 And B, perhaps because they are duplicative of  
22 penalties that could be involved and we think  
23 defendants might make a strong argument that those  
24 should not be counted. Or whatever the other issues  
25 are in terms of PAGA. And, therefore, we think the

1 settlement value of the PAGA case is about X  
2 dollars. And we put that together with what we  
3 think the class action settlement is. As you see  
4 that is about what we settled forth this case.

5 I couldn't tell, for example, from the  
6 papers that I had here whether you thought the  
7 maximum settlement value of the case was  
8 \$15 million, or was it \$5.6 million? So I couldn't  
9 figure out how to do the Kullar analysis. It may  
10 be, for example, in some of these claims both in the  
11 PAGA analysis and the class analysis, that there are  
12 what I call dependent claims. For example, it is  
13 possible that you think that the wage statement  
14 claim is entirely dependent on some other claim,  
15 that is, you have to succeed on, let's say, meal or  
16 a rest break claim before the wage statement claims  
17 have any merit. If that is true, you would tell me  
18 that, maybe that impacts your evaluation in one way  
19 or the other. That certainly would affect the --  
20 impact the odds of success analysis.

21 If we do this, we will avoid one of the  
22 things that came up in the memo, the memo of P&A at  
23 page 16, lines 20 through 21, suggest that one of  
24 the factors that went into evaluating this case was  
25 that most of the money might go to PAGA penalties.

1 Well, that may be just fine. Maybe that is where  
2 all the money actually goes. If this is a strong  
3 PAGA case, then I would expect almost all of the  
4 settlement to go to the PAGA claims and not to the  
5 class claims as such. I just don't know.

6 I also -- I just don't know how the damages  
7 for meal claims and rest break premiums and the  
8 waiting time penalties were calculated. I don't  
9 know where the facts came from. I don't know what  
10 documents you relied on. I don't know whether it  
11 was discovery responses, maybe it was a deposition  
12 of John and Mary Doe. I don't know what those  
13 sources were. I don't know anything about the  
14 sampling. It looks like what happened was that  
15 there was some sort of a sample taken and everything  
16 is based on that. Well, I'd like to know who  
17 selected the sample. I'd liked to know whether the  
18 sample is arguably representative of the whole  
19 class. Was it just three people selected by the  
20 defendant? Was it a 120 people selected by the  
21 plaintiff? I don't have any of that information. I  
22 don't know if the sample information is something I  
23 just rely on.

24 I think I read that the data what we did is  
25 we averaged the data for three out of the seven

1 restaurants. Why? Why was that approach taken?  
2 Why not all seven restaurants or why three? Why is  
3 it that the three restaurants are somehow  
4 representative of the seven? I just don't know.

5 With respect to the multiple references of  
6 the potential bankruptcy of the defendant, don't  
7 mention it unless you actually used that as a factor  
8 in your analysis of what the settlement should be.  
9 Don't just throw it out there, but if the financial  
10 situation of the defendant actually resulted in the  
11 plaintiff accepting less money than it would have,  
12 then you mention it. But then you also have to give  
13 me the evidence because for me to go along with the  
14 plaintiff's view, I need those facts. I need their  
15 tax returns or I need the audited financial  
16 statements or whatever it might be. I need to read  
17 those and, of course, the class needs to read them  
18 too because the class is going to be asked for their  
19 opinion on the fair and reasonableness of the  
20 settlement. They can't do the evaluation unless  
21 they have the same information that I have. So  
22 whenever there is a financial problem being suffered  
23 by the defendant, which leads to a reduction in the  
24 settlement amount, all of the financial information  
25 used by the plaintiff to justify that has to go to

1 me, and it has to be the public domain, and it has  
2 to be reviewed by the public and by the class. Very  
3 often the defendants don't really want that. But,  
4 otherwise, I can't accept it as a criteria.

5 I will just make a note that one of the  
6 factors that apparently was the Court's decision not  
7 to void the declarations. That is true, I didn't  
8 void it at the time requested by the plaintiffs. I  
9 left that as an issue to be handled during the  
10 certification hearing, and it is possible that, of  
11 course, I would void those declarations if and when  
12 we got to certification. That is not a very big  
13 deal. I think what I will do is just note that.

14 With respect to the settlement, I couldn't  
15 tell from the papers, and maybe I just missed it,  
16 how much the plaintiff is going to get per week. I  
17 think the calculation is that each class member gets  
18 X dollars every week of work, but I don't know what  
19 the X is. I don't know what that is or how it was  
20 calculated. I don't know what the average plaintiff  
21 will get. So when this is all said and done, if the  
22 payments are made as you forecast, that is, if in  
23 that settlement amount is probably around \$327,000,  
24 how much does each plaintiff probably get roughly?  
25 Exactly how is the settlement share calculated? I

1       couldn't find -- and I probably just missed it, I  
2       couldn't find the formula to figure out how each  
3       plaintiff gets paid. I also couldn't tell if the  
4       settlement favored some plaintiffs, but not others,  
5       because of the mechanism that you have used.

6               And here I will just pause and ask for some  
7       input with respect to the formula that you have in  
8       fact used to figure out how much each class member  
9       gets. Is it possible that favors some people that  
10      have, let's say, more claims in the meal rest area  
11      and disfavors some people who may have more claims  
12      in the rest break area or something like that? Is  
13      there anyway in which the formula that has been  
14      adopted may inadvertently discriminate among some of  
15      the class members? What do you think?

16             MR. HICKS: I don't think so. It is just  
17      based on how many work weeks, which is a standard  
18      thing. We didn't have like a separate pot of money  
19      money for the wage statement claims or waiting time  
20      penalties or anything like that.

21             THE COURT: So it is your view that  
22      everybody on average, each individual person  
23      suffered roughly the same? Let me rephrase it.  
24      That each person if they brought their own suit,  
25      that their waiting time claims would be roughly the

1 same as everybody else's? At least on a per week  
2 basis, and that their meal rest breaks, or their  
3 other rest break claims would at least on a weekly  
4 basis be the same as everybody else's?

5 MR. HICKS: We think they would be fairly  
6 close due to the -- based on my calculations, the  
7 average shift was just around five hours, and it was  
8 over, it was under, so without actually analyzing  
9 each and every putative class member which seems  
10 like a lot of work getting it close on the work  
11 weeks, it seems like it was accurate.

12 THE COURT: Okay. That probably takes care  
13 of that issue. I have already mentioned in a  
14 different context, I don't know what the records  
15 were that the plaintiff looked at.

16 MR. HICKS: Would you like me to speak on  
17 that right now?

18 THE COURT: You can put that into your  
19 supplemental. With respect to the class rep,  
20 Mr. D'Sa, the title of the case still has Ian D'Sa D  
21 apostrophe, D-S-A in the case. I -- he papers, if I  
22 understood them correctly, did not indicate that he  
23 has left. It has indicated that his lawyer has  
24 left. Yet Mr. D'Sa didn't sign off on any of these  
25 documents. The notice doesn't mention him, and he

1 does not agree to this case. So is he or is he not  
2 as of today a class rep? If he is, what should we  
3 do?

4 MR. HICKS: He is unrepresented. We don't  
5 represent him. I thought perhaps defendants would  
6 file something to get rid of him from the case. We  
7 can't dismiss him. He hasn't been involved or in  
8 touch with us in, I would say, probably a year. I  
9 don't know how to contact him and obviously the  
10 other plaintiffs can't dismiss him from the case.

11 THE COURT: He is still a class rep  
12 according to the complaint. So you are going to  
13 have to come up with some plan. I don't know if you  
14 need to amend the complaint. I do know, as you all  
15 know, that sometimes when people want to add a class  
16 rep you amend the complaint to add John Doe as a new  
17 class rep for a variety of different reasons. I  
18 think you need to investigate this.

19 But as of today, we have a problem, which  
20 needs to be fixed. I will just leave it at that.

21 Let me turn to the defendant entities who  
22 are released in this case and if you look at the  
23 settlement agreement starting around paragraph 1.47  
24 you will see a long list of defendants. And my  
25 question is: Why are they all in there? Did the

1 plaintiffs actually work for all of those entities?

2 MR. HICKS: These plaintiffs did not, but  
3 plaintiffs's theory from the beginning was that the  
4 same two owners, the individuals, operate all of  
5 these other entities which nominally run the  
6 different restaurants. Right before we agreed to  
7 the mediation, we were going to move to amend to add  
8 all these extra defendants. Prior counsel -- we had  
9 a lot of issues in discovery regarding these  
10 entities and the production of documents, even  
11 identification of those entities. So once they were  
12 identified, we decided to put them all in here  
13 because they operated in the family of the Amber  
14 India restaurants.

15 THE COURT: So, let me see if I can feed  
16 this back to you. Is it your view that these  
17 entities, that every one of them ran one of the  
18 seven restaurants? Is that why they are in there?

19 MR. HICKS: Yes.

20 THE COURT: Is that correct?

21 MR. TA: Each entity runs its own  
22 restaurant.

23 THE COURT: Its own restaurant.

24 MR. TA: So, for example, Amber Foods  
25 International ran one location.

1 MR. HICKS: As far as the seven restaurants  
2 and the six entities, they are technically seven  
3 restaurants because one of the restaurants moved its  
4 entire operation to across the street to a new  
5 building, so technically it was the physical  
6 restaurant, but for the purpose of this case we  
7 treated it as a single restaurant.

8 THE COURT: Again, I am probably just  
9 asking exactly the same question again, but is it  
10 true that each one of these defendants employ some  
11 portion of the class?

12 MR. HICKS: Yes, that is correct.

13 THE COURT: The release -- the notice at  
14 page 4 at the bottom makes the point that only  
15 certain positions will qualify for payment.

16 MR. HICKS: That is there for individuals  
17 who were promoted to an exempt position.

18 THE COURT: Okay.

19 MR. HICKS: Some of the class members were  
20 not exempt workers and thus and during the class  
21 period but at some point they were promoted.  
22 Obviously, once they were an exempt employee, we  
23 don't have a classification claim, they wouldn't  
24 recover, even if they continued working for another  
25 year in an exempt position.

1 THE COURT: The class definition is just  
2 the non-exempt?

3 MR. HICKS: That is correct.

4 THE COURT: The amount of time they need to  
5 opt out or exclude themselves has to be 60 days at  
6 least, not 45. The amount of time that the  
7 administrator may take to send out notices again,  
8 repeatedly, means that 45 days is too short, so it  
9 has to be 60.

10 I take it that Rust is going to resend  
11 notices return because the address of the recipient  
12 is no longer valid and if we go to section 2.47,  
13 let's take a look at that in the settlement.

14 I confess I read 2.47 two times, I don't  
15 understand -- I don't know when Rust has to resend a  
16 notice. It is possible that at line 8 and 9 it  
17 means that unless the U.S. Post Office marks it with  
18 the words, quote, "return to sender," close quote,  
19 they will or they won't -- that is, Rust will or  
20 won't send out a new notice. I don't know. It  
21 sounds like they won't have to because it says it  
22 shall be deemed to have been delivered on line 10.  
23 I just don't understand this at all. And I spent  
24 enough time on that paragraph. I want to move on.

25 I think we want to make it clear if Rust

1 gets return mail they will do a skip trace and find  
2 a better address if they can. This is what all  
3 administrators do including Rust, and then they will  
4 resend it out again. However you want to put that  
5 in, I think that is what needs to be done.

6 The deadlines currently many of them are  
7 deemed to have occurred on the date of receipt by  
8 Rust, by the administrator. That never works  
9 because it is totally out of the control of the  
10 class member. The class member has no idea. The  
11 class member could send a letter a day after being  
12 notified of all of this, an objection or -- and if  
13 Rust doesn't get it within a couple of weeks or  
14 whatever it is, then they are out of luck. So it is  
15 postmarked, all of the deadlines should be as of the  
16 postmark because the class reps can control that.  
17 That is another reason why we need 60 days and we  
18 need enough time to be built in here so that it is  
19 extremely likely that all that mail will get to the  
20 administrator.

21 With respect to notice, there is no  
22 discussion of the alternative ways in which you  
23 considered notice could be given. You just said we  
24 think this is the best way, and you could be right  
25 about that, but I need to make an independent

1 evaluation. I need to know what else did you think  
2 about in terms of notice? How about e-mail  
3 addresses? Does defendant have e-mail addresses?

4 MR. HICKS: Not that I know of.

5 THE COURT: Nothing? How about how was it  
6 that the defendant communicated with the class  
7 members during the time of their employment? Was it  
8 by only U.S. mail? Was that the only way the  
9 defendant communicated with them?

10 MR. TA: It was mostly face to face and  
11 telephone.

12 THE COURT: Face to face? Telephone? Have  
13 you talked to Rust about some sort of dialing of the  
14 -- some calling, making 465 phone calls? I don't  
15 know. Maybe that is just ridiculous and it doesn't  
16 work. And maybe people don't like robocalls and  
17 that is really an offensive way to go about it. I  
18 need to know. I need a brief discussion about the  
19 alternatives that you thought about.

20 Other employment situations, maybe this one  
21 is too small, but in others there are bulletin  
22 boards, physical or -- how many of these class  
23 members are currently employed at the defendant,  
24 roughly? Most of them?

25 MR. TA: No. I would probably say 60 to

1 70 percent of the class members are currently still  
2 employed.

3 THE COURT: Keep your voice up.

4 MR. TA: 60 to 70 percent are still  
5 employed.

6 THE COURT: So 60 to 70 percent of these  
7 people are in the restaurants today. That means  
8 that posting something on the bulletin board at the  
9 restaurant might be a terrific way to get their  
10 attention. There's probably things that can be done  
11 within the restaurant that would almost guaranty  
12 notice to 60 or 70 percent of the class. That is  
13 pretty good. So we should probably do something  
14 like that.

15 But again, at this point, I am just taking  
16 suggestions. I would need a really good response to  
17 why we wouldn't want to do that.

18 With respect to the notice, again we will  
19 just go over some of the details here. First of  
20 all, the website, including this transcript, will be  
21 posted, all of the documents filed in connection  
22 with settlement, the set that I am looking at now,  
23 they provided the transcript of this hearing, and  
24 all the supplemental materials that you provide will  
25 all be on the website, and the website should not be

1 buried on page 4 of the notice. It should be  
2 visible either as a footer, should on be on page 1  
3 and the last page. Something to make it a little  
4 bit more clear as to where they can go to get  
5 everything they want with respect to the settlement.

6 I will go through the notice, I am on  
7 page 2 of the notice Roman three, I suggest that we  
8 don't have a date on the first line for this  
9 preliminary hearing date. First of all, there might  
10 be multiple dates. Secondly, it doesn't matter what  
11 the date is, and having multiple dates within four  
12 lines of each other could be confusing. The key  
13 date here is what the final approval date is. So I  
14 would suggest starting out something like the Court  
15 has primarily approved, or something like that, and  
16 just move right into the discussion.

17 With respect to page 3, again throughout  
18 this thing I would urge you to go through this and  
19 delete every single possible word that you think you  
20 can still make it understandable. So, for example,  
21 Roman IV, which is the top of page 3, nothing in the  
22 first sentence -- in the first two sentences  
23 matters. You could start that by just, quote, in  
24 order to ensure." The first two sentences don't  
25 matter to the rest of this. The sentence that

1 starts, "If, comma, for any future reference or  
2 mailings, the recipient of this notice, i.e., you."  
3 Only lawyers would write it that way. The way this  
4 should read is something like "if you wish to change  
5 your name or address do the following". That is it.  
6 Plain English. So if anything in here looks like it  
7 is something that could be written only by a lawyer,  
8 then it should be modified.

9 Page 4, second -- bottom of the second  
10 paragraph. Again, all of the documents submitted in  
11 connection with the settlement will be on the web  
12 address. You might want to discuss with Rust  
13 whether they want to post it on their website. I  
14 don't have a preference. I will just leave that up  
15 to you and Rust to sort of talk about it. Rust puts  
16 this on their own website. If you do have a link to  
17 the law firm's website, the link should not be to  
18 the last page or the first page of the website. The  
19 link should be directly to the page that has all of  
20 the stuff on it.

21 MR. HICKS: That is how we always do it,  
22 your Honor.

23 THE COURT: I will leave that up to you.

24 The last paragraph regarding information  
25 about the number of weeks worked, so you say here it

1 has to be signed under penalty of perjury. Why is  
2 that? That strikes me as a real trap. Unless you  
3 give them a form, not one person reading this knows  
4 the content of CCP 2015.5. In fact, most lawyers  
5 just. Yesterday I had to reject a series of  
6 declarations because they didn't comply with CCP  
7 2015.5 in a complex department, quite surprising,  
8 but actually it happens at least once a month. The  
9 people reading this have no idea what this means  
10 under penalty of perjury. So I suggest that be  
11 deleted.

12 With respect to documentation, you should  
13 tell them what you mean, what kind of documentation  
14 is going to count, because if you don't tell them  
15 then, we will have a fight. I don't know how the  
16 fight gets resolved. They send in a statement that  
17 says "I worked 15 weeks. That is my documentation".  
18 Is that okay? Is that not okay? If it is not okay,  
19 they really need to be alerted to this one. What  
20 documents is it they will probably have that would  
21 change the mind of the administrator, or let's say  
22 the defendant, who is sitting on top of this  
23 information? What is it that would change your mind  
24 with this, or is this just a hopeless and empty  
25 effort of somebody who disagrees?

1           The dispute resolution mechanism on this is  
2 unclear to me, it's unclear because I didn't find it  
3 -- I'm sorry, I'm sure I just missed it. I didn't  
4 find it in the settlement agreement and when I kept  
5 reading here, I read in the middle of this  
6 paragraph: "The parties will review such disputes  
7 and will attempt to resolve them without Court  
8 involvement." So that tells me at least two things:  
9 One, the decision making mechanism is plaintiff's  
10 lawyer and defense lawyer getting together and  
11 resolving it. That is the way it will happen. Is  
12 that right? Number two, if they fail to agree, they  
13 will go to court. Is that right, you will come to  
14 me? I don't mind, but is that really what the  
15 agreement is, is that in the settlement agreement?  
16 I don't know. I don't think it is, but I am not  
17 sure.

18           With respect to the last sentence: "Please  
19 also be advised that the submission of such a  
20 dispute could delay processing." I read that as a  
21 threat, that if they try to disagree they're going  
22 to be delayed in their payment. I think that should  
23 come out. If people have a problem and they think  
24 they are entitled to more, they should not be  
25 inhibited from making that pitch to them.

1           Page 5, the structure of section seven,  
2 Roman VII, is very confusing and my suggestion is it  
3 be broken into two chunks. The first chunk is you  
4 can stay in. The second chunk is you can opt out.  
5 The way it is written right now you flip back and  
6 forth between those two things as you read through  
7 this. So the paragraph that begins: "First, comma,  
8 individuals who are currently members of the class,  
9 comma, including, you, comma, may choose." Too many  
10 words. You should just say something like first you  
11 can choose to remain, right? So every word that you  
12 can take out will make it easier for the person to  
13 read. After this paragraph you would say something  
14 like, you can object because we are still under  
15 chunk one. That language actually comes from the  
16 top of page 6, it is your so-called third option,  
17 which isn't really a third option. It is part of  
18 the first option. What you have as a third option  
19 is they can participate at their own expense with a  
20 lawyer, but that's part of the first chunk. Those  
21 are people who are staying inside the class. So  
22 people who are staying inside the class can have  
23 their own lawyers if they want to. They can object.  
24 You will explain that and you will give them the  
25 date.

1           Second, and we are back to page 5, if you  
2 don't wish to be part of this settlement, you may  
3 elect to opt out. Then you would have the language  
4 that you have got right there. That is your second  
5 chunk. And then the paragraph after that tells them  
6 how to do it. You have got this language in quotes,  
7 quote, "With respect to the Amber India settlement,"  
8 are you telling them that if they don't use that  
9 exact language that it will be ineffective? That  
10 would be odd. That would be odd. Usually language  
11 here just says something like "you have to tell us  
12 in straight forward language that you don't want to  
13 be part of this case. You can tell us by saying you  
14 want to opt out or you want to exclude yourself",  
15 something like that. But this just seems to be  
16 setting people up for hardship, that if they don't  
17 use the exact language maybe the administrator, I  
18 guess, or whoever it might be will decide they  
19 haven't done it in the proper way.

20           Here, of course, you would tell them  
21 immediately right in this paragraph what the  
22 deadline is. You would have to say something like,  
23 you have to do this by a letter postmarked by X  
24 date, something like that.

25           Then, of course, the way you have it

1 currently is that after you have talked about people  
2 opting out, you move back into things that relate to  
3 the people who did not opt out. So we are shifting  
4 back and forth, and it is very confusing, I think,  
5 to a reader who is not used to seeing these things.

6 With respect to page 7, near the bottom,  
7 you have: "During the pendency of the notice  
8 period". That is a phrase that only lawyers use.  
9 Most people -- I think what you mean is something up  
10 until the date of the final hearing all this stuff  
11 will be available for you to look at.

12 Turning to the next page, it says form A  
13 for notice to class members and there is a lot of  
14 blank. This is, what, an include, just to include  
15 the change of address form, right?

16 MR. HICKS: Right.

17 THE COURT: Okay. So at the bottom of  
18 that, change of address it says, "Note, forms must  
19 be received." And you will change that to  
20 postmarked by whatever the key date is. You have  
21 given them a form for change of address. I don't  
22 know if you want to give them any other forms or  
23 not. I am not saying you have to. I think you want  
24 to think about it. Forms for opt out? Forms for  
25 objection? Not necessary. Maybe the fewer numbers

1 of pieces of paper we provide the better.

2 With respect to -- moving back to page 3 of  
3 the notice, you have key terms of the proposed  
4 settlement at the bottom of that page. You should  
5 also include the anticipated administrator's cost.  
6 That is another fairly large chunk of money that  
7 will be coming out. You also need to include, maybe  
8 it is in here somewhere, information on the proposed  
9 cy pres beneficiary. I will talk about that after  
10 separation in just a minute. I couldn't quite find  
11 it, I may have missed it, where it tells them that  
12 the proposed cy pres beneficiary is such and such an  
13 entity so that if they want to they can object, if  
14 they want.

15 Finally, let me conclude by pointing out  
16 some things which we are not going to be dealing  
17 with in the context of this preliminary approval.  
18 So I don't need any information on it now, but I  
19 just want to give some alerts as we move forward in  
20 the process. There was a lot of information that  
21 was provided on the attorney's fees, the expenses of  
22 the attorneys and all this kind of stuff which I  
23 completely ignored, because I make no evaluation  
24 about the attorney's fees analysis. At the final  
25 approval hearing, I will be looking for why the fees

1 and the litigation costs are reasonable. I will be  
2 looking for a Lodestar analysis. I will be cross  
3 checking on Lodestar potentially with multipliers  
4 because the plaintiff's law firm took risks here. I  
5 will be comparing that to the percentage of the  
6 common fund analysis and I will be cognizant of the  
7 Lafitte case out of our Supreme Court.

8 I will be looking for declarations from the  
9 class representatives regarding enhancement awards.  
10 This is another reason why we want to make  
11 100 percent sure we know who the class reps are,  
12 because it looks like Mr. D'Sa has been side-lined.

13 With respect to cy pres and this does  
14 require a change in the settlement agreement 2.6.3,  
15 the settlement agreement states that the cy pres  
16 beneficiary is the impact fund. The parties cannot  
17 make that agreement, only I can decide who the cy  
18 pres beneficiary is. So I will not approve any  
19 settlement that imposes on the Court a requirement  
20 to approve the party's choice of a cy pres. You are  
21 more than free to recommend it, and if there is no  
22 reason not to, I probably would approve it. But  
23 there are problems with this particular beneficiary  
24 that -- not today and not in connection with the  
25 preliminary approval, but at final approval you will

1 have to address.

2 So, first of all, as a preliminary approval  
3 matter, I won't agree to any settlement agreement  
4 that imposes the cy pres beneficiary. Number two,  
5 these are not sums that are, quote, "donated," close  
6 quote by the defendant. I don't know if that is in  
7 there for tax purposes or what that is, but to go  
8 back to one of our first comments, all of the  
9 information -- all of the money from the defendant  
10 is going to go to the administrator. The  
11 administrator will disburse monies pursuant to court  
12 order. One of those orders is going to be, here is  
13 what goes to the cy pres. So I don't know if you  
14 donated -- I don't know what the word "donated"  
15 means.

16 The impact fund may not be approved because  
17 at least on the surface it looks like it benefits  
18 class action lawyers. My interest is to ensure that  
19 the cy pres beneficiary benefits the same interests  
20 that the plaintiffs have in this case. So people  
21 who are -- people who are not non-exempt, who have  
22 wage and hour type problems and who need help,  
23 something like that. That is one way to think about  
24 it. Maybe the impact fund actually does that. Or  
25 maybe there is a way to direct the use of the cy

1 pres so that the impact fund is required to use it  
2 in such and such a way. That is all things you need  
3 to think about. But you may want to come up with  
4 some alternative cy pres alternatives as well when  
5 we get to the final approval hearing.

6 With respect to any cy pres which is  
7 proposed by the parties, I need to know under  
8 penalty of perjury every connection between that cy  
9 pres recipient and the lawyers or the law firms and  
10 the parties involved in the case, past and present.  
11 So if the plaintiff's attorney has been on the board  
12 or has had other connection with the impact fund,  
13 maybe joint litigation, that would be probable or  
14 likely at least with respect to the impact fund. I  
15 need to know all of that. I need to know whether it  
16 is possible a gift to the impact fund might in the  
17 future actually benefit the plaintiff's attorneys in  
18 this case or not.

19 Also we need to do an analysis of what I  
20 call the cy pres break off point. What I mean by  
21 that is that what we really wanted do with the  
22 money, which is a function of uncashed checks, which  
23 is what we are talking about here, right? What we  
24 want to do with that money is we want to turn around  
25 and send it back out to the class members. That is

1 the first choice. We don't want to use cy pres if  
2 we don't have to. There comes a point, however, at  
3 which doing so isn't worth it. So let me  
4 exaggerate. If the uncashed checks turn out to be  
5 \$5.25, then it would be ludicrous to divide that up  
6 among a class of 400 people and send it back out to  
7 them.

8 The question is, what is that break point?  
9 If we have a \$100,000 left over from uncashed  
10 checks, wouldn't we turn around and send it back out  
11 to the people who cashed the first check, the first  
12 round? Yes, we would. So what is the break point  
13 between 35 cents which is ludicrous and \$100,000  
14 where it clearly makes sense. Rust knows the  
15 answer. So speaking with the administrator,  
16 expected cost of distribution and cutting checks and  
17 the other fees that would be involved in the second  
18 around of distribution is something that the parties  
19 need to think about, they need to get those numbers,  
20 and they need to put that into the agreement, and  
21 that is what I would approve. The break point is,  
22 let's make it up, \$20,000, whatever it is, there is  
23 some break point, \$10,000, and then we know what to  
24 do.

25 With respect to the proposed judgment and

1 the various forms like that, Hoyer declaration  
2 Exhibit 1 and Exhibit 4, I won't be using any of  
3 those forms in the end. We don't have to talk about  
4 that now.

5 With respect to the proposed order for the  
6 preliminary approval, you will put in there all the  
7 deadlines for filing, and you will have all of the  
8 final approval papers, including the motion for  
9 attorney fees, enhancement awards, motion for  
10 finding of final approval, all of those papers will  
11 be due ten days before the hearing date. All of the  
12 papers will be put up on the website. The proposed  
13 order, when you come up with that in our next round,  
14 you will provide an electronic Word editable version  
15 of it, and you will e-mail that into the clerks.  
16 You will fill in all of the blanks except for the  
17 blanks for dates. When it comes to the dates, you  
18 will put in parentheses how the date is to be  
19 calculated. I will delete the parentheses from the  
20 order that I sign, and I will put in the date, so  
21 inside the parentheses will probably be something  
22 like 60 days after notice is mailed, that would be  
23 how to calculate it. Then I can take care of  
24 actually doing the final calculations.

25 So those are some of the issues that we

1 want to have fixed. As I say, some of these issues  
2 is just something that I have misunderstood and the  
3 materials are already there or I don't have the law  
4 right, and I am perfectly happy to be told that,  
5 that would be wonderful and that we just move on to  
6 whatever the next issue is.

7 The only major procedural problem we have  
8 is Mr. D'Sa and his status. You will have to decide  
9 what you think we ought to do about that. I don't  
10 know if that is a motion to amend or something else.  
11 I haven't looked into it. I don't want to prejudge  
12 what we need to do. There is some parts of the  
13 settlement agreement that have to be edited, which  
14 means getting another round of signatures from  
15 people, maybe you have a simple amendment or maybe  
16 you want to have a new one. I don't know. Then  
17 there will be a supplemental filing, which will  
18 address the issues that we have talked about on the  
19 record, and thank God we have a court reporter.

20 So with all of that understood, let's go  
21 off the record now for a minute and pick a date for  
22 supplemental submissions. Off the record.

23 (Discussion off the Record.)

24 THE COURT: Counsel have asked for until  
25 the 18th of August for supplemental papers. This

1 motion is continued until the 18th of August.

2 MR. HICKS: If I could, your Honor, I think  
3 August is two months.

4 THE COURT: Did I get that --

5 MR. HICKS: We are still in June. And  
6 actually I just looked another my calendar, I have a  
7 deposition on the 17th. Can we go to the 20th?

8 THE COURT: 20th of July? This matter is  
9 continued until the 20th of July. That will be the  
10 last date for supplemental papers. Counsel have  
11 agreed to have it submitted at that point without  
12 further argument. If I remain uncomfortable with  
13 the situation, I don't feel the supplemental papers  
14 have addressed the issues, I will contact counsel.  
15 Thank you very much.

16 MR. HICKS: Thank you, your Honor.

17 MR. TA: Thank you, your Honor.

18 (Whereupon, the proceedings adjourned at  
19 9:55 a.m.)

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1 State of California )  
2 County of San Francisco )

3 I, Tamara Willat, Certified Shorthand  
4 Reporter for the State of California, do hereby  
5 certify:

6 That I was present at the time of the  
7 proceedings;

8 That I took down in machine shorthand notes  
9 with the aid of a computer;

10 That the above and foregoing is a full,  
11 true, and correct transcription of said shorthand  
12 notes, and a full, true and correct transcript of  
13 all proceedings had and testimony taken on the  
14 record;

15 That I am not a party to the action or  
16 related to a party or counsel;

17 That I have no financial or other interest  
18 in the outcome of the action.

19

20

21 Dated:

22

23

24

25

\_\_\_\_\_  
Tamara Willat, CSR No. 4609