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16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 SAN FRANCISCO DIVISION

19 *IN RE: ZOOM VIDEO COMMUNICATIONS*
20 *INC. PRIVACY LITIGATION,*
21

22 This Document Relates To:
23 All Actions
24
25
26
27
28

Master Case No. 3:20-cv-02155-LB

**JOINT UNOPPOSED MOTION FOR
INDICATIVE RULING RE APPROVAL
OF SETTLEMENTS WITH
OBJECTOR-APPELLANTS**

Hon. Laurel Beeler
Courtroom: B
Date: December 1, 2022
Time: 9:30 AM

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD: PLEASE TAKE NOTICE that on December 1, 2022, at 9:30 a.m. or as soon thereafter as the matter may be heard before the Honorable Magistrate Judge Laurel Beeler, of the United States District Court for the Northern District of California, San Francisco Division, located at Courtroom B, 15th floor, 450 Golden Gate Avenue, San Francisco, California, 94102, Plaintiffs and Defendant Zoom Video Communications, Inc. (“Zoom” and together with Plaintiffs, the “Litigation Parties”) will and hereby do move the Court for an indicative ruling under Fed. R. Civ. P. 62.1 that the Court, upon remand from the Ninth Circuit Court of Appeals, would approve the settlement agreements between Plaintiffs, Zoom, and each of the Objectors Sammy Rodgers and Alvery Neace, on the one hand, and Objector Judith Cohen, on the other hand (Rodgers, Neace, and Cohen being referred to herein as the “Objectors”). This motion is based on this notice of motion and motion, the accompanying memorandum of points and authorities, the Joint Declaration of Tina Wolfson and Mark Molumphy (“Joint Decl.”), argument by counsel at the hearing before this Court, any papers filed in reply, such oral and documentary evidence as may be presented at the hearing of this motion, and all papers and records on file in this matter.

MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION**

Plaintiffs and Zoom respectfully submit that the Court should approve their settlements with three Settlement Class Members¹ who objected to the Class Action Settlement Agreement and Release (the “Settlement Agreement”) and thereafter appealed the Court’s order granting final approval. ECF No. 249. Although the Court was correct in overruling the Objectors’ objections, the Objectors appealed and, through negotiations facilitated by the Circuit Mediator for the Ninth Circuit, the Litigation Parties and Objectors reached settlement agreements that, subject to the Court’s approval, would resolve those appeals and provide additional procedural and substantive benefits to Settlement Class Members. These benefits include a carve-out of certain claims from

¹ Capitalized terms not otherwise defined herein have the same meaning as in the Settlement Agreement (ECF No. 191-1).

1 Settlement Class Members' release of claims and amended procedures to make it easier for class
2 members who filed claims to receive and cash their payments.

3 Resolution of Objectors' appeals through these settlements will have the added benefit of
4 ensuring the expeditious delivery of Settlement Payments from the Settlement Fund to Claimants
5 on a far quicker timeline—a substantial benefit given the current rate of inflation. And the
6 settlements achieve these benefits without taking any money out of the funds allocated for payments
7 to Settlement Class Members. While the settlements permit Objectors to seek service awards and
8 Objectors' counsel to seek fee and expense awards up to certain amounts, approval of such awards
9 is not a condition to the settlements and any approved payments would be made from the Fee and
10 Expense Award that the Court previously approved for payment to Class Counsel.

11 Accordingly, the Litigation Parties respectfully request that the Court grant this Motion, in
12 accordance with Federal Rules of Civil Procedure 23(e)(5)(C) and 62.1, and issue an order
13 indicating that it would approve the settlements with these Objectors were the Ninth Circuit to
14 remand this case for that purpose.

15 **II. BACKGROUND**

16 Following arm's-length negotiations, Plaintiffs and Zoom entered into the Settlement
17 Agreement. ECF No. 191-1. On July 31, 2021, Plaintiffs moved this Court for preliminary
18 approval of the Settlement Agreement. ECF No. 190. On October 21, 2021, the Court granted
19 Plaintiffs' motion for preliminary approval and set an objection deadline of March 5, 2022. ECF
20 No. 204. After Plaintiffs filed their Motion for Final Approval and Motion for Attorneys' Fees,
21 ECF Nos. 216 & 217, Objector Cohen filed an Objection to Plaintiffs' Motion for Final Approval,
22 ECF No. 227, as did Objectors Rodgers and Neace, ECF No. 228 (collectively, the "Objections").
23 After considering the Objections, the Court granted final approval of the Settlement Agreement and
24 entered final judgment, ECF Nos. 249 & 250, from which the Objectors each appealed. ECF Nos.
25 251 & 252. The Objectors' appeals currently are pending before the Ninth Circuit Court of
26 Appeals, where Objectors-Appellants' opening briefs currently are due on October 31, 2022. *See*
27 *Brice v. Zoom Video Communications Inc.*, 9th Cir. Case No. 22-1576, ECF No. 16.
28

Following extensive arms-length settlement negotiations coordinated by the Circuit Mediator for the Ninth Circuit, Plaintiffs, Zoom, and the Objectors have agreed to settle the Objections and appeals.

Settlement with Objectors Rodgers and Neace. Plaintiffs, Zoom, and Objectors Rodgers and Neace have entered into a settlement agreement in which the Litigation Parties agree to undertake certain procedures to make it easier for class members who have filed claims to update their addresses and to receive cash payments by mailed checks. *See* Joint Decl., Ex. A (“Rodgers/Neace Settlement Agreement”) at ¶ 2. These agreed-upon procedures specifically address certain of the concerns raised in the Rodgers and Neace Objection:

Rodgers and Neace Objection Argument	Agreed Procedure to Settle Objection
Settlement Administrator should notify claimants if their check is returned by the post office. (ECF No. 228 at 13-14)	For returned checks from Settlement Class Members, the Settlement Administrator will run address correction, check forwards, and send payments to the corrected addresses when possible. (Rodgers/Neace Settlement Agreement ¶ 2(b).) For returned checks from Settlement Class Members, the Settlement Administrator will also notify such claimants via email to update their address. (Rodgers/Neace Settlement Agreement ¶ 2(c).)
A normal business (#10) envelope should be used to send settlement checks. (ECF No. 228 at 13.)	The Settlement Administrator will mail the checks issued pursuant to the Settlement Agreement to eligible Settlement Class Members via USPS first class mail, in a number 10 business envelope. (Rodgers/Neace Settlement Agreement ¶ 2(a).)
90 days is not sufficient time to cash settlement checks (ECF No. 228 at 14-15)	Zoom and Plaintiffs will amend the Settlement Agreement (§§ 2.5(c) a€(e)) to extend the deadline for Settlement Class Members to cash a settlement check by 30 days, from 90 days to 120 days. (Rodgers/Neace Settlement Agreement ¶ 2(d).)

Rodgers and Neace Objection Argument	Agreed Procedure to Settle Objection
Address change form should be easier to locate. Settlement Administrator should provide confirmation/receipt for address change when made. (ECF No. 228 at 16-17)	The Settlement Administrator will include a link to the form for Settlement Class Members to change their contact information on the home page of the Settlement Website, with a statement that the form can be used to update email addresses, mailing addresses, or both, and with directions on how to include all current contact information, including mailing and email addresses. The Settlement Administrator will also send an email to Settlement Class Members completing the form, confirming their updated contact information. (Rodgers/Neace Settlement Agreement ¶ 2(e).)

In exchange, Objectors Rodgers and Neace agree to release and not to pursue their other objections to the Settlement Agreement and to dismiss their appeal with prejudice. Rodgers/Neace Settlement Agreement ¶¶ 1.2, 4. In addition, Objectors Rodgers and Neace may apply to the Court for service payments of up to \$1,000 each, and their counsel may apply to this Court for up to \$47,900 in attorneys' fees and costs, both of which (if approved) would be paid from the prior award of attorneys' fees to Class Counsel. *Id.* ¶ 3. Notably, the Court's granting of such payments is not a condition of the settlement. *Id.*

Settlement with Objector Cohen. Similarly, Plaintiffs, Zoom, and Objector Cohen have entered into a settlement agreement in which the Litigation Parties agree to modify the release in the Settlement Agreement to exclude certain claims for indemnification or contribution made by a state-licensed professional against Zoom for damages or losses from a "Breach of Confidentiality Claim." Joint Decl., Ex. B ("Cohen Settlement Agreement") at ¶ 2. This carve-out from the release directly addresses the core of Objector Cohen's objection—namely that the Settlement Agreement does not take into account the risk of possible lawsuits that might be filed against Zoom users who are medical or other professionals and who may owe "legal or contractual commitments" to maintain confidentiality. ECF No. 227 at 4-5; ECF No. 236 at 2, 3 ("Any settlement that binds the professional Zoom users must account for this increased risk through future indemnification or by other means").

In exchange, Objector Cohen agrees to release and not to pursue her other arguments in

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