

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

**PENELOPE BAIM BLOCK,
BRIJ M. SHARMA, CHARANJIT
SINGH, LISA M. BERTINI,
VANDANA MAKKER, BALA M.
KRISHNA, TY C. GERHARDT,
JEFFREY ZIMMERMAN,
MUKESH MITTAL, SANJAY
AGARWAL, and SAVITA REDDY,**

Plaintiffs,

v.

Case No. 01 CH 9137

McDONALD'S CORPORATION,

Judge Richard Siebel

Defendant.

**AMICUS CURIAE BRIEF OF VEGETARIAN LEGAL ACTION NETWORK
IN OPPOSITION TO SETTLEMENT**

COMES NOW, Vegetarian Legal Action Network (VLAN)¹ and files this *amicus curiae* brief in opposition to the proposed Settlement Agreement between Plaintiffs identified in the caption ("class representatives") and Defendant McDonald's Corporation ("McDonald's").

INTRODUCTION AND SUMMARY OF ARGUMENT

The governing principle and goal in the prosecution of any class action is to represent and advance the interests of the class members, including those silent members whose voices are not directly represented by counsel during the litigation. The proposed settlement that has been reached in this case has departed dramatically from that principal and goal. While VLAN tentatively supported the initial McDonald's settlement terms, albeit with some concerns, VLAN has acquired information since then that has now caused VLAN to oppose the proposed

¹ VLAN is a non-profit organization incorporated under the laws of the District of Columbia. It consists of an all-volunteer staff of six attorneys with lawyer and non-lawyer supporters throughout the country.

settlement.² The proposed settlement consists almost entirely of a *cy pres* fund meaning that all damages received from the defendant should be distributed to charitable groups who come as close as possible to representing the interests of the class and their purposes for bringing the suit. However, class counsel have not provided a list of *cy pres* recipients to the class, to VLAN or the Court prior to the July 8, 2002, objector deadline.

VLAN's main interest is that any *cy pres* distribution occur on terms that will most benefit the class members and their purposes in bringing this suit. It is important to recognize that the choice of fund recipients is the most crucial step in determining whether the settlement is in the interest of absentee class members and should be approved. In other words, the *cy pres* distribution is capable of either ensuring that class members benefit indirectly from the proposed settlement *or* ensuring that a settlement aids only the attorneys and a few charitable organizations unrelated to the class. By failing to identify organizations receiving the *cy pres* relief, and by negotiating other inadequate terms of the settlement as detailed below, class counsel have failed in their duty to represent the fundamental interests of class members. For these reasons, this Court should reject the proposed settlement as unfair and inadequate.

STATEMENT OF FACTS

VLAN is a unique, non-profit organization dedicated to using legal action to protect the rights of vegetarians. As part of this mission, VLAN was instrumental in the initiation of the McDonald's french fry litigation.³

VLAN was created in August of 1999. Vegetarian and vegan⁴ law students at George Washington University were enrolled in a clinic that chose to promote this litigation against

² VLAN does feel that the overall goal of providing *cy pres* relief is part of the settlement that merits support.

³ For more information about VLAN and VLAN's role in this litigation, see Exhibit A, Laurie Goodstein, For Hindus and Vegetarians, Surprise in McDonald's Fries, N.Y. Times (May 20, 2001).

⁴ A vegan is a vegetarian who also abstains from eating dairy and egg products.

McDonald's. As part of the course, students were encouraged to pursue a legal action on behalf of the public good. The students had learned only months earlier that despite McDonald's advertisements touting their fries as cooked in 100% vegetable oil, McDonald's had in fact added beef tallow to the fries and disguised it as "natural flavoring." This was confirmed by a telephone call that a member of VLAN received from McDonald's customer service representatives. See Exhibit B, "Declaration of James Pizzirusso," ¶¶ 2-5 ("Declaration, ¶¶").

The students decided to pursue a legal action against McDonald's alleging violations of consumer fraud statutes and various other common law claims. The student group formed VLAN as there was no other vegetarian group actively promoting litigating on behalf of vegetarians' rights to know what was in their food. VLAN pursued a two-tiered approach. First, it petitioned the Food and Drug Administration (FDA) to change labeling laws so that food manufacturers could no longer hide animal ingredients under the guise of "natural flavors." See Exhibit C, "Citizen Petition." Second, they researched claims, gathered evidence, drafted legal documents and worked with attorneys to support a class action against McDonald's. As part of the effort to support this unprecedented litigation, VLAN spoke with several national vegetarian groups, allergy groups and religious organizations in order to develop allies and communicate with potential class members. At around the same time that VLAN was contacting Hindu and other religious organizations on the West Coast, a Hindu in California who found out about the beef fat/french fry connection contacted attorney, Harish Bharti in Seattle, Washington.⁵ See Declaration, ¶¶ 6-9.

Mr. Bharti contacted vegetarian organizations and was directed to VLAN when he heard that it had already spent several months preparing a legal complaint against McDonald's. Since

⁵ VLAN is unaware whether this plaintiff first heard about the problem through VLAN's efforts or while reading about it in the book *Fast Food Nation*, by Eric Schlosser which came out after VLAN started work on the litigation

VLAN's attorneys were working *pro bono*, VLAN agreed to give Mr. Bharti its entire work product so that Mr. Bharti could file a private suit on behalf of his own clients and supplement allegations made in his complaint. This work product included a draft complaint, comprehensive legal memoranda, pleadings from other cases, news articles and press releases about McDonald's and its use of 100% vegetable oil, and other documentation. There was no consideration or promise made to VLAN about receiving *cy pres* relief in exchange for this information. VLAN's founders were also class members and hoped to participate in the litigation to the extent possible through that avenue.⁶ See Declaration, ¶¶10-11.

Soon after Mr. Bharti filed the first case in Seattle, basing his complaint in large part on the work of VLAN, other attorneys quickly filed "copy cat" cases in California, Texas, New Jersey and Illinois with very similar allegations and wording taken directly from VLAN's draft complaint. VLAN continued to support the litigation effort through its two web sites: www.veggielawyers.org and www.veggiefries.org. The veggiefries website included declarations from class members and phone numbers so that vegetarians could call McDonald's and advocate that McDonald's change relevant practices.

VLAN initially provided to Mr. Bharti, and later all attorneys, a list of nine organizations that would most closely represent the interests of the class and the purposes of the lawsuit soon after the potential settlement was announced in the press. See Exhibit D, "Vegetarian Organizations Who Should Benefit From McDonald's Settlement." On or about May 22, 2002, VLAN called Mr. Bharti to inquire about the settlement and he notified VLAN that VLAN was no longer in active consideration by plaintiffs' and defendants' counsel as a *cy pres* designee.

effort and which also discussed the french fry/beef fat problem.

⁶ Of course, any sort of fee sharing arrangement with VLAN would have been prohibited at that time since VLAN consisted of law students. VLAN does not contend that it should receive *cy pres* relief based on any statements or representations made by Mr. Bharti. Further, VLAN has no objection to Mr. Bharti's adequacy in this case, though

VLAN became concerned that several worthwhile organizations (VLAN included) were being left out of the settlement. VLAN then wrote a letter to all of the attorneys involved expressing concerns that *cy pres* recipients might not adequately represent the interests of the class. Numerous correspondence followed that only further convinced VLAN that the settlement had serious flaws. For one, plaintiffs' liaison counsel, Kevin Roddy and Cory Fein, refused to give VLAN any details about potential recipients of the *cy pres* relief contending that "hundreds" of organizations were still under active consideration, including VLAN. See Declaration, ¶¶ 13-16. It was then that VLAN decided to oppose the settlement of this litigation, even though it helped to start these actions nearly three years ago, in order to ensure that the rights and interests of absent class members were protected.⁷

ARGUMENT

I. THE COURT MUST CLOSELY SCRUTINIZE THE SETTLEMENT TO PROPERLY PROTECT THE RIGHTS OF ABSENT CLASS MEMBERS.

The burden of proving the fairness of a proposed class action settlement is always on its proponents, without the benefit of any presumption to aid in meeting this burden. See *Newburg & Conte*, 1 *Newburg on Class Actions* § 11.42, at 11-94 (3d ed. 1993) (citing, inter alia, *In re General Motors Corp. Engine Interchange Litig.*, 594 F.2d 1106 (7th Cir.), cert. denied, 444 U.S. 870 (1979)). See also *Gautreax v. Pierce*, 690 F.2d 616, 630-31 (7th Cir. 1982); *Blanchard v. Edgemark Financial Corp.*, 175 F.R.D. 293, 300 (N.D. Ill. 1997)).

Under Illinois law, a class action cannot be compromised unless the court approves. 735

it does have objections to the actions of some of the other attorneys.

⁷ While some of the plaintiffs' attorneys may attempt to discredit VLAN's role in this litigation, as they have done in correspondence with VLAN, as being for purely selfish reasons, VLAN would point out that: (1) it provided all work product to Mr. Bharti without any promises of compensation; (2) the entire staff of VLAN is volunteer; and (3) VLAN provided a list of *nine* organizations it felt were worthy of *cy pres* relief and indicated to plaintiff's counsel that "as many groups as possible" should be included. Any attempts by plaintiffs' attorneys to characterize VLAN's opposition to this settlement as for "black mail" purposes should be totally rejected by this Court.

Ill. Comp. Stat. 5/2-806 (West 2002). In a class action, the court acts as a fiduciary who must serve as the guardian of the rights of the absent class members. Steinberg v. System Software Associates, Inc., 306 Ill.App.3d 157, 169 (1st Dist. 1999); Grunin v. Int'l House of Pancakes, 513 F.2d 114, 123 (8th Cir.), cert. denied, 423 U.S. 864 (1975). In Amchem Products, Inc. v. Windsor, 117 S. Ct. 2231, 2235 (1997), similarly, the Supreme Court held that the rights of absent class members must be the dominant concern of the court, especially in the settlement context. See also Ficalora v. Lockheed Calif. Co., 751 F.2d 995, 996 (9th Cir. 1985). The Supreme Court held that courts should provide “undiluted, even heightened attention in the settlement context” to certain Rule 23 requirements in order “to protect absentees. . . .” Amchem, 117 S. Ct. at 2248. Class action settlements require a high level of scrutiny because there exists a potential conflict of interest between the class and class counsel.⁸ See Mars Steel v. Continental Ill. Nat. Bank & Trust, 834 F.2d 677, 681-2 (7th Cir. 1987).

Moreover, a danger the court must consider in class action settlements is that class counsel may accept a lower recovery for the class in exchange for larger attorneys’ fees. Because the risk of collusive settlements is much greater in class actions than in ordinary litigation, it is “imperative” that the court conduct a “careful inquiry” into the fairness of a proposed class settlement. Mars Steel, 834 F. 2d at 682. “The primary purpose of Rule 23(e) is to protect class members . . . whose rights may not have been given due regard by the negotiating parties.” Ficalora, 751 F.2d at 996. As discussed in detail below, even a cursory examination of this settlement reveals glaring omissions, suggestion of collusion and inadequate

⁸ This concern is especially great where class certification was deferred until after a settlement was negotiated: The danger of a premature, even a collusive, settlement is increased when as in this case the status of the action as a class action is not determined until a settlement has been negotiated, with all the momentum that a settlement agreement generates . . . And where notice of the class action is, again as in this case, sent simultaneously with the notice of the settlement itself, the class members are presented with what looks like a fait accompli. Mars Steel, 834 F.2d at 680-81.

terms. Therefore, this Court should closely scrutinize and reject the proposed settlement.

II. ALL REQUIREMENTS OF CLASS CERTIFICATION MUST BE MET

In Amchem, the United States Supreme Court ruled that all of the requirements of class certification must be met, even if the certification is sought only for the purposes of settlement. 117 S. Ct. at 2231. Pursuant to 735 Ill. Comp. Stat. 5/2-806, one of the prerequisites for a class action lawsuit is that representative parties will fairly and adequately protect the interests of the class.

A. Adequacy of Representation in This Case Has Not Been Satisfied.

The purpose of examining the adequacy of representation is to expose incompetent or ineffective class counsel and uncover any potential conflicts of interest between the class representatives and the remaining class members. Amchem, 117 S. Ct. at 2250-51. In a class action, adequate representation is a due process requirement and class counsel must represent the interests of absent class members at all times of the negotiations with defendants. See Phillip Petroleum Co v. Shutts, 105 S. Ct. 2965, 2974 (1985); Matsushita v. Epstein, 116 S. Ct. 874, 880 (1996). In this case, there are both conflict of interest problems between class representatives and the remaining class members, as well as adequacy issues regarding class counsel.

1. Conflicts exist between class representatives and absent class members.

Numerous courts have warned of the potential for abuse when a class representative is closely related to the class counsel. “When the class representative is a close professional associate with the attorney of record in the cause, the class representative cannot adequately and fairly represent the class and certification should be denied.” Susman v. Lincoln American Corp., 561 F.2d 86, 88 (7th Cir. 1977); see also In re Discovery Zone Securities Litigation, 169 F.R.D. 104, 108 (N.D.Ill.,1996) (“Courts fear that when a class representative is closely associated with

class counsel, he or she may permit a settlement less favorable to the interests of absent class members.”); Williams v. Balcor Pension Investors, 150 F.R.D. 109, 117 (N.D. Ill.1993); Stull v. Pool, 63 F.R.D. 702 (S.D.N.Y.1974); Toroff v. May Co., 531 F.2d 1357 (6th Cir. 1976).

Based upon information and belief, both the New Jersey “kosher” class representative and an Illinois class representative have relationships with the attorneys involved in this case that would make them improper class representatives. This presents a potentially serious conflict, as class representatives may be more willing to settle their claims based on their close, and perhaps even financial relationship, with the plaintiffs’ attorneys. In this case, the Court should determine if the class representatives are truly independent of the attorneys and whether they have adequately represented the interests of the class. The present record does not support a finding of adequacy of these representatives.

2. Certain members of class counsel are inadequate.

Based on information and belief, both the Texas law firm of Caddell & Chapman, as well as the Illinois firm of Edelman, Combs & Lattuner, LLC were fired by one or more of the class representatives due to inadequate disclosure of information about the settlement. This allegation, if true, warrants close scrutiny of the settlement in this case given the favorable terms of the settlement to McDonald’s and plaintiffs’ attorneys while the class receives no direct benefit. VLAN finds such circumstances to be extremely troubling - especially in light of the fact that the Texas firm of Caddell & Chapman remained heavily involved in negotiating the settlement, *and was head of the committee selecting cy pres organizations*, while it did not have any clients in this case. Furthermore, plaintiffs’ lawyers, with the notable exception of Harish Bharti, never were open with or provided reasonable information about the *cy pres* selection process to class members or to VLAN. In addition, the record does not show that class counsel seriously

litigated this case through depositions or motions practice. For all of these reasons, the Court should closely scrutinize the proposed settlement to determine if counsel and the class representatives in this case were adequate.

III. CLASS ACTION SETTLEMENT MUST BE FAIR, REASONABLE AND ADEQUATE.

The standard to be used in evaluating the compromise settlement of a class action is that that the agreement must be fair, reasonable and adequate. Steinberg, 306 Ill.App.3d at 169.⁹ The settlement also must be in the best interests of those affected by the settlement. Waters, 95 Ill.App.3d at 924 (1st Dist. 1982). The burden is on the proponents of the settlement to prove that the settlement is fair, reasonable and adequate. Id. at 925. If the settlement objectors can point to an unfair or inadequate aspect of the settlement, then the proponents have failed to carry their burden, regardless of whether that aspect of the settlement personally impinges the rights of the objectors. Id.; Fox v. Northwest Ins. Brokers, Inc., 113 Ill.App.3d 255, 258 (1st Dist. 1983). While the court cannot rewrite a proposed settlement, it does have the power to make suggestions which the parties may then incorporate into their agreement. Bolling v. Pfizer, 145 F.R.D. 138, 141 (S.D. Ohio 1992). The court can also defer ruling on the propriety of a class action settlement if it has concern about the settlement's fairness, unless and until those concerns are answered or cured by modifying the settlement. See In re Prudential Bache, 815 F. Supp. 177 (E.D. La. 1993).

A. Since Plaintiffs Counsel Have Failed to Disclose *Cy Pres* Recipients, the Court Must Reject the Proposed Settlement.

“The term ‘*cy pres*’ is derived from the Norman French expression *cy pres comme*

⁹ Factors relevant to this determination include: (1) the strength of the case for the plaintiff on the merits, balanced against the extent of the settlement offer; (2) the complexity, length and expense of further litigation; (3) the substance and extent of opposition to the settlement by the class members; (4) the reaction of members of the class to the settlement; (5) the opinion of competent counsel; and (6) the progress of the proceedings and the amount of

possible, which means ‘as near as possible.’” In re Airline Ticket Commission Antitrust Litigation, 268 F.3d 619, 625 (8th Cir. 2001) (internal quotation marks omitted); see also In re Wells Fargo Securities Litigation, 991 F. Supp. 1193, 1195 (N.D. Cal. 1998). When this term is used in the context of a class action settlement fund or damage award, it refers to a distribution to one or more charitable organizations of some or all of the class recovery. See, e.g., 11 Herbert B. Newberg & Alba Conte, Newberg on Class Actions § 10.17 (3d ed. 1992) (“A distribution for the indirect prospective benefit of the class is a *cy pres* distribution. . . . In such an event, the funds are usually paid to a third party or agency to use for designated purposes.”).

Courts have rejected proposed *cy pres* distributions on the ground that the designated charitable organizations bear an insufficient relationship to the class claims. See, e.g., In re Airline Ticket Commission Antitrust Litigation, 268 F.3d 619, 625 (8th Cir. 2001) (reversing approval of *cy pres* distribution, remanding “to the district court to make a distribution or distributions more closely related to the origin of this nation-wide class action case concerning caps on commissions paid to travel agencies”); see also Six (6) Mexican Workers v. Arizona Citrus Growers, 904 F.2d 1301, 1307 (9th Cir. 1990); Wilson v. Southwest Airlines, Inc., 880 F.2d 807, 809 (5th Cir. 1989) (setting aside *cy pres* distribution because court failed to balance all interests).

In general, a “court’s choice among distribution options should be guided by the objectives of the underlying statute and the interests of the silent class members.” Six (6) Mexican Workers, 904 F.2d at 1307.¹⁰ It is generally not enough that an organization is

discovery completed. Gatreaux, 690 F.2d at 631; Mars Steel, 34 F.2d at 683.

¹⁰ See also Powell v. Georgia-Pacific Corp., 119 F.3d 703, 706 (8th Cir. 1997) (noting that “the court carefully weighed all of the considerations and tailored its remedy to reflect the parties’ original intention regarding unclaimed funds”); Nelson v. Greater Gadsden Housing Authority, 802 F.2d 405, 409 (11th Cir. 1986) (in action involving utility allowances to tenants in public housing complex, court approved use of unclaimed compensatory damages to increase the energy efficiency of the apartment units or to improve the defendant-supplied appliances within the units); In re Lorazepam & Clorazepate Antitrust Litigation, 205 F.R.D. 369, 381 (D.D.C. 2002)

comprised of (or primarily represents) individual similarly situated to class members. Rather, the recipient of *cy pres* funds is ideally a “non-profit entity combating harms similar to those that injured the class members.” Jones v. National Distillers, 56 F. Supp. 2d 355, 358 (S.D.N.Y. 1999).

Generally, courts prefer to distribute *cy pres* funds to charitable organizations or agencies that will benefit as many of the class members as possible. See In re Matzo Food Products Litig., 156 F.R.D. 600 (D.N.J. 1994) (citing 2 Newberg on Class Actions, § 10.16 at 10-39); see also Powell v. Georgia Pacific Corp., 119 F.3d 703 (8th Cir. 1997) (approving district court’s distribution of remaining funds from racial discrimination case to scholarship program for African-Americans); Nelson v. Greater Gadsen Housing Authority, 802 F.2d 405, 409 (11th Cir. 1986) (allowing defendant public housing project manager to use unclaimed compensatory damages to increase energy efficiency of apartments and improve appliances supplied with the units). Courts have rejected proposed *cy pres* distributions because they did not offer a sufficiently direct benefit to class members. See, e.g., Six Mexican Workers, 904 F.2d at 1308 (deeming the district court’s consideration of a *cy pres* distribution permissible but rejecting its plan as unlikely to benefit the class members).

The only aspect of this settlement that VLAN presently supports is the *concept* of *cy pres* distribution. Clearly, the size of the class, the difficulty in locating class members and the relative portion of their allocation of a potential recovery all lend support to application of *cy pres* principles here. This Court’s vigorous review of the proposed settlement distribution will serve as the central protection of class members’ rights and assure that a settlement whose terms

(approving *cy pres* distribution “with the express condition that the funds be used in a manner reasonably targeted to specifically benefit the health care needs of a substantial number of the persons injured by the increased prices of lorazepam and/or clorazepate.”); In re Motorsports Merchandise Antitrust Litigation, 160 F. Supp. 2d 1392, 1395 (N.D. Ga. 2001) (approving *cy pres* distribution, and noting that “the Court has attempted to identify charitable

bear little connection to the original harm complained of is rejected in order to protect the interests of the class. In order to avoid an unfair outcome, it is crucial that the Court carefully scrutinize the proposed *cy pres* groups and consider the class members' reactions to those groups. To date, however, Mr. Roddy and Mr. Fein, plaintiffs' liaison counsel, have refused to disclose this information to class members who want to comment on the *cy pres* groups or their selection. VLAN fears that class counsel will wait until the eleventh hour to identify *cy pres* recipients in order to prevent comments from members of the class and/or objectors.¹¹

VLAN provided plaintiffs and defense counsel with a list of nine organizations that closely represent the interests of the class and support the goals of this litigation. See Exhibit D. Despite numerous requests from VLAN to the class attorneys, they have declined to divulge any details of proposed *cy pres* recipients calling such requests "impractical."¹² See Exhibit E, "Kevin Roddy's response (in larger font) to May 29, 2002 Letter from VLAN." Class counsel are aware of the impending July 8th deadline for objectors and opt outs and appear to have purposely withheld this information up until that date, if, in fact, they ever disclose it to the class. For these reasons alone, this Court *must* reject this settlement until class members have the opportunity to review the final *cy pres* designees and object if necessary. Requiring class members to be bound by a settlement when the terms are unknown to them is unfair, and renders the proposed settlement inadequate at this time. As such, VLAN would request that this Court delay final approval until at least one month after the final *cy pres* beneficiaries are released in order to allow adequate time for class members to object or opt out should they so choose.

organizations that may at least indirectly benefit the members of the class of NASCAR racing fans").

¹¹ This conduct by plaintiffs' counsel gives further reason for this court to scrutinize the adequacy of some attorneys.

¹² The only certain details VLAN has learned are that VLAN was no longer in consideration, although the class counsel subsequently denied this, and that class counsel was actively considering *one* group out of VLAN's list of nine. This group, Vegetarian Resource Group, while on VLAN's list for the sole reason that it published a fast food guide for vegetarians, actually described the lawsuit as "counterproductive" to their own desire to get accurate

Counsels' tactics have led VLAN to question the appropriateness of the attorneys involved in this case picking the *cy pres* recipients. Thus, VLAN also proposes that this Court refuse to approve the settlement until the parties agree to appoint a special master or independent body to oversee the distribution of the funds. Cf., Powell, 113 F.3d at 705 (after dispute arose concerning distribution of left-over settlement funds, the court referred the matter to a special master); In re Mexico Money Transfer, 164 F. Supp. 2d at 1011 (approving settlement where committee consisting of representatives from independent organizations and attorneys would oversee the settlement fund) Id.

B. The Settlement Should Be Scrutinized Because There is no Record of Evidence to Support that \$10 Million is Adequate.

As noted in In re Microsoft, in evaluating whether or not to approve a settlement consisting entirely of *cy pres* relief instead of monetary compensation to members of the class, the court must examine the reasonable value of the class claim in order to ensure the size of the *cy pres* relief is adequate. 185 F. Supp. 2d 519, 526 (D. Md. 2002) (“Assessment of the adequacy of a proposed settlement requires evaluation both of the value of the settlement and the value of the claims being settled.”). Because the *cy pres* relief was inadequate and “thinly funded” considering the size of the claims, the court rejected the proposed settlement. Id. at 527-28. Here, no attempts have been made by the parties to consider the size of the claims versus the relative value of the settlement. Most state consumer fraud statutes allow for automatic statutory damages which can run from the hundreds to thousands of dollars per violation. Thus, the proposed class claims here could run into the hundreds of millions of dollars. While a settlement takes into account all of the litigative risk and the potential for recovery at trial, here such little adversarial work was done before the case was settled that it is difficult to determine, on the record, how counsel came up with a settlement value of \$10 million and whether it is fair or adequate. For example, McDonald’s Systemwide sales for the first two months of second

information from fast food companies.

quarter 2002 alone were \$6.9 billion.¹³ Given the enormity of sales at issue in this litigation, the Court should carefully scrutinize the value of the proposed settlement.

C. Other Provisions of the Settlement Also Warrant Close Scrutiny or Rejection.

1. The Public Apology Does Not Benefit the Class Since McDonald's Apologized After the Filing of Mr. Bharti's Initial Complaint and Prior to the Settlement.

Almost immediately after Harish Bharti filed the first complaint in this case, McDonald's apologized for not disclosing the presence of beef in the french fries. Hence, this settlement provision is meaningless and merely re-requires McDonald's to do something it did before "settlement" to further its own interests.

2. The Dietary Advisory Board Has No Power

The proposed dietary advisory board in the settlement agreement has no power and will not benefit class members. For one, the settlement documents contain no details about who the representatives will be. Committee members must adequately represent the interests of the class for the class to be benefited in any significant way. Additionally, there is no requirement that McDonald's will have to implement any of the board's proposals. Since McDonald's may choose to address or ignore any suggestions of this board, McDonald's is no different position after the imposition of this settlement term than it was before the settlement

3. Kosher Groups and Children's Groups Are Not Proper *Cy Pres* Recipients.

As noted above, the only kosher representative is inadequate due to his relationship with one of the attorneys in the case. Additionally, claims involving "children" have never been a part of this litigation. There is no basis under the law to include "children's groups" in the *cy pres*

¹³ <http://www.mcdonalds.com/corporate/press/financial/2002/06172002/index.html>

relief since they will not benefit the class in any way.

4. The Proposed Release is Overbroad

According to language in the proposed settlement, McDonald's is released from claims involving undisclosed "meat" in *any* of its food products. Such a release is overbroad seeing as how the litigated claims involved only beef fat in french fries and hashbrowns. The court should not allow McDonald's to be released from claims involving undisclosed meat ingredients in other food products.

5. The Proposed Attorneys' Fees are Unsupported by the Present Record.

VLAN would support the awarding of attorneys' fees, commensurate with work disclosed through fee petitions and benefit to the class, in an adequate settlement where groups representing the interests of the class are receiving appropriate *cy pres* relief and where other provisions of the settlement would benefit the class. The record does not support such a finding in this case.

CONCLUSION

In light of the foregoing, VLAN opposes the proposed Settlement Agreement in this case as unreasonable, unfair, and inadequate. VLAN would ask that this Honorable Court allow VLAN time to speak at the final settlement hearing, as an interested party and *amicus curiae*.

RESPECTFULLY SUBMITTED BY:

James Pizzirusso, *Pro Se* (Virginia State Bar No. 47296)
Vegetarian Legal Action Network
P.O. Box 50510
Washington, D.C. 20091-0510
(703) 587-6474

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served on the following recipients, as required under the McDonald's settlement agreement, via first class, postage paid, U.S. Mail on this the ____ day of July, 2002, addressed as follows:

Clerk of Court
Circuit Court of Cook County
50 West Washington
Chicago, IL 60602

Daniel A. Edelman
Edelman, Combs & Lattuner, LLC
120 South LaSalle St., 18th Floor
Chicago, IL 60603

Alan H. Silberman
Silberman, Sonnenschein, Nath & Rosenthal
8000 Sears Tower
233 South Wacker Dr.
Chicago, IL 60606

James Pizzirusso