

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK**

IN RE: DENTAL SUPPLIES ANTITRUST
LITIGATION

No. 1:16-CV-00696-BMC-GRB
CONSOLIDATED

**SECOND SUPPLEMENTAL DECLARATION OF LORI L. CASTANEDA REGARDING
THE ADMINISTRATION AND DISTRIBUTION OF SETTLEMENT FUNDS**

1. I am a Senior Director for Kroll Settlement Administration LLC ("Kroll"),¹ formerly known as Heffler Claims Group. The following statements are based on my personal knowledge and information provided by other experienced Kroll employees working under my general supervision. If called on to do so, I could and would testify competently thereto.

2. I previously submitted a declaration on August 14, 2020 [ECF 353-2] (the "Initial Declaration") and January 31, 2022 [ECF 355-2] (the "First Supplemental Declaration" and, together with the Initial Declaration, the "Prior Declarations"). This Declaration supplements the Prior Declarations, which are incorporated herein in their entirety by reference.

3. Kroll was appointed as the Settlement Administrator in connection with that certain Settlement Agreement, dated September 28, 2018 (the "Settlement Agreement"), entered into in the above-captioned action. As the Settlement Administrator, Kroll has assisted with

¹ Capitalized terms used herein and not otherwise defined have the meanings assigned to them in the Settlement Agreement (as defined below).

various tasks, including administering the notice program; receiving and processing claims and requests for exclusion; responding to Class Member inquiries; establishing and maintaining the settlement website; and distributing both the initial Settlement Funds and a second distribution of remaining unclaimed funds.

4. The purpose of this Declaration is to provide an update to the Court as to the funds remaining in the Settlement Fund after the second distribution, mainly uncashed checks, and recommendations as to a third distribution to Class Members of those funds.

PRIOR DISTRIBUTIONS

5. As previously reported to this Court in my Initial Declaration, after all efforts in the claims review and audit process were completed, the total number of claims and registrations eligible for payment was 49,910. Of these, 3,450 were paid as purchasers of Equipment only, based on their total Equipment purchased, and 46,460 were paid as purchasers of both Supplies and Equipment, based on their total Supplies purchased as detailed further in the Plan of Allocation.

6. As noted in the First Supplemental Declaration, upon the Court's approval, Kroll caused a first distribution of Settlement Funds to be sent to Class Members or their agents, based on the Plan of Allocation weighting and the pro rata shares. Following the first distribution, a balance of \$1,643,025.89 remained of the Settlement Funds.

7. On May 19, 2022, Kroll mailed second distribution checks to 36,501 eligible Class Members as approved by the Court. Since that time, 31,547 checks (over 86% of total checks) have been negotiated and 4,954 remain uncashed.

8. Based on the Settlement Fund statements Kroll has received, there remains \$228,304.80 from the uncashed checks and funds held in reserve. For the reasons set forth below, Kroll believes that a third distribution is viable and feasible for the Class.

CHECK REISSUE REQUESTS

9. After the Court-approved second distribution was mailed and the 60-day void date passed, Kroll was contacted by Financial Recovery Strategies (“FRS”), a third-party claims preparer. FRS stated that due to “unforeseen circumstances,” 687 second distribution checks that it received were not cashed by the stale date.² The total amount of these checks is \$55,990.82, with the largest payment being \$736.63 and the smallest being \$5. FRS is requesting Kroll send via wire transaction the amount of \$55,990.82 so that it can re-issue payments to its clients.

10. Kroll has also recently received requests for second round checks to be reissued from four (4) other Class Members.³ These checks total \$336.11. In anticipation of Court approval

² Jeffrey N. Leibell, Chief Legal & Financial Officer of FRS, explained as follows:

On or around October 4, during a fire inspection of the two-story building that FRS, which occupies the second floor, shares with an electronics defense contractor (owned by the father of FRS’s CEO/President), which occupies the first floor, the fire inspector discovered an unopened box sitting on the “back” stairway that connects FRS’s office space with the factory floor of the downstairs tenant. When the box was opened, we discovered that it contained the second distribution checks that, as a result of the passage of time since it was delivered, had become stale-dated. FRS contacted Kroll the next morning to report the situation.

The ordinary procedure followed historically when packages, like the box of checks, are delivered to FRS is that the delivery person either (a) walks up the main stairway to FRS’s office to leave the box with our receptionist or, if she is not present, on the reception desk where it will be processed upon her return; or (b) leaves the package with an employee of the downstairs tenant who, because of the relationship between the two companies, then brings it to our reception area. This time, however, that employee, for reasons unknown to anyone, placed the box on the back stairway where it sat until the fire inspector discovered it. To the best of my knowledge, no one had ever previously put a package to FRS on the back stairs.

³ These four claimants (one of which is requesting reissuance of two checks, one issued in his name and the other in the business name) have various reasons for their check reissue requests: One sold his practice, moved, and the mail was forwarded to him late – this accounts for two of the checks; the second claimant stated that he received the check too late to cash; the third is for a deceased claimant and his widow is requesting the reissue; and the last of the five checks was unable to be cashed due to a name change needed as the business is now operating under a different name.

for these reissues, Kroll has included these reissues in the third distribution amounts and calculations being presented to the Court.

11. Additionally, Kroll has been contacted by three (3) claimants who are requesting their first distribution check be reissued. One payment amount is \$4,169.20, another is for \$2,176.07, and the last is \$735.53.⁴ Due to these checks not being cashed, these claimants also did not receive checks in the second distribution. Anticipating Court approval of these first distribution reissue requests, Kroll has calculated what they would have then been paid as part of the second distribution, in the amounts of \$134.15, \$70.02, and \$23.66 respectively. Kroll has also added their records into the calculation process for the third distribution to determine whether they would receive any further payment.

12. Should the Court determine that any of the above checks not be reissued, Kroll can promptly revise the calculations to remove any payment request the Court denies.

REMAINING SETTLEMENT FUNDS FROM SECOND DISTRIBUTION

13. As noted above, \$228,304.80 remains in the settlement fund, consisting of \$210,300.80 in unclaimed payments and \$18,004 in unused reserved funds for administration fees.

14. Kroll estimates that it will cost \$31,818.80 to complete a third distribution based on the assumptions used in this declaration. This cost includes the preparation of the calculations described in this Declaration, printing and mailing checks to the eligible Class Members, and

⁴ The claimant who is requesting the \$735.53 reissue stated that the initial check was never received. On review of the paper claim form that was submitted, it is difficult to determine whether a numeral in the address is a "0" or a "1," which may have led to the check being sent to the incorrect address. The claimant who is requesting the \$4,169.20 be reissued has not provided an explanation but has asked that the amount not be forfeited. Lastly, the third claimant requesting reissue from the first distribution states that he was out of the country and the check was misplaced by the person collecting his mail and just recently found.

handling any requests for reissues, questions about checks, or questions on the Settlement Plan of Allocation. To minimize administrative expense, should the Court approve a third distribution, Kroll proposes to have checks valid for sixty (60) days, as was done for the second distribution.

15. After estimated administration fees for the third distribution of \$31,818.80 and reissue request payments to FRS and the seven Class Members totaling \$63,635.56, if approved by the Court, this will leave \$132,850.44 to be distributed to eligible Class Members.

16. In anticipation of the Court's approval of a third distribution of the remaining Settlement Funds, Kroll has prepared the calculated award values for Class Members. Kroll considered the funds remaining for each group (Equipment Only Purchasers and Equipment & Supply Purchasers) and assigned those funds back to each respective group. As \$2,078.94 of the uncashed checks will be allocated to the Equipment Only purchasers, that amount will be distributed pro rata to the eligible Equipment Only Class Members, and the remainder of the uncashed funds, totaling \$130,771.50, will be distributed pro rata based on the weighted supply purchase values.

17. Similar to the second distribution, Kroll removed all Class Members who did not cash their second distribution check ("Non-Cashers") leaving only those that negotiated their second distribution check to be potentially eligible for the third distribution.

18. Once the Non-Cashers were removed from the list of potential third distribution recipients, Kroll applied the Plan of Allocation to determine a pro rata amount that the Class Members who cashed their checks would have received had the Non-Cashers been excluded from the second distribution. Kroll then reviewed the results to see if the pro rata share allocated to a Class Member would have already been fulfilled based upon the minimum payment of \$5 that they received as part of the second distribution. All Class Members who would have had their pro rata share fulfilled in the

second distribution had the Non-Cashers not been included were then removed from the list of payable claims for a third distribution.

19. This leaves only those Class Members who cashed their checks and did not get paid their full pro rata amount in the second distribution had the Non-Cashers not been included in that calculation.

20. Kroll then calculated the pro rata amount of the distributable funds each remaining Class Member would receive.

21. In consultation with Class Counsel, Kroll is recommending that a \$5 minimum payment again be used as a threshold for the third distribution. However, for the third distribution, Kroll proposes that those allocated less than \$5 be excluded from receiving a third distribution check to control administrative fees and costs. There are 14,058 Class Members who cashed their second distribution checks and would not have received their full pro rata share had the Non-Cashers not been included in the calculation but would receive between \$0.01 and \$4.99 in the third distribution based on the pro rata calculations. If Kroll were to send checks to these additional 14,058, the amount of funds to be distributed to the Class would need to be further reduced to cover the additional administration of printing and postage for these 14,058 checks.

CONCLUSION

22. Upon Court approval of a third distribution for Class Members who cashed their first and second checks, and who would receive at least \$5, as well as the Court's determination on the additional reissue requests, Kroll is prepared to cause the remaining funds to be distributed.

23. For each group, the minimum additional award will be \$5 and anyone who would have received a pro rata share less than \$5 will be excluded from the distribution, as recommended above. The average additional award for the Equipment Only group will be \$11.66 with the highest additional award estimated to be \$58.52. For those who had supply purchases, the average additional award will be \$12.23, with the highest additional award estimated to be \$331.68. In total, there will be 10,871 Class Members who will receive a third payment of which 10,692 are from the Supplies group and 179 are from the Equipment Only group.

I declare under penalty of perjury pursuant to the laws of the United States of America that the foregoing is true and correct. Executed on this 4th day of May 2023, at Fair Oaks, California.


LORI L. CASTANEDA