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18 BAKERSFIELD MALL, LLC  
19 CA-CENTERSIDE II, LLC

20 SUPERIOR COURT OF THE STATE OF CALIFORNIA

21 COUNTY OF SAN FRANCISCO

22 **COORDINATION PROCEEDING**  
23 **SPECIAL TITLE [RULE 3.550]**

24 **FRANCHISE TAX BOARD LIMITED**  
25 **LIABILITY CORPORATION TAX**  
26 **REFUND CASES**

27 **INCLUDED ACTIONS:**

28 **BAKERSFIELD MALL, LLC V.**  
**CALIFORNIA FRANCHISE TAX BOARD**

**CA-CENTERSIDE II, LLC V.**  
**CALIFORNIA FRANCHISE TAX BOARD**

ELECTRONICALLY  
**FILED**  
Superior Court of California,  
County of San Francisco

**05/11/2023**  
**Clerk of the Court**  
BY: ERNALYN BURA  
Deputy Clerk

Case No. CJC-12-004742

**JOINT STATUS REPORT**

Date: May 16, 2023

Time: 2:00 p.m.

Dept.: 306

Judge: Cynthia Ming-mei Lee

1 Plaintiffs Bakersfield Mall, LLC (“Bakersfield”) and CA-Centerside II, LLC (“Centerside”)  
2 (“Plaintiffs” or “Class Representatives”) and Defendant California Franchise Tax Board (“FTB”) submit  
3 this Joint Status Report regarding settlement implementation per the Court’s Order Granting Final  
4 Approval of Class Action Settlement and Release (“Final Approval Order”). (See Final Approval Order  
5 at 10.)

## 6 I. INTRODUCTION

7 The settlement implementation process resulted in the successful distribution of most of the  
8 settlement funds to class members with Valid Claims, as described below. However, in preparing to wrap  
9 up the settlement and address the residuary, it was discovered that FTB’s class list omitted hundreds of  
10 potential class members. The Parties now request that the Court authorize a supplemental notice and  
11 claims period to ensure that the newly discovered class members are provided with a fair share of benefits  
12 under the Settlement Agreement. The Parties request 14 days for FTB to verify that it has identified and  
13 disclosed all potential class members and for the parties to submit a stipulation and proposed order  
14 containing a plan for providing supplemental notice to, and a claims process for, the newly discovered  
15 class members.

## 16 II. STATUS OF SETTLEMENT FUND

17 On November 22, 2022, the Court issued its Final Approval Order approving the Class Action  
18 Settlement and Release (“Settlement Agreement”) and entered a Judgment binding the parties to the  
19 Settlement Agreement. Since then, the Parties and the Settlement Administrator have been working  
20 diligently to implement the Settlement Agreement.

21 Pursuant to the terms of the Final Approval Order and the Settlement Agreement, on or around  
22 January 10, 2023 FTB made a payment of \$22 million to establish the Gross Settlement Fund. (Final  
23 Approval Order at 3, 9; Settlement Agreement § V.B.3.) These funds were used to pay the initial costs of  
24 notice and settlement administration (\$182,622.66), Attorneys’ Fees (\$6.6 million) and Costs (\$140,000),  
25 and two Service Awards (totaling \$10,000). (Declaration of Lacey Rose of Angeion Group, LLC,  
26 submitted herewith (“Rose Decl.”) ¶ 5; Final Approval Order at 3, 9; Order re Costs of Settlement  
27 Administration (11/22/22) at 1.)

28 The primary settlement task since then has been distributing checks to the class members who

1 submitted Valid Claims. This raised a host of challenging issues, most of which have been resolved  
2 through the cooperative efforts of the Settlement Administrator, FTB, and Plaintiffs. To date, the  
3 Settlement Administrator has sent checks totaling \$10,787,490.16 to the holders of 1,012 Valid Claims.  
4 (Rose Decl. ¶ 8.) This number will increase over the next several weeks, as the Settlement Administrator  
5 continues to verify the federal employment identification numbers of a couple dozen class members,  
6 which is required before a check can be sent. Once this is done, a total of \$11,585,091.16 will have been  
7 distributed to the holders of 1,085 Valid Claims. (*Id.* ¶¶ 4, 9.)

8 When all of the checks are cashed, there will be approximately \$3,450,813.18 left in the settlement  
9 fund. A detailed account of the settlement implementation status, including updated calculations of the  
10 total claims and Valid Claims, as well as how funds were used and what funds remain, is set forth in the  
11 declaration of Lacey Rose on behalf of the Settlement Administrator, submitted herewith.

### 12 **III. NEWLY DISCOVERED CLASS MEMBERS**

13 FTB attorney Ann Hodges received an inquiry from another FTB attorney that led to the discovery  
14 of hundreds of potential class members that had inadvertently been excluded from FTB's class list. *See*  
15 *Order re Plaintiffs' Motion to Compel Information Regarding Class Members (9/21/21)* (ordering FTB to  
16 provide information regarding the class, including a class list). (Declaration of Ann Hodges, submitted  
17 herewith, ¶¶ 3-4; Declaration of Valerie Palmer, submitted herewith.) FTB has investigated the matter,  
18 mainly to allow the Parties to identify LLCs that are class members. FTB's analysis is set forth in the  
19 declarations of Ann Hodges and Valerie Palmer, submitted herewith. Based on the information in FTB's  
20 declarations, it is clear that some of the newly discovered entities are class members. The Parties are  
21 working together to ensure they identify all potential class members left out of the notice and claims  
22 process.

### 23 **IV. PROPOSED SUPPLEMENTAL NOTICE AND CLAIMS PROCESS**

24 Because the newly discovered class members were not on the class list, they did not receive direct  
25 notice of the class action or the proposed settlement, and did not have an opportunity to opt out or submit  
26 claims. After conferring, the Parties believe that these newly discovered class members can and should  
27 be brought into the settlement. The Parties believe that they should be afforded the same benefits as the  
28 other class members, including an opportunity to opt out and submit claims, and to be paid at the same

1 rate as the other class members.

2 The remaining funds in the Net Settlement Fund – approximately \$3.4 million – will likely be  
3 sufficient to cover any Valid Claims submitted by the newly discovered class members. The Net  
4 Settlement Fund is sufficient to pay approximately 323 additional Valid Claims.<sup>1</sup> If the rate of Valid  
5 Claims remains the same as previously computed, there will be between 10 to 20 new valid claims,  
6 requiring payment of approximately \$108,000 to \$216,000.<sup>2</sup> Thus, it is extremely unlikely there will be  
7 more than 323 Valid Claims. The only way to know for sure the number of new Valid Claims and their  
8 dollar value is to allow these entities to submit claims. If there are more than 323 new Valid Claims, the  
9 Parties propose to negotiate a resolution, or, if that fails, to bring the matter to the Court.

10 The Parties believe that there should be a supplemental notice and claims period for the newly  
11 discovered class members, giving them an opportunity to opt out or to submit claims. The Settlement  
12 Administrator has tentatively estimated the administrative costs of conducting an additional notice and  
13 claims process (\$31,473), which has been factored into the calculations set forth herein regarding the funds  
14 available for paying new Valid Claims.

15 Therefore, the Parties request the following:

16 1. The Parties request authorization to conduct a supplemental notice and claims process for  
17 the benefit of the newly discovered class members. They further request authorization from the Court to  
18 pay new Valid Claims from the Net Settlement Fund, pursuant to the terms of the Settlement Agreement.  
19 (Settlement Agreement §§ V.A.3, V.B.) The Parties propose to submit a stipulation and proposed order  
20 authorizing these actions within 14 days.

21 2. The Parties request 14 days to confer with the Settlement Administrator and agree on a  
22 schedule for sending a supplemental notice to the newly discovered putative class members, a claims  
23 period, and an opt-out deadline. The Parties propose to submit the stipulated schedule with a proposed  
24 Supplemental Notice and Claim Form for the Court’s review and approval.

25 <sup>1</sup> This is based on dividing the remaining Net Settlement Fund (\$3,450,813) by the average  
26 payment per claim (\$10,677).

27 <sup>2</sup> The current rate of Valid Claims is based on there being 1,085 Valid Claims out of refund  
28 claims for 98,909 tax years, or 1.1%. (See Rose Decl. Ex. A; Declaration of Amy L. Silverstein in  
support of Plaintiffs’ Motion for Final Approval of Class Action Settlement (9/30/22), ¶ 15) The  
average refund total is approximately \$10,677 (\$11,585,091 divided by 1,085 Valid Claims). (See Rose  
Decl. ¶ 4.)

1           3.       During this proposed 14-day period, the Parties would try to reach agreement as to which  
2 of the newly discovered entities have no potential to be class members and therefore should be omitted  
3 from the supplemental notice mailing and the claims process. If the Parties did not agree regarding a  
4 particular entity's status, the entity would be treated as a putative class member and be provided notice to  
5 be mailed by FTB unless the Court requires FTB to disclose to Plaintiffs and the Settlement Administrator  
6 the identity of all the newly discovered entities as set forth in Paragraph 5, 4:13. During this period, Class  
7 Counsel would also continue to meet with FTB and its counsel to obtain further assurance that all potential  
8 class members have been disclosed to Plaintiffs and the Settlement Administrator.

9           4.       Because a Judgment has already been entered effectuating the Settlement Agreement, the  
10 normal procedure for objecting to proposed settlement terms does not readily translate to the current  
11 circumstances. Therefore, the proposed stipulation would address the issue of how the newly discovered  
12 class members would potentially register any concerns they have with the Settlement.

13           5.       FTB believes that the newly discovered entities likely include non-class members whose  
14 constitutional privacy rights are subject to Rev. & Tax. Code § 19542. Plaintiffs' position is that the  
15 Court's September 21, 2021 Order already ordered FTB to turn over the entire Claims Database, which  
16 included all of the newly discovered entities; over the next 14 days Plaintiffs will work with FTB in good  
17 faith to identify entities that unquestionably have no potential to be class members. As part of the proposed  
18 stipulation, the Parties would also ask the Court to confirm whether its Order re Plaintiffs' Motion to  
19 Compel Information Regarding Class Members (9/21/21) requires FTB to disclose to Plaintiffs and the  
20 Settlement Administrator the identity of all the newly discovered entities in FTB's claims database that  
21 filed claims regardless of whether these entities meet the class definition notwithstanding any  
22 constitutional privacy rights subject to Rev. & Tax. Code § 19542.

23           6.       As part of the proposed stipulation, the Parties would also ask the Court to authorize the  
24 Settlement Administrator to set aside the estimated fees and costs to administer these unanticipated  
25 settlement tasks. The Parties will ask the Settlement Administrator to provide an updated estimate of such  
26 fees and costs. Class Counsel notes that due to their ongoing work on settlement implementation, they  
27 have incurred costs and lodestars greatly exceeding those awarded by the Court on November 22, 2022.  
28 Therefore, Class Counsel may request an opportunity to raise this with the Court at the close of the

1 proposed supplemental claims period.

2 **V. RESIDUARY**

3 In its Final Approval Order, the Court directed that if there was any money remaining in the  
4 Settlement Fund after the first distribution, “the Parties shall jointly move the Court for redistribution of  
5 the remainder to the Valid Claimants, while ensuring that sufficient funds are withheld to cover the  
6 additional administrative costs.” (Final Approval Order at 7:24-8:2 (citing Settlement Agreement §  
7 V.B.10).) While Plaintiffs originally planned to ask the Court at this Compliance Hearing to order  
8 distribution of the residuary, if the Court approves the proposed supplemental notice and claims process,  
9 then the residuary would have to be addressed after the new Valid Claims are received and paid.  
10 Fortunately, the original class members have already received significant compensation for their Valid  
11 Claims, having been paid at an average rate of approximately 2.1 times their original injury. (*See*  
12 Supplemental Decl. of Brian D. Pedersen (10/19/22) ¶ 6 (average injury per class member was \$4,968).)  
13 While Plaintiffs are reluctant to assent to further delay regarding the distribution of funds, they believe  
14 that fairness to the newly discovered class members demands it.

15 **VI. CONCLUSION**

16 The settlement implementation process has resulted in the distribution of most of the settlement  
17 funds. The Parties now request that the Court authorize a supplemental notice and claims process to ensure  
18 that the newly discovered class members are provided with a fair share of benefits. The Parties request  
19 14 days to submit a stipulation and proposed order to address the proposed supplemental notice and claims  
20 process.

22 DATED: May 11, 2023

SILVERSTEIN & POMERANTZ LLP

By: /s/ AMY L. SILVERSTEIN

Amy L. Silverstein

*Attorneys for Plaintiffs and the Class*

25 DATED: May 11, 2023

By: /s/ LAURA E. ROBBINS

Laura E. Robbins

DEPUTY ATTORNEY GENERAL

*Attorneys for Defendant*