

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE: ALL-CLAD METALCRAFTERS,
LLC, COOKWARE MARKETING AND
SALES PRACTICES LITIGATION

This Document Relates to All Actions

MDL No. 2988
Master Case No. 2:21-mc-491-NR

ELECTRONICALLY FILED

**OBJECTOR JOHN MICHAEL ANDREN'S
MOTION FOR RECONSIDERATION**

Objector John Michael Andren respectfully moves this Court for reconsideration of its February 27, 2024, Order (Dkt. 107) granting release of \$503,025.43 in attorneys' fees to class counsel, and leave of the Court to file a brief, three-page response to Plaintiffs' Joint Notice requesting the release of held back fees (Dkt. 106). A copy of Andren's proposed response is attached to this motion. Also attached to this motion is Andren's Second Declaration, and a proposed form of order. In support of his request, Andren states the following:

1. Fundamental fairness and the principles of fair notice counsel granting Andren the right to respond to Plaintiffs' Joint Notice. Ordinary motion practice would allow opposing parties a reasonable period of time to oppose requests of their adversaries. That should not change because Plaintiffs' request was styled as a Joint Notice, rather than a motion. Reconsideration is the proper remedy when a court rules prematurely before allowing a reasonable opportunity for response. *See Barron v. FRB.*, 129 Fed. Appx. 512, 520 (11th Cir. 2005); *New Fashion Pork, LLP v. Omni Builders, Inc.*, 2008 U.S. Dist. LEXIS 79416 (S.D. Ind. Sept. 30, 2008) (treating timely response in opposition as motion for reconsideration of order entered before the response deadline expired)

2. Andren's filing will allow for better, more informed consideration of Plaintiffs' request. It includes argument as well as a personal declaration from Andren attesting to the issues with the claims process in this case. *See* Second Declaration of John Andren ¶¶ 5-10.

3. Andren makes this motion in good faith and for the Court's benefit. He believes there is good cause to grant his motion in the interests of fairness and to provide the complete presentation of these complex and important issues to the Court.

4. Consistent with this Court's practices and procedures, on February 27, 2024, Andren's counsel contacted counsel for the settling parties regarding this request. Counsel for Plaintiffs, Ms. Soffin, stated that Plaintiffs do not consent to this motion. Andren's counsel received two "auto-replies" from counsel for All-Clad stating that both attorneys, Mr. Dalton and Ms. Bayly, would be unavailable to answer emails.

Dated: February 27, 2024

Respectfully submitted,

/s/ Adam E. Schulman
Adam E. Schulman (admitted *pro hac vice*)
HAMILTON LINCOLN LAW INSTITUTE
CENTER FOR CLASS ACTION FAIRNESS
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Washington, DC 20006
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Email: adam.schulman@hlli.org

Attorneys for Objector John Andren

CERTIFICATE OF SERVICE

I certify that I have filed the foregoing document through the Court's ECF system, which has effectuated service of this motion upon all attorneys in this case who are registered for electronic filing.

February 27, 2024

/s/ Adam E. Schulman
Adam E. Schulman (admitted *pro hac vice*)

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**JOHN MICHAEL ANDREN'S RESPONSE TO JOINT NOTICE OF
FILING STATUS OF CLAIMS PROCESS**

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Attorney for Objector John Michael Andren

Introduction

This Court delayed the release of a substantial portion of class counsel’s fee request until after the claims process so it could adjudge the veracity of class counsel’s claims that the final claims numbers (*i.e.*, the class relief) would justify their requested lodestar multiplier. But now class counsel seeks release of the holdback merely because the claims process is nearing closure. But without *any* information about final claims numbers, objective observers are left wondering to what extent the claims process succeeded—and whether class counsel’s “conservative” estimates were genuine or self-serving. To ensure the settlement and award of attorneys’ fees have not trespassed beyond the limits imposed by Rule 23, and to ensure that class members remain the “foremost beneficiaries of the settlement,”¹ Andren asks this Court for three things: (1) to deny the release of the holdback at this time; (2) require the parties to file an actual accounting of the final, or near final, claims numbers; and (3) should payment of the held back funds to class counsel not be warranted given the accounting of class relief, consider whether there are any viable methods to use the funds to the class’s benefit rather than allowing them to revert to All-Clad.

Argument

Plaintiffs ask this Court to release the \$503,025.43 in attorneys’ fees that it deferred pending an accounting of the final claims administration process. Dkt. 106. But they don’t provide an accounting at all; they merely offer the generic statement that the “claims process is substantially complete” and announce that there are “less than 300 claims to move to completion.” Dkt. 106-2 ¶ 9.

At the fairness hearing, class counsel assured this Court that, using the “most conservative” projection of a 50% reduction from the submitted claims, the validated claims for \$75 payments would exhaust the fund. Transcript, Dkt. 105 at 16:21-17:6. That was a continuation of assertions that plaintiffs had made in the papers before the fairness hearing. *See* Dkt. 92 at 18, 33. Andren has been skeptical all along. *See* Transcript at 44:18-45:23; Dkt. 96 at 3. But plaintiffs had assured the Court that

¹ *In re Baby Prods. Antitrust Litig.*, 708 F.3d 163, 179 (3d Cir. 2013).

Andren's projections are "fictitious" and the "reality" is that 50% validation projection is "conservative." Dkt. 94 at 7-9.

When this Court approved the settlement, it relied on the fact that the parties had declared receipt of over 123,000 claims. Final Approval Opinion, Dkt. 103 at 12. The parties' representations made the Court "confident" in the administration process. Transcript at 55:10. The Court relied on the parties' representations that "the claims-resolution process is straightforward with appropriate dispute resolution safeguards in place," and noted that even if "one-third of the current Option A1 claims are disallowed, that would still signify a strong claims rate." Dkt 103 at 19. To "partially address[] Mr. Andren's objection," however, the Court deferred awarding about \$500,000 in attorneys' fees "until the 'claims process is complete.'" Final Approval Opinion at 24. The Court specifically tied this deferral to a review of the outcome of the claims administration. Final Approval Opinion at 18. Andren had suggested this as an alternative in his objection, so that the Court could properly calibrate and tie fees to the "actual benefit conferred on the class." Dkt. 86 at 20. And the Third Circuit too suggests that point of deferring a portion of the fee award is to "overcome the speculative nature of the tentative and imprecise settlement valuations." *In re Prudential Ins. Co. Am. Sales Prac. Litig. Agent Actions*, 148 F.3d 283, 334 (3d Cir. 1998) (cited by Final Approval Opinion at 25).

Andren has only grown more skeptical of the settlement's actual class benefit through his own experience navigating the cumbersome administration process. As Andren describes in his accompanying declaration, after settlement approval, the administrator demanded that Andren resubmit photographic evidence of sharp edges before approving his claim. Second Andren Decl. ¶ 5. After resubmitting the same photographic evidence, his claim was then provisionally approved. *Id.* ¶¶ 5, 7. But that communication stated that he would receive a separate communication providing a shipping label to return his cookware for final inspection and claim approval. *Id.* ¶ 7. After a few months without update, however, Andren received a "Final Notice" that he needed to submit his cookware then or risk missing out on relief. *Id.* ¶ 9. Only then, contemporaneous with the "Final Notice" did Andren receive the separate communication providing his UPS shipping label. *Id.* Then,

although All-Clad paid for the shipping costs itself, to comply with the parties’ packing requirements for the returned cookware (corrugated cardboard packaging with filling), Andren was required to spend about \$20 out of pocket. *Id.* ¶ 10. Separately, during the administration period, Andren also received an unsigned email from a “john doe” account titled “All clad claims validation.” *Id.* ¶ 8. That email attached screenshots complaining about the obstacles class members were encountering in the claims administration process. *See* Exhibit A to Second Andren Decl. And now, lastly, plaintiffs have submitted a notice that speaks volumes in its refusal to reveal actual payout numbers. *See TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2212 (2021) (discussing the adverse inference principle). Andren fears that even the attorneys’ fees awarded to date—\$1.437m—already outstrip the class’s cognizable settlement benefit.²

Andren asks the Court to take these steps. (1) deny the release of the \$503,025.43 in held back attorneys’ fees; (2) require the parties to file an actual accounting of claims numbers, submitted and paid out, broken down by the type of claim;³ and (3) consider whether there are any viable methods to use the \$500,000 excess in negotiated attorneys’ fees to benefit the class and avoid enriching All-Clad, especially given All-Clad’s apparently erroneous representations about the ease of the claims process. If the Court cannot reopen the final judgment *sua sponte*, Andren stands willing to move for that relief. *See Ocean City Costa Rica Inv. Group, LLC v. Camaronal Dev. Group, LLC*, 571 Fed. Appx. 122, 127 (3d Cir. 2014) (Ambro, J.) (cataloging open circuit split on propriety of *sua sponte* reopening). Andren also observes that the plaintiffs may be attempting to foreclose that reopening option by filing

² Andren is confused by the statement in Plaintiffs’ Joint Notice that the Court held back \$503,025,43 from the award of \$1.437m. As far as Andren is aware, the hold back was on top of the \$1.437m award. *See* Dkt. 174 ¶¶ 5-6.

³ This accounting should be at least as detailed as the Post-Distribution Accounting required in the Northern District of California under its Procedural Guidance, *available at* <https://www.cand.uscourts.gov/forms/procedural-guidance-for-class-action-settlements/>. It will have the salutary effect of reducing the transparency deficit in class action administration. *See* Amanda M. Rose, *Classaction.gov*, 88 U. CHI. L. REV. 487, 494-97 (2021) (describing the transparency problem created by, among other things, the lack of distribution data).

their Joint Notice more than one year after this Court's order granting final approval. *See* Fed. R. Civ. P. 60(c)(1).

In any event, it remains true that the simple denial of the fee request is a “half solution.” Transcript at 45:13-14. Recent Third Circuit law suggests that full solution is the elimination of the fee reversion. *In re Wawa, Inc. Data Sec. Litig.*, 85 F.4th 712, 726-27 (3d Cir. 2023). It is not too late for All-Clad and Class Counsel to renounce their interest in the excess fees, and use that sum of money to benefit the class. It would be a “welcome change.” *Id.*

Dated: February 27, 2024

Respectfully submitted,

/s/ Adam E. Schulman
Adam E. Schulman (admitted *pro hac vice*)
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Attorney for Objector John Michael Andren

CERTIFICATE OF SERVICE

I certify that I have filed the foregoing Response in Opposition through the Court's ECF system, which has effectuated service of this motion upon all attorneys in this case who are registered for electronic filing.

Dated: February 27, 2024

/s/ Adam E. Schulman
Adam E. Schulman (admitted *pro hac vice*)

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SECOND DECLARATION OF JOHN MICHAEL ANDREN

I, John M. Andren, declare as follows:

1. I have personal knowledge of the facts set forth herein and, if called as a witness, could and would testify competently thereto.

2. My business address is Hamilton Lincoln Law Institute, 1629 K St. NW, Suite 300, Washington, DC 20006. My telephone number is (703) 582-2499. My email address is john.andren@hlli.org.

3. Hamilton Lincoln Law Institute (“HLLI”) and its attorneys, of which I am one, along with Adam E. Schulman, represent me in this matter.

4. I submitted my claim in this settlement on December 7, 2022. Along with my claim, I submitted the same photographs of my affected cookware as were included in my previous declaration to the Court.

5. On June 6, 2023, I received an email from the claims administrator stating that my claim could not be processed because (A) “we have not received photos of your cookware”; and (B) “[t]he photos you provided do not show the clearly enough to determine if it is an eligible product and/or if it exhibits ‘sharp edges’ as defined in this Settlement.” I followed the link provided in the claims administrator’s email and resubmitted the same photos including in my prior declaration.

6. On July 6, 2023, I received an email from the claims administrator stating my claim had been successfully updated.

7. On August 17, 2023, I received an email from the claims administrator stating that my claim had been provisionally approved and outlining next steps for the submission of my cookware for final claims validation. Namely, I was informed that I would receive another communication containing shipping information and a shipping label to be printed and affixed to my package.

8. On August 18, 2023, I received an anonymous email titled “All clad claims validation” from a “John Doe” email account. The email included screenshots of a social media thread containing class members complaining about the claims administration process in this settlement. A true and correct copy of this email is attached here as Exhibit A.

9. On November 20, 2023, I received a “Final Notice” email from the claims administrator stating my cookware had not be received and instructing my to “send in [my] cookware before its too late!” This was the first communication I received from the claims administrator since notice that my claim was provisionally approved and that I would receive a separate email containing my shipping label. Contemporaneous with this “Final Notice,” I received for the first time a separate email from UPS informing me that my return shipping label was available for printing.

10. On November 29, 2023, I went to a local UPS to pack and ship my cookware. Although the cost of shipping was covered by the settlement, I was responsible for packaging for my cookware. According to the instructions, I needed to ship my cookware in a “corrugated cardboard box and packing material to protect the product.” Packaging my cookware cost \$20.90.

11. On December 31, 2023, I received my replacement cookware from All-Clad.

12. On February 15, 2024, I received my \$75 settlement payment via Venmo.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on February 27, 2024, in Palmetto Bay, Florida.

/s/John M. Andren
John M. Andren

Exhibit A



John Andren <john.andren@hlli.org>

All clad claims validation

john doe <defectivesettlement@gmail.com>
To: John Andren <john.andren@hlli.org>

Fri, Aug 18, 2023 at 2:26 PM

FYI as you might be interested. There's a whole thread of complainants

2 attachments



Screenshot_20230818-132300.jpg
211K



Screenshot_20230818-132219.jpg
198K



CLASS ACTION Settlement LAWSUITS MONEY SIDE HUSTLE COUPON CHEAP



Amanda Stinson · Yesterday at 8:37
PM · 🗨️

Has anyone sent in photos? I threw out my pans so I have nothing. 😞

photos. Your claim cannot be processed because:

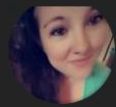
__X__ **A:** We have not received photos of your cookware. In order to continue processing your claim, you must submit photos of the bottom and edge of your cookware, as previously requested.

Submitting photos is simple and quick, and can be done online or through your mobile device. You must do so by **September 16, 2023**. Please upload your images for examination by clicking the link below, or you can copy and paste the link into your browser and follow the instructions to log in:

[https://multi-
plycookwaresettlement.com/upload-images?
cid=4475&lid=3311&sid=842530838](https://multi-
plycookwaresettlement.com/upload-images?
cid=4475&lid=3311&sid=842530838)

_____ **B:** The photos you provided do not show the product clearly enough to determine if it is an eligible product and/or

 12 >

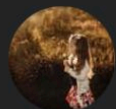


Christina Smith

If y'all don't have the pans, you simply don't meet the requirements for this settlement. It isn't if you ever BOUGHT them it's if you still HAVE them they reimburse you. If you don't have them, then you solved the issue.

16h Like Reply

1 



Didi Jaspersen Lyon

I sent photos but apparently they weren't close/clear enough.. so guess I'm not messing with it anymore.. And for those that keep saying the want the pans returned.. there was an option to receive 35% on AllClad if you no longer have the pans.. they still asked for photos.

14h Like Reply

1 

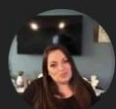


Jill Broder

Got this yesterday. I told them I don't take pics of items I'm throwing in the trash

4h Like Reply

1 



Nichole Gar

Got this email as well. I did not submit pics.

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**ORDER GRANTING MOTION
FOR RECONSIDERATION**

Before the Court is Objector John Michael Andren's Motion for Reconsideration. Having reviewed the motion, the Court finds good cause to allow Mr. Andren to file his response to the Plaintiffs Joint Notice (Dkt. 106) before determining whether to grant plaintiffs' request for release of the attorneys' fees hold back.

Accordingly, it is hereby **ORDERED**.

1. The motion is **GRANTED**.
2. The Court's Order (Dkt. 107) is **VACATED**.
3. Mr. Andren's response attached to his motion is deemed filed.

It is so **ORDERED**.

Dated: ____ __, 2024

HONORABLE J. NICOLAS RANJAN
UNITED STATES DISTRICT JUDGE