

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

Case No. CV 15-06457-MWF (JEMx)

Date: December 7, 2017

Title: Rachel Cody and Lindsey Knowles, individually and on behalf of all other similarly situated -v.- SoulCycle, Inc.

Present: The Honorable MICHAEL W. FITZGERALD, U.S. District Judge

Relief Deputy Clerk:
Cheryl Wynn

Court Reporter:
Not Reported

Attorneys Present for Plaintiff:
None Present

Attorneys Present for Defendant:
None Present

Proceedings (In Chambers):

ORDER RE PLAINTIFFS' MOTION TO REQUIRE POSTING OF APPEAL BOND BY OBJECTOR KERRY ANN SWEENEY [259-1]

Before the Court is Plaintiffs Rachel Cody and Lindsey Knowles' Motion for an Order to Require Posting of Appeal Bond by Objector Kerry Ann Sweeney (the "Motion"), filed on November 6, 2017. (Docket No. 259-1). Objector Kerry Ann Sweeney filed no Opposition, as Plaintiffs note in their Reply, which they filed on November 27, 2017. (Docket No. 261).

After having read the papers submitted on the Motion, the Court deems the matter appropriate for decision without oral argument and **VACATES** the hearing set for **December 11, 2017**. *See* Fed. R. Civ. P. 78(b); Local Rule 7-15.

Under Local Rule 7-12, the failure to file any required document within the deadline may be deemed consent to the granting of the motion. Under Local Rule 7-9, Sweeney was required to file an Opposition to the Motion no later than 21 days before the hearing. Accordingly, her Opposition was due on November 20, 2017. Pursuant to Local Rule 7-12, the Court deems Sweeney's failure to file an Opposition as consent to the granting of the Motion. Sweeney's consent to the Motion is sufficient grounds upon which the Court may grant the Motion, but the Court also finds that the Motion is justified on the merits.

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For the reasons discussed below, in addition to Sweeney’s failure to oppose the Motion, the Motion is **GRANTED**. Objector Sweeney is **ORDERED** to post a bond of **\$1,000** as security for Plaintiffs’ costs on appeal.

I. BACKGROUND

On October 3, 2017, after holding a fairness hearing on October 2, 2017, the Court granted Plaintiffs’ Motion for Final Approval of Class Action Settlement (Docket No. 254) and issued Judgment. (Docket No. 255). In so doing, the Court overruled Sweeney’s Objection to Plaintiffs’ Motion for Attorney Fees. (Order Granting Final Approval at 10–11). On October 20, 2017, Sweeney appealed the Court’s judgment to the Ninth Circuit. (Docket No. 256).

On November 16, 2017, the Ninth Circuit issued an Order to Show Cause requiring Sweeney to pay the filing and docketing fees for her appeal or file a motion to proceed in forma pauperis within 21 days, or her appeal would be dismissed for lack of prosecution. (Docket No. 260).

Citing Sweeney’s history of objecting to and then appealing from class action settlements, her ability to post a bond, the risk that she will not pay Appellees’ costs, and the lack of merit to her appeal, Plaintiffs request that the Court issue an order requiring Plaintiff to pay an appeal bond of a minimum of \$1,000. (*See generally* Mot.).

II. DISCUSSION

Federal Rule of Appellate Procedure 7 provides that “the district court may require an appellant to file a bond or provide other security in any form and amount necessary to ensure payment of costs on appeal.” Fed. R. App. P. 7; *Azizian v. Federated Dep’t Stores, Inc.*, 499 F.3d 950, 954–55 (9th Cir. 2007). When determining whether to require an appeal bond, courts consider the following factors: (1) the appellant’s financial ability to post a bond; (2) the risk that the appellant will not pay the appellee’s costs if it loses the appeal; and (3) an assessment of the likelihood

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that the appellant will lose on appeal and thus be liable for the appellee's costs. *Figure Eight Holdings, LLC v. Dr. Jays, Inc.*, 534 Fed. Appx. 670 (9th Cir. 2013); *Low v. Trump Univ., LLC*, No. CV 10-940-GPC (WVGx), 2017 WL 2655300, at *3 (S.D. Cal. June 19, 2017).

Here, all of the factor support an appeal bond:

First, there is no reason to question Sweeney's ability to pay the requested bond. In the absence of any such indication, this factor weighs in favor of a bond. *See Fleury v. Richemont N. Am., Inc.*, No. CV 05-4525-EMC, 2008 WL 4680033, at *7 (N.D. Cal. Oct. 21, 2008) (finding that lack of evidence indicating inability to pay supported finding that objector was able to post an appeal bond). Moreover, Sweeney's frequent litigation suggests she is able to pay the bond. *See Schulken v. Wash. Mut. Bank*, No. CV 09-2708-LHK, 2013 WL 1345716, at *5 (N.D. Cal. Apr. 2, 2013) (finding objector's frequent litigation supported his ability to pay an appeal bond). Plaintiffs point to Sweeney's extensive history of objecting to class action settlements, and then appealing. (Mot. at 9–10, 13; Declaration of Daniel P. Hipskind, Exs. A–D (Docket 259-2)). This factor therefore weighs in favor of an appeal bond.

Second, Sweeney's prior failure to pay required fees suggests a risk that she will not pay Appellee's costs should she lose on appeal. "Courts have consistently held that there is substantial risk of nonpayment where a party has not paid prior awards." *Figure Eight Holdings, LLC v. Dr. Jay's Inc.*, No. CV 10-7828-R (AJWx), 2012 WL 12893450, at *2 (C.D. Cal. June 18, 2012). The Ninth Circuit has previously dismissed an appeal filed by Sweeney for failure to file an opening brief and to pay appellate fees. *See, e.g., Patrick Cotter, et al. v. Lyft, Inc.*, No. 13-cv-4065, Docket No. 264 (N.D. Cal. Nov. 1, 2016) (dismissing Sweeney's appeal "for failure to pay fees"). As of November 27, 2017, when Plaintiffs filed their Reply, Sweeney had not yet paid the requiring filing fee for this appeal. (Reply at 1). It appears that as of the date of this Order, she still has not paid the filing fee. This factor also weighs in favor of an appeal bond.

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Third, this Court has already considered Sweeney’s Objection and determined that it was without merit. (Order Granting Final Approval at 10–11). The Court’s prior consideration and rejection of the Objection weighs in favor of requiring an appeal bond. *See Low*, 2017 WL 2655300, at *3 (“Having rejected Simpson’s objection for the reasons detailed in the Court’s March 31, 2017 Order, the Court finds it likely that Simpson will lose the appeal and be subject to costs.”) (internal citations omitted); *Schulken*, 2013 WL 1345716, at *5 (finding that third factor weighed in favor of appeal bond where court had already “thoroughly addressed” and rejected the objections). The third factor therefore also weighs in favor of an appeal bond.

The Court notes that the requested minimum bond of \$1,000 is conservative and reasonable. The “costs” referred to in Federal Rule of Appellate Procedure 7 include the items provided by Federal Rule of Appellate Procedure 39(e) as well as “all expenses defined as ‘costs’ by an applicable fee-shifting statute, including attorney’s fees.” *Azizian*, 499 F.3d at 958. Here, Plaintiffs are seeking only their taxable costs provided by Rule 39, though they anticipate spending over \$5,000 on the appeal.

III. CONCLUSION

For the foregoing reasons, the Motion is **GRANTED** and the Court **ORDERS** Sweeney to post an appeal bond of **\$1,000** within **10 days** of the filing of this Order.

IT IS SO ORDERED.