

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

STEPHANIE ROSE, on behalf of herself and others similarly situated,

Plaintiff,

v.

BANK OF AMERICA CORP., and FIA CARD SERVICES, N.A.,

Defendants.

CAROL DUKE and JACK POSTER, on behalf of themselves and others similarly situated,

Plaintiffs,

v.

BANK OF AMERICA, N.A.; BANK OF AMERICA, CORP.; and FIA CARD SERVICES, N.A.,

Defendants.

Case No. [5:11-cv-02390-EJD](#)

ORDER DENYING OBJECTORS' MOTION FOR ATTORNEYS' FEES

Re: Dkt. No. 113

Plaintiffs Stephanie Rose, Sandra Ramirez, Shannon Johnson, Amin Makin, Carol Duke, Jack Poster, and Freddericka Bradshaw ("Plaintiffs") initiated the present class action lawsuit against Defendants Bank of America Corp., Bank of America, N.A., and FIA Card Services, N.A. (collectively, "Defendants") alleging violations of the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227, *et seq.* The parties reached a settlement agreement, which was objected to by James Kirby and Susan House ("Objectors"). On August 29, 2014, the court granted the motion for final approval of the class action settlement, and granted in part and denied

1 in part Plaintiffs' motion for attorneys' fees and costs. In response to the court's order, the
2 Objectors filed the instant motion for attorneys' fees and incentive awards. See Dkt. No. 113
3 ("Mot.").

4 This matter was found suitable for decision without oral argument pursuant to Civil Local
5 Rule 7-1(b). Having carefully considered the parties' arguments, the Objectors' motion will be
6 denied for the following reasons.

7 **I. BACKGROUND**

8 Plaintiffs and Defendants reached a settlement agreement resolving six actions alleging
9 that Bank of America engaged in a systematic practice of calling or texting consumers' cell
10 phones through the use of automatic telephone dialing systems and/or an artificial or prerecorded
11 voice without their prior express consent, in violation of the TCPA. On March 31, 2014, the
12 Objectors filed their objection to the settlement agreement. See Dkt. No. 81 ("Objection"). The
13 Objectors argued that the compensation offered to class members was too low, the injunctive relief
14 did not benefit the class, the attorneys' fee request was excessive, and the "quick pay" provision¹
15 for attorneys' fees elevated class counsel's interests over those of the class. See id.

16 On April 4, 2014, the court held a hearing for the final approval of the class action
17 settlement and Plaintiffs' motion for attorneys' fees and costs. See Dkt. No. 88. On August 29,
18 2014, the court issued an order granting the final approval of the class action settlement, and
19 granting in part and denying in part Plaintiffs' motion for attorneys' fees and costs. See Dkt. No.
20 108 ("Order"). Judgment in this action was entered on September 2, 2014. See Dkt. No. 109.

21 On September 16, 2014, the Objectors filed the instant motion for attorneys' fees pursuant
22 to Federal Rule of Civil Procedure 54, and for incentive awards. See Dkt. No. 113. Plaintiffs filed
23 an opposition brief, and the Objectors filed a reply brief. See Dkt. Nos. 115 ("Opp."), 119
24 ("Reply").

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27 ¹ The purported "quick pay" provision is Section 7.04 of the settlement agreement which enables
28 class counsel to be paid ten days after the entry of the final approval order and the order approving
fees. See Mot. at 5.

1 **II. LEGAL STANDARD**

2 Pursuant to FRCP 54(d)(2), a claim for attorney’s fees must be made by a timely motion.
 3 “Under certain circumstances, attorneys for objectors may be entitled to attorneys’ fees from the
 4 fund created by class action litigation.” Rodriguez v. Disner, 688 F.3d 645, 658 (9th Cir. 2012).
 5 Non-named members of a certified class can object to the fairness of a settlement at the fairness
 6 hearing and can appeal the court’s decision to ignore their objections. Id. If the “objections result
 7 in an increase to the common fund, the objectors may claim entitlement to fees on the same
 8 equitable principles as class counsel.” Id. However, if objectors “do not increase the fund or
 9 otherwise substantially benefit the class members,” then they are not entitled to fees “even if they
 10 bring about minor procedural changes in the settlement agreement.” Id. The district court may
 11 “deny fees to objectors whose work is duplicative, or who merely echo each others’ arguments and
 12 confer no unique benefit to the class.” Id. at 658-59.

13 **III. DISCUSSION**

14 The Objectors seek \$393,311.24 in attorneys’ fees,² and an incentive award of \$2,000 each.
 15 Mot. at 10. Each request will be addressed in turn.

16 **A. Request for Attorneys’ Fees**

17 The Objectors contend that their objections to the settlement agreement in this action
 18 materially benefitted the class in three ways. Mot. at 2. First, they argue that the court agreed
 19 with their assessment that the injunctive relief provided little in the way of real benefit to class
 20 members. Id. Second, they argue that they drew the court’s attention to the low recovery as
 21 compared to other TCPA cases and to the settlement agreement’s indicia of unfairness and
 22 collusion. Id. at 3-4. Third, the Objectors argue that they pointed out class counsel’s high
 23 attorneys’ fee request, and the clear sailing and quick pay provisions contained in the settlement
 24 agreement. Id. at 4-5, 8. Furthermore, they contend that unlike other objections, they addressed in
 25 detail the issues the court ultimately focused on in deciding to reduce Plaintiffs’ attorneys’ fees.

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 27 _____
 28 ² The Objectors’ counsel request 7% of the \$5,618,732.09 that was returned to the common fund
 per the court’s order regarding Plaintiffs’ motion for attorneys’ fees and costs. See Mot. at 10.

1 Id. at 6.

2 In opposition, Plaintiffs argue that the Objectors' objections did not substantially benefit
3 the class because the Objectors did not mention collusion, there was no finding by the court that
4 there was a clear sailing arrangement, and the court order did not address the quick pay provision.
5 Opp. at 3-5. Plaintiffs further argue that the Objectors' rationale as to the injunctive relief was
6 different than that relied on by the court, the Objectors' arguments regarding low cash awards
7 were made by nearly all of the objectors, and the Objectors did not provide any specific factual
8 support for their arguments that Plaintiffs' fee request was excessive. Id. at 5-7.

9 The court finds the Objectors' attorneys' fee request to be unwarranted. As an initial
10 matter, the Objectors' participation in this action was limited to the filing of an eight-page brief
11 objecting to the settlement agreement. See Dkt. No. 81. There is no indication that the Objectors
12 attended the final approval hearing held in April 2014 to advance their objections.

13 More importantly, the court did not rely on the Objectors' arguments in issuing its
14 decision. The court's concern over the settlement agreement's injunctive relief provision stemmed
15 from the terms of the settlement agreement itself and class counsel's response during the final
16 approval hearing. See Order at 19. The court did not rely on the Objectors' argument that
17 injunctive relief would be unavailable to former mortgage holders or credit card customers, nor
18 did the court rely on the Sixth Circuit decision offered by the Objectors. See Objection at 5.
19 Indeed, the Objectors admit in the instant motion that the court's rationale differed from their own
20 objection. See Mot. at 2.

21 As to the Objectors' argument that they drew the court's attention to the low recovery for
22 the class as compared to other TCPA cases, their objection only mentioned two court decisions,
23 one of which was used by this court and was found through independent research. See Objection
24 at 3; Order at 18. As to drawing attention to the settlement agreement's indicia of unfairness and
25 collusion, the court found that the settlement agreement was fair and that there was no sign of
26 collusion. See Order at 9. The court ruled that the settlement agreement had no "clear sailing"
27 arrangement and did not address the purported quick pay provision. See id. Lastly, as to the

1 reduction in Plaintiffs' attorneys' fees, the objection contained a general legal statement regarding
2 attorneys' fees, but did not also contain any unique analysis that could have assisted the court. See
3 Objection at 5-6.

4 Furthermore, the Objectors' counsel failed to comply with Civil Local Rule 54-5(b),
5 which requires that a motion for attorneys' fees include a statement of the services rendered by
6 each person for whose services fees are claimed along with a summary of the time spent by each
7 person, a statement describing the manner in which time records were maintained, a brief
8 description of the relevant qualifications and experiences, and a statement of the customary hourly
9 charges of each person. Without this supporting documentation, the court cannot assess the
10 reasonableness of the fee request which on its face appears extraordinarily high.

11 Given these deficiencies, an attorneys' fee request of \$393,311.24 is unreasonable.
12 Accordingly, this request is denied.

13 **B. Request for Incentive Awards**

14 Without a legal or factual argument, the Objectors plainly request an incentive award of
15 \$2,000 each "for stepping out to protect and serve the class." Mot. at 10. In the absence of legal
16 authority that would allow for such an award to an objector, coupled with the complete lack of an
17 explanation as to why such an award would be justified, this request is denied.

18 **C. Request to Enjoin Quick Pay Provision**

19 In addition, the Objectors appear to argue for the court's reconsideration of the settlement
20 agreement's "quick pay" provision. The Objectors contend that such a provision should be
21 considered now because it is unfair, given that class counsel will soon be paid its fees but the class
22 members' benefits are delayed due to Plaintiffs' previously-filed motion for reconsideration. Mot.
23 at 5-6. At the end of its motion, the Objectors request the court enjoin the quick pay provision
24 pending a ruling on the instant motion and the outcome of any appeals. Id. at 10.

25 This request is improper and unsubstantiated. The court has never determined that the
26 purported quick pay provision is unfair or otherwise harmful to the class. Accordingly, this
27 request is denied.

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IV. CONCLUSION

For the foregoing reasons, the Objectors' Motion for Attorneys' Fees is DENIED.

IT IS SO ORDERED.

Dated: May 18, 2015


EDWARD J. DAVILA
United States District Judge

United States District Court
Northern District of California