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24 **UNITED STATES DISTRICT COURT**
25 **CENTRAL DISTRICT OF CALIFORNIA**
26 **WESTERN DIVISION**

27 NATALIE PAPPAS,
28 Plaintiff,

v.

NAKED JUICE CO. OF GLENDORA,
INC., a California corporation,
Defendant.

CASE NO. LA CV 11-08276-JAK
(PLAx), Lead Case
(Consolidated with LA CV 11-08007;
SA CV 11-01701; LA CV 11-09412;
LA CV 11-09677)

**NOTICE OF MOTION AND
MOTION FOR APPEAL BOND**

Hearing Date: May 12, 2014
Time: 8:30 AM
Place: Courtroom 750, 7th Floor

Declarations of Ryann Cozzi and Robert
Ahdoot filed concurrently herewith

Hon. John A. Kronstadt, presiding

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TO THE COURT AND ALL PARTIES AND COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT on May 12, 2014, at 8:30 AM, or as soon thereafter as they may be heard, in Courtroom 750, 7th Floor, of this Court, located at 255 East Temple Street, Los Angeles, California, 90012, Representative Plaintiffs Natalie Pappas, Russell Marchewka, Christopher Evans, and Gina Park, on behalf of themselves and the plaintiff class (“Plaintiffs”), will and hereby do move this Court for an order pursuant to Federal Rule of Appellate Procedure 7 for an Order compelling Appellants and Objectors Dawn Weaver, Joanne Rossignol, Bradley Henry, Sarah Henry, and Adam Anderson to jointly post an appeal bond in the amount of \$145,950 to secure payment for costs on appeal.

This Motion is based on this Notice of Motion, the attached Memorandum of Points and Authorities, the Declarations of Ryann Cozzi (Settlement Administrator) and Robert Ahdoot (Class Counsel) filed concurrently herewith, all papers and records on file in this case, and such other matters as may be presented to the Court at the time of the hearing.

This Motion is made following the conference of counsel pursuant to L.R. 7-3 which took place on February 27, 2014, March 3, 2014, and March 11, 2014.

Respectfully submitted,

DATED: April 9, 2014

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I. INTRODUCTION

1
2 On January 3, 2014, following more than two years of hard-fought litigation and
3 extensive settlement negotiations, this Court granted final approval of the settlement in
4 this case (the “Settlement”). (Docket No. (“Dkt.”) 184, Civil Minutes Granting Final
5 Approval, Jan. 2, 2014; Dkt. 188, Final Judgment.)¹

6 Hundreds of thousands of Class Members filed claims (the Settlement
7 Administrator received over 750,000 claims), while only 22 Class Members opted-out.
8 Despite this overwhelming support from the class, four Class Members interposed
9 objections (the “Objectors”) that were overruled. Despite the fact that the objections
10 are either boilerplate, frivolous, a copy of previous objections filed by non-lead
11 counsel and rejected by the Court at the preliminary approval stage, or simply do not
12 comport with the law, all four objectors appealed this Courts approval of the
13 Settlement. (Dkts. 185, 193, 199, 204.)

14 Objectors’ Counsel include well known “serial objectors” who have lost,
15 dismissed, abandoned, or withdrawn numerous objections and appeals thereof, instead
16 of allowing the courts to determine the merits of their objections.² Most glaringly,

17
18 ¹ In short, the Settlement requires Naked Juice to redesign its labels, establish
19 programs to verify label accuracy and product ingredients, and institute a \$9 million
20 settlement fund to provide cash payments to class members, administer the Settlement,
21 compensate class counsel’s fees and costs, and pay incentive awards to named
22 plaintiffs.

23
24 ² “[P]rofessional objectors can levy what is effectively a tax on class action
25 settlements, a tax that has no benefit to anyone other than to the objectors. Literally
26 nothing is gained from the cost: Settlements are not restructured and the class, on
27 whose behalf the appeal is purportedly raised, gains nothing.” *In re Cathode Ray*
28 *Tube (CRT) Antitrust Litigation*, 281 F.R.D. 531, 533 n.3 (N.D. Cal. 2012). “Some
objections, however, are made for improper purposes, and benefit only the objectors
and their attorneys (e.g., by seeking additional compensation to withdraw even ill-
founded objections). An objection even of little merit, can be costly and significantly
delay implementation of a class settlement.” *In re Hydroxycut Mktg. & Sales*
Practices Litig., No. 09-md-2087, 2013 WL 5275618, at *5 n.3 (S.D. Cal. Sept. 17,
2013) (quoting Manual for Complex Litigation § 21.643 (4th ed.)); *see also Dennis v.*

[Footnote continued on next page]

1 attorney Joseph Darrell Palmer (who purportedly represents Objector, Dawn Weaver
2 (Dkt. 193)), who has filed over 100 often-if-not-always frivolous objections, at a
3 minimum, earning the rebuke of many courts and the California State Bar, all the while
4 boasting that he dismisses appeals for payoffs, has already been subject to a number of
5 bond orders from other District Courts.

6 The other Objectors are pursuing appeals just as frivolous as Mr. Palmer's, with
7 the same unfortunate goal of delaying implementation of the settlement in the hopes of
8 extracting a "payoff" from the Class and their counsel. None but one of these so-
9 called Objectors bothered to appear before this Court to present their position.

10 While it is Objectors' right to invoke the appellate process, the Class should not
11 be made to bear the costs associated with this process. As a result of the appeal, the
12 administrative costs associated with the delay in providing hundreds of thousands of
13 Class Members with their court-approved settlement funds will be substantial. The
14 Settlement Administrator estimates that the delay caused by Objectors' meritless
15 appeal will cause it to incur costs of at least \$145,950, which it would not have
16 otherwise incurred during the pendency of the appeal, given the large number of
17 claims in this matter. (Declaration of Ryanne Cozzi filed concurrently herewith
18 ("Cozzi Decl.") at ¶ 5.) This figure includes: the costs of continued correspondence
19 with Class Members who submit inquiries; costs related to the maintenance of the
20 Settlement website, toll free number, and interactive voice control systems; and
21 additional costs resulting from possible change of addresses from hundreds of
22 thousands of Class Members. (*Id.* at ¶¶ 6-12.)

23 As several other courts have held under similar circumstances, Objectors should
24 be ordered to post a bond to cover these costs.

25 _____
26 [Footnote continued from previous page]

27 *Kellogg Co.*, No. 09-cv-1786, 2013 WL 6055326, at *4 n.2 (S.D. Cal. Nov. 14, 2013)
28 (discussing attorney Joseph Darrell Palmer's unsavory reputation as a professional
objector).

1 **II. ARGUMENT**

2 Federal Rule of Appellate Procedure 7 states:

3 In a civil case, the district court may require an appellant to file a
4 bond or provide other security in any form and amount necessary to
ensure payment of costs on appeal.

5 A bond “protect[s] an appellee against the risk of nonpayment by an
6 unsuccessful appellant.” *Fleury v. Richemont N. Am., Inc.*, No. C-05-4525 EMC, 2008
7 WL 4680033, at *6 (N.D. Cal. Oct. 21, 2008). It is wholly within the district court’s
8 discretion whether, and in what amount, to impose a bond. *Embry v. Acer Am. Corp.*,
9 C 09-01808 JW, 2012 WL 2055030, at *1 (N.D. Cal. June 15, 2012); *see also In re*
10 *Netflix Privacy Litig.*, 5:11-CV-00379-EJD, 2013 WL 6173772 (N.D. Cal. Nov. 25,
11 2013); Fed. R. App. P. 7, 1979 advisory committee’s note.

12 There are three factors relevant to whether or not the court should require an
13 appeal bond: (1) appellant’s financial ability to post the bond; (2) the risk that the
14 appellant would not pay costs if she loses; and (3) the likelihood that the appellant will
15 lose the appeal and be subject to costs. *See Azizian v. Federated Dep’t Stores, Inc.*,
16 499 F.3d 950 (9th Cir. 2007); *In re Netflix Privacy Litig.*, 2013 WL 6173772 at *3;
17 *Schulken v. Wash. Mut. Bank*, No. 09-CV-02708, 2013 WL 1345716, at *4 (N.D. Cal.
18 Apr. 2, 2013); *Fleury*, 2008 WL 468033, at *7. All of these factors support the
19 imposition of a bond in this case.

20 **A. The Objectors Are Financially Able to Post a Bond**

21 If there is “no indication that [a] plaintiff is financially unable to post bond . . .
22 this factor weighs in favor of a bond.” *Fleury*, 2008 WL 468033, at *7. The appellant
23 bears the burden of proving financial difficulty. *See Miletak v. Allstate Ins. Co.*,
24 No. 06-03778, 2012 WL 3686785 at *2 & n.4 (N.D. Cal. Aug. 27, 2012) (discussing
25 failure of appellant to provide any evidence of inability to pay). “In the absence of
26 evidence that posting a bond will pose a substantial hardship,” the first factor weighs in
27 favor of imposing the bond. *Embry*, 2012 WL 2055030, at *1; *In re Pharm. Indus.*
28 *Avg. Wholesale Price Litig.*, 520 F. Supp. 2d 274, 279 (D. Mass. 2007) (imposing bond

1 where “[t]here is no evidence that a bond would pose an undue hardship on the
2 objector.”). An appellant’s bare assertion of hardship, without “financial information
3 to indicate that she is financially unable to post a bond,” is not enough to overcome
4 this factor. *Miletak*, 2012 WL 3686785, at *2.

5 Plaintiffs are unaware of any inability by Objectors or their attorneys to post the
6 requested bond. Moreover, the presence of multiple objectors militates any such
7 purported burden in this case. Without specific, detailed information regarding
8 Appellant’s finances indicating that the bond would pose a significant burden, this
9 factor favors the bond. *See In re Netflix*, 2013 WL 6173772, at *3; *Schulken*, 2013
10 WL 1345716, at *4. In any event, as Objectors have the wherewithal to hire Counsel to
11 pursue their appeals, they must also have the financial ability to post a bond.

12 **B. Some Objectors Reside Out-of-State, Increasing the Risk They Will Not**
13 **Pay Appellees’ Costs**

14 Courts have recognized that “collecting costs from out of state appellants may
15 be difficult.” *Schulken*, 2013 WL 1345716, at *5 (imposing bond on resident of
16 Washington where case was pending in Northern District of California).

17 Objector Rossignol lives in Seattle, within the District of Washington. (Dkt.
18 159-1.) Objectors Bradley and Sarah Henry reside in West Chicago, Illinois. (Dkt.
19 157.)

20 Should these Objectors prove unwilling to pay appellate costs if the Ninth
21 Circuit affirms this Court’s Final Approval Order, class counsel would need to institute
22 collection proceedings in multiple, different jurisdictions, as well as incur travel costs.
23 The court should impose a Rule 7 bond in these circumstances. *See In re Initial Public*
24 *Offering Sec. Litig.*, 728 F. Supp. 2d 289, 293 (S.D.N.Y. 2010); *Fleury*, 2008 WL
25 4680033, at *7.

26 The risk of non-payment only increases because, as discussed below (*infra* pp.
27 6-10), Objectors’ counsel appear to be professional objectors who have filed these
28 frivolous appeals with the potential aim of extorting payment from class counsel. The

1 Court should be wary of these objectors. *See In re UnitedHealth Group, Inc. PSLRA*
2 *Litig.*, 643 F. Supp. 2d 1107, 1109 (D. Minn. 2009) (noting objectors’ counsel’s “goal
3 . . . to hijack as many dollars for themselves as they can wrest from a negotiated
4 settlement”); *In re Wal-Mart Wage & Hour Employment Practices Litig.*, No. 06-
5 00225, 2010 WL 786513, at *1 (D. Nev. Mar. 8, 2012) (“Objectors’ counsel have a
6 documented history of filing notices of appeal from orders approving other class action
7 settlements, and thereafter dismissing said appeals when they and their clients were
8 compensated by the settling class or counsel for the settling class . . . persuades the
9 Court that collecting costs from the four Objectors would be extremely difficult if not
10 unlikely.”).

11 **C. The Appeals Have No Merit**

12 The lack of merit to the appeal also weighs strongly in favor of a bond. *See*
13 *Schulken*, 2013 WL 1345716, at *5 (finding third factor favored a bond where court
14 had previously addressed and rejected appellant’s arguments); *Fleury*, 2008 WL
15 4680033, at *7. This Court has broad discretion to determine if a class action
16 settlement is fair, adequate, and reasonable. Fed. R. Civ. P. 23(e). The Court’s order
17 approving the settlement considers — and rejects — Appellant’s objections in detail.
18 (Dkt. 184, Final Approval Order at 11-12.) Given the Court’s careful attention to this
19 litigation and the arguments made in the Objections, there is no basis for showing that
20 this Court abused its discretion in approving the Settlement. *See In re Mego Fin.*
21 *Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th Cir. 2000) (“Review of the district court’s
22 decision to approve a class action settlement is extremely limited”). Moreover, as set
23 forth in Plaintiffs’ Supplemental Brief in Response to Objections (Dkt. 169 at pp. 4-
24 25), all of the objections to the Settlement are without merit.

25 The Court thoroughly analyzed the arguments in the objections and rejected
26 them all in issuing its Final Approval Order. (Dkt. 184.) *See also In re Netflix*, 2013
27 WL 6173772, at *3 (noting that the Final Order approving the settlement “engaged in
28 an extensive analysis”); *Yingling v. eBay, Inc.*, No. 09-01733, 2011 WL 2790181, at *2

1 (N.D. Cal. July 5, 2011) (imposing bond and noting that because “the Court has
2 already considered Objector[]’s objections and found them to be meritless, the Court
3 finds that Objector [] is unlikely to succeed on the merits of his appeal”).

4 **D. Objectors’ Counsel’s History of Frivolous Objections and Appeals Further**
5 **Warrants Imposing a Bond**

6 In this case, Objectors’ counsel are repeat players who repeatedly object to and
7 appeal class action settlements in order to leverage the delay caused by their conduct
8 into payoffs by the litigants. They often surface together, as they have in this case,
9 asserting objections to class settlements, often representing the same individuals or
10 each other as objectors in different cases. A Rule 7 bond will ensure that their tactics
11 cause no harm to the class.

12 This Court may consider the conduct of Objectors and their counsel in
13 determining whether to impose a bond. *See In re Pharm. Indus. Avg. Wholesale Price*
14 *Litig.*, 520 F. Supp. 2d at 277-78 (“[R]equiring objectors to post a bond will ensure that
15 a class litigating a frivolous appeal will not be injured or held up by spoilers.”).

16 Many courts have warned about the ability of professional objectors to hold
17 settlements hostage by filing frivolous objections and appeals. *See, e.g., In re Initial*
18 *Pub. Offering Sec. Litig.*, 728 F. Supp. 2d at 295 (imposing Rule 7 bond because “I
19 concur with the numerous courts that have recognized that professional objectors
20 undermine the administration of justice by disrupting the settlement in hopes of
21 extorting a greater share of the settlement for themselves and their clients”); *Barnes v.*
22 *FleetBoston*, No. 01-10395, 2006 WL 6916834, at *1 (D. Mass Aug. 22, 2006)
23 (“Repeat objectors to class action settlements can make a living simply by filing
24 frivolous appeals and thereby slowing down the execution of settlements. The larger
25 the settlement, the more cost-effective it is to pay the objectors rather than suffer the
26 delay of waiting for an appeal to be resolved (even an expedited appeal).”); *O’Keefe v.*
27 *Mercedes-Benz United States, LLC*, 214 F.R.D. 266, 295 n.26 (E.D. Pa. 2003)
28 (“Federal courts are increasingly weary of professional objectors . . . who seek out

1 class actions to simply extract a fee by lodging generic, unhelpful protests.”).

2 **1. Joseph Darrell Palmer’s History of Frivolous Objections**

3 Objector Dawn Weaver is represented by Joseph Darrell Palmer, who has filed
4 over 100 objections, at a minimum,³ often drawing strong rebukes from courts in the
5 process. Courts have deemed Mr. Palmer a serial objector. *See, e.g., In re Oil Spill*
6 295 F.R.D. 112, 159 n.40 (E.D. La. 2013) (“Mr. Palmer has 17 been deemed a ‘serial
7 objector’ by several courts.”); *Heekin v. Anthem, Inc.* No. 05-cv-1908, 2013 U.S. Dist.
8 LEXIS 26700 at *9, 2013 WL 752637 at *2-3 (S.D. Ind. Feb. 27, 2013); *Gemelas v.*
9 *Dannon Co.* No. 08-cv-236, 2010 U.S. Dist. LEXIS 99503 at *5, 2010 WL 3703811
10 (N.D. Ohio Aug. 31, 2010); *In re Uponor, Inc.* No. 11-MD-2247, 2012 U.S. Dist.
11 LEXIS 130140 at *8-9, 2012 WL 3984542 at *3 (D. Minn. Sept. 11, 2012) (“[T]he
12 Palmer Objectors appear to be represented by an attorney who has not entered an
13 appearance in this case and who is believed to be a serial objector to other class-action
14 settlements.”). (*See also* Ahdoot Decl. Exh. C, Transcript from Appeal Bond Hearing
15 Tr., *Poss v. 21st Century*, Case No. BC297438 (LASC Apr. 25, 2011) at 18 (Court:
16 “There is a history here, and the history is not one that you [Mr. Palmer] should be
17 proud of.”).)

18 Courts repeatedly have found that Mr. Palmer engaged in bad faith or vexatious
19 conduct. *See In re TFT-LCD Antitrust Litig.*, 289 F.R.D. 548, 553-54 (N.D. Cal. 2013)
20 (holding Mr. Palmer and his objector clients (his wife and aunt) in civil contempt and
21 awarding monetary sanctions for violating order compelling objectors to appear for
22 deposition); *In re Uponor, Inc.*, 2012 WL 3984542 at *3 (imposing \$170,000 appeal
23 bond upon finding “that the Palmer Objectors have evidenced bad faith and vexatious
24 conduct”); *Heekin*, 2013 WL 752637 at *3 (finding Mr. Palmer’s “behavior in bad
25 faith and also potentially violative of local and ethical rules”); *see also In re MagSafe*

26 _____
27 ³ Ahdoot Decl. Exh. A, *In Re Hydroxycut* Tr. 4/23/13 at 13-14; *see also* Ahdoot
28 Decl. Exh. B, *In re Oil Spill* Tr. at 223 (Palmer: “I filed objections in many, many
cases, Your Honor.”).

1 *Apple Power Adapter Litig.* No. 09-1911, 2012 U.S. Dist. LEXIS 88549 at *3 (N.D.
2 Cal. July 6, 2012) (imposing appeal bond upon finding that Mr. Palmer’s objections
3 are “without merit”); *City of Greenville v. Syngenta Crop Prot., Inc.* No. 10-cv-188,
4 2012 U.S. Dist. LEXIS 130383 at *9 (S.D. Ill. Sept. 13, 2012) (finding Mr. Palmer’s
5 objection untimely, and that court would have “addressed any frivolous objections
6 using Rule 11 sanctions.”.)

7 A review of Mr. Palmer’s objections via PACER shows that he regularly loses,
8 dismisses, abandons, or withdraws objections and/or appeals he files, seemingly
9 without attaining changes to the settlements or additional benefits to the classes at
10 issue. *See, e.g., Sullivan v. Kelly Servs., Inc.*, No. 08-cv-03893-CW, Dkt. 117 (N.D.
11 Cal.); *Hartless v. Clorox Co.*, No. 06-cv-02705-CAB (S.D. Cal.); *In re Mercury*
12 *Interactive Sec. Litig.*, No. 05-cv-03395-JF (N.D. Cal.); *In re Broadcom Corp. Class*
13 *Action Litig.*, No. 06-cv-5036-R (C.D. Cal.); *Rodriguez v. West Publ’g Corp.*, No. 05-
14 CV-3222 R (MCx), 2007 WL 2827379 (C.D. Cal. Sept. 10, 2007) (overruling
15 objections and finding objectors added nothing to settlement); *In re MoneyGram Int’l,*
16 *Inc. Sec. Litig.*, No. 08-CV-883 (D. Minn. 2010); *The Authors Guild, Inc. v. Google,*
17 *Inc.*, No. 05-CV-8136 (S.D.N.Y. 2010); *In re Herley Indus., Inc. Sec. Litig.*, No. 06-
18 CV-2596 (JRS), Dkt. No. 291 (E.D. Pa., Sept. 13, 2010) (overruling objection and
19 requiring appeal bond) (Ahdoot Decl. Exh. D).⁴

20 Mr. Palmer has also been found to fabricate facts about his so-called clients. For
21 example, recently in *In re Netflix Privacy Litig.*, No. 11-CV-00379-EJD, Dkt. 342
22

23 ⁴ On October 14, 2011, in the American Bar Association’s 15th Annual National
24 Institute on Class Actions, Mr. Palmer, who served as a Panelist at the event, stated to
25 the attendees that objecting is “just like a hobby for me” and admitted that he has
26 accepted “a lot” of money in response to the question “how much each of you has
27 accepted to ‘sell’ appeals of class action settlements over the last decade?” (Ahdoot
28 Decl. Exh. F.) *See also* <http://classactionblawg.com/2011/10/17/notes-from-the-15th-annual-national-institute-on-class-actions/> (discussing the ABA conference) (last visited April 7, 2014.)

1 (N.D. Cal. Mar. 7, 2014) (Ahdoot Decl. Exh. E), Mr. Palmer's supposed client filed a
2 declaration "advising the Court of the fact that [her] name has been used without
3 authorization by attorney Darrell Palmer to both lodge an objection to the class action
4 settlement reached in this case and also appeal this Court decision granting approval of
5 the settlement." *Id.* ¶ 2. She declared that she knew nothing about the case or the
6 settlement and had not retained Mr. Palmer. *Id.* ¶¶ 4-5. Her sister had previously
7 worked for Mr. Palmer, but she herself had "never before in [her] life met Darrell
8 Palmer, [] never retained Mr. Palmer or anyone else to act as [her] attorney in this case,
9 [and] never authorized anyone to file any documents on [her] behalf either in this
10 Court or in the Ninth Circuit Court of Appeals." *Id.* ¶ 10.

11 Moreover, in *In re Static Random Access Memory (SRAM) Antitrust Litig.*, No.
12 07-md-01819-CW, Dkt. 1395 (N.D. Cal. 2011), Mr. Palmer represented Barbara
13 Cochran (a serial objector Mr. Furman (who represents Objector Rossignol in this
14 case) also has represented as mentioned *infra*, and who may or may not be related to
15 George Cochran, representing the Henry Objectors in this case), who refused to appear
16 for a court-ordered deposition. (Ahdoot Decl. Exh. G.) Similarly, in *In re Hydroxycut*
17 *Mktg. & Sales Practices Litig.*, No. 09-md-02087-BTM-KSC, Dkt. 1681 (S.D. Cal.
18 Sept. 17, 2013), the court held a hearing to ask basic questions of two of Mr. Palmer's
19 clients, who had objected to the settlement in that case; one of Mr. Palmer's clients
20 refused to attend, and the other's testimony effectively established she had not bought
21 the product at issue, and the court concluded that her objection was not made in good
22 faith. (Ahdoot Decl. Exh. H.)

23 Mr. Palmer was previously suspended from the State Bar of California as the
24 result of a Colorado felony conviction (Ahdoot Decl. Exh. I, *Herfert v. Crayola, LLC*,
25 No. C11-1301-JCC (W.D. Wash.), Dkt. No. 74 (8/17/12 Order)), and has had his *pro*
26 *hac vice* status revoked or denied in several courts because he submitted blatantly false
27 affidavits in support of his application for that status, which he sought in order to assert
28 objections to class action settlements in those courts (Ahdoot Decl. Exhs. J-K).

1 Mr. Palmer currently is facing a complaint filed by the State Bar of California
2 resulting from some of the above-cited conduct. *In the Matter of Joseph Darrell*
3 *Palmer*, Cal. State Bar Ct. Case No. 12-O-16924 (filed 12/6/13) (Ahdoot Decl. Exh.
4 L).

5 Courts have previously granted motions for appeal bonds concerning objections
6 filed by Mr. Palmer. *See In re Netflix*, 2013 WL 6173772; *Herfert v. Crayola*, 8/17/12
7 Order (Ahdoot Decl. Exh. I); *In re Uponsor, Inc.*, 2012 WL 3984542; *In re MagSafe*
8 *Apple Power Adapter Litig.*, 2012 U.S. Dist. LEXIS 88549 at *3; *In re Herley Indus.,*
9 *Inc. Sec. Litig.*, No. 06-CV-2596 (JRS), Dkt. No. 291 (E.D. Pa. 2010) (Ahdoot Decl.
10 Exh. D); *In re Broadcom Corp. Class Action Litig.*, Case No. 06-cv-05036-R-CW,
11 Dkt. No. 356 (C.D. Cal. Aug. 11, 2010) (Ahdoot Decl. Exh. M). This Court should
12 follow such precedent and grant the requested appeal bond.

13 **2. The Remaining Objectors Are Represented by Counsel Who Also Are**
14 **Professional, Serial Objectors, Pressing Meritless Objections on**
15 **Appeal**

16 Objector Joanne Rossignol is represented by serial objectors Joshua Furman and
17 Jon Zimmerman. (Dkt No. 185.) Mr. Zimmerman styles himself as a traffic ticket
18 defense attorney located in Seattle, Washington. *See* www.seattleattorneys.com (last
19 visited April 7, 2014). Mr. Furman, whose objections placed him in conflict with the
20 class,⁵ has represented Mr. Zimmerman as the objector / client on at least three

21
22 ⁵ Mr. Furman is perhaps the most cynical of the current crop of objectors before
23 the Court, even when considering Mr. Palmer's track record, because he essentially
24 argued that plaintiffs could not certify a class. (Ahdoot Decl., Exh. N, Final Approval
25 Tr. at 6:17-7:18, 10:17-13:25.) This kind of objection is "among the most cynical
26 objections" made by professional objectors because the settlement class members –
27 including the Objector – would recover nothing if the settlement was disapproved on
28 this basis. "Such objections occur when that class member has not filed his or her own
lawsuit, and when there is no competing class action, perhaps with a different class
definition, to afford potential relief. As a result, if the settlement fails due to a
supposed impropriety in certifying a settlement class or otherwise, the class member

[Footnote continued on next page]

1 occasions, each time also filing an appeal:

2 • *In re Google Buzz Privacy Litig.*, No. 10-cv-00672 (N.D. Cal.); *Hibnick v.*
3 *Zimmerman*, No. 11-16642 (9th Cir.). Mr. Furman represented Zimmerman as
4 objector and also filed an appeal, which was dismissed voluntarily less than five
5 months after filing.

6 • *In re Payment Card Interchange Fee & Merchant Discount Antitrust Litig.*,
7 1:05-md-01720-JG-JO (E.D.N.Y.). Mr. Furman represented Zimmerman as objector
8 and filed an appeal.

9 • *In re Online DVD Rental Antitrust Litig.*, No. 4:09-md-2029 PJH (N.D. Cal.);
10 *Zimmerman v. Netflix, Inc.*, No. 12-15889 (9th Cir.). Mr. Furman represented
11 Zimmerman as objector and filed an appeal.

12 • *Rodriguez v. West Publishing Corp.*, No. 2:05-cv-03222-R-Mc (C.D. Cal.).
13 Messrs. Furman and Zimmerman represented objectors and also filed an appeal.
14 Nonetheless, the Ninth Circuit affirmed the district court's fee order. *Rodriguez v.*
15 *Schneider*, No. 09-56278, 480 F. App'x 876, 877 (9th Cir. 2012).

16 Mr. Furman also appears on the docket of *In re TFT-LCD (Flat Panel) Antitrust*
17 *Litig.*, No. 07-md-01827-SI (N.D. Cal.), as counsel for serial objector Barbara
18 Cochran, who may or may not be related to George Cochran (who represented another
19 objector in that case), but who definitely filed a notice of appeal in that case, much like

20 _____
21 [Footnote continued from previous page]

22 would have no chance of recovery at all. Objections by class members that would not
23 recover if settlement were not approved are a frequent stratagem of professional
24 objectors, who often find it easier to attack abstract class certification criteria than to
25 understand the details of the settlement or the particular underlying facts of the case.
26 Counsel use these objections to try to obtain a fee for themselves, but the objections, if
27 successful, are actually to the detriment of their clients, who will get nothing if the
28 settlement fails.” Bruce D. Greenberg, *Keeping The Flies Out of the Ointment: Restricting Objectors To Class Action Settlements*, 84 St. John's L. Rev. 949 (2010). Thus, in attempting to line his pockets with an easy pay off, Mr. Furman is in direct conflict with his own client and the entire Settlement Class.

1 this one (*Id.* at Dkt 7799).

2 Objectors Bradley Lewis Henry and Sarah Marie Henry initially purported to be
3 *pro se* in this action, though their objection was filed by George Cochran (Dkt. 157
4 (the “Henry Objection”), and Mr. Cochran finally filed a notice of appearance on
5 behalf of the Henrys after their notice of appeal was filed (Dkt. 204). Mr. Cochran is a
6 serial objector whose objections are routinely denied. Class actions in which Mr.
7 Cochran has filed objections to settlements include: *In re TFT-LCD (Flat Panel)*
8 *Antitrust Litig.*, No. 07-md-01827-SI (N.D. Cal.); *In re Toyota Motor Corp.*
9 *Unintended Acceleration Mktg., Sales Practices, & Prods. Liab. Litig.*, No. 10-ml-
10 02151 (C.D. Cal.); *In re Diet Drugs Prods. Liability Litig.*, No. 99-20593 (E.D. Pa.);
11 and *Schmidt v. AT&T*, No. CV-09-688788 (Ohio, Cuyahoga Cty. Ct. Com. Pleas).

12 **E. The Appeal Bond Should Be Set At \$145,950.**

13 Class counsel request that Appellant be required to post a bond to cover the
14 approximately \$145,950 in additional costs that will be incurred as result of the appeal.
15 (Cozzi Decl. ¶¶ 3-10.) As set forth in more detail in the Cozzi Declaration, this figure
16 covers expected costs for continuing to serve and respond to class members’ needs
17 during the pendency of the appeal. Other courts have held that these are appropriate
18 costs to consider in setting a bond. *See In re Netflix*, 2013 WL 6173772, at *4
19 (reasoning that “Plaintiffs do not seek a bond for delay damages or attorneys’ fees, but
20 rather for the administrative costs incurred during the delay of settlement” and
21 “requiring an appeal bond totaling \$21,519 from each of the individual Objectors,”
22 including administrative costs consisting of costs for “maintaining and administering
23 the settlement website and toll-free phone number, answering questions from class
24 members, managing and filing taxes for the settlement and escrow account, and paying
25 monthly storage costs”); *Miletak*, 2012 WL 3686785, at *2 (imposing \$50,000 bond
26 for administrative costs); *In re Broadcom Corp. Secs. Litig.*, 2005 U.S. Dist. LEXIS
27 45656, at *11 (C.D. Cal. Dec. 5, 2005) (noting that “Objector’s appeal is tantamount to
28 a stay of the judgment approving the class settlement.”); *DeHoyos v. Allstate Corp.*,

1 240 F.R.D. 269, 316, 344 (W.D. Tex. 2007) (“appeal bond is not uncommon in these
2 circumstances given the delay and costs which may be incurred by the class by an
3 appeal); *In re Compact Disc Minimum Advertised Price Antitrust Litig.*, No. MDL
4 1361, 2003 WL 22417252, at *2 (D. Me. Oct. 7, 2003) (“damages resulting from delay
5 or disruption of settlement administration caused by a frivolous appeal may be
6 included in a Rule 7 bond”).

7 As detailed in the Cozzi Declaration, costs related to continued correspondence
8 with Class Members are estimated to come to approximately \$108,000; costs for
9 maintaining the Settlement Website are estimated at \$1,150; costs for maintaining the
10 Toll-Free Telephone Number associated with the Settlement and its interactive voice
11 response (“IVR”) messaging system total approximately \$1,100; costs for providing
12 updated information to Class Members through the Settlement Website and the Toll-
13 Free Telephone Number total approximately \$1,700; and the increased costs of
14 processing checks that are returned as a result of the delay attributable to the appeals,
15 for instance due to Class Members moving during the pendency of the appeals, are
16 expected to total approximately \$34,000.

17 **III. CONCLUSION**

18 Plaintiffs respectfully request that the Court order Appellant and her counsel
19 post a bond for \$145,950 to cover appellee’s costs in defending the frivolous appeal.
20

21
22 DATED: April 9, 2014

Respectfully submitted,

23 /s/ Robert Ahdoot

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Attestation of Filer

Pursuant to Local Rule 5-4.3.4, the undersigned filer hereby attests that all signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing.

Dated: April 9, 2014

/s/ Robert Ahdoot