

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:09-MD-02036-JLK

**IN RE: CHECKING ACCOUNT  
OVERDRAFT LITIGATION**

**MDL No. 2036**

**THIS DOCUMENT RELATES TO:  
FIRST TRANCHE ACTION**

*Larsen v. Union Bank, N.A.*  
S.D. Fla. Case No. 1:09-cv-23235-JLK  
N.D. Cal. Case No. 4:09-cv-3250

**PLAINTIFFS' AND CLASS COUNSEL'S MOTION TO COMPEL ATTENDANCE  
OF OBJECTOR DALLAS STEPHENS AT DEPOSITION AND  
REQUEST FOR EXPEDITED CONSIDERATION**

Only one objection to the Union Bank Settlement is pending, from a Mr. Dallas Stephens of La Mesa, California.<sup>1</sup> (DE # 2881, Ex. A). The objection is nonsensical, leading Class Counsel to believe his objection was made for ulterior purposes. Plaintiffs and Class Counsel have responded to Mr. Stephens's objection in their response filed today (DE # 2922), and note just one of his many errors here: even though Union Bank no longer posts debits from high to low, partly as a result of this litigation (*see* Agreement ¶ 9 (DE # 2859, Ex. A at 3)), Mr. Stephens's objection assumes that "the wrong that was complained of was never righted?" (DE # 2881). Further, while this Court required each objector to provide "any legal support for the objection" (DE # 2659 at 13 - 14), Mr. Stephens failed to provide legal support for any of his

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<sup>1</sup> A second objection was filed and later withdrawn. (DE # 2906).

arguments. Raising further suspicion, he refused to speak with Class Counsel over the phone concerning his objection.

Therefore, on August 23, 2012, Class Counsel served Mr. Stephens with a deposition subpoena commanding his attendance at a deposition scheduled for September 10, 2012. *See* Exhibits B and C (deposition subpoena and proof of service). In an August 23, 2012 email to Class Counsel, Mr. Stephens acknowledged that he was personally served, but wrote that he would “file a motion to quash your untimely and unauthorized deposition subpoena.” *See* Exhibit D (email correspondence between Class Counsel and Objector Stephens). As of this filing, no such motion has been filed; however, it is apparent from Mr. Stephens’s email that he has no intention of appearing at the deposition.

It is necessary to file this motion now because the Final Approval Hearing is imminent (September 13, 2012). A lone objection, resting on spurious and unsupported grounds, should not be permitted to hold up an outstanding class action settlement and delay recovery to over 300,000 Settlement Class Members who received notice.

Plaintiffs and Class Counsel are entitled to take Mr. Stephens’s deposition because the information sought—the basis for and the circumstances surrounding his objection—is “reasonably calculated to lead to the discovery of admissible evidence.” Fed. R. Civ. P. 26(b)(1). Consequently, Plaintiffs and Class Counsel may subpoena Mr. Stephens even if he were viewed as a non-party, and this Court may compel him to appear at the deposition and answer questions. *See* Fed. R. Civ. P. 45; 9A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2463, at 483 (3d ed. 2008) (stating that “at any time, on notice to the commanded person, the party serving the subpoena may move the issuing court for an order

compelling compliance under Rule 45(c)(2)(B)(i).”;<sup>2</sup> *see, e.g., Outside the Box Innovations, LLC v. Travel Caddy, Inc.*, 455 F. Supp. 2d 1374, 1379 (N.D. Ga. 2006) (“[N]on-party Mandy Wilson Decker is directed to comply with Travel Caddy’s subpoena for deposition”). Orders prohibiting a deposition are rarely granted absent extraordinary circumstances. *Salter v. Upjohn Co.*, 593 F.2d 649, 651 (5th Cir. 1979); *see also Wang v. Hsu*, 919 F.2d 130 (10th Cir. 1990) (affirming the district court’s order denying a non-party deponent’s request for a protective order).

It is important for Class Counsel to ascertain the grounds for Mr. Stephens’s objection at deposition, to be able to fully respond to them at the Final Approval Hearing, and make a record in the event the Court overrules the objection and Mr. Stephens appeals. Particularly because his objection is the only one standing in the way of Final Approval, Class Counsel should be afforded the opportunity to examine Mr. Stephens concerning his objection and whether he received assistance in preparing it.<sup>3</sup> In light of the impending Final Approval Hearing, Mr. Stephens should be required to appear at a deposition in the San Diego area, where he lives, on a date convenient to him but in no event after September 10, 2012.

Accordingly, Plaintiffs and Class Counsel respectfully request that the Court enter an Order compelling Mr. Stephens to comply with the deposition subpoena. *See* Exhibit C.

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<sup>2</sup> Copies of this motion are being served upon Mr. Stephens via email and Federal Express.

<sup>3</sup> Although Mr. Stephens stated in his objection that no lawyer represents him, Class Counsel have reason to believe that a professional objector lawyer is behind the objection. *See In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1362 n.30 (S.D. Fla. 2011). Suspicion was raised from the substance of the objection as well as Mr. Stephens’s reported association with one of the lawyers who objected to the Bank of America settlement in MDL 2036, and then appealed this Court’s final approval order in that case.

Dated: August 29, 2012.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 29, 2012, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or *pro se* parties in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

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