

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

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

**IN RE: CHECKING ACCOUNT
OVERDRAFT LITIGATION**

MDL No. 2036

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

Anderson v. Compass Bank,
S.D. Fla. Case No. 1:11-cv-20436-JLK

OBJECTION TO ATTORNEYS' FEES

COMES NOW, Michael L. McKerley ("Objector"), by and through his counsel, and objects to the request for attorneys' fees in this settlement, and states as follows:

Objector residing at 1356 Starcross Drive, Birmingham, Alabama 35216 [(205) 223-5250], had a Compass Bank consumer checking account that he could access with his debit card during the Class Period, and he received direct mailed notice of this settlement. The Objector has read this Objection filed on his behalf and indicated his endorsement and adoption of this objection by his signature.

I. Class Counsel's Requested Fees are Unreasonable in This Consolidated Litigation Because So Much in Attorneys' Fees Have Already Been Paid in Other Settlements in This MDL.

At some point, Class Counsel's lodestar and the windfall to Class Counsel must become relevant. This Court has already approved three 30% fee awards, in Bank of America, Chase,

and Citizens, in settlements that exceeded \$100 million, without ever inquiring into the amount of Class Counsel's lodestar, or what multiplier of that lodestar the fee represented. Class Counsel has already been awarded \$213 million in those three megafund settlements alone, plus several smaller fee awards in the non-megafund settlements. This amount vastly exceeds Class Counsel's reasonable lodestar for this entire case. Because Class Counsel has already been compensated for all of their time, Class Counsel is essentially double-dipping for this and all future requests.

Class Counsel should not be permitted to "recycle" the lodestar for which they have already been compensated in prior cases. To the extent that there is additional, uncompensated lodestar specifically traceable to this case, Class Counsel should be permitted to claim that lodestar in support of their fee request in this case. However, Class Counsel should not be permitted to claim lodestar that was spent pursuing this MDL action generally, including the First, Second, and Third Tranche actions.

II. A Lodestar Cross-Check Is Increasingly Important in This and Future Settlements.

Class Counsel have to date requested fees without the benefit of a detailed lodestar cross-check. This is improper, especially after three megafund settlements to date, when there is no question that Class Counsel have now been fully reimbursed for all of the time they have spent on these consolidated cases, and that any future fee awards will represent pure profit and continue to increase the lodestar multiplier that they have already received. *See In re: Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 944-45 (9th Cir. 2011)(courts required to guard against unreasonable fees by cross-checking against second method, regardless of primary method used).

Indeed, district courts in the Eleventh Circuit have routinely employed a lodestar cross-check for guidance in assessing the reasonableness of a percentage of a fee award. *See In re*

Sunbeam Sec. Litig., 176 F.Supp.2d 1323, 1336 (S.D. Fla. 2001)(finding that a multiplier of 1.45 does not require higher percentage award, in case settled for \$110 million); *Pinto v. Princess Cruise Lines Ltd.*, 513 F.Supp2d 1334, 1343 (S.D. Fla. 2007)(approving lodestar multiplier of 1.2 in a \$4.25 million settlement).

The first factor set forth in *Camden I Condominium Ass'n v. Dunkle*, 946 F.2d 768 (11th Cir. 1991), is “time and labor required.” *Id.* at 772. In this Circuit, that factor has been interpreted to mean the number of hours that class counsel spent on the case – in effect, a lodestar cross-check. Class Counsel once again neglect to provide that figure, instead providing a summary description of tasks performed and number of documents reviewed.

The case of *Faught v. American Home Shield Corp.*, 668 F.3d 1233 (11th Cir. 2011) makes clear that “where the requested fee exceeds 25%, the court is instructed to apply the twelve *Johnson* factors,” including, most importantly, the time and labor required. *Id.* at 1242.

There are additional reasons why Class Counsel should be required to provide detailed information to satisfy the first factor set forth in *Camden I*, and to enable this Court to perform a lodestar cross-check. First, there have already been three megafund settlements in these consolidated cases, unlike *Camden I* and *Pinto*, and therefore the lodestar will provide critical information to the Court about what percentage is reasonable in the circumstances of multiple megafund settlements. Class Counsel are receiving a higher percentage fee in these consolidated cases as a result of a piecemeal settlement process. If, instead, Class Counsel waited until all of the settlements were completed before requesting a fee, as was done in *Newby v. Enron*, 586 F.Supp.2d 732 (S.D. Tex. 2008), it would be clear that this is a billion dollar total settlement, and that a 30% fee is grossly excessive.

Courts in this Circuit have held that a lodestar multiplier of 1.45 is adequate. *See Sunbeam*, 176 F.Supp.2d at 1336. The only appropriate way to set a percentage fee in this case is to require the percentage to be in conformity with the first *Camden I* factor – the time and labor required – which Class Counsel have improperly failed to quantify.

III. Objector’s Experience

The Objector objects to the onerous and unreasonable requirement contained in the Notice that he and his attorney provide “information about other objections” filed by them in other cases. Such a requirement is designed to deter competent and counseled objectors from participating in the process, by imposing such a burden on potential counsel that no class member can retain competent representation.


Conclusion

For the foregoing reasons, the Court should not award any fees in this case until there has been a full and detailed disclosure of all attorneys’ lodestar incurred to the benefit of this case only.

Respectfully submitted,

/s/ Brian M. Silverio
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Signed by:



Michael L. McKerley