

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION**

**Case No. 15-21264-Civ-COOKE/TORRES**

JUSTIN MARK BOISE, individually and on  
behalf of all others similarly situated,

*Plaintiff,*

v.

ACE AMERICAN INSURANCE COMPANY  
and ACE USA, INC.,

*Defendants.* \_\_\_\_\_ /

**PLAINTIFF'S RESPONSE IN OPPOSITION  
TO OBJECTION OF PATRICK S. SWEENEY**

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## I. INTRODUCTION

On September 22, 2017, Patrick S. Sweeney (“Objector”) submitted an untimely *pro se* objection to this Settlement (“Sweeney-Objection”).<sup>1</sup> Although the objection was filed *pro se*, it appears the Objector is an attorney.<sup>2</sup> The Sweeney-Objection<sup>3</sup> was filed almost one month after the Court’s deadline of August 24, 2017,<sup>4</sup> and the Objector is not a member of the Class. The Settlement Administrator (“KCC”) also “confirms that Patrick S. Sweeney who resides at 6666 Odana Road, Madison, WI 53719 is not on the Class List.”<sup>5</sup> The Objector’s phone number is not registered on the national DNC either,<sup>6</sup> which is required for all Class Members.

## II. ARGUMENT

The Objector lacks standing to assert the Sweeney-Objection because he is not a member of the Class. Furthermore, the Objector failed to raise any cogent factual or legal objections to the Settlement in this specific matter. *See Freebird, Inc. v. Cimarex Energy Co.*, 46 Kan. App. 2d 631, 264 P.3d 500, 506 (2011), review denied, (June 13, 2012) (citing Newberg on Class Actions) (stating, in context of fee objection, that “[o]bjectors must raise cogent factual or legal objections. Objectors are not entitled to stop the settlement in its tracks without demonstrating any factual basis for their objection. To allow such disruption to the settlement on the basis of nothing more than unsupported suppositions would completely thwart the settlement process.”) (citations

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<sup>1</sup> Unless otherwise stated, all capitalized terms used herein are as defined in the Settlement Agreement dated January 27, 2017 (the “Settlement Agreement” or “Settlement”) (ECF No. 71-1).

<sup>2</sup> *See, e.g.*, Objector’s previous objections and court filings on the website [www.serialobjector.com](http://www.serialobjector.com).

<sup>3</sup> A copy of the Sweeney-Objection is attached as Exhibit 1.

<sup>4</sup> *See* Order [ECF No. 82], attached as Exhibit 2.

<sup>5</sup> *See* Declaration of Jay Geraci (KCC), attached as Exhibit 3.

<sup>6</sup> *Id.*

omitted). The Sweeney-Objection should be overruled and dismissed on this basis and for the reasons cited herein.

**A. OBJECTOR IS NOT A CLASS MEMBER – NO STANDING TO OBJECT**

Objector “believes he is a member of the class”<sup>7</sup> but he is not. The objector, as a party seeking to generate a court ruling, has the burden of demonstrating standing. *In re Hydroxycut Marketing and Sales Practices Litigation*, 2013 WL 5275618, \*2 (S.D. Cal. 2013), appeal dismissed, (9th Cir. 13-56824) (Dec. 19, 2013) (“The party seeking to invoke the Court’s jurisdiction – in this case, the Objectors – has the burden of establishing standing.” (citing *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 103-04, 118 S. Ct. 1003, 140 L. Ed. 2d 210, 46 Env’t. Rep. Cas. (BNA) 1097, 28 Env’t. L. Rep. 20434 (1998)). Rule 23 itself does not confer standing upon nonclass members. Fed. R. Civ. P. 23; *Association For Disabled Americans, Inc. v. Amoco Oil Co.*, 211 F.R.D. 457, 473-74 (S.D. Fla. 2002) (“Under Fed. R. Civ. P. 23(e), non-class members are not permitted to assert objections to a class action settlement.”) (citing *Gould v. Alleco, Inc.*, 883 F.2d 281, 284, Fed. Sec. L. Rep. (CCH) P 94851, 14 Fed. R. Serv. 3d 549 (4th Cir. 1989)). Courts regularly find that nonclass members have no standing to object to a proposed settlement or to the notice thereof. *In re CP Ships Ltd., Securities Litigation*, 2008 WL 2473684, \*1 (M.D. Fla. 2008) (stating that “[p]ursuant to the plain language of Rule 23 of the Federal Rules of Civil Procedure, only ‘class members’ may object to a proposed class action settlement” and hence finding nonclass member lacked standing to object).

The Settlement Administrator (“KCC”) confirmed that Objector “Patrick S. Sweeney who resides at 6666 Odana Road, Madison, WI 53719 is not on the Class List” and the Objector’s phone

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<sup>7</sup> See Sweeney-Objection at ¶¶ I, III (Exhibit 1).

number is “not on the Do Not Call List.”<sup>8</sup> The Objector is not a Class Member, he lacks standing to assert the Sweeney-Objection, and it should be overruled and dismissed.

**B. SWEENEY-OBJECTION IS UNTIMELY**

The Sweeney-Objection was filed almost one month after the Court’s deadline of August 24, 2017.<sup>9</sup> This deadline was originally set by the Court five months ago in its Order of Preliminary Approval (ECF No. 77) (120 days after the order of preliminary approval). Subsequently, the Court entered an “Order Revising Settlement Scheduling Order” (ECF. No. 82) but the August 24, 2017 deadline never changed. The Objector had four months of notice and time to file an objection before the deadline. Thus, the Sweeney-Objection should be overruled and dismissed as untimely.

**C. NO CONFUSION ABOUT COURT DEADLINES**

On June 19, 2017, this Court entered an Order (ECF No. 82) revising a few deadlines pertaining to this Settlement.<sup>10</sup> However, the objection deadline of August 24, 2017 never changed.<sup>11</sup> There is no confusion about the deadline to submit an objection. Therefore, the Sweeney-Objection should be overruled and dismissed as untimely.

**D. THE ATTORNEY’S FEE IS NOT EXCESSIVE**

The requested attorney’s fee equal to 30% of the common fund is not excessive. To the contrary, the attorney’s fee is authorized by the Federal Rules, Eleventh Circuit precedent, and was unopposed by defendant ACE and defense counsel in the Settlement Agreement. Class Counsel incorporates by reference the legal authorities and arguments asserted in the Motion For Attorney’s Fees (ECF No. 84), Response to Objection of Freddie Glover (ECF No. 91), and Unopposed

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<sup>8</sup> See Declaration of Jay Geraci (Exhibit 3).

<sup>9</sup> See Sweeney-Objection (Exhibit 1).

<sup>10</sup> See Order [ECF No. 82] (Exhibit 2).

<sup>11</sup> *Id.*

Motion for Final Approval of Settlement (ECF No. 92). Therefore, the Sweeney-Objection should be overruled because the attorney's fee is not excessive.

**E. OBJECTOR IS NOT ATTENDING HEARING ON HIS OBJECTION**

This Objector filed a late objection requesting this Court award him "an incentive fee," but the Objector "does NOT intend to appear at the Fairness Hearing" next Wednesday, October 4, 2017.<sup>12</sup> In the opinion of Class Counsel, this speaks to the weakness of the Sweeney-Objection and also reflects on Objector's lack of confidence in his objection.

**F. PAST RECORD OF OBJECTOR – PATRICK S. SWEENEY**

Also of note, it appears Objector Patrick S. Sweeney is an attorney and "professional objector" with questionable motives for objecting in this matter. He is listed as an objector in over 20 cases according to the website [www.serialobjector.com](http://www.serialobjector.com). "[P]rofessional objectors undermine the administration of justice by disrupting settlement in the hopes of extorting a greater share of the settlement for themselves and their clients." *Muransky v. Godiva Chocolatier*, No. 15-cv-60716, 2016 U.S. Dist. LEXIS 126810, at \*9-10 (S.D. Fla. Sept. 16, 2016) (quoting *In re Initial Pub. Offering Secs. Litg.*, 728 F. Supp. 2d 289, 295 (S.D.N.Y. 2010)). "Courts routinely reject such attempts to interfere with class action settlements based on questionable motives." *Khoday v. Symantec Corp.*, 11-CV-180 (JRT/TNL), 2016 WL 1637039, at \*13 (D. Minn. Apr. 5, 2016).

Here, the Sweeney-Objection contains unsupported and erroneous statements of law and fact which lack any corresponding legal support. *In re Whirlpool Corp. Front-Loading Washer Prods. Liab. Litig.*, No. 1:08-WP-65000, 2016 U.S. Dist. LEXIS 130467, at \*41 n.12 (N.D. Ohio Sept. 23, 2016) ("Many of the objections simply contain conclusory assertions with no analysis or

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<sup>12</sup> See Sweeney-Objection at ¶¶ II, VI ([Exhibit 1](#)).

factual support. ... With some exceptions, the Court does not examine these bare arguments.”).

### III. CONCLUSION

Based upon the foregoing reasons, the Sweeney-Objection provides no legitimate basis to impede the Court’s approval of the Settlement and Plaintiff’s request for attorneys’ fees and costs. Therefore, Plaintiff respectfully requests the Sweeney-Objection be overruled and dismissed.<sup>13</sup>

Respectfully Submitted,

/s/ W. Craft Hughes

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ATTORNEYS FOR PLAINTIFF  
AND THE CLASS

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<sup>13</sup> If necessary, Class Counsel intends to seek an appeal bond sufficient to protect the interests of the Class, including compensation for the time value of money, as the Settlement funds are held by defendant ACE pending distribution and thus the Class would receive no interest or compensation for risk of nonpayment attendant to the resulting delay. *See, e.g., In re Polyurethane Foam Antitrust Litig.*, No. 1:10 MD 2196, 2016 U.S. Dist. LEXIS 49592, at \*24-26 (N.D. Ohio Apr. 13, 2016) (ordering \$145,463, which included attorneys’ fees and “lost interest”) (citing cases).

**CERTIFICATE OF SERVICE**

I certify a copy of the foregoing document was electronically filed with the Clerk of this Court using the CM/ECF system in accordance with the protocols for e-filing in the United States District Court for the Southern District of Florida, Miami Division, on September 29, 2017, and will be served on all counsel of record who have consented to electronic notification *via* CM/ECF. I further certify a hard-copy of the foregoing document was served on the Objector as follows:

**Via FedEx Overnight #770381555681**

Mr. Patrick S. Sweeney  
6666 Odana Road, Ste. 116  
Madison, WI 53719

/s/ W. Craft Hughes  
W. Craft Hughes