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17 **UNITED STATES DISTRICT COURT**  
18 **NORTHERN DISTRICT OF CALIFORNIA**  
19 **SAN JOSE DIVISION**

20 IN RE: YAHOO MAIL LITIGATION

No. 5:13-cv-04980-LHK

**PLAINTIFFS' NOTICE OF MOTION AND  
MOTION FOR APPEAL BOND;  
MEMORANDUM OF LAW IN SUPPORT  
THEREOF**

Fed. R. App. P. 7

Date: December 22, 2016  
Time: 1:30pm  
Location: Courtroom 8  
280 South 1<sup>st</sup> Street  
San Jose, CA 95113

1 **NOTICE OF MOTION FOR APPEAL BOND**

2 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE THAT Plaintiffs Cody Baker, Brian Pincus, Rebecca Abrams, and  
4 Halima Nobles (“Plaintiffs”) at the time and place designated above will and hereby do move this Court,  
5 pursuant to Federal Rule of Appellate Procedure 7, for entry of an Order requiring objector-appellant  
6 Patrick S. Sweeney to post an appeal bond in the amount of \$2,000.

7 The motion is based on this Notice of Motion and Motion, the supporting Memorandum of  
8 Points and Authorities, and all papers and records on file in this matter.

9  
10 Dated: October 11, 2016

Respectfully Submitted,

11 **KAPLAN FOX & KILSHEIMER LLP**

**GIRARD GIBBS LLP**

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Cody Baker, Brian Pincus, Rebecca Abrams, and Halima Nobles (“Plaintiffs”)  
4 respectfully request that this Court order objector-appellant Patrick S. Sweeney, Esq. to post an appeal  
5 bond of \$2,000 to ensure payment of the anticipated costs resulting from his appeal of this Court’s Order  
6 Granting Motion for Approval of Class Action Settlement and Order Granting Motion for Attorney’s  
7 Fees and Costs. ECF No. 203.

8 The requested appeal bond is authorized under Rule 7 of the Federal Rules of Appellate  
9 Procedure and all relevant factors strongly favor ordering an appeal bond in this action. First, Plaintiffs  
10 seek a modest bond in the amount of \$2,000, an amount Mr. Sweeney should be capable of paying.  
11 Second, there is a significant risk Mr. Sweeney would not pay Plaintiffs’ costs if his appeal is  
12 unsuccessful because he resides outside the Ninth Circuit’s jurisdiction, he has a pattern of disregard for  
13 court orders, he is a serial objector, and is the subject of pending disbarment proceedings. Finally, Mr.  
14 Sweeney’s objections are frivolous and filed in bad faith. After considering Mr. Sweeney’s objections,  
15 this Court overruled them in their entirety. In short, Rule 7 appeal bonds are an important component of  
16 a balanced civil justice system, and are often necessary, as here, to ensure Plaintiffs recover costs  
17 associated with litigating a frivolous appeal.

18 **II. RELEVANT BACKGROUND**

19 This Court preliminarily approved a class action settlement in this matter on March 15, 2016.  
20 ECF No. 182. Mr. Sweeney filed an objection, complaining about two aspects of the settlement: the  
21 claims process and the requested attorneys’ fees. ECF No. 194. Mr. Sweeney did not oppose the  
22 substance of the settlement, however. On July 22, 2016, Class Counsel moved for leave to conduct  
23 expedited discovery of Mr. Sweeney, including taking his deposition (ECF No. 195), which the Court  
24 granted on July 25, 2016. ECF No. 196. Class Counsel deposed Mr. Sweeney in his home state of  
25 Wisconsin, which was Mr. Sweeney’s first deposition in his capacity as an objector to a class settlement.  
26 See Transcript of Deposition of Patrick S. Sweeney dated August 5, 2016 (“Tr.”) 12:23-25, ECF No.  
27 197-2.

1           Discovery and Class Counsel’s research confirmed that the Sweeney objection was simply a  
2 frivolous form objection bearing no relationship to the case. Sweeney objected to the claims process,  
3 but of course there is no claims process in an injunctive-relief-only settlement. Sweeney’s objection to  
4 the request for attorneys’ fees was based on a purported analysis of fees per “docket entry,” a metric  
5 never used by any court. Sweeney complained that the docket did not demonstrate “substantive” work  
6 including summary judgment, but of course the docket reveals that the parties filed cross-motions for  
7 summary judgment and cross-motions to exclude expert testimony. Sweeney also objected to the lack of  
8 detailed billing records, failing to see that such records were filed well in advance of his objection.  
9 Plaintiffs also submitted evidence of 20 objections Sweeney has filed just in the past year and identified  
10 eight that Sweeney admits to withdrawing in exchange for cash payments negotiated with class counsel.  
11 ECF No. 197, Ex. A. The final approval hearing was held on August 25, 2016. The Court granted final  
12 approval of the settlement and overruled the Sweeney Objection. *In re Yahoo Mail Litig.*, No. 13-CV-  
13 4980-LHK, 2016 WL 4474612, at \*7 (N.D. Cal. Aug. 25, 2016) (“The information obtained from the  
14 discovery, along with the record in this case, demonstrate that Sweeney’s objection lacks merit.”).  
15 Thereafter, Mr. Sweeney filed a Notice of Appeal on September 26, 2016. ECF No. 207. Plaintiffs filed  
16 a Motion for Sanctions on September 29, 2016 (ECF No. 209) and by this motion seek an order for an  
17 appeal bond.

### 18   **III.    ARGUMENT**

19           The Federal Rules of Appellate Procedure delegate to the District Court the power to require an  
20 appeal bond “or provide other security in any form and amount necessary to ensure payment of costs on  
21 appeal.” Fed. R. App. P. 7. The purpose of Rule 7 is to “protect[ ] ... an appellee against the risk of  
22 nonpayment by an unsuccessful appellant.” *Yingling v. eBay, Inc.*, No. C 09-01733 JW, 2011 WL  
23 2790181, at \*1 (N.D. Cal. July 5, 2011) (citing *Fleury v. Richemont N. Am., Inc.*, No. C-05-4525 EMC,  
24 2008 WL 4680033, at \*6 (N.D. Cal. Oct. 21, 2008)). Therefore, it is left to the district court to decide the  
25 need for and the amount of a bond in order to ensure that unsuccessful appellants pay taxable costs. *See*  
26 *Fleury*, 2008 WL 4680033, at \*6 (citing Fed. R. App. P. 7, 1979 advisory committee notes); *see also*  
27 *Azizian v. Federated Dep’t Stores, Inc.*, 499 F.3d 950, 955 (9th Cir. 2007) (noting the amount of an  
28 appeal bond is generally reviewed for abuse of discretion).

1 District courts, in evaluating whether to require a Rule 7 appeal bond, consider three factors: (1)  
2 appellant's financial ability to post bond; (2) the risk that appellant would not pay the cost should  
3 appellant lose; and (3) the merits of appellant's appeal. *Fleury*, 2008 WL 4680033, at \*7.

4 In addition, courts may consider whether the appeal was filed in bad faith. While additional  
5 sanctions for frivolous appeals under Fed. R. App. P. 38 are not properly the subject of appeal bonds,  
6 *see, e.g., Fleury*, 2008 WL 4680033, at \*7 (citing *Azizian*, 499 F.3d at 960), an appellant's bad faith  
7 conduct can still be considered when evaluating the three factors above. *See Dennings v. Clearwire*  
8 *Corp.*, 928 F. Supp. 2d 1270, 1272 (W.D. Wash. 2013) (granting appeal bond where evidence showed  
9 appellants "had vexatious intent in filing their notice of appeal"); *Nam Soon Jeon v. 445 Seaside, Inc.*,  
10 No. CV11-00015 SOM/BMK, 2014 WL 769774, at \*2 (D. Haw. Feb. 24, 2014) (considering bad faith  
11 or vexatious conduct as a fourth factor), *aff'd*, 637 F. App'x 378 (9th Cir. 2016). Moreover, bad faith  
12 and vexatious conduct "may [still] be pertinent" because it "speaks to the risk of nonpayment." William  
13 B. Rubenstein, *Newberg on Class Actions* § 14:15 (5th ed.) (noting "a bad actor may be more likely to  
14 not pay"); *see also In re Wal-Mart Wage & Hour Employment Practices Litig.*, No. 2:06CV00225-  
15 PMPPAL, 2010 WL 786513, at \*1 (D. Nev. Mar. 8, 2010) (noting a risk of nonpayment where objectors  
16 had a documented practice of filing appeals from settlement approvals and dismissing them once  
17 objectors were compensated). Therefore, Plaintiffs will briefly address Objector Sweeney's bad faith  
18 conduct under the second factor.

19 **A. Appellant's Financial Ability Favors Requiring a Bond.**

20 As discussed in detail below, there is substantial reason to believe that Mr. Sweeney *won't* pay  
21 costs if he is unsuccessful on appeal, in part because he has transferred his money (presumably in trust)  
22 to his adult daughter's bank account. But this does not mean he *can't* pay costs. For example, Mr.  
23 Sweeney's family recently took a lavish vacation to the Grand Hyatt Kauai Resort & Spa. Mr. Sweeney  
24 and his wife thereafter filed a personal injury lawsuit against the resort and its parent company related to  
25 an alleged slip and fall. *See generally Sweeney v. Hyatt Corp., et al.*, 16-cv-0143 (D. Hawaii),  
26 complaint filed Mar. 24, 2016 [Hawaii ECF No. 1]. The \$400 filing fee was paid out of Mr. Sweeney's  
27 daughter's account. *See id.*, Hawaii ECF No. 10. Mr. Sweeney also testified in this case that he rented a  
28

1 vacation home for the month of August and has transferred approximately \$100,000.00 to his daughter's  
2 accounts to "pay his bills." Tr. 28:17-29:7; 178:1-2. Clearly, he is capable of paying costs in this case.

3 Sweeney will have the opportunity in response to this motion to present evidence that he is  
4 unable to post a bond. But when an appellant fails to submit financial information indicating the  
5 inability to post a bond, this factor "weigh[s] in favor of a bond." *Fleury*, 2008 WL 4680033, at \*7. *See*  
6 *Chiaverini, Inc. v. Frenchie's Fine Jewelry, Coins & Stamps, Inc.*, No. 04-CV-74891-DT, 2008 WL  
7 2415340, at \*2 (E.D. Mich. June 12, 2008) ("There is no indication that plaintiff is financially unable to  
8 post bond, and thus this factor weighs in favor of a bond."); *In re AOL Time Warner, Inc., Sec. &*  
9 *"Erisa" Litig.*, No. 02 CV. 5575 (SWK), 2007 WL 2741033, at \*2 (S.D.N.Y. Sept. 20, 2007) (reaching  
10 same conclusion). Moreover, a mere assertion that appellant is unable to pay a bond is not enough to  
11 avoid a bond payment. *See In re Netflix Privacy Litig.*, No. 5:11-CV-00379-EJD, 2013 WL 6173772, at  
12 \*3 (N.D. Cal. Nov. 25, 2013) (noting "while Objectors contend that the appeal bond would be  
13 burdensome, they do not provide any evidence indicating a financial inability to pay"); *In re Cardizem*  
14 *CD Antitrust Litig.*, 391 F.3d 812, 818 (6th Cir. 2004) (appellant's failure to show that the bond was  
15 improper or to "make a good faith proffer of a lesser [bond] amount" resulted in dismissal of appeal). In  
16 the absence of evidence demonstrating Sweeney's inability to post the requested bond, this factor  
17 weighs in movants' favor.

18 **B. Appellant Poses a Risk of Nonpayment for Appellees' Costs.**

19 **i. Appellant resides outside of the Ninth Circuit.**

20 Mr. Sweeney poses a significant risk of nonpayment of Plaintiffs' costs because he resides  
21 outside of the Ninth Circuit's jurisdiction. When an appellant is located in another portion of the  
22 country, it is significantly more difficult for appellees to collect their costs should they prevail on  
23 appeal—a factor weighing in favor of a bond. *Fleury*, 2008 WL 4680033, at \*7. *See Lerma v. Schiff*  
24 *Nutrition Int'l, Inc.*, No. 11-CV-1056-MDD, 2016 WL 773219, at \*3 (S.D. Cal. Feb. 29, 2016) (noting a  
25 risk that objector would not pay appeal costs because objector resides out-of-state and outside the Ninth  
26 Circuit); *In re Netflix Privacy Litig.*, 2013 WL 6173772, at \*3 (recognizing the increased difficulty in  
27 collecting costs from appellants who live out of state); *Embry v. ACER Am. Corp.*, No. C 09-01808 JW,  
28 2012 WL 2055030, at \*1 (N.D. Cal. June 5, 2012) (same). In this instance, Mr. Sweeney is not a

1 resident of California, and is not located within the Ninth Circuit. His last known physical address was  
2 in Manitowish, Wisconsin, *see* Tr. 7:5-7, but now only provides the Court and the parties with the  
3 address of a UPS Store in Madison, Wisconsin as his current address. Because there is no evidence that  
4 Mr. Sweeney resides within the Ninth Circuit and has not informed the Court or the parties of his  
5 physical address, there is a significant risk Plaintiffs would be unable to collect their costs from him if  
6 the Ninth Circuit affirms the Orders. Thus, this factor weighs in favor of an appeal bond.

7 **ii. Appellant has a pattern of disregard for court orders.**

8 There exists a heightened risk that Mr. Sweeney will not pay costs based on his pattern of  
9 disregard for court orders. A court may look to an appellant’s demonstrated “history of showing  
10 disrespect for legal ethics and the rules of court” as a factor indicating a likelihood of nonpayment. *See*  
11 *In re Polyurethane Foam Antitrust Litig.*, No. 1:10 MD 2196, 2016 WL 1452005, at \*4 (N.D. Ohio Apr.  
12 13, 2016) (noting appellants’ history of disciplinary court proceedings, submission of unauthorized court  
13 filings, and violation of conflicts-of-interest and breach of fiduciary duty). Additionally, “[a] ‘pattern  
14 of noncooperation and noncompliance with court orders’ supports a conclusion that an appellant ‘may  
15 not pay the appeal costs if [the] appeal is unsuccessful.’” *Id.* (citing *In re Porsche Cars N. Am., Inc.*  
16 *Plastic Coolant Tubes Prod. Liab. Litig.*, No. 2:11-MD-2233, 2014 WL 2931465, at \*2 (S.D. Ohio June  
17 30, 2014).

18 At present, the Wisconsin Office of Lawyer Regulation (“OLR”) has initiated proceedings in the  
19 Wisconsin Supreme Court to revoke Mr. Sweeney’s license to practice law for alleged professional  
20 misconduct, including: practicing without a license; violation of court orders; conflict-of-interest; and  
21 participating in conduct involving dishonesty, fraud, deceit, and/or misrepresentation. Tr. 153:7-164:20;  
22 *see also* ECF No. 195-8 (OLR complaint). Mr. Sweeney is also a defendant in a lawsuit seeking over \$1  
23 million for legal malpractice, fraud, and breach of contract. Tr. 173:1-2. His personal bankruptcy was  
24 dismissed for willful failure to pay a court-ordered fee, simply because it suited his interests. Tr. 202:8-  
25 20. Based on Mr. Sweeney’s demonstrated disregard for legal ethics and noncompliance with court  
26 orders, there is a significant risk of nonpayment for Plaintiffs’ cost—a factor that weighs in favor of an  
27 appeal bond.

1                   **iii. Appellant is a serial objector and thus less likely to pay Plaintiffs' costs.**

2                   As noted in Plaintiffs' Response to Objection and Motion for Sanctions, Mr. Sweeney is  
3 considered a "serial objector" with a history of filing bad-faith objections to delay settlements in order to  
4 extract a fee. *See, e.g., Larson v. Trader Joe's Co.*, No. 11-cv-05188-WHO, 2014 WL 3404531, at \*6-7  
5 (N.D. Cal. July 11, 2014) (noting Mr. Sweeney's "long history of representing objectors"); *Roberts v.*  
6 *Electrolux Home Prods., Inc.*, No. SACV12-1644-CAS (VBKx), 2014 WL 4568632, at \*12-15 (C.D.  
7 Cal. Sept. 11, 2014) (recognizing Mr. Sweeney as a serial objector "who routinely files objections to  
8 class settlements"). There is an increased risk of nonpayment by an appellant when they have a  
9 documented practice of leveraging appeals from settlement approvals in order to extract a fee. *In re*  
10 *Wal-Mart Wage & Hour Employment Practices Litig.*, 2010 WL 786513, at \*1; Newberg on Class  
11 Actions § 14:15 (5th ed.). Mr. Sweeney himself has identified a number of objections to settlements that  
12 he has been involved in. Tr. 173:1-2 (noting he received compensation from at least seven settlement  
13 objections). Additionally, Plaintiffs have submitted evidence of over 20 recently filed objections  
14 involving Mr. Sweeney. *See* ECF No. 197, Ex. A. Sweeney is at it again here, having appealed an order  
15 approving a settlement he never bothered to learn the terms of. Based on Mr. Sweeney's conspicuous  
16 pattern as a serial objector, there is a significant risk he will not pay for Plaintiffs' costs if his appeal is  
17 denied.

18                   **iv. Appellant is unlikely to have future finances sufficient to pay Plaintiffs' costs.**

19                   Finally, there is further risk that Plaintiffs will not collect costs from Mr. Sweeney based on his  
20 precarious personal and professional standing. By Mr. Sweeney's own account, approximately half of  
21 his "business" relates to class-action objections, either as objector or counsel to objectors. Tr. 149:15-  
22 22. As mentioned above, Mr. Sweeney is facing possible disbarment and could face unrelated legal  
23 judgments in excess of his assets. If Mr. Sweeney is disbarred or if his objection mill no longer proves  
24 sustainable, it is unclear where his future income will come from, rendering his future ability to pay  
25 Plaintiffs' costs even more unlikely. In contrast, there is no indication that Mr. Sweeney is currently  
26 unable to post a bond. Additionally, as noted above Mr. Sweeney does not maintain his own bank  
27 account, rather his daughter holds his money for him in her personal bank account, raising the likely  
28



1 possibility that Mr. Sweeney will claim he has no assets in his own name. Tr. 177:10-178:25.

2 Therefore, this factor also weighs in favor of a bond.

3 **C. Appellant’s Appeal Is Meritless.**

4 Finally, courts consider the merits of the appeal when evaluating a motion for appeal bond. Mr.  
5 Sweeney does not oppose the substance of the settlement but instead objects to two ancillary aspects: (1)  
6 the claims administration process (nonexistent in this case); and (2) the attorneys’ fees award. ECF No.  
7 194 at 2-3. Mr. Sweeney has failed provide any evidence that he even has standing to object, and his  
8 objections are unsubstantiated in fact or law.

9 **i. Appellant does not have standing.**

10 Mr. Sweeney lacks standing to object because he failed to meet his burden of establishing  
11 himself as a class member. “Formal objections may only be made by class members,” and the burden is  
12 on the objector to establish their standing. *In re: Cathode Ray Tube (CRT) Antitrust Litig.*, No. 07-cv-  
13 5944-JST, 2016 WL 3648478, at \*23 (N.D. Cal. July 7, 2016) (citing *In re TracFone Unlimited Serv.*  
14 *Plan Litig.*, 112 F. Supp. 3d 993, 1008 (N.D. Cal. 2015)); Fed. R. Civ. P. 23(e)(5) (providing only class  
15 members can object to a settlement). Mr. Sweeney has failed to provide any evidence of his class  
16 membership and admits he “guess[ed]” at his status as a class member—which is insufficient to  
17 establish standing to object. *See TRS Recovery Servs. & Telecheck Servs.*, 2016 WL 543137, at \*6 n.16  
18 (rejecting Mr. Sweeney’s objection in part because his claim to membership was based only ‘on [his]  
19 belief’”). Thus, as noted by the Court, Mr. Sweeney’s “inability to show standing provides a separate  
20 and independent basis to overrule his objection.” *In re Yahoo Mail Litig.*, 2016 WL 4474612, at \*8.

21 **ii. Appellant’s objections are not substantiated by fact or law.**

22 Mr. Sweeney’s appeal will also fail because his objections are baseless. On appeal, a court’s  
23 approval of a class action settlement or a grant of attorney’s fees can only be overturned for abuse of  
24 discretion. *In re Magsafe Apple Power Adapter Litig.*, 571 F. App’x 560, 564 (9th Cir. 2014). Thus,  
25 appellate courts review is “extremely limited.” *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th  
26 Cir. 1998). This Court, in approving the Settlement, carefully considered and overruled Mr. Sweeney’s  
27 objections, and for reasons discussed below Mr. Sweeney’s appeal is frivolous.

1 First, Mr. Sweeney objects to the claims administration process as being unreliable and lacking  
2 oversight. ECF No. 194 at 2 (noting his intent to file a claim in the matter). Had Sweeney acquired  
3 even a passing familiarity with the Settlement, he would have known there was no claims process.  
4 Rather, Plaintiffs sought and obtained only injunctive relief. During his deposition Mr. Sweeney  
5 admitted he was unaware there was no claims process when he filed his objection. Tr. 51:16-20.  
6 Rather than familiarize himself with the proposed settlement, Mr. Sweeney simply objected using  
7 boilerplate language copied from past objections he has filed. ECF No. 197 at 2-3. Therefore, his  
8 objection regarding the claims process is meritless.

9 Second, Mr. Sweeney objects to the attorneys' fees award. ECF No. 194 at 2-3. Mr. Sweeney's  
10 objection is based on his own fee calculation method—a method Mr. Sweeney admits is not supported  
11 by law. Tr. 78:8-9, 18-19 (stating his method "is an art"). Mr. Sweeney's calculation method consists of  
12 dividing the fee award by the number of "substantive" docket entries. Here, Mr. Sweeney laments that  
13 substantive work such as filing an Answer or a Motion for Summary Judgment were not done—yet both  
14 were filed. As noted in the Response to Objection, both sides filed motions for summary judgment,  
15 retained and deposed experts, filed *Daubert* motions, and briefed all dispositive motions. Mr.  
16 Sweeney's fee calculation methodology has never been adopted nor has he made a good faith argument  
17 for its adoption. It is simply a random bit of arithmetic substituting for actual review of the motion for  
18 approval of fees. *See* Tr. 55:6-8 (Mr. Sweeney noting that "part of my philosophy of objecting, is  
19 usually the most likely objection is the fee calculation"). Mr. Sweeney also objects that the fee request  
20 should not be granted in the absence of detailed billing records. ECF No. 194 at 2. As discussed in the  
21 Response to Objection, however, class counsel did file detailed billing records, available on PACER,  
22 prior to the date of the objection. *See* ECF Nos. 189 & 190; Tr. 62:18-20 (showing Mr. Sweeney has  
23 access to and is familiar with PACER).

24 In sum, Mr. Sweeney's objections are without merit, and therefore the third factor also weighs in  
25 favor of a bond.

26 **D. The Amount of the Appeal Bond Is Reasonable.**

27 Plaintiffs respectfully request the Court to order an appeal bond in the amount of \$2,000 to cover  
28 Plaintiffs' taxable costs. In requiring an appeal bond, it is within the Court's discretion to determine the

1 nature and amount of the bond. *Fleury*, 2008 WL 4680033, at \*6. Costs provided under FRAP 39 may  
2 “always [be] include[d] in an appeal bond.” *In re Magsafe Apple Power Adapter Litig.*, 571 F. App'x at  
3 563. Taxable costs under FRAP 39 include the preparation and transmission of the record, and the  
4 reporter's transcript if needed to determine the appeal. Costs also include copies of the briefs.

5 Plaintiffs estimate their taxable costs at \$2,000, which includes costs such as printing,  
6 photocopying, binding, and preparing and serving the appeal record. Because Mr. Sweeney is  
7 unrepresented he is not required to provide the Record, and therefore the burden will fall on Plaintiffs to  
8 do so. Circuit Rule 30-1.2. The Excerpt of Record will necessarily include hundreds of pages of  
9 exhibits, declaration, and other required documents. Even if Mr. Sweeney does provide the initial  
10 Record, Plaintiffs would still need to submit Supplemental Excerpts of Record—including  
11 documentation such as Mr. Sweeney’s deposition transcript and any other exhibits Plaintiffs have relied  
12 on. Circuit Rule 30-1.7. Plaintiffs’ costs will include five copies of the Excerpts of Record plus one  
13 copy for each party required to be served. Circuit Rule 39-1.2. Plaintiffs’ costs will also include copies  
14 of their brief. Circuit Rule 31-1; Fed. R. App. P. 32(a)(7)(A). Each item listed above is taxed at the  
15 Ninth Circuit’s rate of 10 cents per page. Circuit Rule 39-1.3.

16 Plaintiffs’ request for a \$2,000 appeal bond is a conservative estimate for taxable costs. Courts  
17 routinely approve larger bonds in similar situations. *See Miletak v. Allstate Ins. Co.*, No. C 06-03778  
18 JW, 2012 WL 3686785, at \*2 (N.D. Cal. Aug. 27, 2012) (granting \$60,000 appeal bond including  
19 \$10,000 in taxable costs); *Keller v. Nat'l Collegiate Athletic Ass'n*, No. C 09-1967 CW, 2015 WL  
20 6178829, at \*2 (N.D. Cal. Oct. 21, 2015) (granting \$5,000 appeal bond for taxable costs); *Schulken v.*  
21 *Washington Mut. Bank*, No. 09-CV-02708-LHK, 2013 WL 1345716, at \*6 (N.D. Cal. Apr. 2, 2013)  
22 (same); *Fleury*, 2008 WL 4680033, at \*7 (same); *Lerma*, 2016 WL 773219, at \*4 (\$2500); *Dennings*,  
23 928 F. Supp. 2d at 1272 (\$2000). Therefore, Plaintiffs respectfully request this Court order a bond of  
24 \$2,000 to cover Plaintiffs’ taxable costs on appeal.

#### 25 **IV. CONCLUSION**

26 For all the foregoing reasons, Plaintiffs’ Motion for Appeal Bond should be granted.  
27  
28

1 Dated: October 11, 2016

Respectfully submitted,

2 **KAPLAN FOX & KILSHEIMER LLP**

**GIRARD GIBBS LLP**

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By: /s/ Daniel C. Girard

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*Co-Lead Class Counsel*

*Co-Lead Class Counsel*

15  
16 **ATTESTATION STATEMENT**

17 I, Daniel C. Girard, am the ECF User whose ID and password are being used to file the  
18 foregoing Statement. In compliance with Civil L.R. 5-1(i)(3), I hereby attest that all counsel concur in  
19 this filing.

20  
21 /s/ Daniel C. Girard

Daniel C. Girard