UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JENNIFER EOFF and JULIE TINKHAM, individually and on behalf of all others similarly situated, Plaintiffs, vs. SPRINT NEXTEL CORPORATION and SPRINT SPECTRUM, L.P. d/b/a SPRINT NEXTEL, Defendants.	Civil Action No. 2:10-cv-01190 (SDW)(MCA)

BRIEF IN RESPONSE TO THE OBJECTION OF KATHERINE FRANCO, FATIMA DOREGO AND ROBERT BYRNE

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INTRODUCTION

This Settlement provides substantial benefits to the Class. The negotiations that led to it were hard-fought as to the cash fund, non-cash benefits, and the prospective relief, each of which standing alone represents a significant benefit to the Class. Notice to the Class was accomplished by the best means available: direct mail. Not surprisingly, the reaction of the Class has been very positive. The sole objection to this Settlement consists entirely of castoff claims that have been rejected by courts across the country and clichéd assertions of collusion. The only unique feature of this objection is that it was filed by a New Jersey attorney, Forrest Turkish, but was penned by Darrell Palmer, an attorney from California and seasoned objector to class action settlements. According to Mr. Turkish, Mr. Palmer, who has concealed himself from the Court, is clandestinely orchestrating this objection.[1] *See* Declaration of Paul M. Weiss ("Weiss Decl.") at ¶¶ 2-3.

This is not the first time that Mr. Turkish has played the part of Charlie McCarthy to Mr. Palmer's Edgar Bergen. For example, Mr. Palmer is not mentioned in the papers or on the docket for a recent notice of appeal filed in another class settlement by Mr. Turkish. Yet, the Declaration of Service for that same notice was executed by Maria V. Carapia, an employee of the Law Offices of Darrell Palmer. *See In re: Currency Conversion Fee*, No. 12-cv-02227, ECF No. 1 (2d Cir. May 31, 2012). At the same that he has hidden from the courts, Mr. Palmer has unabashedly revealed that preparing this and other baseless objections is a "'hobby'" for him and that he has accepted "'a lot' of money in exchange for dropping appeals following the denial of his objections." *See Arthur v. Sallie Mae, Inc.*, No. 2:10-cv-00198, ECF No. 193 (W.D. Wa. Oct. 28, 2011) at ¶¶ 12-13.

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[1] Mr. Turkish has a history of filing objections with Mr. Palmer. *See, e.g., In re: Insurance Brokerage*, No. 12-02249, ECF No. 45 (3d Cir. July 18, 2012); *In re: Take-Two Interactive Sec.*

Mr. Palmer's objections litter the dockets of courts across the country. Class Counsel are unaware of any that have a legitimate factual or legal basis. Mr. Palmer has once again failed to provide any suggestion as to how this Settlement is unfair, unreasonable or inadequate. Instead, the objection consists largely of erroneous assertions of the specific settlement provisions, rank speculation, and incorrect legal and factual challenges to the Settlement consideration. It is little more than lawyer-concocted "throw mud and see where it sticks" frivolous complaints. If any of it had merit, the Court would be inundated with objections from Class Members and objections filed by legitimate counsel as millions of Class Members received notice. Mr. Palmer's unfounded and unsupported criticisms – as demonstrated herein – are meritless and have no bearing on whether the Settlement is fair and reasonable.

Given the substantial relief the Settlement provides, the Class' overwhelmingly positive response, and the lack of any factual or legal basis for the Objectors' arguments, the Court should overrule the objection.

BACKGROUND OF OBJECTORS' COUNSEL

Class-action expert Professor Samuel Issacharoff, the Reporter for the American Law Institute's Principles of the Law of Aggregate Litigation, stated:

> [C]onsumer cases are unfortunately a magnet for the cottage industry of professional objectors. They bring objections, typically of a generic sort, that are lodged primarily for the purposes of delay and to extract (indeed, often, to extort) payment to the objector's counsel to go away. The unfortunate game is to lodge *pro forma* objections at the trial stage, then negotiate a private resolution in order to drop the invariable notice of appeal. Once the case has progressed beyond the trial court, there is no longer any public accountability for side payments to objectors' counsel, and the game is on.

Decl. of Prof. Samuel Issacharoff, ¶33, *In re Checking Account Overdraft Litig.*, No. 09-md-02036-JLK, ECF No. 1885-7 (S.D. Fla. filed Sept. 16, 2011).

Litig., No. 1:06-cv-00803, ECF No. 171 (S.D.N.Y. Sept. 28, 2010).

Prof. Issacharoff could have been commenting specifically about Mr. Palmer, a professional objector who seeks to derail this Settlement or delay relief to the Class for no purpose other than his own personal agenda. Mr. Palmer solicits class members – and even non-members – for the purpose of filing objections to class action settlements. *See, e.g., In re Uponor, Inc., F1807 Plumbing Fitting Prods. Liab. Litig.*, No. 11-MD-2247, 2012 WL 3984542 (D. Minn. Sept. 11, 2012) (identifying Darrell Palmer as attorney for alleged *pro se* objectors who had purchased an entirely different product than the one at issue in the case). His lawyer-driven objections generally include one or more readily-available criticisms from the following menu: (a) the class isn't getting enough money; (b) the injunctive relief is valueless; (c) the structural relief is too lenient; (d) the notice doesn't give the class enough detail about the case; (e) the class should be divided into smaller groups; (f) the class should include other groups; or (g) the attorneys' fees (and/or incentive awards) are too high. Mr. Palmer files these canned objections at the last-minute with little or no appreciation of the underlying case or settlement, ignores discovery requests, appeals final approval orders and then tries to settle for his own benefit with nothing gained for the Settlement Class. *See In re: Aftermarket Filters Antitrust Litig.*, No. 1:08-cv-04883, ECF No. 1003-7 (N.D. Ill. Sep. 10, 2012) (Appendix A listing 25 cases where Darrell Palmer has filed objections and dismissed, abandoned or withdrawn the objections or appeal without attaining settlement changes or additional benefits for the class); *In re Uponor, Inc., F1807 Plumbing Prods. Liab. Litig.*, No. 11-MDL-2247, ECF No. 125-1 (D. Minn. Aug. 28, 2012) (Exhibit E listing cases in which Darrell Palmer filed an objection in the final stages of a class action); *White v. Experian Inf. Solutions, Inc.*, No. 08-cv-01070, ECF No. 540 (C.D. Cal. Nov. 30, 2009) (objecting to settlement before reading briefs, pleadings, declarations and other documents filed in case).

Mr. Palmer has no interest in improving this Settlement or any other class settlement, *see, e.g., In Re: Oil Spill By The Oil Rig Deepwater Horizon In The Gulf Of Mexico on April 20, 2010*, NO. 10-MD-2179, Transcript of Final Fairness Hearing, p. 149-156, 223-229 (E.D. La. Nov. 8, 2012), annexed hereto as Exhibit A, and he likely realizes that his accusations in this case are unfounded. Unfortunately, in class action settlements, it has become commonplace for serial objectors like Mr. Palmer to file boilerplate objections, no matter what relief is provided to the class, and to the fees being sought, whatever the amount and without regard to the specific circumstances of the case. *See Devlin v. Scardelletti*, 536 U.S. 1, 21 n.5 (2002); *see also, e.g., In re Rite Aid Corp. Sec. Litig.*, 269 F. Supp. 2d 603, 610 n.9 (E.D.Pa. 2003), *vacated on other grounds and remanded*, 396 F.3d 294 (3d Cir. 2005) (rejecting baseless objection as "another vehicle for a professional gadfly" and decrying objector's counsel who had "become a twelfth-hour squeaky wheel"); *O'Keefe v. Mercedes-Benz USA, LLC*, 214 F.R.D. 266, 295 n.26 (E.D.Pa 2003) ("federal courts are increasingly weary of professional objectors"); *Shaw v. Toshiba Am. Info. Sys., Inc.*, 91 F. Supp. 2d 942, 973-74 (E.D. Tex. 2000) (criticizing "obviously 'canned' objections filed by professional objectors who seek out class actions to simply extract a fee by lodging generic, unhelpful protests"); Mike Absmeier, "The Professional Objector and Revised Rule 23: Protecting Voice Rights While Limiting Objector Abuse," 24 Rev. Litig. 609, 611 (2005) ("professional objectors have become an object of scorn among legal scholars. Their opportunistic and sometimes extortionist behavior has understandably led to increasing skepticism of objector side settlements and widespread condemnation of professional objectors, whom commentators have described as shakedown artists, leeches, and extortionists."); Edward Brunet, "Class Action Objectors: Extortionist Free Riders or Fairness Guarantors?," 2003 U. Chi. Legal F. 403, 427 n.98 (2003) (describing the "extortionist" tactics used by objectors.). Mr.

Palmer does not file objections to effectuate changes to settlements, but does so for his own personal financial gain. Indeed, Mr. Palmer boasted at a recent conference that he has extracted large payments from parties or counsel in return for abandoning his objections in return for a payment, with no change to the settlement or benefit to the class. *See Arthur v. Sallie Mae, Inc.*, No. 2:10-cv-00198, ECF No. 193 (W.D. Wa. Oct. 28, 2011) at ¶¶ 12-13. Such extortionist behavior has no place in this or any other litigation.

The sole purpose of the instant objection is to ultimately file an appeal aimed at delaying the distribution of the substantial settlement benefits to Class Members and the payment of attorneys' fees and expenses to Class Counsel who have litigated this case, for no purpose other than to extort a payoff from Class Counsel and courts across the country agree that the class gains nothing by way of these self-serving objections. *See, e.g., In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1361 n.30 (S.D. Fla. 2011); *In re Initial Public Offering Sec. Litig.*, 728 Supp. 2d 289, 294-95 (S.D.N.Y. 2010); *In re UnitedHealth Group PSLRA Litig.*, 643 F. Supp. 2d 1107, 1108-09 (D. Minn. 2009).

In light of the foregoing, Plaintiffs and Class Counsel respectfully submit that the Court should view Mr. Palmer's objection with a healthy dose of skepticism. *See In re Initial Public Offering*, 728 F. Supp. 2d at 295 n.37 ("'Federal courts are increasingly weary of professional objectors …. [with] objections [that] were obviously canned objections filed by professional objectors who seek out class actions to simply extract a fee by lodging generic, unhelpful protests.'").

ARGUMENT

I. The Reaction of the Class Supports Final Approval and Undercuts the Objection.

There are more than one million Class Members, nearly 5,000 of whom have submitted a claim, less than 100 of whom have opted out, and a single objection filed by 3 purported Class

Members, Katherine Franco, Fatima Dorego and Robert Byrne (collectively, the "Objectors"), which represents less than 0.02% of those that submitted a claim and far less than 0.0001% of the Class. *See generally* Declaration of Markham Sherwood (ECF No. 46-3). "The fact that a large number of Class Members have already submitted claim forms demonstrates 'considerable satisfaction with the results of the litigation.'" *Gates v. Rohm And Haas Co.*, Civil Action No.06-1743, 2008 WL 4078456, at *4 (E.D. Pa. Aug. 22, 2008).

The Palmer Objectors filed the only objection to the Settlement. The positive reaction of the Class "strongly" argues for settlement approval because when there is a "vast disparity between the number of potential class members who received notice of the Settlement and the number of objectors," there is a strong presumption in favor of settlement approval. *Cendant*, 264 F.3d at 235; *see also Stoetzner v. U.S. Steel Corp.*, 897 F.2d 115 (3d Cir. 1990) (finding that "the response of the class members, both in numbers and in rationale, strongly favors settlement," where "only twenty-nine" out of 281 class members objected); *Myers v. MedQuist, Inc.*, Civil No. 05-4608(JBS), 2009 WL 900787, at *12 (D.N.J. Mar. 31, 2009) (determining second *Girsh* factor weighed in favor of approval after scrutinizing objections and accounting for the objectors' views). For example, in *Varacallo v. Mass. Mutual Life Ins. Co.*, 226 F.R.D. 207, 237, 251 (D.N.J. 2005), Judge Linares held where .06% of class members opted out of the settlement before him, and .003% raised objections, the results were "extremely low" and favored approval of the settlement. Here the percentages are even more dramatic and support approval. *See Careccio v. BMW of N. Am. LLC*, CIV. A. 08-2619, 2010 WL 1752347, at *4 (D.N.J. Apr. 29, 2010) (finding second *Girsh* factor strongly favors approval where .000074% of those notified objected, and .00014% opted out).

II. The Objections Are Meritless.

Taking a shot gun approach, the Palmer Objectors allege that the Settlement is unfair, inadequate, and unreasonable and object to just about everything, contending – wrongly – that:

1. class settlements require heightened scrutiny (Obj. at 1-2);
2. the Settlement is either valueless, (*id.* at 3-4), or that its value is nebulous, ambiguous, and exaggerated (*id.* at 4-5);
3. there are signs of collusion (*id.* at 7-8).
4. setting the objection deadline before Class Counsel filed their fee application was improper (*id.* at 2-3);
5. claims will be denied unfairly (*id.* at 6);
6. the Settlement is not directed to the Class (*id.* at 5); and
7. subclasses are necessary (*id.* at 6).

All of these arguments miss the mark and each is as factually unfounded as it is fatally flawed in its reasoning.

In a statement equally relevant to the actions of the Palmer Objectors in this case, the *Grinnell* Court said:

> In general the position taken by the objectors is that by merely objecting, they are entitled to stop the settlement in its tracks, without demonstrating any factual basis for their objections, and to force the parties to expend large amounts of time, money and effort to answer their rhetorical questions, notwithstanding the copious discovery available from years of prior litigation and extensive pretrial proceedings. To allow the objectors to disrupt the settlement on the basis of nothing more than their unsupported suppositions would completely thwart the settlement process...To permit the objectors to manipulate the distribution of the burden of proof to achieve such an end would be to permit too much.

City of Detroit v. Grinnell Corp., 495 F.2d 448, 464 (2d Cir. 1974).

At the same time the Palmer Objectors raise their misguided arguments they ignore Third Circuit authority contradicting their position, rely on misleading snippets of quotations from

cases from other circuits, ignore the record before the Court and the plain language of the papers submitted in support of preliminary approval, ignore the value of the Settlement reached by the parties, and fail to appreciate the risks and expense of continued litigation. The objection should be overruled on these bases alone.

A. Class Settlements Are Favored.

The Palmer Objectors assert that the Rule 23 requirements for class certification are subject to heightened scrutiny and misleadingly rely on a single case from the Third Circuit, *In re General Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768 (3d Cir. 1995) in support of their assertion that courts need to "be even more scrupulous than usual in approving settlements where no class has yet been formally certified." Obj. at 1. They are wrong. *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir. 1995) ("The law favors settlement, particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation."); *In re Sch. Asbestos Litig.*, 921 F.2d 1330, 1333 (3d Cir. 1990) (noting Third Circuit's policy of "encouraging settlement of complex litigation that otherwise could linger for years"); *In re Cmty. Bank of N. Va.* 418 F.3d 277, 299 (3d Cir. 2005) ("'all Federal Circuits recognize the utility of … settlement classes' as a means to facilitate the settlement of complex nationwide class actions"). Since at least 1890, the U.S. Supreme Court has expressed a preference for the compromise and settlement of disputed claims pending in the federal courts. *See Hennessy v. Bacon*, 137 U.S. 78, 85 (1890). In an effort to support this bizarre contention and undo this long-stated and well-established preference, the Palmer Objectors either willfully ignore or intentionally misconstrue the papers filed in support of preliminary approval, the notice, the parties' stipulation, and this Circuit's governing standard favoring final approval of class settlements.

B. The Settlement Provides Substantial Benefits to the Class.

The Palmer Objectors offer no facts, and no legal analysis, to explain why $19 million in total relief is inadequate in this case, much less that this settlement is a "coupon deal."[2] Again, if the Palmer Objectors had performed even a modicum of investigation they would know this claim to be entirely inaccurate.

The Palmer Objectors, in mischaracterizing the Settlement as a "coupon deal," largely ignore the $3 million in cash relief in an attempt to undermine the benefits obtained for the Class and to convince this Court to reject the Settlement. The Court should not overlook the full benefits this Settlement provides to the Class, which includes valuable relief including cash, non-cash and prospective relief. The Palmer Objectors' specious assertion that this Settlement is a "coupon deal" is baseless.

Further, as a general rule, broad objections that a settlement somehow could have been better are not a basis upon which to deny approval. Indeed, that some objectors "would prefer to receive greater monetary benefits under the terms of the settlement has no bearing on the reasonableness of the Settlement as a whole." *Hall v. AT & T Mobility LLC,* No. 07- 5325 (JLL), 2010 WL 4053547, at *10 (D.N.J. Oct. 13, 2010). After all, a settlement is, by its very nature, a compromise that naturally involves mutual concessions." *Id.* at *8. Objections seeking broader relief fail to account for the compromise nature of settlements. *McLennan*, 2012 WL 686020, at *8. As one court aptly put it, the possibility "that the settlement could have been better . . . does not mean the settlement presented was not fair, reasonable or adequate," because "[s]ettlement is the offspring of compromise; the question we address is not whether the final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from

[2] Plaintiffs and Class Counsel summarized the litigation and the settlement in their memoranda in support of preliminary and final approval. They do not repeat the summaries here and

collusion." *Hanlon v. Chrysler Corp*., 150 F.3d 1011, 1027 (9th Cir. 1998). Even if a proposed settlement amounts to only "a fraction" of the potential recovery, that does not, "in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved." *In re AT & T Corp*., 455 F.3d 160, 170 (3d Cir. 2006). Rather, the relief "'must represent a material percentage recovery to [the] plaintiff in light of all the risks considered under *Girsh*.'" *Id*.

Indeed, the *Grinnell* Court observed that it is well-settled law that a proposed settlement may be reasonable even if it "'only amount[s] to a fraction of the potential recovery.'" *Id.* at 455. The Second Circuit recognized that "there is no reason, at least in theory, why a satisfactory settlement could not amount to a hundredth or even a thousandth part of a single percent of the potential recovery." *Id.* Here, Class Counsel achieved a significant settlement and have thoroughly analyzed the reasonableness of the settlement in light of the risks of zero recovery. The Palmer Objectors, however, ignore the real possibility of zero recovery that the Class faces if the case were litigated to a final resolution.

The Settlement here, however, more than satisfies the requirements for final approval and includes, valuable cash and non-cash relief, potential improvements in Sprint's disclosures, and injunctive relief. Had litigation continued Plaintiffs would have faced significant challenges to certify a class. Had the parties proceeded to a judgment there would be no guarantee that they would come close to achieving this phenomenal result. Given that this recovery is clearly within the range of reasonableness, and well above that achieved in other settlements, it therefore, should be approved by the Court. *See Stop & Shop Supermarket Co. v. SmithKline Beecham Corp.*, No. 03-4578, 2005 WL 1213926, at *9 (E.D. Pa. May 19, 2005) (approving 11.4% of total damages noting the "percentage compares favorably with the settlements reached in other

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incorporate them by reference.

complex action lawsuits."); *Nichols v. SmithKline Beecham Corp.*, No. 00-6222, 2005 WL 950616 (E.D. Pa. Apr. 22, 2005) (approving between 9.3% and 13.9% of damages as "consistent with those approved in other complex class action cases."); *In re Prudential Securities, Inc. L.P. Litig.*, MDL No. 1005, 1995 WL 798907 (S.D.N.Y. 1995) (approving settlement of between 1.6% and 5% of claimed damages). The Palmer Objectors have nothing to offer this Court regarding the strength of Plaintiffs' case on the merits. They say nothing about the complexity, length and expense of further litigation and trial. They do not consider the lack of opposition to the Settlement among affected parties and the Class. Mr. Palmer does not provide any account of his experience as counsel for plaintiffs or defendants in telecommunications class action litigation, or for that matter in class actions or other complex litigation, so his opinion about the adequacy of the Settlement cannot be considered as the opinion of competent counsel. They say nothing about the mountains of information poured over by Class Counsel and their expert. Finally, they offer this Court no help whatsoever in quantifying the net expected value of continued litigation to the Class. Accordingly, the objection is both legally and factually frivolous. *See In re AOL Time Warner, Inc. Sec. & "ERISA" Litig. (AOL I)*, No. MDL 1500, 2006 WL 903236, at *15 (S.D.N.Y. Apr. 6, 2006) (rejecting "unsupported" objections that failed to "provide[] a legal or factual basis for the alleged insufficiency of the Settlement" or to "consider the legal or factual context in which the Settlement was reached"). *A fortiori* Mr. Palmer's objection must be overruled.

The Palmer Objectors baldly claim that the non-cash relief is essentially worthless to the Class and proceed to pose a series of rhetorical questions and their own suppositions that the parties' valuation is exaggerated. Obj. at 4-5. Not surprisingly, they offer no evidence to support their unfounded assertions. On the other hand, Sprint estimates based upon its own data

and industry expertise, that the non-cash relief is worth up to $8 million to the Class. Similarly, Sprint considered the costs of the prospective relief, including its commitments relating to its Data Drop Rule, and has determined that it is also worth $8 million to the Class. The Palmer Objectors' unsubstantiated claims that the non-cash and prospective relief are valueless must be overruled.

Lastly, to assure that the Class receives the fullest benefit possible from the Settlement, Class Counsel's fee and expense award, assuming the Court approves the application, will be paid separately by Sprint and therefore, will not reduce the valuable relief provided to the Settlement Class Members. Thus, contrary to the Palmer Objectors' unfounded arguments, the full value of the Settlement, worth $19 million, reaches the Class. The Court should not fall for the Palmer Objectors' ruse that this Settlement is merely a "coupon deal."

C. There Are No Signs of Collusion.

The Palmer Objectors claim that the Settlement bears all the indicia of collusion under *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935 (9th Cir. 2011), and thus lacks the fairness required for final approval. *See* Obj. at 7-8. Again, their claim is unfounded. There is absolutely no evidence of collusion or irregularity in the negotiations. Further, they grossly overstate *Bluetooth*'s precedent, being from another circuit, and fail to consider, much less address, the factual circumstances in that case versus those present in this instance. *Bluetooth* has no relevance here.

With respect to the approval of the settlement agreement in *Bluetooth*, the Ninth Circuit expressed the need to be vigilant for collusion between class counsel and the defendant, identifying several non-exclusive signs of potential collusion, such as when counsel receive a disproportionate distribution of the settlement, or when the class receives no monetary distribution but class counsel is amply rewarded, where the defendant agrees to a "clear sailing"

arrangement for the payment of attorneys' fees, or where fees not awarded revert to the defendant rather than being added to the class fund. *Bluetooth*, 654 F.3d at 947.

Unlike *Bluetooth*, this Settlement is the product of good faith, non-collusive, arms' length negotiations overseen, in part, by a distinguished mediator, that took place over a span of months. Again, there is simply no evidence that any of the provisions the Palmer Objectors complain of demonstrate collusive behavior between the parties. This Settlement stands in sharp contrast to *Bluetooth*, where the settlement provided no monetary recovery to the class and did not include any significant injunctive relief. Not surprisingly, they overlook these important material factual distinctions. *See, e.g., Amunrud v. Spring Commc'ns Co. L.P.*, No. CV 10-57, 2012 WL 443751 at *3-4 (D. Mont. Feb. 10, 2012) (where settlement provided "real and meaningful cash compensation to class members," in contrast to the settlement in *Bluetooth*, clear sailing provision and reverter did not amount to evidence of collusion); *Weeks v. Kellogg Co.*, No. 09-cv-8102, ECF No. 157 at 45 (C.D. Cal. Nov. 23, 2011) (distinguishing *Bluetooth*).

Moreover, the background, experience, and accomplishments of the attorneys who prosecuted and defended this action are well known to the Court and in this District. This Settlement was obtained, despite seemingly insurmountable hurdles. Counsel fought forcefully for their respective clients. Their negotiations were antagonistic and arduous. But once the parties reached agreement on the material terms of the Settlement, they worked cooperatively to formalize their agreement and avoided duplication by dividing tasks. This does not point to collusion. Rather, it shows professionalism.

The Palmer Objectors also wholly ignore or completely disregard that the parties negotiations were overseen by a well-respected neutral mediator and former Judge of this

District, William G. Bassler. In their attempts to discredit and stain this Settlement, they have, by implication, disparaged Judge Bassler. As this Court is well aware, Judge Bassler's reputation is beyond reproach. By engaging Judge Bassler as a mediator, the parties "'obviated the danger of an actual or apparent conflict of interest on the part of class counsel by negotiating in a manner expressly recommended by the Third Circuit ….'" *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 335 (3d Cir. 1998). Indeed, while not dispositive, the presence of a mediator supports a finding of non-collusion. *See, e.g., In re HP Laser Printer Litig*., No. SACV 07-667, 2011 WL 3861703, at *4 (C.D. Cal. Aug. 31, 2011); *see also D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) ("The District Court determines a settlement's fairness by examining the negotiating process leading up to the settlement as well as the settlement's substantive terms.").

Turning to *Bluetooth*'s signs of potential collusion, if the Court awards Class Counsel their requested fee and expenses of $3.5 million it would represent less than 16% of the total Settlement value, which is a modest proportion. While the Third Circuit has not established a benchmark for fee awards in common fund cases, the Court has observed that fee awards generally range from 19% to 45% of the settlement fund. *In re General Motors Corp. Pickup Fuel Tank Products Liability Litigation*, 55 F.3d 768, 822 (3d Cir. 1995); *see also Ikon*, 194 F.R.D at 194 ("Percentages awarded have varied considerably, but most fees appear to fall in the range of nineteen to forty-five percent"); *In re Computron Software, Inc.*, 6 F.Supp.2d 313, 322-23 (D.N.J. 1998) ("There is no set standard, however, on how to determine a reasonable percentage. Awards utilizing the percentage-of-recovery method can reasonably range from nineteen percent to forty-five percent of a settlement fund . . . [T]he percentage awarded, should, and generally does, increase commensurate with increased quality of representation.").

When the Court takes into consideration that the Settlement is worth $19 million to the Class and that the parties have agreed that Sprint will pay Class Counsel directly, there is no question that Class Counsel will not receive an amount that is disproportionate to the benefits the Class receives. Further, Sprint's "agreement not to oppose an attorneys' fee award up to a specified amount, as determined by the Court… is entirely proper." *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 962 F. Supp. 450, 543 (D.N.J. 1997). In the event the Court reduces the requested award, the Class will still receive the full benefits provided by the Settlement. Finally, the attorneys' fees and expenses were negotiated separately from the Class Settlement and only after the Settlement's substantive provisions were agreed upon. *See* Declaration of James E. Cecchi at ¶ 20; Declaration of Paul M. Weiss at ¶ 9 (ECF No. 46-1 and 46-2). In short, there is no evidence of collusion, and this baseless objection should be overruled**.**

The Palmer Objectors also accuse Class Counsel of self-dealing by including a "quick pay" provision providing for payment of attorneys' fees prior to resolution of any appeals. They are correct that Class Counsel have requested that they be paid promptly upon the final approval of the settlement. Indeed, such a provision prevents professional objectors – like Mr. Palmer– from trying to hold up a settlement in the hopes of extracting a payment from Class Counsel.

D. The Settlement Schedule Was Proper.

The Palmer Objectors complain that the settlement schedule failed to comply with the Ninth Circuit's decision in *In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988 (9th Cir. 2010), while ignoring controlling precedent from this Circuit concerning Rule 23(h), by not setting the deadline to object until after the filing of their fee application. Obj. at 2-3; *cf. In re Cendant Corp. Litig.*, 264 F.3d 201 (3d Cir. 2001) (Settlement notice to class members, which was not sent until opt-out period had run, was sufficient, in securities class action under the Private Securities Litigation Reform Act). Putting aside the merits of this procedural objection,

Plaintiffs and Class Counsel will consent to the filing of their eminent– and likely boilerplate – objections to Class Counsel's fee application within ten days of the filing of their papers in support of final approval, which were filed on Monday, November 12. Thus, this objection is moot.

E. Notice Was Proper.

The Palmer Objectors attack the notice and contend it was inadequate because it did not contain information sufficient for individual class members to calculate their recovery under the settlement. *See* Obj. at 3-4. They also suggest that neither the notice nor the Settlement gives information regarding the claim amount to which each class member is entitled or how a Class Member might calculate his or her expected benefit. *Id.* at 4-5. Both allegations are false. Had they bothered to read the notice or the papers submitted in support or preliminary approval, including the parties' Stipulation of Settlement, they would understand the amounts that each claimant will receive.

In making these arguments, the Palmer Objectors, again, ignores clear Third Circuit authority to the contrary and that courts have repeatedly rejected arguments that class notices must provide information sufficient to calculate individual recoveries. *Spark v. MBNA Corp.*, 48 Fed. Appx. 385 (3d Cir. 2002) (Notice sent to class members concerning credit card members' lawsuit against credit card company provided adequate basis for class members to determine their individual damages, where notice explained the claim that credit card company used allegedly fraudulent promotional interest rates, and advised class members of dates in question, which allowed class members to determine from their individual records the approximate amount of their maximum potential damages; notice of settlement did not have to provide each member of the class with the kind of individualized information that would be found in a class member's personal records).

The standard for measuring the adequacy of a settlement notice in a class action is reasonableness. *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 113 (2d Cir. 2005). "There are no rigid rules to determine whether a settlement notice to the class satisfies constitutional or Rule 23(e) requirements; the settlement notice must fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings." *Id.* at 114. (citation omitted). "Notice is adequate if it may be understood by the average class member." *Id.* Here, the notice gives a neutral description of the case, a description of the terms of the proposed Settlement and a description of the persons entitled to participate therein and who would be bound by the judgment that would be entered if the Settlement were approved. It informs the class members of their right to opt-out of the class and to object to or accept the Settlement, and to appear by their own counsel if they wish. It notifies them of the amount that will be sought by Class Counsel for attorneys' fees and expenses. Accordingly, notice was adequate.

Lastly, the Palmer Objectors know full well that the law does not require that a settlement give notice to each class member of the dollar amount of its claim. As the Ninth Circuit recently held in rejecting one of Mr. Palmer's many other objections, it is sufficient that the notice "describe [ ] the aggregate amount of the settlement fund and the plan for allocation," *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 962 (9th Cir.2009). Mr. Palmer also ignores the simple fact that individual recoveries from lump-sum settlements are simply not determinable at the time of class notice because it is unknown how many members of the class will opt out, file claims, or neglect to file a claim and the total value to each claimant is dependent upon the total number of claims submitted. Still, based on the claims submitted to date and assuming the Court grants final approval, all Class Members will receive the full value of their benefit election.

F. Subclasses Are Unnecessary.

The Palmer Objectors complain that the Settlement is unfair and requires subclasses because it caps the refund a Settlement Class Member can receive, regardless of the number of lines of service that the Settlement Class Member may have had during the Class Period. Obj. at 6. This objection is as nonsensical as it is unfounded. The focus of this case was Casual Data Charges, which vary based upon how Class Members use their device(s), not based on how many devices or lines of service an individual class member may have had. For example, one teenager could easily incur far more Casual Data Charges sending picture messages among classmates than an elderly couple with multiple lines of service who may text, but have little need or use for picture messages. Simply suggesting that more lines equates to greater damages overlooks the focus of this case.

In addition, drilling down on each Class Member's use of his or her device or devices would require an onerous and expensive claims process, including proof that a given Class Member paid or incurred Casual Data Charge related to use of included picture messaging services as opposed to more common Casual Data Charge related to use of data service. Rather than being unfair, the Settlement, as designed, ensures a higher participation rate by offering a simple claims process and allows eligible claimants to recover up to $20 in cash and others to receive valuable non-cash relief. This hard-fought compromise follows an approach recognized by the *Manual for Complex Litigation (Fourth)*, §21.66 (2004) ("A default award may be appropriate for those who can establish membership in the class but cannot, or prefer not to, submit detailed claims. Typically, such an award would be at the low end of the range of expected claims."). Accordingly, this objection is without merit.

G. The Claims Administrator Will Process Claims Fairly.

The Palmer Objectors also take issue with the Settlement's benefit rules concerning cash

benefits, which provide in part that:

> No Settlement Class Member will be entitled to a Cash Benefit if the Settlement Class Member has an outstanding balance on his or her Wireless Service Account, excluding any balance, for Casual Data Charges, that is in excess of $20.00, or never paid to Sprint any amounts for Casual Data Charges.

Declaration of James E. Cecchi at page 100. (ECF No. 39-2)

In making this objection, the Palmer Objectors insinuate that Gilardi & Co., LLC, one of the most prominent and esteemed claims administrators in the nation, unfairly deny or limit the number of cash claimants based upon its interpretation of the term "outstanding balance." Obj. at 6. This is absurd. There is no evidence that Class Members will be unfairly denied cash benefits. Further, the term "outstanding balance" has an ordinary meaning, *i.e.*, money that is owed, but not paid in full when it becomes due. It will be interpreted in accordance with its plain meaning. Finally, the Palmer Objectors ignore that this Court has continuing authority to oversee the claims process. Even a cursory review of the papers submitted in support of the Settlement would have revealed to the Palmer Objectors that this objection is frivolous.

H. That the Settlement Also Benefits the Public Does Not Mean That the Class Has Been Deprived.

Although the Settlement certainly benefits the public at large through the potential improvement of Sprint's disclosures and the prospective relief that it provides, the relief is clearly focused on the Class, despite objections to the contrary. Obj. at 5. Indeed, the improvements in Sprint's disclosures, Sprint's commitments concerning the Data Drop Rule, and the other prospective relief confers a direct and valuable benefit on the Class. *See Yong Soon Oh v. AT&T Corp.*, 225 F.R.D. 142, 149 (D.N.J. 2004) (rejecting objection that injunctive relief benefited only the public at large, recognizing that "[c]ourts have previously approved settlements that propose injunctive relief that will benefit the class members and the public at large."). Thus, this objection must be overruled.

III. The Objectors Have Not Demonstrated That They Are Class Members.

The *bona fides* of the Objectors is suspect. The Objectors have voluntarily injected themselves into this litigation by filing an objection that was penned by an attorney who is not admitted to this Court. Yet, there is no evidence that the Objectors are Class Members with standing to object.

Class Counsel has repeatedly requested that Mr. Palmer provide proof that they are Class Members with standing to bring their objection. *See* Weiss Decl. at ¶¶ 4-6. For reasons known only to him, Mr. Palmer has refused to provide proof that they are Class Members with standing to object. *Id.* Absent proof that they are Class Members, Plaintiffs and Class Counsel respectfully submit that the Palmer objection should be dismissed.

CONCLUSION

For the foregoing reasons, Plaintiffs and Class Counsel respectfully request that the Court enter an Order overruling the objection.

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Exhibit A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

****

IN RE: OIL SPILL BY THE
OIL RIG DEEPWATER HORIZON
IN THE GULF OF MEXICO ON
APRIL 20, 2010

CIVIL ACTION NO. 10-MD-2179 "J"
NEW ORLEANS, LOUISIANA
THURSDAY, NOVEMBER 8, 2012, 8:30 A.M.

THIS DOCUMENT RELATES TO:

CIVIL ACTION #12-968,
PLAISANCE, ET AL V. BP
EXPLORATION & PRODUCTION,
INC., ET AL
CIVIL ACTION #12-970,
BON SECOUR FISHERIES,
INC., ET AL V. BP
EXPLORATION & PRODUCTION,
INC., ET AL

****

TRANSCRIPT OF FINAL FAIRNESS HEARING PROCEEDINGS
HEARD BEFORE THE HONORABLE CARL J. BARBIER
UNITED STATES DISTRICT JUDGE

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1 P-R-O-C-E-E-D-I-N-G-S
2 THURSDAY, NOVEMBER 8, 2012
3 M O R N I N G S E S S I O N
4 (COURT CALLED TO ORDER)
5
6
7 THE DEPUTY CLERK: All rise.
8 THE COURT: All right. Good morning, everyone. Please
9 be seated.
10 Stephanie, you may call the case, please.
11 THE DEPUTY CLERK: MDL 10-2179, In re: Oil Spill by
12 the Oil Rig Deepwater Horizon in the Gulf of Mexico on
13 April 20, 2010, Civil Action #12-968; Plaisance, et al. versus
14 BP Exploration and Production Incorporated, et al.,
15 Civil Action #12-970; Bon Secour Fisheries Incorporated, et al.
16 versus BP Exploration and Production Incorporated, et al.
17 THE COURT: All right. We're here, obviously, to
18 consider the two proposed class settlements: One in #12-970,
19 Bon Secour versus BP, which is the economic and property damage
20 proposed settlement; the second being Civil Action #12-968,
21 Plaisance versus BP, and that being the medical benefits class
22 settlement.
23 What I plan to do this morning is to take --
24 obviously, I think we need to take these separately. There are
25 two separate class settlement proposals. I plan to take the

1 economic settlement first.
2 After some review of the number of speakers and
3 the time that's been allotted, it seems to me that we can
4 safely say that the economic settlement motion and fairness
5 hearing will probably take the morning.
6 So I'll just announce now, if there is anyone who
7 is here only with respect to the medical settlement, if you
8 would like to leave and come back later, you're welcome to do
9 that. If you want to stay, you're welcome to do that; but, I
10 can assure you, we will not begin the medical settlement
11 discussion until probably right after lunch. So I would say
12 it's safe to come back at 1 o'clock.
13 I do plan to take a brief recess midmorning, and
14 then we'll take a lunch recess.
15 So what I'm hoping to do is complete the economic
16 settlement discussion in the morning, then recess for lunch at
17 whatever time that is, and then come back and finish up with
18 the medical settlement.
19 I'm going to remind everyone, if you haven't
20 already done so, please check your cell phones and turn those
21 off. If you need to talk, please step out into the hallway to
22 do so.
23 We also do have two overflow courtrooms. If
24 people cannot get in here, there is Judge Berrigan's courtroom,
25 which is right down the hall on this same floor; and, then

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1 and it doesn't justify the rights that they are giving up, is
2 the bottom line.
3 THE COURT: All right. Thank you, Mr. Waltzer.
4 There is a Mr. Palmer.
5 You have five minutes, Mr. Palmer.
6 MR. PALMER: I won't take that long, Your Honor.
7 THE COURT: Okay.
8 MR. PALMER: Good afternoon. My name is
9 Darrell Palmer. I represent James Kirby, Mike and Patricia
10 Sturdivant, and Susan Forsyth, all property owners in western
11 Florida.
12 I'm not here to banter about the fairness of the
13 settlement. Unfortunately, today, Your Honors, I am here to
14 give you the bad news that by law you cannot approve this
15 settlement. That is because there really is no cy pres
16 component to this settlement. What there is, is a veiled PR
17 effort --
18 THE COURT: Wasn't that the basis of your objection?
19 You believe this is a cy pres award.
20 MR. PALMER: Well, that's what it's supposed to be.
21 THE COURT: That's what you said. I don't know what
22 you mean, that's what it's supposed to be. You said you
23 thought this promotion -- you're talking about the Seafood and
24 Tourism Promotional Fund, correct?
25 MR. PALMER: Yes, sir, I am.

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1 THE COURT: You called that a cy pres fund, cy pres
2 meaning next best use.
3 MR. PALMER: Correct.
4 THE COURT: It's common or sometimes occurs when there
5 is a settlement in a class action or a global settlement with a
6 fixed amount of dollars, and less claims than are expected are
7 made, and there is money, quote, left over; if there is no
8 reversionary provision where it goes back to the defendant,
9 then the Court has to decide what do we do with the money
10 that's left over. It could be allocated on a pro rata basis to
11 all of the claimants; but, often, they would get pennies or a
12 dollar or two, and it's not worth the cost of distributing it
13 that way.
14 So the parties often provide for what happens
15 with that leftover money, the so-called cy pres award; but,
16 there is no cy pres or leftover money in this settlement, so I
17 don't understand how this is a cy pres.
18 You said in your written filing it was a cy pres
19 award, but just now you said it's not a cy pres award.
20 MR. PALMER: Well, it doesn't fall under the -- well,
21 it's what Professor Redish at Northwestern University calls an
22 ex ante cy pres, where money is distributed for charitable
23 reasons, even before the claim --
24 THE COURT: But not every cy pres award is illegal or
25 improper, right?

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1 MR. PALMER: Absolutely not.
2 THE COURT: So, even if it was a cy pres award, as long
3 as it's put to a use that benefits, generally benefits the
4 class members or the purpose of the lawsuit or litigation,
5 certainly it's entirely proper if the parties agree to this.
6 The Court can't just do it on its own without the parties
7 agreeing to it.
8 MR. PALMER: Well, the Court's fiduciary responsibility
9 is not dependent on the parties agreeing to it, with all due
10 respect, Your Honor. Unfortunately --
11 THE COURT: Well, no, I differ with you there. The
12 Fifth Circuit says I can't distribute it like I want to
13 distribute it unless the parties have put a provision in their
14 settlement agreement as to how it should be distributed, and
15 then I have to decide beyond that whether that's a proper and
16 appropriate use.
17 MR. PALMER: That's correct.
18 THE COURT: That's the law.
19 MR. PALMER: That's right.
20 THE COURT: So what's your gripe here today?
21 MR. PALMER: Well, my gripe here today is that the
22 Court -- the parties today are proposing that the Court approve
23 a distribution that benefits only part of the class.
24 THE COURT: Who is it that you represent that's
25 complaining about this?

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1 MR. PALMER: I represent property owners in western
2 Florida. But you invited me, actually --
3 THE COURT: Well, I invited you because someone pointed
4 out that you had filed this cy pres objection, and I assumed
5 you must represent someone other than yourself who objects to
6 this. Do you?
7 MR. PALMER: I named my clients that I represent,
8 James Kirby, Mike and Patricia Sturdivant and Susan Forsyth,
9 all property owners in western Florida.
10 THE COURT: Are they members of this class?
11 MR. PALMER: Yes, they are.
12 THE COURT: They object to this $57 million being spent
13 to promote tourism and seafood?
14 MR. PALMER: Yes, they do.
15 THE COURT: Go ahead.
16 MR. PALMER: The reason they object, Your Honor --
17 THE COURT: How does that affect them? $57 million is
18 not spent on this, you know, it would just be kept by BP; it
19 wouldn't go to anyone else. You understand that?
20 MR. PALMER: I do. I think that's an honorable and
21 commendable expenditure; but, it should have nothing to do with
22 this class action because it doesn't -- the responsibility of
23 the Court is to make sure that the benefits and the -- well,
24 let me start over.
25 Once this settlement is approved, Your Honor --

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1 and that hasn't been happening yet, so, indeed, what
2 everybody's said today is BP is paying this, BP is funding
3 this, we're accepting the claims and on and on, that's true,
4 it's BP's money still; but, once you approve this settlement,
5 Your Honor, that money, the ownership of that money transfers
6 to the class, including my clients.
7 So what you propose is that we take $57 million
8 that's owned by the class, about a hundred thousand claimants,
9 if I understand -- that's what somebody said earlier -- and we
10 are going to disproportionately use it to benefit only tourism
11 and seafood-related class members; it will not benefit
12 necessarily the nontourism and nonseafood-related tourism
13 industry.
14 THE COURT: What kind of property do your clients own?
15 MR. PALMER: Residential.
16 THE COURT: Residential property.
17 MR. PALMER: Yes, sir.
18 THE COURT: How are they members of the class? What
19 are their damages or claims?
20 MR. PALMER: Their damage claims relate to use of
21 enjoyment, I believe.
22 THE COURT: Are those the claims that I dismissed
23 already?
24 MR. PALMER: You certainly didn't dismiss my clients'
25 claims, Your Honor. I wouldn't be here.

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1 THE COURT: Well, maybe not individually. I'm just
2 trying to figure out are those part of the stigma claims,
3 recreational use; I like to look at the water or enjoy walking
4 along the beach, that sort of thing?
5 MR. PALMER: No, Your Honor. We submitted our proof of
6 class membership along with the objection.
7 THE COURT: Have you filed claims with the claims
8 administrator?
9 MR. PALMER: I believe my co-counsel has filed claims.
10 THE COURT: You've filed claims on behalf of these same
11 clients who now are objecting to the settlement?
12 MR. PALMER: Right.
13 THE COURT: You said the settlement can't be
14 approved --
15 MR. PALMER: That's right.
16 THE COURT: -- what you are started off telling me.
17 MR. PALMER: That's right.
18 THE COURT: So which is it; they want me to approve the
19 settlement, or do they not want me to approve the settlement?
20 MR. PALMER: It's not that they don't want it; it's the
21 fact that you can't, as long as you are distributing money that
22 belongs to the class to people who aren't in the class,
23 Your Honor.
24 The money has to be distributed first to the
25 class members; and, then, if there is some remainder, that

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1 would be appropriate for a cy pres, or a distribution for the
2 next best use.
3 THE COURT: Well, there will be no remainder in this.
4 MR. PALMER: That's right. There won't be. That's why
5 this $57 million giveaway should have nothing to do with this
6 lawsuit.
7 Frankly, you know, there are some other problems
8 with the way the money is being given away. I mean, it
9 supposedly is being managed by a panel. I made multiple phone
10 calls -- well, I learned this morning that apparently
11 $30 million has already been designated --
12 THE COURT: Actually, I think it's more like
13 $44 million has already been distributed.
14 MR. PALMER: Well, it's certainly very difficult for
15 class members to find out how the Court is going to approve the
16 expenditure of their money, the $44 million.
17 THE COURT: It's not quite your clients' money.
18 MR. PALMER: Well, it certainly belongs to the class,
19 Your Honor.
20 THE COURT: Go ahead. You have another 30 seconds,
21 Mr. Palmer. Anything else you want to say?
22 MR. PALMER: Well, I would also like to point out that
23 the attorneys' fees should not be awarded based on this
24 charitable distribution.
25 THE COURT: There is no attorneys' fee issue before the

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1 Court at this time. There has been no application for
2 attorneys' fees.
3 If and when an application for attorneys' fees is
4 made, applications and supporting documentation will be filed,
5 the Court will have hearings, and people will have a chance to
6 weigh in on that. The Court would have to approve any
7 attorneys' fees that are awarded.
8 MR. PALMER: I guess, finally, Your Honor, if I could,
9 I think it would be appropriate for the web site to reflect who
10 the panel members are, what organizations have applied for
11 these awards --
12 THE COURT: I think that's all public information.
13 Mr. Juneau can help with you that. Okay.
14 MR. PALMER: Thank you very much.
15 THE COURT: Thank you.
16 All right. We have about another 30 minutes or
17 so to go. I'm going to allow the class counsel and BP's
18 counsel about 15 minutes each.
19 Mr. Roy.
20 MR. ROY: Thank you, Your Honor. Jim Roy, again.
21 I want to make three points. First, I'm going to
22 address Mr. Waltzer's comments on seafood. Very briefly,
23 Mr. Herman will follow up with additional.
24 The issue, as I perceive it, more than anything,
25 is Mr. Waltzer has severe angst over the potential distribution

1 and ability to do so. Infrastructure is being built for that
2 as we stand and speak today.
3 The medical experts. Dr. Jessica Herzstein --
4 THE COURT: One question. Go back to the slide for a
5 second. Those projects, assuming settlement is approved, the
6 outreach program, the library and so forth, are those available
7 to anyone in the class, regardless of what or whether they are
8 entitled to any monetary compensation? Are there people in the
9 class that could fit that category or not?
10 MR. GODFREY: Yes. Yes. If they are in the class,
11 yes.
12 I mean, you're going to get a Periodic Medical
13 Consultation Program whether you made a claim under the matrix
14 or not.
15 Now, if you discover in that, that you have what
16 you consider to be a later-manifesting condition, then you have
17 the BLO that you have to decide and exercise your rights under.
18 But, yes, you have access to it, yes.
19 In certain areas, by the way, Your Honor, which I
20 was not aware of prior to this case, the importance of this is
21 in certain areas, this creates the first opportunity for the
22 people who might be victims or who believe they are victims to
23 have the access to these medical care services. It's, in many
24 cases, a first-time opportunity or a unique opportunity for
25 them, which is certainly something that we support and that BP

1 agreed willingly to do for the benefit of the class.
2 Dr. Jessica Herzstein: The Periodic Medical
3 Consultation Program is a significant and tangible benefit,
4 especially to those class members who might not otherwise have
5 access to or be able to afford primary medical services.
6 You know, we have a medical care issue in this
7 country, and many of these people, or at least some of these
8 people, may not have had access. To the extent they are in the
9 class and we define the class, they now have access and will be
10 given access. That's an important benefit.
11 Dr. Bernard Goldstein: The program will have a
12 rapid positive impact on the physical, mental and behavioral
13 health of Gulf Coast community members, and these benefits will
14 be realized not just for the five years but long thereafter.
15 The proposed settlement is consistent with the
16 best science available, Dr. Michael Harbut.
17 Then the legal experts. Ms. Cabraser, as she
18 always does, is one of the best proponents I've ever met in
19 terms of class action lawyers. She's usually arguing to
20 certify classes, I'm usually arguing against them, but she's
21 spot on in terms of her answers for Your Honor.
22 But in some ways, we were careful about this from
23 the start intentionally. We knew that there would be questions
24 in light of precedent. We decided not to rely upon ourselves,
25 people who practice in this area of the law, but we said, let's

1 go hire the experts and get their advice. If we can structure
2 it, terrific, and hopefully we can.
3 You know, Dean Klonoff said: This is one of the
4 fairest and most impressive settlements I have seen in more
5 than 20 years of practicing and teaching and writing in the
6 field of class actions; then echoed by Professor Coffee and
7 Professor Miller.
8 Professor Coffee and Professor Miller, there are
9 a lot of classes that they don't like, that they oppose, and
10 they're cited very often, both of them. Less so with
11 Professor Klonoff, but Miller and Coffee, there's a lot of
12 class actions that they've opposed, and courts have cited their
13 work.
14 They looked at this. They gave us hard advice.
15 We structured it accordingly. They looked at it later. They
16 kept checking and double-checking and kicking the tires, and I
17 believe that we'll more than pass muster.
18 So we have a claims administration process, the
19 Garretson Resolution Group. They are on track. They've
20 already got 4300 proof of claim forms. They are in the process
21 of contracting with medical professionals to provide
22 consultation visits. So they are already out there arranging
23 with the professionals.
24 Disbursed 20 million to outreach projects. They
25 have launched the publicly available online library. There is

1 the Internet citation for those who want to see it.
2 They are working with Medicare. They will have
3 Medicare done, I think, within a few months.
4 Dealing with the federal government, Medicare and
5 getting -- Garretson has done this many times. They always
6 work it out, but it takes a while. I had no idea that Medicare
7 regulations were so complicated, but they are a specialist in
8 that.
9 THE COURT: I can tell you, not necessarily in the
10 class action context, but, just generally, it's a recurring
11 common problem we deal with here in trying to settle cases
12 because it's always a very difficult, long, tedious issue that
13 lawyers and courts have to deal with.
14 MR. GODFREY: I must confess, I've learned that the
15 hard way in this case because I went to a few meetings where
16 they tried to explain it to me. I said, do we have experts?
17 Someone said yes. I said, fine, let the experts deal with it.
18 I'm going to get out of the way.
19 Finally, the small number and content of the
20 objections support settlement approval.
21 There are no objections whatsoever to the
22 Periodic Medical Consultation Program; and, only one possible
23 objection -- we are not sure, we can't figure out what the
24 objection is -- to the Gulf Region Health Outreach Program.
25 The few objections that have been filed, though,

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1 are somewhat contradictory and without basis. Some complain
2 it's almost too generous. Okay, we paid more than we wanted
3 to, but that's not an objection that's valid to set aside a
4 settlement.
5 Others say that they are paying a premium for
6 class members' claim. It's not a valid objection.
7 Others object that the compensation amounts are
8 inadequate. That's not the view of class counsel. When you
9 look at the case law, that's certainly not supported in the
10 case law that these are inadequate benefits.
11 Others object that they're not in the class, but
12 they want to be in class. Well, that's not a valid objection
13 either.
14 Then others provide either no evidence or
15 unreliable, unscientific evidence and, frankly, hearsay or
16 speculation.
17 Some complain that opting out of the settlement
18 is not a viable option because they have negative value claims.
19 That's not a value objection. That says I have a little or no
20 value claim, and so why should I opt out; I can't get any money
21 if I opt out. Not a valid objection.
22 Some say the proof standards are too high. Well,
23 they're a whole lot lower in the class settlement than they are
24 in a court of law.
25 Your Honor was right. Liability, for example,

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1 with specific causation, you know, general causation, this is a
2 good deal from that standpoint.
3 Some complain that the settlement does not
4 provide for interim claims under OPA, even through OPA doesn't
5 apply to personal injury claims. So that is an objection, but
6 it's not a valid objection under the law.
7 Bottom line, none of the objections, cumulatively
8 or singularly, come anywhere close to satisfying the burden of
9 establishing that the settlement is unreasonable, unfair and
10 inadequate.
11 Unless Your Honor has any questions, I have a
12 short rebuttal time after we hear from the objectors' counsel.
13 But, once again, I appreciate the time.
14 Your Honor, I neglected to do one thing this
15 morning because I did not use all my slides, but I would like
16 to tender my demonstratives as a court exhibit that I used this
17 morning. They're just the slides I used, so there is a few
18 pages that will be missing because I did not use all the
19 slides. If I could tender that to Mr. Allums now, I would
20 appreciate it.
21 THE COURT: That's fine.
22 MR. GODFREY: Thank you very much.
23 THE COURT: All right. Now we'll hear from the
24 objectors.
25 Is there an objection by Mr. Palmer, who has been

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1 allotted five minutes?
2 MR. PALMER: Thank you very much, Your Honor.
3 Darrell Palmer on behalf of James Kirby, IV, Mike and Patricia
4 Sturdivant, and Susan Forsyth.
5 THE COURT: Who are those folks that you claim to
6 represent?
7 MR. PALMER: Who are they?
8 THE COURT: Who are they?
9 MR. PALMER: They are residents of west Florida.
10 THE COURT: Are they in the class?
11 MR. PALMER: Yes, sir.
12 THE COURT: Are you the same Mr. Palmer who appeared as
13 an objector in the District Court of the District of Minnesota
14 in the --
15 MR. PALMER: Plumb-PEX case.
16 THE COURT: -- plumbing fittings product liability
17 litigation. Are you the same person is my question?
18 MR. PALMER: I never appeared in the district court. I
19 appeared in the appellate court.
20 THE COURT: Well, you apparently filed objections in
21 that case.
22 MR. PALMER: I did. Yes, I did. I filed objections in
23 many, many cases, Your Honor. I'll be completely up front.
24 Including --
25 THE COURT: Apparently you've been considered as a

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1 so-called serial objector, right?
2 MR. PALMER: Well, I think that's particularly
3 pertinent when you look at --
4 THE COURT: Just answer my question, please. Have you
5 been called a serial objector?
6 MR. PALMER: I have.
7 THE COURT: Did the district court find that your
8 objections were evidence of bad faith and vexatious conduct?
9 MR. PALMER: I think that's regrettable that that
10 happened; yes, it is.
11 THE COURT: It says, "The Palmer objectors appear to be
12 represented by an attorney who has not entered an appearance in
13 this case, who is believed to be a serial objector to other
14 class actions," and they cite some evidence of that and refer
15 to you, Darrell Palmer.
16 MR. PALMER: That's right, Your Honor. I'd be happy to
17 submit a brief outlining all of the judges that have expressed
18 appreciation for the things I brought to the attention of the
19 court, including the judge in the Enron case where we made
20 substantial improvements to the tune of several hundred million
21 dollars and increased the claims period. The list is quite
22 long.
23 THE COURT: Stop one second. I'm sorry to interrupt
24 you.
25 I'm told by the U. S. Marshal that there is

1 someone in this courtroom that is still live streaming from the
2 courtroom. Whoever it is needs to get up and leave right now.
3 If not, we're just going to terminate this hearing and resume
4 another day. Do we know who it is?
5 THE MARSHAL: I have an idea.
6 THE COURT: That is against the rules of this Court.
7 You're violating the rules of the Court in the courtroom, and
8 you have to leave right now. You cannot live stream a
9 proceeding from federal court outside the courtroom.
10 THE MARSHAL: It's someone in the back row, Judge.
11 THE COURT: Would you all stand there and observe these
12 people, because if any of them appear to be trying to live
13 stream this in any way, we're just going to remove them from
14 the courtroom. Okay.
15 I'm sorry to have to do this, but people have to
16 follow the rules here; and, if you're here to observe, you're
17 welcome, but you can't play by your own rules.
18 Mr. Palmer, I'm sorry to interrupt you. You have
19 another cy pres objection?
20 MR. PALMER: I do. I have an objection to the medical
21 component, where money apparently has already been distributed
22 for the public use along the coastal region.
23 The problem is, Your Honor -- and if I may, I
24 would just like to read a short quote by Chief Judge
25 Edith Jones from the Klier case.

1 THE COURT: I'm very familiar with that case, but go
2 ahead and read your quote, if you want.
3 MR. PALMER: Thank you.
4 "The use of cy pres simultaneously violates the
5 constitutional dictates of separation of powers by employing a
6 Federal Rule of Civil Procedure to alter the compensatory
7 enforcement mechanism dictated by the applicable substantive
8 law being enforced in class action proceedings. It has somehow
9 become common practice among many Courts, scholars and members
10 of the public to view the modern class action as a
11 free-standing device designed to do justice and police
12 corporate evil-doers. As nothing more than a Federal Rule of
13 Civil Procedure, however, the class action device may do no
14 more than enforce existing substantive law as promulgated
15 either by Congress or in a diversity suit by applicable state
16 statutory or common law. Yet, in no instance of which we are
17 aware does the applicable substantive law sought to be enforced
18 in a Federal Class Action direct the violator to pay damages to
19 an uninjured charity."
20 In this case, Your Honor, it is a purely legal
21 objection. It is not a criticism of all of the great benefits
22 that this medical settlement provides. But the fact is that we
23 are now calling millions of dollars part of the settlement,
24 which makes it the property of the class, and we are
25 distributing that --

1 THE COURT: Well, it wouldn't exist, it wouldn't go to
2 your client or any of the class members, because they are going
3 to be fully compensated for whatever their claim is.
4 Do you have authority from your clients to be
5 standing here? Did they make claims in this class?
6 MR. PALMER: Yes, they did.
7 THE COURT: So you represent persons who have made
8 claims for medical benefits under this class settlement, while,
9 at the same time, you're here saying that they sent you here to
10 try to blow up this settlement?
11 MR. PALMER: It is not blowing up the settlement.
12 THE COURT: Well, if you object, that's what you would
13 be doing.
14 MR. PALMER: Absolutely not. That's the whole purpose
15 of --
16 THE COURT: How are they affected by this if this is
17 approved?
18 MR. PALMER: Your Honor, Rule 23 provides for
19 objections. It doesn't mean that we are evil people or trying
20 to --
21 THE COURT: No one said you're an evil person. I just
22 said you have what's called a conflict, it seems to me, here.
23 On one hand, you represent -- I have serious
24 doubts that your clients even know you're here making this
25 objection, frankly, Mr. Palmer. Did your clients expressly

1 authorize you to come here and oppose this settlement?
2 MR. PALMER: Absolutely.
3 THE COURT: Name the clients that authorized you to
4 come here and oppose this settlement.
5 MR. PALMER: All of them, Your Honor. James Kirby, the
6 Sturdivants and Ms. Forsyth.
7 THE COURT: You are an attorney of record in this
8 court?
9 MR. PALMER: I am. I used to be -- at one point, I was
10 co-counsel with Ms. Cabraser in a case in San Diego where we
11 recovered over $150 million in a scripts case. So --
12 THE COURT: That's all well and good, but it has
13 nothing to do with what we're talking about.
14 So go ahead. You have another couple minutes.
15 Go ahead.
16 MR. PALMER: Thank you, Your Honor.
17 The point is simply that we are taking class
18 funds and distributing it to nonclass members. That's the
19 point of the objection.
20 We're not trying to blow up the objection [sic].
21 We're trying to make sure that the objection passes legal
22 muster and is not vulnerable to reversal, where in -- just like
23 in the Dennis v. Kellogg case, the entire --
24 THE COURT: What would be your solution? What are you
25 asking me to do?

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1 MR. PALMER: That is not my job as an objector.
2 THE COURT: Well, what do you think is going to happen
3 to that money if I uphold your objection? What would you
4 suggest?
5 MR. PALMER: Oh, I think BP will continue with the
6 program. They are just trying to slip that money in on this
7 settlement for PR purposes. That's what I think, personally.
8 But do I think they would withdraw the money?
9 Absolutely not. They've already spent the money. That's one
10 thing the record is clear on, Your Honor. They've spent the
11 20 million dollars. It's not part of this settlement.
12 THE COURT: I don't understand your objection, then. I
13 hear it, I don't understand it; but, I heard you.
14 MR. PALMER: Unless you have any other questions, I
15 don't think I have anything to add.
16 THE COURT: I do not. Thank you very much.
17 MR. PALMER: Thank you very much, Your Honor.
18 THE COURT: Mr. McKee, your objection relates to
19 Specified Physical Conditions Matrix, which you believe
20 provides inadequate compensation; is that correct?
21 MR. MCKEE: Correct, Your Honor. Good afternoon.
22 Robert J. McKee on behalf of objectors, and as well on
23 potential clients who I have not yet taken because of issues
24 that are being raised in this objection.
25 Good afternoon, Magistrate.

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1 THE COURT: The clients you represent are objectors.
2 Are they class members?
3 MR. MCKEE: I believe so, yes. I say that, and I'll
4 explain why.
5 The terms of the settlement make one question
6 whether you are, because it's not only whether you're a
7 resident of A and B or a cleanup worker, but you have to have
8 had your symptoms within 72 hours of a purported exposure,
9 which one is not made clear, and nor do you know whether you're
10 acute or chronic, because you may have been getting exposed and
11 sick every day, and are you able to make a claim as a member of
12 the class for each day under the acute manifestation?
13 So there is issues with the description that make
14 it questionable who is in or out of this class, such as when
15 we're seeing data about 200,000 potential claimants.
16 There has not been a shred of evidence that
17 suggests that any of them fit the matrix. There has not been
18 one showing that a group of people more than a few hundred or
19 thousands actually fit the time frames that would fit into the
20 class.
21 So, yes, I believe all of mine do. I have not
22 opted out all of them. Some have opted out, but there is a
23 protracted opt-out deal.
24 THE COURT: Did you file claims on behalf of any of
25 your clients?

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1 MR. MCKEE: Claims and lawsuits, Your Honor, yes, sir,
2 venued in Key West and transferred here.
3 THE COURT: Claims with the settlement program? That's
4 what I'm asking you.
5 MR. MCKEE: Yes, sir.
6 THE COURT: So, again, you're in a position where this
7 settlement that you believe should not be approved, you have
8 claims that you filed for some clients in the settlement, you
9 have other people that have opted out, you have other people
10 that have objected.
11 MR. MCKEE: Yes, on the basis of attorney-client
12 discussions, some want us to object, some do not believe there
13 is a conflict, others are waiving that conflict.
14 But, certainly, we have taken care in-house of
15 those --
16 THE COURT: I'm trying to get a feel. I don't know if
17 you have a legal conflict or not; but, you're standing here
18 asking me not to approve this settlement, while you have other
19 clients you represent who want it to be approved and are making
20 claims. They can't get paid unless this settlement is approved
21 in this settlement. You understand that, right?
22 MR. MCKEE: I do, Your Honor. But, if I may, there is
23 an aspect to this proceeding, as someone who does not typically
24 do class actions in a 20-year practice of nothing but exposure
25 cases, there's an aspect that we're hopeful, we're here with

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1 hope that for these sick folks -- and there are some very
2 grievously ill people -- that these sick folks who have not
3 received a dollar since they got sick, not an interim payment,
4 nothing, no help, and they still won't, even if this is
5 approved, until the appellate process is done, won't get a
6 dollar for their illnesses, for the impact on their lives --
7 I'm here because I'm hopeful that the Court might provisionally
8 approve this, if certain changes are made, or it would have to
9 destroy this particular part of the settlement, the medical
10 benefits settlement, if it can't be done by the parties.
11 If the Court would allow me to show why the
12 compensation framework does not work when applied to reality
13 here.
14 THE COURT: Go ahead.
15 MR. MCKEE: Thank you, Your Honor.
16 The social tragedy here is that all of these
17 people -- and there are thousands of them -- have not received
18 anything. They are hopeful that this system of law would get
19 them there. Many of them are illiterate. Many of them have no
20 job anymore, couldn't read this if they wanted to as a pro se
21 claimant. It was hard enough for me to read that book.
22 But the reality is --
23 Put on my first slide.
24 -- what is covered here is essentially eye health
25 effects, nasal and respiratory health effects and skin health

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JENNIFER EOFF and JULIE TINKHAM, individually and on behalf of all others similarly situated, Plaintiffs, vs. SPRINT NEXTEL CORPORATION and SPRINT SPECTRUM, L.P. d/b/a SPRINT NEXTEL, Defendants.	Civil Action No. 2:10-cv-01190 (SDW)(MCA)

DECLARATION OF PAUL M. WEISS

PAUL M. WEISS, of full age, hereby declares as follows:

1. I am an attorney licensed to practice in Illinois and a founding member of Complex Litigation Group LLC ("CLG") f/k/a Freed & Weiss LLC, one of the firms working on behalf of the Class in the above litigation and designated Class Counsel by this Court.

2. In response to the class notice, one objection was filed (on behalf of three purported class members). As class counsel, I attempted to reach out to counsel for these Objectors, Mr. Forrest Turkish, Esq., to discuss their objection.

3. When I called Mr. Turkish he candidly explained to me that he had filed the objection on behalf of another attorney, Mr. Darrell Palmer and Mr. Palmer's clients, and that if I had any questions about the objections whatsoever that I needed to speak directly with Mr. Palmer. Further, he told me that only Mr. Palmer could address the factual and legal statements contained in the objection. Mr. Turkish informed me that he had "zero authority" to do anything with respect to the objection and that he had filed the objection

as a favor to Mr. Palmer, with whom he had attended law school.

4. I have left voicemails for Mr. Palmer. He has yet to call me back.

5. In addition, I have sent him several emails requesting to speak with him. To date, he has not responded substantively and has been unwilling to set up a time to discuss the objections.

6. In my emails to Mr. Palmer, I have asked multiple times for proof regarding his clients' standing to pursue their objection. To date, that request has gone un-answered.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Dated: November 16, 2012

Paul M. Weiss