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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

PATRICIA CONNOR, AND SHERI L. BYWATER, Individually And On Behalf Of All Others Similarly Situated, Plaintiffs, V. JPMORGAN CHASE BANK AND FEDERAL NATIONAL MORTGAGE ASSOCIATION A/K/A FANNIE MAE, Defendants.	Case No. 10-CV-1284 GPC (BGS) CLASS ACTION **OBJECTIONS OF GLENICE MAY CAMARISTA AND JANILEY LYNN CAMARISTA TO PROPOSED SETTLEMENT AND NOTICE OF INTENT TO APPEAR** Date: December 4, 2014 Time: 1:30 p.m. Judge: Hon. Gonzalo P. Curiel

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I. INTRODUCTION

The parties agreed to a settlement in 2012 and in spite of 55,629 claims, objector John Davis alerted the court he had not received notice. This prompted the attorneys to invest more time and as a result the court learned that the notice plan had missed more than half of the settlement class. The original class of 1,381,406 members was greatly expanded to include an additional 1,653,559 newly identified class members. A second notice program ensued, and an additional 56,697 claims were received.

Because of the deficient first notice and subsequent proceedings, more than half of the claims being paid under this settlement resulted from the work of a sole objector. Despite this, class counsel request a percentage of the entire settlement fund, including the notice and administration expenses (with certain small carve-outs they claim are being paid outside of the total settlement fund). The $2,364,441.26 in fees requested represents approximately 61% of the portion of the settlement going to the original claimants; the balance of the fund will go to the new claimants brought in through the efforts of a sole objector.

A. Legal Standard

In reviewing a proposed settlement, the district court has a duty to ensure the settlement is "fair, reasonable, and adequate." Fed. R. Civ. Proc. 23(e)(2) Appellate courts accord considerable deference to the district court's "knowledge of the litigants and of the strengths and weaknesses of their contentions". . . . and recognize that the district court "is in the best position to evaluate whether the settlement constitutes a reasonable compromise." *Grant v. Bethlehem Steel Corp.*, 823 F.2d 20, 23 (2d Cir. 1987). "Because class actions are rife with potential conflicts of interest between class counsel and Class Members, district judges presiding over such actions are expected to give careful scrutiny to the terms of proposed settlements in order to make sure that class counsel are behaving as honest fiduciaries for the class as a whole." *Mirfashi v. Fleet*

Mortgage Corp. 356 F.3d 781, 785 (7th Cir. 2004).

The court must be protective of unnamed Class Members. "In approving a proposed class action settlement, the district court has a fiduciary responsibility to ensure that 'the settlement is fair and not a product of collusion, and that the Class Members' interests were represented adequately.'" *Grant, citing In re Warner Communications Sec. Litig*., 798 F.2d 35, 37 (2d Cir.1986). *See also Silber v. Mahon*, 957 F.2d 697, 701 (9th Cir. 1992) ("Both the class representative and the courts have a duty to protect the interests of absent Class Members.")

Prior to formal class certification, there is greater potential for breaches of fiduciary duties owed to the class during settlement. Heightened scrutiny is required. See *Mars Steel Corp. v. Cont'l Ill. Nat'l Bank & Trust Co. of Chicago*, 834 F.2d 677, 681 (7th Cir. 1987) ("When class certification is deferred, a more careful scrutiny of the fairness of the settlement is required."). Courts may refuse to approve a settlement if insufficient notice is provided to Class Members to protect their due process rights. Fed. R. Civ. Proc. 23(e)(1) specifies that "direct notice" of a proposed settlement must be provided "in a reasonable manner to all Class Members who would be bound by the proposal."

II. ARGUMENT

A. Class Counsel's fee should be based on equitable principles and the value they conferred on the class

1. Equitable principles govern the award of attorneys' fees

Federal courts award attorneys' fees under the common fund doctrine as a matter of federal common law, based on "the historic equity jurisdiction of the federal courts." *Sprague v. Ticonic Nat'l Bank*, 307 U.S. 161, 164 (1939). Under the common fund doctrine, "a litigant or a lawyer who recovers a common fund for the benefit of persons

other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). In awarding attorneys' fees from the common fund generated by litigation, courts are bound by traditional principles of equity and we must review awards to class counsel and objectors in that light. *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 273 F. Supp. 2d 563, 565 (D.N.J. 2003) *aff'd sub nom. In re Prudential Ins. Co. of Am. Sales Practice Litig.,* 103 F. App'x 695 (3d Cir. 2004), *citing Boeing v. Van Gemert*, 444 U.S. at 478. "The results obtained for the class are generally considered to be the most important factor in determining the appropriate fee award in a common fund case." *Hensley v. Eckerhart*, 461 U.S. 424, 435 (1983).

2. Class counsel's fee should not be based on the entire fund, but rather only on the portion of the fund achieved for the class because of their efforts

The parties initially settled this case back in 2012. Chase agreed to pay between $7 and $9 million, depending on the number of claims submitted, and also agreed they would not challenge class counsel's request for a fee award of 30% of the fund. Following the initial notice program, 55,629 claims were submitted. In their initial fee request the attorneys requested 25% of the $9 million theoretical fund created by the settlement (the $9 million included amounts paid for settlement administration and notice expenses). The attorneys now claim they are requesting about 20% of the fund – "about" reflecting no doubt the smoke and mirrors clouding their request. Acknowledging that they deserve little compensation related to the new class members, the 2012 attorney's request is for 20% of the settlement fund, including, they claim, only an additional $114,441.26, in attorneys' fees for their work with the second group of claimants. Their analysis of the request is flawed in several respects.

The efforts of a single objector changed this case dramatically. The settlement was on the way to approval, but for the efforts of a lone objector, John W Davis (and occasional "serial objector lawyer), who appeared and objected to the settlement because he was a class member but had not received notice of the settlement. As a result of Davis' objection, the court was alerted that more than half of the settlement class had been left out. The original class of 1,381,406 members was more than doubled with the addition of 1,653,559 new class members. In response to the first notice program, 55,629 valid claims were submitted. A second notice program ensued, and an additional 56,697 claims were received. More than half of the claims to be paid under this settlement resulted from the work of a sole objector.

Group 1 claimants will recover approximately $3,892,361.13, based on each of 55,629 claims being paid $69.97. Group 2 claimants will recover approximately $3,960,092.09, based on each of 56,697 claims being paid $69.97. Combined, the awards being paid to the class amount to $7,852,453.22. But the 20% class counsel claim to be requesting is far over 20 % of the total benefit conferred on the class of $7,852,453.22; 20% of that benefit would be only $1,570,490.64. Rather, Class Counsel's fee request is 20 % of $11,847,206.30 (i.e. 5 X $2,369,441.26 = $11,847,206.30) – more than Chase is even paying. The following table illustrates this point:

	Claims Submitted	**Payment per Claim**	**Consideration to Class**	**20 % Fee**
Group 1	55,629	$69.97	$3,892,361.13	$778,472.23
Group 2	56,597	$69.97	$3,960,092.09	$792,018.42
Total	112,226	$69.97	$7,852,453.22	$1,570,490.64

Class counsel calculate the $2,369,441.26 they are requesting by first starting with the $2,250,000.00 they had requested in connection with the first settlement. They then

added $114,441.26 for their efforts for the second group, and the $5,000.00 incentive fee. This equation yields the $2,369,441.26, as illustrated in this table:

Round 1 Fees	$2,250,000.00
Incentive Awards	$5,000.00
Additional Fees	$114,441.26
Total	$2,369,441.26

Unfortunately, the $2,250,000.00 initial request is a random number, and not relevant here. It is not 20% of the benefit conferred on Group 1, and it is not even 20% of the benefit conferred on the class. To properly evaluate this settlement the court first must consider how failing to provide adequate notice initially compromised the claims of class members. The settlement here was negotiated without a clear understanding of the size of the class because of a hasty move to settlement and inadequate discovery. The deficiencies in class counsel's work and in the settlement came to light through the efforts of an objector. At that point it may have been appropriate to appoint alternate counsel, because counsel had shown themselves insufficient fiduciaries for the class. Instead, the parties went back and did some additional work to provide notice to additional class members, and nominal additional funds were contributed. Chase is now set to pay $11,665,592.09, rather than the between $7 million and $9 million initially negotiated. They are paying approximately between $2.6 million and $4.6 million to settle twice as many claims, for a class twice as large. Despite class counsel's assertions this is an excellent result for the class, this is not an excellent result for Group 1 – the only portion of the class that class counsel should claim to represent.

3. Settlement Administration and Notice Expenses should not be included

Class counsel's percentage fee is based in part on settlement administration and notice expenses, although they attempt to obscure this by claiming the additional notice costs are being paid separately. Doc. 122-1, page 15 (stating notice costs of $850,000 are

being paid separately by Chase to Gilardi for Group 2 efforts). Litigation expenses, settlement administration and notice costs can be summarized:

	Litigation Expenses	Notice Costs
Group 1	$23,878.58	$811,738.30
Group 2	$10,558.74	$850,000.00
Total	$34,437.32	$1,661,738.30

The fee motion states that the notice and administration expenses in total are $1,291,738.39, although this appears to be an error as the numbers provided do not add up to $1,291,738.39. *See* Final Approval Motion, Doc. 122-1, page 15. Regardless of the total, notice and settlement administration expenses are not class benefits. Notice is a benefit for the Defendant (because it is through adequate notice the Defendant gains its release from liability) and settlement administration is an expense, not a benefit. This point was addressed in *Redman v. Radioshack Corp*., No. 14-1470, 2014 2014 WL 465447, -- F.3d -- (7th Cir. Sept. 19, 2014).

> Unfortunately the magistrate judge in approving the settlement in RadioShack failed to analyze the issues properly. Let's begin with the value of the award to the class members. The judge accepted the settlors' contention that the defendant's entire expenditures should be aggregated in determining the size of the settlement; it was this aggregation that reduced the award of attorneys' fees to class counsel to a respectable-seeming 25 percent. But the roughly $2.2 million in administrative costs should not have been included in calculating the division of the spoils between class counsel and class members. Those costs are part of the settlement but not part of the value received from the settlement by the members of the class. The costs therefore shed no light on the fairness of the division of the settlement pie between class counsel and class members.

Redman, at *5. In *In re Aqua Dots Prods. Liab. Litig*., 654 F.3d 748 (7th Cir. 2011), the Seventh Circuit had earlier recognized that notice and attorneys' fees are among the "transactions costs" that can cause a class action to be inferior to other

methods of adjudication. *Id.* at 751. In addition, notice is not a benefit unto itself. Rather, the benefit to the class is realized when effective notice causes a higher claims rate. Because that benefit is reflected in the final tabulation of settlement value, it should not be double-counted by treating notice expenses as another class benefit.

The defendant has every incentive to fund notice because constitutionally adequate notice is a prerequisite for the defendant to obtain the only consideration it receives from a settlement: the waiver and release of class members' claims. *See e.g.*, *Hecht v. United Collection Bureau*, 691 F.3d 218 (2d. Cir. 2012) (permitting relitigation of class action because of inadequacy of class notice in previous settlement); *Twigg v. Sears, Roebuck & Co*., 153 F.3d 1222, 1226-29 (11th Cir. 1998) (same); *Besinga v. United States*, 923 F.2d 133, 136-37 (9th Cir. 1991) (same) (citing cases). That notice costs are not a class benefit is just one example of the principle that costs imposed on the defendant are not the per se measure of compensable class value. The standard under Rule 23(e) "is not how much money a company spends on purported benefits, but the value of those benefits to the class." *In re Bluetooth Headset Prod. Liab. Litig*., 654 F.3d 935, 944 (9th Cir. 2011) (internal quotation and citation omitted).

Treating notice expenses as a class benefit perverts incentives: class counsel receive a commission on money paid to third parties. If attorneys' fees are paid only on what the class receives, class counsel has the incentive to ensure that settlement administration is efficient and to prevent overbilling or wasteful expenditures. Class counsel, in pursuit of a well-deserved fee award, will have a financial interest only in maximizing the effectiveness of notice, and not in maximizing the price of notice as well. But if administrative expenses are deemed to be a class benefit, then counsel should be financially indifferent between claims paid to class members and notice costs paid to settlement administrators. Here, basing a fee award on notice expenses would be inappropriate, as class counsel did not try to ensure adequate notice to begin with.

That counsel's fee award should not be based on litigation expenses is a matter of logic, otherwise class counsel would earn a commission on their expenses. Not fair! The court must exclude litigation expenses and notice costs in determining a reasonable fee award.

B. Class Counsel have not earned a lodestar multiplier

1. Class counsel's lodestar information warrants heightened scrutiny

Class counsel's combined lodestar (base on the highest rates billed in San Diego) is $726,014.50. To begin with, the information submitted in support of their lodestar is contradictory and misleading. A recent decision in the Northern District of California (involving class counsel here) demands close scrutiny. In *Rose v. Bank of America*, No. 11-cv-02390 (N.D. Cal. Aug. 29, 2014) (Doc. 108, Final Approval Order), the court reduced the requested fees from $8,020,976.00 (including expenses) to $2,402,243.91 – approximately 7 % of the settlement fund. As a result, the settlement fund was increased by approximately five and a half million dollars. The decision was based in part on a finding that the lodestar information was inflated. The court reduced the lodestar requested in two phases, mediation and settlement, and case investigation. The court also found class counsel's strategy of filing duplicative and presumably coordinated lawsuits may have intimidated the defendant, but could not support the requested fees. The court found far too many attorneys participated in the settlement negotiations and accordingly reduced the requested fees for that portion. The court should pay particular attention to that decision, which reflected a careful analysis of information submitted by Class Counsel, including detailed reports substantiating counsel's lodestar. Here class counsel's lodestar is prima facie duplicative because class counsel had to revisit issues raised following rejection of the first settlement.

Class counsel's lodestar should first be looked at in terms of the hours spent on each of the two phases. Although the attorneys' fee motion suggests this comparison, the information they provide is incomplete. See Doc. 123-1, page 24. For the Campion firm,

the hours discussed include references to both phases. (We note, however, that the total lodestar requested by Mr. Campion's firm is lower than stated in the comparison of hours spent in the first phase of litigation to the second found on page 28 of the attorneys' fee motion, where his firm's total lodestar is listed as $311,000.) For Hyde & Swigart and Kazerouni Law Group, only additional fees in phase 2 are referenced. No information is provided regarding hours spent in either phase by Lieff Cabraser. Attempting to extrapolate a division of fees based on the information provided in the fee motion yields the following comparison:

	Phase 1	Phase 2	Total
Campion	$190,420.00	$127,542.50	$317,962.50
Kazerouni	$108,253.50	$59,004.00	$167,257.50
Swigart	$164,038.50	$34,060.50	$198,099.00
Lieff Cabraser			$49,658.00
Total Requested	$462,712.00	$220,607.00	$732,977.00
Compare to lodestar total requested in fee motion			$726,014.50

Jonathan Selbin claims a lodestar for his firm of $512,370.00. See Doc. 123-29, page 2, line 16. This appears to be erroneous, because class counsel's fee motion requests less than 10% that amount for Mr. Selbin's firm. Doc. 123-1, page 28. Regarding the work spent on the two phases by the other attorneys, the table suggests that class counsel spent approximately one-third of their lodestar following rejection of the first settlement. We believe no fees should be provided these attorneys for the benefit conferred on the second group of claimants. Those claimants were being left out entirely by class counsel; that class counsel had to do some additional work with their claims should be the basis of minimal, if any compensation. Class counsel did not take on contingent risk regarding these claims. At the least the court should deny them any lodestar multiplier for this work – their work on behalf of group 2 claimants can hardly

be considered of such high quality on merit a multiplier.

2. Factors courts consider in determining fee awards do not support the award of a lodestar multiplier.

Class counsel cite two lists of factors relevant to the award of fees. First, *In re Omnivision Techs., Inc.*, 2007 WL 4293467 at *10 (N.D. Cal. Dec. 6, 2007): "(1) the results achieved; (2) the risk of litigation; (3) the skill required and the quality of work; (4) the contingent nature of the fee and the financial burden carried by the plaintiffs; and (5) awards made in similar cases." Second, the more inclusive set of factors discussed in *Kerr v. Screen Extras Guild, Inc*., 526 F.2d 67, 70 (1975) (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.

Both tests highlight the results obtained for the class and the quality and amount of work. Rather than going over each of the above discussed factors, we draw the court's attention to the benefits obtained for the class and the quality of the work done by class counsel. In connection with the quality of the work, we believe it appropriate to consider the indicia of unfairness found in this settlement as identified in *Bluetooth*.

a) Not an excellent result

Other class action cases alleging violations of the TCPA provide a frame of reference for evaluating the excellence of the results achieved for the class. In *Samantha Ellison v. Steve Madden Ltd.*, case number 2:11-cv-05935, Central District of California,

every class member submitting a valid claim would be eligible to receive $150, unless the total claims were to exceed $10 million, in which case each class member would receive a smaller amount. Likewise in *Kramer v. Autobytel Inc.*, et al, Case Number 4:10-cv-02722, Northern District of California, Judge Claudia Wilken gave preliminary approval to a settlement under which class members would receive payments of up to $100 each. In *Grannan v. Alliant Law Grp., P.C.*, C10-02803 HRL, 2012 WL 216522 (N.D. Cal. Jan. 24, 2012), each class member received between $300 to $325. In *Malta v. Fed. Home Loan Mortg. Corp*., 10-CV-1290-BEN (S.D. Cal.), after final approval, claimants received $84.82. In *Kramer v. B2Mobile*, 10-CV-2722-CW (N.D. Cal.), class counsel estimated each claimant would be paid $100, subject to pro-rata reduction based on the maximum fund, and it was unclear from the final approval order how much money each claimant would actually receive.

The estimated award here is in line with that awarded in other cases – and is not exceptional or worthy of a lodestar multiplier. The uncertainty how much the defendant may have been willing to offer if the true size of the class had been known originally weighs against awarding counsel a lodestar multiplier.

b) The Skill Required and the Quality of Work

Class counsel failed to identify more than half of the class prior to the earlier final approval hearing. Unfortunately, this is not an anomalous occurrence for the attorneys involved here. The court should also know that most were involved in a case where, because of the work of objectors/intervenors, the court learned that notice was not provided to 36% of the class, or class members. Attached hereto as Exhibit A is a transcript of a hearing *with Arthur v. Sallie Mae, Inc.*, 2012 WL 4075238 (W.D. Wash. Sept. 17, 2012) highlighting the court's concerns regarding the adequacy of the notice program. There no notice was provided of a list of a dozen or more subsidiaries

benefiting from the release. In *Sallie Mae*, the defendant concealed (oh forgot!) 3,000,000 class members.

c) Conflicts of interest may be grounds for denial of fees

Another factor to consider is the degree to which the settlement reflected unfairness. Consider the indicia of unfairness and collusion identified as signs the settlement is unfair *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935 (9th Cir. 2011). Under *Bluetooth*, the first signal a settlement is unfair is "when counsel receive a disproportionate distribution of the settlement, or when the class receives no monetary distribution but class counsel are amply rewarded." Id.; see also AMERICAN LAW INSTITUTE, PRINCIPLES OF THE LAW OF AGGREGATE LITIGATION § 3.05, comment b at 208 (2010) ("a proposed settlement in which the class receives an insubstantial payment while the fees requested by counsel are substantial could raise fairness concerns"). Here, class counsel's fee request is out of all proportion to the benefit they achieved for the class. And the benefit itself is unspectacular as compared to other prominent TCPA cases.

The second red flag under *Bluetooth* is a clear sailing agreement. *Bluetooth*, 654 F.3d at 947. A clear sailing agreement is an agreement by the Defendant to not challenge the portion of the settlement that will go to class counsel. The Settlement Agreement here contains such a provision. § 6.01. A defendant's agreement to not challenge a fee request deprives the court of an adversarial proceeding. "Such a clause by its very nature deprives the court of the advantages of the adversary process." *Weinberger v. Great Northern Nekoosa Corp*., 925 F.2d 518, 525 (1st Cir. 1991). The clause "suggests, strongly," that its associated fee request should go "under the microscope of judicial scrutiny." *Id*. at 518, 525. The clear sailing clause lays the groundwork for lawyers to "urge a class settlement at a low figure or on a less-than-optimal basis in exchange for red-carpet treatment on fees." *Weinberger*, 925 F.2d at 524; *accord Bluetooth*, 654 F.3d

at 948. "Provisions for clear sailing clauses 'decouple class counsel's financial incentives from those of the class, increasing the risk that the actual distribution will be misallocated between attorney's fees and the plaintiffs' recovery. They potentially undermine the underlying purposes of class actions by providing defendants with a powerful means to enticing class counsel to settle lawsuits in a manner detrimental to the class." *Vought v. Bank of A*m., N.A., 901 F. Supp. 2d 1071, 1100 (C.D. Ill. 2012). *See also* William D. Henderson, *Clear Sailing Agreements: A Special Form of Collusion in Class Action Settlements*, 77 TUL. L. REV. 813, 816 (2003) (urging courts to "adopt a per se rule that rejects all settlements that include clear sailing provisions.").

The third red flag pinpointed by *Bluetooth* is when the "parties arrange for fees not awarded to revert to defendants rather than be added to the class fund." *Bluetooth*, 654 F.3d at 947. This "kicker arrangement reverting unpaid attorneys' fees to the defendant rather than to the class amplifies the danger" that is "already suggested by a clear sailing provision." *Id*. at 949. Here, class counsel claim the additional fees to be paid by Chase are separate from the settlement fund – meaning if they are not awarded to class counsel they will be retained by Chase. Here both additional notice costs and additional fees paid under the amended settlement revert to the defendant.

These indications of unfairness suggest the court should give this fee request heightened scrutiny. Class counsel's work here reflects a conflict of interest with the class; they did not jealously protect the rights of the class, but sought an easy settlement. Under *Rodriguez v. W. Publ'g Corp*., 563 F.3d 948, 967-69 (9th Cir. 2009), denial of fees may be appropriate.

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C. The objector's fee should be based on the benefit conferred on Group 2

Class counsel have agreed to (negotiated) attorneys' fees of $345,000 for Objector's counsel Ben Nutley.[1] We support this request, but would add that the objector's contribution to the settlement is far greater and should be compensated based on the value of the benefit conferred on the class. The Ninth Circuit has held that objectors who provide a material benefit to the class through their objections are entitled to fees as a matter of law. *See Rodriguez v. Disner*, 688 F.3d 645, 659 (9th Cir. 2012) (objectors are entitled to attorneys' fees when they confer a substantial benefit on the class). When objections result in an increase to the common fund, the objectors may claim entitlement to fees on the same equitable principles as class counsel. *Vizcaino v. Microsoft Corp*., 290 F.3d 1043, 1051–52 (9th Cir.2002).

The objectors should be granted attorneys' fees proportional to benefit conferred on the class and should be deducted from the class counsel's fee request. *See, e.g., In re Prudential Ins. Co. of Am., supra*. (awarding objector's attorneys' fees out of class counsel's fee award); *Lonardo v. Travelers Indem. Co.,* 706 F. Supp. 2d 766, 816-817 (N.D. Ohio 2010) (same); *Duhaime v. John Hancock Mut. Life Ins. Co.*, 2 F. Supp. 2d 175, 176 (D. Mass. 1998) (same); *In re Horizon/CMS Healthcare Corp. Secs. Litig.*, 3 F. Supp. 2d 1208, 1215 (D.N.M. 1998) (same).

It is imperative district courts incentivize objector participation in the settlement process further the interests of the class and to prompt class attorneys to negotiate settlements with the best interests of the class at heart, rather than out of concern for their own gain.

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[1] Mr. Nutley has been a persistent champion for class members and was the prevailing objection counsel in the important *Rodriquez I and II* cases.

Here, because of the objector's efforts, 56,597 additional claims were processed, resulting in $3,960,092.09 additional monetary benefit being conferred on the class. The court should award 20% of this benefit to the objector, to be deducted from class counsel's fee or paid separately from that fee (which appropriate should only be based on the benefits brought to the Group 1 claimants). Legal and equitable principles support just compensation for objectors' counsel. In *Eubank v. Pella Corp.*, 13-2091, 2014 WL 2444388 (7th Cir. June 2, 2014), Justice Posner observed objectors can receive a substantial award:

> Enter the objectors. Members of the class who smell a rat can object to approval of the settlement. See, e.g., *Reynolds v. Beneficial National Bank*, *supra*, 288 F.3d at 287–88; Edward Brunet, "Class Action Objectors: Extortionist Free Riders or Fairness Guarantors," 2003 U. Chi. Legal F. 403, 411–12. If their objections persuade the judge to disapprove it, and as a consequence a settlement more favorable to the class is nego-tiated and approved, the objectors will receive a cash award that can be substantial, as in *In re Trans Union Corp. Privacy Litigation*, 629 F.3d 741 (7th Cir. 2011).

Eubank, at *5.

III. JOINDER IN OTHER OBJECTIONS

These objectors join in and adopt any other well-founded and meritorious objections.

IV. CONCLUSIONS

And all others to be presented at oral argument, these objectors request that the court sustain their objections and grant the following relief:

- Upon proper hearing, sustain these Objections.
- Upon proper hearing, enter such Orders as are necessary and just to alleviate the inherent unfairness, inadequacies and unreasonableness of the Settlement.

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V. CONFIRMATION OF CLASS MEMBERSHIP

Glenice May Camarista is a class member, claim number is JPCN1-5663043-3. Janiley Lynne Camarista is a class member, claim number is JPCN1-6640348-0.

LAW OFFICES OF DARRELL PALMER PC

Dated: October 15, 2014

By: /s/ Joseph Darrell Palmer
Joseph Darrell Palmer
Attorney for Objectors Glenice May Camarista and Janiley Lynne Camarista

CERTIFICATE OF SERVICE

I hereby certify that on October 15, 2014, I electronically filed the foregoing with the Clerk of the Court of the United States District Court for the Northern District of Illinois by using the USDC CM/ECF system.

I certify that all participants in the case who are registered CM/ECF users that service will be accomplished by the USDC CM/ECF system.

I further certify that paper copies of the foregoing were mailed to the following via U.S. Mail, postage prepaid:

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/s/ Joseph Darrell Palmer
Joseph Darrell Palmer

EXHIBIT A

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON AT SEATTLE

Mark A. Arthur, et al.,

Plaintiffs, NO. C10-198JLR

v. TELEPHONE CONFERENCE

Sallie Mae, Inc., SEATTLE, WASHINGTON
April 18,2010

Defendant.

VERBATIM REPORT OF PROCEEDINGS
BEFORE THE HONORABLE JAMES L. ROBART
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiffs: Beth Terrell
Matthew Wilson
Jonathan Selbin
Daniel Hutchinson

For the Defendants: Lisa Simonetti

For the Objectors
and Intervenors: Darrell Palmer

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Proceedings recorded by mechanical stenography, transcript produced by Reporter on computer.

THE COURT: Good afternoon, counsel. This is Judge Robart.

MR. SELBIN: Good afternoon, Your Honor, Jonathan Selbin from Lieff Cabraser Heimann & Bernstein, on behalf of plaintiffs, and with me from my office is Daniel Hutchinson.

THE COURT: Thank you.

MS. TERRELL: Good afternoon, Your Honor, Beth Terrell from Terrell Marshall Daudt & Willie, and also Matt Wilson, on behalf of plaintiffs, Your Honor.

MS. SIMONETTI: Lisa Simonetti for defendant.

THE COURT: Thank you. Counsel, I'm not quite sure what it is that I can do for you today, so let me tell you some things that I definitely know, and then see if you have any questions.

I am not going to prejudge the question of the intervention of what you all have taken to calling the Palmer objectors, but I do want to have briefing on that. Is there any reason why you can't have your briefing in opposition to the motion for intervention filed within seven days?

MR. SELBIN: I see no reason, Your Honor.

MS. SIMONETTI: Your Honor, one of my clients is on vacation and will not be returning until next week. Could we have until the end of -- well, maybe the beginning of the following week?

THE COURT: Why do you need the presence of your

client?

MS. SIMONETTI: I need the presence of my client in order to review the draft brief and approve the brief that we would file.

THE COURT: Counsel, that's your problem. That's not mine. I suggest you get a fax number.

You may note a small note of irritation in this. I'm very close, counsel, to just sending you all back to start over again. I really find nothing in here that justifies the way this matter has been handled. I mean, how we can have missed 36 percent of the class in our notice is a personal embarrassment to me, and it should be a personal embarrassment to counsel. And now we're trying to patch things up by a patch here and a patch there.

I am operating against an increasingly rigorous inspection of these kinds of actions by the circuit, and I am not sure that our work together, and by our work, I mean both the court's and the lawyers', is sufficient to pass muster to what needs to be done.

So the first thing we're going to get done, is we're going to get the motion to intervene decided. Once that motion to intervene is decided, which seems to me to be, until we can hear the briefing on it, two different sets of questions. One is, do we need counsel for the class that they propose -- or the group of plaintiffs who they propose are unrepresented with a class representative. That's one issue.

And second, that seems to be implicit in their briefing, is the question of should they appear as class counsel? Because class counsel haven't been competent enough to get this matter done without them. And I recognize that that's going to entitle them to a portion of the attorney's fees, and those are issues that I'll simply get to when the time comes.

So we will issue a minute order from this call that will re-note that motion to intervene to a date so that the Palmer objectors will know when their reply brief is due, and we will then endeavor to get you an answer on intervention as promptly as possible.

The other thing, it seems to me, that you should know is I am, I think, authorized under the law to do preliminary approvals without going through all of the formalities given that we've done this once, and I am willing to entertain some form of expedited or simplified preliminary approval process of the new and expanded class. I, however, will not allow any notice to be sent out that we have not approved, because I don't feel that the notices that have been suggested in the past have passed muster.

I am going to want a very, very detailed explanation of what's going up on the website, because it seems to me that the behavior of counsel in regard to the website has been at best negligent and at worst an intentional effort to get around the Mercury General case. So we're going to have to supervise that much more rigorously than we have in the past so that we don't

have a further effort to avoid some of the requirements of disclosure of the basis for fees, which seems to me to be a significant question in this matter.

Having said all of that, which I'm sure you're delighted to hear, I have one other question, which is that we apparently now have 1.762 million people, and we have been told that in the original notice that class members who were over 180 days delinquent in their payments, but eventually paid off their loans, are now going to be made whole by providing a cash reward if they submitted a claim.

Yet the website in regards to those people provides class members who at any time have been 180 days or more delinquent on their payments on extension of credit owed or serviced by Sallie Mae, or any other affiliate or subsidiary of SLM Corporation, shall not be entitled to make a claim for a cash award.

So it seems to me that we have told them they are not getting a cash award. That's what's on the website. That's what they know. And now we're saying, without telling you anything different, we're going to make you eligible for award if you submitted a claim.

I am not comfortable with that. So it seems to me that we need to contemplate how we are going to unring that bell and re-ring it in the manner that you now propose.

MR. SELBIN: Your Honor, this is Jonathan Selbin. May I address that point?

THE COURT: Yes.

MR. SELBIN: I think there may be -- the use of the term "cash award" may be a little bit confusing because there are two different kinds of monetary awards that you can get under the original settlement. There is a cash award and there is a reduction award.

They are both monetary relief. The cash award is dollars. You get a check. The reduction award is you get a credit against your account.

It was always the case that the 180-day charged off class members would only get a reduction award, not a cash award. What has changed is the circumstances come up where there are some unknown number -- albeit in all the contacts we've had, we've literally talked to one such person who was 180 days or more late and would be able, therefore, to only get a reduction award, but subsequently paid off their loan in full, and so there is no account against which to run the credit.

So the notion is that to the extent there are any such people -- and we know of one, but there may be others, obviously. They would now be entitled to a cash award rather than a reduction award, because there is no way to give them a reduction award. And so I have to think through Your Honor's question about the extent to which those people were led not to file claims, because I would think since they are entitled to monetary relief, just only a reduction award, they would have probably

filed the claim seeking their monetary relief and we can now honor that claim. But I understand Your Honor's point that we need to consider whether someone might have been dissuaded from filing that claim.

THE COURT: Well, wouldn't we have dissuaded anyone from filing that claim who had paid off their award since we told them they couldn't have a cash award?

MR. SELBIN: Well, Your Honor is right. We told them they could have a reduction award.

THE COURT: And they didn't have anything to reduce, so they didn't bother to file a claim.

MR. SELBIN: I understand Your Honor's point. We were trying, with this change, to address the situation that was speculative at the time we sort of figured it out, which was after preliminary approval, and then we had a single person come through in all the calls that we've gotten who fit that situation. Now, that person filed a claim, and they just figured they were entitled to something, they were going to go ahead and file the claim and make the pitch that they should get it. But I understand Your Honor's point.

THE COURT: All right. On the February 26th date for claim forms, how many did Garden City receive?

MR. SELBIN: The total claim forms that were received by Garden City -- There is two different kinds of claims that can be made. The total claim forms was approximately 104,500. There

is a precise number, but that's the approximate number. And the revocation requests, in other words, the people who asked to not be called was 75,260.

MS. TERRELL: I apologize for interrupting. This is Beth Terrell. Mr. Palmer has e-mailed me, indicating that he's trying to join the conference call and that the call is at capacity. Would Your Honor like me to try to join him in, and is there a way for us to do that?

THE COURT: What is his number?

MS. TERRELL: His number is 858-792 --

THE COURT: Go slowly, please, Ms. Terrell.

MS. TERRELL: (858)792-5600.

THE COURT: All right.

LAW CLERK: We're going to try to conference him in.

THE COURT: Just hang tough for a moment. Ms. Terrell, can you conference call him in on your line?

MS. TERRELL: I think I can. Hold on just a minute, Your Honor.

THE COURT: Counsel, are we back?

MS. TERRELL: Yes, we are, Your Honor.

THE COURT: Who has joined the party?

MR. PALMER: Hello, Your Honor. Darrell Palmer in San Diego on behalf of the objectors and intervenors.

THE COURT: Mr. Palmer, I will tell you that prior to your arrival, I have told the parties that they need to respond

to the pending motion for intervention with a briefing filed within a week, and that we are going to set a note for the motion, re-note it. And off of the local rules here, that will allow you to calculate when your reply, if you choose to file one, is due. Any questions in regards to that?

MR. PALMER: No, Your Honor.

THE COURT: Counsel, when we left off, I was explaining to you that it seems to me we have a problem in regards to what we seem to have been calling the 180-day members, and I am not sure -- I will welcome your proposals on how to deal with that.

It seems to me that we have created a situation where anyone who had paid off their loan was invited by the current website information -- was told they were not eligible for a cash award and, therefore, they wouldn't have filed a joinder in the class, and that now is no longer the case, and there is going to have to be some mechanism arrived at that will allow that to be remedied.

Other than that, counsel, I am not prepared to go any further than to do what I have already told you. It seems to me that we need to deal with the intervention motion.

It's not my practice to tell you that you should or should not sign an amended settlement agreement. That's something that I will pass on when the time comes as to the merit of the settlement.

And in terms of what goes up, you should know that if this class is certified and we need to go out mailings, I expect to

see them. I am also going to want to know what goes up on the website. So that's what I can do for you.

I'll start with the plaintiffs, whoever would like to speak on their behalf.

MR. SELBIN: Thank you, Your Honor, Jonathan Selbin. I think that all makes good sense in terms of how to proceed and we will follow Your Honor's directions on that.

Just a couple of notes, if I may. We obviously were not intending, and it was always our intention that we would get Your Honor to sign off on any new notice before it goes out. We would not send out notice to the class, even if we did a more limited preliminary approval process, because I agree with Your Honor. You have to approve that notice before it goes out, and that includes the website as well.

Your Honor, on the website issue, as I have before, I want to take responsibility for the fact that we made a mistake with the date that resulted in the information not being available prior to final approval, but I can only ask that the court, you know, view it as it is, which is a mistake. We did not have any intention, and we've made every effort to make sure that our fee information is available to the class and in as full a form as possible, including filing all of the detailed time records, which is not, in my experience at least, ordinary practice. But it is not intentional in order to try to hide that. We think our fee will be addressed at the proper time, is appropriate, not

particularly large on these kind of cases. But I assure the court as an officer of the court, that it was never our intention to mislead the court or anyone else on these matters.

THE COURT: Thank you, counsel. Mr. Wilson?

MR. WILSON: Nothing from me, Your Honor.

THE COURT: Anyone on behalf of the student marketing? Ms. Simonetti?

MS. SIMONETTI: Your Honor, we're content with what you've proposed.

THE COURT: All right. Well, let's see. I guess -- I'm sorry. Mr. Palmer, are you still with us?

MR. PALMER: There is just so much to address in the settlement, Your Honor.

THE COURT: We're not doing the merits of the settlement. I am starting a three-week trial in ten minutes, so I'll warn you that you are being crammed in.

MR. PALMER: Well, I think as long as we have an opportunity to be heard in the future when the time comes to make a decision about who is in the class and whether or not the class actually received notice. I will tell you those are some glaring questions that remain, and perhaps some of that will be handled at the motion for intervention. At least that's our hope.

THE COURT: All right. Counsel, thank you. I will look forward to the briefing, and expect a minute order that will set out a new noting date.

And, Mr. Palmer, off of that you can calculate when your reply is due. Thank you, counsel. We'll be in recess.

CERTIFICATE

I, Denae L. Hovland, Official Court Reporter, do hereby certify that the foregoing transcript is true and correct.

/S/Denae L. Hovland
_____
Denae L. Hovland