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Attorney for Objector John W. Davis

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Patricia Connor, Shari L. Bywater, individually, and on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

JPMorgan Chase Bank and Federal National Mortgage Association a/k/a Fannie Mae,

Defendants.

Case No. 10 CV 1284 GPC BGS

AMENDED JOINT MOTION FOR APPROVAL OF:

(1) WITHDRAWAL OF DAVIS OBJECTION, AND

(2) AGREEMENT ALLOCATING OBJECTOR ATTORNEYS' FEES AND INCENTIVE AWARD

Date: December 15, 2014
Time: 1:30 p.m.
Judge: Hon. Gonzalo P. Curiel
Courtroom: 2D

WHEREAS class member John W. Davis submits this amended joint motion, which is intended to supersede an otherwise identical Joint Motion filed December 5, 2014 (Doc. No. 153), and which differs only in that the prior-filed Joint Motion lacked a supporting Memorandum of Points and Authorities and supporting declarations, which are now submitted herewith.

WHEREAS class member John W. Davis filed an objection to the settlement of this case, asserting *inter alia* that the Settling Parties had omitted eligible class members from the list of approved claimants under the settlement.

WHEREAS defendant subsequently undertook an investigation resulting in the discovery of 1,303,112 additional individuals entitled to make claims.

WHEREAS the settling parties, with the participation of Davis's counsel C. Benjamin Nutley, conducted further negotiations and amended the settlement to increase the amount of money to be paid to the Class, resulting in an increase in the value of the settlement of at least $1.9 million.

WHEREAS the primary objections that Davis lodged have been met because: (1) the omitted class members were discovered, notified, and compensated; (2) the settlement was amended to increase the amounts to be paid to existing and newly-discovered class members, and (3) Class Counsel's present request for attorneys' fees has been reduced in absolute terms, and Class Counsel expended considerable additional effort on behalf of the Class after Davis's objection.

WHEREAS Class Counsel and Davis's counsel Nutley subsequently negotiated in good faith to determine appropriate attorneys' fees to be allocated to Davis's counsel and, on consideration of the relevant factors, agreed upon the source and amount of fees to be paid.

THEREFORE, the settling parties hereby respectfully move as follows:

1. For an order approving the withdrawal of Davis's objection, as having been substantially met; and

2. For an Order recognizing that Class Counsel have agreed that the participation of Davis and his counsel Nutley was beneficial to the result in the case, and approving the agreed allocation of $345,000 for fees, expenses, and incentive award to Davis and his counsel. The payment shall be taken from the fee awarded to Class Counsel in the case, and shall be paid over within five days of Class Counsel's receipt of their own fee. The payment shall be divided as follows: $342,500 as fees and expenses, payable to Mr. Nutley, and $2,500 as an incentive payment, payable to Mr. Davis.

Dated: December 10, 2014

/s/ C. Benjamin Nutley
Counsel for John W. Davis

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Dated: December 10, 2014

/s/ Douglas J. Campion
Counsel for Plaintiffs PATRICIA CONNOR and SHERI L. BYWATER and the Proposed Settlement Class

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ECF Signature Certification

Pursuant to Section 2(f)(4) of the Electronic Case Filing Administrative Policies and Procedures Manual, I hereby certify that the content of this document is acceptable to Douglas Campion, counsel for the Class, and that I have obtained Mr. Campion's authorization to affix their electronic signature to this document.

Dated: December 10, 2014

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Plaintiffs,

vs.

JPMorgan Chase Bank and Federal National Mortgage Association a/k/a Fannie Mae,

Defendants.

Case No. 10 CV 1284 DMS BGS

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF JOINT MOTION FOR APPROVAL OF:

(1) WITHDRAWAL OF DAVIS OBJECTION, AND

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I. INTRODUCTION AND FACTUAL BACKGROUND

Class Counsel and Objector John Davis have reached an agreement by which Davis's counsel will be compensated for his efforts in bringing about the amended settlement in this case. Mr. Davis also seeks to withdraw the original objection that led to the amended settlement.

Davis's objection resulted in a comprehensive effort by Chase to uncover unidentified class members. That effort increased the number of eligible class members by over 100%. Meanwhile, the parties negotiated an amendment to the settlement, with the participation of Davis's counsel. As a consequence of the objection and the renegotiation of the settlement, Chase is bound to pay an additional $3,960,092 to the newly-discovered class members.

The original approved settlement had a $7 million floor and a $9 million cap (inclusive of all fees, costs, and incidental expenses). Under its terms, the minimum possible *pro-rata* recovery was $25, until the $9 million cap, at which point the *pro rata* recovery could go below $25 if there were enough valid claims. Doc. 50 at ECF 12 (citing Settlement Agreement at §5.02). Initial (Group 1) claims did not meet the $7 million floor, resulting in a recovery of about $69 each for Group 1 claimants.

Thus, there was a reasonable argument that the existing settlement could absorb the newly-discovered Group 2 class members without any

change (except perhaps Chase paying for additional notice or other incremental costs) because the settlement never guaranteed any specific minimum *pro rata* return. That is, even if the claimant pool were doubled, the *pro rata* recovery would still be within the noticed terms of the initial settlement preliminarily approved by the Court.

However, the amendment was designed to ensure that all claiming class members would get approximately $69, by adding up to $3,960,092.09 for new claimants.[1] The amendment effectively converted the settlement, at least for Group 2 members, into a claims-made settlement that added $69.97 to the settlement fund for each claiming class member of Group 2. See Doc. No. 146-1 at ECF 13 (up to 60,998 claims). That also protected the $69.97 recovery already calculated for Group 1 members, by making it unlikely that the addition of Group 2 claims would dilute Group 1's recoveries, and ensuring parity between the two groups for due process purposes. Doc. 105 at ECF 2 (clarifying that Group 1 and Group 2 claimants would receive same *pro rata* amount).

The fee allocation of $345,000, to be taken from Class Counsel's gross fee award, is reasonable. The fees and expense allocation requested equals between 7 to 9 percent of the additional value created by the settlement

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[1] *See* Doc. 122-1 at ECF 13:8-20 (Memorandum of Points and Authorities in Support of Plaintiff's Motion in Support of Final Approval of Class Action Settlement).

amendment,[2] and approximately 14 percent of the total fees requested by all counsel. The fee allocation was negotiated in good faith with Class Counsel, and the allocation will not reduce the class fund or the recovery of any class member.

II. ARGUMENT

The withdrawal of an objection to a class settlement requires court approval. Fed. Rule Civ. Proc. 23(e)(5). Although the major changes to the settlement terms and other subsequent events have effectively rendered the Davis objection sustained in pertinent part, resolved by stipulation, or otherwise moot, Rule 23 technically prevents it from being withdrawn without the approval of this Court. As the objection was successful, it may be deemed withdrawn.

Class Counsel also agreed to allocate from their fee award a payment of attorneys' fees to Mr. Davis's counsel, C. Benjamin Nutley. The degree to which the law requires disclosure of the attorneys' fee allocation to (or the approval of) this Court is unclear, particularly where it is a negotiated allocation being paid solely from fees awarded to Class Counsel. *E.g.*,

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[2] That $4,557,500 value includes the additional $3,960,092 in cash, costs of notice and administration of $580,500, and defendant's agreement to add up to $125,000 in fees. Omitting notice and administration costs and the additional attorneys' fee payment, the fee allocation is 8.5% of the additional cash benefit being paid directly to the Group 2 claimants. Viewed another way, the allocation is 17% of the $1.96 million cash added to the settlement over and above the $9 million cap in the first settlement.

Hartless v. Clorox Co., 273 F.R.D. 630, 646 (S.D. Cal. 2011) *aff'd in part*, 473 F. App'x 716 (9th Cir. 2012) (Rule 23(e)(3) requires identification of agreements with defendant as to total amount of attorneys' fees, which could affect class members' interests, but not the good-faith allocation of the awarded fees among class counsel, which "does not affect the monetary benefit to class members.").[3]

Regardless, as embodied in the Stipulation and Order submitted herewith, objector's counsel and class counsel agreed to seek a separate order approving both the withdrawal of the objection and the fee allocation to Davis's counsel, to ensure a clear public record and full compliance with any interpretation of the rules.

A. Objector has no Further Objections to the Settlement as Amended; the Davis Objection may be Withdrawn

As set forth in Plaintiffs' papers in support of the settlement, Mr. Davis's objection about the omission of class members was addressed by defendant's extensive efforts to identify the omitted people. Doc. No. 146-1

[3] There is authority that fee-sharing agreements among class counsel, at least, must be disclosed so that courts can screen for potential conflicts or skewed incentives. *E.g.*, *In re "Agent Orange" Product Liability Litigation*, 818 F.2d 216, 226 (2d Cir.), *cert. denied*, 484 U.S. 926 (1987) (class counsel "must inform the court of the existence of a fee sharing agreement at the time it is formulated" so that the court may "prevent potential conflicts from arising"); *cf. Bowling v. Pfizer, Inc.*, 102 F.3d 777, 781 n.3 (6th Cir. 1996) (*in camera* disclosure of fee-sharing required at settlement approval so that court can guard against the "risk that counsel has in some way been 'bought off' and provided with a significant incentive to not represent the class's interest.").

at ECF 12.

On the primary merits issue – the result obtained for the class – Plaintiffs here have also established that the result is squarely within the range found in similar cases. Doc. 139 at 20-21. Davis does not regard the "similar cases" statistic as dispositive. Given potentially large variations in culpability among defendants, it is undesirable to establish a presumptive "going rate" for TCPA cases divorced from their individual merit. However, Davis's counsel has reviewed discovery in the case and conferred at length with Class Counsel concerning the evidence developed in the case, their perception of the risk, and developments in applicable law over the course of the last two years. Nutley Decl., ¶¶ 3, 4. In addition, Davis's counsel is aware of the issues faced in bringing class actions to trial generally and has confirmed through independent research the specific potential issues faced in certifying a TCPA class and bringing the case to trial. Nutley Decl., ¶¶1, 9. On consideration of this multiplicity of factors, including the unusual procedural complications in the case, any further gainsay of the recovery would be unproductive.

Davis's earlier objections to the attorneys' fees have been addressed satisfactorily or rendered inapplicable. Now, Class Counsel's fee request, both in percentage and lodestar/multiplier terms, is more modest than the fee that Davis originally objected to. Class Counsel's papers actually

understate that reduction, for the allocation to Davis's counsel is to be made from the fee awarded to Class Counsel. Thus, while the total fee to all counsel working on the Plaintiffs' side remains just under 20%, Class Counsel's share of that fee is actually slightly less. Class Counsel performed additional work and took additional risk. To Class Counsel's credit, they took up the cause of negotiating a higher settlement value for the class, though there was an argument that they were bound to the earlier settlement and that it could have gone forward essentially unchanged. *See* discussion, *supra*, at 1-2. Given the additional work of counsel, not to mention the significant increase in the class membership and settlement amount, the fee requested now cannot support any reasonable inference of collusion in connection with the settlement.

In fact, now that the claims rates and class compensation are known, Davis further notes that the fee request is based primarily upon dollars *actually claimed* by the class and paid over by Chase, rather than a percentage of a hypothetical fund merely being "made available" for claims. Thus Davis's central objections to the settlement and attorneys' fees no longer apply, and Davis's other objections to the settlement or its amendment have variously been corrected, clarified by the parties, or

mooted by subsequent developments.[4] Accordingly, Davis submits that the objection may be deemed satisfied and withdrawn.

B. The Fee Allocation to Davis's Counsel Should be Approved

There is substantial legal authority and factual support for an award of fees to Davis's counsel in this case, and the amount of the allocation is reasonable. First, that Class Counsel have agreed to the allocation is compelling, because it confirms their acknowledgment of the benefit conferred by Davis and his counsel. The allocation is objectively reasonable, given the impact of the objection, Davis's counsel's role in the amendment to the settlement, and the results of that amendment.

1. Objector's Counsel Conferred a Compensable Benefit in the Case

Davis's objection unquestionably had a beneficial effect on the litigation, by revealing the omission of a more than half of the affected consumers, preserving their due process rights. Even if the settlement had not been measurably improved afterward, that would support a discretionary award of fees for contributing adversarial context.[5]

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[4] For example, Davis originally objected to the *cy pres* provisions of the settlement, but it soon became obvious they would not involve a material amount of money. *See* Doc. 139 at ECF 29-31 (settlement fund will be exhausted, such that *cy pres* provisions of settlement need not be considered).

[5] *E.g.*, **Error! Main Document Only.***Zucker v. Occidental Petroleum Corp.*, 192 F.3d 1323, 1329 (9th Cir. 1999) (observing that objector's attorney

But here, the objection resulted in more than backstop advocacy; the settlement was improved, and its revisions require Chase to add $3.9 million to the settlement. That result equitably requires the payment of fees to Davis's counsel; 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." *Rodriguez v. Disner*, 688 F.3d 645, 658 (9th Cir. 2012) ("*Rodriguez II*"), citing *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051-52 (9th Cir. 2002); *Eubank v. Pella Corp.*, 753 F.3d 718, 720 (7th Cir. 2014) (observing that "if a settlement more favorable to the class is negotiated and approved, the objectors will receive a cash award that can be substantial.") citing *In re Trans Union Corp. Privacy Litig.*, 629 F.3d 741 (7th Cir. 2011) (directing increased fee award allocation to objecting attorney for helping to increase common fund, despite "inherent uncertainties" in estimating her relative contribution to the increase).

Here, the increase in the settlement amount was not a preordained result of adding the undiscovered class members to the original settlement.

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had made a "substantial" contribution "by providing an adversarial context in which the district court could evaluate the fairness of attorneys' fees."); **Error! Main Document Only.***Frankenstein v. McCrory Corporation*, 425 F. Supp. 762, 767 (S.D.N.Y. 1977) **Error! Main Document Only.**("where the objections filed produced a beneficial effect upon the progress of the litigation, an award of fees is appropriate."); *Howes v. Atkins*, 668 F. Supp. 1021, 1027 (E.D. Ky. 1987) ("Objectors' counsel ably performed the role of devil's advocate in this litigation and is deserving of a fee award for this service, even though the settlement was not improved.").

See discussion, *supra*, at 1-2. It required an amendment to the settlement that succeeded in maintaining the pro-rata recovery at $69.97. As the parties themselves have acknowledged, that amendment was not easily reached and, until recently, was not entirely clarified and finalized in its particulars.

2. The Stipulated Allocation Was Negotiated in Good Faith and will not Affect the Class's Recovery; This Court should Afford it Deference

Class Counsel have agreed to pay the fee allocation from their own fee award. Consequently, the allocation of the fee to Davis's counsel will not reduce the amount that would otherwise be paid to the class. Nor is it subject to objection by Defendant, because the total fee sought by Class Counsel (including the fee allocation to objector's counsel) is well under the amount of the "clear sailing" agreement the Settling Parties originally negotiated. *See* Doc. 100-7 at ECF 8, ¶14.

Class Counsel and Davis's counsel negotiated the instant fee allocation in late September, 2014, and reached agreement in principle in early October, 2014. Nutley Decl., ¶12. Because Davis's objection was by that time already substantially and favorably resolved, Class Counsel had no incentive to agree to excessive fees in exchange for the withdrawal of a too-meritorious

objection.[6] Instead, the primary issue was whether the fee award to Davis's counsel would be higher or lower if sought by contested motion. That was an issue of direct financial interest to Class Counsel, given the likely source of the requested fee.[7] The resulting stipulation is an allocation amount negotiated in good faith by sophisticated participants, properly incentivized, with an understanding of the value of the services provided and the range of potential results of a litigated alternative. The Court should therefore give substantial deference to that negotiated result. *Hartless v. Clorox Co.*, 273 F.R.D. at 646; *In re Ampicillin Antitrust Litigation*, 81 F.R.D. 395, 400 (D.D.C.1978) (awarding lump-sum fee to be allocated by inter-counsel agreement and commenting that "it is virtually impossible for the Court to determine as accurately as can the attorneys themselves the internal distribution of work, responsibility and risk" relevant to the fee allocation).

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[6] *Cf., e.g., In re Telectronics Pacing Sys., Inc.*, 137 F. Supp. 2d 985, 1021-24 (S.D. Ohio 2001) (finding $300,000 payment to settle related claims of single objector, to be taken from a separate fund designated for that purpose, did not prejudice the class and was not a "secret" payment to buy the objector's silence).

[7] Courts frequently pay successful objectors' counsel from funds allocated to pay class counsel. **Error! Main Document Only.***Duhaime v. John Hancock Mut. Life Ins. Co.*, 2 F.Supp.2d 175, 176 (D.Mass. 1998) (ordering objector's counsel paid from class counsel's fee fund; because objector had "shared with class counsel the work of producing a beneficial settlement" the Court found it "appropriate that they also share in the fund awarded to recognize the cost of producing the benefit to the class.") citing *In re General Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 820 (3d Cir. 1995).

Finally, as explained below, the amount Class Counsel agreed to pay is objectively reasonable, both as a percentage of the increase in the settlement and as a percentage of the total fees requested by Class Counsel.

3. The Negotiated Allocation is Reasonable in Light of the Result

In common fund cases, when objectors' efforts lead to an increase in a fund, courts consider the contributions of objectors using the same equitable considerations as are applied to class counsel. *Rodriguez II*, 688 F.3d at 660 ("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.") citing *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980).

Where an objector's efforts lead to an incremental increase in the class fund that can be estimated, then courts use that incremental amount as the benefit conferred for the purpose of setting fees under the common fund doctrine. *In re Trans Union*, 629 F.3d at 748; *Consolidated Edison Co. Of New York v. Bodman*, 445 F.3d 438, 460 (D.C. Cir. 2006) (reversing denial of fees to an attorney who did not represent a certified class and directing that "[P]ayment should be allowed "as a reasonable proportion of the amount actually collected ... for which petitioners' attorneys were responsible") *cf. Swedish Hospital v. Shalala*, 1 F.3d 1261, 1272 (D.C. Cir.

1993) (reminding that courts should "apply a percentage of the fund calculation to only that portion of the fund for which counsel was responsible."); followed in *In re First Databank Antitrust Litigation*, 209 F.Supp.2d 96, 100-101 (D.D.C. 2002) (in case "piggybacking" on FTC action, class counsel would be limited to payment of 30%, or $2.4 million, of the $8 million amount their efforts increased the existing common fund). Here, the amendment to the settlement provided for an additional 4.5 million in additional value to the class, and approximately $2 million more in cash than the original settlement. The fee allocation to Davis's counsel is only 7.5 % of the incremental increase in the total value conferred upon class members, and only 8.5% of the additional cash being paid over by Chase to the Group 2 class members. *See* discussion, *supra*, at 3, fn. 2.

The result is likewise supported by comparing the allocation amount to the total fees requested by Class Counsel. *E.g.*, *In re Prudential Ins. Co. Of Am. Sales Practices Litig.*, 273 F.Supp.2d 563, 565 (D.N.J.2003) (because objections were responsible for 1.4% of the value of the fund, objectors were awarded 1.4% of total attorneys' fees); *Ampicillin*, 81 F.R.D. at 400 (lump sum fee to be allocated in part based on relative contribution of the attorneys to the group effort); *Pergamet v. Kaiser-Frazer Corp.*, 224 F.2d 80 (6th Cir. 1955) (in derivative case, evaluating district court allocation among principal attorneys and objectors attorneys based upon same "substantial benefit"

standard, considering their relative contributions to result); Here, Class Counsel and Davis's counsel agreed to a payment that is 14% of the entire fee being requested by Class Counsel. Given the magnitude of the effect of the objection on the settlement as a whole, that proportion is surely reasonable.

4. The Negotiated Fee is Reasonable in Light of the Risk

It is well-established that fee awards should be set to compensate for the risk faced by lawyers who undertake cases in which their fee award is dependent upon success, and in which they face a risk of nonpayment. *Fischel v. Equitable Life Assur. Soc'y of U.S.*, 307 F.3d 997, 1008 (9th Cir. 2002). Thus, Class Counsel here have sought a fee that, cross-checked on a lodestar/multiplier basis, includes a multiplier. Doc. 123-1 at ECF 26:20. So, too, does the allocation to Davis's counsel.[8] Both are within the range of multipliers awarded in contingent common-fund cases.[9]

That is appropriate. In some regards, counsel for objectors face more contingent risk of nonpayment than even class counsel, because they face

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[8] As a comparison to Mr. Nutley's current lodestar, the fee represents approximately a 2.75 multiplier. *See* Nutley Decl., ¶¶ 13-14. That lodestar is increasing; Mr. Nutley continues to bill time assisting Class Counsel in connection with final approval.

[9] *See Vizcaino*, 290 F.3d at 1051, n.6; *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995) (awarding 25% and noting resulting multiplier of 3.6 "which is well within the acceptable range for fee awards in complicated class action litigation such as this."); *Torrisi v. Tucson Electric Power Company*, 8 F.3d 1370, 1376–77 (9th Cir. 1993) (upholding percentage award resulting in a 3.75 multiplier on lodestar).

more hurdles in achieving compensable results. An objection typically challenges a settlement supported by the principal litigants and their sophisticated counsel, provisionally approved by a court, and favored by legal presumption. The inertia of such a settlement is considerable and, consequently, objections that result in a substantive change to a settlement are rare. Christopher R. Leslie, *The Significance of Silence: Collective Action Problems and Class Action Settlements*, 59 Fla. L. Rev. 71, 105 (2007).

Despite facing multiple adverse parties and presumptions, a successful objection typically requires the analysis of numerous case documents and the production of argument within a very short window of time. Edward Brunet, *Class Action Objectors: Extortionist Free Riders or Fairness Guarantors*, 2003 U. Chi. Legal F. 403, 448 (2003) (objectors' counsel "have little time to collect their own information, formulate a coherent position, and formally object to the court); Leslie, *supra*, 59 Fla. L. Rev. 71, 96-97 (concluding that "[a] dearth of information coupled with administrative hurdles and a short response period can combine to make any meaningful objection impractical.")

In spite of all this, even objectors who are successful risk going uncompensated. *See* Brunet, *supra*, 2003 U. Chi. Legal F. at 462 (noting that objectors are unlikely to be compensated for "major victories" in which

they "defeat a proposed settlement so thoroughly that the settlement is never revived.").[10] In a troublingly persistent theme over the years, some courts have refused to credit objectors for demonstrable improvements in settlements or class recoveries. *See* Leslie, *supra*, 59 Fla. L. Rev. at 99 & n.190 ("Even in cases in which the objectors did improve the settlement, their fees sometimes are denied.").[11] This means that successful objectors' counsel sometimes must also successfully prosecute follow-on appeals just to establish their right to a fee award. Circuit courts have made it clear that the constructive participation of objectors should be fostered.[12] That can only be

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[10] For an example involving Mr. Nutley, see *Consumer Cause v. Mrs. Gooch's Natural Food Markets, Inc.*, 127 Cal.App.4th 387 (2005) (although "focused and persuasive" objections by "experienced class counsel" convinced trial court to deny final approval, where plaintiff then voluntarily dismissed case there was no source of payment of fees for successful objector's counsel).

[11] *See also Rodriguez II,* 688 Fed.3d at 659 (error to deny fee on grounds that district court relied on its "own analysis" of the law in determining forfeiture of lead counsel's fee on ethical grounds, where objection and subsequent appeal led to that result); *Reynolds v. Beneficial* **Error! Main Document Only.***Reynolds v. Beneficial Natl. Bk.*, 288 F.3d 277, 288 (7th Cir. 2002) (Posner, J.) (error to deny fee on grounds that court had "without telling anybody" previously reached the conclusion urged by objector's counsel); **Error! Main Document Only.***Green v. Transitron Electronics Corp.*, 326 F.2d 492, 498-99 (1st Cir. 1964) (same).

[12] *See Bell Atlantic Corp. v. Bolger* 2 F.3d 1304, 1310 (3d Cir. 1993) (in settlement, courts lose benefits of adversarial process so that "objectors play an important role by giving courts access to information on the settlement's merits."); *Reynolds* v. *Beneficial National Bank,* 288 F.3d 277, 288 (7th Cir. 2002) (desirable participation of objectors in fairness hearings "is

accomplished by awarding successful objectors' counsel fees that fully compensate the unique risks attending their work.

5. The Skill and Expertise of Mr. Davis's Counsel Support the Negotiated Fee

C. Benjamin Nutley, the attorney Mr. Davis retained to prosecute the objection, is experienced in prosecuting objections, but also has experience representing plaintiff classes in all phases of class action litigation. *See* Nutley Decl. ¶1 and Exhibit 1 thereto. This combination of skill and experience is highly unusual for objectors' counsel. Attorneys with the qualifications to be certified as class counsel – who possess the experience required to object most effectively – rarely undertake objection work. That is not only because, as discussed above, serving honestly as objectors' counsel is not nearly as lucrative. It is also because objectors and their counsel are generally unwelcome litigation participants. *See* Leslie, *supra*, 59 Fla. L. Rev. at 98-99 & nn.180-82 (objectors are often subject to withering *ad hominem* attack by supporters of the settlement and, sometimes, the trial judge); Brunet, *supra*, 2003 U. Chi. Legal F.at 411 (concluding that "[O]bjectors may be the least popular litigation participants in the history of civil procedure."). That perception is augmented by the often uneven quality

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encouraged by permitting lawyers who contribute materially to the proceeding to obtain a fee."); *cf**Error! Main Document Only.*. *Seigal v. Merrick*, 619 F.2d 160, 164-65 (2d Cir. 1980) (disapproving a trial court's reduction of fees to an objector in a derivative case for efforts on theories that did not ultimately prevail).

of objections, and by the participation of objectors who lodge generic objections for improper purposes. *See, e.g., Shaw v. Toshiba America Information Systems, Inc.*, 91 F.Supp.2d 942, 973-74 & nn. 17-19 (E.D. Texas 2000). This presents yet another basis for rewarding objectors' counsel when they are successful: to encourage the desirable participation of competent, qualified counsel.

C. An Incentive Award for Mr. Davis is supported

Class Counsel have agreed not to oppose an allocation of $2,500 to Mr. Davis, to be paid from the $345,000 allocation, as an incentive award.[13] Mr. Davis was indispensable to the result obtained. Nutley Decl., ¶ 12. He maintained detailed records of his communications with Chase (*see* Doc. 64-1), such that his objection could not be dismissed as erroneous or anomalous. Because of his training as a lawyer, he understood the potential implications of Chase's omission and he provided far more advice and assistance to his counsel than a lay objector could. He committed substantial time and effort doing so. Davis Decl., ¶ 5 . Additionally, Mr. Davis declined to opt-out to pursue his own case against Chase, though his

[13] The criteria courts may consider in determining whether to make an incentive award include: 1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation." *Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294, 299 (N.D.Cal.1995) (citations omitted).

documentation would have made such a case more viable, and more valuable, than most. These factors support the allocation of $2,500 as an incentive payment.

Dated: December 10, 2014

/s/ C. Benjamin Nutley

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Attorney for Objector John W. Davis

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Courtroom: 2D

I, C. Benjamin Nutley, am an attorney licensed to practice in the State of California and admitted to practice before this Court. I make this Declaration on the basis of personal knowledge and if called to testify regarding the matters stated herein could do so competently.

1. I have approximately 20 years' experience as a lawyer, almost exclusively in the field of class actions. I have represented plaintiff classes in all phases of class and representative litigation, including trial and appeal. I have also represented objectors in a wide variety of class action cases. My experience is set forth in more detail in my firm profile, attached hereto as Exhibit 1, which is a current version of a document that I submit to courts for the purpose of establishing my qualifications and experience in class litigation.

2. I have been involved in this case since July, 2012, when Mr. Davis contacted me concerning the proposed settlement. I substantially prepared the Davis objection in this case, and filed an appearance as counsel of record when it became clear that the omission of Mr. Davis from the notice program and claimant list was not unique to Mr. Davis.

3. Since the commencement of my involvement in the case through the present, I have communicated extensively with Doug Campion, one of the lawyers representing the Class in this case, regarding the merits of the case

the original settlement, and the amendment to it. I have reviewed the pleadings and discovery in the case, and conferred at length with Class Counsel concerning the evidence developed to support the settlement, counsel's perception of the risk of continued litigation, and developments in applicable law over the course of the last two years. I appeared either telephonically or in person at all hearings since I appeared in this case.

4. Although ostensibly in adversarial positions, Mr. Campion and I were able to coordinate and cooperate on key issues leading to the amended settlement presently before this Court. We agreed to press the argument that the settlement's financial relief should be increased to reflect the addition of previously unidentified class members. To that end, I prepared at his request a memorandum discussing the due process complexities presented by the case, including authority on the necessity for additional notice to class members when a settlement is revised, and the due process rights of original class members to opt-out and object to a revised settlement. I prepared an additional memorandum regarding other procedural issues attending the revision of settlements and the expansion of class relief. The authority and observations in those memoranda are reflected in the current structure of the amendment to the settlement.

5. I attended and participated in the July 31, 2013 mediation session in San Francisco that led to the settlement amendment and the present motion

for final approval, and coordinated with Class Counsel in crafting our respective demands and arguments for that mediation.

6. On the renewed preliminary approval, I obtained clarification from the parties confirming the settlement amendment could not result in disparate financial recoveries between Group 1 and Group 2 class members, as well as changes to the proposed order on preliminary approval regarding the filing of objections.

7. I reviewed the confirmatory deposition testimony taken regarding defendant Chase's effort to identify additional class members, to assist in assuring that no class members were omitted.

8. To date, I have continued to assist Class Counsel by providing assistance and advice regarding the objections filed and associated procedural issues.

9. I am aware of the issues faced in bringing class actions to trial generally, and have confirmed through independent research, including conferring with disinterested lawyers who litigate TCPA cases, the specific issues faced in certifying a TCPA class and bringing the case to trial.

10. On the basis of the amendment to the settlement and the subsequent proceedings, my direct observation of class counsel's work, my evaluation of the factual evidence, and the applicable legal authority, I have concluded that the objections Mr. Davis lodged against the original settlement have

been satisfied in all material respects.

11. My client John W. Davis was critical achieving the result obtained in this case. He assisted in the objection by keeping and compiling records of telephone contacts by defendant, which served as strong evidence defendant had omitted class members from notice and relief. He also assisted by drafting the section of the objection concerning his omission from the class, and took responsibility for assembling and filing the initial objection.

12. Class Counsel and I negotiated and reached agreement in principle on the instant fee allocation in late September, 2014.

13. My current hourly rate for work in class actions is $645. That rate has not been set to fully compensate my time for work undertaken on a contingent basis, particularly in the prosecution of objections, and I undertake such work with the expectation that, if successful, I will be entitled to an award of a multiplier. My hourly rate was last judicially approved for a formal lodestar/multiplier calculation at $595, in a contested fee proceeding filed in 2012 in *Rodriguez v. West Publishing Corp.* (USDC Central District of California Case No. cv-05-3222). It has since been adjusted twice (once annually) at a rate of approximately 4%.

14. My firm has not yet been compensated at all in this case, and has thus far expended a total of 192.6 hours in the prosecution of the objection and amended settlement, for a lodestar of $124,227.

15. My firm incurred expenses totaling $553.35, including: air travel costs of $451.50, and hearing transcript fees of $101.85. My firm does not bill for photocopies or prorated online legal research charges.

This declaration has been signed under penalty of perjury under the laws of the United States of America. It was executed on the 10th day of December, 2014 in the County of Los Angeles, California.

/s/ *C. Benjamin Nutley*
Attorney for John W. Davis
Email: Nutley@zenlaw.com

EXHIBIT 1

C. BENJAMIN NUTLEY

ATTORNEY AT LAW

1055 E. Colorado Blvd., 5th Floor
Pasadena, CA 91106
Tel: 626-204-4060

C. Benjamin Nutley advises parties and counsel in complex commercial litigation and appeals. He is experienced in complex commercial litigation, including antitrust, consumer and securities class actions. A member of the State Bar of California, Mr. Nutley is admitted to practice in all California courts, the United States District Courts for the Northern, Central and Southern Districts of California, and the United States Courts of Appeal for the Third, Eighth, Ninth, and Eleventh Circuits.

Mr. Nutley entered solo practice in 2013. Between 1997 and 2013, he was a partner at the law firm Kendrick & Nutley and its predecessors. Between 1994 and 1997, Mr. Nutley was an associate with the San Diego office of Milberg, Weiss, Bershad, Hynes & Lerach, LLP.

He received his B.A. in Politics, Philosophy and Economics from Claremont McKenna College in 1989 and his J.D. in 1994 from the University of San Diego. Mr. Nutley is a Member of the San Diego Law Review and served as Executive Comments Editor on the Editorial Board of that journal. He wrote *Triggering One-Year Limitations on Section 10(b) and Rule 10b-5 Actions: Actual or Inquiry Discovery?*, 30 San Diego L. Rev. 917 (Fall 1993); quoted with approval, *Berry v. Valence Technology Inc.*, 175 F.3d 699, n.6 (9th Cir. 1999) and discussed in *Betz v. Trainer Wortham*, 504 F.3d 1017, 1024 (9th Cir. 2007).

Mr. Nutley briefed and argued the following precedential appellate cases:

Rodriguez v. Disner, 688 F.3d 645 (9th Cir. 2012)
Glasser v. Volkswagen of America, Inc., 645 F.3d 1084 (9th Cir. 2011)
Rodriguez, et al. v. West Publishing Corp., 563 F.3d 948 (9th Cir. 2009)
Chavez, et al. v. NetFlix, Inc. 162 Cal.App.4th 43 (2008)
Consumer Cause v. Mrs. Gooch's Natural Food Mkts., Inc. 127 Cal.App.4th 387 (2005)
In re Cendant Corp. Litigation, 264 F.3d 201 (3d Cir. 2001)

RECENT AND PENDING CASES

Rodriguez, et al. v. West Publishing Corp., et al. (U.S.D.C. Central District CA No. CV-05-3222) (settlement evaluation, antitrust class action) Kendrick & Nutley represents several class members in this antitrust class action. In accord with the objection the firm prosecuted on their behalf, the district court declined to award any incentive award to the representative plaintiffs in the case (who had sought, pursuant to a contingent agreement, a total of $350,000). The firm then obtained before the Ninth Circuit a reversal of the district court's denial of its fee application, as well as a reversal of the fee award to class counsel. *Rodriguez, et al. v. West Publishing Corp.*, 563 F.3d 948 (9th Cir. 2009). On remand, the district court significantly reduced the fees awarded to class counsel based upon the conflicts of interest. That ruling was upheld in *Rodriguez v. Disner*, 688 F.3d 645 (9th Cir. 2012).

White v. Experian Information Solutions, Inc. (U.S.D.C. Central Dist. Cal. No. 8:05-cv-01070) (settlement evaluation, debt collection practices class action) Kendrick & Nutley represents objectors who opposed approval of the settlement in this case. On appeal, the Ninth Circuit overturned the district court's order approving the settlement and awarding fees was on conflict of interest and adequacy of representation grounds. *Radcliffe v. Experian Information Solutions, Inc.*, 715 F.3d 1157 (9th Cir. 2013), following *Rodriguez, et al. v. West Publishing Corp.*, 563 F.3d 948 (9th Cir. 2009) and *Rodriguez v. Disner*, 688 F.3d 645 (2012). The case has been remanded for further proceedings.

Ganezer v. DirectBuy, Inc. (U.S.D.C. Central Dist. Cal. No. CV 08-08666) (consumer class action) Kendrick & Nutley was one of several firms representing California consumers who purchased memberships in the defendant's buying club. The case was coordinated with several other cases in the Northern District of Indiana, and successfully resolved with a nationwide class settlement.

Conner v. J.P.Morgan Chase Bank, (U.S.D.C. Southern Dist. Cal. NO. 10-cv-1284) (consumer privacy class action) Mr. Nutley represents the sole objector to the original settlement, whose objection revealed that the defendants had failed to disclose or provide notice to over 1.48 million potential class members – over half the total class. After identification of the excluded class members, the parties presented a renegotiated settlement increasing the total settlement amount and resolving the objections. Their motion for approval is presently pending.

In Re: Hydroxycut Marketing and Sales Practices Litig. (U.S.D.C. Southern Dist. Cal. 09-md-02087) (settlement evaluation, consumer class action) Mr. Nutley, working with two other class action firms, successfully objected to the second attempt to settle this case involving weight-loss supplements. The parties presented a revised settlement addressing the objections, which was approved.

Davis v. Cole Haan, Inc. (U.S.D.C. Northern Dist. Cal. No. 11-01826) (settlement evaluation, consumer class action) In this class settlement involving vouchers for products, Mr. Nutley and his cocounsel successfully moved for an order requiring class counsel's attorneys' fees to be calculated under the contingent "coupon" fee provisions of the Class Action Fairness Act, rather than the more generous hourly method specified in the settlement.

Flannery v. McCormick & Schmick's Seafood Rest., Inc. (Los Angeles County Sup. Ct. No. BC 487942) (settlement evaluation, consumer class action) Representing the sole objector to the settlement, Mr. Nutley successfully argued that the class definition should be narrowed to ensure that the release in the case only applied to customers of the named defendant restaurant. The trial court agreed, and approved the settlement only after mandating the change in the class definition.

Foos v. Ann Taylor, Inc. (U.S.D.C. Southern Dist. Cal. No. 11-cv-2794) (settlement evaluation, consumer class action) In this settlement involving product vouchers, Mr. Nutley and his cocounsel successfully moved to require the settling parties to disclose publicly the number of claims for vouchers made in the settlement.

In re TV Writers Cases (Los Angeles County Sup. Ct. No. BC 268836) (settlement evaluation, age discrimination case) In this class action, Kendrick & Nutley assisted in implementing a non-profit aid foundation, which was created by the settlement for the benefit of a subset of the class. This organization, its intended purposes, and its genesis in litigation presented unique problems in balancing transparency, class participation, legal compliance, administrative efficiency, and judicial oversight. Mr. Nutley worked with class and defense counsel to create Implementation Order No. 1, by which the trial court approved and ordered specific rules to resolve those issues.

Heverly, et al. v. Symantec Corp. (Santa Clara Sup. Ct. No. 1-05-CV-053711) (consumer class action) The firm was one of several representing a class of purchasers of computer security and antivirus software in this case alleging false advertising, UCL and CLRA violations. The case was successfully resolved by a classwide settlement providing class members a choice of a cash payment or free products.

Marootian, et al. v. New York Life Insurance Company, Inc. (U.S.D.C. Central Dist. CA No. CV-99-12073) (settlement evaluation, insurance bad-faith class action) The firm represented several individual class members who objected to the scope of notice and the settlement of a class action relating to unpaid insurance policies written prior to the Armenian Genocide of 1915. The firm intervened at the preliminary approval stage and obtained court-ordered changes to the class and settlement notice prior to its dissemination. The firm then prosecuted additional objections to the terms of the settlement, as well as the content and dissemination of the notice.

The firm ultimately secured the agreement of the settling parties to additional publicity of the settlement in the Republic of Armenia, as well as other foreign countries in which Armenian class members resided, to ensure adequate notice of the settlement and claims process. The firm also obtained the close cooperation of the Armenian Ministry of Justice, which further publicized the settlement through print and television announcements, translated the policyholder lists and claim forms into the Armenian language, and assisted numerous individual class members with the claims process. The additional public notices and publicity featured the term "Armenian Genocide" prominently, which term had been entirely avoided in the prior court-approved notice on the grounds that it was too "controversial."

In re Cendant Corp. Securities Litig., (U.S.D.C. Central Dist. NJ No. 98-1664) (settlement evaluation, securities class action). Appeal reported at *In re Cendant Corp. Litigation*, 264 F.3d 201 (3d Cir. 2001). In its appeal of the district court's approval of the settlement and attorneys' fees, the firm obtained important judicial clarifications on the proportionate liability provisions of the Private Securities Litigation Reform Act of 1995, and on the quality of the settlement with the primary defendant. Though the settlement was upheld on appeal, the Third Circuit Court of Appeal found the firm's objections to the settlement had "considerable merit." In particular, the Court agreed that the record-setting $2.85 billion settlement with the primary defendant was too low given the clarity of liability – a position the Lead Plaintiff pension funds had vehemently contested. Further, the Third Circuit overturned the fee awarded and ruled that, in evaluating the fee award on remand, the district court should consider the objections made to the settlement. On remand, the fee was reduced from $262 million to $55 million, and the Lead Plaintiff pension funds agreed to the payment of attorneys' fees to Kendrick & Nutley for their work in the case.

Chavez, et al. v. NetFlix, Inc. (San Francisco Sup. Ct. No. CGC-04-434884) (settlement evaluation, consumer class action) Representing a class member in the case, the firm (along with the Federal Trade Commission and others) successfully objected to the "negative option" feature of the settlement there, resulting in a renegotiation to eliminate the problem and a large increase in the number of class members taking advantage of the settlement offer. The firm also successfully argued for a reduction in class counsel's lodestar in the case. The firm was itself awarded a fee by the trial court for its objection work in the case, a result that was upheld against challenge on appeal. *Chavez, et al. v. NetFlix, Inc.* (2008) 162 Cal.App.4th 43, 62.

Christopher Coburn v. Stamps.com, Inc. (Los Angeles Sup. Ct. No. BC 353721) (settlement evaluation, consumer class action) Kendrick & Nutley was retained to prosecute the appeal from the approval of a class settlement over the objection that the primary relief provided – credit for two free months of service – was not transferrable. After briefing on appeal, the firm secured the agreement of the settling parties to make a second distribution of transferrable credits for two months of service, so that class members could sell or give away the credits if they did not desire a continued relationship with the defendant.

American Environmental Safety Institute v. Procter & Gamble Distributing Co., (Los Angeles Sup. Ct. No. BC334309) (representative action, representing defendant) The firm represented defendant Kiss My Face Corporation in this Proposition 65 case involving allegations of lead content in silicates used in toothpaste.

Consumer Cause, Inc. v. Whole Foods Markets, et al. (Los Angeles Sup. Ct. No. BC251579) (settlement evaluation, class action). The firm represented the sole objector to the settlement of this Proposition 65 case brought by an unaffected organization, which was preliminarily approved as a state-wide class settlement. The Court cited Kendrick & Nutley's objection as "focused and persuasive" in concluding that:

- the class definition and release of claims was overbroad,
- class treatment was inappropriate when it benefitted the parties to the case rather than the class as a whole, and
- the class notice had not met minimum due process requirements.

Based upon the objection prepared by Kendrick & Nutley, the Court denied final approval of the settlement it had preliminarily approved, and decertified the class it had certified for settlement. The appeal from the denial of the firm's subsequent application for attorneys' fees is reported at: *Consumer Cause v. Mrs. Gooch's Natural Food Markets, Inc.* (2005) 127 Cal.App.4th 387.

Edelson v. American Home Shield of California, Inc., (San Diego Sup. Ct. No. 37-2007-00071725) (settlement evaluation, consumer class action) Kendrick & Nutley represented several groups of objectors who successfully opposed final approval of a proposed nationwide settlement. In rejecting the settlement, the trial court specifically cited several arguments that the firm made in objection.

Kim, et al. v. Sony Computer Entertainment America, Inc. (San Mateo Sup. Ct. No. CIV427336) (consumer class action) Kendrick & Nutley was one of several firms representing the plaintiff class in this class action alleging defects in the PlayStation II video game system. The case was successfully resolved through a nationwide class settlement.

Exquisite Caterers v. Popular Leasing, USA, Inc. et al., (NJ Sup. Ct. No. L-3686-04); ***Fusionist, LLC, et al. v. Popular Leasing USA, Inc., et al.*** (Los Angeles Sup. Ct. No. BC 323433)(consumer class actions). Kendrick & Nutley represented small businesses in litigation against leasing companies attempting to enforce equipment leases obtained in the NorVergence telecommunications fraud scandal.

Berry, et al. v. Brookstone Co., Inc. (Los Angeles Sup. Ct. No. BC268875) (settlement evaluation, overtime law class action) In this class action settlement involving overtime pay for employees, Kendrick & Nutley challenged on appeal the award of attorneys' fees and the "incentive" awards to the class representatives. The appeal was settled by an amendment to the judgment reducing the amounts to be paid to the class representatives, and increasing the amount to be paid to absent class members an average of over $100 per class member.

In addition, class counsel in the case agreed to an amendment to the judgment by which they are ordered to abide by specific guidelines in future cases regarding the recording and reporting of their lodestar information, to ensure its accuracy in presentation to courts. To the firm's knowledge, this type of relief is unprecedented in the context of an objection in a class case, though many objections in class cases concern themselves with the accuracy and character of class counsel's reported time.

Vroegh v. Eastman Kodak Company, et al. (San Francisco Sup. Ct. No. CGC-04-428953) (settlement evaluation, consumer class action) The firm represented an objecting class member through appeal in connection with the settlement of this case, the approval of which was upheld on appeal.

Talarico, et al. v. VistaPrint USA, Inc., et al. (L.A. Sup. Ct. No. BC 321402) (settlement evaluation, consumer class action). In this case the firm represented an objector to the settlement of a consumer case alleging that the defendant charged unlawful "shipping and handling" fees.

The settlement – by which the defendant agreed to use the term "processing" instead of "handling" – was approved over objection, and upheld on appeal.

MacBeth, et al. v. Barneys New York (San Diego Sup. Ct. No. GIN 022990) (settlement evaluation, consumer class action). The firm represented the sole objector to a class settlement in this case involving the collection of personal information in credit transactions. The Court refused to grant final approval to the settlement, agreeing with the objector's arguments that:

- the lack of any compensation for the members of the proposed class cut against class treatment;
- there was insufficient information from which to determine whether publication was a proper means of notice to the class members;
- the published notice was deficient because it did not properly apprise the class members of the terms of the settlement and failed to provide adequate information to enable class members to decide rationally whether to accept its terms, object, or "opt-out"; and
- the stipulated procedures forming the injunctive relief in the case still violated the law the defendant had allegedly broken.

After the Court overturned the class settlement, the firm assisted the parties in restructuring the settlement as a non-class, representative settlement with injunctive relief that complied with the law.

Miller, et al. v. Shoe Pavilion, Inc. (San Diego Sup. Ct. No. GIC 764457) (settlement evaluation, consumer class action). In this consumer class action, the firm obtained the agreement of the settling parties to modifications in the settlement and judgment. Those modifications included expanded dissemination of the settlement notice and the Price Reduction Vouchers forming part of the relief in the case, both at the defendant's retail locations and on the internet. By agreement of the parties and order of the Court, the firm served as consultant on the form and content of the Price Reduction Vouchers.

Ross v. FirstUSA Bank (Orange County Sup. Ct. No. 02CC00294) (settlement evaluation, consumer class action) The firm represented an objector to the nationwide settlement of a case involving allegedly unlawful credit card fee practices. The trial court agreed with the firm's argument that the fee requested by plaintiffs' counsel was too high, ultimately awarding approximately $1.25 million less than the $3.5 million requested, but disagreed with the objections to the settlement itself. This result was upheld on appeal.

Mayemura, et al. v. Chase Manhattan Bank, NA. et al. (U.S.D.C. Central Dist. CA No. CV-00-753 LGB). (settlement evaluation, consumer class action). In this settlement evaluation of a case involving credit card billing practices, the firm successfully moved for the disclosure of evidence filed under seal in support of the settlement.

Papendieck, et al. v. MP3.COM, Inc., et al. (U.S.D.C. Central Dist. CA No. CV 00-1873-K) (securities fraud class action). The firm was one of several representing plaintiffs in this class action, which settled for $34.1 million in cash and 2.5 million shares of MP3.com stock.

Look-Look, Inc. v. Claudine Murphy, et al. (Los Angeles Sup. Ct. No. BC 255430) (unfair competition, trade secret). The firm was one of two firms that successfully represented a business in its suit against a former executive alleging misappropriation of trade secrets, breach of contract and unfair competition.

Nguyen, et al. v. First USA Bank, NA, et al. (Los Angeles Sup. Ct. No. BC222846) (settlement evaluation, consumer class action). In this class action on behalf of California residents, Kendrick & Nutley obtained the agreement of the settling parties to changes in the fluid recovery relief provisions of the settlement so that the fund would be used to the greatest extent possible for the benefit of Californians.

Pollack, et al. v. The Iams Co. (Los Angeles Sup. Ct. No. BC246118) (settlement evaluation, consumer class action). In this class action alleging unfair business practices, Kendrick & Nutley obtained the agreement of the settling parties to narrow the breadth of the settlement release of claims, including the express provision that the settlement would not bar class members any relief obtained in pending federal litigation between the defendant and its competitors.

Rueda, et al. v. Schlumberger Resc. Mgmt. Svcs., Inc. (Los Angeles Sup. Ct. No. BC235471) (settlement evaluation, consumer class action) In this case involving water meters allegedly containing excessive lead alloy, Kendrick & Nutley obtained the agreement of the settling parties to modifications in the settlement that (1) restricted the use of fluid recovery funds so that funds used for educational programs by the Los Angeles Department of Water and Power would be used to address the matters alleged in the case; (2) specifically excluded personal injury claims from the release, eliminating the risk that the Settlement's broad release of negligence-related claims could later be construed to bar the litigation of personal injury claims related to lead exposure; and (3) resolved an ambiguity in the discounted sales program set forth in the settlement, so that the defendant could not use a loophole to eliminate its obligations under the settlement.

OTHER COMPLETED CASES

Between 1997 and 2000, Mr. Nutley and his late partner J. Garrett Kendrick practiced in association with other partners, first as Kendrick Bonas Hancock & Nutley and later as Kendrick Bonas & Nutley, which firms prosecuted the following cases:

ANTITRUST ACTIONS

1. ***In re Synthroid Marketing Litigation***

(Master File No. 97 C 6017; MDL Docket No. 1182) Kendrick Bonas & Nutley filed the first state indirect-purchaser monopolization case, and the first direct-purchaser federal antitrust case, against BASF Corporation, Knoll Pharmaceutical Company and others alleging unlawful monopolization of the market for the pharmaceutical levothyroxine sodium. The ultimate settlement in the consolidated cases ultimately resulted in a recovery of $87,400,000.00 for consumers of Synthroid.

2. ***NASDAQ Market-Maker Antitrust and Securities Litigation***

(MDL Docket No. 1023). The firm is one of numerous firms that successfully represented a national class of investors who purchased certain stocks on the NASDAQ system. This action for violations of the Sherman Antitrust Act and the Securities Exchange Act of 1934 was brought against major market-makers in over the counter stocks alleging that the market makers conspired to set artificially inflated bid and ask spreads by refusing to offer stocks at "odd-eighth" prices. The case was settled for in excess of $1 billion.

3. ***In re Methionine Cases and Methionine Cases II***

(Judicial Council Coordination Proceeding Nos. 4090 & 4096) The firm is one of several that successfully represented plaintiffs in a price-fixing action involving methionine, an enzyme used in human and animal food.

4. ***In re: Vitamins Cases***

(Judicial Council Coordination Proceeding No. 4076) The firm is one of several that successfully represented plaintiffs in a case involving the price fixing of vitamin products.

5. ***In re Cosmetics Cases***

(Judicial Council Coordination Proceeding No. 4056) The firm is one of several that successfully represented plaintiffs in this price fixing action involving cosmetics sold in department stores.

6. ***In re Lorazepam & Clorazepate Antitrust Litigation***

(D.C. Cir., No. 01-7163) The firm, along with several others, filed an action against Mylan pharmaceuticals and other companies alleging violations of California antitrust and consumer laws concerning the drugs Lorazepam and Clorazepate. Various cases were consolidated on a national level and resulted in a settlement returning approximately $67 million to consumers of the drugs nationwide.

7. ***California Indirect Purchaser Auction House Cases***

(JCCP 4145); Lang, et al. v. Christies International, PLC et al. (San Francisco Sup. Ct. No. 310616) (antitrust class action). The firm was one of several firms representing plaintiffs in this antitrust class action alleging unlawful price fixing in auctions.

8. ***In re Warfarin Sodium Antitrust Litigation***

(Judicial Council Coordination Proceeding No. 4057; MDL Proceeding 98-1232). The firm was one of several that represented a class of consumers in this group of cases against DuPont Merck Pharmaceutical Co. alleging the unlawful monopolization by of the market for the pharmaceutical warfarin sodium (“Coumadin”). The case was settled for $44.5 million for Coumadin consumers.

9. ***In re Commercial Paper Indirect Purchaser Antitrust Litigation***

(Judicial Council Coordination Proceeding No. 4019) Kendrick Bonas & Nutley successfully represented plaintiffs in this action alleging that the price fixing in the market for businesses that purchased paper and tissue products for commercial use.

10. ***Southern California Retail Egg Price Fixing Litigation***

(McCampbell, et al. v. Ralphs Grocery Company, et al.; San Diego Sup. Ct. No. CV 703666). Kendrick Bonas & Nutley represented a class of retail egg purchasers in a Cartwright Act case involving retail price fixing claims against three supermarket chains operating in the Southern California area. The case was lost to a divided jury after an eight-week trial, a result upheld on appeal.

11. ***C.D. Retailers Antitrust Litigation***

(Independent Music Retailers Association, et al. v. CEMA Distribution et al., C.D. Cal., No. CV-93-4579-SVW (Ex)). Mr. Kendrick was counsel to independent music retailers in this antitrust action brought to prohibit certain of the largest distributors of music compact disc recordings from restraining competition in the emerging market for used CD's.

12. ***Los Angeles Retail Milk Price Fixing Litigation***

(Barela, et al. v. Ralphs Grocery Company, et al., Los Angeles Sup. Ct. No. BC 070061). Kendrick Bonas & Nutley successfully represented a class of consumers in the Cartwright Act case involving price fixing claims against the 7 largest supermarket chains in the Los Angeles area. Counsel in the case secured settlements exceeding a value of $10 million.

13. ***Catfish Product Cases***

(Judicial Council Coordination Proceeding No. 2793). Kendrick Bonas & Nutley was one of two lead counsel in this successful Cartwright Act price fixing action brought on behalf a statewide class of catfish products purchasers.

14. ***In Re Liquid Carbon Dioxide Cases***

(Judicial Council Coordination Proceeding No. 3012). Kendrick Bonas & Nutley represented a class of indirect purchasers of liquid carbon dioxide. Mr. Kendrick held the lead role in this action which alleged that Archer Daniels Midland and other defendants conspired to fix the wholesale prices of liquid carbon dioxide. The case resulted in a settlement in excess of $3 million.

CONSUMER ACTIONS

1. *Allergan Eye-Drops Litigation*

(Bruno v. Allergan, S.D. Sup. Ct. No. 698435) Kendrick Bonas & Nutley successfully represented plaintiffs in a class action alleging that defendant violated California consumer laws in its marketing of identical solutions as different eye-care products at vastly discrepant prices.

2. *McKesson Water Products Late Fee Litigation*

(Manos v. McKesson Water Products Company, Los Angeles Sup. Ct. No. BC-179151) Kendrick Bonas & Nutley successfully represented consumers in six states in a multi-state class action brought to recover illegal and excessive late fee charges imposed by a company offering drinking water delivery services.

3. *Jones Intercable Cable TV Late Fee Litigations*

Kendrick Bonas & Nutley successfully represented consumers in three separate class actions against a cable television provider alleging that the company charged consumers excessive late fees in violation of various California consumer protection laws. (Vittengl v. Jones Intercable, Inc., Ventura Superior Ct. No. 160769 and Nilsen v. Jones Intercable, Inc., Los Angeles Sup. Ct. No. BC135871; Cobian v. Jones Intercable, Inc., 16th Judicial Circuit Court, Jackson County Missouri, at Independence, No. 99-CV-221370).

4. *Multivision Cable TV Late Fee Litigation*

(Avalos v. M.L. Media Partners, L.P., Orange Co. Sup. Ct. No. 762974) Kendrick Bonas & Nutley successfully represented consumers in a class action to recover excessive late fees imposed by a cable television company. After class claims were satisfied, over $30,000.00 of the settlement fund in this case was returned to the community through donation to local public television to support children's educational programming.

5. *TCI Cable TV Late Fee Litigation*

(Nissenbaum v. United Cable Television of Los Angeles, Los Angeles Sup. Ct. No. BC 069216) Kendrick Bonas & Nutley successfully represented a class of consumers in an action to recover excessive late fees imposed by a cable television company. As a result of this case and other litigations brought by the Firm, the California legislature enacted Gov. Code §§53088.5-.8, which limited charges to $4.75 and set notification, warning and grace-period standards.

6. *Storage Facility Late Fee Litigations*

The firm was counsel for plaintiffs in several representative actions and one class action brought to recover illegal and excessive late fee charges imposed by companies offering storage services.

7. ***Childcare Late Fee Litigations***

The firm successfully prosecuted several representative cases and one class action brought to recover illegal and excessive late fee charges imposed by companies offering childcare services.

8. ***Residential Rental Property Late Fee Litigations***

The firm has successfully prosecuted several representative and putative class actions brought to recover illegal and excessive late fee charges imposed by landlords and management companies.

OTHER ACTIONS

Other consumer and securities class actions in which Mr. Nutley has been involved include the following:

1. ***In Re Gupta Corp. Securities Litigation*** (N.D. Cal. Master File No. C-94-1517 FMS) (securities class action).

2. ***In re Sybase, Inc. Securities Litigation*** (N.D. Cal. Master File No. C-95-1144 WHO) (securities class action).

3. ***Cordova v. Liggett Group Inc., et al.*** (San Diego Sup. Ct. C-651824) (consumer action).

4. ***Mangini v. R.J. Reynolds Tobacco Co., et al.*** (San Francisco Sup. Ct. No. C-939359) (consumer action).

5. ***Park, et al. v. Taco Cabana, Inc., et al.*** (W.D. Tex. SA-95-CA-0847) (securities class action).

6. ***In re: Crop Growers Corp. Securities Litigation***, (U.S.D.C. D. Montana, CV-95-58-GF-PGH) (securities class action).

7. ***In re: Styles on Video Securities Litigation***, (U.S.D.C. Central District CA No. CV-94-8342-R) (securities class action).

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Attorney for Objector John W. Davis

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Patricia Connor, Shari L. Bywater, individually, and on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

JPMorgan Chase Bank and Federal National Mortgage Association a/k/a Fannie Mae,

Defendants.

Case No. 10 CV 1284 GPC BGS

DECLARATION OF JOHN W. DAVIS IN SUPPORT OF JOINT MOTION FOR APPROVAL OF:
(1) WITHDRAWAL OF DAVIS OBJECTION, AND
(2) AGREEMENT ALLOCATING OBJECTOR ATTORNEYS' FEES AND INCENTIVE AWARD

Date: December 15, 2014
Time: 1:30 p.m.
Judge: Hon. Gonzalo P. Curiel
Courtroom: 2D

I, John W. Davis, am a class member in the above captioned matter. I make this Declaration on the basis of personal knowledge and if called to testify regarding the matters stated herein could do so competently.

1. On July 20, 2012, I filed an objection to the previously proposed settlement after discovering that the settling parties had failed to identify and account for certain members of the class.

2. My objection resulted in a substantial constructive enhancement to the settlement. Indeed, my efforts in this case resulted in the class size more than doubling. Specifically, my objection ultimately led to the identification of an additional 1,498,593 class members, of whom 1,303,112 were entitled to make a claim concerning the "Group 2" settlement.

3. Group 2 claims are valued at approximately $3,960,092.09. But for my investigation, and subsequent efforts of me and my counsel, C. Benjamin Nutley, Group 2 would never have been discovered. Accordingly, my counsel and I were the catalyst for creation of a common fund approaching four million dollars.

4. In addition to compelling the settling parties to make approximately $3.9 million available to compensate previously unidentified class members, my efforts ultimately resulted in defendant JP Morgan Chase agreeing to contribute an additional $850,000.00 for a supplemental notice campaign, and pay additional attorneys' fees.

5. Since appearing in this action in July, 2012, I have regularly conferred with and directed counsel regarding the case and claims. I made myself available on short notice to answer questions and assist my attorney; I had numerous conversations with my attorney describing the events and the facts of this case and answering any other questions that he had; I have read

numerous documents including but not limited to the complaint, settlement agreement, preliminary approval papers, final approval papers, objections, and responses to objections; and, I have substantively participated through counsel in the negotiation and resolution of Group 2 claims. I spent in excess of 40 hours performing these duties.

6. I understand that my attorney will move the Court for an incentive payment of $2,500 to be paid from the Settlement Fund in recognition of my efforts in identifying and establishing the Group 2 fund. I understand that any such award will have to be approved by the Court.

7. I further understand that my attorney will also move the Court for an award of attorneys' fees and costs to be allocated from Class Counsel's fee in this matter. The negotiated allocated fee amounts to $345,000.00 and represents less than 9% of the common fund created to compensate Group 2 (and less than 3% of the entire potential payment by Chase to fund the settlement).

8. It is my understanding that Defendants do not object to a request by Class Counsel for attorneys' fees and costs, or allocation thereof, as described above.

The foregoing is true to my personal knowledge and if called to do so I could and would testify competently thereto. This declaration has been signed under penalty of perjury under the laws of the United States of America. It was executed on the 10th day of December, 2014 in the County of San Diego, California.

John W. Davis

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Attorney for Objector John W. Davis

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CERTIFICATE OF SERVICE

Date: December 15, 2014
Time: 1:30 p.m.
Judge: Hon. Gonzalo P. Curiel
Courtroom: 2D

Certificate of Electronic Service

I hereby certify that on December 11, 2014, the following documents were filed electronically via the Court's EM/ECF system:

AMENDED JOINT MOTION FOR APPROVAL OF: (1) WITHDRAWAL OF DAVIS OBJECTION, AND (2) AGREEMENT ALLOCATING OBJECTOR ATTORNEYS' FEES AND INCENTIVE AWARD

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF JOINT MOTION FOR APPROVAL OF: (1) WITHDRAWAL OF DAVIS OBJECTION, AND (2) AGREEMENT ALLOCATING OBJECTOR ATTORNEYS' FEES AND INCENTIVE AWARD

DECLARATION OF C. BENJAMIN NUTLEY IN SUPPORT OF JOINT MOTION

DECLARATION OF JOHN W. DAVIS IN SUPPORT OF JOINT MOTION

Notice of this filing will be sent by e-mail to all parties by operation of the court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of electronic Filing. Parties may access this filing through the court's EM/ECF System.

Dated: December 11, 2014

/s/ *C. Benjamin Nutley*
Attorney for John W. Davis
Email: Nutley@zenlaw.com