

1 Suzanne Havens Beckman (SBN 188814)
shavens@parisihavens.com
2 David C. Parisi
dcparisi@parisihavens.com
3 PARISI & HAVENS LLP
4 15233 Valleyheart Drive
5 Sherman Oaks, CA 91403
6 Telephone: (818) 990-1299
Facsimile: (818) 501-7852

7 Ryan D. Andrews (*Pro Hac Vice*)
randrews@edelson.com
8 Ari J. Scharg (*Pro Hac Vice*)
ascharg@edelson.com
9 John C. Ochoa (*Pro Hac Vice*)
jochoa@edelson.com
10 EDELSON MCGUIRE LLC
11 350 North LaSalle, Suite 1300
12 Chicago, IL 60654
13 Telephone: (312) 589-6370
14 Facsimile: (312) 589-6378

15 *Attorneys for Plaintiff*

16 **IN THE UNITED STATES DISTRICT COURT**
17 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

18 SAMANTHA ELLISON, individually)
19 and on behalf of a class of similarly)
20 situated individuals,)

21 Plaintiff,)

22 v.)

23 STEVEN MADDEN, LTD., a)
24 Delaware corporation,)

25 Defendant,)
26)
27)

CV-11-05935 PSG-AGR

**PLAINTIFF’S RESPONSE
TO THE WITHDRAWAL OF
THE CONSTANCE
GIRATOS OBJECTION**

Date: February 25, 2013

Time: 1:30 p.m.

Hon. Philip S. Gutierrez

1 Pursuant to Federal Rule of Civil Procedure 23(e)(5), the purported
2 objection of Constance Giratos cannot be withdrawn without approval from this
3 Court. For the reasons that follow, this Court should refuse to approve the
4 withdrawal of the objection at this time.

5 1. Objector Constance Giratos is represented by a group of attorneys that
6 have a demonstrated history of acting as professional serial objectors to class
7 action settlements. These lawyers have collectively submitted over 25 meritless
8 boilerplate¹ objections for one purpose: to block the class from obtaining relief by
9 filing an appeal when their objections are inevitably overruled and then extracting
10 a personal payday in exchange for dismissal of the appeal. The chart attached
11 hereto as Exhibit B catalogs the serial nature of these professional objectors.

12 2. The Federal Judicial Center has warned courts to “[w]atch out ... ‘for
13 canned objections filed by professional objectors who seek out class actions to
14 simply extract a fee by lodging generic, unhelpful protests.’” Barbara J. Rothstein
15 & Thomas E. Willging, Federal Judicial Center, *Managing Class Action Litigation:
16 A Pocket Guide for Judges*, at 11 (2005) (quoting *Shaw v. Toshiba Am. Info. Sys.,
17 Inc.*, 91 F. Supp. 2d 942, 973 (S.D. Tex. 2000)). Courts are furthered cautioned to
18 be “wary of self-interested professional objectors who often present rote objections
19 to class counsel’s fee requests and add little or nothing to the fee proceedings.” *Id.*
20 at 24; *see also In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330,
21 1361, n. 30 (S.D. Fla. 2011) (“[P]rofessional objectors can levy what is effectively
22 a tax on class action settlements, a tax that has no benefit to anyone other than to
23 the objectors. Literally nothing is gained from the cost: Settlements are not
24 restructured and the class, on whose benefit the appeal is purportedly raised, gains
25 nothing.”).

26
27 ¹ Objector Aileen Connors and her sister (also counsel here) were represented by attorneys
28 Miller, Fortman, and Kress and filed a nearly identical objection, the verbatim copied parts of
which are highlighted in the copy attached hereto as Exhibit A.

1 3. The history of these professional objectors aside, current evidence and
2 these lawyers' own actions in this case suggest that such a scenario is presently
3 occurring with the objection here:

- 4 • The opening paragraph of the Objection affirmatively states that Ms.
5 Giratos is a "class member"² and that the "telephone number on which
6 text messages were received is (314) 280-3769." (Dkt. 53, pg. 2:3-4.)
- 7 • After receiving a copy of the Objection, Class Counsel and the
8 Settlement Administration both searched for the above referenced
9 phone number in the list of all phone numbers to whom text messages
10 were sent that was produced by the Defendant in discovery and
11 provided to the Settlement Administrator (the "Class List"). Neither
12 search found (314) 280-3769 to be on the class list. (Declaration of
13 Jay Edelson, ¶ 4, attached hereto as Exhibit C; Declaration of Mallory
14 Sander, ¶ 4, attached hereto as Exhibit D.)
- 15 • Class Counsel informed counsel for the objectors that the number they
16 affirmatively stated received the text messages at issue was not on the
17 Class List and asked them to confirm its accuracy. In response,
18 Objector's counsel John C. Kress wrote: "I apologize for the
19 confusion with the cell phone number. Here is the correct number:
20 (314) 740-3169." (Edelson Decl. ¶ 6) This number was not on the
21 Class List either. (Edelson Decl. ¶ 7; Sander Decl. ¶ 4.)
- 22 • When Class Counsel informed Kress that the "correct" cell phone
23 number he provided was similarly not on the Class List, he initially
24 claimed that she had received the notice and recalled being "annoyed"
25 after receiving the text messages. (Edelson Decl. ¶ 8.) Kress later
26 backed away from these statements and sought to withdraw the
27 objection. (Dkt. 54.)
- 28 • Although Kress would like the Court and Class Counsel to believe the
issues with Ms. Giratos were a simple mistake, that is simply not true:
prior to filing their objection they confirmed that Aileen Connors was
on the Class List by calling the Settlement Administrator and asking.³

24 ² To be a Class Member under the Settlement and the Court's Preliminary Approval Order, a
25 person must have been sent a text message promoting Defendant Steve Madden products and
events from short codes 91919 or 623336 between July 2010 and September 25, 2012. (Dkt. 45.)

26 ³ There are also unusual circumstances surrounding the call seeking to confirm Aileen
27 Connors was a member of the Class. The individual that called initially provided an incorrect
28 home address and telephone number that did not appear on the Class List. Only after the
Settlement Administrator volunteered the cell phone number did the individual claiming to be
Aileen Connors acknowledge it was an "old phone number," and even then had to have the
number repeated to her.

(Sander Decl. ¶ 3.)

1
2 4. Due to the history of these professional objectors filing meritless
3 objections and then appealing in order to extort a pay-off, Class Counsel
4 determined it prudent, in order to protect the interests of the Class and ensure a
5 complete record for both this Court and the inevitable appeal, that they acquire
6 further information about the objectors' and their counsels' motivation. To that
7 end, after meeting and conferring with Defense counsel, the subpoenas attached as
8 Exhibit E were issued.

9 5. Although discovery on professional-objector counsel and class
10 members is proper in these circumstances, *see e.g. In re Cathode Ray Tube (CRT)*
11 *Antitrust Litig.*, 281 F.R.D. 531, 533-34 (N.D. Cal. 2012), Objectors' counsel have
12 indicated that they will not respond, will move to quash each of the subpoenas in
13 Colorado, Missouri, and Ohio, and will somehow be requesting sanctions.
14 (Edelson Decl. ¶ 9.) Class Counsel are confident that these efforts will be
15 unsuccessful and will move to compel responses if necessary.⁴

16 6. Given the highly questionable circumstances surrounding the filing
17 and subsequent withdrawal of Ms. Giratos's objection, the Court should not
18 approve its withdrawal pursuant to Fed. R. Civ. P. 23(e)(5) until either the
19 subpoenas are complied with or the Objectors otherwise demonstrate their
20 objection was filed in good faith and not for an improper purpose on behalf of a
21 known non-Class member.

22 For the foregoing reasons, Plaintiff respectfully requests that the Court not
23 approve the withdrawal of the Objection of Constance Giratos (dkt. 54) when and
24 until either the subpoenas are complied with or the Objectors otherwise
25 demonstrate their objection was filed in good faith and not for an improper purpose

26
27 ⁴ Class Counsel will separately file a Response detailing the reasons the Objection lacks
28 merit. In corresponding with Objector's counsel, Class Counsel repeatedly offered to discuss
their factual and legal misunderstanding about the settlement, but Objectors' counsel have
refused to engage in any such discussions.

1 on behalf of a known non-Class member, or their objection is withdrawn in its
2 entirety.

3
4 Dated: January 17, 2013

Respectfully Submitted,

5 SAMANTHA ELLISON, individually and
6 on behalf of a class of similarly situated
7 individuals,

8 /s/ Ari J. Scharg
9 Class Counsel

10 Suzanne Havens Beckman (SBN 188814)
11 shavens@parisihavens.com
12 David C. Parisi
13 dcparisi@parisihavens.com
14 PARISI & HAVENS LLP
15 15233 Valleyheart Drive
16 Sherman Oaks, CA 91403
17 Telephone: (818) 990-1299
18 Facsimile: (818) 501-7852

19 Ryan D. Andrews (*Pro Hac Vice*)
20 randrews@edelson.com
21 Ari J. Scharg (*Pro Hac Vice*)
22 ascharg@edelson.com
23 John C. Ochoa (*Pro Hac Vice*)
24 jochoa@edelson.com
25 EDELSON MCGUIRE LLC
26 350 North LaSalle, Suite 1300
27 Chicago, IL 60654
28 Telephone: (312) 589-6370
Facsimile: (312) 589-6378

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused to be served the above and foregoing *Plaintiff's Response to the Withdrawal of the Constance Giratos Objection* to all counsel of record via email and the court's CM/ECF system on this, the 17th day of January, 2013.

/s/ Ari J. Scharg

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28