

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI

IN RE BLUE BUFFALO COMPANY, )  
LTD. MARKETING AND SALES ) Case No. 14-md-02562-RWS  
PRACTICES LITIGATION )  
)  
)  
RELATES TO: ALL CASES )

**OPPOSITION TO OBJECTOR PAMELA SWEENEY’S  
MOTION FOR EXTENSION OF TIME TO POST APPEAL BOND**

Plaintiffs, for their Memorandum in Opposition to Objector Pamela Sweeney’s Motion for Extension of Time to Pay Appellant Filing Fee, state as follows:

**BACKGROUND**

On June 16, 2016, after a fairness hearing, this Court entered a Final Order and Judgment approving a class settlement as well as Findings of Fact, Conclusions of Law, and Order Awarding Fees and Costs. The Court determined that the settlement “provides valuable economic restitution and injunctive relief to a certified class of consumers who had purchased certain Blue Buffalo pet food products between May 7, 2008 and December 18, 2015.” Order, Dkt. No. 263, at 2. Pamela Sweeney is an objector, who filed a notice of appeal but has done no more than delay in any effort to pursue it. Although nominally appearing *pro se*, Mrs. Sweeney is married to attorney Patrick Sweeney, a recognized serial objector. Memorandum in Support of Motion for Appeal Bond, Dkt. No. 233, at 1, 5-6 & Ex. A (“Sweeney Dep.”) at 9.<sup>1</sup> Mrs.

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<sup>1</sup> See also *In re Polyurethane Foam Antitrust Litig.*, 1:10 MD 2196, 2016 WL 1452005, at \*2-3 (N.D. Ohio Apr. 13, 2016) (Sweeney and his counsel have “a known history of acting as a ‘professional, or serial objector’ . . . objections amounted “to pure boilerplate language, wholly untethered from the actual terms of the settlement. They neither sought to argue nor appeared at the fairness hearing. Their behavior needlessly increased the burdens on Class Counsel and this Court. Conduct of this sort falls squarely within the definition of vexatious conduct.”); *Roberts v. Electrolux Home Prods., Inc.*, Case No. 8:12-cv-01644-CAS, 2014 WL 4568632, at \*11-15 (C.D. Cal. Sept. 11, 2014) (overruling Sweeney objections, finding that they “are not made for

Sweeney has herself been an objector in at least six prior class actions. *Id.* at 5-6. For this and other reasons, Plaintiffs requested an appeal bond. Dkt. No. 233.

Mrs. Sweeney failed to timely oppose that motion. She filed an opposition that was untimely by more than a month, on September 13, 2016. Dkt. No. 260. Plaintiffs replied noting, among other things, that Mrs. Sweeney did not in any way demonstrate inability to post a bond.<sup>2</sup> By order dated October 3, 2016, this Court imposed a bond of \$5,000, with payment due by October 14, 2016. Dkt. No. 263. At no time prior to the October 14 deadline did Mrs. Sweeney seek an extension of the bond deadline.

To put Mrs. Sweeney's current motion in context, some history of her delay tactics is in order. After filing her notice of appeal on July 15, 2016 (Dkt. No. 221), Mrs. Sweeney did not timely pay the filing fee for her appeal. Rather, on August 16, 2016, Mrs. Sweeney requested an extension of time, stating in cursory fashion:

1. Appellant is appealing this case and is appearing Pro Se.
2. Appellant is not currently employed.
3. Appellant cannot pay the Appellant Filing Fee until September 30, 2016
4. Appellant moves that she be given until September 30, 2016 to pay the Appellant filing Fee.

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the purpose of benefitting the Class," were "meritless in all respects," and "appear to be made for the improper purpose of delaying the Settlement to extract a fee," and recognizing both Sweeney and attorney Palmer as serial objectors); *Larsen v. Trader Joe's Co.*, 11-CV-05188- WHO, 2014 WL 3404531, at \*7 n.4 (N.D. Cal. July 11, 2014) ("attorney Patrick Sweeney also has a long history of representing objectors in class action proceedings. While not formally appearing for his wife and daughter here, Patrick Sweeney has previously represented them as objectors."). It bears noting that Mrs. Sweeney has on at least one occasion demonstrated a lack of follow through in connection with an appeal she has previously filed. For example, in *Kolinek v. Walgreen Co.*, 13-cv-04806 (N.D. Ill. Jan 27, 2016), Dkt. No. 237, Mrs. Sweeney's appeal was dismissed after she ignored a show cause order requiring her to file a docketing statement.

<sup>2</sup> At deposition, when asked about her ability to pay a bond, Mrs. Sweeney did not claim such any inability to post a bond, but rather, denied having information to answer that question. See Reply To Objector Pamela Sweeney's Response In Opposition To Plaintiffs' Motion For Appeal Bond, Dkt. No. 262 at 2 & n. 1.

Dkt. No. 214. Plaintiffs opposed that request, pointing out, among other things, that Mrs. Sweeney: (1) provided no factual support for her motion, nothing to indicate what sources of payment (aside from employment) are, or are not, available to her, or why she could not pay the filing fee as of the date due; and (2) did not seek leave to proceed *in forma pauperis*, the appropriate course of action if she truly could not afford to pay the filing fee. Memorandum in Opposition to Objector Pamela Sweeney's Motion for Extension of Time to Pay Appellant Filing Fee, Dkt. No. 255. On September 15, 2015, this Court denied Mrs. Sweeney's motion. Dkt. No. 261 (Docket Text order denying motion). Although she had represented an (unsupported) inability to pay the filing fee until September 30 (Dkt. No. 214), Mrs. Sweeney in fact paid it on the same date the Court denied her request for extension. Docket text 9/15/16 (receipt \$505 for appeal by Pamela Sweeney filed 9/15/16).

Mrs. Sweeney's appellant's brief was originally due on September 12, 2016. Due to a request for extension filed by Appellant Lopez, the Eight Circuit extended the deadline for all appellant briefs by 30 days to October 12, 2016. Order dated August 25, 2016 (Appeal No. 16-3159) (EI 44411741); *see also* Order dated September 7, 2016 (Appeal No. 16-3169) (EI 4445560) ("The order of August 25, 2016 extended the due date of all appellate briefs to October 12, 2016.").

Mrs. Sweeney did not file an appellant's brief, however, and on October 21, the Eighth Circuit issued an order to show cause why her appeal should not be dismissed for failure to prosecute. Appeal No.16-3168 (Dkt. No. 266). Mrs. Sweeney responded by asking for additional time to post the bond and file her brief. *See* Response of Pamela A. Sweeney Objector/Appellant To Order To Show Cause. Appeal No. 16-3168 (Entry ID: 4466853). Her motions for additional time are of the same conclusory sort previously made to this Court. *See*

See Pamela A. Sweeney Objector/Appellant's Motion To File An Out Of Time Brief. Appeal No. 16-3168 (Entry ID: 4466864), at 3; Motion For Extension Of Time To Post Appeal Bond, Appeal No. 16-3168 (Entry ID: 4466886) at 1. Well out of time, Mrs. Sweeney also asks this Court for an extension of time to pay the appeal bond. Her motion (substantively identical to the one she filed in the Eighth Circuit), is no more than a repeat of her prior motion for more time to pay the filing fee which was previously rejected by this Court:

1. Appellant is appealing this case and is appearing Pro Se.
2. Appellant is not currently employed.
3. Appellant cannot pay the Appellant Bond until November 30, 2016
4. Appellant moves that she be given until November 30, 2016 to pay the Appellate Bond.

Motion for Additional Time to Post Appellate Bond, Dkt. No. 267, at 1. Under Federal Rule of Appellate Procedure 7, the district court is empowered to require a bond. It is not without jurisdiction to issue orders in regard thereto. See, e.g., *Gundacker v. Unisys Corp.*, 151 F.3d 842, 848 (8th Cir. 1998) (issue of sanctions not before appellate court at time party originally appealed and district court properly decided whether sanctions were appropriate) (citing *Perkins v. General Motors Corp.*, 965 F.2d 597, 599 (8th Cir.1992) (because sanctions are collateral to the merits of the case, sanctions may properly be considered by the district court even when the merits are no longer before it).

### ARGUMENT

As with her motion for extension of time for payment of the filing fee, Mrs. Sweeney provides no actual reason why she was, or currently is, unable to post the bond. Again, Mrs. Sweeney states only that she is not currently employed,<sup>3</sup> but provides nothing to indicate that she

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<sup>3</sup> Interestingly, Mrs. Sweeney provides a new address in the current motion that appears to be a business address (6666 Odana Road, Suite 116, Madison WI 53719).

has no other sources of payment.<sup>4</sup> Again, she gives no factual information for an inability to pay the bond or any indication of why she was unable to do so in accordance with this Court's order. When asked about her ability to post a bond at deposition, Mrs. Sweeney refused to answer. It also bears noting that, although she previously represented (without any factual support) an inability to pay the appellate filing fee until September 30, Mrs. Sweeney actually did pay it on the same date that this Court denied her requested extension.

With regard to the bond that the Court ordered to be paid by October 14, 2016, Mrs. Sweeney failed to request an extension before the due date. The Court should not countenance her continued delay. Mrs. Sweeney's egregiously out-of-time request should be denied, and she should be sanctioned for her failure to comply with this Court's order. In *In re Wal-Mart Wage & Hour Employment Practices Litig.*, 206CV00225PMPPAL, 2010 WL 2132094 (D. Nev. May 25, 2010), the court sanctioned objectors who failed to pay their bond in the amount of \$200 per day for each day between the date of the order to post a bond and the date of hearing on a show-cause order, such amount to be paid into the settlement fund. *Id.* at \*1. Mrs. Sweeney already has had ample opportunity to demonstrate why she did not pay the bond as ordered and/or why she has need of an extension but she did not. Sanction in the same amount (\$200 per day) is appropriate for each day intervening between October 14 (the date by which Mrs. Sweeney was ordered to pay the bond amount) and the date of the Court's sanction order, such amount to be paid into the Settlement Fund. In the alternative, Plaintiffs move for an order for Mrs. Sweeney to show cause why she should not be so sanctioned.

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<sup>4</sup> Mrs. Sweeney has represented to the Eighth Circuit that she does not meet the criteria for proceeding *in forma pauperis*. Motion to File an Out of Time Brief, Appeal No. 16-3168 Entry ID: 4466864 at 3.

Dated: November 9, 2016

Respectfully submitted,

/s/ Don M. Downing

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing was served electronically upon all counsel of record in this action via the CM/ECF system on this 9<sup>th</sup> day of November, 2016 with copies mailed and emailed to the following objector at her addresses appearing on her notice of appeal where appearing *pro se* or to counsel:

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