

**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 )****

**MOTION FOR APPEAL BOND**

Come Now Plaintiffs, on behalf of themselves and others similarly situated, and respectfully move this Court for its Order imposing on objectors Pamela Sweeney, Pamela McCoy, Paul Lopez, Gary Sibley, and Caroline Nadola and their counsel an appeal bond in the amount of at least \$150,309.00. In support of this request, and as more fully set forth in the accompanying Memorandum in Support, Plaintiffs state as follows:

1. On June 16, 2016, after a fairness hearing (which none of the objectors attended), this Court entered its Final Order and Judgment (Dkt. No. 214) approving a class settlement that provides valuable economic restitution and injunctive relief. In addition, the Court entered its Findings of Fact, Conclusions of Law, and Order Awarding Fees and Costs. Dkt. No. 215.

2. Objectors Pamela Sweeney, Pamela McCoy, Paul Lopez, Gary Sibley, and Caroline Nadola have filed notices of appeal from this Court’s final orders approving the settlement and awarding attorneys’ fees and expenses in this action.

3. Mrs. Sweeney, Mr. Lopez, Ms. McCoy, and Mr. Sibley all have histories of objecting to class action settlements, often appealing therefrom only to dismiss their appeals months later without effecting any positive changes to the settlements. Mrs. Sweeney, herself a serial objector, is married to attorney Patrick Sweeney, who has been recognized as a serial objector. Both also have been represented by Darrell Palmer, another professional objector criticized by numerous courts. Mr. Lopez is represented by Christopher Bandas, an attorney

repeatedly chastised for his strategy of holding up settlements by filing frivolous appeals. Mr. Sibley, himself an attorney, also is a serial objector for himself and as attorney to others.

4. Rule 7 of the Federal Rules of Appellate Procedure authorizes an order requiring the posting of an appeal bond.

5. This rule is intended to protect the appellees' rights by "provid[ing] some level of security to Lead Plaintiffs who have no assurances that Appellants have the ability to pay the costs and fees associated with opposing their appeals." *In re Uponor, Inc., F1807 Plumbing Fittings Products Liab. Litig.*, 11-MD-2247 ADM/JJK, 2012 WL 3984542, at \*2 (D. Minn. Sept. 11, 2012). Authority to craft a bond is "indicative of the expected outcome on appeal" and lies within the discretion of district court. *Id.* Bonds are particularly appropriate, and "often required," for appeals of class settlements because "the appeal effectively stays the entry of final judgment, the claims process, and payment to all class members." *Id.* at \*2.

6. In determining whether an appeal bond is necessary, courts consider several factors "including: (1) the appellant's financial ability to post a bond; (2) the risk of nonpayment of appellee's costs if the appeal is unsuccessful; (3) the merits of the appeal; and (4) bad faith or vexatious conduct on the part of the appellants." *Id.* Each factor favors a bond here.

7. There is no evidence that the objectors are unable to pay the cost of a bond. By contrast, they all have risk of non-payment. Sweeney, McCoy, Lopez, and Sibley are repeat objectors and at least two of them are, or have been, represented by known professional objectors criticized across the country for vexatious tactics. Their appeals, based on the objections asserted, are meritless. The objectors raise no legitimate arguments, and four of them have a history of objections that add nothing of value to the class. Courts repeatedly have recognized that such tactics support imposing a bond. *See In re Uponor*, 2012 WL 3984542, at \*5 ("Courts treat with particular disapproval the objections and appeals of 'professional objectors,' whose

objections amount to a tax that has no benefit to anyone other than to the objectors but serves to tie up the execution of [a] Settlement and further delay payment to the members of the Settlement Class”) (internal quotes and citation omitted).

8. For all these reasons, a bond is warranted.

9. The amount of a bond is within the Court’s discretion.

10. Plaintiffs seek a bond in the amount of at least \$150,309.00. This includes direct appeal costs, *see In re Uponor*, 2012 WL 3984542, at \*3 (“Courts routinely approve bonds for appeal-related costs of \$25,000.”); additional administrative costs that will be incurred as a result of the appeals, delay damages, and reasonable attorneys’ fees. Under the circumstances here, each of these components is warranted and appropriate. Imposing an appeal bond in this case will provide necessary security to the class as a result of the meritless appeals.

WHEREFORE, Plaintiffs request that this Court order objectors Pamela Sweeney, Pamela McCoy, Paul Lopez, Gary Sibley, and Caroline Nadola, and their attorneys, to post an appeal bond in the amount of at least \$150,309.00, each to be jointly and severally liable for the bond payment. Plaintiffs further request that the bond be posted within ten (10) days of entry of the Court’s order, and such other relief that the Court deems necessary and appropriate.

Dated: July 29, 2016

Respectfully submitted,

/s/ John G. Simon

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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 29<sup>th</sup> day of July, 2016 with copies mailed to the following objectors at the addresses appearing on their notices of appeal where appearing *pro se* or to counsel:

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