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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

MICHAEL SHAMES, *et al.*,

Plaintiffs,

vs.

THE HERTZ CORPORATION, *et al.*,

Defendants.

CASE NO. 07-CV-2174-MMA(WMC)

**ORDER DENYING *EX PARTE*
MOTION FOR LEAVE TO FILE
MOTION TO INTERVENE**

[Doc. No. 341]

Class settlement objector, Gordon Hansmeier, through his counsel, Brett Langdon Gibbs of Mill Valley, CA, filed an *ex parte* application for leave to file a motion to intervene to be heard on an expedited basis. [Doc. No. 341.] Objector wishes to intervene so that he may ultimately file a motion to remove certain class counsel, have his attorney appointed as co-lead class counsel, and for issuance of supplemental notice. The Court **DENIES** Objector's *ex parte* motion.

I. BACKGROUND

On May 22, 2012, the Court issued an Order preliminarily approving the class settlement, certifying a settlement class, appointing a class representative and class counsel, and providing for class notice. [Doc. No. 313.]

In that Order, the Court appointed Kurtzman Carson Consultants as the class administrator and ordered that individual notice be sent to identified class members via electronic mail or standard mail no later than July 6, 2012. The Court further ordered notice by publication no later than July 27, 2012. [*Id.* ¶ 7(a)-(b).] As relevant to this Order, the Court also scheduled a final

1 approval hearing for October 29, 2012, and set a deadline of October 1, 2012, for filing objections
2 to the class settlement, attorneys' fees, or both. Shortly after the scheduled class notice dates, the
3 Court slowly began receiving objections. [See Doc. No. 319 (Objection of Aaron H. Pratt, first
4 objection received on July 23, 2012).]

5 Objector's local counsel, Brett Gibbs, made an appearance on Objector's behalf on October
6 1, 2012, the last day to file objections to the class settlement. [Doc. No. 330.] Objector filed his
7 objection on the same day. [Doc. No. 331.] At 32 pages—by far the lengthiest objection
8 filed—Objector's filing includes 4 exhibits, including two letters sent to class counsel by an
9 associated Minnesota attorney named Paul R. Hansmeier.

10 The first letter, dated Friday, September 28, 2012, is addressed to class counsel, Mr.
11 Stewart. In addition to briefly voicing Objector's objections, attorney Hansmeier demanded
12 \$30,000 in exchange for his not filing lengthy objections to the class settlement and attorneys' fees
13 request. [Doc. No. 331-4.] Objector's counsel ominously warned, in part:

14 This letter is to advise you that an objection will be filed to your proposed
15 settlement. I am enclosing a draft of the objection to be filed, which you have
16 previously had an opportunity to review. This (or a similar version) will be filed if
17 you do not attempt to resolve this matter. We find that settlements like this are
likely to be rejected following our participation, as was the result today in *In re*
Groupon, No. 11-md- 02238 (S.D. Cal.) (Dkt. No. 97).

18 I will extend to you an offer to settle this matter with my client for
19 \$30,000.00 if the settlement terms are reached by 5:00 PM CST on Monday, Oct. 1,
2012. If you reject this settlement and the objection is filed, the offer to settle is
revoked and will not be extended at the pre-filing settlement amount.

20 Govern yourself accordingly.

21 [Doc. No. 331-4.] On Monday, October 1, 2012, governing himself according to the undertone
22 and implications of Objector's counsel's letter, class counsel responded, in part:

23 In our view, if you present this objection, it is clear that it will have been
24 presented for an "improper purpose" under Fed R. Civ. P. Rule 11(b)(1). Our view
25 is further informed by the fact that the practice of contacting class counsel with draft
26 objections and inviting them to "discuss them" (i.e. resolve them by making an
unjustified payment to the objectors' lawyers) in advance of filing in the hope of
gaining an unjustified payment beyond any legitimate class member's claim appears
from the Record in *Groupon* to be a pattern of conduct.

27 Please be advised that we consider this conduct to be improper and
28 sanctionable under 28 U.S.C.A. § 1927 and Rule 11.

1 [Doc. No. 331-3 at 3.] That same day, Objector’s counsel took umbrage at class counsel’s
2 response and replied, in part:

3 The idea that you would respond to a demand letter *which you requested* by
4 threatening sanctions is unconscionable and wholly beyond the pale. It has become
5 abundantly clear that you are not interested in good-faith discussion, but only in
hardball tactics designed to intimidate my client and to protect this unfair settlement
from legitimate challenge.

6 Regarding your threatened motion for sanctions, please be advised that my
7 client’s objection has a solid basis in both law and fact. You have had ample time to
8 review a draft of my client’s objection, and you have failed to offer a substantive
9 counter-argument at any point. Although you may disagree with our analysis you
should certainly be aware that our arguments are well-founded, and that our client
has a right to make them under Fed. R. Civ. P. 23(e).

10 [Doc. No. 331-2 at 2 (emphasis in original).]¹

11 On October 13, 2012, Plaintiffs filed their consolidated responses to the class members’
12 objections, as the Court required in its original Order preliminarily approving the settlement. In
13 addition to addressing Objector’s lengthy objection on the merits, Plaintiffs sought limited
14 sanctions, asking the Court to strike Objector’s objection.²

15 II. LEGAL STANDARD

16 Under the Local Civil Rules, “the clerk’s office is directed not to file untimely motions and
17 responses thereto without the consent of the judicial officer assigned to the case.” S.D. Cal. Civ.
18 L.R. 7.1.7. The Rules further set forth the timing requirements for filing motions. “Unless the
19 court shortens time . . . , any notice of motion, application or notice of other matter requiring the
20 court’s ruling, plus all necessary supporting documents, will require a minimum filing date of
21 twenty-eight (28) days prior to the date for which the matter is noticed.” *Id.* § 7.1.1.

22 III. DISCUSSION

23 Objector filed the instant *ex parte* motion on October 11, 2012, and sought to file a motion

24
25 ¹ It is of no moment that class counsel requested Objector’s demand in writing. Requesting
26 written confirmation of verbal discussions is unquestionably routine in the practice of law today.
Moreover, any attorney worth his salt would have sought to have Objector’s counsel’s demands
memorialized in writing.

27 ² The Court is not inclined to grant this request primarily on the basis that it does not comply
28 with Rule 11’s separate-motion requirement, Fed. R. Civ. P. 11(c)(2), and, as a result, does not afford
Objector an opportunity to respond, Fed. R. Civ. P. 11(c)(1). That being said, class counsel should
not interpret this as an invitation or suggestion that a formal motion should be filed.

1 to intervene 18 days before the final approval hearing.³ The Local Civil Rules' requirement that
2 motions be noticed 28 days before the hearing required Objector to file any motion no later than
3 October 1, 2012. Objector's motion is therefore untimely and will not be accepted absent an
4 acceptable explanation for its untimeliness.

5 Objector's *ex parte* motion provides the following basis for allowing him to file the
6 intervention motion a mere 18 days before the final approval hearing:

7 This Application and the Motion To Intervene are timely because they
8 are filed within a reasonable time of the Objector's first appearance in this action
9 and of the events relevant to and which prompted the Motion To Intervene. The
10 Objector's ultimate goal in petitioning for intervention in this action is limited to
11 the ability to file his Motion For Removal Of Lead Counsel, For Issuance Of
12 Supplemental Notice, And For Appointment Of Ad Litem Counsel (the
13 "Underlying Motion") The requested intervention is for a limited purpose,
14 prompted solely by very recent events.

15 The Underlying Motion, the Motion To Intervene, and this Application are
16 all prompted by the same events—namely, the attempt by co-Lead Counsel Hulett
17 Harper Stewart LLP, Dennis Stewart, to dissuade the Objector from filing his
18 objection to the Proposed Settlement on the court record, by threatening to move
19 for sanctions against the Objector and/or his counsel upon the public filing of that
20 objection. [Citation.] This was a bold and improper tactic, designed to intimidate a
21 potential objector and to deter him from exercising his right, under Fed. R. Civ. P.
22 23(e), to participate in these proceedings. This incident occurred on the objection
23 filing deadline of October 1, 2012, only ten (10) calendar days—or seven (7) court
24 days—prior to this filing. [Citation.]

25 Objector's counsel waited until October 10, 2012, to contact the Court for a hearing date,
26 which Objector originally requested for a motion for "Removal Of Lead Counsel, For Issuance Of
27 Supplemental Notice, And For Appointment Of *Ad Litem* Counsel." Even assuming Objector
28 would have filed a motion that same day, only 19 days remained for opposition and reply briefs.
29 Objector provides no explanation for waiting until October 10, 2012, to bring the matter to the
30 Court's attention when he knew about class counsel's alleged inappropriate behavior on October 1,

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³ The October 29, 2012, date set for the final approval hearing is set in stone, as the hearing has been scheduled for many months and was the hearing date communicated to nearly 3.5 million class members. Rescheduling the hearing date would be a monumental task that would require that supplemental notice be sent to all class members at great expense and delay. Moreover, the intervention motion and "Underlying Motion" that Objector proposes necessarily must be heard either before or concurrently with the class representative's final approval and fee motions because Objector seeks to remove certain class counsel and inject his counsel as co-class counsel. Objector agrees that the intervention motion should be heard on October 29, 2012. [Doc. No. 341 at 2.] Thus, the timing of filing any motions that should be heard together with those set on October 29, 2012, are necessarily constrained and governed by that date.

1 2012–9 days before his counsel contacted the Court.

2 Moreover, although Objector admits he “received timely notice of the proposed settlement,”
3 [Doc. No. 341-3 at 7:26-27], he does not explain the delay in pursuing “settlement negotiations”
4 with class counsel, especially since it seems it should have been evident to any reasonable attorney
5 that class counsel would not acquiesce given the tone and nature of Objector’s counsel’s demand.
6 [See, *infra*, n.4.] Had Objector not waited until the week before the objection period expired to
7 contact class counsel, he could have timely filed the intervention motion and complied with the
8 Local Rules’ 28-day requirement. Thus, the proposed motion cannot be deemed timely simply
9 because it was “filed within a reasonable time of the Objector’s first appearance in this action”
10 because the correctly-framed inquiry is why it took Objector so long to appear in this action when
11 he received “timely” notice months before and in light of the foreseeable reaction class counsel
12 would have to his attorneys’ “settlement offer.” [See, *infra*, n.4.]

13 Further, having reviewed the “Underlying Motion,” it is apparent that it is without merit
14 and would not succeed even it were allowed to proceed. It appears a significant disconnect exists
15 between Objector’s perception of the events that transpired in the days leading to the objection
16 deadline, the nature of his counsel’s involvement and conduct, and the nature and purpose of class
17 counsel’s response. In reviewing the letters between Objector’s counsel and class counsel, the
18 only “bold and improper” conduct the Court can identify is Objector’s counsel’s attempt to extract
19 \$30,000, from class counsel in exchange for Objector not filing objections that Objector’s counsel
20 suggested could derail approval of the class settlement and award of attorneys’ fees.⁴ Objector
21 now wishes to use his own counsel’s questionable conduct and class counsel’s measured

22
23 ⁴ Objector’s counsel’s indignant outrage at class counsel’s response is quite puzzling.
24 Objector’s counsel certainly does not set forth any independently-actionable claims as the basis for
25 the \$30,000, demand, which seems is an amount picked out of thin air given the small amount of
26 individual damages at issue in this case. Thus, the only “matter” counsel could wish to “settle” for
27 \$30,000, is the arguably inappropriate *quid pro quo*—essentially, “We’ll go away in exchange for
28 \$30,000; otherwise, we’ll file lengthy objections”—Objector’s counsel demanded. See, e.g., *Vollmer*
v. Selden, 350 F.3d 656, 659-60 (7th Cir. 2003) (observing that attorneys intervening to object to a
settlement in the hope of causing expensive delay and getting paid to go away would be an improper
purpose that would justify sanctions). A recipient of such a letter could reasonably interpret it as a
threat to file lengthy objections *in retaliation* for not acquiescing to the \$30,000 demand. With this
plausible interpretation in mind, then, class counsel’s opinion that a retaliatory filing violates Rule 11
is not such a wild notion. See *id.*

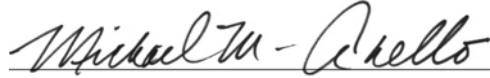
1 response—which Objector recharacterizes in a strained attempt to ascribe misconduct and ill will to
2 class counsel—as a springboard to attack the class counsel’s motivation and mightily strains to
3 manufacture violations of rights related to “certain actions by co-Lead Counsel for the class and
4 their implications regarding notice and due process of law.” Even if the Court were to allow the
5 eventual filing of the “Underlying Motion” and consider Objector’s request to remove Mr. Stewart
6 as class counsel, the Court would find *no* basis to do so. Nor would the Court find it necessary or
7 justified to appoint “*ad litem* counsel to protect absent class members from the sort of behavior
8 [*i.e.*, Mr. Stewart’s behavior] described herein.” Further still, even if such a need existed, the
9 Court certainly would not appoint Objector’s counsel as co-lead class counsel based on the sort of
10 behavior the letters exhibit. Finally, to the extent the “Underlying Motion” requests supplemental
11 notice based on class counsel’s supposed inappropriate behavior, such notice would also be wholly
12 unnecessary and inappropriate in light of the foregoing discussion.

13 **IV. CONCLUSION**

14 Objector’s *ex parte* motion to file a motion to intervene is **DENIED**.

15 **IT IS SO ORDERED.**

16 DATED: October 15, 2012

17 

18 Hon. Michael M. Anello
19 United States District Judge