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Class Counsel

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

IN RE FERRERO LITIGATION

Case No. 3:11-cv-00205 H KSC
Pleading Type: Class Action

REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR APPEAL BOND

Judge: The Honorable Marilyn L. Huff
Hearing: November 13, 2012
Time: 10:30 a.m.
Location: Courtroom 13

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I. INTRODUCTION

Plaintiffs seek a modest appeal bond of $21,970.72 as security against their costs in opposing the appeals of Michael Hale, Courtney Drey, and Andrea Pridham; the administrative costs of keeping in contact with claimants about the status of their claims pending the appeals; and post-judgment interest. (*See* Mot., Dkt. No. 140-1 at 1, 9-10.) Mr. Hale does not oppose the bond.[1] Drey and Pridham's Opposition (Opp., Dkt. No. 142) provides no salient reason to deny Plaintiffs' request for this moderate security against Objectors' meritless appeals.

II. ARGUMENT

A. The Court May Evaluate the Merits of the Appeal

Drey and Pridham argue that frivolousness is an inappropriate ground on which to impose a bond (Opp. at 4-6), but Plaintiffs' use this descriptive only incidentally to their arguments directed toward their burden under Rule 7 of the Federal Rules of Appellate Procedure. They do not request that the Court make a finding of frivolousness, or impose attorneys' fees and sanctions on Objectors.

Instead, Plaintiffs have moved, as is their right under Rule 7, to secure a payment of the costs their counsel will incur as a result of these appeals. In doing so, Plaintiffs discuss the factors laid out in *Fleury v. Richemont N. Am., Inc.*, 2008 U.S. Dist. LEXIS 88166 (N.D. Cal. Oct. 21, 2008) and its progeny, and demonstrate why they weigh in favor of a bond here, namely: (1) the appellant's financial ability to post a bond; (2) the risk that the appellant would not pay the appellee's costs if the appeal loses; (3) the merits of the appeal; and (4) whether the appellant has shown bad faith or vexatious conduct. *Id.* at *19. (*Compare* Mot. at 4-9.)

To the extent Drey and Pridham rely on the Ninth Circuit's 2007 decision in *Azizian v. Federated Dep't Stores, Inc.*, 499 F.3d 950 (9th Cir. 2007) to assert that district courts are precluded from considering the *merits* of an appeal in determining whether to impose a bond pursuant under

[1] Plaintiffs' served their Motion on Mr. Hale's counsel on October 11, 2012. (*See* Dkt. No. 144.) That he failed to respond underscores the risk that Mr. Hale will not pay costs imposed against him after appeal, which should therefore be secured by the imposition of the requested bond.

Appellate Rule 7, this is wrong.[2] Rather, it is well-established that district courts appropriately consider the merits of an appeal, since "the merits . . . informs the likelihood that the appellant will lose and thus be liable for costs." *Fleury*, 2008 U.S. Dist. LEXIS 88166, at *20 (citing *Adsani v. Miller*, 139 F.3d 67, 79 (2d Cir. 1998) ("A district court, familiar with the contours of the case appealed, has the discretion to impose a bond which reflects its determination of the likely outcome of the appeal." (citation omitted))).

Accordingly, since *Azizian*, California district courts have repeatedly imposed bonds on the basis that an appeal is meritless. *See Miletak v. Allstate Ins. Co.*, 2012 U.S. Dist. LEXIS 125426, at *5 (N.D. Cal. Aug. 27, 2012) ("[T]he merits of Objector Wilens' appeal weigh heavily in favor of requiring a bond. . . . [T]he Court has thoroughly considered each of Objector Wilens' objections to the settlement, and has found them to be meritless. Thus, the Court finds that the posting of an appeal bond is warranted."); *Embry v. ACER Am. Corp.*, 2012 U.S. Dist. LEXIS 78068, at *5 (N.D. Cal. June 5, 2012) ("[T]he Court finds that the merits of Objector's appeal weigh heavily in favor of requiring a bond, insofar as his objections to the settlement are lacking in merit. . . . [T]he Court carefully considered each of [Objector's] objections and overruled them prior to approving the settlement."); *In re MagSafe Apple Power Adapter Litig.*, 2012 U.S. Dist. LEXIS 88549, at *7-8 (N.D. Cal. May 29, 2012) ("[T]he merits of the appeals at issue weigh heavily in favor of requiring a bond, as each is lacking in merit" where the objections "were carefully evaluated by the Court before granting final settlement approval."); *Yingling*, 2011 U.S. Dist. LEXIS 79738, at *5 (Imposing bond where "the Court has already considered Objector Balla's objections and found them to be meritless, [and thus] the Court finds that Objector Balla is unlikely to succeed on the merits of his appeal."); *In re Wal-Mart Wage & Hour Employment Practices Litig.*, 2010 U.S. Dist. LEXIS 21466, at *18 (D. Nev. Mar. 8, 2010) ("The Court further finds that the four Objectors should be required to file an appeal bond sufficient to secure

[2] The question of merits is different from the question of frivolity. *See Yingling v. eBay, Inc.*, 2011 U.S. Dist. LEXIS 79738, at *5-6 n.10 (N.D. Cal. July 5, 2011) ("In arriving at this conclusion about the merits of the appeal, the Court does not reach the question of whether Objector Balla's appeal is frivolous." (citing *Azizian*, 499 F.3d at 961)). Moreover, Drey and Pridham's argument is misplaced, since the portion of *Azizian* on which they rely is limited to the imposition of a bond for *attorney's fees*, which Plaintiffs do not seek. *See* 499 F.3d at 954. Curiously, Drey and Pridham admit that *Azizian's* holding is so limited, but assert that *Plaintiffs* "could have, and should have, been more forthcoming in the way they cited Azizian." (Opp. at 6.)

and ensure payment of costs on appeals which in the judgment of this Court are without merit and will almost certainly be rejected by the Ninth Circuit Court of Appeal."); *In re Uponor, Inc.*, 2012 U.S. Dist. LEXIS 130140, at *7-8 (D. Minn. Sept. 11, 2012) ("[T]he Court finds the bases for [objectors'] appeals to be very weak. . . . None of these issues are likely to succeed on appeal, and this factor weighs in favor of imposing a bond.").

In order to prevail on their appeal, Drey and Pridham will have to show that the Court's Order granting final approval was a "clear abuse of discretion." *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 940 (9th Cir. 2011) (citing *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 963 (9th Cir. 2009)). As in the cases cited above, however, this Court carefully considered and overruled Drey and Pridham's objections. (*See* Dkt. No. 127 at 6-7 ¶ 13 ("The Court has considered the objections . . . After careful consideration, the Court overrules the objections.").) This by itself is strong evidence, but the Court's conclusion here is bolstered by the decision of another district court, separately evaluating very similar settlement terms on behalf of a class of Nutella purchasers in the 49 states outside California,[3] which overruled identical objections raised by Drey and Pridham's counsel. *See In re Nutella Mktg. & Sales Practices Litig.*, No. 11-1086-FLW (D.N.J.), Dkt. Nos. 76 (appeal filed by Mr. Langone on behalf of certain objectors); 104 (Final Approval Order & Judgment).

B. The Court May Consider Objectors' Bad Faith and Vexatious Conduct

As *Fleury* and other cases make clear, in hearing a request for an appeal bond, district courts may consider an objector's bad faith or vexatious conduct without determining that her appeal is frivolous. *See Fleury*, 2008 U.S. Dist. LEXIS 88166, at *19 (citations omitted); *In re Wachovia Corp. "Pick-A-Payment" Mortgage Mktg. & Sales Practices Litig.*, 2011 U.S. Dist. LEXIS 92293, at *5-6 (N.D. Cal. Aug. 18, 2011) (citing *Fleury*, 2008 U.S. Dist. LEXIS 88166, at *6)).

Where, as here, objections are filed by serial objectors and/or "professional objector" counsel, courts are particularly concerned that appeals may be in bad faith. As the court in *Barnes v. Fleetboston Fin. Corp.* explained:

[3] Though identical on most terms, the California settlement provides a larger fund for class members on a per capita basis than the settlement covering the other 49 states. (*See* Dkt. No. 114-2 at 14-15.)

> Repeat objectors to class action settlements can make a living simply by filing frivolous appeals and thereby slowing down the execution of settlements. The larger the settlement, the more cost-effective it is to pay the objectors rather than suffer the delay of waiting for an appeal to be resolved (even an expedited appeal). Because of these economic realities, professional objectors can levy what is effectively a tax on class action settlements, a tax that has no benefit to anyone other than to the objectors. Literally nothing is gained from the cost: Settlements are not restructured and the class, on whose behalf the appeal is purportedly raised, gains nothing.

2006 U.S. Dist. LEXIS 71072, at *3-4 (D. Mass. Aug. 22, 2006). *See also In re Initial Pub. Offering Sec. Litig.*, 728 F. Supp. 2d 289, 295 n.37 (S.D.N.Y. 2010) ("Federal courts are increasingly weary of professional objectors . . . who seek out class actions to simply extract a fee by lodging generic, unhelpful protests." (citation and internal quotation marks omitted)); *In re Pharm. Indus. Avg. Wholesale Price Litig.*, 520 F. Supp. 2d 274, 279 (D. Mass. 2007) ("[T]he class is likely to be damaged if the appeal is rejected and there are public policy reasons to prevent frivolous objectors from threatening to hold up class distributions."); *Gemelas v. Dannon Co.*, 2010 U.S. Dist. LEXIS 99503, at *5-8 (E.D. Ohio Aug. 31, 2010) (

> Plaintiffs have shown this is the fourth class action of which [an Objector] claims to be a class member, has filed rote objections, does not appear at fairness hearing and then appeals the district courts' rulings granting final approval for class action settlements. . . . The court finds that Padgett's appeal is meritless. . . . In short, Mr. Padgett appears to be making a business of objecting to, and appealing, class action settlements in order to obtain some financial reward. . . . [C]ourts have discretion to impose appeal bonds to prevent frivolous, unreasonable or groundless litigation. The Court finds Mr. Padgett's appeal to be frivolous, unreasonable and groundless. Finally, there are public policy reasons to prevent frivolous objectors from threatening to hold up class distributions. Serial objectors such as Mr. Padgett should not be encouraged to continue holding up valuable settlements for class members by filing frivolous appeals. (internal citations and quotation marks omitted)).

Drey and Pridham have both filed multiple objections to class action settlements.[4] More relevant, their counsel, Mark T. Lavery, Christopher Langone, and Grenville Pridham, together or in combination, have objected, variously on behalf of themselves, family members, and others, in at least

[4] In addition to this action, Drey filed an objection in *Astiana v. Ben & Jerry's Homemade, Inc.*, 10-cv-4387-PJH (N.D. Cal.), Dkt. No. 86. Pridham filed an objection in *In re Groupon Mktg. & Sales Practices Litig.*, No. 11-md-2238-DMS (S.D. Cal.), Dkt. No. 69; and *In re TFT-LCD (Flat Panel) Antitrust Litig.*, no. 07-md-1827-SI (N.D. Cal.), Dkt. No. 5461 (filed under Pridham's maiden name, Kane).

half-a-dozen cases other than this one. (*See* Dkt. No. 125-1 at 5-6 ¶ 15 (collecting cases).) By their counsel, Drey and Pridham made similar objections in this case that the court in *Hall v. AT&T Mobility*, methodically, and emphatically, overruled. *See* 2010 U.S. Dist. LEXIS 109355, at *21 n.6, *23-24, *32-34, *36-43 (D.N.J. Oct. 13, 2010). After the district court approved the settlement in *Hall*, Langone appealed, but later withdrew it. *See Larson v. AT&T Mobility LLC*, No. 10-4349 (3d Cir. Sept. 9, 2011), Dkt. No. 003110649682.

Further, when lodging their objection here, Drey and Pridham's counsel ignored the Court's Preliminary Approval Order by failing to file objections "signed" by their clients (*see* Dkt. No. 108 at 6 ¶ 7(b)). Instead, Drey and Pridham's counsel filed declarations with their clients' "slash" signatures, also in violation of the Local Rules and the Court's Electronic Case Filing Administrative Policies and Procedures Manual. (*See* Plaintiffs' Response to Drey and Pridham Objection, Dkt. No. 125 at 4-5 (citing S.D. Cal. Civ. L.R. 5.4(f); APPM § 2(f)(1)).) In addition, Mssrs. Lavery and Langone appeared on behalf of their clients in an unauthorized manner, having never sought *pro hac vice* admission, as they were required. (*See id.* at 5.) Although since Plaintiffs raised this issue, Mr. Pridham alone has appeared for Drey and Pridham on their appeal and in opposing this bond motion (*see* Dkt. Nos. 129-30, 142), Mr. Langone continues to file papers purporting to represent Drey and Pridham in an "of counsel" role despite his failure to seek admission. (*See* Dkt. No. 145-1 at 14.)

Drey and Pridham, through their counsel, have also acted vexatiously. As Plaintiffs previously described, after lodging Drey and Pridham's objection, one of their counsel acted unprofessionally in a series of phone calls with Class Counsel and its staff, and promised to appeal their objections to the Ninth Circuit, presumably in anticipation that the Court would overrule them. (*See* Dkt. No. 125-1 ¶¶ 6-13.) On November 3, 2012, Drey and Pridham's counsel served Mr. Fitzgerald with a draft Rule 11 motion, asserting that "[t]he motion you filed to require a bond from Ms. Pridham violates Rule 11" (Fitzgerald Decl. Ex. 1), and demanding its withdrawal before November 24, even though the Motion was set for hearing on November 13 and is proper. On November 5, Drey and Pridham's counsel improperly filed a baseless "Motion to Vacate" the Court's Order granting final approval and entering judgment, and requesting a slew of other unreasonable relief, although the motion only rehashed the same objections the Court overruled last July. (Dkt. No. 145.) That motion appears to be retaliation for

what Drey and Pridham perceive to be an unfair request for an appeal bond.[5]

Finally, Drey and Pridham's Opposition highlights the danger that their appeal is brought in bad faith. Regardless of the price of the product at issue or amount of bond required, there is a strong incentive for unsuccessful class action objectors to file *meritorious* appeals, since successful objector-appellants will have their bonds returned and can often obtains fees and incentive awards for prevailing. Drey and Pridham suggest, however, that if the Court imposes a bond, they will drop their appeal, purportedly because "only a lunatic or a fanatic would post a $20,000 bond to proceed with an appeal over $3.00 jars of Nutella" (Opp. at 3), but more likely because this logic applies to meritless appeals.

Courts have often imposed bonds upon professional objectors, like Drey and Pridham's counsel, who so act in bad faith and vexatiously. *See, e.g., In re Uponor*, 2012 U.S. Dist. LEXIS 130140, at *8 ("bad faith and vexatious conduct" justified bond where "the Palmer Objectors appear to be represented by an attorney who has not entered an appearance in this case and who is believed to be a serial objector to other class-action settlements"); *In re Initial Pub. Offering Sec. Litig.*, 728 F. Supp. 2d at 294 (imposing bond after finding bad faith and vexatious conduct where "counsel for the . . . Objectors are serial objectors," counsel "holds personal, documented animus toward" a party, and where they "refus[ed] to comply with th[e] Court's Orders").

C. The Requested Bond is Not Punitive

Relying on the Supreme Court's decision in *Lindsey v. Normet*, 405 U.S. 56 (1972), Drey and Pridham argue that a bond may not be punitive. *Lindsey* is easily distinguishable, since it concerned an Oregon statute that automatically imposed a bond on unsuccessful parties in eviction suits "of twice the rental value of the property from the time of commencement of the action to final judgment." *Id.* at 63-64. This violated equal protection because the statutory scheme imposed "requirements that in [the Court's] judgment bear no reasonable relationship to any valid state objective and that arbitrarily discriminate against tenants appealing from adverse decisions" in such actions. *Id.* at 76-77.

By contrast, the purpose of the appeal bond authorized under Rule 7 of the Federal Rule of Appellate procedure is "to ensure payment of costs on appeal." Fed. R. App. P. 7; *see also Adsani*, 139

[5] Plaintiffs will shortly file their full response to Drey and Pridham's vacatur motion.

F.3d at 75 (purpose of Rule 7 bond is to protect appellee against risk of non-payment by unsuccessful appellants); *Pedraza v. United Guar. Corp.*, 313 F.3d 1323, 1333 (11th Cir. 2002) (same). Such a bond is not unconstitutional. *See generally Azizian*, 499 F.3d 950.

Finally, Drey and Pridham take issue with Class Counsel's estimate of $15,000 in costs pursuant to 28 U.S.C. § 1920 and Fed. R. App. P. 39(c) and (e), e.g., the costs of preparation of and transmission of the record, the costs of obtaining any necessary transcripts, printing costs and other copying costs. *See Thalheimer v. City of San Diego*, 2012 U.S. Dist. LEXIS 59315, at *9 (S.D. Cal. Apr. 26, 2012). As Plaintiffs demonstrated in the Motion, their $15,000 estimate is *smaller* than what courts frequently find appropriate in such cases. (*See* Mot. at 9-10 (collecting cases).) Lacking legal citations, objectors resort to sarcastic rhetorical questions in opposing the figure. (*See* Opp. at 7 ("Where did this number come from? Did he pull it out of the air?").) Yet Courts recognize the difficulty in estimating the costs in a multi-objector appeal like this one: "Presumably, some of the objectors will utilize parts of the record and reproduce exhibits that others will not. Also, some objectors will likely raise different issues in their appeals than others, causing the class to incur either more or less expense than incurred defending the appeals of other objectors." *In re Diet Drugs Prods. Liab. Litig.*, 2000 U.S. Dist. LEXIS 16085, at *19-20 (E.D. Pa. Nov. 6, 2000) (imposing $25,000 bond). Objectors cite no authority that a motion for an appeal bond must include a detailed itemization of estimated costs; and the fact that the many appeal bond orders Plaintiffs cited imposed cost bonds of round numbers makes clear there is no such requirement. *See, e.g.*, *In re MagSafe*, 2012 U.S. Dist. LEXIS 88549 (imposing separate $15,000 appeal bonds on each objector, for a total of $60,000).

D. The Composition of the Requested Bond is Proper

Drey and Pridham argue that the "costs of delay" may not be included in an appeal bond. (Opp. at 8.) As Plaintiffs' motion makes clear, however, the $5,573.80 estimate by Charlene Young (Dkt. No. 140-3), the settlement's claims administrator, pertains to *administrative costs* of delay, not the delay damages that are precluded under *Fleury* and other cases. (*See* Mot. at 10 (describing costs associated with:

> administering the settlement, including costs of updating addresses and other information needed to remain in contact with Class members, locating lost Class members, providing notices to Class members to apprise them of Objectors' appeal and keep them informed

about the status of the appeal, paying monthly fees for maintaining the website created to inform class members, and providing phone support to answer inquiries from the Class members).)

Such costs have recently been upheld and imposed as part of an appeal bond. *See Miletak,* 2012 U.S. Dist. LEXIS 125426, at *6 ("the Court finds that it may only award an appeal bond comprising . . . appellate costs and administrative costs" which include "costs incurred in order 'to continue to service and respond to class members' needs pending the appeal'" (record citation omitted)).[6]

E. The Requested Bond Promotes Good Public Policy

Relying on the inapposite case of *Devlin v. Scardelletti*, 536 U.S. 1 (2002)—which did not even concern appeal bonds, but a circuit split on whether potential objectors must first intervene—Drey and Pridham argue that the imposition of appeal bonds violates public policy in favor of hearing objections to class action settlements. (Opp. at 8.) As Congress has decided in enacting Federal Rule of Appellate Procedure 7, however, the imposition of an appeal bond does not "[c]reate [n]eedless [o]bstacles for [o]bjectors" (*id.*), who are free to object long before an appeal bond is ever imposed, but exists for the purpose of "ensur[ing] payment of costs on appeal." Fed. R. App. P. 7. *Devlin* is not contrary.

Threatening to institute "a second appeal" if the Court imposes a bond (Opp. at 8), and relying on the Ninth Circuit's June 3, 2010 decision in *In re Wal-Mart Wage & Hour Employment Practices Litig.*, No. 10-15516 (9th Cir. June 3, 2010), Drey and Pridham also assert that the Court should decline to impose a bond because the Ninth Circuit would likely stay the bond pending resolution of their appeal. (*See* Opp. at 8.) In *Wal-Mart*, the district court had imposed a *$2,000,000* bond upon expressly finding the appeal was "frivolous" (different from meritless). The appellants had filed a number of motions and gone through several rounds of review, in front of the district court and the Court of Appeal, before the Ninth Circuit finally entered a one-page order staying the bond. (*See* Fitzgerald Decl. Exs. 2-3 (Motion and Order).) Not only were the circumstances in *Wal-Mart* vastly different, but

[6] Drey and Pridham's suggestion that Class Counsel acted improperly in securing "a quick pay provision that ensured that they themselves were paid" but "did not insist . . . on a parallel protection for their fiduciaries" (Opp. at 8) is misplaced. In the unlikely event that the fees are overturned or reduced on appeal, Class Counsel will be obligated to repay them *to Ferrero*, and are easily located. By contrast, Ferrero would have no way to secure the small sums of money paid to over 50,000 Class Members in the unlikely event that the Settlement is overturned on appeal, and thus a "quick pay" for Class member claimants is impractical and unrealistic, even if desirable in the abstract.

Drey and Pridham have not petitioned the Ninth Circuit for such relief. Moreover, their assertion that the Ninth Circuit recently "did the same thing" in *In re MagSafe*, e.g., stayed an appeal bond (Opp. at 8), is flatly wrong. The Ninth Circuit, citing *Azizian*, actually held:

> "Appellant Marie Gryphon's motion to vacate the appeal bond order ***is denied*** without prejudice to renewing the arguments in the opening brief."

(*See* Fitzgerald Decl. Ex. 4, *In re* MagSafe, No. 12-15782 (9th Cir.), Dkt. No. 41 (emphasis added).)

Contrary to Drey and Pridham's arguments and threats, appeal bonds promote the public interest by ensuring costs incurred by successful parties on appeal are recoverable, obviating the need for additional litigation to obtain those costs once awarded, and deterring meritless appeals filed for the purpose of holding up good settlements. *See generally* cases cited *supra* Point B.

F. Drey and Pridham Have Demonstrated an Ability to Pay the Bond

Drey and Pridham have not submitted any evidence of their inability to pay the modest bond Plaintiffs request. Accordingly, this factor favors imposition of the bond. *See Miletak*, 2012 U.S. Dist. LEXIS 125426, at *5 ("Objector Wilens has presented no evidence that she would be unable to pay an appeal bond. Thus, this factor weighs in favor of imposing an appeal bond." (citing *Fleury*, 2008 U.S. Dist. LEXIS 88166)); *Embry*, 2012 U.S. Dist. LEXIS 78068, at *4-5 ("Objector has not submitted any evidence or even contended that he is unable to post a bond. In the absence of evidence that posting a bond will impose a substantial hardship, this favor weighs in favor of requiring a bond."). But even if Drey and Pridham had "submitted some evidence that they will have difficulty posting" the bond, "in light of the significant risk of non-payment of costs and the lack of merit in Objectors' appeals, this factor nonetheless tips in favor of requiring a bond." *See In re MagSafe*, 2012 U.S. Dist. LEXIS 88549, at *7.

The evidence, however, suggests that Drey and Pridham are able to pay the modest bond requested. Presumably, Drey and Pridham's counsel are pursuing the appeal on contingency. Mr. Langone also represents three objectors to the 49-state settlement in *In re Nutella*. When their objections were overruled, they appealed. (*See In re Nutella* Dkt. No. 106.) The *In re Nutella* Plaintiffs sought a $42,500 appeal bond. (*Id.* Dkt. No. 114.) As of the filing of this brief, Mr. Langone has not opposed the imposition of a bond in that case, suggesting Drey and Pridham's counsel are also able to

pay the smaller bond Plaintiffs request here.

G. The Risk of Non-Payment is Great Because Most of Drey and Pridham's Counsel Practice Outside California

Drey and Pridham argue that the risk of non-payment is low because they are California residents, but ignore that Mssrs. Langone and Lavery—who are likely the real parties in interest if they are pursuing the objection and appeals on contingency and may therefore have to indemnify Drey and Pridham against any assessment of costs—reside and practice outside this state. Specifically, Mr. Lavery practices in Illinois (*see* Drey and Pridham Objection Brief, Dkt. No. 123 at 15), and Mr. Langone has listed his address variably in Illinois (*see id.*) and New York (*see* Drey and Pridham Mot. to Vacate, Dkt. No. 145-1 at 14). Courts have consistently found this factor weighs in favor of imposing a bond, since the alternative is that successful plaintiff-appellees may have to institute numerous collection actions, including outside the jurisdiction, to recover their costs incurred on appeal. *Accord In re MagSafe*, 2012 U.S. Dist. LEXIS 88549, at *7 (appeal bond warranted where, absent bond, if appellees obtained costs on appeal they would "otherwise be forced to pursue collection actions in multiple locations both within the United States and abroad").

III. CONCLUSION

Defending an appeal, even a meritless one, is time-consuming and expensive. More importantly, distribution of the settlement proceeds to Class members will be delayed for months—or years—by these appeals, resulting in substantial monthly expenses incurred by the settlement and claims administrator. It is therefore appropriate to require the Objector-Appellants to post a bond to secure at least a portion of the costs on appeal. Moreover, the reasonableness of this request is underscored by the fact that both Objector-Appellants' counsel are professional objectors attempting to disrupt the settlement and "extract a fee by lodging generic, unhelpful protests." *Devlin*, 536 U.S. at 23 n.5 (2002) (Scalia, J., dissenting) (citing *Shaw v. Toshiba Am. Info Sys., Inc.*, 91 F. Supp. 2d 942, 973-74 & n.18 (E.D. Tex. 2000)). By pursuing their intended appeals, the Objector-Appellants through their professional objector counsel seek to hold hostage the significant settlement proceeds to be distributed to the Settlement Class. Accordingly, it is appropriate for the Court to impose the appeal bond that Plaintiffs request.

DATED: November 6, 2012

Respectfully Submitted,

/s/ Jack Fitzgerald
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