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8	UNITED STATES DISTRICT COURT			
9	SOUTHERN DISTRICT OF CALIFORNIA			
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11	LUIS LERMA, et al.,	Case No.: 11cv1056-MDD		
12	Plaintiffs,	ORDER DENYING OBJECTOR		
13	v.	HAMMACK'S MOTION FOR ATTORNEY'S FEES AND COSTS		
14	SCHIFF NUTRITION INTERNATIONAL, INC., et al.,	ATTORNET STEES AND COSTS		
15	Defendants.	[ECF NO. 179]		
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17	Before the Court is a Motion for Attorney's Fees and Costs, filed on February 8, 2016, by objector Ashley Hammack ("Objector"). (ECF No. 179). Plaintiffs responded in opposition on February 11, 2016. (ECF No. 181). As provided below, Objector's motion is <b>DENIED</b> . <u>PROCEDURAL BACKGROUND</u> Plaintiffs Luis Lerma, Nick Pearson, and Muriel Jayson on behalf of themselves and all others similarly situated, brought a class action			
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24	Complaint against Defendants Schiff Nutrition International, Inc., and Schiff			
25	Nutrition Group, Inc. (ECF No. 33).	Plaintiffs alleged that in its marketing		
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of various products containing glucosamine offered to the public to treat joint ailments, Defendants violated the Consumers Legal Remedies Act, Civil Code § 1750, et seq.; Unfair Competition Law, Business and Professions Code § 17200 et seq.; Illinois Consumer Fraud Act, 502/1, et seq.; personal injuries/medical monitoring; personal injuries/negligence; and breach of express warranty. (*Id.* at 33).

Sometime before March 25, 2014, the parties reached a settlement culminating in the filing of a motion for preliminary approval of the class settlement on that date. (ECF No. 81). On August 6, 2014, following a hearing, the Court declined to preliminarily approve the settlement. (ECF No. 100). Plaintiffs filed a supplemental motion for preliminary approval on September 15, 2014. (ECF No. 107). On November 21, 2014, the Court issued an order that preliminarily approved the settlement agreement. (ECF No. 113). On August 10, 2015, Plaintiffs filed a Motion for Final Approval of Class Action Settlement, Attorneys' Fees and Expenses, and Service Awards. (ECF No. 153). On October 30, 2015, the Court held a fairness hearing. (ECF No. 169). On November 3, 2015, the Court entered its Order granting final approval. (ECF No. 171).

Hammack Objections

Objector Ashley Hammack filed her objections to the proposed settlement on September 24, 2015. (ECF Nos. 157, 158). Objector, through counsel, objected to the terms of the injunctive relief to be awarded in settlement, to the monetary relief, to the claims process, to the award of attorneys' fees and to the incentive awards to the representative plaintiffs.

Ms. Hammack objected to the terms of the proposed injunction arguing that the term of the injunction should be extended from two years to five

years and that the injunctive relief was illusory because Defendants could
 seek relief from the court. (*Id.*). The Court rejected Ms. Hammack's
 objections to the injunctive relief stating:

The Court has considered and rejects Objector Hammack's concern that the injunction is inadequate because its scope is limited to 24 months. The Court acknowledges that a 5 year injunction, as urged by Objector Hammack, would be more beneficial to the Class, but, as the parties correctly argue, the Court's role is to determine whether the relief is adequate and fair, not whether it is perfect or even optimal. *Hanlon*, 150 F.3d at 1027.

The Court further rejects Objector Hammack's objection that the relief is illusory because Defendants can resume deceptive practices at any time before expiration of the 24 month period merely by petitioning the court. As the parties argue, the Settlement Agreement provides a safeguard against this by only permitting lifting of the injunction if Defendants present independent, well-conducted, published clinical trial/s supporting Defendants' representations.

(ECF No. 171 at 15-16).

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Ms. Hammack objected to the monetary relief to be provided to the class because it did not require Defendants to disgorge profits and because Defendants have not disclosed the extent to which their payments to the settlement fund were covered by insurance. (ECF No. 158 at 2). The Court rejected these objections on the grounds that non-restitutionary disgorgement was not available and, to the extent that punitive damages were available, a particularized, individual showing was necessary which likely would defeat class certification on those claims. (ECF No. 171 at 12-13). The Court rejected Ms. Hammack's objection regarding insurance coverage as it was based on purely speculative concerns. (*Id.* at 13).

25 Ms. Hammack objected to the claims process on the grounds that a
26 claim could be rejected based on a deficiency without explanation. The Court

rejected Ms. Hammack's objections because the parties agreed that rejected claims would contain an explanation for the rejection and provide for 30 days for the claimant to correct the deficiency. (Id. at 16).

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Objector challenged the requested attorneys' fees asserting that 33% of the settlement fund was too much and that the fees should be capped at 25%. Two other objectors also challenged the request for 33% of the settlement fund as attorneys' fees. (See SUPPLEMENTAL BRIEF OF AMICI CURIAE TRUTH IN ADVERTISING, INC. AND AARP IN OPPOSITION TO PROPOSED SETTLEMENT, ECF No. 144 at 3-5; OBJECTION OF CHARLES M. THOMPSON, ECF No. 162 at 4-5). After a detailed analysis, the Court agreed with the objectors and ordered that the attorneys' fees were limited to 25% of the settlement fund. (ECF No. 171 at 20-26).

Finally, the Court dispensed with Ms. Hammack's objection to the class representatives' incentive awards. Objector's misreading of the settlement agreement caused her to believe that each class representative would be receiving an incentive award of \$10,000. In fact, the three representatives were to split a total of \$10,000 which the Court found to be fair. (Id. at 18-19).

On November 19, 2015, Objector filed a notice of appeal of this Court's 1920Order approving the settlement. (ECF No. 174). Despite challenging the fairness and adequacy of the settlement approved by the Court, Objector filed the instant motion seeking attorney's fees because the Court awarded 2223attorneys' fees to class counsel at 25% of the settlement fund rather than the requested 33%. (ECF No. 179). Objector seeks an award of \$125,000 in 25attorney's fees representing 25% of the \$500,000 added to the settlement fund as a consequence of the reduced fee award to class counsel. 26

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1	ANALYSIS			
2	The entirety of Objector's position regarding the award of attorneys'			
3	fees to class counsel consisted of two paragraphs. Paragraph one stated:			
4	The Court should cap Class Counsel's fee award to 25% of the settlement			
5	fund. Class Counsel has not provided any support as to why the Court should veer from its 25% baseline to award one-third of the entire			
6	settlement fund. The crux of Class Counsel's justification of its fee award			
7	is the injunctive relief. As noted above, the injunctive relief is inadequate and illusory. Additionally, Class Counsel has not informed the Class as			
8	to the value of the injunctive relief and, as a result, its value should be disregarded or significantly discounted when determining a reasonable			
9	fee award.			
10	[ECF No. 158 at 3]. Paragraph two requested the Court to further reduce the			
11	fee award because class counsel posted their fee motion only on the Court			
12	docket and not also on the class website. ( <i>Id.</i> at 3-4).			
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14	The Court rejected the reduction request presented in Objector's second			
15	paragraph. Accordingly, the question is whether the Court's decision to			
16	award class counsel attorneys' fees in the amount of $25\%$ of the settlement			
17	fund was influenced by Objector's actions. See Rodriguez v. West Publishing			
18	Corp., 563 F.3d 948, 963 (9th Cir. 2009). In Rodriguez, the court of appeals			
19	remanded to the district court a determination of the extent to which			
20	objectors influenced the district court's decision to reject incentive awards to			
21	class representatives. The court of appeals specifically found that the issue of			
22	the reasonableness of those awards was not considered by the district court			
23	until the objectors presented their concerns. That certainly is not the case			
24	here.			
25	Objector was one of three objectors (actually one <i>amici curiae</i> and two			
26	objectors) presenting concerns regarding the amount of attorneys' fees			

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requested by class counsel. The other objectors presented far more in terms of argument and case citations than Objector. (*See SUPPLEMENTAL BRIEF OF AMICI CURIAE TRUTH IN ADVERTISING, INC. AND AARP IN OPPOSITION TO PROPOSED SETTLEMENT*, ECF No. 144 at 3-5; *OBJECTION OF CHARLES M. THOMPSON*, ECF No. 162 at 4-5). Counsel for Truth in Advertising, Inc./AARP appeared at the final hearing. Neither objector nor counsel for objector appeared. (ECF No. 169).

As early as the hearing on the motion for preliminary settlement, held on July 10, 2014, the Court expressed concerns regarding the attorneys' fees to be requested. (*See Transcript of Motion Hearing*, ECF No. 122 at 9 (using ECF page numbering (actual page 7 of transcript)). Ultimately, the Court's analysis covered six pages and, as should be apparent, was based upon its own perceptions and not inspired by any of the objections. (*See* ECF No. 171 at 20-26).

Objector has appealed the fairness of the settlement to the Ninth Circuit. (ECF No. 174). It takes more than a little bit of hubris to challenge the fairness of a settlement, on the one hand, and seek fees for having helped bring about the allegedly unfair result.

Finally, as argued by Plaintiffs, Objector's motion for attorney's fees is not timely. Rule 54(d)(2)(B)(i), Fed. R. Civ. P., required this motion to be filed "no later than 14 days after the entry of judgment." Judgment was entered on November 3, 2015. (ECF No. 171). The instant motion was filed on February 8, 2016, far beyond the 14 day period, with no explanation for the delay or request for relief from the operation of Rule 54.

1		CONCLUSION		
2	Ob	Objector Hammack's motion for attorney's fees and costs is <b>DENIED</b> .		
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4	Dated:	March 1, 2016		
5			Mitchill D. Heal	
6			Hon. Mitchell D. Dembin United States Magistrate Judge	
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