Kardonick v. JP Morgan Chase & Co. et al Doc. 195

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No. 1:10-cv-23235/HOEVELER

DAVID KARDONICK, individually and on behalf of all others similarly situated and the general public,

Plaintiff,

v.

JPMORGAN CHASE & CO. and CHASE BANK USA, N.A.

Defendants.

PLAINTIFFS' SUPPLEMENTAL SUBMISSION REGARDING MOTION TO INTERVENE

Plaintiffs are constrained to file this supplemental submission in order to clarify certain inaccuracies and misrepresentations contained within Movants' (Corrected) Reply in Support of Motion to Intervene. Without a doubt, and as evidenced by the briefing on this matter, Plaintiffs take issue with virtually all of the arguments advanced by the attempted intervenors. Most of those disagreements, however, are best left for elaboration during the hearing scheduled for April 25, 2011. Nonetheless, the most brazen mischaracterizations in Movants' Reply demand immediate, albeit brief, attention.

One distortion meeting this description is Movants' repeated suggestion that the notice of settlement sent to members of the Plaintiff class was in some way "rushed" as a result of the

Dockets.Justia.com

pending Motion to Intervene. ((Corrected) Reply Supp. Mot. Intervene 2, 14 n.16.) This is demonstrably false, as revealed by the Declaration signed by the responsible representative of the settlement administrator appointed by this Court. As the Court will recall, the February 2, 2011 Order preliminarily approving the underlying settlement directed that notice be delivered to the approximately 15 million class members no later than April 11, 2011. Buttressing notions of basic common sense, the Declaration of Mr. Ronald Bertino, the partner at settlement administrator Heffler, Radetich & Saitta LLP ("Heffler") in charge of this project, confirms that coordinating the dispatch of 15 million pieces of mail is no small undertaking,[1] and employees of Saitta turned to this mammoth task soon after issuance of the Preliminary Approval Order. (*See* Bertino Decl. ¶ 4.) Stated differently, the notice administration process was already well underway – with only one month remaining before this Court's deadline – by the time Movants filed their belated Motion to Intervene on March 9, 2011.[2] Even so, Heffler did not finalize the provision of notices until April 8, 2011, or the last business day before the applicable deadline. (Bertino Decl. ¶¶ 4, 5.) It is plain, then, that to say the Motion to Intervene somehow affected the rapidity of notice – as Movants unabashedly do – is just not true.[3]

Equally unfounded is Movants depiction of Plaintiffs' counsel as "inadequate." ((Corrected) Reply Supp. Mot. Intervene 14-15.) In large measure, Plaintiffs' Response in Opposition to the Motion to Intervene sufficiently rebuts this baseless and inflammatory charge

---

[1] In addition to this enormous mailing, it was also necessary for Heffler by April 11, 2011 to establish a telephone system and create a website so as to provide inquisitive class members more information about the settlement. (Bertino Decl. ¶ 6.)

[2] The settlement administrator's "timeline was driven by the Court's notice deadline, the printer's schedule, and the requirements of the U.S. Postal Service." (Bertino Decl. ¶ 5.)

[3] Indeed, Mr. Bertino substantiates that he was never "asked to accelerate the notice process by counsel." (Bertino Decl. ¶ 7.) What is more, he "was not even aware that anyone had objected to the settlement until . . . mid-March." (*Id.*)

(*see* Resp. Opp'n Mot. Intervene 3-6, 16-19, 20-22), though one additional point does deserve mention. Namely, it is of significant moment that in other class action litigation involving a similar Payment Protection product offered by a different credit card issuer, Movants' lawyers have affirmatively supported the efforts of Plaintiffs' attorneys to serve as Class Counsel. *See* Mem. Law Supp. Mot. Appoint Class Counsel at 2 n.2, *Walker v. Discover Fin. Servs., Inc.*, No. 1:10-cv-06994 (N.D. Ill. Apr. 4, 2011) (submitted as Exhibit 1 to this Submission). It is, to put it mildly, simply incongruous for Movants' lawyers – on the one hand – to decry Plaintiffs' attorneys as inadequate, yet – on the other – actively advocate their application to be Lead Counsel in parallel litigation. Truth be told, the undersigned attorneys are anything but inadequate, and Movants know it.

Consequently, for the reasons stated in Plaintiffs' Response in Opposition to Motion to Intervene and this Supplemental Submission, Movants' Motion to Intervene should be denied.

Dated: April 22, 2011

Respectfully submitted,

Ku & Mussman, P.A.

_/s/ Brian Ku____________________
Brian Ku (FL Bar # 610461)
Louis Mussman (FL Bar # 597155)
12550 Biscayne Blvd. #406
Miami, Florida 33181
Tel: (305) 891-1322

CARNEY WILLIAMS BATES BOZEMAN & PULLIAM, PLLC
Allen Carney
Randall K. Pulliam
Marcus Neil Bozeman
11311 Arcade Drive, Suite 200
Little Rock, AR 72212
Tel: (501) 312-8500

GOLOMB & HONIK, P.C.
Richard Golomb
Ruben Honik
Kenneth Grunfeld
1515 Market Street, Suite 1100
Philadelphia, PA 19102
Tel: (215) 985-9177

KANNER & WHITELEY, LLC
Allan Kanner
Conlee S. Whiteley
M. Ryan Casey
701 Camp Street
New Orleans, LA 70130
Tel: (504) 524-5777

Plaintiffs' Counsel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22th day of April, 2011, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Brian Ku
Brian Ku (FL Bar # 610461)