

SUPPLEMENT TO THE AGENDA BOOK

**ADVISORY COMMITTEE
ON
APPELLATE RULES**

**Newark, NJ
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TAB 6

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MEMORANDUM

DATE: September 20, 2013

TO: Judge Steven M. Colloton
Professor Catherine T. Struve

CC: Judge Jeffrey S. Sutton

FROM: Andrea L. Kuperman

SUBJECT: Immediate Appealability of Prejudgment Orders

The Appellate Rules Committee is considering whether to undertake a project that would address the appealability of prejudgment orders. The issue arises from the Supreme Court's observation in *Mohawk Industries, Inc. v. Carpenter*, 558 U.S. 100 (2009), and *Swint v. Chambers County Commission*, 514 U.S. 35 (1995), that the rulemaking process is the preferred means for determining whether and when prejudgment orders should be immediately appealable.¹ At this preliminary stage, the Committee is interested in determining whether it would be useful and practical to undertake a large project that might specify by rule the universe of interlocutory orders that should be appealable, or whether it would be more appropriate to consider only the appealability of particular categories of orders that are brought to the Committee's attention, such as the attorney-client privilege ruling at issue in *Mohawk Industries*.²

¹ Under 28 U.S.C. § 2072(c), the Supreme Court is granted the power to prescribe rules of practice and procedure that "define when a ruling of a district court is final for the purposes of appeal under section 1291 of this title." Section 1291 of Title 28 provides that courts of appeals have jurisdiction over all final decisions of the district courts. So far the only exercise of this rulemaking power has been to authorize permissive interlocutory appeals of a district court order granting or denying class action certification. *See* THOMAS E. BAKER, A PRIMER ON THE JURISDICTION OF THE U.S. COURTS OF APPEALS 52 (Fed. Jud. Ctr. 2009). Notably, "[t]he congressional delegation is a jurisdictional ratchet, a one-way device: judicial rulemaking can be used only to expand appellate jurisdiction and not to contract appellate jurisdiction that is otherwise granted by statute." *Id.*

² It is worth noting that even a more narrow approach will take a good bit of refining to determine the appropriate scope. For example, if the Committee decides to address privilege, it will have to decide

To aid in its examination of this issue, the Committee asked me to do some initial research on the state of the law on the appealability of prejudgment orders. Specifically, I have been asked to research the state of the law and identify groups: (1) categories of claims that are appealable under current Supreme Court decisional law; (2) categories of claims that have divided the lower courts; and (3) categories of claims that have been rejected by Supreme Court, but may warrant consideration in rulemaking.

I. Overview

It has proven quite difficult to pin down all the issues and matters that might fall into each of these categories, and there are thousands of cases, articles, and lengthy treatises devoted to this topic.³ In an effort to be able to give the Committee something to discuss for its Fall 2013 meeting, Professor Struve and I discussed coming up with an outline of topics and a list of resources that can be used for the Committee's initial discussion of this topic. An initial outline follows below, and a bibliography of resources is attached. I have not yet researched the individual topics; nor is this

whether to address all privilege, some privileges and not others, only attorney-client privilege, attorney-client privilege only when the lower court finds that there was privilege but that it was waived, etc. As another example, if the Committee decides to address official immunity appeals, it may want to consider whether to address other types of immunity appeals and the scope of such appeals.

³ For example, *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541 (1949), the case primarily known for setting out the "collateral order doctrine" that allows for immediate appeal of orders before final judgment when certain criteria are met, has been cited over 14,000 times, including almost 6,000 cases and over 1,000 law review articles. "'Under *Cohen*,' . . . 'an order is appealable if it (1) conclusively determines the disputed question; (2) resolves an important issue completely separate from the merits of the action; and (3) is effectively unreviewable on appeal from a final judgment.'" *Mohawk*, 558 U.S. at 105.

As another example, the Federal Practice and Procedure treatise has three full volumes devoted to jurisdiction in the courts of appeals, the majority of which is devoted to the final judgment rule and interlocutory appeals. The volumes span hundreds of pages with many more footnotes. Nearly every footnote contains its own potential issue or issues related to finality, the collateral order doctrine, and/or interlocutory appeals.

an exhaustive list of all of the issues the Committee may want to consider in this area. Rather, I have come up with a list of topics and issues that the Committee may wish to examine as it goes forward, as a starting point for discussion.⁴ Depending on the type of project with which the Committee decides to proceed, further research will be needed into individual topics and issues, and if a broader project is undertaken, further research to uncover additional topics, issues, and resources will certainly be needed. This is meant as an overview of some potential issues, to give the Committee a taste of the types of matters that might fall within a project on appellate jurisdiction over prejudgment orders. It is hoped that what follows is at least helpful for starting the discussion on these issues as the Committee determines the scope of any potential project in this area.

One conclusion I have reached in my initial research is that just identifying the areas that are problematic will be an enormous undertaking. It would be a very large task to establish categories of interlocutory orders that are always appealable, never appealable, and sometimes appealable because there is great variety in what the lower courts do. Further, it might be quite difficult to come up with bright-line rules. *See Gillespie v. United States Steel Corp.*, 379 U.S. 148, 153 (1964) (“And our cases long have recognized that whether a ruling is ‘final’ within the meaning of § 1291 is frequently so close a question that decision of that issue either way can be supported with equally forceful arguments, and that it is impossible to devise a formula to resolve all marginal cases coming within what might well be called the ‘twilight zone’ of finality.”). Thus, what follows is an outline

⁴ I also have not thoroughly examined all of the cases and resources in the attached bibliography. Rather, these are resources I have come across in my initial research that will likely prove useful for further examination if the Committee decides to proceed with a more in-depth analysis of these issues.

of some issues that may be worth considering.⁵

II. Categories of Orders that the Supreme Court has Recognized as Appealable

The following categories of pretrial orders have been recognized by the Supreme Court at some point as subject to immediate appeal, usually under the collateral order doctrine.

- Order denying reduction of bail.
 - *See Stack v. Boyle*, 342 U.S. 1 (1951).
 - *See also* 15A CHARLES ALAN WRIGHT, ARTHUR R. MILLER, AND EDWARD H. COOPER, FEDERAL PRACTICE AND PROCEDURE § 3911.3, at 397 (2d ed. 1992) [hereinafter W&M⁶].
 - *See also* GREGORY A. CASTANIAS & ROBERT H. KLONOFF, FEDERAL APPELLATE PRACTICE AND PROCEDURE IN A NUTSHELL 85 (2008) [hereinafter NUTSHELL].
- Order denying motion to dismiss an indictment on double jeopardy grounds.
 - *See Abney v. United States*, 431 U.S. 651 (1977) (former jeopardy appeal allowed under collateral order doctrine).
 - *See also Richardson v. United States*, 468 U.S. 317 (1984) (claim that second trial after acquittal on one count of federal narcotics violations and after mistrial was declared on remaining counts because jury was unable to agree was barred on double jeopardy grounds because the Government failed to introduce legally sufficient evidence to go to the jury at the first trial raised a colorable double jeopardy claim appealable as a final judgment).
 - *See also* W&M § 3911, at 340.
 - *See also* NUTSHELL at 87.
 - *See also* THOMAS E. BAKER, A PRIMER ON THE JURISDICTION OF THE U.S. COURTS OF APPEALS 75 (Fed. Jud. Ctr. 2009) [hereinafter FJC].
- Order denying motions to dismiss an indictment on Speech or Debate Clause grounds.
 - *See Helstoski v. Meanor*, 442 U.S. 500 (1979);
 - *See also Flanagan v. United States*, 465 U.S. 259 (1984).
- Order requiring criminal defendant to receive medication involuntarily in order to render him competent to stand trial.
 - *See Sell v. United States*, 539 U.S. 166 (2003).
- Order denying absolute immunity.
 - *See Nixon v. Fitzgerald*, 457 U.S. 731 (1982).

⁵ The categories and issues described below have been collected from reviewing a variety of books, treatises, law review articles, and case summaries. Where applicable, I have noted the source or sources discussing these topics, so that they can be consulted as needed later, depending on the scope of the project that the Committee decides on.

⁶ Subsequent references are to Volume 15A unless otherwise indicated.

- *See also Harlow v. Fitzgerald*, 457 U.S. 800 (1982) (noting, without disapproval, that senior aides and advisors to the President of the United States took immediate appeal of order denying absolute immunity defenses pursuant to collateral order doctrine).
- *See also* W&M § 3911, at 341, 343–45 (addressing appealability of pretrial orders denying absolute and qualified immunity).
- *See also* NUTSHELL at 86–87.
- Order holding that Petition Clause of the First Amendment does not provide absolute immunity from liability for libel.
 - *See McDonald v. Smith*, 472 U.S. 479 (1985).
- Order denying qualified immunity.
 - *See Mitchell v. Forsyth*, 472 U.S. 511 (1985).
 - *See also Ashcroft v. Iqbal*, 556 U.S. 662 (2009) (order denying qualified immunity can fall within the collateral order doctrine, so long as the order turns on an issue of law).
 - *See also Behrens v. Pelletier*, 516 U.S. 299 (1996) (defendant’s immediate appeal of an unfavorable qualified-immunity ruling on his motion to dismiss did not deprive the court of appeals of jurisdiction over a second appeal based on qualified immunity following denial of summary judgment).
 - *But see Johnson v. Jones*, 515 U.S. 304 (1995) (defendant entitled to invoke qualified immunity may not appeal district court’s summary judgment order that determines whether pretrial record sets forth a genuine issue of fact for trial).
 - *See also* W&M § 3911, at 346.
- Order denying request to require posting of security.
 - *See Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541 (1949).
 - *See also* NUTSHELL at 84.
- Order vacating attachment of vessel in admiralty.
 - *See Swift & Co. Packers v. Compania Colombiana Del Caribe, S.A.*, 339 U.S. 684 (1950).⁷
- Order imposing notice costs in class action.
 - *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156 (1974).
 - *See also* W&M § 3911, at 338.
 - *See also* W&M § 3911.3, at 397 (comparing different courts of appeals’ approaches to appealability of class action notice issues).
- Order granting motions to abstain and stay the federal litigation pending similar state litigation.
 - *See Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706 (1996) (order remanding case to state court based on *Burford* abstention was immediately appealable).
 - *See Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 8–13

⁷ The *Swift* Court noted that the situation would be different in the case of an order upholding an attachment, in which case the rights of the parties are protected while the litigation on the main claim proceeds.

- (1983) (order staying federal court action pending resolution of state court action was immediately appealable).
- Order remanding to Secretary of Health and Human Services a case challenging Secretary's decision denying disability benefits and which effectively invalidated Secretary's regulations.
 - *See Sullivan v. Finkelstein*, 496 U.S. 617 (1990).
 - Order denying a state's claim to 11th Amendment immunity.
 - *See Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 144 (1993).
 - *See also Tennessee v. Lane*, 541 U.S. 509 (2004).
 - *See also Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996).
 - *See also* NUTSHELL at 87.
 - Order rejecting the Attorney General's certification that a federal employee named as a defendant in a state court action was acting within the scope of employment and refusing to substitute the United States as a defendant in the removed action.
 - *See Osborn v. Haley*, 127 S. Ct. 881 (2007).
 - Order preventing putative intervenor from becoming a party in any respect.
 - *See Brotherhood of R.R. Trainmen v. Baltimore & Ohio R. Co.*, 331 U.S. 519 (1947).
 - Order allocating expense of identification of class members, for purpose of sending individual notice.
 - *See Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340 (1978).
 - State court order authorizing a temporary injunction, where the controversy was beyond the state court's power and instead within the exclusive domain of the National Labor Relations Board.
 - *See Local No. 438 Constr. & Gen. Laborers' Union, AFL-CIO v. Curry*, 371 U.S. 542 (1963).
 - State court denial of a stay of injunction.
 - *See Nat'l Socialist Party of Am. v. Village of Skokie*, 432 U.S. 43 (1977) (per curiam).
 - Order denying leave to proceed *in forma pauperis*.
 - *Roberts v. United States Dist. Ct.*, 339 U.S. 844 (1950) (per curiam).
 - *See* W&M § 3911, at 336–37.
 - *See also* NUTSHELL at 85.
 - Order dismissing a False Claims Act action over the United States' objection.
 - *See United States ex rel. Eisenstein v. City of N.Y.*, 556 U.S. 928 (2009).
 - Order deciding controversy as to whether Jones Act supplied exclusive remedy for damages for death of seaman aboard vessel docked in Ohio and whether there could be a recovery for benefit of brother and sisters of deceased whose mother was living.
 - *See Gillespie v. United States Steel Corp.*, 379 U.S. 148 (1964).
 - State court judgment setting aside lease and awarding execution, relief assertedly within the exclusive power of the Federal Communications Commission, appealable even though accounting still remained to be done in state court.
 - *See Radio Station WOW, Inc. v. Johnson*, 326 U.S. 120 (1945).

- Order denying motion to quash subpoena duces tecum directing a witness to appear before a grand jury.
 - *See Cobbledick v. United States*, 309 U.S. 323 (1940).

III. Categories of Orders that Have Divided the Lower Courts

The following are some examples of categories of orders that have caused controversy in the courts of appeals. This area could be greatly expanded upon with further research. For now, given limited time, I have included some examples discussed in some of the treatises and law review articles, but there are surely many more to be discovered.

- Whether the press gets an appeal or mandamus to challenge closure orders and gag orders.
 - *See* FJC at 82.
 - *See United States v. McVeigh*, 119 F.3d 806, 810 (10th Cir. 1997) (describing circuit split on applicability of collateral order doctrine vs. mandamus to orders denying the press access to documents or proceedings).
 - *See also* FJC at 82 (noting that media appeals of closure orders and gag orders are usually brought by mandamus and that “[b]ecause the substantive rights involved are so important and well-established, and because these mandamuses are so commonplace, these challenges to nonparty orders arguably are a candidate for rule-making recognition as a new category of entitled appeal”).
- Application of *Abney v. United States*, 431 U.S. 651 (1977), which addressed collateral order doctrine’s applicability to claims of former jeopardy.
 - *See San Filippo v. United States Trust Co. of N.Y.*, 470 U.S. 1035 (1985) (dissent from denial of certiorari notes confusion in the lower courts).
- Order denying a civil rights plaintiff’s motion for appointment of counsel.
 - *See Welch v. Smith*, 484 U.S. 903 (1987) (White, J., dissenting) (dissenting from denial of certiorari and noting circuit split).
 - *See also* W&M § 3911.3, at 409–10 (describing various approaches and possible circuit split on appealability of orders refusing to appoint counsel for an indigent litigant).
- A variety of issues regarding qualified immunity orders.
 - For example, confusion in appellate courts has resulted from the statement in *Mitchell v. Forsyth* that denial of qualified immunity is appealable “to the extent that it turns on an issue of law.” Some appellate courts have thus avoided fact-bound appeals. *See* W&M § 3911, at 346. The *Mitchell* Court left open whether appeal can be taken if the defendant must bear the burden of trial on a claim for injunctive or declaratory relief growing out of the same facts.
- Orders denying class status if the putative class member is willing to waive his or her individual claims (effectively creating a final judgment).

- See NUTSHELL at 99–100.

IV. Categories of Orders that Have Been Rejected by the Supreme Court

The following categories of pretrial orders have been recognized by the Supreme Court at some point as not subject to immediate appeal.

- Order denying attorney-client privilege.
 - See *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100 (2009).
 - See also NUTSHELL at 85, 87 (but case law likely out of date after *Mohawk*).
 - There are a number of cases that have used mandamus to review orders requiring disclosure of documents for which privilege or work product is asserted. See 16 W&M § 3935.3, at 710–14 nn.6, 7.
- Order determining that action may not go forward as a class action.⁸
 - See *Coopers & Lybrand v. Livesay*, 437 U.S. 463 (1978).
 - See also W&M § 3911, at 340.
 - See also NUTSHELL at 88.
 - See also FED. R. CIV. P. 23(f) (“A court of appeals may permit an appeal from an order granting or denying class-action certification under this rule if a petition for permission to appeal is filed with the circuit clerk within 14 days after the order is entered. An appeal does not stay proceedings in the district court unless the district judge or the court of appeals so orders.”).
- Order refusing to disqualify opposing counsel in a civil case.
 - See *Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368 (1981).
 - See also *Flanagan v. United States*, 465 U.S. 259 (1984) (same for order disqualifying criminal defense attorney).
 - See also W&M § 3911, at 341, 343.
- Order disqualifying counsel in a civil case.
 - See *Richardson-Merrell, Inc. v. Koller*, 472 U.S. 424 (1985).
 - See also NUTSHELL at 88 (citing *Cole v. U.S. Dist. Ct. for Dist. of Idaho*, 366 F.3d 813, 817 (9th Cir. 2004), as holding that order disqualifying counsel because of a conflict of interest is not immediately appealable).
- Order denying motion to abstain and stay federal litigation pending similar state litigation.
 - See *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271 (1988).

⁸ A bar organization recently submitted a comment to the Civil Rules Committee suggesting that the committee consider rule amendments to provide a right to interlocutory appeal of decisions to certify, modify, or decertify a class. See LAWYERS FOR CIVIL JUSTICE, FEDERATION OF DEFENSE & CORPORATE COUNSEL, DRI- THE VOICE OF THE DEFENSE BAR, AND INTERNATIONAL ASSOCIATION OF DEFENSE COUNSEL, COMMENT: TO RESTORE A RELATIONSHIP BETWEEN CLASSES AND THEIR ACTIONS: A CALL FOR MEANINGFUL REFORM OF RULE 23 (Aug. 9, 2013) (on file with the Rules Committee Support Office).

- Order denying motion to dismiss made on the ground that an extradited person was immune from civil process.
 - *See Van Cauwenberghe v. Biard*, 486 U.S. 517 (1988).
- Order denying motion to dismiss on ground of forum non conveniens.
 - *See Van Cauwenberghe*, 486 U.S. 517 (1988).
 - *See also* NUTSHELL at 88.
- Order refusing to apply Federal Tort Claims Act’s judgment bar.
 - *See Will v. Hallock*, 546 U.S. 345 (2006).
- Order vacating dismissal predicated on the parties’ settlement agreement.
 - *See Digital Equip. Corp. v. Desktop Direct, Inc.*, 511 U.S. 863 (1994).
 - *See also* NUTSHELL at 87–88.
- Order denying defendant’s motion to dismiss a damages action on the basis of a contractual forum-selection clause.
 - *See Lauro Lines S.R.L. v. Chasser*, 490 U.S. 495 (1989).
 - *See also* NUTSHELL at 88.
- Order imposing sanctions on attorney for discovery abuses under Rule 37.
 - *See Cunningham v. Hamilton Cty.*, 527 U.S. 198 (1999).
 - *See also* NUTSHELL at 88.
- Order denying dismissal of murder indictment on grounds of denial of speedy trial.
 - *See United States v. MacDonald*, 435 U.S. 850 (1978).
 - *See also* FJC at 75.
- Order granting permissive intervention but denying intervention as of right.
 - *See Stringfellow v. Concerned Neighbors in Action*, 480 U.S. 370 (1987).
- Order denying motion to dismiss grand jury indictment for alleged violation of rule prohibiting public disclosure by Government attorneys of matters occurring before the grand jury.
 - *See Midland Asphalt Corp. v. United States*, 489 U.S. 794 (1989).
- Order denying summary judgment for county commission where commission argued that sheriff who led raids at issue was not a policy maker for the county.
 - *See Swint v. Chambers Cty. Comm’n*, 514 U.S. 35 (1995).
- Order denying motion to dismiss based on prosecutorial vindictiveness.
 - *See United States v. Hollywood Motor Car Co.*, 458 U.S. 263 (1982).
- Order denying relief to sitting federal judge on claim of vindictive or selective prosecution.
 - *See Claiborne v. United States*, 465 U.S. 1305 (1984) (denial of certiorari).
- Order dismissing first indictment after a second indictment had been obtained.
 - *See Parr v. United States*, 351 U.S. 513 (1956).
- Order denying criminal defendant’s motion to dismiss based on alleged unconstitutionality of statute providing for appointment of an independent counsel to investigate alleged impropriety of Government officials.
 - *See Deaver v. United States*, 483 U.S. 1301 (1987).
- Order denying pre-indictment motion to suppress evidence.
 - *See Di Bella v. United States*, 369 U.S. 121 (1962).
- Order granting motion to suppress before trial in a criminal case, regardless of whether

the effect of suppressing evidence would be to force dismissal of indictment for lack of evidence.

- *See Carroll v. United States*, 354 U.S. 394 (1957).
- *See also* FJC at 75 (Orders in criminal cases “dealing with the suppression of evidence or the return of property are subject to a ‘confusing web of decisions’” on appealability.).
- FTC’s issuance of a complaint.
 - *FTC v. Standard Oil Co. of Calif.*, 449 U.S. 232 (1980).

V. Other Issues the Committee May Wish to Consider

In reviewing the treatises and other literature on this issue, I came across a variety of different issues that the Committee may wish to consider but that did not fit neatly into the previously mentioned categories. As with the above lists, this is not intended to be an exhaustive list of potential issues, but I thought including issues as I came across them in the initial research might be helpful for the Committee’s preliminary deliberations.

- Magistrate judges’ ability to certify judgment for appeal under § 1292(b).
 - *See* W&M § 3901.1, at 48.
- Ability of appellate court to review district court’s nonfinal appellate decision on magistrate judges’ decisions, or before there has been any district court judgment at all.
 - *See* W&M § 3901.1, at 50.
- The extent to which orders involving nonparties or parties in roles subordinate to the main litigation—such as orders imposing sanctions on counsel or limiting media access to court proceedings—may be appealable.
 - *See* W&M § 3911.3, at 414–16.
 - *See also* W&M § 3911, at 367.
- Extraordinary writs are often used to allow interlocutory review of agency actions.
 - *See* FJC at 91–92.
- The proper formulation of the collateral order doctrine. Most courts cite a three-part test – the order must conclusively determine the disputed question, resolve an important question completely separate from the merits, and be effectively unreviewable on appeal from final judgment. Judge Posner observed that this test is redundant, incomplete, and unclear. The First Circuit has a 4-part formula – separability, finality, urgency, and importance.
 - *See* W&M § 3911, at 351–52.
- When to require that there be an important and unsettled question of law for collateral appeal. Usually no important question is required for absolute immunity, qualified immunity, double jeopardy. A number of courts of appeals have stated this requirement, despite lack of clear foundation in Supreme Court opinions.

- See W&M § 3911.5, at 430–32; W&M § 3911, at 335.
- See also NUTSHELL at 85–86 (some courts have included this fourth requirement, but most have limited it to the three *Cohen* factors).
- Whether and how time limits of Rule 4 apply to collateral order appeals.
 - See W&M § 3911, at 357.
- Whether the time to appeal a collateral order starts to run before entry of a formal judgment under Civil Rule 58. Courts have held that it does.
 - See W&M § 3911, at 357–58.
- Whether the time to appeal a collateral order can be suspended by a motion to reconsider. The Sixth Circuit has suggested that Rule 4(a)(4), suspending time to appeal by motions under Civil Rules 50(b), 52(b), or 59(e), applies.
 - See W&M § 3911, at 358–59 (suggesting that an appellant should be permitted to suspend appeal time by a motion for reconsideration filed within 10 days of the order, either by reading Civil Rule 59(e) this way or by reading Appellate Rule 4 that way).
- The scope of appeal from a properly appealable collateral order, *i.e.*, whether it includes other non-collateral matters.
 - See W&M § 3911.2, at 393–95 (noting significant disagreement on the scope of immunity appeals; also noting that a flexible approach as to the scope of collateral order appeals has been used and it would be difficult to come up with a clear rule).
- Accounting for the fact that appeal is not automatically available simply because effective review cannot be had on appeal from a final judgment. Some matters are left to district court discretion, without review.
 - See W&M § 3911.3, at 404–05.
 - See W&M § 3911.3, at 406–12 for some examples of orders held to not be immediately appealable despite the potential lack of effective post-judgment appeal, including: order denying intervention as of right but permitting limited permissive intervention; order dismissing criminal indictment in favor of indictment in another division, resulting in trial in an inconvenient forum (could not be appealed even though final judgment appeal would not effectively remedy the right to be tried in a convenient forum); order denying claims of lack of subject matter jurisdiction, personal jurisdiction, primary jurisdiction in an administrative agency, or forum non conveniens; order denying claim of denial of right to speedy trial; order denying interest of representative plaintiffs in pursuing a class action; orders denying or granting disqualification of opposing counsel; order refusing to appoint counsel for an indigent litigant; orders affecting the ability to pay counsel; a variety of orders likely to impact results of class actions, including orders refusing to approve proposed settlements.
- Appealability of “death knell” orders – those that end the litigation as a practical matter, although there is no final judgment.
 - See W&M § 3912 (describing examples, including interlocutory rulings on injunctive relief and denials of class certification (previous circuit split, now resolved by Supreme Court in denying such appeals as a matter of right (*see* NUTSHELL at 101)); noting that only the core of the death knell doctrine remains

- those cases where there is as a practical matter nothing left to be done in the district court).
- Application of pragmatic finality – a balancing approach to finality that considers whether the costs of piecemeal appeals are outweighed by denying justice by delay.
 - *See* W&M § 3913 (noting that some courts have approved of it, without much expansion).
- Potential rule amendments’ interaction with statutory bases for interlocutory appeal.
 - *See* NUTSHELL at 89–97.
 - Appeals from imposition of injunctions.
 - *See* 28 U.S.C. § 1292(a)(1).
 - Preliminary injunctions are generally appealable, while temporary restraining orders are not. *See* FJC at 54.
 - Appeals from appointment of a receiver.
 - *See* 28 U.S.C. § 1292(a)(2).
 - Appeals from decrees “determining the rights and liabilities of the parties to admiralty cases in which appeals from final decrees are allowed.”
 - *See* 28 U.S.C. § 1292(a)(3).
 - Classified Information Procedures Act.
 - Federal Arbitration Act. Orders stopping arbitration are appealable; orders allowing arbitration are not.
 - 28 U.S.C. § 1292(b) – allowing immediate appeal of interlocutory orders with permission of the district and appellate court.
 - Statutory bases for interlocutory appeal in criminal matters.
 - Orders requiring pretrial detention or imposing conditions on release are governed by the Bail Reform Act of 1984, 18 U.S.C. §§ 3141, 3142, 3143–45, which mirrors the collateral order doctrine.
 - *See* FJC at 74.
 - *See* FJC at 78 (Appeals from a release or detention order, or from an order denying revocation or amendment of such an order may be permissible if they satisfy 28 U.S.C. § 1291 finality, if brought by an accused, or the restrictions on government appeals, if brought by the prosecution. An appeal by the Government must not unduly postpone the proceeding so long as to violate the defendant’s constitutional and statutory right to a speedy trial.).
- Interlocutory appeals in criminal matters.
 - *See* FJC at 75 (noting that there are “appealability precedents governing various and sundry pretrial orders, including but not limited to the following kinds of pretrial matters: the preliminary hearing; determinations of competence to stand trial; determinations whether to try the defendant as an adult or a juvenile; transferring or removing or remanding; extradition; the disposition of property; the denial of a defendant’s motion to dismiss; the granting of the government’s motion to dismiss without prejudice; pleadings; appointment and appearance of counsel; disqualification of the judge; discovery; access to trial; and contempt”).
 - 18 U.S.C. § 3731 authorizes appeals by the prosecution from: (1) a final order dismissing an indictment or information or granting a new trial after verdict or

judgment on any one or more counts, unless the Double Jeopardy Clause prohibits further prosecution; (2) an interlocutory order suppressing or excluding evidence or requiring the return of property; and (3) an interlocutory order granting the release of the defendant, before or after conviction or denying the government's motion to revoke or to modify the conditions of release.

- Writs of mandamus as another means of interlocutory appeal.⁹
 - See NUTSHELL at 97.
- Whether to address pendant appellate jurisdiction.
 - See 16 W&M § 3937.
- Additional categories of interlocutory appeal that the Committee might want to consider providing for or prohibiting:
 - Orders denying immunity under the Foreign Sovereign Immunities Act.
 - See *Fed. Ins. Co. v. Richard I. Rubin & Co., Inc.*, 12 F.3d 1270 (3d Cir. 1993) (within collateral order doctrine).
 - See NUTSHELL at 87.
 - Orders refusing to dismiss an indictment for grand jury irregularity unrelated to the substance of the prosecution.
 - See W&M § 3911.2, at 382 (citing *United States v. Benjamin*, 812 F.2d 548 (9th Cir. 1987), as holding such an order is collateral and appealable).
 - See also FJC at 74 (noting that some orders relating to grand jury proceedings are deemed final and some are not).
 - Orders requiring that plaintiffs preferring to remain pseudonymous identify themselves.
 - See W&M § 3911.2, at 383 (citing *Doe v. Stegall*, 653 F.2d 180 (5th Cir. 1981), and *Southern Methodist Univ. Ass'n of Women Law Students v. Wynne & Jaffe*, 599 F.2d 707 (5th Cir. 1979), as allowing immediate appeal).
 - Orders granting disqualification of trial judge.
 - See W&M § 3911.2, at 383 (citing *In re Cement Antitrust Litig.*, 673 F.2d 1020 (9th Cir. 1981) (order was collateral but could not be appealed because other requirements of collateral order doctrine not satisfied)).
 - Orders denying substitution of parties.
 - See W&M § 3911.2, at 383 (citing *In re Covington Grain Co.*, 638 F.2d 1357 (5th Cir. 1981), as allowing immediate appeal).
 - Orders involving privacy or secrecy and orders barring media or others from obtaining information about ongoing proceedings.
 - See W&M § 3911.3, at 398–99.
 - Orders involving the supposed right not to be subject to the burdens of trial, such as official immunity or double jeopardy claim, or the right of a plaintiff to take a

⁹ One possible avenue of further research might be finding out how mandamus is used to address review of certain areas of interlocutory orders, such as privilege rulings. If it can be determined that mandamus is rarely sought on a particular type of ruling, or that mandamus is effectively addressing problematic orders on particular types of claims, the Committee may conclude that rulemaking is unnecessary.

voluntary dismissal with prejudice.

- See W&M § 3911.3, at 402.
- See also W&M § 3911.4, at 424–26 (collateral order appeal not automatically available to review a number of matters that could be described as intended to protect against the burdens of trial – e.g., orders denying motion to dismiss for failure to state a claim, orders denying summary judgment, orders granting or denying a stay in favor of proceedings in a different court, orders refusing to dismiss in deference to an injunction barring litigation against a company placed in receivership by a state court, rejection of an argument that repetitious litigation is barred by res judicata, or rejection of a speedy trial claim).
- Orders granting recusal of trial judge.
 - See W&M § 3911.3, at 405.
- Orders involving jurisdictional decisions, including personal jurisdiction, whether the limits of Article III are satisfied, improper refusal to remand to state court, and limits arising from special statutory schemes.
 - See W&M § 3911.4, at 423 (generally not immediately appealable).
 - See also NUTSHELL at 108–09 (remand orders generally not immediately appealable).
- Orders granting or denying arbitration.
 - See W&M § 3911.4, at 426–27 (noting that arbitration’s purpose is to avoid litigation in court, but requests for collateral order appeals are frequently denied).
- Orders granting or denying security pending trial.
 - See W&M § 3911.4, at 429 (noting that orders granting security are usually denied interlocutory appeal, while orders denying security are usually allowed to be appealed, and that it is unclear why one form of hardship is favored over the other).
- Orders denying an attorney’s motion to withdraw.
 - See NUTSHELL at 87 (citing *Whiting v. Lacara*, 187 F.3d 317 (2d Cir. 1999), and *Fid. Nat’l Title Ins. Co. of NY v. Intercounty Nat’l Title Ins. Co.*, 310 F.3d 537 (7th Cir. 2002), as cases finding such orders within collateral order doctrine).
- Orders requiring the posting of security for the release of an impounded ship.
 - See NUTSHELL at 88 (citing *Seguros Banvenez S.A. v. S/S Oliver Drescher*, 715 F.2d 54 (2d Cir. 1983), as holding such orders not immediately appealable).
- Orders appointing guardian ad litem for an ERISA plan.
 - See NUTSHELL at 88 (citing *In re Pressman-Gutman Co., Inc.*, 459 F.3d 383 (3d Cir. 2006), as holding such orders not immediately appealable).
- Orders denying a so-called *Rooker-Feldman* defense (i.e., that the Supreme Court is the only federal court that can review a state court judgment).
 - See NUTSHELL at 88 (citing *Bryant v. Sylvester*, 57 F.3d 308 (3d Cir. 1995), *vacated and remanded*, 516 U.S. 1105 (1996), as holding such orders not

- immediately appealable).
- Discovery orders.
 - *See* NUTSHELL at 88–89 (generally not immediately appealable, but there are some exceptions; noting that whether trial court abused its discretion in denying reimbursement of costs to several nonparty witnesses who produced substantial discovery under subpoena has been held immediately appealable (citing *United States v. Columbia Broad. Sys., Inc.*, 666 F.2d 364 (9th Cir. 1982))).
 - Criminal pretrial orders on procedures to be followed at trial.
 - *See* FJC at 75 (generally not appealable).
 - Evidentiary rulings.
 - *See* FJC at 75 (generally not appealable in civil or criminal cases).
 - Orders on rights provided for in the Crime Victims’ Rights Act of 2004.
 - Mandamus allowed for crime victims if the rights provided for in the Crime Victims’ Rights Act of 2004 are violated. *See* FJC at 82–83.

VI. Conclusion

Getting a full grasp on the state of the law on interlocutory appeals and collateral orders is quite a challenge, given that the issue has been raised in so many different contexts, involving nearly every type of pretrial order. This outline is meant to provide a sampling of some of the issues that the Committee may wish to consider in deciding the scope of a potential project on appellate jurisdiction over interlocutory orders. Further and more focused research will likely be needed once the Committee decides on the scope of the project. Should the Committee decide to do a comprehensive project, further research will be needed to identify circuit splits and areas that have caused problems in interlocutory appeals. If the Committee decides to focus on just a few areas, more in-depth research will be needed to discover how the courts and commentators have treated issues within those areas.

Resources on Appealability of Pretrial Orders

CASES

Mohawk Indus., Inc. v. Carpenter, 558 U.S. 100 (2009) (addressing appealability of orders denying claims of privilege).

United States ex rel. Eisenstein v. City of N.Y., 556 U.S. 928 (2009) (noting that under the collateral order doctrine, the United States can appeal the dismissal of a False Claims Act action over its objection).

Ashcroft v. Iqbal, 556 U.S. 662 (2009) (order denying qualified immunity can fall within the collateral order doctrine, so long as the order turns on an issue of law).

Osborn v. Haley, 549 U.S. 225 (2007) (district court order rejecting the Attorney General's certification that federal employee named as defendant in state court action was acting within scope of his employment, and refusing to substitute the United States as defendant, was reviewable under collateral order doctrine).

Will v. Hallock, 546 U.S. 345 (2006) (extensively discussing collateral order doctrine and holding that an order rejecting the judgment bar of the Federal Tort Claims Act as a defense to the instant action was not immediately appealable under the collateral order doctrine).

Tennessee v. Lane, 541 U.S. 509 (2004) (recognizing applicability of collateral order doctrine to denial of a claim to Eleventh Amendment immunity).

Sell v. United States, 539 U.S. 166 (2003) (order requiring criminal defendant to involuntarily receive medication in order to render him competent to stand trial immediately appealable as a collateral order).

Cunningham v. Hamilton Cty., 527 U.S. 198 (1999) (order imposing sanctions on attorney for her discovery abuses, not on contempt theory but solely pursuant to the Federal Rules of Civil Procedure, not immediately appealable).

Johnson v. Fankell, 520 U.S. 911 (1997) (noting that some state courts have picked different categories of cases to fall within their own collateral order doctrines).

United States v. McVeigh, 119 F.3d 806, 810 (10th Cir. 1997) (describing circuit split on applicability of collateral order doctrine vs. mandamus to orders denying the press access to documents or proceedings).

Quackenbush v. Allstate Ins. Co., 517 U.S. 706 (1996) (order remanding case to state court based on *Burford* abstention was immediately appealable).

Seminole Tribe of Florida v. Florida, 517 U.S. 44 (1996) (recognizing that collateral order

doctrine allows immediate appeal of order denying claim of Eleventh Amendment immunity).

Behrens v. Pelletier, 516 U.S. 299 (1996) (denial of summary judgment on grounds of qualified immunity was appealable final judgment even if other claims remained for trial).

Johnson v. Jones, 515 U.S. 304 (1995) (district court's determination that summary judgment record in qualified immunity case raised genuine issue of fact was not immediately appealable).

Swint v. Chambers Cty. Comm'n, 514 U.S. 35 (1995) (order denying county commission's request for summary judgment based on the fact that the sheriff who authorized the raids at issue was not a policymaker for the county did not fall within collateral order doctrine, and there is no pendant party appellate jurisdiction).

Digital Equip. Corp. v. Desktop Direct, Inc., 511 U.S. 863 (1994) (refusal to enforce settlement agreement claimed to shelter party from suit altogether did not supply basis for immediate appeal under collateral order doctrine; detailed examination of collateral order doctrine).

Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc., 506 U.S. 139 (1993) (order denying State's Eleventh Amendment immunity claim is immediately appealable under the collateral order doctrine).

Sullivan v. Finkelstein, 496 U.S. 617 (1990) (order remanding case challenging decision of Secretary of Health and Human Services that denied disability benefit effectively invalidated Secretary's regulations and was immediately appealable as a final decision; concurrence thought it was not a final decision but that immediate appeal was authorized under the collateral order doctrine).

Lauro Lines S.R.L. v. Chasser, 490 U.S. 495 (1989) (order denying motion to dismiss damages action on basis of contractual forum selection clause was not immediately appealable under the collateral order doctrine).

Midland Asphalt Corp. v. United States, 489 U.S. 794 (1989) (order denying motion to dismiss grand jury indictment for alleged violation of rule prohibiting public disclosure by Government attorneys on matters occurring before the grand jury not immediately appealable under the collateral order doctrine).

Van Cauwenberghe v. Biard, 486 U.S. 517 (1988) (refusal to dismiss for forum non conveniens does not fall within the collateral order doctrine; order denying motion to dismiss made on the ground that an extradited person was immune from civil process not immediately appealable).

Gulfstream Aerospace Corp. v. Mayacamas Corp., 485 U.S. 271 (1988) (district court order denying motion to stay or dismiss action when similar suit is pending in state court was not immediately appealable under collateral order doctrine)..

Welch v. Smith, 484 U.S. 903 (1987) (White, J., dissenting) (dissenting from denial of certiorari and noting circuit split about whether an order denying a civil rights plaintiff’s motion for appointment of counsel is immediately appealable).

Deaver v. United States, 483 U.S. 1301 (1987) (denial of criminal defendant’s motion to dismiss based on alleged unconstitutionality of statute providing for appointment of an independent counsel to investigate alleged impropriety of Government officials did not fall within the collateral order doctrine).

Stringfellow v. Concerned Neighbors in Action, 480 U.S. 370 (1987) (order granting permissive intervention but denying intervention as of right was not immediately appealable)

Mitchell v. Forsyth, 472 U.S. 511 (1985) (rejection of a claim to qualified immunity is immediately appealable under the collateral order doctrine).

McDonald v. Smith, 472 U.S. 479 (1985) (recognizing, without disapproval, that appellate court accepted jurisdiction based on a “serious and unsettled question” concerning absolute immunity, specifically, whether the Petition Clause of the First Amendment provides absolute immunity from liability for libel).

Richardson-Merrell, Inc. v. Koller, 472 U.S. 424 (1985) (order disqualifying counsel in civil cases was not a collateral order subject to immediate appeal).

San Filippo v. United States Trust Co. of N.Y., 470 U.S. 1035 (1985) (White, J., dissenting) (noting confusion in lower courts over application of Supreme Court’s holding in *Abney v. United States*, 431 U.S. 651, which held that appellate courts may exercise jurisdiction under the collateral order doctrine over an appeal from a pretrial order denying motion to dismiss an indictment on double jeopardy grounds).

Richardson v. United States, 468 U.S. 317 (1984) (claim that second trial after acquittal of one count of federal narcotics violations and after mistrial was declared on remaining counts because jury was unable to agree was barred on double jeopardy grounds because the Government failed to introduce legally sufficient evidence to go to the jury at the first trial raised a double jeopardy claim appealable as a final judgment).

Claiborne v. United States, 465 U.S. 1305 (1984) (order denying relief to sitting federal judge on claim of vindictive or selective prosecution not immediately appealable under collateral order doctrine).

Flanagan v. United States, 465 U.S. 259 (1984) (order denying request to disqualify counsel in civil case not immediately appealable under the collateral order doctrine).

Moses H. Cone Mem. Hosp. v. Mercury Construction Corp., 460 U.S. 1 (1983) (order staying federal court action pending resolution of state court action was immediately appealable).

United States v. Hollywood Motor Car Co., 458 U.S. 263 (1982) (order denying motion to dismiss based on prosecutorial vindictiveness not appealable before trial)

Harlow v. Fitzgerald, 457 U.S. 800 (1982) (noting, without disapproval, that senior aides and advisors to the President of the United States took immediate appeal of order denying absolute immunity defenses pursuant to collateral order doctrine).

Nixon v. Fitzgerald, 457 U.S. 731 (1982) (order rejecting absolute immunity is immediately appealable under the collateral order doctrine)..

Firestone Tire & Rubber Co. v. Risjord, 449 U.S. 368 (1981) (orders denying motions to disqualify opposing party's counsel in civil cases are not appealable before final judgment in underlying litigation).

FTC v. Standard Oil Co. of Calif., 449 U.S. 232 (1980) (FTC's issuance of a complaint was not a collateral order subject to appellate review before the conclusion of the administrative adjudication).

Boeing Co. v. Van Gemert, 444 U.S. 472 (1979) (appellate court assumed jurisdiction over challenge to portion of district court's judgment providing for attorney's fees to be collected out of the full judgment fund, not just the portion claimed by class members, but dissent argued that the attorney's fees portion of the litigation was ongoing and appeal was not appropriate even under the collateral order doctrine).

Helstoski v. Meanor, 442 U.S. 500 (1979) (direct appeal available for refusal to dismiss an indictment challenged under the Speech and Debate clause).

Coopers & Lybrand v. Livesay, 437 U.S. 463 (1978) (order denying class action status is not immediately appealable; "death knell" doctrine does not support appellate jurisdiction of a prejudgment order denying class certification).

Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340 (1978) (order allocating expense of identification of class members, for purpose of sending individual notice, was appealable under the collateral order doctrine).

United States v. MacDonald, 435 U.S. 850 (1978) (defendant may not, before trial, appeal a district court's order denying his motion to dismiss an indictment because of an alleged

violation of his Sixth Amendment right to a speedy trial).

Nat'l Socialist Party of Am. v. Village of Skokie, 432 U.S. 43 (1977) (per curiam) (order by state supreme court that denied a stay of an injunction entered by lower court was appealable as a final judgment under the collateral order doctrine).

Abney v. United States, 431 U.S. 651 (1977) (addressing collateral order doctrine's applicability to claims of former jeopardy).

Eisen v. Carlisle & Jacquelin, 417 U.S. 156 (1974) (district court's order resolving notice problems in a class action constituted a final decision under the collateral order doctrine).

Gillespie v. United States Steel Corp., 379 U.S. 148 (1964) (appealability of order striking portions of complaint was a close question, but court of appeals did not choose wrongly in deciding to determine on the merits the controversy as to whether Jones Act supplied exclusive remedy for damages for death of seaman aboard vessel docked in Ohio and whether there could be a recovery for benefit of brother and sisters of deceased whose mother was living).

Local No. 438 Constr. & Gen. Laborers' Union, AFL-CIO v. Curry, 371 U.S. 542 (1963) (state court order authorizing a temporary injunction was immediately appealable where the controversy was beyond the state court's power and instead within the exclusive domain of the National Labor Relations Board).

Di Bella v. United States, 369 U.S. 121 (1962) (order denying pre-indictment motion to suppress evidence not immediately appealable).

Carroll v. United States, 354 U.S. 394 (1957) (order granting motion to suppress before trial in a criminal case was not appealable by the government as a final decision, regardless of whether the effect of suppressing evidence would be to force dismissal of indictment for lack of evidence).

Parr v. United States, 351 U.S. 513 (1956) (order dismissing first indictment after a second indictment had been obtained was not appealable).

Stack v. Boyle, 342 U.S. 1 (1951) (order denying motion to reduce bail appealable before trial).

Swift & Co. Packers v. Compania Colombiana Del Caribe, S.A., 339 U.S. 684 (1950) (order vacating foreign attachment of a vessel immediately appealable under collateral order doctrine).

Roberts v. U.S. Dist. Ct., 339 U.S. 844 (1950) (per curiam) (denial of leave to proceed in forma pauperis is an immediately appealable order).

Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541 (1949) (recognizing the collateral order doctrine; order denying request for posting of security was immediately appealable).

Brotherhood of R.R. Trainmen v. Baltimore & Ohio R. Co., 331 U.S. 519 (1947) (order preventing putative intervenor from becoming a party in any respect subject to immediate review).

Radio Station WOW, Inc. v. Johnson, 326 U.S. 120 (1945) (state court judgment setting aside lease and awarding execution, relief assertedly within the exclusive power of the Federal Communications Commission, was appealable even though accounting still remained to be done in state court).

Cobbledick v. United States, 309 U.S. 323 (1940) (order denying motions to quash subpoenas duces tecum directing a witness to appear before a grand jury was immediately reviewable).

STATUTES AND RULES

28 U.S.C. § 1291 (granting appellate jurisdiction over final decisions of the district courts).

28 U.S.C. § 1292(a) (granting appellate jurisdiction over interlocutory orders involving injunctions, receiverships, and orders determining rights and liabilities of parties to admiralty cases in which appeals from final decrees are allowed).

28 U.S.C. § 1292(b) (allowing district court to certify nonfinal orders for immediate appeal).

28 U.S.C. § 2072(c) (granting rulemaking authority to define when a ruling of a district court is final for purposes of appeal under § 1291).

18 U.S.C. §§ 3141–45 (Bail Reform Act of 1984).

18 U.S.C. § 3731 (addressing appeals by the prosecution in criminal matters).

18 U.S.C. App. 3 §§ 1–16 (Classified Information Procedures Act).

9 U.S.C. §§ 1–14 (Federal Arbitration Act).

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- Multidistrict Litigation*, 79 *FORDHAM L. REV.* 1643 (2011).
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TAB 8B

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Study of Class Action Objector Appeals in the Second, Seventh, and Ninth Circuit Courts of Appeals

*Report to the Advisory Committee on Appellate Rules
of the Judicial Conference of the United States*

Marie Leary

Federal Judicial Center

October 2013

This report was undertaken at the request of the Judicial Conference's Advisory Committee on Appellate Rules and is in furtherance of the Center's statutory mission to conduct and stimulate research and development for the improvement of judicial administration. While the Center regards the content as responsible and valuable, it does not reflect policy or recommendations of the Board of the Federal Judicial Center.

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Executive Summary

This study focused on class action objector appeals from class action cases, filed in the district courts on or after January 1, 2008, in which final approval of a Rule 23-certified class action settlement was granted and appealed. The objector appeals studied were filed from January 1, 2008, through March 1, 2013, in the Seventh Circuit, through June 1, 2013, in the Second Circuit, and through July 1, 2013, in the Ninth Circuit.

- Our searches of the CM/ECF district court databases of the districts in the Second, Seventh, and Ninth Circuits were limited to cases filed on or after January 1, 2008. We identified instances in which final approval of a Rule 23-certified class action settlement was granted and appealed through March 1, 2013, in the Seventh Circuit, through June 1, 2013, in the Second Circuit, and through July 1, 2013, in the Ninth Circuit. Objector appeals in these cases were not common (but see footnote 2 and surrounding text). Thirty-six objector appeals were filed in 12 class action settlements in the Second Circuit; 27 objector appeals were filed in 8 class action settlements in the Seventh Circuit; and 108 objector appeals were filed in 49 class action settlements in the Ninth Circuit. These objector appeals represented less than one percent of the total number of appeals filed in each of these three circuits from the beginning of fiscal year 2008 through March 31, 2013.
- Objector appeals were typically made in large cases, primarily in the largest districts within the circuits. In the Second Circuit, 92% of the class action objector appeals originated from the Southern District of New York; in the Seventh Circuit, 73% originated from the Northern District of Illinois; and in the Ninth Circuit, 86% originated from the Northern, Central, and Southern Districts of California.
- The majority of class action objector appeals (83%, or 142 out of 171 total objector appeals identified in our study) were filed from court-approved settlements in consolidated class actions or multidistrict litigation (MDL) class actions with large nationwide classes of plaintiffs.
- The pattern with respect to voluntary dismissal of appeals is different in the Second Circuit than in the Seventh and Ninth Circuits. Although the high percentage of class action objector appeals pending in the Ninth Circuit may alter the pattern, the trend in the Seventh and Ninth Circuits is for objector appeals to be voluntarily dismissed pursuant to Federal Rule of Appellate Procedure 42(b) prior to the filing of an appellant brief and within 200 days from the date on which the appeal was filed.
- In the Second Circuit, 63% of terminated appeals (19 of 30) were decided on the merits, in contrast to no objector appeals decided on the merits in the Seventh Circuit, and only 13% of the terminated appeals decided on the merits in the Ninth Circuit. Out of a combined total of 126 terminated objector appeals identified in the study, the objectors or appellants were successful in their appeals on only three occasions.
- Federal Rule of Appellate Procedure 7 cost bonds were requested in 70% of the objector appeals (19 out of the 27 total objector appeals) filed in the Seventh Circuit; 32% (or 6 out of 19) of these bond requests were granted. Cost bonds were requested in 42% of objector appeals (15 out of the 36 total objector appeals) filed in the Second Circuit; none of the plaintiffs' bond requests were granted. In the Ninth Circuit, bonds were requested in 32% of objector appeals (35 out of the 108 objector appeals), and 66% of these requests were granted (23 out of 35).

Study Approach

The purpose of this study was to determine the frequency with which settlements reached in Rule 23-certified class actions are appealed by class action objectors, generally defined as one or more class members who submit an objection to the proposed settlement in the district court prior to final approval of the class action settlement. To identify the cases in which objector appeals were filed, we first conducted computerized searches of the CM/ECF district court databases to identify the universe of cases in which such an appeal might possibly have been filed, and then we examined the docket sheets of these cases to determine whether such an appeal had actually been taken. If such an appeal had been taken, we coded information relevant to the proposals currently under consideration by the Appellate Rules Committee, including whether the appeals by class action objectors were determined to be of a frivolous nature, the final disposition of the objector appeals, and whether a Rule 7 cost bond was requested and imposed on the appealing objectors.¹

Owing to time constraints and the difficulty of identifying class action objector appeals with automated searches of the CM/ECF databases, the current report is limited to cases filed on or after January 1, 2008, in three circuits (Second, Seventh, and Ninth) and to objector appeals filed from January 1, 2008, through either March 1, 2013 (Seventh Circuit), June 1, 2013 (Second Circuit), or July 1, 2013 (Ninth Circuit). The Second and Ninth Circuits were chosen based on the increased likelihood of the district courts of both circuits having an above-average number of class actions. The Seventh Circuit was chosen as having district courts with an average level of class action filings. Preliminary results based on the districts in the Seventh Circuit were shared in an oral report at the Committee's spring 2013 meeting.

Limiting the search to cases filed after January 1, 2008, likely resulted in an incidence estimate at the lower boundary of the actual rate because some of the class action cases were still pending at the time of our electronic search. In addition, the search would not have captured objector-appeal activity in either pending or closed cases filed before January 1, 2008. However, basing the study on a filing cohort aimed at capturing appeals in recently filed class actions sets relatively unambiguous parameters for the cases included in the study, which in turn allows more straightforward interpretation. Currently, Federal Judicial Center staff are exploring whether it will be fruitful to extend the searches to include earlier filing years, to use an alternative sampling strategy, or to follow up on any cases in the current sample that were pending at the time of our initial work.²

1. Standard codes to identify appeals by class action objectors in the CM/ECF databases do not exist in either the district or appellate courts, and the docketing events that reliably identify Rule 23 class action settlements with objector activity occur at the district-court level. Thus, for each circuit, a tailored search was developed and run for each district within the circuit using the same five-year time period, resulting in a list of cases that would include (if present) cases filed on or after January 1, 2008, with class action settlements that have been granted final approval and from which one or more class members who objected to the proposed settlement filed a notice of appeal. After identifying all legitimate objector appeals in each district, the results were compiled to calculate the circuit-level rate of appeal.

2. Alternative sampling methods include using a termination cohort or a pending cohort of cases. A termination cohort of cases would have provided complete information about the incidence of objector appeals in those cases, but comparisons would likely have been less reliable because the sample would include cases filed in many different years, with some being short-lived cases and some longer lasting. Using a pending cohort also would include cases filed in many different years, with some being short-lived cases and some longer lasting, without the benefit of having complete information about incidence. It may be that a combination sampling strategy will ultimately produce the best estimate of incidence. We recently searched the CM/ECF databases for objector appeal activity from January 1, 2008, through September

A comprehensive record of the results for each of the three circuits is presented in the appendices attached to this report. The appendix for each circuit lists, by district, the class action cases with one or more objector appeals identified in our searches, and for each of these cases the following information was collected:

- whether the case had been consolidated as an MDL by the Judicial Panel on Multidistrict Litigation;
- whether the case is part of a consolidated class action within the district;
- the number of objections submitted by objectors prior to the court's grant of final approval to the class action settlement;
- the date upon which the court granted final approval to the class action settlement or settlements and final judgment from which the objector could appeal, including whether the court also awarded attorneys' fees and expenses;
- the total number of appeals filed by objectors for each case;
- the date on which the notice of appeal was filed in the district court; the name of the objector or objectors filing the notice of appeal; the name of the attorneys (if any) listed on the notice of appeal; name of the attorneys filing appearances on behalf of objectors in the appellate court (if different from the attorney listed on the notice of appeal or if the notice of appeal was filed by the objectors pro se);
- for each appeal identified, the current status of the appeal—either “still pending” or the date of final disposition of the appeal as indicated by the appellate court mandate and the nature of the final disposition (voluntarily dismissed pursuant to a Rule 42(b) motion by the objectors/appellants or per stipulation of the parties; appeal dismissed because of procedural deficiencies; or per decision by the appellate court on the merits);
- whether or not a motion requesting imposition of a Rule 7 cost bond was made—if so, whether the motion was granted and, if granted, the amount of the final bond imposed;
- for each circuit, documentation of each of the events described above for each relevant case, settlement, and appeal.

The following sections of this report summarize the study findings, which are included in greater detail in the appendices, with respect to: the frequency of objector appeals during the period studied, the final disposition of the objector appeals identified, and Rule 7 cost bond activity in each of the three circuits studied.

11, 2013, in any pending case *regardless* of filing year of the underlying case. These searches suggest that the low incidence of objector appeals found in our more detailed study would be replicated in a more expansive study in all districts except the Southern District of New York. The recent search for this district suggests the incidence may be higher than what is reported in this report. However, we cannot make definitive statements without additional review.

Frequency of Class Action Objector Appeals

As described above, the number of objector appeals filed in each of the three circuits during the study period was derived from a compilation of the verified objector appeals identified in the districts within the respective circuits.

For each district included in our search, the table below shows the number of court-approved Rule 23-certified class action settlements from which one or more objector appeals were filed during the five-year study period, and the total number of objector appeals filed in the respective circuit court from those settlements. For each of the districts in our study in which objector appeals were identified, except the Southern District of Illinois and the District of Nevada, there are differences in the number of court-approved Rule 23-certified class action settlements appealed from and the number of objector appeals from the district that were filed in the circuit court. The differences are the result of some cases having multiple objector appeals from the court-approved settlement. Multiple appeals from the same settlement are usually filed by different objectors³ but in several cases the same objector filed more than one notice of appeal to the same settlement.⁴

In addition, in the Southern District of New York and the Northern District of California the number of court-approved Rule 23-certified class action settlements from which an appeal was taken is greater than the number of class action cases listed for those districts.⁵ This is because the large MDL class actions had more than one court-approved settlement.

3. See, e.g., *Blessing v. Sirius XM Radio Inc.*, No. 1:09-cv-10035 (S.D.N.Y. Dec. 7, 2009) (12 separate appeals filed in the Second Circuit by different objectors); *In re Lawnmower Engine Horsepower Mktg. & Sales Practices Litig. (No. II)*, No. 2:08-md-01999 (E.D. Wis. Dec. 5, 2008) (8 appeals filed in the Seventh Circuit by different objectors); *In re Online DVD Rental Antitrust Litig.*, No. 4:09-md-02029 (N.D. Cal. Apr. 13, 2009) (6 appeals filed in the Ninth Circuit by different objectors).

4. See *Dennings v. Clearwire Corp.*, No. 2:10-cv-01859 (W.D. Wash. Nov. 15, 2010). Objectors appealed from the December 20, 2012, order granting final approval of the settlement and from the May 3, 2013, order awarding attorneys' fees and expenses.

5. See *In re Bank of Am. Corp. Sec., Derivative, and Employee Retirement Income Security Act (ERISA) Litig.*, No. 1:09-md-2058 (S.D.N.Y. June 11, 2009) (1 objector appeal was filed from the April 15, 2013, order awarding attorneys' fees for the January 24, 2013, settlement of the consolidated derivative actions and 4 appeals were filed from the April 8 and 9, 2013, orders approving settlement and awarding attorneys' fees for the consolidated securities actions); and *In re TFT-LCD (Flat Panel) Antitrust Litig.*, MDL No. 1827, No. 3:07-md-1827 (N.D. Cal. Apr. 20, 2007) (5 objector appeals were filed from the July 11, 2012, settlement and 8 appeals were filed from the March 29, 2013, settlement).

Class Action Objector Appeals Filed in the Second, Seventh, and Ninth Circuit Courts of Appeals ⁶		
District Court	Court Approved Rule 23-Certified Class Action Settlements Appealed by 1 or More Objectors	Separate Objector Appeals Filed
District of Connecticut	0	0
Eastern District of New York	2	3
Northern District of New York	0	0
Southern District of New York	10	33
Western District of New York	0	0
District of Vermont	0	0
Total for Second Circuit	12	36
Central District of Illinois	0	0
Northern District of Illinois	5	17
Southern District of Illinois	1	1
Northern District of Indiana	0	0
Southern District of Indiana	0	0
Eastern District of Wisconsin	2	9
Western District of Wisconsin	0	0
Total for Seventh Circuit	8	27
District of Alaska	0	0
District of Arizona	1	3
Central District of California	8	12
Eastern District of California	0	0
Northern District of California	24	65
Southern District of California	8	16
District of Idaho	0	0
District of Montana	0	0
District of Nevada	1	1
District of Oregon	0	0
Eastern District of Washington	0	0
Western District of Washington	7	11
Total for Ninth Circuit	49	108

6. This table includes class action objector appeals from class action cases that were filed in the district courts on or after January 1, 2008, in which final approval of a Rule 23-certified class action settlement was granted and appealed from between January 1, 2008, through March 1, 2013, in the Seventh Circuit, through June 1, 2013, in the Second Circuit, and through July 1, 2013, in the Ninth Circuit. Owing to time constraints, the total number of objector appeals filed in the Ninth Circuit Court of Appeals does not include objector appeals, if any, that may have originated from the Districts of Hawaii, Guam, and the Northern Mariana Islands.

Although the results summarized here were obtained from searches conducted in the district courts of only three circuit courts of appeals, if similar searches of the CM/ECF databases in the district courts in the other ten circuits were conducted, we would expect similar results.

- Overall, the percentage of appeals filed by class action objectors is likely to be small compared to the total number of appeals filed in each circuit, even if we take into account that the incidence rates reported here are likely lower bounds because the search was limited to cases filed after January 1, 2008.⁷

As indicated in the table above, in the Second Circuit 36 objector appeals were filed in the 12 class action settlements identified from the approximate five-year sample of filings. Thirty-six appeals is less than one percent of the total number of appeals filed in the Second Circuit from the beginning of fiscal year 2008 through March 31, 2013.⁸ Similarly, 27 objector appeals were filed in eight class action settlements in the Seventh Circuit. Twenty-seven appeals is less than one percent of the total number of appeals filed in the Seventh Circuit from the beginning of fiscal year 2008 through March 31, 2013.⁹ And finally, 108 objector appeals were filed in 49 class action settlements in the Ninth Circuit. One hundred and eight appeals is less than one percent of the total number of appeals filed in the Ninth Circuit from the beginning of fiscal year 2008 through March 31, 2013.¹⁰

At this time, we do not have a count of the total number of Rule 23-certified class action settlements granted final approval from which no objector appeal was taken during the time period of the study. It is likely, however, that the number of court-approved class action settlements appealed by objectors would be a small percentage of such cases.

- The pattern of origination of objector appeals in the Second, Seventh, and Ninth Circuits will likely also be seen in other circuits—that is, most of the objector appeals will be found in the larger districts or in districts considered to be favorable forums for class action filings or frequent transferee districts for MDL consolidations. No or very few objector appeals will be found in smaller districts or districts less popular for class action filings. Thus, the total number of class action objector appeals, by circuit as well as nationwide, will likely originate from a few districts rather than being spread relatively evenly among the districts.

In the Second Circuit, 92% of the class action objector appeals originated from one district—the Southern District of New York. With the exception of the Eastern District of New York, where a total of three objector appeals were filed, there were no objector appeals at all originating from class action settlements granted final approval in the remaining districts of the sample filing from the Second Circuit.

Sixty-three percent of the objector appeals (17 out of 27 total appeals) filed in the Seventh Circuit originated from the Northern District of Illinois, and all but one of the remaining 10 appeals were filed from two class action settlements in one other district—the

7. See *supra* note 2 and the surrounding text discussing the implications of a filing cohort limiting our sample to cases filed on or after January 1, 2008.

8. Administrative Office of the United States Courts, Federal Court Management Statistics, available at <http://jnet.ao.dcn/resources/statistics/federal-court-management-statistics>. Note that these numbers will include filings from October 1, 2007, to December 31, 2007, which are not included in the study's search period.

9. *Id.*

10. *Id.*

Eastern District of Wisconsin. Except for one objector appeal filed from the Southern District of Illinois, no class action objectors appealed in the remaining Seventh Circuit districts during the study period.

In the Ninth Circuit, 86% of the total number of objector appeals originated from three of the California districts, with 60% coming from the Northern District of California (65 out of 108 total appeals), and the remaining 26% split almost evenly between the Southern District of California (16 appeals) and the Central District of California (12 appeals). The majority of the remaining 14% of objector appeals originated from the Western District of Washington (11 of the 15 remaining appeals), with the Districts of Arizona (3 appeals) and Nevada (1 appeal) being the only remaining Ninth Circuit districts where an objector appealed from a class action settlement. Although we have not collected or examined data for the remaining ten circuits, it is likely that the upper limits of an overall nationwide range of objector appeals would be found in the Northern District of California, with 65 objector appeals from 24 court-approved Rule-23 certified class action settlements, and in the Ninth Circuit overall, with 108 objector appeals.

- The majority of class action objector appeals are filed from final settlements in consolidated class actions or MDL class actions with large nationwide classes of plaintiffs.

In the Second Circuit, 89% of the total number of objector appeals (32 out of 36 objector appeals) were filed from court-approved settlements in either MDL class actions (18 appeals) or consolidated class actions (14 appeals). In the Seventh Circuit, 96% of objector appeals were filed from settlements granted final approval in either MDL class actions (16 out of 27 total objector appeals) or in consolidated class actions (10 appeals). And in the Ninth Circuit, 78% (84 out of 108 total objector appeals) were filed from court-approved settlements reached in either MDL class actions (49 appeals) or consolidated class actions (35 appeals filed).

Final Disposition of Class Action Objector Appeals

The table below shows the current disposition of the objector appeals identified in each of the three study circuits. All of the objector appeals can be placed into one of four disposition categories:

1. the appeal is pending as of August 31, 2013;
2. the appeal has been dismissed voluntarily, either pursuant to the appellate court granting the objectors' Federal Rule of Appellate Procedure 42(b) motion to dismiss the appeal or granting the parties' Rule 42(b) stipulation to dismiss the appeal (usually with prejudice);
3. the appeal has been dismissed pursuant to court order owing to a procedural deficiency including lack of standing to maintain the appeal, default for failure to file the required appellate forms or to file the brief and/or appendix by the due date, failure to prosecute the appeal, or failure to pay the docketing fee; or
4. the appeal has been decided on the merits, resulting in an order either dismissing the appeal, affirming the judgment of the district court, or reversing the judgment in part and remanding the case to the district court for further proceedings.

In addition, for appeals that were voluntarily dismissed, dismissed because of procedural deficiencies, or decided on the merits, the table shows the average length of time in days from the date on which the objectors/appellants filed the notice of appeal in the district court and the date on which final disposition of the appeal occurred in the appellate court, signified by issuance of a mandate pursuant to Federal Rule of Appellate Procedure 41(a) indicating that the appeal has been dismissed.

Finally, for objector appeals that were voluntarily dismissed pursuant to Rule 42(b), the table indicates the number of such appeals in which the objectors/appellants filed their appellant brief prior to filing a Rule 42(b) motion seeking voluntary dismissal of the appeal, either pursuant to a motion brought only by the objector or pursuant to the parties' stipulation.

Disposition of Class Action Objector Appeals Filed in the Second, Seventh, and Ninth Circuit Courts of Appeals ¹¹					
Court of Appeals (total # of objector appeals filed)	Appeals Pending (as of 08/31/2013)	Appeals Voluntarily Dismissed Pursuant to Fed. R. App. P. 42(b)		Appeal Dismissed Because of Procedural Deficiency	Appeal Decided on the Merits
		Pursuant to Objector(s) Rule 42(b) Motion to Dismiss ¹²	Pursuant to Parties' Rule 42(b) Stipulation to Dismiss ¹³		
Second Circuit (36 total appeals)	6	6		5 ¹⁴	19 ¹⁵
		1	5		
Average length of time (in days) between filing notice of appeal and final disposition of appeal ¹⁶	N/A	270 days [92 to 544 days] # Objector appeals voluntarily dismissed: • under 50 days: 0 • between 50 and 100 days: 1 • between 100 and 200 days: 1 • between 200 and 300 days: 2 • over 300 days: 2		146 days [78 to 218 days]	396 days [85 to 548 days]
		544 days [N/A]	215 days [92 to 373 days]		
Number of appeals voluntarily dismissed in which appellant brief was filed prior to final disposition of appeal	N/A	1		N/A	N/A
		1	0		

11. Includes class action objector appeals from class action cases that were filed in the district courts on or after January 1, 2008, in which final approval of a Rule 23-certified class action settlement was granted and appealed from January 1, 2008, through March 1, 2013, in the Seventh Circuit, through June 1, 2013, in the Second Circuit, and through July 1, 2013, in the Ninth Circuit. Owing to time constraints, the total number of objector appeals filed in the Ninth Circuit Court of Appeals does not include objector appeals, if any, that may have originated from the Districts of Hawaii, Guam, and the Northern Mariana Islands due to time constraints.

12. The request is brought solely by the objectors/appellants (or by counsel on behalf of the objectors/appellants) asking the court to voluntarily dismiss the appeal pursuant to Rule 42(b).

13. The request is brought by the parties to the appeal per stipulation (or by counsel on behalf of the parties to the appeal)—including the objectors/appellants, class plaintiffs/appellees, and may also include the defendants—asking the court to voluntarily dismiss the appeal pursuant to Rule 42(b).

14. In the Second Circuit, 5 objector appeals were dismissed for procedural deficiencies, including lack of standing to appeal; default because of failure to file required appellate forms (2 appeals); and failure to file brief and/or appendix by due date (2 appeals).

15. In the Second Circuit, 19 objector appeals were decided on the merits: 2 appeals were dismissed and 17 appeals affirmed the judgment of the district court by summary order.

16. The time period is measured from the day the objectors/appellants files the notice of appeal in the district court to the day the appellate court issues the mandate pursuant to Rule 41(a) finally disposing of the appeal. The range indicating the shortest time to disposition and the longest time period in days is provided where more than one objector appeal was filed.

Disposition of Class Action Objector Appeals Filed in the Second, Seventh, and Ninth Circuit Courts of Appeals ¹¹					
Court of Appeals (total # of objector appeals filed)	Appeals Pending (as of 08/31/2013)	Appeals Voluntarily Dismissed Pursuant to Fed. R. App. P. 42(b)		Appeal Dismissed Because of Procedural Deficiency	Appeal Decided on the Merits
		Pursuant to Objector(s) Rule 42(b) Motion to Dismiss ¹²	Pursuant to Parties' Rule 42(b) Stipulation to Dismiss ¹³		
Seventh Circuit (27 total appeals)	0	27		0	0
		19	8 ¹⁷		
Average length of time (in days) between filing notice of appeal and final disposition of appeal ¹⁸	N/A	103 days ¹⁹ [6 to 177 days] # Objector appeals voluntarily dismissed: • under 50 days: 7 • between 50 and 100 days: 2 • between 100 and 200 days: 12 • between 200 and 300 days: 0 • over 300 days: 0		N/A	N/A
		112 days [19 to 177 days]	14 days [6 to 22 days]		
Number of appeals voluntarily dismissed in which appellant brief was filed prior to final disposition of appeal	N/A	9		N/A	N/A
		3 ²⁰	6 ²¹		

17. Six of the eight objector appeals in the Seventh Circuit that were voluntarily dismissed pursuant to the parties' Rule 42(b) stipulation during our study period were dismissed only after the majority of a three-judge panel concluded that the terms of the parties' separate settlement of the dispute underlying the appeals did not undo or affect the original settlement approved by the district court in any way. See *Safeco Ins. Co. of Am. v. Am. Int'l Grp., Inc.*, 710 F.3d 754 (7th Cir. Mar. 25, 2013). For additional details, see the report of findings from the Seventh Circuit at Appendix B.

18. See *supra* note 16.

19. The six appeals filed from the settlement reached in *Nat'l Council on Comp. Ins., Inc. v. Am. Int'l Grp.*, No. 1: 07-cv-2898 (N.D. Ill. filed May 24, 2007) and *Safeco Ins. Co. of Am. v. Am. Int'l Grp., Inc.*, No. 1:09-cv-2026 (N.D. Ill. filed April 1, 2009) were not included within the group of voluntarily dismissed appeals for an analysis of disposition time because their inclusion would have made the average life span of these appeals appear misleadingly high. The Seventh Circuit granted the parties' stipulation to dismiss these six appeals, but the additional information requested and time needed for the panel to issue its decision resulted in 431 days elapsing from the filing of the initial notices of appeal.

20. In one of the three objector appeals in which the objector/appellant filed an appellant brief, the brief was rejected as procedurally deficient and the objector filed a Rule 42(b) motion for voluntary dismissal before refile a corrected brief.

21. Appellant briefs were filed in the six consolidated appeals taken by two objectors in *Nat'l Council on Comp. Ins., Inc. v. Am. Int'l Grp.*, No. 1: 07-cv-2898 (N.D. Ill. filed May 24, 2007) and *Safeco Ins. Co. of Am. v. Am. Int'l Grp., Inc.*, No. 1:09-cv-2026 (N.D. Ill. filed April 1, 2009). On November 29, 2012, a three-judge panel heard oral arguments on the consolidated appeals and took them under advisement. On January 11, 2013, before the panel issued its decision, all parties to the 6 appeals reached a settlement and they all agreed (except for one appellee) to stipulate and file with the court an Agreed Stipulation of Dismissal with prejudice. However, on January 14, 2013, the court ordered the parties to supplement their agreed stipulation of dismissal to address whether the settlement of the dispute underlying the appeals negatively affected the class settlement approved in February 2012. On March 25, 2013, the majority granted the parties' stipulation and dismissed the appeals. See also *supra* note 17 & 19.

Disposition of Class Action Objector Appeals Filed in the Second, Seventh, and Ninth Circuit Courts of Appeals ¹¹					
Court of Appeals (total # of objector appeals filed)	Appeals Pending (as of 08/31/2013)	Appeals Voluntarily Dismissed Pursuant to Fed. R. App. P. 42(b)		Appeal Dismissed Because of Procedural Deficiency	Appeal Decided on the Merits
		Pursuant to Objector(s) Rule 42(b) Motion to Dismiss ¹²	Pursuant to Parties' Rule 42(b) Stipulation to Dismiss ¹³		
Ninth Circuit (108 total appeals)	39	53		7 ²²	9 ²³
		27	26		
Average length of time (in days) between filing notice of appeal and final disposition of appeal ²⁴	N/A	86 days [7 to 435 days] # Objector appeals voluntarily dismissed: • under 50 days: 19 • between 50 and 100 days: 12 • between 100 and 200 days: 19 • between 200 and 300 days: 1 • over 300 days: 2		172 days [42 to 352 days]	461 days [94 to 603 days]
		104 days [25 to 435 days]	69 days [7 to 158 days]		
Number of appeals voluntarily dismissed in which appellant brief was filed prior to final disposition of appeal	N/A	1		N/A	N/A
		1	0		

None of the appeals in the Seventh Circuit and only 17% of those in the Second Circuit were still pending during the study, but 36% of those in the Ninth Circuit were.

In the Seventh Circuit, all of the identified class action objector appeals were voluntarily dismissed pursuant to Rule 42(b). A similar disposition trend is evident in the Ninth Circuit, although because of the high percentage of class action objector appeals in this circuit still pending—appeals that may be voluntarily dismissed or disposed of on the merits—the pattern might change. About two-thirds (77%, or 53 out of 69) of the *terminated* class action objector appeals in the Ninth Circuit were voluntarily dismissed pursuant to Rule 42(b). In the Seventh Circuit, of the dismissals pursuant to Rule 42(b), about two-thirds were by motion and about a third by stipulation. In the Ninth Circuit, the dismissals were split almost evenly between motion and stipulation.

22. In the Ninth Circuit, 7 objector appeals were dismissed for procedural deficiencies, including failure to prosecute (6 appeals) and failure to pay the docketing fee.

23. In the Ninth Circuit, 9 objector appeals were decided on the merits: 6 appeals affirmed the judgment of the district court, and the judgment of the district court was reversed in part, affirmed in part, and remanded per published opinion in three appeals. For additional details on the three appeals in which the objector/appellant was successful, see Ninth Circuit Appeal No. 10-55129 from the settlement in *Fairchild v. AOL, LLC*, No. 2:09-cv-03568 (C.D. Cal. May 19, 2009); and Ninth Circuit Appeal Nos. 11-55674 and 11-55706 from the settlement in *Dennis v. Kellogg Co.*, No. 3:09-cv-01786 (S.D. Cal. Aug. 17, 2009).

24. See *supra* note 16.

In the Second Circuit, a decidedly different disposition trend is found: of the 30 objector appeals that had been terminated, only 6 (or 20%) of the objector appeals were voluntarily dismissed, and all but one of these dismissals was pursuant to the parties' Rule 42(b) stipulation of dismissal.

Dismissals owing to procedural deficiencies resulting from the objectors/appellants' failure to perform a requirement essential for the appeal to proceed (such as file forms required under local circuit rules or payment of the docketing fee) arguably could be considered *de facto* voluntary dismissals. Therefore, we examined whether the above trends were still evident if the appeals dismissed because of procedural deficiencies (5 appeals in the Second Circuit, no appeals in the Seventh, and 7 appeals in the Ninth Circuit) were added to the number of appeals voluntarily dismissed pursuant to a Rule 42(b) motion or stipulation. Although the percentage increased in the Second Circuit (from 20% to 37%) and the Ninth Circuit (from 77% to 87%), the general trend toward voluntary dismissal in the Seventh and Ninth Circuits and toward a merits disposition in the Second Circuit remained. Although Federal Rule of Appellate Procedure 7 cost bonds are discussed in the final section of this report, we note here that procedural deficiencies resulting in the dismissal of the 12 objector appeals discussed above did not include dismissals owing to the objectors' failure to pay a required Rule 7 cost bond.

Examining disposition from a different angle, 63% of the terminated appeals (19 of 30) in the Second Circuit were decided on the merits, including two appeals that were dismissed on the merits and 17 objector appeals where the judgment of the district court was affirmed by summary order. In contrast, no objector appeals were decided on the merits in the Seventh Circuit, and only 13% of the terminated appeals (9 out of 69) were decided on the merits in the Ninth Circuit, including six appeals affirming the judgment of the district court and three appeals reversing the judgment in part, affirming in part, and remanding the case back to the district court for further proceedings.²⁵ Thus, out of a combined total of 126 *terminated* objector appeals identified in the study, the objectors/appellants were successful in their appeals on only three occasions.²⁶ Again, it should be noted that some of the pending appeals may result in favorable merits terminations.

Examining objector appeals terminated by voluntary dismissal, the length of time between the filing of the notice of appeal in the district court to the issuance of the mandate dismissing the appeal in the court of appeal was shorter in the Seventh and Ninth Circuits than in the Second Circuit. In both the Seventh and the Ninth Circuits, almost all of the objectors/appellants dismissed their appeals in under 200 days, but in the Second Circuit, two-thirds of the appeals (4 out of 6) lasted over 200 days. The relatively long life of some of the Second Circuit appeals may be the result of the unique circumstances of the complex cases from which they originate. And again, the number of pending cases in the Ninth Circuit leaves open the possibility that this trend of shorter dismissal times might change. More specifically, examination of the disposition times shows the following:

25. See *supra* note 23.

26. A closer look at the decisions of the appellate court shows that the court did not reject the district court's approval of the settlement agreement as a whole, but rejected the lower court's approval of a specific provision of the agreements. See *Dennis v. Kellogg Co.*, 697 F.3d 858 (9th Cir. Sept. 4, 2012). After a careful review of the class settlement, the Ninth Circuit concluded that the district court did not apply the correct legal standards governing *cy pres* distributions and thus abused its discretion in approving the settlement. See also *Nachshin v. AOL, LLC*, 663 F.3d 1034 (9th Cir. Nov. 21, 2011).

- In the Seventh Circuit, excluding the six appeals voluntarily dismissed in the *Safeco* case,²⁷ 100% (all 21) of the voluntarily dismissed appeals were dismissed under 200 days, and slightly less than half of these were dismissed within the first 100 days.
- In the Ninth Circuit, 94% of the objector appeals dismissed voluntarily were done so under 200 days, and slightly more than half of these were terminated within the first 100 days.
- In all three circuits, voluntarily dismissed appeals pursuant to the parties' stipulation lasted on average a shorter number of days (215 days in the Second Circuit, 14 days in the Seventh Circuit, and 69 days in the Ninth Circuit) compared to the appeals voluntarily dismissed pursuant to a motion submitted only by the objectors (on average 544 days in the Second Circuit, 112 days in the Seventh Circuit, and 104 days in the Ninth Circuit).
- Assuming appeals dismissed for procedural deficiencies are *de facto* voluntary dismissals, the 146-day average length of time for final disposition of those appeals in the Second Circuit falls closer in line with the average in the Seventh Circuit (103 days) and Ninth Circuit (86 days).

If an appellant has made the time and financial commitment to file the opening appellant brief, then this can be viewed as a likely predictor that the appellant does not intend to dismiss the appeal. Likewise, if an appellant has not filed the opening brief and has requested numerous extensions of the deadline on which the brief is due, this can be seen as a likely predictor that the filer does not intend to pursue the appeal to obtain a decision on the merits. For each objector appeal in the study that was voluntarily dismissed pursuant to Federal Rule of Appellate Procedure 42(b), information was collected on the significant documents and/or motions that were filed by the objectors/appellants prior to filing of the request for a Rule 42(b) voluntary dismissal.

The findings are identical in the Second and Ninth Circuits, in which an appellant brief was filed in only one of the objector appeals voluntarily dismissed pursuant to Rule 42(b). In the Seventh Circuit, however, an appellate brief was filed in 9 out of 27 such appeals. It is important to note, however that this number is skewed by the *Safeco* case. Briefs were filed in the six appeals associated with *Safeco* prior to oral arguments, but before the panel issued its opinion the parties settled and filed an agreement upon stipulation to dismiss the appeals. Also, in another of the appeals in which the objector/appellant filed the appellant brief with the court, the court rejected the brief for procedural deficiencies and the appellant voluntarily dismissed his appeal instead of refiling the brief.²⁸

To summarize our findings with respect to final disposition of the objector appeals that we identified in the Second, Seventh, and Ninth Circuits, the trend in two of these circuits (Seventh and Ninth) appears to be that these objector appeals are overwhelmingly terminated voluntarily pursuant to Rule 42(b) prior to the filing of an appellant brief and within 200 days from the date on which the appeal was filed.

27. After 431 days the majority of a three-judge panel granted the parties' stipulation to voluntarily dismiss the appeals filed from the settlement reached in *Nat'l Council on Comp. Ins., Inc. v. Am. Int'l Grp.*, No. 1: 07-cv-2898 (N.D. Ill. filed May 24, 2007) and *Safeco Ins. Co. of Am. v. Am. Int'l Grp., Inc.*, No. 1:09-cv-2026 (N.D. Ill. filed Apr. 1, 2009), while the panel was preparing to issue its decision on the merits following oral arguments. See discussion of *Safeco Ins. Co. of Am. v. Am. Int'l Grp., Inc.*, 710 F.3d 754 (7th Cir. Mar. 25, 2013), *supra* notes 17, 19, & 21.

28. See Appeal No. 11-2588 filed in *In re AT&T Mobility Wireless Data Servs. Tax Litig.*, MDL 2147, No. 1:10-cv-02278 (N.D. Ill. Apr. 7, 2010).

Rule 7 Cost Bonds and Class Action Objector Appeals

The table below summarizes the data collected on Federal Rule of Appellate Procedure 7 cost bond activity from the objector appeals identified in our searches.

Federal Rule of Appellate Procedure 7 Cost Bond Activity in Class Action Objector Appeals in the Second, Seventh, and Ninth Circuits ²⁹		
Circuit	Objector Appeals in Which Plaintiffs Filed Motion for a Rule 7 Cost Bond	Disposition of Plaintiffs' Rule 7 Bond Requests
Second (36 Total Objector Appeals)	<p>Total Number of Appeals for Which Plaintiffs Requested Bond: 15³⁰</p> <p>Average Bond Amount Requested Per Appeal: \$25,500³¹</p>	<p>Total Number of Bond Requests Not Ruled On: 2³²</p> <p>Total Number of Bond Requests Denied: 13³³</p> <p>Total Number of Bond Requests Granted: 0</p> <p>Average Amount of Bond Imposed Per Appeal: N/A</p>

29. This table includes class action objector appeals from class action cases that were filed in the district courts on or after January 1, 2008, in which final approval of a Rule 23-certified class action settlement was granted and appealed between January 1, 2008, through March 1, 2013, in the Seventh Circuit, through June 1, 2013, in the Second Circuit, and through July 1, 2013, in the Ninth Circuit. Owing to time constraints, the total number of objector appeals filed in the Ninth Circuit Court of Appeals does not include objector appeals, if any, that may have originated from the Districts of Hawaii, Guam, and the Northern Mariana Islands.

30. In the Second Circuit, plaintiffs asked the district court to impose a Rule 7 cost bond in 15 objector appeals that were filed in three class actions: *In re Bayer Corp. Combination Aspirin Prods. Mktg. & Sales Practice Litig.*, No. 1:09-md-2023 (E.D.N.Y. Apr. 14, 2009) (requesting a \$132,500 cost bond collectively for Appeals Nos. 13-1928 and 13-1939); *In re Ambac Fin. Grp., Inc. Sec. Litig.*, No. 1:08-cv-411 (S.D.N.Y. Jan. 16, 2008) (requesting a \$50,000 cost bond for Appeal No. 11-4643); and *Blessing v. Sirius XM Radio Inc.*, No. 1:09-cv-10035 (S.D.N.Y. Dec. 7, 2009) (requesting the 12 appellants to collectively post a \$200,000 bond for Appeals Nos. 11-3696, 11-3729, 11-3834, 11-3883, 11-4064, 11-3908, 11-3910, 11-3916, 11-3965, 11-3970, 11-3972, and 11-0406). For additional details of findings from the Second Circuit, see Appendix A.

31. See *supra* note 30. Note that the bond amount used to calculate the average bond amount requested per appeal from collective bond requests is the amount found after splitting the overall bond amount requested evenly between the number of appeals for which the bond is being requested.

32. In *In re Bayer Corp.*, No. 1:09-md-2023, Appeals Nos. 13-1928 and 13-1939 were dismissed on the merits before the court ruled on the plaintiffs' bond motion.

33. Plaintiffs' cost bond requests were denied in *In re Ambac Financial Group*, No. 1:08-cv-411, and in *Blessing*, No. 1:09-cv-10035.

Federal Rule of Appellate Procedure 7 Cost Bond Activity in Class Action Objector Appeals in the Second, Seventh, and Ninth Circuits ²⁹		
Circuit	Objector Appeals in Which Plaintiffs Filed Motion for a Rule 7 Cost Bond	Disposition of Plaintiffs' Rule 7 Bond Requests
Seventh (27 total Objector Appeals)	<p>Total Number of Appeals for Which Plaintiffs Requested Bond: 19³⁴</p> <p>Average Bond Amount Requested Per Appeal: \$35,368³⁵</p>	<p>Total Number of Bond Requests Not Ruled On: 6³⁶</p> <p>Total Number of Bond Requests Denied: 7³⁷</p> <p>Total Number of Bond Requests Granted: 6³⁸</p> <p>Average Amount of Bond Imposed Per Appeal: \$4,500³⁹</p>

34. In the Seventh Circuit, plaintiffs filed a motion requesting the district court to order appellants/objectors to post a Rule 7 cost bond in 19 objector appeals filed in six separate class actions: *In re Discover Payment Protection Plan Mktg. & Sales Practices Litig.*, MDL 2217, No. 10-cv-6994 (N.D. Ill. Feb. 7, 2011) (requesting a \$25,000 cost bond for Appeal No. 12-2366); *In re AT&T Mobility Wireless Data Servs. Tax Litig.*, MDL 2147, No. 1:10-cv-02278 (N.D. Ill. Apr. 7, 2010) (requesting a \$4,500 cost bond each for the 6 appellants in Appeals Nos. 11-2490, 11-2491, 11-2492, 11-2497, 11-2522, and 11-2588); *Schulte v. Fifth Third Bank*, No. 1:09-cv-06655 (N.D. Ill. Oct. 21, 2009) (requesting a \$10,000 bond each for Appeals Nos. 11-2922, 11-2964, and 11-2963); *Masters v. Lowe's Home Centers, Inc.*, No. 09-cv-00255 (S.D. Ill. Apr. 9, 2009) (requesting a \$5,000 cost bond for Appeal No. 11-2688); *Ori v. Fifth Third Bank*, No. 2:08-cv-00432 (E.D. Wis. May 16, 2008) *consol. with Baird v. Fifth Third Bank & Fiserv, Inc.*, No. 2:10-cv-00929 (E.D. Wis. Oct. 25, 2010) (requesting a \$25,000 cost bond for Appeal No. 12-1288); and *In re Lawnmower Engine Horsepower Mktg. & Sales Practices Litig. (No. II)*, No. 2:08-md-01999 (E.D. Wis. Dec. 5, 2008) (requesting a cost bond of \$80,000 each for Appeals Nos. 10-2971, 10-3127, 10-3141, 10-3146, 10-3157, 10-3158, and 10-3185). For additional details of findings from the Seventh Circuit, see Appendix B.

35. See *supra* note 34.

36. The objectors/appellants in six appeals filed from the following four class actions voluntarily dismissed their appeals pursuant to Rule 42(b) before the court ruled on the plaintiffs' bond motion: *In re Discover*, MDL 2217, No. 10-cv-6994; *Schultz*, No. 1:09-cv-06655; *Masters*, No. 09-cv-00255; and *Ori*, No. 2:08-cv-00432.

37. The court denied plaintiffs' request to impose an \$80,000 cost bond per appeal in each of seven appeals filed from the settlement in *In re Lawnmower*, No. 2:08-md-01999.

38. The court granted plaintiffs' request to order appellants to post a cost bond of \$4,500 each in Appeals Nos. 11-2490, 11-2491, 11-2492, 11-2497, 11-2522, and 11-2588, in *In re AT&T*, MDL 2147, No. 1:10-cv-02278.

39. The \$4,500 average cost bond imposed is a misleading figure since it is derived from only one bond request granted for each of the six appeals filed from in *In re AT&T*, MDL 2147, No. 1:10-cv-02278.

Federal Rule of Appellate Procedure 7 Cost Bond Activity in Class Action Objector Appeals in the Second, Seventh, and Ninth Circuits ²⁹		
Circuit	Objector Appeals in Which Plaintiffs Filed Motion for a Rule 7 Cost Bond	Disposition of Plaintiffs' Rule 7 Bond Requests
Ninth (108 total Objector Appeals)	Total Number of Appeals for Which Plaintiffs Requested Bond: 35 ⁴⁰ Average Bond Amount Requested Per Appeal: \$63,158 ⁴¹	Total Number of Bond Requests Not Ruled On: 4 ⁴² Total Number of Bond Requests Denied: 2 ⁴³ Total Number of Bond Requests Granted: 23 ⁴⁴ Average Amount of Bond Imposed Per Appeal: \$16,504 ⁴⁵ Total Number of Bond Requests Pending: 6 ⁴⁶

40. In the Ninth Circuit, plaintiffs filed a motion requesting the district court to order appellants/objectors to post a Rule 7 cost bond in 35 objector appeals filed in 17 separate class actions: *Frederick v. FIA Card Servs., N.A.*, No. 2:09-cv-03419 (C.D. Cal. May 14, 2009) (requesting a \$20,000 cost bond for Appeal No. 11-56609) (court imposed a \$1,000 bond); *In re Wachovia Corp. "Pick-A-Payment" Mortgage Mktg. & Sales Practices Litig.*, No. 5:09-md-02015 (N.D. Cal. Mar. 13, 2009) (requesting a \$116,250 cost bond each for Appeals Nos. 11-16507 and 11-16513) (\$15,000 bond required in Appeal No. 11-16507; Appeal No. 11-16513 voluntarily dismissed pursuant to Rule 42(b) stipulation of the parties filed 20 days after bond request and prior to bond motion decided); *Yingling v. eBay, Inc.*, No. 5:09-cv-01733 (N.D. Cal. Apr. 21, 2009) (requesting \$5,000 cost bond for Appeal No. 11-16033) (court ordered a \$5,000 cost bond); *Embry v. ACER Am. Corp.*, No. 5:09-cv-01808 (N.D. Cal. Apr. 24, 2009) (requesting a \$70,650 bond for Appeal No. 12-15555 and a \$346,814.51 bond in Appeal No. 12-15633) (court imposed a \$70,650 bond each in Appeals Nos. 12-15555 and 12-15633); *In re MagSafe Apple Power Adapter Litig.*, No. 5:09-cv-01911 (N.D. Cal. May 1, 2009) (requesting a \$200,000 cost bond each for Appeals Nos. 12-15740, 12-15757, 12-15782, and 12-15816, and a \$25,000 bond for Appeal No. 12-16053) (court ordered a \$15,000 bond for each of the five appeals); *Schulken v. Washington Mutual Bank*, No. 5:09-cv-02708 (N.D. Cal. June 18, 2009) (requesting a \$20,000 appeal bond in Appeal No. 13-15191) (court imposed a \$5,000 bond); *In re Netflix Privacy Litig.*, No. 5:11-cv-00379 (N.D. Cal. Jan. 26, 2011) (requesting objectors in Appeals Nos. 13-15723, 13-15733, 13-15734, 13-15751, 13-15754, and 13-15759 to post a \$21,519 appeal bond) (motion under submission without oral argument on Aug. 19, 2013); *Adams v. AllianceOne Receivables Mgmt., Inc.*, No. 3:08-cv-00248 (S.D. Cal. Feb. 8, 2008) (requesting a \$64,536.69 appeal bond imposed on objectors in Appeals Nos. 12-56957 and 12-56970 jointly and severally) (motion denied as moot since objectors voluntarily dismissed their appeals prior to court ruling on bond motion); *Dennis v. Kellogg Co.*, No. 3:09-cv-01786 (S.D. Cal. Aug. 17, 2009) (requesting a \$3,000 appeal bond imposed on objectors in Appeals Nos. 11-55674 and 11-55706 jointly and severally) (court ordered a \$3,000 bond imposed on objectors in both appeals jointly and severally); *In re Easysaver Rewards Litig.*, No. 3:09-cv-02094 (S.D. Cal. Sept. 24, 2009) (requesting a \$15,000 bond for Appeal No. 13-55373) (court imposed a \$15,000 cost bond); *In re Ferrero Litig.*, No. 3:11-cv-00205 (S.D. Cal. Feb. 1, 2011) (requesting a \$21,970.12 cost bond imposed jointly and severally in Appeals Nos. 12-56469 and 12-56478) (court denied bond requests in for both appeals); *Gallucci v. Boiron, Inc.*, No. 3:11-cv-02039 (S.D. Cal. Sept. 2, 2011) (requesting court to order objectors in Appeals Nos. 12-57074, 12-57081, and 12-57184 to post a \$235,500.66 appeal bond) (court ordered objectors in the three appeals to collectively post a \$5,000 appeal bond); *Foos v. Ann, Inc.*, No. 3:11-cv-02794 (S.D. Cal. Dec. 1, 2011) (requesting a \$5,000 bond in Appeal No. 13-55059) (court ordered objector to post a \$1,000 bond); *In re General Motors Corp. Speedometer Prods. Liability Litig.*, MDL No. 1896, No. 2:07-cv-00291 (W.D. Wash. Feb. 23, 2007) (requesting objectors in Appeals No. 08-36005 and 08-36028 to post a \$40,811.20 cost bond jointly and severally) (court ordered objectors in both appeals jointly and severally responsible to post a \$1,000 bond); *Arthur v. Sallie Mae, Inc.*, No. 2:10-cv-198 (W.D. Wash. Feb. 2, 2010) (requesting a \$189,344 cost bond in Appeal No. 12-35860) (motion not ruled on owing to plaintiffs withdrawing their bond motion when objectors voluntarily dismissed their appeal); *Dennings v. Clearwire Corp.*, No. 2:10-cv-01859 (W.D. Wash. Nov. 15, 2010) (requesting objectors in Appeals Nos. 13-35038 and 13-35491 to post a \$41,150 cost bond jointly and severally) (ordered objectors to post a \$41,150 cost bond in each appeal); *Herfert v. Crayola, LLC*, No. 2:11-cv-01301 (W.D. Wash. Aug. 5, 2011) (requesting both objector and counsel for objector in Appeal No. 12-35393 to be jointly and severally liable for a \$20,000 appeal bond) (ordered objector and her attorney to file an appeal bond of \$20,000).

The summary in the above table of class plaintiffs' requests for appellate costs bonds illustrates the current lack of uniformity among district courts (and, along with published cases, among circuits) of the factors considered when ruling on requests for Rule 7 bonds and of the costs that may be included in the final dollar amount imposed on the appellant, in addition to the taxable costs specified by Federal Rule of Appellate Procedure 39(c). The frequency with which plaintiffs filed a motion requesting imposition of a cost bond varied across the districts: in the Seventh Circuit, 70% (19 out of the 27 total objector appeals); in the Second Circuit, 42% (15 out of the 36 total objector appeals); and in the Ninth Circuit, 32% (35 out of the 108 objector appeals).

The disposition of the bond motions also varied across districts. In the Second Circuit, 0% of the plaintiffs' bond requests were granted, 87% (13 of 15) of the requests were denied, and 13% (2 of 15) were not ruled on. In the Seventh Circuit, 32% of the bond requests (6 of 19) were granted, 37% (7 of 19) were denied, and 36% (6 of 19) were not ruled on. In the Ninth Circuit, 66% of the class plaintiffs' bond requests (23 of 35) were granted, 6% (2 of 35) of the requests were denied, 11% (4 of 35) were not ruled on, and 17% (6 of 35) were still pending.

As indicated in the notes accompanying the table, bond amounts requested varied considerably both among the districts within the circuits and among the circuits, with the districts in the Ninth Circuit appearing to have the highest overall average bond amount requested per appeal (\$63,158), compared to the districts in the Seventh Circuit (\$35,368) and the Second Circuit (\$25,500).

Further comparisons of Federal Rule of Appellate Procedure 7 cost bond activity between the circuits is not useful given the small number of bonds granted in the Seventh Circuit and none granted in the Second Circuit during our search period. However, we can make several interesting observations about Rule 7 cost bond activity in the Ninth Circuit given the larger sample size:

- The average amount of a Rule 7 cost bond actually imposed per appeal is much lower than the average amount requested by class plaintiffs (e.g., \$16,504 average bond imposed compared to a \$63,158 average bond requested in the Ninth Circuit).
- Although we cannot establish a direct relationship between plaintiffs' request for, or the district court's imposition of, a Rule 7 cost bond and the final disposition of an objector's appeal, in the Ninth Circuit objectors voluntarily dismissed four appeals in 88 days or less following plaintiffs' motion for a cost bond, even before the court ruled on the motion. In

41. See *supra* note 40. Note that to calculate the average bond amount requested per appeal, for collective bond requests (or requests to hold two or more objectors jointly and severally liable to post a bond), we used the amount derived from dividing the overall bond amount requested by the number of separate appeals the bond could be applied to.

42. See *supra* note 40. The objectors/appellants in four appeals filed from three class actions voluntarily dismissed their appeals pursuant to Rule 42(b) before the court ruled on the plaintiffs' bond motion.

43. See *supra* note 40. Court denied plaintiffs' motion for a Rule 7 cost bond for Appeals Nos. 12-56469 and 12-56478 filed in *In re Ferrero Litig.*, No. 3:11-cv-00205 (S.D. Cal. Feb. 1, 2011).

44. See *supra* note 40. Plaintiffs' cost bond motions were granted for 23 objector appeals filed in 13 out of the 17 class actions in which plaintiffs filed a Rule 7 cost bond request.

45. See *supra* note 40. Note that the bond amount used to calculate the average bond amount imposed per appeal for orders imposing an appeal bond collectively (or orders holding objectors jointly and severally liable to post a bond) is the amount found after splitting the overall bond amount ordered evenly between the number of appeals for which the bond is being imposed.

46. See *supra* note 40 for details on *In re Netflix Privacy Litig.*, No. 5:11-cv-00379 (N.D. Cal. Jan. 26, 2011) (bond request taken under submission without oral argument on August 23, 2013).

addition, the 23 objector appeals filed in the Ninth Circuit for which the district courts imposed a Rule 7 cost bond were disposed of as follows: 11 appeals were voluntarily dismissed pursuant to Rule 42(b) within an average of 59 days following the courts' bond order (bond was not paid before dismissal in 9 appeals); 2 appeals were dismissed for procedural deficiencies (bond not paid before dismissal for failure to prosecute in both appeals); judgment on the merits was reached in 3 appeals (bond not paid prior to decision in 1 appeal); and 7 of these objector appeals are currently still pending (cost bond not paid in 2 appeals). Note that in the 12 appeals in which a cost bond was ordered by the district court but not paid by the objector prior to final disposition of the appeal, and the 2 pending objector appeals in which no bond was posted as ordered, failure to post the Rule 7 bond did not result in dismissal of the appeal by the Ninth Circuit pursuant to a procedural deficiency.

- Although failure to post the Rule 7 cost bond did not result in dismissal by the Ninth Circuit, objectors' refusal to comply with the district courts' bond orders initiated an escalating exchange between plaintiffs, objectors, counsel for objectors, and the court, resulting in a contempt finding and imposition of the sanction of striking the objectors' objections to the final settlement in 2 appeals and a contempt finding against objectors' counsel and resulting sanction of revoking counsel's authorization to practice before the district court in a third appeal.⁴⁷
- The district courts' cost bond order was appealed by objectors (by amending their notice of appeal to include the bond order) in 9 of the 23 appeals ordered to post the bond—5 of these appeals remain pending⁴⁸ (cost bond paid in 3 appeals) and 4 were voluntarily dismissed pursuant to Rule 42(b)⁴⁹ (bond was paid prior to dismissal in 1 appeal).

47. See Appeal No. 12-15555 in *Embry v. ACER Am. Corp.*, No. 5:09-cv-01808 (N.D. Cal. Apr. 24, 2009); Appeal No. 12-15757 in *In re MagSafe Apple Power Adapter Litig.*, No. 5:09-cv-01911 (N.D. Cal. May 1, 2009); and Appeal No. 13-35491 in *Dennings v. Clearwire Corp.*, No. 2:10-cv-01859 (W.D. Wash. Nov. 15, 2010). For additional details, see entry for above cases and related notes in Appendix C.

48. Appeal Nos. 12-15757 and 12-15782 in *In re MagSafe Apple Power Adapter Litig.*, No. 5:09-cv-01911 (N.D. Cal. May 1, 2009); Appeal No. 13-15191 in *Schulken v. Washington Mutual Bank*, No. 5:09-cv-02708 (N.D. Cal. June 18, 2009); Appeal No. 13-55373 in *In re Easysaver Rewards Litig.*, No. 3:09-cv-02094 (S.D. Cal. Sept. 24, 2009); and Appeal No. 13-35491 in *Dennings v. Clearwire Corp.*, No. 2:10-cv-01859 (W.D. Wash. Nov. 15, 2010).

49. Appeal No. 11-16033 in *Yingling v. eBay, Inc.*, No. 5:09-cv-01733 (N.D. Cal. Apr. 21, 2009); Appeal No. 12-15555 in *Embry v. ACER Am. Corp.*, No. 5:09-cv-01808 (N.D. Cal. Apr. 24, 2009); Appeal No. 12-35393 in *Herfert v. Crayola, LLC*, No. 2:11-cv-01301 (W.D. Wash. Aug. 5, 2011); and Appeal No. 11-56609 in *Frederick v. FIA Card Servs., N.A.*, No. 2:09-cv-03419 (C.D. Cal. May 14, 2009).

Appendices

Study of Class Action Objector Appeals in the Second, Seventh, and Ninth Circuit Courts of Appeals

*Report to the Advisory Committee on Appellate Rules
of the Judicial Conference of the United States*

Marie Leary

Federal Judicial Center

October 2013

This report was undertaken at the request of the Judicial Conference's Advisory Committee on Appellate Rules and is in furtherance of the Center's statutory mission to conduct and stimulate research and development for the improvement of judicial administration. While the Center regards the content as responsible and valuable, it does not reflect policy or recommendations of the Board of the Federal Judicial Center.

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Appendix A

Class Action Objector Appeals in the Second Circuit Court of Appeals
January 1, 2008 – June 1, 2013

Class Action Objector Appeals in the Second Circuit Court of Appeals from Cases Filed Between January 1, 2008, and June 1, 2013¹

36 Total Objector Appeals

District Court	Appellate Court	Final Disposition of Objector Appeal(s)	FRAP 7 Cost Bond
<ul style="list-style-type: none"> • MDL/Consolidated Class Action • # Objections Submitted • Date Final Approval of Class Action Settlement Granted 	<ul style="list-style-type: none"> • # Appeals Filed by Objector(s) • Date Notice of Appeal(s) Filed • Identity of Filing Objector(s) & Attorney(s) (if any) 	<ul style="list-style-type: none"> • Date & Nature of Final Disposition • Indicate if Appeal is "Pending" 	<ul style="list-style-type: none"> • Motion Filed • Disposition of Motion • Amount Imposed (if granted)
District of Connecticut: 0 objector appeals			
Eastern District of New York: 3 objector appeals			
<p><i>In re Bayer Corp. Combination Aspirin Products Marketing and Sales Practice Litigation</i>, No. 1:09-md-2023 (E.D.N.Y. Apr. 14, 2009).</p> <ul style="list-style-type: none"> • MDL • 6 Objections submitted² • 4/11/2013: Final Order and Judgment granting final approval of the amended settlement agreement; approving the plan for allocation; and dismissing all individual and class claims in MDL 2023.³ 	<p>2 Appeals Filed:</p> <ul style="list-style-type: none"> • 5/13/2013: Objector Shelley Stevens – filed by Thomas L. Cox, Jr./ The Cox Firm (Dallas, Texas) • 5/13/2013: Objector Janis Johnson – filed by Gary W. Sibley/ The Sibley Law Firm (Dallas, Texas) 	<ul style="list-style-type: none"> • 8/6/2013: Appeal No. 13-1928—dismissed on the merits pursuant to court order granting appellees' motion to dismiss⁴ • 8/6/2013: Appeal No. 13-1939—dismissed on the merits pursuant to court order granting appellees' motion to dismiss⁵ 	<ul style="list-style-type: none"> • 6/21/2013: Plaintiffs filed a motion for Objectors Stevens and Johnson to file an appeal bond in the amount of \$132,500⁶ • Appeals dismissed before Court ruled on bond motion • See above
<p><i>Anderson v. Nationwide Credit, Inc.</i>, Nos. 2:10-cv-03825 & 2:08-cv-01016 (E.D.N.Y. Aug. 19, 2010).</p> <ul style="list-style-type: none"> • Consolidated Class Action • 1 Objection submitted⁷ • 5/31/2012: Final Order granting final approval of the settlement agreement and awarding attorneys' fees and costs.⁸ 	<p>1 Appeal Filed:</p> <ul style="list-style-type: none"> • 6/15/2012: Objectors Farobag Cooper & Susan Fox – filed by Attorney Tiffany N. Hardy/Edelman, Combs, Lattner & Goodwin, LLC (Chicago, IL) 	<ul style="list-style-type: none"> • 3/7/2013: Appeal No. 12-2421—voluntarily dismissed pursuant to FRAP 42(b) stipulation of the parties⁹ 	<ul style="list-style-type: none"> • No motion for cost bond
Northern District of New York: 0 objector appeals			
Southern District of New York: 33 objector appeals			
<p><i>In re Ambac Financial Group, Inc. Securities Litigation</i>, No. 1:08-cv-411 (S.D.N.Y. Jan. 16, 2008).</p> <ul style="list-style-type: none"> • Consolidated Class Action • 3 Objections submitted¹⁰ • 9/28/2011: Consent Judgment granting final approval of class action settlements with (1) Underwriter Defendants and (2) Defendant Ambac and the Individual Defendants; Order granting request for attorneys' fees and expenses; Order approving Plan of Allocation.¹¹ 	<p>1 Appeal Filed:</p> <ul style="list-style-type: none"> • 10/28/2011: Objector Police and Fire Retirement System of the City of Detroit¹² – filed by Attorney Denis F. Sheils/ Kohn, Swift & Graf, PC (Philadelphia, PA) 	<ul style="list-style-type: none"> • 7/12/2012: Appeal No. 11-4643¹³—judgment of the district court affirmed by summary order¹⁴ 	<ul style="list-style-type: none"> • 12/15/11: Lead plaintiffs filed a motion to require the objector to post an appeal bond for \$50,000 to cover taxable costs¹⁵ • 1/12/2012: Court denied lead plaintiffs motion for a FRAP 7 appeal bond¹⁶

Class Action Objector Appeals in the Second Circuit Court of Appeals from Cases Filed Between January 1, 2008, and June 1, 2013¹

36 Total Objector Appeals

District Court	Appellate Court	Final Disposition of Objector Appeal(s)	FRAP 7 Cost Bond
<ul style="list-style-type: none"> • MDL/Consolidated Class Action • # Objections Submitted • Date Final Approval of Class Action Settlement Granted 	<ul style="list-style-type: none"> • # Appeals Filed by Objector(s) • Date Notice of Appeal(s) Filed • Identity of Filing Objector(s) & Attorney(s) (if any) 	<ul style="list-style-type: none"> • Date & Nature of Final Disposition • Indicate if Appeal is “Pending” 	<ul style="list-style-type: none"> • Motion Filed • Disposition of Motion • Amount Imposed (if granted)
<p><i>Hayes v. Harmony Gold Mining Co. Ltd.</i>, No. 1:08-cv-3653 (S.D.N.Y. Apr. 16, 2008).</p> <ul style="list-style-type: none"> • 1 Objection submitted¹⁷ • 11/14/2011: Order and Final Judgment granting final approval of the class action settlement, attorneys’ fees and expenses, and dismissing the action with prejudice.¹⁸ 	<p>2 Appeals Filed:</p> <ul style="list-style-type: none"> • 12/13/2011: Objector James J. Hayes – filed <i>pro se</i> – Appeal from order granting preliminary approval of settlement and order denying Objector’s motion to reconsider the final approval of the settlement¹⁹ • 2/1/2013: Objector James J. Hayes – filed <i>pro se</i> – Appeal from the Order issued on Jan. 2, 2013, denying Objector Hayes’ Fed. R. Civ. P. 60(b) motion for reconsideration of the Nov. 14, 2011 Order approving the Settlement Agreement and Plan of Allocation²⁰ 	<ul style="list-style-type: none"> • 1/29/2013: Appeal No. 12-0118—judgment of the district court affirmed by summary order²¹ • 7/18/2013: Appeal No. 13-0635—judgment of the district court affirmed by summary order²² 	<ul style="list-style-type: none"> • No motion for cost bond • No motion for cost bond
<p><i>Chin v. RCN Corp.</i>, No. 1:08-cv-7349 (S.D.N.Y. Aug. 19, 2008).</p> <ul style="list-style-type: none"> • 6 Objections submitted²³ • 9/8/2010: Memorandum and Order granting final approval of the settlement agreement; awarding attorneys’ fees, costs and incentive fee; dismissing all claims with prejudice.²⁴ 	<p>1 Appeal Filed:</p> <ul style="list-style-type: none"> • 10/8/2010: Objector Thomas J. Lavery – filed by attorney Brian L. Bromberg/ Bromberg Law Office, P.C. (New York, NY) 	<ul style="list-style-type: none"> • 3/11/2011: Appeal No. 10-4057—voluntarily dismissed pursuant to FRAP 42(b) stipulation of the parties²⁵ 	<ul style="list-style-type: none"> • No motion for cost bond
<p><i>In re Tremont Securities Law, State Law and Insurance Litigation</i>, Master File No. 1:08-cv-11117 (S.D.N.Y. Dec. 22, 2008) for No. 09-md-2052 (S.D.N.Y. June 11, 2009).²⁶</p> <ul style="list-style-type: none"> • MDL • 16 Objections submitted²⁷ • 8/19/2011: Final Judgment and Order of Dismissal with Prejudice granting final approval of a partial settlement of Securities Law, State Law and Insurance Actions; Judgment and Order granting insurance class counsel’s motion for an award of attorneys’ fees and expenses and insurance class plaintiffs’ incentive awards; and Judgment And Order granting plaintiffs’ state and securities law settlement class insurance class 	<p>4 Appeals Filed:²⁹</p> <ul style="list-style-type: none"> • 9/16/2011: Objector Orloff Family Trust – filed by attorneys Forrest S. Turkish/ Law Offices of Forrest S. Turkish (Bayonne, NJ) & Joseph D. Palmer/ Law Offices of Darrell Palmer PC (Solana Beach, CA) • 9/16/2011: Objectors Lakeview Investment, LP; Phoenix Lake Partners, L.P.; 2005 Tomchin Family Charitable Trust; Edward White, for himself and on behalf of White Trust dated May 3, 2002; & Rigdon O. Dees, III – filed by attorney Benjamin Rozwood/ Rozwood & Company, A.P.C. (Beverly Hills, CA) 	<ul style="list-style-type: none"> • 3/13/2013: Appeal No. 11-3899—voluntarily dismissed pursuant to Objector’s FRAP 42(b) motion³⁰ • 10/24/2012: Appeal No. 11-4022—voluntarily dismissed pursuant to FRAP 42(b) stipulation of the parties³¹ 	<ul style="list-style-type: none"> • No motion for cost bond • No motion for cost bond

**Class Action Objector Appeals in the Second Circuit Court of Appeals
from Cases Filed Between January 1, 2008, and June 1, 2013¹**

36 Total Objector Appeals

District Court <ul style="list-style-type: none"> MDL/Consolidated Class Action # Objections Submitted Date Final Approval of Class Action Settlement Granted 	Appellate Court <ul style="list-style-type: none"> # Appeals Filed by Objector(s) Date Notice of Appeal(s) Filed Identity of Filing Objector(s) & Attorney(s) (if any) 	Final Disposition of Objector Appeal(s) <ul style="list-style-type: none"> Date & Nature of Final Disposition Indicate if Appeal is "Pending" 	FRAP 7 Cost Bond <ul style="list-style-type: none"> Motion Filed Disposition of Motion Amount Imposed (if granted)
<p>counsels' motion for an award of attorneys' fees, reimbursement of expenses, and awards to state law and securities plaintiffs.²⁸</p>	<ul style="list-style-type: none"> 9/19/2011: Objector Philadelphia Financial Life Assurance Company – filed by attorney Richard G. Haddad/ Otterbourg, Steindler, Houston & Rosen, P.C. (New York, New York) 9/20/2011: Objectors Madelyn Haines & Paul Zamrowski – filed by attorney Vincent T. Gresham/Law Office of Vincent T. Gresham (Atlanta, Georgia) 	<ul style="list-style-type: none"> 4/24/2012: Appeal No. 11-3923— dismissed for lack of standing to maintain the appeal³² Appeal No. 11-4030— pending³³ 	<ul style="list-style-type: none"> No motion for cost bond No motion for cost bond
<p><i>Anwar v. Fairfield Greenwich Ltd.</i>, Master File No. 1:09-cv-00118 (S.D.N.Y. Jan. 7, 2009) for No. 09-md-2088 (S.D.N.Y. Oct. 6, 2009).³⁴</p> <ul style="list-style-type: none"> MDL 4 Objections submitted to the Partial Settlement with Fairfield Greenwich Defendants³⁵ 3/25/2013: Final Judgment and Order of Dismissal with Prejudice granting final approval of the partial class action settlement with Fairfield Greenwich Defendants.³⁶ 3/28/2013: Final Judgment and Order Awarding Fees and Expenses from the settlement.³⁷ 	<p>1 Appeal Filed from Partial Settlement with Fairfield Greenwich Defendants:³⁸</p> <ul style="list-style-type: none"> 4/23/2013: Objectors Morning Mist Holdings Ltd. and Miguel Lomeli³⁹ – filed by attorney Robert A. Wallner/Milberg LLP (New York, New York) 	<ul style="list-style-type: none"> Appeal No. 13-1581— pending⁴⁰ 	<ul style="list-style-type: none"> No motion for cost bond

Class Action Objector Appeals in the Second Circuit Court of Appeals from Cases Filed Between January 1, 2008, and June 1, 2013¹

36 Total Objector Appeals

District Court	Appellate Court	Final Disposition of Objector Appeal(s)	FRAP 7 Cost Bond
<ul style="list-style-type: none"> • MDL/Consolidated Class Action • # Objections Submitted • Date Final Approval of Class Action Settlement Granted 	<ul style="list-style-type: none"> • # Appeals Filed by Objector(s) • Date Notice of Appeal(s) Filed • Identity of Filing Objector(s) & Attorney(s) (if any) 	<ul style="list-style-type: none"> • Date & Nature of Final Disposition • Indicate if Appeal is “Pending” 	<ul style="list-style-type: none"> • Motion Filed • Disposition of Motion • Amount Imposed (if granted)
<p><i>In re Bank of America Corporation Securities, Derivative, and Employee Retirement Income Security Act (ERISA) Litigation</i>, No. 1:09-md-2058 (S.D.N.Y. June 11, 2009).⁴¹</p> <ul style="list-style-type: none"> • MDL • 4 Objections submitted to the proposed settlement of the Consolidated Derivative Actions⁴² • 1/24/2013: Order and Final Judgment granting final approval to class action settlement of the Consolidated Derivative Actions⁴³ • 4/15/2013: Order awarding attorneys’ fees and expenses to lead counsel and objector’s counsel in the Consolidated Derivative Actions; denying attorneys’ fee request from Objector Pinsky.⁴⁴ • 8 Objections submitted to the proposed settlement of the Consolidated Securities Actions⁴⁵ • 4/8/2013: Order awarding attorneys’ fees and expenses to co-lead counsel and awards to lead plaintiffs in the Consolidated Securities Actions.⁴⁶ • 4/9/2013: (1) Judgment granting final approval to the Class Action Settlement of the Consolidated Securities Actions; and (2) Order approving Plan of Allocation of the Net Settlement Funds.⁴⁷ 	<p>5 Total Appeals Filed:</p> <p>1 Appeal filed from Settlement in Consolidated Derivative Actions:⁴⁸</p> <ul style="list-style-type: none"> • 5/9/2013: Objector Matthew Pinsky – filed by attorney Christopher L. Nelson/Weiser Law Firm, P.C. <p>4 Appeals Filed from Settlement in Consolidated Securities Actions:⁴⁹</p> <ul style="list-style-type: none"> • 4/23/2013: Objectors AMP Capital Investors Limited, Colonial First State Investments Ltd and H.E.S.T. Australia Ltd. – filed by attorney Hung G. Ta/Hung G.Ta, Esq. PLLC (New York, New York) • 5/7/2013: Objectors Michael and Laurel Washenik – filed by attorney Steve A. Miller/ Steve A. Miller, P.C. (Denver, CO) • 5/8/2013: Objectors Orloff Family Trust DTD 10/3/91, Orloff Family Trust DTD 12/31/01, & St. Stephen, Inc. – filed by Forrest S. Turkish/ Law Office of Forrest S. Turkish (Bayonne, NJ) • 5/8/2013: Objectors Leonard & MaryAnn Masiowski, Michael J. & Babette Rinis, & Michael J. Rinis IRA – filed by N. Albert Bacharach/ N. Albert Bacharach, Jr., PA (Gainesville, FL) 	<ul style="list-style-type: none"> • 8/9/2013: Appeal No. 13-1883—voluntarily dismissed pursuant to FRAP 42(b) stipulation of the parties⁵⁰ • Appeal No. 13-1573—pending • Appeal No. 13-1798—pending • Appeal No. 13-1830—pending • Appeal No. 13-1853—pending 	<ul style="list-style-type: none"> • No motion for cost bond • No motion for cost bond • No motion for cost bond • No motion for cost bond • No motion for cost bond
<p><i>In re Sony Corp. SXRDRear Projection Television Marketing, Sales Practices and Products Liability Litigation</i>, No. 09-MD-2102 (S.D.N.Y. Oct. 13, 2009).</p> <ul style="list-style-type: none"> • MDL • 9 Objections submitted⁵¹ • 8/24/2010: Opinion and Order granting final approval to the 	<p>6 Appeals Filed:⁵³</p> <ul style="list-style-type: none"> • 9/21/2010: 13 Objectors (Objecting Plaintiffs) joined in 1 appeal⁵⁴ – filed by attorneys Sanford P. Dumain, Leigh Smith & Jennifer Czeisler/ Milberg LLP (New York, NY); Attorney Robert I. Lax/ Lax LLP (New York, NY); Attorney 	<ul style="list-style-type: none"> • 9/23/2011: Appeal No. 10-3806—judgment of the district court affirmed by summary order⁵⁵ 	<ul style="list-style-type: none"> • No motion for cost bond

Class Action Objector Appeals in the Second Circuit Court of Appeals from Cases Filed Between January 1, 2008, and June 1, 2013¹

36 Total Objector Appeals

District Court	Appellate Court	Final Disposition of Objector Appeal(s)	FRAP 7 Cost Bond
<ul style="list-style-type: none"> • MDL/Consolidated Class Action • # Objections Submitted • Date Final Approval of Class Action Settlement Granted 	<ul style="list-style-type: none"> • # Appeals Filed by Objector(s) • Date Notice of Appeal(s) Filed • Identity of Filing Objector(s) & Attorney(s) (if any) 	<ul style="list-style-type: none"> • Date & Nature of Final Disposition • Indicate if Appeal is “Pending” 	<ul style="list-style-type: none"> • Motion Filed • Disposition of Motion • Amount Imposed (if granted)
<p>proposed class action settlement, and awarding attorney's fees and expenses.⁵²</p>	<p style="text-align: center;">Joseph J.M. Lange & Jeffrey A. Koncius/ Lange & Koncius, LLP (El Segundo, CA)</p> <ul style="list-style-type: none"> • 9/21/2010: Appeal by Objectors Meserole, Miller, Monroe, Ploubis, Streholski, Seidi, and Mead (the 7 named Plaintiffs in <i>Meserole v. Sony Corp. of Am.</i>, No. 08-cv-8987) <ul style="list-style-type: none"> – filed by attorneys Sanford P. Dumain, Leigh Smith& Jennifer Czeisler/ Milberg LLP (New York, NY); Attorney Robert I. Lax/ Lax LLP (New York, NY); Attorney Joseph J.M. Lange & Jeffrey A. Koncius/ Lange & Koncius, LLP (El Segundo, CA) • 9/21/2010: Appeal by Objector Crusinberry (the named Plaintiff in <i>Crusinberry v. Sony Corp. of Am., Inc.</i>, 09-cv-3461) <ul style="list-style-type: none"> – filed by attorneys Sanford P. Dumain, Leigh Smith& Jennifer Czeisler/ Milberg LLP (New York, NY); Attorney Robert I. Lax/ Lax LLP (New York, NY); Attorney Joseph J.M. Lange & Jeffrey A. Koncius/ Lange & Koncius, LLP (El Segundo, CA) • 9/21/2010: Appeal by Objector Webber (the named Plaintiff in <i>Webber v. Sony Corp. of Am., Inc.</i>, 09-cv-2557) <ul style="list-style-type: none"> – filed by attorneys Sanford P. Dumain, Leigh Smith& Jennifer Czeisler/ Milberg LLP (New York, NY); Attorney Robert I. Lax/ Lax LLP (New York, NY); Attorney Joseph J.M. Lange & Jeffrey A. Koncius/ Lange & Koncius, LLP (El Segundo, CA) • 9/21/2010: Appeal by Objectors Ouellette, Smith and Beers (the 3 named Plaintiffs in <i>Ouellette v. Sony Corp. of Am., Inc.</i>, 09-cv- 1939) <ul style="list-style-type: none"> – filed by attorneys Sanford P. Dumain, Leigh Smith& Jennifer Czeisler/ Milberg LLP (New York, 	<ul style="list-style-type: none"> • 9/23/2011: Appeal No. 10-3814—judgment of the district court affirmed by summary order⁵⁶ • 9/23/2011: Appeal No. 10-3824—judgment of the district court affirmed by summary order⁵⁷ • 9/23/2011: Appeal No. 10-3829—judgment of the district court affirmed by summary order⁵⁸ • 9/23/2011: Appeal No. 10-3873—judgment of the district court affirmed by summary order⁵⁹ 	<ul style="list-style-type: none"> • No motion for cost bond • No motion for cost bond • No motion for cost bond • No motion for cost bond

Class Action Objector Appeals in the Second Circuit Court of Appeals from Cases Filed Between January 1, 2008, and June 1, 2013¹

36 Total Objector Appeals

District Court	Appellate Court	Final Disposition of Objector Appeal(s)	FRAP 7 Cost Bond
<ul style="list-style-type: none"> MDL/Consolidated Class Action # Objections Submitted Date Final Approval of Class Action Settlement Granted 	<ul style="list-style-type: none"> # Appeals Filed by Objector(s) Date Notice of Appeal(s) Filed Identity of Filing Objector(s) & Attorney(s) (if any) 	<ul style="list-style-type: none"> Date & Nature of Final Disposition Indicate if Appeal is "Pending" 	<ul style="list-style-type: none"> Motion Filed Disposition of Motion Amount Imposed (if granted)
	<p>NY); Attorney Robert I. Lax/ Lax LLP (New York, NY); Attorney Joseph J.M. Lange & Jeffrey A. Koncius/ Lange & Koncius, LLP (El Segundo, CA)</p> <ul style="list-style-type: none"> 9/21/2010: Appeal by Objector Raymo (the named Plaintiff in <i>Raymo v. Sony Corp. of Am., Inc.</i>, 09-cv-2820) <ul style="list-style-type: none"> – filed by attorneys Sanford P. Dumain, Leigh Smith & Jennifer Czeisler/ Milberg LLP (New York, NY); Attorney Robert I. Lax/ Lax LLP (New York, NY); Attorney Joseph J.M. Lange & Jeffrey A. Koncius/ Lange & Koncius, LLP (El Segundo, CA) 	<ul style="list-style-type: none"> 9/23/2011: Appeal No. 10-3874—judgment of the district court affirmed by summary order⁶⁰ 	<ul style="list-style-type: none"> No motion for cost bond
<p><i>Blessing v. Sirius XM Radio Inc.</i>, No. 1:09-cv-10035 (S.D.N.Y. Dec. 7, 2009).</p> <ul style="list-style-type: none"> Consolidated Class Action 67 Objections submitted⁶¹ 8/24/2011: Opinion and Order granting final approval to the class action settlement and awarding attorneys' fees and expenses.⁶² 	<p>12 Appeals Filed:</p> <ul style="list-style-type: none"> 9/13/2011: Objectors Ruth Cannata, Craig Cantrall, Lee Clanton, Adam Falkner, Ben & Kim Frampton, Jill Piazza, Marvin Union, and Ken Ward <ul style="list-style-type: none"> – filed by attorney Edward F. Siegel/ Law Office of Edward F. Siegel (Cleveland, Ohio) 9/13/2011: Objector Joel Broida <ul style="list-style-type: none"> – filed by attorney Stephen B Morris/ Morris and Associates (San Diego, CA) 9/21/2011: Objectors Jason Hawkins, Sheila Massie, and John Sullivan <ul style="list-style-type: none"> – filed by Robert K. Erlanger/ Erlanger Law Firm PLLC (New York, New York) 9/22/2011: Objector Nicolas Martin <ul style="list-style-type: none"> – filed by attorney David Stein/ Samuel & Stein (New York, New York); and attorney Theodore H. Frank/ Center for Class Action Fairness LLC (Washington, DC) 	<ul style="list-style-type: none"> 3/13/2013: Appeal No. 11-3696—judgment of the district court affirmed by summary order⁶³ 11/30/2011: Appeal No. 11-3729—dismissed in default due to Objector's failure to file required Forms C and D⁶⁴ 2/16/2012: Appeal No. 11-3834—dismissed in default due to Objectors failure to file a brief and appendix by due date⁶⁵ 3/13/2013: Appeal No. 11-3883—judgment of the district court affirmed by summary order⁶⁶ 	<ul style="list-style-type: none"> 10/5/2011: Plaintiffs filed a motion to require the 12 appellants collectively to post an appeal bond for at least \$200,000 to cover costs and attorneys' fees on appeal⁷⁵ 11/22/2011: Court denied Plaintiffs' motion for a FRAP 7 appeal bond⁷⁶ See above See above See above

Class Action Objector Appeals in the Second Circuit Court of Appeals from Cases Filed Between January 1, 2008, and June 1, 2013¹

36 Total Objector Appeals

District Court	Appellate Court	Final Disposition of Objector Appeal(s)	FRAP 7 Cost Bond
<ul style="list-style-type: none"> • MDL/Consolidated Class Action • # Objections Submitted • Date Final Approval of Class Action Settlement Granted 	<ul style="list-style-type: none"> • # Appeals Filed by Objector(s) • Date Notice of Appeal(s) Filed • Identity of Filing Objector(s) & Attorney(s) (if any) 	<ul style="list-style-type: none"> • Date & Nature of Final Disposition • Indicate if Appeal is “Pending” 	<ul style="list-style-type: none"> • Motion Filed • Disposition of Motion • Amount Imposed (if granted)
	<ul style="list-style-type: none"> • 9/22/2011: Objector Christopher Batman – filed <i>pro se</i> • 9/23/2011: Objectors Steven Crutchfield, Scott D. Krueger, Asset Strategies, Inc., Charles B. Zuravin, and Jennifer Deachin – filed by attorney Matthew J. Weiss/ Weiss & Associates, P.C. • 9/23/2011: Objector Randy Lyons – filed by attorney R. Stephen Griffis/ R. Stephen Griffis, PC (Hoover, AL) • 9/23/2011: Objector Tom Carder – filed by attorney Charles M. Thompson, Esq./ Charles M. Thompson, PC (Birmingham, AL) • 9/23/2011: Objector John Ireland – filed <i>pro se</i> – 10/4/2011: notice of appearance in Appeal No. 11-3965 filed on behalf of Appellant Ireland by Joseph Darrell Palmer/ Law Offices of Darrell Palmer (Solana Beach, CA) • 9/23/2011: Objectors Michael Hartleib and Brian David Goe – filed <i>pro se</i> • 9/26/2011: Objector Jeannine Miller – filed by attorney Steve A. Miller/ Steve A. Miller, P.C. (Denver, CO) • 9/26/2011: Objector Donald K. Nace – filed <i>pro se</i> 	<ul style="list-style-type: none"> • 2/22/2012: Appeal No. 11-4064—dismissed in default due to Objector’s failure to file a brief and appendix by due date⁶⁷ • 3/13/2013: Appeal No. 11-3908—judgment of the district court affirmed by summary order⁶⁸ • 3/13/2013: Appeal No. 11-3910—judgment of the district court affirmed by summary order⁶⁹ • 3/13/2013: Appeal No. 11-3916—judgment of the district court affirmed by summary order⁷⁰ • 3/13/2013: Appeal No. 11-3965—judgment of the district court affirmed by summary order⁷¹ • 3/13/2013: Appeal No. 11-3970—judgment of the district court affirmed by summary order⁷² • 3/13/2013: Appeal No. 11-3972—judgment of the district court affirmed by summary order⁷³ • 2/10/2012: Appeal No. 11-0406—dismissed in default due to Objector’s failure to file required Form D-P⁷⁴ 	<ul style="list-style-type: none"> • See above • See above • See above • See above • See above • See above • See above • See above

Class Action Objector Appeals in the Second Circuit Court of Appeals from Cases Filed Between January 1, 2008, and June 1, 2013 ¹			
36 Total Objector Appeals			
District Court	Appellate Court	Final Disposition of Objector Appeal(s)	FRAP 7 Cost Bond
<ul style="list-style-type: none"> MDL/Consolidated Class Action # Objections Submitted Date Final Approval of Class Action Settlement Granted 	<ul style="list-style-type: none"> # Appeals Filed by Objector(s) Date Notice of Appeal(s) Filed Identity of Filing Objector(s) & Attorney(s) (if any) 	<ul style="list-style-type: none"> Date & Nature of Final Disposition Indicate if Appeal is "Pending" 	<ul style="list-style-type: none"> Motion Filed Disposition of Motion Amount Imposed (if granted)
<p><i>Fishbein v. All Market Inc.</i>, No. 1:11-cv-5580 (S.D.N.Y. Aug. 10, 2011).</p> <ul style="list-style-type: none"> 1 Objection submitted⁷⁷ 8/22/2012: Final Order and Judgment Approving Class Action Settlement and Dismissing Class Action with Prejudice⁷⁸ 	<p>1 Appeal Filed:</p> <ul style="list-style-type: none"> 9/17/2012: Objector Timothy Blanchard <ul style="list-style-type: none"> – filed <i>pro se</i> – on 10/24/2012, Objector Blanchard notified the court he retained attorney Christopher Bandas/ Bandas Law Firm, P.C. (Corpus Christi, TX) 	<ul style="list-style-type: none"> 4/26/2013: Appeal No. 12-3892—voluntarily dismissed pursuant to FRAP 42(b) stipulation of the parties⁷⁹ 	<ul style="list-style-type: none"> No motion for cost bond
Western District of New York: 0 objector appeals			
District of Vermont: 0 objector appeals			

1. Includes class action objector appeals from class action cases that were filed in the district courts on or after January 1, 2008, in which final approval of a Rule 23-certified class action settlement was granted and appealed from between January 1, 2008, through June 1, 2013.

2. See *Plaintiffs' Response to Objections* (Doc. #219) (filed Mar. 1, 2013) (Plaintiffs responded to all six objections, although one *pro se* objection was filed after the Feb. 5, 2013 deadline).

3. See *Final Order and Judgment* (Doc. #234) (filed April 11, 2013). The court's Final Order and Judgment did not address plaintiffs' motion for attorney fees and expenses. At the April 8, 2013 fairness hearing, the objectors were given the option of supplementing their objection to plaintiffs' motion for attorneys' fees and submitting an application to recover attorneys' fees associated with litigating the objection. Counsel for Objector Timmen Cermak (Attorney Charles Chalmers/Allegiance Litigation (Fairfax, CA)) and counsel for Objector Theodore H. Frank (Attorney Adam E. Schulman/ Center for Class Action Fairness (Washington, DC)) have filed motions for attorneys' fees.

4. See *Motion Order*, Nos. 13-1928(L) & 13-1939(con) (2d Cir. Aug. 6, 2013) (Doc. #74) The Second Circuit granted Appellees' motion to dismiss the Objectors' appeals deciding that the Objector/Appellants' challenge to the district court's approval of the amended settlement agreement lacked an arguable basis in fact or law because appellants forfeited their right to seek review of the agreement when they failed to object to the amended settlement agreement in the district court. The Court explained that the Appellants' objections to the original proposed settlement agreement were insufficient to preserve their objections, as the original proposed agreement was substantially modified in response to those objections, and the district court's orders made clear that objections to the amended agreement had to be submitted in advance of the fairness hearing. In addition, the Second Circuit clarified that it lacked jurisdiction to consider the appellants' challenge to the Class's motion for attorneys' fees, as the district court had not yet ruled on the motion and there was not yet any final order to appeal from.

5. See *supra* note 4.

6. See *Letter Requesting a Pre-Motion Conference* (Doc. #242) (filed June 21, 2013). Plaintiffs submitted that the bond should be set at a minimum of \$132,500.00. This amount included: (1) taxable costs, including but not limited to costs incurred for photocopying, printing, binding, filing and service, preparation and transmission of the record and fees for filing the notice of appeal, in the amount of \$25,000.00; (2) costs incurred as a result of the delay in administration of the class funds in the amount of \$57,500.00; and (3) attorneys' fees in the amount of \$50,000.00.

7. See *Joint Opposition to Motion to Intervene and Objection Filed by Farobag Cooper and Susan Fox* (Doc. #19) (Apr. 13, 2012).

8. See *Final Order* (Doc. #24) (filed May 31, 2012).

9. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Required Forms C (Pre-Argument Statement) & D (Transcript Information Form); Motion to Stay Appeal (denied); Motion to Vacate Judgment & Remand Appeal (denied); motion to extend time to file opening brief (granted); FRAP 42(b) motion to withdraw appeal with prejudice submitted by all parties.

10. See *Plaintiffs' Reply Memorandum of Law* (Doc. #135) (filed Sept. 12, 2011). Two *pro se* objectors submitted objections solely to Plaintiffs' request for attorneys' fees. The third objection was submitted by the lawyers for the Police and Fire Retirement System of Detroit, the plaintiff in the stayed state court derivative proceeding, *In re Ambac Fin. Grp., Inc. Shareholders Derivative Litig.*, C.A. No. 3521 (Del. Ch.), and they objected only to the extent that the Ambac bankruptcy estate—which owns the derivative claims as a result of the Ambac bankruptcy filing—had agreed to release its claims as part of the Ambac Settlement. The Plaintiffs argued that the objection had previously been ruled on and rejected by the Bankruptcy Court. See *infra* note 13.

11. See *Consent Judgment Approving Class Action Settlement with the Underwriter Defendants* (Doc. #145) (filed Sept. 28, 2011); *Consent Judgment* approving class action settlement with Ambac and the individual defendants (Doc. #146) (filed Sept. 28, 2011); *Order Granting Lead Counsel's Application for an Award of Attorneys' Fees and Reimbursement of Expenses* (Doc. #144) (filed Sept. 28, 2011); *Order Approving Plan of Allocation* (Doc. #143) (filed Sept. 28, 2011).

12. The Court granted the Appellees' motion to dismiss the appeal of Objector-Appellant Police and Fire Retirement System of the City of Detroit to the extent that it sought to appeal from the Judgment Approving Class Action Settlement with the Underwriter Defendants because the Objector-Appellant waived any argument as to the Underwriters Judgment by failing to object in the district court to the underlying settlement agreement. See *Motion Order*, Nos. 11-4643 Lead, 12-59 Con (2d Cir. Mar. 21, 2012) (Doc. #102).

13. The Settlement also required the approval of the S.D.N.Y. Bankruptcy Court where Ambac's Chapter 11 proceeding was pending. *In re Ambac Fin. Grp., Inc.*, No. 10-15973 (S.D.N.Y. Bankr. Nov. 8, 2010). The Objector-Appellant Police and Fire Retirement System of the City of Detroit appeared and objected to the Settlement in the Bankruptcy Court, which overruled the objections and entered an order on Sept. 13, 2011, approving the Settlement pursuant to Bankruptcy Rule 9019. The Appellant appealed that order to the District Court which affirmed the Bankruptcy Court's order. *In re Ambac Fin. Grp., Inc.*, Nos. 10-15973, 11-7529, 2011 WL 6844533 (S.D.N.Y. Dec. 29, 2011). The Objector-Appellant appealed on Jan. 6, 2012 (2d Cir. Appeal No. 11-59). On January 27, 2012 the Second Circuit granted Appellee's motion to consolidate appeals No. 11-4643 and No. 11-59, and expedite Lead Appeal No. 11-4643.

14. *In re Ambac Fin. Grp., Inc.*, Nos. 11-4643 Lead, 12-59 Con, 2012 WL 2849748 (2d Cir. July 12, 2012) (Summary Order and Judgment) (Judgment Mandate issued Aug. 3, 2012).

15. See *Lead Plaintiffs' Memorandum of Law for an Appeal Bond* (Doc. #157) (filed Dec. 5, 2011). Plaintiffs contended that a \$50,000 bond amount was needed for copying costs for briefs and compilation of the substantial appellate record: "the copying costs, alone, taxed at the Second Circuit rate of \$0.20 per page for commercial reproduction, will likely amount to tens of thousands of dollars given the voluminous filings in connection with the approval of the two settlements and the related bankruptcy court records, including two days of evidentiary proceedings."

16. See *In re Ambac Fin. Grp., Inc. Sec. Litig.*, Nos. 11-4643 Lead, 12-59 Con, 2012 WL 260231 (S.D.N.Y. Jan. 12, 2012). Although the Court concluded that the Objector/Appellant had the financial ability to pay an appeal bond and that the appeal lacked merit, the court denied Plaintiffs' motion for an appeal bond. The Court found that there was a low risk of nonpayment should the Objector/Appellant lose its appeal and the court identified this factor as "perhaps the most important of any under consideration, as the Second Circuit has indicated that protection of an appellee from the risk of nonpayment by an unsuccessful appellant is the central purpose behind Rule 7." *Id.* at *2. Further, the court pointed out that "plaintiffs' concern seems to be that [the Objector's] appeal was filed not in the hope of succeeding on the merits, but rather with the goal of inducing the settling parties to offer compensation to [the Objector] such that [the Objector] would drop its objections and allow the distribution of the settlement. In our view, if this concern is justified and the appeal is indeed frivolous, the appropriate remedy is an award of damages under Rule 38 of the Federal Rules of Appellate Procedure and not an appeal bond under Rule 7." *Id.*

17. See *Memorandum of Law in Support of Plaintiffs' Motion for Final Approval of Settlement* (Doc. #85) (filed Nov. 1, 2011). Two additional objections were submitted but dismissed as invalid because the objectors were not class members with standing to object. The sole objector James Hayes was also the Class Representative. On August 17, 2011, Class Representative Hayes appealed from the Order preliminarily approving the settlement entered on August 2, 2011, and the Order declining reconsideration of the August 2, 2011 order, which was entered on August 10, 2011. See *Notice of Appeal* (Doc. #79) (filed Aug. 19, 2011). On October 28, 2011, Appeal No. 11-3609 was dismissed for lack of jurisdiction because a final order had not been issued by the district court as required by 28 U.S.C. § 1291. (Doc. #82) (filed Oct. 28, 2011).

18. See *Order and Final Judgment* approving settlement and dismissing the action with prejudice (Doc. #88) (filed Nov. 14, 2011).

19. See *Order Preliminarily Approving Settlement and Providing for Notice of Settlement* (Doc. #74) (filed Aug. 2, 2011); and *Hayes v. Harmony Gold Min. Co. Ltd.*, No. 08-cv-03653, 2011 WL 6019219 (S.D.N.Y. Dec. 2, 2011) (denial of Objector's motion for reconsideration of the Court's Nov. 14, 2011 Order and Final Judgment granting final approval of the class action settlement and awarding attorneys' fees).

20. See *Order* (denying Class Representative James J. Hayes' motion pursuant to Federal Rule of Civil Procedure 60 seeking reconsideration of the Court's November 14, 2011, approval of the Settlement Agreement and Plan of Allocation and requesting an order requiring the Claims Administrator to file a summary report on all claims submitted against the Settlement Fund) (Doc. #105) (filed Jan. 2, 2013).

21. *Hayes v. Harmony Gold Min. Co. Ltd.*, No. 12-118, 2013 WL 322921 (2d Cir. Jan. 29, 2013) (Summary Order and Judgment) (Judgment Mandate issued April 2, 2013). Appellant-Objector James Hayes filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. After the court denied the motion by Order dated March 26, 2013, Appellant-Objector Hayes submitted an application for an extension of time within which to file a petition for a writ of certiorari to Justice Ginsburg. By letter dated June 20, 2013, Justice Ginsberg extended the time to and

including July 29, 2013. The petition for a writ of certiorari was filed by James Hayes on July 27, 2013 and placed on the docket August 1, 2013 as No. 13-143. See *U.S. Supreme Court Notice of Writ of Certiorari filing*, No. 12-0118, (2d Cir. Aug. 1, 2013) (Doc. #156).

22. See *Motion Order*, No. 13-635 (2d Cir. July 18, 2013) (Doc. #107). The Court construed the appellees' motions to dismiss the appeal as motions for summary affirmance, and, as construed, the appellees' motions were granted. And although Appellees' motion for monetary sanctions pursuant to Federal Rule of Appellate Procedure 38 was denied absent a showing of bad faith, the Court warned Objector/Appellant Hayes that the "continued filing of duplicative, vexatious, or clearly meritless appeals, motions, or other papers regarding appeals of class action securities fraud claims in the Harmony Gold litigation will result in the imposition of sanctions, which may include a leave-to-file sanction requiring Appellant to obtain permission from this Court prior to filing any further submissions in this Court."

23. See *Memorandum of Law in Support of Motion for Final Approval of Class Action Settlement* (Doc. #46) (filed May 28, 2010).

24. See *Chin v. RCN Corp.*, No. 08-cv-7349, 2010 WL 3958794 (S.D.N.Y. Sept. 08, 2010).

25. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Required Forms C (Pre-Argument Statement) & D (Transcript Information Form); FRAP 42 stipulation with prejudice to withdraw appeal signed by counsel for all parties. Note that Appellant Lavery's brief and appendix were due on Feb. 21, 2011; the court issued an order on Feb. 25, 2011 holding Appellant in default and informing that the appeal would be dismissed if appellant's brief and appendix were not filed by March 11, 2011. Appellant's Rule 42 stipulation of dismissal with prejudice was filed on March 9, 2011.

26. When the transfer order was issued on June 11, 2009, creating 09-md-2052 in the Southern District of New York, the Court's consolidation Order and Memorandum issued on March 26, 2009 remained in place establishing 08-cv-11117 (S.D.N.Y. Dec. 22, 2008) as the master docket for three groupings of consolidated cases: Securities Law Actions, 08-cv-11212; State Law Actions, 08-cv-11183; and Insurance Actions, 09-cv-557.

27. Class counsel prepared a Chart of Objections listing 16 separate Objector Groups (comprised of 48 individual objectors) and indicating that six of these Groups withdrew their objections prior to final approval of the settlement. See Exhibit B attached to *Plaintiffs' Response* (Doc. # 597-2 in 08-cv-11117) (filed Aug. 9, 2011).

28. See *Final Judgment and Order of Dismissal* with prejudice regarding settlement and Rules 23 and 23.1 (Doc. #604) (filed Aug. 19, 2011); *Judgment and Order* granting insurance class counsel's motion for an award of attorneys' fees and expenses and insurance class plaintiffs' incentive awards (Doc. #602) (filed Aug. 19, 2011); *Judgment and Order* granting plaintiffs' state and securities law settlement class insurance class counsels' motion for an award of attorneys' fees, reimbursement of expenses, and awards to state law and securities plaintiffs (Doc. #203) (filed Aug. 19, 2011). Litigation continues in 09-md-2052 as to non-settling defendants.

29. An additional appeal was filed by lead plaintiffs in the Securities Law Actions appealing on behalf of all class members from the Order entering final judgment pursuant to Rule 54(b) dismissing the securities law claims against Defendants KPMG and Ernst & Young. See *Notice of Appeal* (Doc. # 610 in 08-cv-11117) (filed Sept. 12, 2011). The judgment of the district court dismissing appellants federal securities law claims and common law claims against Defendants KPMG and Ernst & Young was affirmed. See *Meridian Horizon Fund, LP v. KPMG*, Nos. 11-cv-3725, 11-cv-3311, 2012 WL 2754933 (2d Cir. July 10, 2012) (Summary Order).

30. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Required Forms C (Pre-Argument Statement) & D (Transcript Information Form); Opposition to motions to dismiss; motion to file late; appellant brief; FRAP 42 motion to voluntary dismissal of appeal with prejudice. Note that on April 24, 2012, the court granted Appellees' motion to dismiss Objector/Appellant Orloff's appeal from the Aug. 19, 2011 Final Judgment and Order of Dismissal granting final approval to the partial settlement (Doc. #604), but denied the dismissal of Orloff's appeal from the Orders granting plaintiffs' motions for attorneys' fees and expenses (Docs. #602, 603). See *Order*, No. 11-cv-3899 (2d Cir. April 24, 2012) (Doc. #301).

31. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Required Forms C (Pre-Argument Statement) & D (Transcript Information Form); motion for leave to respond; motion to file late and to file oversized brief; FRAP 42(b) stipulation with prejudice to withdraw appeal signed by counsel for all parties.

32. The court granted Appellees' motions to dismiss Objector/Appellant Philadelphia Financial Life Assurance Company's appeal for lack of standing to maintain the appeal agreeing with the Appellees that neither the Objector Philadelphia Financial Life Assurance Company nor its policyholders were members of the Settlement Class as defined in the Settlement Agreement. See *Order*, No. 11-cv-3923 (2d Cir. April 24, 2012) (Doc. #63).

33. Oral argument in *Lakeview Invs., LP v. Mass. Mutual Life Ins.*, Appeal No. 11-4030 was heard on June 24, 2013. Decision pending.

34. Pursuant to the transfer order issued on October 6, 2009 by the Judicial Panel on Multidistrict Litigation creating 09-md-2088 in the S.D.N.Y., transferred cases are to be consolidated with lead case No. 09-cv-0118 for all pretrial purposes. All filings in connection with any consolidated actions are to be filed in the lower numbered lead case 09-cv-0118, and the higher numbered case will be closed and removed from the court's database. See *Order* (Doc. #282) (filed Oct. 14, 2009). On June 1, 2012, the court granted final approval to a settlement between the settling class and Defendants EFG Capital International Corp. No objectors appealed the partial settlement. See *Order and Final Judgment* (Doc. #890) (filed June 1, 2012). The March 25, 2013 settlement from which Objectors appealed addressed Plaintiffs' claims against Fairfield Greenwich Limited entity and individual defendants as defined in the court's Final Judgment. Plaintiffs' claims against the PricewaterhouseCoopers Defendants, the Citco Defendants, and GlobeOp Financial Services LLC are not resolved by this Settlement and continue to be prosecuted.

35. See *Plaintiffs' Reply Memorandum in Support of Final Approval of Class Action Settlement* (Doc. #1073) (filed Mar. 8, 2013).
36. See *Final Judgment and Order of Dismissal with Prejudice Settling Action* (Doc. #1097) (filed Mar. 25, 2013).
37. See *Final Judgment and Order Awarding Fees and Expenses from the Settlement* (Doc. #1099) (filed Mar. 28, 2013).
38. Two additional appeals were taken from the March 25, 2013 Final Judgment approving the settlement: (i) Appeal by Irving Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities (No. 13-1392); (ii) Appeal by the Non-Settling Defendants PricewaterhouseCoopers LLP and Citco (No. 13-1642).
39. Appealing Objectors were shareholders of Fairfield Sentry Ltd. (a fund sponsored by Defendants Fairfield Greenwich Group) and Objectors were plaintiffs in *Morning Mist Holdings Ltd. v. Fairfield Greenwich Group*, a derivative action pending on behalf of Fairfield Sentry Ltd. that was filed in May 2009 in New York Supreme Court and then removed to the S.D.N.Y. The Court granted the Plaintiffs/Objectors' motion to remand finding that the Court lacked subject matter jurisdiction under CAFA. See *Anwar v. Fairfield Greenwich Ltd.*, 676 F. Supp. 2d 285, 295, 301 (S.D.N.Y. 2009). On July 22, 2010, the Bankruptcy Court stayed the derivative claims, and the District Court and then the Court of Appeals affirmed. See *In re Fairfield Sentry Ltd.*, 440 B.R. 60 (Bankr. S.D.N.Y. 2010), *aff'd*, No. 10-7311, 2011 WL 4357421 (S.D.N.Y. Sept. 16, 2011), *affirmed*, 714 F.3d 127 (2d Cir. April 16, 2013). In their objection, the Objectors/Derivative Plaintiffs sought to change the Settlement terms so that the release and bar order provisions in the Final Judgment did not preclude them from both recovering in the Settlement and pursuing the *Morning Mist* derivative action, which they brought against many of the same defendants arising out of the same facts and circumstances. If those changes were not made, they argued that the Settlement should not be approved. The Release would, if approved by the Court, prevent Settlement Class Members from prosecuting derivative claims on behalf of the Sentry Fund against Released Parties, including the Fairfield Greenwich Defendants.
40. On May 16, 2013, Appellees motion to expedite Appeal No. 13-1581 was granted.
41. The securities, derivative, and ERISA actions were separately consolidated into Master File No. 09 MDL 2058 and ordered to coordinate for pretrial purposes. MDL 2058 remains open pending settlement in the consolidated ERISA Action.
42. See *Lead Plaintiffs' Reply Memorandum of Law in Further Support of Motion for Final Approval of Derivative Action Settlement* (Doc. #782) (filed Dec. 28, 2012).
43. See *Order and Final Judgment settling Consolidated Derivative Action* (Doc. #805) (filed Jan. 24, 2013).
44. See *Order on Motions for Awards of Attorneys' Fees and Reimbursement of Expenses* (Doc. #873) (filed April 15, 2013) (Order awarding attorneys' fees and expenses to lead counsel in the consolidated derivative action and to counsel for Nancy Rothbaum, a former objector to the proposed settlement of the consolidated derivative action and the lead plaintiff in *In re Bank of Am. Corp. Stockholder Derivative Litig.*, No. 4307-CS (Del. Ch.); denying fee request from counsel for Mathew Pinsly, another former objector to the proposed settlement and the lead plaintiff in *Pinsly v. Holliday*, No. 12-cv-04778 (S.D.N.Y. June 19, 2012).
45. See *Plaintiffs' Reply Memorandum of Law in Support of Motion to Approve Class Action Settlement and Plan of Allocation* (Doc. #852) (filed Mar. 29, 2013).
46. See *Order Awarding Attorneys' Fees And Expenses* (Doc. #862) (filed Apr. 8, 2013). See also *In re Bank of America Corp. Securities, Derivative, and Employee Retirement Income Sec. Act (Erisa) Litig.*, No. 09-md-2058, 2013 WL 1558686 (S.D.N.Y. April 11, 2013) (granting fee request to lead counsel in Consolidated Securities actions; further explanation of April 8, 2013 decision to deny fee request to law firm of Flanagan, Lieberman, Hoffman and Swaim).
47. See *Judgment Approving Class Action Settlement* (settling Consolidated Securities Actions) (Doc. #871) (filed Apr. 9, 2013); and *Order Approving Plan of Allocation of Net Settlement Fund* (Doc. #868) (filed Apr. 9, 2013).
48. The consolidated Derivative Action was settled on Jan. 24, 2013, and no objectors appealed from the order granting final approval of the settlement. Counsel for Objector Pinsly appealed from the April 15, 2013 Order denying his motion for attorneys' fees and expenses. See *supra* note 44.
49. An additional appeal was filed by Plaintiff Charles Dornfest from the April 9, 2013 Judgment approving the Consolidated Securities Action insofar as the Judgment dismissed his complaint, and from the Sept. 29, 2011 Order denying Plaintiff Dornfest the right to move to certify a class of Bank of America option investors. See *Notice of Appeal* (Doc. #890) (filed Apr. 25, 2013) and *Memorandum and Order* (Doc. #468) (filed Sept. 29, 2011). Appeal No. 13-1677 remains pending.
50. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Required Forms C (Pre-Argument Statement) & D (Transcript Information Form); FRAP 42(b) stipulation with prejudice to withdraw appeal signed by counsel for all parties.
51. See *Plaintiffs' Memorandum in Support of Motion for Final Approval of Class Action Settlement and Response to Opposition to Proposed Class Action Settlement and Request for Attorneys' Fees* (Doc. #102)(filed Aug. 3, 2010). Eight of the 9 objections were submitted by 8 individual *pro se* objectors, and the final objection was filed by counsel on behalf of 13 objectors ("13 Objecting Plaintiffs"). The 13 Objecting Plaintiffs were the named plaintiffs in 5 class actions against Sony Corp. pending in the S.D.N.Y. that were all filed by attorneys for Milberg LLP, Lax LLP, and Lange & Koncius, LLP. *Meserole v. Sony Corp. of Am.*, 08 Civ. 8987 (S.D.N.Y. Oct. 22, 2008), *Ouellette v. Sony Corp. of Am., Inc.*, 09 Civ. 1939 (S.D.N.Y. Mar. 3, 2009), *Webber v. Sony Corp. of Am., Inc.*, 09 Civ. 2557 (S.D.N.Y. Mar. 19, 2009), *Raymo v. Sony Corp. of Am., Inc.*, 09 Civ. 2820 (S.D.N.Y. Mar. 24, 2009), and *Crusinberry v. Sony Corp. of Am., Inc.*, 09 Civ. 3461 (S.D.N.Y. Apr., 2009). On October 9, 2009, the JPMDL consolidated these 5 class

actions with *Minton v. Sony Electronics, Inc.*, No. 09 Civ. 8651 (S.D.N.Y. Oct. 13, 2009) originally filed in the E.D.N.Y. on March 6, 2009, and *Cardenas v. Sony Corp. of America, Inc.*, No. 09 Civ. 8652 (S.D.N.Y. Oct. 13, 2009), originally filed in the E.D. Tex. on June 18, 2009, transferring them to the S.D.N.Y. into MDL 2102. In November 2009, Plaintiff Cardenas and Defendants reached a class action settlement and the court granted preliminary approval of the settlement in May 2010. *In re Sony Corp. SXRDRear Projection Television Mktg., Sales Practices & Products Liab. Litig.*, 09 MD 2102, 2010 WL 1993817 (S.D.N.Y. May 19, 2010).

52. See *In re Sony Corp. SXRDRear Projection Television Mktg., Sales Practices and Products Liab. Litig.*, No. 09-MD-2102, 2010 WL 3422722 (S.D.N.Y. Aug. 24, 2010).

53. Two additional appeals were filed by individual Attorneys Sanford P. Dumain, Leigh Smith, Jennifer Czeisler, Robert I. Lax, Joseph J.M. Lange and Jeffrey A. Koncius (Appeal No. 10-3888 filed on 9/24/2011) and their respective law firms Milberg LLP, Lax LLP, and Lange & Koncius, LLP (Appeal No. 10-3871 filed on 9/22/2011) whom represented plaintiffs in all 5 of the original class actions filed in the S.D.N.Y. These attorneys and their respective firms were appealing from the district court's July 22, 2010 Order imposing Rule 11 sanctions against counsel for making "objectively unreasonable representations in pleadings submitted to the Court, orally in presentations to the Court, and in motion papers without making a sufficient or appropriate investigation as to the truth of such statements." See *Opinion and Order* (Doc. #94) (filed July 22, 2010). Although the Second Circuit affirmed the district court's approval of the class action settlement of the consolidated cases, the July 22, 2010 Order imposing Rule 11 sanctions against appellant attorneys and their firms was vacated. *In re Sony Corp. SXRDR*, Nos. 10-3806-CV L, 10-3829-CV CON, 10-3874-CV CON, 10-3814-CV CON, 10-3871-CV CON, 10-3888-CV, 10-3824-CV CON, 10-3873-CV CON, 2011 WL 4425361 (2d Cir. Sept. 23, 2011) (Summary Order and Judgment) (judgment mandate issued October 14, 2011).

54. See *supra* note 51.

55. *In re Sony Corp. SXRDR*, Nos. 10-3806-CV L, 10-3829-CV CON, 10-3874-CV CON, 10-3814-CV CON, 10-3871-CV CON, 10-3888-CV, 10-3824-CV CON, 10-3873-CV CON, 2011 WL 4425361 (2d Cir. Sept. 23, 2011) (Summary Order and Judgment) (judgment mandate issued October 14, 2011).

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. See *Plaintiffs' Memorandum of Law In Response to Objections to Motions for Final Approval of Settlement and for an Award of Attorneys' Fees and Reimbursement of Expenses* (Doc. #149) (filed Aug. 3, 2011) (The 67 objections were submitted by total of 85 objectors with 10 Objections filed by objector's attorney and 57 filed *pro se*).

62. See *Blessing v. Sirius XM Radio Inc.*, No. 09 CV 10035, 2011 WL 3739024 (S.D.N.Y. Aug. 24, 2011). See also *Final Order and Judgment* (Doc. #162) (filed Aug. 25, 2011) & *Order Awarding Attorneys' Fees and Expenses* (Doc. #163) (filed Aug. 25, 2011).

63. *Blessing v. Sirius XM Radio Inc.*, Nos. 11-3696, 11-3883, 11-3908, 11-3910, 11-3916, 11-3965, 11-3970, 11-3972, 2012 WL 6684572 (2d Cir. Dec. 20, 2012) (Summary Order and Judgment) (judgment mandate issued March 13, 2013).

64. Appellant Broida's Forms C and D were due on September 27, 2011. The court informed Appellant Broida that the appeal would be dismissed effective October 18, 2011, if Forms C and D were not filed by that date. See *Order*, No. 11-3729 (2d Cir. Oct. 4, 2011)(Doc. #11). Appellant Broida's motion to reinstate his appeal was denied. See *Motion Order*, No. 11-3729 (2d Cir. Nov. 16, 2011)(Doc. #57).

65. Appellants' brief and appendix were due on January 3, 2012. The court informed Appellants that the appeal would be dismissed effective January 20, 2012 if the brief and appendix were not filed by that date. See *Amended Order*, No. 11-3834 (2d Cir. Feb. 1, 2012)(Doc. #65). The Appellants did not file. The mandate issued on Feb. 16, 2012 dismissing Appeal No. 11-3834. See *Order disposing of appeal*, No. 11-3834 (2d Cir. Feb. 16, 2012)(Doc. #75).

66. *Blessing v. Sirius XM Radio Inc.*, Nos. 11-3696, 11-3883, 11-3908, 11-3910, 11-3916, 11-3965, 11-3970, 11-3972, 2012 WL 6684572 (2d Cir. Dec. 20, 2012) (Summary Order and Judgment) (judgment mandate issued March 13, 2013). Appellant-Objector Nicholas Martin filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. After the court denied the motion by Order dated March 3, 2013, Appellant-Objector Martin submitted an application for an extension of time within which to file a petition for a writ of certiorari to Justice Ginsburg. See *Order*, No. 11-3883 (2d Cir. Mar. 3, 2013) (Doc. #175). By letter dated May 23, 2013, Justice Ginsberg extended the time to and including August 2, 2013. A petition for a writ of certiorari was filed on August 2, 2013 and placed on the Supreme Court docket August 6, 2013 as No. 13-169. See *U.S. Supreme Court Notice of writ of certiorari filing*, No. 11-3883 (2d Cir. Aug. 6, 2013) (Doc. #182).

67. Appellant Batman's brief and appendix were due on December 30, 2011. The court informed Appellant that the appeal would be dismissed effective January 24, 2012 if the brief and appendix were not filed by that date. See *Order*, No. 11-4064 (2d Cir. Jan. 10, 2012) (Doc. #56). Appellant Batman did not file. The mandate issued on Feb. 22, 2012 dismissing Appeal No. 11-4064. See *Order disposing of appeal*, No. 11-4064 (2d Cir. Feb. 22, 2012) (Doc. #71).

68. *Blessing v. Sirius XM Radio Inc.*, Nos. 11-3696, 11-3883, 11-3908, 11-3910, 11-3916, 11-3965, 11-3970, 11-3972, 2012 WL 6684572 (2d Cir. Dec. 20, 2012) (Summary Order and Judgment) (judgment mandate issued March 13, 2013). Appellants-Objectors in Appeal No. 11-3908

filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The court denied the motion by Order dated March 3, 2013. See Order, No. 11-3908 (2d Cir. Mar. 3, 2013) (Doc. #173).

69. *Blessing v. Sirius XM Radio Inc.*, Nos. 11-3696, 11-3883, 11-3908, 11-3910, 11-3916, 11-3965, 11-3970, 11-3972, 2012 WL 6684572 (2d Cir. Dec. 20, 2012) (Summary Order and Judgment) (judgment mandate issued March 13, 2013).

70. *Id.*

71. *Id.*

72. *Id.*

73. *Blessing v. Sirius XM Radio Inc.*, Nos. 11-3696, 11-3883, 11-3908, 11-3910, 11-3916, 11-3965, 11-3970, 11-3972, 2012 WL 6684572 (2d Cir. Dec. 20, 2012) (Summary Order and Judgment) (judgment mandate issued March 13, 2013). Appellant-Objector in Appeal No. 11-3972 filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The court denied the motion by Order dated March 3, 2013. See Order, No. 11-3972 (2d Cir. Mar. 3, 2013) (Doc. #161).

74. The court informed Appellant Nace that his appeal will be dismissed effective December 30, 2011, if Form D-P was not filed by that date. See Order, No. 11-4061 (2d Cir. Nov. 21, 2011) (Doc. #37). Appellant Batman did not file. The mandate issued on Feb. 22, 2012 dismissing Appeal No. 11-4064. See Order disposing of appeal, No. 11-4061 (2d Cir. Jan. 17, 2012) (Doc. #47).

75. See Memorandum of Law in Support Motion to Require Appellants to Post an Appeal Bond (Doc. #183) (filed Oct. 5, 2011). Plaintiffs asserted that although they were indifferent as to how Appellants chose to allocate among themselves the cost of the bond, because Plaintiffs' expenses and attorneys' fees on the appeal would not be materially reduced even if one or several of the 12 Appellants dropped out of the appeal, it was important for the full \$200,000 bond to be posted regardless of how many of the Appellants remained in the appeal or participated in paying for the bond.

76. See *Blessing v. Sirius XM Radio Inc.*, No. 09 CV 10035, 2011 WL 5873383 (S.D.N.Y. Nov. 22, 2011). The Court denied the Plaintiffs' request for a \$200,000 appeal bond concluding that although it was unlikely that the Objectors would succeed in their appeals, Plaintiffs had failed to demonstrate either that there was a significant risk of nonpayment or that the Objectors had engaged in bad faith or vexatious conduct.

77. See Reply Memorandum Of Law in Support of Motion for Settlement (Doc. #46) (filed Aug. 13, 2012).

78. See Final Order and Judgment approving class action settlement and dismissing class action with prejudice (Doc. #52) (filed Aug. 22, 2012); Order Granting Plaintiffs' Motion for an Award of Attorneys' Fees, Expenses and Incentive Awards (Doc. #51) (filed Aug. 22, 2012).

79. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Required Forms C (Pre-Argument Statement) & D (Transcript Information Form); motion to extend time; FRAP 42 stipulation with prejudice to withdraw appeal signed by counsel for all parties.

Appendix B

Class Action Objector Appeals in the Seventh Circuit Court of Appeals
January 1, 2008 – March 1, 2013

**Class Action Objector Appeals in the Seventh Circuit Court of Appeals
from Cases Filed Between January 1, 2008, and March 1, 2013⁸⁰**

27 Total Objector Appeals

District Court • MDL/Consolidated Class Action • # Objections Submitted • Date Final Approval of Class Action Settlement Granted	Appellate Court • # Appeals Filed by Objector(s) • Date Notice of Appeal(s) Filed • Identity of Filing Objector(s) & Attorney(s) (if any)	Final Disposition of Objector Appeal(s) • Date & Nature of Final Disposition • Indicate if Appeal is “pending”	FRAP 7 Cost Bond • Motion Filed • Disposition of Motion • Amount Imposed (if granted)
Central District of Illinois: 0 objector appeals			
Northern District of Illinois: 17 objector appeals			
<p><i>In re: Discover Payment Protection Plan Marketing and Sales Practices Litigation</i>, MDL 2217, No. 10-cv-6994 (N.D. Ill. Feb. 7, 2011)</p> <ul style="list-style-type: none"> • MDL • 6 Objections Submitted⁸¹ • 5/10/2012: Final Order and Judgment granting final approval to the class action settlement; Order awarding attorneys’ fees, reimbursement of expenses, and service award⁸² 	<p>1 Appeal Filed:</p> <ul style="list-style-type: none"> • 6/7/2012: Objector Aaron Petrus – filed <i>pro se</i> – 6/15/2012: disclosure statement in Appeal No. 12-2366 filed on behalf of Appellant Petrus by Christopher Andreas Bandas/ Bandas Law Firm, P.C. (Corpus Christi, TX) 	<ul style="list-style-type: none"> • 7/6/2012: Appeal No. 12-2366—voluntarily dismissed pursuant to Objector’s FRAP 42(b) motion⁸³ 	<ul style="list-style-type: none"> • 6/28/2012: Plaintiffs’ motioned for objector Petrus to post appellate cost bond of \$25,000⁸⁴ • Appeal dismissed before motion for bond ruled on
<p><i>In re: AT&T Mobility Wireless Data Services Tax Litigation</i>, MDL 2147, No. 1:10-cv-02278 (N.D. Ill. Apr. 7, 2010)</p> <ul style="list-style-type: none"> • MDL • 10 Objections Submitted⁸⁵ • 6/2/2011: Memorandum Opinion and Order (1) granting final approval of the class action settlement; and (2) grants in part and denies in part Class Counsel’s motion for approval of attorneys’ fees, costs, and expenses, and for approval of incentive awards for Class Representatives⁸⁶ 	<p>6 Appeals Filed:</p> <ul style="list-style-type: none"> • 6/30/2011: Objectors Angela Vrana & Barbara Fisher – filed by Attorney Bonner C. Walsh/Walsh, PLLC (Athens, TX) • 7/1/2011: Objector Karen Wiand – filed by Attorney Mark S. Baumkel/ Mark S. Baumkel & Associates (Bingham Farms, MI) • 7/1/2011: Objectors Travis Cox, Shelly Stevens & Margaret Johnson – filed by Attorney Thomas L. Cox/The Cox Firm (Dallas, TX) • 7/1/2011: Objector Paige Nash – filed by Gary W. Sibley/Sibley Firm (Dallas, TX) 	<ul style="list-style-type: none"> • 7/22/2011: Appeal No. 11-2490—voluntarily dismissed with prejudice pursuant to FRAP 42(b) stipulation of the parties⁸⁷ • 7/7/2011: Appeal No. 11-2491—voluntarily dismissed with prejudice pursuant to FRAP 42(b) stipulation of the parties⁸⁸ • 11/28/2011: Appeal No. 11-2492—voluntarily dismissed pursuant to Objectors’ FRAP 42(b) motion⁸⁹ • 12/6/2011: Appeal No. 11-2497—voluntarily dismissed pursuant to Objectors’ FRAP 42(b) motion⁹⁰ 	<ul style="list-style-type: none"> • 7/22/2011: Class representatives motioned court to order all six appellants to post appellate cost bond of \$4,500 each⁹³ • 7/28/2011: Court ordered Objectors to post a bond of \$4,500 each by 8/11/2011⁹⁴ • See above. Appeal No. 11-2491 dismissed prior to bond order • See above • See above

Class Action Objector Appeals in the Seventh Circuit Court of Appeals from Cases Filed Between January 1, 2008, and March 1, 2013⁸⁰

27 Total Objector Appeals

District Court	Appellate Court	Final Disposition of Objector Appeal(s)	FRAP 7 Cost Bond
<ul style="list-style-type: none"> • MDL/Consolidated Class Action • # Objections Submitted • Date Final Approval of Class Action Settlement Granted 	<ul style="list-style-type: none"> • # Appeals Filed by Objector(s) • Date Notice of Appeal(s) Filed • Identity of Filing Objector(s) & Attorney(s) (if any) 	<ul style="list-style-type: none"> • Date & Nature of Final Disposition • Indicate if Appeal is “pending” 	<ul style="list-style-type: none"> • Motion Filed • Disposition of Motion • Amount Imposed (if granted)
	<ul style="list-style-type: none"> • 7/5/2011: Objector Margaret Strohle – filed <i>pro se</i>; – 10/11/2011: disclosure statement in Appeal No. 11-2522 filed on behalf of Appellant Strohle by Joseph Darrell Palmer/Law Office of Darrell Palmer (Solana Beach, CA) • 7/12/2011: Objectors Mike Hale, Summer Hogan, Michael Schulz & Omar Rivero – filed by Christopher A. Bandas/Bandas Law Firm (Corpus Christi, TX) & Peter Higgins (Chicago, IL—local counsel) 	<ul style="list-style-type: none"> • 12/6/2011: Appeal No. 11-2522—voluntarily dismissed pursuant to Objectors’ FRAP 42(b) motion⁹¹ • 12/6/2011: Appeal No. 11-2588—voluntarily dismissed pursuant to Objectors’ FRAP 42(b) motion⁹² 	<ul style="list-style-type: none"> • See above • See above
<p><i>In re: Kentucky Grilled Chicken Coupon Marketing & Sales Practices Litigation</i>, MDL 2103, No. 1:09-cv-07670 (N.D. Ill. Dec. 4, 2009)</p> <ul style="list-style-type: none"> • MDL • 1 Objection Submitted⁹⁵ • 11/30/2011: Final Approval of Class Action Settlement granting (1) final approval of class action certification and settlement; (2) approval of attorneys’ fees and incentive award; and overruling objector Jill K. Cannata’s objections⁹⁶ 	<p>1 Appeal Filed:</p> <ul style="list-style-type: none"> • 12/8/2011: Objector Jill K. Cannata – filed by Attorney Sam P. Cannata / Cannata Phillips LPA, LLC (Cleveland, OH) 	<ul style="list-style-type: none"> • 2/1/2012: Appeal No. 11-3745—voluntarily dismissed pursuant to Objectors’ FRAP 42(b) motion⁹⁷ 	<ul style="list-style-type: none"> • No request for cost bond
<p><i>Schulte v. Fifth Third Bank</i>, No. 1:09-cv-06655 (N.D. Ill. Oct. 21, 2009)</p> <ul style="list-style-type: none"> • Consolidated Class Action⁹⁸ • 13 Objections Submitted⁹⁹ • 7/29/2011: Memorandum Opinion and Order and Judgment granting final approval of the class action settlement, Class Counsels’ request for attorneys fees; denying Class Counsels request for cost and expense reimbursement without prejudice; and approving an incentive award for the Class Representatives¹⁰⁰ 	<p>3 Appeals Filed:</p> <ul style="list-style-type: none"> • 8/19/2011: Objectors Michelle Keyes,¹⁰¹ Amanda Ratliff, Verdel Ratliff – filed by local counsel Timothy P. Mahoney/ Hagens Berman Sobol Shapiro LLP (Oak Park, IL); and – filed by attorneys that were members of <u>Plaintiffs’ Executive Committee</u> in <i>In re Checking Account Overdraft Litigation</i>, 09-md-2036 (S.D. Fla. June 10, 2009)¹⁰² • 8/19/11: Appeal by Northcoast Mattress & Recycling, LLC (Ohio limited liability company and class member) – filed by Attorney Sam P. Cannata / Cannata Phillips LPA, LLC 	<ul style="list-style-type: none"> • 9/28/2011: Appeal No. 11-2922—voluntarily dismissed pursuant to Objectors’ FRAP 42(b) motion¹⁰⁴ • 9/27/2011: Appeal No. 11-2964—voluntarily dismissed pursuant to Objectors’ FRAP 42(b) motion¹⁰⁵ 	<ul style="list-style-type: none"> • 9/20/2011: Class representatives motioned court to order appellants to post appellate cost bond of \$10,000 each¹⁰⁷ • Appeals dismissed before motion for bond ruled on • See above

**Class Action Objector Appeals in the Seventh Circuit Court of Appeals
from Cases Filed Between January 1, 2008, and March 1, 2013⁸⁰**

27 Total Objector Appeals

District Court <ul style="list-style-type: none"> • MDL/Consolidated Class Action • # Objections Submitted • Date Final Approval of Class Action Settlement Granted 	Appellate Court <ul style="list-style-type: none"> • # Appeals Filed by Objector(s) • Date Notice of Appeal(s) Filed • Identity of Filing Objector(s) & Attorney(s) (if any) 	Final Disposition of Objector Appeal(s) <ul style="list-style-type: none"> • Date & Nature of Final Disposition • Indicate if Appeal is “pending” 	FRAP 7 Cost Bond <ul style="list-style-type: none"> • Motion Filed • Disposition of Motion • Amount Imposed (if granted)
	<p>(Cleveland, OH) (Note: The original objection from which this appeal was taken was submitted by Sam P. Cannata filing <i>pro se</i> as a class member and mailing his objection to class counsel)</p> <ul style="list-style-type: none"> • 8/25/2011: Objector Laura K. Kannapel¹⁰³ – filed by Scott D. Gilchrist/ Cohen & Malad, LLP (Indianapolis, IN) 	<ul style="list-style-type: none"> • 9/27/2011: Appeal No. 11-2963—voluntarily dismissed pursuant to Objector’s FRAP 42(b) motion¹⁰⁶ 	<ul style="list-style-type: none"> • See above
<p><i>National Council on Compensation Insurance, Inc. v. American International Group</i>, No. 1:07-cv-2898 (N.D. Ill. filed May 24, 2007) & <i>Safeco Insurance Company of America et al. v. American International Group, Inc.</i>, No. 1:09-cv-2026 (N.D. Ill. filed Apr. 1, 2009)</p> <ul style="list-style-type: none"> • Consolidated Class Action¹⁰⁸ • 3 Objections Submitted¹⁰⁹ • 12/21/2011: Order granting final approval of settlement, but staying the ruling pending a forthcoming opinion. The court granted settlement class plaintiffs’ first, second and third interim fee petitions; petition for incentive fee awards to each of the seven Settlement Class Plaintiffs; Objector Liberty Mutual’s fee petition was granted in part. Objectors Safeco and Ohio’s fee petition was granted in part.¹¹⁰ • 2/28/2012: Memorandum Opinion and Order and Final Judgment approving the settlement agreement; granting Safeco & Ohio Casualty’s motion for reimbursement of attorneys’ fees, costs and expenses; granting Liberty’s motion for reimbursement of fees and costs in part¹¹¹ 	<p>6 Appeals Filed:¹¹²</p> <ul style="list-style-type: none"> • 1/19/2012: Objectors Safeco Ins. Co. of America and Ohio Casualty Ins. Co. – appeal of Dec. 21, 2011 Order entered in 09-2026 – filed by Michael A. Walsh/ Nutter, McClennen & Fish, LLP (Boston, MA) & Gary Elden, Gary Miller, Matthew Sitzler, Daniel Hinkle; Grippo & Elden, LLC (Chicago, IL) • 1/19/2012: Objector Liberty Mutual Ins. Co. – appeal of Dec. 21, 2011 Order entered in 09-2026 – filed by James A. Morsch/Butler Rubin Saltarelli & Boyd LLP (Chicago, IL) • 1/23/2012: Objector Liberty Mutual Ins. Co. – appeal of Dec. 21, 2011 Order entered in 07-2898 – filed by James A. Morsch/Butler Rubin Saltarelli & Boyd LLP (Chicago, IL) • 3/27/2012: Objectors Safeco Ins. Co. of America and Ohio Casualty Ins. Co. – appeal of Feb. 28, 2012 Opinion and Order & Final Judgment entered in 09-2026 – filed by Michael A. Walsh/ Nutter, McClennen & Fish, LLP (Boston, MA) & Gary Elden, Gary Miller, Matthew Sitzler, Daniel Hinkle; Grippo & Elden, LLC (Chicago, IL) 	<ul style="list-style-type: none"> • 3/25/2013: Appeal No. 12-1158—dismissed per published opinion granting parties stipulation to voluntarily dismiss with prejudice pursuant to FRAP 42(b)¹¹³ • 3/25/2013: Appeal No. 12-1157—dismissed per published opinion granting parties stipulation to voluntarily dismiss with prejudice pursuant to FRAP 42(b)¹¹⁴ • 3/25/2013: Appeal No. 12-1187—dismissed per published opinion granting parties stipulation to voluntarily dismiss with prejudice pursuant to FRAP 42(b)¹¹⁵ • 3/25/2013: Appeal No. 12-1730—dismissed per published opinion granting parties stipulation to voluntarily dismiss with prejudice pursuant to FRAP 42(b)¹¹⁶ 	<ul style="list-style-type: none"> • No request for cost bond • No request for cost bond • No request for cost bond • No request for cost bond

**Class Action Objector Appeals in the Seventh Circuit Court of Appeals
from Cases Filed Between January 1, 2008, and March 1, 2013⁸⁰**

27 Total Objector Appeals

District Court <ul style="list-style-type: none"> • MDL/Consolidated Class Action • # Objections Submitted • Date Final Approval of Class Action Settlement Granted 	Appellate Court <ul style="list-style-type: none"> • # Appeals Filed by Objector(s) • Date Notice of Appeal(s) Filed • Identity of Filing Objector(s) & Attorney(s) (if any) 	Final Disposition of Objector Appeal(s) <ul style="list-style-type: none"> • Date & Nature of Final Disposition • Indicate if Appeal is “pending” 	FRAP 7 Cost Bond <ul style="list-style-type: none"> • Motion Filed • Disposition of Motion • Amount Imposed (if granted)
	<ul style="list-style-type: none"> • 3/27/2012: Objector Liberty Mutual Ins. Co. <ul style="list-style-type: none"> - appeal of Feb. 28, 2012 Opinion and Order & Final Judgment entered in 07-2898 - filed by James A. Morsch/Butler Rubin Saltarelli & Boyd LLP (Chicago, IL) • 3/27/2012: Objector Liberty Mutual Ins. Co. <ul style="list-style-type: none"> - appeal of Feb. 28, 2012 Opinion and Order & Final Judgment entered in 09-2026 - filed by James A. Morsch/Butler Rubin Saltarelli & Boyd LLP (Chicago, IL) 	<ul style="list-style-type: none"> • 3/25/2013: Appeal No. 12-1753—dismissed per published opinion granting parties stipulation to voluntarily dismiss with prejudice pursuant to FRAP 42(b)¹¹⁷ • 3/25/2013: Appeal No. 12-1764—dismissed per published opinion granting parties stipulation to voluntarily dismiss with prejudice pursuant to FRAP 42(b)¹¹⁸ 	<ul style="list-style-type: none"> • No request for cost bond • No request for cost bond
Southern District of Illinois: 1 objector appeal			
<p><i>Masters v. Lowe’s Home Centers, Inc.</i>, No. 09-cv-00255 (S.D. Ill. April 9, 2009)</p> <ul style="list-style-type: none"> • 5 Objections Submitted¹¹⁹ • 7/14/2011: Order of Final Approval granting final approval of class action settlement, and granting motion for Attorney Fees and Expenses and Incentive Award to Class Representative¹²⁰ 	<p>1 Appeal Filed:</p> <ul style="list-style-type: none"> • 7/25/2011: Objector Grace M. Cannata <ul style="list-style-type: none"> - filed by Attorney Sam P. Cannata/ Cannata Phillips LPA, LLC (Cleveland, Ohio) 	<ul style="list-style-type: none"> • 12/8/2011: Appeal No. 11-2688 voluntarily dismissed pursuant to Objector’s FRAP 42(b) motion¹²¹ 	<ul style="list-style-type: none"> • 8/30/2011: Plaintiff motioned for Objector Cannata to post appellate cost bond of \$5,000¹²² • Appeal No. 11-2688 dismissed before motion for bond ruled on
Northern District of Indiana: 0 objector appeals			
Southern District of Indiana: 0 objector appeals			

**Class Action Objector Appeals in the Seventh Circuit Court of Appeals
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27 Total Objector Appeals

District Court <ul style="list-style-type: none"> MDL/Consolidated Class Action # Objections Submitted Date Final Approval of Class Action Settlement Granted 	Appellate Court <ul style="list-style-type: none"> # Appeals Filed by Objector(s) Date Notice of Appeal(s) Filed Identity of Filing Objector(s) & Attorney(s) (if any) 	Final Disposition of Objector Appeal(s) <ul style="list-style-type: none"> Date & Nature of Final Disposition Indicate if Appeal is “pending” 	FRAP 7 Cost Bond <ul style="list-style-type: none"> Motion Filed Disposition of Motion Amount Imposed (if granted)
Eastern District of Wisconsin: 9 objector appeals			
<p><i>Ori v. Fifth Third Bank</i>, No. 2:08-cv-00432 (E.D. Wis. May 16, 2008) consolidated with <i>Baird v. Fifth Third Bank and Fiserv, Inc.</i>, No. 2:10-cv-00929 (E.D. Wis. Oct. 25, 2010)</p> <ul style="list-style-type: none"> Consolidated class action 1 Objection Submitted¹²³ 1/10/2012: Decision and Order and Order of Judgment (1) granting final approval to the class action settlement; (2) granting Settlement Class Counsels’ request for attorneys’ fees, costs, and expenses, and the incentive award for Representative Plaintiff; (3) responding to and overruling Objector Gatto’s objections; and (4) denying plaintiffs request that the court find that Michael Gattos’ objection was frivolous and made in bad faith.¹²⁴ 	<p>1 Appeal Filed:</p> <ul style="list-style-type: none"> 2/8/2012: Objector Michael Gatto – filed by attorney Sam P. Cannata/ Cannata Phillips LPA, LLC (Cleveland, Ohio) 	<ul style="list-style-type: none"> 2/27/2012: Appeal No. 12-1288—voluntarily dismissed pursuant to Objector’s FRAP 42(b) motion¹²⁵ 	<ul style="list-style-type: none"> 2/20/2012: Plaintiff motioned for objector Cannata to post appellate cost bond of \$25,000¹²⁶ Motion denied as moot because the appeal was dismissed before motion for bond was ruled on
<p><i>In re: Lawnmower Engine Horsepower Marketing and Sales Practices Litigation (No. II)</i>, No. 2:08-md-01999 (E.D. Wis. Dec. 5, 2008)</p> <ul style="list-style-type: none"> MDL 68 Objections Submitted¹²⁷ 8/16/2010: Decision and Order granting final approval for five separate class action Settlement Agreements reached with five separate groups of Defendants; and granting attorneys’ fees, litigation expenses, and class-representative service awards¹²⁸ 	<p>8 Appeals Filed:¹²⁹</p> <ul style="list-style-type: none"> 8/23/2010: Objectors Rosalie Borgarts, Paul Palmer, Irving S. Bergin, Cory A. Buye, Jill Cannata, Robert Falkner and Thomas Basie – notice of appeal filed by Edward F. Siegel (Cleveland, OH); Darrell Palmer/ Law Offices of Darrell Palmer (Solana Beach, CA); Kenneth E. Nelson/ Nelson Law Firm P.C. (Kansas City, MO); Edward W. Cochran (Shaker Heights, Ohio); Sam P. Cannata (Garfield Hts., Ohio) – Disclosure statement filed by Atty. Edward W. Cochran for Objectors/ Appellants in appeal # 10-2971 9/10/2010: Objector Carl Olson – filed by John J. Pentz /Class Action Fairness Group (Maynard, MA) 	<ul style="list-style-type: none"> 2/16/2011: Appeal #10-2971—voluntarily dismissed pursuant to Objectors’ FRAP 42(b) motion¹³¹ 2/16/2011: Appeal #10-3127—voluntarily dismissed pursuant to Objectors’ FRAP 42(b) motion¹³² 	<ul style="list-style-type: none"> 8/31/2010: Plaintiff motioned for Objector-Appellants in Appeal #10-2971 to post appellate cost bond of \$80,000¹³⁹ 11/2/2010: Court denied class representatives’ motion for an appeal bond¹⁴⁰ 9/14/2010: Plaintiff motioned for Objector-Olson to post an appellate cost bond of \$80,000¹⁴¹ 11/2/2010: Court denied class representatives’ motion for an appeal bond¹⁴²

Class Action Objector Appeals in the Seventh Circuit Court of Appeals from Cases Filed Between January 1, 2008, and March 1, 2013⁸⁰

27 Total Objector Appeals

District Court	Appellate Court	Final Disposition of Objector Appeal(s)	FRAP 7 Cost Bond
<ul style="list-style-type: none"> • MDL/Consolidated Class Action • # Objections Submitted • Date Final Approval of Class Action Settlement Granted 	<ul style="list-style-type: none"> • # Appeals Filed by Objector(s) • Date Notice of Appeal(s) Filed • Identity of Filing Objector(s) & Attorney(s) (if any) 	<ul style="list-style-type: none"> • Date & Nature of Final Disposition • Indicate if Appeal is “pending” 	<ul style="list-style-type: none"> • Motion Filed • Disposition of Motion • Amount Imposed (if granted)
	<ul style="list-style-type: none"> • 9/14/2010: Objectors Karen Chandler & Thomas L. Cox, Jr <ul style="list-style-type: none"> – notice of appeal filed by Joshua B. Kons /Law Offices of Joshua B. Kons LLC (Whitefish Bay, WI) – 10/25/2010: disclosure statement filed terminating attorney Kons and adding Thomas L. Cox Jr. (Dallas, TX) as attorney for Objectors Chandler and Cox (himself) • 9/14/2010: Objectors Douglas Hilbert, Kelly Marie Spann, Kent Stephens, David Borgmeyer, Jarvis Gutridge, Earl Hortiz, Mark Schulte and Munir Abu-Nader <ul style="list-style-type: none"> – filed by Jonathan E. Fortman (St. Louis, MO) (Attorney for Class Members Douglas Hilbert, Kelly Marie Spann, and Kent Stephens); Attorney Fortman is only attorney to file disclosure statement for appellants in Appeal No. #10-3146 – John C. Kress(St. Louis, MO) (Attorney for Class Members David Borgmeyer, Jarvis Gutridge and Earl Hortiz); – J. Scott Kessinger (Kapaa, HI) (Attorney for Class Members Mark Schulte and Munir Abu-Nader) • 9/14/2010: Objector Jeannine Miller <ul style="list-style-type: none"> – filed by Steve A. Miller/Steve A. Miller, PC (Denver, CO) • 9/15/2010: Objector Scott Kimball III <ul style="list-style-type: none"> – filed by Mark A Lindow/Lindow, Stephens, Treat LLP (San Antonio, TX) • 9/15/2010: Objector Clyde Farrel Padgett <ul style="list-style-type: none"> – filed <i>pro se</i> by Clyde F. Padgett (Lufkin, TX) • 11/19/2010: Objector David Marlow¹³⁰ <ul style="list-style-type: none"> – filed by James H. Price/Lacy, Price & Wagner, PC (Knoxville, TN) 	<ul style="list-style-type: none"> • 2/16/2011: Appeal #10-3141—voluntarily dismissed pursuant to Objectors’ FRAP 42(b) motion¹³³ • 2/10/2011: Appeal #10-3146—voluntarily dismissed pursuant to Objectors’ FRAP 42(b) motion¹³⁴ • 2/16/2011: Appeal #10-3157—voluntarily dismissed pursuant to Objectors’ FRAP 42(b) motion¹³⁵ • 2/10/2011: Appeal #10-3158—voluntarily dismissed pursuant to Objectors’ FRAP 42(b) motion¹³⁶ • 2/10/2011: Appeal #10-3185—voluntarily dismissed pursuant to Objectors’ FRAP 42(b) motion¹³⁷ • 2/10/2011: Appeal #10-3689—voluntarily dismissed pursuant to Objectors’ FRAP 42(b) motion¹³⁸ 	<ul style="list-style-type: none"> • 9/29/2010: Plaintiff motioned for Objector-Appellants in Appeal Nos. #10-3141, 10-3146, 10-3157, 10-3158, & 10-3185 to post an appellate cost bond of \$80,000 each.¹⁴³ • 11/2/2010: Court denied class representatives’ motion for an appeal bond.¹⁴⁴ • See Plaintiffs’ 9/29/2010 bond motion above • See Plaintiffs’ 9/29/2010 bond motion above • See Plaintiffs’ 9/29/2010 bond motion above • See Plaintiffs’ 9/29/2010 bond motion above • No request for cost bond

Western District of Wisconsin: 0 objector appeals

80. Includes class action objector appeals from class action cases that were filed in the district courts on or after January 1, 2008, in which final approval of a Rule 23-certified class action settlement was granted and appealed from between January 1, 2008, through March 1, 2013.
81. See *Memorandum of Law (I) In Support of Final Approval of Class Action Settlement; (II) In Response to Timely Objections to the Settlement Agreement; and (III) In Response to Objections to the Award of Attorneys' Fees and Expenses of Class Counsel* (Doc. #171) (filed Apr. 24, 2012) (all 6 objections were filed *pro se*).
82. See *Final Order and Judgment* (Doc. #177) (Apr. 10, 2012); *Order awarding attorneys' fees, reimbursement of expenses, and service award* (Doc. #179) (Apr. 10, 2012).
83. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Required Docketing Statement; Disclosure Statement filed by Attorney Christopher A. Bandas for Appellant Aaron Petrus; amended Docketing Statement; Objector's FRAP 42(b) motion to voluntarily dismiss the appeal.
84. See *Plaintiffs' Motion to Direct Objector to Post Appeal Bond* (Doc. #187) (June 28, 2012). Plaintiffs asserted that \$25,000 was a conservative estimate of the costs both they and Defendants would incur during the pendency of the appeals including thousands of dollars of costs associated with filing briefs to be prepared in multiple copies by a professional appellate printer; increased administrative expenses from the delay caused by Objector's appeal, which would include, among other expenses, additional expenses necessary to extend website maintenance and to process and respond to written and verbal inquiries about the status of claims processing during the appeal, as well as prepare and serve all necessary accounting and tax documents.
85. See *Plaintiffs' Memorandum in Support of Motion for Settlement* (Doc. #163) (filed Mar. 8, 2011) & Ex. 3 Klonoff Declaration (3 of the 10 total objections were filed *pro se*, and remaining 7 were filed by counsel on the Objectors behalf).
86. See *In re AT & T Mobility Wireless Data Servs. Sales Tax Litig.*, 792 F.Supp.2d 1028 (N.D. Ill. June 2, 2011) (Memorandum Opinion and Order granting final approval to class action settlement and dismissing all claims without prejudice until June 1, 2012, after which the dismissal is with prejudice); *In re AT & T Mobility Wireless Data Servs. Sales Tax Litig.*, 792 F.Supp.2d 1028 (N.D. Ill. June 2, 2011) (Memorandum Opinion and Order grants in part and denies in part class counsel's motion for approval of attorneys' fees, costs, and expenses, and for approval of incentive awards for class representatives).
87. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Required Docketing Statement (incomplete); joint motion by Objectors/appellants and appellee AT&T to voluntarily dismiss the appeal with prejudice pursuant to Rule 42(b). The Second Circuit notified Objectors/Appellants Vrana and Fisher that they had until July 22, 2011, to file a completed Circuit Rule 3(c) docketing statement containing a statement of jurisdiction sufficient to establish diversity of citizenship for federal jurisdiction. See *Order*, No. 11-2490 (2d Cir. July 15, 2011) (Doc. #14). Objectors/Appellants Vrana and Fisher filed a joint stipulation of dismissal on July 22, 2011.
88. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Required Docketing Statement; joint motion by Objector/appellant and appellee AT&T to voluntarily dismiss the appeal with prejudice pursuant to Rule 42(b).
89. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Required Amended Docketing Statement; Amended Disclosure Statement filed by Attorney Thomas L. Cox, Jr.; Response in opposition to motion to dismiss; 3 Motions for extensions of time to file appellant brief (granted); Objectors' motion to voluntarily dismiss appeal pursuant to Rule 42(b).
90. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Required Docketing Statement (amended to establish diversity of citizenship); Disclosure Statement filed by Attorney Gary W. Sibley for Appellant Paige Nash in 11-2497; Response in opposition to motion to dismiss; 3 Motions for extensions of time to file appellant brief (granted); Appellant Brief filed (brief rejected as procedurally deficient and resubmission must occur within 7 days); motion to accept resubmitted appellant brief; Objector's motion to voluntarily dismiss appeal pursuant to Rule 42(b).
91. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Required Docketing Statement (amended to establish diversity jurisdiction); Disclosure Statement filed by Attorney Joseph Darrell Palmer for Appellant Margaret Strohlein in 11-2522; Response in opposition to motion to dismiss; 3 Motions for extensions of time to file appellant brief (granted); Joint Appellant Brief filed (brief rejected as procedurally deficient and resubmission must occur within 7 days); motion to resubmit late joint appellant brief (granted); joint brief of objectors-appellants filed; Voluntary Joint Motion To Dismiss pursuant to Rule 42(b) of Appellants Margaret Strohlein, Mike Hale, Summer Hogan, Michael Schultz and Omar Rivero, filed on December 5, 2011, by counsel for the appellants in Appeal Nos. 11-2522 and 11-2588.
92. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Docketing Statement (amended to establish diversity jurisdiction); Disclosure Statement filed by Attorney Christopher Bandas for Appellants Mike Hale, Summer Hogan, Omar S. Rivero and Michael Schulz in 11-2588; Response in opposition to motion to dismiss; 3 Motions for extensions of time to file appellant brief (granted); Appellant Brief filed (brief rejected as procedurally deficient and resubmission must occur within 7 days); motion to resubmit late joint appellant brief granted; joint brief of objectors-appellants filed; Voluntary Joint Motion To Dismiss pursuant to Rule 42(b) of

Appellants Margaret Strohlein, Mike Hale, Summer Hogan, Michael Schultz and Omar Rivero, filed on December 5, 2011, by counsel for the appellants in 11-2522 and 11-2588.

93. See *Motion and Memorandum by Service List for Bond (to Require Objectors/Appellants to Post Appeal Bond)* (Docs. #242 & 243) (filed July 22, 2011).

94. See *Minute Entry for Motion Hearing Held on July 28, 2011 on Plaintiffs' Motion for an Appeal Bond* (Doc. #251) (filed July 28, 2011). The Court granted Class Representatives' motion to require objectors/appellants to post an appeal bond, and ordered each Objector to post a bond of \$4,500 by 8/11/11.

95. See *Plaintiffs' Motion & Memorandum in Support of Final Approval of Class Action Settlement, and Approval of Attorneys' Fees and Incentive Award* (Doc. #108) (filed Nov. 16, 2011).

96. See *Final Approval of Class Action Settlement* (Doc. #113) (filed Nov. 30, 2011); *Final Approval of Class Certification* (Doc. #112) (filed Nov. 30, 2011); and *Final Judgment Order* (Doc. #115) (filed Dec. 6, 2011).

97. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Second Amended Docketing Statement; Motion for extension to file appellant brief (granted); Objector's FRAP 42(b) motion to voluntarily dismiss appeal.

98. Representative Plaintiff Marlene Willard was a party to the settlement agreement, which provided that upon entry of final approval, the similar action she brought in the Northern District of Georgia (*Willard v. Fifth Third Bank*, Case No. 1:10-cv-0271 (N.D. Ga. Feb. 1, 2010)) would be dismissed with prejudice. On June 3, 2010, the Judicial Panel on Multidistrict Litigation vacated its March 2, 2010, order conditionally transferring the *Schulte* and *Willard* class actions to the Southern District of Florida and ruled that in light of the settlement reached between Plaintiffs Schulte and Willard and the Defendant, that these cases should not be transferred into MDL No. 2036, *In re Checking Account Overdraft Litig.*, which was pending in the Southern District of Florida. See *In re Checking Account Overdraft Litig.*, No. MDL 2036, 715 F.Supp.2d 1358 (J.P.M.L. June 3, 2010).

99. See *Plaintiffs' Proposed Motion for Final Approval* (Doc. #103-1) (filed Mar. 7, 2011) (11 objections were filed *pro se* in letter format and 2 objections were filed by class members represented by attorneys who were also members of the Plaintiffs' Executive Committee in *In re Checking Account Overdraft Litigation*, No. 09-md-2036 (S.D. Fla. June 10, 2009). On March 14, 2011, the court granted a joint motion filed by the 4 objectors represented by counsel (Laura Kannapel, Michelle Keyes, Amanda Ratliff, and Verdel Ratliff) for a temporary protective order precluding the taking of their depositions and the production of documents in response to subpoenas served upon them by Plaintiffs counsel. See *Protective Order Precluding Depositions and Production of Subpoenaed Documents* (Doc. #111) (filed Mar. 14, 2011).

100. See *Memorandum Opinion and Order* (Doc. #124) (filed July 29, 2011) and *Judgment* (Doc. #125) (filed July 29, 2011).

101. Appellant/Objector Keyes was the named plaintiff in *Keyes v. Fifth Third Bank*, No 10-cv-2283 (S.D. Fla. Apr. 2, 2010), an overlapping class action that was made part of MDL 2036, *In re Checking Account Overdraft Litigation*, pending in the Southern District of Florida. Represented by the Plaintiffs' Executive Committee in MDL No. 2036, Appellants/Objectors Michelle Keyes, Amanda Ratliff and Verdel Ratliff filed an objection to Representative Plaintiffs' motion for preliminary approval of the proposed settlement in addition to objecting to the proposed final settlement.

102. Bruce S. Rogow/Alters Law Firm, P.A. (Miami, FL); Aaron S. Podhurst, Robert C. Josefsberg, Peter Prieto, John Gravante, III/Podhurst Orseck, P. A. (Miami, FL); Robert C. Gilbert, Stuart Z. Grossman/ Grossman Roth, P.A. (Coral Gables, FL); Michael W. Sobol, David Stelling, Roger Heller, Jordan Elias/ Lieff, Cabraser, Heimann & Bernstein, LLP (San Francisco, CA); E. Adam Webb, G. Franklin Lemond, Jr./ Webb, Klase & Lemond, L.L.C. (Atlanta, GA); Ted E. Trief, Barbara E. Olk/ Trief & Olk (New York, NY); Ruben Honik, Kenneth J. Grunfeld/ Golomb & Honik, P.C. (Philadelphia, PA); Russell W. Budd, Bruce W. Steckler, Mazin Sbaiti/ Baron & Budd, P.C. (Dallas, TX).

103. Appellant/Objector Laura K. Kannapel was represented by the Plaintiffs' Executive Committee in *In re Checking Account Overdraft Litigation*, MDL No. 2036 (S.D. Fla. June 10, 2009) in addition to Cohen & Malad, LLP (Indianapolis, IN) when she filed her original objection.

104. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Required Docketing Statement/Seventh Circuit Transcript Information Sheet/ Disclosure Statement filed by Attorney Timothy P. Mahoney; Objectors' FRAP 42(b) motion to voluntarily dismiss appeal.

105. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Required Docketing Statement/Seventh Circuit Transcript Information Sheet/ Disclosure Statement filed by Attorney Sam P. Cannata; Response in Opposition to Appellees' Motion to Dismiss; Plaintiff-Appellant Northcoast Mattress & Recycling LLC by and through its attorney Sam P. Cannata FRAP 42(b) motion for voluntary dismissal of Appeal No. 11-2964. On Sept. 15, 2011, Plaintiffs-Appellees filed a motion to dismiss the Appeal of Northcoast Mattress & Recycling LLC for lack of jurisdiction, arguing that because Northcoast did not object to the settlement in the District Court and was not a "party" to the litigation under Rule 3(c) of the Federal Rules of Appellate Procedure, the Court lacked jurisdiction over its appeal and the appeal should be dismissed. See *Appellees' Motion to Dismiss Case*, No. 11-2964 (7th Cir. Sept. 15, 2011) (Doc. #21). On September 26, 2011, Sam Cannata on behalf of Plaintiff-Appellant Northcoast Mattress & Recycling LLC filed both a response to Appellees' motion to dismiss and a FRAP 42(b) motion to voluntarily dismiss Appeal No. 11-2964. See *Response in Opposition by Appellant Northcoast Mattress & Recycling, LLC to Motion to Dismiss & Motion filed by Appellant Northcoast Mattress & Recycling, LLC to Dismiss Case*, No. 11-2964 (7th Cir. Sept. 26, 2011) (Docs. #22 & 23).

106. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Required Docketing Statement/Seventh Circuit Transcript Information Sheet/ Disclosure Statement filed by Attorney Scott D. Gilchrist; Objector's FRAP 42(b) motion to voluntarily dismiss appeal.

107. See *Representative Plaintiffs' Motion for Imposition of Appeal Bonds and Incorporated Memorandum of Law* (Doc. #149) (filed Sept. 20, 2011). Plaintiffs' asked the court to order objectors to post a \$10,000 cost bond for each of the three appeals to cover the "likely costs and attorneys' fees Settlement Class Counsel will incur in opposing these appeals."

108. The settlement approved by the court dismissed all claims in both *National Council on Compensation Ins., Inc. v. Am. Int'l Grp.*, No. 1:07-cv-2898 (N.D. Ill. filed May 24, 2007) and *Safeco Ins. Co. of Am. et al. v. Am. Int'l Grp., Inc.*, No. 1:09-cv-2026 (N.D. Ill. filed April 1, 2009). Brief history of the litigation: After the class representative in the original class action 07-2898 was dismissed for lack of standing in 2009, the defendant American International Group (AIG) was realigned as the plaintiff because AIG filed counterclaims and a third party complaint against the 24 insurance companies who were members of the original Plaintiff class. *Am. Int'l Grp., Inc. v. ACE INA Holdings, Inc.*, Nos. 09-2026, 07-2898 (N.D. Ill. May 24, 2007). On April 1, 2009, Safeco Insurance Company of America and Ohio Casualty Insurance Company filed a class action against AIG bringing claims that mirrored the claims in the original 07-2898 complaint. *Safeco Ins. Co. of Am. et al. v. Am. Int'l Grp., Inc.*, No. 1:09-cv-2026 (N.D. Ill. filed April 1, 2009). Two members of the Plaintiff class in *Safeco*, Liberty Mutual Insurance Company and The Hartford Financial Services Group, asserted counterclaims against AIG in the original action 07-2829 arising out of AIG's alleged underreporting of workers compensation premiums. On January 13, 2011, the Court granted Settlement Class Plaintiffs (7 companies representing insurance companies that were members of the original plaintiff class in 07-2829) leave to intervene in *Safeco* (09-2026) and leave to file their complaint in intervention to present the terms of the settlement reached between Settlement Class Plaintiffs and Defendant AIG. Safeco Insurance Company together with Ohio Casualty Insurance Company, and Liberty Mutual Insurance Company—all three class members in Appeal No. 09-2026—objected to the settlement even before preliminary approval was granted, as well as submitting formal objections after preliminary approval was granted.

109. See *Settlement Class Plaintiffs' Status Report About Opt-Outs and Objections* (Doc. #506 in Appeal No. 09-2026) (filed Oct. 6, 2011). One Objection was filed by class members Safeco Ins. Co. of America and Ohio Casualty Ins. Co.—the original plaintiffs in Appeal No. 09-2026 and subsidiaries of the Liberty Mutual group of companies. Another Objection was filed by class member Liberty Mutual Ins. Co.—also the counter-claimant against Defendant AIG in 07-2829. A third objection was formally withdrawn prior to final approval of the settlement.

110. See *Order* (Doc. #589) (filed Dec. 21, 2011). On November 29, 2011, the court held a final fairness hearing, and on December 21, 2011, the court held a hearing on the parties' various fee petitions. Although the Court's Order issued on December 21 granted final approval of the settlement, that ruling was stayed pending the court's determinations of fees and issuance of a final memorandum opinion.

111. See *Am. Int'l Grp., Inc. v. ACE INA Holdings, Inc.*, Nos. 07-cv-2898, 09-cv-2026, 2012 WL 651727 (N.D. Ill. Feb. 28, 2012). The court entered Final Judgment on March 1, 2012 (Doc. #614) (filed Mar. 1, 2012).

112. After the Objector-Appellants received notice from the Seventh Circuit on January 26, 2012, that the district court's December 21, 2011, Order may not be a final appealable judgment within the meaning of 28 U.S.C. § 1291, Safeco Ins. Co. and Liberty Mutual filed additional notices of appeal from the district court's February 28, 2012, Memorandum Opinion and Order and March 1, 2012 Final Judgment. On April 2, 2012, the Seventh Circuit granted the Appellants' motions to consolidate the 6 appeals for briefing and disposition: Appeal Nos. 12-1157, 12-1158, 12-1186, 12-1730, 12-1753, 12-1764.

113. *Safeco Ins. Co. of Am. v. Am. Int'l Grp., Inc.*, 710 F.3d 754 (7th Cir. Mar. 25, 2013). On November 29, 2012, a three-judge panel (Chief Judge Frank Easterbrook, and Circuit Judges Richard Posner and Daniel Manion) heard oral arguments on the consolidated appeals and took them under advisement. Before the panel issued its decision, on January 11, 2013, all parties to the 6 appeals reached a settlement and they all agreed (except for appellee ACE INA Holdings) to stipulate and file with the court an Agreed Stipulation of Dismissal with prejudice, each party to bear its own FRAP 39 costs. Although ACE INA Holdings did not join the stipulation, it did not oppose the settlement and request for dismissal. See *Motion filed by Appellants to Dismiss Case*, Appeal Nos. 12-1157, 12-1158, 12-1186, 12-1730, 12-1753, 12-1764 (7th Cir. Jan. 11, 2013) (Doc. #143). On January 14, 2013, the Court ordered the parties to supplement their "agreed stipulation of dismissal" to address (1) whether the settlement of the dispute underlying the appeals should be approved by the district court as affecting the class settlement approved in February 2012, and (2) whether the appellants should be allowed to reinstate their appeal if the district court refused to approve their settlement. See *Order re: "Agreed Stipulation of Dismissal,"* Appeal Nos. 12-1157, 12-1158, 12-1186, 12-1730, 12-1753, 12-1764 (7th Cir. Jan. 14, 2013) (Doc. #144). In an opinion written by Chief Judge Easterbrook, the majority concluded that since none of the parties were objecting to the settlement between Liberty Mutual and AIG, since the terms of their separate settlement did not undo or effect the original settlement approved by the district court in any way, and since there was no one wanting to adjudicate the case any further, then the appeals should be dismissed. *Safeco Ins. Co. of Am.*, 710 F.3d at 758. Although Judge Easterbrook did not appear to be troubled by the settlement between Liberty Mutual and AIG that was reached while the appeal was pending as long as this "de facto opt-out on appeal" did not call into question the settlement's fairness to the other class members, in his dissent Judge Posner felt the court had dismissed the appeal too quickly without actually examining the terms of the settlement between Liberty Mutual and AIG: "We don't know the terms of the settlement on which dismissal is predicated, so we don't know whether the settlement sells out the interests of the class. But it may." *Id.* (Posner, J., dissenting). Judge Posner suggested that a request for a voluntary dismissal in the class action context deserves closer scrutiny. *Id.* at 761–62.

114. See *id.*

115. *See id.*

116. *See id.*

117. *See id.*

118. *See id.*

119. *See Plaintiff's Response to Objections to Class Action Settlement* (Doc. #59) (filed July 1, 2011) (One of the five objections was deemed invalid because the objector's wife and not the objector was a class member. The remaining four objections were filed *pro se* in letter format, although the six-page objection filed *pro se* by "Grace M. Cannata Pro Se Objector" stated at the conclusion of her objection that "she intends to hire Attorney Sam P. Cannata to represent her interests in this matter.")

120. *See Order of Final Approval* (Doc. #63) (filed July 14, 2011).

121. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Required Docketing Statement/Seventh Circuit Transcript Information Sheet/ Disclosure Statement filed by Attorney Sam Cannata; opposition to appellees motion to dismiss the appeal; Objector's Rule 42(b) motion to voluntarily dismiss the appeal.

122. *See Plaintiffs' Motion for Appellate Cost Bond* (Doc. #68) (filed Aug. 30, 2011). Plaintiffs requested that Objector Grace Cannata and/or her counsel, Sam Cannata, be required to post a bond of \$5,000.00, based on a reasonable estimate of the taxable costs that are likely to be incurred, but limited to costs described in 28 U.S.C. § 1920 and Federal Rule of Appellate Procedure 39 such as the costs of copying briefs and appendices, preparation and transmission of the record on appeal, and obtaining the court reporter's transcript.

123. *See Representative Plaintiff's Amended Memorandum of Law in Support of Motion for Final Approval of Class Action Settlement and Award of Attorneys' Fees, Costs, Expenses, and Incentive Award* (Doc. #205) (filed Jan. 3, 2012) (Representative Plaintiff responds to objections submitted by the sole Objector Michael Gatto, filed by his attorney Sam P. Cannata, and Representative Plaintiff asked the court to make a finding of frivolity and bad faith in connection with Michael Gatto's objection.). On January 3, 2012, Settlement Class Counsel served Michael Gatto with a subpoena for a deposition. The subpoena was issued by the United States District Court for the Northern District of Ohio, and the deposition was noticed for January 6, 2012 in Cleveland, Ohio. (Doc. #210) (filed Jan. 3, 2012) On January 4, 2012, Gatto filed a motion to quash the subpoena. (Doc. #211) (filed Jan. 4, 2012) Plaintiffs argued that the deposition and documents were needed to determine the legitimacy of Gatto's objection given Gatto's attorney Cannata's history and Gatto's lack of knowledge of his objection. (Doc. #212) (filed Jan. 4, 2012) The district court denied Objector Gatto's motion to quash declaring that it lacked jurisdiction because a motion to quash must be presented to the court for the district in which the deposition would occur. (Doc. #213) (filed Jan. 5, 2012) Attorney Cannata responds in outrage to the "ad hominem attacks and name calling against the Plaintiff-Objector and his counsel" that Representative Plaintiff and their Class Counsel had resorted to. (Doc. #214) (filed Jan. 5, 2012) Following Objector Gatto's deposition that was held on Jan. 9, 2012 in the Southern District of Ohio, Class counsel submitted 7-page reply arguing that the deposition revealed Gatto's lack of familiarity with his objections and showed his hatred for class action cases in general. Class counsel repeated their original request for a finding that the objection was frivolous and filed in bad faith. (Doc. #215) (Jan. 9, 2012).

124. *See Decision and Order* (Doc. #216) (filed Jan. 10, 2012) (Representative Plaintiff asked the court to make a finding of frivolity and bad faith in connection with Michael Gatto's objection. District Judge Lynn Adelman addressed each of Objector Gatto's seven arguments and concluded that "[w]hile the evidence is not sufficient to conclude that Gatto's objections are clearly frivolous or made in bad faith, he has not made any valid arguments that justify altering the terms of the settlement agreement or denying the motion for attorneys' fees." Judge Adelman found that Gatto's objections were either mooted by the Settlement Agreement or not supported by credible evidence.). *See also Order of Judgment* (Doc. #217) (filed Jan. 10, 2012).

125. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Required Docketing Statement/Seventh Circuit Transcript Information Sheet/ Disclosure Statement filed by Attorney Sam Cannata; Objector's FRAP 42(b) motion to voluntarily dismiss the appeal.

126. *Representative Plaintiffs Motion for Imposition of Appeal Bond and Incorporated Memorandum of Law* (Doc. #224) (filed Feb. 20, 2012). Plaintiffs argued that the Court should order the Objector/Appellant to post an appeal bond in the amount of \$25,000 to cover the likely costs and attorneys' fees Settlement Class Counsel would incur in opposing Appellant's appeal—which would "almost certainly exceed this amount."

127. *See Brief in Support filed by All Plaintiffs* (Doc. #334) (filed June 15, 2010) (although 73 total objections were originally filed by class members, five objections were withdrawn by June 15, 2010 thus resulting in 68 final objections submitted).

128. *See In re Lawnmower Engine Horsepower Mktg. & Sales Practices Litig.*, 733 F.Supp.2d 997 (E.D. Wis. Aug. 16, 2010). See also the five individual Orders and Judgments filed on August 16, 2010 approving five settlement agreements between the plaintiff class and all defendants and awarding attorneys' fees and costs to class counsel, thereby resolving all actions that were transferred and consolidated for pretrial purposes by the Panel on Multidistrict Litigation into MDL 1999: MTD Settlement (Doc. #381); Group of Six Settlement (Doc. #382); Honda Settlement (#383); Kawasaki Settlement (Doc. #384); and Kohler Co. Settlement (Doc. #385).

129. The Seventh Circuit consolidated all 8 appeals for purposes of briefing and disposition: Appeal Nos. 10-2971, 10-3127, 10-3141, 10-3146, 10-3157, 10-3158, 10-3185, 10-3689. Note that Appeal No. 10-3154 is not included as it is an appeal by defendant Husqvarna Outdoor Products Inc.

130. On September 13, 2010, Objector David Marlow filed a timely Civil Rule 59(e) motion to amend/correct the judgment. *See Motion to Amend/Correct Order dated August 16, 2010 by David C Marlow* (Doc. #402) (filed Sept. 14, 2010). Briefing was stayed on all appeals filed prior to final disposition on the Rule 59(e) motion in the district court. *See Order*, Appeal Nos. 10-2971, 10-3127, 10-3141, 10-3146, 10-3157, 10-3158, 10-3185 (7th Cir. Sept. 28, 2010) (Doc. #19). On October 28, 2010, the District Court denied Objector Marlow's motion to amend, and appellant briefs in all consolidated appeals were due on Dec. 15, 2010, and then extended to Jan. 18, 2011. *See Order Denying Motion to Amend/Correct* (Doc. #468) (filed Oct. 28, 2010). Objector Marlow filed his notice of appeal on November 19, 2010.

131. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Required Docketing Statement/Seventh Circuit Transcript Information Sheet/Disclosure Statement filed by Attorney Edward W. Cochran; Objectors' motion to voluntarily dismiss their appeal pursuant to FRAP 42(b).

132. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Required Docketing Statement/Seventh Circuit Transcript Information Sheet; jurisdictional memorandum; status report by Attorney John J. Pentz III for Appellant Carl Olson, Jr., on disposition of motion to alter or amend filed by David Marlow; Objector's motion to voluntarily dismiss the appeal pursuant to Rule 42(b).

133. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Required Docketing Statement (amended as late)/Seventh Circuit Transcript Information Sheet; jurisdictional memorandum; Disclosure statement filed by Attorney Thomas L. Cox Jr. for Objector/Appellant Thomas L. Cox Jr. (himself) and Objector/Appellant Karen Chandler, in case 10-3141; Objectors' motion to voluntarily dismiss the appeal pursuant to Rule 42(b).

134. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Required Docketing Statement (amended as late); jurisdictional memorandum; Disclosure Statement filed by Attorney Jonathan E. Fortman for Appellants Kent Stephens, Douglas Hilbert, Kelly M. Spann, David Borgmeyer and Jarvis Gutridge; Objectors' motion to voluntarily dismiss the appeal pursuant to Rule 42(b).

135. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Required Docketing Statement/Seventh Circuit Transcript Information Sheet/Disclosure Statement filed by Attorney Steve A. Miller; statement of jurisdiction; jurisdictional memorandum; Objector's motion to voluntarily dismiss her appeal pursuant to Rule 42(b).

136. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Required Docketing Statement/Seventh Circuit Transcript Information Sheet/Disclosure Statement filed by Attorney Theodore C. Schultz; statement of jurisdiction; jurisdictional memorandum; Objector's motion to voluntarily dismiss the appeal pursuant to Rule 42(b).

137. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Required Docketing Statement/Seventh Circuit Transcript Information Sheet; jurisdictional statement; Objector's motion to voluntarily dismiss the appeal pursuant to Rule 42(b).

138. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Required Docketing Statement (filed late); Objector's motion to voluntarily dismiss the appeal pursuant to Rule 42(b).

139. *See Memorandum in Support of Plaintiff's Motion for an Appeal Bond* (Doc. #393) (filed Aug. 31, 2010). Plaintiffs asserted that an appeal bond in the amount of \$80,000 was justified in recognition of the following harms to Class Members the appeal will impose: additional Rule 39(c) costs of copying, printing, and reproducing documents up to \$25,000; costs associated with the prolonged settlement administration period that an objector's appeal necessitates including additional costs associated with website maintenance, online claim filing, claim form processing and validation, telephone support, distribution and tax reporting, project management and technical consulting fees, and other miscellaneous administrative costs up to \$55,000; costs arising from delays to the distribution of settlement benefits including the distribution of cash, warranty and injunctive benefits included in the settlement reached in this case; and costs associated with the additional attorneys' fees incurred while defending the Objectors' appeal. In their Reply briefs, class representatives state that they are not asking for a cost bond that includes class counsel's attorneys' fees as well as the costs attributable to the delay in distributing settlement benefits to class members. *See Reply Brief* (Doc. #464) (filed Oct. 12, 2010) & *Reply Brief* (Doc. #469) (filed Nov. 1, 2010).

140. *See In re Lawnmower Engine Horsepower Mktg. & Sales Practices Litig.*, No. MDL 08-1999, 2010 WL 4630846 (E.D. Wis. Nov. 2, 2010). The court stated that the "text of the rule indicates that only one element must be met before a bond may be required—namely, that the district court finds a bond "necessary to ensure" payment of costs on appeal. Thus, if the movant points to facts giving rise to a reasonable probability that the appellant will fail to pay any costs taxed by the court of appeals when the appeal is over, the district court should require a bond." *Id.* at *1. The Court rejected class representatives argument that there was a risk of nonpayment case because the objecting class members were geographically dispersed and represented by attorneys who were alleged to be "professional objectors." The Court also rejected plaintiffs argument that a bond was appropriate because the professional objectors' appeals were meritless, finding that the "text of Rule 7 does not indicate that the district court should consider the merits of the appeal when deciding whether to require an appeal bond." *Id.* To the extent that the merits are relevant to the risk of nonpayment, the Court could not conclude that the appeals were meritless or pursued for an improper purpose based upon the evidence on the record, refusing to give any weight to other cases cited by class representatives in which district courts found that certain of the attorneys representing the objectors in these appeals had objected in bad faith. *Id.*

141. See *Memorandum in Support of Plaintiffs' Motion for an Appeal Bond* (Doc. #413) (filed Sept. 14, 2010). See *supra* note 139 for a description of the costs included in the \$80,000 bond amount requested by plaintiffs.

142. See *supra* note 140 for details regarding the court's denial of Plaintiffs' motion for an appeal bond in *In re Lawnmower Engine Horsepower Mktg. & Sales Practices Litig.*, No. MDL 08-1999, 2010 WL 4630846 (E.D. Wis. Nov. 2, 2010).

143. See *Memorandum in Support of Plaintiffs' Motion for an Appeal Bond* (Doc. #457) (filed Sept. 29, 2010). Plaintiffs filed this motion asking the Court for an Order requiring five Objectors' attorneys that Plaintiffs alleged are professional objectors—counsel Mark Lindow, Steve A. Miller, Thomas Cox, Jr., J. Scott Kessinger and Clyde Padgett—to post an appeal bond in the amount of \$80,000 for each appeal. Plaintiffs argued that “although their clients have the unquestioned right to appeal the Court's Orders, the Court has the power to protect the parties and the class from the damage and delay serial objectors cause.” See *supra* note 139 for a description of the costs included in the \$80,000 bond amount requested by plaintiffs.

144. See *supra* note 140 for details regarding the court's denial of plaintiffs' motion for an appeal bond in *In re Lawnmower Engine Horsepower Mktg. & Sales Practices Litig.*, No. MDL 08-1999, 2010 WL 4630846 (E.D. Wis. Nov. 2, 2010).

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Appendix C

Class Action Objector Appeals in the Ninth Circuit Court of Appeals
January 1, 2008 – July 1, 2013

Class Action Objector Appeals in the Ninth Circuit Court of Appeals from Cases Filed Between January 1, 2008, and July 1, 2013¹⁴⁵

(not including appeals, if any, originating from the districts of Hawaii, Guam, and the Northern Mariana Islands)

108 Total Objector Appeals Filed

District Court	Appellate Court	Final Disposition of Objector Appeal(s)	FRAP 7 Cost Bond
<ul style="list-style-type: none"> • MDL/Consolidated Class Action • # Objections Submitted • Date Final Approval of Class Action Settlement Granted 	<ul style="list-style-type: none"> • # Appeals Filed by Objector(s) • Date Notice of Appeal(s) Filed • Identity of Filing Objector(s) & Attorney(s) (if any) 	<ul style="list-style-type: none"> • Date & Nature of Final Disposition • Indicate if Appeal is “pending” 	<ul style="list-style-type: none"> • Motion Filed • Disposition of Motion • Amount Imposed (if granted)
District of Alaska: 0 objector appeals			
District of Arizona: 3 objector appeals			
<p><i>In re LifeLock, Inc., Marketing and Sales Practices Litigation</i>, No. 2:08-md-1977 (D. Ariz. Oct. 17, 2008)</p> <ul style="list-style-type: none"> • MDL • 20 Objections Submitted¹⁴⁶ • 8/31/2010: Order and Final Judgment granting (1) joint motion for final approval of class action settlement ; and (2) motion for attorneys’ fees, expenses and incentive fees¹⁴⁷ 	<p>3 Appeals Filed:</p> <ul style="list-style-type: none"> • 9/24/2010: Objector Billy Daniels – filed by Darrell Palmer/Law Offices of Darrell Palmer (Solana Beach, CA) • 9/24/2010: Objector James E. Pentz – filed by John J. Pentz/ Class Action Fairness Group (Maynard, MA) • 9/19/2011: Objectors Kris Klinge and Tracey Cox Klinge – filed by Thomas L. Cox, Jr./The Cox Firm (Dallas, TX) 	<ul style="list-style-type: none"> • 1/06/2011: Appeal No. 10-17177—voluntarily dismissed pursuant to Objector’s FRAP 42(b) motion¹⁴⁸ • 1/05/2011: Appeal No. 10-17318—voluntarily dismissed pursuant to Objector’s FRAP 42(b) motion¹⁴⁹ • 12/30/2010: Appeal No. 10-17180—voluntarily dismissed pursuant to Objector’s FRAP 42(b) motion¹⁵⁰ 	<ul style="list-style-type: none"> • No motion for cost bond • No motion for cost bond • No motion for cost bond
Central District of California: 12 objector appeals			
<p><i>Munoz v. J.C. Penny Corp., Inc.</i>, No. 2:09-cv-00833 (C.D. Cal. Feb. 3, 2009)</p> <ul style="list-style-type: none"> • 2 Objections Submitted¹⁵¹ • 9/22/2010: Final Judgment and Order of Dismissal with prejudice granting final approval of the settlement agreement and awarding attorneys’ fees and costs.¹⁵² 	<p>1 Appeal Filed:</p> <ul style="list-style-type: none"> • 10/22/2010: Objector Maria Fernandez – filed by attorney David M. deRubertis/The deRubertis Law Firm, APC (Studio City, CA) 	<ul style="list-style-type: none"> • 12/20/2010: Appeal No. 10-56678—voluntarily dismissed pursuant to Objector’s FRAP 42(b) motion¹⁵³ 	<ul style="list-style-type: none"> • No motion for cost bond
<p><i>Frederick v. FIA Card Services, N.A.</i>, No. 2:09-cv-03419 (C.D. Cal. May 14, 2009).</p> <ul style="list-style-type: none"> • 3 Objections Submitted¹⁵⁴ • 8/25/2011: Final Judgment and Order of Dismissal with prejudice; Amended Order granting final approval of class settlement and awarding attorney fees and costs and incentive awards.¹⁵⁵ 	<p>2 Appeals Filed:</p> <ul style="list-style-type: none"> • 9/14/2011: Objector Robert J. Gaudet – filed <i>pro se</i> – 8/7/2012: notice of appearance entered by Michael S. Brown/Law Office of Michael S. Brown LLC (Renton, WA) – notice of appeal amended to include Court’s 12/5/2011 FRAP 7 Bond Order; Court’s 4/12/2012 Order refusing to accept late payment of bond; and 5/21/2012 Order denying Objector’s motion for reconsideration 	<ul style="list-style-type: none"> • 09/14/2012: Appeal No. 11-56609—voluntarily dismissed pursuant to Objector’s FRAP 42(b) motion¹⁵⁶ 	<ul style="list-style-type: none"> • 11/7/2011: Plaintiffs asked Court to order Objector Gaudet to post an appellate cost bond of \$20,000¹⁵⁸ • 12/5/2011: court ordered that Objector Gaudet’s right to appeal was conditioned upon his posting a \$1,000 appellate bond within 30 days¹⁵⁹

Class Action Objector Appeals in the Ninth Circuit Court of Appeals from Cases Filed Between January 1, 2008, and July 1, 2013¹⁴⁵

(not including appeals, if any, originating from the districts of Hawaii, Guam, and the Northern Mariana Islands)

108 Total Objector Appeals Filed

District Court	Appellate Court	Final Disposition of Objector Appeal(s)	FRAP 7 Cost Bond
<ul style="list-style-type: none"> • MDL/Consolidated Class Action • # Objections Submitted • Date Final Approval of Class Action Settlement Granted 	<ul style="list-style-type: none"> • # Appeals Filed by Objector(s) • Date Notice of Appeal(s) Filed • Identity of Filing Objector(s) & Attorney(s) (if any) 	<ul style="list-style-type: none"> • Date & Nature of Final Disposition • Indicate if Appeal is “pending” 	<ul style="list-style-type: none"> • Motion Filed • Disposition of Motion • Amount Imposed (if granted)
	<ul style="list-style-type: none"> • 9/22/2011: Objectors Karen Chandler and Nikki Johnson <ul style="list-style-type: none"> – filed <i>pro se</i> – 10/12/2011: notice of appearance entered by Thomas L. Cox/The Cox Firm (Dallas, TX) for Appellants Chandler and Johnson 	<ul style="list-style-type: none"> • 11/8/2011: Appeal No. 11-56668—voluntarily dismissed pursuant to Objector’s FRAP 42(b) motion¹⁵⁷ 	<ul style="list-style-type: none"> • Appeal No. 11-56668 dismissed prior to Plaintiffs’ cost bond motion
<p><i>Fairchild v. AOL, LLC</i>, No. 2:09-cv-03568 (C.D. Cal. May 19, 2009)</p> <ul style="list-style-type: none"> • Consolidated class action • 2 Objections Submitted¹⁶⁰ • 12/31/2009: Order and Final Judgment granting motion by settlement class plaintiffs for final approval of class action settlement¹⁶¹ • 1/4/2010: Order granting motion for attorney fees¹⁶² 	<p>1 Appeal Filed:</p> <ul style="list-style-type: none"> • 1/26/2010: Objector Darren McKinney <ul style="list-style-type: none"> – filed by Theodore H. Frank/ Center for Class Action Fairness (Washington, DC) 	<ul style="list-style-type: none"> • 9/20/2012: Appeal No. 10-55129—Judgment of the district court reversed in part, affirmed in part, and remanded per published opinion¹⁶³ 	<ul style="list-style-type: none"> • No motion for cost bond
<p><i>Stern v. Singular Wireless Service</i>, No. 8:09-cv-01112 (C.D. Cal. Dec. 15, 2009)</p> <ul style="list-style-type: none"> • Consolidated Class Action¹⁶⁴ • 9 Objections Submitted¹⁶⁵ • 11/22/2010: Order granting (1) final approval to the UCC settlement and entering final judgment; and (2) application for award of attorneys’ fees and reimbursement of expenses to class counsel, and incentive awards for class representatives¹⁶⁶ 	<p>2 Appeals Filed:¹⁶⁷</p> <ul style="list-style-type: none"> • 12/9/2010: Objectors Gene Hopkins and Marc Gambello <ul style="list-style-type: none"> – filed by Darrell Palmer/Law Offices of Darrell Palmer (Solana Beach, CA) • 12/23/2010: Objectors Karin Lynch <ul style="list-style-type: none"> – filed by J. Garrett Kendrick/ Kendrick & Nutley (Pasadena, CA); John W. Davis/Law Office of John W. Davis (San Diego, CA) 	<ul style="list-style-type: none"> • 6/19/2012: Appeal No. 10-56929—Judgment of the district court affirmed per unpublished opinion¹⁶⁸ • 6/19/2012: Appeal No. 10-57062—Judgment of the district court affirmed per unpublished opinion¹⁶⁹ 	<ul style="list-style-type: none"> • No motion for cost bond • No motion for cost bond
<p><i>Kambiz Batmanghelich v. Sirius XM Radio Inc.</i>, No. 2:09-cv-09190 (C.D. Cal. Sept. 25, 2009)</p> <ul style="list-style-type: none"> • 3 Objections Submitted¹⁷⁰ • 9/15/2011: Final Order and Judgment granting (1) Plaintiff’s motion for final approval of class action settlement; and (2) Plaintiff’s unopposed application for attorneys’ fees and costs, class representative’s service payment, and settlement administration expenses.¹⁷¹ 	<p>2 Appeals Filed:</p> <ul style="list-style-type: none"> • 10/10/2011: Objector Dave Denny <ul style="list-style-type: none"> – filed by John W. Davis/Law Office of John W. Davis San Diego, CA). • 10/13/2011: Objectors Michelle Melton and Edmund F. Bandas¹⁷² <ul style="list-style-type: none"> – filed by Darrell Palmer/Law Offices of Darrell Palmer (Solana Beach, CA). 	<ul style="list-style-type: none"> • 11/10/2011: Appeal No. 11-56756—voluntarily dismissed pursuant to Objector’s FRAP 42(b) motion¹⁷³ • 11/9/2011: Appeal No. 11-56776—voluntarily dismissed pursuant to Objector’s FRAP 42(b) motion¹⁷⁴ 	<ul style="list-style-type: none"> • No motion for cost bond • No motion for cost bond

Class Action Objector Appeals in the Ninth Circuit Court of Appeals from Cases Filed Between January 1, 2008, and July 1, 2013¹⁴⁵

(not including appeals, if any, originating from the districts of Hawaii, Guam, and the Northern Mariana Islands)

108 Total Objector Appeals Filed

District Court	Appellate Court	Final Disposition of Objector Appeal(s)	FRAP 7 Cost Bond
<ul style="list-style-type: none"> • MDL/Consolidated Class Action • # Objections Submitted • Date Final Approval of Class Action Settlement Granted 	<ul style="list-style-type: none"> • # Appeals Filed by Objector(s) • Date Notice of Appeal(s) Filed • Identity of Filing Objector(s) & Attorney(s) (if any) 	<ul style="list-style-type: none"> • Date & Nature of Final Disposition • Indicate if Appeal is “pending” 	<ul style="list-style-type: none"> • Motion Filed • Disposition of Motion • Amount Imposed (if granted)
<p><i>Milgram v. Chase Bank USA, N.A.</i>, No. 2:10-cv-00336 (C.D. Cal. Jan. 15, 2010)</p> <ul style="list-style-type: none"> • 8 Objections Submitted¹⁷⁵ • 11/22/2011: Final Approval Order granting final approval to the class action settlement, and awarding attorneys’ fees, costs, and class representative’s service award¹⁷⁶ 	<p>2 Appeals Filed:</p> <ul style="list-style-type: none"> • 12/22/2011: Objector Andrew Cesare – filed by Darrell Palmer/Law Offices of Darrell Palmer (Solana Beach, CA) • 1/13/2012: Objector Anthony Cannata – filed by Sam P. Cannata/Cannata Phillips LPA, LLC (Cleveland, OH) 	<ul style="list-style-type: none"> • 1/31/2012: Appeal No. 12-55002—voluntarily dismissed pursuant to FRAP 42(b) stipulation of the parties¹⁷⁷ • 2/9/2012: Appeal No. 12-55139—voluntarily dismissed pursuant to FRAP 42(b) stipulation of the parties¹⁷⁸ 	<ul style="list-style-type: none"> • No motion for cost bond • No motion for cost bond
<p><i>In re Toyota Motor Corporation Securities Litigation</i>, No. 2:10-cv-00922 (C.D. Cal. Feb. 8, 2010)</p> <ul style="list-style-type: none"> • Consolidated Class Action • 1 Objection Submitted¹⁷⁹ • 3/15/2013: Final Judgment and Order of Dismissal with Prejudice granting motion for final approval of the securities class action settlement; Order approving plan of allocation; and Order granting motion for attorneys’ fees and reimbursement of litigation expenses.¹⁸⁰ 	<p>1 Appeal Filed:</p> <ul style="list-style-type: none"> • 4/8/2013: Objector James J. Hayes – filed <i>pro se</i> 	<ul style="list-style-type: none"> • 5/3/2013: Appeal No. 13-55613—voluntarily dismissed pursuant to Objector’s FRAP 42(b) motion¹⁸¹ 	<ul style="list-style-type: none"> • No motion for cost bond
<p><i>Keller v. Gaspari Nutrition, Inc.</i>, No. 2:11-cv-06158 (C.D. Cal. July 26, 2011)</p> <ul style="list-style-type: none"> • 1 Objection Submitted¹⁸² • 3/20/2012: Order granting motion for final approval of the class action settlement, and motion for attorneys’ fees, costs and Plaintiff service award.¹⁸³ 	<p>1 Appeal Filed:</p> <ul style="list-style-type: none"> • 4/17/2012: Objector Bryan Anderson – filed <i>pro se</i> 	<ul style="list-style-type: none"> • 5/2/2012: Appeal No. 12-55737—voluntarily dismissed with prejudice pursuant to FRAP 42(b) stipulation of the parties¹⁸⁴ 	<ul style="list-style-type: none"> • No motion for cost bond
Eastern District of California: 0 objector appeals			

Class Action Objector Appeals in the Ninth Circuit Court of Appeals from Cases Filed Between January 1, 2008, and July 1, 2013¹⁴⁵

(not including appeals, if any, originating from the districts of Hawaii, Guam, and the Northern Mariana Islands)

108 Total Objector Appeals Filed

District Court	Appellate Court	Final Disposition of Objector Appeal(s)	FRAP 7 Cost Bond
<ul style="list-style-type: none"> • MDL/Consolidated Class Action • # Objections Submitted • Date Final Approval of Class Action Settlement Granted 	<ul style="list-style-type: none"> • # Appeals Filed by Objector(s) • Date Notice of Appeal(s) Filed • Identity of Filing Objector(s) & Attorney(s) (if any) 	<ul style="list-style-type: none"> • Date & Nature of Final Disposition • Indicate if Appeal is “pending” 	<ul style="list-style-type: none"> • Motion Filed • Disposition of Motion • Amount Imposed (if granted)
Northern District of California: 65 objector appeals			
<p><i>In re: Bextra and Celebrex Marketing Sales Practices and Product Liability Litigation</i>, MDL No. 1699, No. 3:05-md-01699 (N.D. Cal. Sept. 8, 2005)</p> <ul style="list-style-type: none"> • MDL • 5 Objections Submitted¹⁸⁵ • 9/28/2009: Order and Final Judgment granting motions for (1) final approval of the purchase claims class action settlement, and (2) attorney fees, reimbursement of expenses and compensation to named plaintiffs. • 10/09/2009: Second Revised Order and Final Judgment approving the settlement between purchase claims classes and Defendant Pfizer, Inc. and awarding of attorneys’ fees.¹⁸⁶ 	<p>2 Appeals Filed:</p> <ul style="list-style-type: none"> • 10/5/2009: Objectors Barbara Hurst and Diane Gibson <ul style="list-style-type: none"> – filed by Dennis D. Gibson/Gibson, McClure, Wallace & Daniels, LLP (Dallas, TX); Mary L. Needham/Law Offices of Mary L. Needham (San Rafael, CA) – 10/14/2009: Revised notice of appeal to include the 10/9/2009 Revised Order and Final Judgment • 10/27/2009: Objectors Janice Johnson and Wilma Thompson <ul style="list-style-type: none"> – filed by Michele Miller/McKague & Tong, LLP (San Francisco, CA); Jeffrey L. Weinstein/ Jeffrey L. Weinstein, P.C. (Athens, TX); Steve A. Miller/ Steve A. Miller, P.C. (Denver, CO) 	<ul style="list-style-type: none"> • 11/12/2009: Appeal No. 09-17284—voluntarily dismissed pursuant to FRAP 42(b) stipulation of the parties¹⁸⁷ • 11/12/2009: Appeal No. 09-17420—voluntarily dismissed pursuant to FRAP 42(b) stipulation of the parties¹⁸⁸ 	<ul style="list-style-type: none"> • No motion for cost bond • No motion for cost bond
<p><i>In re TFT-LCD (Flat Panel) Antitrust Litigation</i>, MDL No. 1827, No. 3:07-md-1827 (N.D. Cal. Apr. 20, 2007)</p> <ul style="list-style-type: none"> • MDL <p>Settlement #1: Settling Plaintiffs (Indirect Purchaser Plaintiffs and 8 Settling States) jointly agree to final settlement with Settling Defendants (7 of the 10 named defendants)</p> <ul style="list-style-type: none"> • 18 Objections Submitted¹⁸⁹ • 7/11/2012: Final Judgment of dismissal with prejudice and Order granting final approval of combined class, <i>parens patrie</i>, and governmental entity settlements.¹⁹⁰ 	<p>13 Total Appeals Filed</p> <p>Settlement #1—5 Appeals Filed:</p> <ul style="list-style-type: none"> • 8/6/2012: Objectors Johnny Kessel and Alison Paul <ul style="list-style-type: none"> – filed by Joseph Darrell Palmer/Law Offices of Darrell Palmer PC (Solano Beach, CA) • 8/8/2012: Objector Andrea Kane <ul style="list-style-type: none"> – filed by Grenville Pridham/Law Offices of Grenville Pridham (Tustin, CA) – 09/24/2012: notice of appearance in No. 12-16839 for Andrea Kane filed by Christopher V. Langone/Law Offices of Christopher Langone (Ithaca, NY) 	<ul style="list-style-type: none"> • Appeal No. 12-16830—pending¹⁹⁷ • 6/26/2013: Appeal No. 12-16839—dismissed for failure to prosecute¹⁹⁸ 	<ul style="list-style-type: none"> • No motion for cost bond • No motion for cost bond

Class Action Objector Appeals in the Ninth Circuit Court of Appeals from Cases Filed Between January 1, 2008, and July 1, 2013¹⁴⁵

(not including appeals, if any, originating from the districts of Hawaii, Guam, and the Northern Mariana Islands)

108 Total Objector Appeals Filed

District Court	Appellate Court	Final Disposition of Objector Appeal(s)	FRAP 7 Cost Bond
<ul style="list-style-type: none"> • MDL/Consolidated Class Action • # Objections Submitted • Date Final Approval of Class Action Settlement Granted 	<ul style="list-style-type: none"> • # Appeals Filed by Objector(s) • Date Notice of Appeal(s) Filed • Identity of Filing Objector(s) & Attorney(s) (if any) 	<ul style="list-style-type: none"> • Date & Nature of Final Disposition • Indicate if Appeal is “pending” 	<ul style="list-style-type: none"> • Motion Filed • Disposition of Motion • Amount Imposed (if granted)
<p>Settlement #2: Settling Plaintiffs (Indirect Purchaser Plaintiffs and 8 Settling States) jointly agree to final settlement with Settling Defendants (remaining 3 of the 10 original named defendants)</p> <ul style="list-style-type: none"> • 11 Objections Submitted¹⁹¹ • 3/29/2013: Order Granting Final Approval Of Combined Class, <i>Parens Patriae</i>, And Governmental Entity Settlements With AUO, LG Display, And Toshiba Defendants; Final 	<p>Settlement #2—8 Appeals Filed:</p> <ul style="list-style-type: none"> • 8/10/2012: Objector Ira Conner Erwin <ul style="list-style-type: none"> – filed <i>pro se</i> – 9/10/2012: notice of appearance in Appeal No. 12-16780 filed on behalf of Appellant Ira Erwin by Christopher Andreas Bandas/ Bandas Law Firm, P.C. (Corpus Christi, TX) – 4/29/2013: amended notice of appeal adding relevant orders re April 2013 Settlement #2 (see below) • 8/10/2012: Objector Luis Mario Santana <ul style="list-style-type: none"> – filed <i>pro se</i> – 9/10/2012: notice of appearance in Appeal No. 12-16782 filed on behalf of Appellant Luis Santano by Christopher Andreas Bandas/ Bandas Law Firm, P.C. (Corpus Christi, TX) – 4/29/2013: amended notice of appeal adding relevant orders re April 2013 Settlement #2 (see below) • 8/10/2012: Objector Stefan Rest <ul style="list-style-type: none"> – filed <i>pro se</i> – 9/10/2012: notice of appearance in Appeal No. 12-16788 filed on behalf of Appellant Stefan Rest by Christopher Andreas Bandas/ Bandas Law Firm, P.C. (Corpus Christi, TX) – 4/29/2013: amended notice of appeal adding relevant orders re April 2013 Settlement #2 (see below) • 4/26/2013: Objectors Alison Paul, Johnny Kessel and Leveta Chesser <ul style="list-style-type: none"> – filed by Joseph Darrell Palmer/Law Offices of Darrell Palmer PC (Solano Beach, CA) – 2/22/2013: Objectors Paul and Chesser and their counsel Palmer appealed from the Order of Contempt entered against them on 2/19/2013¹⁹⁶ 	<ul style="list-style-type: none"> • Appeal No. 12-16780—pending¹⁹⁹ • Appeal No. 12-16782—pending²⁰⁰ • Appeal No. 12-16788—pending²⁰¹ • 7/12/2013: Appeal No. 13-15929—dismissed for failure to prosecute²⁰² 	<ul style="list-style-type: none"> • No motion for cost bond • No motion for cost bond • No motion for cost bond • No motion for cost bond

Class Action Objector Appeals in the Ninth Circuit Court of Appeals from Cases Filed Between January 1, 2008, and July 1, 2013¹⁴⁵

(not including appeals, if any, originating from the districts of Hawaii, Guam, and the Northern Mariana Islands)

108 Total Objector Appeals Filed

District Court	Appellate Court	Final Disposition of Objector Appeal(s)	FRAP 7 Cost Bond
<ul style="list-style-type: none"> • MDL/Consolidated Class Action • # Objections Submitted • Date Final Approval of Class Action Settlement Granted 	<ul style="list-style-type: none"> • # Appeals Filed by Objector(s) • Date Notice of Appeal(s) Filed • Identity of Filing Objector(s) & Attorney(s) (if any) 	<ul style="list-style-type: none"> • Date & Nature of Final Disposition • Indicate if Appeal is “pending” 	<ul style="list-style-type: none"> • Motion Filed • Disposition of Motion • Amount Imposed (if granted)
<p>Judgment of Dismissal With Prejudice; Award of Attorneys Fees, Expenses, and Incentive Awards¹⁹²</p> <ul style="list-style-type: none"> • 4/1/2013: Amended Order¹⁹³ • 4/1/2013: Final Judgment Re Indirect Purchaser Plaintiff/State Entity Class Actions¹⁹⁴ • 4/3/2013: Second Amended Order¹⁹⁵ 	<ul style="list-style-type: none"> • 4/27/2013: Objector CBC, Inc. <ul style="list-style-type: none"> – filed by Micah R. Jacobs/Jacobs Law Group SF (San Francisco, CA); Brian M. Torres/ Sheftall & Torres, P.A. (Miami, FL) – 8/5/2013: notice of appearance on behalf of Appellant CBC, Inc. filed by John G. Crabtree/Crabtree & Associates, P.A. (Key Biscayne, FL) • 4/27/2013: Objector Margo Bradley <ul style="list-style-type: none"> – filed by Micah R. Jacobs/Jacobs Law Group SF (San Francisco, CA); Brian M. Torres/ Sheftall & Torres, P.A. (Miami, FL) – 8/5/2013: notice of appearance on behalf of Appellant Bradley filed by John G. Crabtree/Crabtree & Associates, P.A. (Key Biscayne, FL) • 4/27/2013: Objector Alex Martinez <ul style="list-style-type: none"> – filed by Micah R. Jacobs/Jacobs Law Group SF (San Francisco, CA); Brian M. Torres/ Sheftall & Torres, P.A. (Miami, FL) – 8/5/2013: notice of appearance on behalf of Appellant Bradley filed by John G. Crabtree/Crabtree & Associates, P.A. (Key Biscayne, FL) • 4/29/2013: Objectors Barbara Cochran, Kevin Luke, Geri Maxwell, Maria Marshall, Wayne Marshall and Gerri Marshall <ul style="list-style-type: none"> – filed by John J. Pentz/ Class Action Fairness Group (Maynard, MA) (for Objectors Cochran and Luke) – filed by George W. Cochran/ Cochran & Cochran (Louisville, KY) (for Objectors Maxwell, Maria Marshall, Wayne Marshall and Gerri Marshall) • 4/29/2013: Objectors Shannon Cashion, W. Christopher McDonough, Kelly Kress, and Mark Schulte <ul style="list-style-type: none"> – filed by Steve A. Miller/Steve A. Miller, PC (Denver, CO) – Jonathan E Fortman/Law Office of Jonathan E. Fortman, LLC (Ellisville, 	<ul style="list-style-type: none"> • Appeal No. 13-15920—pending • Appeal No. 13-15917—pending • Appeal No. 13-15916—pending • Appeal No. 13-15930—pending • Appeal No. 13-15934—pending 	<ul style="list-style-type: none"> • No motion for cost bond • No motion for cost bond • No motion for cost bond • No motion for cost bond • No motion for cost bond

Class Action Objector Appeals in the Ninth Circuit Court of Appeals from Cases Filed Between January 1, 2008, and July 1, 2013¹⁴⁵

(not including appeals, if any, originating from the districts of Hawaii, Guam, and the Northern Mariana Islands)

108 Total Objector Appeals Filed

District Court	Appellate Court	Final Disposition of Objector Appeal(s)	FRAP 7 Cost Bond
<ul style="list-style-type: none"> • MDL/Consolidated Class Action • # Objections Submitted • Date Final Approval of Class Action Settlement Granted 	<ul style="list-style-type: none"> • # Appeals Filed by Objector(s) • Date Notice of Appeal(s) Filed • Identity of Filing Objector(s) & Attorney(s) (if any) 	<ul style="list-style-type: none"> • Date & Nature of Final Disposition • Indicate if Appeal is “pending” 	<ul style="list-style-type: none"> • Motion Filed • Disposition of Motion • Amount Imposed (if granted)
	<p>MO) (listed for Objector McDonough on appeal)</p> <ul style="list-style-type: none"> – John C Kress/The Kress Law Firm, LLC(St. Louis, MO) (listed for Objector Kress on appeal) <ul style="list-style-type: none"> • 5/7/2013: Objector Julius Dunmore – filed by Paul S. Rothstein/ (Gainesville, FL) • 6/13/2013: Objector Keena Dale – filed by N. Albert Bacharach, Jr./Law Offices of N. Albert Bacharach, Jr.(Gainesville, FL) 	<ul style="list-style-type: none"> • Appeal No. 13-15915—pending • Appeal No. 13-16216—pending 	<ul style="list-style-type: none"> • No motion for cost bond • No motion for cost bond
<p><i>In re: Cathode Ray Tube (CRT) Antitrust Litigation, MDL No. 1917, No. 3:07-cv-05944 (N.D. Cal. Nov. 26, 2007)</i></p> <ul style="list-style-type: none"> • MDL • 1 Objection Submitted²⁰³ • 3/22/2012: Order and Final Judgment of Dismissal with Prejudice granting Indirect Purchaser Plaintiffs’ motion for final approval of class action settlement with Chunghwa Picture Tubes, Ltd.²⁰⁴ 	<p>1 Appeal Filed:</p> <ul style="list-style-type: none"> • 3/23/2012: Objector Sean Hall – filed <i>pro se</i> – on 6/14/2012, attorney Joseph Darrell Palmer/Law Offices of Darrell Palmer (Solana Beach, CA), filed a notice of appearance with the Clerk of the Ninth Circuit as counsel on Mr. Hull’s behalf²⁰⁵ 	<ul style="list-style-type: none"> • 7/30/2012: Appeal No. 12-17602—voluntarily dismissed pursuant to Objector’s FRAP 42(b) motion²⁰⁶ 	<ul style="list-style-type: none"> • No motion for cost bond
<p><i>In re Maxim Integrated Products, Inc., Securities Litigation, No. 5:08-cv-00832 (N.D. Cal. Feb. 6, 2008)</i></p> <ul style="list-style-type: none"> • Consolidated Class Action • 1 Objection Submitted²⁰⁷ • 9/29/2010: Final Judgment and Order of Dismissal granting motions for final approval of the securities class action settlement and approving plan of allocation.²⁰⁸ • 11/1/2010: Order granting motion for attorney fees and reimbursement of litigation expenses.²⁰⁹ 	<p>1 Appeal Filed:</p> <ul style="list-style-type: none"> • 12/1/2010: Objector National Automatic Sprinkler Industry Pension Fund – filed by Irwin B. Schwartz/BLA Schwartz, PC (Los Angeles, CA) 	<ul style="list-style-type: none"> • 1/4/2011: Appeal No. 10-17756—voluntarily dismissed pursuant to Objector’s FRAP 42(b) motion²¹⁰ 	<ul style="list-style-type: none"> • No motion for cost bond

Class Action Objector Appeals in the Ninth Circuit Court of Appeals from Cases Filed Between January 1, 2008, and July 1, 2013¹⁴⁵

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108 Total Objector Appeals Filed

District Court	Appellate Court	Final Disposition of Objector Appeal(s)	FRAP 7 Cost Bond
<ul style="list-style-type: none"> • MDL/Consolidated Class Action • # Objections Submitted • Date Final Approval of Class Action Settlement Granted 	<ul style="list-style-type: none"> • # Appeals Filed by Objector(s) • Date Notice of Appeal(s) Filed • Identity of Filing Objector(s) & Attorney(s) (if any) 	<ul style="list-style-type: none"> • Date & Nature of Final Disposition • Indicate if Appeal is “pending” 	<ul style="list-style-type: none"> • Motion Filed • Disposition of Motion • Amount Imposed (if granted)
<p><i>Pecover v. Electronic Arts, Inc.</i>, No. 4:08-cv-2820 (N.D. Cal. June 5, 2008)</p> <ul style="list-style-type: none"> • 9 Objections Submitted²¹¹ • 5/30/2013: Final Judgment and Order of dismissal granting final approval of class action settlement.²¹² • 6/19/2013: Order awarding attorneys’ fees.²¹³ 	<p>1 Appeal Filed:</p> <ul style="list-style-type: none"> • 6/28/2013: Objector Aaron Miller – filed by Steve A. Miller/ Steve A. Miller, PC (Denver, CO) 	<ul style="list-style-type: none"> • 8/16/2013: Appeal No. 13-16336—voluntarily dismissed pursuant to FRAP 42(b) stipulation of the parties²¹⁴ 	<ul style="list-style-type: none"> • No motion for cost bond
<p><i>Lane v. Facebook</i>, No. 5:08-cv-03845 (N.D. Cal. Aug. 12, 2008)</p> <ul style="list-style-type: none"> • 4 Objections Submitted²¹⁵ • 3/17/2010: Order granting motion for final approval of class action settlement with Defendant Facebook.²¹⁶ • 5/24/2010: Final Judgment and Order of Dismissal approving settlement and motion for attorney fees and costs.²¹⁷ 	<p>2 Appeals Filed:</p> <ul style="list-style-type: none"> • 6/22/2010: Objector Ginger McCall – filed by Gregory A. Beck/Public Citizen Litigation Group (Washington, DC); Mark A. Chavez/Chavez & Gertler LLP (Mill Valley, CA); Philip S. Friedman/Friedman Law Offices, PLLC (Washington, DC); Michael Page/Williams & Connolly LLP (Washington, DC) (post appeal) • 6/25/2010: Objectors Megan Marek and Benjamin Trotter – filed by John W. Davis/Law Office of John W. Davis (San Diego, CA); Steven Helfand/Helfand Law Offices (San Francisco, CA) (post appeal) 	<ul style="list-style-type: none"> • 9/20/2012: Appeal No. 10-16380—Judgment of the district court affirmed per published opinion²¹⁸ • 9/20/2012: Appeal No. 10-16398—Judgment of the district court affirmed per published opinion²¹⁹ 	<ul style="list-style-type: none"> • No motion for cost bond • No motion for cost bond
<p><i>The NVIDIA GPU Litigation</i>, No. 5:08-cv-04312 (N.D. Cal. Sept. 12, 2008)</p> <ul style="list-style-type: none"> • Consolidated Class Action • 50 Objections Submitted²²⁰ • 12/20/2010: Final Judgment granting (1) settlement class plaintiffs/owners of class computers motions for final approval of class action settlement with Nvidia Corp., and (2) motion for attorney fees, expenses and reimbursements for plaintiffs.²²¹ 	<p>5 Appeals Filed:²²²</p> <ul style="list-style-type: none"> • 1/18/2011: Hewlett Packard Consumer Objectors – filed by Michael F. Ram/Ram & Olson LLP (San Francisco, CA); Richard B. Rosenthal/The Law Offices of Richard B. Rosenthal, P.A. (San Rafael, CA); Marc H. Edelson/Edelson & Associates (Doylestown, PA) • 1/18/2011: Objector Frank Barbara – filed by Darrell Palmer/Law Offices of Darrell Palmer (Solano Beach, CA) 	<ul style="list-style-type: none"> • 3/28/2012: Appeal No. 11-15182—voluntarily dismissed pursuant to Objector’s FRAP 42(b) motion²²³ • Appeal No. 11-15186—pending²²⁴ 	<ul style="list-style-type: none"> • No motion for cost bond • No motion for cost bond

Class Action Objector Appeals in the Ninth Circuit Court of Appeals from Cases Filed Between January 1, 2008, and July 1, 2013¹⁴⁵

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108 Total Objector Appeals Filed

District Court <ul style="list-style-type: none"> • MDL/Consolidated Class Action • # Objections Submitted • Date Final Approval of Class Action Settlement Granted 	Appellate Court <ul style="list-style-type: none"> • # Appeals Filed by Objector(s) • Date Notice of Appeal(s) Filed • Identity of Filing Objector(s) & Attorney(s) (if any) 	Final Disposition of Objector Appeal(s) <ul style="list-style-type: none"> • Date & Nature of Final Disposition • Indicate if Appeal is “pending” 	FRAP 7 Cost Bond <ul style="list-style-type: none"> • Motion Filed • Disposition of Motion • Amount Imposed (if granted)
	<ul style="list-style-type: none"> • 1/18/2011: Objector Steven F. Helfand – filed by Marcus Daniel Merchasin/The Law Office of Marcus Daniel Merchasin (San Francisco, CA); John W. Davis/Law Office of John W. Davis (San Diego, CA) (post appeal) • 1/19/2011: Objector Chase A. Thompson – filed by Steve A. Miller/Steve A. Miller, PC (Denver, CO) • 1/19/2011: Objector Nikki Johnson – filed <i>pro se</i> – 01/31/2011: notice of appearance in No. 11-15192 for Nikki Johnson filed by Thomas L. Cox, Jr./The Cox Firm (Dallas, TX) 	<ul style="list-style-type: none"> • Appeal No. 11-15190—pending²²⁵ • Appeal No. 11-15191—pending²²⁶ • Appeal No. 11-15192—pending²²⁷ 	<ul style="list-style-type: none"> • No motion for cost bond • No motion for cost bond • No motion for cost bond
<p><i>Ross v. Trex Company, Inc.</i>, No. 3:09-cv-00670 (N.D. Cal. Feb. 13, 2009)²²⁸</p> <ul style="list-style-type: none"> • Consolidated Class Action • 18 Objections Submitted²²⁹ • 3/16/2010: Order granting (1) motion for final approval of the class action settlement of the surface flaking claims asserted by plaintiffs in the <i>Ross</i> action (09-cv-00670) against Defendant Trex Company, Inc.; (2) approval of requested attorneys’ fees and expenses to class counsel, and separate incentive awards to named plaintiffs.²³⁰ • 4/7/2010: Final Order approving class action settlement of <i>Ross</i> plaintiffs’ surface flaking claims, overruling all objections, and dismissing released claims with prejudice.²³¹ 	<p>1 Appeal Filed:</p> <ul style="list-style-type: none"> • 4/14/2010: Objectors Mark Okano and Sharon Ding – filed by Steve W. Berman/Hagens Berman Sobol Shapiro LLP (Seattle, WA) 	<ul style="list-style-type: none"> • 7/30/2010: Appeal No. 10-15871—voluntarily dismissed pursuant to FRAP 42(b) stipulation of the parties²³² 	<ul style="list-style-type: none"> • No motion for cost bond

Class Action Objector Appeals in the Ninth Circuit Court of Appeals from Cases Filed Between January 1, 2008, and July 1, 2013¹⁴⁵

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District Court	Appellate Court	Final Disposition of Objector Appeal(s)	FRAP 7 Cost Bond
<ul style="list-style-type: none"> • MDL/Consolidated Class Action • # Objections Submitted • Date Final Approval of Class Action Settlement Granted 	<ul style="list-style-type: none"> • # Appeals Filed by Objector(s) • Date Notice of Appeal(s) Filed • Identity of Filing Objector(s) & Attorney(s) (if any) 	<ul style="list-style-type: none"> • Date & Nature of Final Disposition • Indicate if Appeal is “pending” 	<ul style="list-style-type: none"> • Motion Filed • Disposition of Motion • Amount Imposed (if granted)
<p><i>In re Wachovia Corporation “Pick-A-Payment” Mortgage Marketing and Sales Practices Litigation</i>, No. 5:09-md-02015 (N.D. Cal. Mar. 13, 2009)</p> <ul style="list-style-type: none"> • MDL • 36 Objections Submitted²³³ • 5/17/2011: Order and Judgment granting settlement class Plaintiffs’ (1) motion for final approval of class action settlement with Defendant Wachovia Corporation; and (2) motion for attorneys’ fees and costs and service payments to class representatives.²³⁴ 	<p>3 Appeals Filed:²³⁵</p> <ul style="list-style-type: none"> • 6/10/2011: Objector Marcella M. Rose – filed by Lawrence J. Salisbury/ Majors & Fox (San Diego, CA); Malinda R. Dickenson/Law Office of Malinda R. Dickenson (San Diego, CA) • 6/13/2011: Objectors Nathaniel C. Dayton, Stephen B. Fine, and Ariel Brookman Fine – filed by William Breck/ The Public Interest Law Firm, Inc. (Reno, NV); Adriana Dominguez/ Dominguez Law Office (Costa Mesa, CA) • 6/15/2011: Objectors Robert E Flores, Sharon L Flores, James Rudolph, and Donald Smith – filed by attorney J. Darrell Palmer/ Law Offices of Darrell Palmer (Solana Beach, CA) 	<ul style="list-style-type: none"> • 8/30/2011: Appeal No. 11-16507—voluntarily dismissed pursuant to Objector’s FRAP 42(b) motion²³⁶ • 6/30/2011: Appeal No. 11-16510—voluntarily dismissed pursuant to FRAP 42(b) stipulation of the parties²³⁷ • 7/21/2011: Appeal No. 11-16513—voluntarily dismissed pursuant to FRAP 42(b) stipulation of the parties²³⁸ 	<ul style="list-style-type: none"> • 7/1/2011: Plaintiffs asked the court to order Objector Rose to post an appellate cost bond of \$116,250²³⁹ • 8/18/2011: court ordered Objector Rose to post a \$15,000 bond by 9/26/2011²⁴⁰ • Appeal No. 11-16510 dismissed prior to Plaintiffs’ appellate cost bond motion • 7/1/2011: Plaintiffs filed a motion asking the court to order Objectors Flores, Rudolph and Smith to post an appellate cost bond of \$116,250²⁴¹ • Appeal No. 11-16513 dismissed prior to court’s ruling on plaintiffs’ cost bond motion
<p><i>Fiori v. Dell, Inc.</i>, No. 5:09-cv-01518 (N.D. Cal. Apr. 7, 2009)</p> <ul style="list-style-type: none"> • Consolidated Class Action • 3 Objections Submitted²⁴² • 4/1/2011: Final Judgment and Order granting final approval of class action settlement.²⁴³ • 7/6/2011: Order granting motion for attorney fees, costs, and incentive awards.²⁴⁴ 	<p>1 Appeal Filed:</p> <ul style="list-style-type: none"> • 4/26/2011: Objectors Margaret Munoz and Cery Perle – filed by J. Darrell Palmer/ Law Offices of Darrell Palmer (Solana Beach, CA) – 8/5/2011: appeal amended to add the 07/06/2011 Order granting class counsel’s motion for attorney fees 	<ul style="list-style-type: none"> • 9/7/2011: Appeal No. 11-16109—voluntarily dismissed pursuant to FRAP 42(b) stipulation of the parties²⁴⁵ 	<ul style="list-style-type: none"> • No motion for cost bond

Class Action Objector Appeals in the Ninth Circuit Court of Appeals from Cases Filed Between January 1, 2008, and July 1, 2013¹⁴⁵

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108 Total Objector Appeals Filed

District Court <ul style="list-style-type: none"> • MDL/Consolidated Class Action • # Objections Submitted • Date Final Approval of Class Action Settlement Granted 	Appellate Court <ul style="list-style-type: none"> • # Appeals Filed by Objector(s) • Date Notice of Appeal(s) Filed • Identity of Filing Objector(s) & Attorney(s) (if any) 	Final Disposition of Objector Appeal(s) <ul style="list-style-type: none"> • Date & Nature of Final Disposition • Indicate if Appeal is “pending” 	FRAP 7 Cost Bond <ul style="list-style-type: none"> • Motion Filed • Disposition of Motion • Amount Imposed (if granted)
<p><i>In re: Online DVD Rental Antitrust Litigation</i>, No. 4:09-md-02029 (N.D. Cal. Apr. 13, 2009)</p> <ul style="list-style-type: none"> • MDL • 30 Objections Submitted²⁴⁶ • 3/29/2012: Order and Final Judgment granting: (1) motion for final approval of class action settlement between settlement class Plaintiffs and Wal-Mart Stores, Inc. and Walmart.com USA LLC; and (2) class counsel’s motion for attorneys’ fees, reimbursement of expenses, and payments to class representatives.²⁴⁷ 	<p>6 Appeals Filed:²⁴⁸</p> <ul style="list-style-type: none"> • 3/30/2012: Objector Theodore H. Frank – filed <i>pro se</i> – Mr. Frank is an attorney listing the address of the Center for Class Action Fairness on his notice of appeal • 4/17/2012: Objector Jon M. Zimmerman – filed by Joshua R. Furman/Joshua R. Furman Law Corp. (Sherman Oaks, CA) • 4/23/2012: Objector Edmund F. Bandas – filed <i>pro se</i> – 05/22/2012: notice of appearance in Appeal No. 12-15957 filed on behalf of Appellant Edmund F. Bandas by Christopher Andreas Bandas/ Bandas Law Firm, P.C. (Corpus Christi, TX) • 4/27/2012: Objector Maria Cope – filed by Joseph Darrell Palmer/ Law Offices of Darrell Palmer (Solana Beach, CA) • 4/30/2012: Objector John Sullivan – filed by Mark Lavery/The Lavery Law Firm (Des Plaines, IL); Christopher V. Langone/ Law Office of Christopher Langone (Ithaca, NY); Grenville Thomas Pridham/Law Office of Grenville Pridham (Tustin, CA) • 4/30/2012: Objector Tracey Klinge Cox – filed by Gary W. Sibley & Tracey Klinge Cox/The Sibley Firm (Dallas, TX) – 5/18/2012: notice of appearance in Appeal No. 12-16038 filed on behalf of Appellant Tracey Klinge Cox by Attorney Gary W. Sibley/The Sibley Firm (Dallas, TX) 	<ul style="list-style-type: none"> • Appeal No. 12-15705—pending • Appeal No. 12-15889—pending • Appeal No. 12-15957—pending • Appeal No. 12-15996—pending • Appeal No. 12-16010—pending • Appeal No. 12-16038—pending 	<ul style="list-style-type: none"> • No motion for cost bond • No motion for cost bond • No motion for cost bond • No motion for cost bond • No motion for cost bond • No motion for cost bond

Class Action Objector Appeals in the Ninth Circuit Court of Appeals from Cases Filed Between January 1, 2008, and July 1, 2013¹⁴⁵

(not including appeals, if any, originating from the districts of Hawaii, Guam, and the Northern Mariana Islands)

108 Total Objector Appeals Filed

District Court <ul style="list-style-type: none"> • MDL/Consolidated Class Action • # Objections Submitted • Date Final Approval of Class Action Settlement Granted 	Appellate Court <ul style="list-style-type: none"> • # Appeals Filed by Objector(s) • Date Notice of Appeal(s) Filed • Identity of Filing Objector(s) & Attorney(s) (if any) 	Final Disposition of Objector Appeal(s) <ul style="list-style-type: none"> • Date & Nature of Final Disposition • Indicate if Appeal is “pending” 	FRAP 7 Cost Bond <ul style="list-style-type: none"> • Motion Filed • Disposition of Motion • Amount Imposed (if granted)
<p><i>Yingling v. eBay, Inc.</i>, No. 5:09-cv-01733 (N.D. Cal. Apr. 21, 2009)</p> <ul style="list-style-type: none"> • 2 Objections Submitted²⁴⁹ • 3/31/2011: Final Order and Judgment granting (1) Plaintiffs’ motion for final approval of class action settlement with Defendant eBay; and (2) motion for attorney fees and expenses and class representative incentive compensation awards.²⁵⁰ 	<p>1 Appeal Filed:</p> <ul style="list-style-type: none"> • 4/4/2011: Objector Joseph Balla <ul style="list-style-type: none"> – filed by Joseph Darrell Palmer/ Law Offices of Darrell Palmer (Solana Beach, CA) – 8/5/2011: filed an amended notice of appeal to appeal from the courts’ July 5, 2011 Order requiring Objector Balla to post a \$5,000 appeal bond 	<ul style="list-style-type: none"> • 8/12/2011:²⁵¹ Appeal No. 11-16033—voluntarily dismissed pursuant to FRAP 42(b) stipulation of the parties²⁵² 	<ul style="list-style-type: none"> • 4/25/2011: Plaintiffs motioned the court to order Objector Balla to post a \$5,000 appeal bond²⁵³ • 7/5/2011: court orders Objector Balla to post an appeal bond in the amount of \$5,000 on or before July 25, 2011²⁵⁴
<p><i>Embry v. ACER America Corp.</i>, No. 5:09-cv-01808 (N.D. Cal. Apr. 24, 2009)</p> <ul style="list-style-type: none"> • 2 Objections Submitted²⁵⁵ • 2/14/2012: Order granting settlement class plaintiffs (1) motion for final approval of the class action settlement; and (2) motion for attorneys fees, costs and incentive to named plaintiff.²⁵⁶ 	<p>2 Appeals Filed:</p> <ul style="list-style-type: none"> • 3/12/2012: Objector Christopher Bandas <ul style="list-style-type: none"> – filed by Joseph Darrell Palmer/ Law Offices of Darrell Palmer (Solana Beach, CA) – Appeal No. 12-15555 was dismissed on 04/18/2012 for failure to pay fees, and reinstated on 6/25/12 after Objector Bandas’ payment of fees.²⁵⁷ – Notice of Appeal amended on 8/6/2012 (to include July 31, 2012 Bond Order) & 9/6/2012 (to include Aug. 31, 2012 Contempt Order)²⁵⁸ • 3/14/2012: Objector Sam P. Cannata²⁵⁹ <ul style="list-style-type: none"> – filed <i>pro se</i> 	<ul style="list-style-type: none"> • 10/2/2012: Appeal No. 12-15555—voluntarily dismissed pursuant to Objector’s FRAP 42(b) motion²⁶⁰ • 6/15/2012: Appeal No. 12-15633—voluntarily dismissed pursuant to Objector’s FRAP 42(b) motion²⁶¹ 	<ul style="list-style-type: none"> • 7/11/2012: After the Ninth Circuit reinstated Bandas’ appeal on June 25, 2012, Plaintiffs filed a motion for reconsideration requesting that the Court’s June 5, 2012 Order to post a \$70,650 appellate bond be applied, jointly and severally, to Bandas and his attorney Darrell Palmer.²⁶² • 7/31/2012: court ordered Objector Bandas to post an appellate bond of \$70,650 by Aug. 6, 2012, or file a notice of dismissal of his appeal²⁶³ • 3/23/2012 & 05/04/2012: Plaintiff requests court to grant its original motion to impose a \$346,814.51 bond on Objector Cannata alone²⁶⁴ • 6/5/2012: Court grants Plaintiffs motion in part and requires Objector Cannata to

Class Action Objector Appeals in the Ninth Circuit Court of Appeals from Cases Filed Between January 1, 2008, and July 1, 2013¹⁴⁵

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108 Total Objector Appeals Filed

District Court	Appellate Court	Final Disposition of Objector Appeal(s)	FRAP 7 Cost Bond
<ul style="list-style-type: none"> • MDL/Consolidated Class Action • # Objections Submitted • Date Final Approval of Class Action Settlement Granted 	<ul style="list-style-type: none"> • # Appeals Filed by Objector(s) • Date Notice of Appeal(s) Filed • Identity of Filing Objector(s) & Attorney(s) (if any) 	<ul style="list-style-type: none"> • Date & Nature of Final Disposition • Indicate if Appeal is “pending” 	<ul style="list-style-type: none"> • Motion Filed • Disposition of Motion • Amount Imposed (if granted)
			either post an appellate bond of \$70,650 within 14 days, or file a notice of dismissal of his appeal ²⁶⁵
<p><i>In re: MagSafe Apple Power Adapter Litigation</i>, No. 5:09-cv-01911 (N.D. Cal. May 1, 2009)</p> <ul style="list-style-type: none"> • Consolidated Class Action • 11 Objections Submitted²⁶⁶ • 3/8/2012:²⁶⁷ Judgment and Order granting: (1) motion for final approval of class action settlement between settlement class Plaintiffs and Defendant Apple, Inc.; and (2) plaintiffs’ motion for attorneys’ fees, reimbursement of expenses, and incentive awards. 	<p>5 Appeals Filed:²⁶⁸</p> <ul style="list-style-type: none"> • 3/23/2012: Objector Dale Funk – filed <i>pro se</i> • 4/3/2012: Objector Robert J. Gaudet – filed <i>pro se</i> • 4/6/2012: Objector Marie Gryphon – filed by Theodore H. Frank/Center for Class Action Fairness (Washington, DC); Daniel Greenberg/Greenberg Legal Services (Little Rock, Ark.) • 4/6/2012: Objector Jeremy Lee – filed <i>pro se</i> – 06/13/2012: notice of appearance in Appeal No. 12-15816 filed on behalf of Objector/Appellant Jeremy Lee by Joseph Darrell Palmer/ Law Offices of Darrell Palmer (Solana Beach, CA) • 5/2/2012: Objector Kerry Ann Sweeney – filed by Joseph Darrell Palmer/ Law Offices of Darrell Palmer (Solana Beach, CA) 	<ul style="list-style-type: none"> • 6/19/2012: Appeal No. 12-15740—voluntarily dismissed pursuant to Objector’s FRAP 42(b) motion²⁶⁹ • Appeal No. 12-15757—pending; notice of appeal amended on 08/29/2012 to include May 29, 2012 Bond Order and Aug. 7, 2012 Contempt Order²⁷⁰ • Appeal No. 12-15782—pending; notice of appeal amended on 06/02/12 to include May 29, 2012 Bond Order²⁷¹ • 7/20/2012: Appeal No. 12-15816—voluntarily dismissed pursuant to Objector’s FRAP 42(b) motion²⁷² • 8/7/2012: Appeal No. 12-16053—voluntarily dismissed pursuant to Objector’s FRAP 42(b) motion²⁷³ 	<ul style="list-style-type: none"> • 4/16/2012: Plaintiffs asked the Court to order Objector Funk to post an appeal bond in the amount of \$200,000²⁷⁴ • 4/10/2012: Plaintiffs asked the Court to order Objector Gaudet to post an appeal bond in the amount of \$200,000²⁷⁵ • 4/16/2012: Plaintiffs asked the Court to order Objector Gryphon to post an appeal bond in the amount of \$200,000²⁷⁶ • 4/13/2012: Plaintiffs asked the Court to order Objector Lee to post an appeal bond in the amount of \$200,000²⁷⁷ • 6/13/2012: Plaintiffs asked the Court to order Objector Sweeney and her attorney Palmer to post a \$25,000 appeal bond <p style="background-color: yellow;">NOTE: On 5/29/2012 for Appeals above, the court ordered each Objector to either post a \$15,000 appeal bond or dismiss appeal by June 8, 2012.²⁷⁸</p>

Class Action Objector Appeals in the Ninth Circuit Court of Appeals from Cases Filed Between January 1, 2008, and July 1, 2013¹⁴⁵

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108 Total Objector Appeals Filed

District Court	Appellate Court	Final Disposition of Objector Appeal(s)	FRAP 7 Cost Bond
<ul style="list-style-type: none"> MDL/Consolidated Class Action # Objections Submitted Date Final Approval of Class Action Settlement Granted 	<ul style="list-style-type: none"> # Appeals Filed by Objector(s) Date Notice of Appeal(s) Filed Identity of Filing Objector(s) & Attorney(s) (if any) 	<ul style="list-style-type: none"> Date & Nature of Final Disposition Indicate if Appeal is “pending” 	<ul style="list-style-type: none"> Motion Filed Disposition of Motion Amount Imposed (if granted)
			<ul style="list-style-type: none"> for anticipated taxable costs²⁷⁹ 7/6/2012: Objector Sweeney is ordered on or before July 20, 2012, to post a \$15,000 bond or file a notice of dismissal²⁸⁰
<p><i>Ko v. Natura Pet Products, Inc.</i>, No. 4:09-cv-02619 (N.D. Cal. June 17, 2009)</p> <ul style="list-style-type: none"> 3 Objections Submitted²⁸¹ 9/10/2012: Order granting (1) motion for final approval of the class action settlement with Defendant Natura Pet Products, Inc.; (2) motion for attorneys’ fees, costs, and incentive award.²⁸² 	<p>1 Appeal Filed:</p> <ul style="list-style-type: none"> 10/11/2012: Objector Alfredo Walsh – filed <i>pro se</i> 11/27/2012: notice of appearance in Appeal No. 12-17296 filed on behalf of Appellant Alfredo Walsh by Christopher Andreas Bandas/ Bandas Law Firm, P.C. (Corpus Christi, TX) 	<ul style="list-style-type: none"> 4/24/2013: Appeal No. 12-17296—dismissed for failure to prosecute²⁸³ 	<ul style="list-style-type: none"> No motion for cost bond
<p><i>Schulken v. Washington Mutual Bank</i>, No. 5:09-cv-02708 (N.D. Cal. June 18, 2009).</p> <ul style="list-style-type: none"> 1 Objections Submitted²⁸⁴ 11/13/2012: Order granting (1) motion for final approval of the class action settlement with Defendant JP Morgan Chase Bank; (2) motion for attorneys’ fees, expenses and incentive award.²⁸⁵ 	<p>1 Appeal Filed:</p> <ul style="list-style-type: none"> 1/30/2013: Objector Donald R. Earl²⁸⁶ – filed <i>pro se</i> 	<ul style="list-style-type: none"> Appeal No. 13-15191—pending 	<ul style="list-style-type: none"> 2/15/2013: Plaintiffs asked court to order Objector Earl to immediately post a \$20,000 appeal bond²⁸⁷ 4/2/2013: The court ordered Objector Earl to post a \$5,000 appeal bond²⁸⁸
<p><i>Lemus v. H&R Block Tax and Business Services, Inc.</i>, No. 3:09-cv-03179 (N.D. Cal. July 13, 2009)</p> <ul style="list-style-type: none"> 4 Objections Submitted²⁸⁹ 8/22/2012: Judgment and Order granting final approval of class action settlement and awarding attorneys’ fees, expenses and incentive award.²⁹⁰ 9/10/2012: Order granting Plaintiffs’ motion for reconsideration and modifying Order granting final approval of settlement and award of attorneys’ fees.²⁹¹ 	<p>1 Appeal Filed:²⁹²</p> <ul style="list-style-type: none"> 9/21/2012: Objector Maria D. Merlan – filed by Douglas Caiafa/Douglas Caiafa, A Professional Law Corporation (Los Angeles, CA) 	<ul style="list-style-type: none"> 9/28/2012: Appeal No. 13-16628—voluntarily dismissed pursuant to FRAP 42(b) stipulation of the parties²⁹³ 	<ul style="list-style-type: none"> No motion for cost bond

Class Action Objector Appeals in the Ninth Circuit Court of Appeals from Cases Filed Between January 1, 2008, and July 1, 2013¹⁴⁵

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District Court <ul style="list-style-type: none"> • MDL/Consolidated Class Action • # Objections Submitted • Date Final Approval of Class Action Settlement Granted 	Appellate Court <ul style="list-style-type: none"> • # Appeals Filed by Objector(s) • Date Notice of Appeal(s) Filed • Identity of Filing Objector(s) & Attorney(s) (if any) 	Final Disposition of Objector Appeal(s) <ul style="list-style-type: none"> • Date & Nature of Final Disposition • Indicate if Appeal is “pending” 	FRAP 7 Cost Bond <ul style="list-style-type: none"> • Motion Filed • Disposition of Motion • Amount Imposed (if granted)
<p><i>In re: Google Buzz Privacy Litigation</i>, No. 5:10-cv-00672 (N.D. Cal. Feb. 17, 2010)</p> <ul style="list-style-type: none"> • Consolidated Class Action • 47 Objections Submitted²⁹⁴ • 5/31/2011: Order granting final approval of class action settlement, approval of cy pres awards, and awarding attorney fees.²⁹⁵ • 6/2/2011: Amended Order granting final approval of class action settlement, approval of cy pres awards, and awarding attorney fees.²⁹⁶ • 6/17/2011: Order granting final application for reimbursement of expenses.²⁹⁷ 	<p>5 Appeals Filed:²⁹⁸</p> <ul style="list-style-type: none"> • 6/16/2011: Objector Kervin Walsh – filed by Martin Murphy/ (San Francisco, CA) (attorney identified on the notice of appeal) – 07/06/2011: notice of appearance in Appeal No. 11-16587 filed on behalf of Appellant Kervin Walsh by Christopher Andreas Bandas/ Bandas Law Firm, P.C. (Corpus Christi, TX) • 6/28/2011: Objector Megan Marek – filed by C. Benjamin Nutley/Kendrick & Nutley (Pasadena, CA); John W. Davis/Law Office of John W. Davis (San Diego, CA) • 6/30/2011: Objector Steven Cope – filed by Joseph Darrell Palmer/ Law Offices of Darrell Palmer (Solana Beach, CA) • 6/30/2011: Objectors Brent Clifton and Warren Sibley – filed <i>pro se</i> – 07/13/2011: notice of appearance in No. 11-16640 for Brent Clifton and Warren Sibley filed by Thomas L. Cox, Jr./The Cox Firm (Dallas, TX) • 7/1/2011: Objectors Jon M. Zimmerman, Alison Jackson, and Tanya Rudgayzer – filed by Joshua R. Furman/Joshua R. Furman Law Corp.(Sherman Oaks, CA) (for Objector Zimmerman) – filed by Jeffrey P. Harris & Alan J. Statman/Harris, Statman & Eyrich, LLC (Cincinnati, OH) (for Objector Jackson) – filed by Daniel A. Osborn/Osborn Law, PC (New York, NY)(for Objector Rudgayzer) 	<ul style="list-style-type: none"> • 11/21/2011: Appeal No. 11-16587—voluntarily dismissed pursuant to FRAP 42(b) stipulation of the parties²⁹⁹ • 11/21/2011: Appeal No. 11-16638—voluntarily dismissed pursuant to FRAP 42(b) stipulation of the parties³⁰⁰ • 11/21/2011: Appeal No. 11-16639—voluntarily dismissed pursuant to FRAP 42(b) stipulation of the parties³⁰¹ • 11/21/2011: Appeal No. 11-16640—voluntarily dismissed pursuant to FRAP 42(b) stipulation of the parties³⁰² • 11/21/2011: Appeal No. 11-16642—voluntarily dismissed pursuant to FRAP 42(b) stipulation of the parties³⁰³ 	<ul style="list-style-type: none"> • No motion for cost bond • No motion for cost bond • No motion for cost bond • No motion for cost bond • No motion for cost bond

Class Action Objector Appeals in the Ninth Circuit Court of Appeals from Cases Filed Between January 1, 2008, and July 1, 2013¹⁴⁵

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<p><i>Nguyen v. BMW of North America, LLC</i>, No. 3:10-cv-02257 (N.D. Cal. May 25, 2010)</p> <ul style="list-style-type: none"> • Consolidated Class Action • 11 Objections Submitted³⁰⁴ • 4/20/2012: Order granting final approval of joint motion for class action settlement³⁰⁵ • 4/20/2012: Order awarding attorneys’ fees and costs.³⁰⁶ • 5/08/2012: Final Judgment dismissing Defendant with prejudice.³⁰⁷ 	<p>1 Appeal Filed:³⁰⁸</p> <ul style="list-style-type: none"> • 5/21/2012: Objectors Devesh M. Nirmul, Lawrence C. Weiner, and Michael B. Winn <ul style="list-style-type: none"> – filed by Jennifer Sarnelli/Gardy & Notis, LLP (Englewood Cliffs, NJ); William B. Federman/Federman & Sherwood (Oklahoma City, OK) 	<ul style="list-style-type: none"> • 7/11/2012: Appeal No. 12-16210—voluntarily dismissed pursuant to FRAP 42(b) stipulation of the parties³⁰⁹ 	<ul style="list-style-type: none"> • No motion for cost bond
<p><i>In re Apple iPhone 4 Products Liability Litigation</i>, No. 5:10-md-02188 (N.D. Cal. Nov. 9, 2010).</p> <ul style="list-style-type: none"> • MDL • 21 Objections Submitted³¹⁰ • 8/10/2012: Order granting motion for final settlement approval and motion for attorneys’ fees and costs.³¹¹ 	<p>3 Appeals Filed:³¹²</p> <ul style="list-style-type: none"> • 9/7/2012: Objector Alison Paul <ul style="list-style-type: none"> – filed by Joseph Darrell Palmer/ Law Offices of Darrell Palmer (Solana Beach, CA) • 9/10/2012: Objector Michael J. Schulz <ul style="list-style-type: none"> – filed <i>pro se</i> – 09/28/2012: notice of appearance in Appeal No. 12-17004 filed on behalf of Appellant Michael J. Schulz by Christopher Andreas Bandas/ Bandas Law Firm, P.C. (Corpus Christi, TX) • 9/10/2012: Objector Burt Chapa <ul style="list-style-type: none"> – filed <i>pro se</i> – 09/28/2012: notice of appearance in Appeal No. 12-17005 filed on behalf of Appellant Bert Chapa by Christopher Andreas Bandas/ Bandas Law Firm, P.C. (Corpus Christi, TX) 	<ul style="list-style-type: none"> • 1/11/2013: Appeal No. 12-16994—voluntarily dismissed pursuant to FRAP 42(b) stipulation of the parties³¹³ • 1/11/2013: Appeal No. 12-17004—voluntarily dismissed pursuant to FRAP 42(b) stipulation of the parties³¹⁴ • 1/11/2013: Appeal No. 12-17005—voluntarily dismissed pursuant to FRAP 42(b) stipulation of the parties³¹⁵ 	<ul style="list-style-type: none"> • No motion for cost bond • No motion for cost bond • No motion for cost bond

Class Action Objector Appeals in the Ninth Circuit Court of Appeals from Cases Filed Between January 1, 2008, and July 1, 2013¹⁴⁵

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District Court	Appellate Court	Final Disposition of Objector Appeal(s)	FRAP 7 Cost Bond
<ul style="list-style-type: none"> • MDL/Consolidated Class Action • # Objections Submitted • Date Final Approval of Class Action Settlement Granted 	<ul style="list-style-type: none"> • # Appeals Filed by Objector(s) • Date Notice of Appeal(s) Filed • Identity of Filing Objector(s) & Attorney(s) (if any) 	<ul style="list-style-type: none"> • Date & Nature of Final Disposition • Indicate if Appeal is “pending” 	<ul style="list-style-type: none"> • Motion Filed • Disposition of Motion • Amount Imposed (if granted)
<p><i>In re: Netflix Privacy Litigation</i>, No. 5:11-cv-00379 (N.D. Cal. Jan. 26, 2011)</p> <ul style="list-style-type: none"> • Consolidated Class Action • 100 Objections Submitted³¹⁶ • 3/18/2013: Final Judgment and Order of dismissal with prejudice granting: (1) motion for final approval of class action settlement; and (2) motion for attorneys’ fees, expenses and incentive award.³¹⁷ 	<p>6 Appeals Filed:³¹⁸</p> <ul style="list-style-type: none"> • 4/12/2013: Objector Gary Wilens – filed by Jaffrey Wilens/Lakeshore Law Center (Yorba Linda, CA) • 4/15/2013: Objector Matthew D. Tanner – filed by Clinton A. Krislov/ Krislov & Associates, Ltd. (Chicago, IL) • 4/15/2013: Objectors Stephen C. Griffis & Hugh Ramsey – filed by Steve A. Miller/ Steve A. Miller, PC (Denver, CO) – 07/22/2013: notice of appearance in Appeal No. 13-15734 for Appellants Griffis and Ramsey by John Jacob Pentz/Class Action Fairness Group (Maynard, MA) • 4/16/2013: Objector Bradley Schulz – filed by Christopher Andreas Bandas/ Bandas Law Firm, P.C. (Corpus Christi, TX); Timothy R. Hanigan/ (Woodland Hills, CA) • 4/16/2013: Objectors Andrew Cesare, William Ford, & Katherine Strohlein – filed by Joseph Darrell Palmer/ Law Offices of Darrell Palmer PC (Solana Beach, CA) • 4/17/2013: Objector Tracey C. Klinge – filed by Thomas L. Cox, Jr./The Cox Firm (Dallas, TX) 	<ul style="list-style-type: none"> • Appeal No. 13-15723—pending • Appeal No. 13-15733—pending • Appeal No. 13-15734—pending • Appeal No. 13-15751—pending • Appeal No. 13-15754—pending • Appeal No. 13-15759—pending 	<ul style="list-style-type: none"> • 5/31/2013: Plaintiffs Asked Court to order each Objector to post a \$21,519 appeal bond³¹⁹ • Status: Hearing on motion set for Aug. 23, 2013 vacated; court has taken bond motion under submission without oral argument on 08/19/2013 with order to follow • Motion pending (see above) • Motion pending (see above) • Motion pending (see above) • Motion pending (see above) • Motion pending (see above)

Class Action Objector Appeals in the Ninth Circuit Court of Appeals from Cases Filed Between January 1, 2008, and July 1, 2013¹⁴⁵

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District Court	Appellate Court	Final Disposition of Objector Appeal(s)	FRAP 7 Cost Bond
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<p><i>Farrell v. OpenTable, Inc.</i>, No. 3:11-cv-01785 (N.D. Cal. Apr. 12, 2011).</p> <ul style="list-style-type: none"> • 3 Objections Submitted³²⁰ • 1/30/2012: Order granting (1) motion for final approval of class action settlement, and (2) motion for attorney fees, expenses and incentive award.³²¹ 	<p>1 Appeal Filed:</p> <ul style="list-style-type: none"> • 2/21/2012: Objector Fred Sondheimer – filed by Lawrence W. Schonbrun/Law Office of Lawrence W. Schonbrun (Berkeley, CA) 	<ul style="list-style-type: none"> • 5/3/2012: Appeal No. 12-15370—voluntarily dismissed pursuant to Objector’s FRAP 42(b) motion in compliance with a court-approved stipulation of the parties³²² 	<ul style="list-style-type: none"> • No motion for cost bond
<p><i>In re Bank of America Credit Protection Marketing & Sales Practices Litigation</i>, No. 3:11-md-02269 (N.D. Cal. Sept. 14, 2011).</p> <ul style="list-style-type: none"> • MDL • 13 Objections Submitted³²³ • 1/16/2013: Order granting (1) motion for final approval of class action settlement; and (2) motion for attorney fees, reimbursement of expenses, and service awards.³²⁴ 	<p>2 Appeals Filed:</p> <ul style="list-style-type: none"> • 1/24/2013: Objector Beau Lochridge – filed by attorney Timothy R. Hanigan/Lang, Haingnan & Carvalho (Woodland Hills, CA) (identified as counsel for appellant on notice of appeal) – 1/31/2013: notice of appearance in Appeal No. 13-15170 filed on behalf of Appellant Beau Lochridge by Christopher Andreas Bandas/Bandas Law Firm, P.C. (Corpus Christi, TX) (appellate record indicates “Attorney Timothy R. Hanigan substituted by Attorney Christopher Andres Bandas”). • 2/8/2013: Objector Adina Wasserman – filed <i>pro se</i> – 03/07/2013: notice of appearance in Appeal No. 13-15276 filed on behalf of Appellant Adina Wasserman by Allen G. Weinberg/Law Offices of Allen G. Weinberg (Beverly Hills, CA) 	<ul style="list-style-type: none"> • 4/10/2013: Appeal No. 13-15170—voluntarily dismissed pursuant to objector’s FRAP 42(b) motion³²⁵ • 3/29/2013: Appeal No. 13-15276—voluntarily dismissed pursuant to FRAP 42(b) stipulation of the parties³²⁶ 	<ul style="list-style-type: none"> • No motion for cost bond • No motion for cost bond
Southern District of California: 16 objector appeals			
<p><i>Adams v. AllianceOne Receivables Management, Inc.</i>, No. 3:08-cv-00248 (S.D. Cal. Feb. 8, 2008).</p> <ul style="list-style-type: none"> • 6 Objections Submitted³²⁷ • 9/28/2012: Order (1) granting joint motion for final approval of class action settlement; (2) granting class counsel’s motion for attorneys’ fees, costs, and service awards.³²⁸ 	<p>2 Appeals Filed:</p> <ul style="list-style-type: none"> • 10/25/2012: Objector Gordon B. Morgan – filed <i>pro se</i> – 12/04/2012: notice of appearance in Appeal No. 12-56957 filed on behalf of Appellant Morgan by Attorney Christopher Andreas Bandas/Bandas Law Firm, P.C. (Corpus Christi, TX) 	<ul style="list-style-type: none"> • 2/4/2013: Appeal No. 12-56957—voluntarily dismissed pursuant to objector’s FRAP 42(b) motion³²⁹ 	<ul style="list-style-type: none"> • 11/8/2012: Plaintiffs asked the Court to impose a \$64,536.69 appeal bond upon Smith, Nelson and Morgan, jointly and severally,³³¹ grant Plaintiffs permission to depose and seek

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(not including appeals, if any, originating from the districts of Hawaii, Guam, and the Northern Mariana Islands)

108 Total Objector Appeals Filed

District Court	Appellate Court	Final Disposition of Objector Appeal(s)	FRAP 7 Cost Bond
<ul style="list-style-type: none"> • MDL/Consolidated Class Action • # Objections Submitted • Date Final Approval of Class Action Settlement Granted 	<ul style="list-style-type: none"> • # Appeals Filed by Objector(s) • Date Notice of Appeal(s) Filed • Identity of Filing Objector(s) & Attorney(s) (if any) 	<ul style="list-style-type: none"> • Date & Nature of Final Disposition • Indicate if Appeal is “pending” 	<ul style="list-style-type: none"> • Motion Filed • Disposition of Motion • Amount Imposed (if granted)
	<ul style="list-style-type: none"> – 12/4/2012: notice of appearance filed on behalf of Appellant Morgan in the district court by Attorney Joseph Darrell Palmer/ Law Offices of Darrell Palmer PC (Solana Beach, CA) • 10/26/2012: Objectors Eric B Nelson, Mary Margaret Smith <ul style="list-style-type: none"> – filed <i>pro se</i> – 01/31/2013: notice of appearance filed on behalf of Appellants Nelson & Smith by Joseph Darrell Palmer/ Law Offices of Darrell Palmer (Solana Beach, CA) 	<ul style="list-style-type: none"> • 2/5/2013: Appeal No. 12-56970—voluntarily dismissed pursuant to Objector’s FRAP 42(b) motion³³⁰ 	<ul style="list-style-type: none"> documents from Objectors’ counsel Bandas and Palmer;³³² and strike the objection and notice of appeal fraudulently signed by Objector Morgan.³³³ • 6/20/2013: Plaintiffs’ motions were denied as moot due to Objectors’ voluntary dismissal of their claims • See above
<p><i>Dennis v. Kellogg Co.</i>, No. 3:09-cv-01786 (S.D. Cal. Aug. 17, 2009)</p> <ul style="list-style-type: none"> • 2 Objections Submitted³³⁴ • 4/5/2011: Order Granting (1) Final Approval of Class Action Settlement; (2) Award of Attorney’s Fees; and (3) Judgment of Dismissal.³³⁵ 	<p>2 Appeals Filed:³³⁶</p> <ul style="list-style-type: none"> • 4/22/2011: Objector Stephanie Berg <ul style="list-style-type: none"> – filed by Joseph Darrell Palmer/ Law Offices of Darrell Palmer PC (Solana Beach, CA) • 4/29/2011: Objector Omar Rivero <ul style="list-style-type: none"> – filed <i>pro se</i> – 5/20/2011: notice of appearance in Appeal No. 11-55706 filed on behalf of Appellant Rivero by Christopher Andreas Bandas/ Bandas Law Firm, P.C. (Corpus Christi, TX) 	<ul style="list-style-type: none"> • 9/4/2012: Appeal No. 11-55674—Judgment of the district court reversed in part, affirmed in part, and remanded per published opinion³³⁷ • 9/4/2012: Appeal No. 11-55706—Judgment of the district court reversed in part, affirmed in part, and remanded per published opinion³³⁸ 	<ul style="list-style-type: none"> • 7/8/2011: Plaintiffs’ ask for an order requiring Objectors Rivero and Berg to jointly and severally post an appeal bond in the amount of \$3,000 to cover appellees’ costs on appeal³³⁹ • 8/10/2011: Court ordered Rivero and Berg to jointly and severally post an appeal bond in the amount of \$3,000³⁴⁰ • See above

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(not including appeals, if any, originating from the districts of Hawaii, Guam, and the Northern Mariana Islands)

108 Total Objector Appeals Filed

District Court <ul style="list-style-type: none"> • MDL/Consolidated Class Action • # Objections Submitted • Date Final Approval of Class Action Settlement Granted 	Appellate Court <ul style="list-style-type: none"> • # Appeals Filed by Objector(s) • Date Notice of Appeal(s) Filed • Identity of Filing Objector(s) & Attorney(s) (if any) 	Final Disposition of Objector Appeal(s) <ul style="list-style-type: none"> • Date & Nature of Final Disposition • Indicate if Appeal is “pending” 	FRAP 7 Cost Bond <ul style="list-style-type: none"> • Motion Filed • Disposition of Motion • Amount Imposed (if granted)
<p><i>In re: Easysaver Rewards Litigation</i>, No. 3:09-cv-02094 (S.D. Cal. Sept. 24, 2009)</p> <ul style="list-style-type: none"> • Consolidated Class Action • 1 Objection Submitted³⁴¹ • 2/4/2013: Final Order Approving Class Settlement; granting Plaintiffs' Motion for Attorneys' Fees, Costs, and Incentive Awards.³⁴² • 2/21/2013: Final Judgment in favor of Settlement Class against Defendants, and dismissing the action with prejudice.³⁴³ 	<p>1 Appeal Filed:³⁴⁴</p> <ul style="list-style-type: none"> • 3/4/2013: Objector Brian Perryman – filed by Theodore H. Frank/ Center for Class Action Fairness (Washington, DC) – 6/5/2013: notice of appeal amended to include May 5, 2013 Order Granting Motion for Appeal Bond 	<ul style="list-style-type: none"> • Appeal No. 13-55373—pending. 	<ul style="list-style-type: none"> • 3/14/2013: Plaintiffs' ask that the court require Objector Perryman to post an appellate cost bond of at least \$15,000³⁴⁵ • 5/6/2013: Court ordered that on or before May 31, 2013, Objector Perryman must either post a \$15,000 bond or file a notice of dismissal of his appeal³⁴⁶
<p><i>Cohorst v. BRE Properties, Inc.</i>, No. 3:10-cv-02666 (S.D. Cal. Dec. 27, 2010)</p> <ul style="list-style-type: none"> • 2 Objections Submitted³⁴⁷ • 4/13/2012: Final Judgment and Order granting final approval of the class action settlement and awarding costs and incentive awards.³⁴⁸ • 6/5/2012: Order awarding attorneys' fees to class counsel and Objector's counsel³⁴⁹ 	<p>1 Appeal Filed:</p> <ul style="list-style-type: none"> • 7/5/2012: Objector Susan Kreidler – filed by Paul R. Kiesel/Kiesel Boucher Larrison LLP (Beverly Hills, CA) 	<ul style="list-style-type: none"> • 9/5/2012: Appeal No. 12-56256—voluntarily dismissed with prejudice pursuant to FRAP 42(b) stipulation of the parties and Objector/Appellant's withdrawal of objections to the court-approved class action settlement³⁵⁰ 	<ul style="list-style-type: none"> • No motion for cost bond

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(not including appeals, if any, originating from the districts of Hawaii, Guam, and the Northern Mariana Islands)

108 Total Objector Appeals Filed

District Court	Appellate Court	Final Disposition of Objector Appeal(s)	FRAP 7 Cost Bond
<ul style="list-style-type: none"> • MDL/Consolidated Class Action • # Objections Submitted • Date Final Approval of Class Action Settlement Granted 	<ul style="list-style-type: none"> • # Appeals Filed by Objector(s) • Date Notice of Appeal(s) Filed • Identity of Filing Objector(s) & Attorney(s) (if any) 	<ul style="list-style-type: none"> • Date & Nature of Final Disposition • Indicate if Appeal is “pending” 	<ul style="list-style-type: none"> • Motion Filed • Disposition of Motion • Amount Imposed (if granted)
<p><i>In re Ferrero Litigation</i>, No. 3:11-cv-00205 (S.D. Cal. Feb. 1, 2011).</p> <ul style="list-style-type: none"> • Consolidated Class Action • 2 Objections Submitted³⁵¹ • 7/9/2012: Final Judgment and Order granting final approval of the class action settlement; granting plaintiffs’ motion for attorney fees and costs; and incentive awards.³⁵² 	<p>2 Appeals Filed:³⁵³</p> <ul style="list-style-type: none"> • 8/7/2012: Objectors Courtney Drey and Andrea Pridham <ul style="list-style-type: none"> – filed by attorney Grenville Pridham/ Law Office of Grenville Pridham (Tustin, CA) – 9/7/2012: notice of appearance in No. 12-56469 by Christopher V. Langone for Appellants Drey and Pridham • 8/9/2012: Objector Michael Hale <ul style="list-style-type: none"> – filed <i>pro se</i> – 10/03/2012: notice of appearance in Appeal No. 12-56478 filed on behalf of Appellant Hale by Attorney Christopher Andreas Bandas/ Bandas Law Firm, P.C. (Corpus Christi, TX) 	<ul style="list-style-type: none"> • Appeal No. 12-56469—pending³⁵⁴ • Appeal No. 12-56478—pending 	<ul style="list-style-type: none"> • 10/11/2012: Plaintiffs ask court to impose a \$21,970.72 appeal bond, jointly and severally, on Objectors Drey, Pridham and Hale³⁵⁵ • 11/9/2012: Court denied Plaintiffs’ request to impose an appeal bond on Objectors³⁵⁶ • See above
<p><i>In re: Groupon, Inc., Marketing and Sales Practices Litigation</i>, No. 3:11-md-02238 (S.D. Cal. June 2, 2011).</p> <ul style="list-style-type: none"> • MDL • 18 Objections Submitted³⁵⁷ • 12/18/2012: Order and Final Judgment approving the class action settlement and awarding class counsel an amount deemed as reasonable attorneys’ fees and expenses. Objector’s motion for attorneys’ fees and costs denied.³⁵⁸ 	<p>4 Appeals Filed:</p> <ul style="list-style-type: none"> • 1/17/2013: Objector Pdraigin Browne <ul style="list-style-type: none"> – filed by attorney Brett L. Gibbs/ (Mill Valley, CA) – 4/5/2013: notice of appearance in Appeal No. 13-55118 on behalf of Appellant Browne filed by Attorney Paul Robert Hansmeier/Class Action Justice Institute LLC (Minneapolis, MN) – 5/31/2013: Attorney Hansmeier files notice of withdrawal from Appeal No. 13-55118 as ordered by the Court³⁵⁹ – 5/31/2013: Attorney Nathan Alexander Wersal/Class Action Justice Institute LLC (Minneapolis, MN) files notice of appearance on behalf of Appellant Browne • 1/17/2013: Objector Andrea Pridham <ul style="list-style-type: none"> – filed by Grenville Thomas Pridham/Law Office of Grenville Pridham (Tustin, CA); Christopher V. Langone/ Law Office of Christopher Langone (Ithaca, NY) 	<ul style="list-style-type: none"> • Appeal No. 13-55118—pending • 2/28/2013: Appeal No. 13-55119—dismissed for failure to pay docketing/filing fee 	<ul style="list-style-type: none"> • No motion for cost bond • No motion for cost bond

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(not including appeals, if any, originating from the districts of Hawaii, Guam, and the Northern Mariana Islands)

108 Total Objector Appeals Filed

District Court	Appellate Court	Final Disposition of Objector Appeal(s)	FRAP 7 Cost Bond
<ul style="list-style-type: none"> • MDL/Consolidated Class Action • # Objections Submitted • Date Final Approval of Class Action Settlement Granted 	<ul style="list-style-type: none"> • # Appeals Filed by Objector(s) • Date Notice of Appeal(s) Filed • Identity of Filing Objector(s) & Attorney(s) (if any) 	<ul style="list-style-type: none"> • Date & Nature of Final Disposition • Indicate if Appeal is “pending” 	<ul style="list-style-type: none"> • Motion Filed • Disposition of Motion • Amount Imposed (if granted)
	<ul style="list-style-type: none"> • 1/17/2013: Objectors Chris Brown and Maggie Strohlein – filed by Joseph Darrell Palmer/ Law Offices of Darrell Palmer (Solana Beach, CA) • 1/17/2013: Objector Sean Hull – filed <i>pro se</i> – 2/8/2013: notice of appearance in Appeal No. 13-55128 filed on behalf of Appellant Sean Hull by Christopher Andreas Bandas/ Bandas Law Firm, P.C. (Corpus Christi, TX) 	<ul style="list-style-type: none"> • Appeal No. 13-55120—pending • Appeal No. 13-55128—pending 	<ul style="list-style-type: none"> • No motion for cost bond • No motion for cost bond
<p><i>Gallucci v. Boiron, Inc.</i>, No. 3:11-cv-02039 (S.D. Cal. Sept. 2, 2011).</p> <ul style="list-style-type: none"> • 3 Objections Submitted³⁶⁰ • 10/31/2012: Final Judgment and Order granting Motion for approval of Class Action Settlement, awarding Class Counsel fees and expenses, awarding Class Representatives incentives, permanently enjoining parallel proceedings, and dismissing action with prejudice.³⁶¹ 	<p>3 Appeals Filed:</p> <ul style="list-style-type: none"> • 11/14/2012: Objectors David Johnson and Maria Carapia – filed by Joseph Darrell Palmer/ Law Offices of Darrell Palmer (Solana Beach, CA) • 11/15/2012: Objector Henry Gonzalez – filed by Scott J. Ferrell/ Newport Trial Group (Newport Beach, CA) • 11/29/2012: Objector Israel Elizondo – filed <i>pro se</i> – 1/7/2013: notice of appearance in Appeal No. 12-57184 filed on behalf of Appellant Elizondo by Christopher Andreas Bandas/ Bandas Law Firm, P.C. (Corpus Christi, TX) 	<ul style="list-style-type: none"> • 6/11/2013: Appeal No. 12-57074—dismissed for failure to prosecute³⁶² • Appeal No. 12-57081—pending³⁶³ • 6/3/2013: Appeal No. 12-57184—dismissed for failure to prosecute³⁶⁴ 	<ul style="list-style-type: none"> • 12/20/2012: Pursuant to the court’s orders in the Final Judgment, Settling Plaintiffs and Defendant jointly requested the court to order Objectors to post an appeal bond in the amount of \$235,500.66³⁶⁵ • 6/6/2013: Court ordered appealing Objectors to collectively post an appeal bond of \$5,000 no later than July 19, 2013 or file a notice of dismissal³⁶⁶ • See above • See above

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(not including appeals, if any, originating from the districts of Hawaii, Guam, and the Northern Mariana Islands)

108 Total Objector Appeals Filed

District Court	Appellate Court	Final Disposition of Objector Appeal(s)	FRAP 7 Cost Bond
<ul style="list-style-type: none"> • MDL/Consolidated Class Action • # Objections Submitted • Date Final Approval of Class Action Settlement Granted 	<ul style="list-style-type: none"> • # Appeals Filed by Objector(s) • Date Notice of Appeal(s) Filed • Identity of Filing Objector(s) & Attorney(s) (if any) 	<ul style="list-style-type: none"> • Date & Nature of Final Disposition • Indicate if Appeal is “pending” 	<ul style="list-style-type: none"> • Motion Filed • Disposition of Motion • Amount Imposed (if granted)
<p><i>Foos v. Ann, Inc.</i>, No. 3:11-cv-02794 (S.D. Cal. Dec. 1, 2011)</p> <ul style="list-style-type: none"> • 1 Objection Submitted³⁶⁷ • 12/10/2012: Order granting Motion for Final Approval of Class Settlement and granting in part Motion for Attorneys' Fees.³⁶⁸ 	<p>1 Appeal Filed:</p> <ul style="list-style-type: none"> • 1/9/2013: Objector Sarah McDonald – filed by John W. Davis/ Law Office of John W. Davis (San Diego, CA) 	<ul style="list-style-type: none"> • Appeal No. 13-55059—pending³⁶⁹ 	<ul style="list-style-type: none"> • 1/22/2013: Plaintiff asks court to enter an Order requiring Objector McDonald and/or her counsel to post a \$5,000 appellate bond³⁷⁰ • 5/20/2013: Court ordered Objector Sarah McDonald to post a \$1,000 bond or file a notice of dismissal of her appeal within 10 days³⁷¹
District of Idaho: 0 objector appeals			
District of Montana: 0 objector appeals			
District of Nevada: 1 objector appeal			
<p><i>International Brotherhood of Electrical Workers Local 697 Pension Fund v. International Game Technology</i>, No. 3:09-cv-00419 (D. Nev. July 30, 2009)</p> <ul style="list-style-type: none"> • 1 Objection Submitted • 10/19/2012: Final Judgment and Order of Dismissal with Prejudice granting (1) motions for final approval of the securities class action settlement; (2) approval of plan of allocation for settlement proceeds; (3) application for attorneys' fees and expenses and Plaintiffs' expenses.³⁷² 	<p>1 Appeal Filed:</p> <ul style="list-style-type: none"> • 11/16/2012: Objector Ian Kideys – filed <i>pro se</i> 	<ul style="list-style-type: none"> • 4/5/2013: Appeal No. 12-17602—dismissed for failure to prosecute³⁷³ 	<ul style="list-style-type: none"> • No motion for cost bond
District of Oregon: 0 objector appeals			
Eastern District of Washington: 0 objector appeals			

Class Action Objector Appeals in the Ninth Circuit Court of Appeals from Cases Filed Between January 1, 2008, and July 1, 2013¹⁴⁵

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108 Total Objector Appeals Filed

District Court	Appellate Court	Final Disposition of Objector Appeal(s)	FRAP 7 Cost Bond
<ul style="list-style-type: none"> • MDL/Consolidated Class Action • # Objections Submitted • Date Final Approval of Class Action Settlement Granted 	<ul style="list-style-type: none"> • # Appeals Filed by Objector(s) • Date Notice of Appeal(s) Filed • Identity of Filing Objector(s) & Attorney(s) (if any) 	<ul style="list-style-type: none"> • Date & Nature of Final Disposition • Indicate if Appeal is “pending” 	<ul style="list-style-type: none"> • Motion Filed • Disposition of Motion • Amount Imposed (if granted)
Western District of Washington: 11 objector appeals			
<p><i>In re: General Motors Corporation Speedometer Products Liability Litigation</i>, MDL No. 1896, No. 2:07-cv-00291 (W.D. Wash. Feb. 23, 2007).</p> <ul style="list-style-type: none"> • MDL • 32 Objections Submitted³⁷⁴ • 11/7/2008: Order and Final Judgment granting motion for final approval of class action settlement; motion for attorney fees and costs; and dismissing claims with prejudice.³⁷⁵ 	<p>2 Appeals Filed:</p> <ul style="list-style-type: none"> • 12/1/2008: Objector Clyde Farrel Padgett – filed <i>pro se</i> • 12/8/2008: Objectors William P. Jehle and Tom Richeson – filed by attorneys Kearney Dee Hutsler & Richard G. Baker/ The Hutsler Law Firm (Birmingham Alabama)³⁷⁶ 	<ul style="list-style-type: none"> • 3/2/2009: Appeal No. 08-36005—voluntarily dismissed with prejudice pursuant to FRAP 42(b) stipulation of the parties³⁷⁷ • 3/2/2009: Appeal No. 08-36028—voluntarily dismissed with prejudice pursuant to FRAP 42(b) stipulation of the parties³⁷⁸ 	<ul style="list-style-type: none"> • 12/5/2008: Plaintiffs filed a motion for Objector Padgett to post an appellate cost bond of \$40,811.20 within 2 weeks of the court order • 12/11/2008: Plaintiffs filed an amended motion for each objector filing an appeal in the case to be jointly and severally liable for an appellate cost bond of \$40,811.20 within 2 weeks of the court order³⁷⁹ • 1/15/2009: the Objectors were held jointly and severally responsible to post a \$1,000 appeal bond within 2 weeks of the Order³⁸⁰
<p><i>Shin v. Esurance Inc.</i>, No. 3:08-cv-05626 (W.D. Wash. Oct. 15, 2008)</p> <ul style="list-style-type: none"> • 1 Objection Submitted³⁸¹ • 1/29/2010, <i>vacated and re-entered</i>, 04/02/2010: Final Judgment granting motion for final approval of class action settlement; motion for attorneys’ fees, expenses and incentive award; and dismissing claims with prejudice.³⁸² 	<p>1 Appeal Filed:</p> <ul style="list-style-type: none"> • 1/29/2010 & Amended 4/22/2010:³⁸³ Objector Su Shin – filed by Attorney Alana K. Bullis/Law Offices of Alana K. Bullis, PLLC (DuPont, WA) 	<ul style="list-style-type: none"> • 5/24/2010: Appeal No. 10-35113—voluntarily dismissed with prejudice pursuant to FRAP 42(b) stipulation of the parties³⁸⁴ 	<ul style="list-style-type: none"> • No motion for cost bond

Class Action Objector Appeals in the Ninth Circuit Court of Appeals from Cases Filed Between January 1, 2008, and July 1, 2013¹⁴⁵

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108 Total Objector Appeals Filed

District Court	Appellate Court	Final Disposition of Objector Appeal(s)	FRAP 7 Cost Bond
<ul style="list-style-type: none"> • MDL/Consolidated Class Action • # Objections Submitted • Date Final Approval of Class Action Settlement Granted 	<ul style="list-style-type: none"> • # Appeals Filed by Objector(s) • Date Notice of Appeal(s) Filed • Identity of Filing Objector(s) & Attorney(s) (if any) 	<ul style="list-style-type: none"> • Date & Nature of Final Disposition • Indicate if Appeal is “pending” 	<ul style="list-style-type: none"> • Motion Filed • Disposition of Motion • Amount Imposed (if granted)
<p><i>In re Classmates.com Consolidated Litigation</i>, No. 2:09-cv-00045 (W.D. Wash. Jan. 13, 2009).</p> <ul style="list-style-type: none"> • Consolidated Class Action • 370 Objections Submitted³⁸⁵ • 06/15/2012: Order granting (1) motion for final approval of class action settlement; (2) motion for attorney fees, costs, and participation awards to class representatives; and (3) Order certifying settlement class; and (4) Judgment dismissing the case and entering the two year injunction.³⁸⁶ 	<p>3 Appeals Filed:³⁸⁷</p> <ul style="list-style-type: none"> • 7/12/2012: Objector Michael J Schulz – notice of appeal filed <i>pro se</i> – on 8/14/12 Christopher A. Bandas filed a notice of appearance to serve as counsel on behalf of Objector-Appellant Schulz/Bandas Law Firm, P.C. (Corpus Christi, TX) • 7/13/2012: Objector Brent Clifton – original Notice of Appeal filed by Gary Sibley/The Sibley Firm (Dallas, TX) – amended notice of appeal filed on 7/18/2012 by Objector Clifton <i>pro se</i> • 7/16/2012: Objector Christopher Langone – filed by Christina Henry/Seattle Debt Law, LLC (Seattle/ Washington) 	<ul style="list-style-type: none"> • 8/27/2012: Appeal No. 12-35593—voluntarily dismissed pursuant to Objector’s FRAP 42(b) motion³⁸⁸ • 8/28/2012: Appeal No. 12-35604—voluntarily dismissed pursuant to Objector’s FRAP 42(b) motion³⁸⁹ • 8/27/2012: Appeal No. 12-35595—voluntarily dismissed pursuant to Objector’s FRAP 42(b) motion³⁹⁰ 	<ul style="list-style-type: none"> • No motion for cost bond • No motion for cost bond • No motion for cost bond
<p><i>Palmer v. Sprint Solutions, Inc.</i>, No. 2:09-cv-01211 (W.D. Wash. Aug. 25, 2009)</p> <ul style="list-style-type: none"> • 2 Objections Submitted³⁹¹ • 10/21/2011: Judgment and Order granting final approval of class action settlement and motion for attorney fees, costs and incentive award.³⁹² 	<p>1 Appeal Filed:</p> <ul style="list-style-type: none"> • 11/28/2011: Objector Ricardo H. Nigaglioni³⁹³ – filed <i>pro se</i> 	<ul style="list-style-type: none"> • 2/14/2013: Appeal No. 11-35991—judgment of the district court affirmed per unpublished opinion³⁹⁴ 	<ul style="list-style-type: none"> • No motion for cost bond
<p><i>Arthur v. Sallie Mae, Inc.</i>, No. 2:10-cv-198 (W.D. Wash. Feb. 2, 2010).</p> <ul style="list-style-type: none"> • 26 Objections Submitted³⁹⁵ • 9/17/2012: Order and Final Judgment granting (1) motion for final approval of amended class action settlement; and (2) motion for attorney fees, costs and service awards.³⁹⁶ 	<p>1 Appeal Filed:</p> <ul style="list-style-type: none"> • 10/17/2012: Objectors Sara Sibley and Judith Brown – filed by Attorney Thomas L. Cox, Jr./ (Dallas, TX)³⁹⁷ 	<ul style="list-style-type: none"> • 12/5/2012: Appeal No. 12-35860—voluntarily dismissed pursuant to Objector’s FRAP 42(b) motion³⁹⁸ 	<ul style="list-style-type: none"> • 10/25/2012: Class Plaintiffs filed a motion to require Objectors to post an appeal bond of \$189,344³⁹⁹ • 12/4/2012: Class Plaintiffs withdrew their pending motion for an appeal bond in response to Objectors’ motion to voluntarily dismiss their appeal pursuant to FRAP 42(b).

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108 Total Objector Appeals Filed

District Court	Appellate Court	Final Disposition of Objector Appeal(s)	FRAP 7 Cost Bond
<ul style="list-style-type: none"> • MDL/Consolidated Class Action • # Objections Submitted • Date Final Approval of Class Action Settlement Granted 	<ul style="list-style-type: none"> • # Appeals Filed by Objector(s) • Date Notice of Appeal(s) Filed • Identity of Filing Objector(s) & Attorney(s) (if any) 	<ul style="list-style-type: none"> • Date & Nature of Final Disposition • Indicate if Appeal is “pending” 	<ul style="list-style-type: none"> • Motion Filed • Disposition of Motion • Amount Imposed (if granted)
<p><i>Dennings v. Clearwire Corp.</i>, No. 2:10-cv-01859 (W.D. Wash. Nov. 15, 2010)⁴⁰⁰</p> <ul style="list-style-type: none"> • 8 Objections Submitted⁴⁰¹ • 12/20/2012: Settlement Order and Final Judgment granting motion for final approval of class action settlement.⁴⁰² • 5/3/2013: Order granting motion for attorneys’ fees and expenses.⁴⁰³ 	<p>2 Appeals Filed:</p> <ul style="list-style-type: none"> • 1/18/2013: Objectors Mr. Gordon Morgan and Mr. Jeremy De La Garza appealed the <i>Settlement Order</i> (filed 12/20/2012) <ul style="list-style-type: none"> – filed by Christopher Bandas/ Bandas Law Firm, P.C. (Corpus Christi, TX) • 6/3/2013: Objectors Mr. Gordon Morgan and Mr. Jeremy De La Garza appealed the <i>Order Granting Motion for Attorney’s Fees and Expenses</i> (filed 5/3/2013) <ul style="list-style-type: none"> – filed by Christopher Bandas/ Bandas Law Firm, P.C. (Corpus Christi, TX) 	<ul style="list-style-type: none"> • 4/22/2013: Appeal No. 13-35038—Judgment of the district court affirmed per summary order⁴⁰⁴ • Appeal No. 13-35491—pending⁴⁰⁵ 	<ul style="list-style-type: none"> • 2/20/2013: Plaintiffs filed a motion requesting that the Court order Objectors, jointly and severally, to post an appellate cost bond of \$41,150⁴⁰⁶ • 3/11/2013: Court ordered Objectors Morgan and De La Garza to either post a bond in the amount of \$41,150 or dismiss their notice of appeal⁴⁰⁷ • 6/3/2013: With respect to Objector’s second appeal, Plaintiffs filed a similar motion requesting that the Court order Objectors, jointly and severally, to post an appellate cost bond of \$41,150⁴⁰⁸ • 7/9/2013: Finding that the same arguments applied and that \$41,150 is again an appropriate amount, the Court ordered Objectors Morgan and De La Garza to either post the bond or withdraw their appeal within 5 days of the date of the order. Failure to comply would result in Objectors and Objectors’ counsel held subject to sanctions by the court⁴⁰⁹

Class Action Objector Appeals in the Ninth Circuit Court of Appeals from Cases Filed Between January 1, 2008, and July 1, 2013¹⁴⁵

(not including appeals, if any, originating from the districts of Hawaii, Guam, and the Northern Mariana Islands)

108 Total Objector Appeals Filed

District Court	Appellate Court	Final Disposition of Objector Appeal(s)	FRAP 7 Cost Bond
<ul style="list-style-type: none"> • MDL/Consolidated Class Action • # Objections Submitted • Date Final Approval of Class Action Settlement Granted 	<ul style="list-style-type: none"> • # Appeals Filed by Objector(s) • Date Notice of Appeal(s) Filed • Identity of Filing Objector(s) & Attorney(s) (if any) 	<ul style="list-style-type: none"> • Date & Nature of Final Disposition • Indicate if Appeal is “pending” 	<ul style="list-style-type: none"> • Motion Filed • Disposition of Motion • Amount Imposed (if granted)
<p><i>Herfert v. Crayola, LLC</i>, No. 2:11-cv-01301 (W.D. Wash. Aug. 5, 2011)</p> <ul style="list-style-type: none"> • 1 Objection Submitted⁴¹⁰ • 4/27/2012: Final Order granting joint motion for final approval of class action settlement and motion for attorney fees, expenses and representative plaintiff award.⁴¹¹ 	<p>1 Appeal Filed:</p> <ul style="list-style-type: none"> • 5/14/2012: Objector Amber Pederson – filed <i>pro se</i> – on 5/24/2012, Class Counsel was informed that Objector-Appellant Pederson would be represented by Mr. Christopher Bandas/ Bandas Law Firm, P.C. (Corpus Christi, TX)⁴¹² – on 7/5/2012, attorney Darrell Palmer/Law Offices of Darrell Palmer (Solano Beach CA) filed Objector-Appellant’s Response to the Parties’ Motion for an appeal bond, and filed an application to appear <i>pro hac vice</i> on behalf of Objector-Appellant Amber Pederson.⁴¹³ Mr. Palmer’s application was denied on 8/17/2012.⁴¹⁴ 	<ul style="list-style-type: none"> • 9/26/2012: Appeal No. 12-35393—voluntarily dismissed⁴¹⁵ pursuant to Objector’s FRAP 42(b) motion⁴¹⁶ 	<ul style="list-style-type: none"> • 6/21/2012: Class Plaintiffs and Defendants filed a joint motion requesting that Objector Pederson and her counsel, Mr. Bandas, be jointly and severally liable to post an appeal bond of \$20,000⁴¹⁷ • 7/31/2012: Following oral argument at which neither Objector-Appellant nor her counsel appeared, Court granted the parties’ joint motion and ordered Appellant Pederson and her attorney Christopher Bandas to file an appeal bond of \$20,000⁴¹⁸ • 8/10/2012: Court amended its 7/31/2012 order to require that the appeal bond be filed no later than August 31, 2012⁴¹⁹

145. Includes class action objector appeals from class action cases that were filed in the district courts on or after January 1, 2008 in which final approval of a Rule 23-certified class action settlement was granted and appealed from between January 1, 2008, through July 1, 2013. The total number of objector appeals filed in the Ninth Circuit Court of Appeals does not include objector appeals, if any, that may have originated from the Districts of Hawaii, Guam and the Northern Mariana Islands due to time constraints.

146. Two objections were filed by counsel and 18 objections were submitted *pro se*. See *Motion for Final Approval of Class Action Settlement and Entry of Final Judgment and Order of Dismissal* (Doc. # 199) (filed July 30, 2010) and *Settlement Class Representatives’ Response to Objections* (Doc. #207) (filed July 30, 2010).

147. See *In re LifeLock, Inc. Marketing and Sales Practices Litigation*, No. MDL 08-1977, 2010 WL 3715138 (D. Ariz. Aug. 31, 2010).

148. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Required Mediation Form; motion to dismiss case voluntarily pursuant to FRAP 42(b).

149. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Required Mediation Form; motion to dismiss case voluntarily pursuant to FRAP 42(b).

150. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Required Mediation Form; motion to dismiss case voluntarily pursuant to FRAP 42(b).

151. See Doc. #65 (filed Apr. 30, 2010) & Doc. #80 (filed Aug. 31, 2010) (original and resubmitted objections from Objector Figueroa). See Doc. #86 (filed Sept. 9, 2010) (objections from Objector Maria Fernandez).

152. See *Final Judgment and Order of Dismissal with Prejudice* (Doc. #93) (filed Sept. 14, 2010).

153. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Required Mediation Form; motion to dismiss case voluntarily pursuant to FRAP 42(b).

154. See *Plaintiffs' Responses to Objections to Proposed Settlement, Fees and Incentives* (Doc. #88) (filed May 23, 2011).

155. See *Amended Order by Judge Andrew J. Guilford Granting Final Approval of Class Settlement and Granting Application for Attorney Fees and Costs and Incentive Awards* (Doc. #104) (filed Aug. 25, 2011).

156. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Objector/ Appellant Gaudet's motion to proceed *in forma pauperis* (denied by the district court Dec. 13, 2011 and denied by the Ninth Circuit on Mar. 13, 2012). The district court refused to accept Objector Gaudet's attempt to post the \$1,000 FRAP 7 bond on April 12, 2012 (more than 3 months past the deadline set in the court's Dec. 5, 2011 Order) (Doc. #122, Minute Order of 04/12/2012). On June 13, 2012, the Ninth Circuit denied appellees' motion to dismiss, and ordered Appellant Gaudet to post the \$1,000 bond and the district court to accept it if it was posted within 21 days. Appellant Gaudet complied. See *Order*, No. 11-56609 (9th Cir. June 13, 2012)(Doc. #17). On July 26, 2012, Attorney Michael Brown files a notice of appearance for Appellant Gaudet, and after two telephonic mediation conferences, Gaudet files a motion to voluntarily dismiss his appeal pursuant to FRAP 42(b) on Sept. 14, 2012.

157. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Required Mediation Form; appellant's motion to dismiss the case voluntarily pursuant to FRAP 42(b).

158. See *Class Counsel's Notice Of Motion And Motion For Order Requiring Objector/Appellant Robert Gaudet To Post Bond Pursuant To F.R.A.P. 7* (Doc. #111) (filed Nov. 7, 2011)(class counsel estimates that if the appeal is fully briefed by all sides then appellees will incur at least \$20,000 in recoverable costs, including the costs of preparing copies of briefs and excerpts of record).

159. See *Order Setting Bond at \$1,000* (Doc. #116) (filed Dec. 5, 2011) (Court found that \$1,000 was a reasonable amount to cover anticipated copying costs given Objector's financial status). The Court denied Objector Gaudet's motion to sanction and remove Plaintiff's counsel from his role as class counsel.

160. See *Plaintiffs' Response to Objections to the Proposed Settlement* (Doc. #39) (filed Dec. 14, 2009).

161. See *Order Granting Plaintiffs' Motion for Award of Attorneys' Fees* (Doc. #49) (filed Jan. 4, 2010).

162. See *Lane v. Facebook, Inc.*, No. 08-3845, 2010 WL 2076916 (N.D. Cal. May 24, 2010).

163. See *Nachshin v. AOL, LLC*, 663 F.3d 1034 (9th Cir. Nov. 21, 2011). On appeal, Objector/appellant McKinney through his counsel Theodore Frank raised the same objections pertaining to the Settlements *cy pres* distributions that were overruled in the district court. The Court concluded that the *cy pres* distributions approved by the district court as part of the overall settlement approval did not meet with *cy pres* standards as interpreted by the Ninth Circuit because the donations were made on behalf of a nationwide plaintiff class, thus the district court abused its discretion approving *cy pres* awards that would be distributed to geographically isolated and substantively unrelated charities. *Id.* On July 31, 2013, Plaintiffs filed their motion for preliminary approval of a revised class action settlement scheduled to be heard on August 26, 2013. See Doc. #66 (filed July 31, 2013).

164. The Court consolidated three pending class actions against Defendants for settlement purposes only, pursuant to Federal Rule of Civil Procedure 42: (a) *Stern v. AT&T Mobility Corp. f/k/a Cingular Wireless Corp.*, Case No. 05-8842 ("*Stern I*"); (b) *Lozano v. New Cingular Wireless f/k/a AT&T Wireless Corp.*, Case No. 02-00090 ("*Lozano*"); and (c) *Stern v. New Cingular Wireless Servs., Inc. f/k/a AT&T Wireless Servs., Inc.*, Case No. 09-1112 ("*Stern II*"). *Stern I* was designated as the lead case, and the Court clarified that it would enter separate preliminary approval orders and final judgments in each of the three consolidated cases. See Doc. #25 (filed Apr. 13, 2010).

165. See *Order Granting Final Approval to the UCC Settlement and Entering Final Judgment* (Doc. #81) (filed No. 22, 2010). Although the court found that four objectors were not members of the UCC Settlement Class and, thus, lacked standing to object to the UCC Settlement, the Court addressed all 9 objections specifically stating the reasons for overruling each objection. *Id.*

166. See *Order Granting Final Approval to the UCC Settlement and Entering Final Judgment* (Doc. #81) (filed No. 22, 2010). See *Order Granting Application for Award of Attorneys' Fees and Reimbursement of Expenses to Class Counsel and Incentive Awards For Class Representatives* (Doc. #80) (filed Nov. 22, 2010).

167. Appellants' opposed motion to consolidate Appeal Nos. 10-56929 and 10-57062 was granted on Aug. 5, 2011. Order, Nos. 10-56929, 10-57062 (9th Cir. Aug. 5, 2011) (Doc. #20).

168. See *Stern v. Gambello*, Nos. 10-56929, 10-57062, 2012 WL 1744453 (9th Cir. May 17, 2012) (Rejecting Objector/Appellants argument that the district court did not adequately scrutinize either the proposed settlement or the fee petition, the court found that the district court's decision to approve the settlement, the claims procedure, and its decision to decline a more intensive inquiry before granted the requested fees and expenses was not a clear abuse of discretion.) On May 25, 2012, the Court granted Objector/Appellant Lynch's motion to extend time to file a petition for rehearing or rehearing en banc until June 7, 2012. Order, Nos. 10-56929, 10-57062 (9th Cir. May 25, 2012)(Doc. #73). It appears that Appellant Lynch chose not to file a petition for rehearing as on June 19, 2012 the mandate was issued as to the courts May 17, 2012 decision affirming the district court.

169. See *supra* note 168.

170. See *Plaintiff's Response to Objections to Class Action Settlement* (Doc. #81) (filed Aug. 22, 2011).

171. See *Final Order Approving Class Action Settlement and Judgment* (Doc. #89) (filed Sept. 15, 2011).

172. Objector Edmund F. Bandas' original objection letter dated Aug. 4, 2011 was originally received by the Court on August 5, 2011, but was rejected as an inappropriate communication pursuant to Local Rule 83-2.11 and returned to counsel. On October 18, 2011, Edmund Bandas submitted a letter seeking to reinstate his objection to the class action settlement. The Court ordered the Clerk to file Class member Bandas' objection, but it went on to conclude that the objection would not have altered the Court's decision to grant final approval of the settlement. See Doc. #98 (filed Oct. 18, 2011).

173. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Required Mediation Questionnaire; Appellant Denny's motion to dismiss case voluntarily pursuant to FRAP 42(b).

174. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Required Mediation Questionnaire; notice of appearance of Attorney Christopher Bandas for Appellants Michelle Melton and Edmund F. Bandas; Appellant's joint motion to dismiss case voluntarily pursuant to FRAP 42(b).

175. See *Response by Plaintiff to Objections to Approval of Settlement, Certification of Class, and Application for Attorneys' Fees* (Doc. #62) (filed Nov. 15, 2011).

176. See *Final Approval Order* (Doc. #65) (filed Nov. 22, 2011).

177. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Required Mediation Questionnaire; parties stipulated motion to dismiss case voluntarily pursuant to FRAP 42(b).

178. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Required Mediation Questionnaire; parties stipulated motion to dismiss case voluntarily pursuant to FRAP 42(b).

179. See *Lead Plaintiff's Supplemental Submission in Response to the Court's March 4, 2013 Order and in Further Support of the Proposed Settlement* (Doc. #310) (filed Mar. 7, 2013).

180. See Docs. #322 (Order Approving Plan of Allocation), 323 (Final Judgment and Dismissal with Prejudice) & 324 (Order granting Motion for Attorneys' Fees and Reimbursement of Expenses) (filed Mar. 15, 2013).

181. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Objector/Appellant Hayes' motion to dismiss case voluntarily pursuant to FRAP 42(b).

182. See *Memorandum & Order Regarding Motions for Final Approval of Class Action Settlement, Award of Attorneys' Fees, Costs and Plaintiff Service Award* (Doc. #23) (filed Mar. 20, 2012).

183. See *Memorandum and Order Regarding Motion for Final Approval of Class Action Settlement and Award of Attorneys' Fees, Costs and Plaintiff Service Award* (Doc. #23) (filed Mar. 20, 2012).

184. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: parties' stipulated motion to dismiss case voluntarily with prejudice pursuant to FRAP 42(b).

185. Purchaser class plaintiffs reported that only five total objections to the settlement were filed and one had already been resolved. See *Motion for Final Approval of Settlement* (Doc. #3121) (filed Aug. 14, 2009).

186. See Doc. #3206 (filed Sept. 28, 2009) & Doc. #3222 (filed Oct. 9, 2009). MDL 1699 was assigned to the N.D. Cal in September 2005. Prior to this September 2009 settlement of the purchaser claim class actions from which objectors appealed, Defendant Pfizer Inc. had resolved thousands of product liability cases. After the settlement of the purchaser claim class actions, a number of product liability cases remained for resolution and the docket remained active up until March 2013. After dismissal of the final product liability plaintiff from the proceedings, Judge Breyer recommended to the JPML that MDL 1699 be terminated. See *Order Recommending Termination of Multidistrict Litigation Proceeding to Judicial Panel on Multidistrict Litigation* (Doc. #3640) (filed Mar. 29, 2013).

187. Ten days after filing their notice of appeal, Objectors/Appellants Barbara Hurst and Diane Gibson were notified per Order from the Clerk of the Ninth Circuit that they had 21 days to either dismiss their appeal (since the district courts' orders from which they appealed did not dispose of the case as to all claims and all parties) or show cause as to why their appeal should not be dismissed for lack of jurisdiction. See *Order*, No. 09-17284 (9th Cir. Oct. 26, 2009) (Doc. #5) (citing Fed. R. Civ. P. 54(b) and *Chacon v. Babcock*, 640 F.2d 221 (9th Cir. 1981)). Noncompliance would result in dismissal of the appeal pursuant to Ninth Circuit Rule 42-1. Appellants filed their stipulated motion to dismiss the case on Nov. 11, 2009.

188. Ten days after filing their notice of appeal, Objectors/Appellants Janice Johnson and Wilma Thompson were notified per Order from the Clerk of the Ninth Circuit that they had 21 days to either dismiss their appeal (since the district courts' orders from which they appealed did not dispose of the case as to all claims and all parties) or show cause as to why their appeal should not be dismissed for lack of jurisdiction. See *Order*, No. 09-17420 (9th Cir. Nov. 10, 2009) (Doc. #2) (citing Fed. R. Civ. P. 54(b) and *Chacon v. Babcock*, 640 F.2d 221 (9th Cir. 1981)). Noncompliance would result in dismissal of the appeal pursuant to Ninth Circuit Rule 42-1. Appellants filed their stipulated motion to dismiss the case on Nov. 11, 2009.

189. See *Indirect-Purchaser Plaintiffs' and Settling States' Joint Response to Objections to Combined Class, Parens Patriae, and Governmental Entity Settlements* (Doc. #5601) (filed May 4, 2012) (describing the 18 objections brought by 28 objectors).

190. See *Order Granting Final Approval Of Combined Class, Parens Patriae, and Governmental Entity Settlements; Final Judgment of Dismissal With Prejudice* (Doc. #6130) (filed July 11, 2012).

191. See *Indirect-Purchaser Plaintiffs' and Settling States' Joint Response to Objections to Combined Class, Parens Patriae, and Governmental Entity Settlements With AUO, LG Display and Toshiba Defendants* (Doc. #7162) (filed Nov. 15, 2012) (describing the 11 documents that could be construed as objections, noting that three of the four objectors represented in the single objection submitted by Attorney George W. Cochran have formally withdrawn their objections).

192. See *In re TFT-LCD (Flat Panel) Antitrust Litig.*, MDL 1827, 3:07-md-1827, 2013 WL 1319653 (N.D. Cal. March 29, 2013).

193. See *Amended Order Granting Final Approval of Combined Class, Parens Patriae, And Governmental Entity Settlements with AUO, LG Display, And Toshiba Defendants; Ordering Final Judgment of Dismissal with Prejudice; Award of Attorneys Fees, Expenses, and Incentive Awards* (Doc. #7688) (filed Apr. 1, 2013).

194. See *Final Judgment Re Indirect Purchaser Plaintiff/State Entity Class Actions* (Doc. #7690) (filed Apr. 1, 2013).

195. See *In re TFT-LCD (Flat Panel) Antitrust Litig.*, MDL 1827, 3:07-md-1827, 2013 WL 1365900 (N.D. Cal., April 03, 2013).

196. See *Order Re Civil Contempt and Award of Sanctions Against Objectors Alison Paul, Leveta Chesser, and Their Counsel Joseph Darrell Palmer* (Doc. #7618) (filed Feb. 19, 2013) for a detailed history of the events that led up to the Court's decision to hold Objector Alison Paul (Attorney Palmer's wife), Objector Leveta Chesser (Attorney Palmer's aunt) and Attorney Joseph Darrell Palmer in contempt for failure to comply with the courts' orders to appear for a deposition. Although the Court declined to strike the objections of Paul and Chesser, the court awarded monetary sanctions to compensate Plaintiffs' class counsel for fees incurred pursuing the depositions in the amount of \$9,254.11. *Id.* Objectors Paul and Chesser and their counsel Palmer appealed from the Order of Civil Contempt. Appeal No. 13-15365 (9th Cir. Feb. 22, 2013). Appeal No. 13-16216 was dismissed for failure to prosecute on July 5, 2013, but reinstated on Aug. 13, 2013 and Appellants opening brief was filed the same day. See *Order*, No. 13-15365 (9th Cir. Aug. 13, 2013) (Doc. #14).

197. On April 12, 2013, the Ninth Circuit denied Plaintiffs/Appellees' motion for summary affirmance of the district court's judgment stating that "the arguments raised in the opening brief are sufficiently substantive as to warrant further consideration by a merits panel." See *Order*, No. 12-16830 (9th Cir. Apr. 12, 2013) (Doc. #49). In addition, appellees' motion to designate the appeal as frivolous and their motion for damages was referred to the assigned merits panel for whatever consideration the panel deems appropriate. *Id.*

198. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: notice of appearance of Christopher V. Langone for Appellant Andrea Kane; Required Mediation Questionnaire; appellant's motion to dismiss case voluntarily pursuant to FRAP 42(b) (denied). On January 9, 2013, Objector/Appellant filed a motion to dismiss her appeal voluntarily pursuant to FRAP 42(b) and an alternative motion to remand to which Plaintiffs objected. On March 1, 2013, the Ninth Circuit denied appellant's motion to dismiss without prejudice and appellant's alternative motion to remand. Objector/Appellant Kane was given 21 days to either file a renewed motion to dismiss the appeal voluntarily with prejudice or file her opening brief by April 1, 2013. See *Order*, No. 12-16839 (9th Cir. Mar. 1, 2013) (Doc. #34). On June 28, 2013, noting that Appellant Kane did not file an opening brief, Appeal No. 12-16839 was dismissed for failure to prosecute. See *Order*, No. 12-16839 (9th Cir. June 28, 2013) (Doc. #37).

199. Attorney Bandas filed his notice of appearance on behalf of Objector/Appellant Conner on Sept. 10, 2012 in Appeal No. 12-16780. On Dec. 5, 2012, the Court granted Attorney Bandas' motion on behalf of Objector/Appellant Connor to consolidate appeals Nos. 12-16780, 12-16782, and 12-16788. On March 1, 2013, the Ninth Circuit denied appellants' motion to remand and motion for sanctions under 28 USC 1927. See *Order*, Nos. 12-16780, 12-16782, and 12-16788 (9th Cir. Mar. 1, 2013) (Doc. #27). Plaintiffs/Appellees motion to dismiss for failure to prosecute and for determination of frivolous appeal was denied. *Id.* Appellants submitted their opening briefs on April 1, 2013.

200. Attorney Bandas filed his notice of appearance on behalf of Objector/Appellant Luis Santana on Sept. 10, 2012 in Appeal No. 12-16782. On Dec. 5, 2012, the Court granted Attorney Bandas' motion on behalf of Objector/Appellant Santana to consolidate appeals Nos. 12-16780, 12-16782, and 12-16788. On March 1, 2013, the Ninth Circuit denied appellants' motion to remand and motion for sanctions under 28 USC 1927. See *Order*, Nos. 12-16780, 12-16782, and 12-16788 (9th Cir. Mar. 1, 2013)(Doc. #27).Plaintiffs/Appellees motion to dismiss for failure to prosecute and for determination of frivolous appeal was denied. *Id.* Appellants submitted their opening briefs on April 1, 2013.

201. Attorney Bandas filed his notice of appearance on behalf of Objector/Appellant Stefan Rest on Sept. 10, 2012 in Appeal No. 12-16788. On Dec. 5, 2012, the Court granted Attorney Bandas' motion on behalf of Objector/Appellant Rest to consolidate appeals Nos. 12-16780, 12-16782, and 12-16788. On March 1, 2013, the Ninth Circuit denied appellants' motion to remand and motion for sanctions under 28 USC 1927. See *Order*, Nos. 12-16780, 12-16782, and 12-16788 (9th Cir. Mar. 1, 2013) (Doc. #27). Plaintiffs/Appellees' motion to dismiss for failure to prosecute and for determination of frivolous appeal was denied. *Id.* Appellants submitted their opening briefs on April 1, 2013.

202. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Objectors were notified on June 13, 2013 of their failure to file the Mediation Questionnaire as required under circuit rules; they were given 7 days to either file the Questionnaire, a motion to dismiss the appeal voluntarily under FRAP 42(b), or show cause why their appeal should not be dismissed. See *Order*, No. 13-15929 (9th Cir. June 12, 2013)(Doc. #5). On July 2, 2013, Objectors/Appellants were given an additional 7 days to comply. Finding continued failure to comply with the courts orders, Appeal No. 13-15929 was dismissed on July 12, 2013 for failure to prosecute. See *Order*, No. 13-15929 (9th Cir. July 12, 2013)(Doc. #8).

203. Sean Hull filed his original objection as a *Pro Se* Objector from Denver, Colorado where he lives and works, although Indirect Purchaser Plaintiffs submitted evidence that his objection letter was postmarked in Corpus Christi, Texas and mailed by attorney Christopher Bandas. See *Decl. of Mario N. Alioto* (Doc. #1062-1, Ex. 1) (filed Mar. 1, 2012). Indirect Purchaser Plaintiffs were unsuccessful in their attempts to ascertain whether Mr. Hull was a member of the settlement class with standing to object to the settlement prior to the final approval hearing. (Doc. #1062) (filed Mar. 1, 2012) & (Doc. 1116) (filed Mar. 27, 2012). In addition to finding that his objection was without merit, Judge Samuel Conti overruled Mr. Hull's objection "on the grounds that the objector has failed to submit proof or otherwise establish that he is a member of the Class, and therefore lacks standing to challenge the Settlement." See *Order Granting Final Approval of Settlement with Chunghwa Picture Tubes, Ltd.* (Doc. #1103) (filed Mar. 22, 2012).

204. See Docs. # 1105, 1106 (filed Mar. 22, 2012). Following the initial settlement between Indirect Purchaser Plaintiffs and defendant Chunghwa Picture Tubes, Ltd., five additional settlements have been approved between a class of Direct Purchaser Plaintiffs and named defendants, most recently being the settlement between Direct Purchaser Plaintiffs and Toshiba defendants. See *Order granting Final Approval of Class Action Settlement with Toshiba* (Doc. #1791) (filed July 23, 2013). To date, there have been no objector appeals resulting from these settlements. Litigation continues in MDL 1917 and the issue of attorney fees will not arise until all remaining claims have been addressed.

205. Citing the Court's continuing jurisdiction under the Final Judgment entered on March 22, 2012 in conjunction with the Order granting final approval of the settlement with Chunghwa Picture Tubes, Ltd., Judge Conti granted the Indirect Purchaser Plaintiffs' motion to compel discovery and ordered objector Hull to appear for a deposition and produce requested documents by May 11, 2012. *See Order Granting Indirect Purchaser Plaintiffs' Motion to Compel Discovery From Objector* (Doc. # 1155) (filed Apr. 16, 2012). Judge Conti concluded that because the requests for documents and information sought by the Indirect Purchaser Plaintiffs focused "solely on the objector's standing, the bases for his current objections, his role in objecting to this and other class settlements, and his relationships with the counsel that are believed to be behind the scenes manipulating him," the requested information and documents are relevant, needed and reasonably narrowly tailored. *Id.* In response to Objector Hull's refusal to appear for a deposition or produce documents by the Court's May 11, 2012 deadline and failure to provide any valid reason or justification for not doing so, Indirect Purchaser Plaintiffs filed a motion requesting the Court to order Hull to show cause why he should not be found in civil contempt and sanctioned in the amount of \$5,000 in attorney's fees and \$1,166.95 in costs for his failure to comply with the Court's direct order. (Doc. #1199) (filed May 18, 2012). On May 25, 2012, Special Master Legge granted the Indirect Purchaser Plaintiffs' motion and ordered Objector Hull to show cause why he should not be held in contempt for violating the Court's order compelling his deposition and response to discovery documents (Doc. #1210) (filed May 25, 2012). On June 1, 2012, Joseph Darrell Palmer entered his appearance as counsel on behalf of Objector Sean Hull (Doc.#1222) (filed June 1, 2012), and filed a Response to Plaintiffs motion for contempt arguing that plaintiffs' motion should be denied, the order for a deposition should be vacated as without jurisdiction and moot, and sanctions should be denied in their entirety. (Doc. #1223) (filed June 1, 2012). On June 20, 2012, Special Master Legge filed his Proposed Order Finding Objector Sean Hull in Civil Contempt and Awarding Sanctions to Indirect Purchaser Plaintiffs. (Doc. #1234) (filed June 20, 2012). However, it appears that before Judge Conti either adopted or rejected Special Master Legge's Proposed Order, Objector/Appellant Hull voluntarily dismissed his appeal pursuant to FRAP 42(b) on August 9, 2012.

206. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: notice of appearance of Joseph Darrell Palmer for Appellant Sean Hull; motion to dismiss case voluntarily pursuant to FRAP 42(b).

207. The sole objector National Automatic Sprinkler Industry Pension Fund ("NASI") represented by attorney Irwin Schwartz only objected to the attorneys fee award as presented in the Settlement Notice. Objectors supported the settlement and plan of allocation. Following the September 27, 2010, hearing on Final Approval of Class Settlement, the Court concluded that a supplemental hearing on the Application for Attorney Fees warranted in light of a recent Ninth Circuit's decision. A Supplemental Final Settlement Hearing on Plaintiffs' Application for Attorney Fees was set for November 1, 2010, and additional objections could be filed up until October 26, 2010. Objector NASI remaining the only objector to the fee award, filed a supplemental objection and response which were overruled by the court's Order Granting Lead Plaintiffs Motion for Attorney Fees and Reimbursement of Litigation Expenses. (Doc. # 312) (filed Nov. 1, 2010).

208. *See* Docs. #293 & 294 (filed Sept. 29, 2010).

209. *See* Doc. #312 (filed Nov. 1, 2010).

210. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Required Mediation Form; motion to dismiss case voluntarily pursuant to FRAP 42(b). Prior to dismissing its appeal, Objector Pension Fund also withdrew its motion for attorney fees and expenses pursuant to Fed. R. Civ. P. 54(d). (Doc. #320) (filed Dec. 21, 2010).

211. *See Plaintiffs' Response to Objections to Class Counsel Settlement* (Doc. #421) (filed Jan. 3, 2013) (describing the 9 objections; two additional objections were submitted 14 days past the deadline). Class plaintiffs were given an additional 30 day period to submit objections to Plaintiffs' modified plan of distribution of the settlement funds. Three objectors filed renewed objections during this period. *See Status Report* (Doc. #462) (filed May 20, 2013).

212. *See Final Judgment and Order of Dismissal with Prejudice* (Doc. #465) (filed May 30, 2013).

213. *See Order* (Doc. #467) (filed June 19, 2013).

214. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Required Mediation Form; objector/appellant's stipulated motion to dismiss case voluntarily pursuant to FRAP 42(b).

215. *See Plaintiffs Proposed Findings of Fact and Conclusions of Law and Order Thereon* (Doc. #118) (filed Mar. 3, 2010).

216. *See Lane v. Facebook, Inc.*, No. 08-3845, 2010 WL 9013059 (N.D. Cal. Mar. 17, 2010).

217. *See Lane v. Facebook, Inc.*, No. 08-3845, 2010 WL 2076916 (N.D. Cal. May 24, 2010).

218. *Lane v. Facebook, Inc.*, 696 F.3d 811 (9th Cir. 2012) (holding that the district court did not abuse its discretion in approving the parties' \$9.5 million settlement agreement as "fair, reasonable and adequate" finding the settlement amount was not too low and not disqualified because a Facebook employee sits on the board of the organization distributing *cy pres* funds). Objector/appellant McCall's Petition for rehearing *en banc* and Objectors Marek and Trotter's petition for rehearing were denied. *Lane v. Facebook, Inc.*, 709 F.3d 791 (9th Cir. 2013). Objectors' petition for certiorari was recently granted on July 31, 2013. *Marek v. Lane, et al.*, (U.S. July 31, 2013) (No. 13-136).

219. *See supra* note 156.

220. Although 50 objections appear to have been timely filed objecting to the terms of the proposed settlement or the fees and expenses requested by class counsel, the court reports in order granting final approval that only 27 objections were filed by members of the Settlement Class as defined in the Notice. (Doc. #319) (filed Dec. 20, 2010) Thus only 27 objectors had standing to object to the settlement. *See also Pls. Reply Mem. in Supp. of Mot. for Final Approval of Settlement* (Doc. #302) (filed Dec. 6, 2010).

221. *See* Docs. #319, 320 (filed Dec. 20, 2010).

222. The Ninth Circuit *sua sponte* consolidated Appeal Nos. 11-15182, 11-15186, 11-15190, 11-15191, and 11-15192 on Feb. 1, 2011.

223. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Required Mediation Form; motions to extend time to file opening brief and record on appeal (granted); motion to supplement the record on appeal (denied); motion to

file opening brief and certain excerpts of record under seal(granted); opening brief filed; response to appellees' motion to strike; motion for extension of time to file reply brief (granted); motion to dismiss case voluntarily pursuant to FRAP 42(b).

224. Oral argument was held in San Francisco on August 13, 2013 for consolidated appeals 11-15186, 11-15190, 11-15191, 11-15192.

225. Oral argument was held in San Francisco on August 13, 2013 for consolidated appeals 11-15186, 11-15190, 11-15191, 11-15192.

226. Oral argument was held in San Francisco on August 13, 2013 for consolidated appeals 11-15186, 11-15190, 11-15191, 11-15192.

227. Oral argument was held in San Francisco on August 13, 2013 for consolidated appeals 11-15186, 11-15190, 11-15191, 11-15192.

228. Although 9th Circuit Objector Appeal No. 10-15871 listed here resulted from the final approval of the settlement of surface flaking claims by plaintiffs in *Ross v. Trex Company, Inc.*, No. 3:09-670 (N.D. Cal. Feb. 13, 2009), the settlement also consolidated *Ross* with *Okano v. Trex Company, Inc.*, No. 09-1878 (N.D. Cal. Apr. 14, 2009) for purposes of pursuing mold claims against Defendant Trex. See *Order* (Doc. # 152) (filed Mar. 16, 2010). Plaintiffs on behalf of a nationwide class filed a motion seeking preliminary approval of a settlement of their mold claims against Defendant Trex on April 5, 2013, and a hearing on the motion is scheduled for Aug. 23, 2013. (Doc. # 258) (filed Apr. 5, 2013).

229. Preliminary approval of the class action Settlement Agreement between class members and Defendant Trex Co. was granted on July 30, 2009; the final fairness hearing was held on October 30, 2009. Fifteen objections were submitted prior to the fairness hearing and an additional 3 objections were submitted afterwards. Despite the fact that four of the 18 total objections were untimely and a fifth suffered from other procedural deficiencies, the court considered all of them, addressing the arguments raised prior to overruling all objections and granting final approval, finding the settlement to be fair, adequate and free from collusion. See *Second Revised Final Order Approving Class Action Settlement and Dismissing Released Claims with Prejudice* (Doc. #154)(filed Apr. 7, 2010)(*nunc pro tunc* to March 15, 2010).

230. See Doc. #152 (filed Mar. 16, 2010).

231. See Doc. #154 (filed Apr. 7, 2010).

232. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: It appears that the parties intended to participate in the Ninth Circuit Mediation Program (facilitates settlement while appeals are pending). On June 30, 2010, the parties informed the court that they had reached a settlement and they were ordered to either file a motion or stipulation to dismiss the appeal pursuant to FRAP 42(b) or contact the Circuit Mediator within 30 days. Objectors/Appellants filed their stipulated motion to dismiss the case voluntarily pursuant to FRAP 42(b) on July 9, 2010, and the court dismissed the appeal on July 12, 2010.

233. Although the court considered all 36 objections, the court pointed out that 5 of the 36 objections were received from individuals who also opted out of the settlement which technically mooted their objections as class members who opt out lack standing to object to a settlement. See *Order (1) Granting Final Approval of Class Action Settlement etc.* (Doc. # 207) (filed May 17, 2011).

234. See *In re Wachovia Corp. "Pick-A-Payment" Mortgage Mktg. & Sales Practices Litig.*, 2011 WL 1877630 (N.D. Cal. May 17, 2011).

235. An additional appeal was filed by lead plaintiffs Anthony Michaels and David Catapano, appealing on behalf of themselves and the class, most likely from the court's decision to award class counsel only \$800,000 of the \$1.05 million it requested for attorney fees, and to award class representatives Michaels and Catapano only \$2,000 of the \$5,000 they requested. See *Notice of Appeal* (Doc. # 226) (filed July 27, 2012). Appeal No. 12-35631 was dismissed on Aug. 30, 2012, pursuant to appellants' FRAP 42(b) motion for voluntary dismissal.

236. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Required Mediation Form; motion to proceed *in forma pauperis* (denied by the district court Aug. 18, 2011); motion to extend time to file response to appellees motion to dismiss for lack of jurisdiction (granted in part); motion to dismiss case voluntarily pursuant to FRAP 42(b).

237. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Required Mediation Form; parties' stipulation to dismiss the case voluntarily pursuant to FRAP 42(b).

238. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Required Mediation Form; parties' stipulation to dismiss the case voluntarily pursuant to FRAP 42(b).

239. Plaintiffs asked the court to require a total appeal bond of \$240,000 divided equally among the 2 Objectors (\$116,250 each) to ensure payment of appellate costs that consisted of: (1) \$15,000 per appeal for the expenses incurred opposing these appeals, which are recoverable costs under Fed. R. App. P. 39(e); and (2) \$101,250 for the interest on the unpaid settlement amount and attorneys' fees through resolution of the appeals (plaintiffs calculated by multiplying the cash component of the settlement amount and the attorneys' fees awarded by the Court (\$75 million) by the current applicable interest rate of 0.18% for 18 months, which plaintiffs identified as a conservative estimate of the length of time it will take to resolve the appeals.) See *Plaintiffs' Memorandum of Points and Authorities in Support of Motion Requiring Objector-Appellants to Post Appeal Bond* (Doc. # 235, Attach. 1) (filed July 1, 2011).

240. Citing *Azizian v. Federated Dep't Stores, Inc.*, 499 F.3d 950, 961 (9th Cir. 2007), the court balanced the appellant's ability to pay a bond, the risk that the appellant would not pay costs if unsuccessful, the merits of the appeal, and whether the appellant has shown bad faith or vexatious conduct, and ordered Rose to post an appellate bond in the amount of \$15,000 concluding that the "amount is significantly less than the requested amount of \$ 116,250, but will offer Plaintiffs some assurance that they will recover their costs in the event that Rose's appeal is unsuccessful." See *Order* (Doc. #249) (filed Aug. 18, 2011) & *Order Setting Deadline for Marcella Rose to Post Appeal Bond* (Doc. #252) (filed Aug. 26, 2011). Appeal No. 11-16507 was voluntarily dismissed on Aug. 30, 2011 prior to the Sept. 26, 2011 deadline for posting the cost bond.

241. Plaintiffs asked the court to require a total appeal bond of \$240,000 divided equally among the 2 Objectors (\$116,250 each) to ensure payment of appellate costs that consisted of: (1) \$15,000 per appeal for the expenses incurred opposing these appeals, which are recoverable costs under Fed. R. App. P. 39(e); and (2) \$101,250 for the interest on the unpaid settlement amount and attorneys' fees through resolution of the appeals (plaintiffs calculated by multiplying the cash component of the settlement amount and the attorneys' fees awarded by the Court (\$75 million) by the current applicable interest rate of 0.18% for 18 months, which plaintiffs identified as a conservative estimate of the length of time it will take to resolve the appeals.) See *Plaintiffs' Memorandum of Points and Authorities in Support of Motion Requiring Objector-Appellants to Post Appeal Bond* (Doc. # 235, Attach. 1) (filed July 1, 2011). Although Objectors Attorney Darrell Palmer filed an 11-page Response to Plaintiff's motion arguing that

it should be overruled or the bond should only be set for \$1,000, Appeal No. 11-16513 was voluntarily dismissed on July 21, 2011 prior to the court's ruling on the Plaintiffs' cost bond motion. See *Response Objectors Opposition to Plaintiffs' Motion for an Appeal Bond* (Doc. #239) (filed July 15, 2011).

242. *Plaintiffs' Consolidated Response to Objections to Final Approval of Class Action Settlement and Request for Attorneys' Fees* (Doc. #205) (filed Mar. 7, 2011) (plaintiffs argue that the objections asserted on behalf of four class members by three well known professional objectors—Attorneys Howard Strong, Joseph Darrell Palmer, and Charles Chalmers—should be overruled because they have all been rejected by other courts including the district court for the N.D. Cal).

243. See Doc. #216 (filed Apr. 1, 2011).

244. On April 1, 2011, the Court granted Final Approval of the Settlement, but delayed consideration of Class Counsel's Motion for Attorney Fees until after the May 20, 2011 deadline for filing a claim. On June 7, 2011, a Joint Report in Response to the Court's Order Re Number of Claims was filed by class counsel detailing the number of claims submitted. On June 9, 2011, Attorney Chalmers on behalf of Objector Neil Scheiman moved for Leave to File a Response to the Report, which he filed on June 29, 2011. The court overruled Objector Scheiman's supplemental objections and approved Class Counsel's Motion for an Award of Attorney Fees, Costs, and Incentive Awards. (Doc. #232) (filed July 6, 2011).

245. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Required Mediation Form; late-filed motion for an extension of time to file opening brief (granted); parties' stipulated motion to dismiss the case voluntarily pursuant to FRAP 42(b).

246. Plaintiffs' Reply Memorandum in Support of Motion for Final Approval of Settlement (Doc. #583)(filed Feb. 28, 2012)(Plaintiffs addressed the substance of the twenty-six objections to the proposed Settlement that were timely lodged.) Upon receipt of four additional objections, Plaintiffs amended and filed an updated version of a chart that catalogued all of the 30 timely filed objections. (Doc. #590) (filed March 5, 2012).

247. See Docs. #607, 608 & 609 (filed Mar. 29, 2012).

248. The Ninth Circuit granted appellees' motion to consolidate Appeal Nos. 12-15705, 12-15889, 12-15957, 12-15996, 12-16010, and 12-16038 on March 8, 2012.

249. *Response to Objections to Proposed Settlement* (Doc. #214) (filed Mar. 7, 2011).

250. See Doc. #218 (filed Mar. 31, 2011).

251. See *infra* note 254 for explanation of a noted discrepancy regarding date of dismissal.

252. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Required Mediation Form; motion for an extension of time to file opening brief (granted); amended notice of appeal; parties' stipulated motion to dismiss the case voluntarily pursuant to FRAP 42(b).

253. Class counsel explained that in accordance with the terms of the judgment and the Settlement Agreement, the Settlement Administrator would be proceeding with the distribution of the Settlement Fund despite Objector Balla's attempted appeal. Thus, Plaintiffs would seek a bond amount only with respect to the more limited costs of appeal recoverable under Federal Rule of Appellate Procedure 39. Estimating that the costs associated with the appellate record, court reporter transcriptions, and printing to be approximately \$4,000–\$6,000, Plaintiffs chose to request that the court set the amount of the appeal bond at the midpoint of the estimated appellate costs or \$5,000. See *Motion for Appeal Bond* (Doc. #220) (filed Apr. 25, 2011).

254. See *Yingling v. eBay, Inc.*, No. 5:09-1733, 2011 WL 2790181 (N.D. Cal. July 5, 2011). It appears that Objector Balla and his attorney Mr. Palmer chose not to post the bond, but instead to amend the notice of appeal on August 5, 2011, thus notifying the court of their intention to appeal from the courts July 5, 2011 Order requiring the bond. The appellate docket for Appeal No. 11-16033 indicates that Appellant Balla filed a stipulated motion to dismiss the appeal voluntarily pursuant to FRAP 42(b) on August 11, 2011. Although the appellate docket appears to indicate that the court granted Objector Balla's FRAP 42(b) motion to dismiss on Aug. 12, 2011, the mandate is not entered on the district court docket until September 14, 2011. See Doc. #232 (filed Sept. 14, 2011).

255. Only 2 objections were filed. On Jan. 23, 2012, attorney Sam P. Cannata submitted objections on behalf of his minor children Objectors Enzo R. and Mia G. Cannata. (Doc. #199) (filed Jan. 23, 2012). Attorney Joseph Darrell Palmer filed objections on behalf of another attorney, Objector Christopher Bandas. (Doc. #200) (filed Jan. 23, 2012) In addition to submitting their arguments for why the Palmer/Bandas and Cannata Objections should be overruled, Plaintiffs motioned the court to strike the Objection of Mia and Enzo Cannata because since neither of the Cannata objectors are purchasers of the computers as required to be members of the class (their objection states they received their computers as gifts), they do not have standing to object. See *Plaintiffs' Reply Memorandum* (Doc. #202) (filed Jan. 30, 2012). On Feb. 1, 2012, Samuel Cannata filed a motion to withdraw his minor children as objectors and substitute himself, on the ground that he purchased the computers for his children, and thus he was the true class member at issue. Doc. #213 (filed Feb. 1, 2012) Although the Court granted Mr. Cannata's motion to withdraw his children as the named Objectors and substitute himself as the Objector of record, the Court found Mr. Cannata's objections to be without merit, overruled them and granted final approval of the settlement. See *Order* (Doc. #217) (filed Feb. 14, 2012).

256. See Doc. #218 (filed Feb. 14, 2012).

257. After receiving notice on March 28, 2012 that the appeal would be dismissed within 21 days unless the docketing and filing fees were paid [Doc. #233 (filed Mar. 23, 2012)], the Ninth Circuit dismissed Objector Bandas' Appeal No. 12-15555 on April 18, 2012. See Doc. #241 (filed Apr. 18, 2012). After payment of the docketing fee, Objector Bandas' Appeal No. 12-15555 was reinstated on June 25, 2012. (Doc. #259) (filed June 25, 2012).

258. Following the July 31, 2012 Order for Mr. Bandas to post an appeal bond by Aug. 6, 2012, Attorney Palmer and Objector Bandas filed a motion to stay (Doc. #267)(filed Aug. 6, 2012) and amended their notice of appeal to include the July 31, 2012 Bond Order (Doc. #268)(filed Aug. 6, 2012). Judge James Ware denied Palmer/Bandas' motion to stay, ordering Bandas' to either post the appellate bond by Aug. 24, 2012 or dismiss his appeal with failure to comply possibly resulting in a finding of civil contempt and imposition of sanctions (Doc. #272)(filed Aug. 22, 2012). On

Aug. 29, 2012, Judge Ware granted Plaintiffs' motion for sanctions finding that Objector Bandas' failure to comply with the Court's July 31 Order and August 22 Order warranted a finding that Objector Bandas was in contempt, and the Court imposed the sanction of striking Objector's objection to the Final Settlement "which means that the Objection has no force or effect on the Final Settlement." See *Embry v. ACER Am. Corp.*, No. 09-01808, 2012 WL 3777163 (N.D. Cal. Aug. 29, 2012). On Sept. 6, 2012, Objector Bandas amended his notice of appeal a second time to add the courts Aug. 29, 2012 Contempt Order. See Doc. #276 (filed Sept. 6, 2012). On Sept. 28, 2012, Plaintiffs filed a motion requesting Objector Bandas to be found in contempt of court a second time and imposition of further sanctions. (Doc. #277) (filed 9/28/2012). On October 1, 2012, a hearing on the motion for further sanctions was set for Oct. 26, 2012 in San Francisco. On October 2, 2012, the Ninth Circuit granted Appellant Bandas' motion to dismiss the case voluntarily pursuant to FRAP 42(b). (Doc. #280) (filed Oct. 2, 2012).

259. Although Mr. Cannata was originally counsel to the original Objectors, Sam P. Cannata was substituted as the Objector of record prior to final approval of the settlement. See *supra* note 255.

260. See *supra* note 258. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Required Mediation Form; Appellant Bandas' motions to reinstate case after FRAP 42-1 dismissal (second motion granted after payment of fees); motion to extend time to file opening brief (granted); amended notice of appeal (first and second); motion to stay lower court action; reply and response to appellees' motion to dismiss appeal following district court's contempt order; appellant Bandas' motion to dismiss case voluntarily pursuant to FRAP 42(b).

261. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: late payment of docket fee; objector/appellant Cannata's motion to dismiss the case voluntarily pursuant to FRAP 42(b).

262. See *Plaintiffs' Motion for Reconsideration* (Doc. #257) (filed June 26, 2012).

263. See *Order granting Plaintiffs' Motion for Reconsideration* (Doc. #265) (filed July 31, 2012).

264. See *Plaintiff's Supplemental Brief in Support of Motions for Discovery and Appeal Bond* (Doc. #251) (filed May 4, 2012). Following dismissal of Objector Bandas' appeal, Plaintiffs asked the court to grant its original motion filed on March 23, 2012 to require Objector Cannata to post a cost bond in the amount of \$346,814.51 or such lesser amount as the Court sees fit. Plaintiffs asserted that an appeal bond in the amount of \$346,814.51 is necessary to ensure payment of: (1) costs incurred in opposing the appeal (\$15,000); administrative costs of keeping in contact with claimants about the status of their claim pending appeal (\$55,650); and (3) delay damages likely to be awarded to class members on appeal under 28 U.S.C. 1912 because of delay in distribution of settlement benefits (\$276,164.51). *Plaintiff's Motion for Appeal Bond* (Doc #232) (filed March 23, 2012).

265. Although the court found that a bond was warranted, the Court refused to include anticipated damages in the value of a FRAP 7 cost bond, thus because Plaintiff only anticipated incurring \$70,650 in actual costs, the Court found that a bond of \$70,650 was appropriate. See *Embry v. ACER Am. Corp.*, No. 09-01808, 2012 WL 2055030 (N.D. Cal. June 05, 2012). It appears that Objector Cannata chose the option of dismissing his appeal within the 14-day deadline instead of posting the \$70,650 appellate cost bond. (Doc. #254) (filed June 15, 2012).

266. *Response in Opposition to Objections to the Proposed Settlement* (Doc. #98) (filed Jan 27, 2012).

267. *Order Granting Final Approval of Settlement and Release and Granting Plaintiffs' Motion for An Award of Attorneys' Fees, Reimbursement of Expenses and Incentive Awards* (Doc. #107) (filed Mar. 8, 2012) (Notice given per Doc. #118 on April 5, 2012); and *Judgment* (Doc. #110) (filed Apr. 2, 2012) (Notice given per Doc. #116 on April 4, 2012).

268. The Ninth Circuit granted appellees' motion to consolidate Appeal Nos. 12-15740, 12-15757, 12-15782, and 12-15816 on May 7, 2012.

269. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: objector/appellant's motion to dismiss the case voluntarily pursuant to FRAP 42(b). Objector Funk dismissed his appeal and did not post the required appellate cost bond.

270. The Ninth Circuit denied Objector/Appellant Gaudet's motion to stay the district courts' May 29, 2012 bond order. (Doc. #172)(filed June 7, 2012). Objector Gaudet amended his notice of appeal to include the May 29, 2012 Bond Order. (Doc. #164)(filed June 6, 2012). On June 22, 2012, Plaintiffs filed a motion to hold Objector Gaudet in contempt for failing to post a bond by June 8, 2012, not dismissing his appeal, and after being served with Plaintiffs' notice of deposition, Gaudet failed to appear. (Doc. # 179)(filed June 22, 2012). On July 6, 2012, Judge Ware denied Plaintiffs' motion for contempt as premature, but ordered Objector Gaudet to post the required appellate bond on or before July 13, 2012 or dismiss his appeal. Furthermore, the court placed Objector Gaudet on notice that failure to immediately comply with the Court's May 29 Order may result in a finding of civil contempt and the imposition of appropriate sanctions. (Doc. #195)(July 6, 2012) On August 1, Plaintiffs renewed their motion for contempt, and on August 22, 2012 the Court found that Objector's failure to comply with the Court's May 29 Order warranted a finding that Objector Gaudet is in contempt, and imposed the sanction of striking his objection to the Final Settlement which means that Objector Gaudet's objection has no force or effect on the final settlement. See *In re Magsafe Apple Power Adapter Litigation*, No. 09-01911, 2012 WL 3686783 (N.D. Cal. Aug. 22, 2012). On August 29, 2012, Objector Gaudet amended his notice of appeal in No. 12-15757 to add the Courts May 29, 2012 Bond Order and the courts' August 22, 2012 Contempt Order. (Doc. #206) (filed Aug. 29, 2012). As of August 2013, Objector/Appellant Gaudet has filed his opening brief and reply brief in pending appeal No. 12-15757, which remains consolidated with appeal No. 12-15782.

271. Objector Gryphon and her attorney Theodore Frank responded to Plaintiffs' bond motion by asking the court to deny the motion and impose Rule 11 sanctions on Plaintiffs' counsel. (Doc. #137)(Apr. 30, 2012). After being ordered on May 29, 2012, to post a \$15,000 appeal bond and be available for deposition questioning on the ability to post a larger bond of \$25,000, counsel for Objector Gryphon attempted to post a \$25,000 bond on June 8, 2012 which the Clerk of Court was unable to post because Objector Gryphon was not ordered or granted leave to post a bond in that amount. See Doc. #176 (filed June 20, 2012). Objector Gryphon and her counsel were ordered to post the required \$15,000 bond on or before June 22, 2012 which they did. See Doc. 179 (filed June 22, 2012). In Appeal No. 12-15782, Appellant Gryphon and her counsel filed a motion to vacate or modify the district court's May 29, 2012 Bond Order. Appeal No. 12-15782 (9th Cir. June 8, 2012) (Doc. #16). On Sept. 5, 2012, the Ninth Circuit denied Plaintiff/Appellees' motion to dismiss Appeal No. 12-15782, and denied Appellant Gryphon's motion to vacate the appeal bond order without prejudice to renewing the argument in her opening brief. See *Order*, No. 12-15782 (9th Cir. Sept. 5, 2012) (Doc. #40). As of

August 2013, Objector/Appellant Gryphon has filed her opening brief and reply brief in pending appeal No. 12-15782, which remains consolidated with appeal No. 12-15757.

272. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: notice of appearance by attorney Joseph Darrell Palmer for Objector Lee, objector/appellant's motion to dismiss the case voluntarily pursuant to FRAP 42(b).

273. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: required Mediation Form, objector/appellant's motion to dismiss the case voluntarily pursuant to FRAP 42(b).

274. *See Motion for Bond* (Doc. #133) (filed Apr. 16, 2012). For each bond request, Plaintiffs' requested an appeal bond in the amount of \$200,000 consisting of \$25,000 in anticipated taxable costs and \$175,000 in anticipated attorneys' fees Plaintiffs would incur in defending against each of the Objectors' appeals. Plaintiffs also sought an Order granting Plaintiffs limited expedited discovery to establish whether the Objectors' appeals lacked merit, whether each Objector was capable of paying the cost of the requested bond, and whether each Objector would pay the appellees' costs if they lost their appeal.

275. *See Motion for Bond* (Doc. #127) (filed Apr. 10, 2012). *See supra* note 274 for details of bond request.

276. *See Motion for Bond* (Doc. #132) (filed Apr. 16, 2012). *See supra* note 274 for details of bond request. Objector Lee filed a motion to stay the courts May 29, 2012 bond order on June 7, which the Court denied. (Doc. #174) (filed June 20, 2012). On June 22, 2012, Plaintiffs filed a motion to hold Objector Lee in contempt for failing to post a bond by June 8, 2012, not dismissing his appeal, and after being served with Plaintiffs' notice of deposition, Lee failed to appear. (Doc. # 181) (filed June 22, 2012). On July 6, 2012, Judge Ware denied Plaintiffs' motion for contempt as premature, but ordered Objector Lee to post the required appellate bond on or before July 13, 2012 or dismiss his appeal. Furthermore, the court placed Objector Lee on notice that failure to immediately comply with the Court's May 29 Order may result in a finding of civil contempt and the imposition of appropriate sanctions. (Doc. #195) (July 6, 2012) Objector Lee voluntarily dismissed his appeal on July 20, 2012. (Doc. #196) (filed July 20, 2012).

277. *See Motion for Bond* (Doc. #131) (filed Apr. 13, 2012). *See supra* note 274 for details of bond request.

278. *See In re MagSafe Apple Power Adapter Litig.*, No. 09-01911, 2012 WL 2339721 (N.D. Cal. May 29, 2012). Because the Court concluded that Objectors were highly unlikely to prevail in their appeals, and because there was a significant risk of non-payment following appeal, the Court found that a bond was warranted, but the bond would only be required in an amount sufficient to cover Plaintiffs' anticipated costs, and not Plaintiffs' projected attorney fees. Thus, on or before June 8, 2012, the Court required each Objector to either post a \$15,000 bond or file a notice of dismissal of their respective appeals. In addition, the Court granted Plaintiffs' Motion to conduct limited discovery and ordered that on or before June 18, 2012, each Objector must be available for one in-person deposition regarding his or her ability to post a bond in the amount of \$25,000. Upon completion of the depositions, Plaintiffs could file a single supplemental Motion seeking a higher bond per Objector based on financial information gathered from the deposition. *Id.* at *2.

279. Doc. #168 (filed June 13, 2012).

280. Objector Sweeney was also ordered to appear for an in-person deposition regarding her status as a class member on or before July 27, 2012. (Doc. #194) (filed July 6, 2012). Objector Sweeney voluntarily dismissed her appeal on August 7, 2012. (Doc. #201) (filed Aug. 7, 2012).

281. *Plaintiffs' Motion for Final Approval of Class Action Settlement* (Doc. #88-1) (filed Jan. 20, 2012).

282. *See Ko v. Natura Pet Products, Inc.*, No. 09-02619, 2012 WL 3945541 (N.D. Cal. Sept. 10, 2012).

283. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Required Mediation Questionnaire; notice of appearance of Christopher A. Bandas for Appellant Walsh on Nov. 27, 2012. Objector/Appellant failed to file his opening brief by April 5, 2013 as required, and did not seek an extension of time to file. Appeal 12-17296 was dismissed under Ninth Cir. R. 42-1 for failure to prosecute. Order, No. 12-17296 (9th Cir. Apr. 24, 2013) (Doc. #17).

284. *Plaintiffs' Response and Motion to Overrule Purported Class Member Donald R Earl's Objections* (Doc. #219) (filed Nov. 2, 2012).

285. *See Order* (Doc. #223) (filed Nov. 13, 2012). The Court specifically overruled Objector Earl's objections and extended the opt-out deadline for Mr. Earl to Dec. 10, 2012 so he could exclude himself from the settlement if he chose. *Id.* After the Court granted final approval of the Settlement after a hearing which Objector Earl did not attend, Objector Earl filed a motion to vacate the court's Nov. 13 Order granting final approval and awarding attorneys' fees. *See* Doc. #225 (filed Nov. 21, 2012) Plaintiffs' filed a motion to impose sanctions on Objector Earl for filing a frivolous Motion to Vacate that they alleged both repeated his failed attacks on the class notice (while admitting that his prior objections were made without even having read the notice in full) and raised new, baseless accusations of fraud against Class Counsel. *See Motion for Sanctions* (Doc. #230) (filed Dec. 3, 2012). The Court denied Objector Earl's motion to set aside the judgment pursuant to Rule 60(b), and denied Plaintiffs' motion for sanctions in the absence of clear evidence that Objector Earl's intentions were in bad faith. However, the court warned of future sanctions for continuing to file pleadings raising theories that the court has previously rejected. *See Schulken v. Washington Mutual Bank*, No. 09-027080, 2013 WL 11568 (N.D. Cal. Jan 1, 2013). Objector Earl filed his notice of appeal on Jan. 30, 2013 (Doc. #238).

286. Objector/Appellant Earl appealed the Court's Orders: (1) granting in part and denying in part class certification (Doc. # 184), granting preliminary approval to the Parties' class action settlement (Doc. #210), granting final approval to the settlement (Doc. # 223), and denying Earl's motion to vacate the judgment. (Doc. #237)

287. *Motion for Bond* (Doc. #240) (filed Feb. 15, 2013). Plaintiffs' request for a \$20,000 appeal bond includes: \$10,000 for estimated taxable costs (filing fees, printing and copying costs, cost of transcripts), and \$10,000 for administrative costs of addressing the settlement class delay during the pendency of the appeal. *Id.*

288. *Order* (Doc. #259) (filed Apr. 2, 2013). Finding Plaintiffs estimate of taxable costs associated with preparing and transmitting the record of the case to be over-inclusive and presuming Objector Earl will pay for the transcripts, the Court reduced the bond amount requested for taxable costs from \$10,000 to \$5,000, and denied the request for \$10,000 for administrative costs of addressing settlement delay as Plaintiffs were unable to identify any precedent or statutes authorizing administrative expenses as "costs," nor clearly distinguish the projected costs from those that could be claimed as attorney's fees. *Id.* Objector/Appellant Earl's emergency motion to stay the district court's bond order was denied by the Ninth Circuit

on May 30, 2013. *Order*, No. 13-15191 (9th Cir. May 31, 2013) (Doc. #9). Objector Earl was ordered to pay for the cost of the necessary transcripts needed on appeal. *See* Doc. #263 (filed May 31, 2013).

289. *Plaintiffs' Motion for Final Approval of Class Action Settlement* (Doc. #143) (filed Mar. 8, 2012). Plaintiffs assert that of the four objections, one objector had sought permission to withdraw his objection. *Id.*

290. *See Lemus v. H & R Block Enterprises LLC.*, No. 09-3179, 2012 WL 3638550 (N.D. Cal. Aug. 22, 2012).

291. *See Order*, Doc. #166 (filed Sept. 10, 2012).

292. Appeal No. 13-16628 was filed on Aug. 7, 2013 by class member Paul Madar from the court's denial of his motion to permit a late filed claim to the settlement funds and denial of his motion to reconsider the court's final approval of the settlement. Class member Madar did not object to the settlement thus his appeal is not considered an Objector appeal.

293. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: parties' stipulated motion to dismiss the case voluntarily pursuant to FRAP 42(b).

294. *See Exhibit A Index of Objections Received by Class Counsel* (Doc. #104-1) (filed Feb. 2, 2011).

295. *See Order* (Doc. #128)(filed May 31, 2011).

296. *See In re Google Buzz Privacy Litigation*, No. 10-00672, 2011 WL 7460099 (N.D. Cal. June 02, 2011).

297. *See Order* (Doc. #136) (filed June 17, 2011).

298. The Ninth Circuit filed an Order on Oct. 21, 2011 notifying Objector/Appellants in Appeal Nos. 11-16587, 11-16638, 11-16639, 11-16640, and 11-16642 that they were selected for inclusion in the Mediation Program. An in-person mediation/settlement conference was scheduled for Nov. 17, 2011 in San Francisco. *See Mediation Order*, Appeal No. 11-16587 (9th Cir. Oct. 21, 2011) (Doc. #12). The parties filed their stipulated motion to dismiss the appeals voluntarily pursuant to FRAP 42(b) on Nov. 18, 2011 and the Ninth Circuit dismissed the appeals on Nov. 21, 2011.

299. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: notice of appearance of Christopher Bandas for Appellant Kervin Walsh; Required Mediation Questionnaire; parties' stipulated motion to dismiss the case voluntarily pursuant to FRAP 42(b).

300. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Required Mediation Questionnaire; parties' stipulated motion to dismiss the case voluntarily pursuant to FRAP 42(b).

301. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Required Mediation Questionnaire; parties' stipulated motion to dismiss the case voluntarily pursuant to FRAP 42(b).

302. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: notice of appearance of Thomas L. Cox Jr. for Appellants Brent Clifton and Warren Sibley; Required Mediation Questionnaire; parties' stipulated motion to dismiss the case voluntarily pursuant to FRAP 42(b).

303. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Required Mediation Questionnaire; parties' stipulated motion to dismiss the case voluntarily pursuant to FRAP 42(b).

304. *See Nguyen v. BMW List of Objections Received From Class Members* (Doc. #102-1) (filed Feb. 27, 2012).

305. *See Nguyen v. BMW of North America LLC*, No. 10-02257, 2012 WL 1677054 (N.D. Cal. April 20, 2012).

306. *Id.*

307. *See Judgment* (Doc. #121) (May 8, 2012).

308. Appeal No. 13-16628 was filed on Aug. 7, 2013 by class member Paul Madar from the court's denial of his motion to permit a late filed claim to the settlement funds and denial of his motion to reconsider the court's final approval of the settlement. Class member Madar did not object to the settlement thus his appeal is not considered an Objector appeal.

309. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Required Mediation Questionnaire; parties' stipulated motion to dismiss the case voluntarily pursuant to FRAP 42(b).

310. *Response in Opposition to Objections to Proposed Settlement* (Doc. #59) (filed June 29, 2012).

311. *See In re Apple iPhone 4 Products Liability Litigation*, No. 5:10-md-02188, 2012 WL 3283432 (N.D. Cal. Aug. 10, 2012).

312. An additional appeal was filed by lead plaintiffs Anthony Michaels and David Catapano, appealing on behalf of themselves and the class, most likely from the court's decision to award class counsel only \$800,000 of the \$1.05 million it requested for attorney fees, and to award class representatives Michaels and Catapano only \$2,000 of the \$5,000 they requested. *See Notice of Appeal* (Doc. # 226) (filed July 27, 2012). Appeal No. 12-35631 was dismissed on Aug. 30, 2012, pursuant to appellants' FRAP 42(b) motion for voluntary dismissal.

313. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Required Mediation Form; motion to extend time to file opening brief (mooted); parties' stipulation to dismiss the case voluntarily pursuant to FRAP 42(b).

314. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: notice of appearance of Christopher Bandas on behalf of Appellant Michael Schulz; Required Mediation Form; motion to extend time to file opening brief (granted); parties' stipulation to dismiss the case voluntarily pursuant to FRAP 42(b).

315. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: notice of appearance of Christopher Bandas on behalf of Appellant Burt Chapa; Required Mediation Form; motion to extend time to file opening brief (granted); parties' stipulation to dismiss the case voluntarily pursuant to FRAP 42(b).

316. *Plaintiffs' Reply Memorandum in Support of Motion for Final Approval of Settlement* (Doc. #226) (filed Nov. 28, 2012). Plaintiffs assert that while there were 119 docketed items styled as "objections," only 100 were "proper objections" due to substance (5 expressed approval for the settlement), objections that also requested exclusion from the settlement class, failure to meet objection deadline and procedural defects. *Id.*

317. See *In re Netflix Privacy Litig.*, No. 5:11-CV-00379, 2013 WL 1120801 (N.D. Cal. March 18, 2013).
318. The Ninth Circuit granted appellees' motion to consolidate Appeal Nos. 13-15723, 13-15733, 13-15734, 13-15751, 13-15754, and 13-15759 on July 1, 2013.
319. The bond amount requested includes printing and administrative costs associated with responding to each appellate brief (estimated at \$175 on each appeal), and administrative costs of continued settlement administration during the length of the appeal period. See *Motion for Bond on Appeal* (Doc. #281) (filed May 31, 2013). In addition to the bond motion, Plaintiffs have filed a motion requesting an opportunity to conduct limited discovery with respect to the Objectors regarding the merits of their appeals, their motivations and interests in appealing, objection histories, and their financial arrangements with their counsel relevant to the appeal. See *Motion for Extension of Time to Complete Discovery* (Doc. #282) (filed May 31, 2013). Both of Plaintiffs motions are scheduled for hearing on Aug. 23, 2013 in San Jose before Judge Edward Davila.
320. See *Plaintiff's Motion for Final Approval of Class Action Settlement* (Doc. #33) (filed Dec. 16, 2011). Plaintiffs filed a separate 20 page response to objections filed by one of the three objectors in this case. See *Plaintiff's Reply in Support of Final Approval and Response to Objection of Fred Sondheimer* (Doc. #38) (filed Jan. 6, 2012).
321. See *Farrell v. OpenTable, Inc.*, No. 11-1785, 2012 WL 1379661 (N.D. Cal. Jan. 30, 2012).
322. One of the grounds of Objector Fred Sondheimer's original objection was that the Settlement Agreement contained no reporting requirement on the number of class members receiving a refund or credit. On April 27, 2012 (3 months after Objector Sondheimer filed his appeal), Plaintiff class members and Defendant OpenTable, Inc. agreed to amend the Settlement Agreement by including a stipulation in which the Defendant agreed to maintain reasonable records of any refunds or credits paid to settlement class members for a one year period and file this information with the court; Objector Sondheimer agreed to dismiss his appeal within 24 hours; and Plaintiffs' class counsel agreed to pay Mr. Sondheimer and his counsel \$7,000 within 14 days of Defendants' payment to class counsel pursuant to the terms of their agreement. See *Stipulation for Defendant to Collect Refund Information and Payment to Objector's Counsel* (Doc. #58) (filed Apr. 27, 2012). The court signed and granted the stipulation on May 2, 2012. (Doc. #58) (filed May 2, 2012) Objector Sondheimer voluntarily dismissed his Appeal 12-15370 the same day and mandate was filed in the district court on May 3, 2012. (Doc. #59) (filed May 3, 2012).
323. See *Plaintiffs Reply* (Doc. #89) (filed Dec. 21, 2012) (discussing the 13 objections submitted, 5 of which were allegedly untimely and/or otherwise procedurally improper).
324. See *In re Bank of Am. Credit Protection Mktg. & Sales Practices Litig.*, No. 3:11-md-2269, 2013 WL 174056 (N.D. Cal. January 16, 2013).
325. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: notice of appearance of Attorney Christopher A. Bandas for Appellant Beau Lochridge; Required Mediation Form; appellant's motion to dismiss the case voluntarily pursuant to FRAP 42(b).
326. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: notice of appearance of Allen G. Weinberg on behalf of Appellant Adina Wasserman; parties' stipulation to dismiss the case voluntarily pursuant to FRAP 42(b).
327. See *Class Counsel's Opposition to Objections to Final Approval of Class Action Settlement* (Doc. #125) (filed Aug. 22, 2012) & *Decl. of Tricia M. Solorzano on Behalf of Settlement Administrator Regarding Notice and Claims Process in Support of Motion for Final Approval of Class Action Settlement, Ex. G* (Doc. #128-7) (filed Aug. 22, 2012) (one objector could not be identified as a class member).
328. *Order Granting Joint Motion for Final Approval of Class Action Settlement; Granting Class Counsel's Motion for Attorneys' Fees, Costs, and Service Awards* (Doc. # 137) (Sept. 28, 2012).
329. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: notice of appearance of Attorney Christopher A. Bandas for Appellant Gordon Morgan; Required Mediation Form; appellant's motion to dismiss the case voluntarily pursuant to FRAP 42(b).
330. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: notice of appearance of Attorney Joseph Darrell Palmer for Appellants Nelson and Smith; Required Mediation Form; appellants' motion to dismiss the case voluntarily pursuant to FRAP 42(b).
331. See *Motion for Appeal Bond* (Doc. #148)(filed Nov. 8, 2012). Plaintiffs contend that an appeal bond of \$64,536.69 is necessary to ensure payment of appellate costs including (1) the estimated cost to the class of \$15,000 in connection with preparation of the record on appeal and transcript costs; (2) estimated cost to the class of \$6,536.69 in lost interest resulting from the delay caused by the appeal(based on an 18-month appeal period and the interest rate prescribed for judgments); and (3) estimated additional claims administrator costs of \$56,500 that will be incurred as a result of the appeal. *Id.*
332. See *Class Plaintiffs' Motion for Administrative Relief* (Doc. #158-1) (filed Dec. 10, 2012) Plaintiffs allege that Objectors Smith, Morgan and Nelson filed their original objections "pro se," then filed their notices of appeal "pro se", and only when Plaintiffs filed their motion for an appeal bond did Attorneys Bandas and Palmer file their notices of appearance on behalf of Objectors. Plaintiffs' counsel asserts that while the appeal bond motion is pending they seek from the court an order to allow the necessary discovery to establish that Palmer's and Bandas' appeal are 1) frivolous, and 2) support a pattern and practice of extracting money from Class Counsel or face a frivolous appeal. *Id.*
333. See *Plaintiffs' Motion to Strike Objection and Notice of Appeal of Gordon B. Morgan* (Doc. #167-1) (filed Dec. 28, 2012). Plaintiffs allege that the fact that Morgan did not sign his objection nor did he sign his notice of appeal, but then represented to the court that he did, by filing them pro se, when in actuality Attorney Bandas drafted, signed and filed the objection and notice of appeal for Morgan, violated F.R.C.P. 11(a) and thus both the objection and notice of appeal must be struck. *Id.*
334. See *Plaintiffs' Reply to Motion for Final Approval of Class Action Settlement* (Doc. #46)(filed Feb. 7, 2011); and *[Defendants'] Reply in Support of Motion for Final Approval of Class Action Settlement* (Doc. #45) (filed Feb. 7, 2011).
335. See *Order Granting (1) Final Approval to Class Action Settlement; (2) Award of Attorney's Fees; and (3) Judgment of Dismissal*. (Doc. #49) (filed Apr. 5, 2011).

336. The Ninth Circuit granted Appellants' motion to consolidate Appeal Nos. 11-55674 and 11-55706. *See Order* (9th Cir. July 19, 2011) (Doc. #12).

337. *See Dennis v. Kellogg Co.*, 697 F.3d 858 (9th Cir. Sept. 04, 2012). After a careful review of the class settlement, the Ninth Circuit concluded that the "district court did not apply the correct legal standards governing *cy pres* distributions and thus abused its discretion in approving the settlement. The settlement neither identifies the ultimate recipients of the product and cash *cy pres* awards nor sets forth any limiting restriction on those recipients, other than characterizing them as charities that feed the indigent." *Id.* at 861. On remand, the court granted the parties' joint motion for preliminary approval of the second revised negotiated settlement. (Doc. #95) (filed May 5, 2013). The final approval hearing is scheduled for Sept. 9, 2013. Several objections have been filed prior to the August 9, 2013, deadline for objections, including an objection filed by Attorney Joseph Darrell Palmer on behalf of Objectors Kendal Mark Jan, and Toni Ozen [(Doc. #103) (filed on Aug. 10, 2013)] and an objection filed by attorney Theodore Frank on behalf of Objector M. Todd Henderson [(Doc. #102) (filed Aug. 9, 2013)].

338. *See id.*

339. *See Plaintiffs' Motion for Rule 7 Appeal Bond* (Doc. #61) (filed July 8, 2011). Although Plaintiffs stated that since there were two separate objector appeals, "an appeal bond of \$3,000 to cover costs on appeal is reasonable," they reserved the right to seek an increase if necessary. *Id.*

340. *See Order Granting Plaintiffs Motion for a Rule 7 Appeal Bond* (Doc. #65) (filed Aug. 10, 2011) (neither Objector filed a timely opposition to the bond and Objector Rivero's counsel Christopher Bandas indicated Objector Rivero did not oppose a Rule 7 bond).

341. *See Plaintiffs' Memorandum of Points and Authorities In Support of Final Approval Of Class Action Settlement and Plaintiffs' Unopposed Motion for Attorneys' Fees And Costs and Incentive Awards* (Doc. #262) (filed Jan. 18, 2013) (arguing that the sole objection submitted by Attorney Theodore Frank on behalf of nominal Objector Brian Perryman should be dismissed because Objector Perryman lacks Article III standing to object to the proposed settlement). *See also Defendant's Statement of Non-Opposition to Plaintiffs' Motion for Final Approval of Class Action Settlement* (Doc. #265) (filed Jan. 22, 2013) (discussing Perryman objection). On Feb. 13, 2013, Objector Perryman filed a motion requesting the court impose Rule 11 sanctions against class counsel for filing a Memorandum in Support of Final Approval that contains claims, factual contentions and allegations which have no evidentiary support and are not warranted by existing law. (*See Doc. #272*) (filed Feb. 13, 2013). The court denied Objector Perryman's motion for Rule 11 sanctions. (Doc. #290) (filed May 6, 2013).

342. *See In re EasySaver Rewards Litig.*, 921 F.Supp. 2d 1040 (S.D. Cal. Feb. 4, 2013).

343. *See Final Judgment* (Doc. #277) (filed Feb. 21, 2013).

344. Appeal No. 13-16628 was filed on Aug. 7, 2013 by class member Paul Madar from the court's denial of his motion to permit a late filed claim to the settlement funds and denial of his motion to reconsider the court's final approval of the settlement. Class member Madar did not object to the settlement thus his appeal is not considered an Objector appeal.

345. *See Motion for Bond on Appeal* (Doc. # 284-1) (filed 03/14/2013). Plaintiffs asserted that although they would be justified in seeking a bond in excess of \$96,000 to cover interest on the cash fund and administrative costs, they only sought a modest bond of \$15,000 for traditional FRAP 39(e) costs. *Id.*

346. *See Order Granting Motion for Appellate Bond* (Doc. #291) (filed May 6, 2013).

347. *See Order Adopting Report and Recommendation, as Modified, Re Approval of Final Settlement; Denying in Part and Granting in Part Objections* (Doc. # 88) (filed Jan. 18, 2012).

348. *See Final Judgment and Order* (Doc. #109) (filed Apr. 13, 2012). The Court overruled the objections except for the argument made by Objectors Charmaine Griffith, Deidre Quenell, Rosemary Cohorst filed by Susan Kreidler that individual notice should be sent to class members with known addresses. Due to the request for attorneys' fees and costs by Objectors' counsel, the final decision on the distribution of the fee award to Class and Objectors counsel was postponed until after the May 7, 2012 hearing on Objectors' motion for attorney's fees and costs.

349. *See Cohorst v. BRE Props., Inc.*, No. 10-2666, 2012 WL 2001754 (S.D. Cal. June 05, 2012) (the court denied the motion for attorneys' fees by Attorneys for Objectors Yanique Dias and Gilliane Graber and granted counsel for Objector Susan Kreidler's motion for attorney's fees and costs in the amount of \$69,641).

350. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Required Mediation Questionnaire; stipulated motion to voluntarily dismiss case with prejudice pursuant to FRAP 42(b). In addition to stipulating to the dismissal of her appeal pursuant to FRAP 42(b), Objector Kreidler filed a motion to withdraw all objections made to the settlement approved by the court. (Doc. #126)(filed Aug. 28, 2012).

351. *See Plaintiffs' Response to Objections* (Doc. #125) (filed July 2, 2012) (asserting that one of the two objections should not be considered because it did not comply with the Court's preliminary approval order or the S.D. Cal.'s Local Rules and Electronic Case Filing Administrative Policies and Procedures Manual, and was filed by two attorneys not authorized to practice law in the district).

352. *See In re Ferrero Litig.*, No. 11-cv-00205, 2012 WL 2802051 (S.D. Cal. July 9, 2012).

353. The Ninth Circuit *sua sponte* consolidated Appeal Nos. 12-56469 and 12-56478 on Sept. 5, 2012.

354. On Dec. 3, 2012, the district court denied a motion, filed by Objectors Courtney Drey and Andrea Pridham on November 5, 2012, to vacate the Court's order approving the class settlement pursuant to Federal Rule of Civil Procedure 60(b). *See Doc. #154* (filed Dec. 3, 2012).

355. Plaintiff's request for an appellate bond in the amount of \$21,970.72 included: \$15,000.000 for costs incurred in opposing the appeal; \$5,573.80 for administrative costs of keeping in contact with claimants about the status of their claim pending appeal; and \$1,396.92 for post judgment interest. *See Plaintiffs' Motion for Appeal Bond* (Doc. 140-1) (filed Oct. 11, 2012).

356. *See Order Denying Plaintiffs' Request for an Appeal Bond* (Doc. #150) (filed Nov. 9, 2012). The Court concluded that an appeal bond was not necessary because Plaintiffs provided insufficient evidence to establish that there was a risk of nonpayment by Objectors should Plaintiffs be awarded costs on appeal.

357. See *Order Denying Joint Motion for Final Approval of Class Action Settlement* (Doc. #97) (filed Sept. 28, 2012). After considering all 18 objections to the settlement, the Court overruled all objections except for two objections to the *cy pres* award. Unable to strike down only the *cy pres* portion of the settlement, the court denied the joint motion for final approval of the class action settlement. On October 5, 2012, Plaintiffs and Defendants filed a revised stipulation of settlement which directly addressed the Court's concerns by striking the *cy pres* provisions in their entirety while keeping the settlement unchanged in all other respects.

358. See *Order Approving Class Action Settlement* (Doc. #108) (filed Dec. 12, 2012) and *Final Judgment* (Doc. # 109) (filed Dec. 18, 2012).

359. On May 17, 2013, the Ninth Circuit issued an Order informing Attorney Paul Hansmeier that he must withdraw as counsel of record for Objector/Appellant Browne within 14 days because he was not eligible to represent parties in the appeal due to the fact that on May 15, 2013, the court ordered Hansmeier's application for admission to the bar of the Ninth Circuit held in abeyance pending the outcome of his referral to the Minnesota State Bar and the Central District of California Standing Committee on Discipline for sanctions imposed in an appeal pending in the Central District of California. See *Order*, No. 13-55118 (9th Cir. May 17, 2013)(Doc. #16).

360. See *Joint Response to Objections to Final Approval of Class Action Settlement* (Doc. #107) (filed Aug. 13, 2012).

361. See *Gallucci v. Boiron, Inc.*, No. 3:11-cv-2039, 2012 WL 5359485 (S.D. Cal. Oct. 31).

362. Originally due on Feb. 22, 2013, Objectors Carapia and Johnson were granted two requested 30-day extensions to file their appellant brief. See *Orders*, No. 12-57074 (9th Cir. Feb. 22, 2013 & Apr. 9, 2013) (Docs. #10, #12). Objector/appellants did not file their opening brief by April 22, 2013. On June 11, 2013, Appeal No. 12-57074 was dismissed for failure to prosecute pursuant to Ninth Circuit Rule 42-1.

363. The Ninth Circuit, on May 7, 2013, stayed the appellate proceedings filed by Henry Gonzales until July 23, 2013, or until the bond amount at issue was resolved. *Order*, No. 12-57081 (9th Cir. May 7, 2013) (Doc. #24). Following the court's June 6, 2013 Bond Order, Objector/Appellant Gonzalez posted a \$5,000 bond with the district court. (Doc. #150) (filed July 11, 2013).

364. Originally due on March 11, 2013, Objector Elizondo was granted a requested 30-day extension to file his appellant brief. See *Order*, No. 12-57184 (9th Cir. Mar. 8, 2013) (Doc. #7). Objector/appellant did not file his opening brief by April 10, 2013. On June 3, 2013, Appeal No. 12-57184 was dismissed for failure to prosecute pursuant to Ninth Circuit Rule 42-1.

365. See *Joint Motion to Set Bond Amount* (Doc. #138) (filed Dec. 20, 2012). The Court imposed an appeal-bond requirement in its final approval order. Specifically, the Court ordered that "[a]ny Class Member seeking to appeal . . . must . . . post an appropriate bond" to cover costs on appeal. See *Gallucci v. Boiron, Inc.*, No. 3:11-cv-2039, 2012 WL 5359485 (S.D. Cal. Oct. 31), at ¶ 10. The parties pointed out that despite this requirement, the three groups of objectors who filed notices of appeal did so without even seeking a determination of the bond amount they were required to post. Settling Plaintiffs and Defendant requested that the appeal bond be set at \$235,500.66, asserting this amount as "a conservative estimate of the damages, costs, and interests that will result from the appeal." Specifically, the parties estimate that the bond is necessary to cover: \$3,660 to print, file, and serve all the necessary ninth circuit papers; \$12,000 for administrative costs that will be incurred in order "to continue to service and respond to class members' needs pending the appeal; \$203,650 in attorney fees to defend the appeals; \$16,190.66 for post-judgment interest (calculated using 622 day average appeal period and a .19% interest rate on the \$5 million settlement fund). See *Joint Motion, supra*.

366. See *Order Granting in Part Joint Motion to Set Bond Amount* (Doc. #147) (filed June 6, 2013). The Court concluded that because it had already considered and overruled the objections, it was unlikely the objectors would prevail on appeal, thus it was appropriate to require the posting of an appeal bond. However, the Court refused to award the amount (\$235,500.66) sought by the parties finding that only the parties' request for appellate costs was warranted in this case (finding the parties failed to establish that the claim was brought under a fee-shifting statute allowing recovery of attorneys' fees from an objecting class member, and the court declined to impose post-judgment interest and administrative costs, deeming them to be delay costs, and finding that such anticipated damages were not required.) The Court agreed with the objectors' assessment that a low bond amount was sufficient in this case and set the appeal bond amount at \$5,000.00 to be posted collectively by all objector-appellants.

367. See *Plaintiff's Memorandum of Points & Authorities in Support of Unopposed Motion for Final Approval of Proposed Class Settlement* (Doc. #34-1) (filed Dec. 3, 2012).

368. See *Order Granting Motion for Final Approval of Class Settlement and Granting in Part Motion For Attorneys' Fees* (Doc. #39) (filed Dec. 10, 2012). The court determined that an award of not more than \$192,000 in attorneys' fees and costs to class counsel would be entered upon submission of sufficient documentation that permits the Court to find that class counsel's hours and expenses were reasonable and whether a multiplier should be applied.

369. Objector McDonald posted the \$1,000 appeal bond on May 28, 2013. (Doc. #72) (filed May 28, 2013). The Court granted Objector McDonald's ex parte motion for the disclosure of the data showing how many class members requested a coupon under the settlement agreement. (Doc. #71) (filed May 20, 2013) The Ninth Circuit, on July 22, 2013, construed McDonald's late motion for a further extension of time to file her appellate brief as a motion to stay proceedings until Oct. 17, 2013. *Order*, No. 13-55059 (9th Cir. July 22, 2013) (Doc. #12).

370. See *Plaintiff's Memorandum of Points & Authorities in Support of Motion for Appeal Bond* (Doc. #52-1) (filed Jan. 22, 2013). Plaintiff requested that McDonald and/or her counsel be required to post a bond of \$5,000.00 based on a reasonable estimate of the taxable costs that were likely to be incurred in defending the case throughout the appeal.

371. See *Order in part Granting Motion for Appeal Bond* (Doc. #70) (May 20, 2013). Court concluded that since each objection was without merit, the posting of an appeal bond was warranted, but the amount of the appeal bond was found to be excessive because the Plaintiff provided no detail as to why a \$5,000.00 bond would be appropriate. Even allowing for significant potential administrative costs while the case was on appeal, the Court found that \$1,000.00 was a reasonable appeal bond amount.

372. See *Int'l Broth. of Elec. Workers Local 697 Pension Fund v. Int'l Game Tech., Inc.*, No. 3:09-cv-00419, 2012 WL 5199742 (D. Nev. Oct. 19, 2012).

373. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Objector/ appellant failed to file his opening brief by Feb. 25, 2013 as required, did not seek an extension of time to file, and failed to order transcripts pursuant to court order and Circuit Rules.

374. The 32 separate objections represented a total of 35 class members (1 objection was filed by counsel representing two objectors and remaining 31 objections were brought *pro se*). See *Plaintiffs' Reply Brief in Support of Motions for Final Approval and Attorneys' Fees and Costs* (Doc. # 163) (filed Oct. 31, 2008).

375. See *Order granting Class Counsel's Motion for Attorney Fees and Costs* (Doc. #177) (filed Nov. 7, 2008) and *Final Judgment* (Doc. #176) (filed Nov. 7, 2008).

376. Plaintiffs filed a Motion to Strike the Notice of Appeal filed by Objectors Jehle and Richeson alleging that their attorneys, Kearney Dee Hutsler and Richard G. Baker, were not members of the bar of the Western District of Washington and they did not seek admission *pro hac vice* prior to filing the Notice of Appeal on Dec. 8, 2008. See *Motion to Strike Appeal* (Doc. # 194) (filed Dec. 24, 2008). The Court refused to strike the Objectors' notice of appeal since Attorneys Hutsler and Baker were under the impression that the Rules of Procedure of the JPMDL did not require objectors' attorneys to seek admission *pro hac vice*, and they associated with local counsel and were admitted *pro hac vice* in January 2009. See *Order Denying Plaintiffs' Motion to Strike Notice of Appeal* (Doc. # 208) (filed Jan. 15, 2009).

377. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: stipulated motion to voluntarily dismiss case with prejudice pursuant to FRAP 42(b).

378. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Required Docketing Statement and Mediation Form; stipulated motion to voluntarily dismiss case with prejudice pursuant to FRAP 42(b).

379. Plaintiffs asked the court to require a total appeal bond of \$40,811.20 consisting of: (1) \$1,000 for the cost of the appeal for filing and brief preparation costs; (2) \$30,000 for estimated appellate attorneys' fees the class would incur on appeal; and (3) interest on unpaid attorney's fees, estimated at \$9,811.20 assuming the case took only 1 year to go through the appellate process. See *Plaintiffs' Motion for Appeal Bond* (Doc. # 184) (filed Dec. 5, 2008).

380. The Court was not persuaded that including attorneys' fees or interest on unpaid attorneys' fees on appeal was appropriate in setting the amount of the cost bond in this case. See *Order Granting In Part and Denying In Part Plaintiffs' Motion for Appeal Bond* (Doc. # 207) (filed Jan. 15, 2009). It appears that the full amount of \$1,000 for the appeal bond was posted by Attorney Hutsler on behalf of Objector/Appellants Jehle and Richeson on Jan. 30, 2009. (Doc. # 209) Following voluntary dismissal of their appeal, the court granted the Objectors motion to exonerate the appeal bond and return it to counsel for the Objectors. (Doc. # 213) (filed Apr. 10, 2009).

381. See *Class Plaintiffs' Opposition to Memorandum of Authorities to Postpone Class Plaintiffs' Motion for Final Approval of Class Action Settlement and Settlement Class Certification* (Doc. #60) (filed Jan. 22, 2010). Class plaintiffs pointed out that pursuant to the Court's Order preliminarily approving the proposed Settlement, anyone with any objection to the Settlement or who wished not to participate in the Settlement could file an objection or opt out of the Class by filing appropriate documentation on or before December 29, 2009, and no one did so.

382. The final fairness hearing on class settlement was held on Jan. 15, 2010 during which Original Class Representative Su Shin and one of her counsel of record, Alana Bullis, whom both had initially approved the Settlement and did not submit an objection prior to the Dec. 29, 2009 deadline, raised objections to the settlement which they assert they only recently became aware of. The court ordered Class Counsel to address the issues raised. On Jan. 29, 2010, the Court rejected the objections to the settlement filed by Ms. Shin's counsel Bullis, denied their motion to postpone the final hearing, granted Class Counsel's motion to substitute Karen Seger as the named-plaintiff and class representative, and granted Final Judgment and Order approving the class action settlement and request for attorney fees. (Doc. # 67) (filed Jan. 29, 2010). Realizing that Defendants were not in compliance with the reporting requirements under CAFA 28 USC §1715(d), on Feb. 2, 2010, the district court re-opened the case and vacated the Final Judgment, and re-noted the hearing date for entry of its final order certifying the settlement class and approving the settlement until March 29, 2010, after the 90-day period required by §1715(d) had expired. Thus, on April 2, 2010, the court re-entered the Final Judgment and Order Approving the Settlement and Dismissing the Claims of Class Members with Prejudice. (Doc. #75) (filed Apr. 2, 2010).

383. Objector-Appellant Shin filed the initial notice of appeal on Jan. 29, 2010 following the initial Final Judgment and Approval of Settlement issued on Jan. 29, 2010 which was subsequently vacated and re-entered on April 2, 2010. Objector Shin filed an Amended Notice of Appeal on April 22, 2010. See discussion *supra* note 382.

384. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Required Docketing Statement and Mediation Form; Response to Rule 54(b) Order to Show Cause (requiring Appellant to show cause why the Ninth Circuit should retain jurisdiction of the appeal after the district court vacated the initial judgment); amended notice of appeal; stipulated motion to voluntarily dismiss case with prejudice pursuant to FRAP 42(b).

385. The court worked with the parties to create a class notice that permitted class members to participate online, including the ability to object to the settlement via an online submission. Class counsel reported that prior to the Nov. 18, 2011 cut-off date for filing objections, 370 objections were submitted to either Class Counsel, the Court, or the Settlement Administrator including 206 objections received via email and the remaining via US mail. See *Plaintiffs' Motion for Final Approval of Revised Class Action Settlement* (Doc. # 176) (filed Dec. 7, 2011).

386. Judge Richard A. Jones expressed gratitude towards the many class members who filed objections which he credits as helping him to reject the parties' first settlement in February 2011 as unfair, not reasonable, and inadequate. See *In re Classmates.com Consol. Litig., No. 2:09-cv-00045, 2011 WL 744664 (W.D. Wash. Feb. 23, 2011)*. Class Counsel and Defendants negotiated a new settlement which the court characterized as "underwhelming" but a dramatic improvement over the 2010 version. See *In re Classmates.com Consol. Litig., No. 2:09-cv-00045, 2012 WL 3854501 (W.D. Wash. June 15, 2012)*. In the final Order, the court rejected claims for attorneys' fees submitted by two objectors (Christopher Langone and California attorney Charles Chalmers representing two California objectors), but agreed to grant Objector Michael Krauss's request to forgo his motion for attorney fees and instead sanction class counsel for their decision to issue legally invalid and wholly improper subpoenas against Objector Krauss's counsel (Krauss was represented by attorneys for the Center for Class Action Fairness). The Court reduced Class Counsel's attorney fee award by \$100,000 to be distributed to class members who had submitted claims.

387. An additional appeal was filed by lead plaintiffs Anthony Michaels and David Catapano, appealing on behalf of themselves and the class, most likely from the court's decision to award class counsel only \$800,000 of the \$1.05 million it requested for attorney fees, and to award class

representatives Michaels and Catapana only \$2,000 of the \$5,000 they requested. *See Notice of Appeal* (Doc. # 226) (filed July 27, 2012). Appeal No. 12-35631 was dismissed on Aug. 30, 2012, pursuant to appellants' FRAP 42(b) motion for voluntary dismissal.

388. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Required Mediation Form; Notice of Appearance of Attorney Christopher Bandas; unopposed motion to dismiss case voluntarily pursuant to FRAP 42(b).

389. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Required Mediation Form; unopposed motion to dismiss case voluntarily pursuant to FRAP 42(b).

390. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Required Mediation Form; unopposed motion to dismiss case voluntarily pursuant to FRAP 42(b).

391. *See Motion Final Approval of Class Action Settlement and Response to Objections by Plaintiff* (Doc. #84) (filed Oct. 6, 2011).

392. *See Judgment and Order of Final Approval* (Doc. #91) (filed Oct. 21, 2011).

393. Because Objector-Appellant Nigaglioni's Nov. 28, 2011 Notice of Appeal was not filed within 30 days from entry of the Oct. 21, 2011 Judgment, on Dec. 15, 2011 Objector-Appellant filed a timely motion for an extension of time to appeal pursuant to FRAP 4(a)(5). (Doc. # 93)(filed Dec. 15, 2011). The Court granted Objector Nigaglioni an 8-day extension of time to file his notice of appeal, thus the district court considered his Nov. 28, 2011 notice of appeal to have been timely filed. (Doc. # 98) (filed Jan. 17, 2012).

394. *Palmer v. Nigaglioni.*, No. 11-35991, 2013 WL 542852 (9th Cir. Feb. 14, 2012) (Judgment Mandate issued Mar. 11, 2013).

395. In the Sept. 17, 2012 *Settlement Order and Final Judgment*, the Court stated that all objections to the Original Settlement (rejected by the Court in Jan. 2011) and to the Amended Settlement had been considered, listing the 26 objections that were filed on behalf of 34 class members. *Arthur v. Sallie Mae, Inc.*, No. 10-cv-198, 2012 WL 4075238 (W.D. Wash. Sept. 17, 2012). Twenty-one of the 26 objections were brought by *pro se* objectors, and the remaining 5 objections were brought by attorneys on behalf of 13 objectors: Attorney Thomas L. Cox filed objections twice on behalf of Objectors Sara Sibley and Judith Brown (filed Dec. 13, 2010 & July 19, 2012); Attorney Donald Yarbough filed objections twice on behalf of 9 named Objectors/class members (filed Dec. 16, 2010 & July 9, 2012); Attorney Darrell Palmer filed an objection on behalf of Objectors Patrick Sweeney & Sasha McBean (filed Dec. 13, 2010). On Sept. 14, 2012, the Court granted Class Plaintiffs' motion for revocation of the Court's order granting admission *pro hac vice* to Attorney Darrell Palmer, (Doc. # 251, filed Aug. 20, 2012), brought in response to discovering that Mr. Palmer's *pro hac vice* application in another case before the District Court had been denied because Mr. Palmer had made false statements in his application by failing to mention that as a result of a Colorado felony conviction he had been suspended from three state bar associations. *See infra* discussion of *Herfert v. Crayola, LLC*, No. 11-1301 (W.D. Wash Aug. 5, 2011).

396. *See Arthur v. Sallie Mae, Inc.*, No. 10-cv-198, 2012 WL 4075238 (W.D. Wash. Sept. 17, 2012) (Settlement Order and Final Judgment); *Arthur v. Sallie Mae, Inc.*, No. 10-cv-198, 2012 WL 4076119 (W.D. Wash. Sept. 17, 2012) (Order Approving Class Counsels' Motion For Award Of Attorneys' Fees And Costs And Service Awards In Connection With Amended Settlement).

397. Class Plaintiffs filed a motion seeking an order requiring Objectors' counsel Thomas L. Cox to show cause for why he should not be sanctioned for appearing before the district court three times in this case (filed objections to the original settlement and to the amended settlement and filed the October 17 Notice of Appeal on behalf of Objectors Sibley and Brown) without seeking *pro hac vice* admission to the W.D. Washington district court and for failing to join local counsel to sign his filings, both of which are required by Local Rule. (Doc. #276) (filed Oct. 19, 2012). After failing to respond by the deadline established, the court ordered Mr. Cox to show cause why he should not be sanctioned for failure to apply for leave to appear *pro hac vice*. (Doc. #287) (filed Nov. 21, 2012). Mr. Cox filed his Response to Show Cause on November 28, 2012. The court did not have the opportunity to rule on Class Plaintiffs' motion because Class Plaintiffs' withdrew their pending motion to Show Cause in response to Objectors motion to voluntarily dismiss their appeal pursuant to FRAP 42(b). (Doc. # 292) (filed Dec. 4, 2012).

398. Significant documents and/or motions filed by the objector(s)/appellant(s) prior to final disposition of the appeal: Required Mediation Form; unopposed motion to dismiss case voluntarily pursuant to FRAP 42(b).

399. Included in Class Plaintiffs' requested bond amount of \$189,344 were the estimated cost of \$15,000 for preparation of the record on appeal and transcript costs; estimated cost to class of \$34,344 in lost interest resulting from the delay caused by the appeal (based on an 18-month appeal period); and an estimated additional claims administrator cost of \$140,000 that will be incurred due to the appeal. *See Class Plaintiffs' Motion for Appeal Bond* (Doc. #279) (filed Oct. 25, 2010). Due to Objectors Sibley and Brown and their counsel Thomas Cox's failure to respond by the required deadline to Class Plaintiff's motion for an appeal bond, the court ordered Objectors to show cause why an appeal bond should not issue in the amount requested by Class Plaintiffs. (Doc. #287) (filed Nov. 21, 2012). Objector Brown filed her opposition on November 28, 2012. (Doc. #289) (filed Nov. 28, 2012) The court did not rule on Class Plaintiffs' motion before the Objectors dismissed their appeal pursuant to FRAP 42(b) on December 5, 2012.

400. Although not officially consolidated, the Settlement approved in *Dennings v. Clearwater Corp.* represents a final adjudication on the merits of all claims of the Settlement Class with respect to matters alleged, or that could have been alleged, in three separate cases filed as class actions: this case, *Dennings v. Clearwater*, No. 10-01859; *Minnick v. Clearwire US, LLC*, No. 2:09-cv-00912 (W.D. Wash. July 2, 2009), *stayed pending resolution of appeal*, No. 10-35228 (9th Cir. March 8, 2010); and *Newton v. Clearwire Corp.*, No. 2:11-cv-00783 (E.D. Cal. 2011).

401. Seven objections were filed *pro se*, and a final objection was filed on behalf of 2 objectors by their counsel Christopher Bandas. Plaintiffs motioned the court for permission to serve subpoenas and take the depositions of Objectors Mr. Gordon Morgan and Mr. Jeremy De La Garza, on whose behalf their counsel Mr. Christopher Bandas filed a joint objection to the proposed settlement. (Doc. #78) (filed Dec. 6, 2012). Determining that Plaintiffs had raised "legitimate concerns regarding whether the objections . . . [were] serious and whether their attorney is a so-called 'professional objector,'" the Court granted Plaintiffs' motion to depose the Objectors. (Doc. #84) (filed Dec. 11, 2012). The Court summarized in the introductory remarks to several court orders in this case that the "depositions revealed that Mr. Morgan had no personal objection to the settlement, neither of them had read the settlement agreement or their own objections to it, and both had worked with the same attorney on other class action cases." *See, e.g., Order Denying Motion to Stay* (Doc. # 152) (filed July 11, 2013) referencing *Plaintiffs Memorandum* (Doc. #97) (filed Dec. 18, 2012), Exs. A, B (depositions of Mr. Morgan and Mr. De La Garza).

402. See *Settlement Order and Final Judgment* (Doc. #99) (filed Dec. 20, 2012).

403. See *Dennings v. Clearwire Corp.*, No. 10-cv-1859, 2013 WL 1858797 (W.D. Wash. May 03, 2013) (Order Granting Motion For Attorney's Fees And Expenses).

404. The Ninth Circuit granted Plaintiffs'/Appellees' motion for summary affirmance of the district court's Dec. 20, 2012 *Settlement Order and Final Judgment* finding that the "questions raised in this appeal are so insubstantial as not to require further argument." Order, *Dennings v. Clearwire*, No. 13-35038 (9th Cir. Apr. 22, 2013) (Judgment Mandate issued June 3, 2013). The Objectors ignored the Court's March 11, 2013 Bond Order and petitioned for rehearing in the Ninth Circuit. See *Petition for Rehearing, Dennings v. Clearwire*, No. 13-35038 (9th Cir. May 6, 2013). Class Plaintiffs moved to hold the Objectors in contempt for ignoring the Court's March 11, 2013 Order to post an appeal bond. (Doc. #128)(filed May 9, 2013). In response, on May 15, 2013, the Objectors moved to dismiss their appeal voluntarily pursuant to FRAP 42(b), and the Ninth Circuit construed this as a motion to voluntarily withdraw the objectors' request for a rehearing and granted the motion. See Order, *Dennings v. Clearwire*, No. 13-35038 (9th Cir. May 24, 2013). Judge Robart denied Class Plaintiff's motion for contempt finding that although the "objectors still have not posted an appeal bond, they have effectively complied with the court's order by dismissing their notice of appeal." (Doc. # 130) (filed June 3, 2013).

405. On July 9, 2013, Attorney Christopher Bandas filed an amended notice of appeal to inform the court that Objector-Appellants Morgan and De La Garza also intended to appeal from the Court's Amended Order Granting Motion for Appeal Bond entered on July 9, 2013, and from "any order or judgment approving the class settlement, class counsel's attorneys' fees or expenses, and/or incentive awards to class representatives, and any order or judgment naming or identifying this objector or the objection filed by this objector, including any entered or signed subsequent to this notice of appeal." (Doc. # 150) (filed July 9, 2013). In addition, on July 9, 2013, relying on Ninth Circuit law indicating that \$39,150 of the \$41,150 bond was comprised of impermissible costs, Objectors sent to the district court a check in the amount of \$2,000 to timely post what Objectors believed to be the undisputed amount of the \$41,150 appeal bond under Ninth Circuit law. The Court rejected Objectors' good faith attempt to post a \$2,000 bond and returned the \$2,000 check. (Doc. # 155) (filed July 25, 2013). Also on July 9, 2013, Mr. Bandas filed an Emergency Motion to Stay the District Court's July 9, 2013 Order requiring Objectors to post an appeal bond before proceeding with their appeal to allow the Ninth Circuit to decide the validity of the remaining portion of the bond amounting to \$39,150. (Doc. # 151)(filed July 9, 2013). The emergency motion was denied on July 11, 2013 (Doc. #152) (filed July 11, 2013), and on that same day Objectors filed a Rule 27-3 motion for emergency review with the Ninth Circuit requesting a stay of the District Court's appeal bond order. On July 15, 2013, the Ninth Circuit summarily rejected Objectors' arguments and denied Objectors' Emergency Motion to Stay the Appeal Bond. See Order, *Dennings v. Clearwire*, No. 13-35491 (9th Cir. July 15, 2013). On July 19, 2013, the District Court issued an order for Objectors' counsel to appear on August 1 and show cause why they and their clients should not be sanctioned for failing to comply with a court order to post the \$41,150 appeal bond. (Doc. #154)(filed July 19, 2013). On July 23, 2013, Objectors posted the appeal bond in full in the requested amount of \$41,150 with the Court and Mr. Bandas requested that the Court vacate the order to appear and show cause arguing that sanctions are now unnecessary. (Doc. # 155) (filed July 25, 2013). On July 26, 2013, Judge Robart denied Objectors' motion to vacate the show cause order finding that the "fact that Objectors posted bond after being ordered to appear and face sanctions does not exonerate Objectors any more than it would exonerate a criminal defendant to return stolen property after being charged with theft. The punishable conduct has already occurred and cannot be taken back. Accordingly Objectors' counsel have been ordered to appear in court, explain their actions, and face sanctions should the court decide to impose them." (Doc. # 156) (filed July 26, 2013). In addition, the court denied Mr. Bandas' request to appear by telephone stating that if "Objectors' counsel intends to litigate in the State of Washington, he must be prepared to appear in Washington when ordered to do so by the court. The nature of Objectors' behavior in these proceedings makes this sanctions hearing more appropriate for in-person resolution." *Id.* On July 30, 2013, Judge Robart issued an order to provide counsel for Objectors "notice of the legal rule on which sanctions would be based, the form of the potential sanctions, and to notify Objectors and their counsel that they stand accused of bad faith conduct—namely, willful disobedience of a court order." (Doc. # 158) (filed July 30, 2013). On July 31, 2013, the Court denied Christopher Bandas' motion (Doc. # 159) (filed July 31, 2013) to continue his show cause hearing, pointing out that Mr. Bandas is mistaken to conclude that this is a criminal (or even a civil) contempt proceeding for which he is entitled to due process protections that he has not been afforded pursuant to the Courts' July 30, 2013 Order. Judge Robart clarified that this is not a contempt proceeding at all, but a sanctions hearing and the law that applies is the law of sanctions under the court's inherent authority, not the law of contempt. (Doc. # 160) (filed July 31, 2013). However, even though the sanctions hearing was ordered to take place on Aug. 1, 2013 as scheduled, Judge Robart did agree to provide Mr. Bandas with additional procedural protections and opportunities to be heard. See Order *Denying Motion to Continue* (Doc. # 160)(filed July 31, 2013). The Show Cause hearing was held on Aug. 1, 2013 and continued to Aug. 20, 2013 with additional briefing due by Aug. 16, 2013. (Doc. #162)(Minute Entry for proceedings held on Aug. 1, 2013). Following the show cause hearing held on Aug. 20, 2013, the court heard from counsel regarding sanctions and concluded that the "appropriate sanction is to revoke Mr. Bandas' authorization to practice in the Western District of Washington." (Doc. #166) (Minute Entry for proceedings held on Aug. 20, 2013).

406. Plaintiffs asked the court to require a total appeal bond of \$41,150 to ensure payment of appellate costs that consisted of: (1) \$2,000 in costs for ordering a transcript, preparation of excerpts of record, copying or printing, binding, filing, service, and delivery of the necessary copies of a brief, appendix, and record; and (2) \$39,150 in incremental settlement administration charges likely to be incurred as a result of the appeal (calculated by multiplying estimated monthly increase in settlement administration costs of \$2,250 by the median length of a Ninth Circuit appeal (17.4 months)). See *Plaintiffs' Motion for Appeal Bond* (Doc. # 107) (filed Feb. 20, 2013). Defendant Clearwater joined in Plaintiffs' motion for an appeal bond. (Doc. # 110) (filed Feb. 21, 2013).

407. The Court ordered the Objectors to post an appeal bond of \$41,150 or dismiss their appeal because (1) the objectors' underlying objections were without merit; (2) there was a "risk of non-payment of appeal costs given that both objectors live in Texas, and it may therefore be difficult to enforce a cost order imposed upon them"; (3) the objectors appeared to have the ability to pay an appeal bond; and (4) there was evidence presented that the objectors "had vexatious intent in filing their notice of appeal . . ." *Bond Order* (Doc. #117) (filed Mar. 11, 2013).

408. *Class Plaintiffs' Motion for Appeal Bond in Connection with Objectors' Second Appeal* (Doc. #134) (filed June 13, 2012). See *supra* note 406 for original description of items included within Plaintiff's request for a total appeal bond of \$41,150.

409. *Amended Order Granting Motion for Appeal Bond* (Doc. # 149) (filed July 8, 2013). See *supra* note 407 for court's reasons for imposing the original March 13, 2013 Bond Order.

410. Although the sole Objector Amber Pederson filed her objection *pro se*, Class Plaintiffs point out that the affidavit accompanying the objection was notarized by Margot Valdez, who was the legal secretary of attorney Christopher Bandas. See *Objection to Settlement filed by Claimant Amber Pederson* (Doc. #47) (filed April 2, 2012) & *Declaration of Lynn Lincoln Sarko*, Ex. 1 (Doc. #57) (filed June 21, 2012). Objector Pederson did not appear at the Final Approval hearing. (Doc. #50, Minute Entry April 24, 2012).

411. See *Final Order* (Doc. #51) (filed Apr. 27, 2012).

412. Although Objector Pederson filed a notice of appeal *pro se* on May 14, 2012, when lead class counsel attempted to contact Objector Pederson on May 24, 2012 by calling the phone number she listed on her objection, Christopher Bandas, an attorney at the Bandas Law Firm in Corpus Christi, Texas, returned the call and informed class counsel that he was representing Amber Pederson. See *Declaration of Lynn Lincoln Sarko* (Doc. #57) (filed June 21, 2012). Lead class counsel pointed out that Attorney Bandas had not filed a notice of appearance on Objector Pederson's behalf in the district court, nor had he done so with respect to Objector Pederson's appeal to the Ninth Circuit. *Id.*

413. See *infra* note 417.

414. See *infra* notes 418–19.

415. On Sept. 17, 2012, the Court denied Objector-Appellant's motion to stay the posting of a \$20,000 appellate bond pending the outcome of her appeal of the Court's July 31, 2012 Order. In addition, given that the Objector-Appellant did not comply with the court's Aug. 31, 2012 deadline for filing the appeal bond, the Court ordered that the Objector-Appellant either immediately comply with the Court's July 31, 2012 Order requiring the posting of a \$20,000 appellate bond, or file a notice of dismissal of her appeal. Furthermore, the Court added: "Failure to take one of these two actions by Thursday, September 20, 2012 may result in a finding of civil contempt and the imposition of appropriate sanctions, such as the striking of Claimant's objection to the Final Settlement." See *Order Re: Motion to Stay the Posting of an Appeal Bond* (Doc. # 79) (filed Sept. 17, 2012). On Sept. 22, 2012, Objector-Appellant filed a Notice informing the court that she wished to withdraw her objection to the settlement pursuant to Civil Rule 23(e)(5). (Doc. # 80) (filed Sept. 22, 2012). On Sept. 26, the Ninth Circuit granted Appellant's motion for voluntary dismissal pursuant to FRAP 42(b).

416. Significant documents and/or motions filed by objector(s)/appellant(s) prior to final disposition of the appeal: notice of appearance of attorney Joseph Darrell Palmer for Appellant Pederson; motion to extend time to file opening brief (granted; opening brief due Sept. 21, 2012); motion to stay district court action and replies to responses by appellees; motion to dismiss case voluntarily pursuant to FRAP 42(b).

417. Included in Class Plaintiffs and Defendants joint request for a bond amount of \$20,000 is a "reasonable estimate of costs permitted under Federal Rule of Appellate Procedure 39(e); it also includes attorney fees and accounts for the lack of merit of the appeal and the involvement of professional objector Christopher Bandas." See *Declaration of Lynn Lincoln Sarko in Support of Joint Motion to Require Attorney Christopher Bandas and Objector Amber Pederson to Post Appeal Bond, and Seeking Any Other Appropriate Relief to Protect the Class* (Doc. #57) (filed June 21, 2012). On July 5, 2012, Objector-Appellant's Response in Opposition to Class Counsel's Motion for Appeal Bond was filed by Attorney Darrell Palmer, Law Offices of Darrell Palmer PC located in Solana Beach, CA. (Doc. #60) (filed July 5, 2012). On July 5, 2012, Attorney Darrell Palmer filed an application for leave to appear *pro hac vice*. On July 16, 2012, the Court admitted attorney Darrell Palmer on behalf of Objector Amber Pederson. (Doc. #59) (filed July 5, 2012) & (Doc. # 64) (filed July 16, 2012).

418. After analyzing the factors recently set out in *In re Wells Fargo Loan Processor Overtime Pay Litig.*, No. 07-1841, 2011 WL 3352460, at *10 (N.D. Cal. Aug. 2, 2011) to arrive at the \$20,000 bond amount, the Court found that imposition of the bond was warranted because Ms. Pederson is the only objector out of millions of claimants, the appeal appears to be vexatious and frivolous, there is a serious risk that Ms. Pederson will not be available to pay any costs in the event she loses an appeal, and the apparent ability of her attorney to post the bond. See *Joint Opposition to Objector Pederson's Motion to Stay Posting of Appeal Bond and Related Discovery* (Doc. # 75) (filed Aug. 29, 2012). On August 7, 2012, Attorney Darrell Palmer filed an amended notice of appeal to inform the court that Objector-Appellant Pederson also intended to appeal from the Court's Minute Order entered on July 31, 2012, ordering Pederson and attorney Bandas to post a \$20,000 appeal bond. (Doc. #69) (filed Aug. 7, 2012). In addition, Mr. Palmer filed a motion requesting that the imposition of the bond be stayed pending the outcome of Objector-Appellant's appeal of the appellate bond to the Ninth Circuit. (Doc. # 68) (filed Aug. 7, 2012).

419. In addition to imposing a deadline to file the bond, Judge John C. Coughenour ordered Objector's counsel Darrell Palmer to appear before the Court on Aug. 21, 2012, to show cause as to why he should not be sanctioned for submitting a *pro hac vice* application in which he declared under penalty of perjury that he had not been disbarred or formally censured by a court of record or by a state bar association, in direct opposition to the California Bar Association web site which states that Mr. Palmer was suspended and publicly reprimanded as a result of a conviction. *Minute Order* (Doc. # 71) (filed Aug. 10, 2012). Prior to the Aug. 21 show cause hearing, the court issued an order denying Darrell Palmer's application to appear *pro hac vice* due to material nondisclosures in his application which he attributed to an oversight on the part of his assistant, which resulted in his failure to inform the court that he was temporarily suspended from the state bars of Colorado, California and Arizona as a result of a Colorado felony conviction. *Order Denying Application of Claimant's Counsel Darrell Palmer to Appear Pro Hac Vice* (Doc. #74) (filed Aug. 17, 2012).

TAB 12C

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MEMORANDUM

DATE: September 23, 2013

TO: Advisory Committee on Appellate Rules

FROM: Catherine T. Struve, Reporter

RE: Item No. 13-AP-H

Appellate Rule 41(b) provides that “[t]he court's mandate must issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later,” but also provides that “[t]he court may shorten or extend the time.” Under Rule 41(d)(1), a timely rehearing petition or stay motion presumptively “stays the mandate until disposition of the petition or motion.” A party can seek a stay pending the filing of a certiorari petition; if the court grants such a stay and the party who sought the stay files the certiorari petition, then Rule 41(d)(2)(B) provides that “the stay continues until the Supreme Court’s final disposition.” Rule 41(d)(2)(D) directs that “[t]he court of appeals must issue the mandate immediately when a copy of the Supreme Court order denying the petition for writ of certiorari is filed.”

The Supreme Court’s decisions in *Ryan v. Schad*, 133 S. Ct. 2548 (2013) (per curiam), and *Bell v. Thompson*, 545 U.S. 794 (2005), raise at least three issues concerning the meaning of Rule 41. The Committee may wish to consider whether Rule 41 should be amended to clarify any or all of these points.

First, the Court twice declined to decide whether Rule 41 requires a court of appeals to issue the mandate immediately after the filing of the Supreme Court’s order denying the petition for writ of certiorari in a case. In *Bell* and *Schad*, the petitioners argued that the mandatory language of Rule 41(d)(2)(D) admits of no exceptions, and that a court of appeals thus has no discretion to stay the issuance of the mandate. The respondent in *Bell* countered that Rule 41(d)(2)(D) “is determinative only when the court of appeals enters a stay of the mandate to allow the Supreme Court to dispose of a petition for certiorari.” 545 U.S. at 803. He argued that Rule 41(b) grants a court of appeals authority to stay its mandate for other reasons following the Supreme Court’s denial of certiorari and rehearing. In both *Bell* and *Schad*, the Court assumed, *arguendo*, that Rule 41 authorizes a further stay of the mandate following the denial of certiorari, but held that the court of appeals in both cases abused its discretion in doing so. The Court ruled that any authority to stay the mandate after denial of certiorari may be exercised only in “extraordinary circumstances.”

The Committee may wish to consider amending Rule 41 to clarify whether a court of appeals has discretion to stay the mandate after a denial of certiorari. Two options, of course, are identified by the competing views of the current Rule described by the Court in *Bell*: Rule 41 could require that a court of appeals must issue the mandate immediately after a denial of certiorari, with no exceptions. Or Rule 41 could permit a court of appeals to stay the mandate, even after the denial of certiorari, in extraordinary circumstances. If the Committee elects to deliberate on those alternatives, three subsidiary points warrant attention:

(A) In unusual circumstances, a party may petition for a writ of certiorari before a case is finally decided in the court of appeals. In that rare situation, it would not make sense for the court of appeals to issue its mandate after a denial of certiorari while the case is still pending in the court of appeals. If the present structure of Rule 41 does not establish that Rule 41(d)(2)(D) applies only to denials of certiorari after a case is finally resolved in the court of appeals, then any amendment to make mandatory the issuance of the mandate should take into account the unusual scenarios mentioned here.

(B) Federal Rule of Appellate Procedure 2 states that “a court of appeals may—to expedite its decision or for other good cause—suspend any provision of these rules in a particular case and order proceedings as it directs, except as otherwise provided in Rule 26(b).” According to the original Committee Note to Rule 2: “The primary purpose of this rule is to make clear the power of the courts of appeals to expedite the determination of cases of pressing concern to the public or to the litigants by prescribing a time schedule other than that provided by the rules. The rule also contains a general authorization to the courts to relieve litigants of the consequences of default where manifest injustice would otherwise result. Rule 26(b) prohibits a court of appeals from extending the time for taking appeal or seeking review.” Any proposal to amend Rule 41 to make mandatory the issuance of the mandate should consider whether the availability of authority to suspend the rules under Rule 2 would frustrate the purpose of an amendment, and whether Rule 2 should be amended as well.

(C) The Supreme Court in *Calderon v. Thompson*, 523 U.S. 538 (1998), stated that “[a]lthough some Justices have expressed doubt on the point, the courts of appeals are recognized to have an inherent power to recall their mandates, subject to review for abuse of discretion.” *Id.* at 549-50 (citations omitted). This power “can be exercised only in extraordinary circumstances.” *Id.* at 550. If Rule 41 were amended to state that a court of appeals must *issue* the mandate immediately after denial of certiorari, then the court of appeals presumably would retain authority to *recall* the mandate in extraordinary circumstances. In considering whether to make issuance of the mandate mandatory, therefore, the Committee should consider whether there are reasons to require a court of appeals first to issue and then to recall a mandate in a case of extraordinary circumstances, rather than merely to stay the mandate after a denial of certiorari.

Second, in *Bell*, the Supreme Court said “[i]t is an open question whether a court may exercise its Rule 41(b) authority to extend the time for the mandate to issue through

mere inaction.” 545 U.S. at 805. The Rule provides merely that “[t]he court may shorten or extend the time.” The court of appeals in *Bell* purported to stay the issuance of the mandate after denial of certiorari without notifying the parties, and the State in that case proceeded to set an execution date in a capital case without realizing that the mandate never had issued. The Supreme Court assumed, *arguendo*, “that a court may stay the mandate without entering an order” before holding that the court of appeals abused its discretion.

The original version of the Rule stated that “[t]he mandate of the court shall issue 21 days after the entry of judgment *unless the time is shortened or enlarged by order.*” The words “by order” were deleted as part of the 1998 restyling, which moved the relevant part of the rule from subdivision (a) into subdivision (b). As with all the restyling Committee Notes, the Note to Rule 41 states that most of the changes were “intended to be stylistic only.” The Committee may wish to consider whether Rule 41 should be amended to clarify whether a court of appeals may extend the time of issuance of the mandate by inaction or whether it must issue an order to extend the time.

The Eleventh Circuit has adopted a local operating procedure to address this point. In *United States v. Irey*, 612 F.3d 1160 (11th Cir. 2010) (en banc), *cert. denied*, 131 S. Ct. 1813 (2011), the petitioner raised the following question presented at the Supreme Court: “Whether the Eleventh Circuit exceeded its authority by delaying the issuance of the mandate without providing the parties with notice of its intention to do so and abused its discretion by failing to take any action for more than four months after the court issued its original panel decision.”¹ Initially, an Eleventh Circuit panel had rejected the government’s challenge to Irey’s sentence.² The court of appeals’ docket indicates that this opinion issued, and judgment was entered, on March 30, 2009. The government did not file a petition for rehearing. No further docket entries appear until August 12, 2009, when the court of appeals sua sponte granted rehearing en banc and vacated the panel opinion.³ The en banc court of appeals subsequently vacated and remanded for resentencing.⁴ The court of appeals in *Irey* had issued no order extending the time set by Rule 41(b) for the issuance of the mandate.

The Supreme Court denied certiorari in *Irey*, but the Eleventh Circuit in 2010 adopted the following IOP 6, which accompanies Appellate Rule 35:

Any active Eleventh Circuit judge may request that the court be polled on whether rehearing en banc should be granted whether or not a

¹ Petition for Writ of Certiorari at i, *Irey v. United States* (No. 10-727).

² *See United States v. Irey*, 563 F.3d 1223 (11th Cir. 2009).

³ *See United States v. Irey*, 579 F.3d 1207 (11th Cir. 2009).

⁴ *See United States v. Irey*, 612 F.3d 1160, 1224-25 (11th Cir. 2010) (en banc) (“Because we have determined that a downward deviation from the guidelines range in this case is unreasonable, it follows that the only action on remand that will be consistent with this opinion is resentencing within the guidelines range, which necessarily means a sentence of 30 years.”).

petition for rehearing en banc has been filed by a party.... At the same time the judge may notify the clerk to withhold the mandate. If a petition for rehearing or a petition for rehearing en banc has not been filed by the date that mandate would otherwise issue, the Clerk will make an entry on the docket to advise the parties that a judge has notified the clerk to withhold the mandate. The identity of the judge will not be disclosed.⁵

The Eleventh Circuit's revised IOP seems like a useful innovation. It is true that an alert litigant ought to be attentive to whether or not the court of appeals has issued the mandate after handing down a decision. But *litigants* – particularly those not well versed in appellate procedure – may overlook the need to keep track of that question. A CM/ECF notice of a docket entry indicating that a judge has ordered the clerk to withhold the mandate will alert the litigant to the non-issuance of the mandate (at least, if the attorney has registered on CM/ECF). A quick survey of local circuit provisions reveals that most circuits do not address this topic. The Ninth Circuit Advisory Committee Notes advise litigants to check with the Clerk if the mandate has not issued timely.⁶

Third, *Schad* highlights a quirk in the wording of Rule 41(d). Rule 41(d)(2)(B) provides that if the court grants a request for a stay pending the filing of a certiorari petition, the petition is filed, and appropriate notice is given to the circuit clerk, then “the stay continues until *the Supreme Court’s final disposition*.” Rule 41(d)(2)(D) directs, as noted above, that “[t]he court of appeals must issue the mandate immediately *when a copy of a Supreme Court order denying the petition for writ of certiorari is filed*.” *Schad* illustrates that when rehearing is sought in the Supreme Court after a denial of certiorari, the “Supreme Court’s final disposition” can occur later than the date when “a copy of a Supreme Court order denying the petition for writ of certiorari is filed.” The court of appeals in *Schad* pegged the endpoint of its stay to what turned out to be the later of these points (the “final disposition” in the Supreme Court), and the Court did not appear to criticize this choice. Thus, perhaps the courts in practice are adopting a common-sense approach that reads Rule 41(d)(2)(D) to permit an extension until “the Court’s final disposition” in cases where rehearing is timely sought in the Supreme Court. In any event, the Committee may wish to consider whether or not to adjust Rule 41(d)(2)(D)’s wording to fit more closely with that in Rule 41(d)(2)(B).

⁵ The last two sentences in this IOP were added effective August 1, 2010.

⁶ See Ninth Circuit Advisory Committee Note to Rule 25-2 (advising litigant to tell Clerk if, inter alia, “the mandate has not issued within 28 days after the time to file a petition for rehearing has expired”).

TAB 14

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MEMORANDUM

DATE: September 23, 2013
TO: Advisory Committee on Appellate Rules
FROM: Catherine T. Struve, Reporter
RE: A further question relating to electronic filing

After the agenda materials for the Committee's fall 2013 meeting were submitted, I received an inquiry from John Rabiej that relates to the Appellate Rules' treatment of electronic service. Specifically, Mr. Rabiej asked why the Appellate Rules require proof of service when service is accomplished through CM/ECF:

FRAP 25(d) requires a proof of service to appear or be affixed to the papers filed. The Notice of Docket Activity generated by CM/ECF constitutes service, but it does not replace the certificate of service. I can see why a certificate of service is required in pro se cases if CM/ECF is not used. But I am having difficulty envisioning why a certificate of service is required when CM/ECF is used. As a practical matter, how is this certificate of service handled? Does a lawyer electronically file a certificate under penalty of perjury stating that the document was transmitted to the court via CM/ECF, which generated a Notice of Docket Activity, which was sent to all parties. That would seem to add nothing to the Notice of Docket Activity, which already indicates who has been served.

Mr. Rabiej's question seems to me to be a good one. The purpose of this memo is to briefly note the issue in case the Committee feels that it is worthwhile to investigate further.

Appellate Rule 25(d) provides:

(d) Proof of Service.

(1) A paper presented for filing must contain either of the following:

(A) an acknowledgment of service by the person served; or

(B) proof of service consisting of a statement by the person who made service certifying:

(i) the date and manner of service;

(ii) the names of the persons served; and

(iii) their mail or electronic addresses, facsimile numbers, or the addresses of the places of delivery, as appropriate for the manner of service.

(2) When a brief or appendix is filed by mailing or dispatch in accordance with Rule 25(a)(2)(B), the proof of service must also state the date and manner by which the document was mailed or dispatched to the clerk.

(3) Proof of service may appear on or be affixed to the papers filed.

Other provisions that require proof of service can be found in Appellate Rules 5(a)(1),¹ 21(a)(1),² 21(c),³ and 39(d)(1),⁴ Bankruptcy Rule 8008(d),⁵ and Civil Rule 5(d)(1).⁶

¹ Rule 5(a)(1) provides: “To request permission to appeal when an appeal is within the court of appeals’ discretion, a party must file a petition for permission to appeal. The petition must be filed with the circuit clerk with proof of service on all other parties to the district-court action.”

² Rule 21(a)(1) provides: “A party petitioning for a writ of mandamus or prohibition directed to a court must file a petition with the circuit clerk with proof of service on all parties to the proceeding in the trial court. The party must also provide a copy to the trial-court judge. All parties to the proceeding in the trial court other than the petitioner are respondents for all purposes.”

³ Rule 21(c) provides: “An application for an extraordinary writ other than one provided for in Rule 21(a) must be made by filing a petition with the circuit clerk with proof of service on the respondents. Proceedings on the application must conform, so far as is practicable, to the procedures prescribed in Rule 21(a) and (b).”

⁴ Appellate Rule 39(d)(1) provides: “A party who wants costs taxed must--within 14 days after entry of judgment--file with the circuit clerk, with proof of service, an itemized and verified bill of costs.”

⁵ Bankruptcy Rule 8008(d) provides:

Papers presented for filing shall contain an acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service and of the names of the persons served, certified by the person who made service. The clerk of the district court or the clerk of the bankruptcy appellate panel may permit papers to be filed without acknowledgment or proof of service but shall require the acknowledgment or proof of service to be filed promptly thereafter.

The pending amendments to Part VIII of the Bankruptcy Rules – which are currently on track to take effect in December 2014 – would relocate the relevant provision to a new Rule 8011(d) but would retain the proof-of-service requirement.

⁶ Civil Rule 5(d)(1) requires a “certificate of service”:

Any paper after the complaint that is required to be served--together with a certificate of service--must be filed within a reasonable time after service. But disclosures under Rule 26(a)(1) or (2) and the following discovery requests and responses must not be filed until they are used in the proceeding or the court orders filing: depositions, interrogatories,

It seems to me that Rule 25(d) could be revised so that it no longer requires a proof of service in instances when service is accomplished by means of the “notice of docket activity” generated by CM/ECF. Those instances cover many filings in the courts of appeals. There will continue to be exceptions. An obvious exception will occur when the litigant who is served does not participate in CM/ECF. Another exception will arise in some instances when the litigant who makes service does not participate in CM/ECF.⁷ Also, I am guessing that filings (made in the court of appeals) that *initiate* an appellate case in the court of appeals will not work the same way as later filings in that same case. That is to say, at the time that the very first filing in an appellate matter is docketed in the court of appeals, the CM/ECF system may not be set up to generate a notice of docket activity (as a result of that filing) to the other litigants in the case. For that reason, Appellate Rules 5(a)(1) (petitions for permission to appeal), 21(a)(1) (mandamus petitions), and 21(c) (petitions for other extraordinary writs) seem to me to raise distinct issues.

One possibility might be to revise Rule 25(d) along the following lines:

(d) Proof of Service.

(1) ~~A paper presented for filing must contain~~ Proof of service consists of either of the following:

(A) an acknowledgment of service by the person served; or

(B) ~~proof of service consisting of~~ a statement by the person who made service certifying:

(i) the date and manner of service;

(ii) the names of the persons served; and

(iii) their mail or electronic addresses, facsimile numbers, or the addresses of the places of delivery, as appropriate for the manner of service.

(2) When a brief or appendix is filed by mailing or dispatch in accordance with Rule 25(a)(2)(B), the proof of service must also

requests for documents or tangible things or to permit entry onto land, and requests for admission.

Criminal Rule 49(b) would seem to incorporate the “certificate of service” requirement, because it provides in part that “[s]ervice must be made in the manner provided for a civil action.”

⁷ Even when the litigant whose paper is being served does not participate in CM/ECF, sometimes service will be accomplished electronically by means of the CM/ECF system. As Mr. Gans has mentioned to the Committee, the Eighth Circuit has adopted a special rule allowing prisoners and other pro se litigants to file with the Clerk, who then serves their documents to registered users through CM/ECF.

state the date and manner by which the document was mailed or dispatched to the clerk.

(3) Proof of service may appear on or be affixed to the papers filed.

(4) When service is made under Rules 25(c)(1)(D) and 25(c)(2) by means of a notice of docket activity generated by CM/ECF, no proof of service is required [unless otherwise stated by these Rules]. When service is made by any other means, the paper presented for filing must contain proof of service.

An additional question might be why Appellate Rule 39(d)(1) (quoted in footnote 4, above) includes a reference to proof of service. Rule 25(d) would seem to apply to any “paper presented for filing” in the court of appeals,⁸ rendering Rule 39(d)(1)’s reference to proof of service redundant.⁹ It therefore might be useful – if other related amendments are brought forward – to amend Rule 39(d)(1) to delete the reference to proof of service: “A party who wants costs taxed must--within 14 days after entry of judgment – file with the circuit clerk, ~~with proof of service,~~ an itemized and verified bill of costs.”

⁸ As the Committee is aware, the Appellate Rules “govern procedure in the United States courts of appeals,” Rule 1(a)(1), whereas when a document is filed in the district court, “the procedure must comply with the practice of the district court,” Rule 1(a)(2).

⁹ The references in Rules 5 and 21 are also redundant, under the current Rules. But I do not suggest deleting them, because – as noted above – those Rules concern case-initiating filings in the courts of appeals, and the separate requirements of proof of service in Rules 5 and 21 would be useful if Rule 25 were revised as shown in the text.