

Exhibit K

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

TODD BARRON, ADELE FERRERA,
MATTHEW MCDONOUGH and
DAVID KORN, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

SNYDER'S LANCE, INC.,

Defendant.

ORDER

WDW Case No. 16-mc-06-slc

SDF Case No. 13-62496 LENARD/GOODMAN

On May 10, 2016, Pamela A. Sweeney, self-styled pro se objector in this lawsuit, filed a motion to stay discovery and to quash a Rule 45 subpoena that requires her deposition here in Madison on May 12, 2016. *See* dkt. 1. This is the third motion to quash filed in this court within the past week by Ms. Sweeney or by Patrick Sweeney, but the other two resolved themselves without this court entering a captioned order. *See* 16-mc-04 , *In Re: Blue Buffalo Company, Ltd. Marketing and Sales Practices Litigation*, and 16-mc-05, *In Re: Automotive Parts Antitrust Litigation*.

In this particular case, the attorneys in the underlying lawsuit have filed a response (dkt. 2) in opposition to Ms. Sweeney's motion, to which they have attached a copy of the February 12, 2016 Order Granting Preliminary Approval of Class Action Settlement [...], dkt. 202. That order specifically permits the attorneys to take Ms. Sweeney's deposition in the manner they have set forth in their subpoena to Ms. Sweeney. *Id.* at 7-8 (¶14). Ms. Sweeney's boilerplate objections have not persuaded this court that it should quash the subpoena or stay discovery.

ORDER

It is ORDERED that:

(1) Objector Pamela A. Sweeney's Motion To Stay Discovery / To Quash a Rule 45 Subpoena is DENIED; and

(2) Pamela A. Sweeney must comply with the Rule 45 subpoena in all respects. Failure to do so could result in the sanctions set forth in ¶14 of the Southern District of Florida's February 12, 2016 order, as well as possible contempt sanctions imposed by this court.

Entered this 10th day of May, 2016.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge

Exhibit L

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MATTHEW EDWARDS, et al.,
Plaintiffs,
v.
NATIONAL MILK PRODUCERS
FEDERATION, et al.,
Defendants.

Case No. [11-cv-04766-JSW](#)

[consolidated with 11-CV-04791-JSW
and 11-CV-05253-JSW]

**ORDER GRANTING IN PART AND
DENYING IN PART OBJECTORS’
MOTION FOR ATTORNEYS’ FEES,
COSTS, AND INCENTIVE AWARDS;
DENYING MOTION TO PROCEED IN
FORMA PAUPERIS; GRANTING
MOTION FOR BOND; AND DENYING
AS MOOT MOTION TO APPEAR BY
TELEPHONE**

Re: Dkt. Nos. 488, 496, 505, 510

Now pending are: (1) a motion for attorneys’ fees, costs, and incentive awards by Objectors Joshua D. Holyoak and Michael Antonio O’Brian; (2) a motion to proceed on appeal in forma pauperis (“IFP”) by Objector Christopher Andrews; and (3) Plaintiffs’ motion to require Objectors Andrews, Pamela A. Sweeny, and Conner Erwin to post an appeal bond. The Court has considered the parties’ papers, the objections received, the responses to those objections, relevant legal authority, and the record in this case, and finds all pending motions suitable for disposition without oral argument. *See* N.D. Civ. L.R. 7-1(b).¹ For the reasons set forth in this order, the Court GRANTS IN PART AND DENIES IN PART the motion of Holyoak and O’Brien for fees, costs, and incentive awards; DENIES the motion of Andrews to proceed IFP; and GRANTS Plaintiffs’ motion to require the posting of an appeal bond.

¹ The Court vacated the hearings on the pending motions via Clerk’s Notices on August 8, 2017 and September 11, 2017. Accordingly, the Court DENIES AS MOOT the motion by Andrews to appear by telephone at the hearing on the motion to post the appeal bond. (Dkt. No. 510.)

ANALYSIS

A. Motion of Holyoak and O'Brian for Fees, Costs, and Incentive Awards

Objector Holyoak sees an award of attorneys' fees of \$70,000. Objector O'Brian seeks attorneys' fees of \$70,000, expenses of \$1432.03, and an incentive award of \$5000. Both Objectors request that the collective total of \$146,432.03 be paid by class counsel from the original fee award, not from the portion of the common fund remaining for the class.

Attorneys for objectors may be entitled to attorneys' fees from the common fund created by class action litigation if their objections result in an increase to the common fund. *Rodriguez v. Disner*, 688 F.3d 645, 658 (9th Cir. 2012). The objectors' work must increase the fund or otherwise substantially benefit class members in an amount worth more than the fee they are seeking; minor procedural changes in the settlement agreement are not enough to create an entitlement to fees. *Id.* The Court may "deny fees to objectors whose work is duplicative, or who merely echo each others' arguments and confer no unique benefit to the class." *Id.* at 658-59.

In this case, the Court's own review would likely have resulted in a fee award to class counsel that was lower than the amount sought. The Objectors could not have been certain of this, however, much less of the specific issues that would weigh with the Court. *See Reynolds v. Beneficial Nat'l Bank*, 288 F.3d 277, 288 (7th Cir. 2002) ("objectors must decide whether to object without knowing what objections may be moot because they have already occurred to the judge"). The Court noted the issue of class counsel's stated intention to "seek attorneys' fees substantially in excess of the Ninth Circuit's 'benchmark percentage' of 25%" in the August 22, 2016 order regarding the motion for preliminary approval, in which the Court suggested the addition of further information regarding the fee award to the Legal Notice of Settlement. (Dkt. No. 426, at 3-4.) This should have provided potential objectors with some indication that the Court would be "focused" on that question once the motion and supporting documentation was filed. At that time, however, the motion for attorneys' fees had not yet been filed, and the Objectors (and indeed, the Court itself) could not have known what specific issues the Court would address sua sponte after review of the fee motion.

Moreover, the quality of work by these two Objectors stood out among the other objections

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1 received by the Court in providing an adversarial presentation of the issues supported by helpful
2 citations to relevant authority. In particular, although the Court overruled Holyoak's objections
3 that Plaintiffs' litigation expenses should be included in the numerator when calculating the
4 percentage of recovery, the calculations and authority provided by Holyoak's counsel were helpful
5 to the court in cross-checking the decision of what fee award would be reasonable. The legal
6 authority provided by Holyoak in connection with his argument that this is an extraordinarily large
7 common fund case was also helpful to the Court in reviewing the issues, even though the Court
8 ultimately found that this is not, strictly speaking, a megafund case. Additionally, Holyoak's
9 objection regarding the end date for class membership and O'Brian's objections regarding the
10 breadth of the release and the lack of information available to the class about the possible size of
11 distributions, while ultimately overruled, resulted in clarifications related to those issues that were
12 helpful to the Court. The Court finds, therefore, that an award of attorneys' fees to counsel for
13 Holyoak and O'Brian is appropriate in this case.

14 The Court turns next to the amount of the fees. The settlement fund in this case was \$52
15 million. Class Counsel requested a fee award of \$17,333,333, plus expenses and service awards,
16 cross-checking to a 2.7 multiplier of counsel's lodestar of \$6,470,731. After ruling on the
17 objections, the Court awarded attorneys' fees of \$13 million, plus expenses and service awards,
18 cross-checking to a multiplier of less than 2.01. As discussed above, Objector Holyoak's work
19 contributed in some measure to the savings to the class of \$4,333,333 and both Objectors' work
20 contributed to the Court's analysis of other aspects of the settlement. The \$140,000 fees that they
21 seek, combined, are approximately 3.23 percent of the savings to the class.

22 In determining the proper amount of the fees, the Court considers the same factors
23 previously considered in connection with class counsel's fee award. When evaluating whether the
24 percentage sought by counsel is reasonable, the Court considers factors including: (1) the results
25 achieved; (2) the risk involved with the litigation; (3) the skill required and quality of work by
26 counsel; (4) the contingent nature of the fee; and (5) awards made in similar cases. *Vizcaino v.*
27 *Microsoft Corp.*, 290 F.3d 1043, 1048-50 (9th Cir. 2002). When, as here, a benchmark percentage
28 recovery for Objectors' counsel would be significantly too large in light of the hours devoted to

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1 the case and the substantive contribution of the objections, the benchmark percentage should be
2 adjusted or replaced by the lodestar calculation. *See In re Apple Inc. Sec. Litig.*, No. 06-cv-05208-
3 JF, 2011 WL 1877988, at *5 (N.D. Cal. May 17, 2011) (citing *Winger v. SI Management L.P.*,
4 301 F.3d 1115, 1127 (9th Cir. 2002)). In determining the appropriate multiplier, if any, on a
5 lodestar calculation, the Court may consider factors that include: (1) the amount involved and the
6 results obtained; (2) the time and labor required; (3) the novelty and difficulty of the questions
7 involved; (4) the skill requisite to perform the legal service properly; (5) the preclusion of other
8 employment by the attorney due to acceptance of the case; (6) the customary fee; (7) the
9 experience, reputation, and ability of the attorneys; and (8) awards in similar cases. *In re*
10 *Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 941-42 (9th Cir. 2011).

11 Holyoak documents a lodestar of \$43,542.50 for his counsel's work on this case. In
12 requesting a fee award of \$70,000, Holyoak therefore seeks a 1.6 multiplier of his attorneys'
13 lodestar, an amount lower than class counsel's multiplier. This number is appropriately
14 proportional to the lesser degree of risk taken on by Holyoak in comparison to class counsel, the
15 lesser degree of novelty of the issues addressed at the settlement and attorneys' fees stage of this
16 case compared with earlier proceedings, and the shorter time period over which the work was
17 performed, but fair given Holyoak's contributions to the Court's analysis and the skillful work
18 performed by his attorneys. The Court will grant Holyoak's motion for attorneys' fees in the
19 amount of \$70,000.

20 O'Brian documents a lodestar of \$29,911.40, so his counsel's request for \$70,000 results in
21 a 2.3 multiplier, higher than the multiplier requested by Holyoak or that awarded to Class Counsel.
22 Like Holyoak, O'Brian's work at the settlement stage involved less risk and novelty than the
23 complex antitrust issues raised earlier in this case, and was performed over a shorter time period.
24 The Court also notes that in comparison to Holyoak, O'Brian presented objections that were less
25 helpful to the Court and contributed less directly to the benefit to the class, as discussed in the
26 Court's order overruling those objections. In particular, the Court did not rely significantly on
27 O'Brian's analysis of Class Counsel's fee motion. Courts "generally do not award objectors
28 attorneys' fees where the 'court did not rely on the Objectors' arguments in issuing its decision.'"

1 *In re Transpacific Passenger Air Transportation Antitrust Litig.*, No. 07-cv-05634 CRB, 2015 WL
2 4776946, at *1 n.1 (N.D. Cal. Aug. 13, 2015) (quoting *Rose v. Bank of Am. Corp.*, No. 11-cv-
3 02390 EJD, 2015 WL 2379562, at *2 (N.D. Cal. May 18, 2015)). In light of the significantly
4 lesser degree to which the Court relied upon O’Brian’s arguments, the Court finds that O’Brian’s
5 request for a multiplier of 2.3 is disproportionate and unreasonable. The Court will grant
6 O’Brian’s motion in part, awarding him fees of \$29,911.40 with no multiplier, either upward or
7 downward. *Cf. id.* at *2 (awarding a fee award of less, “but not considerably less,” than the
8 objector’s multiplier where the objector conferred a substantial benefit to the class on one issue
9 but also raised other issues that conferred no benefit to the class).

10 O’Brian also requests reimbursement for expenses in the amount of \$1,432.03, which the
11 Court will grant, and an incentive award of \$5000 for himself, which the Court will grant only in
12 part. The class representatives who received \$5000 each in this case assisted counsel over the
13 course of many years, spending many hours responding to written discovery and sitting for
14 depositions, among other contributions. O’Brian, on the other hand, does not contend that he was
15 required to participate in any discovery. His contributions to the case were limited to a short
16 period of time during which he primarily consulted with his lawyer about strategy and stayed
17 apprised of case developments, taking an interest in part as an attorney himself. He did, however,
18 face ad hominem attacks relating to his motivation for participating in the litigation. Balancing
19 these factors and comparing O’Brian’s contribution in this case to that of the named Plaintiffs, the
20 Court will grant his request for an incentive award in part, and award him \$250 in recognition of
21 his willingness to serve and the benefit of his participation. *See Hendricks v. Starkist Co.*, No.
22 13-cv-00729-HSG, 2016 WL 5462423, at *16 (N.D. Cal. Sept. 29, 2016) (noting that incentive
23 award to objector would reduce the funds available to other class members).

24 Finally, the Objectors request that any attorneys’ fee award to them should be paid by class
25 counsel, rather than the class. In the exercise of discretion, the Court will deny this request. The
26 award of fees, costs, and incentive award to the Objectors’ counsel shall be paid from the
27 remainder of the administrative costs portion of the settlement fund. *See In re Transpacific*
28 *Passenger Air Transportation Antitrust Litig.*, No. 07-cv-05634-CRB, 2015 WL 4776946, at *2

1 (N.D. Cal. Aug. 13, 2015) (“Courts in this circuit ‘commonly award objectors fees and expenses
2 from the common fund.’”). This is not a case where class counsel’s conduct of the settlement led
3 directly to the need for objectors to intervene, given that the fee award requested by class counsel
4 would have been within the Court’s discretion and that the settlement negotiated by class counsel
5 was fair and reasonable. *Compare Hendricks*, 2016 WL 5462423, at *16.

6 **B. In Forma Pauperis Status on Appeal**

7 On July 17, 2017, Objector Andrews timely filed a notice of appeal, which was assigned
8 Ninth Circuit Appeal No. 17-16459. On July 18, 2017, Andrews filed an application in this Court
9 to proceed IFP on appeal, including the required affidavit demonstrating indigency under penalty
10 of perjury. *See* 28 U.S.C. § 1915(a)(1).

11 Objector Sweeney filed a notice of appeal on July 24, 2017, which was assigned Ninth
12 Circuit Appeal No. 17-16541. Sweeney has not filed a motion to proceed IFP either in this Court
13 or in the Ninth Circuit, but the Ninth Circuit docket reflects that the filing fee for her appeal has
14 not been paid.

15 The Court denies IFP status only if every issue presented by an appeal is plainly frivolous.
16 *See, e.g., Ellis v. United States*, 356 U.S. 674, 674-75 (1958) (“The good-faith test must not be
17 converted into a requirement of a preliminary showing of any particular degree of merit.”);
18 *Hooker v. American Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002) (“If at least one issue or claim
19 is found to be non-frivolous, leave to proceed in forma pauperis on appeal must be granted for the
20 case as a whole.”); *cf. Nietzsche v. Williams*, 490 U.S. 319, 329, 331 (1989) (“not all unsuccessful
21 claims are frivolous”).

22 The Court overruled Andrews and Sweeney’s objections to the settlement and fee award
23 for the reasons explained in the Court’s June 26, 2017 order. Although the participation of these
24 Objectors in the settlement process was appreciated by the Court, the Court finds that each of their
25 appeals fails to raise non-frivolous issues for the reasons explained in the Court’s prior order and
26 in Class Counsel’s briefing on the pending motions. The Court therefore will deny Andrews’
27 motion to proceed IFP and will certify that the Court also finds that Sweeney fails to raise non-
28 frivolous issues on appeal pursuant to 28 U.S.C. § 1915(a)(3).

United States District Court
Northern District of California

C. Plaintiffs’ Motion to Require Posting of Appeal Bond.

Finally, the Court turns to Plaintiffs’ motion for an order under Federal Rule of Appellate Procedure 7 requiring the posting of a \$1,000.00 appeal bond by objectors Erwin, Andrews, and Sweeney. That rule provides:

In a civil case, the district court may require an appellant to file a bond or provide other security in any form and amount necessary to ensure payment of costs on appeal. Rule 8(b) applies to a surety on a bond given under this rule.

Fed. R. App. P. 7.

Although Rule 7 does not define the term “costs,” the Ninth Circuit has held that, as used in that rule, the term includes those costs specified in Federal Rule of Appellate Procedure 39 as well as “all expenses defined as ‘costs’ by an applicable fee-shifting statute, including attorneys’ fees.” *Azizian v. Federated Dep’t Stores, Inc.*, 499 F.3d 950, 958 (9th Cir. 2007). There is no request for the bond to include anticipated attorney’s fees in this case. Rule 39 provides that:

The following costs on appeal are taxable in the district court for the benefit of the party entitled to costs under this rule:

- (1) the preparation and transmission of the record;
- (2) the reporter’s transcript, if needed to determine the appeal;
- (3) premiums paid for a supersedeas bond or other bond to preserve rights pending appeal; and
- (4) the fee for filing the notice of appeal.

Fed. R. App. P. 39(e).

The purpose of an appeal bond is to protect an appellee against the risk of nonpayment by an unsuccessful appellant. *Fleury v. Richemont N. Am., Inc.*, No. 05-cv-04525 EMC, 2008 WL 4680033, at *6 (N. D. Cal. Oct. 21, 2008). In determining whether to impose an appeal bond, courts in the Northern District of California consider the following factors: “(1) the appellant’s financial ability to post a bond; (2) the risk that the appellant would not pay the costs if he loses the appeal; and (3) an assessment of the likelihood that the appellant will lose on appeal and thus be liable for costs.” *Padgett v. Loventhal*, No. 5:04-CV-03946-EJD, 2015 WL 4240804, at *3 (N.D. Cal. July 13, 2015) (citing *Figure Eight Holdings, LLC v. Dr. Jays, Inc.*, 534 Fed. App’x

1 670 (9th Cir. 2013)). The “question of the need for a bond, as well as its amount, are left in the
2 discretion of the trial court.” *Fleury*, 2008 WL 4680033, at *6 (citing 1979 Advisory Committee
3 Note to Fed. R. App. P. 7); *see also Jeon v. 445 Seaside, Inc.*, 637 Fed. Appx. 378, 379 (9th Cir.
4 Feb. 22, 2016) (Mem.) (“The determination of the amount of a bond necessary to ensure payment
5 of costs on appeal is left to the discretion of the district court[.]”) (citing *Azizian*, 499 F.3d at 955).

6 On September 6, 2017, Erwin filed a motion for voluntary dismissal of his appeal, Ninth
7 Circuit No. 17-16456. Accordingly, the Court will deny the motion to require Erwin to post a
8 bond without prejudice to renewal in the event that Erwin’s appeal is not dismissed.

9 Objector Andrews opposes the motion for a bond in any amount. He submitted a response
10 to the motion (Dkt. No. 511), an unauthorized sur-reply (Dkt. No. 515), and a further supplement
11 providing this Court with a copy of his response to a motion for summary affirmance filed in the
12 Ninth Circuit (Dkt. No. 516), all of which the Court has considered in the exercise of discretion in
13 light of the liberal standard for reviewing pro se filings. Objector Sweeney has not responded to
14 the motion. The Court addresses the motion as to Andrews and Sweeney below.

15 **1. Appellants’ Financial Ability to Post a Bond.**

16 The first factor that the Court considers is each appellant’s financial ability to post a bond.
17 This factor “generally weighs in favor of a bond unless a party is financially unable to post a
18 bond.” *Padgett*, 2015 WL 4240804, at *3 (citing *Fleury*, 2008 WL 4680033, at *7).

19 Because Sweeney has neither opposed the motion for a bond nor filed a motion to proceed
20 IFP, the Court’s only information regarding her financial condition was submitted by Plaintiffs.
21 Plaintiffs state that Sweeney’s husband is a practicing attorney, and submit the Wisconsin State
22 Bar profile for an attorney named Patrick S. Sweeney. (Byszewski Decl. ISO Motion to Require
23 Bond, ¶ 4 & Ex. B, Dkt. No. 505-1.) Plaintiffs do not explain how they are sure that this
24 individual, whose business address differs from Objector Sweeney’s address of record, is her
25 husband, and the Court gives little weight to this evidence. Sweeney, however, has not submitted
26 any evidence that she is financially unable to post a bond. Therefore, this factor weighs in favor of
27 a bond as to Sweeney, as in most cases.

28 Andrews, on the other hand, has submitted a motion to proceed IFP, under penalty of

1 perjury. Among other information, he states that his average monthly income is \$1,433.00,
2 including \$25 per month in public assistance. He further attests that his monthly expenses are also
3 \$1433.00. In his sur-reply, Andrews adds that at this time he cannot pay a bond in any amount,
4 but will attempt to earn money and set that aside for a bond in the future. Plaintiffs submitted
5 excerpts of deposition testimony by Andrews, in which he states that he is self employed in the
6 field of sales, and sells advice to individuals or businesses considering the installation of a security
7 system. (Byszewski Decl. ISO Motion to Require Bond, ¶ 3 & Ex. A, Dkt. No. 505-1.) The Court
8 finds that Andrews has shown that he has limited financial means available for the purpose of
9 posting an appeal bond. However, the Court considers not only whether Andrews currently
10 possess sufficient assets to post a bond, but whether he can qualify for a bond in the amount
11 imposed, and in light of Andrews' profession and income finds that Andrews does have the ability
12 to qualify for and post a bond. *See Keller v. National Collegiate Athletic Association*, No. 09-cv-
13 01967-CW, 2015 WL 6178829, *3 (N.D. Cal. Oct. 21, 2015).

14 **2. The Risk that Appellants Would Not Pay the Costs if They Lose the Appeal.**

15 The Court turns next to the risk that Appellants would not pay the costs if they lose on
16 appeal. Courts have recognized the difficulty and risk associated with collecting costs from
17 appellants who live out-of-state or outside of the Ninth Circuit. *See Padgett*, 2015 WL 4240804,
18 at *3 (citing cases). Both Andrews and Sweeney live outside of the Ninth Circuit, Andrews in
19 Michigan and Sweeney in Wisconsin. Absent any other information regarding the risk that
20 Appellants would not pay the costs if they lose on appeal, the Court finds that this factor weighs
21 slightly in favor of requiring a bond as to both Andrews and Sweeney.

22 **3. The Likelihood that Appellants Will Lose on Appeal.**

23 The final factor for the Court to consider is an assessment of the likelihood that Appellants
24 will lose on appeal and thus be liable for costs. The Court has found that both Objectors' appeals
25 fail to raise any non-frivolous issues. It is very likely that Appellants will lose on appeal and will
26 thus be liable for costs. This third factor therefore weighs heavily in favor of requiring a bond for
27 both Appellants.
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United States District Court
Northern District of California

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4. The Amount of the Bond.

Considering together all three factors of this District’s test, the Court finds that imposition of a bond in some amount is appropriate under Rule 7. The Court therefore turns to the amount of the bond, which, as discussed above, is tied to anticipated appellate costs. *See, e.g., Keller*, 2015 WL 6178829 **1-2. Plaintiffs submit a declaration under penalty of perjury stating that they conservatively estimate that the costs they would stand to recover as the prevailing party on these appeals warrant a bond of \$1000 per Appellant. Despite, and fully considering, Andrews’ limited means, the Court finds that a bond of \$1000 per Appellant is reasonable for this appeal, given the size of the record. *See Fed. R. App. P. 7; see also Fed. R. App. P. 39(e)*. Accordingly, Mr. Christopher Andrews is required to file a bond of \$1000 to pursue Appeal No. 17-16459 . Ms. Pamela A. Sweeney is required to file a bond of \$1000 to pursue Appeal No. 17-16541. These bond amounts shall remain unchanged if the appeals are consolidated. To permit Andrews time to make the necessary arrangements to post a bond, each appellant shall post the required bond with the Clerk of Court to be deposited into the Court’s Registry by no later than December 1, 2017.

CONCLUSION

For the reasons set forth in this order, the Court rules as follows.

The Court GRANTS IN PART AND DENIES IN PART the motion for attorneys’ fees, costs, and incentive awards by Objectors Holyoak and O’Brian (Dkt. No. 488). It is hereby ordered that counsel for Holyoak be awarded attorneys’ fees in the total amount of \$70,000 and counsel for O’Brian be awarded attorneys’ fees in the total amount of \$29,911.40 from the remainder of the administrative costs portion of the settlement fund. The Court also orders that O’Brian’s counsel be reimbursed for expenses incurred in the amount of \$1432.03. Finally, the Court awards that an incentive award be made in the amount of \$250 to Objector O’Brian.

The Court DENIES the motion to proceed IFP on appeal by Objector Andrews (Dkt. No. 496). The Court also CERTIFIES that an appeal by Objector Sweeney is frivolous under 28 U.S.C. § 1915(a)(3).

The Court GRANTS Plaintiffs’ motion to require Objectors Andrews, Sweeney, and Erwin to post an appeal bond (Dkt. No. 505). Mr. Christopher Andrews is required to file a bond of

1 \$1000 to pursue Appeal No. 17-16459. Ms. Pamela A. Sweeney is required to file a bond of
2 \$1000 to pursue Appeal No. 17-16541. These bond amounts shall remain unchanged if the
3 appeals are consolidated. Each appellant shall post the required bond with the Clerk of Court to be
4 deposited into the Court's Registry by no later than December 1, 2017.

5 The Court DENIES AS MOOT the motion by Objector Andrews to appear by telephone at
6 the hearing on the motion to post the appeal bond (Dkt. No. 510).

7 **IT IS SO ORDERED.**

8 Dated: September 13, 2017

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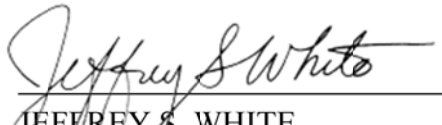
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JEFFREY S. WHITE
United States District Judge

Exhibit M

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United States District Court
Central District of California

AMY FRIEDMAN; JUDI MILLER;
KRYSTAL HENRY-McARTHUR; and
LISA ROGERS, on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

GUTHY-RENKER, LLC and WEN BY
CHAZ DEAN, INC.,

Defendants.

Case No. 2:14-cv-06009-ODW(AGR_x)

**ORDER GRANTING MOTION FOR
FINAL APPROVAL OF CLASS
SETTLEMENT [216] AND
GRANTING MOTION FOR
ATTORNEYS' FEES AND COSTS
[218]**

I. INTRODUCTION

Plaintiffs Amy Friedman, Judi Miller, Krystal Henry-McArthur, and Lisa Rogers bring this class action lawsuit against Defendants Guthy-Renker, LLC and Wen By Chaz Dean, Inc., alleging that Defendants' line of "WEN" haircare products caused their hair to fall out. In mid-2016, the parties reached a class-wide settlement of all claims, and the Court preliminarily approved the settlement. (ECF No. 178.) Pending before the Court are the following: (1) Motion for Final Approval of the Class Settlement; (2) Motion for Attorneys' Fees, Costs, and Incentive Awards; and (3) Objections to the Class Settlement. For the reasons discussed below, the Court **GRANTS** both Motions and **OVERRULES** the Objections to the Settlement. (ECF Nos. 216, 218.)

1 **II. BACKGROUND**

2 **A. Factual Background**

3 The Court has previously recited at length the factual and procedural history
4 underlying this case (ECF Nos. 41, 146, 167, 178), and thus the Court only briefly
5 summarizes those facts here. Wen By Chaz Dean designed the “WEN” line of
6 haircare products and licensed those products to Guthy-Renker, which in turn
7 manufactured, marketed, and sold them throughout the United States. According to
8 Plaintiffs, the WEN Hair Care Products cause hair loss and scalp irritation. Plaintiffs
9 further allege that Guthy-Renker falsely advertised the product as safe, failed to warn
10 consumers about the potential for hair loss, and erroneously instructed consumers to
11 use excessive amounts of the product.

12 **B. Procedural History Prior to Preliminary Approval**

13 Following pre-certification discovery, and after four mediations, the parties
14 reached a class-wide settlement of all claims in this action. (ECF Nos. 135, 137, 140,
15 144; Class Counsel Decl. ¶ 4, ECF No. 153-2.) The total settlement fund amounted to
16 \$26.25 million. (Class Counsel Decl., Ex. A (“Settlement Agreement”) § 6, ECF No.
17 170-1.) The settlement agreement established a two-tier claim system for class
18 members. Under Tier 1, any class member who purchased WEN Hair Care Products
19 could submit a claim without any supporting documentation for a one-time payment
20 of \$25. (*Id.* § 6A.) Under Tier 2, class members who suffered more extensive injuries
21 could recover up to \$20,000 by submitting a claim with supporting documentation.
22 (*Id.* § 6B.) An independent special master would then analyze and value the claim.
23 (*Id.*) The special master’s decision would be final and not subject to appeal or
24 reconsideration.¹ (*Id.*) Any class member who either submitted a Tier 1 or Tier 2
25 claim, or who did not affirmatively opt out of the class, would release all advertising
26 and bodily injury claims against Defendants.

27 _____
28 ¹ In short, although not denominated as such, it appears that Tier 1 claims were intended to
compensate the class for false advertising, while Tier 2 claims appeared intended to compensate
class members for personal injuries.

1 The agreement reserved up to \$5,000,000 to pay for Tier 1 claims, meaning that
2 each claimant would receive the full \$25 payout only if 200,000 or fewer class
3 members submitted Tier 1 claims. (*Id.*) The total amount allotted to pay Tier 2 claims
4 would be the amount remaining in the fund after Tier 1 claims, incentive awards,
5 administrative costs, and attorneys' fees were paid out (which the Court originally
6 estimated to be \$13.86 million). (Order at 4, ECF No. 178.) In the event the number
7 of claims submitted in either tier exceeded the funds set aside for that tier, all claim
8 payments within the tier would be proportionally reduced. (*Id.* §§ 7, 15.) Finally, the
9 agreement called for the payment of \$6.5 million in attorneys' fees, a total of \$57,500
10 in incentive awards to the named plaintiffs, and close to \$1 million (approximately) in
11 administrative costs. (*Id.* §§ 8, 9, 11, 13, 14; *see also* Order at 4–5.) For a more in-
12 depth recitation of the terms of the settlement, see Order at 4–8, ECF No. 178.

13 On October 28, 2016, the Court conditionally certified a settlement-only class
14 and preliminarily approved the terms of the settlement and the form and method of
15 notice. (ECF No. 178.) The Court noted, however, that it was troubled by: (1) the
16 potential for significant reductions in claim payouts; (2) the fact that the incentive
17 awards were at or near the ceiling established by the Ninth Circuit for such awards;
18 and (3) the size of the fee award to class counsel. (*See* Order at 15–18.) The Court set
19 a final settlement approval hearing for June 5, 2017. (*Id.* at 23.)

20 **C. Procedural History Following Preliminary Approval**

21 **1. Class Notice**

22 The settlement administrator, Dahl Administration, LLC (“Dahl”), used several
23 methods to give notice to the class. First, following preliminary approval of the
24 settlement, the parties subpoenaed the records of various retailers to obtain contact
25 information for all of the class members. (*See* Omnibus Decl. ¶ 11–12, ECF No. 216-
26 1; Dahl Decl. ¶ 6, ECF No. 217.) Based on these records, the administrator estimated
27 that there were approximately 8.1 million people in the class. (Dahl Decl. ¶ 7.)
28 Approximately 60% of these class members ultimately received notice of the

1 settlement by e-mail,² and the remaining members received notice by regular mail
2 where a mailing address could be identified. (*Id.* ¶¶ 10–13.) Approximately 97.12%
3 of the class received either e-mail notice or mail notice of the settlement. (*Id.* ¶ 13.)

4 Second, the administrator issued notice by publication. (*Id.* ¶¶ 14–15.) The
5 administrator implemented a web-based publication campaign between December 23
6 and December 26, 2016, using banners on social media. (*Id.*) In addition, for what it
7 is worth, there was extensive media coverage of the Court’s preliminary approval of
8 the settlement.³ Third, the administrator set up a website that made available details
9 of the settlement, the long-form notice of the settlement, a list of important dates and
10 deadlines, a link to file an online claim, settlement documentation, and other resources
11 related to this action and its settlement. (*Id.* ¶¶ 16–17.) Finally, the administrator also
12 set up an automated and dedicated toll-free telephone system that provided
13 information regarding the settlement. (*Id.* ¶¶ 18–20.) As of May 1, 2017, Dahl had
14 also received and, where appropriate, responded to 15,294 emails and 2,076 pieces of
15 written correspondence concerning the settlement. (*Id.* ¶ 21.)

16 **2. Opt Outs and Objections**

17 The administrator received 3,773 timely requests to opt out of the settlement.
18 (*Id.* ¶ 22.) The administrator also received 10 timely written objections to the
19 settlement and 2 untimely objections. (*Id.* ¶ 23.)

20 **3. Tier 1 and 2 Claims Filed**

21 Tier 1. The settlement administrator received 398,709 timely Tier 1 claims.
22 (Nolan & Dahl Decl. ¶ 8, ECF No. 216-2.) This was well in excess of the 200,000
23

24 ² That is, the e-mail sent to them did not bounce back to the sender as undeliverable. (Dahl Decl.
25 ¶¶ 9–10.)

26 ³ See, e.g., Glamour, *The Class-Action Settlement Against Wen Hair Care Is Officially Moving*
27 *Forward*, <https://www.glamour.com/story/wen-hair-care-lawsuit-hair-loss-moving-forward> (last
28 visited July 20, 2017); People, *\$26 Million Hair Loss Lawsuit Settlement Moves Forward for Wen*
Hair Care Products, <http://people.com/style/wen-hair-care-lawsuit-moves-forward/> (last visited July
20, 2017); CBS Los Angeles, *Class-Action Lawsuit Over Wen Hair Products Gets Preliminary*
Settlement Approval, [http://losangeles.cbslocal.com/2016/10/31/class-action-lawsuit-over-wen-hair-
products-gets-preliminary-settlement-approval/ \(last visited July 20, 2017\).](http://losangeles.cbslocal.com/2016/10/31/class-action-lawsuit-over-wen-hair-products-gets-preliminary-settlement-approval/)

1 maximum required for a full payout on each claim, and thus the parties predicted that
2 each claimant would receive only \$12.54—only 50% of what the parties originally
3 predicted. (*Id.*)

4 Tier 2. The settlement administrator received somewhere between 25,000 and
5 29,000 timely Tier 2 claims. (*Id.* ¶ 9; Nolan Suppl. Decl. ¶ 5, ECF No. 228-3.) Judge
6 Nan Nolan, who is a retired magistrate judge, was appointed as special master to
7 evaluate these claims. (Nolan & Dahl Decl. ¶ 2.) As of May 1, 2017, Judge Nolan
8 had reviewed and scored approximately 60% of the claims filed. (*Id.* ¶ 14.) Based on
9 her review, Judge Nolan predicted that no pro-rata reductions would be needed for
10 Tier 2 claims. (*Id.* ¶ 25.)

11 **C. Final Approval Hearing**

12 On June 5, 2017, the Court held a final approval hearing. (ECF No. 225.) At
13 that hearing, the Court expressed its dissatisfaction with the following: (1) that Tier 1
14 claimants were receiving only half of the payout that the settlement notices reasonably
15 led them to believe that they would receive; (2) the proposed incentive awards for
16 Amy Friedman and Judi Miller were excessive; and (3) class counsel's fee recovery
17 was excessive. (*See generally* ECF No. 231.) The Court subsequently issued an order
18 directing the parties to inform the Court whether they intended to take any steps to
19 address the Court's concerns regarding these issues. (ECF No. 226.)

20 On July 3, 2017, the parties submitted a report stating that they had amended
21 the agreement to address the Court's concerns. (ECF Nos. 228, 229.) First, class
22 counsel had agreed to reduce its fee request by \$1 million, and to contribute that sum
23 to paying Tier 1 claims. (Joint Report at 1–2.) In addition, the parties removed the \$5
24 million cap on the payment of Tier 1 claims, thus allowing unused funds originally
25 earmarked for Tier 2 claims to be used to pay Tier 1 claims instead. (*Id.*) By doing
26 this, all Tier 1 claims would be paid out at full value (\$25) without making any pro-
27 rata reductions to Tier 2 claim payouts. (*Id.*; *see also* Dahl Suppl. Decl. ¶ 2, ECF No.
28 228-2.) Second, named Plaintiffs Amy Friedman and Judi Miller agreed to reduce

1 their incentive awards to \$20,000 each. (Joint Report at 2–3.) Finally, the parties
2 requested that the \$250,000 cap on the special master’s fee be increased to \$400,000
3 to reflect the fact that the number of Tier 2 claims filed was more than six times the
4 number that they originally anticipated receiving. (Nolan Suppl. Decl. ¶ 5, ECF No.
5 228-3.)

6 III. LEGAL STANDARD

7 The approval of a class action settlement takes place in two stages. *Ontiveros v.*
8 *Zamora*, 303 F.R.D. 356, 363 (E.D. Cal. 2014). In the first stage of the approval
9 process, the court preliminarily approves the settlement pending a fairness hearing,
10 temporarily certifies a settlement class, and authorizes notice to the class. *See Murillo*
11 *v. Pac. Gas & Elec. Co.*, 266 F.R.D. 468, 473 (E.D. Cal. 2010). At the fairness
12 hearing, after notice is given to putative class members, the court entertains any of
13 their objections to (1) the treatment of the litigation as a class action and/or (2) the
14 terms of the settlement. *See Diaz v. Tr. Territory of Pac. Islands*, 876 F.2d 1401,
15 1408 (9th Cir. 1989) (holding that a court is required to hold a hearing prior to final
16 approval of a dismissal or compromise of class claims to “inquire into the terms and
17 circumstances of any dismissal or compromise to ensure it is not collusive or
18 prejudicial”). Following such a hearing, the court must reach a final determination as
19 to whether the parties should be allowed to settle the class action pursuant to the terms
20 agreed upon. *See Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 525 (C.D.
21 Cal. 2004).

22 IV. DISCUSSION

23 A. Class Certification

24 1. Legal Standard

25 Class certification is appropriate only if “each of the four requirements of Rule
26 23(a) and at least one of the requirements of Rule 23(b)” are met. *Zinser v. Accufix*
27 *Research Inst., Inc.*, 253 F.3d 1180, 1186 (9th Cir. 2001). Under Rule 23(a), the
28 plaintiff must demonstrate that the requirements of numerosity, commonality,

1 typicality, and adequacy are met. *See* Fed. R. Civ. P. 23(a); *Mazza v. Am. Honda*
2 *Motor Co.*, 666 F.3d 581, 588 (9th Cir. 2012). Next, the proposed class must meet the
3 requirements of at least one of the three types of class actions listed in Rule 23(b).
4 *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2548 (2011). Under Rule 23(b)(3),
5 the plaintiff must demonstrate that the requirements of predominance and superiority
6 are met. Fed. R. Civ. P. 23(b)(3). Finally, where class certification is sought for
7 settlement purposes only, the certification inquiry still “demand[s] undiluted, even
8 heightened, attention.” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

9 **2. Discussion**

10 The Court previously concluded that each of the Rule 23(a) and Rule 23(b)(3)
11 requirements were met, and thus conditionally certified a settlement-only class.
12 (Order at 4–8.) Objectors Christy Whaley Sparks and Ellen Bentz submitted
13 objections arguing that tort claims are generally not suitable for class treatment. (ECF
14 Nos. 206, 217-11.) However, there is no *per se* rule in the Ninth Circuit against
15 certifying such claims. *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1230 (9th
16 Cir. 1996). Moreover, the reason Bentz gives for why such certification might not be
17 appropriate in this particular instance—because tort-based claims are “significant” and
18 thus should not be waivable through the opt out process—is not persuasive, because
19 this concern is not unique to tort-based claims. Tellingly, Bentz cites no authority for
20 the proposition that potentially high-dollar claims should never receive class
21 treatment, and the authority in this district is to the contrary. *See Boyd v. Bank of Am.*
22 *Corp.*, 300 F.R.D. 431, 444 (C.D. Cal. 2014) (“[T]he potentially high value of the
23 claims does not weigh against class certification.”).

24 Sparks also gives several other reasons why litigating the class members’
25 claims as a class action is not superior to litigating them individually. First, Sparks
26 argues that individual lawsuits would be resolved more quickly than through the class
27 action mechanism. However, Sparks gives little justification for this conclusion. She
28 gives no estimate at all as to how long the claims process in this action might take or

1 how long an individual action would take to resolve. Moreover, Sparks’ objection
2 seems counterintuitive. The claims process in this settlement simply requires the
3 submission of the class members’ evidence for immediate evaluation by the special
4 master. In contrast, an individual action would require *both* parties to take
5 discovery—which in a products liability case could be extensive even for individual
6 actions—and would potentially require them to try their claims.

7 Second, for persons who intend to pursue individual claims regardless of the
8 existence of class certification or the class settlement, Sparks argues that they are
9 burdened with the requirement that they timely opt out of this lawsuit before they may
10 do so. However, again, the same can be said about *all* class actions (or at least Rule
11 23(b)(3) class actions); this is not an issue that is unique to this particular lawsuit.
12 Simply pointing out the general burdens of class litigation does not show that class
13 litigation is not the superior method for adjudicating *this* particular dispute.

14 The Court therefore overrules these portions of Sparks and Bentz’s objections
15 and, for the reasons more fully discussed in the Court’s preliminary approval order,
16 certifies the class the purpose of this settlement only.

17 **B. Settlement Notice**

18 **1. Legal Standard**

19 Class certification notices must comply with Rule 23(c)(2)(B). “For any class
20 certified under Rule 23(b)(3), the court must direct to class members the best notice
21 that is practicable under the circumstances, including individual notice to all members
22 who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B).

23 The notice must clearly and concisely state in plain, easily understood
24 language:

- 25 (i) the nature of the action;
- 26 (ii) the definition of the class certified;
- 27 (iii) the class claims, issues, or defenses;
- 28 (iv) that a class member may enter an appearance through an attorney if
the member so desires;

- 1 (v) that the court will exclude from the class any member who requests
- 2 exclusion;
- 3 (vi) the time and manner for requesting exclusion; and
- 4 (vii) the binding effect of a class judgment on members under Rule
- 5 23(c)(3).

6 Fed. R. Civ. P. 23(c)(2)(B)(i)–(vii).

7 The Ninth Circuit has approved individual notice to class members via e-mail.
8 *See In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 946 (9th Cir. 2015). It
9 has also approved notice via a combination of short-form and long-form settlement
10 notices. *Id.*; *see also Spann v. J.C. Penney Corp.*, 314 F.R.D. 312, 331 (C.D. Cal.
11 2016) (approving e-mail and postcard notice, each of which directed the class member
12 to a long-form notice); *Vandervort v. Balboa Capital Corp.*, 8 F. Supp. 3d 1200, 1204
13 (C.D. Cal. 2014); *In re Optical Disk Drive Antitrust Litig.*, No. 3:10-MD-02143 RS,
14 2014 WL 1654028, at *2 (N.D. Cal. Apr. 25, 2014).

15 For class action settlements, “[t]he court must direct notice in a reasonable
16 manner to all class members who would be bound by the proposal.” Fed. R. Civ. P.
17 23(e)(1). “Notice is satisfactory if it generally describes the terms of the settlement in
18 sufficient detail to alert those with adverse viewpoints to investigate and to come
19 forward and be heard.” *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th
20 Cir. 2004) (internal quotation marks omitted). The notice “does not require detailed
21 analysis of the statutes or causes of action forming the basis for the plaintiff class’s
22 claims, and it does not require an estimate of the potential value of those claims.”
23 *Lane v. Facebook, Inc.*, 696 F.3d 811, 826 (9th Cir. 2012).

24 **2. Analysis**

25 The Court concludes that the notice provided to class members more than
26 adequately satisfied these requirements. The parties used reasonable efforts to
27 identify all individuals that were part of the class by issuing subpoenas to the retailers
28 of WEN Hair Care Products. (Omnibus Decl. ¶¶ 11–12.) The parties provided
individual short-form notice (by e-mail or regular mail) to over 97% of the class.

1 (Dahl Decl. ¶ 6.) The remaining 3% of class members received constructive notice
2 through website publication. (*Id.* ¶¶ 14–15.)⁴ Such notice is sufficient under Rule 23.
3 The Court has also reviewed the short-form notices and publication notice to the class
4 members and is satisfied that it adequately informs the class member of the nature of
5 the action, the class claims, issues, and defenses, the ability of the members to request
6 exclusion from the class, and the time and manner for requesting exclusion. The
7 notices also give a sufficient overview of the terms of the settlement. The short-form
8 notices also direct the class member to the long-form notice, which describes in detail
9 the definition of the certified class, and advises the class member of their right to
10 appear and contest the settlement. Finally, the settlement administrator maintained a
11 website containing extensive information about the settlement and set up a dedicated
12 telephone line regarding the settlement.

13 In light of this, the Court concludes that the notice provided to the class is the
14 best practicable notice under the circumstances consistent with Rule 23. *See In re*
15 *Google Referrer Header Privacy Litig.*, 87 F. Supp. 3d 1122, 1129 (N.D. Cal. 2015).

16 **C. Settlement Terms**

17 **1. Legal Standard**

18 “Assessing a settlement proposal requires the district court to balance a number
19 of factors: the strength of the plaintiffs’ case; the risk, expense, complexity, and likely
20 duration of further litigation; the risk of maintaining class action status throughout the
21 trial; the amount offered in settlement; the extent of discovery completed and the stage
22 of the proceedings; the experience and views of counsel; the presence of a
23 governmental participant; and the reaction of the class members to the proposed
24 settlement.” *Hanlon*, 150 F.3d at 1026. “Not all of these factors will apply to every
25 class action settlement. . . . The relative degree of importance to be attached to any
26 particular factor will depend upon and be dictated by the nature of the claim(s)

27
28 ⁴ Moreover, numerous class members were likely also alerted to the existence of the settlement via media publications.

1 advanced, the type(s) of relief sought, and the unique facts and circumstances
2 presented by each individual case. Ultimately, the district court’s determination is
3 nothing more than an amalgam of delicate balancing, gross approximations, and rough
4 justice.” *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 525–26
5 (C.D. Cal. 2004) (internal citations and quotation marks omitted).

6 **2. Analysis**

7 The Court adopts its analysis granting preliminary approval of the terms of the
8 settlement, subject to the Court’s further analysis below concerning issues that have
9 arisen since that preliminary approval.

10 **i. Tier 1 Claims**

11 The Court finds final approval of the Tier 1 claims process appropriate. For the
12 reasons discussed in the preliminary approval order, a \$25 payment per claimant is
13 reasonable given the risks of further litigation. Moreover, because the parties have
14 agreed to increase the amount of money set aside for paying Tier 1 claims such that
15 each claimant will in fact receive \$25 each, the Court’s previous concerns on the
16 potential pro-rata reduction to claim payouts is moot.

17 **ii. Tier 2 Claims**

18 For the reasons discussed in the preliminary approval order, the Court also finds
19 the Tier 2 claims process reasonable. Moreover, because there will be no pro rata
20 reductions to the payout of Tier 2 claims,⁵ the Court finds final approval of the
21 settlement appropriate.

22 **iii. Special Master Fee**

23 The Court finds the increase in the special master fee appropriate. The number
24 of Tier 2 claims actually filed far exceeded the parties’ original estimate. Moreover,

25 ⁵ In addition, the settlement administrator testified that she valued the claims without artificially
26 squeezing them to fit within the total pot of money set aside for Tier 2 claims. *See* Hr’g Tr. 28–29
27 (“Q. Do you believe there is enough money in the common fund to give a fair award to all members
28 of the class? A. And without making any adjustments. . . . Q. Did you back into these numbers you
created? A. No, I didn’t. I didn’t. I did it from the first two months of where I was teaching myself
the story of Wen.”).

1 the parties indicate that this increase will not prevent the Tier 2 claimants from
2 receiving a full pay out on their claims pursuant to the special master’s evaluation.
3 (Joint Report at 3–4.) The Court therefore grants the increase in the special master fee
4 from \$250,000 to \$400,000.

5 **iv. Objections**

6 The Court addresses the arguments submitted by the following objectors in
7 connection with this settlement.⁶ For the reasons discussed below, the Court overrules
8 each objection.

9 Christy Whaley Sparks. (ECF No. 206.) The bulk of Sparks’ lengthy objection
10 is to the fairness of the settlement terms. Sparks’ objection to those terms can be
11 divided into three major categories: (1) promoting the strengths of Plaintiffs’ case; (2)
12 arguing that the Tier 2 claim amounts are inadequate; and (3) arguing that the Tier 2
13 claim-filing procedure is excessively onerous. The Court will address each argument
14 in turn.

15 *Strengths of Plaintiffs’ Case*. Sparks describes at length what she perceives to
16 be the strength of Plaintiffs’ case against Defendants. First, Sparks points to the
17 presence of several allergens in the Wen Hair Products that she claims is not safe for
18 use and which likely caused the symptoms that many class Plaintiffs experienced.
19 Second, Sparks contends that WEN does not contain sufficient cleansers, which can
20 result in Seborrheic Dermatitis. Third, Sparks emphasizes the physical and

21
22 ⁶ The Court also notes that it received relatively few objections (12) given the size of the class (8
23 million). *See In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2008) (noting
24 that, “[b]y any standard,” receiving only three objections out of 57,630 class members “favors
25 approval of the Settlement”). Moreover, not all of the objections even argued against the fairness of
26 the settlement: three objectors argued that the settlement was unfair to *Defendants*, one objector
27 simply pointed out a quirk in the claims filing procedure, and one did not appear to make any
28 argument at all against the fairness of the settlement. Finally, one objection was from an apparent
professional objector and devoid any real argument. The relatively few legitimate objections thus
heavily favors approval of the settlement. *Nat’l Rural Telecommunications Coop. v. DIRECTV, Inc.*,
221 F.R.D. 523, 529 (C.D. Cal. 2004) (“It is established that the absence of a large number of
objections to a proposed class action settlement raises a strong presumption that the terms of a
proposed class settlement action are favorable to the class members.”).

1 psychological effect on the user of hair loss, including negative self-esteem and
2 depression. Fourth, Sparks points to the recent investigation initiated by the Food and
3 Drug Administration into complaints of hair loss caused by WEN. Sparks accuses
4 Guthy-Renker of not cooperating with the investigation and failing to adequately
5 investigate any connection between use of WEN and hair loss. Finally, Sparks also
6 accuses Defendants of hindering consumers from investigating the link between use of
7 WEN and hair loss. Sparks cherry-picks two e-mails sent by Defendants to consumers
8 where Defendants downplay the possibility of such a link.

9 The Court does not find these reasons sufficient to scuttle the settlement. First,
10 while there may be some WEN users who have suffered some of the more serious
11 symptoms and conditions that Plaintiff describes, there is no evidence that all or even
12 most users suffered such injuries. Moreover, in response to Sparks' objection,
13 Defendants present substantial evidence suggesting that the ingredients in WEN
14 products do not in fact cause hair loss or scalp irritation at all. Thus, Sparks' objection
15 does little to show that the evidence as to liability is particularly lopsided in favor of
16 the class. And for any class member who did suffer unusually severe symptoms and
17 who believes that the class settlement does not adequately compensate him or her for
18 her injury, that person may opt out of the class and pursue an individual action.
19 Finally, Sparks' overtures as to Defendants' lack of cooperation with the FDA or
20 consumers does not even relate to the fairness of the settlement at all; it seems
21 designed simply to cast Defendants in a bad light.

22 *Onerous Claim Filing Procedures.* Sparks argues that the claim filing
23 procedures are onerous and do little to relieve the class of the risks of continued
24 litigation. First, Sparks argues that the settlement still requires class members to
25 prove causation. That is, the settlement claim forms request information regarding
26 other medical conditions that could affect a claimant's hair loss (i.e., pregnancy,
27 thyroid conditions, etc.), which Sparks believes is for the purpose of reducing
28 payment based on a causation inquiry. Second, Sparks argues that the special master

1 will be making decisions based on the credibility of each claimant and their
2 documentation, which is exactly what a jury would do anyway. Third, Sparks argues
3 that the settlement requires documentation beyond what would be necessary at trial,
4 yet also caps the total amount recoverable.

5 The Court is also not convinced by these arguments. First, the fact that the
6 Special Master can consider other alternate or contributing causes of hair loss does not
7 make the settlement unfair. Claimants are entitled to recover under Tier 2 to the
8 extent that their use of WEN caused them hair loss or other injury. Where a claimant
9 suffered hair loss that is clearly attributable to another cause, the claimant should not
10 receive recovery. Similarly, if a claimant suffered from another condition that is
11 linked to hair loss, the claimant's recovery should be limited to that hair loss caused
12 by the use of WEN rather than the total amount of hair loss they might have suffered.
13 Thus, allowing the special master to consider issues of causation is not a mark against
14 the settlement. As to Sparks' second argument, the fact that the special master is still
15 making some credibility determinations does not mean that the settlement lacks any
16 benefit for the class. Finally, the submission of documentation always bolsters the
17 credibility of a claimant's claim—whether through this claims process or at trial. The
18 bare fact that Sparks *could* turn up at trial without any documentation of her injury
19 does not mean that a jury would award her anything. Thus, requiring documentation
20 does not make the settlement unfair or unreasonable in comparison to litigating the
21 claim.

22 *Tier 2 Payout is Insufficient.* Sparks argues that the money set aside to payout
23 Tier 2 claims is insufficient. However, as it appears that there have been no pro rata
24 reductions to the Tier 2 claim payouts, this issue is moot.

25 Melissa Randolph. (ECF No. 217-11.) Randolph submitted an objection that
26 stated only that she “fe[lt] the relief and notice is inadequate and the compensation is
27 excessive.” However, Randolph gives no explanation as to why she believes either
28 the relief or notice is inadequate. This precludes any meaningful evaluation of her

1 objection. Moreover, the issue of attorneys’ fees (if that is what Randolph is referring
2 to by “compensation”) is discussed in more detail elsewhere in this order. The Court
3 therefore overrules this objection.

4 Lindsey Buss, Christina Brown, Patricia Seastrom-Miller. (ECF No. 217-11.)
5 These persons object to the settlement on the basis that they do not believe that there
6 were any problems with any WEN Haircare Products, and thus the Court should not
7 require Defendants to pay anything in settlement. However, class members do not
8 have standing to object that the settlement is unfair to *Defendants* rather than the class.
9 *See In re First Capital Holdings Corp. Fin. Prod. Sec. Litig.*, 33 F.3d 29, 30 (9th Cir.
10 1994) (class members must have Article III standing to object to the settlement). The
11 Court therefore overrules this objection.

12 Rosemary Renz. (ECF No. 217-11.) Renz noticed “unusual breakage” in her
13 hair after using WEN and stopped using the product thereafter. She still has seven
14 bottles of WEN products that she wishes to return for a full reimbursement, and she
15 objects to the settlement on the basis that this is not a settlement option. She seeks
16 \$262 in reimbursement. Full reimbursement for multiple bottles purchased, however,
17 would not be a compromise settlement, and thus is an unrealistic request. The Court
18 therefore overrules this objection.

19 Kathleen Horn. (ECF No. 217-11.) Horn believes that a \$25 settlement
20 payment is insufficient. She states that she had a burning sensation on her scalp after
21 using WEN and that she is losing more hair than normal. It appears that Horn
22 overlooked the Tier 2 claims process before she filed this objection, which provides a
23 procedure for claiming compensation based on hair loss. The Court therefore
24 overrules this objection.

25 Tremaine Charles. (ECF No. 217-11.) Charles believes that a \$25 settlement
26 payment is insufficient. She also believes that the Tier 2 claims process is unduly
27 burdensome in that it requires her to submit documentation that she no longer has, and
28 that she is suffering emotional distress for which she should be compensated. As an

1 initial matter, Charles should have filed a Tier 2 claim rather than a simple Tier 1
2 claim. Moreover, requiring documentation is not a deficiency in the Tier 2 process—
3 any lawsuit would require her to provide such documentation. If she believes that she
4 is entitled to more money than what the settlement offers, she can also opt out and
5 pursue an individual action. The Court therefore overrules this objection.

6 Pamela Sweeney. (ECF No. 217-11.) Sweeney objects to the settlement on a
7 number of vague grounds, including: (1) the claims administration process is not
8 properly overseen; (2) attorneys’ fees are too high and are inadequately detailed; and
9 (3) she joins all other objections made by other objectors. Sweeney’s objections are
10 too vague for the Court to properly analyze, and in any event seem to raise issues that
11 are addressed elsewhere in Order. The Court therefore overrules this objection.

12 Pamela Behrend. (ECF No. 217-11.) Behrend objects to the settlement on the
13 grounds that her home state (Pennsylvania) and several other states provide statutory
14 damages for unfair trade practices in excess of \$25. Thus, she argues that the claims
15 of the Plaintiffs in this case, who are residents of states that do not have such statutory
16 damages, are not typical of the class. She also argues that the amount set aside for
17 Tier 1 claims is insufficient. Finally, she argues that the attorneys’ fees in this case are
18 excessive.

19 The Court does not find these objections persuasive. First, the states in which
20 the named Plaintiffs reside is not what drives the application of California law to the
21 nationwide class—indeed, the fact that *none* of the named Plaintiffs are residents of
22 California shows this. Moreover, Defendants’ lack of connection to Pennsylvania
23 greatly increases the difficulty of certifying a nationwide class based on Pennsylvania
24 law. Second, to the extent Behrend believes the settlement to be inadequate because
25 there are states in which the maximum statutory damages exceeds \$25, this also does
26 not warrant withholding settlement approval. Pretrial settlements almost inevitably
27 result in a reduced pay out based on a compromise; the fact that the settlement does
28 not award all damages that one may be entitled to if they obtained a judgment fully in

1 their favor does not mean that the settlement is inadequate. *See In re Omnivision*
2 *Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (approving settlement that
3 provided 9% of the maximum potential recovery, and suggesting that a “smaller
4 certain award” is often preferable to “seek[ing] the full recovery but risk getting
5 nothing”). Finally, the Court addresses Behrend’s remaining objections elsewhere in
6 this order. The Court therefore overrules this objection.

7 Ellen Bentz. (ECF No. 217-11.) Bentz objects that: (1) the total settlement
8 amount is insufficient to compensate the class; (2) attorneys’ fees sought are
9 excessive; (3) the opt-out period was not long enough to meaningfully evaluate the
10 settlement; (4) the damages cap for Tier 2 claims is too low; (5) tort-based claims
11 should not be litigated as class actions; and (6) incentive awards to Plaintiffs are
12 excessive. As the Court noted in the final approval hearing, the Court agrees that the
13 attorneys’ fees and incentive awards are excessive, and thus has reduced those awards.
14 *See infra*. In addition, the Court considers the length of the opt out period to be
15 adequate for a diligent class member to evaluate their injury and compare it to the
16 benefits that the settlement has to offer. Finally, the Court has considered and
17 overruled elsewhere in this Order arguments similar to the remaining arguments that
18 Bentz makes. The Court therefore overrules this objection.

19 Thomas Paciorkowski. (ECF No. 217-11.) Paciorkowski objects to the claims
20 process. Specifically, while he did not purchase the product, he used the product, yet
21 the online Tier 1 claim-processing form requires the claimant to enter a purchase date
22 in order to obtain a recovery. Thus, he instead submitted a paper claim and left the
23 “purchase date” blank. Paciorkowski requests that the Court address the dilemma of
24 how users (but non-purchasers) of the product can submit Tier 1 claims without
25 entering a purchase date. It appears, however, that Paciorkowski has solved his own
26 dilemma (i.e., by submitting a paper claim form), and thus it is unclear what further
27 relief he wishes the Court to order. In addition, Paciorkowski concedes that he
28 contacted the settlement administrator about this issue, who instructed him to simply

1 enter any date into “purchase date” query. This explicit advice should alleviate any
2 concerns Paciorkowski has about submitting incorrect information in the claim forms.
3 The Court therefore overrules this objection.

4 Luwona Ferguson. (ECF No. 217-11.) It is unclear what Ferguson’s objection
5 is. She indicates that she is a former cosmetologist and that she stopped using WEN
6 products and asked Guthy-Renker to stop sending her such products. She asked
7 Guthy-Renker if she could return the WEN products she has, but Guthy-Renker told
8 her to just “hold on to it.” Beyond this, however, Ferguson does not state what it is
9 about the settlement that she finds to be objectionable. The Court therefore overrules
10 this objection.

11 **D. Incentive Awards**

12 In the Ninth Circuit, there is no per se rule against incentive awards for class
13 representatives. However, “district courts [should] scrutinize carefully the awards so
14 that they do not undermine the adequacy of the class representatives.” *Radcliffe v.*
15 *Experian Info. Sols. Inc.*, 715 F.3d 1157, 1163 (9th Cir. 2013). In evaluating incentive
16 awards, the court should look to “the number of named plaintiffs receiving incentive
17 payments, the proportion of the payments relative to the settlement amount, and the
18 size of each payment.” *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 947
19 (9th Cir. 2015). *Compare id.* (approving \$5,000 incentive awards for nine class
20 representatives with \$27.25 million settlement fund), *In re Mego Fin. Corp. Sec.*
21 *Litig.*, 213 F.3d 454, 457 (9th Cir. 2000) (approving \$5,000 incentive award for two
22 class representatives with \$1.725 million settlement fund), *and In re U.S. Bancorp*
23 *Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002) (approving \$2,000 incentive awards to five
24 named plaintiffs out of a class potentially numbering more than 4 million in a
25 settlement of \$3 million), *with Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003)
26 (disapproving incentive awards averaging \$30,000 for 29 class representatives with a
27 \$14.8 million settlement).

28 Here, the incentive awards for Henry-McArthur (\$5,000) and Rogers (\$2,500)

1 are well within any metric used to determine the adequacy of incentive awards.
2 Moreover, Friedman and Miller have agreed to reduce their incentive awards to
3 \$20,000 each. While these two latter awards still border on the threshold for
4 disapproval, *see Staton*, 327 F.3d at 977, the Court is satisfied that their participation
5 in this lawsuit justifies the award. The Court therefore approves these incentive
6 awards.

7 **E. Attorneys' Fees**

8 Class counsel seeks an award of \$5.5 million in attorneys' fees, which is a \$1
9 million reduction from the amount they initially sought. "While attorneys' fees and
10 costs may be awarded in a certified class action where so authorized by law or the
11 parties' agreement, courts have an independent obligation to ensure that the award,
12 like the settlement itself, is reasonable, even if the parties have already agreed to an
13 amount." *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 941 (9th Cir.
14 2011). "Where a settlement produces a common fund for the benefit of the entire
15 class, courts have discretion to employ either the lodestar method or the percentage-
16 of-recovery method." *Id.* at 942. "Because the benefit to the class is easily quantified
17 in common-fund settlements, we have allowed courts to award attorneys a percentage
18 of the common fund in lieu of the often more time-consuming task of calculating the
19 lodestar. Applying this calculation method, courts typically calculate 25% of the fund
20 as the 'benchmark' for a reasonable fee award, providing adequate explanation in the
21 record of any 'special circumstances' justifying a departure." *Id.* However, the Court
22 should not use a "mechanical or formulaic approach [to determining attorneys' fees]
23 that results in an unreasonable reward." *Id.* at 994. Thus, the Court should cross-
24 check a percentage-of-the-fund approach with a lodestar approach in appropriate
25 circumstances. *Id.*

26 Here, the fee award contemplated by Class Counsel is 20.9% of the total
27 settlement fund, and thus is presumptively reasonable under the percentage-of-
28 recovery calculation. Moreover, having considered (1) the information counsel has

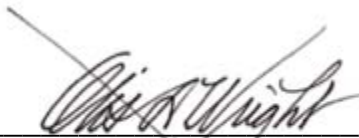
1 provided regarding the number of hours expended on the litigation and a reasonable
2 hourly rate, (2) arguments of counsel at the final approval hearing, (3) the recovery
3 obtained for the class, and (4) the risk counsel took in pursuing this action, the Court
4 is satisfied that \$5.5 million is a reasonable fee to award class counsel.

5 **IV. CONCLUSION**

6 For the reasons discussed, the Court **GRANTS** the Motion for Final Approval
7 of Class Settlement (ECF No. 216) and **GRANTS** the Motion for Attorneys' Fees,
8 Costs, and Incentive Awards (ECF No. 218). The Court **OVERRULES** all
9 Objections to the Settlement. The Court shall enter a modified version of the parties'
10 proposed judgment

11 .
12 **IT IS SO ORDERED.**

13
14 August 21, 2017



15
16 **OTIS D. WRIGHT, II**
17 **UNITED STATES DISTRICT JUDGE**
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Exhibit N

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

=====

AMY FRIEDMAN, JUDI MILLER,
KRYSTAL HENRY-MCARTHUR, and
LISA ROGERS on behalf of
themselves and all others
similarly situated,

Plaintiffs,

-vs-

Case No. 2:14-cv-06009-ODW-AGR

GUTHY-RENKER, LLC, and
WEN BY CHAZ DEAN, INC.,

Defendants.

=====

Deposition of:

PAMELA SWEENEY

Madison, Wisconsin

April 10, 2017

12:57 p.m.

Reported by: Paula Thompson

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I N D E X

WITNESS	Page (s)
PAMELA SWEENEY	
Examination by Mr. Anderson	4/87
Examination by Mr. Whybrew	78
Examination by Mr. Yasuzawa	86

E X H I B I T S

No.	Description	Identified
Exhibit 1	Subpoena	28
Exhibit 2	Objection to Guthy-Renker	51
Exhibit 3	Objection to Trader Joe's	51
Exhibit 4	Objection to Blue Buffalo	51
Exhibit 5	Objection to Ascena Retail Group	51
Exhibit 6	Objection to Snyder's-Lance	51
Exhibit 7	Objection to Walgreens	51
Exhibit 8	Objection to Milk	51
Exhibit 9	Objection to Johnson and Johnson	51
Exhibit 10	Settlement agreement and release of claims	59

(Attached to the original transcript and
copies provided to Mr. Anderson and
Mr. Whybrew)

(Original transcript filed with
Mr. Anderson and copies provided to
Mr. Anderson and Mr. Whybrew)

1 DEPOSITION of PAMELA SWEENEY, called as a
2 witness, taken at the instance of the Plaintiffs,
3 under the provisions of Chapter 804 of the Wisconsin
4 Statutes, pursuant to Notice, before Paula Thompson,
5 a Notary Public in and for the State of Wisconsin, at
6 Verbatim Reporting, Limited, 2 East Mifflin Street,
7 Suite 102, City of Madison, County of Dane, and State
8 of Wisconsin, on the 10th day of April, 2017,
9 commencing at 12:57 p.m.

10
11 A P P E A R A N C E S
12

13 WILLIAM H. ANDERSON, Attorney,
CUNEO, GILBERT & LADUCA, LLP

14 4725 Wisconsin Avenue, Northwest, Suite 200,
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15 Plaintiffs.

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16
17 CHARLES R. WHYBREW, Attorney,
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19 of Defendant Guthy-Renker, LLC

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21 BRIAN YASUZAWA, Attorney,
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22 445 South Figueroa, Suite 3200, Los Angeles,
California 90071-1651, appearing via telephone on
behalf of Defendant WEN by Chaz Dean

23 Byasuzawa@hptylaw.com 213-486-8018
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PAMELA SWEENEY,

called as a witness, being first duly sworn, testified on oath, as follows:

EXAMINATION

BY MR. ANDERSON:

Q Okay. Mrs. Sweeney, we were introduced a moment ago. But just for purposes of the record, my name is William Anderson; and I represent the plaintiffs in Friedman versus Guthy-Renker.

MR. ANDERSON: Counsel on the phone, do you all want to introduce yourselves?

MR. YASUZAWA: Hi. Good morning, ma'am. My name is Brian Yasuzawa. I'm with Hawkins, Parnell, Thackston, and Young; and I represent WEN by Chaz Dean.

MR. WHYBREW: And this is Chuck Whybrew from Lewis Wagner representing Guthy-Renker, LLC.

BY MR. ANDERSON:

Q Okay. Mrs. Sweeney, could you state and spell your name for the record, please?

A Sure. Pamela Sweeney. And that's spelled "S" as in Sam, W-E-E-N-E-Y.

Q Okay. And, Ms. Sweeney, have you been deposed before?

1 A I have.

2 Q How many times?

3 A Twice.

4 Q Twice. And were both of those depositions in
5 conjunction with objections that you filed in
6 other cases?

7 A Yes.

8 Q And which cases were those?

9 A Blue Buffalo and Snyder's Pretzels.

10 Q And when were those depositions?

11 A To the best of my recollection, a year ago.

12 Q And they occurred on separate days, correct?

13 A Correct.

14 Q Okay. And did they both occur here in Wisconsin?

15 A Correct.

16 Q Okay. And did you move to quash the subpoenas
17 for both of those depositions or just one? How
18 did that work?

19 A To the best of my recollection, I think just one.

20 Q Okay.

21 A And then we talked. And then I said I would come
22 but we had to put a limit on the time --

23 Q Okay.

24 A -- which was two hours.

25 Q Okay. All right. So --

1 A It was Blue Buffalo.

2 Q Okay. And let's back up for a second. Let's
3 just talk about sort of some ground rules for the
4 deposition.

5 A Okay.

6 Q So I know you've done this a couple of times, so
7 there's probably some familiarity with the
8 process. But nevertheless, you realize that the
9 court reporter is recording everything that we
10 say, right?

11 A Correct.

12 Q Okay. And because she's recording, we both have
13 to make an effort, me especially, but both of us
14 to speak slowly so that she can record
15 everything. Fair?

16 A Fair.

17 Q Okay. And we'll try not to speak over one
18 another. If you're speaking, I'll try to let you
19 finish; and I would ask that you extend me the
20 same courtesy. Fair?

21 A Fair.

22 Q Okay. So this way the transcript is cleaner and
23 we don't have folks trying to talk over one
24 another. During the course of the day today, you
25 may find that you need to take a break at some

1 point. The only thing that I ask is that if
2 we're to take a break that you finish answering
3 the question that is posed before we stop for a
4 break. Fair?

5 A Okay. Fair.

6 Q All right. Great. And beyond that, please
7 respond to questions verbally; that is, it's
8 difficult for the court reporter to take down
9 gestures. Okay?

10 A Okay. Fair.

11 Q All right. Great.

12 A May I ask just one question?

13 Q Sure.

14 A What do you anticipate the time frame to be?

15 Q I don't know for sure. I don't expect that it
16 will take very long, but it'll sort of depend on
17 how things unfold during our questioning and --
18 but I don't anticipate it will be more than a few
19 hours. I suspect it may be more than two. And
20 the other thing that I can't control is, I don't
21 know how many questions the defendants will have
22 for you.

23 A Okay.

24 Q And so that's a bit of an X factor that I
25 can't -- I can't control.

1 A I just have kids out of school at 20 to 4:00. Is
2 that -- but, I mean, I have somebody to pick them
3 up if need be.

4 Q Okay. Okay. Fair enough. And if we reach a
5 point where you need to reach out to somebody to
6 say, hey, can you please --

7 A Okay.

8 Q -- grab the kids, you know, just let me know --

9 A Sure.

10 Q -- and we'll stop and you can contact them.

11 A Okay.

12 Q All right. So, Mrs. Sweeney, tell me about your
13 educational background. Where did you go to
14 school?

15 A Starting from when?

16 Q High school.

17 A High school, I went to West High School in
18 Madison, Wisconsin.

19 Q Okay.

20 A Then I graduated from University of
21 Wisconsin-Madison and --

22 Q Go ahead.

23 A -- then I went on to get -- to the University of
24 San Diego and got a master's.

25 Q Okay. What was your undergraduate degree in?

1 A Economics.

2 Q Okay. And when did you obtain that degree?

3 A 1980 or '81. I can't remember what it was.

4 Q Okay. And how about your master's? When did you
5 obtain that?

6 A 1984 or '85. It's a master's in business
7 administration.

8 Q Okay. Okay. So you said you got an MBA in '84
9 or '85. And that was from the University of
10 San Diego did you say?

11 A Correct.

12 Q Okay. And after you obtained your graduate
13 degree, did you --

14 A Correct.

15 Q -- work?

16 A Yes.

17 Q And where did you work?

18 A I went through a management training program for
19 Southeast Bank in the state of Florida.

20 Q Okay. And how long were you with them?

21 A Several years. And then I was pregnant, and so I
22 quit; and then they went belly-up.

23 Q Okay.

24 A And I don't know what year that was.

25 Q Okay. Any sense of how long you worked at

1 Southeast Bank?

2 A Two years, three years. I mean, I completed
3 their management training program, worked at
4 Palm Beach in all different branches. Let's say
5 two. I can't really remember. It was 30 years
6 ago.

7 Q Okay. And after that job, after the baby was
8 born, did you resume working?

9 A No. I was a stay-at-home mom.

10 Q Okay. So when is the last time that you were
11 employed?

12 A Well, I've done my own things; but I substitute
13 taught when she was in school --

14 Q Okay.

15 A -- at her school.

16 Q So what's the last job that you had for which you
17 received compensation?

18 A Well, I suppose that unless you're talking about
19 doing -- you know, I've worked for my husband a
20 little doing some things for him.

21 Q Okay. And your husband's an attorney?

22 A Correct.

23 Q Okay. And what did you do for your husband?

24 A I just did like managerial things, kept accounts,
25 you know, up to date.

1 Q Okay. So when's the last time --

2 A I did --

3 Q Oh, I'm sorry.

4 A Oh, no. That's okay. Did some property
5 management work with buildings we had.

6 Q Okay.

7 A So when was the last time I received an actual
8 check? Couple years ago; several years ago.

9 Q And when was the last time you substitute taught?

10 A Oh, gosh. 27, '89, '99, some early 2000. You're
11 asking me a lot of things I don't remember.

12 Q What kind of law does your husband practice?

13 A Business.

14 Q Business. Transactional or --

15 A Kind -- yeah. Real estate, transactional, that
16 kind of --

17 Q Okay. And you said you managed some property.

18 A Mm-hmm.

19 Q If you could just respond with a yes or no. It's
20 easier for her to --

21 A Yes.

22 Q Okay. And so the property that you managed, are
23 you -- is it owned by you and your husband or --

24 A Not anymore.

25 Q Okay.

1 A But --

2 Q Well, tell me about that. So when did you sell
3 it?

4 A We did not sell it.

5 Q Okay. What were the circumstances in which you
6 stopped?

7 A We lost it during the recession, a number of
8 buildings.

9 Q And how many buildings did you lose?

10 A To the best of my recollection, it was one, two,
11 three -- three.

12 Q And what --

13 A And then some land.

14 Q Okay. I'm sorry to have interrupted.

15 A Oh, no.

16 Q What -- so you say three buildings and some land.
17 What types of buildings were those?

18 A Commercial.

19 Q And where were they located?

20 A Wisconsin.

21 Q In Madison or elsewhere?

22 A Madison, Middleton.

23 Q Okay. And how about the land that you lost?

24 A Middleton.

25 Q What size was that plot of land?

1 A Oh, gosh. I'd say about the size of that
2 building, maybe a little less.

3 Q Okay. So for the record, you're pointing across
4 the street at a --

5 A Oh, yeah. I'm sorry.

6 Q -- at a building. Are you anticipating it's sort
7 of in the realm of an acre? More than that?
8 Less than that?

9 A More than an acre certainly.

10 Q Okay. More than two acres?

11 A Possibly. I just don't recall.

12 Q Okay. And you're married?

13 A Yes.

14 Q And when did you get married?

15 A 1986.

16 Q So was that the same year your husband graduated
17 from California Western School of Law?

18 A Maybe a year later. Maybe it was that year. I
19 don't recall.

20 Q Okay.

21 A Somewhere around there.

22 Q And you have children?

23 A Yes.

24 Q Okay. And what are their names?

25 A Carrie.

1 Q Carrie Ann?

2 A Well -- or Carrie Ann. I call her Carrie.

3 Q Sure. And her last name is Sweeney as well?

4 A Sweeney as well.

5 Q And when was she born?

6 A She was born in 1989.

7 Q Okay. Can you give me her birthday?

8 A Yes. June 20th, 1989.

9 Q Okay. Any other children?

10 A Yes.

11 Q Okay. And who are they?

12 A Erin. And that's a girl, E-R-I-N.

13 Q Last name also Sweeney?

14 A Sweeney.

15 Q Okay. Birthday?

16 A January 29th, '03.

17 Q Okay.

18 A And then there's a Michael --

19 Q Okay.

20 A -- Sweeney; and he is also January 29th, '03.

21 Q Twins.

22 A Yes.

23 Q Any other children?

24 A No.

25 Q Okay.

1 A A dog.

2 Q A dog. I'm not going to ask you the dog's
3 birthday. Now, your husband --

4 A All right.

5 Q -- his name is Patrick S. Sweeney?

6 A That is correct.

7 Q Okay. And what's the name of his law firm?

8 A Sweeney Legal Group.

9 Q And does he hold that practice alone, or does he
10 have other lawyers that work with him?

11 A He holds it alone.

12 Q Okay. So I'd like to talk to you a little bit,
13 Ms. Sweeney, about your objection in this case
14 and then some objections that you filed in some
15 other cases.

16 A Okay.

17 Q If you have -- do you have a list of the -- it
18 appears that you have a document that --

19 A Here. I just wrote this down for you this
20 morning. That's it to the best of my
21 recollection. But if I could have it back, I
22 have other stuff --

23 Q Sure. Perhaps we can make a photocopy of it.

24 A But that's -- I mean, if there's anything else, I
25 don't remember; but I think that's pretty

1 accurate.

2 Q Do you have a sense of how many times you've
3 objected to class action settlements?

4 A Right there.

5 Q These are all --

6 A That's it.

7 Q -- all of the ones that you recall?

8 A Yeah.

9 Q Okay. Or -- okay.

10 A I mean, if I'm missing one, it's because I
11 absolutely don't recall it. I was writing them
12 down and quick trying to -- you can go to PACER
13 for the ones I don't have and just pull it up,
14 which is what I did and just ran them off.

15 Q Okay. And so you would -- by your count, you've
16 objected in one, two, three, four, five, six,
17 seven, eight, nine cases?

18 A Correct.

19 Q Okay. And those are all that you can recall?

20 A Mm-hmm.

21 Q Okay. And when's the first time you objected to
22 a class action settlement? I'm just trying to
23 understand chronologically.

24 A I think -- to the best of my recollection, it was
25 U.S. Bank.

1 Q Okay. And when was that objection filed?

2 A Three years ago.

3 Q Okay. And were you repre --

4 A Maybe a little more.

5 Q I'm sorry.

6 A Maybe a little more.

7 Q Okay. And were you represented in that objection
8 by a lawyer?

9 A I don't recall that one because that was the
10 first one. I don't recall.

11 Q You don't recall whether you had a lawyer or not?

12 A Oh, no. I did not have a lawyer outside of,
13 like, my husband who -- but it was U.S. Bank; and
14 I think my daughter did too because it was her --
15 she was U.S. Bank too, and that's all I can
16 remember.

17 Q Okay. Have you been represented in any of your
18 objections by a lawyer who's not your husband?

19 A No.

20 Q No.

21 A Well, maybe. Well, I don't know. There's three
22 kind of iffy ones which were kind of the first
23 ones that I can't really remember, the
24 Trader Joe's one and the U.S. Bank. And I don't
25 really know exactly because I really wasn't in

1 control of those. Now, these other ones I am
2 but --

3 Q What do you mean when you say you weren't in
4 control of those?

5 A Well, I, you know, completely wrote the
6 objection; did all the research. It's my thing.
7 I'm pro se. It's my deal.

8 Q So when you say it's your thing, what do you mean
9 by that?

10 A It's my document that I sent in.

11 Q Okay. And do you use sort of the same template
12 for each of the objections that you file, or do
13 you draft each one as a unique objection?

14 A Well, I read through the whole thing. I mean,
15 there's only so much one can object about; the
16 same way there's only so much one can write in a
17 class action. So sometimes I'll write the same
18 similar thing, but it's only because I've
19 researched that to be the same issue.

20 Q And when you say you've researched things to be
21 the same issue, where do you conduct your
22 research?

23 A What do you mean?

24 Q I mean, do you conduct legal research? What kind
25 of research are you referring to when you say --

1 A Well, I note all of the documents that are put
2 out and read through those; and then I go through
3 PACER to see what's logged in by the different
4 attorneys and different people. And then I'll
5 read anything else, you know, about the company
6 itself that I can find.

7 Q Okay. Does your husband typically assist you in
8 preparing --

9 A No.

10 Q -- your deposition? Or pardon me. Let me just
11 get out the question, and then absolutely you'll
12 have an opportunity to respond. So does your
13 husband typically assist you in preparing your
14 objections?

15 A No.

16 Q Okay. Has he ever assisted you in preparing an
17 objection?

18 A The only ones back when was U.S. Bank and
19 Trader Joe's.

20 Q Okay. So initially when you started objecting --
21 and U.S. Bank was the first case, right?

22 A To the best of my knowledge.

23 Q Okay.

24 A Yes.

25 Q And -- and in that case, your husband represented

1 you or assisted you? Do you know?

2 A I don't recall.

3 Q Okay. But since that time, the objections that
4 you've filed, you believe you've done the work
5 yourself?

6 A Correct.

7 Q Researched the cases?

8 A Correct.

9 Q Identified issues that you were concerned about?

10 A Correct.

11 Q And brought those to the court's attention?

12 A Correct.

13 Q Okay. Have you obtained any payments in
14 conjunction with the objections that you filed in
15 any of these nine cases?

16 A I'm under nondisclosure so I cannot comment.

17 Q Which cases are you under nondisclosure
18 agreements for?

19 A I can't comment.

20 Q Why can't you comment?

21 A Because I'm under nondisclosure, and I'm not
22 going to comment.

23 Q Well, the inability to comment on the amount of
24 the settlement is different than an
25 acknowledgement that there is an agreement in

1 that particular case.

2 A I'm not comfortable saying that because I have
3 not gone back to read my settlements. So if you
4 want to ask the judge or do something later, feel
5 free to. I am not comfortable stating that --
6 what I've signed.

7 Q But you have been paid to withdraw objections,
8 correct?

9 A I did not say that.

10 Q So you haven't been paid to withdraw objections?

11 A I did not say that. I have a settlement
12 agreement.

13 Q And how many cases have you reached settlement
14 agreements in?

15 A Can I see my list?

16 Q Sure.

17 A I think I can answer that. Three.

18 Q Three. And how recently were those settlements
19 achieved?

20 A Again, I can't answer that because I'm under a
21 settlement agreement; and I don't know exactly
22 what it says, and I do not want to go against
23 what I've already signed. If you want to go
24 ahead and take it to the judge, I will --

25 Q So let me ask you a question. Do you have those

1 agreements?

2 A I must have them somewhere.

3 Q Are they in your e-mail, I would assume? Is that
4 how they were transmitted to you?

5 A No.

6 Q No. How were they transmitted to you then?

7 A Paper documents.

8 Q Paper documents. Of the nine cases that you
9 referenced, how many of them did you file a
10 notice of appeal in?

11 A Can I see my list again? Some aren't even where
12 you could. Blue Buffalo I did. Justice I think
13 I did.

14 Q And if I could stop you for a second.

15 A Sure.

16 Q What is Justice?

17 A It's, you know, that store for teenagers --

18 Q Sure.

19 A -- that you see at the mall.

20 Q Yes.

21 A It has a different name to it, though, if you
22 research it; and I can't -- I don't know what it
23 is offhand.

24 Q Okay.

25 A But it's the retail store.

1 Q Is that Ascena Retail Group?

2 A That's it.

3 Q Okay. All right. And what year did you file
4 that appeal in?

5 A Last year.

6 Q Okay. So in 2016?

7 A '16.

8 Q Okay. And I interrupted you. I apologize. So
9 you've filed notices of appeal in Blue Buffalo
10 and in Justice. Any other cases?

11 A Walgreens. Western Union, I have no idea right
12 now. I have no recollection because I think it
13 became a dormant case. It just kind of sat
14 there. Nobody did anything with it. That, I am
15 not sure. So Walgreens I did, Johnson and
16 Johnson I did, Snyder's I did, Milk isn't done,
17 and Blue Almond I did. You may have this back.

18 Q So to the best of your recollection, you've filed
19 notices of appeal in six of the nine cases that
20 you recall objecting in; is that right?

21 A To the best of my recollection, yes.

22 Q Has any settlement that you've objected to
23 received final approval and you didn't file a
24 notice of appeal?

25 A I'm not sure.

1 Q Well, what would you need to do to be sure?

2 A I'd have to go back and research it. I can't
3 say. I don't know for sure.

4 Q Have you ever obtained any changes in a
5 settlement as a result of your objection?

6 A Yes.

7 Q Which cases?

8 A Pretzels, Snyder's.

9 Q Okay. And what -- what change was made to the
10 settlement as a result of your objection in
11 Snyder's?

12 A That the attorneys would follow through with the
13 distributions until everything was complete; and
14 I have that in writing.

15 Q What does that mean that they would follow
16 through with the distributions?

17 A Well, you know how you have those settlement
18 administrators and try to give them a phone call
19 and see if they answer or if things are sent out
20 properly, which often they're not, they agreed
21 that they would follow through until the
22 completion of the distribution of money.

23 Q And do you believe that the lawyers generally in
24 a class action have that underlying obligation to
25 begin with or not?

1 A No, because it isn't followed through. I mean,
2 you can say you do; but I don't see it.

3 Q What do you mean you don't see it? In what cases
4 would you say you didn't see it?

5 A Let's see. You can't -- often you can't get
6 anyone to talk to you. Snyder's I saw it in when
7 you file a claim and the claim doesn't work or go
8 through. And I've just seen it before. It's
9 something that I think is important as opposed to
10 just -- the attorneys just taking the money and
11 on to the next. I think that's one of the
12 biggest downfalls, and I think that's kind of why
13 Neil Gorsuch doesn't like class actions.

14 Q You think that Justice Gorsuch doesn't like class
15 actions because he's concerned that the lawyers
16 don't follow through?

17 A Well, I don't know his opinion; but he does not
18 like class actions I think simply of how people
19 are represented.

20 Q Okay. Do you think he likes objectors?

21 A I would have no idea.

22 Q Okay. And when you say he doesn't like class
23 actions, what do you base that upon? What did
24 you read or see that made you believe that?

25 A I've read and seen it in two different areas. He

1 will do something with class actions. He does
2 not -- he is not for them.

3 Q Okay. So in the Snyder's case, you achieved an
4 agreement or a change that would require the
5 lawyers to follow through with the distributions
6 of the settlement moneys, correct?

7 A That is correct.

8 Q Any other achievements?

9 A I believe in one -- can I see my list again? I'm
10 not 100 percent sure. I can't say.

11 Q So other than the change to the attorneys
12 following through on the distributions in
13 Snyder's, you can't think of any other changes
14 that --

15 A Well, I can; but I'm not sure, so I can't say.

16 Q You're not sure what? What are you not sure of?
17 Whether you achieved any changes?

18 A Correct. I believe I did in one, but I'm not
19 going to say since I'm on the record and I don't
20 know. You can ask the judge, and they can ask me
21 later if you'd like to do that; but I'm not going
22 to perjure myself.

23 Q Well, to be clear, I'm not asking you to perjure
24 yourself.

25 A I don't remember.

1 Q I'm asking you for factual information.

2 A Yeah. I just -- I don't remember so --

3 Q Okay. Is objecting currently your principle
4 source of income?

5 A No.

6 Q What is?

7 A My husband's business.

8 Q Okay. But I'm talking about money that you earn.
9 Is objecting your principal source of income?

10 Not your family's. Just you.

11 A No.

12 Q No. What would you say is your principal source
13 of income then?

14 A My husband's income.

15 Q The question was a little bit different than
16 that. The question was, is objecting your,
17 Pamela Sweeney's, principal source of income?

18 A No.

19 Q Okay. What is your principal source of income?

20 A My husband's income.

21 Q Again, I'm not asking about your husband's. Let
22 me ask the question in a different way. You said
23 you haven't been paid by your husband's company
24 in two or three years, correct?

25 A Correct.

1 Q Okay. Have you received income from any sources
2 other than your husband and objecting in the last
3 two years?

4 A I'm under a nondisclosure. I can't state that.

5 Q You can't say whether you've received any money
6 to dismiss your objections or you --

7 A I cannot.

8 Q How many objections did you file last year?

9 A You're going to have to give that back to me.
10 Last year. 2016, do you mean?

11 Q Yes.

12 A Okay. I think three, maybe four to the best of
13 my recollection. I don't know what all the dates
14 are.

15 Q Thank you. Let's see here. Ms. Sweeney, I'm
16 going to pass you what we'll mark as Exhibit 1.

17 (Exhibit No. 1 marked for
18 identification.)

19 BY MR. ANDERSON:

20 Q Ms. Sweeney, do you recognize that document?

21 A Yeah. It's your subpoena to have me testify.

22 Q Okay. Can you turn with me to Exhibit A?

23 A What's Exhibit A?

24 Q Go ahead and turn to it. You'll see it. It's
25 the last page of the four-page document.

1 A Oh, it's the last page. Okay. Oh, okay.

2 Q Okay. And what is Exhibit A?

3 A Questions you've asked me.

4 Q Okay. And to the best of your ability, do you
5 believe that you have produced copies of the
6 objections filed by you or on your behalf in any
7 other class action within the last 10 years?

8 A Yes.

9 Q Okay. And where did you search for those
10 documents?

11 A On PACER.

12 Q Exclusively?

13 A Mm-hmm. Because you wanted them printed out, so
14 I went back to PACER to get the objection.

15 Q So you don't maintain copies of the cases that
16 you --

17 A No, I don't.

18 Q -- object on? If you don't mind, please just let
19 me finish asking the question first; and then you
20 can respond.

21 A Oh, I thought you were done.

22 Q So you don't maintain copies of anything that you
23 file in your e-mail?

24 A I might have things in my e-mail, but I didn't
25 have any of that.

1 Q All right. And so then you were able to identify
2 the documents that you produced today via
3 searches on PACER, correct?

4 A Correct.

5 Q And that's the exclusive location that you
6 searched?

7 A Correct.

8 Q Okay.

9 A And then if you want any that aren't there, just
10 go to PACER and pull them right out. They're
11 there.

12 Q And question number two, can you read it for me?

13 A Produce any and all documents memorializing any
14 settlements you or anyone acting on your behalf
15 received in the last 10 years related to an
16 objection filed in a class action wherein you
17 served as an objector.

18 Q All right. And so you have no documents in
19 response to this one?

20 A I -- I'm under nondisclosures.

21 Q And so as the result -- how many nondisclosures
22 are you under? Did you say three?

23 A I believe so to the best of my knowledge.

24 Q And just so the record is clear, you've achieved
25 settlements in three of the non-objections that

1 you recall filing; but you are unwilling to
2 produce those documents because you believe that
3 you are under a legal obligation not to produce
4 them?

5 A Correct.

6 Q Okay. And did you consult with your husband at
7 all to get advice as to whether or not that was a
8 valid basis to object to disclosing those
9 documents?

10 A No.

11 Q Did you consult with any lawyer to determine
12 whether or not --

13 A No.

14 Q -- it was a -- please wait.

15 A Okay.

16 Q -- whether it was appropriate to produce those
17 documents or not?

18 A No.

19 Q So on what basis do you believe that it's legally
20 appropriate for you not to produce them?

21 A Because I signed nondisclosures. If you would
22 like to go, again, to the judge and request that,
23 that's fine; but I will not -- I signed a
24 nondisclosure, and I'm not going to violate
25 that --

1 Q And you believe --

2 A -- because you want me to.

3 Q And you believe that that nondisclosure requires
4 you not even to say that you reached any
5 settlement in any of those cases?

6 A That's correct.

7 Q Okay. Did you write the nondisclosure or did the
8 lawyers?

9 A The lawyers.

10 Q Okay. Can you read number three for me?

11 A Certainly. "Produce any and all documents
12 sufficient to identify each and every person that
13 assisted in the preparation of your objection in
14 this case."

15 Q Did anyone assist you in preparing your objection
16 in this case?

17 A No.

18 Q Okay. So you knew immediately upon looking at
19 this question that -- or this request that you
20 wouldn't have any documents for this one,
21 correct?

22 A Right. I have all of my answers written down
23 here.

24 Q How about number four? Can you read that one?

25 A "Produce any agreement you have entered into for

1 assistance or representation pertaining to your
2 objection in this case." None.

3 Q You don't have any agreement because you're
4 repre --

5 A That's correct.

6 Q -- because you're representing yourself, correct?

7 A Correct. And could I finish too, please?

8 Q Sure. And fair to say for number five you don't
9 have any agreements concerning any financial
10 arrangements either?

11 A Correct.

12 Q Have you ever had an agreement that required you
13 to share a portion of your objection fee with
14 anyone else?

15 A Never.

16 Q Can you read number six?

17 A Yes. "Produce any and all receipts or other
18 documents in any fashion memorializing your
19 purchase of WEN during the class period."

20 Q And did you search for documents for number six?

21 A No. I have none. I purchased it at Sephora at
22 West Towne, and I usually pay cash for most of my
23 purchases.

24 Q And when did you purchase WEN?

25 A It was either the very end of 2015 or early 2016,

1 and it was at Sephora at West Towne Mall in
2 Madison, Wisconsin; and it was on the right-hand
3 side of the mall when you walk in. They no
4 longer carry it, though.

5 Q How many times did you purchase WEN?

6 A Twice.

7 Q Twice. And how much did you pay each time you
8 purchased it?

9 A I don't know. It was kind of expensive. Like
10 30-ish something.

11 Q Did you like the product?

12 A I didn't really dislike it until the second time
13 around, and then I found it made my hair greasy.

14 Q Why did you purchase it a second time?

15 A Because I didn't hate it yet. I just -- I don't
16 know. I just was in Sephora. I just grabbed it.
17 I didn't purchase it a third time, though.

18 Q And so to the best of your recollection, those
19 purchases took place in late 2015, early 2016?

20 A Yeah. Like, kind of around Christmastime.

21 Q Do you recall which scents you purchased?

22 A I think it was an almond something.

23 Q Sweet Almond Mint. Does that sound right?

24 A Yeah.

25 Q Both times, same scent?

1 A Yes.

2 Q Do you believe you lost any hair or sustained any
3 physical injuries after using the product?

4 A No.

5 Q And do you feel that you were misled by the
6 advertising of the product?

7 A Well, apparently. There's -- now that you're
8 suing them, I mean, apparently the product isn't
9 what it says it is.

10 Q And what specifically would you say was not what
11 you thought it was with respect to WEN?

12 A That you can wash your hair all these many, many,
13 many times and that it won't be dry. You can
14 keep doing it, and that's one of the reasons I
15 bought it is because my hair is dry.

16 Q And now you've come to believe that it didn't
17 help your hair or it didn't stop your hair from
18 becoming dry?

19 A No. It just -- you couldn't use it as often as
20 they said, and you had to use a lot of it I felt
21 because it doesn't -- there's like no lather.

22 Q So why do you say you couldn't use it as often as
23 they said? What do you mean by that?

24 A Well, they say you can wash your hair as often as
25 you want with it; and it made my hair greasy.

1 Q Okay. So -- so in other words, your concern with
2 the product was that you couldn't use it as often
3 as you wanted to?

4 A No. That wasn't my concern with the product, if
5 that's what you're asking me; and I'm telling you
6 that's what it did. It didn't do -- my concern
7 with the product is that it damaged people, and
8 that's why you sued them.

9 Q But it didn't damage you.

10 A No.

11 Q Right?

12 A And that's why I filed a Tier I within the
13 parameters of what you had written down.

14 Q What made you choose to file an objection in this
15 case?

16 A One, because I thought it was weird that you
17 hadn't put any of your billings or anything out;
18 two, there -- when I read through it, there is no
19 designation of where any money's going or do you
20 have anything set up after that; three, I thought
21 for -- because it wasn't even given to the judge
22 yet as far as I can determine. Now, maybe you
23 have different things about your billings and
24 what you did. And I felt that was a large amount
25 given. If people are really that injured,

1 \$26 million isn't a lot. I don't know how you
2 prove that, but you know what I mean; depending
3 on how many people you have. That's why.

4 Q And would you say that the bases for your
5 objection in this case are similar to the ones
6 that you have brought to the court's attention in
7 other cases?

8 A Well, similar in the sense of high attorney
9 awards but dissimilar in the sense that there
10 were no billings, there were no detailed anything
11 sent to the judge or on PACER or -- and I thought
12 it was weird that they did -- that you did that
13 and that the judge just signed it. You didn't
14 change a word.

15 Q So you carefully reviewed PACER for this case?

16 A I read the whole thing before I would decide to
17 object to something.

18 Q Okay. And when you say you read the whole thing,
19 do you mean you read all of the documents -- just
20 let me get it out -- do you read all of the
21 documents on PACER; or you mean you read the
22 whole settlement agreement? What do you mean
23 when you say that?

24 A Do I click on every document on PACER and read
25 the whole thing? On every one, no. I'll pick

1 some and read some; but I will read every, you
2 know, thing that's put out in the settlement
3 agreement, et cetera, et cetera, whatever is put
4 out there.

5 Q How did you learn about this settlement?

6 A How did I learn about it? Well, the job is to
7 get it out there to people to -- so they can make
8 -- file claims. If you don't do that, then you
9 haven't made it fair and reasonable.

10 Q Right. But that's not the question that I asked.
11 I asked how you, Pamela Sweeney, heard about the
12 settlement. How did you learn of the settlement?

13 A I read about it.

14 Q Where?

15 A On the Internet.

16 Q When? When did you read about it on the
17 Internet?

18 A A couple months ago, two, three, four.

19 Q So take me through your process. So you're
20 reading on the Internet and you learn about the
21 settlement, and then what do you do?

22 A Well, usually if I look at something and I'm a
23 class member, if I've either purchased product,
24 I'm a member of the bank, et cetera, then I read
25 about it.

1 Q How many class action settlements have you
2 participated in that you didn't object?

3 A I -- can you clarify that question?

4 Q Sure. How many class action settlements have you
5 participated in that you did not object?

6 A How many class action settlements have I
7 participated in? I don't know what that even
8 means. You'd have to -- how would you
9 participate if you didn't object or you didn't do
10 it yourself?

11 Q You could file a claim.

12 A Oh. Oh, I see what you're saying.

13 Q I'm sorry. Maybe let me --

14 A I'm not following what you're saying. How many
15 claims have I filed? Oh.

16 Q Let me just --

17 A Okay.

18 Q To be clear about what the question is --

19 A Yeah, because I don't know what you're asking.

20 Q -- how many cases have you filed a claim in and
21 not objected?

22 A Probably eight more than that.

23 Q Which -- how many in the last three years would
24 you say that you participated in by filing a
25 claim but did not object?

1 A Say eight to ten.

2 Q Eight to ten?

3 A Roughly.

4 Q Okay. And which cases are those that you filed
5 claims but did not object?

6 A I can't remember offhand.

7 Q You can't remember the name of a single one of
8 the cases?

9 A Correct.

10 Q So when you say eight to ten, what are you basing
11 that on then if you can't remember even one of
12 the cases that you filed a claim but didn't
13 object?

14 A Just because I've gotten, you know, the \$4 and \$2
15 and things they send to you; and I'm just
16 thinking I've gotten those. I didn't object, and
17 I can't remember because it wasn't a question
18 that was asked to me; and I couldn't tell you
19 offhand.

20 Q What's the maximum claim for a Tier II claim in
21 the WEN settlement? Do you recall?

22 A \$20,000.

23 Q Do you think \$20,000 is a lot of money?

24 A It depends.

25 Q On what?

1 A On what you're getting \$20,000 for.

2 Q In this case, do you think that --

3 A Oh, to give to -- it depends.

4 Q On what?

5 A It depends on the damages suffered, how you prove
6 that.

7 Q Can you recall specifically what documents you
8 reviewed in conjunction with your decision to
9 object or not object in this case? Which
10 documents?

11 A Well, the settlement agreement, what you put out
12 about WEN.

13 Q What do you mean when you say what we put out
14 about WEN?

15 A Why don't we just say the settlement agreement,
16 the list of things that you have listed on the
17 website.

18 Q Okay. So previously I thought you said you went
19 to PACER, but now you're saying you reviewed the
20 documents on the website?

21 A Well, I did. And then I go to PACER, and then I
22 look through that; and then I pull up a couple.

23 Q Okay. And to the best of your recollection, was
24 the settlement agreement available on the
25 website?

1 A I can't remember. I have it.

2 Q Okay. So you reviewed the settlement agreement.
3 Can you specifically recall reviewing any other
4 documents in conjunction with your decision to
5 object in the WEN case?

6 A I read other documents. I can't tell you exactly
7 what they were or their titles.

8 Q Okay. All right. Number seven asks you to
9 produce any bottles of WEN in your possession,
10 custody or control. Did you look for those?

11 A No, I don't have any. That was a year ago. I
12 don't know. Do you keep your bottles from
13 washing your hair from a year ago?

14 Q I'm not the one being asked questions today --

15 A I know. I know.

16 Q -- so it's not really relevant.

17 A No, I do not.

18 Q And so fair to say then that you don't possess
19 any evidence to demonstrate that you're actually
20 a member of the class?

21 A That is correct.

22 Q So we should take your word for it, right?

23 A That is correct.

24 Q And you don't have any documents as it pertains
25 to number eight? You don't have any documents

1 that demonstrate that you were harmed by WEN, do
2 you?

3 A What do you mean? Could you clarify that?

4 Q Sure. Why don't you read the request out loud.

5 A Produce all documents constituting -- which one?

6 Oh.

7 Q Number eight.

8 A Oh, number eight. "Produce any and all evidence
9 demonstrating in any fashion that you were harmed
10 by WEN physically, financially, or otherwise."

11 And I just said, "Made hair greasy."

12 Q So you were damaged in the sense that WEN made
13 your hair greasy?

14 A Correct.

15 Q Any other way?

16 A No.

17 Q For number nine, is it correct that you did not
18 communicate with any lawyer about your objection
19 in this matter?

20 A Correct.

21 Q Did you communicate with any other person
22 regarding your objection in this matter?

23 A No.

24 Q Now, Mrs. Sweeney, you've been asked to post
25 appeal bonds in other cases; is that correct?

1 A Yes.

2 Q Which cases?

3 A Blue Buffalo.

4 Q Any others?

5 A That's the only one I remember.

6 Q Did you post the bond?

7 A No.

8 Q And why not?

9 A I could not.

10 Q You could not what?

11 A Post the bond.

12 Q Because you didn't have the financial resources
13 to do it?

14 A Correct.

15 Q Do you have the financial resources to put an
16 appeal bond forward of \$25,000 in this case?

17 A No.

18 Q Okay. So for number 11, fair to say that you
19 have no documents in response to that request
20 because you do not have sufficient funds to --

21 A I do not have the ability to do that.

22 Q Do you know how long it typically takes for an
23 appeal to be reviewed by the 9th Circuit?

24 A I do not.

25 Q Would 18 to 24 months surprise you?

1 A With the 9th Circuit, no.

2 Q Why do you say that with the 9th Circuit?

3 A It would not surprise me.

4 Q But you said with the 9th --

5 A It would not surprise me.

6 Q But why do you say that?

7 A Because it's the 9th Circuit.

8 Q And what is it about the 9th Circuit that -- that
9 you're referring to?

10 A Nothing.

11 Q Does it bother you at all that thousands of
12 people who were harmed after using WEN could
13 potentially be delayed in receiving benefits 18
14 to 24 months if you were to file an appeal?

15 A Does it bother me? Yes.

16 Q But do you anticipate that you'll file an appeal
17 in this case if the judge does not deny final
18 approval?

19 A I have no idea.

20 Q Why do you say that?

21 A Because I have no idea.

22 Q Would it be fair to say, though, that at each
23 opportunity, you have systematically filed
24 notices of appeal in each of your other
25 objections?

1 A No. I always do an analysis.

2 Q But in each analysis, you've come to the
3 conclusion that you should file a notice of
4 appeal, right?

5 A In many.

6 Q Which ones did you not file a notice of appeal
7 in?

8 A Again, I don't remember all of them.
9 Blue Buffalo -- or Justice I did, and I just
10 walked away from it because I didn't think it was
11 a good case at all; and I thought that they had
12 really done damage themselves, the attorneys, to
13 the whole thing, so I just left that.
14 Western Union became dormant, and that just sits.
15 I don't know. I can't really say. I don't know.

16 Q You don't know what?

17 A You want to ask me the question again?

18 MR. ANDERSON: Can you read it back?

19 (Question read back.)

20 A Milk.

21 BY MR. ANDERSON:

22 Q And has Milk been finally approved yet?

23 A I don't know.

24 Q You just filed that objection on November 1st,
25 2016, right?

1 A Correct.

2 Q So has the time lapsed yet for you to file a
3 notice of appeal in that case?

4 A I don't know.

5 Q Tell me if these are right. So Western Union,
6 you filed an objection on February 25th, 2016?

7 A That sounds about right.

8 Q And what's the procedural status of that case?

9 A Just -- nothing's happened. It just died. I
10 think the attorney doing it just stopped doing
11 it.

12 Q Okay.

13 A I think he lost -- I think he lost actually, to
14 be honest. There were some other objectors in
15 there, and they took away a lot of his fees; and
16 I think he just had it.

17 Q Okay. And you filed an objection in Blue Buffalo
18 on April 13th, 2016. Does that sound right?

19 A That sounds -- yes. I mean, if you have it,
20 those are probably right.

21 Q And filed a notice of appeal in that case on
22 July 15th, 2016. Does that sound about right?

23 A That sounds about right.

24 Q And your appeal was dismissed for one of
25 prosecution in that case, right, on

1 November 23rd, 2016? Does that sound about
2 right?

3 A For the \$5,000, yeah. They wanted a \$5,000 bond.

4 Q And are you aware that during the pendency of an
5 appeal, the settlement administrator has to
6 continue to run the website and the telephone
7 lines and all of those things in the WEN case,
8 right?

9 A Well, of course, yes.

10 Q And you're aware that there are costs associated
11 with continuing to provide those services during
12 the pendency of an appeal, correct?

13 A Yes.

14 Q All right. And so do you think it's fair that
15 the amount of money that class members will
16 receive will be reduced because of the need to
17 continue to provide those services as the result
18 of an appeal?

19 A It doesn't matter if I think it's fair or not
20 fair.

21 Q Well, you're currently here as an objector. I'm
22 asking you your opinion.

23 A But I didn't appeal anything.

24 Q I'm simply asking your opinion.

25 A And that's my opinion. It doesn't really matter

1 what -- if I think it's fair or not fair.

2 Q Well, in the context of a deposition in a case
3 where you've objected, it's a reasonable question
4 for me to ask you; and so I'm curious how you do
5 feel. We're here today to learn about your
6 feelings.

7 A Do you want to rephrase it for me?

8 (Question read back.)

9 A What you're asking me is a loaded question. And
10 if the person that is appealing it, given it be
11 me or given it be Joe Smith or whoever, if
12 they're appealing it to make the settlement
13 better and to make it more beneficial that the
14 class gets more money and the attorneys get less
15 money, then, yes, I think it's fair.

16 BY MR. ANDERSON:

17 Q Okay. So let's see. We talked about the
18 Western Union objection that you filed in 2016
19 and Blue Buffalo. You filed Snyder's just a few
20 weeks after Blue Buffalo on or about
21 May 3rd, 2016. Does that sound about right?

22 A That sounds about right. Yeah.

23 Q Okay. And then you filed an objection to the
24 Johnson and Johnson case on December 22nd, 2016?

25 A That sounds about right.

1 Q Okay. So one, two, three, four -- four
2 objections that you recall filing in 2016?

3 A If that's what you have, yeah, that's about
4 right.

5 Q Oh, Justice.

6 A Justice. Justice I never pursued. I mean, I
7 just stopped even looking at it; so I always --
8 often forget about that. But, yeah, Justice.

9 Q So you filed five objections then that you recall
10 in 2016?

11 A That sounds accurate.

12 Q How many objections have you filed so far this
13 year?

14 A In 2017?

15 Q Yes.

16 A I don't know because I don't know the dates. My
17 whole list is there, so that's everything
18 including in 2017.

19 Q So you don't recall whether you've filed any
20 objections in the last three months, four months?

21 A No, I don't recall the dates. I really don't.
22 I'm sorry. But my list is there, so that's it.

23 MR. ANDERSON: We've gone for a
24 little over an hour. Why don't we take a
25 short break.

1 THE WITNESS: Okay.

2 MR. ANDERSON: Can we go off the
3 record?

4 (Recess.)

5 (Exhibit Nos. 2-9 marked for
6 identification.)

7 BY MR. ANDERSON:

8 Q Mrs. Sweeney, you've been passed a series of
9 documents. Can we take them one at a time just
10 to make sure you recognize them? Exhibit No. 2,
11 do you recognize that document?

12 A Yes.

13 Q And what is that?

14 A It's my objection to your case.

15 Q And how about Exhibit No. 3?

16 A Is it the next one? Okay. That is an objection
17 to Trader Joe's.

18 Q And is that your objection in Trader Joe's?

19 A No. Again, U.S. Bank and Trader Joe's were ones
20 that I was helped with; but this -- but the other
21 ones I've done all on my own --

22 Q Okay. And --

23 A -- as I stated earlier.

24 Q Sorry. Can you look at page four of Exhibit 3?

25 A Of Exhibit 3?

1 Q Yes. You signed this document, correct?

2 A I did.

3 Q And you indicated that you were pro se?

4 A Correct.

5 Q But you say that you didn't actually --

6 A I had help on this.

7 Q From whom?

8 A From my husband.

9 Q Anyone else?

10 A No.

11 Q Okay. And to be clear, you previously testified
12 that, aside from your husband, you haven't had
13 help from any lawyers in your objections; is that
14 right?

15 A Correct.

16 Q How about in your appeals?

17 A I think that Darrell Palmer was involved in an
18 appeal here.

19 Q Okay. But he did not represent you in your
20 objection, only in your appeal; is that right?

21 A To the best of my knowledge, I can't remember. I
22 mean, it's three years ago. I don't know. I
23 know he was involved, and I know those were the
24 two that I had help with; and that's -- but
25 you're asking me to go back three years so --

- 1 Q Yes, I am.
- 2 A Yes, you are.
- 3 Q So did you have an agreement with Mr. Palmer?
- 4 A No.
- 5 Q You had no agreement?
- 6 A No.
- 7 Q You did not retain his services as a lawyer?
- 8 A In an agreement -- what do you mean?
- 9 Q Did you have --
- 10 A Can you clarify?
- 11 Q -- an agreement in writing?
- 12 A Oh, no. No. I had no agreements with --
- 13 Q Did your husband have an agreement in writing
- 14 with Mr. Palmer about his representation?
- 15 A I doubt it. I don't believe so.
- 16 Q Did they attend law school together?
- 17 A They did.
- 18 Q How long have your husband and Darrell Palmer
- 19 known one another?
- 20 A Since they attended law school together.
- 21 Q Were they classmates in law school?
- 22 A Yes.
- 23 Q So they graduated both at the same time? Same
- 24 year?
- 25 A Correct.

1 Q Have they done much work together?

2 A Not anymore.

3 Q And why is that?

4 A Darrell Palmer had a stroke.

5 Q He's also been --

6 A He's disabled, I believe.

7 Q He's also been disbarred from the practice of
8 law, correct?

9 A Who?

10 Q Darrell Palmer.

11 A I have no idea.

12 Q So because of Mr. Palmer's health issues, he and
13 your husband stopped doing cases together. How
14 about before that? What did they do together?
15 What sort of work?

16 A I have no idea. They were friends.

17 Q Okay.

18 A Okay.

19 Q Let's move to Number 5. That's the Ascena
20 objection. Is that your objection in the Ascena
21 case? Do you recognize it as such?

22 A Mm-hmm.

23 Q I'm sorry?

24 A Yes. Sorry.

25 Q Thank you. It takes some getting used to. Okay.

1 Number 6, do you recognize that document?

2 A Yes.

3 Q And what is it?

4 A It's my objection to Snyder's-Lance case.

5 Q Okay. And in that case, you retained Mr. Palmer
6 just for purposes of the appeal. Which case did
7 he --

8 A What?

9 Q -- write the appeal for you?

10 A What are you talking about?

11 Q You said that you had Mr. Palmer as your lawyer
12 at some point. Which case was that for?

13 A Oh, this Trader Joe's.

14 Q Oh, I see.

15 A I think they -- somehow he was in it and we were
16 in it and --

17 Q Okay. So it's just --

18 A Nothing else.

19 Q -- just that one?

20 A Correct.

21 Q Okay. But not on the objection; just on the
22 appeal?

23 A Again, as I stated earlier, I do not recall. I
24 believe so.

25 Q Okay. Number 7, please.

1 A I don't have a Number 7.

2 Q It's a one-page document.

3 A Six -- oh, here we go. Yep.

4 Q All right. Do you recognize that document?

5 A Yes, I do.

6 Q And what is it?

7 A It's my objection to Walgreens.

8 Q And I notice that in terms of the styling, it's
9 different than almost all of your other
10 objections. It's much shorter, and it doesn't
11 have the same format.

12 A That is correct.

13 Q Why is that? Was it just early on or --

14 A I think I was doing it fast. I had to get it in.

15 Q And Number 8, do you recognize that document?

16 A Yes.

17 Q And what is it?

18 A It's my objection to the Milk.

19 Q And finally Number 9.

20 A It's my objection to Johnson and Johnson.

21 Q Would it be fair to say, Mrs. Sweeney, that you
22 dislike the legal model for class actions?

23 A I don't know if I dislike the legal model. I
24 would have to have the legal model defined for
25 me.

1 Q Well, as best as we can count, you've filed five
2 objections to class actions in 2016. You've
3 filed, well, at least one this year; but you
4 can't recall if you've filed any others. Would
5 you say that you have sort of a fundamental issue
6 with the way that class actions are -- or class
7 action settlements are reviewed by courts in the
8 United States?

9 A I don't know that I'd say that.

10 Q Well, so what -- what would you say about that
11 because --

12 A I would say you have to look at each one
13 individually, and individual cases have their
14 inherent individual problems. And judges are
15 different, and districts are different. And for
16 me to say I have an inherent problem with it, no,
17 I don't; but I have a problem with specific
18 issues in individual cases.

19 Q Okay. So if we were to look at Exhibit 2, which
20 is your objection in this case.

21 A Okay. Hang on. All right.

22 Q All right. You list your first concern. Can you
23 read for me on, I guess, the second page of the
24 document your first concern, reasons for
25 objecting to the settlement?

1 A This is making it hard without my reading
2 glasses. "Any amount of attorney fees that are
3 rewarded should be withheld to assure class
4 counsel's continuing oversight and involvement in
5 implementing settlement."

6 Q That's number two. Can you read number one,
7 please?

8 A Oh. Sure. "Claims administration process fails
9 to require reliable oversight, accountability,
10 and reporting about whether the claims process
11 actually delivers what was promised."

12 Q Okay. What does that mean?

13 A Okay. Let's take an example. Say Joe Smith is a
14 settlement administrator and he has \$20 million
15 from a settlement and he's disbursing it to
16 whoever filed the claim, often that gets -- falls
17 through the cracks, things aren't disbursed, they
18 take a long time to get disbursed. If -- you
19 know, say somebody has a question and they're
20 elderly and they call and they can't get ahold of
21 the settlement administrator to talk, that's what
22 I mean.

23 Q What evidence do you have that any of those
24 things occurred in this case -- in the WEN case?

25 A Well, you haven't gotten there yet.

1 Q Haven't gotten where yet?

2 A Final approval.

3 Q What does that have to do with -- you've made a
4 claim that it doesn't require oversight or
5 accountability and reporting. What -- what
6 specifically can you point to --

7 A Well, you don't. I couldn't even find the -- who
8 the side press -- who you're giving the money to
9 if there's any left over. You have nothing
10 allocated for that. And I don't know. Are the
11 attorneys following it, the settlement process?

12 Q Well, you said you carefully reviewed the
13 settlement agreement, right?

14 A I did and I don't see anything there --

15 Q Okay.

16 A -- that shows that you do or you would. I see
17 that -- how much you want for fees, and I see how
18 much that you've negotiated with your defendants.
19 Other than that, I don't see a lot.

20 Q How long is the settlement agreement in this
21 case?

22 A How many pages? I don't know. 20?

23 MR. ANDERSON: Can you mark this as
24 Exhibit 10, please?

25 (Exhibit No. 10 marked for

1 identification.)

2 BY MR. ANDERSON:

3 Q So, Mrs. Sweeney, just --

4 A 20. That's what I thought.

5 Q -- as a head's up --

6 A 22.

7 Q -- the exhibits that have been marked will be
8 collected from you at the end of the deposition.

9 A Oh, all right. Okay.

10 Q So I would caution you not to intermingle --

11 A All right. Thanks.

12 Q -- them with your own documents that you brought
13 to the deposition today.

14 A Okay. That's probably good. Okay.

15 Q All right.

16 A Let's see here. Is this mine? Okay. Okay.

17 Q So how would you like the parties to change the
18 oversight of the settlement?

19 A Wait until everything's distributed before
20 attorneys get their fees.

21 Q So in other words, in your view, the attorneys
22 should not receive fees until all of the benefits
23 have been distributed?

24 A Mm-hmm.

25 Q And is that your view in every single lawsuit?

1 A In many I think it should be implemented like
2 that, yes.

3 Q Can you give me an example of a case where you
4 didn't believe that that should be the case?

5 A I can't off the top of my head.

6 Q And would you say that number one in just about
7 all of your objections would be the same sort of
8 argument about oversight and accountability?

9 A Yeah. Yes. I mean, that's one of the basic
10 problems and fees without --

11 Q Well, we're just focused on number one right now.

12 A Oh, okay. All right.

13 Q We'll get there.

14 A Okay. Just to give you -- can I go off the
15 record quick?

16 Q No.

17 A Just to give you a head's up, it's -- no? Okay.
18 It's 2:30 and I might have to make a phone call.

19 Q That is totally fine.

20 A Okay.

21 Q And how -- how much advance notice does the
22 person who's going to be collecting your children
23 need?

24 A If I call her by about 3:10, it should be all
25 right.

1 Q Okay. So --

2 A Okay.

3 Q -- why don't we talk for a few more minutes.

4 A Okay.

5 Q And if at 3:00 I have not already said, hey,
6 let's take a break, please just remind me; and
7 we'll make sure that we do.

8 A All right.

9 Q I have a six- and an eight-year-old; so believe
10 me, I understand how that goes.

11 A Okay.

12 Q All right. So there's a special master
13 associated with this settlement, right?

14 A I saw that you were creating one.

15 Q What does that mean to you? Do you know?

16 A From my understanding from reading it, it's a
17 person -- specifically in this case because it's
18 more of a -- it seems like personal injury --
19 that evaluates what comes in to see if people get
20 the money that they claim is due them.

21 Q Okay. And do you know who the special master is
22 in this case?

23 A I do not. Sometimes they put in a judge. I
24 don't know who else they put in.

25 Q So in this case, it's a retired federal

1 magistrate judge. Were you aware of that?

2 A Not specifically. But I know it's a -- it was --
3 can be a judge. It is --

4 Q And you understand that Judge Nolan, the
5 magistrate judge -- or the retired magistrate
6 judge who's acting as special master in this
7 case, you realize that her function is to
8 apportion benefits to the class, correct?

9 A My understanding was just to the Tier II people
10 who actually have personal injury. Is that
11 incorrect?

12 Q No, that's not wrong. But is that sufficient
13 accountability for Tier II or no?

14 A I mean, if it's followed through, if -- but who
15 knows? I mean, you don't know. I don't know.

16 Q So --

17 A And what happens -- sorry.

18 Q No, no, no. Go --

19 A I can't ask you a question. Go ahead. Go ahead.

20 Q So if I understand reason number one, it's just
21 that the lawyers shouldn't be paid until all of
22 the claims have been determined to make sure that
23 the lawyers don't shirk their responsibilities to
24 the class?

25 A Correct.

1 Q So how is that different than number two?

2 A Now I just lost it.

3 Q Objection number two, Exhibit No. 2.

4 A Oh, there it is. There was a reason you told me
5 not to mix those up. Okay.

6 Q So it sort of sounds like when I asked you about
7 number one, you're kind of talking about number
8 two.

9 A Well, yes. I guess you could combine them if you
10 wanted to in a sense.

11 Q Well, in other words --

12 A One is really -- attorneys fees should be
13 withheld is really number two. Number one is
14 there should be an accountability of how things
15 are allocated out to people, which there often
16 isn't; so that's how I separate them in my mind.

17 Q Okay.

18 A But --

19 Q And so you believe that --

20 A Go ahead.

21 Q -- you believe that in the absence -- in the
22 absence of some specific statement by the lawyers
23 that they'll fail to be accountable for the
24 settlement; is that right?

25 A Yes.

1 Q So not withstanding the settlement agreement and
2 the fact that all of the lawyers have signed and
3 agreed to abide by the terms of the settlement
4 agreement, you think something additional is
5 necessary to ensure that the lawyers follow
6 through?

7 A Yes.

8 Q And that is the change that you're most proud of
9 having accomplished in any of the settlements in
10 which you've objected, correct, because you did
11 that in Snyder's?

12 A Yes.

13 Q Okay. Can you read number three for me?

14 A "The fee calculation is unfair in that the
15 percentage of the settlement amount is far too
16 high. Attorneys' fees are disproportionate to
17 the value of the recovery of the class."

18 Q Can you explain what you mean by that?

19 A Well, when I went to PACER, it's hard to tell
20 what your costs are or what -- there's no any
21 thing about billing. There's minimal amounts of
22 entries. How do you know how many people are in
23 the class? Yes. And I thought this seemed like
24 it had less visibility.

25 Q Okay. What percentage of the fee are the lawyers

1 asking for in this case?

2 A Well, it states in there 25 percent.

3 Q Is that what it says?

4 A Mm-hmm.

5 Q I'm sorry?

6 A Yes.

7 Q Thank you.

8 A Sorry.

9 Q Okay. And do you typically -- when you object,
10 do you typically raise the percentage of the fee
11 as a basis for your objection?

12 A Sometimes.

13 Q How about in all of the objections that you have
14 in front of you, did you raise the fee as a basis
15 for your objection? Take your time. If you need
16 to look through them, go ahead.

17 A Prob -- I mean, yes. Probably. Or close to it.

18 Q Any cases -- you can take your time and look
19 through. Any cases there that you didn't object
20 to the fee?

21 A I mean, that's clearly -- I don't know. I would
22 say yes.

23 Q So in each of the cases in which you've objected,
24 you've objected to the amount of the fees,
25 correct?

1 A Well, I think -- yes.

2 Q Okay. And in each of the cases in which you've
3 objected, you've objected to the percentage of
4 the fee that the lawyers are seeking to receive,
5 correct?

6 A I don't know if they're all percentages. Some
7 are. Some are different. But, yes, you can say
8 I object to the fees. Make it simple.

9 Q Do you know what the benchmark fee percentage is
10 in California?

11 A From what I read, it said 25 percent; but then
12 again, you have no entries. You have no -- the
13 potential objector or the potential anybody
14 reading it, there's not much to read.

15 Q But you reviewed PACER to see what work we
16 completed in the case, right?

17 A I did and there's not a lot of entries.

18 Q Okay. And that's actually frequently been a
19 basis for your objections, right? You said, oh,
20 there's not enough entries on PACER to justify
21 this fee?

22 A Well, you don't know. A lot are -- you know, a
23 lot of entries are just notices of this; and, you
24 know, they're not of much substance, many.

25 Q But were you aware that in this case, the

1 plaintiffs' counsel served over 100 or served 100
2 requests for production of documents? Were you
3 aware of that?

4 A No, I was not.

5 Q Okay. Did you know that the lawyers in this case
6 served 75 requests for admission?

7 A No.

8 Q Did you know that the lawyers in this case had to
9 file two motions to compel in order to ensure
10 that they received documents?

11 A I did not.

12 Q Did you know that the lawyers in this case
13 attended four days, separate days, of mediation
14 with a retired judge in order to reach the
15 settlement that's before the court?

16 A I did.

17 Q Okay. Did you know that the lawyers in this case
18 had to file a motion to compel and have an
19 argument against Amazon to get Amazon to turn
20 over the names of the people that purchased WEN
21 through Amazon?

22 A I did not.

23 Q Did you review the joint lead counsel declaration
24 in support of the motion for preliminary
25 approval?

1 A I think I read the preliminary approval. I can't
2 tell you what it states offhand.

3 Q Did you know that that document identifies a
4 substantial number of the tasks that the lawyers
5 completed prior to seeking preliminary approval
6 of the WEN settlement?

7 A I did not.

8 Q So you've made an objection about the quality and
9 quantity of the work that the lawyers have
10 completed in this case. But you didn't review
11 the declaration submitted with the preliminary
12 approval papers, did you?

13 A That's completely inaccurate. You just stated
14 about the quality. I have no idea of your
15 quality. The quantity, no. You really don't
16 have a lot on PACER; and, no, you're not really
17 transparent; and, no, you haven't put out a lot
18 that you've done. I did read you had four
19 mediation sessions. That's not a lot.

20 Q How many mediation sessions would be a lot?

21 A 12.

22 Q Is that common? Have you ever seen a case that
23 had 12 mediation sessions?

24 A I have not.

25 Q Okay. Have you ever seen a case that even had

1 four mediation sessions?

2 A I've never read a case that had four mediation
3 sessions. I'm not sure people put that out there
4 but you did.

5 Q So your analysis of the work that the lawyers
6 performed in this case, would it be fair to say
7 it's just based on the number of docket entries
8 then?

9 A No, that wouldn't be fair to say.

10 Q Okay. What else is it based upon?

11 A Can I have my note? Can you hand me that? There
12 was one thing I read that I found interesting,
13 and it was stated that it -- an inflated fee
14 award, the matter was settled prior to class
15 certification and is your fee award reasonable.

16 Q The question that I posed to you was what you
17 reviewed prior to making your objection. You
18 said --

19 A Well, I've already told you.

20 Q Excuse me. Please let me finish. You said that
21 you reviewed things other than the ECF entries.
22 What else did you review?

23 A The what entries?

24 Q The ECF, the PACER entries. Electronic case
25 filing is the -- what the words -- what the

1 acronym refers to.

2 A Correct. And there's nothing that shows much of
3 anything.

4 Q But you didn't actually click on all of the
5 documents?

6 A No, I did not.

7 Q Okay. Did you click on all of the documents
8 related to preliminary approval at least?

9 A Possibly. I don't recall. I did this a while
10 ago.

11 Q In actuality, it was less than two months ago
12 that you filed your objection, correct?

13 A But I reviewed it before I filed it.

14 Q But you don't remember if you reviewed the
15 declaration that lead counsel made?

16 A No, I do not.

17 Q Okay. Do you think that you're in a better
18 position to determine whether the fees requested
19 by the lawyers are appropriate than the judge?

20 A Am I? No.

21 Q In part perhaps because you didn't review all of
22 the documents in support of preliminary approval?

23 A No. That has nothing to do with it.

24 Q So you don't think you need to review the
25 documents that the parties filed in order to

1 determine --

2 A I didn't say that. You did.

3 Q Okay. So tell me, please. What would you need
4 to review in order to determine whether a fee
5 application is appropriate?

6 A I would need to look at detailed billing. I
7 would need to know what somebody charges an hour.
8 I would need to know who did what and on and on
9 and on.

10 Q So you believe that in order for a settlement to
11 be fair, you personally have to review every one
12 -- every lawyer's detailed billing entries to
13 determine whether they're appropriate?

14 A Yes.

15 Q But you don't believe that you're in a better
16 position than the judge to evaluate that?

17 A No.

18 Q Do you have some specialized experience or
19 training that you feel makes you well situated to
20 review detailed billing entries?

21 A It's just reading entries of things and adding
22 things up. It's not complicated.

23 Q So you don't believe that any specialized
24 understanding is necessary?

25 A Well, not really.

1 Q What cases have you reviewed detailed billing
2 records in?

3 A I don't think any of them. Western Union, the
4 judge came back and made the guy do detailed
5 billings; and I think he just went "whew" and
6 that was it. So, no, I have not because
7 typically don't put them out there unless a judge
8 says okay.

9 Q So would it be fair to say then a standard
10 criticism that you make in your objections is
11 that the lawyers have not provided detailed
12 billing records?

13 A That would be fair.

14 Q Can you read number five in your objection for
15 me?

16 A "The objector herein hereby adopts and joins in
17 all other objections which are based on
18 sufficient precedent and theories of equity and
19 law in this case and hereby incorporates said
20 objections by reference as if they were fully
21 described herein."

22 Q Are those your words?

23 A Well, they were somebody's words; and I wrote
24 them down. It just means other objectors that
25 have sufficient theories or things they're

1 challenging, I incorporate that in mine.

2 Q But did you --

3 A Did I write it? Yes.

4 Q And so you understand what all of these things in
5 here mean?

6 A Yes.

7 Q Okay. So what does that mean, "theories of
8 equity and law"?

9 A Well, equity -- equity meaning that things are
10 fair. Law is the law. I don't know what you're
11 asking.

12 Q Did you copy this language from another
13 objection?

14 A Yeah. I've used it many of times. It just is
15 incorporating other people's objections so you
16 don't lose out on that.

17 Q So in other words, you've copied it from someone
18 else's objection at some point; and you
19 systematically use it in your objections?

20 A I don't know. How do we write anything? Do we
21 see it somewhere at sometime in our life? How do
22 you write anything you write? Did you see it
23 somewhere before? Did you write it? I mean, of
24 course. We all have to write like that.

25 Q I'm not sure I follow. What do you mean when you

1 say, "we all have to write like that"?

2 A Okay. How did you learn your first sentence?

3 You copied it down. I don't know what you're
4 trying to say here.

5 Q I'm asking you whether this is language that you
6 copied from something else or something that you
7 originally drafted.

8 A Well, I probably copied it from something else
9 that I drafted prior and probably took a sentence
10 or two from something and combined it.

11 MR. ANDERSON: Why don't we break
12 for a moment so you can make that phone call.

13 THE WITNESS: Okay.

14 MR. ANDERSON: We're off the record.

15 (Recess.)

16 MR. ANDERSON: Back on the record.

17 BY MR. ANDERSON:

18 Q Ms. Sweeney, you recall that you're still under
19 oath, right?

20 A Yes.

21 Q Okay. So we talked before the break about the
22 various bases for your objection in this
23 settlement.

24 A Yes.

25 Q You don't identify any -- well, strike that. Are

1 there any other reasons why, aside from those
2 enumerated here, that you believe that the
3 settlement is not fair, reasonable, and adequate
4 aside from those you've listed?

5 A No.

6 Q Now, question, it seems like on a number of your
7 objections you list 666 Odana -- is that how it's
8 pronounced?

9 A Correct.

10 Q -- Road, Number 116, Madison, Wisconsin.

11 A Correct.

12 Q Is that a UPS store?

13 A Yes. Or a FedEx, yes.

14 Q Okay. Why did you list the FedEx store as your
15 return address?

16 A Because we have a mailbox there.

17 Q I see. Okay. Do you not have a mailbox at your
18 house?

19 A Yes, I do.

20 Q So why do you use the FedEx as your address?

21 A Just to make sure things get there.

22 Q Have you had difficulty receiving your mail?

23 A No.

24 Q But it doesn't list a P.O. Box. So once it gets
25 to the FedEx store, how do they know to get it to

1 you?

2 A They put it in the box.

3 Q How many boxes are there at the FedEx store?

4 A I don't know. Mine's 116. They probably just
5 know my name.

6 Q What's the address of your husband's law office?

7 A 2672 Mutchler. He works out of the house.

8 Q Okay. And does he sometimes list the FedEx store
9 as his office address as well?

10 A He will list it, yes. I don't know if it's a
11 FedEx or a UPS. But, yeah, they -- it's one of
12 those.

13 Q How often do you go to that address to pick up
14 your mail?

15 A Well, it depends what kind of week I'm having. I
16 try to get there once a week.

17 Q Okay. I'm going to reserve a few questions and
18 allow defense counsel to ask questions themselves
19 if they'd like.

20 A Have they been there the whole time?

21 Q Indeed they have.

22 A Quiet as a mouse.

23 MR. ANDERSON: Mr. Whybrew, are you
24 there?

25 MR. WHYBREW: I am.

EXAMINATION

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BY MR. WHYBREW:

Q Ms. Sweeney, again, I'm Chuck Whybrew. I represent Guthy-Renker, LLC. Sorry I can't be there in person. I hope you can hear me okay. Can you?

A Yes.

Q How did you learn about WEN?

A Online.

Q Any particular place online?

A I don't know. Sometimes I go to class action objection. Sometimes I get icons that pop up. But it could --

Q So the first time you learned about WEN --

A -- could be from any of those but on the Internet.

Q So the first time you learned about WEN was via obtaining information about this lawsuit; is that correct?

A Could you repeat that?

Q I'm just trying to figure out when the first time was you heard about the WEN cleansing conditioners, and I think you said on the Internet.

A Right.

1 Q And I'm trying to figure out --

2 A Sometime in the fall. I can't even tell you
3 when, but it was in 2016.

4 Q You said you purchased in the fall of '15 and the
5 fall of '16.

6 A No.

7 Q Is that no? No?

8 A No, I didn't. It would have been the winter. So
9 it would be like January 2016. Between -- right
10 in that Christmas time. Not in the fall.

11 Q Okay. So it would have been December or January
12 of '15 or '16? Is that the first time you
13 purchased the product?

14 A Well, December of 2015 or January 2016, right in
15 that window.

16 Q And I think you said you made another purchase in
17 December -- around Christmastime of 2016; is that
18 correct?

19 A 2015 -- no. No, because that would be just last
20 month. No, they don't even carry WEN in Sephora
21 anymore --

22 Q Okay. So I may have misunderstood --

23 A -- and they haven't for like a year.

24 Q I misunderstood you earlier.

25 A It's okay.

1 Q So your two purchases were around Christmastime
2 of 2016 or possibly -- I mean 2015 or possibly
3 January of 2016?

4 A Or February. Right in that window, yeah.

5 Q Did you know about this lawsuit before you
6 purchased the product?

7 A I did not.

8 Q And I think you testified that you purchased the
9 product because you were having dry hair; is that
10 correct?

11 A Well, yeah. And we shop at Sephora, and it was
12 just there; and it was -- they had it marketed.
13 And some woman said, "Have you tried this?" I
14 don't know if you've ever shopped at Sephora.
15 But anyway, I just tried it. Yeah. I mean, I
16 try -- I'm not married to a shampoo or
17 conditioner like many people are. I try a lot of
18 different things.

19 Q You testified that Guthy-Renker said that you
20 could use the cleansing conditioner as often as
21 you wanted. Where was that statement made?

22 A I don't know. I read it. Maybe I read it
23 online.

24 Q You don't recall any particulars where you read
25 that?

1 A I do not.

2 Q You say -- well, strike that. You testified that
3 you -- that you believe the product caused your
4 hair to become greasy; is that correct?

5 A Correct.

6 Q Describe what you mean by greasy.

7 A Not dry, greasy, like icky, like flat.

8 Q Was it to the touch?

9 A And visual.

10 Q Okay. And when you say "visual," was it shiny?
11 Describe what you mean by -- what it was by
12 visual.

13 A Well, you know how hair can be flat against your
14 head or it can be kind of like off with volume?

15 Q Okay. Anything else?

16 A So it was flat. No. That was it.

17 Q You never called Guthy-Renker to complain about
18 the product, did you?

19 A No, I didn't.

20 Q Are you aware of any objections that your husband
21 has filed to class action settlements?

22 A Yes. He filed some.

23 Q Do you know if he's filed both personally and as
24 an attorney?

25 A I can't state. I don't know for sure.

1 Q Overall, do you know how many he has filed --

2 A I do not.

3 Q -- in the course of his career?

4 A I do not.

5 Q Have you seen any of his objections that he's
6 filed?

7 A No.

8 Q Would it shock you that they look very similar --
9 or some look very similar to yours?

10 A Would it shock me?

11 Q Yes.

12 A No.

13 Q Okay. Because I believe you said that -- or
14 strike that. I think you testified that you may
15 have copied some of your objection from other
16 sources. Do you recall copying any of your
17 objection from any of your husband's?

18 A No.

19 Q Where is your husband licensed to practice law?

20 A He is licensed in the state of Florida and in the
21 state of Wisconsin.

22 Q Were you aware that he's been noted by at least
23 one court as being a serial objector to class
24 action claims?

25 A Yeah. I don't -- I don't know what that serial

1 objector thing is. I mean, are people serial
2 class counsel people? I don't like the word
3 "serial." It reminds me of a serial killer. I
4 don't know.

5 Q So you've never heard that before?

6 A Yes, I have heard that before and -- and read it;
7 but I think it's silly.

8 Q Why do you think it's silly?

9 A Because it's silly; because it makes you sound
10 like you're like a serial killer. What if I
11 called you a serial defendant or a serial class
12 counsel person? I mean, same thing.

13 Q Is professional objector less offensive to you?

14 A I suppose than serial.

15 Q Were you aware of your husband -- strike that.
16 Are you aware of his actions in a case pending in
17 Florida involving Tom's of Maine?

18 A Am I aware of his actions? No.

19 Q Well, strike that. Are you aware of his
20 involvement in a Florida case involving
21 Tom's of Maine?

22 A No.

23 Q Never talked to him about any trouble he's gotten
24 in related to that case?

25 A No.

1 Q Do you know how much money he's received as a
2 result of any objection that he's lodged in a
3 class action settlement?

4 A I do not.

5 Q Your husband has been sued by former University
6 of Wisconsin athletic director Barry Alvarez,
7 correct?

8 A Yes.

9 Q That was in early 2016, correct?

10 A I don't know.

11 Q Your husband was also indicted for wire fraud in
12 December of 2016, correct?

13 A Yes. And I'm not at liberty to talk about that,
14 so I'm going to invoke the spousal privilege at
15 this moment.

16 Q And I'm going to ask you about any communications
17 you had with him about it. Have those two cases
18 hurt his business?

19 A I'm going to invoke the spousal privilege; and if
20 you wish to call the judge, be my guest.

21 Q So you're refusing to answer my question?

22 A I'm invoking the spousal privilege.

23 Q Are you refusing to answer my question?

24 A I don't know really how to answer that. I'm
25 invoking the spousal privilege.

1 Q 2016 was the year I believe you filed more than
2 half the objections that you've filed in class
3 action settlements, correct?

4 A That could be.

5 Q Is there any correlation between your filing all
6 of those objections and your husband's legal
7 issues?

8 A No.

9 Q Mr. Anderson asked you about the address you
10 maintain at either a UPS store or FedEx store.
11 Do you recall that?

12 A Yes.

13 Q I was noting that you had -- strike that. I
14 noted that in some of your objections you had an
15 address on South Fish Hatchery Road,
16 Richardson Road. And then I think your current
17 location is Mutchler Road, correct?

18 A Correct.

19 Q Have you also lived on South Fish Hatchery Road?

20 A No. That was again a -- that's a FedEx -- FedEx.

21 Q I believe Richardson Road was a home, correct?

22 A That is correct.

23 Q Have you maintained any other addresses in the
24 last five years?

25 A In the last five years, just 5763 Golden Terrace.

1 Q Can you say that again? 5723?

2 A 5763.

3 Q Golden Terrace?

4 A And that's Madison 53711.

5 Q Where is that located?

6 A Or Fitchburg. They're interchangeable.

7 MR. WHYBREW: That's all the
8 questions I have.

9 EXAMINATION

10 BY MR. YASUZAWA:

11 Q Hi, ma'am. My name is Brian Yasuzawa. Can you
12 hear me okay?

13 A I can.

14 Q You mentioned that you purchased the WEN product
15 that you used from the Sephora location; is that
16 correct?

17 A That is correct.

18 Q Do you know where that Sephora was located?

19 A West Towne Mall.

20 Q After using the product, did you ever make any
21 complaints to Sephora?

22 A No, I did not.

23 Q Did you ever return the product as being
24 defective or anything like that?

25 A No, I did not.

1 Q I know you said that you saw the product at the
2 Sephora location and purchased it. Was there
3 anything that led you to purchasing the WEN
4 product?

5 A Just one of the clerks was talking about it.

6 Q After experiencing what you called greasy hair,
7 did you ever go back to Sephora and ask them what
8 you could do to remedy that?

9 A No.

10 MR. YASUZAWA: All right. That's
11 all the questions I have. Thanks.

12 EXAMINATION

13 BY MR. ANDERSON:

14 Q Just a point of clarification from you. I said
15 it was a UPS store at 666 Odana, and you
16 corrected me and said it was a FedEx store. Is
17 it a FedEx store or a UPS store?

18 A I -- it's one of the two.

19 Q And you go there once a week, though, right?

20 A I get mail, packages, and -- well, I try to. I
21 don't know. It's either a UPS or a FedEx. I'm
22 sorry I don't know. I'm sure you could pull it
23 right up online there and that would tell you
24 what it is.

25 Q Can you help me understand, Mrs. Sweeney, why

1 there has been such a significant uptick in the
2 number of objections you've filed starting in
3 2016 to the present?

4 A No. I mean, understand why? I just became
5 interested in it. I read about them now.

6 Q What peaked your interest?

7 A How things weren't followed -- you know, many
8 times things aren't followed through. I had
9 gotten cards years before, and I don't think that
10 it's followed through at all; and that's what
11 peaked my interest.

12 Q So is it fair to say then that it has nothing to
13 do with the money?

14 A Correct.

15 Q So your -- your reasons for objecting to five
16 settlements last year and some more this year is
17 just your desire to see that class actions are
18 resolved in a fair way and not at all about
19 money?

20 A Correct.

21 Q But you've accepted money in order to dismiss
22 objections?

23 A I didn't say that. I said I've had settlement
24 agreements with nondisclosures.

25 Q So then you've never received any money in order

1 to dismiss an objection?

2 A I just answered your question. Is that a
3 different question?

4 Q I think it was a different question.

5 MR. ANDERSON: Can you read it back?

6 (Question read back.)

7 A I'm under nondisclosure with settlement, and I
8 cannot tell the content of the settlement.

9 BY MR. ANDERSON:

10 Q Do you believe it's relevant to Judge Wright's
11 review of your objection in this case that you've
12 filed a significant number of prior objections?

13 A I don't know that it should be. But, I mean, I'm
14 not the judge and what they would think in their
15 mind. I would think they would take each one
16 specifically. I guess the same question would
17 be, if a class counsel files five class action
18 suits, would the judge not find that reasonable?
19 You know? It can go both ways.

20 Q Oh. So you see those as similar things?

21 A Mm-hmm.

22 Q I'm sorry?

23 A I'm sorry. Yes.

24 Q So in other words, lawyers filing class actions
25 and pursuing them to obtain relief for groups of

1 people is no different than someone repeatedly
2 objecting to class action settlements? In your
3 mind, that's the same thing?

4 A Given the case.

5 Q What do you mean "given the case"?

6 A I'm just going to say yes to that.

7 Q Do you think that there are any -- I know that
8 you found the term "serial objector" to be
9 loaded. Do you think that there are any people
10 that abuse the class action process in
11 prosecuting objections for the sole purpose of
12 extracting an objection fee?

13 A I'm sure there's people who do. People abuse the
14 system all the time for a variety of reasons.

15 Q But specifically with respect to objectors, do
16 you believe that there are any people that
17 serially object in order to obtain payments in
18 order to agree to dismiss their objections?

19 A Possibly. I don't know what people do or what
20 their settlements are or anything.

21 Q Is that --

22 A But that's certainly a possibility.

23 Q Is that because they typically sign nondisclosure
24 agreements?

25 A I have no idea what they do. I can only speak

1 for myself.

2 Q Ms. Sweeney, the settlements that you reached
3 which you assert are confidential and can't be
4 disclosed, if I told you that we would accept
5 them pursuant to the protective order in the case
6 and a designation as confidential, in other words
7 that they would not be shared with anyone -- can
8 I finish the question?

9 A Yes.

10 Q -- would that assuage your concerns about
11 producing them?

12 A No. I'd have to ask the people who wrote the
13 settlement agreement, and then I would go to the
14 judge.

15 Q You would go to the judge and do what?

16 A Ask the question of, "Is it proper for you to
17 receive this? Am I putting myself at risk?"

18 Q Well, do you think it's --

19 A And I would go to the judge.

20 Q I'm sorry. So do you think it's probative of
21 your motives that you have at least three secret
22 settlements related to objections you filed in
23 the past?

24 A Nobody has secret anything. I have a
25 nondisclosure, and many times people have

1 nondisclosures for all sorts of documents for all
2 sorts of legal matters as you're aware.

3 Q Why do you think that there are nondisclosure
4 agreements with your settlements in which you
5 agreed to dismiss three class action objections?

6 A Because things are private, and they don't want
7 to disclose.

8 Q They don't want to disclose what? What
9 specifically do you think it is that they don't
10 want to disclose?

11 A I have no idea. And if you want to ask the
12 judge, go ahead; but I'm under nondisclosure.
13 This is probably the tenth time I've said it.
14 You're trying to get me to say something else. I
15 don't want to.

16 Q No. I'm not trying to get you to say something
17 else. I'm trying to understand why you believe
18 that information --

19 A I don't believe it. I know that to be. I have a
20 nondisclosure. If you want to petition the judge
21 and the judge grants them to you, that's fine.

22 Q Okay. But -- so in other words, just so that the
23 record is clear, even if we agree to accept them
24 confidentially, that would not be sufficient to
25 address your concerns?

1 A Right, because of the -- there's opposing people
2 who wrote the settlement agreements.

3 Q And just so that the record is clear about this,
4 you refuse to disclose whether you have ever
5 taken any money in exchange for dismissing an
6 objection?

7 A I refuse to disclose the terms of my settlement
8 agreement. You can, again, go ask the judge.

9 Q Do you think it matters that you may have taken
10 payments in prior cases? Should it matter?

11 A I didn't. You have no idea the terms of my
12 settlement agreements, and you keep pounding on
13 this; and I find this offensive, and maybe I'll
14 go to the judge for sanctions.

15 Q You can certainly -- feel free to file a motion.

16 A I can. But, I mean, it's the tenth or eleventh
17 time you've asked me that; and you can go to the
18 judge and ask for them, but that's -- that's it.

19 Q I just want to be clear because I suspect that
20 there probably will be motion practice about
21 this --

22 A Okay.

23 Q -- issue, and I just want to make sure that the
24 record is clear on this singular point; and then
25 I think I'm finished. Notwithstanding the terms

1 of any agreement, you believe that you cannot
2 testify about whether you've taken money to
3 dismiss an objection in any case?

4 A State that again.

5 THE WITNESS: You can read it back
6 if you want to.

7 (Question read back.)

8 A I am subject, again, to a nondisclosure -- a
9 nondisclosure of the settlement.

10 BY MR. ANDERSON:

11 Q And any of its terms then?

12 A And any of its terms.

13 MR. ANDERSON: Okay. I have nothing
14 further. Thank you.

15 THE WITNESS: Thank you.

16 (Adjourned at 3:30 p.m.)

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1 STATE OF WISCONSIN)
) SS
2 COUNTY OF DANE)
3

4 I, Paula Thompson, a Notary Public in and for the
5 State of Wisconsin, do hereby certify that the
6 foregoing deposition was taken before me at
7 Verbatim Reporting, Limited, 2 East Mifflin Street,
8 Suite 102, City of Madison, County of Dane, and State
9 of Wisconsin, on the 10th day of April, 2017; that it
10 was taken at the request of the Plaintiffs, upon
11 verbal interrogatories; that it was taken in
12 shorthand by me, a competent court reporter and
13 disinterested person, approved by all parties in
14 interest and thereafter converted to typewriting
15 using computer-aided transcription; that said
16 deposition is a true record of the deponent's
17 testimony; that the deposition was taken pursuant
18 to Notice; that said Pamela Sweeney before
19 examination was sworn by me to testify to the truth,
20 the whole truth, and nothing but the truth relative
21 to said cause.

22 Dated April 14th, 2017

23 

24 _____
Notary Public
25 In and for the State of Wisconsin