

EXHIBIT G

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

CASE NO.: 0:13-cv-60721- MORENO/ORAZO-REYES

IRA MARC FLADELL, SARAH CROUCH,
GREG OLSON, TILENA ALI, MARGARET
ZAWISTOWSKI, DANNY LANE and BEVERLY LANE
on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

WELLS FARGO BANK, N.A.;
WELLS FARGO INSURANCE, INC.;
ASSURANT, INC.;
AMERICAN SECURITY INSURANCE COMPANY;
VOYAGER INDEMNITY INSURANCE COMPANY,
STANDARD GUARANTY INSURANCE CO.;
QBE SPECIALTY INSURANCE COMPANY;
QBE INSURANCE CORPORATION;
QBE FIRST NSURANCE AGENCY, INC.;
QBE FINANCIAL INSTITUTION RISK SERVICES, INC.;
and PRAETORIAN INSURANCE COMPANY,
Defendants.

**OBJECTIONS TO THE PROPOSED CLASS ACTION
SETTLEMENT AND NOTICE OF INTENT TO APPEAR**

Objector, Jennifer Deachin n/k/a Jennifer Hinjosa hereby provides information needed to demonstrate her membership in the settlement class, objects to the proposed settlement; gives notice of her intent to appear at the September 18, 2014 fairness hearing before Chief US District Judge Federico A. Moreno and says:

PROOF OF MEMBERSHIP IN THE SETTLEMENT CLASS

Objector Jennifer Deachin n/k/a Jennifer Hinjosa (Objector Hinjosa) is a member of the settlement class, who: during the class period had a mortgage with defendant Wells Fargo Bank, N.A. and who, was billed for forced placed insurance; and who received published notice. Objector Hinjosa resides at 4932 SW 19th Street, Gainesville, Florida, 32608. Telephone c/o undersigned counsel at (352) 378-9859.

NOTICE OF INTENT TO APPEAR

Objector Hinjosa hereby gives notice of her intent to appear at the fairness hearing before Chief US District Judge Federico A. Moreno, presently scheduled for September 18, 2014 at 10:00 am in courtroom 13-3 of the Wilkie D. Ferguson, Jr. US Courthouse in Miami.

OBJECTIONS

The proposed Settlement is unfair, inadequate and unreasonable for the following reasons:

1. The Settlement Notice (the Notice) fails to provide any information: regarding the aggregate estimated damages suffered by the class; the estimated average damages of individual class members; or the relationship, if any, of the chances of success at trial and the decision to accept a recovery of 7 cents to 11cents on the dollar. As a result, class members, and this court, can not determine the fairness, adequacy and reasonableness of the proposed Settlement.
2. By its silence, the Notice does not provide sufficient information to allow Class Members to decide whether to opt out of the settlement or remain part of the class and submit their claim, or to object and hope that the court will require a better

deal for the class members.

3. The amount of attorneys' fees are unreasonable and excessive, given the problematic nature of a claims made settlement and the resultant likelihood that statistically, over 90% of the class members will not file claims forms and will receive nothing from this settlement.
4. The Notice fails to inform class members that their portion of the settlement is not funded by the defendants by the payment of any amount of money to class counsel as fiduciaries for the class.
5. The Notice describes a request to the court for attorneys' fees and expenses of \$19 million. However, the Notice fails to inform class members that the \$19 million is funded pursuant to the proposed settlement, not as part of a common fund including both the money to be paid class members and class counsel, but rather as a benefit that only benefits class counsel. Furthermore, class members are not informed that a reduction in class counsels' fee only benefits the defendants because any of the \$19 million fund not paid to class counsel reverts to the defendants.
6. Fairness requires: that the defendants pay into a settlement fund which does not revert to defendants if it is not exhausted, but instead spills into a *cy pres*. As structured the proposed settlement incentivizes the non-payment of class members. Every dollar that goes unpaid stays in defendants' pockets. The total amount of money defendants brought to the table should be equitably allocated between class members and class counsel, with the lion's share going to class members, not class

counsel.

7. Assuming *arguendo* the court approves the proposed claims made settlement, the court should defer on an award of attorney fees until the claims period is over and the administrator can report to the court the actual value of the settlement, in terms of claims made.
8. Objector Hinjosa hereby adopts and incorporates any and all other properly-filed objections not inconsistent with the foregoing as if set forth fully herein.

WHEREFORE, Objector Hinjosa respectfully requests that this Court sustain these Objections and enter such Orders as are necessary and just to adjudicate these Objections so as to alleviate the inherent unfairness, inadequacy and unreasonableness of the proposed Settlement.

Respectfully submitted,
/s/ N. Albert Bacharach, Jr.
N. Albert Bacharach, Jr.
Florid Bar Number: 209783
N. ALBERT BACHARACH, JR., P.A.
Attorney for Plaintiff
4128 NW 13th Street
Gainesville, Florida 32609-1807
(352)378-9859 (FAX) 338-1858

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of August, 2014, the foregoing was filed with the Clerk of the Court using the CM/ECF filing system and that all counsel of record will automatically be notified by the CM/ECF electronic mail system.

/s/ N. Albert Bacharach, Jr.
N. Albert Bacharach, Jr.

1 **Alan J. Sherwood**
 2 **Cal SBN 118330**
 3 **1300 Clay Street, Suite 600**
 4 **Oakland, CA 94612**
 5 **(510) 268-9685**
 6 **Fax 510.903.1773**
 7 **AlanSherwood@earthlink.net**
 8 **Attorney for Objector Jennifer Deachin**

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Angel Fraley, *et al.*,
 Plaintiffs,
 v.
 Facebook, Inc., *et al.*,
 Defendants.

Case No. 3:11-cv-01726-RS

**OBJECTIONS, PROOF OF MEMBERSHIP IN
 CLASS AND NOTICE OF INTENT TO
 APPEAR, BY COUNSEL, AT THE JUNE 28,
 2013 FAIRNESS HEARING**

Hearing Date: Friday June 28, 2013
 Time: 10:00 a.m.
 Courtroom: 3, 17th Floor
 The Honorable Richard Seeborg

Objector, Jennifer Deachin, by and through her undersigned counsel, hereby provides the information needed to demonstrate her membership in the settlement class; gives notice of her intent to appear by counsel at the fairness hearing; objects to the proposed settlement; and says:

PROOF OF MEMBERSHIP IN THE SETTLEMENT CLASS

Objector, Jennifer Deachin is a member of the settlement class having received an e-mail from legalnotice@facebookmail.com that stated: that she may have been featured in a "Sponsored Story" on Facebook prior to December 3, 2012: and that her Class Member Number was 463933485. Jennifer Deachin's address is 4932 SW 17th Street Gainesville, Florida 32608

1 and her and telephone number is (352) -5363. Her email address, associated with her
2 Facebook account, is rican 74@yahoo.com. Her declaration is attached hereto as Exhibit "A."

3
4 **NOTICE OF INTENT TO APPEAR**

5 Jennifer Deachin hereby gives notice of her intent to appear, by counsel, at the Fairness
6 Hearing before the Honorable Richard Seeborg, United States District Judge at the United States
7 Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102, in Courtroom 3, 17th Floor, on
8 Kune 28, 2013 at 10:00 am. Jennifer Deachin , by counsel will cross-examine witnesses and
9 present legal arguments addressing the statutory and constitutional deficiencies of the "Notice of
10 Class Action and Proposed Settlement" (Hereinafter the Notice); and the Proposed Settlement.
11 Jennifer Deachin does not intend to offer documents into evidence or call witnesses.

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13 **OBJECTIONS**

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15 1. The Notice is defective because it does not meet minimum constitutional due
16 process requirements with regard to providing class members with notice and an opportunity to
17 be heard.

18 2. The Notice says that the Representative Plaintiffs contend that Defendants
19 violated California Civil Code § 3344. However, the Notice fails to inform class members that
20 California Civil Code § 3344 provides in part that "in any action brought under this section, the
21 person who violated the section shall be liable to the injured party or parties in an amount equal
22 to the greater of seven hundred fifty dollars (\$750) or the actual damages suffered by him or her
23 as a result of the unauthorized use..."

24 3. The Notice fails to inform class members of the size of the class. Therefore, it is
25 impossible for class members to evaluate whether the Proposed Settlement is Fair, Adequate or
26 Reasonable. For example, if a class member knew that there were 100,000 people in the class,
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1 then they could calculate the class' statutory damages to be \$75 million. (100,000 x \$750 =
2 \$75,000.000) Then by dividing \$20 million by \$75 million they could determine that class
3 counsel was advocating that the class settle for 26.66 cents on the dollar. However, if there were
4 1,000,000 class members, the class' statutory damages to be \$750 million. (1,000,000 x \$750 =
5 \$750,000.000) In that case the class member would then divide \$20 million by \$750 million, at
6 which point they would see that class counsel was advocating that the class settle for 2.66 cents
7 on the dollar; which is 2.66 percent of the statutory damages available.

8 4. Because the Notice fails to inform class members of the size of the class, it is
9 impossible for class members to estimate whether the \$10 per "participating class member"
10 number has any bases in reality or is a blatant sham. Class Counsel's math suggests there will be
11 at least 2,000,000 "participating class members" ($\$20,000,000 \div 2,000,000 = \10) If the take
12 rate is defined as the percentage of class members who file claims and become a "participating
13 class member" and you use a 5% take rate; then 2,000,000 "participating class members" implies
14 a class with 40,000,000 members. However, if the class consisted of 80,000,000 members then
15 the 5% take rate would result in 4,000,000 "participating class members". That would result in a
16 \$5.00 per "participating class member" distribution, before attorney fees and costs are subtracted
17 out. Furthermore, if the class consisted of 160,000,000 members then the 5% take rate would
18 result in 8,000,000 "participating class members". That would result in a \$2.50 per
19 "participating class member" distribution, before attorney fees and costs are subtracted out.

20 5. The Notice refers to "Section 2.3(a)(ii) of the settlement agreement instead of
21 explicitly notifying class members that if their pro-rata share of the Net Settlement Fund would
22 be less than five dollars (\$5), the Court may, in its discretion, order the Settlement Administrator
23 to distribute the entire Net Settlement Fund to the Cy Pres Recipients, in which event you will
24 not get a penny.

25 6. As Judge Posner stated in *Reynolds, V. Beneficial Natl. Bank* 288 F.3d 277 (7th
26 Cir. 2002) in discussing the judicial duty to protect the members of a class in class action

1 litigation from lawyers for the class who may, in derogation of their professional and fiduciary
2 obligations, place their pecuniary self-interest ahead of that of the class. "This problem,
3 repeatedly remarked by judges and scholars, see, e.g., *Culver v. City of Milwaukee*, 277 F.3d 908,
4 910 (7th Cir. 2002); *Greisz v. Household Bank (Illinois), N.A.*, 176 F.3d 1012, 1013 (7th Cir.
5 1999); *Rand v. Monsanto Co.*, 926 F.2d 596, 599 (7th Cir. 1991); *Duhaime v. John Hancock*
6 *Mutual Life Ins. Co.*, 183 F.3d 1, 7 (1st Cir. 1999); John C. Coffee, Jr., "Class Action
7 Accountability: Reconciling Exit, Voice, and Loyalty in Representative Litigation," 100 Colum.
8 L.Rev. 370, -385-93 (2000); David L. Shapiro, "Class Actions: The Class as Party and Client,"
9 73 Notre Dame L.Rev. 913, 958-60 and n. 132 (1998), requires district judges to exercise the
10 highest degree of vigilance in scrutinizing proposed settlements of class actions. We and other
11 courts have gone so far as to term the district judge in the settlement phase of a class action suit a
12 fiduciary of the class, who is subject therefore to the high duty of care that the law requires of
13 fiduciaries. *Culver v. City of Milwaukee*, *supra*, 277 F.3d at 915; *Stewart v. General Motors*
14 *Corp.*, 756 F.2d 1285, 1293 (7th Cir. 1985); *In re Cendant Corp. Litigation*, 264 F.3d 201, 231
15 (3d Cir. 2001); *Grant v. Bethlehem Steel Corp.*, 823 F.2d 20, 22 (2d Cir. 1987)"

16 7. California Civil Code § 3344 also provides in part that "The prevailing party in
17 any action under this section shall also be entitled to attorney's fees and costs." Therefore, the
18 parties should have negotiated an award of fees under § 3344. Had they done so, this court's
19 review would have focused on the reasonableness of the fee request under the lodestar
20 calculation method. Then if the amount of fees Facebook was agreeing to pay in the settlement
21 agreement were significantly higher than the fees class counsel could have expected to be
22 awarded pursuant to fee shifting and a lodestar methodology, the fees would be seen as
23 unreasonable.

24 8. Ordinarily, "a defendant is interested only in disposing of the total claim asserted
25 against it . . . the allocation between the class payment and the attorneys' fees is of little or no
26 interest to the defense . . ." *In re GMC Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d
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1 768, at 819-20 (3d Cir. 1995)

2 9. The fees available under a fee-shifting statute are part of the plaintiff's recovery
3 and are not dependent upon any explicit fee arrangements between the plaintiffs and their
4 counsel. For that reason, contingent fee agreements between counsel and client are valid in cases
5 where statutory fees are available. See *Venegas v. Mitchell*, 495 U.S. 82, 86-89, 109 L. Ed. 2d 74,
6 110 S. Ct. 1679 (1990). Common fund fees are essentially an equitable substitute for private fee
7 agreements where a class benefits from an attorney's work, so the same general principles
8 outlined in *Venegas* should apply. *Staton v. Boeing Co.* 327 F.3d 938 (9th Cir. 2003) As a result
9 Class Counsel should always separately negotiate for the defendant to pay fee shifted fees after
10 arriving at a settlement sum for the class. Thereafter, the court can reduce the common fund fee
11 award by the amount of the fee shifted amount paid by the defendant.

12 10. To the extent that the value of the common fund for attorney fee purposes
13 includes the value of injunctive relief, as set forth on page 6 of the notice, that is improper in this
14 circuit. "[O]nly in the unusual instance where the value to individual class members of benefits
15 deriving from injunctive relief can be accurately ascertained may courts include such relief as
16 part of the value of a common fund for purposes of applying the percentage method of
17 determining fees. ... When this is not the case, courts should consider the value of the injunctive
18 relief obtained as a "relevant circumstance" in determining what percentage of the common fund
19 class counsel should receive as attorneys' fees, rather than as part of the fund itself. In this matter
20 the requested attorney's fees are excessive and unreasonable.

21 11. Jennifer Deachin hereby adopts all other meritorious and timely filed objections
22 that are not inconsistent with these objections.

23
24 **WHEREFORE**, Jennifer Deachin respectfully requests that this Court to sustain these
25 Objections and enter such Orders as are necessary and just to adjudicate these Objections
26 including but not limited to: an order disapproving the proposed settlement because it is not fair,
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1 adequate or reasonable and because of the improper notice to the class; an order requiring class
2 counsel and the settling defendants to craft a new notice that complies with due process and then
3 to re-notice the class, and granting such other relief that this court deems necessary or proper so
4 as to alleviate the inherent unfairness, inadequacy and unreasonableness of the proposed
5 Settlement.

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DATED this 2nd day of April 2013.

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Respectfully Submitted,

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/s/ Alan J. Sherwood

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Alan J. Sherwood
Attorney for Objector Jennifer Deachin
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Fax 510.903.1773
AlanSherwood@earthlink.net
Attorney for Objector Jennifer Deachin

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CERTIFICATE OF SERVICE

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I HEREBY CERTIFY that on this 2nd of May, 2013, the foregoing was filed with the Clerk of the
21 Court and that all parties will be electronically served by the CM/ECF system.

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/s/ Alan Sherwood
Alan Sherwood

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1 Alan J. Sherwood
 2 Cal SBN 118330
 3 1300 Clay Street, Suite 600
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 7 AlanSherwood@earthlink.net
 8 Attorney for Objector Jennifer Deachin

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 11 **IN THE UNITED STATES DISTRICT COURT**
 12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
 13 **SAN FRANCISCO DIVISION**

Case No. 3:11-cv-01726-RS

14 Angel Fraley, *et al.*,
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 16 Plaintiffs,

v.

17 Facebook, Inc., *et al.*,
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 19 Defendants.

EXHIBIT "A"
DECLARATION OF JENNIFER DEACHIN
IN SUPPORT OF HER OBJECTIONS, PROOF
OF MEMBERSHIP IN CLASS AND NOTICE
OF INTENT TO APPEAR, BY COUNSEL,
AT THE JUNE 28, 2013 FAIRNESS HEARING


Hearing Date: Friday June 28, 2013
 Time: 10:00 a.m.
 Courtroom: 3, 17th Floor
 The Honorable Richard Seeborg

20 I, Jennifer Deachin, declare and state, under penalty of perjury, that I make this
 21 Declaration based on my personal knowledge of the matters stated herein and, if called
 22 upon to testify, I would testify as to the truth and correctness of the following:

- 23 1. My name is Jennifer Deachin.
- 24 2. I make this declaration in support of the Objections, Proof of Membership
 25 in Class and Notice of Intent to Appear, by Counsel, at the June 28, 2013
 26 Fairness Hearing.
- 27 3. My physical address, telephone number, and the email address, associated
 28 with my Facebook account, as set forth in the Objections, Proof of

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Membership in Class and Notice of Intent to Appear, by Counsel, at the
June 28, 2013 Fairness Hearing are true and correct.


Jennifer Deachin

Case: 1:10-md-02196-JZ Doc #: 1967 Filed: 11/13/15 1 of 2. PageID #: 92375

FILED

JENNIFER HINOJOSA
4932 SW 19TH STREET
GAINESVILLE, FLORIDA 32608

2015 NOV 13 PM 1:41
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
TOLEDO

November 12, 2015

Clerk of the Court
U.S. District Court
Northern District of Ohio
United States Courthouse
1716 Spielbusch Avenue
Toledo, OH 43604

Marvin A. Miller
Miller Law, LLC
115 S. LaSalle Street,
Suite 2910
Chicago, Illinois 60603

RE: *In re Polyurethane Foam Antitrust Litigation*
Case No. 10-MD-2196
United States District Court
Northern District of Ohio

To Whom It May Concern ,

My name is Jennifer Hinojosa; my address is 4932 Southwest 19th Street, Gainesville, Florida 32608. Because I am retaining counsel to represent me in this matter I've not included my telephone number, and that I be contacted through counsel.

I am writing to object to the proposed polyurethane foam antitrust litigation settlement.

I am a class member because, between January 1, 1999 and August 1, 2015 I purchased a mattress to the best of my knowledge, contained flexible polyurethane foam from QVC for approximately \$1,400.00. I bought this product for my home in Gainesville, Florida.

The requested \$45,375,000.00 in attorney's fees representing 30% of the \$151,250,000 settlement of is excessive; as is the requested \$285,000 in incentive payments to the class representatives to be paid in addition the money they will receive from filing their claims.

I do not intend to appear at the fairness hearing on December 15, 2015.

Case: 1:10-md-02196-JZ Doc #: 1967 Filed: 11/13/15 2 of 2. PageID #: 92376

RE: *In re Polyurethane Foam Antitrust Litigation*
Case No. 10-MD-2196
United States District Court
Northern District of Ohio

Page Two

Thanking you in advance for your consideration of my objections.

Sincerely yours,



Jennifer Hinojosa

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**CARL BLESSING, et al. on Behalf of Themselves
And All Others Similarly Situated,**

Plaintiffs,

No. 09-cv-10035 (HB)

v.

SIRIUS XM RADIO INC.

Defendant.

**OBJECTIONS TO PROPOSED SETTLEMENT AND NOTICE OF
INTENT TO APPEAR AT FAIRNESS HEARING**

COMES NOW, Objectors Steven Crutchfield, Scott D. Krueger, Asset Strategies, Inc., Charles B. Zuravin, and Jennifer Deachin (the Crutchfield Objectors), by and through their undersigned counsel of record, and hereby file these Preliminary Objections to the Proposed Settlement of Sirius XM Radio Inc. Settlement, give notice of their intent to appear at the fairness hearing, and in support of their objections state as follows:

PROOF OF CLASS MEMBERSHIP

Stephen Crutchfield, 2144 U.S. Highway 278 West, Cullman, Alabama 35057, (256) 734-4553, referred by Frank H. Tomlinson, an Alabama attorney, is the owner of an XM radio and is a member of the Class. Scott D. Krueger, 2750 Northwest 43rd Street, Suite 201, Gainesville, Florida 32606, (352) 376-3090 referred by N. Albert Bacharach, Jr., a Florida attorney, is the owner of an XM radio and is a member of the Class. Asset Strategies Inc., 80 West Avon Road, Avon, CT 06001, (860) 6731040 is the owner of an XM radio and is a member of the Class, Charles B. Zuravin, 6634 Oakmont Way, West Palm Beach, 33412 (561) 775-1840

referred by C. Herbert Offer, a Florida attorney, is the owner of an XM radio and is a member of the Class, and Jennifer Deachin, 4932 SW 19th St., Gainesville, FL 32608, (352) 283-8865 referred by Paul S. Rothstein, a Florida attorney, is the owner of an XM radio and is a member of the Class.

NOTICE OF INTENT TO APPEAR

The Crutchfield Objectors hereby give notice that they intend to appear, by undersigned counsel, at the Fairness Hearing that is presently scheduled to be held at 10:00 a.m. on Monday, August 8, 2011, before the Honorable Harold Baer, Jr., U.S. District Judge, in Courtroom 23B at the United States District Court for the Southern District of New York, located at 500 Pearl Street, New York, New York 10007-1312. The Crutchfield Objectors intend to offer documents into evidence and call witnesses in support of their objections.

OBJECTIONS

The proposed Settlement is unfair, inadequate, and unreasonable for the following reasons:

1. After this Court indicated its willingness to certify this matter as a Federal Antitrust Damage class, a settlement was entered into by the parties. The proposed settlement appears to have no correlation to the damages to the class resulting from the Defendant's antitrust violations, much less triple damages, and only provides the class with a "six month extension" of current prices, in-kind benefit.
2. Since the FCC approved the merger of XM Radio and Sirius, the Defendant has had a monopoly in the provision of Satellite Digital Audio Radio Service (SDARS), as there is no other competition in the SDARS market.
3. Although this Court found that injunctive relief on a class-wide basis was not

predominate under Rule 23(b)(2), the relief afforded by the settlement is, in practice, injunctive relief, not money damages, i.e. if this court ordered the Defendant not to effectuate a price increase until next year, that would be injunctive relief.

4. The parties to the settlement opine that the injunctive relief is worth at least \$180 million to the class. Even assuming the purposed injunctive relief has finite monetary value, that value is not the money damages Defendant owes the class members. The antitrust laws envision a defendant paying money damages that are a multiple of their ill-gotten gain. As this Court noted:

Plaintiffs also allege that in proving Defendant's anticompetitive conduct they will rely on the increase in market concentration, Defendant's post-merger price increases, and Defendant's plans to further increase prices in the future, none of which requires individualize proof.

Doc. 85 at 8.

5. Assuming the current price of service is the result of defendant's monopolistic practices, the class will continue to pay the artificial inflated price during the proposed six month price freeze. Therefore, not only is the defendant is not paying damages to the class; they are only agreeing, for a limited time only, to not increase the damages that the members of the class suffer on a monthly basis.

6. It is clear that there is no correlation between a six month moratorium of price increases, supposedly worth \$180 million, to the amount of damages this class might ultimately prove if the case were to go to trial. As stated in *Malcolm v. Marathon Oil Co.*, 642 F.2d 845 (11th Cir. 1981):

The antitrust plaintiff's burden of proving the amount of damages is lighter than the burden of proving injury in fact. See *Story Parchment Co. v. Paterson Parchment Paper Co.*, 282 U.S. 555, 562, 51 S.Ct. 248, 250, 75 L.Ed. 544 (1931); *Terrell v. Household Goods Carriers' Bureau*, 494 F.2d 16, 23-24 (5th

Cir. 1974). Often the nature of the violation makes calculation of damages difficult. "In such (a) case, while the damages may not be determined by mere speculation, it will be enough if the evidence show(s) the extent of the damages as a matter of just and reasonable inference, although the result be only approximate." *Story Parchment Co. v. Paterson Parchment Paper Co.*, 282 U.S. 555, 563, 51 S.Ct. 248, 250, 75 L.Ed. 544 (1931). The amount of damage may be shown by just and reasonable inference with juries voting upon the probable and inferential as well as upon direct and positive proof. *Terrell v. Household Goods Carriers' Bureau*, 494 F.2d 16, 23-24 (5th Cir. 1974); *Bigelow v. RKO Radio Pictures, Inc.*, 327 U.S. 251, 264, 66 S.Ct. 574, 579, 90 L.Ed. 652 (1946). In fact, given proof of the fact of damage, proof of losses which border on the speculative is allowed in order to facilitate the policy of the antitrust laws. *Ford Motor Co. v. Webster's Auto Sales, Inc.*, 361 F.2d 874, 887 (1st Cir. 1966); *Hobart Brothers Co. v. Malcolm T. Gilliland, Inc.*, 471 F.2d 894, 903 (5th Cir. 1973). And estimates may be based on assumptions so long as the assumptions rest on adequate bases. *Terrell v. Household Goods Carriers' Bureau*, 494 F.2d 16, 24 (5th Cir. 1974); *Hobart Brothers Co. v. Malcolm T. Gilliland, Inc.*, 471 F.2d 894, 902 (5th Cir. 1973). The estimate of the amount of damages may even suffer from minor imperfections. *Id.* at 903.

The point being that maybe since the damages are a multiple of the damage caused by the defendant's price of service, the class would be better off trying this case than settling for a six month price freeze. An antitrust verdict for money damages is worth substantially more than what this settlement is offering each of the class members.

7. Nothing has been submitted to substantiate the defendant's estimation that this price freeze has an "estimated" value of \$180 million. Objectors have sought the information from the Defendant's counsel but at this time have not received a response. (See Exhibit "A" attached hereto.) Without this information neither Objectors, nor the Court, can assess "the range of reasonableness of the settlement fund in light of the best possible recovery." *D'Amato v. Deutsche Bank*, 236 F.3d 78, 86 (2d Cir. 2001).

8. The proposed settlement resembles and shares many of the characteristics of a Coupon Settlement including the fact that the proposed settlement provides for large cash

attorney fees and little or no actual value to class members. As the National Association of Consumer Advocates, Standards and Guidelines for Litigation and Settling Consumer Class Actions (2d ed.2006), 255 F.R.D. 215, 235 states, “[T]he considered view today is that unless a coupon settlement provides increased benefits to class members and possesses certain safeguards, they should generally be avoided. . .”.

9. Instead of a cash payout, the proposed settlement offers class members an in-kind benefit of continued membership without a price increase for six months. Or, for class members who are no longer subscribers, because they cancelled their Sirius XM service between July 29, 2009 and July 5, 2011, the opportunity to re-up their Sirius XM service; and, to either reconnect their satellite radio without paying a reactivation fee and receive one month of basic satellite radio service at no cost, or receive one month of Sirius XM Internet streaming service at no cost. Such in-kind compensation is generally calls for careful scrutiny, i.e. scrutiny of both the proposed in-kind benefit and scrutiny of the value of the in-kind benefit. In any event, the dollar amount ascribed to the benefit does not represent its actual cost to the Defendant and like most in-kind benefits can be used by the Defendant for advertising purposes such as encouraging class members to continue service during the price freeze period.

10. The attorney’s fees request in this case is \$13 million. However, under the authority of Fed.R.Civ.P. 23(h)(1), no motion has been made for said fees and directed to the class members.

11. A) Although the attorney fees are to be paid separate and apart from the in-kind benefits paid to the class, the fees must be reviewed as a part of the overall settlement because in all cases the total of money damages plus attorney fees is what the Defendant is willing to pay *out of pocket* to resolve the litigation. In that light the \$13 million represents

100% of the cash settlement as opposed to 6.7% of the overall claimed in-kind settlement value, which, as objected to above consists of a price freeze on defendant's monopolistic pricing and other in-kind benefits, not actual damages paid to class members.

B) Like a coupon published in Parade magazine, the price freeze is not properly a class benefit from which attorney fees can be calculated. There is a subclass of Class members, who are no longer subscribers. They will receive no benefit other than the opportunity to become defendant's customer once again. Furthermore, since everyone else in the United States who is not a member of the class will receive the same price freeze benefit from the defendant, that in-kind "benefit" is not a benefit to the class.¹

C) In any event if the court elects to pay attorney's fees on a percentage basis, that number should be cross-checked by examining the lodestar of class counsel. To date no lodestar has been submitted for class members to review.

12. The Crutchfield Objectors hereby incorporate and adopt any and all other properly-filed objections not inconsistent with the foregoing.

WHEREFORE, Objector respectfully requests that this Court sustain these Objections and enter such Orders as are necessary and just to adjudicate these Objections so as to alleviate the inherent unfairness, inadequacy and unreasonableness of the proposed Settlement.

Respectfully submitted,

/s/ Matthew J. Weiss

Matthew J. Weiss
Weiss & Associates, P.C.
440 Park Avenue South
3rd Floor
New York, NY 10016

¹ One can almost see the advertising campaign regarding how the price of service will not increase until 2012, and then here comes the "Netflix" increase.

212-683-7373
212-726-0135 fax
mjweiss@weissandassociatespc.com

ATTORNEY FOR STEVEN CRUTCHFIELD, SCOTT D.
KRUEGER, ASSET STRATEGIES, INC., CHARLES B.
ZURAVIN, AND JENNIFER DEACHIN

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing OBJECTIONS TO PROPOSED SETTLEMENT AND NOTICE OF INTENT TO APPEAR AT FAIRNESS HEARING was served via Notice of Electronic Filing on this the 18th day of July, 2011, to all attorneys of record., and a copy was mailed to:

James J. Sabella
Grant & Eisenhofer, P.A.
485 Lexington Avenue
New York, New York 10017

/s/ Matthew J. Weiss _____

EXHIBIT "A"

FRANK H. TOMLINSON

ATTORNEY AT LAW

15 NORTH 21st STREET

SUITE 302

BIRMINGHAM, ALABAMA 35203-4103

E-mail Address: htomlinson@bellsouth.net

July 13, 2011

TELEPHONE: (205) 326-6626
FACSIMILE: (205) 326-2889

Via E-mail and U.S. Mail:

Todd R. Geremia, Esq.
Jones Day (NYC)
222 East 41st Street
New York, NY 10017

Brian Kelth Grube, Esq.
Jones Day (Cleveland)
901 Lakeside Avenue
Cleveland, OH 44114

**RE: Blessing v. Sirius XM Radio, Inc.
U.S. Dist. Ct. S.D.N.Y. 09-CV-10035**

Gentlemen:

I represent several class members in the Sirius XM Radio settlement. In trying to evaluate the settlement's reasonableness and fairness, I read in Plaintiffs' Memorandum of Law in Support (Doc. 95), the following statement, "Defendant estimates that the value to the Class of not implementing this rate increases between the period of August 1, 2011 through December 31, 2011 is at least \$180 million."

In reviewing materials submitted, I cannot find any report of an economist or any expert who has submitted that estimation and the basis for it. I would ask that you forward me a copy of such materials in order to better understand where this number originated and so that my expert can review.

A prompt response would be greatly appreciated.

Very truly yours,



Frank H. Tomlinson

FHGT/sah

Index No. 09-cv-10035 (HB) Year 20

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CARL BLESSING, et al. on Behalf of Themselves
And All Others Similarly Situated,

Plaintiffs,

v.

SIRIUS XM RADIO INC.

Defendant.

OBJECTIONS TO PROPOSED SETTLEMENT AND
NOTICE OF INTENT TO APPEAR

WEISS & ASSOCIATES, P.C.
ATTORNEYS AT LAW

Attorneys for

Objectors

440 PARK AVENUE SOUTH, 3RD FLOOR
NEW YORK, NEW YORK 10016

(212) 683-7373

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

Dated: July 18, 2011

Signature: *Matthew Weiss*
Matthew J. Weiss, Esq.

Service of a copy of the within

is hereby admitted.

Dated:

Attorney(s) for

PLEASE TAKE NOTICE

that the within is a (certified) true copy of a entered in the office of the clerk of the within named Court on

NOTICE OF ENTRY

that an Order of which the within is a true copy will be presented for settlement to the Hon. one of the judges of the within named Court, at

on 20, at M.

Dated:

WEISS & ASSOCIATES, P.C.
ATTORNEYS AT LAW

Attorneys for

440 PARK AVENUE SOUTH, 3RD FLOOR
NEW YORK, NEW YORK 10016

To:

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

LAURA FAUGHT; STEVEN }
FAUGHT, on behalf of themselves and }
all others similarly situated, }

Plaintiffs, }

v. }

Case No: 2:07-CV-1928-RDP

AMERICAN HOME SHIELD }
CORPORATION, }

Defendant. }

**OBJECTIONS TO PROPOSED SETTLEMENT AND NOTICE OF
INTENT TO APPEAR AT FAIRNESS HEARING**

COMES NOW, Objectors John Howe, Jenny Hill and Jennifer Deachin (“The Howe Objectors”), holders of policies issued by American Home Shield Corporation, *et al.*, by and through their undersigned counsel of record, and hereby file these Preliminary Objections to the Proposed Settlement Of American Home Shield of Corporation, and in support thereof, state as follows:

PROOF OF CLASS MEMBERSHIP

John Howe, 2525 NW 21st Avenue, Gainesville, Florida, 32605, (352) 665-9835, contract No. 85199141, referred to undersigned counsel by N. Albert Bacharach, Jr., a Florida Attorney, received the “NOTICE OF CLASS ACTION AND SETTLEMENT.” John Howe is a policy holder of home owner’s warranty

policies issued by American Home Shield Corporation, et al. John Howe's unsworn declaration previously filed in *Edleson, v. American Home Shield of California, Inc., et al.* is attached hereto as Exhibit "A."

_____ Jenny Hill, 1645 NW 31st Place, Gainesville, Florida, 32605, (352) 214-2126, Contract No. 71282751, referred to undersigned counsel by N. Albert Bacharach, Jr., a Florida Attorney, received the "NOTICE OF CLASS ACTION AND SETTLEMENT." Jenny Hill is a policy holder of home owner's warranty policies issued by American Home Shield of California, Inc., et al. Jenny Hill's unsworn declaration previously filed in *Edleson, v. American Home Shield of California, Inc., et al.* is attached hereto as Exhibit "B."

Jennifer Deachin, 4932 SW 19th Street, Gainesville, Florida, 32608, Contract No. 81542361, referred to undersigned counsel by N. Albert Bacharach, Jr., a Florida Attorney, received the "NOTICE OF CLASS ACTION AND SETTLEMENT." Jennifer Deachin is a policy holder of home owner's warranty policies issued by American Home Shield Corporation., et al. Jennifer Deachin's unsworn declaration previously filed in *Edleson, v. American Home Shield of California, Inc., et al.* is attached hereto as Exhibit "C."

_____ **NOTICE OF INTENT TO APPEAR**

OBJECTORS HOWE, HILL and DEACHIN, (hereinafter "The Howe Objectors") hereby give notice they intend to appear, by undersigned counsel, at

the Fairness Hearing that is presently scheduled to be held in this matter at 10:00 a.m/ on Wednesday, March 10th, 2010, before the Honorable R. David Proctor, District Judge, in Courtroom 7A of the United States District Court for the Northern District of Alabama, located at 1729 Fifth Avenue North, Birmingham, Alabama 35203. Objectors do not intend to offer documents into evidence or to call witnesses.

OBJECTIONS

The proposed Settlement is unfair, inadequate and unreasonable for the following reasons:

1. A substantially similar settlement in *Edelson, etc. v. American Home Shield Corporation*, Superior Court of California, County of San Diego, Case No.: 37-2007-00071725-CV-BT-CTL was found not to be fair, adequate and reasonable.
2. The Settlement is not fair, adequate or reasonable because the Defendant is not required to do anything pursuant to the settlement that wasn't required under its warranty agreements with Class Members.
3. The Settlement fails to provide the value of the Settlement. As a result, class members and this Court can not determine the fairness, adequacy and reasonableness of the Settlement.

4. Although, the Defendant has agreed to review previously denied claims through the Review Desk, the Defendant, in its sole discretion, may again deny those claims previously submitted and denied. Fairness demands that there be a third-party administrator to review denied claims.
5. Given the sole discretion granted to Defendant over the reviewing of claims submitted by Class Members, the Settlement provides the class with no benefit whatsoever.
6. The Settlement will not deter Defendant's improper business practices in the future because, although, the Settlement provides that Defendant will distribute training materials to address any issues that Defendant determines require further training, the Defendant may solicit and consider, but need not implement, recommendations from Class Counsel regarding changes to their business practices.
7. The two-year window within which Defendant will either deny or make an offer on all submitted claims is facially unreasonable. Two years is an excessive amount of time to undertake settlement administration. As a result, Class Members who have not opted out will wait up to two years before being able to bring an individual action.

8. The Settlement Notice does not provide sufficient information to allow Class Members to decide whether to opt out of the settlement or remain part of the class and submit their claim to the Review Desk. Because Defendant has such enormous discretion in denying submitted claims, and because after a denial of a claim, that Class Member would be in the same position as if they had opted out, except that they would have lost the time it took Defendant to decide to deny their claim, Class Members cannot determine whether it would be more beneficial to remain part of the settlement and submit a claim to the Review Desk or to opt out and immediately bring an individual action against Defendant. This deficiency in the Settlement might have been eliminated if the Settlement and Notice had described the criteria that Defendant planned to use when evaluating claims, however, the neither the Settlement nor the Notice include any information regarding the criteria to be used by Defendant when reviewing claims, nor any information that would allow a Class Members to predict whether their claim would be denied, and therefore whether it would be more beneficial to opt out and bring an individual action immediately.

9. The amount of attorney's fees are unreasonable and excessive, given the negligible value of the settlement to the Class Members. The Notice describes the award of attorney's fees as \$1.5 million, plus 25% of any amount paid out by Defendant on claims submitted pursuant to the Settlement. Normally, that would be a relatively small fee for representing Class Members in a national class. But, in this case, it is a very large fee for settlement with no value to the Class Members.
10. Objectors hereby incorporates any and all other properly-filed objections not inconsistent with the foregoing.

WHEREFORE, The Howe Objectors respectfully request that this Court to sustain these Objections and enter such Orders as are necessary and just to adjudicate these Objections so as to alleviate the inherent unfairness, inadequacy and unreasonableness of the proposed Settlement.

DATED this 8th day of February, 2010.

/s/Frank H. Tomlinson

Frank H. Tomlinson

AL Bar No. ASB-7042-T66F

Attorney at Law

15 North 21st Street, Suite 302

Birmingham, AL 35203

Telephone: (205) 326-6626

Facsimile: (205) 328-2889

htomlinson@bellsouth.net

*Attorney for John Howe, Jenny Hill and
Jennifer Deachin*

CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically filed a true and correct copy of the above and foregoing, and service via CM/ECF has been made upon all parties who have entered appearances in this case by electronic means, this 8th day of February, 2010.

s/Frank H. Tomlinson

Frank H. Tomlinson

N. Albert Bacharach, Jr., P.A.

115 Northeast 6th Avenue
Gainesville, Florida 32601-3416
Phone: (352) 378-9859
(800) 226-9859
Fax: (352) 338-1858
E-Mail: N.A.Bacharach@att.net

February 22, 2010

Via U.S. Mail, postage prepaid and via Federal Express Overnight Delivery

CLAIMS ADMINISTRATOR	CO-LEAD COUNSEL	MATTEL'S COUNSEL
c/o Gilardi & Co. LLC P.O. Box 8090 San Rafael, CA 94912-8090	John J. Stoia, Jr. Rachel L. Jensen Coughlin Stoia Geller Rudman & Robbins, LLP 655 West Broadway, Ste 1900 San Diego, CA 92101 Joe R. Whatley, Jr. Elizabeth Rosenberg Whatley Drake & Kallas LLC 1540 Broadway, 37th Floor New York, NY 10036	Hugh R. Whiting Jones Day North Point 901 Lakeside Avenue Cleveland, OH 44114 Thomas E. Fennell Michael L. Rice Jones Day 2727 North Harwood Street Dallas, TX 75201-1515

Re: Objections and Notice of Intent to Appear at the Fairness Hearing
In re MATTEL, INC., TOY LEAD PAINT PRODUCTS LIABILITY
LITIGATION
Case No.: 2:07-ml-01897-DSF-AJW, MDL No. 1807

Gentlemen:

On behalf of Jennifer Deachin, (hereinafter Objector Deachin) I hereby object to the proposed settlement in the above-styled matter and hereby give notice of her intent to appear at the fairness hearing, by counsel, presently scheduled to be held in this matter on Monday, March 15, 2010 before the Honorable Dale S. Fischer, U.S. District Judge, at the United States District Court for the Central District of California--Western Division, Roybal Federal Building, in Courtroom 840, at 255 East Temple Street, Los Angeles, California 90012, to cross-examine witnesses, and, to present legal argument.

REDACTED

Objector DEACHIN, whose address is [REDACTED] is a class member pursuant to Section 6D. of the Class Notice. She purchased for a minor child over whom she has custody or control as a parent or guardian: 1)Fisher Price Customized Medical Kit Restage (Red Blood Pressure Cuff), with no recall price.

Objector DEACHIN alleges that the Proposed Settlement is not fair, adequate, or reasonable because:

A. The Notice is deficient because the language of the Notice is in conflict with paragraph n(iii) of the Settlement Agreement and paragraph 8 of the Order Preliminarily Approving Class Action Settlement. (Doc. 167) Both of the aforesaid paragraphs deal with receipt of objections, not their postmarks.

Therefore, on its face, the Notice fails to comply with the Court Order.

B. The Notice states that class members who wish to object to the settlement must provide a Proof of Purchase to assert an objection. This conflicts with the class definition, which does not only does not require the proof of purchase, this requirement violates Rule 23(e)(5) which guarantees that each class member has the right to object to a settlement. Furthermore, this additional improper requirement will likely keep other class members from objecting to the settlement. The Court should, on the basis of defective Notice, extend the date by which class members may file objections and require re-Notice to the class.

C. Pursuant to the Proposed Settlement, those class members who no longer possess the Recalled Toys, or a Proof of Purchase from years ago will only receive Mattel vouchers (coupons). For those class members, the Proposed Settlement amounts to advertising benefitting Mattel. These class members are in the same

position as people who clip the Defendant's coupons from the Sunday paper. Coupon settlements have been criticized by the courts (*Acosta v. Trans Union, LLC*, 243 F.R.D. 377 (C.D. Cal. 2007)) and Congress as providing only illusory benefit to the injured class members.

D. The provisions of the Proposed Settlement whereby Defendants agree to implement and maintain a Quality Assurance System designed to identify and prevent the sale by Defendants of products with accessible parts containing impermissible lead benefits everyone with children and provides no specific benefit to class members not enjoyed by everyone.

E. Although class counsel and Defendants have agreed to an award of attorneys fees and expenses of \$12.9 million; because portions of the Proposed Settlement include voucher coupons, the Class Action Fairness Act ("CAFA"), requires that attorney's fees not be awarded until the actual value of the voucher coupon element of the Proposed Settlement has been determined. *See* 28 U.S.C. § 1712(a).

F. The Class Action Fairness Act provides that if a proposed settlement provides coupons to the class, and a portion of the recovery of coupons is not used to determine the attorney's fees, then any attorney's fee award must be based on a lodestar analysis. 28 U.S.C. § 1712(b)(1). If the proposed settlement contains both coupons and equitable relief, as the Proposed Settlement in the instant case does, the portion of the attorney's fees that is based upon the portion of the recovery of the coupons must be calculated according to the value of the coupons actually redeemed by class members, and the portion of attorney's fees not based

on the coupons must be calculated according to a lodestar analysis. 28 U.S.C. § 1712(c). Therefore, in this matter, the portion of attorney's fees based on the coupon portion of the Proposed Settlement must be calculated as a percentage of the value of the coupons actually redeemed by the class members, or the entire amount of attorney's fees must be determined according to a lodestar analysis, or a combination of a percentage of the value of the coupons actually redeemed and the amount of time class counsel reasonably expended working on the action.

G. Objector DEACHIN hereby adopts and incorporates any and all timely objections not inconsistent with the foregoing Objections as if set forth fully herein.

Sincerely,



N. ALBERT BACHARACH, JR.

NABjr/jms