UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

LAWRENCE E. JAFFE PENSION PLAN, On Behalf of Itself and All Others Similarly Situated, Plaintiff, vs. HOUSEHOLD INTERNATIONAL, INC., et al., Defendants.	)))))))))))))	Lead Case No. 02-C-5893 (Consolidated) CLASS ACTION Honorable Jorge L. Alonso

PLAINTIFFS' RESPONSE TO OBJECTOR'S NOTICE OF RECENT SUPPLEMENTAL AUTHORITY RE PLAINTIFFS' MOTION FOR AN APPEAL BOND

Plaintiffs hereby respond to objector's submission of *In re: Target Corporation Customer Data Security Breach Litigation*, No. 16-1408, 2017 WL 429261 (8th Cir. Feb. 1, 2017) as supplemental authority in support of his opposition to plaintiffs' request for an appeal bond. In *Target*, the Eighth Circuit reversed and remanded "for the district court to reduce the Rule 7 bond to reflect only those costs that Appellees will recover should they succeed in any issues remaining on appeal following the district court's reconsideration of class certification." *Id.* at *5. *Target* does not alter the fact that the Court has the authority to require objector and his counsel to post an appeal bond in the requested amount, and that such a bond is necessary and appropriate in this case.

First, *Target* addresses only whether and when delay costs may be included in a bond issued ***under Rule 7***, but the decision does not address the Court's inherent authority to impose an appeal bond. *Id.* at *4. In the Seventh Circuit, even where "[n]o statute or rule, or decision of this circuit, expressly authorizes a court to require the posting of a bond." *Anderson v. Steers, Sullivan, McNamar & Rogers*, 998 F.2d 495, 496 (7th Cir. 1993) (requiring bond to secure payment of costs arising from frivolous litigation, holding "if there is reason to believe that the prevailing party will find it difficult to collect its costs, the court can require the posting of a suitable bond"); *see also Chambers v. NASCO,* 501 U.S. 32, 49 (1991); *Pedraza v. United Guar. Corp.,* 313 F.3d 1323, 1335 (11th Cir. 2002). Objector has never contested the Court's inherent authority to issue an appeal bond in the amount requested.

Second, plaintiffs have met *Target*'s standard for including delay costs in a Rule 7 bond. The appellees in *Target* did not cite any statute or rule that would allow them to recover for the financial harm the Class would suffer as a result of the delay caused by the appeal. Instead, they cited only "a myriad of district court opinions and one Third Circuit opinion – all unpublished – allowing Rule 7 appeal bonds to include delay-based administrative costs." 2017 WL 429261, at *4. By contrast, plaintiffs here cited two statutes (28 U.S.C. §1912 and §1927) and an Appellate Rule (Fed. R. App. P. 38) which will allow plaintiffs to recover for the financial harm objector's frivolous appeal has inflicted, and will continue to inflict, upon the Class. *See* Dkt. Nos. 2275 at 2-3, 2288 at 8-10. Thus, the requested bond satisfies *Target*'s rule that a bond under Rule 7 may include "only those costs

that the prevailing appellate litigant can recover under a specific rule or statute applicable to the case at hand." 2017 WL 429261, at *5; *cf In re Cardizem CD Antitrust Litig.*, 391 F.3d 812, 817 (6th Cir. 2004) (Rule 7 costs include those "sums" that are "'properly awardable under the relevant substantive statue ***or other authority***'") (quoting *Marek v. Chesny*, 473 U.S. 1, 9 (1985) (emphasis added)); *Adsani v. Miller,* 139 F.3d 67, 72 (2d Cir. 1998) (same).

Finally, the stated purpose of the rule adopted in *Target* is to "secure[] the compensation due to successful appellees while avoiding creating 'an impermissible barrier to appeal' through overly burdensome bonds." 2017 WL 429261, at *5 (quoting *Adsani*, 139 F.3d at 76). The appeal in *Target* was not frivolous; in the substantive portion of its opinion, the panel vacated an order certifying a settlement class, holding that "the district court abused its discretion by failing to rigorously analyze the propriety of certification." 2017 WL 429261, at *3. Thus, the statutes and rule plaintiffs rely on in this case were not before the court. By contrast, objector's appeal of this Court's order approving the $1.575 billion settlement (which will cause millions of dollars in delay damages) is patently frivolous. Dkt. Nos. 2275 at 6-8, 2288 at 3-8. This conclusion is dictated by the factual and legal infirmity of objector's arguments, objector's own assessment of the settlement appeal's "narrow odds," and his now-broken promise – made under oath – to dismiss the appeal. The presence of these factors, and objector's counsel's shocking admission that objector will press on with the appeal for reasons completely unrelated to its merits, eliminates any concern that the requested bond might "creat[e] 'an impermissible barrier to appeal.'" 2017 WL 429261, at *5. This concern is no longer valid once the appellant's lawyers admit they are pursuing the appeal for an

improper purpose. Under these circumstances, the balance weighs heavily in favor of "secur[ing] the compensation due to successful appellees." *Id.*

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 21, 2017, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses for counsel of record denoted on the attached Service List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on February 21, 2017.

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