UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE STERICYCLE SECURITES LITIGATION	Case No. 1:16-cv-07145 CLASS ACTION Hon. Andrea R. Wood
MARK PETRI, Objector.	

REPLY IN SUPPORT OF OBJECTOR MARK PETRI'S MOTION TO LIFT STAY FOR LIMITED DISCOVERY

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INTRODUCTION

Lead plaintiffs' opposition to Petri's Motion to Lift Stay for Limited Discovery demonstrates that lead counsel and plaintiffs wish to hide their lodestar and the details of their work and relationships as reflected in retention agreements, fee sharing agreements, campaign contributions, and time records, perhaps because they reveal what Petri suspects: that lead plaintiffs and counsel have prioritized their own financial interests over those of the class, as reflected in the excessive attorneys' fee request pending before the Court. (Indeed, they happily disclose that they have no litigation financing arrangements, demonstrating the negative pregnant with respect to everything else they fight.) Lead counsel devote much of their opposition to irrelevant arguments, including false *ad hominem* attacks, and falsely claim they have produced all relevant information. Lead plaintiffs fall back on the position that Petri's request to lift the stay arises from mere "speculation." Yet, they cannot and do not deny the ongoing investigation in *State Street*,[1] and their best rebuttal to the kickback scheme alleged in the complaint filed by the former attorney at Bernstein Litowitz Berger & Grossman LLP ("Bernstein Litowitz")[2] is the same non-denial Petri cited in his objection. *See* Dkt. 120 at 12. As demonstrated below and in his opening brief, the proposed discovery Petri seeks is limited in scope regarding the adequacy of representation by lead plaintiffs and lead counsel, as reflected in their fee request. Much information relevant to lead plaintiffs' fee request and the adequacy of the representation provided to class members remains undisclosed. Lifting the stay will allow the Court to better analyze the pending request for attorneys' fees with information Petri obtains through discovery.

In Section I, Petri demonstrates that Plaintiffs' argument about Local Rule 37.2 is misplaced. Plaintiffs spend much time parsing individual discovery requests, but this is simply a motion to lift the

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[1] *See Ark. Teacher Ret. Sys. v. State St. Bank & Tr.*, No. 11-10230-MLW, 2018 U.S. Dist. LEXIS 111320, at *10 (D. Mass. June 28, 2018).

[2] *See Bernstein v. Bernstein Litowitz Berger & Grossmann LLP*, 814 F.3d 132, 143 (2d Cir. 2016) ("*BLB&G*").

stay. The PSLRA on its face does not apply here. In Section II, Petri demonstrates the limited discovery he seeks is necessary to protect the class's interests. Plaintiffs spend a regrettable amount of time on personal attacks on Mr. Petri and his non-profit attorneys; Section III addresses these abusively false *ad hominem* attacks.

ARGUMENT

I. Petri's motion is timely, procedurally proper, and should be granted.

A. Plaintiffs are wrong that the motion is improper under Local Rule 37.2.

Lead plaintiffs complain that Petri's motion does not comply with Local Rule 37.2, but that Rule applies only to discovery motions. Petri's motion does not yet involve a discovery dispute; it seeks to lift the stay on discovery so that he can request discovery from lead plaintiffs. If the Court grants his motion, and lead plaintiffs refuse to respond to his reasonable requests, then Local Rule 37.2 would apply, requiring the parties to meet and confer before Petri moved to compel responses to his requests.

Lead plaintiffs also complain that Petri's motion is untimely because they publicly sought appointment as lead plaintiffs in September 2016; the *BLB&G* lawsuit became public in February 2016; and *State Street* has been publicized since the summer of 2017. Their argument is premised on the absurd view that Petri should have anticipated two or three years ago that lead plaintiffs would file an excessive fee request and made his discovery requests then. Dkt. 132 at 3. Petri and other class members had no notice of the appointment of lead counsel years ago, much less notice about the size of the fees that lead plaintiffs intended to request, or even the participation of two of the three firms now seeking fees.

B. The PSLRA on its face does not apply here.

Lead plaintiffs improperly rely on a PSLRA standard whose text and spirit have no application here. First, on its face, the stay of discovery set forth in 15 U.S.C. § 78u-4(b)(3)(B) applies only "during the pendency of any motion to dismiss." The day after granting preliminary approval to the proposed

settlement, the Court denied the motion to dismiss. Dkt. 112. Given the pending settlement, defendants certainly do not anticipate filing any further motions to dismiss. *See* Dkt. 112.

Second, the purpose of the § 78u-4(b)(3)(B) discovery stay "is to curtail abusive litigation—it is allows the court to evaluate the plaintiffs' claims before imposing any unreasonable burden on the defendant and it prevents a plaintiff from bringing an action without first possessing the information necessary to satisfy the heightened pleading requirements of the PSLRA and using discovery to obtain that information and resuscitate a complaint that would otherwise be dismissed." *Cornielsen v. Infinium Capital Mgmt., LLC*, 916 F.3d 589, 601 (7th Cir. 2019); *accord Singer v. Nicor*, No. 02 C 5168, 2003 U.S. Dist. LEXIS 26189, 2003 WL 22013905, at *1 (N.D. Ill. Apr. 23, 2003) ("The goal of the PSLRA's discovery stay is to prevent the unnecessary imposition of discovery costs in both money and time on defendants in securities fraud cases, given that such costs often coerce settlements by innocent parties."). In other words, the PSLRA stay exists to protect defendants from excessive fees spent defending meritless suits—not shield fee requests from objector scrutiny. Petri's request to lift the stay in fact dovetails with those purposes. His targeted discovery requests seek to protect class members from an excessive fee request in this case; on a macro-level, excessive fees and pay-to-play schemes drive abusive litigation and compromise the adequate representation of class members.

Even if the Court were to apply the "particularized facts" standard from the PSLRA, Petri has met that standard, as detailed in his opening brief and in Section II. His description and supporting documentation addressing how class members will be unduly prejudiced by lead plaintiffs and lead counsel if they perpetuated the practices for which they have been called to task in other cases could hardly be more particularized. Lead plaintiffs' purported concern with delayed settlement and uncertainty are overblown. As his counsel advised in open court, Petri does not object to the settlement itself. The Court may grant the motion for final approval of the settlement "and hold any award of attorneys' fees in abeyance," just as plaintiffs suggested. Dkt. 126 at 4.

C. Petri's limited discovery is appropriate.

Plaintiffs fall back on the argument that it is purportedly "exceptionally rare" for a court to grant an objector discovery. But even they don't argue that objector discovery is prohibited. If any

case calls for discovery, it is this one, where Petri extensively documented a pattern and practice—by both the lead plaintiffs and their counsel—of putting their self-interest ahead of the class members' interest. Lead plaintiffs *admit* to having failed to disclose until the preliminary approval motion a local law firm seeking a cut of the fees. Dkt. 134 at 3 n.3. And it appears the Klausner firm was not disclosed until plaintiffs filed their motion for attorneys' fees, on page 39, footnote 8, of the Declaration of John C. Brown (Dkt. 119), even though their involvement in the case predates MissPERS'. While lead plaintiffs challenge Petri's reasons for seeking discovery as "speculative concerns," Dkt. 132 at 5, they fail to explain how Petri can know what he seeks to know, or how the Court can appropriately scrutinize their fee request given this background, without such discovery.

There is nothing untimely about Petri's motion. The discovery he seeks is directly relevant to the Court's consideration of lead plaintiffs' motion for attorneys' fees, which was filed on June 17, 2019. The motion sought an excessive fee award, while failing to provide information sufficient to demonstrate that lead plaintiffs and their counsel are not engaging in the same practice of overbilling the class for which ATRS is being investigated in *State Street* and unnecessary billing and pay-to-play practices that alleged by lead counsel's former partner against Bernstein Litowitz. Because that information was not disclosed in the fee request, Petri has taken on the effort now. It would have been inefficient and potentially burdensome on the Court had Petri followed lead plaintiffs' suggestion that he "should have filed his motion months or years ago." Dkt. 132 at 3. Given plaintiffs' claim that they have already disclosed much information responsive to Petri's requests, and the limited nature Petri's requests, the time required to complete discovery should be minimal.

Finally, the number of shares held by a class member and the number of objecting class members have no bearing on their Rule 23(e) objection rights, the validity of their arguments, or their right to discovery. *Contra* Dkt. 132 at 6; Dkt. 134 at 1. In almost any given class-action settlement, no matter how much it betrays the interests of the class, the predominating class response will be apathy. Objectors without counsel must expend significant resources on an enterprise that will create little direct benefit for themselves. Accordingly, it is "naïve" to infer class approval from a low objection rate. *See Redman v. Radioshack Corp.*, 768 F.3d 622, 628 (7th Cir. 2014). Without *pro bono* counsel and

public-minded objectors to look out for the interests of the class, filing an objection is economically irrational for any individual class member. *See Vought v. Bank of Am.*, 901 F. Supp. 2d 1071, 1093 (C.D. Ill. 2012) (citing, *inter alia*, survey finding between 42% and 64% of settlements engendered no filings by objectors).

II. The limited discovery requested by Petri remains necessary to protect the class.

Lead plaintiffs blatantly misrepresent the scope of what they have provided, claiming they have now disclosed to the Court "every conceivably relevant piece of information." Dkt. 132 at 2. The reality is that significant, relevant information remains hidden from the view of the Court and class members. Plaintiffs' response carefully evades some of the key questions raised by Petri and, in doing so, raises higher the red flags Petri identified in his opening brief and objection.

Further, lead plaintiffs attempt to blur the lines between Petri's motion to lift the stay and a discovery motion concerning the precise scope of permissible discovery. The present motion simply asks the Court to lift the stay so that Petri may request the limited information set forth in his proposed discovery requests. Dkts. 125-1 and 125-2. Lead plaintiffs ask the Court to block Petri from even requesting this information, before Petri has served his requests and the parties have met and conferred to discuss whether any particular requests can be narrowed further if production truly imposes an undue burden. If plaintiffs have in fact already fully responded to a request, then they can simply certify that they have disclosed all responsive information to the Court in a specified filing. The Court should not allow lead plaintiffs to dodge the production of any discovery with either their carefully worded responses or their nitpicking of the individual requests.

A. Petri's requests for retention agreements, fee sharing agreements, and anticipated expert testimony remain necessary and are not moot.

In direct response to Petri's objection and request to lift the stay of discovery, lead plaintiffs provide new information about which law firms will receive a payment of fees in this case and how the fees will be allocated among those firms. *See* Dkt. 132 at 7-8. But this newly disclosed information tells only part of the story, the remainder of which lead plaintiffs appear to want to bury.

First, lead plaintiffs do not deny that the retention agreements that Petri seeks are relevant, nor do they claim that it would be burdensome to produce these agreements. Instead, they rely on the public availability of a retention agreement between Bernstein Litowitz and Mississippi for this case and Petri's citations in his brief to an agreement with ATRS to suggest that Petri does not need to obtain any other such agreements. Dkt. 132 at 8 n.8. As made clear in his brief, however, Petri's quotations and citations to the ATRS agreement were in reference to an ATRS agreement from a *different case* in which the court had required disclosure of the retention agreement prior to appointing lead counsel. Dkt. 121 at 12 (citing Bednarz Decl. Ex. H). Petri does not have a copy of the ATRS retention agreement for this case, or even of the agreement characterized in the cited case. Nor does Petri have a copy of the master retention agreement between Bernstein Litowitz and Mississippi or any retention agreement for the Gadow Tyler or Klausner law firms. Lead plaintiffs identify no burden involved in producing these agreements that they suggest are widely available. Nor do plaintiffs deny that courts routinely order the production of retention agreements, as these agreements can reveal when the relationship began, fee agreements, local counsel requirements, financing arrangements, and other terms of representation relevant to litigation decisions and the fee request. Given the allegations against MissPERS and ongoing investigation into ATRS, and the late disclosure of the involvement of Gadow Tyler and the Klausner firm, this information is necessary to ensure the interests of the class are adequately protected.

Second, lead plaintiffs tellingly do not deny that any fee sharing agreements exist. Instead, they argue only that Petri's request to lift the stay is premised on a false assumption that third parties will be paid out of the fee allocation. Lifting the stay will permit Petri to obtain a direct response to settle this issue—a response that is hardly burdensome and would be required as a matter of routine if this litigation were brought in other jurisdictions. *See* Local Rule 23.1 of the U.S. District Courts for the Southern and Eastern Districts of New York. Such agreements may address how and why the fee allocation set forth in lead plaintiffs' response brief was determined and if allocations were made for improper reasons, providing grounds for returning those funds to the class. The existence and terms

of any fee sharing agreements go to the heart of the issues involving Bernstein Litowitz, MissPERS, and ATRS in the *BLB&G* complaint and *State Street* investigation.

Third, while lead plaintiffs have now identified the allocation of fees among the law firms in this case, whether their initial fee request was based on that allocation or built in a cushion of fees to be shared with another party remains an outstanding question. *See* Dkt. 121 (describing history of referral fee payments and undisclosed local counsel payments). These issues can be scrutinized through discovery into the actual distribution of attorneys' fees in prior cases and whether each recipient of fees was identified to the court in those cases.

Finally, lead plaintiffs do not address Petri's proposed discovery regarding any anticipated expert testimony they intend to rely upon in support of their pending fee request. *See* Doc. Req. No. 6, Dkt. 125-1; Interrogatory No. 8, Dkt. 125-2. Perhaps they do not intend to submit expert testimony; however, Petri and other class members are surely entitled to notice of any new evidence or argument as well as an opportunity to respond if they do.

B. Petri's request for campaign donations from individuals not known to the Objector is neither irrelevant, nor moot, nor unconstitutional.

Plaintiffs offer dueling non sequiturs in opposition to Petri's proposed interrogatory for campaign contributions, *volunteer work*, and *paid work* for the Mississippi attorney general and his political campaigns: (1) donations are Constitutionally-protected and (2) they are publicly disclosed. But Petri does not seek to restrict any speech: the issue is that counsel provides financial support for a client that is supposed to have a fiduciary duty to the absent class. Petri simply seeks *more* disclosure (which is obviously lawful) due to the peculiar arrangement between lead counsel and its client—both of which owe a fiduciary duty to absent class members like Petri.

The relevance of this information is clear, as other courts have recognized. Here, four Bernstein Litowitz partners provided $20,000 to Jim Hood within days of clearing their way for appointment as lead counsel in this case in October 2016. Dkt. 121 at 6. These contributions total 6.7% of all political contributions Hood received in 2016! While not disqualifying *per se*, such a cozy relationship certainly deserves *exploration* on behalf of absent class members owed a duty of loyalty.

"In cases where a court determines that a publicly-managed fund is the presumptively most adequate plaintiff, the court could properly require that the fund disclose any campaign contributions by the fund's choice of counsel to any elected officials possessing direct oversight and authority over the fund." *In re Cendant Corp. Litig.*, 264 F.3d 201, 270 n.49 (3d Cir. 2001). Thus, courts properly have properly "required to disclose to the Court any campaign contributions made directly or indirectly to any fundraiser or political campaign in Mississippi." *In re Diamond Foods, Inc.*, 295 F.R.D. 240, 256 (N.D. Cal. 2013).

Of course, the discovery request is not moot: Petri asks for contributions of *immediate family* of the attorneys representing MissPERS *and also employment by immediate family* within the Mississippi Attorney General's Office. Petri is unaware of any public disclosure of these connections, and if there really were public records available which identify them, lead counsel could simply produce the records. Assuming there are no such records, lead counsel should instead answer the modest question asked by Petri's proposed interrogatory and provide the *names* of such individuals.

While Petri has located a couple of family members among Jim Hood's donors, these individuals have unusual last names, and Petri has no means whatsoever to identify employment relationships. This gap of information is significant in view of the *BLB&G* complaint, where the plaintiff initially did not understand the political connection of a Mississippi attorney assigned unnecessary work—being married to an attorney in the Attorney General's Office—perhaps because the attorney had the very common surname "Martin." Dkt. 120-5 at 6. In discussing the *BLB&G* case, another court observed the relevance of connections between outside lawyers and the AG's Office:

> The alleged payments of kickbacks by the Bernstein Litowitz firm, which apparently were not denied by MissPERS and its counsel and indeed may have been solicited by MissPERS, are disappointing, at best. Such alleged payments arguably indicate a need for close review of the application to serve as counsel for lead plaintiff submitted by Bernstein Litowitz on behalf of Cambridge and MissPERS. **For example, MissPERS and/or the Bernstein Litowitz firm could be required to respond to questions from the court disclosing whether any payments have been made or are to be made to any counsel or any person or entity affiliated with MissPERS or any of the attorneys or decisionmakers in the Mississippi Attorney General's Office.**

Cambridge Ret. Sys. v. Mednax, Inc., No. 18-61572-CIV, 2018 U.S. Dist. LEXIS 207064, at *41 (S.D. Fla. Dec. 6, 2018) (emphasis added). These immediate family employment relationships are exactly what Petri seeks here, and the requested discovery is not at all moot.

Likewise, the campaign contribution portion of Petri's request is not moot. Without knowing the names of donors affiliated with lead counsel, Jim Hood's disclosures might as well be gibberish. Petri does not know all immediate family donors, which lead counsel could name easily.

Disclosure of contributions to the Democratic Attorneys General Association ("DAGA") is also relevant to evaluating Petri's request. In 2015, DAGA made contributions to ***one and only one candidate***: Jim Hood, providing him with $880,000 or 40% of his contributions that year, including a payment for $150,000 just weeks before the election—and one day after the Bernstein Litowitz firm sent DAGA $100,000. Dkt. 121 at 8. Gadow Tyler attorneys also sent $100,000 to DAGA in 2015. Plaintiffs dismisses the relevance of DAGA in a footnote (Dkt. 134 at 11 n.11), but another court found it probative and ordered broader disclosure under less extreme facts than present here:

> Nevertheless, there is a sufficient possibility that at least a portion of these contributions, though made to a national, separate organization, might eventually be provided to Attorney General Hood's political campaigns that they should have been disclosed to the Court. Indeed, DAGA provided $850,000 to Hood's 2007 campaign and $550,000 to his 2011 campaign. Accordingly, an order issued requiring plaintiff's counsel to submit a statement itemizing all contributions made to DAGA by the law firms or its members from January 2012 to the present and to provide any communications between either law firm and the Mississippi Attorney General's Office concerning any such contribution.

Diamond Foods, 295 F.R.D. at 256. The *Diamond Food* court ultimately rejected the adequacy challenges against MissPERS and its law firm in that case (Lieff Cabraser), but only after determining "It does not appear that the law firms or their individual attorneys made contributions to Attorney General Hood *after* counsel were approved by the Court in June 2012." *Id.* (emphasis in original). The same does not hold here—Bernstein Litowitz partners gave no less than $20,000 immediately prior to its appointment in 2016 and $21,800 after preliminary approval was granted just months ago. Dkt. 121 at 6. All three plaintiffs' firms have provided financial support to Jim Hood since the appointment of

lead counsel—and two of them also provided in-kind support. *Id.* at 6-7.

Finally, the "first to approach" policy of MissPERS does not render Petri's request irrelevant as plaintiffs claim. Dkt. 134 at 11. The policy allegedly requires MissPERS to select the first law firm to approach the Attorney General's Office *out of a panel of eleven qualified firms*. Dkt. 133-1 at 4. It appears that each and every firm appointed by MissPERS in a securities case is a political donor to Jim Hood. Dkt. 120-8 at 7. The policy does not eliminate the "appearance of political favoritism" as claimed (Dkt. 133-1 at 2), it simply relocates *when* political favoritism might manifest. How does a firm get to be on the panel of qualified monitoring firms? Bernstein Litowitz's undisputed history of political donations provides a strong clue. "In February 2006, Hood retained BLB&G for the first time as lead counsel for MissPERS in the Delphi Corporation securities class action 'just days after receiving $25,000 in donations' from the firm's attorneys." Dkt. 120 at 8 (quoting *Pay-to-Play and the Tort Bar*, WALL ST. J. (Oct. 31, 2009)).

Moreover, the *BLB&G* complaint suggests that potential political favoritism can occur not only at the time of selecting lead counsel, but also in the course of litigation, when politically-connected firms can be sent legal work. This is precisely why Petri requests campaign contributions and *employment* relationships with the Attorney General's Office, and also why detailed billing records have unusual importance in this case.

C. The attorney time records are relevant to demonstrate risk and protect against unnecessary and untimely billing.

Lead plaintiffs are tellingly resistant to producing their attorney time records. One would think that lead counsel would welcome an opportunity to show they acted as diligent fiduciaries of the class. Instead, they rely heavily on deflection and a technical reading of Local Rule 54.3 and accuse Petri of mischaracterizing the rule. But Petri did no such thing. He simply cited the rule in his motion with a "see also" signal and proposed a discovery request that asked for the same information "described in N.D. Illinois Local Rule 54.3(d)." Dkt. 125-2 at 5; Dkt 121 at 1. If any party has shown "an unsettling lack of good faith" on this point, it is not Petri. Dkt. 132 at 11. Lead plaintiffs don't give a good explanation as to why they should not have to provide the same information required by

Rule 54.3 in other types of settlements—information that should serve as a *floor* in the class action context. Surely, at a minimum, equivalent information should be produced where the fees will be taken out of the recovery of absent class members, who have little incentive to monitor the litigation and depend upon the Court to scrutinize their counsel's fee request. *See Reynolds v. Beneficial Nat'l Bank*, 288 F.3d 277, 279-80 (7th Cir. 2002).

Lead plaintiffs also argue that time records are not important. The time records are needed here, however, for more than "simply a 'cross-check' on the reasonableness" of the requested fees. *See* Dkt. 152 at 11. The time records will show at what stage of the case the attorneys billed large portions of time, which will give the Court insight into the risk involved in the case.[3] They also will assist in showing whether lead plaintiffs and lead counsel provided adequate representation, or whether they have continued the pattern and practice of billing misconduct and kickbacks that Petri detailed in his opening brief and objection. Only production of those records will reveal, for example, whether Gadow Tyler's work reflected the purpose for which it was retained and for which it was best situated to handle, *i.e.*, "local Mississippi matters," including "assistance with MissPERS' document collection and review, and deposition preparation," Dkt. 133-1 ¶ 14, or, whether the local firm's work is more similar to the unnecessary work alleged in *BLB&G*. The records will also reveal when Gadow Tyler performed that work and may help explain why they were not disclosed to the Court or the class until lead plaintiffs filed their motion for preliminary approval in February. *See* Dkt. 132 at 3 n.3. The declaration submitted by a Gadow Tyler partner carefully notes that the bulk of the time they spent on the case "occurred before the Parties signed the term sheet on December 6, 2018, memorializing the Parties' agreement in principle to settle." Dkt. 133-3 ¶ 5. The declaration fails to note how much

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[3] Plaintiffs assert that there was substantial risk because "no other law firm filed a securities fraud case," citing *Silverman v. Motorola Solutions, Inc.*, 739 F.3d 956 (7th Cir. 2013). Dkt. 134 at 24. But there was competition in this case, unlike *Silverman*; Pomerantz LLP sought appointment on behalf of a different plaintiff, but withdrew due to the larger loss incurred by MissPERS and ATRS. Dkt. 36. Nor was the case especially risky because Stericycle has only $52 million in cash. Dkt. 134 at 24. The company is not near bankruptcy; it has a market capitalization in the *billions* because investors know it has assets worth that amount. It's like arguing Bill Gates is not actually a billionaire because his wealth is tied up in investments rather than cash.

of their time occurred before the more relevant date of the parties' agreement in principle to settle. And, the declaration does nothing more than repeat the vague descriptions of the firm's work that "helped develop and successfully resolve" securities class actions identified by nothing more than the names of the defendants. Petri's discovery seeking the firm's usual market rates charged to paying clients can demonstrate whether the rates charged to the absent class members here are reasonable.

Additionally, the new disclosure that the Klausner firm represented St. Lucie County Fire District Firefighters Pension Fund and Boynton Beach Firefighters' Pension Fund, the investors who filed the initial complaint in this action, raises questions about the role of the firm in the litigation. Dkt. 133-2 ¶ 5. For example, what work did they perform, and when and at whose direction did they perform that work? The Deputy Director of ATRS stated his "understanding … that the Klausner firm … represented the investors who filed the initial complaint in this action," but he fails to indicate any understanding of what their work entailed or how it benefited the class. *See* Dkt. 133-2 ¶ 5. The question is especially important given the apparently close relationship between the Klausner firm and Bernstein Litowitz documented in a Forensic Investigation ("Report") of the Jacksonville Police and Fire Pension Fund commissioned by the city of Jacksonville, Florida.[4] Prior to 2017, the Klausner firm was General Counsel for the pension fund. In addition to earning attorneys' fees for legal work, it was paid 10% of fees from securities cases Klausner referred to Bernstein Litowitz. Report at 18. However, when questioned by the investigator, the fund's administrator denied the existence of a monitoring agreement with Bernstein Litowitz, contrary to Klausner's prior written representations to the trustees. *Id.* at 4. Among other things, the report concluded "Payments from BLBG to the General Counsel—who recommended BLBG for highly-lucrative securities litigation—pose a significant conflict of interest." *Id.* at 73. Klausner seems to serve an outside counsel role for at least one of the filing plaintiffs: Boynton Beach Firefighters Pension Fund.[5]

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[4] Available online on the city's website at: http://www.coj.net/departments/police-fire-pension-fund/forensic-investigation-2015/audit-findings-full-document.aspx.

[5] *See* newsletter, online at: http://bbffp.org/docs/newsletters/Newsletter_20170809.pdf; Feb. 7, 2018 minutes: http://bbffp.org/docs/minutes/minutes_20180207.pdf.

In support of their argument that "there is no need" for their time records, lead plaintiffs cite only a few cases—none of which appears to have involved the credibly-alleged billing irregularities and other abusive practices identified by Petri and subject to ongoing investigation. *See* Dkt. 132 at 10, 11. Further, lead plaintiffs are wrong that Petri is "contradicting the position his lawyers" took in *Eubank v. Pella Corp.*, a case in which neither the undersigned attorney nor CCAF was involved. *See* Dkt. 132 at 11. CCAF's founder, Mr. Frank, handled that case in connection with a private practice he formerly maintained, and requested fees after his objection and subsequent appeal resulted in the class ***tripling*** their recovery. There were no allegations of the sort involved here that required closer-than-usual review of the billing records. *See Eubank v. Pella Corp.*, No. 06 C 4481 (N.D. Ill.).

III. The personal attacks on Petri and his *pro bono* counsel are irrelevant and false.

"Courts expect—demand—responsible advocacy from members of the bar…. Lawyers who launch ad hominem attacks on the bench and their adversary bring dishonor only on themselves." *United States v. Kimberlin*, 898 F.2d 1262, 1266 (7th Cir. 1990). Despite this admonition to counsel in this Circuit, and as Petri predicted, lead plaintiffs seek to distract from the substance of his arguments by lodging *ad hominem* attacks against him—even including his family in their smears—and his *pro bono* counsel, the non-profit Hamilton Lincoln Law Institute's Center for Class Action Fairness ("CCAF"). Opp. Mem. 1 (citing Reply Br., Dkt. 134). Dkt. 134 at 1-2; *see also id.* at 4 (claiming Petri "is represented by a professional objectors' attorney").

Petri preempted many of these attacks in the Declaration of Theodore H. Frank. Dkt. 120-2 (addressing, *e.g.*, *Lonardo v. Travelers Indemn. Co.*, 706 F. Supp. 2d 766 (N.D. Ohio 2010) and *City of Livonia Employees' Ret. Sys. v. Wyeth*, 07 Civ. 10329, 2013 WL 4399015 (S.D.N.Y. Aug. 7, 2013)). As detailed therein, neither Petri nor CCAF are "professional objectors," nor is CCAF's "sole purpose … generating objections to class action settlements and constricting class action litigation." Rather, CCAF and Petri's objection seek the correct application of Rule 23 to ensure the fair treatment of class members. *See* Dkt. 120-2 ¶¶ 5, 17. As evidence of this, on multiple occasions, successful objections brought by CCAF have resulted in new class-action settlements where the defendants pay

substantially more money to the plaintiff class without CCAF objecting to the revised settlement.

With respect to lead counsel's fanciful claim that CCAF has received "millions of dollars" in corporate contributions, CCAF—which has an annual budget of under a million dollars a year—never took or solicited money from corporate donors other than court-ordered attorneys' fees prior to its October 2015 merger with the Competitive Enterprise Institute ("CEI") or since its February 2019 separation with CEI and merger into HLLI. While the much larger CEI does take a percentage of its donations from corporate donors, CCAF never allowed donors to interfere with its case selection or management during the short time CCAF was a sub-unit of CEI. Frank Supp. Decl. ¶¶ 4-6.

Lead plaintiffs' complaint that CCAF sometimes recovers reasonable, court-approved attorneys' fees where it has demonstrably provided a benefit to the class is hypocritical, when their own counsel recover (far larger) fees in a similar fashion. Despite recovering over $200 million of dollars for class members in its ten years of operation, CCAF has not requested fees in the majority of its cases or even the majority of its appellate victories. *See* Dkt. 120-2 ¶ 19. Representation that is *pro bono* means only that it will be without cost to the client; it does not preclude a request for attorneys' fees from opposing parties or a common fund. *E.g.*, *In re Primus*, 436 U.S. 412, 429-31 (1978) (ACLU and NAACP); *Blum v. Stenson*, 465 U.S. 886, 894-95 (1984) (*pro bono publico* representation not grounds for reducing attorneys' fees); Comments to ABA Model Rule 6.1 (court award of fees does not disqualify work as *pro bono*). And, whatever gripes lead plaintiffs may have about previous CCAF fee awards or fee requests, those are entirely irrelevant to the question of whether plaintiffs' pending fee request demands the closer scrutiny that Petri's requested discovery will enable the Court to provide.

In short, lead plaintiffs push a false narrative that CCAF, its founder, Ted Frank, and, by extension, Petri are opportunistic ideologues whose work cannot be relied upon. *See* Dkt. 134 at 6-7. From this flawed premise, they argue that the "background and intent" of objectors are relevant to assessing their arguments. *Id.* at 5. This argument makes little sense. An objector's motives are irrelevant to the legal merits of his objection. *See In re Fine Paper Antitrust Litig.*, 751 F.2d 562, 586-87 (3d Cir. 1984). The applicable legal rules don't somehow change depending on the reasons a class member decides to object or the identity of the person making the arguments. Courts instead are right

to hold that "the views of Objectors or their counsel on th[e] subject [of class action litigation in general] does not discredit the points they have made relating to the substance of this settlement." *True v. Am. Honda*, 749 F. Supp. 2d 1052, 1079-80 (C.D. Cal. 2010). That objectors' counsel "have represented objectors in other actions … has no greater bearing on the merits of the objections raised than a plaintiff's counsel's experience in filing class action suits speaks to the merits of the claims he brings." *Id.* But even if the background of objectors and their counsel were relevant, the unparalleled success of CCAF and its attorneys in this Circuit would be dispositive in favor of Petri's motion: if an objector whose counsel's firm has won more Seventh Circuit appeals this decade relating to class action settlements than all other objectors combined does not have sufficient credibility to have their objections fairly considered, who does? *See, e.g., Pearson v. NBTY, Inc.*, 772 F.3d 778, 787 (7th Cir. 2014) (observing that CCAF "flagged fatal weaknesses in the proposed settlement" and demonstrated "why objectors play an essential role in judicial review of proposed settlements of class actions"); *In re Subway Footlong Sandwich Mktg &Sales Practices Litig.*, 869 F.3d 551, 556 (7th Cir. 2017) (similar); *In re Walgreen Co. Stockholder Litig.*, 832 F.3d 718 (7th Cir. 2016) (sustaining CCAF's client's objection and calling for the end of the merger lawsuit "racket"); *In re Southwest Airlines Voucher Litig.*, 898 F.3d 740, 746 (7th Cir. 2018) (recognizing CCAF's significant benefit to the class; noting "this is not a case where the objector ran up a tab with minimal value added"); *Pearson v. Target Corp.*, 893 F.3d 980 (7th Cir. 2018) (reversing denial of CCAF's attempt to disgorge objector blackmail).

While Petri trusts the Court will disregard class counsel's smears, in an abundance of caution, he addresses further misrepresentations made in plaintiffs' opposition in the Supplemental Declaration of Theodore H. Frank, filed contemporaneously with this brief.

CONCLUSION

For the foregoing reasons, Petri respectfully requests that the Court lift the stay on proceedings to permit him to conduct limited discovery as set forth in his proposed interrogatories and document requests filed as Dkts. 125-1 and 125-2.

Dated: July 19, 2019

/s/ M. Frank Bednarz

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Attorney for Objector Mark Petri as trustee for the Julia Winkler Petri 2014 Trust, created under Article III, Section (D) of the Margaret Gregory Reiter 1988 Trust, created by Agreement dated June 9, 1988, as amended July 22, 1992

Certificate of Service

The undersigned certifies he electronically filed the foregoing Reply in Support of Objector Mark Petri's Motion to Lift Stay for Limited Discovery via the ECF system for the Northern District of Illinois, thus effecting service on all attorneys registered for electronic filing.

Dated: July 19, 2019

/s/ M. Frank Bednarz
M. Frank Bednarz