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October 17, 2013

Molly Dwyer, Clerk of Court
Office of the Clerk
U.S. Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

Re: *In re Magsafe Apple Power Adapter Litigation*, No. 12-15782 (consolidated w/ No. 12-15757)

VIA ECF

Dear Ms. Dwyer:

Objector-Appellant Marie Newhouse submits this FRAP 28(j) letter to advise the Court of supplemental authority.

In re Dry Max Pampers Litigation, 724 F.3d 713 (6th Cir. 2013) (attached), reversed and vacated a district court's class action settlement approval and fee award for affording "preferential treatment" to class counsel. *Id*. at 721.

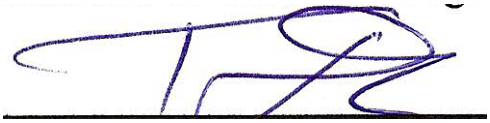
Pampers criticized the district court for not responding to the objector's objections and for a final approval order that, "[w]ith the exception of a few typographical changes, [] was a verbatim copy of a proposed order that the parties had submitted to the court before the hearing." 724 F.3d at 717. Newhouse made the same argument here. Opening Brief 39-40; Reply Brief 17-18.

Here Newhouse argued that plaintiffs cannot take credit for an Adapter Replacement Program instituted well before this action was filed. Opening Brief 26; Reply Brief 5-6. *Pampers* agreed, citing the same precedent as Newhouse, that a refund program in place "without the assistance of class counsel and without assigning away important rights" could not be counted as a settlement benefit. 724 F.3d at 719.

As Newhouse argued here, *Pampers* held that "it was the parties' burden to prove the [value of the refund program], rather than [objector's] burden to disprove it." 724 F.3d at 719; Opening Brief 24-26. As in this case, the *Pampers* district court failed to inquire into the value of such relief: it "did not even mention the refund program during the fairness hearing or in its order approving the settlement. Thus . . . the value of the refund program to unnamed class members is negligible." 724 F.3d at 719; Opening Brief 24.

Finally, *Pampers* supports Newhouse's argument of standing. *Pampers* recognizes the "economic reality" that settlement fairness includes "the manner in which [a settlement] amount is *allocated* between the class representatives, class counsel, and unnamed class members." 724 F.3d at 717. Like the successful appellant in *Pampers*, Newhouse has standing to complain of the excessive fee award because she is challenging the overall fairness of the settlement. Opening Brief 51-52; Reply Brief 24.

Respectfully submitted,



Theodore H. Frank

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Marie E. Newhouse

PROOF OF SERVICE

I hereby certify that on October 17, 2013, I electronically filed the foregoing with the Clerk of the United States Court of Appeals for the Ninth Circuit using the CM/ECF system, which will provide notification of such filing to all counsel of record, with the exception of the following counsel, whom I caused to be served by first-class mail.

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Executed on October 17, 2013

/s/ Theodore H. Frank

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