EXHIBIT 2

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION	**: No. 2:12-md-02323-AB** **:** **: MDL No. 2323** **:** **: Hon. Anita B. Brody**
THIS DOCUMENT RELATES TO: **ALL ACTIONS**	**:** **:** **:** **:**

CO-LEAD CLASS COUNSEL'S MOTION TO STRIKE
THE LATE-FILED OBJECTION OF CURTIS L. ANDERSON

Co-Lead Class Counsel move to strike the late-filed objection of Curtis L. Anderson [ECF No. 6248]. As set forth in the accompanying memorandum of law in support of this motion, Mr. Anderson's objection fails to comply with this Court's Preliminary Approval Order of July 7, 2014, and, therefore, should be stricken from the record.

Dated: October 21, 2014

Respectfully submitted,

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Co-Lead Class Counsel

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION	**: No. 2:12-md-02323-AB** **:** **: MDL No. 2323** **:** **: Hon. Anita B. Brody**
THIS DOCUMENT RELATES TO: **ALL ACTIONS**	**:** **:** **:** **:**

CO-LEAD CLASS COUNSEL'S MEMORANDUM OF LAW
IN SUPPORT OF MOTION TO STRIKE
THE LATE-FILED OBJECTION OF CURTIS L. ANDERSON

I. INTRODUCTION

Co-Lead Class Counsel submit this memorandum of law in support of their motion to strike the late-filed objection of Curtis L. Anderson [ECF No. 6248]. As set forth below, Mr. Anderson's objection was filed late and fails to comply with this Court's Preliminary Approval Order of July 7, 2014, and thus, it should be stricken.

II. FACTUAL BACKGROUND

On July 7, 2014, this Court entered its Order granting preliminary approval of the Class Action Settlement Agreement as of June 25, 2014 (the "Settlement Agreement"). Regarding objections, this Court adopted and approved the objection procedures of the Settlement Agreement with an October 14, 2014 deadline, as follows:

> The objection procedure set forth in Section 14.3 of the Settlement Agreement is approved. Written objections must be postmarked on or before October 14, 2014. The attached Long-Form Notice explains the objection procedure.

In re: National Football League Players' Concussion Injury Litig., No. 2:12–md–02323–AB, 2014 WL 3054250, at *14 (E.D. Pa. July 7, 2014) (emphasis added).

Section 14.3 of the Settlement Agreement sets forth the procedures for objecting Settlement Class Members to timely object. These procedures detail that the following must be provided by October 14, 2014:

1) a detailed statement of their objection;

2) their printed name, address, telephone number, and date of birth; and

3) the dated Personal Signature of the Retired NFL Football Player, Representative Claimant, or Derivative Claimant making the objection (not an electronic signature).

If the objecting Settlement Class Member is represented by counsel, his/her attorney must:

1) timely file a notice of appearance by October 14, 2014;

2) file a sworn declaration attesting to his or her representation of each objecting Settlement Class Member; and

3) comply with the other procedures of the section.

Settlement Agreement [ECF No. 6087], Section 14.3 (a) & (b).

Mr. Anderson, who is represented by counsel, George W. Cochran, Esq., filed his objection out of time, on October 16, 2014. The objection is nothing more than a "copy-cat" or "me too" recital of others' objections. Mr. Anderson, through his counsel George Cochran, shamelessly "adopts all timely objections previously submitted and the legal bases asserted by counsel," purportedly out of concern for "the interest of time." Anderson Objection at 1. In addition to being two (2) days late, the objection is not personally signed by Mr. Anderson. Instead, it is electronically signed, "(*Original signature to follow*)." Mr. Anderson acknowledges

that he missed "the official deadline for timely submissions," but suggests his late filing of merely cumulative objections should be excused. *Id.* Co-Lead Class Counsel disagree.

III. ARGUMENT

This Court has absolute discretion to excuse a late-filed objection under the terms of the Settlement Agreement, and as a matter of law. *See National Hockey League v. Metropolitan Hockey Club, Inc*., 427 U.S. 639, 642 (1976). This Court's discretion should be informed by several concerns of importance.

First, Mr. Anderson, through George Cochran, acknowledges his tardiness. His justification for being late is that he "only recently learned that the class notice does not accurately summarize the actual settlement." Anderson Objection at 1.[1] This tardiness, however, is likely due to the fact that Mr. Anderson's retention of (and possibly solicitation by) George Cochran did not occur until *after* the Preliminary Approval Order's deadline of October 14th. George Cochran's Declaration of retention concedes as much, as it too is dated October 16, 2014. *See* ECF No. 6248-1.

Second, George Cochran is a professional objector[2] and a habitual late filer of objections. Indeed, this is not the first time George Cochran has ignored the deadline to object in a class action settlement in the Eastern District of Pennsylvania. In the *Diet Drugs* litigation, MDL No. 1203,

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[1] As the Court is aware, the Notice program approved by this Court began immediately after the Order of Preliminary Approval issued – in July. Notice issued using first class mail, television, print media, and the internet, *e.g.*, www.nflconcussionsettlement.com. In addition to the official notice program, widespread news coverage of the settlement has and continues to occur. For Mr. Anderson to claim that he only recently learned of the settlement defies credulity.

[2] *See Devlin v. Scardelletti*, 536 U.S. 1, 21-22 & n. 5 (2002)(Scalia, J., dissenting)(noting that professional objectors are those "who seek out class actions to simply extract a fee by lodging generic, unhelpful protests.").

for example, George Cochran *never* filed of record his clients' objections. Instead, on their behalf, he moved to intervene in the litigation almost a month *after* the deadline for filing objections. Class Counsel opposed George Cochran's late-filed motion.[3] Then-Chief Judge Bechtle denied the motion. *See In re Diet Drugs (Phentermine/ Fenflura-mine/Dexfenfluramine) Prods. Liab. Litig.*, MDL 1203, PTO No. 1295 (E.D. Pa. May 8, 2000), attached hereto as Exhibit "B." *See also In re: TFT-LCD Flat Panel Antitrust Litig.*, No. 07-md-1827 (N.D. Cal.) [ECF No. 5497, at 2] (George W. Cochran acknowledges that the objection deadline was April 13, 2012, yet he filed the objection on his clients' behalf five (5) days later, on April 18, 2012), attached hereto as Exhibit "C."

Third, Mr. Anderson's objections, through George Cochran here, are at best cumulative and duplicative of other objectors, including Mr. Cochran's brother, Edward W. Cochran, also a professional objector, but one who managed to file timely his clients' objections in this case. *See* ECF No. 6213 (Objection of Cleo Miller, *et al*., filed by Edward W. Cochran, and yet another professional objector, John J. Pentz).[4] Mr. Anderson expressly adopts the objections of those who *timely* filed. As a late adopter, no new insights or perspective on the Settlement Agreement are gained by considering the objections repeated by George Cochran. Instead, the Court, the class, and Co-Lead Class Counsel are subjected to the "generic, unhelpful protests" of a professional objector who has lodged objections in an obvious attempt to extract an extortionate fee for his own self-aggrandizement.

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[3]Because these events occurred 14 years ago, only a copy of the electronic version of the opposition in MDL 1203's files is currently available, and is attached hereto as Exhibit "A."

[4]*See In re Initial Public Offering Sec. Litig.*, 671 F. Supp.2d 467, 496 n. 219 (S.D.N.Y. 2009) (citing cases characterizing Mr. Pentz as a "professional objector").

All told, there is no justification for considering these late-filed objections. The terms of the Settlement Agreement should apply, *i.e.*, by failing to comply with terms of this Court's order adopting the provisions of Section 14.3, Mr. Anderson has waived and forfeited his rights to object. Settlement Agreement, Section 14.3(d).

IV. CONCLUSION

For the reasons stated herein, the late-filed objections of Mr. Anderson should not be considered. Co-Lead Class Counsel's motion to strike the objections should be granted.

Dated: October 21, 2014

Respectfully submitted,

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Co-Lead Class Counsel

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE DIET DRUGS (Phentermine/ Fenfluramine/Dexfenfluramine) PRODUCTS LIABILITY LITIGATION	:	MDL Docket No. 1203
THIS DOCUMENT RELATES TO ALL ACTIONS	:	
SHEILA BROWN, SHARON GADDIE, VIVIAN NAUGLE, QUINTIN LAYER, and JOBY JACKSON-REID, Individually and all others similarly situated,	:	
Plaintiffs,	:	CIVIL ACTION NO. 99-20593
v.	:	
AMERICAN HOME PRODUCTS CORPORATION,	:	
Defendant.	:	

RESPONSE IN OPPOSITION TO MOTION TO
INTERVENE BY THE GEORGE W. COCHRAN OBJECTORS

I. INTRODUCTION

On April 25, 2000, the George W. Cochran objectors, i.e., Phyllis M. Rodriguez, Frances Rammage, Sherri D. Weineke, Pam Butler, Lynn Reed, Carl Wolf, Ted Doak, Sherrie Brichetto and Kim Heaton, moved pursuant to Fed.R.Civ.P. 24 to intervene as of right into the Brown litigation. As the Cochran litigants' intervention needlessly duplicates the objections and requests of other intervenors, the motion is unnecessary, as well as substantively defective.

Accordingly, class counsel respectfully request that the motion be denied.

II. FACTUAL BACKGROUND

The Cochran objectors served their motion to intervene on April 25, 2000. In their motion, the Cochran objectors suggest that on March 28, 2000 they jointly noticed their intention to appear and object to the proposed Settlement Agreement. Class counsel were never served with that alleged pleading. Moreover, the pleading does not appear on the official docket of the Court in MDL 1203. It is highly questionable whether the objection was timely, vis a vis, the March 30, 2000 deadline imposed by the Settlement Agreement and PTO No. 997. Despite these objections allegedly being filed on March 28, 2000, the Cochran objectors now seek to move to intervene pursuant to Fed.R.Civ.P. 24(a)(2) as a matter of right on the mistaken grounds that their untimely motion to intervene is necessary to preserve their standing to object.

III. ARGUMENT

A. The Cochran Objectors Can Not Satisfy the Requirements For Intervention as of Right.

In Kleisser v. U.S. Forest Services, 157 F.3d 964 (3d Cir. 1998), the Third Circuit pronounced the four criteria for intervention as of right. These four elements for intervention under Rule 24(a) are: (1) a timely application for intervention exists; (2) sufficient interests in the litigation; (3) the threat of impairment of that interest exists; and (4) inadequate representation of the applicant's interests. Id. at 969. As discussed below, these four criteria have not been met here.

First, the motion to intervene, served on April 25, 2000, less than a week before the

Final Fairness hearing is untimely. Because a significant question exists as to whether the objections by these objectors were ever properly made, to allow intervention for persons whose objections were untimely in the first instance provides no meaningful relief. Intervention for the purpose of stating an objection that is prohibited from being stated as a consequence of its untimeliness is a useless gesture. Since the objection is untimely and the motion for intervention was filed at the eleventh hour, it too should be found to be untimely. Further, because the Third Circuit does not require the intervention of objectors to present their objections at the Final Fairness Hearing or require intervention as predicate to standing by which an objector may appeal the determination of this Court following the Final Fairness Hearing, intervention is entirely unnecessary. See Bell Atlantic v. Bolger, 2 F.3d 1304 (3d Cir. 1993).

Second, class counsel assume that the factual averments that the objectors are U.S. citizens that ingested Pondimin or Redux is accurate. Accordingly, it would appear that they have an interest in the subject matter of the settlement. However, class counsel are uncertain as to whether any of these persons have opted out of the settlement or whether their counsel have other clients that are participating in the settlement in which case, a disqualifying conflict under Corn Derivatives exists. Further, since their counsel have violated PTO No. 1244, as to the obligations to provide an affidavit regarding the composite of their client base, or to provide discovery of their clients, it is unclear whether a satisfactory interest remains in the subject matter of this litigation.

Third, while the objectors correctly suggest that they will be bound by the judgment if this Court finally approves the proposed class settlement, it is not clear that any of their

interests will be impaired by the final approval of the settlement. The objectors continually refer to "their interests" as being impaired. However, they do not indicate what interests will be impaired by the settlement or how their interest will be impaired or impeded by the settlement. Indeed, because the Settlement Agreement is fair, reasonable and adequate, no meaningful interest will be impaired or impeded.

Fourth, the objectors self-serving statement that adequate representation is in question, is simply not correct. These objectors present a new twist on the adequacy requirement of Rule 23(a)(4). Under these objectors' views, although counsel may have been adequate during the litigation, or indeed during the settlement negotiations, however, once the settlement is presented for preliminary approval, counsel's adequacy is rendered doubtful because they may actually seek to have the settlement finally approved. This strange dialectic is not the law. Indeed, this Court and others have found class counsel to be adequate counsel for purposes of administering the MDL as well as presenting class claims. See PTO Nos. 6, 865, 997 and Vadino v. American Home Products Corp., No. MID-L-425-98 (N.J. Super. Jan. 26, 1999). Accordingly, class counsel are more than adequate representatives for the class.

Class counsel also suggest that to the extent these objectors feel that their claims are not being adequately presented, similar objections have been presented by a variety of other counsel, some of whom may in fact be associated with counsel for these objectors.[1] Thus, as

[1]Because of the untimeliness of the objection by the George W. Cochran objectors, class counsel never had an opportunity to take discovery of their counsel. Nor did these counsel submit their clients for depositions as required by PTO No. 1244 or provide a Corn Derivatives affidavit describing the composite of their client base. Class counsel, therefore, have no database from which to understand these Cochran objectors' motives.

other objectors are making similar presentations, the necessity for duplicative and cumulative objections such as those presented by these objectors through the form of a motion to intervene becomes all the more attenuated and unnecessary.

IV. CONCLUSION

As a consequence of these objectors inability to meet the criteria for intervention as of right, class counsel respectfully request that the motion be denied.

Dated: April 30, 2000

Respectfully submitted,
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EXHIBIT B

101331

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: DIET DRUGS (PHENTERMINE, FENFLURAMINE, DEXFENFLURAMINE) PRODUCTS LIABILITY LITIGATION	MDL DOCKET NO. 1203
THIS DOCUMENT RELATES TO:	
SHEILA BROWN, et al.	
v.	
AMERICAN HOME PRODUCTS CORPORATION	CIVIL ACTION NO. 99-20593

PRETRIAL ORDER NO. 1295

AND NOW, TO WIT, this 8th day of May, 2000, upon consideration of the motion to intervene of: Phyllis M. Rodriguez, Frances Rammage, Sherri D. Wieneke, Pam Butler, Lynn Reed, Carl Wolf, Ted Doak, Sherrie Brichetto and Kim Heaton (Document #201703), IT IS ORDERED that said motion is DENIED.

The above motion seeks intervention by class members to the nationwide class action settlement. To the extent that class members have submitted objections to the settlement pursuant to Pretrial Order No. 997, formal intervention by class members is unnecessary. Any objections properly submitted by class members pursuant to Pretrial Order No. 997 will be considered by the

court at the fairness hearing, commencing May 2, 2000. In addition, objectors and other eligible parties are already entitled to participate in discovery relating to the fairness and adequacy of the settlement without the need to intervene. See Pretrial Order Nos. 1071 and 1109. Thus, the court denies the motion to intervene.

BY THE COURT:

LOUIS C. BECHTLE, J.

EXHIBIT C

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UNITED STATES DISTRICT COURT
FOR THE NORTHEN DISTRICT OF CALIFORNIA

IN RE: TFT-LCD (FLAT PANEL ANTITRUST LITIGATION,	)	No. m 07-1827 SI
	)	**MDL No. 1827**
APPLIES TO ALL INDIRECT-PURCHASER CLASS ACTIONS	)	

OBJECTION TO SETTLEMENT AND MOTION FOR ATTORNEY'S FEES

Now come class members Geri Maxwell, Maria Marshall, Wayne Marshall and Gerri Marshall ("Objectors"), by and through counsel, and object to the proposed settlement and requested attorneys' fees. Objectors have standing to make this objection because they indirectly purchased a qualified LCD product in California from a settling Defendant during the class period. Objectors intend to attend the fairness hearing on May 18, 2012 through undersigned or associated counsel. Pursuant to the Court's Order (DE 4688), following is "a brief explanation of [Objectors'] reasons".

I. There Is Insufficient Information To Determine Whether The Proposed Settlements And Attorneys' Fees Are Fair And Reasonable.

At the fairness hearing scheduled for May 18, 2012, the Court will determine whether: (1) the proposed settlements are fair, reasonable and adequate; and (2) final judgments should be entered dismissing class claims against the settling defendants with prejudice. To exclude herself from class treatment, Objectors had to notify the Court by April 13, 2012. The same deadline applies for objecting to the fairness of either the settlement or the attorneys' fees.

Although the deadline for "opting out" or objecting has arrived, there is insufficient information available upon which to make a reasoned decision. To quote the Notice of Proposed Settlement: "*At this time, it is unknown how much each Class Member who submits a valid claim will receive.*" The notice indicates a general intent to establish a minimum award, but no commitment or figure is mentioned. Neither does it disclose the criteria for establishing a "valid" claim. How can class members decide whether to participate in a proposed settlement that doesn't even say if they will meet the standard for proving a claim?

For the same reason, Plaintiffs' "motion" for attorneys' fees is premature. Class counsel is seeking up to <u>one-third</u> of total recovery—far above this Circuit's normal ceiling—without providing any documentation to test the reasonableness of their request. When the Court approved attorneys' fees in the direct purchaser settlements, it was able to cross check the reasonableness of the request with the lodestar. Since much of the direct purchaser discovery also applies to the instant settlement, Objectors anticipate a much higher lodestar this time around. Absent full

disclosure of counsels' itemized billable hours and expenses, there is no way to gauge the reasonableness of Plaintiffs' request. Class members should not be expected to waive fundamental rights without knowing what they are signing. Because class counsel did not justify exceeding the Circuit's "bright line" test of 25%, their motion must fail.

II. What Is Known Is Enough To Deny The Proposed Settlement.

What the class notice does disclose about the settlement is enough to see it is unreasonable. Significant financial incentives to class representatives and counsel betray any pretense of adequately representing class members' claims. On top of hundreds of millions of dollars promised to class counsel, each lead Plaintiff stands to gain $15,000 if the settlement is approved. As guardian for the absentee members, the Court is duty-bound to closely scrutinize the fairness of the settlement proposed.

Upon close inspection, the settlement's blemishes stand out. The "pro rata" distribution of net settlement proceeds is probably the largest. This simplistic approach to allocating funds fails to recognize that not all state indirect purchaser laws—known as *Illinois Brick* repealer statutes—are created equal. California's legendary Cartwright Act raised the bar on consumer antitrust protection so high that most states have yet to clear it. Any litigator worth his salt would use California's statute to put the fear of God into these corporate Goliaths. That's really the only reason we are having a fairness hearing at all. In all "fairness", the settlement funds should be apportioned among class members according to the relative strength of their state protection.

Other glaring flaws in the proposed settlement include: (1) failure to establish criteria for proof of claim; (2) failure to guarantee a minimum recovery; (3) cy pres distribution of excess funds without trebling damages to successful claimants (as permitted by state statute); and (4) establishing deadlines for exclusions and objections before the motion for fees is properly supported.

III. Class Counsel's Motion For Fees Is Patently Unreasonable.

Finally, there is no way counsel for Plaintiffs can justify a fee request equal to one-third of total recovery as it currently stands. As discussed, they provide no evidentiary support to rebut the presumption that a request exceeding 25% is unreasonable *per se*. The truth is that most class settlements of this magnitude fall closer to 20%. Moreover, the litigation's complexity and risk—primary factors relied upon in the direct purchaser litigation—do not apply with equal force to indirect purchasers. For the most part, pretrial discovery obtained in the former proceeding have benefitted the latter proceeding. As a result, the indirect purchaser litigation has been far less "labor intensive". To be logically consistent with its prior analysis, the Court would apply the same factors to significantly reduce the fee awarded.

CONCLUSION

For the foregoing reasons, Objectors respectfully request that the Court:

(1) Reject the proposed settlement as presented;

(2) Refuse to enter final judgments dismissing class claims against the settling defendants with prejudice;

(3) Deny the motion for attorneys' fees as presented;

(4) Order an amended notice of proposed settlement that includes:

(i) apportioning settlement funds among class members according to relative strength of each state's indirect purchaser statute;

(ii) establishing clear criteria for proof of claim;

(iii) guaranteeing a minimum recovery for each eligible claimant;

(iv) allocating excess funds among successful claimants up to three times their initial award prior to cy pres distribution;

(v) extending "opt out" and objection deadlines until counsel's motion for attorneys' fees is properly documented.

Respectfully Submitted,
Geri Maxwell, Maria Marshall, Wayne Marshall, Gerri Marshall
By their attorney,

AUTHORIZED SIGNATURE:

George W. Cochran
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Tel: (502) 690-7012

Certificate of Service

In compliance with the Court's Order regarding service of objections, I hereby certify that a true copy of the foregoing was mailed to the following on or before April 13, 2012:

Clerk's Office
United States District Court for the
District of Northern California
16th Floor
450 Golden Gate Avenue
San Francisco, CA 94102

LCD Indirect Objections
P.O. Box 8025
Faribault, MN 55021-9425

George W. Cochran

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION	: No. 2:12-md-02323-AB : : MDL No. 2323 : : Hon. Anita B. Brody
THIS DOCUMENT RELATES TO: ALL ACTIONS	: : : :

ORDER

AND NOW, on this _____ day of _____, 2014 upon consideration of Co-lead Class Counsel's Motion to Strike the Late-filed Objection of Curtis L. Anderson, it is hereby ORDERED, ADJUDGED and DECREED that said motion is GRANTED.

BY THE COURT:

_____
Anita B. Brody, J.

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing was served electronically via the Court's electronic filing system on the 21st day of October, 2014, upon all counsel of record.

Dated: October 21, 2014

/s/ Christopher A. Seeger

Christopher A. Seeger