IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LAWRENCE E. JAFFE PENSION PLAN, on behalf of itself and all others similarly situated,	)	
Plaintiff,	)	No. 02 C 5893
v.	)	Judge Jorge L. Alonso
HOUSEHOLD INTERNATIONAL, INC., et al.,	)	
Defendants.	)	

ORDER

The Court denies in large part, and grants as to plaintiffs' estimated taxable costs under Federal Rule of Appellate Procedure 39, plaintiffs' motion for an appeal bond [2275]. Appellant McDonald is directed to post by March 8, 2017 a bond in the amount of $500 to cover taxable costs on appeal.

STATEMENT

Kevin P. McDonald, who was the sole objector to the court-approved settlement in this class action, has appealed. Before the Court is plaintiffs' motion for an order requiring McDonald to post an appeal bond pursuant to Federal Rule of Appellate Procedure 7 and the Court's inherent power to require security for the costs of suit. Plaintiffs contend in their motion that the appropriate bond amount would be $4,251,500, which comprises $4,221,000 for "lost interest" plaintiffs expect to incur from the delay in distribution of the settlement funds; $30,000 in added claims-administration costs; and $500 in estimated taxable costs, such as those incurred for copying and printing the record, that are recoverable under Federal Rule of Appellate

Procedure 39. In their reply brief, plaintiffs modify the requested bond amount to $3,089,195 to reflect a reduction in the amount of the claimed lost interest, as a result of excluding from the calculation the costs and fees awarded to Lead Counsel. (ECF No. 2288, Pls.' Reply at 1 n.1.)

The thrust of plaintiffs' motion is that McDonald should be required to post the requested bond to ensure reimbursement of the "substantial, irretrievable costs being forced upon the Class as a result of the meritless appeal." (ECF No. 2275, Pls.' Mot. & Mem. at 1.) In support of their contention that the amount should account for interest and delays in settlement administration, plaintiffs cite various decisions from other circuits in which sizable bonds were imposed in an effort to minimize the disruption of the administration of justice by serial class action objectors.

In this Circuit, however, albeit in an unpublished order, the Court of Appeals has expressed the view that interest and administration costs are not recoverable under Federal Rule of Appellate Procedure 7, explaining that Rule 7 "refers specifically and only to 'a bond . . . necessary to ensure payment of costs on appeal'" and that "[s]pecial problems related to abuse by class action objectors must be handled in other ways, primarily through a motion under Federal Rule of Appellate Procedure 38 for sanctions." *Allen v. J.P. Morgan Chase Bank, NA*, No. 15-3425, 2015 WL 12714382, at *1 (7th Cir. Dec. 4, 2015) (modifying, to $5,000, a class action objector's appeal bond where the district court had set the bond at $121,886 to cover interest and administration costs and had expressed the view that the appeal was meritless); *see also In re Navistar Diesel Engine Prods. Liab. Litig.*, No. 11 C 2496, 2013 WL 4052673, at *2 (N.D. Ill. Aug. 12, 2013) ("If the appeals in the present case are frivolous—a subject on which the Court expresses no view—then plaintiffs' remedy is to seek 'just damages' from the Seventh Circuit under Rule 38, if and when they prevail on appeal. The Court agrees with those courts that have determined that Rule 7 does not permit a district court to include in a bond damages

that the court of appeals might later award under Rule 38.") (citation omitted). This Court also declines to exercise its inherent power to require security for the requested interest and administration costs. *See Navistar*, 2013 WL 4052673, at *2 (noting that the district court's imposition of a high appeal bond could effectively preempt the appellate court's prerogative to make its own determination about the frivolousness of an appeal). And plaintiffs do not argue persuasively that there are any additional sources of authority for including such costs in the bond amount.

Although McDonald urges the Court to reject plaintiffs' motion altogether, he concedes that at most, the Court "might exercise its discretion to require security to cover the $500" in expected Rule 39 costs, but suggests that the Court need not order a formal bond because McDonald "would agree to pledge his recovery in the case, estimated at $1,734." (ECF No. 2286, McDonald's Opp'n at 15.) The Court nevertheless finds it appropriate to require McDonald to post a bond in the amount of $500, which is a conservative estimate of plaintiffs' taxable costs on appeal under Rule 39.

SO ORDERED.

ENTERED: March 1, 2017

JORGE L. ALONSO
United States District Judge