

U.S. Court of Appeals Docket No. 18-15054

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

In Re: NATIONAL COLLEGIATE
ATHLETIC ASSOCIATION
ATHLETIC GRANT-IN-AID CAP
ANTITRUST LITIGATION

SHAWNE ALSTON, ET AL., *Plaintiffs-Appellees*,

v.

DARRIN DUNCAN, *Objector-Appellant*,

v.

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, ET AL. *Defendants-Appellees*.

On Appeal from the United States District Court for the Northern District of
California

Case No. 4:14-md-02541-CW (Honorable Claudia Wilken)

**PLAINTIFFS-APPELLEES' REPLY IN SUPPORT OF MOTION FOR
SANCTIONS AGAINST OBJECTOR-APPELLANT DARRIN DUNCAN
AND HIS ATTORNEY CAROLINE TUCKER**

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INTRODUCTION

Serial objectors Darrin Duncan (“Duncan”) and his attorney Caroline Tucker (“Tucker”) are holding up the distribution of funds to well-deserving former college athletes. Despite abandoning any argument that the district court erred in granting final approval to the settlement, Duncan and Tucker continue to refuse to dismiss their appeal. There is simply no good-faith explanation for this. Plaintiffs-Appellees (“Plaintiffs”)¹ urge the Court to sanction Duncan and Tucker for their misconduct.

ARGUMENT

Duncan musters only a few paragraphs in his opposition brief (Dkt. 18;² “Opp.”) to explain why he does not believe sanctions are appropriate. *See* Opp. at 4-5. First, Duncan contends that the “idea” that “Duncan has failed to prosecute his appeal . . . cannot be further from the truth.” *Id.* at 4. Duncan’s use of hyperbole does not disguise the fact that his opening appellate brief did not contain *a single criticism* of the final approval order. *See* Opp. at 1 (“Objector does not

¹ “Plaintiffs” refers to the Plaintiffs who pursued damages claims in *In re: National Collegiate Athletic Association Athletic Grant-in-Aid Cap Antitrust Litigation*, N.D. Cal. Case No. 14-md-2541-CW. Duncan’s appeal improperly named as appellees various individuals who were not involved in the damages case upon which the appeal is based.

² Unless otherwise noted, all docket citations are to the Ninth Circuit docket in Case No. 18-15054.

deny that his appeal is focused on the [purportedly] excessive fees awarded by the district court. . . .”).³

Second, Duncan states that he “believes that while Appellees claim that their concern is for class members to receive their funds, their real motive is to try to intimidate Objector to drop his appeal.” Opp. at 4. Duncan, of course, cites no support for this statement. Far from seeking to “intimidate” Duncan, Plaintiffs have sent Tucker correspondence, requesting in a professional fashion that Duncan drop his abandoned appeal of the final approval order so that the settlement funds can be distributed to deserving class members. *See* Dkt. 15-2 at Exs. 1 and 2.

Lastly, Duncan and Tucker suggest that the sanctions request is improper because objectors can purportedly provide “value to the settlement process.” *See* Opp. at 5. However, Duncan and Tucker present *zero evidence* that they are the type of legitimate objectors who actually could add such value. For example, they do not respond to the fact that in *O’Bannon v. NCAA* (“*O’Bannon*”), Tucker attempted to extract a \$200,000 payout from plaintiffs’ counsel in exchange for dropping Duncan’s appeal. *O’Bannon*, 9th Cir. Case No. 15-16860 at Dkt. 9-2 at ¶ 3. Moreover, they fail to even address the laundry list of recent objections in

³ A full analysis of Duncan’s failure to prosecute his appeal of the final approval order can be found in Plaintiffs’ motion to dismiss/motion for summary affirmance (Dkt. 14-1) and in the concurrently-filed reply brief for those motions.

which Tucker has been involved (*see* Dkt. 15-1 at 6-7), let alone cite an objection of hers that actually improved a class action settlement.

CONCLUSION

Duncan and Tucker have abandoned their appeal of the final approval order. Despite this, they continue to hold up the distribution of settlement funds to well-deserving class members. Enough is enough. They should not be permitted to abuse the class action process. The Court should sanction Duncan and Tucker in the requested amount of \$12,880.

Dated: June 22, 2018

By: /s/ Steve W. Berman

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9th Circuit Case Number(s) 18-15054

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