

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

JAMES J. ABOLTIN, *et al.*,

Plaintiffs,

v.

JEUNESSE, LLC, *et al.*,

Defendants

Case No. 6:17-cv-01624-PGB-KRS

**MOTION OF TRUTH IN ADVERTISING, INC. FOR LEAVE TO FILE  
BRIEF AS AMICUS CURIAE IN OPPOSITION TO PROPOSED SETTLEMENT**

Amicus Curiae Truth in Advertising, Inc. (“TINA.org”) hereby moves this Court, pursuant to Rule 7, Fed. R. Civ. P., for leave to file the accompanying brief in opposition to the proposed settlement in this matter.<sup>1</sup>

TINA.org is a nonpartisan, nonprofit consumer advocacy organization whose mission is to combat the systemic and individual harms caused by deceptive marketing. One focus of TINA.org’s work is ensuring that laws protecting consumers from deceptive advertising are effectively enforced. To that end, TINA.org monitors the activities (and inactions) of government regulators and litigation brought by consumers acting as private attorneys general, and when necessary voices its opposition.

Drawing on its accumulated expertise, TINA.org is routinely permitted by courts to participate as amicus curiae in consumer class actions, commonly at the settlement approval

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<sup>1</sup> TINA.org is attaching to this motion its proposed amicus curiae brief in opposition to the proposed settlement, and its proposed notice of intent to appear at the Final Fairness Hearing, in the absence of a directly applicable Local Rule precluding the attachment of such proposed filings. *See, e.g., FTC v. ROCA Labs, Inc., et al.*, Case No.: 8:15-cv-02231-MSS-CPT (M.D. Fla. 2015) (Doc. Nos. 26 and 27); *U.S.A. v. Todd S. Farha*, Case No.: 8:11-cr-00115-JSM-MAP (M.D. Fla. 2014) (Doc. Nos.: 859 and 861).

stage. *See, e.g., Bostick v. Herbalife Int’l of Am., Inc.*, 13-cv-02488 (C.D. Cal.) May 14, 2015 Order (TINA.org granted permission to file brief opposing proposed settlement agreement over parties’ objection.). These submissions alert courts to proposed settlements that are not “fair, reasonable, and adequate,” Fed. R. Civ. P. 23(e)(2), with particular attention to injunctive relief provisions, which – notwithstanding their importance – often receive cursory considerations from parties and objectors more focused on monetary relief and fees.

These efforts, highlighting the value of effective equitable relief and identifying glaring deficiencies in proposed settlements, have prevented outcomes that would have harmed consumer “members” of putative settlement classes and improved the results obtained for them. In *Quinn v. Walgreen Co.* No. 12-cv-8187 (S.D.N.Y.), for example, the parties, responding to TINA.org’s concerns, renegotiated their settlement agreement to make injunctive relief broader and perpetual, rather than limited to 24 months; and in *Lerma v. Schiff Nutrition Int’l*, No. 3:11-CV-01056 (S.D. Cal.), Dkt. 120, 141, plaintiffs, prompted by TINA.org’s submission, sought to withdraw (and ultimately renegotiated) a settlement.

With respect to multilevel marketing (“MLM”) companies and pyramid schemes in particular, TINA.org has filed several complaints with the Federal Trade Commission (“FTC”) regarding several fraudulent marketing ventures. TINA.org’s efforts in this regard prompted the FTC to file suit for a permanent injunction against an Arizona-based pyramid scheme, a case in which TINA.org worked with the Commission, providing it with its investigation findings, as well as testimony at the preliminary injunction hearing in the District Court of Arizona. *See FTC Acts to Halt Vemma as Alleged Pyramid Scheme*, FTC Press Release, Aug. 26, 2015, available at <https://www.ftc.gov/news-events/press->

releases/2015/08/ftc-acts-halt-vemma-alleged-pyramid-scheme. TINA.org has also participated as amicus curiae at the appellate court level in a case filed against a company alleged to be deceptively luring consumers into an illegal pyramid scheme. *See Torres v. S.G.E. Mgmt., L.L.C.*, 838 F.3d 629 (5th Cir. 2016) (en banc) (Fifth Circuit, after granting TINA.org's Motion for Leave, affirmed certification of a RICO class action challenging the multilevel marketing scheme) (cert. denied *S.G.E. Mgmt., L.L.C. v. Torres*, 138 S. Ct. 76 (Oct. 2, 2017)).

TINA.org has also conducted informational congressional briefings in Washington, D.C. regarding pyramid schemes; presented at national conferences of MLM executives focusing on deceptive marketing and pyramid scheme issues; exposed industry-wide deceptive marketing tactics involving misleading income claims and illegal disease-treatment claims through its investigative reporting; and is a resource for consumers nationwide to both educate themselves and submit complaints regarding MLM schemes.

In short, TINA.org has a unique expertise in the area of MLM companies, the marketing used by them, and the impact that deceptive marketing by these MLMs has on consumers, all of which will assist this Court in better understanding the issues raised by the parties' proposed settlement. *See, e.g., Bayshore Ford Trucks Sales, Inc. v. Ford Motor Co.*, 471 F. 3d 1233, 1249 fn. 34 (11th Cir. 2006) (“[D]istrict courts possess the inherent authority to appoint ‘friends of the court’ to assist in their proceedings.”); *Florida Immigration Coal. et al. v. Mendez*, No. 09-cv-81280, Order (S.D. FL. Nov. 23, 2009) (granting nonprofit organization's motion for leave to file as amicus curiae); *Resort Timeshare Resales, Inc. v. Stuart*, 764 F. Supp. 1495 (S.D. FL. May 21, 1991) (granting motion for leave to appear as

amicus curiae, stating that an amicus participates “for the benefit of the court” and that it is “within the discretion of the court to determine the fact, extent, and manner of participation by the *amicus*.”). *See also Neonatology Assocs., P.A. v. Comm’r of Internal Revenue, et al.*, 293 F.3d 128, 132 (3d Cir. 2002) (Alito, J.) (“Even when a party is very well represented, an amicus may provide important assistance to the court. . . . Some friends of the court are entities with particular expertise not possessed by any party to the case. . . .”); *Ryan v. CFTC*, 125 F.3d 1062, 1063 (7th Cir. 1997) (Posner, J.) (“An amicus brief should normally be allowed when . . . the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.”); *Managing Class Action Litigation: A Pocket Guide for Judges*, 3d ed., Federal Judicial Ctr. 2010, at 17 (“Institutional ‘public interest’ objectors may bring a different perspective . . . Generally, government bodies such as the FTC and state attorneys general, as well as nonprofit entities, have the class-oriented goal of ensuring that class members receive fair, reasonable, and adequate compensation for any injuries suffered. They tend to pursue that objective by policing abuses in class action litigation. Consider allowing such entities to participate actively in the fairness hearing.”).

The issues presented in this settlement are of central importance to TINA.org’s work and mission.<sup>2</sup> TINA.org’s sole motivation for its filing is to provide the Court with its unique expertise and perspective as to the impact that the proposed settlement will have on the approximately 200,000 consumers that will be affected by it – a settlement that appears to provide no meaningful relief to class members but will inevitably leave defendants better off

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<sup>2</sup> TINA.org’s Motion for Leave and accompanying amicus brief are entirely independent and are not supported or motivated in any way – financially or otherwise – by any outside parties or organizations.

than if they had never been sued. In addition, now that the parties to this lawsuit have reached an agreement, they no longer have an adversarial relationship, and thus this Court can look only to objectors to illuminate any potential issues with the settlement. *See Pearson, et al. v. NBTY, Inc., et al.*, 772 F.3d 778, 787 (7th Cir. 2014) (“[O]bjectors play an essential role in judicial review of proposed settlements of class actions . . .”); *In re HP Inkjet Printer Litig.*, 2011 U.S. Dist. LEXIS 65199, at \*2-3 (N.D. Cal. June 20, 2011) (“Objectors can play a valuable role in providing the court with information and perspective with respect to the fairness, adequacy, and reasonableness of a class action settlement.”).

The attached amicus brief explains in detail why TINA.org opposes the proposed settlement and urges this Court to deny final approval of it. In short, the brief explains that the terms are unfair because it provides no meaningful benefit to consumers wronged by Jeunesse’s deceptive tactics as alleged in the operative complaint. The so-called injunctive relief is illusory – permitting Jeunesse to continue unfettered with the fraudulent scheme that forms the basis of plaintiffs’ complaint. Incredibly, the parties’ agreement does not require Jeunesse to make any substantive changes to any corporate policy now in place. Moreover, Jeunesse must only maintain this status quo for two years at most while class members are required to forfeit their legal rights forever. The proposed monetary relief fares no better as it places unnecessary and onerous hurdles in class members’ way of obtaining compensation, which will inevitably result in the vast majority of class members receiving nothing. And while the absent class members are left without fair and adequate compensation, class counsel will pocket more than a third of the Settlement Fund with leftovers being unjustly siphoned away from under-compensated class members to Jeunesse or a *cy pres* recipient.

WHEREFORE, TINA.org respectfully moves this Court for entry of an order permitting TINA.org to appear as amicus curiae in this action, deeming as filed TINA.org's proposed attached brief in opposition to the proposed settlement (attached hereto as **Exhibit 1**), and deeming as filed TINA.org's attached notice of intent to appear at the Final Fairness Hearing (attached hereto as **Exhibit 2**).

**LOCAL RULE 3.01(g) CERTIFICATION**

Though not a party to this action and merely seeking to assist the Court as amicus curiae in evaluating the proposed settlement agreement, counsel for TINA.org has nonetheless conferred with counsel for Plaintiffs and Defendants regarding the instant Motion for Leave, as well as the issues raised in TINA.org's opposition to the proposed settlement agreement. Counsel have been unable to reach an agreement on the issues raised.

Dated: November 20, 2018.

Respectfully,

By: /s/ Hal K. Litchford

Hal K. Litchford

Fla. Bar No.: 272485

Kyle A. Diamantas

Fla. Bar No.: 106916

Baker Donelson

200 South Orange Avenue, Ste. 2900

Orlando, FL 32801

Telephone: (407) 422-6600

*hlitchford@bakerdonelson.com*

*Kidmanatas@bakerdonelson.com*

*fedcts@bakerdonelson.com*

Laura Smith, Legal Director

(District of Conn. Bar No. ct28002, not admitted in Florida)

Truth in Advertising, Inc.

115 Samson Rock Drive, Suite 2

Madison, CT 06443

Telephone: (203) 421-6210

*lsmith@truthinadvertising.org*

Attorneys for Truth in Advertising, Inc.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on November 20, 2018, I electronically filed the foregoing with the Clerk of the Courts using the ECF system who will serve notice on all counsel of record.

*/s/ Hal K. Litchford* \_\_\_\_\_

Hal K. Litchford