IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

IN RE: SAMSUNG TOP-LOAD WASHING MACHINE MARKETING, SALES PRACTICES AND PRODUCTS LIABILITY LITIGATION	MDL Case No. 17-ml-2792-D
THIS DOCUMENT RELATES TO: ALL CASES	

O R D E R

Defendants Samsung Electronics America, Inc., and Samsung Electronics Co., Ltd., bring before the Court a Motion for Leave to File a Response to Plaintiffs' Response to Disclosure of Side Agreements [Doc. No. 219]. Objector John Douglas Morgan makes the same request [Doc. No. 221]. Plaintiffs oppose both motions [Doc. Nos. 220, 222].

In support of their position, Plaintiffs argue their Response [Doc. No. 218] raised no issues that need be addressed by the movants, as these have all been extensively briefed elsewhere. Movants contend Plaintiffs have mischaracterized the side agreement, misstated the law, and contorted the facts.

Throughout these proceedings, the Court has welcomed all opportunities to review adversarial briefing. But the Court agrees fully with Class Counsel that the prompt resolution of outstanding matters is to the utmost potential benefit of the class. All issues addressed in the Response have been extensively briefed. Therefore, the Court finds the movants' requests for leave should be and are hereby **DENIED**.

In a related filing, Objector Morgan takes issue with the Court's *in camera* review of Plaintiffs' detailed billing records.

Months ago, Plaintiffs moved for leave to file detailed time records under seal and *ex parte* for the Court's *in camera* review [Doc. No. 183]. The detailed time records, Class Counsel asserted, "contain confidential information relating to privileged attorney-client communications and protected attorney work-product information, including confidential strategic information about Plaintiffs' case." Motion for Leave at 1. This motion was unopposed. The Court granted leave, and detailed billing records were filed under seal and *ex parte*. Order [Doc. No. 189]. Objector Morgan subsequently filed a Motion to Strike Plaintiffs' Untimely Expert Declaration [Doc. No. 191]. In a brief footnote therein, Objector Morgan seemingly injected an untimely assertion of his right to examine the detailed billing records. Objector Morgan more explicitly renewed this request to review the detailed billing records in his Response [Doc. No. 211] to Plaintiff' Supplemental Brief [Doc. No. 206].

A district court's decision to study certain documents *in camera* or *ex parte* is reviewed for abuse of discretion. *Estate of Trentadue ex rel. Aguilar v. United States*, 397 F.3d 840, 860 (10th Cir. 2005). The practice of reviewing detailed billing records *in camera*, in the context of class action settlements, is widespread. *See, e.g., Garcia v. Tyson Foods, Inc.* 770 F.3d 1300, 1309 (10th Cir. 2014) (ruling court acted within its discretion to conduct an *ex parte, in camera* review of billing records where it allowed the responding party to obtain summaries and depose someone familiar with the billing practices); *In re Life Time Fitness, Inc., Tel. Consumer Prot. Act (TCPA) Litig.*, 847 F.3d 619, 623 (8th Cir.

2017) (affirming the approval of a settlement where "[t]he district court also reviewed in camera the itemized daily time records kept by each attorney and other legal professional who participated in representing the class and ultimately accepted those records"); *see also Acevedo v. Workfit Med. LLC*, 187 F. Supp. 3d 370, 383 (W.D.N.Y. 2016) ("Plaintiffs' counsel has provided for *in camera* review a breakdown of the costs incurred in this litigation."); *In re Flonase Antitrust Litig.*, 291 F.R.D. 93, 105 (E.D. Pa. 2013) ("Class counsel submitted copies of their time and expense records for *in camera* review."); *McDonough v. Toys "R" Us, Inc., 834 F. Supp*. 2d 329, 346 (E.D. Pa. 2011) ("[C]lass counsel submitted copies of their time and expense records for *in camera* review.").

At times, appellate courts have taken issue with district courts encouraging the parties to submit such records *in camera*:

> A pattern of withholding information likely to undermine the settlement emerged when, after approving the settlement, the district judge encouraged the solo practitioners to submit their fee applications in camera, lest the paucity of the time they had devoted to the case (for which the judge awarded them more than $2 million in attorneys' fees) be used as ammunition by objectors to the adequacy of the representation of the class.

Reynolds v. Beneficial Nat. Bank, 288 F.3d 277, 284 (7th Cir. 2002). But the Court neither prompted nor encouraged the *in camera* filing here. Objector Morgan argues, however, that once the request for release of the documents is made, to deny the request would be violative of his due process rights. Motion to Strike at 6 n.4. Objector Morgan presents no binding authority that would support this contention, and the Court can locate none. Objector Morgan, however, does cite to persuasive authority concluding that when an *in camera* review is challenged and litigated, due process requires filing billing materials of

record. *See In re: Cathode Ray Tube (Crt) Antitrust Litig*., No. 1917, 2016 WL 1072097, at *3 (N.D. Cal. Mar. 17, 2016) (collecting cases where *defendants* make such a request). The Court notes that persuasive authority arriving at an opposite conclusion also exists, and that Objector Morgan's request is untimely and directly in conflict with the position he has taken throughout this litigation.

The Second Circuit found that, "whether to grant objectors access to billing records is a matter within the district court's discretion." *Cassese v. Williams*, 503 F. App'x 55, 58 (2d Cir. 2012*); In re Pall Corp. Class Action Attorneys' Fees Application*, No. CV 07-3359 JS GRB, 2013 WL 1702227, at *4 (E.D.N.Y. Apr. 8, 2013) (adopting a report and recommendation and noting that "though objectors' counsel argues that it should be provided with the contemporaneous time records, Judge Seybert correctly rejected this application").

The Court sees no need to resolve the constitutional question raised by Objector Morgan. Nevertheless, important policy considerations compel the Court to rule in Objector Morgan's favor. Having reviewed the detailed time records *in camera*, the Court finds it unnecessary to completely shield them from the public. In its discretion and in the interest of transparency, the Court finds Objector Morgan's request to inspect the detailed billing records should be and is hereby **GRANTED**. *See Yamada v. Nobel Biocare Holding AG*, 825 F.3d 536, 545 (9th Cir. 2016); *AIG Annuity Ins. Co. v. Law Offices of Theodore Coates, P.C., No*. CIVA07CV01908-MSKMJW, 2009 WL 728462, at *1 (D. Colo. Mar. 18, 2009).

To echo the Court's conclusions above, the prompt resolution of this matter is in the best interest of the class; the Court will not entertain endless ancillary litigation.

IT IS THEREFORE ORDERED that Samsung, New Jersey Counsel, and Objector John Douglas Morgan disclose the full terms of any side agreements that they have reached during the pendency of this litigation—including all payments made or to be made by Samsung, on its behalf, or at its behest—by February 12, 2020. No further briefing on this issue will be allowed.

IT IS FURTHER OREDERED that Plaintiffs are to file of record their detailed time records and provide a copy to Objector Morgan by February 12, 2010. These records should be redacted to remove only privileged information, so they can be inspected by opposing parties. A privilege log must be produced explaining the grounds for any redactions to the time records.

IT IS FURTHER OREDERED that Objector Morgan may file a brief presenting objections he might have concerning the fairness and reasonableness of Plaintiffs' fee request. This brief must be limited in scope to Objector Morgan's review of those time records. The brief may be no longer than ten (10) pages and must be filed by February 19, 2020.

IT IS FURTHER OREDERED that Plaintiffs may respond to Objector Morgan's brief on the detailed time records by February 26, 2020. The response must be limited in scope to address any issues raised in Objector Morgan's brief and must be limited to ten (10) pages in length.

IT IS FURTHER OREDERED that Objector Morgan may file a reply no longer than five (5) pages by March 2, 2020.

Sur-replies will not be allowed, and further motions for extensions of time will not be entertained, absent compelling circumstances. Late filings will not be considered. Any filings or briefs not in compliance with this Order shall be stricken.

IT IS SO ORDERED this 29th day of January, 2020.

TIMOTHY D. DeGIUSTI
Chief United States District Judge