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Objector and absent class member

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

IN RE PLAID INC. PRIVACY LITIGATION:	Master Docket No.: 4:20-cv-03056 DMR
THIS DOCUMENT RELATES TO: ALL ACTIONS.	OBJECTION AND NOTICE OF INTENTION TO APPEAR

Date:	May 12, 2022
Time:	1:00 p.m.
Ctrm:	Videoconference
Judge:	The Hon. Donna M. Ryu

CLASS MEMBERSHIP

I am a class member in the above referenced case. My notice ID is PLD1036874260. My confirmation code is 72089AF62D. I submitted a claim on January 30, 2022, at 6:01:46 AM. My contact information is listed in the caption. This is sufficient evidence of class membership. I intend to appear at the fairness hearing.

OBJECTIONS

STRUCTURAL PROBLEM WITH NOTICE AND JURISDICTION

The Notice is misleading and violates due process. This implicates jurisdictional concerns. See*, Molski v. Gleich*, 318 F.3d 937 (9th Cir. 2002). Here, the notice implies, erroneously, that the judge overseeing this case is an Article III judge, when she is not. See, Notice, § 26 ["Please check www.PlaidSettlement.com, or Judge Donna M. Ryu's Calendar [website link for federal court omitted here] for any updates about the Settlement and Final Approval Hearing"]. In fact, the Notice should have indicated "Magistrate Judge," and not "Judge." There is a case out of the Seventh Circuit directly on point: *Williams v. GE Capital* 159 F.3d 266, 269-270 (7th Cir. 1997).

"Alternatively, the unnamed class member could try to show in a collateral attack that the decision to proceed before a magistrate judge was a matter on which there was a potential (or, in the light of the fully developed record, an actual) significant intra-class conflict and that the notice the absentee received was inadequate to inform her of this conflict. [**citations omitted here**]. "In this case, the 'Notice of Pendency of Class Action, and Notice of Proposed Settlement and Hearing Thereon' that went to the unnamed Williams class members clearly indicated that the lawsuit was before 'Magistrate Judge Joan H. Lefkow.' Due process requires no more."

Here, class members were not put on sufficient notice of the Court's status within the constitutional system; and suggested, wrongly, that it was an Article III court.

The issue is important. In 1968, Congress enacted the Federal Magistrates Act to enhance judicial efficiency in the federal courts. Since then, some judicial functions delegated to magistrate judges have been challenged on constitutional grounds: while federal district judges, appointed pursuant to Article III of the United States Constitution, are protected with life tenure and undiminishable salary, thereby enhancing judicial independence, federal magistrate judges, appointed pursuant to Article I, have no such protection.

While a Magistrate Judge plainly has the authority to determine the fairness of a proposed settlement with the consent of the named parties, one reason the district court should consider voiding a reference to a magistrate *sua sponte* is where the rights of numerous parties not present before the court might be affected by the decision. See, *Pacemaker Diagnostic Clinic of America v. Instromedix*, Inc., 725 F.2d 537, 545 (9th Cir. 1984) (*en banc*)(Kennedy, J.)(one reason district court should consider voiding a reference to a magistrate sua sponte is where "rights of numerous parties not present before the court might be affected by the decision"). Here, the reference should be voided due to the problem with the Notice and because of the magnitude of the class. It is claimed that the Settlement Class includes approximately 98 million consumers.

Parties consenting to allow a magistrate judge to hear a civil action deprive Article III judges of the essential attributes of judicial power. In light of inaccurate notice, the case should be referred to an Article III judge, precisely as the notice contemplates. Williams notes, “It may also be open to the unnamed class members to present such an argument directly to an Article III judge of the district court; because the record does not indicate that the plaintiffs made any effort to do so here, we offer no definitive view on the matter.” *Williams,* at 270. As such, I specifically request that this matter be referred back to an Article III judge for evaluation of fairness under Rule 23.

<u>THE PLAID PORTAL PROVIDES VALUABLE CONSIDERATION AND THE PROPOSED SETTLEMENT SHOULD BE APPROVED</u>

Given that individual recoveries are likely not going to be significant, the portal is one aspect of the overall compensation to be provided the class that is most exciting. It is an important aspect of the settlement but receives very little description in the Settlement Agreement and minimal discussion in the briefs. The portal to some extent appears to be a work in progress and is evolving. This is reasonable because the portal must be dynamic to keep class members' interest. If the Court overrules my initial objection, I support approval of the proposed settlement.

In fact, the concept of the portal provides valuable consideration to the class. However, the parties should continue to enhance the user experience and stipulate that the portal and the primary features offered through it are always available free of charge to class members. Plaid should also not be allowed to use the portal to, for example, bombard class members with marketing materials from third parties or to sell services. Its primary purpose must be informational. Apart from the availability of the portal free of charge, the Court and the settling parties should resist the urge to place requirements on the portal as this might disrupt what should be continual enhancements to the user experience. This would damage what appears to be a genuine effort to provide meaningful information to class members.

HERRERA KENNEDY LLP HAS INFLATED RATES AND DUPLICATED THE WORK

The parties seek a benchmark award. But the lodestar cross check reveals a substantial multiplier, well excess of 3. This excessive multiplier is based on already, very high hourly rates and utilization of timekeepers in place of lower cost associates to handle much of the work.

Herrera Kennedy LLP's fees are simply in outer space. Moreover, Herrera Kennedy LLP duplicated the work of LCHB and Burns Charest. There was simply no underlying reason for Herrera Kennedy LLP's extensive involvement in this case when the class was already more than adequately represented by LCHB and Burns Charest. This is underscored because Herrera Kennedy LLP evidently retains no modest timekeepers who were capable of performing routine litigation tasks not requiring billings at $825 per hour and greater.

The lowest cost timekeeper at Herrera Kennedy LLP is $825 per hour. Meanwhile, at LCHB, the firm appropriately used a mix of timekeepers, presumably based on the type of work required. For example, there is a timekeeper listed at $370 per hour. Burns Charest is similar to LCHB. While Burns Charest lists a $1,000+ hourly rate for Warren Burns, his billings, along with other timekeepers, is, appropriately, modest. Burns Charest also had mixed timekeepers with rates as low as $325 per hour. The captain(s) of the ship should have high rates; but not if they are rowing.

Quite frankly, the class would have been better served by simply appointing LCHB and Burns Charest as the class attorneys and firing everyone else from Herrera Kennedy LLP. There is little question that LCHB could have handled this case on its own. LCHB is already more than adequate and had Burns Charest further augmenting them. It is unclear what distinct services were required to be performed by Herrera Kennedy LLP or why class members should be compelled to pay its artificially high rates when they already had outstanding attorneys representing them and charging reasonable fees.

I take no issue with the fees requested by LCHB and Burns Charest. However, I dispute the rates used by Herrera Kennedy LLP and their failure to use lower cost timekeepers. What is particularly untoward is that Herrera Kennedy LLP is using inflated rates that may result in class attorneys at LCHB and Burnest Charest receiving less compensation. Had more modestly priced timekeepers been properly utilized by Herrera Kennedy LLP, it is plain the true multiplier here is upwards of 4 plus. This is too much.

March 3, 2022

steven helfand
Steven Helfand
Objector and absent class member

PROOF OF SERVICE

A copy of this objection was furnished to the Court by One Legal on March 3, 2022. The address for the Court is: Clerk of Court, United States District Court for the Northern District of California, 1301 Clay Street, Oakland, CA 94612. This objection was sent electronically to the aforementioned:

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I declare that this declaration is executed under penalty of perjury under the laws of the United States of America on March 3, 2022.

steven helfand
Steven Helfand
Objector and absent class member