

Consolidated Appeals
Nos. 07-56643, 07-56645, 07-56646,
07-56647, 07-56649, 07-56650, and 07-56651

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

RYAN RODRIGUEZ et at., Plaintiffs-Appellees

and

WEST PUBLISHING CORPORATION, A MINNESOTA CORPORATION
d.b.a. BAR/BRI et al., Defendants-Appellees
vs.

GEORGE SCHNEIDER, et al., Objectors-Appellants

Appeal From Judgment Entered By
The United States District Court, Central District of California,
Manuel Real, District Court Judge
District Court Case No. CV-05-03222

**REPLY BRIEF OF OBJECTORS-APPELLANTS JAMES JURANEK,
AUDREY JURANEK AND RICHARD P. LEBLANC**

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TABLE OF CONTENTS

I. *The Juranek Appellants’ Objections Are Hardly “Pro Forma”* 1

II. *Class Representatives Overstate the Significance That
“Just 27 Class Members” Have Filed An Appeal.* 2

III. *The Objection to the Cy Pres Provision Is Not “Moot”* 3

I. *The Juranek Appellants' Objections Are Hardly "Pro Forma."*

Class Representatives accuse the Juranek Appellants of making “mostly *pro forma*” objections “in an effort to justify an award of attorneys’ fees.” (Brief of Plaintiffs-Appellees at 3.) However, aside from the obvious fact that the Juranek Appellants *never made a request for attorneys’ fees with the trial court* (in contrast with the other appellants), their objections—including the central objection that the district court approved a settlement in the face of an actual conflict of interest between Class Representatives and the Class, without explanation as to how the settlement was fair despite the conflict—are not at all “*pro forma*.”

In this case, the district court held that five of the seven class representatives, including all three class representatives who attended the mediation which produced the settlement agreement, had an “actual manifestation of conflicting interest” because they entered into an improper fee-sharing arrangement with Class Counsel. E.R. 142-169, 58-68.¹ The district court also held that the Incentive Agreements between Class Counsel and Class Representatives (1) were inappropriate and contrary to public policy, E.R. 27; (2) led to an improper request by Class Counsel for a contractually-obligated incentive award that was not reflective of the factors courts consider in granting incentive requests, E.R. 59; (3) created the appearance of

¹ The brief submitted by Class Counsel refers to the Excerpt of Record as being “filed by Appellants David Feldman, Cameron Gharabiklou, Emily Grant, Jeff Lang, Sarah McDonald, Cara Patton, Rachel Schwartz and Greg Thomas.” (Brief of Plaintiffs-Appellees at 1 n.1.) That is incorrect. The Feldman *and* Schneider *and* Juranek Appellants jointly filed one Excerpt of Record in an effort to streamline the appellate record.

impropriety between Class Counsel and Class Representatives, E.R. 60; (4) failed to correlate the amount of the incentive request to a reasonable forecast of costs or risks Class Representatives would incur, E.R. 61; (5) were a violation of the California Rules of Professional Conduct's prohibition on fee sharing, E.R. 61-64; (6) amounted to an improper "bounty payment," E.R. 64-66; and (7) created an "actual manifestation of conflicting interest" between Class Representatives and the unnamed Class Members, E.R. 66-68. Class Representatives cannot truly believe that those facts exist in every appeal of a class action settlement, or that objections based on them are merely "form objections."

II. Class Representatives Overstate the Significance That "Just 27 Class Members" Have Filed An Appeal.

In the district court, Class Representatives argued that the settlement enjoyed "overwhelming class support" because "only 54 Class Members have submitted objections," and this argument was adopted by Judge Real. E.R. 101. They now argue that "just 27 Class Members" object to the settlement on appeal. (Brief of Plaintiffs-Appellees at 3.) Thus, according to Class Representative, this is evidence that the settlement enjoys "overwhelming" Class support.

However, as the district court itself recognized, the improper Incentive Agreements between Class Representatives and Class Counsel were "never disclosed to the class." E.R. 67 (emphasis added). "In fact," according to Judge Real, "although apparently the Incentive Agreement was provided to Defendants in

April of 2006, no one informed the Court of the Incentive Agreement until well after the Preliminary Approval Hearing [and after the deadline for class members to object to the settlement had passed], when the incentive award requests were made.”

Id.

Given that the notice of settlement did not contain a provision stating that the named Class Representatives had entered into an improper Incentive Agreement which obligated Class Counsel to seek a \$75,000 incentive fee on their behalf—and that Class Representatives risked losing that incentive award by not agreeing to the settlement—the absence of more objections is not evidence of “approval” of the settlement.

III. *The Objection to the Cy Pres Provision Is Not “Moot.”*

West and Kaplan argue that even if the *cy pres* provision rendered the settlement unfair, “the point has been rendered moot.” (Brief of Defendants-Appellees at 55.) The only record evidence cited by West and Kaplan to support this argument is the affidavit of Richard Sartory, a Senior Project Administrator for the Claims Administrator, Complete Claim Solutions, LLC.

However, in his affidavit, Mr. Sartory merely “estimates” that there will be no funds left when all of the claims are processed, because it is impossible to determine at this point whether all of them are “Authorized Claims (i.e., not duplicative, signed by the appropriate Class Member, for a Bar Review Course within the Class Period, identifying the correct amount paid for the Bar Review Course, etc.) . . .” (Defs.’

SER at 221-22, ¶¶ 13-14.) Moreover, Judge Real expressly *refused to adopt Mr. Sartory's "estimate" as a finding of fact.* (E.R. at 128-29.) Thus, the *cy pres* objection is not moot and should be addressed by this Court.

Dated: June 16, 2008

Respectfully submitted,

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