

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

Consolidated Appeals

Nos. 07-56643, 07-56645, 07-56646, 07-56647,
07-56649, 07-56650, 07-56651, and 07-56833

RYAN RODRIGUEZ, et al.,
Class 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 (R)

**SETTLING PLAINTIFFS-APPELLEES'
MOTION TO EXPEDITE ORAL ARGUMENT
(CIRCUIT RULE 27-12)**

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Settling Plaintiffs¹-appellees (the “Movants”) seek a hearing on an expedited basis for the consolidated appeals from the (1) Final Order and Judgment Approving Settlement (FER 1-24)² and (2) Order Granting Class Counsel Attorneys’ Fees and Reimbursement of Expenses (FER 24-30). The appeals have been fully briefed.

Under Circuit Rule 27-12, a motion to expedite may be granted for good cause. Good cause exists here because delay in hearing and resolving the appeals will (1) cause many Authorized Claimants be deprived recovery, and (2) increase the administration costs of the Settlement, thereby reducing the amount of money available for distribution to the Authorized Claimants.

The Movants have been advised that no party to this appeal opposes this motion.

¹ Unless otherwise stated, all capitalized terms have the same meaning as set forth in the Stipulation and Settlement Agreement, dated February 2, 2007 (“Settlement Agreement”).

² “FER __” refers to the Excerpts of the Record filed by Appellants David Feldman, Cameron Gharabiklou, Emily Grant, Jeff Lang, Sarah McDonald, Cara Patton, Rachel Schwartz and Greg Thomas (“Feldman Appellants”).

II. BACKGROUND

The appeals relate to a \$49 million Settlement of a nationwide antitrust class action. Twenty-six (26) Class Members³ (less than 0.1%) out of a Class of approximately 300,000 purchasers of BAR/BRI bar review courses have pursued these appeals.

The Settlement was reached after almost two years of arduous litigation and with the assistance of the Honorable Daniel Weinstein (Ret.). The Settling Parties negotiated a Settlement of the Action, which alleged violation of federal antitrust laws.

The principal terms of the Settlement are: (1) termination of the marketing agreement between BAR/BRI and Kaplan (the catalyst for this antitrust lawsuit); (2) requiring BAR/BRI to include specific notice to students of their right when locking in a price for a BAR/BRI bar preparation course; (3) an express commitment by BAR/BRI to comply with fair advertising laws; and (4) \$49 million.

The Settlement addresses the conduct that gave rise to this Action, and compensates Class Members with cash for a substantial portion of their overcharges.

³ One appellant (Oliver Gutierrez) voluntarily dismissed his appeal as of May 22, 2008.

The Settlement was approved in a certified nationwide class action consisting of approximately 300,000 members. The Notice relating to the Settlement was mailed to approximately 376,000 potential Class Members on April 5, 2007, and the Summary Notice relating to the Settlement was placed in national newspapers, magazines, and on the internet in April and May 2007.

The Settlement has broad support from the Class. As of October 1, 2008, the Complete Claim Solutions, LLC ("CCS"), the Claims Administrator, received approximately 88,000 Claim Forms. See Declaration of Thomas R. Glenn ("Glenn Decl." or "Glenn Declaration") submitted herewith at ¶ 5. Appellants, by contrast, represent just 26 Class Members – less than one tenth of one percent (0.1%) of the Class.

The Settlement administration process is now at a point where (1) the Claim Forms have been fully processed, (2) those Claim Forms which the Claims Administrator have deemed to be deficient are in the curing phase, and (3) a distribution of the Net Settlement Fund could be made to Authorized Claimants as early as December 2008. See Glenn Decl., ¶ 6.

**III. GOOD CAUSE EXISTS TO EXPEDITE THE HEARING
TO AVOID FORFEITURE OF CLAIMS AND
INCREASED EXPENSE TO THE CLASS**

**A. Delay in Distribution Will Result in Loss of Recovery
by a Large Number of Authorized Claimants**

Once class members receive notice and file claims, it is important to keep them “connected” to the claims administration process to insure they can receive payment on their claims. Here, as explained in the Glenn Declaration connection is lost with Authorized Claimants over time as they fail to provide updated information after moving (changing addresses and phone numbers) or changing names, through marriage or otherwise. *See* Glenn Decl., ¶¶ 8-9.

This slow process of attrition grows worse the larger the class and the longer appeals take to resolve. During the initial mailing phase of this administration, approximately 32,000 undeliverable Notice and Claim Forms were received by CCS. *See* Glenn Decl., ¶ 8. CCS was able to locate approximately 22,500 updated addresses (70%), leaving 9,500 potential Class Members that did not receive a mailed notice. *See id.* This 70% success/update rate is typical in consumer-type administrations. *See id.*

Moreover, according to the United States Census Bureau, approximately 25% of the U.S. population in the 20-39 age group moved in 2006-07. *See* Glenn Decl., ¶ 9. Given the nature of the class in this Action, the vast majority of Authorized Claimants fall into this category. *See id.* Applying this percentage to the approximate 88,000 Claim Forms filed in this Settlement, it can be estimated that 22,000 Class Members that have filed a Claim will move annually, and of that 22,000, only 15,400 (70%) will be locatable through updated addresses, resulting in a substantial number of claimants who will not receive a distribution check. *See id.* The greater the length of time between the receipt of the claim and the actual distribution date, the greater the number of distribution checks that will fail to reach the claimants. *Id.*

It has already been a year since the Claim Form deadline expired. Statistically, there are over 6,000 claimants whose recovery is in jeopardy. The longer the appeals process continues, the larger that number will grow. In fact, if the hearing on the appeals is scheduled in the normal course, it is likely that the number will exceed 12,000. Movants seek to avoid such inevitability, or at least keep it to a minimum by expediting the hearing on these appeals.

**B. Delay in Distribution Will Result in Increased Costs
Borne by the Class**

As evidenced by delays in administration of similar class action settlements, the delay not only deprive a significant number of Class Members from their recovery, but will also necessarily impose costs on the Class. *See* Glenn Decl., ¶¶ 11-20. Indeed, as every notice of address change or name change that is received (an estimated 15,400 per year) must be processed by the Claims Administrator, a cost that will be borne by the Class as a whole, decreasing the amount available for distribution to Authorized Claimants. *See* Glenn Decl., ¶¶ 9, 10, 13.

In addition, other costs will continue to accrue until the affirmance of the Settlement becomes final. Included in this amount are costs for such items as maintaining a P.O. Box, maintaining a toll-free number for claimants to call with questions, answering additional telephone calls, processing additional correspondence, including status requests, responding to e-mails, maintaining the www.barbri-classaction.com website, warehousing documents, calculation and payment of quarterly tax payments, and various administrative tasks. *See* Glenn Decl., ¶13.

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