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CLASS ACTION & MDL roundup

QTR 2 | 2024

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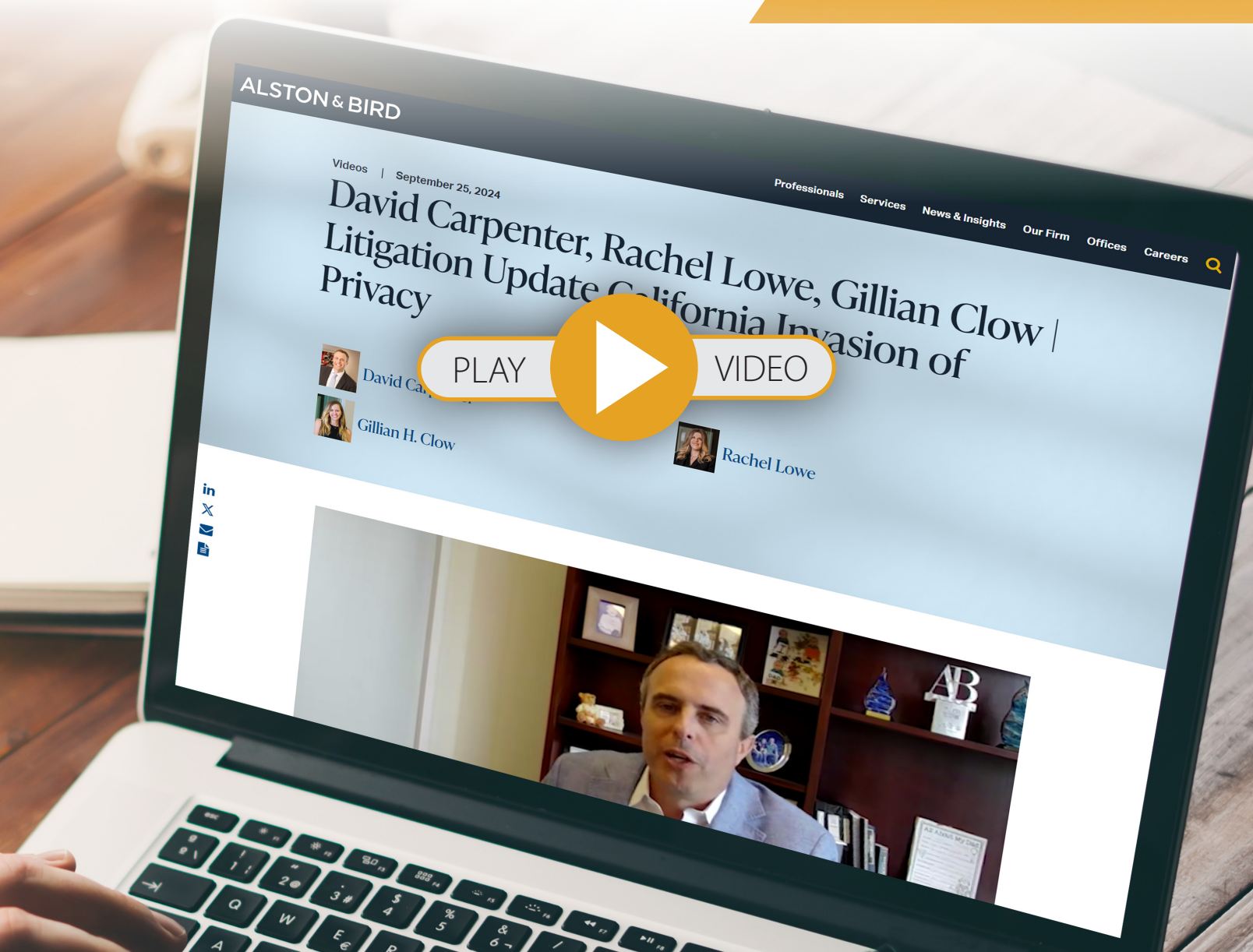
overview

video highlight

LITIGATION UPDATES ON THE CALIFORNIA INVASION OF PRIVACY ACT

Partners David Carpenter and Rachel Lowe and senior associate Gillian Clow discuss developing trends touching on the California Invasion of Privacy Act and what is on the horizon at the intersection of class action and privacy litigation.

Watch the video on alston.com



CLASS ACTION & MDL roundup

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Where the (Class) Action Is

Welcome back to the *Class Action & MDL Roundup!* This edition covers notable class actions from the first quarter of 2024.

Starting off across the pond, we continue to monitor litigation developments in the United Kingdom, including a case in the Court of Appeal weighing in on whether multiple claimants can bring claims in one claim form. Making a jump over to Oklahoma, more than 20,000 growers of broiler chickens won class certification in this ongoing antitrust litigation that has impacted many companies in the food and beverage industry. In addition to antitrust litigation, food and beverage companies are in the hot seat on the consumer protection front as more cases concerning "all natural" labeling make their way to the courts with no sign of slowing down.

Data breaches are making headlines across the world as privacy concerns are top of mind in our digital age. The cases seem to get bigger and bigger each quarter with more at stake for the companies involved. In this edition of the *Roundup*, we cover a monumental data breach litigation case whose plaintiffs sought certification of a nationwide class of the 1.5 billion individuals whose data was exposed.

We wrap up the *Roundup* with a summary of class action settlements finalized in the second quarter. We hope you enjoy this installment and, as always, welcome your feedback on this issue.

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International

- **UK: Legislation to Restore Litigation Funding Agreements on Hold**

  Litigation Funding Agreements (Enforceability) Bill.

  The Litigation Funding Agreements (Enforceability) Bill was introduced to Parliament on 19 March 2024 to reverse the effect of the UK Supreme Court decision of *R (PACCAR) v Competition Appeal Tribunal*. That decision held that litigation funding agreements under which the funder receives a share of damages constitute damages-based agreements that must comply with applicable restrictive regulations. The *PACCAR* decision caused widespread uncertainty in the UK litigation funding market and led to the invalidation of many existing litigation funding agreements, including those funding collective actions.

  However, the bill did not become law ahead of the UK general election on 4 July 2024, and it remains to be seen whether the new government will take steps to pass equivalent legislation. For the moment, the *PACCAR* decision remains in force.

- **UK: Court of Appeal Confirms Test for When Multiple Claimants Can Bring Claims in One Claim Form**

  Morris v Williams & Co Solicitors (A Firm) [2024] EWCA Civ 376.

  One of the mechanisms by which multi-party claims can be pursued in England & Wales is through the issue of a single claim form in one set of proceedings with multiple joint claimants. This is in contrast to other forms of collective proceedings such as those brought by group litigation order (GLO) or by a representative claimant with the 'same interest' as the other claimants.

  The test for whether multiple claimants can use a single claim form to start all claims is whether each of the claims can be 'conveniently disposed of in the same proceedings'. The test is different to the narrower test that was in place previously, which required 'common questions of fact or law' to be present.

  In *Morris*, 132 claimants brought an action in professional negligence against a firm of solicitors related to investments made in failed development projects. The claimants did so with one claim form, which the defendant sought to strike out because it did not meet the requirements for multiple claims to be brought in one claim form.

The Court of Appeal held that the claims could proceed in one claim form and rejected the arguments of the defendant. The correct test was one of 'convenience'. There was no basis to add a gloss to that test (for example by asking whether the commonality between claims was sufficiently significant to mean that its determination would represent 'real progress' in the final determination of each claim). On the facts of this case, it so happened that common questions of law and fact did arise – the broader test of convenience was therefore satisfied.

The Court of Appeal did however make three further points of note:

1. In every case commenced by multiple claimants in a single claim form, the parties ought to consider whether the GLO procedure would be more appropriate. The GLO will specify the common issues of fact or law that are raised by the various claims, and there is the flexibility for multiple solicitors to act for different claimants under the framework of a GLO.
2. Multiple claimant actions should be subject to active case management to ensure full procedural fairness to defendants. For example, when rules that limit the volume of early disclosure did not effectively translate to multi-party claims, the position ought to be actively managed by applications to the court.
3. While recognizing that the convenience test was broader than a test based on whether there were common questions of fact or law, the Court of Appeal suggested that the rule ought to be revisited to consider whether the previous test ought to be reinstated.

UK: Costs Management of Large Group Litigation

Pan NOx Emissions Litigations [2024] EWHC 1728 (KB).

A three-day costs management hearing took place in June 2024 for the Pan NOx emissions group litigation, which is proceeding via multiple GLOs in the UK. The hearing assessed the claimants' and defendants' costs budgets for the next phases of the litigation. The budgeted legal costs were for significant amounts, running to many hundreds of millions of pounds. The court significantly reduced the costs budgets because they included unreasonable and disproportionate amounts. The case serves as a reminder that the courts will not give the parties a blank cheque to recover unfeasibly large costs simply because of the nature and size of the group litigation. ■

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Antitrust / RICO

Benchmark Approach Misses the Mark

Series 17-03-615 v. Express Scripts Inc., No. 3:20-cv-50056 (N.D. Ill.) (Apr. 26, 2024). Judge Johnston. Denying motion for class certification.

The district court denied a bid to certify classes of direct and indirect purchasers who allegedly paid supracompetitive prices for Acthar, a drug used to treat lupus and infantile spasms, finding the third-party payor's proposed damage model impermissibly relied on industry-wide growth, as opposed to factors specific to Acthar. The payor's expert proposed comparing actual prices to but-for prices using the "benchmark approach" by inflating the pre-conspiracy wholesale acquisition cost of the drug based on the growth in the pharmaceutical industry as a whole (as reflected in the pharmaceutical producer price index, or PPI). The court rejected this approach, finding that the expert's reliance on industry-wide growth was "fundamentally unreasoned" because he provided no analysis establishing that the drugs composing the PPI were roughly similar to Acthar compared with the characteristics that would primarily determine pharmaceutical prices.

Broiler Growers Win Class Cert Game of Chicken

In re Broiler Chicken Grower Antitrust Litigation No. II, No. 6:20-md-02977 (E.D. Okla.) (May 8, 2024). Judge Shelby. Granting motion for class certification.

An Oklahoma federal court certified a proposed class of 24,354 growers of broiler chickens on claims that Pilgrim's Pride and other co-conspirator poultry companies impermissibly suppressed grower compensation, concluding that its claims would stand, or fail, based on evidence common to the class. The growers contended that Pilgrim's Pride and other poultry companies serving as "integrators" in the poultry production process suppressed grower pay by entering into a gentlemen's agreement not to poach one another's growers and by sharing competitively sensitive pay information. In opposing class certification, Pilgrim's Pride argued the growers could not show that the class members were impacted by the alleged conspiracy with common evidence because the market for grower services was hyper-localized and there was wide variance in grower pay. The court disagreed, finding that Pilgrim's Pride's argument presented a question of fact that will be proven or disproven through evidence common to the class: if the evidence showed that the market is not nationwide, that would be common to the class and the growers' claim would fail.

Practicable Joinder Case Delivers Good Practice Pointer

In re Lipitor Antitrust Litigation, No. 3:12-cv-02389 (D.N.J.) (June 6, 2024). Judge Sheridan. Denying motion for class certification.

The district court declined to certify a class of direct purchasers of Lipitor on claims alleging that an agreement between the defendants led to the restraint of generic Lipitor competition because it determined the direct purchasers had failed to demonstrate the impracticality of joinder under the relevant factors – even if the class was big enough to meet the traditional benchmark of 40 for numerosity, as the direct purchasers contended. For example, the direct purchasers focused on the cost of individual litigation but did not show that their claims would be worth less than their shared costs in a joined action, and more than 60% of the proposed class members had at least $1 million in prospective damages. According to the court, the direct purchasers' showing did not justify "the extraordinary treatment" afforded by class membership. ■

"**Cari Dawson** provides the method to the madness of "Issue Classes: To (b)(3) or Not to (b)(3) – That Is the Question" at the 2024 Class Actions National Institute in Nashville on October 25."

Cari Dawson

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Consumer Protection

Second Circuit Crumbles Plaintiffs' All Natural Product Claims

Bustamante v. KIND LLC, No. 22-2684 (2nd Cir.) (May 2, 2024). Affirming order granting motion for summary judgment.

The Second Circuit affirmed an order excluding the plaintiffs' experts and granting the defendant's motion for summary judgment on claims that the "all natural" labels on its granola bars and other snack products were deceptive. The circuit court first agreed with the district court that the consumer survey expert's opinion was not likely to assist the trier of fact because the phrasing of questions in the expert's study were "leading and manipulative." The circuit court also held that the district court correctly excluded a chemistry expert's opinion that the ingredients in the defendant's products were not "natural" – an opinion based on where these types of ingredients are "typically" sourced and not on any analysis of the actual ingredients used. Because there was no evidence for a reasonable consumer's understanding of the term "natural" following exclusion of these experts, the circuit court held that summary judgment was proper.

Sandwich Giant Wins Dismissal of Consumers' TCPA Claim

Soliman v. Subway Franchisee Advertising Fund Trust LTD, No. 22-1726 (2nd Cir.) (May 10, 2024). Affirming order granting motion to dismiss.

A divided Second Circuit panel affirmed an order dismissing Telephone Consumer Protection Act (TCPA) claims alleging the sandwich chain sent class members unwanted marketing text messages after they unsubscribed from receiving the automated messages. All three judges agreed with the district court's conclusion that the text messages did not constitute an "artificial or prerecorded voice" under the TCPA because they contained no audio component. The majority further held that Subway did not implement an "autodialing system" because it was selecting numbers to text from a preexisting list, as opposed to randomly generating telephone numbers to contact. The dissenting judge said that the technology used was an autodialer – in part, because she believes the majority's ruling would render superfluous the TCPA provision allowing businesses to use number generators to dial the numbers of parties who have given prior consent to be contacted.

Ninth Circuit Cries Foul and Reverses Dismissal of Baby Food Labeling Claim

Davidson v. Sprout Foods Inc., No. 22-16656 (9th Cir.) (June 28, 2024). Reversing dismissal of Sherman Law food labeling claim.

The Ninth Circuit reversed the dismissal of the plaintiffs' food labeling claim brought under California's Sherman Law, holding such claims were not preempted by the Federal Food, Drug, and Cosmetic Act (FDCA). The plaintiffs alleged that the defendant's baby food pouches' prominent display of nutrient claims such as "3g of Protein" and "5g of Fiber" violated the Sherman Law, which, like the FDCA, prohibits nutrient content claims on food intended for consumption by children under the age of two. The district court found that the Sherman claim was preempted by the FDCA, which only permits states to enact nutrition labeling standards identical to federal law. In a case of first impression, the Ninth Circuit disagreed with the district court, holding that "federal law does not preempt private enforcement of the Sherman Law's labeling requirements" because the Sherman Law expressly incorporates all federal FDCA standards, ensuring that the California and federal standards will be the same. The court could not perceive any reason why Congress would permit states to legislate in this area and then deny enforcement of that legislation by their citizens. Thus, even if the FDCA had not "expressly permitted" claims under the Sherman Law, the presumption against preemption would have led the court to hold that the Sherman claim was not preempted. ■

"Join us in New York for a full-spectrum look into current legal and business opportunities and challenges at our 2024 Pharmaceutical and Biologics Summit on October 10."

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Labor & Employment / ERISA

There Is No Deadline to File a Motion for Class Certification

Cinar v. R&G Brenner Income Tax LLC, No. 1:20-cv-01362 (E.D.N.Y.) (June 21, 2024). Judge Kovner. Recommending granting class certification.

An Eastern District of New York judge has ruled that an employment class can be certified even though the employment agreements included individualized compensation and work schedules if all individuals were subject to the same wage practices. The court rejected the additional argument that a class certification filed almost four years after the lawsuit's inception is untimely and prejudicial because there was no deadline to file under Rule 23 and the defendant was on notice that the putative class intended to file for class certification.

Health Care System Required to Pay $200 Million for Wage Violations

Bennett v. Providence Health & Services, No. 21-2-13058-1 (King County, WA Superior Court) (May 9, 2024). Judge Rothrock. Awarding over $200 million to plaintiffs.

In 2021, a class action complaint was filed on behalf of nurses, technicians, medical assistants, and other hourly staffers, alleging the hospital system was responsible for wage violations involving its "rounding" policy and meal break practices. According to the complaint, Providence used to pay its hourly staffers based on time worked rounded to the nearest 15-minute increment—per a policy the hospital system discontinued in October 2023—even though employees use an electronic timekeeping system. After a nearly eight-day trial, a jury deliberated for less than three hours and found Providence should pay $98.3 million in compensatory damages. The total damages were then doubled due to the court's summary judgment ruling in January 2024, which found Providence willfully committed these wage violations. Providence has, therefore, been ordered to pay more than 33,000 of its hourly employees more than $229 million. ■

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If you want to know "Why Calif. Courts Are Split on ERISA Forfeited Contributions," **Blake Crohan** answered in *Law360*.

Blake Crohan

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Privacy & Data Security

Too Big to Certify? 1.5 Billion-Member Class Is "Not Administratively Feasible"

In re Blackbaud Inc. Customer Data Breach Litigation, No. 3:20-mn-02972 (D.S.C.) (May 14, 2024). Judge Anderson. Denying class certification.

The defendant data collection services provider was the victim of a ransomware attack that allegedly included backup files containing unencrypted personal identifying and health information of 1.5 billion individuals. The plaintiffs sought certification of a nationwide class of anyone whose data was exposed. The plaintiffs contended that the classes were ascertainable based largely on an expert witness, who outlined a "several thousand hours" process by which the 90,000 backup files would be restored to create a single, searchable database and information obtained from a class member would be used to search the database for data elements relating to that class member. The court excluded the expert's report, determining that he had failed to demonstrate that his method was reliable and replicable, had been tested, or could be scaled across the putative class. The court then denied class certification, noting that the degree of manual review of the backup files that would be required to identify class members and the information that was exposed would involve hundreds of millions of inquiries and that the proposed class was therefore not ascertainable. ■

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There are no pop quizzes at the 2024 Privacy & Security Forum Fall Academy, so it's safe to enjoy **David Keating**'s panel "Regulatory Pitfalls Under State Comprehensive Privacy Law" on October 24 and "The Board's Oversight Role in Cybersecurity: Trends in Preparedness and Response" with **Kim Peretti** and **Cara Peterman** on October 25 in Washington, DC.

David Keating

Kim Peretti

Cara Peterman

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Products Liability

- **Risky Business: Potential Risk of Contamination Does Not Support Article III Standing**

  In re Recalled Abbott Infant Formula Products Liability Litigation, No. 23-2525 (7th Cir.) (Apr. 2, 2024). Affirming district court's dismissal for lack of standing.

  The Seventh Circuit affirmed dismissal of a putative economic-loss class action brought by consumers who purchased infant formula that was recalled due to unsanitary conditions at a manufacturing plant. The plaintiffs claimed that they did not get what they bargained for because the formula had a risk of contamination and that they paid a premium price they would not otherwise have paid. The Seventh Circuit held that the plaintiffs lacked standing to bring economic-loss claims for potentially contaminated baby formula because their claimed injury was hypothetical and not particularized to the products they purchased. The plaintiffs failed to allege that the formula they purchased was contaminated or that the defendant's contamination issue was sufficiently widespread to plausibly affect the formula they purchased. The court distinguished *In re Aqua Dots*, in which standing existed because the product there contained a universal defect that rendered the product valueless to all customers.

- **The Results Are … Pending: Plaintiffs Need Not Perform a Damages Analysis Before Certification to Demonstrate Classwide Injury and Damages**

  Lytle v. Nutramax, No. 22-55744 (9th Cir.) (Apr. 22, 2024). Affirming class certification.

  The Ninth Circuit held that class action plaintiffs may rely on a proposed—but not yet performed—conjoint model to show that injury and damages are susceptible to common proof if the court finds that the proposed model is sufficiently reliable. Additionally, a "limited" (rather than "full") *Daubert* inquiry can often suffice at the class certification stage.

  The plaintiffs filed a class action alleging a pet product falsely advertised its health benefits. In support of class certification, the plaintiffs' expert proposed—but did not perform—a conjoint analysis to show injury and damages on a classwide basis. The district court certified the class, and the Ninth Circuit affirmed. The Ninth Circuit held that class plaintiffs may rely on an unexecuted damages model to demonstrate that injury and damages are susceptible to common proof so long as the court

finds, by a preponderance of the evidence, that the model will be able to reliably calculate damages common to the class at trial. Moreover, the circuit court held that district courts need not always conduct a full *Daubert* analysis when making this reliability finding. Here, a full *Daubert* assessment would have been premature because the expert had not yet fully developed his model, and the appeals court found the district court did not abuse its discretion in certifying the class where the expert's qualifications were undisputed and his proposed methodology was well accepted. ■

"Say "I do" to **Greg Berlin**'s panel, "Something Borrowed, Something Blue: Contaminants Old and New," at the ABA Section of Environment, Energy, and Resources' 32nd Fall Conference in Seattle on October 25."

Greg Berlin

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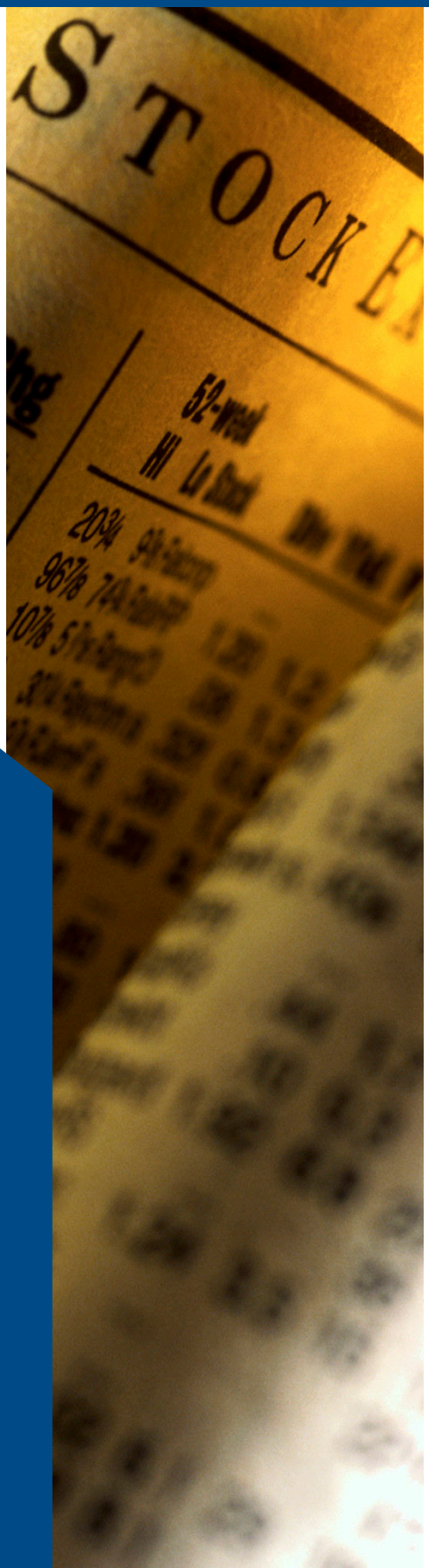

Securities

- **Fifth Circuit Again Revives Flagging Securities Class Action**

  Oklahoma Firefighters Pension and Retirement System v. Six Flags Entertainment Corporation, No. 23-10696 (5th Cir.) (Apr. 18, 2024). Reversing dismissal for lack of standing and remanding for further proceedings.

  The Fifth Circuit revived a securities class action against Six Flags for a second time. Following the Fifth Circuit's first decision in June 2023, the defendants filed a motion to dismiss arguing that the lead plaintiff lacked standing because it purchased stock shortly after Six Flags first disclosed the true state of the company's partnership with a Chinese real estate developer to build new theme parks overseas. The district court granted the motion and denied a motion to amend to name a new lead plaintiff. The Fifth Circuit held that the lead plaintiff had standing under the court's earlier opinion that the true state of Six Flags' partnership with the Chinese real estate developer slowly leaked out over time. The Fifth Circuit also held that the substitute plaintiff could properly intervene and remanded the case for the district court to consider the motion to amend.

- **Ninth Circuit Upholds Dismissal of Mobile Gaming Suit**

  Jedrezejcyzk v. Skillz Inc., No. 23-15493 (9th Cir.) (Apr. 16, 2024). Upholding motion to dismiss investor action.

  The Ninth Circuit upheld the dismissal of a putative class action alleging that Skillz Inc., a mobile gaming company, overstated its popularity and technical features. The opinion held that the existence of bug defects did not render the company's statements about enabling synchronous games for different players misleading, and noted that the federal securities laws do not create an obligation to disclose all potential kinks in a software program. In rejecting the plaintiffs' arguments that the statement "paying users today have 10 Skillz games installed" was misleading because Skillz did not disclose whether paying users paid to play all 10 games, the court noted that investors were aware that Skillz's business model involved offering free initial downloads.

Eleventh Circuit Finds No Conspiracy to Restrict Trades of "Meme" Stocks

In re January 2021 Short Squeeze Trading Litigation, No. 22-11873 (11th Cir.) (June 26, 2024). Upholding motion to dismiss investor action.

The Eleventh Circuit held that investors in Robinhood Markets and Citadel Securities failed to allege any anticompetitive effect occurred because of the alleged conspiracy between those platforms to restrict trades of "meme" stocks like GameStop in 2021. The investors alleged that Robinhood and Citadel prevented users from buying shares in meme stocks like GameStop and AMC after those stocks were short-sold. The court noted that despite the alleged conspiracy between Robinhood and Citadel to halt trading, every other brokerage on the market was allowing trading in the stocks at issue. The court held that investors failed to connect the reduced supply of the relevant securities to anticompetitive effects in the no-fee brokerage market. ■

"**Emily Costin** and **Michelle Jackson** crunched the numbers to find "The Life Expectancy of Actuarial Equivalence Lawsuits" for *Plansponsor*."

Emily Costin

Michelle Jackson

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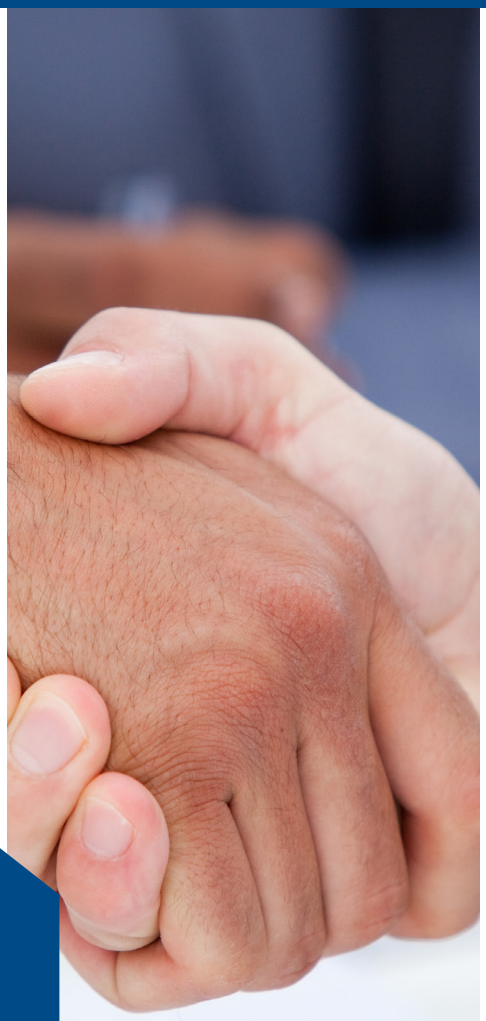

Settlements

- **Eleventh Circuit Vacates $35 Million Class Settlement for Alleged TCPA Violations**

  Drazen v. Pinto, No. 21-10199 (11th Cir.) (May 13, 2024). Vacating and remanding to the district court.

  In a lengthy opinion, the Eleventh Circuit vacated and remanded the Southern District of Alabama's approval of a $35 million class settlement for a class of plaintiffs who alleged that GoDaddy.com violated the TCPA by using an automatic dialing system to send unwanted texts and calls. The district court had approved a framework in which class members could choose either a $35 cash payment or a $150 GoDaddy.com voucher and also approved an award of up to $10.5 million in attorneys' fees based on its determination that the framework was not a "coupon settlement."

  The appellate court held that the framework was a coupon settlement and therefore the district court erred by not calculating attorneys' fees under CAFA's parameters. Although the lead opinion included a litany of other reasons why the district court had erred, a two-judge concurrence affirmed that the judgment of the court was cabined to the determination that this was a coupon settlement in which CAFA applied, making the district court's calculation of attorneys' fees erroneous.

- **Bedsheet Buyers Can Count on $10.5 Million Settlement**

  Hawes v. Macy's Inc., No. 1:17-cv-00754 (S.D. Ohio) (Apr. 15, 2024). Judge Cole. Approving $10.5 million settlement.

  The Southern District of Ohio approved a $10.5 million settlement agreement for a class of plaintiffs who purchased sheets from Macy's stores and alleged Macy's and its manufacturer co-defendants illegally misrepresented the thread count of the sheets. The defined class of purchasers eligible to recover include customers who can verify purchases of the sheets through Macy's records or through their own receipts, as well as customers who can attest to their purchases under penalty of perjury. Class counsel was awarded one-third of the settlement, for a total of $3.5 million.

Class Wins Payday to Settle Securities Claims

In re Paysign Inc. Securities Litigation, No. 2:20-cv-00553 (D. Nev.) (Apr. 18, 2024). Judge Navarro. Approving $3.75 million settlement and granting attorneys' fees.

A federal district judge approved a securities class action settlement against Paysign Inc., finding the settlement was fair, reasonable, and adequate. The settlement resolves claims against Paysign that the company and certain officers and directors violated the Securities Exchange Act of 1934 by making misrepresentations and omissions of material fact in various public statements concerning Paysign's internal controls over financial reporting. The result of these misrepresentations was to allegedly artificially inflate the price of Paysign's common stock, which then dropped in response to certain disclosures. The settlement creates a $3.75 million fund to be distributed among all persons and entities that purchased or acquired Paysign common stock between March 12, 2019 and March 31, 2020. The court also approved class counsel's requested fees in the amount of 33.5% of the settlement amount, plus more than $57,000 in costs and expenses, as well as $5,000 service awards for each named plaintiff.

Settlement Approved for Victims of Alleged Securities Laws Violations

Miller v. Sonus Networks Inc., No. 1:18-cv-12344 (D. Mass.) (Apr. 24, 2024). Judge O'Toole. Approving $4 million settlement.

The District of Massachusetts approved a $4 million class settlement for purchasers of Sonus Networks stock who alleged they were defrauded by materially false and misleading statements about the company's finances in violation of various securities laws. The defined class of plaintiffs eligible to recover includes all individuals and entities that purchased Sonus common stock, call options, or put options between January 8, 2015 and March 24, 2015. Class counsel was awarded one-third of the settlement in attorneys' fees.

Enormous Location Tracking Class Action Settles for Large Amount (Though Not for Class Members)

In re Google Location History Litigation, No. 5:18-cv-05062 (N.D. Cal.) (May 3, 2024). Judge Davila. Approving $62 million settlement and awarding fees.

Judge Davila approved a massive class action settlement arising out of Google's alleged tracking and storing of approximately 247 million U.S. mobile device users' location data, even when the location setting

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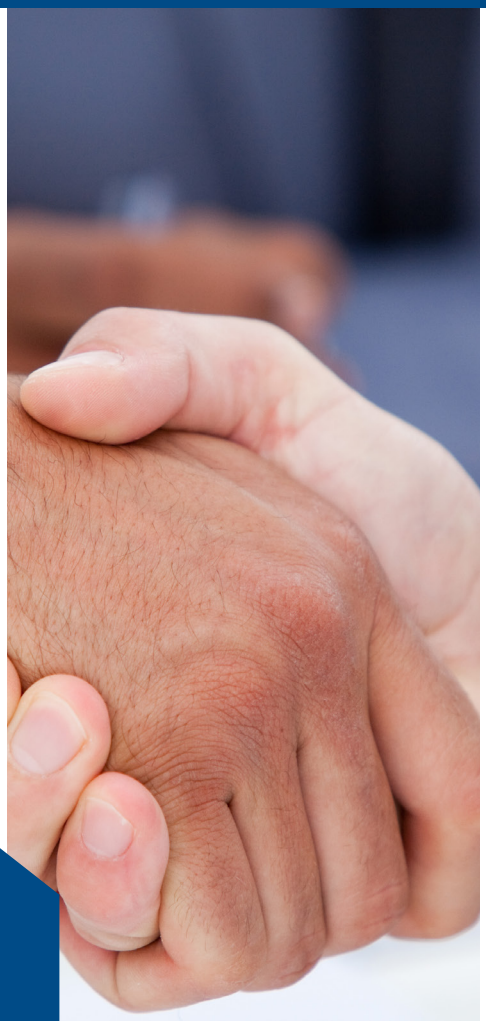
Kerri-Ann Griggs

"Be flexible and open"



was purportedly disabled. The plaintiffs asserted claims for intrusion upon seclusion, violation of California's constitutional right to privacy, and unjust enrichment. The parties reached their settlement after five years of litigation, which included two rounds of motions to dismiss, 26 months of "contentious" discovery, and a three-day mediation session.

Under the settlement, and in addition to adopting certain business practices, Google must pay $62 million into the settlement fund. But despite that large settlement fund, Judge Davila observed that—before even taking into account an award of attorneys' fees and administrative costs—each class member might receive no more than 25 cents given the number of class members. Judge Davila found that—over objections by three class members—a cy pres distribution was appropriate here and split up the settlement fund between approximately 20 nonprofit groups such as the ACLU Speech, Privacy, and Technology Project and the Rose Foundation. According to Judge Davila, these recipients "will appropriately use the Settlement Fund to further their advocacy for data privacy nationwide such that the Settlement Class will ultimately enjoy greater data privacy protections as a result." While class members will not receive any settlement funds, class counsel will receive $18.6 million in attorneys' fees.

Pest Infestation Suit Eradicated with Settlement

In re Family Dollar Stores Inc. Pest Infestation Litigation, No. 2:22-md-03032 (W.D. Tenn.) (May 6, 2024). Judge Lipman. Approving settlement and denying attorneys' fees.

A federal judge signed off on a settlement for shoppers of Family Dollar stores affected by a rodent infestation at one of its distribution centers. The underlying litigation arose after the Arkansas Department of Health (ADH) inspected the distribution center and reported seeing "significant rodent activity" in areas where human and pet food were stored. The ADH alerted the Food and Drug Administration (FDA), which initiated an investigation and in February 2022 released a report that detailed a rodent infestation of many compromised products stored in the distribution center. The FDA then issued a safety alert that directed consumers who had shopped in affected stores to discard certain products that had potentially been contaminated by rodents. At the same time, Family Dollar temporarily closed 404 stores and issued a voluntary recall of the FDA-regulated products sold in the affected stores. The Arkansas attorney general filed a lawsuit against Family Dollar that was succeeded by more than a dozen private lawsuits that were eventually consolidated by the Judicial Panel on Multidistrict Litigation.

The settlement agreement approved by the court provides $25 Family Dollar gift cards to all claimants who attest they shopped at an impacted Family Dollar store serviced by the distribution center at issue between January 2020 and February 2022. The class settlement resolves only private claims and includes a carve out for litigation that was brought by the State of Arkansas. While the court blessed requests for nearly $250,000 in costs and $44,000 in service awards to be divided among the eight named plaintiffs, the court denied without prejudice the plaintiffs' attorneys' request for fees because their lodestar method was not supported with affidavits or declarations demonstrating how much time was spent working on each aspect of the case or affirming that the customary hourly rates charged were reasonable.

- **Court Cuts Payday for Class Counsel in Employee Pay Class Action**

Rivera v. Marriott International Inc., No. 2:19-cv-05050 (C.D. Cal.) (June 4, 2024). Judge Wright. Approving $437,000 settlement.

Judge Wright approved a settlement in a case brought against Marriott, though he also cut class counsel's fee award. The named plaintiff alleged that Marriott's Marina del Rey hotel in California failed to pay its employees all wages and failed to provide meal and rest periods or compensation in lieu thereof, among other things. Under the settlement, Marriott will pay $436,560 into a settlement fund, which will then be distributed to class members in shares ranging from $527.15 to $1,843.15. After considering the relevant factors, Judge Wright found that the settlement was fair, reasonable, and adequate. But as for attorneys' fees, Judge Wright denied class counsel's request for one-third of the settlement fund and instead awarded one-fourth of the fund. Judge Wright noted that class counsel "offer[ed] little to establish that this result comes anywhere close to 'exceptional'" and that the issues involved were "relatively straightforward and standard to California-based wage-and-hour class action lawsuits."

- **Settlement Approved Following Alleged Violations of Wage Compensation Laws**

Phillips v. Help at Home LLC, No. 1:15-cv-08954 (N.D. Ill.) (June 4, 2024). Judge Finnegan. Approving $1.8 million settlement.

The Northern District of Illinois approved a $1.8 million settlement between a class of plaintiffs and defendants alleged to have violated the FLSA and various Illinois wage laws for failing to pay overtime for certain hours worked. The defined class of "supervisors" who worked at Illinois Help at Home locations between January 1, 2013 and

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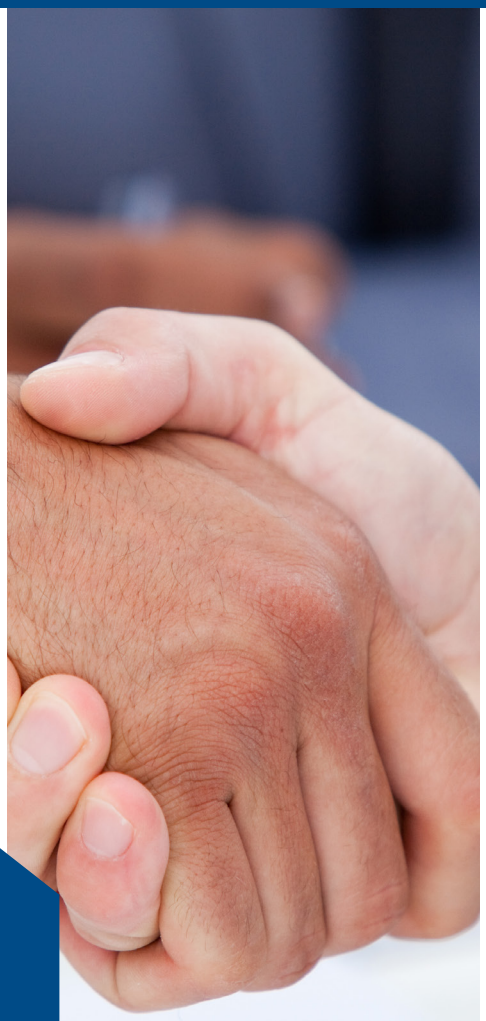
"Find work that energizes you"



October 18, 2019 are eligible to recover. Additionally, supervisors who worked outside Illinois during the relevant time period can recover if they opted in to the settlement. Class counsel was awarded approximately $950,000 in attorneys' fees.

- **Plasma Donor Software Provider Injects $8.74 Million to Settle Illinois BIPA Class Action**

  Crumpton v. Haemonetics Corp., No. 1:21-cv-01402 (N.D. Ill.) (June 4, 2024). Judge Daniel. Approving $8.74 million settlement and granting attorneys' fees.

  Haemonetics Corp. received final approval for a class settlement stemming from allegations it violated the Illinois Biometric Information Privacy Act (BIPA). That settlement, which provides a settlement fund of $8.74 million, will provide settlement class members an equal share of the net settlement fund—estimated to land somewhere between $250 and $570 per claimant, depending on the number of claims filed. The settlement resolves allegations the company provided plasma donor centers software that collected and stored patient biometric information without patient consent. To be eligible to receive settlement funds, individuals must have had their finger scanned at a plasma donation facility in Illinois and their biometric data shared without written consent between February 2016 and February 2024. The court also approved attorneys' fees of $2.8 million and a class representative incentive payment of $5,000.

- **Class Action Easily Walks to Settlement**

  Loeper v. Wegmans Food Markets Inc., No. 3:22-cv-02044 (M.D. Pa.) (June 4, 2024). Judge Mannion. Awarding $350,000 settlement and awarding fees.

  The class representative alleged that Wegmans violated the Pennsylvania Minimum Wage Act by failing to pay overtime wages for the time that warehouse employees spent walking between the warehouse door and the time clock. Wegmans agreed to pay $350,000 to settle this case, $116,666 of which will go to the class counsel who came up with this creative theory of liability. Judge Mannion approved the settlement as fair, reasonable, and adequate and awarded the requested attorneys' fees.

Another Day, Another Data Breach Settlement

Holden v. Guardian Analytics Inc., No. 2:23-cv-02115 (D.N.J.) (June 5, 2024). Judge Martini. Approving $1.4 million settlement and awarding fees.

Judge Martini approved a settlement involving Guardian Analytics, an AI cloud-based financial crime risk management solution provider. The settlement arises out of a data breach of Guardian's systems in 2022 and 2023, and the settlement class included all persons who were notified that their personally identifiable information may have been impacted by the data incident. Under the settlement, class members can receive 24 months of free credit monitoring services, compensation for up to four hours of lost time at $25 per hour, and compensation for ordinary unreimbursed losses up to $250 and for extraordinary unreimbursed losses up to a total of $5,000. Alternatively, settlement class members can receive a cash payment (the amount of which depends on the funds left in the settlement fund), and those individuals whose Social Security numbers were accessed get twice as much as others. Judge Martini found that the settlement was fair, reasonable, and adequate, and he also awarded over $473,000 in attorneys' fees.

No Fatal Flaw in This Insurance Stock Suit

In re Prudential Financial Inc. Securities Litigation, No. 2:19-cv-20839 (D.N.J.) (June 13, 2024). Judge Chesler. Approving $35 million settlement.

A federal district judge approved a settlement in a case alleging that Prudential Financial Inc. and its executives made false and misleading statements in violation of the federal securities laws about its insurance reserves and mortality experience in its individual life business, which had the effect of artificially inflating the prices of Prudential common stock. The settlement includes a $35 million fund for all persons who purchased the common stock of Prudential Financial Inc. between June 5, 2019 and August 2, 2019.

Respiratory Care Unit Exhales After Data Breach Settlement

In re Lincare Holdings Inc. Data Breach Litigation, No. 8:22-cv-01472 (M.D. Fla.) (June 24, 2024). Judge Sansone. Approving $7.25 million settlement and granting attorneys' fees.

Provider of in-home respiratory care and equipment Lincare Holdings inked a $7.25 million settlement to end class claims stemming from a 2021 cyber-breach or data incident. The class settlement, which was approved by the court as fair, adequate, and reasonable, will provide

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"Begin to build a personal brand"

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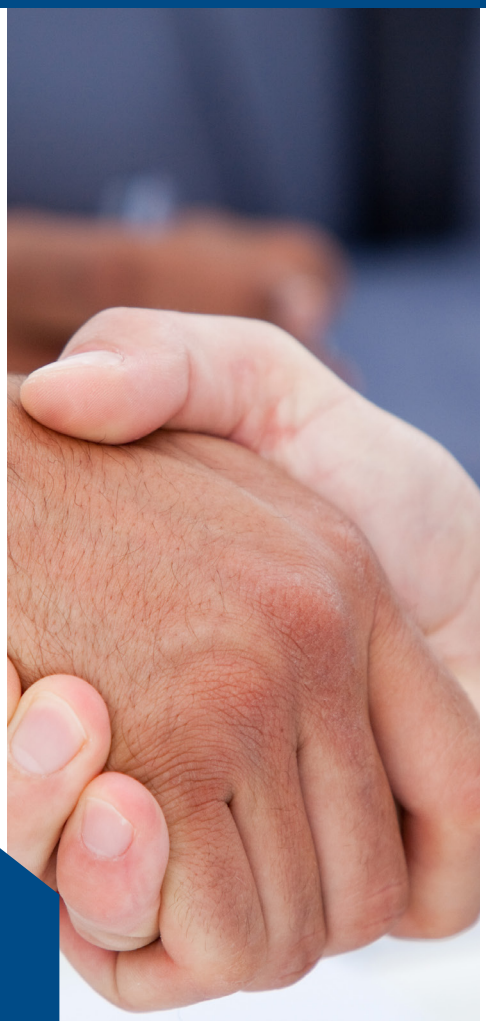

up to $5,000 per impacted class member for reimbursement of out-of-pocket losses suffered because of the data breach. The settlement ends litigation that began back in June 2022, and in addition to reimbursing out-of-pocket damages, the settlement allows class members to recover up to four hours of lost time compensated at $20 per hour because of dealing with the breach. California class members can receive an additional $90 for potential statutory claims under California law. In addition to approving the settlement, the judge also blessed the plaintiffs' attorneys' request for $2.42 million in fees and over $41,000 in costs. ■

CLASS ACTION & MDL roundup

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