

# Court of Appeal Reminds Litigants That Settling With Named Plaintiff Does Not Necessarily End Putative Class Action

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If a defendant in a putative class action settles with the class representative prior to class certification, does the defendant nonetheless have to respond to pre-settlement discovery requests to identify absent class members? According to the California Court of Appeal in *Pirjada v. Superior Court*, 2011 WL 6144930, Case No. B234813 (Cal. App. Dec. 12, 2011), the answer is *no*, although the appellate court left open the possibility that the trial court could require some form of notice to protect the interests of absent class members.

### **Plaintiff Seeks Discovery Identifying Putative Class Members**

Putative class representative Obaidul Pirjada ("Pirjada") brought a purported class action on behalf of all security guards who had been employed in California by defendant Pacific National Security, Inc. ("Pacific National") during the preceding four years, alleging violations of the California Labor Code and the California Business and Professions Code. Pirjada propounded discovery requesting, among other things, the names and addresses of all putative class members. Pacific National did not object or respond to the discovery requests.

### **Plaintiff, Without Counsel Involvement, Settles Directly With Defendant**

Without the involvement of his attorneys, Pirjada settled directly with Pacific National after negotiating with its CEO. Then, by letter to his counsel, Pirjada requested that his claims be dismissed with prejudice, and enclosed the settlement agreement along with payment for legal services.

### **Plaintiff's Counsel Files Motion for Order Providing Notice to Putative Class Members; Defendant Files Motion to Dismiss**

Instead of dismissing the lawsuit, however, Pirjada's counsel filed a motion seeking to provide notice to absent members of the proposed class that substitution of a suitable class representative was necessary. Pacific National filed a motion to dismiss based on the parties' settlement, which Pirjada joined.

### **Superior Court Denies Both Motions**

The superior court denied Pacific National's motion to dismiss, noting that a plaintiff's individual settlement does not vitiate plaintiff's or his counsel's fiduciary obligations to the putative class members. The court granted sixty days leave to amend to add a new plaintiff as class representative. The court denied counsel's motion for notice, finding it unnecessary because unlike in *CashCall, Inc. v. Superior Court*, 159 Cal. App. 4th 273 (2008), and *Best Buy Stores, L.P. v. Superior Court*, 137 Cal. App. 4th 772 (2006), members of the putative class of security guards know whether they were injured and thus can determine without notice whether to assert claims against Pacific National. The court specifically noted, however, that regardless of notice, plaintiff's counsel was authorized to communicate with potential class members.

### **Plaintiff's Counsel Moves to Compel Discovery to Identify New Class Representative, Which Superior Court Denies**

Plaintiff's counsel then moved to compel responses to the previously propounded requests for information identifying putative class members, arguing that Pacific National had waived its objections by failing to respond; that Pirjada could not provide contact information for other putative class members because he worked at only one Pacific National location and was the only guard assigned there; and that Pirjada contacted counsel only after his employment at Pacific National had ended. The superior court denied the motion to compel, stating that Pirjada had settled his claims and that his discovery requests were therefore moot. The court reiterated, however, that counsel were free to communicate with class members, even if they were not entitled to discovery.

### **Court of Appeal Denies Petition, Deciding Superior Court Did Not Abuse Discretion**

Plaintiff's counsel filed a petition for writ of mandate challenging the superior court's denial of the motion to compel, as well as the denial of the motion to provide notice.

The Court of Appeal concluded that the superior court acted within its broad discretion in denying the motion to compel, and choosing instead to protect absent class members by allowing counsel leave to amend the complaint after using informal means to identify potential replacement class representatives.

With respect to notice, the Court stated:

[P]recertification discovery may be allowed in appropriate circumstances to identify a substitute class representative in place of one who is not able to serve in that capacity, as well as to assist the lead plaintiff in learning the names of other individuals who might assist in prosecuting the action. But the obligation to notify absent class members before dismissing the case rests with the superior court, not the lead plaintiff or class counsel. The nature and extent of that notice must be decided by the court itself.

*Pirjada*, 2011 WL 6144930. at \*14. The Court noted that under California Rule of Court 3.770, no notice to absent class members is required at all "if the court finds that the dismissal will not prejudice them." *Id.* Moreover, because the superior court issued an order to show cause regarding dismissal, counsel will have the opportunity at that hearing to demonstrate that some form of notice is required to avoid prejudice to absent class members.

### **Lessons for Class Action Defendants**

The somewhat unique circumstances in *Pirjada* highlight the importance of making sure to tie up procedural loose ends, such as outstanding discovery, when a defendant settles with the named plaintiff(s) prior to class certification. More broadly, the case serves as a reminder that named plaintiffs and their counsel have an ongoing fiduciary duty to potential class members, and courts must take reasonable steps to protect those interests, including through potential discovery and notice procedures.

Under *Parris v. Superior Court*, 109 Cal. App. 4th 285 (2003), and its progeny, "trial courts must apply a balancing test and weigh the actual or potential abuse of the class action procedure against the potential benefits that might be gained" by allowing precertification discovery to identify a substitute class representative. *Pirjada*, 2011 WL 6144930, at \*5 (quoting *Starbucks Corp. v. Superior Court*, 194 Cal. App. 4th 820, 825 (2011)). Addressing that standard remains a key consideration for defendants who seek to avoid ongoing class action litigation when they settle with a named plaintiff.