

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RAINBOW BUSINESS SOLUTIONS, doing
business as PRECISION TUNE AUTO
CARE; DIETZ TOWING, INC.; THE
ROSE DRESS, INC.; VOLKER VON
GLASENAPP; JERRY SU; VERENA
BAUMGARTNER; TERRY JORDAN; ERIN
CAMPBELL; and LEWIS BAE,

Plaintiffs,

v.

MERCHANT SERVICES, INC.; NATIONAL
PAYMENT PROCESSING; UNIVERSAL
MERCHANT SERVICES LLC; UNIVERSAL
CARD, INC.; JASON MOORE; NATHAN
JURCZYK; ROBERT PARISI; ERIC
MADURA; FIONA WALSHE; ALICYN ROY;
MBF LEASING LLC; NORTHERN
FUNDING, LLC; NORTHERN LEASING
SYSTEMS, INC.; JAY COHEN; LEONARD
MEZEI; SARA KRIEGER; SAM BUONO;
and SKS ASSOCIATES, LLC,

Defendants.

No. C 10-1993 CW

ORDER GRANTING
PLAINTIFF ERIN
CAMPBELL'S MOTION
FOR
RECONSIDERATION
(Docket No. 584)

On February 7, 2014, the Court granted Plaintiff Erin Campbell's motion for leave to file a motion for reconsideration of its order granting in part Plaintiffs' motion for class certification. Plaintiff Campbell seeks reconsideration of the Court's denial of certification of a nationwide SKS Post-Lease Expiration class to pursue Racketeer Influenced and Corrupt Organizations Act (RICO) and RICO conspiracy claims. Leasing

1 Defendants oppose the motion. Having considered the parties'
2 papers and the record in the case, the Court GRANTS Plaintiff
3 Campbell's motion for reconsideration and CERTIFIES the nationwide
4 SKS Post-Lease Expiration class to pursue RICO and RICO conspiracy
5 claims.

6 DISCUSSION

7 I. Commonality and Predominance

8 In its original order denying certification of the SKS Post-
9 Lease Expiration class, the Court found that Plaintiff Campbell
10 failed to establish that common issues of law and fact predominate
11 with respect to her alleged RICO and RICO conspiracy claims. The
12 Court based this finding on its commonality and predominance
13 analysis for the Excessive Lease Amount class. However, as
14 Plaintiff Campbell points out in her motion for reconsideration,
15 the factual basis for the SKS Post-Lease Expiration class's RICO
16 claim is different than the Excessive Lease Amount class's RICO
17 claim. Accordingly, the Court revisits its analysis of this
18 issue.

19 Like Plaintiff Campbell's UCL claim on behalf of the SKS
20 Post-Lease Expiration California subclass, Plaintiff Campbell's
21 RICO and RICO conspiracy claims on behalf of the proposed SKS
22 Post-Lease Expiration class are based on the theory that Leasing
23 Defendants conspired with one another to defraud former lessees by
24 collecting purported taxes that were not actually due or paid to
25 any taxing authority. Plaintiff Campbell alleges that Leasing
26 Defendants conducted a faulty simulation to determine how much to
27 charge those former lessees and compiled the results on a
28 spreadsheet referred to as Schedule 1. Plaintiff Campbell further

1 alleges that Leasing Defendants made or attempted to make
2 unauthorized ACH deductions from merchants' bank accounts in their
3 efforts to collect the purported taxes. Moreover, Plaintiff
4 Campbell alleges that, in order to process those deductions,
5 Leasing Defendants conspired to defraud the third-party ACH
6 processors.

7 Leasing Defendants argue that Plaintiff Campbell has failed
8 to "prove" reliance and proximate cause for the RICO claim.
9 Leasing Defendants' Opposition at 5. However, at the class
10 certification stage, Plaintiff Campbell need not prove reliance.
11 Rather, Plaintiff Campbell must demonstrate that the RICO claim
12 "depend[s] upon a common contention" that is "of such a nature
13 that it is capable of classwide resolution--which means that
14 determination of the truth or falsity will resolve an issue that
15 is central to the validity of each one of the claims in one
16 stroke." Wal-Mart, 131 S. Ct. at 2551. Here, Plaintiff
17 Campbell's theory is that Leasing Defendants made fraudulent
18 misrepresentations upon which the ACH processors relied when
19 making or attempting to make deductions from the proposed class
20 members' bank accounts. This allegation, whether true or false,
21 will resolve the issue for the entire class. See Friedman v. 24
22 Hour Fitness USA, Inc., 2009 U.S. Dist. LEXIS 81975, *26 (C.D.
23 Cal.) ("Because the injury to class members was inflicted
24 automatically through electronic processes, as a result of the
25 payment processors' reliance on the alleged misrepresentation, the
26 proximate cause requirement is not a barrier to class treatment of
27 the RICO claim.").

1 To the extent that Leasing Defendants contend that class
2 certification is improper, because the facts presented by
3 Plaintiff Campbell do not support her claim of fraudulent
4 misrepresentation, the Court notes that Plaintiff Campbell has
5 submitted a signed ACH processing agreement in which Defendant Jay
6 Cohen affirmed that the ACH payments were authorized. *Simplicio*
7 *Dec.*, Ex. WWW. That document provides, "Regulations governing
8 origination of an ACH debit payment require that the Originator
9 (You the Merchant) have and retain evidence that the Payer duly
10 authorized the payment." *Id.* Leasing Defendants argue that the
11 merchants' ACH forms and leases provided them with authorization
12 to make these debits. However, whether these documents authorized
13 debits after the leases expired is a disputed question of fact
14 that is common to the proposed class.

15 The Court finds that common questions exist and predominate
16 for Plaintiff Campbell's RICO claim on behalf of the proposed SKS
17 Post-Lease Expiration class. These questions include the
18 propriety of Leasing Defendants' simulation to determine whether
19 taxes were due, whether class members' form ACH agreements
20 authorized the deductions after their leases had expired and
21 whether ACH processors relied on fraudulent misrepresentations by
22 Leasing Defendants when they processed the debits.

23 II. Other Factors

24 A. Numerosity

25 The Court previously found that Plaintiff Campbell satisfied
26 the numerosity requirement with respect to the SKS Post-Lease
27 Expiration Class.
28

1 B. Typicality

2 Leasing Defendants argue that Plaintiff Campbell's claim is
3 not typical of the proposed class and she lacks standing to pursue
4 a RICO claim because Leasing Defendants were not able to debit any
5 taxes or fees from her bank account. However, a plaintiff who has
6 suffered an injury to "business or property" caused by the
7 racketeering conduct has standing to bring a racketeering claim.
8 Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 495 (1984). Although
9 Leasing Defendants were not able to deduct money from her bank
10 account, Plaintiff Campbell alleges that, when she received the
11 notice of debt from Leasing Defendants, she spent time away from
12 her usual work and paid an assistant to help her research and
13 compile financial records. This payment to an assistant is
14 sufficient to establish a "concrete financial loss" for purposes
15 of standing for the RICO claim. Oscar v. University Students Co-
16 op Ass'n, 965 F.2d 783, 785 (9th Cir. 1992).

17 Leasing Defendants also argue that Plaintiff Campbell's
18 decision to pay an assistant to compile her records defeats
19 typicality because her damages are not similar to those of the
20 bulk of class members. However, even if her damages differ from
21 those of many class members, her RICO and UCL claims are identical
22 to the class's. "Under Rule 23(a)(3) it is not necessary that all
23 class members suffer the same injury as the class representative."
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1 Lozano v. AT&T Wireless Servs., Inc., 504 F.3d 718, 734 (9th Cir.
2 2007).¹

3 The Court finds that Plaintiff Campbell has satisfied the
4 typicality requirement with respect to the SKS Post-Lease
5 Expiration class.

6 C. Adequacy

7 The Court previously found that Plaintiff Campbell met her
8 burden on this prong.

9 D. Superiority

10 The Court finds that Plaintiff Campbell has satisfied the
11 superiority prerequisite with respect to the SKS Post-Lease
12 Expiration class's RICO and RICO conspiracy claims. The risks,
13 small recovery, and relatively high costs of litigation here make
14 it unlikely that individual merchants will pursue claims against
15 Leasing Defendants independently. A class action, however, "would
16 offer those with small claims the opportunity for meaningful
17 redress." Sullivan v. Kelly Services, Inc., 268 F.R.D. 356, 365
18 (N.D. Cal. 2010). In addition, a class action would more
19 efficiently resolve the numerous legal and factual questions
20 relevant to this class's claims against Leasing Defendants.

21
22 ¹ Leasing Defendants have also filed a motion for leave to
23 file a motion for reconsideration of the Court's class
24 certification order, making further arguments about the typicality
25 of Plaintiff Campbell's injuries and also seeking reconsideration
26 of the Court's certification of the Property Tax Equipment Cost
27 Basis Class. Docket No. 587. To the extent the Court addresses
28 the arguments Leasing Defendants raise in their motion for leave,
the Court GRANTS the motion for leave to file a motion for
reconsideration and DENIES the motion for reconsideration. In all
other respects, the Court DENIES the motion for leave to file a
motion for reconsideration.

1 Accordingly, the class action is superior to individual litigation
2 for this class.

3 The Court certifies the SKS Post-Lease Expiration class to
4 pursue its RICO and RICO conspiracy claims.

5 CONCLUSION

6 For the foregoing reasons, the Court GRANTS Plaintiff
7 Campbell's motion for reconsideration and certifies the SKS Post-
8 Lease Expiration Class, which is defined as: "All persons and
9 businesses whose lease numbers appeared on Schedule 1" to pursue
10 RICO and RICO conspiracy claims.

11 IT IS SO ORDERED.

12
13 Dated: 3/17/2014

14 
CLAUDIA WILKEN
United States District Judge