

SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN DIEGO  
HALL OF JUSTICE

TENTATIVE RULINGS - November 29, 2007

EVENT DATE: 11/30/2007

EVENT TIME: 02:00:00 PM

DEPT.: C-61

JUDICIAL OFFICER: John S. Meyer

CASE NO.: GIC875385

CASE TITLE: FINCH VS LAMPS PLUS INC

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Business Tort

EVENT TYPE: Motion Hearing (Civil)

CAUSAL DOCUMENT/DATE FILED: Motion for Attorney Fees, 10/04/2007

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The Court has reviewed and considered the supporting papers submitted by plaintiff and defendant, the opposition papers submitted by Class Member Taylor, and the letter in opposition from Attorney Neil B. Fineman. Having given consideration to the proposed settlement and the opposition, the Court is left with concerns and discomfort regarding the proposed settlement.

Contrary to the assertions by plaintiff and defendant, the Court did not "affirm[] the legal viability of the UCL claims in response to Defendant's demurrer and reject[] the requested limitation of the class to one-year," nor did the Court make a determination that there was no distinction between the two sub-groups. The Court's ruling on the Demurrer noted that defendant brought a procedurally defective motion to strike. The Court simply declined to grant defendant's procedurally defective request to strike class allegations on a Demurrer.

The Class that was certified (for settlement purposes only) contains two sub-groups: Group A is made up of Class Members whose claims were filed within a one-year statute of limitations, and Group B is made up of Class Members whose claims were filed after the running of the one-year statute but within a four-year statute of limitations.

The Court cannot determine whether a \$15 voucher to all Class Members constitutes a fair, adequate or reasonable settlement to all Class Members. There is a conflict between the two sub-groups due to the fact, under the statutes allegedly violated, Group A would be entitled to monetary relief and Group B would not be entitled to monetary relief. The Court has not been provided sufficient evidence regarding the size of Group A versus the size of Group B, and potential recovery for Group A alone, so as to ascertain whether Group B is obtaining a significant benefit at the expense of Group A. The Court questions whether Defendant Lamps Plus is gaining a significant and/or unfair advantage by offering small recovery to a four-year class instead of facing the statutory violations sought by a one-year class.

The conflict between the Class Members creates a conflict of interest for Class Counsel. Class Counsel admits to this problem in his explanation for conducting settlement negotiations in seriatim.

The Court declines to approve the proposed Order due to the language regarding personal information obtained during return transactions. Whether or not a request for personal identification during returns is permitted under Civil Code section 1747.08 was never briefed or argued in this case, let alone decided by this Court.

THEREFORE, the Motion for Final Approval of Class Settlement is DENIED.

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The Motion for Attorney Fees is rendered moot by the Court's ruling on the Motion for Final Approval of Class Settlement.