

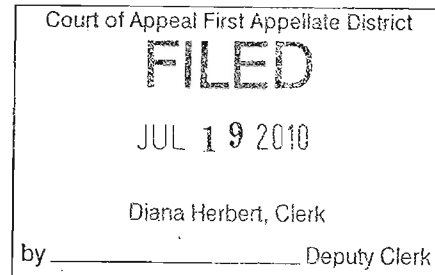
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July 15, 2010



VIA U.S. MAIL

Honorable Presiding Justice and Associate Justices of the  
California Court of Appeal  
First Appellate District, Division Five  
350 McAllister Street  
San Francisco, CA 94102

Re: *Cellphone Fee Termination Cases*, case nos. A124038, A124048  
Request for Publication of Opinion dated June 28, 2010

Dear Honorable Justices:

Pursuant to Rule of Court 8.1120(a), I write on behalf of Consumer Attorneys of California (“CAOC”) to request publication of this Court’s opinion filed on June 28, 2010 in *Cellphone Fee Termination Cases*, case nos. A124038, A124048.

**Statement of Interest**

Founded in 1962, COAC is a voluntary non-profit membership organization of over 3,000 consumer attorneys practicing in California. Its members predominantly represent individuals subjected to unlawful employment practices, consumer fraud, personal injuries and insurance bad faith. CAOC has taken a leading role in advancing and protecting the rights of consumers, employees and injured victims in both the courts and in the Legislature. This has often occurred through class and other representative actions under this state’s consumer protection and wage and hour laws. CAOC therefore has a substantive interest in upholding the public policies underlying the class action process for the benefit of workers and consumers.

CAOC has previously participated as amicus curiae in significant cases involving class action issues. See, e.g., *Pioneer Electronics (USA), Inc. v. Superior Court* (2007) 40 Cal.4th 360, 374; *Discover Bank v. Superior Court* (2005) 36 Cal.4th 148.

**The Cellphone Termination Fee Cases Opinion Meets the Standards for  
Publication of Rule of Court 8.1105(c)**

The *Cellphone Termination Fee Cases* opinion meets the standards for publication set forth in Rule of Court 8.1105(c) because it “[a]dvances a new interpretation” of several important aspects of California law governing approval of class action settlements.

The opinion addresses issues that the California appellate courts have not previously addressed, or have rarely addressed, in prior cases involving class action settlements. In its discussion of these issues, the opinion cites non-California authorities and adopts principles from those opinions as reflective of California law. The opinion should be published to provide guidance to litigants from California’s own courts on these points.

First, the opinion’s discussion of whether a notice of classwide settlement must reference the *size* of the class rests entirely on federal authorities, highlighting the lack of California precedent on that question. Slip op. at 12 (citing *In re Lorazepam & Clorazepate Antitrust Litigation* (D.D.C. 2002) 205 F.R.D. 369, 379; *In re Insurance Brokerage Antitrust Litigation* (D.N.J., Feb. 16, 2007, MDL No. 1663, No. 04-5184(FSH)) 2007 U.S. Dist. LEXIS 11163 [nonpub. opn.]; *In re: Managed Care Litigation; Class Plaintiffs v. Aetna Inc.* (S.D.Fla., Oct. 24, 2003, MDL No. 1334, No. 00-1334-MD-Moreno) 2003 U.S. Dist. LEXIS 27228 [nonpub. opn.]). The Court’s holding that settlement class notices need not estimate the class size is important for attorneys drafting proposed notices (the terms of which are often negotiated as part of the settlement documents) and for trial judges approving them. The opinion’s citation of a Ninth Circuit case summarizing the information to be included in the short- and long-form notices highlights the need for further guidance in the body of published California case law. Slip op. at 13 (quoting *Marshall v. Holiday Magic, Inc.* (9th Cir. 1977) 550 F.2d 1173).

Second, the Court’s discussion of the propriety and amount of class representative incentive awards, if published, would make a substantial contribution to California law on this point. Slip op. at 20-23. As the opinion notes, “[t]here is a surprising dearth of California authority directly addressing” the subject of class representative incentive awards. *Id.* at 21. The fact that this part of the discussion relies primarily on non-California cases underscores its importance to the development of California law in this area. *See id.* at 20, 22 (citing *Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F. Supp. 294; *Dornberger v. Metropolitan Life Ins. Co.* (S.D. N.Y. 2001) 203 F.R.D. 118).

Third, the Court’s approval of the use of a summary notice directing settlement class members to a Website with more detailed information is significant because only one past California decision has addressed the propriety of such notice. Slip op. at 12-13 (citing *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43). Publication of the opinion will lay to rest any remaining doubt on this point, which is increasingly important as more and more litigants attempt to employ the communication powers of the internet to help reduce the expense of class notice.

Honorable Justices, California Court of Appeal  
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**Conclusion**

For all of these reasons, the *Cellphone Termination Fee Cases* opinion meets the standards for publication of Rule of Court 8.1105(c). The Court is respectfully asked to certify the opinion for publication.

Respectfully submitted,

  
Kimberly A. Kralowec  
State Bar No. 163158

cc: See attached proof of service

Enclosure

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**PROOF OF SERVICE**

I, the undersigned, hereby declare under penalty of perjury that the following is true and correct:

I am a citizen of the United States; am over the age of 18 years; am employed by THE KRALOWEC LAW GROUP, located at 188 The Embarcadero, Suite 800, San Francisco, California 94105, whose members are members of the State Bar of California and at least one of whose members is a member of the Bar of each Federal District Court within California; am not a party to the within action; and that I caused to be served a true and correct copy of the following documents in the manner indicated below:

1. **LETTER TO THE HONORABLE PRESIDING JUSTICE AND ASSOCIATE JUSTICES OF THE CALIFORNIA COURT OF APPEAL, FIRST APPELLATE DISTRICT, DIVISION FIVE; and**
2. **PROOF OF SERVICE.**



**By Mail:** I placed a true copy of each document listed above in a sealed envelope addressed to each person listed below on this date. I then deposited each envelope with the U.S. Postal Service on the same day with postage thereon fully prepaid in the ordinary course of business. I am aware that upon motion of a party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing in the affidavit.

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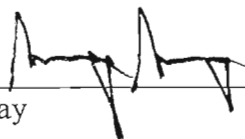
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Executed this 15th day of July, 2010 in San Francisco, California.

  
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