

THE
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Delta Settles FCRA Class Action for \$2.3 Million

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We have another multi-million dollar FCRA class action settlement on the books. In *Schofield v. Delta Air Lines, Inc.*, No. 18-cv-00382-EMC, 2019 U.S. Dist. LEXIS 31535, at *1 (N.D. Cal. Feb. 27, 2019), the district court for the Northern District of California recently issued an order granting Plaintiff's motion for preliminary approval of class settlement totaling \$2.3 million for a class of approximately 44,100 class members.

The plaintiffs in *Schofield* consist of individuals who applied for employment with Delta Airlines and were allegedly given inadequate disclosure documents when consenting to background checks. They claim that Delta violated the FCRA; the California Investigative Consumer Reporting Agencies Act ("ICRAA"); the California Consumer Credit Reporting Agencies Act ("CCRAA"); and the California Business & Professions Code by acquiring "consumer, investigative consumer and/or consumer credit reports through background checks from current and former employees without providing proper disclosures and obtaining proper authorizations." Plaintiffs argued that the disclosures were inadequate and in violation of the FCRA because they were not clear and unambiguous, contained extraneous information, and did not consist solely of the disclosure.

After the case was removed from San Francisco Superior Court, Delta filed a motion for summary judgment on the basis that the named Plaintiff's claims under the FCRA, ICRAA, and CCRAA were time-barred by the statute of limitations because he had to bring the action within two years of knowing that background check took place. Delta's motion was unopposed as the parties reached a settlement before the opposition was due.

The Settlement Agreement

The settlement agreement released the FCRA and state law claims related to Delta's "conduct in obtaining background checks on applicants without using a stand-alone authorizing document that complies with the FCRA and accompanying state laws." *Id.* at *3-4. As stated above, the settlement is for \$2.3 million for a class of approximately 44,100 class members.

- Of the \$2.3 million, Plaintiff's counsel is going to seek 25%, but is permitted to seek up to 33.33% of the total settlement amount, or \$766,666.66.
- 60% of the net settlement amount is to be divided evenly among class members on a pro rata basis whose background check Defendant procured or caused to be procured on or after October 17, 2015 through February 14, 2019. *Id.* at *4.
- 40% of the net settlement amount is to be divided evenly among class members on a pro rata basis whose background check Defendant procured or caused to be procured from October 17, 2012 through October 16, 2015
- Finally, if the total number of class members exceeds 46,000, Delta will supplement the settlement fund by \$50 per person for each person in excess of 46,000.

Class Certification



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As the court notes, where “a class has not yet been certified in [a] case, before determining the fairness of a class action settlement agreement, the Court must determine whether the settlement class meets the requirements for class certification under Federal Rule of Civil Procedure 23.” Thus, the court had to analyze whether the alleged class satisfies the requirements of FRCP Rule 23(a), which are (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy of representation.

1. **Numerosity**

The court quickly checked off this requirement as the class is upwards of 44,100 members.

2. **Commonality**

This requirement is met when there are questions of fact and law which are common to the class. In this case, the motion for preliminary approval defined the common issue as “whether Delta willfully violated the law by using these forms.” The court found that, “[w]hile some class members may have more specific issues with respect to the statute of limitations, that does not necessarily preclude class certification.” This requirement was met.

3. **Typicality**

To satisfy this requirement, “the claims or defenses of the representative parties must be typical of the claims or defenses of the class. In this case, the court concluded that all class members, including the class reps, will likely face the same challenge with respect to a statute of limitations defense. Further, the plaintiff alleged that Delta’s conduct was uniform, so whether Delta obtained consumer reports and when class members should have learned of the report is likely to turn on common evidence or patterns of evidence. Thus, this requirement was met.

4. **Adequacy of Representation**

There are two factors the court looks at here – (1) do the named plaintiffs and their counsel have any conflicts of interest with other class members, and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class? With respect to the first question, the court found no conflicts of interest. With regard to the second question, the court noted that plaintiff’s counsel moved quickly for settlement, but acknowledged that such a move may very well be the result of the “general weakness of the case rather than a lack of vigorous representation.”

5. **FRCP Rule 23(b)**

Finally, the court had to find that the requirements under FRCP Rule 23(b) were satisfied. Under Rule 23(b), the court must find that questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

First, the court found that there is a single common issue that drives the litigation—that is whether Delta willfully violated the law by using facially inadequate forms predominates over the individual issues. Thus, the court concluded that liability can be determined on a class wide basis. Next, the court noted that the amount in controversy is small and that because litigation costs would dwarf potential recovery, a class action is the superior means of adjudicating this case.

Review and Approval of Settlement

Once the court determined that the FRCP Rule 23 requirements for class certification were met, it had to approve the proposed settlement. The court analyzed (a) the adequacy of the settlement amount; (b) the settlement process; (c) the presence of obvious deficiencies; and (D) procedural guidance for class action settlements.

1. **Adequacy of the settlement amount**

The court preliminarily found that the settlement consideration is adequate despite potential vulnerabilities in plaintiff’s case (ex. overcoming statute of limitations defense; litigating unsettled aspects of law related to claims; finding of willfulness)

1. **Settlement process**

The settlement was reached as a result of arm’s length negotiations with a mediator, so the court found that the settlement was reached in a procedurally fair manner.

1. **The presence of obvious deficiencies**

The court analyzed the notices to be sent to class members, whether the named plaintiff was receiving

preferential treatment by way of the large incentive award (requested \$10,000 as an incentive award), and attorney's fees. The court found no deficiencies that would lead it to not approve the proposed settlement agreement.

1. ***Procedural guidance for class action settlements***

The court found that the parties appropriately addressed the Northern District of California's procedural guidance for class action settlements.

Thus, the court granted preliminary approval of the settlement based upon the terms set forth in the settlement agreement. The final approval hearing is scheduled for July 11, 2019. Stay tuned!

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