Addendum Supporting Appeals of cases 4-03-SC-003174, 4-04-SC-006735, 4-04-SC-006736

Background: On July 30, 2004, Plaintiff had hearings on three cases, all involving the same Defendants, for three separate and unrelated violations of the Telephone Consumer Protection Act (TCPA). These were each unique and unrelated events and occurrences, occurring over approximately 8 weeks, with unrelated facts for each cause of action. These hearings were in the Los Gatos Small Claims Court. The Commissioner ruled that Plaintiff was splitting a single case, ordering mandatory joinder, which would force the resulting single case beyond the limits available in Small Claims Court. The three cases preyed for damages in the amounts of $2,500, $2,500, and $4,500.

The Commissioner ruled that Plaintiff could either pursue a single case for $2,500 (with both other cases dismissed with prejudice) or that Plaintiff could choose dismissal of all three cases without prejudice such that the cases could be pursued of in the Court of Limited Jurisdiction. Plaintiff chose dismissal of all three cases without prejudice.

Plaintiff filed a Request to Vacate the dismissal for each of the three cases, arguing that, since no two of these cases shared the same event, occurrence, or nexus of facts, the plaintiff should not be forced into mandatory joinder, and the cases should be heard as filed. The Requests to Vacate were read by the same Commissioner who issued the original dismissals; he denied the Requests to Vacate without addressing the issues raised in the arguments accompanying said Requests to Vacate.

Discussion of Right to Appeal:

While the Code of Civil Procedure section 116.710(a) denies Plaintiffs the right to appeal a Small Claims **Judgment**, there is **no prohibition against an appeal of a Request to Vacate.**

Further, the Code of Civil Procedure section 1294 specifically states that
"An aggrieved party may appeal from:
…
(b) An order dismissing a petition to confirm, correct or vacate an award."

Further, there is an important judicial inconsistency to be addressed with this appeal. Nearly identical Small Claims cases (also involving multiple TCPA violations and, in one case, involving essentially the same defendant) have been addressed by Commissioner Madden in Palo Alto and numerous other jurisdictions in California, and it appears **all** of these other cases have **held that the law does not support mandatory joinder**.

Lastly, should the rulings stand, there will be a chilling effect (apparently only in Los Gatos) on the Private Right of Action that is part of the TCPA. With mandatory joinder of all separate causes of action against violators of the TCPA, those violators would benefit by causing multiple violations to force actions out of Small Claims Court—certainly in direct opposition to express Congressional intent.

Respectfully submitted,

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