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Calif. Court Backs Fees In \$36M Restoration Hardware Suit

By **Emily Field**

Law360, New York (March 15, 2016, 9:54 PM ET) -- A California appeals court on Monday tossed an appeal by a class member who had argued that notice of a \$9 million attorneys' fee award in a \$36 million judgement against Restoration Hardware over collecting customers' ZIP codes should be sent to the whole class.

In a unanimous, published opinion, the panel dismissed class member Francesca Muller's appeal of the award under a state Supreme Court decision from the 1940s, *Eggert v. Pac. States S. & L. Co.*, that addressed whether an unnamed class member could appeal a judgment entered in the class action. Like *Eggert*, the instant action involved class claims and a challenge to an attorneys' fee award brought by a class member who didn't take any steps to be added as a named plaintiff, the panel said.

The named plaintiff, Mike Hernandez, had argued that Muller had no standing to bring her appeal, according to the opinion.

Muller had argued that the lower court erred in declining to order sending a notice to all class members about a hearing on the attorneys' fee award and that the award was an abuse of the court's discretion, according to the opinion.

The panel rejected Muller's argument that *Eggert* was decided before the Federal Rules of Civil Procedure were revised in 1966 and therefore was not relevant to the issue of whether she had standing to bring her appeal.

"Muller cites no authority suggesting that changes to federal procedural rules for managing class actions at trial undermine the analysis of a state statute that limits the standing of parties entitled to appeal, and we are aware of no relevant authority that does so," the panel said.

Under California law, if class members are given the option of opting out, they can instead pursue their own suit instead of being bound by a judgment in the class action, the panel said.

Even if they stay in the class, they can acquire appellate standing by intervening and moving to vacate the judgment, the panel said.

"Intervention in the instant action would have permitted Muller to oppose the attorney fee award and preserve the objectives of the class action: orderliness, efficiency and fairness to other class members," the panel said.

Hernandez filed the class action in 2006 claiming that Restoration Hardware Inc. violated

the Song-Beverly Credit Card Act by asking for and recording ZIP codes from customers who used a credit card to make purchases at its California retail stores, the panel said.

The court eventually certified the case as a class action, and Michael Hernandez and Amanda Georgino were named class representatives with Patterson Law Group and Stonebarger Law acting as counsel for the class, the panel said.

Following a bench trial, the trial court found Restoration was liable for as many as 1,213,745 violations of the law and set a penalty recovery in the amount of \$30 per violation, a total maximum liability of \$36,412,350, the panel said.

After the trial, Hernandez asked the court to order \$9.1 million in attorneys' fees, representing 25 percent of the judgment, according to the panel. Restoration Hardware said it wouldn't contest the fees, according to the opinion.

A June 2013 notice to potential class members told them about the suit and explained that they could remain in the class and be bound by the judgment, or exclude themselves, the panel said.

The notice also explained that if members chose to remain in the class, they had the option of entering an appearance through counsel, the panel said.

Two weeks later, Lawrence W. Schonbrun of the Law Office of Lawrence W. Schonbrun entered an appearance in the action on behalf of Muller, but she didn't move to intervene, join as an additional class action or be substituted as a class representative, the panel said.

Representatives for Muller and Hernandez didn't immediately respond to requests for comment Tuesday.

Muller is represented by Lawrence W. Schonbrun of the Law Office of Lawrence W. Schonbrun.

Hernandez is represented by James R. Patterson and Allison H. Goddard of Patterson Law Group, and Gene J. Stonebarger of Stonebarger Law.

Restoration Hardware did not make an appearance in this decision.

The case is Hernandez et al. v. Restoration Hardware Inc., case number D067091, in the Court of Appeal, Fourth Appellate District, Division One of the State of California.

--Editing by Aaron Pelc.

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