

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
HALL OF JUSTICE
TENTATIVE RULINGS - September 12, 2023

EVENT DATE: 09/15/2023 EVENT TIME: 09:00:00 AM DEPT.: C-73

JUDICIAL OFFICER: Joel R. Wohlfeil

CASE NO.: 37-2021-00023321-CU-MC-CTL

CASE TITLE: MATA VS. DIGITAL RECOGNITION NETWORK INC [E-FILE]

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Misc Complaints - Other

EVENT TYPE: Motion Hearing (Civil)

CAUSAL DOCUMENT/DATE FILED: Motion - Other, 08/16/2023

The Motion (ROA # 69) of Plaintiff Guillermo Mata ("Plaintiff") for an order for Class Certification, is GRANTED.

The Court certifies the following class:

"All residents of California whose California license plate data was collected by Defendant Digital Recognition Network, Inc. (either directly or through an affiliate) in the State of California at least fifteen times between June of 2017 and the date of final judgment."

Plaintiff's present counsel (Edelson PC) will serve as the attorneys for the class.

Defendant's objection and motion to strike (ROA # 103) to the declaration of Jacob J. Kamenir (ROA # 100) is SUSTAINED / GRANTED.

Plaintiff must demonstrate the existence of an ascertainable and sufficiently numerous class, a well-defined community of interest, and substantial benefits from certification that render proceeding as a class superior to the alternatives. Brinker Restaurant Corp. v. Superior Court (2012) 53 Cal. 4th 1004, 1021.

The certification question is essentially a procedural one that does not ask whether an action is legally or factually meritorious. Id. at 1023.

On the other hand, issues affecting the merits of a case may be enmeshed with class action requirements. Id.

The Court must examine Plaintiff's theory of recovery, assess the nature of the legal and factual disputes likely to be presented, and decide whether individual or common issues predominate. Id. at 1025.

The party seeking certification has the burden to establish the existence of these elements. Knapp v. AT & T Wireless Services, Inc. (2011) 195 Cal. App. 4th 932, 938.

The community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class. Code Civ. Proc. 382; Linder v. Thrifty Oil Co. (2000) 23 Cal. 4th 429, 435, 436.

The element of predominance presents the ultimate question of whether the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants. Brinker Restaurant Corp. v. Superior Court, *supra*.

The answer hinges on whether the theory of recovery advanced by the proponents of certification is, as an analytical matter, likely to prove amenable to class treatment. *Id.*

The Court must examine the allegations of the complaint and supporting declarations, and consider whether the legal and factual issues they present are such that their resolution in a single class proceeding would be both desirable and feasible. *Id.* at 1021, 1022.

As a general rule, if Defendant's liability can be determined by facts common to all members of the class, a class will be certified even if the members must individually prove their damages. *Id.* at 1022.

Predominance is a comparative concept, and the necessity for class members to individually establish eligibility and damages does not mean individual fact questions predominate. Sav-On Drug Stores, Inc. v. Superior Court (2004) 34 Cal. 4th 319, 334.

Common Issues Predominate

Civil Code sections 1798.90.5, et seq. is a recently enacted statutory scheme designed to regulate the practices and procedures for the collection of license plate information by automated license plate recognition ("ALPR") operators. Plaintiff relies on section 1798.90.51, which provides as follows:

"An ALPR operator shall do all of the following:

(a) Maintain reasonable security procedures and practices, including operational, administrative, technical, and physical safeguards, to protect ALPR information from unauthorized access, destruction, use, modification, or disclosure.

(b)(1) Implement a usage and privacy policy in order to ensure that the collection, use, maintenance, sharing, and dissemination of ALPR information is consistent with respect for individuals' privacy and civil liberties. The usage and privacy policy shall be available to the public in writing, and, if the ALPR operator has an Internet Web site, the usage and privacy policy shall be posted conspicuously on that Internet Web site.

(2) The usage and privacy policy shall, at a minimum, include all of the following:

(A) The authorized purposes for using the ALPR system and collecting ALPR information.

(B) A description of the job title or other designation of the employees and independent contractors who are authorized to use or access the ALPR system, or to collect ALPR information. The policy shall identify the training requirements necessary for those authorized employees and independent contractors.

(C) A description of how the ALPR system will be monitored to ensure the security of the information and compliance with applicable privacy laws.

(D) The purposes of, process for, and restrictions on, the sale, sharing, or transfer of ALPR information to other persons.

(E) The title of the official custodian, or owner, of the ALPR system responsible for implementing this section.

(F) A description of the reasonable measures that will be used to ensure the accuracy of ALPR information and correct data errors.

(G) The length of time ALPR information will be retained, and the process the ALPR operator will utilize to determine if and when to destroy retained ALPR information."

In addition, section 1798.90.54 provides for a private right of action:

"(a) In addition to any other sanctions, penalties, or remedies provided by law, an individual who has been harmed by a violation of this title, including, but not limited to, unauthorized access or use of ALPR information or a breach of security of an ALPR system, may bring a civil action in any court of competent jurisdiction against a person who knowingly caused the harm.

(b) The court may award a combination of any one or more of the following:

(1) Actual damages, but not less than liquidated damages in the amount of two thousand five hundred dollars (\$2,500).

(2) Punitive damages upon proof of willful or reckless disregard of the law.

(3) Reasonable attorney's fees and other litigation costs reasonably incurred.

(4) Other preliminary and equitable relief as the court determines to be appropriate."

(emphasis added)

Given these two statutes, Plaintiff must plead and prove the following elements: (a) a violation of section 1798.90.51 (i.e., failure to implement and follow reasonable procedures and practices to protect ALPR information, or the failure to implement and publish a sufficient usage and privacy policy); (b) "harm" caused by any such violation; and (c) Defendant must have knowingly caused the harm. As this is a proposed class action, common issues must predominate with respect to these elements.

Common issues predominate with respect to Plaintiff's theory of recovery. Plaintiff alleges that Defendant's privacy policy, which governs the collection and use of ALPR data, violates section 1798.90.51, and in addition is not adequately publicized on Defendant's internet website. These are issues which are common across the entire class.

Regarding the harm caused by this violation, it is alleged that Plaintiff and each class member suffered an unreasonable invasion of their privacy such that each individual is entitled to the minimum liquidated damages amount of \$2,500. Whether Defendant's policies and procedures resulted in an invasion of privacy and whether this generalized violation of privacy constitutes sufficient "harm" are common issues. The entitlement to the \$2,500 liquidated damages amount is a common issue. See Juan Canizales Conde v. City Compassionate Caregivers, Inc. (C.D. Cal., Nov. 10, 2020, No. CV205302MWFMRWX) 2020 WL 9259837, at *4 (fact that the TCPA provides for statutory damages resolves any differing questions of causation or damages between the class members).

The knowledge element also presents a common issue. Whether Defendant, through its agents, employees and / or principals, knew that the statutory violation with respect to the privacy policy would result in an unreasonable invasion of privacy and would, in turn, harm the class members is a common issue.

The Court's conclusion that common issues predominate is not a finding that Plaintiff's theory of recovery has merit. These issues have yet to be adjudicated. However, as framed by Plaintiff, they can be adjudicated on a class wide basis and the Motion for class certification is granted on this basis.

Typicality

The purpose of the typicality requirement is to assure that the interests of the named representative aligns with the interests of the class. Seastrom v. Neways, Inc. (2007) 149 Cal. App. 4th 1496, 1502.

"Typicality" refers to the nature of the claim or defense of the class representative, and not to the specific facts from which it arose or the relief sought. Id.

The test of typicality is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named Plaintiff, and whether other class members have been injured by the same course of conduct. Id.

Class certification is inappropriate where a putative class representative is subject to unique defenses which threaten to become the focus of the litigation. Id.

In this action, the named Plaintiff asserts an identical claim and the same harm. Defendant fails to reference any unique defenses. As a result, the element of typicality has been established and class certification is appropriate.

Adequacy of Representation

The adequacy inquiry serves to uncover conflicts of interest between named parties and the class they seek to represent. Johnson v. GlaxoSmithKline, Inc. (2008) 166 Cal. App. 4th 1497, 1509.

To assure adequate representation, the class representative's personal claim must not be inconsistent with the claims of other members of the class. As discussed above, no conflicts or inconsistencies have been referenced by Defendants. As a result, the element of adequacy of representation has been established and class certification is appropriate.

Ascertainability

The objectives of this requirement are best achieved by regarding a class as ascertainable when it is defined in terms of objective characteristics and common transactional facts that make the ultimate identification of class members possible when that identification becomes necessary. Noel v. Thrifty Payless, Inc. (2019) 7 Cal. 5th 955, 980.

A class definition is sufficient if it allows a member of the class to identify himself or herself as having a right to recover based on the class description. Id.

In this case, the class is defined in terms of a common and objective characteristic: whether a person's license plate information has been scanned by Defendant, or an affiliate. Defendant's database will identify which California license plates have been scanned in California fifteen times or more during the relevant time period. Members of the class will be readily identifiable by cross-referencing the license plate data with public records and/or vehicle registration records maintained by the California Department of Motor Vehicles.

Sufficiently Numerous

It is undisputed that the class is sufficiently numerous.