

BACKGROUND

On January 7, 2009, Plaintiffs initiated this action challenging California's statutory requirement that they disclose the names and other personal information of those contributors of \$100 or more and subsequently moved for a preliminary injunction, which this Court denied. The Court has since denied Plaintiffs' Motion for Summary Judgment.

By way of the instant litigation, Plaintiffs seek, *inter alia*, to have this Court: 1) enjoin Defendants from enforcing the semiannual reporting requirements under California Government Code § 84200; 2) enjoin Defendants from commencing criminal or civil actions for failing to comply with those reporting requirements; and 3) enjoin Defendants from both publishing reports or making available prior reports or campaign statements filed by Plaintiffs pursuant to California's Political Reform Act of 1974, Cal. Gov. Code § 81000 et seq. ("PRA").

Plaintiffs now move the Court to certify three classes, comprised of one class of Plaintiffs and two classes of Defendants. The proposed classes are defined as:

- 1) Plaintiff Class of Major Donors: All individuals and organizations that contributed ten thousand dollars (\$10,000) or more to Plaintiffs ProtectMarriage.com or NOM-California.
- 2) Defendant Class of District Attorneys: All district attorneys in the State of California that are granted the authority to enforce provisions of the Political Reform Act of 1974, Cal. Gov't Code ("CGC") § 81000 et seq. (The "PRA").
- 3) Defendant Class of Elected Attorneys: All elected city attorneys in the State of California that are granted the authority to enforce provisions of the Political Reform Act of 1974, CGC 81000 et seq.

1 ANALYSIS

2 1. The Putative Classes Meet the Requirements of
3 Rule 23(a)

4 The numerosity requirement of Rule 23(a)(1) is established
5 if "the class is so numerous that joinder of all members is
6 impracticable." The geographical disbursement of class members
7 outside of one district increases the impracticability of
8 joinder, and "when the class is large, numbers alone are
9 dispositive." Riordan v. Smith Barney, 113 F.R.D. 60, 62 (N.D.
10 Ill. 1986). At the same time, courts have been inclined to
11 certify classes of fairly modest size. See, e.g., Jordan v. Los
12 Angeles County, 669 F.2d 1311, 1319 (9th Cir. 1982) (willing to
13 find numerosity for classes with thirty-nine, sixty-four, and
14 seventy-one people), vacated on other grounds, 459 U.S. 810
15 (1982).

16 In the instant case, the Class of Major Donors is comprised
17 of approximately 466 putative plaintiffs. Additionally, there
18 are fifty-eight California district attorneys empowered to
19 enforce the PRA. Finally, eleven cities currently retain elected
20 district attorneys, but over 400 retain the right to elect a city
21 attorney. The size of these classes thus satisfies the
22 numerosity requirements of Rule 23(a)(1). Additionally, the
23 geographical location of the members of each class throughout the
24 state and nation increases the impracticability of joining all
25 class members. Moreover, the circumstances of this action, in
26 which Plaintiffs assert they should not be required to disclose
27 the identities of political donors, makes it unlikely putative
28 class members would choose to litigate absent the class action.

1 Accordingly, Plaintiffs' proposed class meets the numerosity
2 requirements of Rule 23(a) (1).

3 Under Rule 23(a) (2), commonality is established if "there
4 are questions of law or fact common to the class." This
5 requirement is construed permissively and can be satisfied upon a
6 finding of "shared legal issues with divergent factual
7 predicates...." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019
8 (9th Cir. 1998). The instant case presents the common legal
9 issue of whether Plaintiff class members are required to comply
10 with the PRA's disclosure requirements. The Defendant class
11 members are each empowered with the same enforcement authority
12 under the PRA. Thus, Plaintiffs establish commonality because
13 the evidentiary and legal arguments necessary to prosecute the
14 instant claims are nearly identical as to all class members.

15 Typicality under Rule 23(a) (3) is satisfied if "the claims
16 or defenses of the representative parties are typical of the
17 claims or defenses of the class." Typicality does not require
18 the claims to be identical. *Hanlon*, 150 F.3d at 1020. Rather,
19 the Ninth Circuit has found typicality if the requisite claims
20 "'share a common issue of law or fact' ... and are 'sufficiently
21 parallel to insure a vigorous and full presentation of all claims
22 for relief.'" *Cal. Rural Legal Assistance, Inc. v. Legal Servs.*
23 *Corp.*, 917 F.2d 1171, 1175 (9th Cir. 1990) (citations omitted),
24 *amended*, 937 F.2d 465 (9th Cir. 1991). As alluded to above, the
25 representative Plaintiffs in the present matter assert the same
26 claims that could be brought by any of the other class members
27 for the alleged defects in the application and enforcement of the
28 PRA.

1 Although claims attributable to each class member may present
2 minor factual differences, such as donation amounts and
3 occurrences of harassment, the differences do not preclude a
4 finding of typicality.

5 The last requirement of Rule 23(a) is that "the
6 representative parties will fairly and adequately protect the
7 interests of the class." Fed. R. Civ. P. 23(a)(4). In Hanlon,
8 the Ninth Circuit identified two issues for determining the
9 adequacy of representation: (1) whether the named plaintiffs and
10 their counsel have any conflicts of interest with other class
11 members, and (2) whether the named plaintiffs and their counsel
12 will "prosecute the action vigorously on behalf of the class."
13 150 F.3d at 1020. This Court is entirely satisfied that the
14 Plaintiff classes are adequately represented by both the named
15 Plaintiffs and their counsel. One need only conduct a cursory
16 overview of the law governing this substance of this case to
17 determine the breadth and depth of the experience Plaintiffs'
18 counsel brings to this litigation. The same is true of the
19 Court's confidence in counsel for the district attorney classes.
20 Moreover, the Court knows of no conflict that weights against
21 certification. Therefore, Plaintiffs have satisfied the
22 Rule 23(a)(4) requirement for adequacy of representation.

23 Based on the foregoing discussion, Plaintiffs have
24 established the class action prerequisites under Rule 23(a).
25 Accordingly, the next issue to be addressed is whether class
26 certification, for purposes of preliminary approval of the
27 Settlement Agreement, is proper under Rule 23(b).

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1 **2. The Putative Classes Meet the Requirements of**
2 **Rule 23(b)**

3 Certification is proper under Rule 23(b)(3). Rule 23(b)(3)
4 permits class certification when (1) common questions of law and
5 fact predominate over any individual claims and (2) a class
6 action is the superior method to fairly and efficiently
7 adjudicate the matter.

8 Under the Rule 23(b)(3) predominance analysis, the Court
9 must determine whether the proposed class is “sufficiently
10 cohesive to warrant adjudication by representation.” Hanlon,
11 150 F.3d at 1022, citing Anchem Prods., Inc. v. Windsor, 521 U.S.
12 591, 623 (1997). The requirement is satisfied if a plaintiff
13 establishes that a “common nucleus of facts and potential legal
14 remedies dominates” the litigation. Id. The “common nucleus of
15 facts” in the present case derives from the alleged
16 unconstitutionality of the PRA disclosure requirements and the
17 application of those requirements to contributors to the Yes on 8
18 campaign. The factual underpinnings underlying each Plaintiff’s
19 potential claims is nearly identical and, despite any minor
20 differences, those common issues prevail. See Blackie v.
21 Barrack, 524 F.2d 891, 905 (9th Cir. 1975). Class certification
22 in this case, where common issues predominate, serves the
23 judicial economy function of Rule 23 class actions. Valentino,
24 97 F.3d at 1234.

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1 Plaintiffs must also establish that the proposed class
2 action is the superior method of resolving the dispute in
3 comparison to available alternatives. "A class action is the
4 superior method for managing litigation if no realistic
5 alternative exists." Id. at 1234-35. The Ninth Circuit has
6 recognized that a class action is a plaintiff's only realistic
7 method for recovery if there are multiple claims against the same
8 defendant for relatively small sums. Local Joint Executive Bd.
9 Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc., 244 F.3d
10 1152, 1163 (9th Cir. 2001). Accordingly, because the crux of
11 each plaintiff's sought-after relief is equitable in nature, and
12 because Plaintiffs seek to draw as little attention as possible
13 to their voting preferences, a class action appears to be the
14 superior method to resolve this case.

15 The same conclusion is reached after consideration of the
16 superiority factors set forth by Rule 23(b)(3). First, because
17 it is likely that each individual class member could only pursue
18 relatively small claims, and because they wish to remain
19 anonymous, "class members have no particular interest in
20 individually controlling the prosecution of separate actions."
21 Rule 23(b)(3)(A); see also Zinser v. Accufix Research Inst.,
22 Inc., 253 F.3d 1180, 1190 (9th Cir. 1991) ("Where damages
23 suffered by each putative class member are not large, this factor
24 weighs in favor of certifying a class action."). When the
25 individual claims of class members are small, the class action
26 "facilitates the spreading of the litigation costs among the
27 numerous injured parties" and encourages recovery for unlawful
28 activity.

1 See In re Warfarin Sodium Antitrust Litig., 391 F.3d 516, 534
2 (3rd Cir. 2004). Additionally, in the instant action, the class
3 members have the option to "opt-out" of the proposed settlement,
4 thus allowing individuals the opportunity to control the
5 litigation. Id.

6 The second relevant factor under Rule 23(b)(3) is whether,
7 and to what extent, other class members have begun litigation
8 concerning the controversy. Rule 23(b)(3)(B). This factor
9 counsels against certification if, despite the class action, a
10 multiplicity of suits will continue through judicial proceedings.
11 Zinser, 253 F.3d at 1191 (citing to 7A Charles Alan Wright,
12 Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure
13 § 1780 at 568-70 (2d ed. 1986)). Neither the parties nor the
14 court are not aware of any other similar suit raising similar
15 issues. Accordingly, the Rule 23(b)(3)(B) concern regarding the
16 multiplicity of litigation does not weigh against certification.

17 Under Rule 23(b)(3)(C), the Court may also consider "the
18 desirability or undesirability of concentrating the litigation of
19 the claims in a particular forum." There appears to be no reason
20 why concentrating the litigation in this Court would be
21 undesirable considering the presence of Defendants within the
22 state and the substance of the challenge to California law.

23 Lastly, under Rule 23(b)(3)(D), the Court may consider
24 "likely difficulties in managing a class action." In this case,
25 the overwhelming benefits that inhere in litigating this matter
26 as a class action outweigh any difficulties that might arise in
27 the management of the litigation.

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CONCLUSION

For the reasons stated, Plaintiffs' Motion to Certify Class (Docket No. 108) is GRANTED.¹

IT IS SO ORDERED.

Dated: August 27, 2009



MORRISON C. ENGLAND, JR.
UNITED STATES DISTRICT JUDGE

¹ Because oral argument will not be of material assistance, the Court ordered this matter submitted on the briefing. E.D. Cal. Local Rule 78-230(h).