



## Alerts

### California Class Action Lawyers Must Help Class Members Enforce Judgment

February 16, 2010

*Lawyers for the Profession® Alert*

*Barboza v. West Coast Digital GSM, Inc.*, 179 Cal.App.4th 540, 102 Cal.Rptr.3d 295 (2009)

#### Brief Summary

In a class action, given absent class members' lack of power or incentive to enforce a judgment, the court ordered class counsel to assume post-judgment enforcement duties on behalf of the class.

#### Complete Summary

Plaintiffs were employees who brought a class action against their employer West Coast Digital, Inc. (WCD). WCD then sold its assets and ceased operations. The parties stipulated to a default against WCD. The court entered an aggregate judgment of more than \$4 million. Plaintiffs' counsel submitted for the court's approval a notice to class members of the judgment. The proposed notice stated that class counsel had fulfilled their obligations to the class and had no obligation to seek to enforce the judgment. The trial court did not approve the notice and noted that class counsel's duty of care extends to enforcement of the judgment. Class counsel appealed from the order denying approval of the notice.

The California Court of Appeal, Second District, affirmed based on a number of considerations unique to class actions. Most importantly, a class related issue was still unresolved. Namely, there was an open question as to the appropriate distribution among class members of any assets recovered. This issue was exacerbated by the fact that any recovery from the insolvent defendant would likely be too small to cover plaintiffs' aggregate claims. Further, because the judgment was an aggregate judgment, no individual class member could seek to enforce it, and even if individual enforcement was possible it would likely be too expensive for individuals to seek enforcement. The court also noted that class members often cannot feasibly agree with class counsel on the scope of representation. Accordingly, the court held that class counsel must represent "all of the absent class members' interests throughout the litigation to the extent there are class issues" and that it was the duty of the trial court to ensure that counsel is protecting those interests. *Id.* at 300-01.

The court conceded that the default rule — outside of the class action context — is that attorneys' duties end upon entry of judgment, but the court noted that

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this common law rule has generally included an exception for special circumstances. The court held that class representation can present such a special circumstance. The court also conceded that its holding could impose a hardship on class counsel who lack expertise in enforcing judgments. But the court held this consideration was outweighed by the need to protect class members' interests, and noted that class counsel could always associate with counsel who did have expertise in enforcement.

### **Significance of Opinion**

This opinion demonstrates one of the many ways the lawyer-client relationship and its attendant duties may be considered differently in the class representation context. Although the court takes a fact-specific approach to this case, it also seemingly articulates a broader rule calling for lawyers to represent "all of the absent class members' interests throughout the litigation [including post-judgment] to the extent there are class issues."

*This alert has been prepared by Hinshaw & Culbertson LLP to provide information on recent legal developments of interest to our readers. It is not intended to provide legal advice for a specific situation or to create an attorney-client relationship.*