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California federal court bemoans choice of unfit plaintiffs in denial of class certification motion

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When a court begins its order denying class certification by lamenting the "failure to properly vet named plaintiffs" and "seeming unwillingness to promptly address issues that arise during litigation with named plaintiffs" as "serious problems that the class action plaintiffs' bar desperately needs to rectify," class action plaintiffs should take note. *Lineberry v. AddShoppers, Inc.*, Case No. 23-cv-01996-VC, 2025 WL 1533136, at *1 (N.D. Cal. May 29, 2025)

In *Lineberry*, the named plaintiffs alleged that that when they visited certain websites and

put an item in their cart, the websites used tracking technology from a company called AddShoppers to send them targeted marketing emails, even though the named plaintiffs "never provided their email addresses or any other personal information to those websites." 2025 WL 1533136, at *1. Judge Vince Chhabria of the Northern District of California denied class certification after determining that one named plaintiff lacked standing and that both named plaintiffs were neither adequate nor typical of the class. *Id.* at *3-10.

The procedural history of the lawsuit was convoluted and involved numerous amended pleadings, substitutions of named plaintiffs, and evolving factual allegations and causes of action. *Id.* at *2. As of February 2025, there were only two remaining named plaintiffs – California residents Abby Lineberry and Miguel Cordero – and the only remaining cause of action was a claim under the California Invasion of Privacy Act ("CIPA"). *Id.* Judge Chhabria denied these plaintiffs' motion for certification for two reasons.

First, after an evidentiary hearing involving testimony from the named plaintiffs, the district court concluded that Cordero lacked standing because (1) he did not remember putting the item in question in his virtual shopping cart; (2) he was unable to rebut AddShoppers' evidence that he only visited the website in question once; and (3) his testimony was "not credible" based "both on the inherent implausibility of his overall narrative and his demeanor." *Id.* at *6.

Second, the district court concluded that Lineberry and Cordero were neither adequate nor typical of the putative classes because they did not receive any targeted marketing emails from AddShoppers after allegedly browsing websites and placing items in their carts. *Id.* at 9.

Moreover, named plaintiff Lineberry testified that she deleted the full browsing history of data on her phone after AddShoppers requested that data in discovery. *Id.* at *8. Unsurprisingly, the district court found that Lineberry's browsing history deletion raised credibility, typicality, and adequacy issues and "could generate a spoliation related instruction to the jury." *Id.*

Finally, the court declined to give the plaintiffs a second bite at the class certification apple because the plaintiffs had already been given multiple opportunities to amend, and it would be unfair to the defendants to give the plaintiffs yet another opportunity to do so after two and a half years of litigation. *Id.* at *10.

Takeaway: *Lineberry v. AddShoppers* is a helpful reminder of the pitfalls associated with an atypical and inadequate named plaintiff. Judge Chhabria summed it up best in the following conclusory admonition to the plaintiffs' bar:

> when these sorts of problems become apparent, plaintiffs' lawyers seem to stick their heads in the sand rather than addressing them proactively (for example, by seeking to bring in new named plaintiffs before class certification). Going forward with named plaintiffs plagued by these kinds of problems is inconsistent with the duty of counsel to faithfully represent the interests of the absent class members. If the only named plaintiff you can find is someone whose presence threatens to weaken the claims of the absent class members, don't bring the lawsuit. And if you've already brought the lawsuit, don't just plow ahead hoping that it won't become a big deal.

Id.