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The Ninth Circuit affirms class certification against yearbook aggregator

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Takeaway: In an opinion joining a comprehensive analysis of Ninth Circuit predominance law with colorful observations about the “digital afterlife” of old yearbooks, the Court of Appeals has affirmed class certification against PeopleConnect, Inc., the operator of Classmates.com. *Nolen v. PeopleConnect, Inc.*, No. 24-3894, --- F.4th ---, 2026 WL 2871735 (9th Cir. Sept. 24, 2026). While *Nolen* reiterates the Ninth Circuit’s limitations on determining “merits” issue to resolve class certification, it also includes a discussion of litigating “claims-splitting” intraclass conflicts that may provide a roadmap to defense counsel where class members have meaningful claims requiring individualized adjudication that would be jettisoned to secure certification of less valuable claims.

The *Nolen* plaintiff alleged that, by using class members’ names that appear in digitized yearbooks to sell paid subscriptions to Classmates.com without their consent, PeopleConnect violated California’s right-of-publicity statute, Cal. Civ. Code § 3344. PeopleConnect vigorously disputed the viability of class certification under the liability theory in *Nolen*—that PeopleConnect violated § 3344 the moment it made a person’s name searchable—but the Ninth Circuit rejected each of its challenges. 2026 WL 2871735, at *5.

First, PeopleConnect argued that § 3344 requires proof that a class member was actually searched, an inquiry that necessarily would be individualized. *Id.* at *5. But the Ninth Circuit held that this argument “goes to the merits of the class’s § 3344 claims, not to whether the class can be certified.” *Id.* The parties in *Nolen* did not dispute the elements of a § 3344 claim, only whether “searchability” sufficed to show the “direct connection” element. *Id.* at *6, *8. Section 3344(e), however, expressly makes that a “question of fact.” *Id.* at *6.

Because PeopleConnect essentially claimed a failure of proof on an essential element, the Ninth Circuit found it presented a summary judgment question rather than a basis for denying certification. The Court of Appeals explained that when “the concern about the proposed class is not that it exhibits some fatal dissimilarity but, rather, a fatal similarity—[an alleged] failure of proof as to an element of the plaintiffs’ cause of action—courts should engage that question as a matter of summary judgment, not class certification.” *Id.* at *6-*7. The Court of

Appeals explained that predominance accepts the plaintiff's legal theory and assumes the class "will prevail or fail in unison" based on the viability of that theory. *Id.* at *7. A different issue may have been presented if—as in the cases cited by PeopleConnect—the court needed to determine the elements of the claim as a legal matter before assessing predominance. *Id.* at *8.

Second, PeopleConnect argued that statutory damages require individualized proof of mental anguish or, alternatively, individualized proof of economic injury. The *Nolen* court declined to reach the mental-anguish argument because PeopleConnect had not raised it in opposing certification. *Id.* at *8. Regarding economic injury, the Ninth Circuit upheld the district court's inference: "One can reasonably infer that by using an individual's likeness in direct connection with its advertising, the company believes her likeness is valuable." *Id.* at *9. The Court of Appeals also credited unchallenged evidence that PeopleConnect buys and licenses yearbooks, showing a market for the names they contain. *Id.* at *10. And because § 3344 guarantees a \$750 minimum award, class members need not quantify their actual damages. *Id.* at *9 n.6.

Third, PeopleConnect argued that the district court lacked a workable plan to screen out four groups: students who signed school consent forms; people who are not reasonably identifiable from a search result; registered users and yearbook donors excluded under the class definition; and people whose names are not searchable. The *Nolen* court examined each group and found that none of them presented a material predominance problem. *Id.* at *10-*11

Regarding school consent forms, PeopleConnect offered seven exemplars that did not help its position. Only three extended rights to "assigns," "transferees," or "successors," and PeopleConnect offered no evidence that it held any such status. "We do not permit a defendant to support its invocation of individualized issues with mere speculation." *Id.* at *12.

While PeopleConnect identified a handful of identical or similar names (nine and twenty, respectively), the Ninth Circuit found these insufficient to require a person-by-person inquiry across a class of roughly 100,000. That a defendant may "pick off the occasional class member" does not create predominating individual issues. *Id.* at *12-*13.

The class definition already excluded registered users and donors (thereby obviating their individual consent defenses). And the district court adopted a two-step plan — claimant self-certification followed by PeopleConnect's cross-check against its user and donor records, with sampling and the option to seek decertification if significant fraud appears — sufficient to police the exclusion of these individuals. *Id.* at *13.

The Court of Appeals similarly agreed that disputes about the “searchability” of class members’ names can be addressed post-certification through self-identification that “can easily be tested.” *Id.* at *16.

PeopleConnect also raised two adequacy challenges. Although the Ninth Circuit found PeopleConnect had not adequately preserved its “claims-splitting” argument—that Nolen’s decision to proceed solely on a “searchable” theory sacrifices potentially stronger “searched” claims that class judgment would preclude—the Court of Appeals provided guidance for a future decertification motion, noting that the issue appeared to be one of first impression in the Circuit. *Id.* at *17-*18. After reviewing various decisions addressing “intraclass” conflicts, the *Nolen* court concluded that, in evaluating an adequacy challenge to a class representative’s strategic decision “to bring only certain claims or seek only certain types of relief,” courts should consider “whether such a decision secures the benefits of aggregate litigation, as well as whether it strikes a justifiable balance between the value of any abandoned claims and the value of the relief sought.” *Id.* at *19. This examination should ensure that the conflict is actual rather than speculative and consider whether “an individual who seeks to prove actual damages higher than the statutory minimum, and for whom litigating individually makes financial sense, could opt out of the class.” *Id.* at *20.

Finally, the Ninth Circuit rejected the argument that Nolen cannot represent the injunctive class given that her name is no longer searchable because her theory requires only searchability (not an imminent search) and because PeopleConnect only made her name unsearchable after she sued. *Id.* at *20. A defendant cannot “pick off” a representative through voluntary cessation, and PeopleConnect made no effort to carry its heavy burden of showing the conduct would not recur. The Court of Appeals explained that PeopleConnect “may not render Nolen an inadequate representative simply by its ‘voluntary cessation of challenged conduct’ as to her.” *Id.* at *21.