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Illinois federal court denies class certification in law firm call recording dispute

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Takeaway: A federal court in Illinois recently denied certification of a proposed class of employees, clients, and potential clients of a law firm who alleged that the firm secretly recorded their telephone calls. *Alholm v. Vrdolyak L. Grp., LLC*, No. 22 CV 1820, 2026 WL 3082834 (N.D. Ill. Oct. 15, 2026). After weighing conflicting deposition testimony and reviewing the call recordings, the court held that the plaintiffs failed to show by a preponderance of the evidence that the firm’s phone system could record calls only on a system-wide basis, and therefore the question of whether each class member’s calls were recorded was an individualized one that defeated predominance. 2026 WL 3082834, at *9. The *Alholm* decision illustrates that courts must resolve factual disputes directly bearing on class certification, including by assessing witness credibility, rather than merely accepting a plaintiff’s characterization of the evidence.

In *Alholm*, six former employees of The Vrdolyak Law Group, LLC (“VLG”), brought class claims for illegal wiretapping under 18 U.S.C. § 2511 and the Tennessee wiretap statute and for illegal eavesdropping under the Illinois eavesdropping statute, alleging that VLG secretly recorded their phone conversations. *Id.* at *1. The plaintiffs moved to certify a class under Rule 23(b)(3) of “[a]ll employees, clients, and potential clients” of VLG who had a phone conversation between November 1, 2019, and January 28, 2020, with a person using VLG’s telephone system, along with Illinois and Tennessee subclasses. *Id.* The court explained that, for all three claims, “the question that towers over all others is whether calls made over VLG’s phone system were recorded,” because every other element “assumes that calls were recorded in the first place.” *Id.* at *3.

The court denied class certification, finding that most of the plaintiffs’ proffered common evidence would be inadmissible at trial to prove that VLG recorded calls. *Id.* at *3–5. Evidence that VLG’s managing partner conducted video surveillance of employees was improper character evidence under Federal Rule of Evidence 404(b), and statements by former VLG personnel and text messages among employees were hearsay, including text messages that did not qualify as present sense impressions or recorded recollections. *Id.* at *4. The court “strictly” applied the Federal Rules of Evidence “in full” because discovery and summary judgment were complete. *Id.* at *3 n.1. That left audio recordings of calls of one plaintiff, Lucero Del Real, which the plaintiffs argued contained sounds that could have been captured only by a system-wide recording feature. *Id.* at *5. After

reviewing every recording, the district court disagreed: the recordings contained no ringing, no conversations that did not involve Del Real, and no audible transfers, and therefore did not “exhibit the characteristics of system-wide call recording.” *Id.*

The plaintiffs alternatively argued that VLG’s phone system was capable of recording calls only on a system-wide basis, thus establishing commonality. *Id.* at *6. Relying on *Arandell Corp. v. Xcel Energy Inc.*, 149 F.4th 883, 893 (7th Cir. 2025), the court reasoned that, where commonality turns on the truth or falsity of a specific fact, it must resolve the dispute even if doing so requires weighing the credibility of fact witnesses whose testimony is presented through deposition transcripts. *Alholm*, 2026 WL 3082834, at *6–7. Three witnesses involved with VLG’s phone system gave three different accounts about the system. *Id.* at *7. Because the plaintiffs failed to show that it was more likely than not that the system could record only system-wide, the Del Real recordings were not common evidence, and whether VLG recorded each class member’s calls—which the plaintiffs themselves called “the central issue in this case”—could not be a common question. *Id.* at *9.

The court acknowledged that the system’s capabilities presented a common question but held that it did not predominate. *Id.* Distinguishing *Bell v. PNC Bank*, 800 F.3d 360, 378 (7th Cir. 2015), where a “no” answer on the existence of an unofficial overtime policy would have caused all class claims to “fail in unison,” the court reasoned that a “no” answer here would not defeat the plaintiffs’ claims but would simply render the question of call recordings individualized. *Alholm*, 2026 WL 3082834, at *9. The court likewise found that VLG’s alleged concealment and class members’ expectations of privacy did not predominate over the key question of whether calls were recorded. *Id.* at *9–10.

The *Alholm* decision underscores that class certification is not “a mere pleading standard,” *id.* at *1 (quoting *Wal-Mart Stores v. Dukes*, 564 U.S. 338, 350 (2011)), and that the plaintiffs’ evidence must actually support their representations. Defendants facing certification motions after the close of discovery should scrutinize whether the plaintiffs’ “common evidence” would be admissible at trial and whether factual disputes underlying commonality can be resolved in their favor on the record. As the court put it, it could not “certify a class based on a few excerpts of testimony it does not credit and call recordings the contents of which do not live up to plaintiff’s characterization.” *Id.* at *10.