

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. SA CV 17-2274-DOC (DFMx)

Date: July 19, 2019

Title: MITCHELL V. CORELOGIC, INC. ET AL.

PRESENT:

THE HONORABLE DAVID O. CARTER, JUDGE

Deborah Lewman
Courtroom Clerk

Not Present
Court Reporter

ATTORNEYS PRESENT FOR
PLAINTIFF:
None Present

ATTORNEYS PRESENT FOR
DEFENDANT:
None Present

**PROCEEDINGS (IN CHAMBERS): ORDER GRANTING IN PART
APPLICATION FOR FURTHER
RESTRAINING ORDER [217]**

Before the Court is Plaintiffs' Motion for Order to Show Cause Why Defendant Should Not Be Held in Contempt of Court for Violating the Stipulated Injunction, and in the Alternative Application for Further Temporary Restraining Order ("Motion") (Dkt. 229). The Court heard oral argument on July 15, 2019. Having considered the parties' arguments, the Court GRANTS IN PART the relief requested in the Motion.

On February 22, 2019, this Court entered a Temporary Restraining Order (Dkt. 146) (1) enjoining Defendant CoreLogic, Inc. ("CoreLogic") from terminating or threatening to terminate, or retaliating or discriminating against employees who are participants in this lawsuit in any way, based on Defendant's knowledge of an employee's participation in or statements given in support of this case; and (2) requiring CoreLogic to transmit a statement to appraisers informing them of their right to speak with Plaintiffs' counsel and join the lawsuit free from retaliation or threats of retaliation or intimidation by Defendant. *Id.*

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On March 4, 2019, the Court granted a stipulated injunction (Dkt. 163), requiring that CoreLogic (1) will not terminate or threaten to terminate or retaliate or discriminate against employees who are participants in this lawsuit in any way based on its knowledge of an employee's participation in or statements given in support of this case; (2) have **no communications with potential class members regarding this lawsuit during the opt-in period, and no communications with class members regarding this lawsuit during or after the opt-in period**, without first obtaining written permission from the Court. If Defendant wishes to have any such communications, it must submit a statement to the Court setting forth the information that it wishes to communicate, the means it intends to use to make the communication, and the identity of the individual(s) who will make the communication. Dkt 163 (emphasis added). The Court ordered Defendant to transmit a statement to appraisers informing them of their right to speak with Plaintiffs' counsel and to join the case free from retaliation. *Id.*

Before this lawsuit, CoreLogic adopted a bona fide ERISA plan whereby eligible employees whose employment terminated would be offered severance so long as the employee executed and did not revoke the company-approved form of release agreement. Declaration of Barr Hill ("Hill Decl.") (Dkt. 233-2). In the last few years, CoreLogic has been forced to carry out reductions in force, which have impacted appraisers and other employees throughout the organization. *Id.* ¶ 4. To date, CoreLogic has been forced to lay off 383 appraisers. *Id.* In connection with these reductions, employees are offered severance and other benefits in exchange for the execution of a Separation Agreement and Release. *Id.*

On or around the employee's separation date, CoreLogic provides the employee with their Separation Agreement and Release. Opp'n (Dkt. 233) at 3. If the employee elects to accept the severance, they sign and return the Separation Agreement and Release to CoreLogic. *Id.* Among other provisions, the Separation Agreement and Release requires mutual binding arbitration in accordance with the Employment Arbitration Rules of the American Arbitration Association, which this Court has found to be valid and enforceable. *Id.*; Hill Decl. ¶ 5.

While all affected employees have received a termination letter describing their severance offer and terms of separation, the termination letter given to opt-ins contains the following language regarding the lawsuit:

"You may have received a notice informing you of a pending collective action lawsuit brought against CoreLogic on behalf of appraisers claiming violations of the Fair Labor Standards Act ("FLSA") and California law.

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The Court has not ruled on the merits of the lawsuit and CoreLogic denies any wrongdoing, however, your execution of the Agreement and Release may impact your ability to participate in that lawsuit, should you wish to do so. You are free to consult with an attorney or any other source you feel is appropriate, so you can make a fully informed decision.”

Declaration of Deborah Smith (Dkt 229-6), Ex. A. CoreLogic did not seek the Court’s approval of the above communication.

The termination letter given to members of the California putative class has the following language about the lawsuit:

“You may have received a notice informing you of a pending class and collective action lawsuit brought against CoreLogic on behalf of appraisers claiming violations of the Fair Labor Standards Act (“FLSA”) and California law (the “Action”). The Court has not ruled on the merits of the Action and CoreLogic denies any wrongdoing. Notwithstanding, to avoid the time and expense of litigation, **CoreLogic would like to offer you two thousand five hundred dollars (\$2,500) to settle these disputed claims.** Whether you accept or reject the settlement sum will have no impact on your ability to receive your Severance. To be eligible to receive the settlement sum, you must sign and return the enclosed Release of Disputed Claims within the timeperiod prescribed by the Company. You are free to consult with an attorney or any other source you feel is appropriate, so you can make a fully informed decision.

Declaration of Scott Trautman (Dkt. 229-5), Ex. A (emphasis added). Attached to the termination letter, California putative class members were given a form entitled “Release of Disputed Claims Agreement” focused solely on this lawsuit. The form offers these terminated employees \$2,500 if they sign, agreeing to opt out of this lawsuit, within seven calendar days. *Id.*, Ex. B.

According to Plaintiffs, CoreLogic’s termination letters to opt-ins mention and discuss the lawsuit, creating confusion among opt-ins about whether their desire to stay in the case was at odds with their need for the severance money. Mot. at 4. Plaintiffs argue that by failing to bring the communication to the Court’s attention, CoreLogic violated the injunction. *Id.* Moreover, since opt-ins are represented by counsel, Plaintiffs argue the communication “may violate” California Rule of Professional Conduct 2-100. *Id.* at 5 n.1.

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As to the putative class members, Plaintiffs argue the offer of settlement violates the stipulated injunction because it is a communication about the lawsuit with potential class members without written permission from the Court and because the offer of \$2,500.00 in exchange for an opt-out agreement is an attempt to influence employees in a highly vulnerable state to sign away their rights. *Id.* at 5. Plaintiffs argue that now that Plaintiffs are preparing to move for class certification, CoreLogic is using the occasion of these layoffs to attempt to greatly limit its exposure over these allegations. *Id.* According to Plaintiffs, CoreLogic did not extend this offer to putative class members and employees subject to arbitration until the occasion of their termination, when the employee may be much more susceptible to influence. *Id.* at 6.

And Plaintiffs argue that in the alternative, if the Court concludes that the communications are outside the scope of the stipulated injunction, the Court should find that the conduct is prohibited under Federal Rule of Civil Procedure 23(d) because the offer is misleading and the context in which it was made is highly coercive. *Id.* at 8. Plaintiffs argue CoreLogic did not inform putative class members “about the strength and extent of plaintiffs’ claims.” *Id.* (citing *County of Santa Clara v. Astra USA, Inc.*, No. 05-cv-3740, 2010 WL 2724512 (N.D. Cal. July 28, 2010)).

CoreLogic responds that *Plaintiffs* previously argued that putative class and collective action members noted to counsel that Defendant had been laying off appraisers in mass and offering severance packages in exchange for the release of their claims, without disclosing the existence of the present class and collective action lawsuit. *See* Opp’n at 4. In response, CoreLogic agreed to include language regarding the present action. *Id.* CoreLogic argues that neither the TRO nor motion for preliminary injunction made any reference to the Notice of Separation that was communicated to appraisers two weeks prior, and which included the language Plaintiffs demanded. *Id.*

Federal Rule of Civil Procedure 23(d) provides that “the court may issue orders” that “require—to protect class members and fairly conduct the action—giving appropriate notice to some or all class members of any step in the action,” “impose conditions on the representative parties,” or “deal with similar procedural matters.” Fed. R. Civ. P. 23(d)(1). “Subdivision (d) is concerned with the fair and efficient conduct of the action....” Fed. R. Civ. P., Adv. Comm. Notes. “Because of the potential for abuse, a district court has both the duty and the broad authority to exercise control over a class action and to enter appropriate orders governing the conduct of counsel and parties.” *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 100 (1981). In particular, a district court has the power to “limit[] communications between parties and potential class members.” *Id.* at 101.

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Settlements are usually to be encouraged. *See Cty. of Santa Clara v. Astra USA, Inc.*, No. C 05-03740 WHA, 2010 WL 2724512, at *3 (N.D. Cal. July 8, 2010). Settlements, however, cannot come “at the expense of the class action mechanism itself to the detriment of putative class members.” *Keystone Tobacco Co. v. United States Tobacco Co.*, 238 F. Supp 2d 151, 154 (2002). Courts have limited communications to putative class members when those communications are shown to contain misleading information. *See In re McKesson HBOC, Inc. Secs. Litig.*, 126 F. Supp. 2d 1239, 1244 (N.D. Cal. 2000).

First, while it is a close call, the Court agrees with CoreLogic that the communications to both opt-ins and putative class members did not violate the previous injunction. As to the twenty-seven collective action opt-in members, the appraisers are not being solicited to sign release agreements; rather they are being notified of their separation of employment from CoreLogic and the effects that the Separation Agreement and Release will be offered. Plaintiffs previously requested the inclusion of language referencing the existence of this putative class and nationwide collective action lawsuit.

But with respect to putative class members, the Court is concerned with the context in which these communications are being made to newly terminated employees. Although CoreLogic attached a copy of the operative complaint to the offer of settlement and reminded employees that they should feel free to consult with an attorney, the offer is coercive given that it is made without any indication of the strength or extent of the plaintiffs’ claims and that only seven days are afforded to consider the monetary offer made in conjunction with a letter of termination. The news of termination can create tremendous financial stress on an employee. *See, e.g.*, Declarations of David Fiamengo, Clark Simonian, Amy Garibay, and Scott Trautman. Personal financial pressures may make the offer difficult to turn down, and affording just seven days to accept the offer creates further pressure on the putative class members.

The Court’s previous injunction was limited to the opt-in period with respect to potential class members. The Court thus declines to hold CoreLogic in contempt of court for communications made to putative class members via the termination letters. But settlements cannot come at the expense of the class action mechanism itself. CoreLogic should have approached the Court regarding this coercive communication given the timing of its communications so close to the class certification cut-off. Moving forward, the Court orders that (1) any communication to putative class members through a letter of termination must include the contact information for Plaintiffs counsel, Bryan Schwartz Law, including a telephone number; (2) putative class members must be afforded at least fourteen (14) days to sign and return the release agreement to afford them ample time to

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contact Plaintiffs counsel and consider the execution of the release following their notification of employment termination; (3) CoreLogic is otherwise prohibited from communicating with putative class members about this lawsuit without first seeking Court permission; (4) the Court will include for purposes of its class certification numerosity analysis any putative class member who executed a release agreement under these coercive circumstances. Plaintiff shall submit evidence demonstrating who executed a release agreement after receiving a termination letter that provided just seven days to execute the release and did not provide contact information for Plaintiffs' counsel.

The Clerk shall serve this minute order on the parties.

MINUTES FORM 11
CIVIL-GEN

Initials of Deputy Clerk: djl