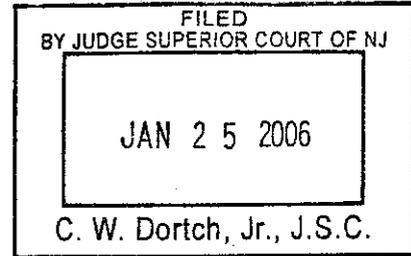


James C. Shah
Shepherd, Finkelman, Miller & Shah, LLC
475 White Horse Pike
Collingswood, New Jersey 08107-1909
(856) 858-1770
(856) 858-7012 (Fax)
ishah@sfmslaw.com
Attorneys for Plaintiff



MILDRED SMITH,
Individually and On Behalf of All Others
Similarly Situated,

Plaintiff,

v.

SBC COMMUNICATIONS, INC.,
SOUTHERN NEW ENGLAND
TELEPHONE CO. (d/b/a SNET),

and

BJ's WHOLESALE CLUB, INC.,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION CAMDEN COUNTY

DOCKET NO.: L-9159-99

CIVIL ACTION/ CLASS ACTION

**FINAL APPROVAL ORDER
AND JUDGMENT**

WHEREAS, Plaintiff, Mildred Smith, on behalf of herself and all Class Members, previously filed a motion for an order preliminarily approving the Settlement Agreement entered into by the Parties to this action; and

WHEREAS, Defendant, BJ's Wholesale Club, Inc. ("BJ's"), supported approval of that Settlement;

WHEREAS, the Court on November 9, 2005 entered an Order granting preliminary approval to the Settlement, approving Notice to the Class, and provisionally certifying a Settlement Class; and

WHEREAS, the Court conducted a hearing regarding final approval of the Settlement on January 25, 2006, at which time it considered, among other matters, (1) any objections filed with or presented to the Court and the Parties' responses thereto; (2) the memoranda submitted on behalf of the respective Parties; (3) the Settlement Agreement and all exhibits thereto; and (4) the representations and argument of counsel; now therefore,

IT IS ORDERED, ADJUDGED AND DECREED that:

1. All capitalized terms used in this Order have the meaning as defined in the Settlement Agreement dated October 10, 2005.
2. This Court has jurisdiction over the subject matter of this Litigation and all parties to this Litigation, including all Class Members as defined in Section I of the Settlement Agreement previously filed in this Litigation.
3. The Settlement Agreement and the Settlement set forth therein are found and determined to be fair, reasonable, and adequate, and are hereby approved, and the terms thereof are ordered performed by all parties to the Settlement Agreement.
4. This Court finds that the following Class is properly certified for all purposes consistent with this Settlement:

All persons who purchased pre-paid telephone calling cards offered by Communications Design Group, Inc. from vending machines located on the premises of a BJ's club between February

1, 1998 and June 12, 2001, excluding Defendants and their officers.

It is well settled that, pursuant to Rule 4:32-1, “a class action ‘should be permitted unless there is a clear showing that it is inappropriate or improper.’” Delgozzo v. Kenny, 266 N.J.Super. 169, 180 (App.Div. 1983), quoting Lusky v. Capasso Bros., 118 N.J.Super. 369, 373 (App.Div. 1972), cert. denied, 60 N.J. 466 (1972). As such, Rule 4:32-1, governing certification of class actions, is to be liberally construed. In re Cadillac V8-6-4 Class Action, 93 N.J. 412, 435 (1983); Delgozzo, 266 N.J.Super. at 179. Applying this standard, all applicable elements under Rule 4:32-1(a) and (b) are satisfied.

A. Numerosity

For purposes of class certification, Plaintiff need only demonstrate that joinder of the class members is impracticable. R. 4:32-1(a)(1). In determining whether the elements of R. 4:32-1(a) have been satisfied, the Court must give Plaintiff “every favorable view” of the complaint and the record. Varacallo v. Massachusetts Mutual Life Ins. Co., 332 N.J.Super. 31, 42 (App.Div. 2000), quoting Riley v. New Rapids Carpet Center, 61 N.J. 218, 223 (1972). In New Jersey (and elsewhere), a proposed class of forty (40) members satisfies this requirement. Vargas v. Calabrese, 634 F. Supp. 910 (D.N.J. 1986). Here, Plaintiff pleaded and has demonstrated that thousands of individuals were affected by the alleged conduct.

B. Commonality

Rule 4:32-1(a)(2) requires that the Court find that “there are questions of law or fact common to the class.” A common question is one that “arises from a ‘common nucleus of operative facts’ regardless of whether ‘the underlying facts fluctuate over the class period and

vary as to individual claimants.” In re Asbestos School Litig, 104 F.R.D. 422, 429 (E.D.Pa.1984), aff’d in part, vacated in part sub. nom. In re School Asbestos Litig., 789 F.2d 996 (3d Cir.), cert. denied, 479 U.S. 852 (1986) (quoting Cohen v. Uniroyal, Inc., 77 F.R.D. 685, 690-91 (E.D.Pa. 1977)). A common nucleus of operative facts is typically found where the defendants have engaged in a common course of conduct toward members of the proposed class. Kugler v. Romain, 58 N.J. 522, 540 (1971). Rule 4:32-1(a)(2) does not require that all class members share identical claims. As noted in Delgozzo, under the analogous federal rule, “a single common question is sufficient.” 266 N.J.Super. at 185.

Here, there are multiple common issues of law and fact, including:

- whether the facts presented constitute violations of applicable consumer protection laws;
- whether the facts suggest a contract between Class Members and the seller;
- whether the facts suggest breach of contract;
- whether on-site advertising was likely to mislead customers regarding the true value of the cards;
- whether the particular billing practices at issue constitute “material” terms of the agreement with the customer, such that disclosure is required;
- whether customers incur ascertainable loss when on-site advertising fails to advise them of material billing terms;
- whether any applicable “tariffs” on file with regulatory agencies constitute effective notice of the otherwise undisclosed billing and marketing practices; and
- what the proper measure of damages is.

Accordingly, the commonality element is satisfied.

C. Typicality

In order to satisfy the typicality requirement, Plaintiff must demonstrate that “the claims or defenses of the representative parties [be] typical of the claims or defenses of the class:”

When the same unlawful conduct was directed at or affected both the named plaintiffs and the members of the putative class, the typicality requirement is usually met, irrespective of varying fact patterns that may underlie individual claims.

Cannon v. Cherry Hill Toyota, Inc., 184 F.R.D. 540, 544 (D.N.J. 1999). The focus of the typicality inquiry is not on the named plaintiff’s behavior, but rather on the acts and omissions of the defendant. The crucial question is whether the named plaintiff and the class can “‘point to the same broad course of alleged fraudulent conduct’ to support a claim for relief.” Zinberg v. Washington Bancorp, Inc., 138 F.R.D. 397, 401 (D.N.J. 1990).

Here Plaintiff and all Class Members assert that they have been subjected to the same allegedly unlawful treatment by BJ’s – the misrepresentation of the value provided by prepaid telephone calling cards sold from vending machines on the premises of BJ’s club stores. The typicality element is readily satisfied by this common course of conduct.

D. Adequacy

Rule 4:32-1(a)(4) requires the court to conclude that “the representative parties will fairly and adequately protect the interests of the class.” To satisfy this requirement:

(a) the plaintiff’s attorney must be qualified, experienced, and generally able to conduct the proposed litigation, and (b) the plaintiff must not have interests antagonistic to those of the class.

Delgozzo, 266 N.J.Super. at 188. The burden is on the defendant to demonstrate that the

proposed representative is inadequate. Id.

Here, Plaintiff has no interests that are antagonistic to those of the class. The interests of the Plaintiff and the other class members are precisely the same: to obtain an adjudication that Defendant's conduct violated the Consumer Fraud Act and common law, and to obtain redress for the damages caused by that illegal conduct. Furthermore, Plaintiff has retained counsel with extensive experience in both state and federal consumer class action litigation including telecommunications litigation, considerable trial experience, and thorough knowledge of New Jersey courts. The adequacy element is readily satisfied.

E. Predominance

In addition to meeting the requirements under Rule 4:32-1(a), the action also must satisfy one of the three sub-parts of Rule 4:32-1(b). Plaintiff satisfies the requirements of Rule 4:32-1(b)(3), which requires the Court to find that:

. . . questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and . . . a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

As the United States Supreme Court has recognized, predominance "is a test readily met" in consumer cases. Amchem Products, Inc. v. Windsor, 521 U.S. 591, 624 (1997).

Here, there is no question Plaintiff seeks to remedy common legal grievances on behalf of the Class. These common legal grievances are based on alleged uniform conduct by BJ's regarding sales practices. Thus, common questions of law and fact predominate over questions affecting only individual class members and a class action is the superior method for adjudicating this controversy, rather than a multitude of individual actions, which would

consume court resources, and would present a threat of inconsistent outcomes.

5. The Court determines that the Class Notice given to Class Members regarding the material elements of the proposed Settlement constitutes the best practicable notice to all Class Members and fully meets the requirements of due process.

6. Immediately upon entry of this Final Approval Order, the operative Complaint as amended in this Litigation shall be dismissed in its entirety with prejudice. This dismissal shall be without costs to any party, except as specifically provided in the Settlement Agreement.

7. This Final Approval Order applies to all claims or causes of action settled under the terms of the Settlement Agreement, and shall be fully binding with respect to all Class Members who did not properly request exclusion.

8. This Final Approval Order is a final judgment within the meaning of the New Jersey Rules of Court.

9. This Court adjudges that the Representative Plaintiff and all Class Members who did not properly request exclusion are barred and permanently enjoined from asserting, instituting, or prosecuting, either directly or indirectly, any claims settled under the terms of the Settlement Agreement, which they ever had, or now have, to the extent provided in the Settlement Agreement.

10. This Court adjudges that all of BJ's claims shall conclusively be deemed to be released and discharged as to the Representative Plaintiff, to the extent provided in the Settlement Agreement.

11. Without affecting the finality of this Final Approval Order in any way, the Court

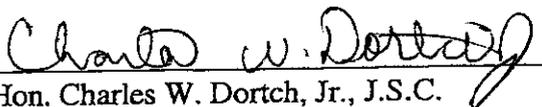
retains jurisdiction over: (1) the implementation and enforcement of the Settlement Agreement until each and every act agreed to be performed by the Parties to the Settlement Agreement shall have been performed; (2) any other action necessary to conclude this Settlement and to implement any provision of the Settlement Agreement; and (3) the enforcement, construction and interpretation of the Settlement Agreement.

12. Class Counsel, DP Alexander & Associates LLC, and Shepherd, Finkelman, Miller & Shah, LLC are awarded costs, expenses, and attorneys' fees in the amount of \$375,000, to be paid by BJ's as set forth in the Settlement Agreement, plus such sums due Class Counsel Donald Alexander for services associated with finalizing and administering the Settlement, also as specified in the Settlement Agreement.

13. Class Counsel's request for reimbursement of costs and expenses in the amount of \$375,000 (plus the capped fee to Class Counsel Alexander) is eminently reasonable in light of the scope and duration of this Litigation and the nature of the costs incurred.

14. This Court determines that the \$5,000 incentive award to be paid by BJ's to Plaintiff Mildred Smith for her efforts in this litigation is well within the range of incentive awards routinely awarded in class actions, is reasonable in light of her efforts, and as such, approves the award.

Dated: January 25, 2006


Hon. Charles W. Dortch, Jr., J.S.C.