

A consumer filed a class action in federal court on behalf of millions of users of a social media site for \$100 million, claiming that the corporation that owns the site shared the users' data without their consent. The court certified the class action after determining that common questions of law and fact predominated and that the class action was the best method to fairly and efficiently adjudicate the dispute. Notice was sent by email to users of the social media site, informing them of their right to opt out of the class action. However, due to a technical error, a certain group of users was never sent the notice. The class eventually reached a settlement with the corporation, and the court entered an order dismissing the class action with prejudice.

Two months later, the group of users who never received notice of the first class action filed an identical class action against the same corporation in federal court. The corporation moved to dismiss.

How will the court likely rule on the corporation's motion?

- A. Deny the motion, because email is not an appropriate means to send notice of a class action.
- B. Deny the motion, because the group had no opportunity to opt out of the first class action.
- C. Grant the motion, because notice of the first class action was appropriately provided under the circumstances.
- D. Grant the motion, because the first class action was dismissed with prejudice.

Explanation:

Adequate notice for class action

Contents Notice must clearly & concisely state in plain language:

- nature of action
- definition of class
- claims, issues, or defenses
- class member may appear through attorney
- court will exclude member who opts out of class
- time & manner for opting out *and*
- binding effect of class judgment

Delivery Court must provide notice by most practical means—including individual notice to reasonably identifiable members

Costs Plaintiff bears cost of notifying members of class action

A federal court has the power to certify (ie, authorize) the following types of class actions:

- Prejudicial risk – separate actions would create a risk of (1) inconsistent decisions regarding the parties or (2) impairing absent class members' interests
- **Common question** – common questions of law or fact predominate over individual questions, and a class action is the best method to fairly and efficiently adjudicate the dispute (as seen here)
- Final equitable relief – injunctive or declaratory relief is appropriate because the opposing party's actions generally apply to the whole class

In a "common question" class action, **adequate notice must be provided** to all class members because they have the **right to opt out** of the class action and sue on their own behalf.* Notice must be provided by the most practical means under the circumstances, including U.S. mail, email, or other reasonable means. A **class member** who **receives notice** but **fails to opt out cannot pursue a subsequent suit** involving the same claim.

Here, notice of the first class action against the corporation was appropriately provided by email to users of the social media site **(Choice A)**. However, a group of users never received this notice due to a technical error and had no opportunity to opt out of the first class action. As a result, the group may pursue a subsequent class action against the corporation involving the same claim, and the court will likely deny the corporation's motion to dismiss **(Choice C)**.

*In "prejudicial risk" and "final equitable relief" class actions, notice is not required because class members do not have a right to opt out. Instead, a court has the discretion to provide notice and an opportunity to opt out of such class actions.

(Choice D) The court order dismissing the first class action with prejudice means that the members of that class action cannot sue on the same claim in the future. However, it does not prevent the group from asserting the same claim since the group was not provided with notice and had no opportunity to opt out.

Educational objective:

In a "common question" class action, adequate notice must be provided to all class members because they have the right to opt out of the class action. A class member who receives such notice but fails to opt out cannot pursue a subsequent suit involving the same claim.

References

- Fed. R. Civ. P. 23(c)(2) (notice requirements for "common question" class action).
- 7AA Charles Alan Wright et al., Federal Practice and Procedure § 167; 1786 (3d ed. 2020) (explaining the notice requirements for a "common question" class action).