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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

ASTRAILIA I. DUNFORD, individually and No. C 13-03829 WHA
on behalf of all similarly situated,

Plaintiff,

v.

AMERICAN DATABANK LLC,

Defendant.

**ORDER RE MOTION TO APPOINT
INTERIM COUNSEL AND RE
SUMMARY JUDGMENT BRIEFING
SCHEDULE**

In June 2013, this action involving the Fair Credit Reporting Act, 15 U.S.C. 1681, *et seq.*, was filed in Alameda Superior Court. *Roe v. American DataBank, LLC*, No. HG13682746. Removal occurred in August 2013. Attorneys Michael Caddell and Cynthia Chapman from the law firm of Caddell & Chapman then appeared as counsel of record for plaintiff Jane Roe. In December 2013, Jane Roe was dismissed and Astrailia Dunford's motion to intervene was granted.

In May 2014, Ms. Dunford filed a second amended complaint and moved to certify two classes: (1) a disclosure form class and (2) an obsolete information class. She also moved to appoint the law firm of Caddell & Chapman as class counsel. A supplemental briefing opportunity was provided (Dkt. Nos. 48, 50).

On July 1, Ms. Dunford filed a motion to appoint the law firm of Caddell & Chapman as interim counsel, noticed for a hearing on August 14. Defendant filed a statement of non-opposition on July 7 (Dkt. Nos. 55, 65).

1 On July 3, defendant filed a précis seeking leave to file a motion for summary judgment.
2 Defendant argued that Ms. Dunford’s report was not obtained for “employment purposes;”
3 defendant’s actions were not willful; and Ms. Dunford’s report did not contain an “adverse item
4 of information” (Dkt. No. 63).

5 On July 3, the parties filed a “stipulated request for order shortening time for decision on
6 plaintiff’s unopposed motion for appointment of interim class counsel” (Dkt. No. 64).
7 The parties have a settlement conference before Magistrate Judge Jacqueline Corley set for
8 July 9 (Dkt. Nos. 22, 57).

9 * * *

10 Upon review of the record, the following is hereby ordered:

11 1. The joint stipulation to shorten time on the motion to appoint interim counsel is
12 **DENIED**.

13 2. The motion to appoint Caddell & Chapman as interim counsel is **HELD IN**
14 **ABEYANCE** until summary judgment and class certification are decided. This is because any
15 possible flaws in Ms. Dunford’s standing and/or ability to represent putative class members
16 should not factor into settlement negotiations compromising a class recovery. No class has
17 been certified to date. If (and when) a class is certified, the class’ claims should be evaluated *on*
18 *the merits*, not influenced by the risk that the particular plaintiff lacks standing. Moreover, any
19 motion for approval of a proposed class settlement would require proper evidentiary and/or
20 expert support. *See Daniels v. Aeropostale West, Inc.*, No. 3:12-cv-05755-WHA, 2014 WL
21 2215708, at *3 (N.D. Cal. May 29, 2014); *Kakani v. Oracle Corp.*, No. 3:06-cv-06493-WHA,
22 2007 WL 1793774, at *7 (N.D. Cal. June 19, 2007). In most circumstances “it is better to
23 develop and to present a proposed compromise *after* class certification, after diligent discovery
24 on the merits, and after the damage study has been finalized” (Dkt. No. 20). The summary
25 judgment motion should be heard and decided before any settlement discussions occur because
26 if it turns out that Ms. Dunford lacks standing, then class members should not be saddled with a
27 proposed settlement that reflects that risk.
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3. This order recommends that the July 9 settlement conference be postponed until after summary judgment and/or class certification is decided in August 2014.

4. The following briefing schedule shall apply for defendant's motion for summary judgment. Defendant's motion (not to exceed fifteen pages) is due by **JULY 15 AT NOON**. Plaintiff's opposition (not to exceed fifteen pages) is due by **JULY 22 AT NOON**. No replies, please. Defendant's motion for summary judgment, plaintiff's motion for class certification, and plaintiff's motion to appoint interim counsel shall be heard on **JULY 31, 2014 AT 8:00 A.M.**

IT IS SO ORDERED.

Dated: July 7, 2014.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE