

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ANDRE SCOTT, et al.,  
  
Plaintiffs,  
  
v.  
  
COMCAST CABLE COMMUNICATIONS  
MANAGEMENT, LLC,  
  
Defendant.

Case No. [16-cv-06869-EMC](#)

**ORDER RE SUPPLEMENTAL  
BRIEFING AND/OR EVIDENCE**

Docket No. 53

No collective or class action has been certified in this case. The parties have filed a stipulation indicating that the named plaintiffs are dismissing their individual claims with prejudice and that they are dismissing the class claims without prejudice. *See* Docket No. 53 (stipulation).

Federal Rule of Civil Procedure Rule 23(e) requires the Court to review and approve a proposed voluntary dismissal, settlement, or other compromise of a certified class’s claims. The Ninth Circuit has held that Rule 23(e) also applies to settlements before certification, but in a much lighter form that does not entail “the kind of substantive oversight required when reviewing a settlement binding upon the class.” *Diaz v. Trust Territory of Pac. Islands*, 876 F.2d 1401, 1408 (9th Cir. 1989). Although there has been “some uncertainty” about whether this holding applies in the wake of the 2003 amendments to Rule 23(e), courts in this district continue to follow *Diaz* to evaluate the proposed settlement and dismissal of putative class claims.

*Dunn v. Teachers Ins. & Annuity Ass’n of Am.*, No. 13-cv-05456-HSG, 2016 U.S. Dist. LEXIS 4338, at \*9 (N.D. Cal. Jan. 13, 2016).

Under *Diaz*, a court

inquire[s] into possible prejudice from (1) class members’ possible reliance on the filing of the action if they are likely to know of it either because of publicity or other circumstances, (2) lack of

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

adequate time for class members to file other actions, because of a rapidly approaching statute of limitations, [and] (3) any settlement or concession of class interests made by the class representative or counsel in order to further their own interests.

*Diaz*, 876 F.2d at 1408. “If, after considering these factors, a district court concludes that there is a risk of prejudicial or unfair impacts from the pre-certification settlement of putative class claims, *Diaz* also held that district courts may require notice to putative class members.” *Dunn*, 2016 U.S. Dist. LEXIS 4338, at \*9.

The Court orders the parties to file supplemental briefs and/or evidence regarding the *Diaz* factors. The briefs shall include a description of all publicity concerning this case and its filing. There may be either cross-briefs or a joint brief, with all briefing to be filed within a week of the date of this order.

**IT IS SO ORDERED.**

Dated: January 16, 2018

  
EDWARD M. CHEN  
United States District Judge