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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JAMIE POSTPICHAL, et al.,

Plaintiffs,

No. C 19-07270 WHA

v.

CRICKET WIRELESS, LLC,

Defendant.

**ORDER GRANTING MOTION  
TO DISMISS CLRA CLAIMS**

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California’s Consumer Legal Remedies Act bans certain practices that the California legislature has deemed to be “unfair” or “deceptive.” Plaintiffs allege claims under CLRA Sections 1170(a)(5), (7), and (9), which prohibit misleading representations and advertisements. Plaintiffs filed this lawsuit with CLRA claims for injunctive relief only, waited 30 days, then amended their complaint to include damages claims. Plaintiffs have not alleged that a CLRA notice was sent to Cricket with regard to this matter prior to amending the complaint to include damages.

CLRA has a specific notice requirement set out in 1782(d):

An action for injunctive relief brought under the specific provisions of Section 1770 may be commenced without compliance with subdivision (a). Not less than 30 days after the commencement of an action for injunctive relief, and after compliance with subdivision (a), the consumer may amend his or her complaint without leave of court to include a request for damages. The appropriate provisions of subdivision (b) or (c) shall

1 be applicable if the complaint for injunctive relief is amended to  
2 request damages.

3 Subdivision (a) requires:

4 (a) Thirty days or more prior to the commencement of an action  
5 for damages pursuant to this title, the consumer shall do the  
6 following:

7 (1) Notify the person alleged to have employed or  
8 committed methods, acts, or practices declared unlawful by  
9 Section 1770 of the particular alleged violations of Section 1770.

10 (2) Demand that the person correct, repair, replace, or  
11 otherwise rectify the goods or services alleged to be in violation of  
12 Section 1770.

13 The notice shall be in writing and shall be sent by certified or  
14 registered mail, return receipt requested, to the place where the  
15 transaction occurred or to the person's principal place of business  
16 within California.

17 Plaintiffs have not fulfilled this notice requirement. The initiation of the lawsuit itself  
18 does not provide notice under subdivision (a). Plaintiffs lean on a prior CLRA notice sent to  
19 Cricket in 2015 in a case that was subsequently dismissed. Though the claimant would be a  
20 member of the proposed class and the claims there paralleled the present claims, that notice  
21 arose from a different lawsuit long before the initiation of this matter. This does not satisfy  
22 CLRA's requirement because that notice did not involve "the consumer[s]" who have brought  
23 the current claims.

24 Nor does the fact that Cricket received general complaints from consumers prior to the  
25 filing of this lawsuit (including putative class members that are not putative class  
26 representatives) satisfy CLRA's notice requirement either.

27 While Cricket cannot credibly claim that it was not on actual notice of the bad acts herein  
28 alleged, the legislative intent of Section 1782(d) — allowing time for defendants to correct  
violations in light of the specter of a CLRA lawsuit *before* plaintiffs pursue damages — serves  
a vital role in promoting efficient resolution of alleged CLRA violations. Whether Cricket  
would correct its violations with notice at this point seems unlikely, but the procedural  
requirements set out by CLRA are unyielding and must be followed.

