

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF ORANGE  
CIVIL COMPLEX CENTER**

**MINUTE ORDER**

DATE: 02/10/2023

TIME: 10:00:00 AM

DEPT: CX105

JUDICIAL OFFICER PRESIDING: Randall J. Sherman

CLERK: J. Phu

REPORTER/ERM: Lisa Ann Augustine-10419 CSR# 10419

BAILIFF/COURT ATTENDANT:

CASE NO: **30-2018-00982195-CU-MC-CXC** CASE INIT.DATE: 03/23/2018

CASE TITLE: **Aresh vs. Hunt**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Misc Complaints - Other

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EVENT ID/DOCUMENT ID: 73944518

**EVENT TYPE:** Motion to Certify Class

MOVING PARTY: Rohinton T. Aresh Beneficiary of Greit Liquidating trust, a terminated Maryland trust on behalf of himself and all others similarly situated

CAUSAL DOCUMENT/DATE FILED: Motion - Other class certification, 11/07/2022

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EVENT ID/DOCUMENT ID: 73944519

**EVENT TYPE:** Status Conference

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**APPEARANCES**

Kenneth Catanzarite, from Catanzarite Law Corporation, present for Plaintiff(s) remotely.

Thomas E. Walling, counsel, present for Defendant(s) remotely.

Joseph Campo, from Lewis Brisbois Bisgaard & Smith LLP, present for Defendant(s) remotely.

Austin Trickey, counsel from Spierer, Woodward, Corbalis & Goldberg is present remotely for Gordon and Susan Descombes.

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Tentative Ruling posted on the Internet .

Hearing held, all participants appearing remotely.

The Court hears oral argument.

The Court confirms the tentative ruling as follows:

Plaintiff Rohinton T. Aresh's Motion for Class Certification is granted.

The party advocating class treatment must demonstrate the existence of an ascertainable and sufficiently numerous class, a well-defined community of interest, and substantial benefits from certification that render proceeding as a class superior to the alternatives. In turn, the community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class. Brinker Restaurant Corp. v. Superior Court (2012) 53 Cal. 4th 1004, 1021. These elements are typically referred to as (1) ascertainability; (2) numerosity; (3) commonality; (4) typicality; (5) adequacy; and (6) superiority. Capitol People First v. State Dept. of Developmental Services (2007) 155 Cal. App.

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4th 676, 681.

Plaintiff bears the burden of proof on these elements. This must be established by admissible evidence; the parties may not rely on allegations in their complaint. Soderstedt v. CBIZ Southern Calif., LLC (2011) 197 Cal. App. 4th 133, 154-55 (plaintiffs submitted only three declarations of proposed class members; in the absence of admissible evidence re size of class, moving party failed to meet burden to show numerosity); Barriga v. 99 Cents Only Stores LLC (2020) 51 Cal. App. 5th 299, 322-23 (trial court has duty to scrutinize declarations re class certification to ensure they are not the product of "coercion or deception").

Defendants Gary H. Hunt, Edward A. Johnson, D. Fleet Wallace, Gary Wescombe, and W. Brand Inlow (collectively, the "Trustee Defendants"), and Defendants Todd Mikles, Etienne Locoh, SCMG Liquidation, Inc. (fka Sovereign Capital Management Group, Inc.), SSMF Liquidation, LLC (fka Sovereign Strategic Mortgage Fund, LLC), Infinity Urban Century, LLC, GCL, LLC, and Sovereign Capital Management Holdings, LLC (collectively, the "Mikles Defendants"), oppose this motion.

Defendants do not dispute that the class is sufficiently ascertainable and numerous. The class is identified as "All persons who as of January 1, 2012 owned Beneficial Interests in GREIT LIQUIDATING TRUST (the "Class")." (5th Am. Compl. ¶47.) Plaintiff estimates the total class size is in excess of 13,856, of which 2,000 are California residents. (Id. ¶48.)

Plaintiff argues that the element of commonality is satisfied as to each claim because Defendants' class-wide liability turns on acts and omissions committed uniformly against all beneficiaries of the G REIT Liquidating Trust. Defendants argue against commonality, asserting that individual inquiries would predominate as to what investment advice was given or known to each class member when investing in G REIT, Inc. However, Defendants do not show how such information is relevant here as the claims at issue do not concern each class member's decision to invest, but rather Defendants' management of the G REIT Liquidating Trust and sale of its assets. As Plaintiff points out, the claims at issue in this action concern the acts or omissions by Defendants with respect to the management of the Trust, which are common to the class.

Defendants also argue that each class member's reliance on Defendants' alleged misrepresentations must be individually assessed. However, a majority of the claims do not involve any element of reliance, and the remaining claims involve a presumption of reliance. The Second Cause of Action for securities fraud in violation of Corp. Code Section 25401 does not require proof of reliance. Bowden v. Robinson (1977) 67 Cal. App. 3d 705, 715 ("Sections 25401 and 25501 differ from common law negligent misrepresentation in that: (1) proof of reliance is not required, (2) although the fact misrepresented or omitted must be 'material,' no proof of causation is required, and (3) plaintiff need not plead defendant's negligence.") The claims for breach of fiduciary duty, negligence and conversion have no element of reliance. The securities claims in the Third through Fifth Causes of Action also have no element of reliance.

For the Sixth Cause of Action for violation of Section 10(b)-5 of the Securities Exchange Act of 1934, a "presumption (of reliance) is generally available to plaintiffs alleging violations of section 10(b) based on omissions of material fact", which is the case here. Binder v. Gillespie (9th Cir. 1999) 184 F.3d 1059, 1063. Similarly, the Fifteenth Cause of Action for fraudulent transfer involves omissions of material fact, and the court concludes that a presumption of reliance would apply to that claim.

As a result, common issues predominate as to the claims at issue in this action, establishing commonality.

As to typicality and adequacy, Plaintiff has shown that his claim is typical of the class and Defendants do not dispute that he would be an adequate class representative. Rather, Defendants argue that Plaintiff's

counsel would be inadequate class counsel based on past sanctions issued against counsel and disqualifications of counsel. However, the court concludes that these incidents fail to show that Plaintiff's counsel cannot adequately represent the class. Thus, Plaintiff has successfully shown the elements of typicality and adequacy.

As to superiority, Plaintiff argues that a class action is superior to multiple lawsuits by each class member concerning the same conduct at issue in this action, as it avoids wasting judicial resources and duplicative proceedings, especially where the small recovery for each class member may prevent enforcement of their rights. Defendants argue that individual issues predominate, but as discussed above, the court finds that argument to be without merit. Defendants also criticize Plaintiff for not providing a trial plan, but this fact alone does not demonstrate that class treatment is not superior to a multiplicity of suits by each class member.

Defendants argue that Maryland law, not California law applies, but it is unclear how that argument undermines the suitability of this action for class treatment. Nonetheless, Defendants have not demonstrated why Maryland law should apply to the claims at issue, or why the choice of law provision concerning the Trust instrument should apply when the Trust is now terminated.

Plaintiff points out that the Trust itself was administered in California (Pltf.'s Exs. A, B, H), the Chairman of the Trustees resides in California (Pltf.'s Ex. I, pp. NW0395-96, 441), Defendant Mikles resides in California (Pltf.'s Ex. J, p. 32), Defendant SCMG operated in California (Pltf.'s Ex. K), NNNRI is in California (Pltf.'s Ex. N), Defendant SSMF is a California company (Pltf.'s Ex. L), and the Sutter Square property is in California (Pltf.'s Ex. A, p. 23). Defendants do not dispute these facts, but argue instead that either Maryland law should apply or the law of the state where each class member resides should apply. However, Defendants make no showing as to why the laws of other states should apply, such as why other states would have an interest in their laws applying to the claims at issue. Plaintiff has provided adequate evidence to support applying California law to the claims in this action, and Defendants have failed to show that any foreign law should apply.

Based on the foregoing, the court concludes that Plaintiff has carried his burden to show that class certification is warranted.

The Mikles Defendants' Request for Judicial Notice is granted. However, when the court takes judicial notice of documents, it does not accept the truth of matters stated in those documents. Herrera v. Deutsche Bank National Trust Co. (2011) 196 Cal. App. 4th 1366, 1375.

A Status Conference is also set for today and will go forward.

Discussions held between the Court and counsel regarding the status of this case, the status of the related cases, and trial setting, as set forth on the record.

The next Status Conference is scheduled for 07/06/2023 at 01:30 PM in Department CX105.

A Joint Status Report must be filed at least one week before the hearing.

Court orders plaintiff to give notice.