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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE GOOGLE PLAY STORE
ANTITRUST LITIGATION

MDL Case No. [21-md-02981-JD](#)
Member Case No. 20-cv-05761-JD

**ORDER RE DECERTIFICATION AND
CLASS NOTICE**

After developments in the expert witness opinions at the merits stage, the Court concluded that the opinions of Dr. Hal J. Singer with respect to the merits of the consumer plaintiffs’ antitrust claims must be excluded under Federal Rule of Evidence 702. *See* Dkt. No. 588.


This raises a question of decertification of the consumer class. The Court certified the class, and denied Google’s motion to exclude Dr. Singer’s opinions in support of certification, because the record at the certification stage supported those decisions. *See* Dkt. No. 383. That is no longer the case. The Court has now excluded Dr. Singer’s pass-through formula and his opinions based on the application of that formula in this litigation. The pass-through formula was an essential element of the consumer plaintiffs’ argument in support of certification. Consequently, the order granting certification should be vacated.

As a general rule, the Court is free “to reconsider, *rescind*, or modify an interlocutory order” such as certification of a class “for cause seen by it to be sufficient.” *City of Los Angeles, Harbor Division v. Santa Monica Baykeeper*, 254 F.3d 882, 885 (9th Cir. 2001) (internal citation omitted; emphasis in original). But a district court “retains jurisdiction over an interlocutory order -- and thus may reconsider, rescind, or modify such an order -- until a court of appeals grants a party permission to appeal.” *Id.* at 886.

1 That is the situation here. The grant of permission to appeal the certification order has
2 terminated the Court's authority to decertify the class. The parties are directed to meet and confer,
3 and be prepared to discuss proposed next steps with the Court at the September 7, 2023 status
4 conference. The consumer plaintiffs' motion to authorize a notice of pendency to the consumer
5 plaintiff class, Dkt. No. 575, is denied.

6 **IT IS SO ORDERED.**

7 Dated: August 28, 2023

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12 JAMES DONATO
13 United States District Judge
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United States District Court
Northern District of California