Class Actions Challenging Property Preservation Activities

*By Joseph F. Yenouskas and John C. Raffetto**

Introduction

Plaintiffs' lawyers have filed a series of putative nationwide class actions challenging charges to borrowers in connection with lenders' post-default property-preservation activities, specifically property inspections and broker price opinions ("BPO"). These activities help lenders by protecting property value, benefit borrowers by reducing deficiency judgments after foreclosure, and prevent blight that can adversely impact surrounding communities.

This survey first addresses the importance of default servicing in protecting the value of the collateral that secures residential mortgage loans. It then describes the claims that have been made in class actions filed against lenders and servicers. It then discusses the differing decisions issued on motions to dismiss and motions for class certification.

The Importance of Property Preservation Activities

Lenders that make loans for home purchase, or to refinance existing loans, place large sums of money at risk. Borrowers agree to repay the money with interest in monthly increments and give lenders a security interest in real property to assure repayment.[1] When borrowers default on their payments, however, the lender's collateral is placed at risk. Borrowers who miss one payment are likely to miss others,[2] and borrowers who miss multiple payments often abandon the property entirely.[3] Property value declines if a property is vacant, as it is subject to damage from weather, vandalism, and other actions that could be prevented if it were occupied.[4]

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1. Fannie Mae/Freddie Mac, New York Uniform Instrument 2–3 (Jan. 2001), https://www.fanniemae.com/content/legal_form/3033w.doc [hereinafter Fannie Mae Instrument] (Form 3033).

2. *See* Anderson v. Hancock, 820 F.3d 670, 676 (4th Cir. 2016).

3. *See* Diana Golobay, *Voluntarily Abandoned Mortgages Continue to Grow According to Study*, NuWire Investor (May 3, 2010), http://www.nuwireinvestor.com/voluntarily-abandoned-mortgages-continue-to-grow-according-to-study/.

4. U.S. Dep't of Hous. & Urban Dev., Vacant and Abandoned Properties: Turning Liabilities into Assets (2014), https://www.huduser.gov/portal/periodicals/em/winter14/highlight1.html.

Mortgage loan agreements typically address these post-default risks by allowing lenders and mortgage loan servicers, who collect monthly payments and interact with borrowers, to inspect the property, to conduct exterior and interior maintenance, and to secure vacant property from access by trespassers.[5] Inspections allow servicers to mitigate against the impairment of their collateral. Inspections also may be needed where states and municipalities have passed ordinances that require interested parties, other than the borrower, to monitor, maintain, and secure real property.[6]

BPOs play a different but important role in post-default mortgage loan servicing. Typically, a BPO involves a real estate broker estimating the value of property based on comparable sales and a visual inspection.[7] BPOs are a useful tool for lenders because they provide an estimated value for property, which provides the lender and the servicer with the key piece of information required to determine whether foreclosure, deed-in-lieu of foreclosure, short sale, or other solution is appropriate.[8] Institutional investors, such as Fannie Mae and Freddie Mac, require servicers to inspect properties to determine occupancy status and property condition,[9] and they permit the use of BPOs as part of pre-foreclosure and foreclosure-alternatives property valuation.[10]

Property preservation activities confer other benefits. When a borrower cannot cure a default, the lender may seek to recover its investment by selling the property at a foreclosure sale. In most states, a borrower can be personally liable if the sale amount falls below the amount to which the lender is entitled,[11] and so activities preserving property value can ameliorate deficiency judgments. Property preservation activities also benefit communities surrounding properties in default; by maintaining the structure's physical integrity and the property's appearance, such activities prevent diminution of neighborhood property values.[12] Such

5. Fannie Mae Instrument, *supra* note 1, at 10 ("Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property," including "enter[ing] the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, [and] have utilities turned on or off . . . .").

6. *See, e.g.*, Bos. Mun. Code §§ 16-52.1, 16-52.4, 16-52.5 (2015), http://www.amlegal.com/codes/client/boston_ma/ (requiring lenders to close and secure vacant property, board up entry points, prevent destruction of window frames and doorways, and inspect).

7. Tara Twomey, *Deciphering Mortgage Proofs of Claim*, Am. Bankr. Inst. J., Nov. 2008, at 1, 53.

8. *Id.*; *see* Tracy M. Clark, *It Pays to Verify Real Estate Values*, Am. Bankr. Inst. J., June 2014, at 42, 43.

9. Fannie Mae, Servicing Guide: Single Family ch. A2-1-01, at 80–85, ch. D2-2-11, at 438–43 (Feb. 10, 2016) [hereinafter Fannie Mae Guide], https://www.fanniemae.com/content/guide/svc021016.pdf; Freddie Mac, Single Family Seller/Servicer Guide ch. 65.30 (Dec. 16, 2015) [hereinafter Freddie Mac Guide], http://www.freddiemac.com/singlefamily/guide/bulletins/pdf/121615Guide.pdf.

10. Fannie Mae Guide, *supra* note 9, ch. F-1-15, at 814–17; Freddie Mac Guide, *supra* note 9, ch. 65.38.

11. Cem Demiroglu, Evan Dudley & Christopher M. James, *State Foreclosure Laws and the Incidence of Mortgage Default*, 57 J.L. & Econ. 225, 229–30 & tbl. 1 (2014).

12. Nat'l Vacant Props. Campaign, Vacant Properties: The True Costs to Communities 6 (Aug. 2005), www.smartgrowthamerica.org/documents/true-costs.pdf.

diminished property values can have a ripple effect, decreasing local tax revenue, which is based on property value, and driving out community members.[13]

Lenders typically retain third parties to perform inspections and BPOs and charge the costs to the borrowers.[14] Many servicers use automated programs that order inspections and BPOs at regular intervals based on investor requirements.[15]

Class Actions Challenging Property Preservation Activities

The recent class actions share common claims and factual themes arising out of charges incurred for property preservation activities.[16] These actions have included claims under the Racketeer Influenced and Corrupt Organizations Act ("RICO").[17] Most, but not all, alleged that the defendants breached security agreements, and many asserted unjust enrichment causes of action.[18] Some plaintiffs also asserted common law and statutory fraud claims.[19]

The complaints allege that the plaintiffs paid for inspections and/or BPOs that were unreasonable or unnecessary because the borrowers remained in contact with the servicers, because no one reviewed inspection reports, because defendants performed preservation actions too frequently, or because defendants programmed an automatic system to order as many inspections as possible.[20] Some plaintiffs allege that the fees they challenged were concealed in their monthly statements by the use of vague terms.[21] And several suits asserted that lenders charged borrowers more for default services than the lender was charged by its vendor.[22]

13. *Id.* at 6–7, 12.

14. Twomey, *supra* note 7, at 53 (reporting that third parties may be engaged to prepare BPOs and inspect property, with any attendant fees charged to the borrower); Christopher K. Odinet, *The Use of Bank Contractors in Mortgage Foreclosure: Contractual Considerations and Liability Concerns*, Prob. & Prop., Jan./Feb. 2015, at 52, 53, www.smartgrowthamerica.org/documents/true-costs.pdf (discussing relationship between lenders and property-inspection vendors).

15. *See, e.g.*, Walker v. Countrywide Home Loans, Inc., 121 Cal. Rptr. 2d 79, 84–85 (Ct. App. 2002).

16. *See, e.g.*, Giotta v. Ocwen Fin. Corp., No. 15-cv-00620-BLF, 2015 WL 8527520, at *1–2 (N.D. Cal. Dec. 11, 2015); Hill v. Nationstar Mortg. LLC, No. 15-60106-CIV, 2015 WL 4478061, at *1 (S.D. Fla. July 6, 2015); Vega v. Ocwen Fin. Corp., No. 2:14-cv-04408-ODW (PLAx), 2015 WL 1383241, at *1 (C.D. Cal. Mar. 24, 2015); Cirino v. Bank of Am., N.A., No. CV-13-8829 PSG (MRWx), 2015 WL 3669078, at *1 (C.D. Cal. Feb. 10, 2015); Alhassid v. Bank of Am., N.A., 60 F. Supp. 3d 1302, 1308–09 (S.D. Fla. 2014); Ellis v. J.P. Morgan Chase & Co., 950 F. Supp. 2d 1062, 1068 (N.D. Cal. 2013); Stitt v. Citibank, N.A., 942 F. Supp. 2d 944, 948–49 (N.D. Cal. 2013); Bias v. Wells Fargo & Co., 942 F. Supp. 2d 915, 923–25 (N.D. Cal. 2013); Young v. Wells Fargo & Co., 671 F. Supp. 2d 1006, 1012–13 (S.D. Iowa 2009).

17. Pub. L. No. 91-452, tit. IX, 84 Stat. 922, 941–48 (1970) (codified as amended at 18 U.S.C. §§ 1961–1968 (2012)); *see, e.g.*, *Giotta*, 2015 WL 8527520, at *2; *Vega*, 2015 WL 1383241, at *1; *Young*, 671 F. Supp. 2d at 1013.

18. *Compare Hill*, 2015 WL 4478061, at *1–2 (alleging breach of security agreement), *with Stitt*, 942 F. Supp. 2d at 950 (no allegation of breach of security agreement).

19. *Compare Bias*, 942 F. Supp. 2d at 925–26 (alleging common law fraud), *with Hill*, 2015 WL 4478061, at *2 (no allegation of common law fraud).

20. *Hill*, 2015 WL 4478061, at *1; *Cirino*, 2015 WL 3669078, at *1; *Stitt*, 942 F. Supp. 2d at 949; *Young*, 671 F. Supp. 2d at 1012–13.

21. *Bias*, 942 F. Supp. 2d at 924.

22. Weiner v. Ocwen Fin. Corp., No. 2:14-cv-02597-MCE-DAD, 2015 WL 4599427, at *1 (E.D. Cal. July 29, 2015) (alleging defendant charged marked-up fees); *Hill*, 2015 WL 4478061, at *1

Decisions on Motions to Dismiss

Decisions on motions to dismiss these class actions have varied. Three courts have dismissed class actions in their entirety.[23] Five courts granted partial dismissals of claims under RICO, the Fair Debt Collection Practices Act,[24] and state unfair competition laws, such as the California Unfair Competition Law ("California UCL"),[25] as well as claims of common-law fraud and common-law unjust enrichment, while allowing other claims to survive.[26] One court has allowed all claims to proceed.[27]

With respect to RICO, the most successful defense arguments challenged the sufficiency of allegations regarding the existence of a cognizable RICO enterprise[28] and a pattern of racketeering activity.[29] For example, defendants successfully convinced courts to dismiss RICO claims because the lenders that ordered default services, and the inspection firms that performed them, did not share the requisite common illegal purpose.[30] At least one defendant successfully argued that omission claims—that defendants withheld material information about the challenged charges—failed to state a RICO claim because lenders owe no fiduciary duty to borrowers that would require disclosure.[31]

In other cases, plaintiffs successfully defended against these arguments. In *Young v. Wells Fargo & Co.*,[32] for example, the court found that the complaint adequately alleged the formation of an enterprise because the plaintiffs alleged that the servicer conducted the affairs of the RICO enterprise by ordering prop-

(same); Bias v. Wells Fargo & Co., No. 12-CV-664 YGR, 2012 WL 2906664, at *1 (N.D. Cal. July 13, 2012) (same).

23. *Hill*, 2015 WL 4478061, at *3–4; Vega v. Ocwen Fin. Corp., No. 2:14-cv-04408-ODW (PLAx), 2015 WL 3441930, at *6 (C.D. Cal. May 28, 2015), *appeal docketed*, No. 15-55885 (9th Cir. June 10, 2015); *Cirino*, 2015 WL 3669078, at *7.

24. Pub. L. No. 95-109, 91 Stat. 874 (1977) (codified as amended at 15 U.S.C. §§ 1692–1692p (2012)).

25. Cal. Bus. & Prof. Code §§ 17200–17210 (Deering 2007 & Supp. 2016).

26. Giotta v. Ocwen Fin. Corp., No. 15-cv-00620-BLF, 2015 WL 8527520, at *5–11 (N.D. Cal. Dec. 11, 2015); Ellis v. J.P. Morgan Chase & Co., No. 12-cv-03897-YGR, 2015 WL 78190, at *1, *6 (N.D. Cal. Jan. 6, 2015); Stitt v. Citibank, N.A., No. 12-cv-03892-YGR, 2015 WL 75237, at *1, *5–7 (N.D. Cal. Jan. 6, 2015); Alhassid v. Bank of Am., N.A., 60 F. Supp. 3d 1302, 1327–28 (S.D. Fla. 2014); Ellis v. J.P. Morgan Chase & Co., 950 F. Supp. 2d 1062, 1093 (N.D. Cal. 2013); Stitt v. Citibank, N.A., 942 F. Supp. 2d 944, 948 (N.D. Cal. 2013); Young v. Wells Fargo & Co., 671 F. Supp. 2d 1006, 1040 (S.D. Iowa 2009).

27. Bias v. Wells Fargo & Co., 942 F. Supp. 2d 915, 944 (N.D. Cal. 2013).

28. Boyle v. United States, 556 U.S. 938, 946 (2009) (holding that enterprise must have "common purpose of engaging in a course of conduct" and sufficient continuity of "interpersonal relationships" showing that alleged members of enterprise joined together in order to pursue that purpose (quoting, in the first instance, United States v. Turkette, 452 U.S. 576, 583 (1981))).

29. Am. Dental Ass'n v. Cigna Corp., 605 F.3d 1283, 1290–91 (11th Cir. 2010) (holding that "pattern of racketeering activity," under 18 U.S.C. § 1961(5), is at least two related acts that violate certain criminal statutes).

30. *Stitt*, 942 F. Supp. 2d at 958 ("Plaintiffs here have vaguely alleged that unidentified subsidiaries, affiliated companies, and/or intercompany divisions order default-related services from third-party vendors and brokers. No specific factual allegations explain how this occurs . . . ."); *see also Ellis*, 2015 WL 78190, at *6; *Stitt*, 2015 WL 75237, at *5; Cirino v. Bank of Am., N.A., No. CV-13-8829 PSG (MRWx), 2014 WL 9894432, at *10–11 (C.D. Cal. Oct. 1, 2014).

31. *Giotta*, 2015 WL 8527520, at *7.

32. 671 F. Supp. 2d 1006 (S.D. Iowa 2009).

erty inspections in conjunction with property inspection vendors.[33] It likewise held that the complaint adequately alleged a pattern of racketeering activity because it alleged that Wells Fargo engaged in mail and wire fraud to collect payments for the enterprise's benefit.[34] And, in *Bias v. Wells Fargo & Co.*,[35] the plaintiffs survived a motion to dismiss primarily by showing that their claims of defendants' omissions of material information were "interwoven with [affirmative] misrepresentations,"[36] and the court found that amounts set forth on Wells Fargo's billing statements were false because the complaint alleged that it marked up the charges it paid to property inspection firms.[37]

Courts left a more mixed record as to non-RICO claims. In *Stitt v. Citibank, N.A.*[38] and *Ellis v. J.P. Morgan Chase & Co.*,[39] the courts allowed the plaintiffs' unjust enrichment claims to stand because determining the viability of those claims required a choice-of-law analysis that the courts refused to perform at the motion-to-dismiss stage.[40] Moreover, the courts allowed the plaintiffs' fraud claims to stand because they alleged omissions that were "interwoven with misrepresentations" and there were potentially applicable exceptions to the general rule that only a fiduciary must disclose such information.[41] In *Giotta v. Ocwen Financial Corp.*,[42] the court dismissed the plaintiffs' California UCL and fraud claims because the plaintiffs had not adequately alleged an unfair, deceptive, or abusive practice.[43] Finally, in *Alhassid v. Bank of America, N.A.*,[44] the court dismissed the plaintiffs' unjust enrichment claim against their servicer because an express contract governed the relationship, dismissed their Nevada Deceptive Trade Practices Act claim because that statute was inapplicable to claims involving real estate, and dismissed their civil conspiracy claim because of the economic loss rule.[45] The *Alhassid* court refused to dismiss the plaintiffs' Florida Deceptive and Unfair Trade Practices Act claim because the alleged conduct may have amounted to "trade or commerce" under the statute.[46]

33. *Id.* at 1028.
34. *Id.* at 1026–28.
35. 942 F. Supp. 2d 915 (N.D. Cal. 2013).
36. *Id.* at 939.
37. *Id.*
38. 942 F. Supp. 2d 944 (N.D. Cal. 2013).
39. 950 F. Supp. 2d 1062 (N.D. Cal. 2013).
40. *Id.* at 1091; *Stitt*, 942 F. Supp. 2d at 959–60.
41. *Ellis*, 950 F. Supp. 2d at 1091; *Stitt*, 942 F. Supp. 2d at 961.
42. No. 15-cv-00620-BLF, 2015 WL 8527520 (N.D. Cal. Dec. 11, 2015).
43. *Id.* at *9–10.
44. 60 F. Supp. 3d 1302 (S.D. Fla. 2014).
45. *Id.* at 1322–25.
46. *Id.* at 1323–24. A claim for damages under the Florida act has three elements: "(1) a deceptive act or unfair practice in the course of trade or commerce; (2) causation; and (3) actual damages." *Id.* at 1323 (citing FLA. STAT. § 501.203(8) (defining "trade or commerce")). The court held that, although loan collection activities fall outside of the scope of the Florida act, the complaint alleged other services, including property inspections, property appraisals, and force-placed insurance, that fall within the scope of the Florida act. *Id.* at 1323–24.

In one case, *Vega v. Ocwen Financial Corp.*,[47] the court mostly avoided addressing the viability of each individual count by pointing out the fundamental flaws and unsound assumptions at the heart of the plaintiff's claims.[48] First, the court noted that the plaintiff's theory of liability was legally deficient because she tried "to spin a breach of contract claim into a fraud case."[49] Second, the court rejected as illogical the plaintiff's theory that Bank of America committed fraud by failing to state on billing statements that its charges were "unnecessary."[50] The court also held that the plaintiff could not use Fannie Mae/Freddie Mac guidelines, which direct the manner in which loan servicers perform default activities, as a basis to impose liability, because the unrelated guidelines did not govern the relationship between the plaintiff and her mortgage servicer.[51]

Defendants also raised procedural bars to suit. In *Hill v. Nationstar Mortgage LLC*,[52] the court dismissed the case in its entirety because the plaintiffs had not sent a notice to Nationstar regarding the dispute before filing suit, as required by a mortgage provision.[53] By contrast, in *Giotta v. Ocwen Financial Corp.*,[54] the court refused to dismiss the complaint on notice grounds, concluding the provision inured only to the benefit of the original lender.[55]

Class Certification Decisions

Courts have issued five class certification decisions to date, taking markedly different approaches on similar arguments. The decisions turned on two primary issues: the role of automated systems and uniform practices in default servicing and whether a trier of fact must make a reasonableness determination to establish liability.

Decisions Granting Certification

In *Huyer v. Wells Fargo & Co.*,[56] the court certified a class for injunctive relief under Rule 23(b)(2) and for monetary relief under Rule 23(b)(3) of the Federal Rules of Civil Procedure. The court anchored its analysis on the question of whether Wells Fargo's use of an automated system to order drive-by property inspections constituted a common injury for all putative class members.[57] Even though it acknowledged that "there can be no doubt that the circumstances surrounding each individual inspection vary on a borrower-to-borrower basis,"

47. No. 2:14-cv-04408-ODW (PLAx), 2015 WL 1383241 (C.D. Cal. Mar. 24, 2015).
48. *Id.* at *5.
49. *Id.* at *4.
50. *Id.* at *6.
51. *Id.* at *14.
52. No. 15-60106-CIV, 2015 WL 4478061 (S.D. Fla. July 6, 2015).
53. *Id.* at *3.
54. No. 15-cv-00620-BLF, 2015 WL 8527520 (N.D. Cal. Dec. 11, 2015).
55. *Id.* at *6.
56. Huyer v. Wells Fargo & Co., 295 F.R.D. 332, 335–49 (S.D. Iowa 2013).
57. *Id.* at 337–39.

the court found that commonality existed because use of the system involved "a policy that was applied uniformly to all class members."[58]

The *Huyer* court rejected the defendants' arguments that individualized issues predominated over this common question. First, the defendants argued that it could not be proven that, as to each member of the putative class, the inspections conducted were unreasonable.[59] The court recognized that the question of the reasonableness of the inspections necessarily involved individualized issues,[60] but it nonetheless found that ultimate liability hinged on whether the defendants' policy to indiscriminately "order[] drive-by property inspections" violated RICO and California UCL, not whether it was a breach of contract.[61] For similar reasons, the *Huyer* court rejected the defendants' argument that individualized proof of injury was required, concluding that, if the defendants' policies were applied generally, there would be a concrete injury to the class as a whole.[62] Finally, the court refused to accept the defendants' argument that individualized proof of reliance was required to establish a fraud violation as part of the plaintiffs' RICO claims because it concluded that common evidence in the form of payments could show reliance.[63] In effect, the court found no need to consider the individualized facts of each individual property-preservation activity because it focused on asking whether the use of an automated system was proper in and of itself.[64]

The court also granted class certification in *Bias v. Wells Fargo & Co.*[65] Unlike other cases, the central common question in *Bias* was whether defendants had marked up BPO fees charged to class members.[66] Rejecting Wells Fargo's argument that individualized issues about affirmative misrepresentations or omissions made certification inappropriate, the court concluded that Wells Fargo's failure to disclose the markup was a sufficiently common question to satisfy Rule 23.[67]

Decisions Denying Class Certification

Three courts have denied class certification motions. In *Stitt v. Citibank, N.A.*,[68] the court concluded that the named plaintiffs' claims hinged on a

58. *Id.* at 338–39.
59. *Id.* at 347.
60. *Id.*
61. *Id.* at 337. Other courts have reached opposite conclusions on the breach of contract question. *See supra* note 23 and accompanying text.
62. *Huyer*, 295 F.R.D. at 349.
63. *Id.* at 348.
64. Wells Fargo later agreed to a classwide settlement worth $25.7 million. Hannah Sheehan, *Wells Fargo Agrees to $25.7M Settlement in RICO Suit*, Law360 (Dec. 10, 2015, 4:47 PM), http://www.law360.com/articles/735881/wells-fargo-agrees-to-25-7m-settlement-in-rico-suit.
65. 312 F.R.D. 528, 532 (N.D. Cal. 2015).
66. *Id.* at 535. The court also concluded that a second question was common to the class: whether two defendant entities could each be held liable for the conduct of marking up the BPO charges. *Id.* at 537. The court, however, doubted that the latter question would "ultimately drive the resolution of the litigation and support commonality on its own." *Id.*
67. *Id.* at 541.
68. No. 12-cv-03892-YGR, 2015 WL 9177662 (N.D. Cal. Dec. 17, 2015).

contract dispute, but their contracts included distinct terms, permitting property-preservation services "if reasonable," other times "if appropriate," and still other times "if necessary."[69] As in *Young v. Wells Fargo & Co.*,[70] the *Stitt* plaintiffs argued that Citibank's use of an automated system and uniform policies was a common question.[71] Unlike in *Young*, however, the *Stitt* court found that use of an automated system alone was insufficient to establish commonality because it did not drive resolution of the litigation.[72] The court concluded that the case was instead driven by contract liability, and so whether individual property inspections and BPOs were authorized by the mortgage agreement would depend on the individualized, varying facts of each putative class member's contract, precluding class treatment.[73]

In *Ellis v. J.P. Morgan Chase & Co.*,[74] the plaintiffs asserted that Chase's use of an automated system, which applied uniform policies, was a common question that would drive liability for the class as a whole.[75] However, the *Ellis* court found that the plaintiffs' underlying assumption that Chase applied uniform policies throughout the class period was incorrect, as demonstrated by individualized inquiries into the servicing records of each named plaintiff.[76] Furthermore, the court found that the records of each plaintiff showed far more inspections were conducted than were charged to borrowers.[77] These individualized issues precluded commonality.[78]

Finally, in *Alhassid v. Bank of America, N.A.*,[79] the court denied certification because of individualized issues about the inspections themselves. The court first determined that the proposed class was not ascertainable because the plaintiffs could not identify any record system to identify class membership.[80] The court also noted that the plaintiffs' list of purportedly common questions did not drive the question of liability as to the entire class.[81] Finally, the court found that "only *individualized* evidence" about default services as to each borrower could demonstrate liability, preventing the plaintiffs from establishing predominance under Rule 23(b)(3).[82]

69. *Id.* at *5.
70. *See* Young v. Wells Fargo & Co., 671 F. Supp. 2d 1006, 1012–13 (S.D. Iowa 2009).
71. *Stitt*, 2015 WL 9177662, at *3.
72. *Id.* (citing Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338 (2011)).
73. *Id.* at *5.
74. No. 12-cv-03897-YGR, 2015 WL 9178076 (N.D. Cal. Dec. 17, 2015).
75. *Id.* at *6.
76. *Id.*
77. *Id.* The court also noted that Chase ultimately waived some of the fees for the performance of property-preservation services. *Id.*
78. *Id.*
79. 307 F.R.D. 684 (S.D. Fla. 2015).
80. *Id.* at 695.
81. *Id.* at 697.
82. *Id.* at 701.