

FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

IN RE: WILLIAMS-SONOMA, INC.;
WILLIAMS-SONOMA ADVERTISING,
INC.; WILLIAMS-SONOMA DTC, INC.,

WILLIAMS-SONOMA, INC., a
Delaware corporation, DBA Pottery
Barn, DBA Williams-Sonoma, DBA
Williams-Sonoma Home;
WILLIAMS-SONOMA ADVERTISING,
INC., a California corporation;
WILLIAMS-SONOMA DTC, INC., a
California corporation,

Petitioners,

v.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
CALIFORNIA, SAN FRANCISCO,

Respondent,

WILLIAM RUSHING, Individually
and on Behalf of all Others Similarly
Situated,

Real Party in Interest.

No. 19-70522

D.C. No.
3:16-cv-01421-
WHO

OPINION

Appeal from the United States District Court
for the Northern District of California
William Horsley Orrick, District Judge, Presiding

Argued and Submitted October 2, 2019
San Francisco, California

Filed January 13, 2020

Before: Ferdinand F. Fernandez and Richard A. Paez,
Circuit Judges, and Jennifer Choe-Groves,* Judge.

Opinion by Judge Fernandez;
Dissent by Judge Paez

SUMMARY**

Writ of Mandamus / Discovery

The panel granted Williams-Sonoma Advertising, Inc.'s petition for a writ of mandamus, and ordered the district court to vacate a pre-class-certification discovery order that directed Williams-Sonoma to produce a list of California customers who had purchased certain bedding products.

* The Honorable Jennifer Choe-Groves, Judge for the United States Court of International Trade, sitting by designation.

** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

William Rushing brought an underlying action against Williams-Sonoma to recover damages that he allegedly suffered due to Williams-Sonoma's alleged misrepresentations about thread count on bedding he purchased. Before a class action was certified, the district court determined that Kentucky law governed Rushing's claim and that Kentucky consumer law prohibited class actions. The district court granted Rushing's request to obtain discovery from Williams-Sonoma for the purpose of aiding his counsel's attempt to find a California customer who purchased similar bedding.

In determining whether to issue mandamus relief, the panel applied the *Bauman v. U.S. Dist. Court*, 557 F.2d 650, 656-661 (9th Cir. 1977), factors. The panel held that Supreme Court authority demonstrated clear error in the district court's decision. The panel held that the Supreme Court has determined that seeking discovery of the name of a class member (here an unknown person, who could sue Williams-Sonoma) was not relevant within the meaning of Fed. R. Civ. P. 26(b)(1), which limits the scope of discovery. *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 353 (1978). The panel concluded that the district court clearly erred as a matter of law when it ordered the discovery in question, and the balance of factors weighed in favor of granting the writ of mandamus.

Judge Paez dissented because in his view the district court had not erred, let alone committed the clear error required for the extraordinary remedy of mandamus relief.

COUNSEL

P. Craig Cardon (argued), Robert J. Guite, and Benjamin O. Aigboboh, Sheppard Mullin Richter & Hampton LLP, San Francisco, California, for Petitioners.

Kathryn Honecker (argued) and Jonathan Udell, Rose Law Group, PC, Scottsdale, Arizona; Amber L. Eck and Robert D. Prine, Haeggquist & Eck, LLP, San Diego, California; George Richard Baker, Baker Law, PC, Los Angeles, California; for Real Party in Interest.

No appearance for Respondent.

Timothy G. Blood and Paula R. Brown, Blood Hurst & O'Reardon, LLP, San Diego, California, for Amicus Curiae Consumer Attorneys of California.

OPINION

FERNANDEZ, Circuit Judge:

Williams-Sonoma, Inc., Williams-Sonoma DTC, Inc., and Williams-Sonoma Advertising, Inc. (collectively “Williams-Sonoma”) petition for a writ of mandamus¹ ordering the district court to vacate a pre-class-certification discovery order that directed Williams-Sonoma to produce a list of California customers who had purchased certain bedding products. The purpose of the discovery was to enable opposing counsel to find a lead plaintiff to pursue a class

¹28 U.S.C. § 1651(a).

action against Williams-Sonoma under California law. We grant the petition.

BACKGROUND

William Rushing, a resident and citizen of the State of Kentucky, allegedly purchased bedding from Williams-Sonoma, and an important reason for his doing so was based upon the advertised thread count. Williams-Sonoma said that the thread count was 600 threads per square inch, but Rushing allegedly later discovered that it was actually much lower than that. Thus, he brought an action against Williams-Sonoma to recover damages under the law of the State of California that he allegedly suffered due to Williams-Sonoma's alleged misrepresentations. He also sought damages under California law for a class of consumers who bought bedding from Williams-Sonoma due to the selfsame alleged misrepresentations.

Before a class action was certified,² the district court determined, *inter alia*, that Kentucky law governed Rushing's claims and that Kentucky consumer law prohibited class actions. Rushing gave notice that he would pursue his personal claims under Kentucky law, but sought to obtain discovery³ from Williams-Sonoma for the sole purpose of aiding his counsel's attempt to find a California purchaser of bedding from Williams-Sonoma who might be willing to sue. The district court obliged, and to that end ordered Williams-Sonoma to produce a list of all California customers who purchased bedding products of the type referred to in

² See Fed. R. Civ. P. 23(c)(1)(A).

³ See Fed. R. Civ. P. 26.33.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.