

LOS ANGELES

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## Class Status Upheld in \$250 Million Case

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**SANTA ANA** — An appellate court has given a big boost to a \$250 million nationwide class action against a subsidiary of H&R Block.

In an order Wednesday, the 4th District Court of Appeal in San Diego let stand Orange County Superior Court Judge Thierry P. Colaw's decision in April to certify the class. According to the class plaintiffs' attorneys, the case "is believed to be the first national, consumer class action ever certified by the Orange County Superior Court." *Do Right's Plant Growers v. RSM Equico Inc.*, 06CC00137 (Orange Co. Super. Ct., filed July 11, 2006)

Plaintiffs' attorney Jerome L. Ringler of Ringler Kearney Alvarez in Los Angeles said the defendant company, RSM Equico Inc., defrauded 4,900 owners of small to mid-sized companies by charging as much as \$50,000 each to market the companies to foreign investors but only rarely doing so.

"They promised they were going to market them if they paid the 50 grand, and 85 percent of them never got marketed," Ringler said. "It's not very complicated. It's very dishonest."

Ringler Kearney is handling the case with another Los Angeles class-action law firm, McNicholas & McNicholas.

The business owners paid from \$37,500 to \$50,000 for appraisals, or "platforms," of their companies, according to Ringler. At that point, they could give a second RSM company authority to market the companies to foreign investors and others.

From 1999 to 2007, the plaintiffs contend, only about 15 percent of the companies ever were marketed at all, only 3 percent ever were sold and just 0.3 percent were sold overseas. H&R Block purchased the RSM companies in about 2001.

"And they never disclosed ever these rates of sales and marketing to any of their customers," Ringler said. He said the plaintiffs filed 2,000 declarations from former customers saying they would not have paid for appraisals if they'd known the marketing and sales statistics.

An attorney for RSM, Thomas M. Riordan of O'Melveny & Myers' Newport Beach office, deferred comment to the company.

Spokeswoman Kelly Osborne said the company is disappointed by the appellate court's action in not taking up the case. "We don't think the denial constitutes a decision on the

merits in any way, shape or form, and we're going to continue to defend [the case]," Osborne said.

In his petition to the Court of Appeal, Riordan described the class litigation as "unmanageable" and said the facts show that the many small businesses have dissimilar claims and complaints.

The case is not one about "thousands of insubstantial claims based on uniform representations to a multitude of consumers," Riordan wrote in the petition. It involves thousands of "unique commercial transactions" by businesses worth from \$2 million to \$300 million.

Although the litigation is pending in Orange County, the writ petition was decided by the appellate court in San Diego. Ringler said that happened because one of the original owners of RSM was Sheila Prell Sonenshine, herself a former 4th District Court of Appeal justice based in Santa Ana. Sonenshine and other owners were dismissed from the lawsuit more than a year ago because H&R Block assumed all their liability.

Sonenshine could not be reached to comment Thursday.

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