

IN THE CIRCUIT COURT OF DEKALB COUNTY, MISSOURI

NICHOLSON, *et al.*

v.

PRIME TANNING CORP., *et al.*

Case No. 09-DK-CC00052

FILED

JUN 25 2009

JULIE WHITSELL
Circuit Clerk & Ex-Officio Recorder
DEKALB COUNTY, MO

PLAINTIFFS' MOTION FOR RECONSIDERATION

Plaintiffs, by and through their counsel, and pursuant to MO. R. CIV. P. 78.04, move the Court to reconsider its June 5, 2009 Order denying class certification of a medical monitoring class pursuant to MO. R. CIV. P. 52.08.

Plaintiffs' petition was just filed on April 24, 2009 and the First Amended Petition was filed on May 15, 2009. None of the Defendants have even had the opportunity to file an answer before the Court issued its Order, let alone conduct discovery, brief the issues, and conduct oral argument on the issue of class certification.

LAW AND ARGUMENT

Standard of Review

The trial court erred and abused its discretion by denying Plaintiffs their motion for class certification prior to the parties having an opportunity to conduct any discovery in the case.

The Court reviews class certification ruling for an abuse of discretion. *Koger v. Hartfield Life Ins. Co.*, 28 S.W.3d 405 (MO.App.W.D. 2000) (citing *Senn v. Manchester Bank of St. Louis*, 583 S.W.2d 119, 132 (Mo. banc 1979)). A court abuses its discretion only if its "ruling is so arbitrary and unreasonable as to shock one's sense of justice and indicate a lack of careful consideration." *Koger v. Hartfield Life Ins. Co.*, 28 S.W.3d 405 (MO.App.W.D. 2000)(citing

Duckett v. Troester, 996 S.W.2d 641, 646 (Mo.App.1999) quoting *McGraw v. Andes*, 978 S.W.2d 794, 801 (Mo.App.1998)). [Emphasis added.]

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully move the Court to reconsider its prior Order and for other such relief that the Court deems just and reasonable.

Date: June 24, 2009

Respectfully submitted,

SPEER LAW FIRM, P.A.

By: 

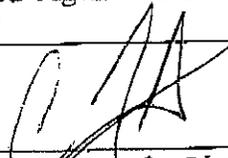
Charles E. Speer (MO 40713)
Tammy R. Dodson (MO 48223)
Gerald Lee Cross, Jr. (MO 60101)
Kirra N. Jones (MO 60161)
104 West 9th Street, Suite 305
Kansas City, Missouri 64105
Tel: (816) 472-3560
Fax: (816) 421-2150
cspeer@speerlawfirm.com
tdodson@speerlawfirm.com
lcross@speerlawfirm.com
kjones@speerlawfirm.com

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that this on June 24, 2009 a true and correct copy of the aforesated was sent U.S. Mail to:

<p>Mr. Scott R. Ast Scharnhorst Ast & Kennard, P.C. 1000 Walnut Suite 1550 Kansas City, MO 64106 Attorney for Rick Ream</p>	<p>Benjamin E. Marcus 84 Marginal Way, Suite 600 Portland, ME 04101-2480 Registered Agent for Prime Tanning Co. Inc.</p>
<p>CSC Lawyers Inc Svc Co. 221 Bolivar Street Jefferson City, MO 65101 Registered Agent for Prime Tanning Corp.</p>	<p>CT Corporation Systems 120 S. Central Ave. Clayton, MO 63105 Registered Agent for National Beef Leathers Co. LLC</p>



Attorney for Plaintiffs