

SEP 08 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GARY GRABEK, SHIRLEY  
WALDBUESSER, MARK A. GEUDER,  
DWITE RUSSELL, JULIE SPICER;  
individually and on behalf of all those  
similarly situated,

Plaintiffs - Appellants,

v.

NORTHROP GRUMMAN  
CORPORATION, NORTHROP  
GRUMMAN CORPORATION SAVINGS  
PLAN ADMINISTRATIVE  
COMMITTEE, NORTHROP  
GRUMMAN CORPORATION  
COMPENSATION AND  
MANAGEMENT DEVELOPMENT  
COMMITTEE OF THE BOARD OF  
DIRECTORS, NORTHROP GRUMMAN  
CORPORATION SAVINGS PLAN  
ADMINISTRATIVE COMMITTEE, J.  
MICHAEL HATELEY, as Corporate Vice  
President and former Chief Human  
Resources and Administrative Officer,  
IAN ZISKIN, as Chair of the  
Administrative Committee and Corporate

No. 07-56448

D.C. No. CV-06-06213-MLR

MEMORANDUM\*

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Vice President and Chief Human Resources and Administrative Officer, DENNIS WOOTAN, as Secretary of the Administrative Committee, JOHN T. CHAIN, Jr., all in their capacities as Members of the Compensation and Management Development Committee and as Members of the Northrop Grumman Corporation Board of Directors, LEWIS W. COLEMAN, PHILLIP FROST, KEVIN SHARER, PHILIP A. ODEEN, STEPHEN FRANK, RYAN HAMLIN, ROSE MARY ABELSON, VIC FAZIO, CHARLES LARSON, AULAN PETERS, RONALD D. SUGAR;

Defendants - Appellees.

Appeal from the United States District Court  
for the Central District of California  
Manuel L. Real, District Judge, Presiding

Argued and Submitted July 10, 2009  
Pasadena, California

Before: WARDLAW, RAWLINSON and N.R. SMITH, Circuit Judges.

Appellants, employees of the Northrop Grumman Corporation, challenge the district court's denial of their motion for class certification in this ERISA action asserting a breach of fiduciary duty.

1. The district court abused its discretion by failing to make any findings whatsoever regarding the class certification requirements articulated in Fed.R.Civ.P. 23. *See Parra v. Bashas', Inc.*, 536 F.3d 975, 977-78 (9th Cir. 2008) (“An abuse of discretion occurs when the district court . . . omits consideration of a [Rule 23] factor . . .”).

2. Although the determination of class certification is within the province of the district court rather than the appeals court, this case appears to meet the requirements of Fed.R.Civ.P 23(a) and (b). *See Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 833-34 (1999) (A “[c]lassic example[.]” of a Rule 23(b)(1)(B) action is one “charging a breach of trust by an indenture trustee or other fiduciary similarly affecting the members of a large class of beneficiaries . . .”) (citations and internal quotation marks omitted).

3. Due to the failure of the district court to make the requisite findings, we vacate the district court’s August 7, 2007, order denying class certification. Although we recognize and regret the burden placed on other judges in the judicial district, to avoid further delay in resolving this matter, we order reassignment to a different judge on remand. *See, e.g., United States v. Murillo*, 548 F.3d 1256, 1257 (9th Cir. 2008).

**VACATED AND REMANDED. CASE TO BE REASSIGNED TO A  
DIFFERENT DISTRICT JUDGE ON REMAND.**