NOT FOR PUBLICATION

FILED

OCT 30 2026

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ADAM ELGINDY; JULIANNE CHUANROONG; ANDREW TASAKOS, on behalf of themselves, the general public, and those similarly situated,

Plaintiffs - Appellees,

v.

ERIC ALAN ISAACSON,

Objector - Appellant,

v.

AGA SERVICE COMPANY, doing business as Allianz Global Assistance; JEFFERSON INSURANCE COMPANY; BCS INSURANCE COMPANY,

Defendants - Appellees.

No. 24-7320

D.C. No. 4:20-cv-06304-JST

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Jon S. Tigar, District Judge, Presiding

Argued and Submitted May 18, 2026
San Francisco, California

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Before: COLLINS, JOHNSTONE, and DE ALBA, Circuit Judges;
Partial Concurrence and Partial Dissent by Judge COLLINS.

Eric Alan Isaacson appeals the district court's final approval of a class action settlement and the denial of his motion to unseal. We dismiss the appeal of the denial of the motion to unseal for lack of jurisdiction and affirm the final approval order.

1. A district court's order denying a motion to unseal is immediately appealable as a collateral order treated as final under 28 U.S.C. § 1291. *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1096 (9th Cir. 2016); *see also Digit. Equip. Corp. v. Desktop Direct, Inc.*, 511 U.S. 863, 867–68 (1994). An appeal must be taken within 30 days after entry of such an order. *See* 28 U.S.C. § 2107(a); Fed. R. App. P. 4(A); *SEC v. Cap. Consultants, LLC*, 453 F.3d 1166, 1173 (9th Cir. 2006) ("As with all final decisions, the time for appeal of an appealable collateral order begins to run on the date the court enters the order. Thus, parties who do not realize that an order may be an appealable collateral order before the time for appeal runs out will lose their opportunity to appeal.").

The district court denied Isaacson's motion to unseal on May 13, 2024, making the appeal deadline June 12, 2024. Isaacson filed his notice of appeal on November 27, 2024, well outside that window. We therefore dismiss the appeal of the motion to unseal for lack of jurisdiction and do not reach its merits. *See Bowles*

v. Russell, 551 U.S. 205, 206–07 (2007).

2. The district court confirmed certification of the settlement class, and although its analysis of Federal Rule of Civil Procedure 23(a) prerequisites was thinner than our caselaw contemplates, *see Black Lives Matter L.A. v. City of L.A.*, 113 F.4th 1249, 1254 (9th Cir. 2024), Isaacson has failed to show that reversal is required.[1] We have jurisdiction under 28 U.S.C. § 1291. We review de novo the district court's class certification for legal error, and absent such error, we review for abuse of discretion. *O'Connor v. Uber Techs., Inc.*, 904 F.3d 1087, 1094 (9th Cir. 2018).

A district court must conduct a "rigorous analysis" of the Rule 23(a) prerequisites before certifying a class, including in the settlement context. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350–51 (2011); *Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651, 664 (9th Cir. 2022) (en banc). The district court arguably did not perform that analysis, because its preliminary approval order recited the Rule 23(a) requirements but included no

[1] Isaacson forfeited his challenge to certification based on the district court's Rule 23(b) predominance analysis. While "an objector need not be an oracle and predict issues that will arise for the first time in the district court's final order," *Saucillo v. Peck*, 25 F.4th 1118, 1130 (9th Cir. 2022), Isaacson did not raise a Rule 23(b) predominance issue after the district court issued its preliminary order. *See In re E.R. Fegert, Inc.*, 887 F.2d 955, 957 (9th Cir. 1989) ("The rule in this circuit is that appellate courts will not consider arguments that are not properly raised in the trial courts." (citation modified)). So we decline to reach it.

reasoning, and its final order contained no separate findings regarding Rule 23(a). But we need not address this issue, because no such broader objections to the class certification order have been preserved. The sole certification defect Isaacson presented below was inadequate representation. Isaacson framed the defect under both Rule 23(a)(4) and Rule 23(e)(2)(A), and the district court resolved it on the merits. Though housed within the district court's Rule 23(e) fairness discussion, that analysis applied the governing Rule 23(a)(4) standard and addressed the precise intra-class conflicts Isaacson raised.

Nor did the district court abuse its discretion on the merits by declining to require separately represented subclasses. All class members' claims arose from a common course of conduct and rest on the same theory of liability. The differences in refund percentages between Tranches One and Two correspond to differences in the disclosures each group received. *See In re Apple Inc. Device Performance Litig.*, 50 F.4th 769, 781 (9th Cir. 2022) (noting that differences in harm among class members do not necessarily require separate representation). As such, the district court's approval of the class was not an abuse of discretion.

3. We review for abuse of discretion the district court's approval of incentive awards. *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 948 (9th Cir. 2015). Given "the number of class representatives, the average incentive award amount, and the proportion of the total settlement that is spent on incentive

awards," the district court did not abuse its discretion in approving $5,000 incentive awards. *Id.* at 947–48.

DISMISSED in part, AFFIRMED in part.

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Elgindy v. AGA Serv. Co., No. 24-7320

COLLINS, Circuit Judge, concurring in part and dissenting in part:

I concur in all but section 1 of the court's memorandum disposition in this case. As to the sealing issue raised by Intervenor-Objector-Appellant Eric Alan Isaacson, I think that we have jurisdiction over the issue, but that Isaacson's arguments lack merit. Accordingly, I would not dismiss any portion of this appeal but would instead affirm the district court's judgment in its entirety. To the extent that the majority does otherwise, I respectfully dissent.

Even assuming *arguendo* that Isaacson could have immediately appealed, under the collateral order doctrine, the denial of his motion to unseal certain materials, his failure to take such an appeal does not alone suffice to establish that he may not raise that issue on appeal from the final judgment. Appealability under the collateral order doctrine is *not* based on an "individualized jurisdictional inquiry," but instead is focused on "the entire category to which a claim belongs." *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 107 (2009) (simplified). Thus, even if Isaacson may benefit from our general rule that persons who have intervened for purposes of unsealing records may take an immediate interlocutory appeal from a denial of the requested unsealing, *see Center for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1096 (9th Cir. 2016), that does not necessarily foreclose the possibility that, after the litigation plays out to final judgment, the

sealing issue might, in the unique circumstances of that case, nonetheless turn out to be effectively reviewable from the final judgment. That is the case here. Isaacson is also a class member and objector, and he contends that the district court erred in requiring him to sign the protective order in order to have access to the requested sealed information and that this assertedly unlawful condition impeded his ability to present his objections to the approval of the settlement. The district court's ruling rejecting that argument merges into the final judgment approving the settlement and may therefore be raised on appeal from that final judgment. *See Dupree v. Younger*, 598 U.S. 729, 735 (2023) (noting the "general rule" that interlocutory rulings "merge into the final judgment, at which point they are reviewable on appeal" (simplified)). And where, as here, the result is that there were two opportunities to take an appeal that would embrace the issue, the settled federal rule is that a failure to take an interlocutory appeal as of right does not preclude raising the issue, if possible, on appeal from the final judgment. *See Baldwin v. Redwood City*, 540 F.2d 1360, 1364 (9th Cir. 1976) (holding that "an interlocutory appeal is permissive, not mandatory," and that, "[w]hen an appeal is not taken, the interlocutory order merges in the final judgment and may be challenged in an appeal from that judgment"); *see also Langer v. Kiser*, 57 F.4th 1085, 1104–05 (9th Cir. 2023) (same).

Accordingly, we have jurisdiction to review whether the district court

properly sealed the materials and required Isaacson to sign a protective order as a condition for accessing that information for purposes of objecting to the settlement. We review that determination only for an abuse of discretion, *see San Jose Mercury News, Inc. v. United States Dist. Ct.*, 187 F.3d 1096, 1102 (9th Cir. 1999), and there is none. "The law . . . gives district courts broad latitude to grant protective orders to prevent disclosure of materials for many types of information, including, but not limited to, trade secrets or other confidential research, development, or commercial information." *Phillips ex rel. Estates of Byrd v. General Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002) (emphasis omitted). The district court articulated the correct legal standards, and it permissibly concluded that Defendants had adequately supported their claim that the very limited quantity of information sealed was sufficiently competitively sensitive to warrant its sealing, with access limited to those parties and class members who agreed to the confidentiality restrictions contained in the district court's protective order.[1]

For the foregoing reasons, I would affirm the district court's judgment in its entirety.

[1] I am also persuaded that Defendants have established sufficient grounds for maintaining that information under seal in this court and that its motion to do so (Dkt. No. 40) should be granted. I therefore concur in the court's order granting that motion.