

No. 14-0301

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absent or inadequate, commonality might be present. *See Ira Holtzman, C.P.A. v. Turza*, 728 F.3d 682, 684 (7th Cir. 2013); *see also MDC Acquisition Co. v. Traveler's Prop. Cas. Co. of Am.*, 545 F. App'x 398, 401 (6th Cir. 2013); *Nack v. Walburg*, 715 F.3d 680 (8th Cir. 2013). Moreover, "[t]he denial of a plaintiff class sometimes defeats the case as a practical matter because the stakes are too small and the litigations costs are too high for the individual plaintiff to go forward." *In re Delta Airlines*, 310 F.3d at 957. Such is the case here, where an individual's recovery is limited to a maximum of \$1,500. 47 U.S.C. § 227(b)(3).

Nonetheless, the procedural posture of this case weighs against review. The district court's failure to address the impact of an absent or inadequate opt-out notice is critical to the continued viability of the underlying suit. Further, the district court only considered whether commonality was present, and not whether any of the other requisite factors for certification were present. *See Fed. R. Civ. P. 23(a), (b)*. Thus, it is premature for us to consider the issue raised here.

The petition for permission to appeal is **GRANTED** insofar as the district court failed to analyze all of the relevant arguments concerning commonality and failed to engage in a rigorous analysis of all of the Rule 23 class certification factors. The order denying class certification is **VACATED**, and the case is **REMANDED** to the district court for further proceedings.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk