KCC Class Action Services

KCC Class Action Digest
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EMPLOYMENT

Wage & Hour

Does 1-2 v. Déjà Vu Consulting Inc., Nos. 17-1801/1802/1827, 2019 WL 2336927 (6th Cir. Jun. 3, 2019) (Cole, J.)
Exotic dancers brought suit for violation of the Fair Labor Standards Act ("FLSA") and state law against their employers, alleging wage and hour violations by virtue of misclassifying them as independent contractors. After settlement was reached, the United States District Court for the Eastern District of Michigan granted preliminary approval and overruled objections, and granted final approval, and an amended motion for fees and costs. Four objectors appealed, alleging the agreement was not reasonable, the release was overbroad, and the notice did not comport with due process requirements of Rule 23.

The Sixth Circuit affirmed, reasoning in support of its decision first that in relevant part, in terms of Objectors' primary argument, that the class was being under-compensated, the district court did not abuse its discretion in determining the value of the settlement in lieu of the potential risks of continuing litigation.

Turning next to Rule 23, the Court first addressed the breadth of the class release and found that Objectors' argument lacked merit in that the claims released share a "factual predicate" with the claims in the complaint. In terms of notice, the Court found the notice covered all the bases under Rule 23(c)(2)(b). Here, the Court found that contrary to Objectors' contentions, the notice accurately captured the scope of release, detailed the nature of monetary relief available, and did not need to describe the exact award amount estimated or class actions previously filed against Defendants.

ENVIRONMENTAL

Slocum v. International Paper Co., Nos. 16-12563, 16-12567, 16-13793, 2019 WL 2192099 (E.D. La. May 21, 2019)
Plaintiffs brought suit against a neighboring paper mill, alleging the release of black liquor from the mill caused various damages, under theories of negligence, strict liability, and nuisance. Plaintiffs sought class certification.

The Court granted certification, reasoning in support of its decision first that numerosity was satisfied on grounds of there being approximately 2,500 potential class members; commonality was satisfied on the basis of the presence of a variety of common issues. In terms of predominance, the Court analyzed each claim, finding that (1) for the negligence claims, predominance was satisfied for purposes of proving duty, breach, and general causation, but not for specific causation nor individual damages; (2) for the nuisance claim, the Court found predominance met; (3) for a separate negligence claim on grounds of "custody" of the equipment, the Court found predominance met because there was no analysis for causation or damages in proving liability; (4) for equitable relief claims, the Court found predominance met, and no damages or causation analysis was necessary.

The Court then split the trials of the case, first on liability and the second on specific causation and damages, and approved certification on the liability issues.

RETIREMENT PLANS

Bacon v. Board of Pensions of the Evangelical Lutheran Church in America, No. A18-1307, 2019 WL 2262777 (Minn. Ct. App. May 28, 2019) (Reyes, J.)
Plaintiffs brought action against retirement-plan trustee for various fiduciary and fraud claims. The district court granted Defendant's motion to dismiss under the excessive-entanglement doctrine, which was reversed. The Court then certified an opt-out class and denied certification with respect to mismanagement of funds, and denied certification as a mandatory class under Minnesota's state rule 23 for both claims. Plaintiffs filed petition for discretionary review on the mandatory class denial, and the Court granted review.

The Court reversed and remanded, reasoning in support of its decision that, in terms of whether the trial court abused its discretion by denying certification under Minnesota rule 23.02(a), as a matter of first impression, it had not. Here, the Court relied upon federal precedent because of substantial similarity and reasoned that the requirements of numerosity, commonality, typicality, and adequacy were determined to be satisfied and were undisputed.

In terms of the remaining issue, whether certifying the class might create the risk of inconsistent adjudications establishing incompatible standards for parties opposing the class or impair the rights of absent parties to protect their interests, the Court found the trial court instead certified the class on predominance and superiority, by characterizing the claims as individualized monetary claims. Here, the appellate court found that these were not individualized monetary claims, but claims regarding duties to the plan as a whole.

As such, the Court found the trial court abused its discretion, and held certification as a mandatory class was permissible where the class sought monetary recovery and equitable relief on behalf of a retirement plan, rather than on behalf of individual participants.

SECURITIES

Fee Awards

Fresno County Employees' Retirement Association v. Isaacson/Weaver Family Trust, No. 17-2662, 2019 WL 2219680 (2nd Cir. May 23, 2019) (Pooler, J.)
In the context of a consolidated securities class action, the lead Defendant objected to a fee award granted to lead Plaintiff's attorneys, arguing that the fees were presumptively limited to an unenhanced lodestar due to statutory fee shifting provisions in the case. Plaintiff countered that the use of a common fund allowed for either a lodestar or percentage method to be appropriate, an argument with which the United States District Court for the Southern District of New York agreed in its order.

The Second Circuit affirmed the order. Reviewing the order de novo, the Court relied upon the United States Supreme Court's decision in *Alyeska Pipeline Service Co. v. Wilderness Society*, in which the common fund doctrine was held as separate from fee-shifting provisions under various statutes. The Court further reasoned that this had been followed in other Second Circuit cases, as well as in neighboring circuits. While Defendant contended that applying a common fund doctrine would create economic unfairness in similar cases, the Court rejected that argument, holding that a district court can freely determine the economics at stake in any case.

Class Certification

Milbeck v. Truecar, Inc., No. 18-cv-02612, 2019 WL 2353010 (C.D. Cal. May 24, 2019) (Cole, J.)
Plaintiffs brought securities suit against Defendants, alleging that misrepresentations were made in the context of a secondary offering of stock. Lead Plaintiff sought class certification.

The Court granted the motion, reasoning in support of its decision that terms numerosity was satisfied on grounds of there being 85-98 million shares of stock outstanding during the class period. In terms of commonality, the Court found the variety of securities claims to be common, and then similarly found typicality satisfied by virtue of Plaintiffs' allegation of having suffered from Defendants' conduct against the market. For adequacy, the Court found the lead Plaintiff adequate and without conflict, and rejected Defendant's argument that counsel was not monitored sufficiently.

Turning then to predominance, the Court found damages need not be calculated on a class-wide basis to show predominance at this stage, and that evidence of the fraud-on-the-market presumption of reliance was not contested, thus satisfying predominance.

SETTLEMENTS

Wage & Hour

Camilo v. Ozuna, No. 18-cv-023842, 2019 WL 2141970 (N.D. Cal. May 16, 2019) (DeMarchi, J.)
Plaintiff factory workers brought wage and hour claims under state law and the FLSA against their employer. After the matter was settled, plaintiffs sought preliminary approval of the settlement.

The Court conditionally certified the settlement class under Rule 23 and the FLSA, but refrained from approving the settlement pending the parties resolving certain issues the Court identified. Reasoning in support of its decision, the Court first found certification appropriate under both standards in relevant part on grounds that (1) numerosity was satisfied by the presence of more than 40 potential class members; (2) commonality was satisfied by the various claims being common across the class; (3) typicality was satisfied for similar reasons; (4) adequacy because counsel was qualified and there were no intra-class conflicts; and (5) no individual issues would predominate over common ones.

In terms of settlement approval, the Court took issue with the facts that (1) the parties had changed the ratio of payments to each class without explanation; (2) there was confusion about whether Rule 23-only claimants were still included in the settlement; (3) some claimants were unfairly excluded with class members who had received Department of Labor settlements during a certain time period; (4) the scope of the proposed release was too narrow in applicable members and too overbroad in releasing claims; (5) the settlement did not estimate potential exposure in a manner satisfactory to the Court; (6) fees and costs exceeded the relevant 25% benchmark without presented support; (7) service awards exceeded the average class payment by a factor of three; (8) a variety of other provisions were too ambiguous to affirm; and (9) the proposed notice was confusing and inconsistent. As such, the Court denied the settlement without prejudice, allowing for corrections to be made.

TELEPHONE CONSUMER PROTECTION ACT

Calls

Jackson v. Paycron Inc., No. 19-cv-00609, 2019 WL 2085430 (M.D. Fla. May 13, 2019) (Jung, J.)
Plaintiff brought suit for violation of the Telephone Consumer Protection Act ("TCPA") against Defendant, alleging the use of an auto-dialer for soliciting calls. Defendant was served but defaulted. Plaintiff then sought certification of two classes.

The Court granted conditional certification of a single class, subject to obtaining proof of class identity and class-wide damages. Reasoning in support of its decision, the Court first noted that for certification in the context of a default, a standard Rule 23 analysis applied. Overall, the Court found the second proposed class was likely to overlap significantly with the first, and denied certification without prejudice, allowing it to be added later if needed. Looking at numerosity, the Court found hundreds of likely class members sufficient. For commonality, the Court found a variety of common issues, while for typicality, the Court found Plaintiff's claims to be shared with the class. In terms of adequacy, the Court found no conflicts, no unique defenses at issue, and counsel to be qualified. The Court found predominance was met by the common issues in the case, and that superiority was met by the economic efficiency of the class action.

Text Messages

Esparza v. Smartpay Leasing, Inc., No. 17-cv-03421, 2019 WL 2372447 (N.D. Cal. Jun. 5, 2019) (Alsup, J.)
Plaintiff brought suit for violation of the TCPA against Defendant, alleging receipt of promotional texts on her cell phone after terminating her contract from a separate phone line, and after requesting not to receive them by a STOP message. Plaintiff moved for certification of two classes: (1) for those who had received a Re-Engagement text message; and (2) for those who had rejected further texts with a STOP message and still received them afterward.

The Court granted in part and denied in part, certifying the STOP message class only. Reasoning in support of its decision, the Court first evaluated the proposed class definitions, which differed from the one in the complaint. The Court found no significant expansion of the class, and Defendant had alleged no prejudice resulting from the change.

Turning next to the Rule 23 analysis, the Court looked first at commonality and predominance, finding that commonality was easily satisfied, but that individualized issues of consent were required in the Re-Engagement class, as Defendant's procedure of acquiring consent was not consistent for those who signed up without using a trackable system. However, the Court found this was not a problem for customers who had used the online portal. For the STOP message class, the issue of consent was determinable from those who had sent STOP messages. Thus, the Court found predominance met for the STOP message class, and only in part for the Re-Engagement class.

In terms of typicality, the Court found Plaintiff's claims atypical with the Re-Engagement class, as she had signed up by paper, and predominance had not been demonstrated for that subgroup alone. For the STOP message class, however, the Court found typicality established.

In terms of numerosity, the Court found it satisfied by virtue of 22,578 telephone numbers having been sent automated text messages as a response to opt-out attempts. While Defendant argued this was insufficient, as it did not show receipt of the messages, and that some of the numbers may have opted-out in other ways than the STOP message, the Court found both arguments speculative and not sufficient to show how numerosity was defeated.

For adequacy, the Court found counsel was qualified and experienced in class action cases despite having participated in only one TCPA-specific case. The Court also found Plaintiff lacked conflicts with the class and that their knowledge of the claims and case was sufficient to proceed with Plaintiff as an adequate representative.

For superiority, the Court found the low value of each claim made a single proceeding preferable and more efficient, and thus, superior.

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