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INSIDE THIS ISSUE

Consumer	pg. 1
Numerosity	pg. 2
Settlement	pg. 2



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CONSUMER

Text Messages

Gordon v. Robinhood Financial LLC, No. 19-cv-0390, 2021 WL 243851 (E.D. Wash. Jan. 25, 2021) (Rice, J.) Plaintiff brought suit against an online investment broker, alleging the receipt of unsolicited text messages in violation of Washington state consumer statutes. After Defendants removed the action to federal court on the basis of class action diversity jurisdiction, Plaintiff sought class certification.

The Court granted the motion, reasoning in support of its decision that 1,100 class members sufficed for numerosity purposes. Turning next to commonality, the Court found that Plaintiff raised a single common question of law, regardless of any disputed individual issues of consent, and this was sufficient. Likewise, the Court found typicality met by the Defendant's course of conduct toward all class members in transmitting the text messages. The Court ruled that the underlying facts inherent to these elements would be further addressed at the merits stage or through summary judgment. In terms of adequacy, while Defendant argued that Plaintiff had conducted no discovery and failed to cite evidence in his certification motion, the Court found this did not affect competency or commitment of the representative or counsel for the class.

Turning then to Rule 23(b)(3) predominance, the Court found the predominant common question was whether the Defendant violated the statutes in question by its conduct, and ruled that any individualized inquiries into text content, consent, or residency of class members could be dealt with in the merits stage or identification of the class later on. The Court also found superiority satisfied by virtue of the low individual recovery amount available, a lack of parallel litigation, the ease of class-wide adjudication and the statutory nature of damages sought.

Apps

Wilson v. PTT, LLC, No. 18-cv-5275, 2021 WL 211532 (W.D. Wash. Jan. 21, 2021) (Lasnik, J.) Plaintiff brought suit against the creator of a gambling app, alleging violations of state gambling and consumer laws, and unjust enrichment in being required to purchase additional in-game coins to keep playing after using up the free ones offered. Plaintiff sought class certification and a preliminary injunction.

The Court granted the motion for class certification and denied the motion for preliminary injunction. In support of its class certification decision, the Court first considered Article III standing. Defendant argued that Plaintiff did not suffer injury-in-fact because he received the benefit of the bargain that he made. The Court found that the Plaintiff's injury was cognizable and that the enrichment amount had been established.

Looking at the requirements of Rule 23, the Court found numerosity satisfied without dispute. For commonality, the Court found that one key common question was whether the coins are "things of value" under the statute, as well as additional common questions that would follow from this.

In terms of typicality, while Defendant argued first that Plaintiff did not play one of the two games at issue for the class, the Court found these two games shared the coins at issue and involved the same questions. The Defendant also argued Plaintiff had made unsupported statements in the case, but the Court found these were not substantially meaningful to affect the class action proceeding. The Court similarly rejected Defendant's contention that Plaintiff's subsequent bankruptcy discharge made the trustee the real party in interest, reasoning that Plaintiff had since reopened his bankruptcy case to assert the coins as newly discovered assets, leaving no meaningful bar to pursuing the claims. The Court also found judicial estoppel was not a bar because of the shifting jurisprudence during the interim that left no controlling law to estop Plaintiff's claims when they were made. The Court then found the unique defenses Defendant cited were not applicable, finding typicality satisfied.

In terms of adequacy, while Defendant contended that Plaintiff was inadequate by virtue of certain statements undermining his credibility, the Court found these were not disqualifying in that they were unlikely to affect adjudication of either class-wide claims or individual claims. As such, the Court found adequacy was met. Turning next to Rule 23(b)(3) predominance, the Court found that the common questions would establish liability and predominate over any individualized defenses. The Court then found superiority was met by the low individual amounts sought, lack of parallel litigation, and ability to manage the case within the district court as a common forum.

For Rule 23(b)(2), the Court found that injunctive relief would be appropriate if Plaintiff is able to prevail, but that preliminary injunctive relief was not appropriate, since it was not clear whether Plaintiff was likely to prevail from the existing record.

NUMEROSITY

Anderson v. Weinert Enterprises, Inc., No. 20-1030, 2021 WL 282551 (7th Cir. Jan. 28, 2021) (Scudder, J.) Plaintiff brought suit against an employer, alleging violations of the Fair Labor Standards Act (“FLSA”) by virtue of employer’s failing to properly calculate and pay overtime wages. The action failed to attract enough employee support, and Plaintiff withdrew his federal claim to solely pursue his state claim. The district court determined the class would include no more than 37 members, and that this was not impracticable for establishing numerosity. Certification was denied by the United States District Court for the Eastern District of Wisconsin and Plaintiff appealed.

The Seventh Circuit affirmed, reasoning in support of its decision first that the district court’s findings as to geographic dispersion, overall size, individual claim amounts, and ease of communication with Plaintiff were reasonable, as they showed that all but two class members lived within 50 miles of the district court and the other issues were not a problem to proceeding. The district court had however opted not to make inferences without evidence from the Plaintiff on hiring practices that would raise the class size over 40, and the Court found this was Plaintiff’s burden to prove so as to satisfy Rule 23.

The Court also noted that the number 40 was not a magic number automatically imparting numerosity, and that the central question was whether joinder would be impracticable; the Court found Plaintiff had not made this showing, and that the district court did not abuse its discretion in finding so.

SETTLEMENT

Zayas v. San Francisco Sheriff’s Dept., No. 18-cv-06155, 2021 WL 151980 (N.D. Cal. Jan. 18, 2021) (Spero, J.)

Plaintiffs brought suit against a county jail system after suffering direct and indirect impact from sewage overflows. After reaching a settlement covering the instance case and two related cases, Plaintiffs sought preliminary approval.

The Court denied the motion without prejudice, reasoning in support of its decision that while the agreement was the result of serious, informed, non-collusive negotiations and that the general terms including the overall amount of settlement were reasonable, there were clarity issues and inconsistencies requiring attention.

First, the Court noted the presence of multiple class definitions that were inconsistent in duration and excluded some of the plaintiffs from the related cases. The Court found the settlement class was also not clearly defined by a fair and efficient process of identification, and the payout amounts did not have a standard basis for calculation. The Court also found the attorney fee provision was at a different amount from other papers in the

case, which signified a lack of agreement. The Court also found a lack of a clear release provision and adequate protections for absent class members, and that it was superfluous to make the agreement contingent on approval of the Board of Supervisors when they had already approved the settlement.

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