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As part of our commitment to practitioners, KCC provides this resource on decisions related to class action litigation in state and federal court.

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CLASS CERTIFICATION

Britton v. Servicelink Field Services, LLC, No. 18-cv-0041, 2018 WL 4259239 (E.D. Wash. Sep. 6, 2018) (Rice, J.)

Plaintiffs brought suit against service provider who changed locks and damaged property after Plaintiffs had defaulted on their mortgage loans. Defendant brought a preemptive motion to deny certification before Plaintiffs had conducted any discovery, alleging individual inquiries would be needed that would preclude predominance of common issues.

The Court denied the motion, reasoning that discovery was necessary to determine whether predominance could be satisfied. As such the Court found denying certification to be premature, citing the same lack of discovery as well as the possibility that Plaintiffs might adopt or drop various claims, and might decide not to pursue class certification at all.

EMPLOYMENT

Terry v. Hoovestol, Inc., No. 16-cv-05183, 2018 WL 4283420 (N.D. Cal. Sep. 7, 2018) (Tigar, J.)

Plaintiff brought state wage and hour suit against their former employer. After Defendant removed the case to federal court, the parties reached a proposed settlement. Plaintiffs sought preliminary approval.

The Court denied the motion, reasoning in support of its decision that the settlement did not satisfy the relevant reasonableness requirements. The Court did first find most of the factors at issue to support approval, including that (1) there was no collusion in the negotiations (as the settlement was reached after mediation, discovery, briefing a motion for certification, and arms-length negotiation, and there was no reversion or clear sailing provision); (2) there was suitable risk and complexity in the litigation (including disagreements between the parties over the strengths of the case and certification claims); (3) that litigation would be lengthy and expensive; (4) the settlement award, fees, and costs were within the range of possible approval, due to the risks in litigating the case; (5) the discovery process had gathered sufficient information for the parties to make an informed decision about the settlement; (6) class counsel's opinion was favorable; and (7) the variability of the class award based on hours worked was appropriate.

However, the Court found some obvious deficiencies that prevented the grant of approval. For the proposed *cy pres* distribution, the Court found no nexus had been established between the recipient beneficiary and the class. The Court also found the release in the settlement to be overbroad, going beyond the stated claims in the case. Finally, the Court found the proposed notice was sufficient, but the deadline for opting out or objection was too short.

SECURITIES

In re: Sandisk LLC Securities Litigation, No. 15-cv-01455, 2018 WL 4293336 (N.D. Cal. Sep. 4, 2018) (Chhabria, J.)

Plaintiffs brought shareholder suit against an electronic products company, alleging that statements and omissions made were material and misleading, and that the price of the company's shares was artificially inflated as a result. Plaintiffs sought class certification.

The Court granted the motion, reasoning in support of its decision first that numerosity was satisfied on grounds of the record establishing millions of shares being traded. For commonality/typicality, the Court found the core factual and legal questions of the case were sufficient and shared by Plaintiffs. The Court also noted superiority had been demonstrated.

While Defendant contended that certification should be denied because of inadequacy of counsel due to misrepresenting witness statements in the amended complaint, the Court found the witness statement was murky, such that charging class counsel with having committed an ethical violation so serious as to disqualify the class from certification had not been established.

Defendant also argued that the plaintiffs were inadequate in failing to properly supervise the litigation, based on purported gaps in familiarity and monitoring of the matter. The Court found that these were not serious enough to warrant denial of certification.

For predominance, the Court found this had been met, despite Defendant's critiques of the operative damages methodology. Thus, the Court granted the motion for certification.

TELEPHONE CONSUMER PROTECTION ACT

Faxes

Sawyer v. Sharonville Family Medicine, No. 16-cv-550, 2018 WL 4214386 (S.D. Ohio Sep. 5, 2018) (Dlott, J.) Plaintiff medical practice brought suit for violation of the Telephone Consumer Protection Act against a pharmaceutical service, alleging that unsolicited faxes were sent. Plaintiff sought class certification, and the magistrate judge recommended it be denied. Plaintiff then filed objections to the recommendation.

The Court overruled the objections and denied class certification. Reasoning in support of its decision, the Court focused on the magistrate's conclusion that the motion failed to satisfy predominance and superiority, and left questions as well to satisfaction of commonality, typicality, and adequacy. The Court reviewed the findings *de novo*.

First considering predominance, the Court credited the magistrate judge's finding that common proof could not resolve the individualized inquiries involved with permission from the class members to receive faxes. Particularly, Defendant alleged it had slowly built its fax list from actively adding customers who consented individually, but that the actual instances of acquiring consent from individual people were not recorded. The Court found this would require individualized inquiries with 34,772 individuals as to whether consent had been given, and that Plaintiff had not shown any evidence that any individual customers had not consented. Along the same lines, considering consent as a defense, the Court was skeptical of Plaintiff's argument that Defendant bore the burden of proof, and ruled that the burden of doing so actually fell to Plaintiff as part of predominance.

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Our high-quality, cost-effective notice and settlement administration services have been recognized by *Daily Business Review*, *The Recorder*, *The New Jersey Law Journal's*, among other leading publications. KCC has earned the trust and confidence of our clients with our track record as a highly-responsive partner.

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