



Class Action Services

KCC Class Action Digest

December 2016

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CONSUMER

Fair Debt Collection Practices Act

Dickens v. GC Services Limited Partnership, No. 16-cv-803, 2016 WL 6681468 (M.D. Fla. Nov. 14, 2016) Plaintiff brought suit against a debt collector, alleging violation of the Fair Debt Collection Practices Act (“FDCPA”) on grounds of Defendant’s alleged failure to provide notice that certain rights can only be invoked in writing. Plaintiff moved for summary judgment and class certification.

While the Court granted the motion for summary judgment, it also denied the motion for class certification, and ordered that a judgment in the amount of \$1 be entered for the Plaintiff. In terms of the class certification ruling, the Court reasoned in support of its decision that although (1) numerosity was satisfied on grounds of 9,800 potential class members; and (2) commonality and typicality were satisfied on grounds that the nature of the claims was alleged to involve the same injury based on Defendant’s sending the same letter and notice to the entire class, other elements were not satisfied.

In that regard, the Court took issue with adequacy, finding that Plaintiff had alleged only statutory damages rather than actual damages, which could lead to class members’ being dispossessed of certain rights to assert actual damages. In this regard the Court cited a 2004 Eleventh Circuit decision called *Cooper v. Southern Co.*, reasoning that Plaintiffs’ “choice to forego certain damages had the potential of creating a conflict of interest with those class members for whom those foregone damages were the primary objective.” The Court found similar problems with superiority, reasoning that those concerns would make pursuing a class action economically inefficient, as it would impose higher costs on absent class members than they would receive as a settlement award.

EMPLOYMENT

Fair Labor Standards Act

Thomas v. Kellogg Co., No. 13-cv-5136, 2016 WL 7057218 (W.D. Wa. Dec. 5, 2016) (Leighton, J.) Plaintiffs filed a Fair Labor Standards Act (“FLSA”) case against their employer, alleging overtime wage claims resulting from a failure to properly classify outside sales employees as non-exempt. After the Court initially granted a motion to conditionally certify the case as a collective action, the parties then sought summary judgment, Defendant moved to decertify the class, and Plaintiffs moved to certify a state law class.

The Court denied all requests. After first denying summary judgment on grounds that the test in question as to employees’ being exempt or not under the overtime provisions of the FLSA was based on factors that required factual analysis, the Court turned to the certification motions.

Dealing first with Defendant’s motion to decertify, the Court reviewed the applicability of the FLSA standard of “similarly situated” over the proposed class, and based on three factors, found Plaintiffs shared job titles, duties, compensation, and other factors to such an extent that the Court could review and determine the key issues in the case for the class as a whole, and that decertification was not necessary to proceed.

Turning then to the motion to certify state law class actions, the Court concluded that certifying state law classes would not meet the superiority element for certification, because class certification would disregard the employees’ interests by binding absent class members who had already, in the Court’s view, chosen not to file a consent to join in response to the notice of FLSA conditional certification previously. The Court found it unnecessary to review the other factors for certification and denied the motion based on this analysis alone.

UTILITIES

Rates

Claridge v. North American Power & Gas, LLC, No. 15-cv-1261, 2016 WL 7009062 (S.D.N.Y. Nov. 30, 2016) (Castel, J.)

Plaintiffs filed a class action suit against an electricity company, alleging among other claims misrepresentation of the method of calculating customer rates by using variable market-based rates. Plaintiffs sought class certification.

The Court granted the motion, modifying the proposed class definition slightly. In support of its decision, the Court reasoned that numerosity was satisfied on grounds of the presence of 40,000 estimated class members. In terms of commonality, the Court first rejected Defendant's contention that customers' subjective understanding of the relevant contracts was at issue, and concluded that common questions of law and fact centered upon the allegation that Defendant had misleadingly described the applicable calculation in the materials sent to all class members. In terms of typicality, while Defendant argued that Plaintiffs were atypical because they availed themselves of an introductory promotional rate period offered under a unique sales pitch directed at them, the Court concluded that these were minor variations from the uniform issue at heart in the case, which concerned the literature sent to all class members. Defendant also argued that Plaintiffs were subject to unique rate calculation based on their region and other variables, which the Court also rejected. Adequacy was also satisfied, with the Court noting that Plaintiffs' misunderstanding some of the allegedly misleading terms at issue in the case did not make them inadequate.

Turning then to predominance, the Court reviewed each set of claims individually. First, the Court found that claims under New York General Business Law were common claims about deceptive practices that required no individualized proof, and therefore a class action was superior to multiple individual suits. For the contract claims, the Court found the claims all dealt with the same document sent to all class members, and that any review of individualized statements made prior to issuing the document amounted to parol evidence, and a class action was therefore superior for these common claims.

Finally, the Court then modified the class definition on grounds that it was overbroad because it did not account for limitations periods, and limited the class definition accordingly.

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