KCC Class Action Services

KCC Class Action Digest
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AUTOMOTIVE

Engines

Mendoza v. Hyundai Motor Co., Ltd., No. 15-cv-01685, 2017 WL 342059 (N.D. Cal. Jan. 23, 2017) (Freeman, J.)
Plaintiffs brought suit against a car manufacturer, alleging that cars sold between 2011 and 2014 had defective engines in violation of California consumer protection statutes and common law duties. After receiving preliminary approval of a proposed class action settlement, the parties moved for final approval.

The Court granted final approval, the award for fees and costs (except for part of Plaintiffs' costs), and the service award to Plaintiffs.

Addressing the proposed settlement, the Court found that settlement was favored by: (1) the existence of significant barriers to Plaintiff's chances to prevail on the merits; (2) the value of the settlement award; (3) the extent of discovery thus far; (4) the experience of class counsel; and (5) the rate of class satisfaction with the settlement. The Court also reviewed and overruled objectors' concerns. The Court also evaluated the potential for collusion in reaching the settlement, and found no cause for concern, citing in support of its decision that: (1) the fee award was under 10% of the settlement value; (2) the clear-sailing provision was representative of counsel's time and expense devoted; (3) any unpaid funds would not revert to Defendant; (4) the negotiations included a mediator; (5) Plaintiffs were receiving all of their requested relief; and (6) Plaintiffs' service awards were lower than the average in the Ninth Circuit. Thus, the Court found the settlement fair and reasonable as a whole.

Looking next at fees and costs, the Court found an award of $761,415.67 to be reasonable, as it was far below the 25% benchmark threshold used in the Ninth Circuit, and less than the anticipated lodestar result. The Court also found the fee-shifting at issue to be authorized by two state statutes, and thus authorized here. The Court therefore granted the award for fees and costs, as well as for Plaintiffs' itemized costs of $33,584.33 which were found reasonable except for one item which was not sufficiently described.

Finally, turning to the service award for Plaintiffs of $2,500 each for their time and involvement, the Court found this was half of the benchmark threshold in the Ninth Circuit and therefore presumptively reasonable.

CIVIL RIGHTS

Immigration

Onadia v. City of New York, No. 300340/2010, 2017 WL 90843 (Sup. Ct. N.Y. Jan. 9, 2017) (Danziger, J.)
A former immigration detainee brought suit against the city, alleging violation of the Fourth Amendment, and claiming false imprisonment and negligence on grounds of allowing delays in release per detention protocols, and for failing to investigate detainees' status or reasons for detention. Plaintiff filed for class certification under New York state law, the standard for which is similar to that of Federal Rule of Civil Procedure 23.

The Court granted the motion, first finding numerosity satisfied on grounds of there being 9,181 class members. Turning then to commonality and predominance, the Court rejected Defendant's contention that the use of different forms by the city during the class period defeated the motion, reasoning that there was no meaningful difference between them. The Court also noted that common questions existed with respect to the city's policy or practice regarding, and the existence of, actual detention beyond what was legally permitted. The Court found these questions likely to predominate because common evidence would resolve the claims, regardless of any need for individual damages determinations to be handled after liability.

After noting typicality and adequacy were satisfied, the Court found superiority satisfied as well, finding that class members were likely to be marginalized members of society with lower incomes, and therefore less likely to file separate claims, thereby making a class proceeding the superior method for adjudication.

FAIR CREDIT REPORTING ACT

Notice in Advance of Background Check

Lengel v. HomeAdvisor, Inc., No. 15-cv-2198, 2017 WL 364582 (D. Kan. Jan. 25, 2017) (Vratil, J.)
Plaintiff brought putative class action against Defendant, alleging violations of the Fair Credit Reporting Act ("FCRA") by virtue of Defendants' willfully failing to provide proper notice to job applicants before obtaining a consumer report for purposes of a background check. After negotiations, Plaintiff filed a motion for preliminary approval of a class action settlement.

The Court sustained the motion in part as to the settlement agreement, but granted certification and appointed class counsel. Reasoning in support of its decision, the Court first considered numerosity, noting that 1,650 class members satisfied the requirement. Turning then to commonality, the Court found sufficient common questions as to whether Defendant's disclosures were part of the job applications in question or contained extraneous information, as well as whether Defendant willfully violated the FCRA.

In terms of typicality and adequacy, the Court found Plaintiff's claims typical of the class claims, and ruled that no conflict of interest existed. The Court also found counsel to be well-qualified. Looking next at predominance, the Court found the predominant issue was the common claim under the FCRA, and that there were no individualized issues as to damages since the statutory damages were the same for each member. Looking next at superiority, the Court found a class action to be more efficient than having individual actions with higher costs and smaller awards. With all elements met, the Court approved certification.

Turning then to the proposed settlement to evaluate fairness, the Court found the parties had negotiated fairly and honestly, with significant questions of law and fact remaining, and had affirmed that they believed the settlement to be fair. However, the Court was not convinced of the value of the settlement award, specifically in the over-broad scope of release and a lack of provisions for re-distributing funds from bad addresses or for checks that are not cashed within 60 days. Accordingly, the Court could not preliminarily approve the settlement as fair and reasonable, but allowed the parties to submit a revised motion for preliminary approval.

INSURANCE

Massachusetts State Law

Morgan v. Massachusetts Homeland Ins. Co., No. 16-P-216, 2017 WL 264507 (Mass. App. Ct. Jan. 20, 2017) (Kafker, J.)
Plaintiff brought suit against an insurer, alleging unfair or deceptive claim practices in violation of state statutes. Plaintiff's motion for certification was denied and summary judgment was entered for the proposed class-wide claim. Plaintiff then was found at trial not to have been injured by Defendant's violation, and the trial court ruled in favor of Defendant. Plaintiff then appealed, arguing that the lower court erred by denying certification and concluding he had not been injured. Defendant cross-appealed.

Relevant for our purposes here, the Court found that certification was properly denied. In support of its ruling, the Court rejected Plaintiff's contention that the class should be certified on grounds that claims were paid after Defendant used certain software to calculate market values of automobiles, reasoning that Plaintiff did not

submit sufficient evidence to show how he and other class members were similarly situated, and pointing out that significant differences in each person's claims, and the localized markets where they were located, precluded certification. The Court also found that it could not discern how Plaintiff was harmed solely by the use of this software, as the check he received was close to the amount he demanded and was based on a variety of market figures.

Health Insurance

Gordon v. New West Health Servs., No. 15-cv-24, 2017 WL 365484 (D. Mont. Jan. 25, 2017) (Morris, J.)
Plaintiffs brought suit against insurer and health provider, seeking civil enforcement and declaratory relief for Defendant's alleged failure to cover certain treatment as "medically necessary." Prior to Plaintiff moving for class certification, Defendant filed a motion to deny certification and a motion to strike Plaintiff's supplemental briefing.

The Court granted Defendant's motion to deny certification, and denied Plaintiff's motion to certify a class under Rule 23(b)(2), while also allowing leave to amend the complaint to add a class action under Rule 23(b)(3). Reasoning in support of its decision, the Court first addressed Plaintiff's Rule 23(b)(2) motion for certification of injunctive relief and declaratory relief claims. Here, the Court found that the class could not be certified on a (b)(2) basis because that section does not authorize claims for retrospective relief, and Plaintiffs had not identified any ongoing conduct that could be enjoined.

Turning then to Rule 23(b)(3), which Plaintiff sought to add by amending the complaint, the Court granted leave to amend the complaint, reasoning that numerosity was satisfied on grounds of 37 potential class members, and finding in terms of commonality that the class claims centered around a single pattern of behavior in terms of Defendant's using certain guidelines in its dealings with the class.

OIL & GAS

Royalties

Naylor Farms, Inc. v. Chaparral Energy, LLC, No. 11-cv-0634, 2017 WL 187542 (W.D. Okla. Jan. 17, 2017) (Heaton, J.)
Plaintiff brought suit for underpayment of gas royalties, alleging that certain costs were unfairly deducted, and certain profits wrongfully kept by Defendant. Plaintiff filed for class certification.

After modifying the proposed class definition and excluding fraud claims, the Court granted class certification. Reasoning in support of its decision, the Court first found numerosity satisfied on grounds of 10,000 or more class members. In terms of commonality, the Court found the primary common question to be whether all leases for gas rights contained an implied duty of merchantability. While Defendant took issue with this question, in that the lease clauses purportedly differed, and that raw gas could be sold directly at the well without accumulation as a class first, the Court found that the majority of gas was sold after collective processing, and that in any event the marketability of gas directly at the well site only expanded the duty of merchantability owed to the class. The Court also observed that 90% of the lease clauses in question were substantially similar in language, which would satisfy commonality if properly limiting the class to exclude the other 10%.

Turning to typicality and adequacy, while Defendant contended that the leases were too unique for typicality to be satisfied, the Court rejected both that argument as well as the argument that each class member's gas required unique processing, which the Court found irrelevant to the question of royalties owed under the lease. In terms of adequacy, the Court rejected Defendant's contention that Plaintiff was not properly aware of his claims

in the case, and that a unique defense applied due to a specific third party involvement with the Plaintiff.

In terms of Rule 23(b)(3) predominance, while Defendant argued again that the leases were individually unique, and that both the various limitations defenses and damages issues required individual inquiries, the Court disagreed, finding that damages could be dealt with via a common model of calculation, and that the defenses cited were not fatal to class certification. Here the Court took one exception, at the fraud claims, which would require individual proof on the issue of reliance. The Court accordingly excluded those claims from class treatment and found predominance had otherwise been met.

Seeligson v. Devon Energy Production Co., L.P., No. 16-cv-00082-K, 2017 WL 68013 (N.D. Tex. Jan. 6, 2017) (Kinkeade, J.)
Plaintiff brought suit alleging improper and intentional underpayment of oil and gas royalties owed by Defendant. After denial of an initial motion for class certification, Plaintiff moved for reconsideration.

The Court granted the motion to reconsider, and therefore certification. In support of its decision, the Court first noted that it had the authority to simply alter or amend the initial certification decision rather than require an entirely fresh filing by plaintiff, reasoning with reference to Rule 23(c)(1)(C) that it was more than 10 days after the order had been entered, and it had authority under Rule 60(b) to relieve the parties from the order due to changes in circumstances.

Turning then to Rule 23's core elements, the Court first found the class ascertainable, reasoning that class members could be easily identified from Defendant's own records, and that Defendant's purported standard was higher than what the Fifth Circuit actually requires.

In terms of commonality, the Court found common questions as to policy and practice, namely: (1) whether Defendant breached its duty to the market by taking a percentage of the royalties as a fee; and (2) whether Defendant breached that duty by failing to recoup profits made from those royalties. In terms of predominance, the Court found that the two common questions mentioned above were the heart of the case and would predominate, and that these could be proven by common evidence, even though damages might need to be calculated after proving liability. For superiority, the Court found that judicial economy would be served by a class action, such that the benefits of the class device outweighed the costs of pursuing thousands of separate matters.

SETTLEMENT ISSUES

In re: Life Time Fitness, Inc., Telephone Consumer Protection Act (TCPA) Litigation, No. 15-3976, 2017 WL 443646 (8th Cir. February 2, 2017) (Wollman, J.)
After Plaintiffs brought suit against a fitness company alleging violations of the Telephone Consumer Protection Act ("TCPA") by virtue of the company's sending unsolicited text messages, the parties reached a proposed settlement agreement on all items except fees and costs. The United States District Court for the District of Minnesota eventually awarded $2.8 million in fees and authorized counsel to allocate and distribute the fees among themselves. An objector then appealed the fee award.

The Eighth Circuit affirmed the district court's order, reasoning in support of its decision that the district court conducted a thorough analysis and determined that the percentage method of calculating fees was reasonable given the time and expense devoted by counsel. The Eighth Circuit also found that the district court had reasonably followed the Ninth Circuit's approach to including costs of administration in calculating the percentage award, and declined to strictly follow the Seventh Circuit's approach on this issue. The Court then looked at the allocation discretion granted, and found that the attorneys had no dispute in the matter, and therefore the trial court did not abuse its discretion in letting them allocate the fee award as they saw fit.

Fee Award

Dungee v. Davison Design & Development Inc., No. 16-1486, 2017 WL 65549 (3rd Cir. Jan. 6, 2017) (Restrepo, J.)
After Plaintiff brought suit alleging violations of the American Inventors Protection Act and breach of contract against a marketing company in the business of invention promotion services, the parties reached a proposed settlement, which was approved by the United States District Court for the District of Delaware. As part of that approval, the Court awarded $1.1 million in fees as a multiplied lodestar calculation. Defendant appealed the fee award.

The Court vacated the fee award and remanded the matter, centering its reasoning on the fee award. The Court first held that the lodestar method was appropriate, as there was no common fund from which a percentage could be taken. The Court then found however that the district court erred in calculating the lodestar amount with a multiplier. Here the Third Circuit found fault with the district court's choice of a 4.35 multiplier, reasoning that it could find no evidence that billing records had been submitted to support the appropriateness of this number, nor why the circumstances of the case were rare and exceptional so as to support a multiplier. The Court remanded the matter for further proceedings.

Fair Labor Standards Act

Patterson v. Premier Construction Co. Inc., No. 15-cv-00662, 2017 WL 122986 (E.D.N.Y. Jan. 12, 2017) (Townes, J.)
Plaintiff brought suit against their employer, alleging overtime violations of both the Fair Labor Standards Act and state law. After negotiations, the parties moved for preliminary certification and approval of a settlement.

The Court denied the motions without prejudice, reasoning in support of its decision that the parties neglected to provide information about the potential range of recovery, instead simply asserting that the settlement amount was fair on the basis that it reduced the typical costs of litigation. Similarly, where the parties asserted the existence of possible risks and defenses, the Court required more information as to how a damages award could be calculated on the basis of those risks and defenses. The Court also took issue with the summary estimation of the damages for 75 class members, deeming that insufficient, and found problems with a purportedly limitless fee provision, a reversion clause, an apparently misleading notice, and the parties' miscalculation of the purported damages award.

TELEPHONE CONSUMER PROTECTION ACT

Telemarketing

Golan v. Veritas Entertainment, LLC, No. 14-cv-00069, 2017 WL 193560 (E.D. Mo. Jan. 18, 2017) (Webber, J.)

Plaintiff brought suit alleging violation of the TCPA based on telemarketing ads and surveys sent without consent over the telephone to registrants of the Do Not Call list. After the case was removed to federal court, dismissed for lack of standing, appealed and reversed, and then amended to allege only TCPA claims, Plaintiff sought class certification.

The Court granted the request, reasoning in support of its decision first that the class was ascertainable in that the question of identifying who was called and who gave consent to be called could be established by Defendant's own call logs. The Court also found numerosity satisfied, reasoning that four million homes alleged to have been called was sufficient.

The Court then considered commonality and predominance together, first addressing Defendant's contention that individual issues of consent and damages would overshadow the common issues, noting that Defendant's own witness had said in a deposition that there was a policy of never obtaining consent. While Defendant also said that some members may have given consent to be called about religious freedom, the Court did not agree that this sort of consent also included consent to movie advertising. The Court thus found the class to have common questions capable of class-wide proof, and also concluded that damages questions could be resolved commonly, so as to satisfy predominance as well. The Court then considered the argument that Plaintiff lacked standing stemming from some concrete injury, and found there to be a circuit court split on the issue. The Court ultimately ruled that receiving any calls can constitute concrete injury.

Finding typicality, adequacy, and superiority satisfied, the Court granted class certification.

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