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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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CIVIL RIGHTS

Drivers Licenses

Johnson v. Jessup, No. 18-cv-467, 2019 WL 1437215 (M.D.N.C. Mar. 31, 2019) (Schroeder, J.)
Plaintiffs brought suit against the North Carolina motor vehicles division, seeking injunctive relief for alleged violations of equal protection and due process in revoking their licenses for non-payment. Defendant moved for judgment on the pleadings, and Plaintiff moved for preliminary injunction and certification.

The Court granted in part and denied in part Defendant's motion, granted the motion for certification, and denied the motion for preliminary injunction.

In support of its decision on class certification, the Court found that adequacy and the Rule 23(b)(2) elements were unopposed and thus satisfied. In terms of numerosity, while Defendant contended that the evidence on class size was speculative, the Court cited statements from an employee of Defendant regarding potential class size of those already affected by the underlying issue, which itself was sufficiently numerous, and also supported an inference that future class members would also be sufficiently numerous.

In terms of commonality, the Court found numerous common questions, and despite Defendant's contention that Plaintiff had not suffered the same injury as the class members, ruled that the core injury was the revocation, and not the effects of such upon their lives.

In terms of typicality, where Defendant argued first that Plaintiffs had not shown the proposed class members were similarly low-income, the Court found that the violation at issue was rather the lack of notice and hearing prior to revocation. Second, where Defendant argued that the relief sought would require individual inquiries on alternate causes for each revocation, the Court found this was an inquiry for the Defendant to perform, not itself. Third, where Defendant argued that some class members may have received an ability-to-pay hearing, the Court found the case revolved around a facial challenge to the statutes at issue, not their application. Fourth, where Defendant contended that the claims of some class members might be subject to a statute of limitations defense, which Plaintiffs countered by invoking the "continuing violation" doctrine holding that a limitations period may be tolled by an ongoing practice, the Court limited the class to class members with claims no more old than three years at the time of filing.

ENVIRONMENTAL

Contamination

Millman v. United Technologies Corporation, No. 16-cv-312, 2019 WL 1362617 (N.D. Ind. Mar. 25, 2019) (Springmann, J.)

Plaintiffs brought environmental contamination suit against Defendants. Plaintiffs sought class certification, and after a similar case was decided, moved to amend their motion. Multiple Defendants opposed the motion and filed a response offering details of the prejudice they would suffer if the motion was granted.

The Court granted the motion for leave to amend the motion for certification and granted a deadline for evidence questions to be addressed. Reasoning in support of its decision, the Court analyzed Plaintiff's motion to amend first, and found it was not untimely, as it was filed nine days after the event that triggered it. The Court found that cases cited by Defendant did not suggest an alternative analysis of timeliness was warranted.

Looking next at potential prejudice to Defendants, the Court found this had not been established. The Court found no difference in the discovery requirements had been identified by Defendants. Additionally, the Court

found that Plaintiffs sought to amend the issues of law and fact alleged, but that the common questions likely to predominate would not differ, nor would the burden of proving them. The Court also found Defendants had not established why resources already spent were wasted, why motion practice would prejudice them, nor why their other arguments outweighed Plaintiffs' good cause to amend their motion.

FOOD LABELING

Predominance

Mohamed v. Kellogg Co., No. 14-cv-2449, 2019 WL 1330920 (S.D. Cal. Mar. 23, 2019) (Lorenz, J.)
Plaintiff brought consumer class action in state court against manufacturer of vegetarian hamburgers, alleging misrepresentation over the ingredients used. Defendant removed to federal court, and Plaintiff moved for class certification.

The Court denied the motion, reasoning in support of its decision that predominance, the principal class certification element in dispute, was not satisfied. Here the Court credited Defendant's argument that Plaintiff's proposed damages model could not account for a price premium calculation under a conjoint analysis. The Court cited precedent for the use of such an analysis, but found that Plaintiff had not shown how this method would measure damages under the theory of liability.

SECURITIES

Zwick Partners, LP v. Quorum Health Corp., No. 16-cv-02475, 2019 WL 1450546 (M.D. Tenn. Mar. 29, 2019) (Crenshaw, J.)

Plaintiffs brought suit for violations of securities laws against Defendants, alleging that their stock purchases were made at prices that were artificially inflated. Certain Plaintiffs moved for class certification.

Relevant here, the Court granted certification in part. Reasoning in support of its decision, the Court focused on predominance and Defendants' challenges to Plaintiffs' attempt to demonstrate that a fraud-on-the-market presumption of reliance was appropriate. The Court found the statements at issue to be sufficiently public, that their materiality could be adjudicated at the merits stage, and that the shares were traded in an efficient market, with no rebuttal by Defendants of the presumption by a preponderance of the evidence.

The Court also found superiority was met by efficiency in judicial economy and no difficulty in management.

Looking then to Rule 23(a), the Court found numerosity satisfied based upon the share volumes at issue. For commonality, the Court found a variety of common questions arising from the common course of conduct pursued by Defendants. For typicality and adequacy, the Court found the lead Plaintiff had established that its claims were the same as those under the common interest of the class, and that counsel was qualified.

TELEPHONE CONSUMER PROTECTION ACT

Calls

Bennett v. GoDaddy.com LLC, No. 16-cv-03908, 2019 WL 1552911 (D. Ariz. Apr. 8, 2019) (Silver, J.)
Plaintiff brought suit for violation of the Telephone Consumer Protection Act ("TCPA") against Defendant, alleging that he received prohibited telemarketing calls on his cell phone. Plaintiff moved for certification.

The Court granted the motion, reasoning in support of its decision that numerosity was satisfied, and that in terms of commonality, at least two common questions could be resolved in one stroke, satisfying commonality.

Turning to typicality, the Court found Plaintiff and all class members had suffered the same injury under the same conduct. While Defendant argued that Plaintiff was more knowledgeable about the TCPA than the class, and that he was subject to a unique defense based on the phone being a business line, the Court found neither argument convincing, and found typicality met. Adequacy was similarly satisfied.

Turning next to Rule 23(b)(3) predominance, Defendant argued that individual inquiries would be needed in order to determine the nature of each call and of each receiving phone. The Court found that the question of whether a call can be deemed “telemarketing” was not a question depending on the content of the call itself, but the initiation of it. The Court found Defendant had not submitted evidence to show the calls were made for any other purpose. As such, the Court found common questions would predominate.

In terms of superiority, the Court found individual cases unlikely and uneconomical, and that parallel litigation had not been sought. Finding the case was not likely to suffer management difficulties, the Court found superiority was met, overruling Defendant’s objections that the class was under-inclusive, that the TCPA was meant for individual plaintiffs, or that using a class action device here would be somehow “unconstitutional” due to the damages that would have to be paid.

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