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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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CONSUMER

Credit Card Holds

Teggerdine v. Speedway LLC, No. 16-cv-03280, 2018 WL 2451248 (M.D. Fla. May 31, 2018) (Whittemore, J.)
A consumer sued a gas distributor and a financial company over a payment processing system that placed a \$125 hold on credit cards without providing notice. Plaintiff moved for class certification.

The Court denied the motion, reasoning in support of its decision first that the class was ascertainable in that it was administratively feasible to determine class membership, and the class was defined by objective criteria, pointing out that data on the pertinent 400,000 transactions was obtainable from Defendants' records, and linked to the class.

Noting that numerosity was satisfied by the number of transactions, the Court turned to commonality and typicality and found Defendants' policy and standard course of conduct was common to all class members, who thus shared the same issues, satisfying both elements. Adequacy was also satisfied.

In terms of predominance however, the Court found individual inquiries would predominate, noting that the case placed 21 states' varying negligence laws at issue, and Plaintiff had not identified which states were involved, nor identified differences in those laws so as to enable management of the application of those laws to the case. Accordingly, the Court found that the class could not be certified.

EMPLOYMENT

Racial Discrimination

White Glove Staffing, Inc. v. Methodist Hospitals of Dallas, No. 17-cv-1158, 2018 WL 2485027 (N.D. Tex. May 29, 2018) (Kinkeade, J.)

A staffing company and certain employees brought suit against a hospital and a foundation which had used the staffing company's services, alleging that racial discrimination had occurred in its unreasonable dismissal of black workers utilized on a *per diem* basis. Plaintiffs brought a motion for certification.

The Court denied the motion, reasoning in support of its decision, that the class was not ascertainable, as it included any and all workers of the company, which the Court found to be both too vague and also reliant on assumptions of contract, worker qualifications, daily needs for labor, and workers' volition to work on certain assignments. Accordingly, the motion was denied.

SETTLEMENT ISSUES

Notice Plan and Claims Process

Brown v. Jonathan Neil & Assocs., Inc., No. 17-cv-00675, 2018 WL 2734866 (E.D. Cal. Jun. 5, 2018)

Plaintiff brought suit for violation of the Fair Debt Collection Practices Act ("FDCPA") against an insurance debt collector. After a settlement was reached prior to class certification, Plaintiffs sought preliminary approval.

The Court denied the motion. Reasoning in support of its decision, the Court found that the settlement's opt-in and opt-out procedures created unfairness in that class members were required to take action under the terms of the settlement, and that doing so may require submitting a claim form via postal mail, which could create a scenario in which the postage to submit the claim form exceeded the value of the average settlement award. The Court questioned whether the claims process was necessary given that the class members could be easily identified.

The Court then evaluated the proposed class notice, and noted that the mailing list was compiled two years prior, and the parties did not appear to intend to update it prior to use for class notice. The Court also took issue with the average estimated award listed on the notice, as well as the plan to utilize any unclaimed funds to reimburse Defendant for administrative costs. The Court did however find the plan to send remaining funds to a *cy pres* recipient.

The Court also criticized the release in question, the size of the requested named plaintiff award in comparison to the average class member award, as well as proposed fees.

Objector Issues

In re Online DVD Rental Antitrust Litig., No. 09-md-02029, 2018 WL 2387848 (N.D. Cal. May 25, 2018) (Hamilton, J.)

A class member known for objecting to class settlements filed a motion to intervene in an antitrust action after its 2011 settlement had been approved, seeking a new disclosure of statistics concerning the usage of the 2015 gift cards issued as the class award.

The Court denied both the motion to intervene and the motion for disclosure, reasoning in support of its decision that a motion to intervene was inappropriate because the proposed intervenor was already a class member.

In terms of the motion for disclosure, after finding that it did retain jurisdiction to consider such motions, the Court found the settlement did not provide for disclosure of the statistical information sought, and that the class member would need to have standing to seek that information.

There, the Court found that there was no alleged invasion of a legally protected interest stated by the class member. As the settlement imposed no obligation on Defendant to keep statistics or produce them, and the class member had stated no interest in obtaining them, the motion was denied.

The Court then looked at the merits of the motion despite a lack of standing, and found class members had no right to the information anyway, since the settlement imposed no obligation on Defendant to keep statistics or produce them, and that the class member had not raised this request at the proper objection time in which he had appeared. The Court thus declined to revisit the settlement.

TELEPHONE CONSUMER PROTECTION ACT

Faxes

Sawyer v. KRS Biotechnology, Inc., No. 16-cv-550, 2018 WL 2425280 (S.D. Ohio May 30, 2018) (Bowman, J.) A doctor brought suit for violation of the Telephone Consumer Protection Act ("TCPA") against a pharmacy that had sent faxes to his office without consent. Plaintiff sought class certification.

The Court denied the motion, reasoning in support of its decision, the Court first looked at predominance, and found it lacking on grounds that Defendant's sales team's policies included a regular practice for obtaining consent with detailed customer lists. As such, the Court found individual inquiries were inevitable and would predominate in the case.

The Court also considered numerosity, finding it satisfied on grounds of there being over 1,000 class members. However, commonality and typicality could not be met due to the lack of evidence on predominance, such that each class member was likely to have only individual issues, as no common claim had yet been established.

Cell Phones

Lavigne v. First Community Bancshares, Inc., No. 15-cv-00934, 2018 WL 2694457 (D.N.M. Jun. 5, 2018) (Johnson, J.)

Plaintiff brought suit against a bank and a sales group, alleging violation of the TCPA on grounds that Defendants had used auto-dialers to call cell phones without consent. Plaintiff sought class certification, and Defendants moved to strike Plaintiff's fact witness declaration.

The Court granted certification and denied the motion to strike. Reasoning in support of its decision, the Court found numerosity satisfied on grounds of Plaintiffs' presentation of 38,000 phone numbers from Defendants' lists, with a witness affirming in a declaration at having checked each number to determine that 37,219 of them were cell phones. While Defendants moved to strike this affidavit, the Court denied that motion, finding that no special expertise was needed to calculate these numbers, and that numerosity was satisfied apart from the affidavit.

In terms of commonality, the Court found numerous common claims, and that each was sufficient on its own. For typicality, the Court found the same substantial legal theory was shared by the class, although slightly different facts were involved, such that typicality was satisfied. Adequacy was also satisfied.

Turning to predominance and ascertainability, while Defendants argued that Plaintiffs deliberately sought to exclude its customers, and as such, exclude anyone who might have consented to the calls in question, the Court found that this did not bar certification, and noted that the class was ascertainable by objective criteria.

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