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## CONSUMER

### *Lending*

*MacDonald v. Cashcall, Inc.*, No. 16-cv-2781, 2019 WL 5617511 (D. N.J. Oct. 31, 2019) (Arleo, J.) Plaintiffs brought suit against a short-term lender, alleging lending practices with exorbitant interest rates in violation of state and federal law. Plaintiffs sought certification of two classes, which differed only by the dates of the class period.

The Court granted certification, reasoning in support of its decision that numerosity was satisfied by virtue of class sizes of 7,520 and 11,158. For commonality, the Court found common questions of law and fact. Typicality was satisfied by virtue of Plaintiffs having shown their claims to be legally identical to those of the class. In addition, Defendants' argument as to factual differences in the loan procurement process were not sufficient to undermine typicality.

In terms of adequacy, the Court found nothing in the record to suggest a conflict of interest. While Defendants contended that Plaintiff MacDonald lacked credibility by virtue of failure to recall certain facts, the Court found this did not show Plaintiffs lacked a minimal degree of knowledge about the case, and that counsel was likewise adequate.

In terms of ascertainability, while Defendants argued the class could not be ascertained due to borrower locations and "fail-safe" characteristics that would rely on a merits finding in the case, the Court found Plaintiffs' proposed modification of the class definition would resolve those concerns and satisfy ascertainability.

For superiority, while Defendants argued there were two governmental agency actions that were superior to this action, the Court found that one of those denied recovery to any borrowers, and the other had never been filed in court after the agency ruling. Defendants also argued individual actions would lead to higher recovery of damages and fees, but the Court found the interests of concentrating litigation and lack of manageability problems satisfied superiority.

Turning to Rule 23(b)(3) predominance, the Court found the common evidence of the similar agreements and losses caused under those terms were sufficient to show that common claims would predominate on all counts.

Finally, the Court looked at whether Plaintiffs had waived the right to bring a class action due to an arbitration agreement in the operative loan agreements, and found the Third Circuit had already held the arbitration agreement to be unenforceable, rendering it inapplicable here.

## EMPLOYEE RETIREMENT INCOME SECURITY ACT

*Carlson v. Northrop Grumman Corp.*, No. 13-cv-02635, 2019 WL 5101502 (N.D. Ill. Oct. 11, 2019) (Wood, J.) Plaintiffs brought suit for violation of the Employee Retirement Income Security Act ("ERISA") against a workplace retirement plan provider, alleging failure to pay severance benefits and asserting counts seeking: (1) declaration of rights as to benefits owed; (2) judgment of discriminatory interference of rights; and (3) equitable reformation of the plan due to breach of fiduciary duties. Plaintiffs sought class certification.

The Court granted in part on Count I and denied in part on the other two counts. Reasoning in support of its decision, the Court first considered commonality and typicality, and found that Defendants' alleged practice was uniformly applied, thus satisfying both. For numerosity, the Court found 751 class members sufficient, despite Defendants' argument that some of these had not signed a release. For adequacy, the Court found Plaintiffs adequate despite Defendants' argument as to lack of particular knowledge, and the strength or

dissimilarity of claims. The Court also found counsel sufficient. For Rule 23(b) on this count, the Court found this was met sufficiently.

In terms of Count II, the Court took issue with the fact that Plaintiffs had not shown that all class members' rights were interfered with under the same practice, and that some members may have been denied for other reasons. As such, the Court denied certification on this count, with leave to renew.

For Count III, the Court found Plaintiffs had not met typicality by showing uniformity in practice between class members before a change in plan administration, and those after the change. The Court noted that adjusting the class definition would not supply sufficient information to determine which members were included, and therefore denied the motion on this count with leave to renew.

## EMPLOYMENT

*Walker v. Osterman Propane LLC*, No. 17-cv-10416, 2019 WL 5318972 (D. Mass. Oct. 21, 2019) (Saris, J.) Plaintiffs brought suit against their former employer, alleging underpayment of wages in violation of state law. Plaintiffs sought class certification under two theories of liability: (1) that Defendants had automatically deducted lunch breaks from employee pay without verification of the break having been taken; and (2) that Defendants did not fully relieve work duties during lunch breaks.

The Court granted certification under Plaintiff's second theory of liability only. Reasoning in support of its decision, the Court reviewed the motion under Rule 23 as to each theory separately. For the first theory, the Court found no challenge to ascertainability and numerosity. For commonality, the Court found Plaintiffs had not demonstrated an automatic deduction policy was in place, and the record showed a variety of practices at each branch, intermixed with managerial discretion. Therefore, the Court denied the motion as to this theory on commonality.

For the second theory, the Court found the same for numerosity and ascertainability as before. For commonality, the Court found Plaintiffs had demonstrated a common question which would resolve the state law claim, so as to meet commonality. Likewise for typicality, the Court found Plaintiffs' claims were the same as all class members.

For adequacy, Defendant alleged Plaintiffs held grudges against their former manager and had committed timecard falsification, but the Court found these allegations were not disqualifying conflicts of interest as they either did not affect the claim or were actually made intermittently under permission of the employer to make up for unpaid overtime. As such the Court found adequacy met.

Turning then to Rule 23(b)(3) predominance, the Court found no individualized inquiries were needed, such that common questions would predominate. For superiority, the Court found a single class action would be better than multiple individual actions due to the efficiencies involved in common adjudication.

## GOVERNMENT

### *Student Loans*

*Sweet v. DeVos*, No. 19-cv-03674, 2019 WL 5595171 (N.D. Cal. Oct. 30, 2019) (Alsup, J.) Plaintiffs brought suit against the United States Department of Education, alleging that the Department unjustly refused en masse to process their claims under the "borrower defense" rule for loan forgiveness based on school misconduct, in violation of the Administrative Procedure Act. Plaintiffs sought class certification.

The Court granted the motion, reasoning in support of its decision that numerosity was satisfied on grounds that 158,000 class members was sufficient. In terms of adequacy, the Court found no conflict of interest or any risk of failing to vigorously prosecute the case.

Turning to commonality and typicality, Defendants argued that Plaintiffs had failed to show a uniform policy at issue, or that the claims were factually similar. The Court deemed this a merits argument, and found that the Department had not decided one application since June 2018, despite having an annual rate of 27,996 in the previous year, and had not given any timeline for future actions to be taken. The Court found this was sufficient evidence at the certification stage of a single uniform policy, such that resolving the key question would determine the matter for the whole class. As such, the Court found typicality and commonality were satisfied.

Turning then to Rule 23(b)(2) and Rule 65(d), the Court evaluated the question of whether injunctive relief was appropriate as a class-wide remedy, and found the request to compel Defendants to restart processing of claims to be sufficient for certification.

## HEALTH CARE

### *Medicaid Benefits*

*Tinsley v. Faust*, No. 15-cv-00185, 2019 WL 5103081 (D. Ariz. Oct. 11, 2019) (Silver, J.)

Plaintiffs were minors in custody of a state foster care system, and brought suit alleging that certain statewide policies had subjected them to risk of denial of health care benefits. The Court certified a general class and a set of subclasses, but on appeal the Ninth Circuit vacated the Medicaid subclass certification and remanded for further review. Accordingly, Plaintiff sought certification of the proposed Medicaid subclass.

The Court granted the motion, reasoning in support of its decision first that commonality was satisfied by virtue of the services required by law and the question of whether Plaintiffs had alleged with factual support that Defendants had failed to provide those services, or created a risk that these might be denied due to deficient policies. Analyzing the different services to be provided, the Court found Plaintiffs had made the requisite showing and that commonality was met.

After noting that numerosity and adequacy were unopposed and satisfied, the Court considered typicality, finding that the Ninth Circuit had rejected that argument that Plaintiffs must show identical injuries to those of the class instead of “typical” injuries. The Court found typicality satisfied.

Turning then to Rule 23(b)(2), the Court found the appellate court had rejected Defendant’s argument of Plaintiff not having shown how the ongoing practice could be remedied by injunctive or declaratory relief. Therefore, the Court found this had been met by adequate description of the injunctive relief sought.

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