KCC Class Action Services

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This KCC Class Action Digest is provided by Patrick Ivie, Executive Vice President Class Action Services.

To request a proposal, or schedule a CLE, contact Patrick at 310.776.7385 or pivie@kccllc.com.

EMPLOYEE RETIREMENT INCOME SECURITY ACT

Caldwell v. UnitedHealthCare Ins. Co., No. 19-cv-2861, 2020 WL 7769822 (E.D. Cal. Dec. 29, 2020) (Alsup, J.) Plaintiff brought suit for violation of the Employee Retirement Income Security Act ("ERISA") seeking to recover health benefits from an insurer, alleging that the insurer categorically denied her claim for a procedure without analyzing her individual medical need. Plaintiff moved for certification under Rule 23(b)(1) and 23(b)(2).

The Court granted the motion, reasoning in support of its decision first that while the likely class size was between 30 and 50, because one issue relating to exclusion was one of the grounds for the lawsuit and request for class certification, the class was sufficiently numerous. The Court also noted that the policy had become formalized such that it would impact future members of the class.

In terms of commonality, the Court found the same policy sufficient to pass the test. While Defendant attempted to distinguish a specialized procedure from a general procedure, the Court found that the issue was the uniform denial of all forms of the procedure. Similarly, the Court rejected Defendant's contention that the question relied on individual members' requests' timing, finding that the possibility of disparate answers was the central concern. Defendant also argued a lack of a common injury, since some class members had not been harmed, but the Court found the class definition excluded those unharmed, and that the harm was one of process and not outcome.

For typicality and adequacy, while Defendant argued that some class members were denied under an omnibus policy adopted at a later date, the Court found this was simply a continuation of the same policy at issue. The Court also found that any unique exhaustion defense would be dealt with prior to trial and therefore would not become a major focus in the litigation.

Turning to Rule 23(b)(2), the Court found this was satisfied by the facts of the case, and therefore did not reach the arguments for certification under Rule 23(b)(1). However, the Court noted that a subclass would be created for any class members for whom "unproven" was the sole ground of denial.

Finally, for ascertainability, the Court found Defendant had conceded it could identify members and their claim denials from its spreadsheet data, and that the extra effort Defendant claimed would be needed to process this data was actually not necessary to ascertain class membership.

EMPLOYMENT

Beltran v. Olam Spices & Vegetables, Inc., No. 18-cv-01676, 2020 WL 7769822 (E.D. Cal. Dec. 30, 2020) Plaintiffs brought suit against their employer alleging violations of the Fair Labor Standards Act ("FLSA") and other related claims. After the parties reached settlement and moved for preliminary approval, which was referred to a magistrate judge for review, the magistrate judge recommended denying the motion.

The Court ordered supplemental briefing and documentation to address several issues raised by the pending motion. Reasoning in support of its decision, the Court first reviewed the magistrate's findings of an inference of a conflict of interest. The Court found there was a concern about a "smooth sailing" provision, but that this had been removed and was no longer an issue. The Court also noted supplemental briefing and support had already been sufficiently provided to address the magistrate's concern about valuation of claims, as well as with respect to liquidated damages and the FLSA limitations period. The Court also noted additional information had been provided so as to conclude a *bona fide* dispute existed in the case.

In terms of incentive payments, the magistrate found concern that these were too excessive, and while the Court did not find the recommendation persuasive, it nonetheless did not find sufficient support to approve the payments and ordered supplemental briefing related to three of the five named Plaintiffs. The Court also found a lack of support for a significantly above-benchmark attorney fees award, reasoning that this was usually required at the final approval stage, but nonetheless asked for a general showing of support for the figure sought.

Looking next at the FLSA notice and opt-in procedure, the Court agreed that the magistrate's conclusion that the settlement's call for signing the back of settlement checks as grounds for releasing claims did not comply with FLSA's requirements was a concern, observing that the proposed opt-in method would occur after final approval and likely leave no opportunity for those plaintiffs to participate in the litigation. As such, the Court asked for far more detail on this issue as a condition to granting preliminary approval. The Court also found defects in the clarity of the notice text and case data and asked that it be revised and resubmitted.

The Court also found supplemental briefing was needed to clarify the proposed distribution of *cy pres* funds, as well as to provide support to address concerns that individualized or site-specific issues could undermine commonality.

Charbonneau v. Mortgage Lenders of America, LLC, No. 18-cv-02062, 2021 WL 84171 (D. Kan. Jan. 11, 2021) (Teeter, J.)
Plaintiff brought FLSA suit against employer, alleging that team leaders and loan officers were made to perform off-the-clock work as a matter of policy. The Court had conditionally certified two FLSA classes (for each job type), and at the conclusion of discovery, Defendants moved for decertification.

The Court denied the motion, reasoning in support of its decision that in terms of the team leader class, Defendants had not identified any disparate settings between individual class members. The Court also found that no unique defenses had been identified, apart from damages issues that were not a basis for decertification. The Court then found fairness and procedural considerations favored collective adjudication, as liability had already been established and there were no unique defenses. Accordingly, the Court did not decertify this class.

Turning to the loan officer class, while Defendant argued that a variety of disparate settings existed, the Court agreed with Plaintiff that the evidence on record showed unity of a common theory that made the claims substantially similar. First, the Court found a company-wide effort to enforce the policies in question. Second, the Court found that unpaid overtime had occurred among all class members, even though some did not work unpaid overtime every week. Third, the Court found the company did not allow a mechanism for reporting such time. Altogether, the Court found in this a unified theory that weighed in favor of collective treatment.

In terms of individualized defenses for the loan officer class, while Defendant argued several (rooted in specific knowledge, de minimis, waiver, and statute of limitations defenses), the Court found specific knowledge was unnecessary when common questions controlled liability, and that representative testimony would be sufficient to avoid the need for individual testimony. Additionally, the Court found de minimis, waiver, and statute of limitations defenses did not require individualized trials, as evidence on record and singular trial motions could be used to sort these out. For fairness and procedural considerations for the loan officer class, the Court found that these considerations weighed in favor of continued collective action, in addition to lower costs through pooling of resources in a single efficient proceeding dealing with common issues.

NOTICE

Senne v. Kansas City Royals Baseball Corp., No. 14-cv-00608, 2021 WL 134889 (N.D. Cal. Jan. 14, 2021) (Spero, Mag. J.)
Plaintiff baseball players brought suit against their employing teams, arguing a variety of wage claims. In a previous order, the deadline for disseminating class notices was set for January 29, 2021. Since that order, the parties had resolved some disputes, and came up with new proposals, including a long form notice proposal filed by Plaintiffs on January 13, 2021, which Defendants opposed.

The Court ordered the parties to submit a stipulated proposed notice by January 18, 2021. In support of its decision, the Court looked at Defendants' arguments and analyzed them under Rule 23(c). First, Defendants argued that class members faced onerous obstacles in having to file requests for exclusion. The Court found that the opt-out procedure proposed was satisfactory under the Rule and approved the procedure in question.

Second, Defendants argued that the plan did not satisfy due process due to not furnishing notice in English and Spanish languages equally, but instead directing Spanish speakers to a website and phone recording. The Court found Plaintiffs had determined previously that this need existed and directed that the long-form notice be sent in both languages.

Third, Defendants argued that the notice plan had no provision for reminders after thirty days. The Court found that no evidence had been offered as to why this was necessary.

Fourth, Defendants argued that notices did not advise absent class members of the nature of the class damage claims as potentially exceeding Plaintiffs' own damages sought. The Court found this argument cited a case which held the same, so as to prevent conflicts of interest, and that Plaintiffs had not disputed the argument. The Court found Defendants had proposed sufficient language on this issue and approved the use of this language.

Fifth, Defendants argued the notice did not specifically list the teams who remained as Defendants in the case. The Court found Plaintiffs had objected to this due to potential confusion, but that Defendants had addressed this with a disclaimer sentence. The Court therefore approved Defendants' proposal.

Sixth, Defendants objected to the short-form names used for the classes in the notice. The Court found the names had been used throughout the litigation, and were sufficiently cross-referenced to the longer descriptions, with a higher likelihood of confusion if they were to be changed. These were approved.

Seventh, Defendants asserted their intent to object to the domain name proposed for the case website, due to potential confusion from using the term MiLB, when the Minor League Baseball organization was not a party in the case. The Court found the domain name was suitable, but that Defendants' proposed domain name was close enough to the other name, and that any potential confusion would be eliminated by using this.

Finally, the Court approved or overruled a variety of linear proposals and objections, and chided the parties for their failure to timely communicate to confer on these points on their own, instead leaving the Court to rule on these minor disputes with very little time remaining before the deadline date.

RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT

Custom Hair Designs By Sandy v. Central Payment Co., LLC, No. 20-1677, 2020 WL 7755459 (8th Cir. Dec. 30, 2020) (Benton, J.)
Plaintiffs brought suit for violation of the Racketeer Influenced and Corrupt Organizations ("RICO") Act, alleging a variety of claims against a credit card processing company, including misrepresentation and inflation of fees. The United States District Court for the District of Nebraska denied summary judgment to Defendant and certified a class. Defendant appealed.

The Eighth Circuit affirmed. After first noting that it only had jurisdiction to review the certification decision, the Court rejected Defendant's contention that the district court had failed to engage in the required "rigorous analysis" under Rule 23.

The Court also rejected Defendant's contention that the district court had erred in finding predominance satisfied, finding that common questions and answers would predominate in at least four ways. Additionally, the Court found that RICO claims did not rely on individual reliance, contrary to Defendant's assertion. The Court also found that the statute of limitations for fraudulent concealment did not defeat predominance. The Court similarly found that the state law concealment claim did not depend on individualized reliance, as the information to be relied upon had never been disclosed to the class.

The Court next considered typicality and adequacy, first finding that Defendant had ignored similarities of the core claims of the Plaintiffs, which were also applicable to all class members, such that minor variations did not defeat typicality. In terms of adequacy, the Court distinguished Defendant's chosen caselaw, finding no intraclass conflict existed in that the claims of absent members were not being litigated.

Finally, the Court looked at superiority, and found it satisfied by virtue of the fact that no plaintiff would be likely to pursue the individual claims of tens or hundreds of dollars in the instant case.

Lead Editor of KCC Class Action Digest: Robert DeWitte, Vice President, Class Action Services