KCC Class Action Services

KCC Class Action Digest
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CONSUMER

Overcharge

Cameron v. South Jersey Pubs, Inc., No. A-5177-17T2, 2019 WL 3022352 (N.J. Super. Ct. App. Div., Jul. 11, 2019) (Rothstadt, J.)
Plaintiff brought consumer fraud suit against restaurant chain franchisee, alleging it had overcharged him for beverages above the fair market rate in violation of the Consumer Fraud Act ("CFA"), the Truth in Consumer Contract, Warranty and Notice Act ("TCCWNA"), and similar consumer statutes and common law claims. Plaintiff sought class certification under New Jersey's Rule 4:32-1(b)(2), which the lower court denied certification. Plaintiff appealed.

The Court reversed the order and remanded, ordering Rule 4:32-1(b)(2) certification. Reasoning in support of its decision, the Court first considered Defendant's argument that the first four elements of the state class action statute were not satisfied, and found that Defendant had not made this argument below, and the Court saw no reason to consider it now. The Court also found no merit to the argument in that the class had met the requirements for numerosity, commonality, typicality, and adequacy.

Turning to Plaintiff's request for certification of an injunctive relief class, the Court found the lower court had conflated various concepts regarding the CFA claim for injunctive relief, especially in its holding that the requirement for cohesiveness required a level of predominance to be shown, the standard in (b)(3) certification. The Court found that cohesiveness could be shown sufficiently by the remedy's ability to satisfy similar class claims, and that Plaintiff had shown this sufficiently for (b)(2) certification.

In terms of the TCCWNA claim, the Court found the lower court did not address the claim for purposes of (b)(2) certification. The Court then found that granting certification would not raise concerns about imposing hardship for TCCWNA violations, and that there was no legal authority holding the facts at issue were not violations of the TCCWNA. As such, the Court found that holding such here would allow merchant behavior of this type to proceed without any recourse of a class action to enforce compliance with the two statutes.

Breach of Contract

Streater v. Sarchione Chevrolet, Inc., No. 18-cv-643, 2019 WL 2903955 (N.D. Ohio Jul. 5, 2019) (Lioi, J.)
Plaintiff brought consumer protection suit against a car dealership, after his financing fell through on a car he purchased and his original car was sold at auction against the terms of the contract, which gave a year to cancel the transaction altogether. Plaintiff moved for class certification.

The Court denied the motion, reasoning in support of its decision that first, in terms of ascertainability, the class was composed of a majority of members who signed a materially different contract from that of the putative class representative. As such, identifying class members would require detailed fact finding to determine class membership.

While a failure of ascertainability defeated class certification on its own, the Court analyzed the other factors as well, first finding that numerosity could not be satisfied because of the fact that Plaintiff's allegations were more complex than believed, leaving it difficult to determine how many others may be similarly situated.

In terms of commonality, the Court found that it could not be met because of the same issues presented by ascertainability, which also posed insurmountable challenges to satisfying predominance, as it could not yet be determined which issues, if any, would be common or require individualized inquiries.

For typicality, the Court found the allegation of actual harm made Plaintiff's claim unique and therefore atypical.

Similarly, in terms of adequacy, the Court found Plaintiff to be inadequate because of the lack of typicality, noting a potential conflict in seeking to recover his actual damages against class-wide damages.

False Advertising

Noel v. Thrifty Payless, Inc., No. S246490, 2019 WL 3403895 (Cal., Jul. 29, 2019) (Cantil-Sakauye, J.)
A consumer brought suit against the manufacturer of an inflatable pool, alleging a pool purchased was much smaller than the picture on the box indicated, in violation of various consumer statutes. Certification was denied due to lack of evidence on ascertainability, and Plaintiff appealed. On appeal, the ruling was affirmed by the California Court of Appeal, and Plaintiff subsequently appealed that ruling as well.

The California Supreme Court reversed and remanded. Reasoning in support of its decision, the Court reviewed precedent on ascertainability, holding that the standard requires objective terms of definition so as to identify class members, which ultimately rests on due process to class members. The Court found that this requirement did not depend on the form or sufficiency of class notice, nor on sufficient evidence to prove membership, nor on the need to keep time and expenses below a certain limit; the Court found these issues were not properly addressed in finding a class ascertainable.

As such, the Court found Plaintiff's class was sufficiently defined using objective criteria, and therefore that the trial court abused its discretion in denying certification on ascertainability grounds. The Court did not address predominance concerns with a separate class certification motion pending, or of other concerns with the classes proposed, and remanded the case for further review.

Faxes

Whiteamire Clinic, P.A. Inc. v. Cartridge World North America, LLC, No. 16-cv-00226, 2019 WL 3423154 (N.D. Ohio, Jul. 30, 2019) (Boyko, J.)
Plaintiff brought suit under the Junk Fax Protection Act (JFPA), alleging unwanted receipt of fax advertisements from Defendant. Plaintiff sought class certification.

The Court granted the motion, reasoning in support of its decision first that in terms of ascertainability, identifying the class was administratively feasible by virtue of the existence of a spreadsheet listing 8,586 class members. This figure also satisfied numerosity, and the Court further found that commonality was satisfied because the class all suffered the same alleged injury. In terms of typicality, the Court found Plaintiff typical of the class, having received the fax at issue. Adequacy was also satisfied.

Turning next to predominance, the Court found that answering the common questions in the case would predominate over any individual issues. Defendant argued it had a defense based on permission acquired from express consent or prior business relationships, but the Court found no evidence had been submitted to support this theory, and that Defendant had admitted a lack of permission on two such ads anyway. The Court then looked at superiority and found this was met due to the economic efficiencies involved, and because the class members would be barred from bringing individual suits due to the expiration of the limitations period.

EMPLOYMENT

Fair Labor Standards Act

Myers v. Loomis Armored US, LLC, No. 18-cv-00532, 2019 WL 3338172 (W.D.N.C., Jul. 25, 2019) (Whitney, J.)

Plaintiff brought suit for violations of state employment laws and the Fair Labor Standards Act ("FLSA") against a former employer, alleging violations of wage and hour laws in failing to provide overtime pay. Plaintiff sought conditional certification under FLSA and certification under Rule 23 for the state law claims.

The Court granted the motion, reasoning in support of its decision that under the FLSA conditional certification standard, Plaintiff was only required to make a minimal showing that the class was similarly situated in pleadings and affidavits, which had been accomplished. The Court noted that this was typical in the stage before discovery was completed, and rejected Defendant's objection calling for individual inquiries to resolve affirmative defenses, finding this was premature at the conditional certification stage.

For the Rule 23 class, the Court looked at commonality and typicality and found these were met by the same course of conduct upon the class, and the common questions shared by it. For adequacy, the Court found no conflict and that Plaintiff was typical of the class. The Court then looked at predominance and found any individual inquiries would be for damages only, which did not foreclose certification. The Court did not mention numerosity or superiority, but did grant certification under Rule 23.

GOVERNMENT

Fowler v. Guerin, No. 15-cv-5367, 2019 WL 3337964 (W.D. Wa. Jul. 25, 2019) (Settle, J.)
Teachers brought suit against the Washington State Department of Retirement Services, alleging improper calculation of interest on paycheck contributions the teachers made constituted a violation of the 5th Amendment Takings Clause. Plaintiffs sought class certification.

The Court granted the motion, reasoning in support of its decision that in terms of numerosity, 20,000 potential class members was sufficient. For commonality, the Court found the 5th Amendment claims were common questions. For typicality, the Court found the common policy visited upon the class made Plaintiffs' claims typical of the class. For adequacy, the Court found the representatives had served since 2009 in that role and were adequate and without conflict.

Turning then to Defendant's objection to granting certification based on the injunctive relief sought, the Court noted that the matter had been decided by the United States Court of Appeals for the Ninth Circuit, which found an injunctive relief class may be certified under Rule 23(b)(2). Since the Court had found that Rule 23(a) had been met, it approved certification of the injunctive relief class.

Looking next at Plaintiff's request to amend the class to account for ongoing violations up to the present, the Court found the request did not meet briefing requirements, and granted Defendant's motion to strike this request.

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