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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

Coupons

In re Easysaver Rewards Litig., No. 09-cv-02094, 2019 WL 4736210 (S.D. Cal. Sep. 27, 2019) (*per curiam*) Plaintiffs brought consumer class action against online business which allegedly charged a fee to access coupons that never became available thereafter. After a decade of litigation ending in a coupon settlement, followed by two appeals, Plaintiff brought a renewed request for attorney's fees against the settlement terms, and Defendant did not oppose. However, the same Objector who challenged the prior award on appeal objected again.

The Court granted the fee request in part and denied in part, allowing costs but denying without prejudice the fee request. Reasoning in support of its decision, the Court considered the Objector's arguments. First, the Court considered whether the lodestar approach went against the Class Action Fairness Act in premature calculation of the remainder class fund. The Court agreed that the lodestar approach alone was not proper, and that bifurcation of the award was appropriate to allow the lodestar method for the non-coupon relief, and percentage method for the coupon relief. As such the Court found it necessary to deny without prejudice the fee award and to allow the parties to submit a new request along those lines.

The Court looked next at the argument that the requested fee disproportionately benefited counsel over the class, or was excessive or duplicative. The Court agreed that time spent pursuing fees should not be included in the fee request, and ordered any future fee request to account for this issue. In terms of requested costs, the Court found these costs had already been previously approved, and incorporated its prior determination anew.

EMPLOYMENT

In re: Autozone, Inc., Wage & Hour Employment Practices Litig., No. 17-17533 and 18-55273, 2019 WL 4898684 (9th Cir. Oct. 4, 2019) (O'Scannlain, Siler & Nguyen, JJ.)

Plaintiffs brought wage and hour suit against employer. After the United States District Court for the Central District of California denied certification, ordered on summary judgment, and denied leave to amend the complaint, Plaintiffs appealed.

The Court affirmed, and after addressing a jurisdictional question, turned to the class certification issues. In terms of the district court's decertification of the rest break subclass for lack of predominance, the Court found no abuse of discretion, as there was no showing of a uniform policy which might require individual inquiries. Looking next at the district court's denial of certification of other classes for lack of predominance, the Court found similar inquiries would be needed, and that the district court therefore did not abuse its discretion.

SECURITIES

Gruber v. Gilbertson, No. 16-cv-9727, 2019 WL 4439415 (S.D.N.Y. Sep. 17, 2019) (Pauley, J.)

Plaintiff brought a securities fraud case against a company from which they had purchased stock before the principal equity stakeholders allegedly engineered a price inflation scheme. Plaintiff moved to certify a class and subclass.

The Court granted the motion, reasoning in support of its decision that numerosity was satisfied by virtue of the millions of outstanding shares of stock in existence. For commonality, the Court found a variety of common

questions in the case. For typicality, the Court found Defendant's arguments as to certain dates and information relied upon to be meritless, and that Plaintiff's claims were typical of the class. For adequacy, the Court found Defendant made weak arguments about Plaintiff's own claim or on reliance that did not indicate a "fundamental conflict" with the class, and that Plaintiff and counsel were both adequate.

Turning then to Rule 23(b)(3) predominance, the Court looked at disputes as to reliance and damages. For reliance, the Court found the *Affiliated Ute* presumption applied due to the primary material omission allegedly made upon the class, and that the presumption had not been rebutted sufficiently. The Court also found that Plaintiffs' proposed damages model was sufficiently simple to calculate from the price differences.

SETTLEMENT ISSUES

Objector

Pearson v. NBTY, Inc., No. 11-cv-7972, 2019 WL 4597367 (N.D. Ill. Sep. 23, 2019) (Blakey, J.) Plaintiff brought suit against glucosamine distributors, alleging violation of consumer protection laws by making false claims. The parties in a number of cases joined in a nationwide settlement. After various appeals, an Objector brought a motion seeking disgorgement of side payments Defendant made to other objectors to settle their appeals.

The Court denied the motion, reasoning in support of its decision that the Objector had not demonstrated that a rule violation or unlawful action had been committed. The Court found the Objector had not provided sufficient evidence for his assertion, and that his assertion ran contrary to the settlement agreement's terms on class payments. The Court found rather that the class received what was bargained for, and that no basis had been demonstrated to order disgorgement.

TELEPHONE CONSUMER PROTECTION ACT

Calls

Susinno v. Workout World, Inc., No. 15-cv-5881, 2019 WL 4417663 (D.N.J. Sep. 13, 2019) (Sheridan, J.) Plaintiff brought suit for violation of the Telephone Consumer Protection Act ("TCPA") in a case against Defendant gym facility operator, alleging receipt of unwanted sales calls made with an auto-dialer. Plaintiff moved for certification.

The Court granted the motion, reasoning in support of its decision first that numerosity was satisfied by virtue of 25,808 putative class members. In terms of commonality, the Court found a variety of common questions in the case.

In terms of typicality, while Defendant argued that Plaintiff was subject to unique facts and defenses, the Court found this unpersuasive, reasoning that there had been no showing of intent regarding Defendant's allegations of spoliation, and also that Plaintiff had standing in having received the call alleged.

Turning then to adequacy, the Court first considered whether Plaintiff's relationship with counsel was improperly personal, and found it was not likely to affect the outcome of recovery. Next, the Court looked at credibility, and found Plaintiff's minor inconsistencies without bearing on any legal issues before the Court.

In terms of Rule 23(b)(3) predominance, the Court noted that the only issues were common, and that the parties did not contend that any opportunity for consent to receive communications had been offered. As such, the Court found predominance met.

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