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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.

In addition to industry resources, KCC offers interactive CLE-accredited courses geared toward class action settlement administration and legal notification, some of which carry Professional Responsibility CLE credit. Go to [www.kccllc.com/class-action/insights/continuing-education](http://www.kccllc.com/class-action/insights/continuing-education) to learn more about our courses and schedule a CLE for your law firm or industry event.

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## EMPLOYMENT

*Runyan v. MTC Transportation, Inc.*, No. 18-cv-915 (W.D. Wash. Jan. 27, 2020) (Pechman, J.)  
Plaintiff brought suit matter alleging violations of meal and rest break laws under state law, Employee Retirement Income Security Act (“ERISA”), and breach of contract. The case was removed to federal court, but the amended complaint dropped the ERISA claim.

The Court ordered the case be remanded to the state court. Reasoning in support of its decision, the Court noted that because the ERISA claim had been dropped, which was the only Federal law question, the case could not be heard due to the lack of federal question jurisdiction. Since the Court could not find any other basis for federal court jurisdiction, the Court remanded the case to the state court.

## FAIR DEBT COLLECTION PRACTICES ACT

*Holzman v. Malcolm S. Gerald & Associates, Inc.*, No. 16-cv-80643, 2020 WL 408243 (S.D. Fla. Jan. 23, 2020) (Smith, J.)

Plaintiffs brought suit for violation of state law and the Fair Debt Collection Practices Act (“FDCPA”), alleging improper collection practices concerning a credit card debt. Plaintiffs filed a motion for certification.

The Court granted the motion, reasoning in support of its decision first that in terms of numerosity, the Court found a number above 100 and potentially up to 3,000 sufficient. For commonality, the Court found the FDCPA claim to be sufficiently common. For typicality, the Court found it satisfied on the basis that the class and Plaintiff sought the same relief under the same theory. For adequacy, the Court found Plaintiff’s affidavit established adequacy, counsel was well-qualified, and that no conflict was present.

Looking next at predominance, the Court found the FDCPA claim concerning the form letter to be the predominating common issue. However, the Defendant argued that statute of limitations defenses might vary from state to state, which would require individual inquiries. The Court disagreed, finding that Defendant’s records and actions already taken in the case could resolve this issue, and that decertification was always available later if appropriate cause were to arise.

For superiority, the Court found economic factors and the absence of a need for mini-trials made the class action superior.

Finally, with respect to ascertainability, while Defendant argued that Plaintiff could not show whether class members’ debts are consumer in nature (which would require individual inquiries to determine who was in the class), the Court found Defendant’s own records sufficient to show this, and ruled that the nature of the debt was not an issue for review at the certification stage. The Court also noted that the real problem with this argument was that Defendant lacked evidence to show the chain of transfer for the debt, which was not a reason to find against certification. As such, the Court found the class was ascertainable and granted certification.

## SETTLEMENT ISSUES

### *Fees*

*Esparza v. Smartpay Leasing, Inc.*, No. 17-cv-03421, 2020 WL 465865 (N.D. Cal. Jan. 28, 2020) (Alsup, J.)  
Plaintiff brought suit for violation of the Telephone Consumer Protection Act (“TCPA”) against Defendant, alleging text message advertisements were sent after Plaintiff opted out. The parties settled, and Plaintiff moved for final approval of settlement and for fees and costs.

The Court granted final approval, and granted the motion for fees and costs in part.

In support of its decision, the Court first looked at the settlement, and found that notice was adequate, the scope of the release appropriate, the terms reasonable, and the allocation of the final award amount was reasonable.

Looking next at the fees and costs, the Court found costs were reasonable and granted the \$2,500 incentive award requested. The Court slightly reduced the attorney fees request from 25% to 23%, or exactly \$2 million, after calculating this amount to be a 2.187 multiplier of the lodestar figure.

### *Settlement Approval in Maryland State Court*

*Burton v. Hale*, No. 3346, Sept. Term, 2018, 2020 WL 405654 (Md. Ct. Spec. App. Jan. 24, 2020) (Bair, J.) Plaintiffs brought consumer loan case in state court, alleging that improper interest and fees were charged in violation of the Credit Grantors Closed End Credit Provisions. The parties settled and the Court granted final approval of the settlement against Objector's arguments. Objector appealed, contending that the trial court improperly evaluated the fairness of the settlement.

The Court affirmed the order. Reasoning in support of its decision, the Court asked first whether the class representative was adequate, and found this question was not properly before it, as the Objector had conceded and thus waived this issue in the settlement hearing. However, the Court found adequacy had already been met per the lower court's certification analysis.

Looking next at whether the settlement approval was fair, the Court found the lower court had used a thorough analysis to weigh the settlement's reasonableness, and had examined the certification elements, reached a finding of absence of collusion, weighed the likelihood of recovery, and had sufficient evidence to determine the settlement was fair. The Court also noted there was no requirement for the lower court to value each claim with exactitude, despite Objector's contention of the same.

## **TELEPHONE CONSUMER PROTECTION ACT**

### *Numerosity*

*Derval v. Xaler*, No. 19-cv-01881, 2020 WL 430781 (C.D. Cal. Jan. 28, 2020) (Wright, J.) Plaintiff brought suit for violation of the TCPA against Defendant, alleging automatic texts were sent without express consent. The Plaintiff brought a motion for certification.

The Court denied the motion, reasoning in support of its decision that in terms of numerosity, Plaintiff had not shown sufficient evidence of any estimated number of class members, beyond the assertions made in the pleadings. The Court also found that a presumption that Defendant's records would contain such information was not supported by any evidence in the record. As such, numerosity was not met.

With experience administering over 6,500 settlements, KCC's team knows first-hand the intricacies of class action settlement administration. At the onset of each engagement, we develop a plan to efficiently and cost-effectively implement the terms of the settlement. Our domestic infrastructure, the largest in the industry, includes a 900-seat call center and document production capabilities that handle hundreds of millions of documents annually. In addition, last year, our disbursement services team distributed over half a trillion dollars.

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