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California Courts Affirm Additional Settlements Over Vigorous Objections

In two opinions published on July 7, 2010, the Second and Fourth Districts of the California Court of Appeal refused to allow two objectors to derail two different class action settlements. In these two wage and hour class actions, the objectors challenged the proposed settlements on fairness grounds, and the courts once again affirmed the deferential review standard while rejecting the objectors arguments.

In Nordstrom Commission Cases, __ Cal. App. 4th __, (2010); 2010 DJDAR 10557 (ordered published on July 7, 2010) ("Nordstrom") the plaintiffs challenged a settlement reached in a 1997 federal class action whereby the defendant entered into contracts with its sales employees regarding the calculation of their commissions. Nordstrom, 2010 DJDAR at 10558. These contracts included commission reductions when customers returned the merchandise used to calculate the commission. The plaintiffs in Nordstrom claimed that the 1997 settlement violated California Labor Code sections 203 and 221, and, therefore, the class was entitled to additional compensation and penalties for the defendant's willful failure to pay wages that were owed. Id.

The Nordstrom parties reached a preliminary settlement in which the defendant agreed to pay up to $6.4 million in cash and $2.5 million in merchandise vouchers to settle with the class. Notice was sent following the preliminary approval. A class member, Kellie Taylor, was the only class member to file a viable objection. After the trial court approved the settlement over Taylor's objection, she appealed.

The Court of Appeal, Fourth District, restated the deferential standard of review for class action settlements: "To merit reversal [of a settlement], both an abuse of discretion by the trial court must be 'clear' and the demonstration of it on appeal 'strong.'" Nordstrom, *citing* Cho v. Seagate Technology Holdings, Inc., 117 Cal. App. 4th 734, 743 (2009). Furthermore, the court, citing Cellphone Termination Fee Cases, 180 Cal. App. 4th 1110, 1117-18 (2009), stated that a settlement will be presumed fair when (1) it is reached through "arm's length bargaining," (2) there was sufficient discovery and investigation, (3) counsel is experienced with similar litigation, and (4) the percentage of objectors is small. With these principles in mind, the court addressed Taylor's objections.

Taylor's main complaint was that the trial court undervalued the class claims, resulting in an unfair settlement. Nordstrom, 2010 DJDAR at 10559. Specifically, Taylor claimed that the settlement did not adequately address California Labor Code section 203 ("Section 203"), which provides substantial penalties against employers who willfully withhold wages earned. Taylor claimed that the defendant's violations of Section 203 significantly raised the defendant's potential liability, thus rendering the settlement amount inadequate. The court rejected Taylor's argument, finding that the trial court did not abuse its discretion in discounting the penalties from the Section 203 because the defendant could defeat the penalties by showing that a "good faith dispute" existed regarding the claimed wages. The defendant's argument could succeed because the defendant was conforming to the 1997 settlement agreement, which, while it did not change California law, gave the defendant a legitimate expectation that the commission contracts were not illegal. Furthermore, as the court pointed out, had the defendant NOT complied with the approved settlement provisions, it risked being held in contempt of court. In light of the strength of the defendant's defense to Section 203, it was not an abuse of discretion to approve the settlement even though it did not appear to fully value Section 203. The Court of Appeal dismissed Taylor's remaining objections and affirmed the trial court's approval of the settlement terms.

In Munoz v. BCI Coca-Cola Bottling Company, __ Cal. App. 4th __ (2010); 2010 DJDAR 10445 (ordered published on July 7, 2010) ("Coca-Cola"), the plaintiffs filed a wage and hour class action on behalf of production and merchandising supervisors who they claimed were incorrectly classified as "exempt" employees. Importantly, the Coca-Cola action followed on the heels of another class action, Costanza v. BCI Coca-Cola Bottling Company ("Costanza") involving the same counsel. The Costanza plaintiffs initially filed suit against the same defendant on behalf of all persons employed as supervisors. Coca-Cola, 2010 DJDAR at 10446. After significant discovery took place, the Costanza case resulted in a settlement for only a portion of the supervisor class, and did not cover the production and merchandizing supervisors who became the class members in the Coca-Cola action.

In Coca-Cola, after limited discovery was conducted (not nearly as much as in Costanza), the parties reached a mediated settlement agreement, whereby $1.1 million was set aside for the 188 class members, with the money being divided, pro rata, to those making claims. After reductions for fees, costs, and $10,000 split between the two named class representatives, the average class member would receive approximately $4,300. Coca-Cola, 2010 DJDAR at 10445. The trial court gave its preliminary approval of the settlement, and class notice was issued. 142 class members submitted valid claims, two opted out, and Tom Greenwell filed the only objection. The trial court overruled Greenwell's objection and approved the settlement. Greenwell appealed.

On appeal, Greenwell objected on different grounds than the objector in Nordstrom. Greenwell relied on the case Kullar v. Foot Locker Retail, Inc., 168 Cal. App. 4th 116 (2008), which rejected a settlement agreement because the court lacked substantial information necessary to accurately evaluate the case. Greenwell claimed that there was not enough investigation conducted in the Coca-Cola litigation to allow the trial court to reasonably approve the settlement because there was no agreement regarding the class's maximum possible recovery. Coca-Cola, 2010 DJDAR at 10448.

The court rejected Greenwell's argument. As an initial matter, the court held that Kullar did not require the trial court to have an "explicit" statement of the maximum recoverable amount, but, instead, only required an "understanding of the amount that is in controversy." Id. In this case, there was an adequate record to give the court the sense of the potential liability. The court included references to the discovery that was conducted in the Costanza litigation, which counsel and the court could reasonably rely upon under these circumstances. This discovery also revealed that the case would have been difficult to certify and that the trial would have been difficult. Id. at 10447. There were also significant risks regarding the allegations regarding meal and rest periods, due to a case currently pending in the California Supreme Court, Brinker Restaurant Corp. v. Superior Court, 165 Cal. App. 4th 25 (2008)(review granted Oct. 22, 2008), which could "gut" the Coca-Cola class allegations. Coca-Cola, 2010 DJDAR at 10447. The uncertain status of Brinker greatly increased the risk to the class and made a reduced settlement amount much more reasonable. Given all of these factors, the Court of Appeal affirmed the trial court's exercise of discretion to approve the settlement, finding that the record "fully supported" the settlement amount. Id. at 10450.

After rejecting Greenwell's Kullar argument, the court dismissed Greenwell's remaining claims, including his objection to the special payments for the named class representatives. Under the settlement, the class representatives each received an additional $5,000 plus their settlement amount. Id. Greenwell challenged that amount as excessive, but the Court of Appeal rejected the argument, citing cases where the named class members received 30 or 44 times the average payout to the class members. Here, the named class representatives only received double the average payout for the class and, therefore, the court held that it was not excessive and affirmed the settlement provisions. Id.

Nordstrom and Coca-Cola each represent cases where the Court of Appeal deferred to the trial court's evaluation of the record to determine the appropriateness of class action settlements. In both cases, the Court of Appeal allowed the trial courts to evaluate numerous factors, including settlement terms and discovery from other cases, to determine that the objectors' claims lacked merit. Particularly with respect to evaluating the legal issues that threatened the class's recovery, the Court of Appeal deferred to the trial court's analysis of the risks and rewards of taking the cases to trial. These cases, therefore, reaffirm the guiding principles that the Court of Appeal will respect the agreed upon terms of an arm's length negotiated settlement, and will not succumb to the objections of a single class member who thinks the case was worth more than the trial court thought.