



March 11, 2016

### CLIENT ALERT

#### U.S. Court of Appeals for the Second Circuit Protects Consumers by Providing a Setback to Consumer Class Action Lawsuits

In Gallego v. Northland Group, Inc.,<sup>i</sup> the U.S. Court of Appeals for the Second Circuit affirmed a decision by the U.S. District Court for the Southern District of New York denying class certification to a proposed Fair Debt Collection Practices Act (“FDCPA”) settlement class, concluding that Rule 23(b)(3)’s superiority requirement<sup>ii</sup> was not met. The court’s holding recognizes that absentee class members’ interests would not be best served by a broad settlement requiring them to release any and all claims alleged in the complaint against the defendant in exchange for 16.5 cents – or for no money at all. The decision provides a thoughtful analysis of key class certification concepts and principles that will significantly impact the scrutiny of class certification as it relates to superiority for putative class members.

Plaintiff’s lawsuit alleged that a letter attempting to collect a debt violated the FDCPA because it did not provide a “call-back” name, as required by a New York City municipal statute.<sup>iii</sup> Before defendant filed a responsive pleading, the parties agreed to settle the lawsuit on a class-wide basis, and the parties jointly moved for conditional approval of the classwide settlement and to certify the conditional settlement class. The district court denied class certification,<sup>iv</sup> observing that the agreed-to recovery was *de minimis*, and that “[s]uch an insignificant recovery is harmful to a putative plaintiff who might have prosecuted his claim individually but failed to opt-out of the class, and it is meaningless to everyone else.” Additionally, on its own initiative, the court found that the complaint appeared to allege nothing other than a violation of New York City law, rather than a violation of the FDCPA, and dismissed the case for lack of subject-matter jurisdiction.

On appeal, plaintiff-appellant argued that “the vast majority of class members are unlikely to file claims and that those who do file claims [to be paid from the settlement fund] will thus recover a more substantial amount.” In affirming the lower court’s denial of class certification, the Second Circuit rejected this argument, remarking that “[a]n expected low participation rate is hardly a selling point for a proposed class settlement – and the relief would still be trivial even if only 5% of class members filed a claim.” Taking it a step further, the Second Circuit also found that there was sufficient reason to doubt plaintiff’s ability to fairly and adequately protect the interests of the class, since the settlement was designed to release absentee class members’ claims in exchange for 16.5 cents, or no money at all.

In addition to affirming the district court’s denial of class certification, the Second Circuit found that even though plaintiff’s FDCPA claims met the very low threshold to support federal-question jurisdiction, plaintiff still failed to state a claim for relief under the FDCPA. The Second Circuit was particularly swayed by the fact that there was no evidence that Congress intended for the FDCPA to incorporate state or local standards of conduct.

While this decision has considerable significance in the FDCPA context, it may have equally great if not greater significance on a broad spectrum of federal consumer protection statutes and class action lawsuits at large. It is also consistent with the U.S. Supreme Court decisions in Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 131 S. Ct. 2541, 180 L. Ed. 2d 374 (2011) and Comcast Corp. v. Behrend, 133 S. Ct. 1426, 185 L. Ed. 2d 515 (2013) specifically clarifying that the procedural rules governing class actions go beyond a mere pleading standard and that courts must conduct a “rigorous analysis” of all class requirements.

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Warshaw Burstein’s Creditors’ Defense Litigation and Compliance Group advises on all facets of FDCPA compliance and provides representation in litigation defense, investigations and transactions. If you have questions about the U.S. Court of Appeals for the Second Circuit’s decision and its implications, please contact either [Scott E. Wortman](#) or [Hilary Korman](#), or your regular [Warshaw Burstein](#) attorney.

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<sup>i</sup> Gallego v. Northland Group, 2016 WL 697383, No. 15-1666-cv (2d Cir. February 22, 2016).

<sup>ii</sup> The superiority requirement dictates that a class action can only be maintained if it is superior to other available methods for fairly and efficiently adjudicating the controversy.

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<sup>iii</sup> New York City Administrative Code § 20-493.1(a)(iv).

<sup>iv</sup> Gallego v. Northland Grp., Inc., 102 F. Supp. 3d 506 (S.D.N.Y. 2015) aff'd in part, vacated in part, remanded, No. 15-1666-CV, 2016 WL 697383 (2d Cir. Feb. 22, 2016).