

Class Actions Alert

Akin Gump

STRAUSS HAUER & FELD LLP

Ninth Circuit Invalidates Local Rule Requiring Class Certification Motions to Be Brought Within 90 Days

January 11, 2019

Key Points

- Central District of California Local Rule 23-3 requires plaintiffs to file a motion for class action certification within 90 days of service of the complaint.
- The 9th Circuit in *ABS Entertainment* overturned Local Rule 23-3's applicability as "incompatible" with Federal Rule of Civil Procedure 23.
- Parties have one less tool in their toolkit to push for early class certification discovery.

The 9th Circuit recently invalidated the Central District of California's Local Rule that requires plaintiffs to file a motion for class action certification within 90 days of service of the complaint as "incompatible" with the Federal Rules of Civil Procedure. *See ABS Entm't, Inc. v. CBS Corp.*, 908 F.3d 405 (9th Cir. 2018).

This decision brings a major change to class action litigation practice in the Central District of California, where the 90-day Local Rule places pressure on parties to conduct early discovery for class certification.

The 9th Circuit's Decision in ABS Entertainment

The plaintiffs in *ABS Entertainment* were four record companies who brought a class action against CBS Corp. and CBS Radio, claiming that CBS infringed on ABS's intellectual property rights by digitally streaming certain sound recordings without ABS's permission. *ABS Entm't, Inc. v. CBS Corp.*, 908 F.3d 405 (9th Cir. 2018). CBS delivers music content through terrestrial radio and digital streaming.

The district court granted summary judgment in favor of CBS and struck class certification as untimely filed under Central District of California Local Rule 23-3. Under the Central District of California's Local Rules, Rule 23-3 requires plaintiffs to file a motion for class action certification within 90 days of filing a complaint. The trial judge refused to accept the parties' first stipulation to extend the 90-day deadline for filing a

Contact

Neal Marder

[Email](#)

Los Angeles

+1 310.728.3740

Ashley Vinson Crawford

[Email](#)

San Francisco

+1 415.765.9561

Kim Hyongsoon

[Email](#)

Irvine

+1 949.885.4218

Michael Stortz

[Email](#)

San Francisco

+1 415.765.9508

Andrew Jick

[Email](#)

Los Angeles

+1 310.728.3741

Markos Generales

[Email](#)

Los Angeles

+1 310.728.3332

class certification motion, holding that there was “no show of cause, let alone good cause.” The court then denied the parties’ second stipulation to extend the deadline for class certification without explanation. The court went on to grant summary judgment for CBS on plaintiffs’ claims. Plaintiffs appealed, challenging both the summary judgment ruling and the striking of class certification.

With respect to class certification, the 9th Circuit reversed the district court’s ruling, holding that “the bright-line of Local Rule 23-3 is incompatible with Federal Rule of Civil Procedure 23” and that “Local Rules cannot be incompatible with Federal Rules.” The 9th Circuit explained that “[t]his bright line rule is in direct contrast to the flexibility of the Federal Rule, which calls for a determination on class certification ‘[a]t an early practicable time after a person sues or is sued as a class representative.’”

In addition to the supremacy of the Federal Rules over Local Rules, the complexity of certain class certification motions helped drive the court’s analysis in favor of Federal Rule 23’s flexible standard, as opposed to Local Rule 23-3’s hardline rule. A district court must undertake a “‘rigorous analysis’ of the prerequisites for certification,” which “may require discovery.” The 9th Circuit hinted to lower courts still following Local Rule 23-3 without exception that “deny[ing] discovery in [such cases] would be an abuse of discretion,” by citing its own words in *Kamm v. California City Development Company*, 509 F.2d 205 (9th Cir. 1975).

While the court admitted that a “district court’s application and interpretation of its Local Rules is entitled to ‘a large measure of discretion,’” it reiterated the well-established principle that “Local Rules cannot be incompatible with Federal Rules.”

Takeaways

The 9th Circuit’s ruling is a major change in class action litigation practice in the Central District of California. By requiring a class certification motion to be filed within 90 days after a case is served, Local Rule 23-3 puts pressure on both parties to conduct class certification discovery early in the case. Moreover, because some judges routinely grant stipulations to waive the Local Rule requirements, while other judges do not, the draw of a particular judge could materially impact the progress of class action litigation during the early stages of the case. By invalidating the Local Rule, the 9th Circuit’s decision in *ABS Entertainment* may create more uniformity in class action litigation in the Central District. Also, as a result of the decision, parties will now have one less tool to push for early class certification discovery. A possible consequence of the decision is that reduced pressure to file class certification motions and serve related immediate class certification discovery may impact early efforts to settle class action cases.