

A 9th Circ. Shift On Timing For Class Cert. Motions

By **Neal Ross Marder, Michael Stortz, Andrew Jick and Markos Generales**
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In *ABS Entertainment Inc. v. CBS Corp.*, the U.S. Court of Appeals for the Ninth Circuit has 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.[1]

By striking down Local Rule 23-3, which it previously upheld, the Ninth Circuit has signaled a shift in position. 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 Ninth 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’ intellectual property rights by digitally streaming certain sound recordings without ABS’ permission.[2] 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 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 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 the plaintiffs’ claims. The plaintiffs appealed, challenging both the summary judgment ruling and the striking of class certification.

Notably, the Ninth Circuit had previously rejected a similar challenge based on a conflict between Local Rule 23-3’s 90-day requirement and the federal rule’s language. In *Archila v. KFC U.S. Properties Inc.*,[3] the district court dismissed the plaintiff’s class allegations based on the plaintiff’s failure to comply with the local rule deadline, and the plaintiff appealed, arguing that the local rule conflicted with the federal rule and that the district court’s rigid enforcement of the rule violated his due process rights. The Ninth Circuit



Neal Ross
Marder



Michael
Stortz



Andrew Jick



Markos
Generales

rejected the plaintiff's argument, holding that, in particular, the challenge based on a conflict with the federal rules had "no merit."

In *ABS Entertainment*, however, the Ninth Circuit reversed the district court's ruling with respect to class certification, 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 Ninth 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 hard-line rule. A district court must undertake a "'rigorous analysis' of the prerequisites for certification," which "may require discovery." The Ninth 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*.^[4]

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 Ninth 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 Ninth 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.

While *ABS Entertainment's* impacts will be felt most immediately in the Central District of California, the court's reasoning could lead to similar holdings in other jurisdictions nationwide. Indeed, after the federal rules changed in 2003 from requiring that class motions be brought "as soon as practicable" to instead requiring that such motions be brought "at an early practicable time," all local rules imposing strict time restrictions for motions to certify a class became at risk of being held void under the new formulation. As the Ninth Circuit's decision noted, several practice guides have similarly advised that local rules calling for specific time limits to bring class certification motions "appear to be inconsistent with the federal rules and, as such, obsolete." The *Manual for Complex Litigation* notes that such local rules conflict with "Rule 23(c)(1)(A)'s emphasis on the parties' obligation to present the court with sufficient information to support an informed decision on certification."

Thus, similar local rules that have been enacted in other judicial districts across the country are likewise at risk for being struck down by circuit courts seeking to follow in the Ninth Circuit's footsteps. For instance, the Northern District of Texas and the Northern District of Florida have also enacted local rules

requiring plaintiffs to file class certification motions within 90 days of filing the complaint, similar to the Central District of California's Local Rule 23-3. Individual judges' standing orders that purport to require class certification motions to be brought within a strict time period may likewise be implicated.

Neal Ross Marder and Michael Stortz are partners, Andrew Jick is counsel, and Markos Generales is an associate at Akin Gump Strauss Hauer & Feld LLP.

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[1] See *ABS Entm't, Inc. v. CBS Corp.*, 908 F.3d 405 (9th Cir. 2018).

[2] *ABS Entm't, Inc. v. CBS Corp.*, 908 F.3d 405 (9th Cir. 2018).

[3] *Archila v. KFC U.S. Properties Inc.*, 420 F. App'x 667 (9th Cir. 2011) (unpublished)

[4] *Kamm v. California City Development Company*, 509 F.2d 205 (9th Cir. 1975).