



## Defeating Class Certification – When a Win Really Isn’t a Win

By Gene Williams

Attorneys who defend against class action lawsuits know that the most effective and decisive way to beat such a lawsuit is to defeat class certification. A denial of class certification reduces an otherwise large case with significant exposure for the defendant to a single plaintiff (or a small number of plaintiffs), and can then be resolved either with a motion for summary judgment or a modest settlement. However, not all denials of class certification are treated equally, as the defendant in *Tellez v. Rich Voss Trucking, Inc.*, Santa Clara County Sup. Ct. No. 1-12-CV-227103 recently learned.

In *Tellez*, plaintiff filed a putative class action against Rich Voss Trucking alleging wage and hour violations. After substantial delay by the plaintiff, including one granted extension of time to file a motion for class certification and after another request for extension was denied, Plaintiff filed his motion for class certification. The court set the motion for hearing and issued a tentative denying the motion for class certification, but provided no basis for that denial. The tentative simply stated that the motion was denied.

In connection with the hearing on the motion, the plaintiff failed to comply with Santa Clara County local rules regarding contesting a tentative, which required the plaintiff to call the court and opposing counsel the day before the hearing to inform them of the party’s intent to contest the tentative. As a result, the defendant’s counsel did not appear at the hearing, and the court expressed its frustration with Plaintiff’s counsel that it could not substantively discuss the motion because defendant’s counsel was not present. The court simply indicated that the tentative would become final. When plaintiff’s counsel asked if the Court would provide a more detailed explanation of the basis for its denial of class certification, the Court stated that “I don’t intend to.” Plaintiff’s counsel pressed on, requesting any guidance on whether the decision was based on numerosity, commonality or adequacy, but counsel was cut off by the court, which indicated that it would not discuss the motion. Unfortunately for the defendant, the court’s frustration with plaintiff’s counsel actually worked to the plaintiff’s benefit, and defendant’s victory on class certification was short-lived.

The plaintiff appealed the denial of certification on the basis that the denial provided “no valid pertinent reason” to warrant denial of certification. The Court of appeal reversed the trial court, holding that “the trial court’s order denying class certification is devoid of any explanation and nothing in the record of the hearing or anywhere else in the record illuminates the trial court’s thinking.” The Court of Appeal observed that “appellate review of orders denying class certification differs from ordinary appellate review. Under ordinary appellate review, we do not address the trial court’s reasoning and consider only whether the result was correct. But when denying class certification, the trial court must state its

reasons, and we must review those reasons for correctness.”

The Court clarified that the trial court need not include its reasoning in its order denying class certification, but the basis for the court’s decision must be discernible from the record. In distinguishing the present case from others where the denial of certification was affirmed, the Court note that each of those cases “involved some degree of written or oral explanation, even if not detailed, but with some way for the reviewing court to deduce what was the court’s reasoning.”

The Court concluded by holding that “[r]egrettably, we must remand this case to the trial court to reconsider the motion and in the event that it again denies the motion, articulate its reasoning.” It is unclear from the Court’s ruling whether the plaintiff will be provided the opportunity to contest the court’s tentative when the motion is reconsidered. If the plaintiff is allowed to challenge the tentative, he will have had a substantial amount of time to prepare and refine his arguments, and will likely be in a much better position to challenge the tentative than he was at the time of the original hearing.

Thus the defendant, who had already spent the time and resources to *successfully* oppose the motion for class certification, and who was forced to spend substantially more time and resources in opposing the plaintiff’s appeal, was then left having to reargue the motion, yet again. None of this additional time or expense was the result of any deficiency in the substantive arguments raised by the defendant, but the defendant was forced to incur the additional costs nonetheless.

While it certainly would have been helpful to the defendant had the Court articulated on the record its basis for denying class certification, the defendant could have taken a number of steps to minimize the risk of incurring the unnecessary time and expense that were suffered by the defendant in *Tellez*. First, defendants opposing class certification can, and should, submit a proposed order denying the motion for class certification, setting forth the reasons as articulated in the defendant’s opposition papers. Second, if the Court denies certification on only a subset of the arguments raised by the defendant, the defendant should offer to submit a revised proposed order reflecting those issues upon which the court ruled in its favor. And if the Court, as was the case in *Tellez*, does not conduct a hearing on the motion, and does not articulate a basis for denial, the defendant should strongly encourage the court to enter a substantive order, and should offer to prepare that order, even if it means incurring additional time and expense.

Ultimately defense counsel who defeats a motion for class certification must resist, or at least delay, the instinct to celebrate the decisive victory in the case long enough to ensure that the court’s ruling provides sufficient detail and analysis to avoid a relatively simple appeal by the plaintiff. Otherwise the defendant may find itself celebrating an order that is worth little more than the paper it is printed on, and then having to engage in a lengthy and costly fight to have that order upheld.

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