UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

Remijas ex rel. Situated v. Neiman Marcus Grp., LLC

341 F. Supp. 3d 823 (N.D. Ill. 2018) · Decided September 17, 2018

SUMMARY

The court denied without prejudice motions for final approval of a class action settlement and for attorney's fees, costs, and service awards arising from Neiman Marcus's 2013 data breach. It decertified the proposed settlement class because of conflicts between customers who made purchases during the malware period and those who made purchases outside that period, concluding that the class representatives could not adequately represent all members. The court also expressed concerns about the settlement's notice program and low claims response rate.

CASE DETAILS

COURT	United States District Court for the Northern District of Illinois
WRITING FOR THE COURT	Sharon Johnson Coleman
JURISDICTION	Illinois
DECIDED	September 17, 2018
DISPOSITION	other
PROCEDURAL POSTURE	After preliminary certification of a settlement class and preliminary approval of a proposed class settlement, the parties moved for final settlement approval and attorney's fees, costs, and service awards. Objectors challenged the settlement. The district court decertified the settlement class and denied the pending motions without prejudice.
STANDARD OF REVIEW	A motion to decertify a class is reviewed under the same standards applicable to a motion to certify a class and is not subject to the heightened standard applicable to reconsideration motions. A proposed class settlement must be lawful, fair, reasonable, and adequate.
PRECEDENTIAL VALUE	published federal district court opinion
PARTIES	Hilary Remijas, Melissa Frank, Debbie Farnoush, Joanne Kao v. Neiman Marcus Group, LLC

TOPICS

class actions · civil procedure · attorney fees · remedies

PRACTICE AREAS

class actions · consumer protection · data privacy and security · civil procedure · settlement approval

QUESTIONS PRESENTED

1. Whether the proposed settlement class satisfied Rule 23's adequacy-of-representation requirement despite conflicts between customers whose purchases occurred during the malware period and customers whose purchases occurred outside that period.
2. Whether the court should decertify the settlement class under the same standards used for initial class certification rather than the heightened standard applicable to reconsideration.
3. Whether final approval of the proposed class settlement and related attorney's fees, costs, and service awards was appropriate.

HOLDINGS

1. The settlement class could not remain certified because the non-malware-period subclass had interests antagonistic to those of customers who purchased during the malware period, and the named plaintiffs and class counsel did not adequately represent the non-malware-period subclass.
2. A motion to decertify a class is reviewed under the same standards as a motion to certify a class and is not subject to the heightened reconsideration standard merely because another judge previously certified the class.
3. Final approval of the class settlement and the motions for attorney's fees, costs, and class-representative service awards were denied without prejudice because the settlement class was decertified.

KEY QUOTATIONS

> *"Motions to decertify a class, however, are reviewed using the same standards as motions to certify a class."* (825-826)

> *"The Court finds this mechanism to be highly suspect."* (827)

> *"Accordingly, the settlement class as it is currently composed has a fundamental conflict that undermines the adequacy of the representation of the class."* (828-829)

> *"For the foregoing reasons, the Court decertifies the settlement class."* (830)

FACTUAL BACKGROUND

Neiman Marcus experienced a 2013 malware breach that potentially exposed approximately 350,000 customers' credit-card information, with approximately 9,200 cards later used fraudulently. The proposed settlement class included customers who made purchases during both the period when the malware was active and a later period when the malware could not have been active. The settlement provided monetary compensation to some malware-period purchasers but primarily nonmonetary relief to others, creating different interests among class members.

PROCEDURAL HISTORY

The case was initially dismissed for lack of standing by Judge James Zagel, but the Seventh Circuit reversed and remanded. After further procedural developments, including dismissal for failure to proceed and reinstatement, Judge Der-Yeghiayan preliminarily certified the settlement class and approved the settlement preliminarily. The case was transferred to Judge Coleman, who considered the objections and denied final approval and fee-related motions while decertifying the class.

DISPOSITION

other

CASES CITED

- Isby v. Bayh, 75 F.3d 1191, 1196 (7th Cir. 1996)
- Hispanics United of DuPage County v. Village of Addison, Illinois, 988 F. Supp. 1130, 1149 (N.D. Ill. 1997)
- E.E.O.C. v. Hiram Walker & Sons, Inc., 768 F.2d 884, 888-89 (7th Cir. 1985), cert. denied, 478 U.S. 1004 (1986)
- Ellis v. Elgin Riverboat Resort, 217 F.R.D. 415, 420 (N.D. Ill. 2003)
- Phillips v. Sheriff of Cook County, 828 F.3d 541, 549 (7th Cir. 2016)
- Reynolds v. Beneficial National Bank, 288 F.3d 277, 279-80 (7th Cir. 2002)
- Retired Chicago Police Association v. City of Chicago, 7 F.3d 584, 598 (7th Cir. 1993)
- Secretary of Labor v. Fitzsimmons, 805 F.2d 682, 697 (7th Cir. 1986) (en banc)
- Uhl v. Thoroughbred Technology and Telecommunications, Inc., 309 F.3d 978, 986 (7th Cir. 2002)
- Rosario v. Livaditis, 963 F.2d 1013, 1018 (7th Cir. 1992)
- In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation, 827 F.3d 223, 233 (2d Cir. 2016)
- In re Subway Footlong Sandwich Marketing and Sales Practices Litigation, 869 F.3d 551, 557 (7th Cir. 2017)
- Grok Lines, Inc. v. Paschall Truck Lines, Inc., No. 14 C 8033 (N.D. Ill. Sept. 18, 2015)
- Thorogood v. Sears, Roebuck & Co., 627 F.3d 289, 293 (7th Cir. 2010)