

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Stromberg v. Qualcomm Inc.

No. No. 19-15159, United States Court of Appeals for the Ninth Circuit (September 29, 2021)

SUMMARY

The Ninth Circuit vacated certification of a nationwide indirect purchaser class in an antitrust suit against Qualcomm, holding that the district court erred in its choice-of-law analysis by applying California's Cartwright Act to all class members despite material differences among state antitrust laws, including Illinois Brick repealer and non-repealer states, which swamped predominance under Rule 23(b)(3). The court also vacated certification of the Rule 23(b)(2) injunctive relief class in light of **FTC v. Qualcomm Inc.**, 969 F.3d 974 (9th Cir. 2020), which held that Qualcomm's licensing practices did not violate the Sherman Act, and remanded for the district court to reconsider the effect of that decision on class certification and the viability of plaintiffs' claims.

CASE DETAILS

COURT	United States Court of Appeals for the Ninth Circuit
WRITING FOR THE COURT	Ryan D. Nelson; Eugene E. Siler; Jay S. Bybee
JURISDICTION	Federal
DECIDED	September 29, 2021
DOCKET	No. 19-15159
DISPOSITION	vacated_and_remanded
PROCEDURAL POSTURE	Interlocutory appeal from class certification order under Rule 23(f)
STANDARD OF REVIEW	The district court's class certification rulings are reviewed for abuse of discretion, and its underlying factual findings for clear error. The choice of law determination is reviewed de novo, with factual findings reviewed for clear error.
PRECEDENTIAL VALUE	Published
PARTIES	Qualcomm Incorporated v. Karen Stromberg, et al.

TOPICS

class actions civil procedure conflict of laws appellate procedure commercial litigation

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the district court erred in its choice of law analysis when certifying a nationwide Rule 23(b)(3) class, given differences in state antitrust laws.
2. Whether the district court erred in certifying a Rule 23(b)(2) class for injunctive relief in light of this court's decision in *FTC v. Qualcomm Inc.*, 969 F.3d 974 (9th Cir. 2020).

HOLDINGS

1. The district court erred in its choice of law analysis because material differences exist between California's Cartwright Act and the antitrust laws of other states, and non-repealer states have a strong interest in applying their own laws. Therefore, common issues of law do not predominate, and the class was erroneously certified.
2. The Rule 23(b)(2) class certification order is vacated, and on remand the district court should reconsider the effect of *FTC v. Qualcomm* on the class's ability to meet Rule 23(a) requirements and the viability of plaintiffs' claims.

KEY QUOTATIONS

“the 23(b)(3) class was erroneously certified under a faulty choice of law analysis because differences in relevant state laws swamp predominance.” (at 17)

“non-repealer states have a clear interest in applying their laws to class members who purchased cellphones in their state” (at 28)

“By applying California law to the nationwide class of indirect purchasers, the district court improperly impaired non-repealer state policy by allowing California to set antitrust enforcement policy for the entire country. This is the ‘false federalism’ that CAFA intended to correct.” (at 31)

FACTUAL BACKGROUND

Qualcomm is a global leader in cellular technology that holds standard essential patents (SEPs) and licenses them on FRAND terms. It also sells modem chips. Plaintiffs, indirect purchasers of cellphones, alleged that Qualcomm maintained a monopoly in modem chips through a 'no-license-no-chips' policy, refusal to license to rival chip suppliers, and exclusive dealing with Apple, resulting in higher prices. The district court certified a nationwide class seeking damages and injunctive relief. The panel vacated the certification order due to errors in choice of law analysis and in light of the earlier *FTC v. Qualcomm* decision, which held that similar conduct did not violate the Sherman Act.

PROCEDURAL HISTORY

The district court certified a nationwide class under Rule 23(b)(3) and (b)(2) in an antitrust multidistrict litigation. Qualcomm appealed. The panel vacated and remanded.

DISPOSITION

REMAND INSTRUCTIONS

On remand, the district court shall: (1) reconduct the choice of law analysis for the Rule 23(b)(3) class, starting with step one of the governmental interest test; (2) reconsider the effect of *FTC v. Qualcomm* on the Rule 23(b)(2) class and the entire class's ability to meet Rule 23(a) requirements; and (3) determine the viability of plaintiffs' claims moving forward.

CASES CITED

- *FTC v. Qualcomm Inc.*, 969 F.3d 974 (9th Cir. 2020)
- *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581 (9th Cir. 2012)
- *Senne v. Kan. City Royals Baseball Corp.*, 934 F.3d 918 (9th Cir. 2019)
- *Zinser v. Accufix Rsch. Inst., Inc.*, 253 F.3d 1180 (9th Cir. 2001)
- *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977)
- *Apple Inc. v. Pepper*, 139 S. Ct. 1514 (2019)
- *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011)
- *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 133 S. Ct. 1184 (2013)
- *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487 (1941)
- *Microsoft Corp. v. Motorola, Inc.*, 696 F.3d 872 (9th Cir. 2012)
- *Hanlon v. Chrysler Corp.*, 150 F.3d 1011 (9th Cir. 1998)
- *Vinole v. Countrywide Home Loans, Inc.*, 571 F.3d 935 (9th Cir. 2009)
- *Parsons v. Ryan*, 754 F.3d 657 (9th Cir. 2014)
- *Rodriguez v. Hayes*, 591 F.3d 1105 (9th Cir. 2010)
- *Chen v. Los Angeles Truck Ctrs., LLC*, 444 P.3d 727 (Cal. 2019)
- *Clothesrigger, Inc. v. GTE Corp.*, 236 Cal. Rptr. 605 (Ct. App. 1987)
- *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2003)
- *McCann v. Foster Wheeler LLC*, 225 P.3d 516 (Cal. 2010)
- *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442 (2016)
- *Cel-Tech Commc'ns, Inc. v. L.A. Cellular Tel. Co.*, 973 P.2d 527 (Cal. 1999)
- *Clayworth v. Pfizer, Inc.*, 233 P.3d 1066 (Cal. 2010)
- *Hernandez v. Burger*, 162 Cal. Rptr. 564 (Ct. App. 1980)
- *AT & T Mobility LLC v. AU Optronics Corp.*, 707 F.3d 1106 (9th Cir. 2013)
- *Mack v. Bristol-Myers Squibb Co.*, 673 So. 2d 100 (Fla. Dist. Ct. App. 1996)
- *Ciardi v. F. Hoffman-La Roche, Ltd.*, 762 N.E.2d 303 (Mass. 2002)
- *In re Lithium Ion Batteries Antitrust Litig.*, 2014 WL 4955377 (N.D. Cal. 2014)
- *LaChance v. U.S. Smokeless Tobacco Co.*, 931 A.2d 571 (N.H. 2007)
- *Gibbons v. J. Nuckolls, Inc.*, 216 S.W.3d 667 (Mo. 2007)

