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List of Federal Court Cases Decided On Class Action Certification After Wal-Mart Stores, Inc. v. Dukes

This Client Alert provides a list of cases showing how the Federal Courts have applied Wal-Mart Stores, Inc. v. Dukes, 131 S. Ct. 2541 (2011), in determining whether to grant or deny class action certification since the U. S. Supreme Court issued its important decision on June 20, 2011. This case list is provided, by illustration and as a non-exhaustive list, to assess the immediate effect of Wal-Mart.

Our immediately prior Client Alert provides a summary of the important aspects of the Wal-Mart decision as it applies to class actions.

In less than five months since the Supreme Court ruled in Wal-Mart, the following cases have been reported in various courts throughout the United States:

Federal courts denying certification of proposed class actions

Third Circuit

Rodriguez v. National City Bank, No. 08-2059, 2011 U.S. Dist. LEXIS 101367 (E.D. Pa. Sept. 8, 2011) (Robreno, J.) (denying plaintiffs' motion for certification of settlement class where plaintiffs alleged that bank discriminated against minority home loan applicants; no commonality where many loan officers used their own discretion to perpetrate the alleged discrimination).

Fourth Circuit

MacGregor v. Farmers Insurance Exchange, No. CV-03088, 2011 U.S. Dist. LEXIS 80361 (D.S.C. July 22, 2011) (Norton, J.) (denying motion to allow notice to similarly situated employees in action alleging that plaintiffs were denied overtime compensation due to defendant's improper procedure for approving overtime; court found that there was no common question that would predominate at trial because the approval process was decentralized and varied according to different supervisor's discretion).

Fifth Circuit

Altier v. Worley Catastrophe Response, LLC, No. 11-241, 2011 U.S. Dist. LEXIS 85696 (E.D. La. July 26, 2011) (Wilkinson, Jr., J.) (denying Rule 23(b)(3) class certification where plaintiffs alleged defendant breached employment contract with adjusters by paying them less than the contracted rate; plaintiffs failed to show that common issues of law predominated over individual issues, despite the fact that action is based on one underlying contract, because the action involved significant individualized damages and varying evidentiary issues regarding each contract).

Sixth Circuit

Corwin v. Lawyers Title Insurance Co., No. 09-13897, 2011 U.S. Dist. LEXIS 84232 (E.D. Mich. Aug. 1, 2011) (Lawson, J.) (denying class certification in action where plaintiffs alleged they were overcharged for title insurance; because local practice varied among agents and discount eligibility required individual proof from each consumer, liability could not be established in "one stroke").

Seventh Circuit

Ruiz v. Serco, Inc., No. 10-cv-394, 2011 U.S. Dist. LEXIS 91215 (W.D. Wis. Aug. 5, 2011) (Crabb, J.) (denying class certification in FLSA action where plaintiffs alleged they were improperly exempted from overtime compensation; plaintiffs could not show that all proposed members performed sufficiently similar job duties, which was an inquiry necessary in determining if each was properly exempt).

McReynolds v. Merril Lynch, No. 05 C 6583, 2011 U.S. Dist. LEXIS 115431 (N.D. Ill. Sept. 19, 2011) (Gettleman, J.) (reconsidering and affirming denial of class certification in action where plaintiffs alleged that African American financial advisors earned less on company-wide basis than white financial advisers; identification of two employment policies leading to this disparity not sufficient to satisfy commonality requirement because implementation of these policies depends on discretionary decisions by many different supervisors).

Eighth Circuit

Bennett v. Nucor Corp., Nos. 09-3831/3834 and 10-1332, 2011 U.S. App. LEXIS 19395 (8th Cir. Sept. 22, 2011) (affirming denial of class certification in action alleging racial discrimination under disparate treatment and disparate impact liability theories; commonality not satisfied where employment practices varied substantially in each department and where defendant's management was decentralized and each department was autonomous).

Ninth Circuit

Ellis v. Costco Wholesale Corp., No. 07-15838, 2011 U.S. App. LEXIS 19060 (9th Cir. Sept. 16, 2011) (vacating and remanding the district court's certification of class where plaintiffs alleged that Costco engaged in gender discrimination when promoting employees; district court failed to engage in the "rigorous analysis" mandated by Wal-Mart to determine whether "there was significant proof that [Costco] operated under a general policy of discrimination").

Cruz v. Dollar Tree Store, Inc., No. 07-2050 SC, 07-4012 SC, 2011 U.S. Dist. LEXIS 73938 (N.D. Cal. July 7, 2011) (Conti, J.) (denying class certification where plaintiffs alleged they were improperly classified as "executive employees" and thus precluded from receiving overtime compensation; after determining that payroll certifications common to all class members did not provide reliable evidence and that much of the case would depend on individual class member's testimony, court determined class certification was inappropriate because there was no "common glue" throughout the case from which to decide liability).

Stockwell v. City and County of San Francisco, No. C 08-5180, 2011 U.S. Dist. LEXIS 117234 (N.D. Cal. Oct. 11, 2011) (Hamilton, J.) (denying renewed motion for certification in light of Wal-Mart; plaintiffs alleged defendants discriminated against them based on their age in awarding promotions; claims cannot be decided on a class-wide basis where age discrimination is only shown through statistical evidence of disproportionate impact and an allegation that the City operated under a "general policy of discrimination").

Badella v. Deniro Marketing LLC, No. 10-03908, 2011 U.S. Dist. LEXIS 128145 (N.D. Cal. Nov. 4, 2011) (Breyer, J.) (denying certification in action alleging that defendant's sham dating website was fraudulent and in violation of RICO; commonality requirement satisfied under Rule 23(a) because common questions of law and fact existed as to whether defendants had a "widespread practice" of sending out fake messages from non-existent women; however, Rule 23(b)(3)'s stricter predominance requirement not met where issues individual to each plaintiff would need to be litigated, including the different reasons users joined website).

Federal Courts certifying class actions post-Wal-Mart

First Circuit

Trombley v. Bank of Am. Corp., No. 08-cv-456, 2011 U.S. Dist. LEXIS 83777 (D.R.I. July 28, 2011) (DiClerico, Jr., J.) (granting certification of a settlement class where plaintiffs alleged that BAC imposed fees and penalties for timely-tendered credit payments; commonality requirement satisfied because all claims stemmed from BAC's central practices and policies).

Second Circuit

In re Partsearch Technologies, Inc., No. 11-10282, 2011 Bankr. LEXIS 2245 (Bankr. S.D.N.Y. June 21, 2011) (Glenn, J.) (certifying class for settlement purposes in action where defendant allegedly violated New York law by failing to give proper notice to its employees prior to "mass layoff"; commonality requirement satisfied where the "core" litigation issues were common to all class members except for each employee's individual damages).

Ramos v. SimplexGrinnel, No. 07-CV-981, 2011 U.S. Dist. LEXIS 65593 (E.D.N.Y. June 21, 2011) (Gold, J.) (certifying class in action where plaintiffs alleged they were denied wages in violation of New York labor laws; common issue will predominate at trial where various New York offices all similarly erred in not having a reliable method of ensuring that all workers received prevailing wages).

United States v. City of New York, No. 07-CV-2067, 2011 U.S. Dist. LEXIS 73660 (E.D.N.Y. July 8, 2011) (Garfus, J.) (denying motion to de-certify liability-phase class in light of Wal-Mart in action alleging that fire department's hiring practices were racially discriminatory; commonality requirement satisfied because all class members were subject to the same allegedly biased testing procedures).

Odom v. Hazen Transport, Inc., No. 10-CV-6304T, 2011 U.S. Dist. LEXIS 86760 (W.D.N.Y. Aug. 5, 2011) (Payson, J.) (granting certification of a settlement class where 16 truck drivers alleged that they did not receive overtime compensation because defendant improperly classified them as independent contractors rather than employees; commonality satisfied where resolution of all claims depends on whether defendant was employer under statute).

Third Circuit

Churchill v. Cigna Corp., No. 10-6911, 2011 U.S. Dist. LEXIS 90716 (E.D. Pa. Aug. 12, 2011) (Sánchez, J.) (granting certification for subclass of individuals whose insurance claims for experimental autism treatment were denied – and denying certification for subclass of individuals who did not file claims – in view of defendant's policy not to cover these types of claims; commonality satisfied as to the first subclass because national policy denying these experimental treatments was applied to all members and determination of whether this policy is proper would resolve central question to all members' claims; commonality requirement not satisfied as to second subclass because each member needs to show that filing claim would have been futile, which necessitates an analysis of each non-claimant's behavior).

Fourth Circuit

Gray v. Hearst Communications, Inc., No. 10-1302, 2011 U.S. App. LEXIS 17890 (4th Cir. Aug. 25, 2011) (affirming certification in action where plaintiffs alleged that defendant knowingly misrepresented its directory's circulation when soliciting advertisers; although each sales representative had broad discretion to tailor his sales pitch, each class member signed contract containing same distribution obligation – whether defendant breached this provision will "resolve in one stroke" a central issue to the litigation).

Fifth Circuit

Morrow v. City of Tenaha Deputy City Marshall Washington, No. 2-08-cv-288, 2011 U.S. Dist. LEXIS 96829 (E.D. Tex. Aug. 29, 2011) (Ward, J.) (certifying class in action alleging that city officials developed a discriminatory traffic stop practice that targeted racial minorities; commonality requirement satisfied where a small and centralized group of city officials conceived and implemented interdiction policy and plaintiffs had significant proof of a "general policy of discrimination" given the plaintiffs' proffered statistics and anecdotes and the fact that city failed to maintain racial profiling information as required by Texas law).

Sixth Circuit

Creely v. HCR ManorCare, Inc., Nos. 3:09 CV 2879, 3:10 CV 417 and 3:10 CV 2200, 2011 U.S. Dist. LEXIS 77170 (N.D. Ohio June 9, 2011) (Zouhary, J.) (holding that Wal-Mart does not affect grant of class certification in FLSA action because FSLA only requires class members satisfy "similarly-situated" criteria rather than Rule 23(a)(2)'s commonality requirement; further holding crux of case is whether company-wide policies violated plaintiffs' statutory rights).

Ham v. Swift Transportation Co., No. 2:09-cv-02145, 2011 U.S. Dist. LEXIS 77883 (W.D. Tenn. July 1, 2011) (Donald, J.) (certifying classes under Rule 23(b)(1)(a) and 23(b)(3) in action alleging that commercial truck driving school's testing procedures violated state and federal law, causing revocation of plaintiffs' licenses; commonality requirement satisfied because all plaintiffs underwent same testing procedures and whether these procedures violated law was a central issue to litigation).

Ware v. T-Mobile USA, No. 3:11-cv-411, 2011 U.S. Dist. LEXIS 127091 (M.D. Tenn. Nov. 2, 2011) (Trauger, J.) (granting conditional FLSA class certification for employees working at call center in Nashville and denying conditional FLSA class certification for nationwide employees in action seeking unpaid wages for preparatory work performed before being allowed to clock in; Wal-Mart commonality analysis not applicable to conditional FLSA certification inquiry, which requires only that putative class members be "similarly situated" and that each member "opt-in").

Seventh Circuit

Williams-Green v. J. Alexander's Restaurants, Inc., No. 09-CV-5707, 2011 U.S. Dist. LEXIS 99373 (N.D. Ill. Sept. 1, 2011) (Manning, J.) (granting class certification in action alleging that defendant restaurant improperly retained a percentage of waitress' tips from a "tip pool" intended to be given entirely to non-tipped staff; commonality satisfied because plaintiffs had shown a widespread practice of retaining tips and liability as to all plaintiffs' claims could be established by determining the propriety of defendant's tip pool; individual calculations as to each plaintiff's damages did not affect the satisfaction of commonality requirement).

Ninth Circuit

Gilmer v. Alameda-Contra Costa Transit Dist., No. 08-05186, 2011 U.S. LEXIS 126845 (N.D. Cal. Nov. 2, 2011) (Wilken, J.) (denying motion to de-certify FLSA action that sought unpaid overtime wages earned while traveling for work; each plaintiff's individual mode of transportation would affect the extent of defendant's liability but court holds this dissimilarity was much more limited than in Wal-Mart, where defendant's policy permitted all managers to exercise wide discretion in promoting employees).

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