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Using a Rule 12(f) Motion to Strike Class Allegations in the Ninth Circuit: The Aftermath of Whittlestone

November 9, 2011 by Alona G. Metz

Last year, the Ninth Circuit curtailed the use of Rule 12(f) motions to strike in a case of first impression called Whittlestone, Inc. v. Handi-Craft Co., 618 F.3d 970 (9th Cir. 2010). The narrow holding of Whittlestone is that "Rule 12(f) does not authorize district courts to strike claims for damages on the ground that such claims are precluded as a matter of law." Id. at 974-975. Rule 12(f) of the Federal Rules of Civil Procedure states that a district court "may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." "The function of a 12(f) motion to strike is to avoid the expenditure of time and money that must arise from litigating spurious issues by dispensing with those issues prior to trial . . . ." Fantasy, Inc. v. Fogerty, 984 F.2d 1524, 1527 (9th Cir. 1993) (overruled on other grounds in Fogerty v. Fantasy, Inc., 510 U.S. 517 (1994)).

Whittlestone was a breach of contract case where the defendant filed a motion to strike the plaintiff's claims for lost profits and consequential damages, arguing that the claims were barred under the contract. Id. at 973. The district court granted the motion to strike. Id. The Ninth Circuit reversed because courts "may not resolve disputed and substantial factual or legal issues in deciding a motion to strike." Id. (internal quotation marks and brackets omitted). Specifically, the court found that a claim for damages was not an insufficient defense, redundant, immaterial, impertinent, or scandalous matter. Id. at 974. Further, the court

reasoned that reading "Rule 12(f) in a manner that allowed litigants to use it as a means to dismiss some or all of a pleading . . . would be creating redundancies within the Federal Rules of Civil Procedure, because a Rule 12(b)(6) motion . . . already serves such a purpose." Id. Additionally, the court reasoned that because Rule 12(f) motions are reviewed for abuse of discretion and Rule 12(b)(6) motions are reviewed de novo, it would not make sense to allow litigants to seek dismissal of a pleading under 12(f) when it could do so under Rule 12(b)(6). Id.

Since Whittlestone, district courts in the Ninth Circuit have been split over the issue of whether a defendant may use a Rule 12(f) motion to strike class allegations. For instance, in Astiana v. Ben & Jerry's Homemade, Inc., No. C 10-4387 PJH, 2011 U.S. Dist. LEXIS 57348, at *39 (N.D. Cal. May 26, 2011), the court held that "the questions [of] whether the class is ascertainable and whether a class action is superior should be resolved in connection with a class certification motion." The Astiana Court, citing Whittlestone, held that the defendants had not established that the allegations they sought to have stricken were "either part of an insufficient defense, or are redundant, immaterial, impertinent, or scandalous." Id.; see also Beal v. Lifetouch, Inc., No. CV 10-8454-JST (MLGx), 2011 U.S. Dist. LEXIS 33758, at *20-21 (C.D. Cal. Mar. 15, 2011) (holding that motion to strike class allegations was "premature at the pleadings stage, as the issue of class certification is not yet before the Court" and finding that "the class allegations are clearly relevant to the subject matter of the litigation, and do not amount to redundant, immaterial, impertinent, or scandalous matters"); Swift v. Zynga Game Network, Inc., No: C 09-05443 SBA, 2010 U.S. Dist. LEXIS 117355, at *29-30 (N.D. Cal. Nov. 2, 2010) (citing Whittlestone and denying a motion to strike class allegations).

Other district courts in the Ninth Circuit have allowed a defendant to bring a Rule 12(f) motion to strike class allegations and will grant the motion "if it is clear from the complaint that the class claims cannot be maintained." Murphy v. DirecTV, Inc., Case No. 2:07-cv-06465-JHN-VBKx, 2011 U.S. Dist. LEXIS 87627, at *4-5

(C.D. Cal. Feb. 11, 2011) (denying motion to strike class allegations because it was not clear from the complaint that the class claims could not be maintained). The United States Supreme Court has held that "[s]ometimes the issues are plain enough from the pleadings to determine whether the interests of the absent parties are fairly encompassed within the named plaintiff's claim . . . ." Gen. Tel. Co. of Sw. v. Falcon, 457 U.S. 147, 160 (1982) (reversing a class certification order). See also Collins v. GameStop Corp., No. C10-1210 THE, 2010 U.S. Dist. LEXIS 88878, at *6 (N.D. Cal. Aug. 6, 2010) (granting, in part, a motion to strike class allegations before Whittlestone).

However, while courts may entertain the motion to strike, it is rare to strike class allegations in advance of a motion for class certification. Cholakyan v. Mercedes-Benz USA, LLC, No. CV 10-05944 MMM (JCx), 2011 U.S. Dist. LEXIS 72584, at *66, 70 (C.D. Cal. June 30, 2011) ("Defendant has yet to file an answer and discovery has not begun. Given the early stage of the proceedings, it is premature to determine if this matter should proceed as a class action. Accordingly, the court denies defendant's motion to strike plaintiff's class allegations") (internal citation omitted); see also Clerkin v. MyLife.com, Inc., No. C 11-00527 CW, 2011 U.S. Dist. LEXIS 96735, at *9-10 n. 4(N.D. Cal. Aug. 29, 2011) ("Some defendants have brought motions under Rule 12(f) to strike class allegations from complaints. While courts entertain such motions, it is rare that class allegations are stricken at the pleading stage") (internal citation omitted); Sliger v. Prospect Mortg., LLC, NO. CIV. S-11-465 LKK/EFB, 2011 U.S. Dist. LEXIS 57393 (E.D. Cal. May 26, 2011) (entertaining motion to dismiss and strike class allegations and definition, but denying the motions).

There are certainly cases where the class allegations are so deficient on the face of the complaint that the allegations should be stricken to conserve resources. Thus, a Rule 12(f) challenge is probably worth a try where the class allegations in a complaint are severely lacking.