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My Business Was Hit with a Class Action!

What do I do?

You may think that class action litigation is the legal problem of large companies, but even small mom-and-pop businesses can become targets for this type of litigation. The concerns could be wage related or accessibility oriented, or any number of other issues. So what can you do to defend against these claims?

Defendants facing class actions are often eager to explore ways to end the case as swiftly as possible. One strategy they

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frequently consider is whether to offer the named plaintiff the complete relief that he or she seeks in the case through an offer of judgment. The theory is that if the plaintiff has been offered everything he or she could achieve through litigation, then he or she no longer has a personal stake in the case and the named plaintiff cannot move forward in representing the putative class members' claims — thereby quickly and (relatively) inexpensively resolving the case.

However, many argue that such a strategy allows for defendants to “pick off” named plaintiffs to evade the class action mechanism. So, the question is: Are offers of judgment a viable class action defense in Washington state?

A Washington appeals court addressed this issue in a 2014 case. The court stated that an unaccepted offer of judgment to a named plaintiff in a putative class action did not operate to moot that plaintiff's claims. The court further stated that the possibility of class certification was still viable following the unaccepted offer of judgment. In that case, the Washington court noted that the federal

circuit courts were split on these issues. However, the United States Supreme Court is set to resolve the issue this term when it considers the matter of *Gomez v. Campbell-Ewald Co.*

Although there appears to be a trend within the federal courts that suggests the high court will find that precertification offers of judgment do not operate to moot the named plaintiff's claims, there is case law precedence suggesting that the Supreme Court may hold otherwise. Indeed, in 2013, the Supreme Court held that a defendant's offer to satisfy the named plaintiff's interest in a *collective action* mooted her individual claim and the entire collective action she purported to bring under the Fair Labor Standards Act. The Supreme Court did not, however, decide the issue in connection with a *class action*.

The Supreme Court's much anticipated decision in the *Gomez* case may significantly affect how Washington state courts address offers of judgments in class actions in the future — and the decision will certainly affect Washington federal courts' treatment of these issues.

Accordingly, we recommend paying close attention to the Supreme Court's decisions on these issues and consulting with counsel about the possibility of offers of judgment as class action defense strategies. Further, we recommend consulting with counsel about numerous other options available to help you avoid costly collective and/or class action litigation.

ERIN M. WILSON is an attorney at Lane Powell and an active member of its Commercial Litigation Practice Group. She focuses her practice on class-action defense as well as complex commercial and employment litigation. Reach her at wilsonem@lanepowell.com or 206.223.7432.

LAURA L. RICHARDSON is an attorney at Lane Powell and focuses her practice on complex litigation. She has experience in diverse matters, including commercial class actions, commercial contract disputes, First Amendment litigation and media/entertainment litigation. Reach her at richardsonll@lanepowell.com or 503.778.2161.