MISCELLANEOUS

CONSTITUTIONALITY OF CFPB UPHELD

Consumer Fin. Prot. Bureau v. Seila Law, LLC, 923 F.3d 680 (9th Cir. 2019).
https://www.leagle.com/decision/infco20190506075

FACTS: Plaintiff-Appellee Consumer Financial Protection Bureau ("CFPB") was investigating into whether Defendant-Appellee Seila Law, LLC, violated the Telemarketing Sales Rule. The CFPB issued a civil investigative demand ("CID") to Seila Law, requiring the firm respond to interrogatories and requests for documents. Seila Law refused to comply. The CFPB filed suit, seeking enforcement of the CID.

The district court granted the petition and ordered Seila Law to comply with the CID. Seila Law appealed.

HOLDING: Affirmed.

REASONING: Seila Law argued that the CFPB's structure violates the Constitution's separation of powers because the agency is headed by a single director who exercises substantial executive power but can only be removed by the President for cause.

Seila Law argued that the CFPB's structure violates the Constitution's separation of powers because the agency is headed by a single director who exercises substantial executive power but can only be removed by the President for cause.

The court rejected Seila Law's argument, first holding that the CFPB exercised quasilegislative and quasi-judicial powers, not purely executive powers. The CFPB's for-cause removal restriction was a permissible means of insulating the CFPB from Presidential control. The court further held that, because of the CFPB's quasi-legislative and quasi-judicial roles, Congress could use the for-cause restriction to ensure that the CFPB acted independently of the President's will.

Second, the court held that the substantial executive power wielded by the director was not dispositive. The court relied on the Supreme Court opinion in Free Enterprise Fund v. Public Company Accounting Oversight Board, analogizing the for-cause restriction for the Director of the CFPB to the for-cause restriction for the Commissioners of the SEC who wielded substantial executive power. Accordingly, it was not unconstitutional to require for-cause removal of an agency head who wielded substantial power.

Lastly, the court made no distinction between multi-member and single-individual leadership structures. Thus, it was not an issue that the CFPB was headed by a single individual.

CALIFORNIA SUPREME COURT REJECTS CLASS-CERTIFICATION "ASCERTAINABILITY" REQUIREMENT

Noel v. Thrifty Payless, Inc., ___P.3d___ (Cal. 2019).
https://www.courts.ca.gov/opinions/documents/S246490.PDF

FACTS: Plaintiff-Appellant, James Noel purchased an inflatable pool from a Rite Aid drugstore chain location ("Rite Aid"). A picture that appeared on the packaging of the pool suggested that it was larger than reality. Noel alleged that his purchase of the pool was influenced by this picture. Noel brought a putative class action against Defendant-Appellee Thrifty Payless, Inc., the operator of Rite Aid, for violating the Consumers Legal Remedies Act, the Unfair Competition Law, and the False Advertising Law. The trial court denied class certification, finding that Noel had provided no evidence on how the class could be ascertained, as required by California's class action rule. The California Court of Appeal affirmed the trial court's decision. Noel appealed.

HOLDING: Reversed and remanded.

REASONING: Noel argued that he had no obligation under California's class action rule to offer evidence that there were means of identifying the individual members of the class he proposed.

The court accepted Noel's argument for two reasons. First, the court reasoned that a class is ascertainable when it is defined in a way that is sufficient to allow a member of the proposed class to identify himself or herself as having a right to recover. Because Noel's proposed class definition created no ambiguity as to who was included within it and who would be bound by its outcome, the court found that the class was ascertainable.

Second, the court reasoned that the trial and appellate courts' concerns with providing evidence reflecting how the members of the class could be individually identified and contacted were irrelevant to the issue of ascertainability. Because providing a means of identifying and contacting members of a class is a distinct issue from whether a class might exist, the court found that the trial court abused its discretion when it found that no ascertainable class existed.

FEE-SHIFTING ATTORNEY'S FEES AWARD NOT INCREASED BY "RISK"

In Re The Home Depot Inc., Customer Data Sec. Breach Litig., ___F.3d___ (11th Cir. 2019).
https://www.leagle.com/decision/infco20190725065

FACTS: Following a data breach at The Home Depot Inc., the information for tens of millions of credit cards was stolen, and a class of banks who issued the cards ("Banks") sued Home Depot to recover their resulting losses. Home Depot settled with the class and agreed to pay the reasonable attorney's fees of Class Counsel. The agreement specified that the attorney's fees would be paid separate from and in addition to the class fund, but the parties left the amount of those fees undetermined. The trial court awarded attorney's fees to Class Counsel using the lodestar method, finding Class Counsel's hours to be reasonable and applying a multiplier of 1.3 to account for the risk the case presented Both

sides appealed. Home Depot appealed.
HOLDING: Vacated and remanded.
REASONING: Home Depot argued that the trial court abused its discretion by applying a multiplier. Home Depot based its argument on Supreme Court precedent outlining the use of multipliers in statutory fee-shifting cases.

The court accepted Home Depot's argument, holding that the trial court abused its discretion in applying the multiplier to the lodestar amount. The court based its reasoning on *Perdue v. Kenny A. ex rel. Winn*, in which the Supreme Court held that risk was not an appropriate basis for enhancing an attorney's fee in statutory fee-shifting cases because most of the factors used to justify an enhancement were already subsumed in the lodestar, resulting in a windfall if they were to count them again with a multiplier. The court reasoned it to be just as unreasonable to double-count these factors in a contractual fee-shifting case as it was in a statutory fee-shifting case.