

Even a Worldwide Pandemic Is No Excuse For Blowing A Class Certification Deadline!

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For years, federal courts in California have been inundated with wage and hour class actions. Because these cases often clogged district court dockets for months (and, sometimes, even years) on end, the Central District of California issued the former Local Rule 23-3, which set a 90-day deadline to file a motion for class certification from the filing of a complaint in or removal of an action to federal court. In 2018, the Ninth Circuit invalidated the 90-day deadline, but judges continue to manage their dockets by imposing shorter than average deadlines to keep cases moving. And, as a recent Central District Judge's order demonstrates, these deadlines are firm, *even during the COVID-19 pandemic*.

On July 22, 2020, Judge John F. Walter [issued an order](#) granting Denny's Inc.'s motion to strike plaintiffs Myra Deleon and Karla Jiminez's ("Plaintiffs'") class allegations. Plaintiffs had filed their putative wage and hour class action in California Superior Court on October 28, 2019, and Denny's removed it to federal court on February 3, 2020. Approximately a month later, the District Court issued a Scheduling Order requiring Plaintiffs to file their motion for class certification 120 days after removal—*i.e.*, by June 2, 2020. When Plaintiffs failed to meet that deadline, Denny's filed a motion to strike their class allegations.

In arguing that their failure to meet the deadline constituted “excusable neglect,” Plaintiffs’ counsel invoked what amounted to a the “dog ate my homework” argument, with a COVID-19 angle: They claimed that the staff member responsible for calendaring deadlines had been on a leave of absence and, due to COVID-19 shelter-in-place orders, their office staff did not discover the issue because all support staff had been furloughed. However, Denny’s presented evidence that the employee’s leave actually began eight days after the Court’s Scheduling Order, which was issued more than two weeks before the shelter-in-place orders that purportedly triggered staff furloughs. The Court also noted that Plaintiffs’ counsel were ultimately responsible for managing their deadlines—and could not get away with simply delegating their obligations to furloughed (non-attorney) staff. The Court also based its decision on the facts that Plaintiffs’ counsel failed to propound “even the most basic discovery requests” and had served untimely responses to Denny’s discovery—presumably based on the mistaken belief that COVID-19 could be used as an excuse. The Court similarly rejected any argument that a lack of familiarity with the Local Rules constituted a valid reason for missing the deadline.

Ultimately, Judge Walter’s order is a reminder of the importance of diligent lawyering, including proper calendaring of deadlines even in the time of a pandemic! And, it is a clear indication that, in the absence of truly extenuating circumstances, even COVID-19 is not a “get out of jail free” card.

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- **Anthony J. Oncidi**
Partner
- **Philippe A. Lebel**
Partner