

DOJ to Take Closer Look at Fairness of Proposed Class Action Settlements

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For the first time in more than a decade, the U.S. Department of Justice (DOJ) has exercised its authority under the Class Action Fairness Act (CAFA) to file an objection to a proposed settlement of a consumer class action. The DOJ's filing in [Cannon v. Ashburn Corp. d/b/a Wines 'Til Sold Out](#) was made just one day after outgoing U.S. Associate Attorney General Rachel Brand [gave a speech](#) in which she stated that the DOJ intends to become much more active in reviewing proposed class action settlements to ensure that they "provide real recovery to class members and not just big payouts to plaintiffs' lawyers."

Under CAFA, class action defendants must notify the U.S. Attorney General and state attorneys general of a proposed class action settlement at least 90 days before a final approval hearing, and these officials can then express their views regarding the settlement to the court. Rachel Brand stated in her speech that although DOJ has received CAFA notices regarding over 700 class settlements each year since CAFA's enactment in 2005, it had only weighed in on two settlements before its filing last week in the *Cannon* case.

Cannon involves allegations that the defendant falsely inflated the purported original prices of wines in order to create the false impression it was providing steep discounts. In the proposed settlement, class members would be eligible for credits of up to \$2 per bottle on future purchases. Plaintiffs' lawyers claim that the total monetary value of the settlement credits is \$10.8 million and are seeking \$1.7 million in attorneys' fees.

The DOJ has urged the District Court to reject the settlement because it "provides extremely limited value to consumers and yet seeks to transfer a massive \$1.7 million windfall payment to plaintiffs' counsel." The DOJ further argues that "[e]ither plaintiffs' claims are strong, in which case a settlement that has meaningful value to the class is required, or plaintiffs' claims are meritless, in which case their counsel is not entitled to a massive fee."

In light of the Rachel Brand speech and the DOJ's objection to the proposed settlement in the *Cannon* case, parties to class actions can anticipate [much greater scrutiny](#) of class settlements by the DOJ going forward.

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