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WLF URGES NINTH CIRCUIT TO UPHOLD RULE 23'S REQUIREMENTS

(In re JUUL Marketing Practices Litigation)

“The District Court’s order would allow virtually any class to be certified, even if the plaintiffs’ alleged injury was not caused by the defendant.”

—John Masslon, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the U.S. Court of Appeals for the Ninth Circuit to reverse a class-certification order in an important Racketeering Influenced and Corrupt Organizations Act case. In an amicus brief, WLF argues that the U.S. District Court for the Northern District of California’s decision contravenes the U.S. Constitution, the Federal Rules of Civil Procedure, and the Federal Rules of Evidence.

The case arises from JUUL Labs’s alleged deceptive marketing of its vaping products. Plaintiffs contend that Altria used JUUL Labs to misrepresent the safety of JUUL products, which caused them to start vaping. As dozens of these cases were filed around the country, the Judicial Panel on Multidistrict Litigation created a multi-district litigation in the Northern District of California. Plaintiffs eventually moved for class certification, and the District Court granted that motion. Altria has now asked the Ninth Circuit to reverse the class-certification order.

In its brief supporting Altria, WLF explains that for a class to be certified, common issues of law and fact must predominate over individualized questions. Yet the District Court certified two classes that include years in which the plaintiffs admit that Altria had no influence over JUUL Labs. It is impossible for common questions to predominate in these circumstances. It is also a reason that the District Court lacked subject-matter jurisdiction to grant the class-certification motion.

WLF’s brief also explains why the District Court erred by not applying the full Rule 702 analysis for the plaintiffs’ experts’ testimony. As five other courts of appeals recognize, recent Supreme Court precedent and the text of Rule 23 require that a district court make admissibility decisions before certifying a class. But the District Court held that cross-examination of the expert witnesses suffices to protect Altria’s interest.

Celebrating its 46th year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

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