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When is a coupon not a coupon under section 1712(e) of CAFA?

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Takeaway: The law surrounding "coupon" settlements under 28 U.S.C. § 1712 of the Class Action Fairness Act ("CAFA") continues to evolve. Under section 1712(e), courts must: (1) apply "heightened scrutiny" when approving settlement agreements involving coupons; and (2) assess attorneys' fees based on the actual redemption rate of the coupons, rather than based on the overall value of the settlement. In 2015, the Ninth Circuit developed a three-part test for identifying a "coupon": (1) whether class members have to pay out of pocket to take advantage of the award; (2) whether the award is valid only "for select products or services," and (3) whether the award is transferrable or expires. *In re Online DVDRental Antitrust Litig.*, 779 F.3d 934 (9th Cir. 2015),

The Court of Appeals applied that test in *McKnight v. Hinojosa,* 54 F.4th 1069 (9th Cir. 2022), which involved a challenge to Uber's "safety fee" and resulted in a settlement that included a tiny credit to affected users' accounts. The average credit was very small—only about $1.07 (with many class members receiving $0.35 or less)—and could only be used on the Uber platform (Uber or Uber Eats). But after applying the *Online DVD* three-part test, the appellate court found that the parties had not entered a coupon settlement, reasoning that the first and third factors cut against finding a coupon settlement even if the second factor supported a coupon settlement. The determining factor in *McKnight* appears to have been the availability of a cash alternative: class members could opt to receive either the credit or the *entire* credit amount in cash.

After *McKnight*, cash *and* credit settlements seem to qualify as coupon settlements under section 1712(e), but not cash *or* credit settlements. *Compare In re Easysaver Rewards Litig.*, 906 F.3d 747, 757-58 (9th Cir. 2018) (part cash, part store credit settlement was coupon settlement under section 1712(e)), *and Chambers v. Whirlpool Corp.*, 980 F.3d 645, 655 (9th Cir. 2020) (finding coupon settlement where rebate portion of award could not be redeemed for cash), *with McKnight*, 54 F.4th 1069 (cash or credit option not coupon settlement under section 1712(e)).