

JUL 22 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SCOTT BONLENDER; et al.,

Plaintiffs - Appellees,

v.

AMERICAN HONDA MOTOR CO.,
INC.,

Defendant - Appellant.

No. 07-55258

D.C. No. CV-06-01305-MLR/PLA

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Manuel L. Real, District Judge, Presiding

Argued and Submitted June 6, 2008
Pasadena, California

Before: KOZINSKI, Chief Judge, ALDISERT** and BEA, Circuit Judges.

American Honda Motor Co., Inc. appeals the district court's order certifying
a class in four statewide putative class actions consolidated for pretrial purposes by

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

** The Honorable Ruggero J. Aldisert, Senior United States Circuit
Judge for the Third Circuit, sitting by designation.

the Judicial Panel on Multidistrict Litigation. We have jurisdiction pursuant to 28 U.S.C. § 1292 and Federal Rule of Civil Procedure 23(f), and we vacate and remand.

Honda's Rule 23(f) petition was not filed within 10 days of the district court's June 29, 2006 class certification order. Nevertheless, the petition was timely, because it was filed within 10 days of the district court's October 16, 2006 minute orders, which resolved a genuine ambiguity in the original order. *See FTC v. Minneapolis-Honeywell Regulator Co.*, 344 U.S. 206, 211–12 (1952).

The district court abused its discretion by *sua sponte* certifying a nationwide class without making any findings regarding Rule 23's requirements for class certification. *See Price v. Lucky Stores, Inc.*, 501 F.2d 1177, 1179 (9th Cir. 1974), *disapproved on other grounds in Gardner v. Westinghouse Broadcasting Co.*, 437 U.S. 478, 479 n.2 (1978). Among other things, the district court failed to analyze whether variations in applicable state law defeated Rule 23(b)(3)'s predominance requirement. *See Lozano v. AT & T Wireless Servs., Inc.*, 504 F.3d 718, 728 (9th Cir. 2007).

Accordingly, we vacate the district court's June 29, 2006 class certification order, and the two October 16, 2006 minute orders modifying the class

certification order, and remand for further proceedings consistent with this decision.

We further order that the case be reassigned to a different district court judge on remand. *See generally United States v. Reyes*, 313 F.3d 1152, 1160 (9th Cir. 2002) (“[A]damancy in erroneous rulings may justify remand to different judge.”) (citation omitted).

VACATED and REMANDED.