



CLASS ACTION LAW SUITS:

Understanding How to Challenge the
Certification of a Class

What Makes A Class?

- Federal Elements (FRCP 23)
 - Numerosity
 - Commonality
 - Typicality of claims
 - Adequacy of Representation

The Elements Analyzed

(1) Numerosity

- What's the lucky number? There is no set number.

(2) Commonality,

- Are the questions of law or fact common to the members?

(3) Typicality of Claims,

- Are the injuries similar?

(4) Adequacy of Representation

- Adequacy of Class Representative
 - Does the class representative have common interests with the unnamed members? And
 - Will the representative vigorously pursue the class interest?
- Adequacy of Counsel
 - Is counsel qualified?

Common Questions – “Predominance”

The predominance element is not met if each class member must be required to individually litigate numerous and substantial questions to determine his or her right to recover.

In re: Dalkon Shield IUD Products Liability Litigation 693 F.2d 853, 856 (9th Cir. 1982).

Class certification should be denied where “the main issues in a case require the separate adjudication of each class member's individual claim or defense.”

Zinser v. Accufix Research Institute, Inc., 253 F.3d 1180, 1189 (9th Cir. 2001).

Common Questions – “Predominance” (Cont.)

The Supreme Court has found that if the Court cannot resolve all putative class members' claims “in one stroke” based on a single body of evidence, class certification should be denied.

Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, ____ (2011).

Class Wide Restitution

“[T]he remedy the plaintiff seeks must be truly ‘restitutionary in nature’--that is, it must represent the *return* of money or property the *defendant acquired* through its unfair practices.”

Shersher v. Super. Ct., 154 Cal.App.4th 1491, 1498 (2007).

Standing

- The proposed class suffers from a constitutional defect. Article III precludes recovery without standing by reason of an injury traceable to the defendant's alleged misconduct. No class can include persons without Article III standing. A class in federal court must be “defined in such a way that anyone within it would have standing,” meaning they suffered an injury-in-fact caused by the defendant’s conduct in a UCL cause of action.
- See e.g. *Denney v. Deutsche Bank AG*, 443 F.3d 253, 264 (2d Cir. 2006).

Typical and Adequate Representatives

Plaintiffs must show that their claims are “typical” of the class and that they will serve as “adequate representatives” of the class to obtain class certification.

See General Tel. Co. of Southwest v. Falcon, 457 U.S. 147, 156 (1982);
Valentino v. Carter-Wallace, Inc. 97 F.3d 1227, 1234 (9th Cir. 1996).

To meet the typicality requirement, the representative plaintiffs must have claims that are similar to those of the class. The representative plaintiffs have the burden to demonstrate adequacy and they must comply with their fiduciary duty to protect the interests of the class members.

Crawford v. Honig, 37 F.3d 485, 487 (9th Cir. 1994);
Berger v. Compaq Computer Corp., 257 F.3d 475, 481(5th Cir. 2001).

Class Action Fairness Act (CAFA)

District Courts have Original Jurisdiction of matters involving at least 100 class members, at least one plaintiff is diverse from any defendant, and the aggregate in controversy exceeds \$5,000,000.

- CAFA cases are not subject to the 1-year statute of limitations
- A stipulation not to seek damages over \$5,000,000 is not binding on other class members.

Defeating Class Certification

- Members of the class
- Plaintiff Lacks Standing
- No Common Proof
 - Liability depends on individualized proof
- Plaintiff's Suffer Individualized Damages

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