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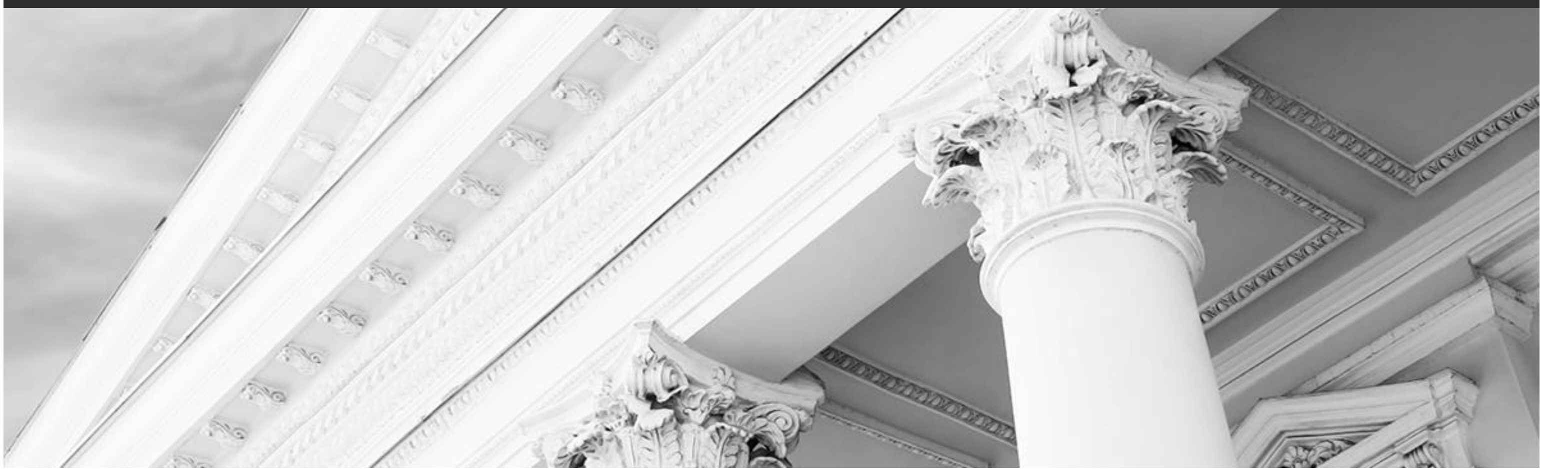

This GT Newsletter summarizes recent class-action decisions from across the United States.

Highlights include:

- In a non-CAFA case, U.S. Supreme Court holds that post-removal amendment eliminating federal questions required remand of remaining state-court claims.
- In a Video Privacy Protection Act class action, court in the First Circuit denies certification because identifying putative class members was administratively infeasible.
- Second Circuit parses enforceability and scope of various arbitration provisions in the context of antitrust claims, requiring arbitration of certain claims based on a delegation provision, while refusing to order arbitration as to other claims that were not sufficiently related to the agreement containing the arbitration provision.
- Second Circuit affirms dismissal of New York consumer fraud claims challenging health and wellness statements based on sugar content because the amount of added sugar was listed on the label.
- Third Circuit rejects class certification based on putative class member declarations attesting to individualized circumstances that precluded predominance.
- Fourth Circuit emphasizes that the mere risk of harm is insufficient to show putative class member standing under *Transunion*.
- Eighth Circuit issues decisions addressing class certification, one permitting certification in a contract case, while denying certification in another because reliance and causation were individualized issues.
- Ninth Circuit affirms denial of motion to compel arbitration in the context of a modification to a continuing relationship based on defendant's failure to comply with Restatement of the Law, Consumer Contracts, including an opt-out provision.

U. S. Supreme Court

Lackey v. Stinnie, 145 S. Ct. 659 (2025)

Award of preliminary injunction did not render plaintiffs "prevailing part[ies]" eligible for attorney's fees under 42 U.S.C. § 1988(b).

Virginia drivers whose licenses were suspended due to their failure to pay court fines brought a class action suit against the commissioner of the Virginia Department of Motor Vehicles under 42 U.S.C. § 1983, arguing that the Virginia statute requiring suspension of their licenses was unconstitutional. The district court preliminarily enjoined the commissioner from enforcing the statute. But before the case reached final judgment, the Virginia General Assembly repealed the challenged law, rendering the action moot. The question presented to the Supreme Court was whether the drivers were "prevailing part[ies]" who qualify for an award of attorney's fees under § 1988(b).

The Supreme Court held that, because the drivers gained only preliminary injunctive relief before the action became moot, they do not qualify as "prevailing part[ies]" eligible for attorney's fees under § 1988(b). The Court reasoned that "[i]n awarding preliminary injunctions, courts determine if a plaintiff is likely to succeed on the merits—along with the risk of irreparable harm, the balance of equities, and the public interest," and because preliminary injunctions do not conclusively resolve the rights of parties on the merits, they do not confer "prevailing party" status. The Supreme Court also explained that this conclusion served the interests of judicial economy by reducing the risk of "a second major litigation" over attorney's fees.

Royal Canin U.S.A., Inc. v. Wullschleger, 604 U.S. 22, 145 S. Ct. 41 (2025)

Post-removal amendment can divest a federal court of jurisdiction.

A consumer brought a putative class action in Missouri state court against manufacturer of prescription dog food, alleging violations of the Federal Food, Drug, and Cosmetic Act (FDCA), Missouri Merchandising Practices Act (MMPA), and state antitrust law. The manufacturer removed the case, and the district court remanded to state court. On the manufacturer's petition for review, the Eighth Circuit vacated, finding that, although the consumer did not plead independent claims under FDCA, federal-question jurisdiction existed because the meaning of relevant FDCA provisions was thoroughly embedded in, and integral to, success of the consumer's state-law claims. The consumer then amended, so the complaint no longer mentioned or asserted claims under the FDCA, and then requested remand to state court. After denying remand, the district court dismissed the complaint on the merits. The consumer appealed, and the Eighth Circuit vacated and ordered remand to state court. The Supreme Court granted certiorari to resolve a circuit split regarding whether a post-removal amendment can divest a federal court of jurisdiction.

In a unanimous opinion, the Supreme Court held that the post-removal amendment of the complaint to remove all federal questions deprived the district court of supplemental jurisdiction over remaining state-law claims. The Court held that with the loss of federal-question jurisdiction, a federal court loses its supplemental jurisdiction over the state-law claims.

First Circuit

Bowers v. Russell, 22-cv-10457, 2025 WL 342077 (D. Mass. Jan. 16, 2025)

The District of Massachusetts concludes that defenses did not preclude class certification.

Employees of Russelectric, Inc. participated in an employee stock ownership plan as a retirement benefit. When the company's founder passed away, the board of directors terminated the employee stock ownership plan and ultimately sold the company. Plaintiffs, on behalf of themselves and a putative class, alleged that the board of directors undervalued the shares at termination. Plaintiffs sought to certify a class of 394 participants and beneficiaries. Defendants opposed class certification because there would be individualized issues as to whether and when the employees signed releases to receive their claw-back payment, when the employees learned of the alleged underpayment, and whether severance agreements barred the claims.

The District of Massachusetts concluded that the putative class had "plenty in common" to warrant certification. All class members participated in the same employee stock ownership plan, received a pro rata share of the payment the board authorized and received the alleged underpayment for their shares. The court concluded that any challenge defendant makes to actual knowledge of any alleged underpayment would not lead to individualized inquiries. Under the Employment Retirement Income Security Act of 1974 (ERISA), "actual knowledge" of a breach is a high bar that requires a plaintiff to know "the essential facts of the transaction or conduct constituting the violation." The record showed that any communications a participant may have received before the lawsuit would not have indicated that the valuation of the unallocated shares was tainted or that significant bonuses were deducted from the sale price itself. Thus, the record did not demonstrate that actual knowledge was likely to dominate the litigation.

Defendant also challenged whether the severance agreements signed barred them from bringing the claim. According to the court, the plaintiffs' severance agreement did not make them inadequate. The court would use its authority to place class members with potentially barred claims in a separate subclass or exclude them from the class altogether if the evidence later showed that an affirmative defenses, like the severance agreement, would likely bar the claims.

Therrien v. Hearst Television, Inc., 23-cv-10998, 2025 WL 509454 (D. Mass. Feb. 14, 2025)

The District of Massachusetts concludes that individual testimony to identify individual class members would be "administratively infeasible," preventing certification.

Plaintiff claimed that Hearst unlawfully disclosed his personally identifiable information to third parties in violation of the Video Privacy Protection Act. The plaintiff sought to certify a class of all persons in the United States who downloaded one of the defendant's mobile applications on to their mobile phone, enabled location permissions for the application for at least 250 sessions over a period of at least one month, and watched at least 10 videos between May 5, 2021, and April 15, 2024.

Hearst broadcasts local news and weather programming, offering station-specific mobile phones applications. These applications provide live news, weather feeds, and articles that may contain no video content, a single video, or multiple videos on the application. When subscribers install the application, the user is given the option to be placed on an email list to receive updates related to the applications and access to permission location services. When the application is first installed, it is assigned an ID and, if permitted, geolocation data is sent to a third-party that is associated with the geolocation data, content ID, and a video counter.

The court concluded that the class was not readily ascertainable based on objective criteria and denied the motion for class certification. Identifying class members would require multiple steps, including individual testimony. First, expert analysis of geolocation datapoints, third-party evaluation coupled with manual validation of the resulting names, and then testimony from each putative class member confirming that the information disclosed is actually their information. Such testimony on behalf of the entire class would be administratively infeasible and potentially violate defendant's due process rights. As an example, geolocation data may point to multi-unit residences with hundreds of occupants. The objective data would be unable to identify a specific unit without the aid of testimony. It would be nearly impossible to distinguish the putative class member from other users. This would lead to individual issues predominating over common ones.

Second Circuit

Risley v. Universal Navigation Inc., No. 23-1340-CV, 2025 WL 615185 (2d Cir. Feb. 26, 2025)

Court affirms dismissal of federal securities claims but vacates dismissal of state-law claims when plaintiffs properly pled original diversity jurisdiction under CAFA.

Plaintiffs brought a nationwide class action against developers of automated computer codes that facilitate the transfer of cryptocurrency on a decentralized exchange, asserting federal securities law claims and state-law claims for the alleged fraudulent conduct of third parties on that exchange. The district court dismissed plaintiffs' amended complaint.

On appeal, the Second Circuit affirmed the dismissal of plaintiffs' claims under the Securities Act of 1933 (Securities Act) and the Securities Exchange Act of 1934 (Exchange Act). As to the Securities Act claim, the court held that plaintiffs failed to adequately allege defendants either were the sellers of the allegedly fraudulent tokens at issue or that, for their own financial gain, they actively solicited the sale of the tokens to plaintiffs. As for the Exchange Act claim, the Second Circuit agreed with the district court that it "defie[d] logic" that a drafter of a computer code could be held liable under the Exchange Act for a third-party user's misuse of the platform.

But the Second Circuit held that the district court erred in dismissing the state-law claims under the doctrine of supplemental jurisdiction. The court found plaintiffs properly pled original diversity jurisdiction over those claims under the Class Action Fairness Act (CAFA). Thus, the court vacated and remanded for the district court to consider the state-law claims.

Davitashvili v. Grubhub Inc., No. 23-521-CV, 2025 WL 798378 (2d Cir. Mar. 13, 2025)

Court denies motion to compel arbitration of antitrust claims, holding the claims are not related to plaintiffs' "access and use of" defendant's service.

Consumers brought a putative class action against a food-ordering platform, alleging violations of federal and state antitrust laws based on no-price competition agreements with restaurants that fixed restaurant food prices so that consumers paid higher prices than they would have without the no-price competition agreements. The platform and services moved to compel arbitration based on arbitration clauses in their respective "Terms of Use." The district court denied the motion to compel arbitration. First, the district court determined that the plaintiffs agreed to Uber's and Postmates's Terms of Use, but not Grubhub's. Next, the district court held that the arbitration clauses' enforceability was a question for the court, rather than the arbitrator, to resolve. The district concluded that the arbitration clauses in defendants' Terms of Use did not apply to plaintiffs' claims because the claims "lacked any nexus to the agreement containing the clause."

The Second Circuit held that the district court erred in ruling that Grubhub failed to establish that it formed an agreement to arbitrate with plaintiffs, because Grubhub's web and mobile application interfaces gave reasonable notice of the arbitration provision, and thus there was a valid agreement to arbitrate between plaintiffs and Grubhub. Yet the Second Circuit held that the district court correctly ruled that the threshold question of arbitrability for plaintiffs' claims against Grubhub was for the court to decide because Grubhub's arbitration clause clearly and unmistakably stated that "issues related to the scope, validity, and enforceability of this Arbitration Agreement are for a court to decide." The Second Circuit also agreed that Grubhub's arbitration clause did not apply to plaintiffs' antitrust claims because plaintiffs' claims were not related to their individualized use of Grubhub's website or mobile application.

In contrast, the Second Circuit found that, for Uber and Postmates, the district court erred in denying the motion to compel arbitration based on a delegation provision. The court thus held that plaintiffs' claims against Uber and Postmates should be sent to an arbitrator to determine whether those claims are arbitrable.

Cudjoe v. Bldg. Indus. Elec. Contractors Ass'n, No. 24-921, 2025 WL 655580 (2d Cir. Feb. 28, 2025)

Allegation that fund trustees breached fiduciary duties and caused class members to lose wages was enough to allege injury-in-fact.

Plaintiff filed a putative class action, alleging that the trustees of benefit funds in which he participated breached their fiduciary duties by approving and paying themselves over $1 million in compensation from fund assets. Plaintiff alleged that arrangement resulted in "significant damages to Union members' benefits" and violated the Employment Retirement Income Security Act of 1974 (ERISA), among other statutes. The district court dismissed without leave to amend, holding that plaintiff failed to establish Article III standing. Plaintiff appealed only as to his monetary claims under ERISA involving his interest in the fund.

The Second Circuit vacated the dismissal, holding that plaintiff's complaint plausibly alleged a concrete injury. The court based its holding on plaintiff's allegation that the trustees amended the trust agreements to allow for themselves to be paid out of plan assets, even though they did not perform compensable services with a fair market value anywhere near the level of the compensation they received. Plaintiff further alleged that, had the money been properly invested, the funds would have earned millions more, and class members would have received either greater cash wages or benefits. The court found these allegations of financial harm was plausible enough to give rise to an injury-in-fact.

Bates v. Abbott Laboratories, No. 24-919-CV, 2025 WL 65668 (2d Cir. Jan. 10, 2025)

Court affirms dismissal of NY GBL §§ 349 and 350 claims, holding that health and wellness statements were not plausibly alleged to be false or misleading due to sugar content, when the labels expressly listed and made no claims about product's sugar content.

A former consumer of defendant's Ensure products alleged that the use of health and wellness statements on the labels affixed to its Ensure nutrition shakes and drinks were false and misleading because the high amount of added sugar in the products is harmful to an individual's health. The district court dismissed the New York General Business Law (GBL) §§ 349 and 350 claims, holding that plaintiff had failed to state a plausible claim that the labels are false or misleading.

On appeal, the Second Circuit affirmed dismissal. The court held that, because the labeling statements about the health and nutrition benefits made no claim at all about sugar, and each of the labels expressly listed the sugar content on the nutrition facts panel, the district court correctly held that plaintiff failed to plausibly allege that any of the challenged statements are false or misleading to a reasonable consumer.

Zappia v. Myovant Scis. Ltd., No. 24-253-CV, 2025 WL 338351 (2d Cir. Jan. 30, 2025)

Plaintiff failed to plausibly allege that statements about independence of law firm retained as counsel for a transaction were materially false or misleading.

Minority shareholder brought a securities class action, with claims arising out of representations made in a proxy statement defendant disseminated to shareholders in connection with a sale of its minority shares to its majority shareholder. The defendant's board of directors formed a special committee to evaluate the potential transaction and retained a law firm as its counsel. Plaintiff alleged the representations in defendant's proxy statement related to this purchase materially misrepresented the law firm's independence, because the law firm represented certain of the majority shareholder's parent group entities in unrelated matters. The district court granted defendants' motion to dismiss, holding that the statements on the law firm's independence were not materially false or misleading.

On appeal, the Second Circuit affirmed the district court's judgment. The court held that plaintiff failed to plausibly allege facts supporting an inference that the law firm's advice in the transaction at issue could have been impacted because of its representation of other entities in the majority shareholder's group. The court also found that plaintiff's allegations describing the pre-transaction negotiations undermined the plausibility of any assertion that the law firm could be perceived to have influenced the negotiations so the defendant received a depressed share price to benefit the firm's other clients.

Manchin v. PACS Grp., Inc., No. 24-CV-8636 (LJL), 2025 WL 460775 (S.D.N.Y. Feb. 11, 2025)

District court holds pension fund plaintiff was more adequate lead plaintiff in securities class action with competing motions for appointment as lead plaintiff.

In a class action securities case against operator of senior care facilities, two plaintiffs submitted competing motions seeking appointment as lead plaintiff. One plaintiff was an individual, and the other was a pension fund. The district court analyzed the applications under framework of the Private Securities Litigation Reform Act of 1995 (PSLRA).

First, the district court considered that the PSLRA established a presumption in favor of the lead plaintiff applicant with the largest financial interest in the relief the class sought. The court held the pension fund had suffered a greater loss and was thus presumed to be a more adequate lead plaintiff so long as it satisfied the typicality and adequacy requirements. The court then found that the pension fund satisfied those requirements, as its injuries were of the same kind and arose out of the same facts as that of other class members, and its large loss also supported a prima facie case of adequacy. The court also found that the pension fund had retained counsel highly experienced in securities class actions, and there was no sign that the pension fund had interests that were antagonistic to other class members.

The district court rejected the individual plaintiff's arguments that the pension fund lacked standing to bring claims related to the defendant's initial public offering (IPO). The court held this argument lacked merit, as there was no requirement that the court select as lead plaintiff only a movant with standing to assert every possible claim against every defendant. The court also held that the PSLRA allowed a lead plaintiff to construct a complaint that names a plaintiff who purchased IPO shares, even if that named plaintiff is not appointed co-lead plaintiff.

The district court also rejected the individual plaintiff's remaining arguments, which were (1) that the pension fund did not identify other plaintiffs with standing to allege IPO claims; (2) that the pension fund might select an additional plaintiff who would conflict with other claims; (3) that if the non-IPO claims are dismissed the action would be without a lead plaintiff; and (4) that the pension fund's challenge to the lead plaintiff's appointment indicated the desire to exclude a representative with the capacity to equally advance the IPO claims. The court held that the individual plaintiff did not demonstrate that the pension fund was an inadequate lead plaintiff or that appointing the individual plaintiff as co-lead plaintiff would serve the interests of the class.

Third Circuit

Steven A. Conner, DPM, P.C. v. Fox Rehab. Services, No. 23-1550, 2025 WL 289230 (3d Cir. Jan. 24, 2025)

Third Circuit affirms denial of class certification for failure to satisfy predominance requirement.

Defendant is a private healthcare provider that offers physical, occupational, and speech therapy services to patients in their homes. Defendant primarily receives patients through referrals from other medical providers and communications with referral sources via fax.

Plaintiff is a private physician who received eight faxes from defendant over a three-month period. Before receiving the faxes, plaintiff had never been in contact with defendant and had never referred patients to defendant. Plaintiff brought a putative class action against defendant under the Telephone Consumer Protection Act (TCPA), contending the faxes constituted unsolicited advertisements.

Plaintiff sought to certify a class consisting of all persons and businesses who received faxes from defendant on certain dates. In opposition, defendant provided declarations from 32 putative class members who claimed they voluntarily provided their fax numbers to defendant, that they did not perceive the faxes they received from defendant to be advertisements, and, in any event, that defendant had permission to send them advertisements. The district court denied the class certification motion for failure to satisfy the ascertainability and predominance requirements. Plaintiff appealed. And the Third Circuit affirmed.

First, the court found no error in the district court's decision to close precertification discovery without compelling certain discovery plaintiff wanted. The court recognized that, in determining whether the record for certification is adequate, the district court "must balance the need to make a decision that is careful and well-informed with the requirement that its decision must not be unjustifiably delayed."

Second, the Third Circuit ruled that the district court erred in concluding that plaintiff's proposed class failed to satisfy the ascertainability requirement. The district court's decision was based on its finding that plaintiff's proposed methodology for ascertaining class members—reviewing defendant's vendor's transmission logs—was neither administratively feasible nor reliable. But the Third Circuit found the district court had misinterpreted the class definition as requiring proof of successful transmission. The Third Circuit found that the class was readily ascertainable through review of the transmission logs and identifying faxes that were successfully transmitted.

Third, the Third Circuit agreed that the predominance requirement was not met, as plaintiff's "putative class would require thousands of mini trials on the individualized issue of whether the faxes had been unsolicited." The Third Circuit deferred to the district court's findings that the declarations defendant submitted in opposition to the motion showed that defendant had "obtained prior express consent through highly individualized methods of communication, rendering it impossible to resolve the unsolicited element" of plaintiff's TCPA claim "in the aggregate."

Cheesman v. Capital Health Sys. Inc., No. 23-2882, 2025 WL 854705 (3d Cir. Mar. 13, 2025)

Third Circuit makes clear that citizenship under CAFA is determined as of the complaint's filing.

Plaintiffs – patients of defendants Capital Health and Valley Health (both New Jersey hospitals) – each sued their hospital in New Jersey Superior Court, alleging that the hospitals' disclosure of their personal health information on social media violated their privacy rights. Each hospital-defendant removed the case against it to federal court based on the federal officer removal statute, contending that, because plaintiffs' claims arose from the hospitals' compliance with the HITECH Act's incentive program (which promoted adopting electronic health records systems) they were acting under the United States, its agencies, or its officers. Valley Health's removal petition was also based on the Class Action Fairness Act (CAFA).

Both plaintiffs filed remand motions, which were granted. Defendants appealed and the Third Circuit affirmed.

As for Valley Health's CAFA argument, the Third Circuit held that Valley Health failed to satisfy CAFA's minimal diversity requirement, because both plaintiff and Valley Health were New Jersey citizens and the complaint's class definition covered only New Jersey citizens. Valley Health argued that the class definition could include putative class members who have since become citizens of other states, but the court rejected that argument because citizenship of the members of the proposed class is determined as of the complaint's filing. See 28 U.S.C. § 1332(d)(7). Thus, the court found that "any Valley Health patient who was once a New Jersey citizen but took up citizenship elsewhere by the time the complaint was filed is necessarily excluded from the proposed class."

Fourth Circuit

Mr. Dee's Inc. v. Inmar, Inc., 127 F.4th 925 (4th Cir. 2025)

Fourth Circuit affirms denial of class certification in case alleging anticompetitive conduct.

Plaintiffs – purchasers of coupon processing services – sought certification in a lawsuit alleging that defendant participated in an anticompetitive conspiracy to raise coupon processing fees. Plaintiffs sought to certify two classes—one of manufacturer purchasers and another of retailer purchasers. The district court declined to certify the class of manufacturer purchasers. Plaintiffs appealed and the Fourth Circuit affirmed.

Plaintiffs offered three definitions of the manufacturer class: (1) a "fixed list class" based on a fixed list of manufacturers who paid observably higher shipping fees during the class period, (2) a "limited payer class" based on manufacturers who paid shipping fees to a competitor for at least 2.2 million coupons during the class period, and (3) a class of "all payer" manufacturers that paid shipping fees during the class period to defendants or a competitor during the class period.

The Fourth Circuit rejected the "fixed list class" because it failed to define a class at all; merely providing a list of names fails to "affirmatively demonstrate" that the proposed class satisfies Rule 23's requirements.

The Fourth Circuit also rejected the "limited payer class," finding that the definition was untethered from defendants' alleged conduct and plaintiffs' claims of harm, and impermissibly excluded more than 2,000 manufacturers.

Finally, the Fourth Circuit rejected the "all payer class," because plaintiffs had failed to demonstrate that all purported class members had suffered harm, raising Article III standing concerns.

Alig v. Rocket Mortg., LLC, 126 F.4th 965 (4th Cir. 2025)

Applying the Supreme Court's *TransUnion* decision, the Fourth Circuit finds mere risk of harm insufficient to establish class member standing.

Plaintiffs – homeowners who refinanced their home mortgage loans with defendants – brought a putative class action alleging that defendants improperly influenced appraisers by providing them with estimates of the value of plaintiffs' homes, and thereby deprived plaintiffs of the independent appraisals for which they paid, in violation of West Virginia law. The district court certified the class and the Fourth Circuit affirmed. The U.S. Supreme Court then granted defendants' petition for a writ of certiorari, vacated the Fourth Circuit's judgment and remanded the case for further consideration in light of the holding in *TransUnion LLC v. Ramirez,* 594 U.S. 413 (2022) that every class member must have Article III standing to recover individual damages.

On remand, the district court found that *TransUnion* did not change the result and reinstated its original judgment. In so holding, the district court found that each putative class member suffered a concrete harm sufficient to establish Article III standing because they paid for an independent appraisal that they never received.

The Fourth Circuit reversed, finding it was "insufficient for the plaintiffs to argue that [defendants'] inclusion of borrowers' home-value estimates on the form used to hire an appraiser created a risk that each class member would receive an inflated appraisal, which, in turn, would enhance the risk that they would wind up owing more on their refinanced mortgage loans that their homes were actually worth, which could, in turn, lead to concreate, real-world economic harm." The Fourth Circuit found that, after *TransUnion*, this risk cannot establish the concrete injury necessary for standing. The court explained, "while the plaintiffs' and the district court's theory is that injury of class members was shown because they each paid a fee for an appraisal that was tainted by the borrowers' home-value estimates and therefore was worthless, there is no evidence that the class members' appraisals were in fact tainted, rending them worthless"—a showing the Fourth Circuit found *TransUnion* requires.

Espin v. Citibank, N.A., 126 F.4th 1010 (4th Cir. 2025)

Fourth Circuit finds military service members required to arbitrate claims under the Servicemembers Civil Relief Act.

Plaintiffs – military service members – brought a putative class action against defendant, the bank that issued their credit cards, claiming that defendant improperly charged them standard civilian interest rates and fees on outstanding balances after they left active duty, in violation of the Servicemembers Civil Relief Act (SCRA) and the Military Lending Act (MLA). Defendant moved to compel arbitration under an arbitration agreement in plaintiffs' credit card agreements, which included a class-action waiver.

The district court denied certification, finding that the SCRA, which codifies the right of servicemembers to bring and participate in class actions "notwithstanding any previous agreements to the contrary," overrode the plaintiffs' preexisting arbitration agreements that waived class proceedings. The district court did not address issues relating to the MLA.

The Fourth Circuit reversed, finding that that the SCRA does not contain a clearly expressed congressional intention to override the Federal Arbitration Act (FAA)'s instruction to enforce arbitration agreements, and that the FAA bound plaintiffs to the terms of the arbitration agreement in their credit card agreements. In so holding, the Fourth Circuit relied on Supreme Court precedent that a federal statute does not override the enforcement of arbitration agreements under the FAA unless they explicitly say so, and that Congress's statutes must be "read as a harmonious whole rather than at war with one another." The Fourth Circuit thus remanded with instructions to compel the arbitration of plaintiffs' SCRA claims.

The Fourth Circuit further found that, unlike the SCRA, the MLA explicitly overrides agreements to arbitrate. Because there was a dispute between plaintiffs and defendant as to whether the MLA applied to plaintiffs' accounts, the Fourth Circuit remanded with instructions to determine whether the MLA applies and to resolve any other issues relating to the MLA claims.

Fifth Circuit

Ictech-Bendeck v. Waste Connections Bayou, Inc., No. 18-7889, 2025 WL 932772 (E.D. La. March 27, 2025)

Court declines to certify Rule 23(b)(3) class of property owners alleging nuisance absent showing of predominance and superiority.

Property owners sued the operators of the Jefferson Parish Landfill, alleging that noxious odors were a nuisance and violated Louisiana law over several decades. In a bifurcated proceeding, the court first found general causation between odors and gases emitted by the landfill that could produce plaintiffs' claimed injuries. Plaintiffs then moved for class certification, which defendants opposed.

The district court denied certification. After finding that the requirements of Rule 23(a) and the implied ascertainability requirement were satisfied, the court ruled that plaintiffs could not show predominance and superiority and also found that plaintiffs had failed to present a workable trial plan under Rule 23(c)(4). On predominance, the court ruled that differences in exposure, causation, and damages were highly individualized and predominated over common issues. These individualized issues also defeated superiority because, despite proposing subclasses, plaintiffs had failed to present a workable trial plan.

Sixth Circuit

In re Upstart Holdings, Inc. Sec. Litig., No. 2:2022cv02935, 2025 WL 934219 (S.D. Ohio March 27, 2025)

Court grants class certification to investors in securities fraud lawsuit over alleged misrepresentations about defendant's AI lending model.

Investors sued Upstart and various executives for allegedly making false and misleading statements about its AI-based lending platform, artificially inflating the company's stock price and violating federal securities laws. Plaintiffs also claimed that executives had engaged in insider trading with non-public information.

Plaintiffs moved to certify a Rule 23(b)(3) class of investors. Defendants opposed s certification, arguing that plaintiffs were atypical because some had engaged in post-class-period trading (after the alleged fraud was revealed) and profited, that some plaintiffs lacked standing to bring insider trading claims, and that individualized issues on causation and damages defeated predominance. The district court certified the class. Analyzing the record under Rule 23(a) and (b)(3), the court rejected defendants' arguments, explaining that post-class-period trading did not negate plaintiffs' injuries, profiting on some trades did not preclude a fraud claim on others, and plaintiffs had standing for individual claims. As to predominance, the court found that the claims could be proven with common evidence of defendants' misrepresentations and reliance based on a fraud-on-the-market presumption.

Eighth Circuit

Meek v. Kan. City Life Ins., 126 F.4th 577 (8th Cir. 2025)

Eighth Circuit affirms class certification for policyholder class based on insurer's breach of contract.

The named plaintiff filed a class action against a defendant life insurer for breach of contract based on the defendant including a hidden cost in policyholder's monthly statements that was not disclosed in the policy itself. The district court granted class certification, as well as partial summary judgment, in favor of the plaintiff. A jury subsequently awarded approximately $1,000,000 in damages to the class. The defendant appealed to the Eighth Circuit, in part because of the district court's class certification ruling.

Relying primarily on the position that certain class members never cashed out or otherwise received lower rates, the insurer argued on appeal that the district court erred in finding that common questions of law or fact predominated. The Eighth Circuit disagreed, noting that the policy provisions and application of

Kansas law to those provisions were consistent across the class. It also held that the class members, regardless of their rates or cash-out status, had all suffered the same injury through the insurer's breach. Because the named plaintiff had provided a method of calculating damages on a class-wide basis, the potential variation among individual damages awards did not matter.

Morgan Vogt v. Progressive Cas. Ins., 129 F.4th 1071 (8th Cir. 2025)

Eighth Circuit affirms denial of class certification for individualized issues of reliance and causation.

After buying a van from a car dealership, the named plaintiff learned that the dealership had originally bought the van from the defendant insurer, who had classified the van as a total, yet sold it with a clean title. Plaintiff filed suit against the insurer for fraud, negligent misrepresentation, negligence, and negligence per se and sought to certify two classes. The district court denied class certification, and plaintiff appealed.

On appeal, the Eighth Circuit affirmed the denial of class certification. First, the court noted that class member-specific inquiries would be required for the class to establish reliance – a necessary element of their fraud and negligent misrepresentation claims. This individualized issue would defeat the purpose of any other common elements that could be resolved more easily on a class-wide basis. Second, the court determined that the negligence and negligence per se claims were also unsuitable for class treatment because, while reliance is not an element of these claims, causation is. In this case, causation, by extension, would require individualized assessments of the class members' reliance on the title representations. Thus, the Eighth Circuit affirmed and rejected plaintiff's efforts to obtain class certification.

Doe v. SSM Health Care Corp., 126 F.4th 1329 (8th Cir. 2025)

Eighth Circuit affirms remand to state court under federal officer removal statute and Class Action Fairness Act.

Defendant healthcare provider attempted to remove a state court putative class action for improperly sharing patients' private health information to federal court. Defendant relied on the federal officer removal statute and the Class Action Fairness Act. After the district court denied the removal request, defendant appealed.

The Eighth Circuit affirmed the removal denial. The court first addressed defendant's argument under 28 U.S.C. § 1442(a)(1). Because defendant was not a federal government, agency, or officer, defendant needed to make a threshold showing that (a) it is a "person" under the statute, (b) it acted under the direction of a federal officer, (c) a causal connection exists between its complained-of conduct and official federal authority, and (d) it has a colorable federal defense to the claim against it to carry out federal officer removal. The Eighth Circuit held that the "design of private website," the source of the patient information sharing, is not a "basic governmental task" to support federal officer removal. This remained true regardless of any incentive payments that defendant would have received from the federal government because the website was not being operated on the government's behalf or for its benefit. The Eighth Circuit likewise rejected defendant's argument under the Class Action Fairness Act because plaintiff's proposed class definition included only Missouri citizens, which did not meet the Act's minimal diversity requirement.

Ninth Circuit

Cornell v. Desert Fin. Credit Union, No. 23-16144, 2025 WL 856140 (9th Cir. Mar. 18, 2025)

Adding an arbitration provision in updated terms with an ongoing, at-will, business-consumer relationship must comply with section 3 of the Restatement of the Law, Consumer Contracts, under Arizona law.

Defendant appealed from a denial of its motion to compel arbitration of the claims an Arizona plaintiff. Plaintiff alleged that defendant, a credit union, violated federal and state law in how it assessed overdraft fees. The credit union moved to compel arbitration under an arbitration provision added to its terms after the plaintiff began banking with the credit union. The district court certified to the Arizona Supreme Court a question regarding when contract modifications are enforceable against consumers under Arizona state law. The Arizona Supreme Court issued an opinion clarifying the standards for modification of contracts governing "an on-going, at-will, business-consumer relationship" by adopting the requirements set forth in section 3 of the Restatement of the Law, Consumer Contracts. *Cornell v. Desert Fin. Credit Union*, 254 Ariz. 477 (2023). The district court then applied the Arizona Supreme Court's decision, holding the arbitration provision was unenforceable for not complying with section 3 of the Restatement. The Ninth Circuit agreed with the district court, affirming its denial of the motion to compel arbitration. To comply with section 3 of the Restatement, defendant had to show that (1) "the consumer received reasonable notice of the proposed modified term and a reasonable opportunity to review it"; and (2) "the consumer received a reasonable opportunity, including reasonable notice of the opportunity, to reject the proposed modified term and continue the contractual relationship under the existing term." But nowhere on the defendant's notice updating its terms with the arbitration provision was plaintiff allowed opting out. Thus, the modification was ineffective under Arizona law.

Hutchins v. HP Inc., 5:23-cv-05875-BLF, 2025 WL 404594 (N.D. Cal. Feb. 5, 2025)

Using forfeitures to reduce employer contributions does not violate ERISA when permitted under a 401(k) plan.

Plaintiff brought a putative class action challenging a defendant's obligations under the Employee Retirement Income Security Act (ERISA). Plaintiff alleged the defendant breached its fiduciary duties and engaged in self-dealing in violation of ERISA when it used 401(k) "forfeitures" (i.e., when an employee leaves a company before fully vesting in an employer's contributions) to reduce employer contributions rather than to pay administrative costs. The court dismissed the first amended complaint without leave to amend.

The court agreed with defendant's two overarching arguments. First, plaintiff's claims effectively sought to increase benefits provided under his 401(k) plan. He argued that for defendant to comply with its fiduciary duties, it had to maximize pecuniary benefits to individual plan participants or resolve every issue of interpretation in favor of plan beneficiaries. But ERISA does not specifically "mandate what kind of benefits employers must provide if they choose to have a [401(k)] plan." *Lockheed Corp. v. Spink*, 517 U.S. 882, 887 (1996). The purpose of ERISA is to ensure that employees receive benefits that are guaranteed to them. *Id.* Yet nowhere did plaintiff allege that he or any other plan participant received anything less than what they were guaranteed under the plan. Second, plaintiff's theory ignored "decades of settled law" that allowed using forfeitures to reduce employer contributions.

Garland v. Kroger Co., 24-cv-240-LL-JLB, 2025 WL 474914 (S.D. Cal. Feb. 12, 2025)

Despite product testing, claims alleging deception based on use of artificial components in food must comply with Rule 9(b).

A California plaintiff and Illinois plaintiff brought a putative class action under California and Illinois consumer protection statutes. They sought to represent a putative class of those who bought Kroger Blueberry Fruit & Cereal Bars. Plaintiffs claimed they relied on statements on labels that the cereal bars were "naturally flavored." Yet plaintiffs claimed that they were misled because they did not expect for the cereal bars' filling to include synthetic compounds, including malic acid, which lab analysis confirmed. The California plaintiff alleged she purchased the product "between January 2020 and January 2024." The Illinois plaintiff alleged he purchased the product "between January 2021 and January 2024." The lawsuit was filed in February 2024.

First, the court held that both plaintiffs' claims were barred by the statute of limitations. The longest period of statute of limitations for the California plaintiff was four years (UCL claim). The statute of limitations for the single claim asserted by the Illinois plaintiff was three years. But the plaintiffs only alleged an unspecified purchase date with no mention of multiple purchases. "Such vague statements with multi-year ranges of time do not adequately convey when Plaintiffs purchased the product."

Second, the court held that it lacked personal jurisdiction over the Illinois plaintiff's Illinois consumer protection claim. It reasoned that the mere fact that other plaintiffs may have consumed the product in California was not enough to confer specific jurisdiction over a nonresidents' claims. *Bristol-Myers Squibb Co. v. Superior Ct. of California*, 582 U.S. 255 (2017) (*BMS*). The court rejected the plaintiff's argument that *BMS* is not controlling because it did not involve a class action in federal court. Acknowledging the Ninth Circuit had not weighed in, the court still agreed with the federal courts who have considered the issue and found that *BMS* applies to claims brought by named plaintiffs in class actions under diversity jurisdiction. The court also rejected plaintiffs' argument that the court could assert pendent personal jurisdiction over the Illinois claim, because the action was based on diversity jurisdiction with no federal claim to hook the state-law claim onto.

Third, the court held that plaintiffs failed to allege with particularity that the malic acid in their cereal bars was artificial. Because plaintiffs' consumer protection claims all sounded in fraud, plaintiffs had to comply with Rule 9(b). Although plaintiffs had supposedly confirmed the presence of artificial malic acid, they did not allege the "who, what, when, where, and how" because it did not include the specific date or place of the testing, and who conducted the testing. The court found that details of the date and place of the testing and who conducted the testing were not so particular as to go against Rule 9(b), especially as the information was in plaintiffs' possession.

Finally, the court agreed that "naturally flavored" and "made with real fruit" on the product's label was not deceptive. All the consumer protection claims required plaintiffs to prove the label of the product was likely to deceive a reasonable consumer. But after evaluating the front label, the court found that the cereal bars' front label was unambiguous and did not promise that the whole cereal bar was natural.

Suchard v. Sonoma Acad., 109 Cal. App. 5th 1089 (2025)

Parents of students who were not sexually abused do not have UCL standing to claim they paid too much for tuition because a private school failed to disclose abuse of other students.

Plaintiffs were two parents and a student who paid nearly $50,000 per year in tuition to defendant, a private school. They alleged the school employed three people who engaged in sexually abusive or inappropriate behavior with other students—neither plaintiffs nor their children—and defendant did not disclose that conduct to them. Plaintiffs alleged that defendant's administrators were aware of the sexual abuse but failed to report it to authorities. They alleged defendant's omissions were unfair business practices under California's unfair competition law (UCL), resulting in injury by spending money for tuition at the rates the school charged. Plaintiffs sought to pursue the action on behalf of a class of those who paid tuition to the school.

The trial court sustained defendant's demurrer to the second amended complaint without leave to amend and dismissed the action. The Court of Appeal affirmed.

To have standing under the UCL, a person must have "suffered injury in fact and [have] lost money or property as a result of unfair competition." *Kwikset Corp. v. Superior Court*, 51 Cal. 4th 310, 322 (2011). When the injury-producing claim is based on a theory of fraud, the misrepresentation must be an immediate cause of the injury-producing conduct. *Id.* at 326-27.

The Court of Appeal agreed that plaintiffs had not suffered an injury in fact. There was no allegation that the value of plaintiffs' education was reduced, nor were there any allegations that the named plaintiffs or their children suffered from abuse. Those students got the education for which they and their parents had paid, and any injury to them was conjectural or hypothetical.

Chai v. Velocity Investments, LLC, 108 Cal. App. 5th 1030 (2025)

California Court of Appeal rules that California's Fair Debt Buying Practices Act does not require actual damages to sue.

Plaintiff brought a putative class action seeking statutory damages for violation of California's Fair Debt Buying Practices Act (FDBA). The FDBA sets requirements for debt buyers. Among other requirements, it requires debt buyers in their first communication to consumers to advise them of their ability to request documentation showing proof of the debt, the consumer's liability for the debt, and the debt buyer's entitlement to collect instead of the original creditor. The FDBA also authorizes private enforcement of its requirements, making a buyer liable to the consumer for "the sum of" "any actual damages" and "statutory damages between $100 and $1,000." Plaintiff alleged that the defendant debt buyer failed to comply with the FDBA's requirements in the first communication to him.

Plaintiff appealed after the trial court granted defendant's judgment on the pleadings, ruling the FDBA permits only a consumer that has suffered "actual damage" to sue under the act. The Court of Appeal reversed, ruling the FDBA confers standing on any person who, like plaintiff, alleges a debt buyer's violation of their rights under the act.

First, the court focused on the language of the FDBA, emphasizing that the act distinguished between actual damages, statutory damages, and additional damages when a debt buyer is sued in a class action "engaged in a pattern and practice" of violating the act. The language "the sum of" actual and statutory damages signified that actual damages only add to a debt buyer's liability under the FDBA. Thus, mere violation of the act with respect to the consumer was the only injury necessary to confer standing. Second, the court looked to the legislative history of the FDBA. The legislative history included language that the bill was intended to prescribe penalties for violating the act, which the court read as supporting that a mere violation of the act was enough for standing. Third, the court was not persuaded by defendant's comparison to federal statutes and Article III standing. It held that nothing under California's FDBA suggested that federal standing requirements should limit access to California courts to enforce California statutory rights.

Capito v. San Jose Healthcare Sys., LP, 17 Cal. 5th 273 (2024)

Hospitals have no independent duty to warn patients of charges before treating.

A plaintiff filed a class action challenging an evaluation and management services fee (EMS fee) at a hospital, asserting breach of California consumer protection laws. An EMS fee is charged after a patient is discharged. There is an extensive scheme of state and federal law that obligates hospitals to make disclosures about the prices of medical services, including EMS fees. This scheme includes requiring hospitals to post a clear and conspicuous notice in its emergency department informing patients that a "chargemaster" listing the uniform charges was available for review and how it may be accessed. There was no dispute that the hospital defendant complied with the regulatory scheme, including listing its EMS fees in a chargemaster that was conspicuously disclosed. Plaintiff argued, however, that the hospital had a duty beyond the regulatory scheme to notify emergency room patients that they would be charged EMS fees. Plaintiff alleged that the hospital's failure to do so violated the UCL and CLRA.

The California Supreme Court agreed with the lower courts, holding hospitals have no duty under the UCL or CLRA, beyond their obligations under the relevant statutory and regulatory scheme, to disclose EMS fees before treating emergency room patients. Requiring such disclosure would alter the careful balance of competing interests considered under the legislative history, including price transparency and provision of emergency care without regard to cost. The California Legislature and U.S. Congress have already decided what pricing information to make available in a hospital's emergency room. They have also decided what not to include. The regulatory history for the disclosure requirements showed a strong legislative policy to ensure that emergency medical care is provided immediately to those who need it. The duty the plaintiff sought to impose could risk discouraging patients from seeking emergency care or would put patients in a position to weigh whether they should be treated in an emergency room or not.

Thus, the court affirmed, holding hospitals do not have a duty under the UCL or CLRA beyond what is required by the statutory and regulatory scheme, to disclose EMS fees.

Tenth Circuit

Johnson v. Paparazzi, LLC, 2:22-cv-00439-AMA-PK, 2025 WL 948384 (D. Utah Mar. 28, 2025)

In case alleging false adverting of products as nickel-free, court holds that plaintiffs who did not allege a physical reaction did not have standing.

Plaintiffs were 22 consumers from 14 states that brought a putative class action against a jewelry wholesaler. Plaintiffs alleged defendant advertised its products as nickel free. After third-party testing in 2021, however, plaintiffs alleged that every product of defendant that was tested contained significant amounts of nickel. Generally, plaintiffs alleged that defendant falsely advertised its jewelry, and they would not have purchased the products or would have paid less for them. Eighteen plaintiffs were added through an amended complaint. Only some plaintiffs alleged they suffered physical reactions when wearing defendant's jewelry.

The court held that only plaintiffs that alleged physical reactions to the jewelry had Article III standing. Standing requires a plaintiff to have (1) suffered an injury in fact; (2) a traceable connection between the injury and defendant's alleged conduct; and (3) an injury that a favorable court decision would redress. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). Plaintiffs that alleged physical reactions had standing because they plausibly allege injuries in fact (economic injuries with products plausibly purchased) that were traceable (physical symptoms when wearing defendant's products) to the alleged misconduct (false advertisement of nickel-tainted jewelry). As to the remaining claims that did not allege physical injuries, the court dismissed the complaint with leave to allow them to try to allege sufficient facts to support standing. The court advised those plaintiffs to provide facts that would support standing, including facts that would link the products purchased to the products tested.

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