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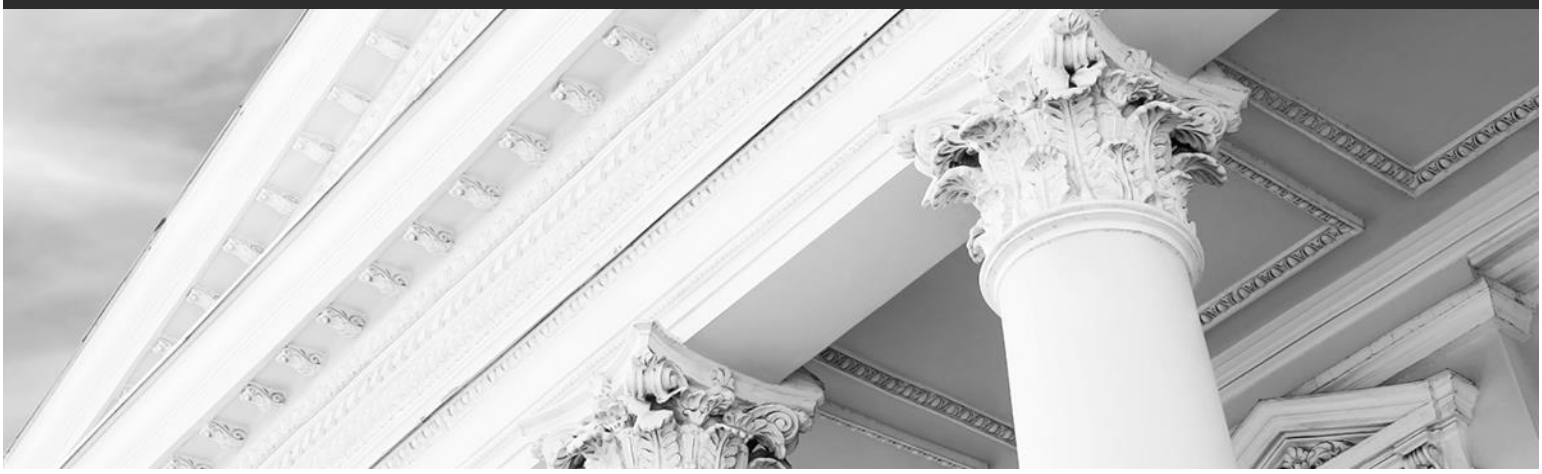
Class Action Litigation Newsletter | Summer 2025



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

Highlights from this issue include:

- Supreme Court holds that it has jurisdiction to consider detainees' application for injunctive relief, and that class-wide temporary injunctive relief was available to the putative class.
- Supreme Court rules that ERISA plaintiffs need only plausibly allege the elements of prohibited-transaction claims without addressing affirmative defenses of potential exemptions at pleading stage.
- Second Circuit affirms district court's dismissal of Video Privacy Protection Act claim, adopting the Third and Ninth Circuits' "ordinary person" standard for defining personally identifiable information under the statute.
- Fourth Circuit reverses certification of class after entry of summary judgment for plaintiffs because district court failed to decide certification at an "early practicable time."
- Fifth Circuit vacates attorneys' fee award to class counsel for failure to provide class-wide notice as required by Rule 23(h).

- En banc Sixth Circuit vacates class certification in multistate automotive defect case.
- Eighth Circuit holds pending class action tolls individual claims so long as plaintiff is not unambiguously excluded from the class.
- Eleventh Circuit affirms denial of motion to compel arbitration where defendant attempted to cure failure to comply with AAA's policies after plaintiff filed putative class action in court.

U. S. Supreme Court

A. A. R. P. v. Trump, 145 S. Ct. 1364 (2025)

Class-wide temporary injunctive relief was available to putative class.

Two immigration detainees, Venezuelan nationals, sought habeas corpus relief in a putative class action against President Donald Trump and other defendants. The claims related to the President's invocation of the Alien Enemies Act (AEA) to remove detainees as suspected members of a Venezuelan criminal gang that was designated as a foreign terrorist organization. The district court denied the detainees' motion for a temporary restraining order (TRO) against summary removal under the AEA. The detainees appealed and filed an emergency motion for a temporary administrative stay and injunction pending appeal. The Fifth Circuit dismissed the appeal for lack of subject matter jurisdiction and denied the motion as premature. The detainees applied for injunctive relief against summary removal under the AEA, and the Supreme Court construed the application as a petition for writ of certiorari.

In a 7-2 *per curiam* decision, the Supreme Court held the Fifth Circuit erred in dismissing the detainees' appeal for lack of jurisdiction because appellate courts have jurisdiction to review interlocutory orders that have "the practical effect of refusing an injunction." The district court's inaction had the practical effect of refusing an injunction to detainees facing an imminent threat of severe, irreparable harm. Accordingly, the Supreme Court granted the application for an injunction pending further proceedings, vacated the Fifth Circuit's judgment, and remanded the case to the Fifth Circuit for the purpose of determining the process necessary to satisfy due process.

The dissent, written by Justice Alito and joined by Justice Thomas, disputed the Supreme Court's jurisdiction and the availability of class-wide relief. In response, the Court held that it had the power to issue injunctive relief to prevent irreparable harm to the applicants and to preserve its jurisdiction over the matter. The Supreme Court further held that it may properly issue temporary injunctive relief to the putative class to preserve its jurisdiction pending appeal, as the named applicants and the putative class members were entitled to constitutionally adequate notice prior to any removal. Although the putative class members may ultimately take different steps to protect their own interests in response to such notice, the notice to which they were entitled was the same. And because courts may issue temporary relief to a putative class, the Supreme Court did not need to decide whether a class should be certified as to the detainees' due process claims in order to temporarily enjoin the government from removing putative class members while the question of what notice is due was adjudicated.

Cunningham v. Cornell Univ., 145 S. Ct. 1020 (2025)

ERISA plaintiffs need not address affirmative defenses of potential exemptions to state a claim.

Participants in retirement plans that a private university administers brought a class action against the university and its appointed fiduciaries, alleging various breaches of fiduciary duties, including that defendants caused the plans to engage in prohibited transactions for recordkeeping services, in violation of the Employee Retirement Income Security Act (ERISA). The district court granted defendants' motion to dismiss the prohibited-transaction claim for failure to state a claim, granted defendants' motion for summary judgment and to exclude in part, and denied defendants' motion to strike the jury demand. Plaintiffs appealed, and defendants conditionally cross-appealed. The Second Circuit affirmed as to dismissal of the prohibited-transaction claim, holding that the claim must allege the exemption for

reasonable and necessary transactions did not apply—in other words, plaintiffs must allege that the transaction was unnecessary or involved unreasonable compensation. In doing so, the Second Circuit split from the Eighth Circuit, which has held that no additional pleading requirements applied to prohibited-transaction claims.

In a unanimous opinion, the Supreme Court reversed and held that ERISA plaintiffs need only plausibly allege the elements of a prohibited-transaction claim without addressing affirmative defenses of potential exemptions. The Supreme Court held that at the pleading stage, it was sufficient to plausibly allege the claim's elements. The Court reasoned that incorporating all 21 exemptions to the claim as elements would "plainly frustrate Congress's intent to create a 'categorica[l]' bar." The Supreme Court noted that this approach would be "especially illogical" because several of the exemptions turned on facts one would expect to be in the fiduciary's possession. The Supreme Court reversed and remanded for further proceedings consistent with its opinion.

First Circuit

Parsons v. Commerce Insurance Co., 2084CV00659-BLS2, 2025 WL 1707080 (Mass. Super. Ct. June 17, 2025)

Class certification denied where individual vehicle valuations required to prove injury under Chapter 93A insurance claim.

Plaintiff filed a putative class action against Commerce Insurance Company, asserting breach of contract and violations of Massachusetts General Laws Chapter 93A, § 9. The case stems from the insurer's valuation of plaintiff's vehicle as a total loss following a collision. Plaintiff alleged that the insurer systematically underpaid insureds for their totaled vehicles using unfair and deceptive valuation practices.

Plaintiff asserted two theories under Chapter 93A: (1) the insurer unfairly reduced actual cash value (ACV) estimates through "dealer-ready condition adjustments" derived from CCC Intelligent Solutions' Market Valuation Reports (MVRs); and (2) the insurer failed to consider the price paid and value of improvements to the insured vehicles as required under Massachusetts regulations. The Superior Court denied the plaintiff's motion for class certification.

Under G.L. c. 93A, § 9(2), class certification requires proof that defendant's unfair/deceptive conduct caused similar injury to numerous persons similarly situated. While typical Mass. R. Civ. P. 23(b) predominance and superiority standards are not strictly required under § 9(2), courts may still consider them in their discretion, as the Superior Court did here. Though the court found that Rule 23(a) factors were met (notably large class sizes and similar legal theories), it denied class certification under both Rule 23(b) and Chapter 93A, Section § 9(2) because injury could not be presumed across the board for the proposed class. Specifically, to determine if any given class member was underpaid (and thus injured), the court found it necessary to assess the ACV of each totaled vehicle individually, considering its condition and comparable market value. The court emphasized that proof of injury and causation is not just a question of damages, but of liability itself. Chapter 93A requires a "separate, identifiable harm" that was caused by the allegedly unfair practice, not just the existence of the practice itself. Without this, no recovery—even of nominal or statutory damages—is permitted. The court found that because injury and causation would vary for each proposed class member, common questions did not predominate. The court concluded that individualized litigation was superior, as trying these claims in a single class would not promote efficiency or consistency.

Second Circuit

Solomon v. Flipps Media, Inc., 136 F.4th 41 (2d Cir. 2025)

Court affirms dismissal of Video Privacy Protection Act claim, adopting "ordinary person" definition of personally identifiable information under the statute.

A consumer brought a putative class action against a video streaming service, alleging that the service violated her rights under the Video Privacy Protection Act (VPPA) by sending information about titles of videos she streamed and her social media identifier to an unrelated third party. The district court granted the video streaming service's motion to dismiss, holding the consumer did not plausibly allege the service disclosed her "personally identifiable information" as prohibited by the VPPA, and denied the consumer's request for leave to amend the complaint.

The Second Circuit noted the VPPA did not specifically define "personally identifiable information" and that the Second Circuit had not defined it beyond the statutory definition. The court then analyzed how other circuits had defined it. Under the reasonable foreseeability standard the First Circuit adopted, personally identifiable information included information disclosed to a third party that was reasonably and foreseeably likely to reveal which videos the plaintiff had obtained, such as information about videos a user watched combined with GPS address and device identifier information that would allow a technologically sophisticated third party to identify the user. Under the ordinary person standard the Third and Ninth Circuits adopted, the VPPA's prohibition on disclosure applied only to the kind of information that would readily permit an ordinary person—rather than a sophisticated tech company—to identify a specific individual's video-watching behavior.

The Second Circuit adopted the ordinary person standard, holding that the complaint did not plausibly allege an ordinary person could identify the consumer through the disclosed information. Therefore, the court held the consumer failed to plausibly allege the service had disclosed personally identifiable information in violation of the VPPA and affirmed the district court's dismissal of the complaint. The Second Circuit further held the district court did not abuse its discretion in denying the request for leave to amend the complaint.

Koenigsberg v. Bd. of Trs. of Columbia Univ. in City of New York, No. 24-2519-CV, 2025 WL 1540252 (2d Cir. May 30, 2025)

Equitable estoppel did not toll statute of limitations where only the very conduct underlying the substantive claims was alleged.

Two students who unsuccessfully applied for undergraduate admission to Columbia University in 2018 and their mother, who paid for their applications, brought a putative class action against the university's board of trustees, alleging the university knowingly reported inaccurate information, which led to it being ranked as a "top five" university. Plaintiffs alleged that, had Columbia reported accurate information, it would have been ranked lower, and as a result they and others would not have applied, saving them each the application fee. The plaintiffs brought claims alleging deceptive practices under New York General Business Law (GBL) § 349 and § 350 and unjust enrichment, seeking to certify a class of all applicants denied undergraduate admission to Columbia since 2011.

The district court dismissed the GBL claims as time-barred under the relevant statute of limitations and dismissed the unjust enrichment claim as duplicative of the GBL claims. It thereafter denied plaintiffs'

motion for reconsideration and relief from judgment, which sought leave to file an amended complaint. On appeal, the plaintiffs-appellants challenged only the district court's post-judgment order concluding that their proposed amended complaint—like the original complaint—was time-barred by the applicable statutes of limitations, and equitable tolling did not apply.

In a summary order, the Second Circuit held that the district court did not abuse its discretion by finding the proposed amendments were futile because equitable estoppel was not available, under New York law, to toll the limitations period. The alleged actions that were the basis of plaintiffs' equitable tolling argument were not separate and subsequent acts of wrongdoing to prevent plaintiffs from bringing a claim. Rather, they were "part of the very conduct underlying the substantive claims of the complaint" and, as a result, equitable estoppel did not apply. The Second Circuit also held the unjust enrichment claim was properly dismissed as duplicative of the GBL claims. The Second Circuit thus affirmed the district court's judgment.

Robertson v. Trinity Packaging Corp., No. 24-1296, 2025 WL 1135350 (2d Cir. Apr. 17, 2025)

Improper actions of class counsel in a separate litigation did not support conclusion that counsel could not adequately represent class under Rule 23.

Plaintiffs sought approval of their class action settlement of claims under the Fair Labor Standards Act and New York Labor Law against the defendant, a corporation. The District Court denied plaintiffs' unopposed motion for final approval of the settlement on the grounds that plaintiffs' counsel could not adequately serve as class counsel based on their purportedly improper actions in a separate litigation. On appeal, both sides urged the Second Circuit to reverse the district court's order.

In a summary order, the Second Circuit held the district court did not assess the factors listed in Rule 23(g)(1)(a), and instead relied solely on its conclusion that counsel had acted improperly in a separate case. The court noted that misconduct in a different case could support a court's conclusion that counsel cannot adequately represent a class, but that misconduct would have to be clear, significant, and indicative of the counsel's inadequacy to represent the class in the case currently before the court. The Second Circuit held the record did not support such a conclusion in the present action. The Second Circuit further held that the district court implicitly and improperly relied on collateral estoppel (i.e., issue preclusion) in deciding that plaintiffs could not challenge its conclusion that counsel behaved unethically in litigating the other case. Under New York law, the elements of issue preclusion were not met because the prior decision did not decide the central issue here, and the parties were not the same in the two cases—the lawyers were. The Second Circuit also stated that there was no full and fair opportunity to litigate the propriety of counsel's conduct with respect to the initial proposed settlement in the other case. The Second Circuit further noted that even if counsel's initial conduct in the other case was improper, counsel had responded to the district court's concerns and was ultimately adjudicated to be adequate class counsel in the other case.

The Second Circuit thus held the district court erred in determining the class counsel was inadequate based on conduct in a separate case, vacated the district court's order, and remanded the case for further consideration of the proposed class action settlement in light of the other relevant factors under Rule 23.

BNP Paribas v. New Mexico State Inv. Council, No. 24-635-CV, 2025 WL 1443654 (2d Cir. May 20, 2025)

Court dismissed appeal for lack of jurisdiction where district court's order enforcing parties' prior settlement agreement was not a final decision and did not grant new injunctive relief or modify the injunction.

In 2013, several plaintiffs filed antitrust class actions alleging banks and other defendants conspired to prevent price transparency and competition in the market for credit default swaps (CDS). The actions were consolidated in the Southern District of New York. In 2015, the parties sought court approval of a proposed settlement, which was approved in 2016. The district court issued orders stating that all "Releasing Parties" under the agreement "shall forever be enjoined from prosecuting in any forum any Released Claims against any of the Released Parties."

In 2021, retirement funds filed an antitrust class action in the District of New Mexico against the same bank defendants alleging that the banks had rigged the auction process used to determine the payout on CDS contracts when certain "credit events" occur. The funds, which were members of the class in the prior Southern District of New York action, had the opportunity to opt out of the prior settlement but did not do so, and remained in the settling class.

The banks filed a motion in the Southern District of New York action seeking to enforce the parties' settlement agreement in the prior action as applied to the funds' auction-rigging claims in the District of New Mexico. The district court granted the banks' motion, finding that the settlement's release barred the funds' claims insofar as they arose from pre-2014 conduct. Accordingly, the district court enjoined the funds "from pursuing any claims against the Banks in the New Mexico Action for any alleged violation of law based on conduct occurring before June 30, 2014," and from prosecuting against the banks any similar claims relating to CDS transactions. The funds appealed.

In a summary order, the Second Circuit concluded that it lacked jurisdiction to hear the appeal. The court reasoned that when an order merely interprets an injunction and settlement agreement to bar certain claims and then directs the dismissal of those claims, the order is generally not final unless it is accompanied by a finding of contempt and sanctions. Because the district court merely enforced the parties' settlement agreement and its accompanying injunctions by directing compliance therewith, it was not a final decision and thus not appealable under 28 U.S.C. § 1291, which provides the court with jurisdiction over "appeals from all final decisions of the district courts of the United States."

The Second Circuit further held the order was not appealable under 28 U.S.C. § 1292(a)(1), which permits appeals from interlocutory orders "granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions." The court reasoned that the district court's order did not grant any new injunctive relief, but merely enforced its previous injunctive relief as applied to the claims the funds now sought to pursue. The Second Circuit further found that even if the settled claims and the funds' auction-rigging claims pertained to injuries occurring in different segments of the CDS market, there was no error in the district court's finding that they shared a common factual predicate.

The Second Circuit also held that the funds' claims were adequately represented in the prior action. The Second Circuit dismissed the appeal for lack of jurisdiction.

Fourth Circuit

McCoy v. Bureau of Alcohol, Tobacco, Firearms and Explosives, No. 23-2085, 2025 WL 1702193 (4th Cir. June 18, 2025)

Fourth Circuit finds district court failed to decide class certification at "early practicable time" by certifying class after entering summary judgment in plaintiffs' favor.

Plaintiffs – 18-to-20-year-old individuals – sued the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), arguing that a federal statute prohibiting the sale of handguns to individuals under the age of 21 violates the Second Amendment. The United States District Court for the Eastern District of Virginia agreed with plaintiffs and entered summary judgment in their favor. After summary judgment was entered, plaintiffs moved for, and were granted, certification of a nationwide class. ATF appealed.

On appeal, ATF argued the statute is constitutional and further argued that the district court erred in certifying a class after issuing a favorable ruling on the merits for plaintiffs, relying upon Fed. R. Civ. P. 23(c)(1)(A)'s requirement that, "[a]t an early practicable time after a person sues … the court must determine by order whether to certify the action as a class action." ATF further argued that plaintiffs "should not receive the benefit of class-wide relief when they strategically withheld their class certification motion to avoid being bound by an unfavorable ruling."

The Fourth Circuit Court of Appeals agreed with ATF and reversed, finding the statute to be constitutional and that the district court's decision to certify the class after entering summary judgment was an error, as it was not at "an early practicable time" in the case.

Maldini v. Marriott International, Inc., No. 24-1064, 2025 WL 1560372 (4th Cir. June 3, 2025)

Fourth Circuit upholds class-action waiver and finds that defendants' participation in MDL does not relinquish right to enforce waiver.

Plaintiffs filed putative class actions against Marriott International, Inc. and a global professional services firm across the United States following a data breach. The U.S. Judicial Panel on Multidistrict Litigation (MDL) consolidated the actions for pretrial proceedings. The district court certified damages classes against Marriott and, on a prior appeal from that certification decision, the Fourth Circuit found the district court erred by failing to consider the effect of a contractual class-action waiver. On remand, the district court held that by agreeing to participate in the MDL proceeding, Marriott engaged in conduct that was inconsistent with the class-action waiver and therefore waived its right to enforce that provision. The court further found that the class-action waiver was unenforceable because it conflicted with Fed. R. Civ. P. 23. Marriott appealed and the Fourth Circuit reversed.

First, the Fourth Circuit disagreed with the district court's finding that Marriott relinquished its right to enforce the class-action waiver. In so holding, the court noted that Marriott invoked the class-waiver defense "at any point at which it was required to do so," including in a motion to dismiss, in its answer, and again in opposing class certification. The court further rejected the notion that participating in an MDL is inconsistent with a class-action waiver.

Second, the Fourth Circuit rejected the district court's conclusion that Rule 23 precludes contractual waivers of class wide litigation, noting that "the Supreme Court made clear in 2013 that parties may indeed waive class-action litigation by contract."

The court then found the class-action waiver was not unconscionable and that it applied to plaintiffs' consumer protection, negligence, and contract claims, thanks to the waiver's "broad arising out of or related to language."

Fifth Circuit

Morrow v. Jones, 140 F.4th 257 (5th Cir. 2025)

Fifth Circuit rules that Rule 23(h) notice is mandatory for class action attorney-fee awards.

Plaintiffs in east Texas sued city and county officials for allegedly unlawful "stop and seize" policing practices. The parties settled, entered into a consent decree, and agreed that defendants would pay class counsel's fees and expenses. Plaintiffs' counsel filed four motions for attorneys' fees. While the first three were granted, the district court only partially granted the fourth motion, reducing hourly rates and hours compensated. Plaintiffs appealed to the Fifth Circuit.

The Fifth Circuit vacated the district court's attorneys' fee award in the class action, ruling that the district court had abused its discretion by failing to provide class-wide notice of the fee motion as mandated by Rule 23(h). Defendants argued in opposition that the plaintiffs had forfeited the lack of notice objection by not raising it at the district court. But the Fifth Circuit distinguished forfeiture from waiver, choosing to address the issue as a pure question of law whose neglect would result in a miscarriage of justice for class members.

The court highlighted Rule 23(h)'s mandatory language—"notice of the motion must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner"—and referenced the Advisory Committee Notes, confirming that notice is "required in all instances" due to class members' inherent interest in fee arrangements. The court explained that a district court's "independent obligation to protect the interests of the class" means the notice requirement may not be forfeited. The court vacated the reduced attorney-fee award and remanded the case, ordering the district court to provide Rule 23(h) notice and allow class members to object.

Sixth Circuit

Pickett v. City of Cleveland, 140 F.4th 300 (6th Cir. 2025)

Sixth Circuit affirms certification of Fair Housing Act disparate-impact class.

Black homeowners and residents in Cleveland, Ohio sued the city, challenging the city's billing practices and alleging that the water department had disproportionately placed water liens on properties in majority Black neighborhoods. The district court certified a "water lien class" under Rule 23(b)(2) for injunctive and declaratory relief and 23(b)(3) for damages. The city appealed, arguing that a Fair Housing Act (FHA) violation under 42 U.S.C. § 3604(a) is not itself a cognizable injury, and thus class members with no economic harm lacked standing.

The Sixth Circuit affirmed. It agreed that Rule 23(a)'s prerequisites had been satisfied and that the city's alleged discriminatory conduct warranted a single injunction or declaratory judgment under Rule 23(b)(2). Regarding Rule 23(b)(3)'s predominance requirement, the Sixth Circuit concluded that the common question of whether the water lien policy violated the FHA predominated over individual damages issues. The court of appeals reiterated that varying individual injuries or the need for individualized damages calculations do not defeat predominance.

On standing, the Sixth Circuit reconciled plaintiffs' standing under *TransUnion LLC v. Ramirez*. Despite lacking an economic harm, the court recognized that FHA disparate-impact violations confer Article III standing, similar to the injury caused by constitutional racial discrimination by private housing providers. Thus, the assessment of a discriminatory water lien itself constitutes an injury-in-fact.

Speerly v. GM, LLC, No. 23-1940, 2025 WL 1775640 (6th Cir. June 27, 2025) (en banc)

En banc Sixth Circuit vacates class certification in multistate automotive defect case.

Car buyers sued General Motors in a putative class action, alleging that two "universal" defects in the Hydra-Matic automatic transmissions installed in their vehicles lead to shuddering and harsh shifting. Plaintiffs' claims included breach of express and implied warranties, consumer protection violations, and fraudulent omission under various state laws. On behalf of 800,000 individuals, the district court certified 26 state subclasses, including 59 state-law claims, concluding that common questions over the defects, GM's knowledge, and materiality predominated over individual issues. GM appealed, and the en banc Sixth Circuit vacated, concluding that the district court's Rule 23 analysis was insufficient. Emphasizing Rule 23's "rigorous requirements" for multi-state class actions, the court of appeals focused on the commonality and predominance requirements.

For commonality, the court explained that a district court must engage in an "element-by-element analysis" for each claim and "may not simply ask whether generalized questions yield a common answer." The Sixth Circuit determined that the district court had "overlooked how significant differences across each cause of action raise commonality concerns." In particular, the district court did not contextualize the terms "defect" and "knowledge," which have different meanings depending on the cause of action.

As for predominance, the Sixth Circuit ruled that the district court had failed to "qualitatively evaluate" predominance through a state-by-state analysis of plaintiffs' claims. Instead, the court explained, variations in state law, distinct defect theories, and individualized customer experiences suggested predominance was lacking. The court of appeals highlighted manageability issues with trying dozens of causes of action across over two dozen states, including the challenge of interpreting varied state laws and instructing juries. What's more, the court of appeals recognized that arbitration agreements in certain customer purchase agreements raised unique defenses that raised further individualized issues. Finally, while the en banc court ultimately did not resolve whether all class members must have Article III standing, concurring opinions suggested that lack of standing among a significant number of class members would preclude class certification.

The Sixth Circuit vacated the class certification order and remanded the case with instructions for the district court to engage in further analysis.

Seventh Circuit

Armstrong v. Boyland Auto BGMC LLC, No. 24-3182, 2025 WL 1121647 (7th Cir. Apr. 16, 2025)

Seventh Circuit confirms pro se litigants cannot represent putative class.

The plaintiff, a pro se litigant, filed a putative class action seeking to represent a group of class members who had been denied cash prizes they supposedly won from several individuals and automotive businesses. At the outset of the case, citing a rule that pro se litigants cannot represent classes, the district court ordered the plaintiff to obtain counsel or amend his complaint and proceed only on his own behalf. The plaintiff ignored the district court's multiple orders and instead filed motions for class certification and other various requests over the next several months. The district court dismissed the suit without prejudice based on the plaintiff's failure to follow the court's orders, and the plaintiff appealed.

The Seventh Circuit affirmed the dismissal. Noting that district courts have broad discretion to dismiss a suit for failure to comply with court orders, the Seventh Circuit held that the district court did not commit a legal error in dismissing the suit. The district court also appropriately gave the plaintiff multiple warnings to obtain class counsel or amend his complaint to eliminate the class allegations. Likewise, the district court acted within its discretion to delay service and screen the complaint until the threshold question of legal representation was resolved.

McDaniel v. Wis. Dept. of Corrs., No. 2022AP1759, 2025 WL 1739139 (WI 2025)

Wisconsin Supreme Court reverses appellate court decision denying class certification.

A group of corrections officers working for the Wisconsin Department of Corrections (WDOC) filed a putative class action against the WDOC, alleging wage claims for work performed pre- and post-shift. The district court granted plaintiffs' motion for class certification, noting that plaintiffs had a "plausible" argument and class requirements under Wisconsin's class certification statute had been met. The WDOC appealed, and the Wisconsin Court of Appeals reversed the lower court and held that class certification was improper because commonality and typicality could not be met where the plaintiffs were not entitled to compensation for the external shift activities at issue. The plaintiffs appealed to the Wisconsin Supreme Court.

Reversing the appellate court, the Wisconsin Supreme Court determined that the district court had not abused its discretion in certifying the class. The court explicitly held that a court should not consider the class's claim on the merits when addressing commonality and typicality in the context of class certification. It further clarified that United States Supreme Court precedent aligns with this holding because, while a class certification assessment may require some overlap with the merits, no case from the highest court has determined that assessing the viability of the merits is required. The court went on to conclude under this standard that a reasonable court could have found that the plaintiffs had satisfied commonality due to the common question of whether the alleged pre- and post-shift activities were compensable. It further determined that the WDOC's arguments regarding typicality failed because they hinged on assessing the viability of the merits. Two of the justices dissented in part. While they agreed with the majority's holding that courts should not assess merits viability to determine class certification, they rejected the majority's decision to address arguments WDOC made on which the appellate court had not opined. Rather than remanding the matter back to the district court for further proceedings, the

dissenting justices would have remanded the matter back to the appellate court to address the remaining arguments.

Eighth Circuit

Hess v. Union Pac. R.R. Co., 139 F.4th 974 (8th Cir. 2025)

Court reverses dismissal of individual claim, holding that a pending class action tolls the statute of limitations so long as the plaintiff is not unambiguously excluded from the class.

Plaintiff filed an employment discrimination action asserting that he was unlawfully terminated due to his disability. The parties agreed that the statute of limitations was tolled by the filing of a class action complaint that encompassed his claims, but defendant argued that the district court certified a narrower class that did not include plaintiff's claims. As a result, defendant argued that the statute of limitations began to run again following class certification in the class action. Plaintiff argued that the statute of limitations did not begin to run again until the class was decertified. The district court dismissed plaintiff's claim, finding that the statute of limitations on it had run.

The Eighth Circuit reversed the district court's decision and held that when a plaintiff was not unambiguously excluded from the class as certified in a pending class action, the individual plaintiff remains entitled to *American Pipe* tolling. The Eighth Circuit noted that the term "reportable health event" in the class definition was not clearly defined. Accepting plaintiff's factual allegations as true and drawing all reasonable inferences in his favor, the Eighth Circuit determined that he was not unambiguously excluded from the certified class.

Handorf v. Transamerica Life Ins. Co., No. 23-CV-32-CJW-MAR, 2025 WL 1573209 (N.D. Iowa June 3, 2025)

Court grants motion to certify the class, holding that claims regarding an increase in cost of insurance are capable of class-wide resolution when putative class members signed form contracts providing for increases in insurance cost to be applied uniformly.

Consumers sought certification of two classes and two subclasses of policyholders owning nonparticipating, flexible premium adjustable universal life insurance policies issued on a non-negotiable form contract. Each of the classes and subclasses had specific policy provisions that were either identical or substantially similar across all of the putative class members' policies, such as a policy provision stating that "[a]ny change in the Cost of Insurance Rates will be applied uniformly to all members of the same premium class."

The district court granted plaintiff's motion for class certification, rejecting defendant's arguments that plaintiffs had failed to meet the Rule 23 requirements. First, the district court rejected defendant's argument that plaintiffs' damages model was insufficient, holding that it was able to calculate an aggregate amount of damages across each class and subclass. Second, while different subsets of policyholders may have suffered different damages, the district court held that class certification was still possible as the difference may be explained by different inputs into a common equation and did not require an individualized damages analysis. Third, the district court held that interpretative issues did not defeat class certification.

Ultimately, while the district court concurred with defendant's assessment that this would be a difficult case to manage on a class wide basis, it held that class treatment remained the superior approach. The district court specifically noted that plaintiffs had provided state law surveys and references to model jury instructions addressing the very case management issues defendant highlighted.

Ninth Circuit

Schiebe v. ProSupps USA, LLC, No. 23-3300, No. 23-3300, 2025 WL 1730272 (9th Cir. 2025)

Plaintiff's misbranding claims survive FDCA preemption at the pleadings stage, where plaintiff tested one sample by an independent laboratory rather than the 12 samples the FDA requires, because a reasonable inference may be drawn from the single sample that the dietary supplements at issue were misbranded.

Plaintiff alleged that defendant's Hydro BCAA dietary supplements were misbranded because his preliminary testing of one sample showed the supplement contained more grams of carbohydrates and calories than were listed on the dietary supplement's FDA-prescribed label. The dietary supplement was subject to FDA requirements with sales across more than one state. Plaintiff did not test the 12 random samples the FDA requires to determine if a product is misbranded. The district court found the Food, Drug, and Cosmetic Act (FDCA) preempted the claims because plaintiff failed to plead that he tested the supplement according to the FDA's sampling process. The Ninth Circuit reversed and held plaintiff's claim survived preemption, holding that a court could draw a reasonable inference from the single sample plaintiff tested that testing a composite sample according to FDA regulations would show that the sample was misbranded under the FDCA. The court found that while discovery may show that the single sample was an outlier, it was not going to draw that conclusion at the pleading stage.

Chavez Reyes v. Hi-Grade Materials Co., 110 Cal. App. 5th 1089 (2025)

Plaintiff cannot voluntarily dismiss PAGA claims after appealing a denied class certification motion to retroactively make the order appealable.

After the court denied plaintiff's class certification motion in a putative wage and hour class action, plaintiff's individual claims and four representative causes of action under California's Private Attorneys General Act of 2004 (PAGA) remained. Plaintiff appealed the court's denial of class certification, on the basis that the interlocutory order was appealable under the "death knell doctrine." Defendant argued that the doctrine does not apply when representative PAGA claims remain after the trial court has denied class certification. In response to this argument, and in an attempt to retroactively create appellate jurisdiction, a year after filing his appeal, plaintiff voluntarily dismissed his PAGA claims without prejudice. The California Court of Appeal held that the death knell doctrine did not apply under these circumstances and dismissed plaintiff's appeal for lack of jurisdiction.

California follows the "one final judgment rule," under which most interlocutory orders are not appealable. The death knell doctrine is a "tightly defined and narrow" exception to the one final judgment rule. An order denying class certification is generally not a final judgment because the action leaves intact the individual plaintiff's claims. But under the death knell doctrine, an order may be appealable if it effectively terminates the entire action as to the class. To be appealable under the death knell doctrine, an order must "amount to a de facto final judgment for absent plaintiffs, under circumstances where the

persistence of viable but perhaps de minimis individual plaintiff claims creates a risk no formal final judgment will ever be entered."

The Court of Appeal assessed the death knell doctrine in conjunction with representative PAGA claims that remain after denial of class certification. Ultimately, the court recognized that a PAGA plaintiff seeks penalties as a representative of the state and on behalf of similarly aggrieved employees, not as an individual. Accordingly, and because there is still the potential for recovery of significant statutory penalties under PAGA, the court found a plaintiff asserting PAGA claims is still incentivized to proceed to judgment on behalf of himself.

The court next considered whether plaintiff's voluntary dismissal of his PAGA claims made the denial of his class certification order appealable. Defendant raised three points. First, it argued that plaintiff's voluntary dismissal was an improper attempt to circumvent the death knell doctrine. Relatedly, it argued that the death knell doctrine should be determined at the time an appeal is filed to avoid gamesmanship. Finally, it emphasized that plaintiff's voluntary dismissal was without prejudice, meaning plaintiff still had the ability to assert the PAGA claims after the appeal was resolved. The court agreed with defendant, emphasizing "it is not our proper function to exercise appellate jurisdiction over an interlocutory order just to extricate a litigant from circumstances of his own creation."

LaRock v. ZoomInfo Techs, LLC, No. C24-5745-KKE, 2025 WL 1345264 (W.D. Wash. May 8, 2025)

Ban against class actions in Washington state's right of publicity statute does not apply in federal class actions because it regulates procedure and conflicts with Rule 23.

Plaintiff brought a putative class action against defendant, alleging that defendant's free profile previews and free trials wrongfully used plaintiff and the putative class members' names to advertise defendant's services in violation of Washington's right of publicity statute, the Washington Personality Rights Act (Wash. Rev. Code § 63.60.010) (WPRA). Defendant moved to strike the class allegations because the WPRA expressly bans class actions. In determining whether the ban conflicts with Rule 23, the district court followed Justice Scalia's plurality opinion in *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 398 (2010), which asks whether the state court rule "really regulates procedure." The district court found that the WPRA class action ban did in fact regulate procedure because it did not add, subtract, or define any of the necessary elements of plaintiff's claim, and there is no indication that the WRPA's ban was intended to impact any substantive right. Therefore, the district court held that the WRPA class action ban is not applicable in federal court.

Tenth Circuit

In re Church of Jesus Christ of Latter-Day Saints Tithing Litig., 2:24-md-03102-RJS-DAO, 2025 WL 1135726 (D. Utah Apr. 17, 2025)

Widely publicized reports of fraud can trigger the statute of limitations based on constructive knowledge.

Plaintiffs in a consolidated multidistrict litigation alleged that over decades they donated hundreds of thousands of dollars to the Church of Jesus Christ of Latter-Day Saints. Plaintiffs alleged that starting around 1997, the Church established Ensign Peak Advisors, Inc. to act as a "slush fund" for charitable donations, including tithing from Church members, and used Ensign to conceal its accounts to prevent

donors from knowing the scale of the Church's financial holdings. Plaintiffs also alleged that the Church used donations to fund for-profit enterprises instead of the charitable purposes it identified when soliciting donations. Plaintiffs sought to represent a nationwide class of all individuals who donated funds to the Church since 1998. Plaintiffs asserted a breach of fiduciary duty claim and various fraud claims seeking injunctive relief, a public accounting, appointment of a special master to monitor the Church's collection and use of donated funds, damages, restitution, disgorgement, and attorneys' fees.

The Church denied plaintiffs' allegations and made three arguments on its motion to dismiss. First, it argued that the case could not be adjudicated in secular courts, relying on the church autonomy doctrine. Second, the Church argued plaintiffs' claims were barred by the statute of limitations. Third, the Church argued that plaintiffs' claims were inadequately pled. Without reaching the Church's first argument, the court agreed with the Church's second and third arguments, primarily focusing its discussion on the Church's statute of limitations argument.

The court disagreed with the Church that it was precluded by the church autonomy doctrine from considering plaintiffs' complaint in the first place. Although the doctrine could potentially bar addressing novel questions concerning the doctrine and its application to civil fraud claims, it did not limit the court's ability to consider other deficiencies. Instead, relying on the judicial canon of constitutional avoidance, the court first focused on nonconstitutional failures with the complaint before reaching the church autonomy doctrine.

The court agreed with the Church that plaintiffs were barred by Utah's three-year statute of limitations for fraud-based claims, which can be triggered by constructive notice running from the date a plaintiff should have discovered their claim.

The court found "there [was] abundant evidence establishing Plaintiffs were on constructive notice more than three years before they brought suit." In finding constructive notice, the court emphasized that the complaint was based on a whistleblower report published in 2019. The court held that the whistleblower report was "readily accessible" and that it "strain[ed] credulity" that "reasonably diligent individuals who had donated substantial sums of money to the Church" would have been unaware of the whistleblower report. The court also took judicial notice of numerous nationwide publications that reported on the Church's alleged fraud that were published more than three years prior to plaintiffs' filing their complaint.

The court also rejected the plaintiffs' argument that their constructive notice was a factual issue that was inappropriate on a motion to dismiss. The court highlighted that the plaintiffs failed to address how the constructive notice analysis would have changed if the court deferred its ruling to summary judgment, and recognized that "[n]othing gleaned in discovery could retroactively change the fact that" the whistleblower report was public since 2019 and the complaint expressly relied on the report.

The court granted the Church's motion to dismiss with prejudice.

D.B.U. v. Trump, 349 F.R.D. 228 (D. Colo. 2025)

District of Colorado holds class certification can be appropriate in the habeas context.

In March 2025, President Donald Trump signed a proclamation designating Tren de Aragua (TdA) a "Foreign Terrorist Organization" under the Alien Enemies Act. Petitioners were Venezuelan citizens detained at an ICE detention facility in Denver. At an immigration proceeding, an immigration judge indicated that ICE believed petitioners were affiliated with TdA. Petitioners denied being affiliated with TdA, but were at "grave risk" of ICE "alleging that" they are TdA members.

Petitioners moved to certify a class of "all noncitizens in the District of Colorado who were, are, or will be subject to the March 2025 Presidential Proclamation." The court granted petitioners' motion.

As an initial matter, the court discussed why class certification in the habeas context was possible. After recognizing there "[was] no dispositive case on the matter," it held the Tenth Circuit "ha[d] endorsed what is essentially the application of Rule 23 when habeas petitioners seek to represent a class." The court also found persuasive a Southern District of Texas decision that certified an analogous class of noncitizen Venezuelans who were designated as alien enemies under the same March 2025 presidential proclamation.

After determining habeas class proceedings were permissible, the court analyzed Rule 23(a) and Rule 23(b)(2)'s factors, finding petitioners had met their certification burden.

As to numerosity under Rule 23(a), the court found petitioners met their burden by showing the number of detainees who were subject to the proclamation or fell within the class definition was so numerous as to make joinder impracticable. As to commonality, petitioners focused on showing the class had a common question of whether present or future detainment under the proclamation was legal. In response, the government argued that petitioners had "factual differences" undermining commonality because they were detained under a different authority—the Immigration and Nationality Act—as opposed to being detained under the proclamation. The court rejected the government's distinction, finding petitioners' risk of deportation under the proclamation was enough for commonality. The government's typicality arguments echoed its commonality arguments, arguing the petitioners were "not part of the proposed class" because they were detained under a different legal authority. But the court held that this difference in factual situation was not enough to defeat typicality. Lastly, as to adequacy, the court again rejected the government's "factual differences" argument. The petitioners did not seek any unique relief contrary to the relief sought on behalf of the class, and petitioners' counsel demonstrated they were sufficiently experienced to adequately represent them.

The court also found that petitioners met their burden of showing Rule 23(b)(2)'s injunctive relief certification requirements were satisfied. First, the court found that the government's actions—subjecting class members to detainment and removal under the proclamation—were based on grounds generally applicable to all class members. At bottom, petitioners challenged the proclamation's application, a "common policy." Second, the court found that injunctive relief would be appropriate for a class because the class was sufficiently cohesive. An injunction may be stated in specific terms, as was demonstrated by a prior temporary restraining order the same court issued in the same matter. Further, the court rejected the government's argument that injunctive relief had to be tailored to each class member. The injunction petitioners sought—determining the due process and notice to which class members may be entitled—was sufficiently similar and could be addressed in a single injunction.

Eleventh Circuit

Merritt Island Woodwerx, LLC v. Space Coast Credit Union, 137 F.4th 1268 (11th Cir. 2025)

Eleventh Circuit allows consumer class action complaint to proceed despite the existence of a binding arbitration agreement because defendant financial institution failed to comply with AAA's policies.

Plaintiffs representing a putative class sued defendant credit union alleging that they were improperly assessed various fees under the parties' master service agreement (MSA). The MSA contained a mandatory arbitration clause, which selected the American Arbitration Association (AAA) and its rules as those to govern the arbitration. The arbitration clause also had a provision that stated that "[i]f [the] AAA is unavailable to resolve the Claims, and if you and we do not agree on a substitute forum, then you can select the forum for the resolution of the Claims."

On March 27, 2023, prior to filing their lawsuit, a single plaintiff filed an arbitration demand with the AAA related to the fees assessed under the MSA. AAA responded in a letter on April 20, 2023, explaining that it was declining "to administer this claim and any other claims between [defendant] and its consumers at this time" because defendant had not submitted its consumer dispute resolution plan for review or paid the associated fee. On April 25, 2023, defendant emailed the AAA expressing its desire to arbitrate and asking the specific reasons for the AAA's decision.

On June 7, 2023, plaintiffs filed a putative class action in the District Court for the Middle District of Florida. On June 9, 2023, defendant filed its arbitration agreement with the AAA for review and paid the applicable AAA fees. On July 24, 2023, the AAA approved defendant's arbitration provision and indicated that it was prepared to administer consumer related disputes. Defendant then moved to compel arbitration. The district court denied defendant's motion to compel arbitration, explaining that defendant waived its contractual right to arbitrate because it failed to perform under the agreement by declining to timely take the steps necessary for the AAA arbitration.

On appeal, the Eleventh Circuit, relying on its prior ruling in *Bedgood v. Wyndham Vacation Resorts, Inc.*, 88 F.4th 1355 (11th Cir. 2023), affirmed the district court's ruling. The Eleventh Circuit found that the district court correctly relied on the AAA's declination to administer the claim to conclude that defendant failed to perform and, therefore, was in default under the MSA. The Eleventh Circuit further concluded that defendant's attempt to cure its default after the putative class action complaint was filed was irrelevant, specifically explaining that defendant's initial failure to comply with the AAA's requirements was "inconsistent with asserting its arbitration right at any time before the suit." The Eleventh Circuit also determined that, because the district court was a "forum," the MSA's provision permitting plaintiffs to "select the forum for the resolution of the Claims" allowed them to file their lawsuit in federal court. Finally, although defendant argued that the district court's ruling should be limited only to the plaintiff who filed the arbitration demand, the Eleventh Circuit rejected this argument. Because the other plaintiffs had an identical arbitration provision, the AAA's refusal letter was a sufficient evidentiary basis to support a futility argument, which excused their compliance with the requirement to arbitrate.

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