GT GreenbergTraurig

Class Action Litigation Newsletter | Winter 2025/2026

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

Highlights from this issue include:

- Second Circuit vacates decision dismissing antitrust action against drug manufacturers, rejecting standing arguments based on *Illinois Brick*.
- Third Circuit reverses denial of motion to compel arbitration, holding defendant did not waive arbitration rights as to absent class members despite years of litigation activity.
- Fourth Circuit holds data breach plaintiffs must show public dissemination of their personal information to establish Article III standing.
- Fifth Circuit holds that Texas would not recognize cross-jurisdictional tolling.
- Eighth Circuit reverses class certification of Missouri Merchandising Practices Act claims.
- Illinois Supreme Court reverses nationwide class certification in FACTA action, holding the named plaintiff lacked common-law standing when she alleged only an increased risk of identity theft without any concrete injury.
- Ninth Circuit overrules prior precedent that diversity jurisdiction under CAFA is determined only at time of removal, based on recent U.S. Supreme Court ruling.

U. S. Supreme Court

Trump v. Orr, No. 25A319, 2025 WL 3097824 (U.S. Nov. 6, 2025)

Supreme Court holds displaying passport holders' sex at birth did not offend equal protection principles.

Transgender and non-binary individuals brought a putative class action seeking declaratory relief against the president, the State Department, and its secretary. Plaintiffs also sought injunctive relief against all defendants except the president, alleging that changes to the State Department's passport policy to require passports to reflect only a holder's sex assigned at birth and to remove the option for an "X" sex marker violated equal protection by discriminating on the basis of sex and transgender status, violated Fifth Amendment rights to travel abroad and to informational privacy, and violated First Amendment rights to freedom of speech and expression. They further alleged that the policy should be set aside under the Administrative Procedure Act (APA). The district court granted plaintiffs' motion to certify two classes and their motion for preliminary injunction enjoining the defendants from enforcing the policy. Defendants filed a motion for a stay pending appeal. The First Circuit denied the motion, and defendants applied to the Supreme Court for a stay pending appeal.

The Supreme Court granted the stay, ruling that defendants were likely to succeed on the merits on the grounds that displaying passport holders' sex at birth did not offend equal protection principles and plaintiffs were not likely to prevail in arguing that the State Department acted arbitrarily and capriciously by declining to depart from presidential rules that Congress expressly required it to follow. The Supreme Court found that defendants would suffer irreparable injury absent a stay because the district court's grant of class-wide relief enjoined enforcement of an executive branch policy with foreign affairs implications concerning a government document.

The Supreme Court thus granted the application and stayed the district court's order, pending the disposition of the appeal to the First Circuit and the disposition of a petition for a writ of certiorari.

Second Circuit

Mosaic Health, Inc. v. Sanofi-Aventis U.S., LLC, 156 F.4th 68 (2d Cir. 2025)

Court vacates dismissal of antitrust action, holding Sherman Act claim was sufficiently alleged.

Health care providers brought a putative class action against drug manufacturers, alleging the manufacturers violated the Sherman Antitrust Act and state laws through a conspiracy to unlawfully restrain the trade of insulin medication by restricting federal Drug Discount Program discounts on insulin medications (under Section 340B of the Public Health Service Act, 42 U.S.C. § 256b). The district court granted defendants' joint motion to dismiss and denied plaintiffs' motion for leave to file an amended complaint. Plaintiffs appealed.

At the outset of the case, defendants argued that the Supreme Court's decisions in *Astra USA, Inc. v. Santa Clara County*, 563 U.S. 110, (2011), and *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977), barred the plaintiffs from asserting claims under the Sherman Act and from seeking damages, on the grounds that the plaintiffs were indirect purchasers of the defendants' drugs and therefore lacked antitrust standing.

The Second Circuit held that dismissal was improper, and that *Astra* and *Illinois Brick Co.* did not bar the plaintiffs from bringing this action. First, the court held that *Astra* — in which the Supreme Court determined there is no private right of action for a covered entity to sue manufacturers for violations of Section 340B — did not bar Sherman Act claims. Second, the court held that *Illinois Brick* — in which the Supreme Court held that indirect purchasers alleging overcharge claims did not have standing to sue for antitrust violations under the Clayton Antitrust Act — did not bar the claims, when plaintiffs expressly disclaimed damages for overcharges and instead sought damages for losses incurred as a result of "lost access."

The Second Circuit held that plaintiffs sufficiently pleaded parallel conduct by plausibly alleging that defendants acted similarly enough in substance by restricting Section 340B Drug Discount pricing and raising prices in the market of certain popular diabetes medications over the course of months. The court considered that these announced policy changes bore similarities in timing and had a similar anti-competitive effect of limiting or eliminating the availability of Section 340B Drug Discounts. The Second Circuit found the differences in policies were still consistent with parallel conduct and did not change the overall effect of restricting Section 340B drugs. The court thus held that plaintiffs sufficiently alleged parallel conduct that contributes to an inference of a horizontal price-fixing conspiracy.

The Second Circuit further held that plaintiffs had sufficiently pleaded the "plus factors" — the allegations of further circumstances pointing toward a meeting of the minds — required when antitrust plaintiffs rely on circumstantial evidence. "Plus factors" may include a common motive to conspire, evidence that shows that the parallel acts were against the apparent individual economic self-interest of the alleged conspirators, and evidence of a high level of interfirm communications. The court held that plaintiffs alleged sufficient facts suggesting that defendants had a common motive to conspire to neutralize or mitigate market-share and regulatory threats just before the restrictions were imposed and that restricting Section 340B Drug Discounts would have been against any individual defendant's own economic self-interest. Plaintiffs also alleged that it was likely that defendants communicated with each other, both indirectly and directly, by using the same lobbying firms and lobbyists in advance of their restrictions on Section 340B Drug Discounts. The court determined that this made coordination even more probable and noted that the same lobbying firms worked on the Section 340B issue at the same time for PhRMA, an industry association of which each defendant was a member and on the board of directors.

Thus, the Second Circuit held plaintiffs sufficiently alleged parallel conduct and "plus factors" that supported the plausibility of a Section 1 conspiracy. The court directed the district court to reexamine its ruling on plaintiffs' allegations regarding state-law claims, which the district court dismissed for the same reason as the Sherman Act claims.

J.M. v. New York City Dep't of Educ., 161 F.4th 149 (2d Cir. 2025)

Court holds failure to exhaust administrative remedies was excused based on "policy or practice" exception.

Parents of children with disabilities, on behalf of themselves, their children, and a putative class of similarly situated children, brought an action against the city department of education, board of education, and chancellor, seeking declaratory and injunctive relief based on their contention that defendants violated the Individuals with Disabilities Education Act (IDEA) by maintaining a policy of discontinuing services to students with disabilities before their 22nd birthday. The district court granted

defendants' motion to dismiss for lack of subject-matter jurisdiction due to failure to exhaust administrative remedies. Plaintiffs appealed.

The Second Circuit found that in the normal course, parents may only sue in federal or state court under the IDEA after exhausting its administrative remedies. However, the court held that exhaustion is not an absolute requirement. Plaintiffs contended that their failure to exhaust in this case was excused for two reasons: (1) adequate relief would not be available in the administrative forum, and (2) they challenged a Department of Education policy or practice of general applicability that is contrary to law.

The Second Circuit concluded, as a matter of first impression, that plaintiffs' claims fell squarely within the latter "policy or practice" exception. The court explained that, to fall within that exception, the plaintiffs' challenge to a general policy must raise a question of law that does not require (or even significantly benefit from) development of a factual record regarding the impact of a policy on an individual child's access to services, and must not turn on the kind of technical questions of education policy best resolved with the benefit of agency expertise and a fully developed administrative record. Additionally, if excusing the exhaustion requirement undermines rather than promotes efficiency, a court may decline to apply the policy-or-practice exception.

Considering these factors, the Second Circuit concluded exhaustion was excused on the basis of the policy-or-practice exception. The court held that plaintiffs' central claim for declaratory relief turned on a question of law that is untethered from the individual circumstances of any individual student, the resolution of which would not benefit from an administrative record in an individual case or cases. The court further found that the strictly legal questions at issue did not require the exercise of discretion and educational expertise by state and local agencies and that requiring hundreds of individual hearings would not promote efficiency. Thus, the Second Circuit concluded that plaintiffs' claims fall within the policy-or-practice exception to the IDEA's exhaustion requirement.

The Second Circuit vacated and remanded for further proceedings consistent with its opinion.

Chalmers v. Nat'l Collegiate Athletic Ass'n, No. 25-1307-CV, 2025 WL 3628416 (2d Cir. Dec. 15, 2025)

Court affirms dismissal of Sherman Act claims as time barred.

Plaintiffs, who played men's college basketball at universities affiliated with the National Collegiate Athletic Association (NCAA) from 1994 to 2015, brought a putative class action against the NCAA and six of its member conferences. Plaintiffs alleged that defendants conspired to violate the Sherman Act and were unjustly enriched through commercial use of plaintiffs' names, images, and likenesses (NIL). Defendants moved to dismiss, and the district court granted the motion on four grounds: (1) plaintiffs' Sherman Act claims were barred by the four-year statute of limitations and were not subject to equitable tolling; (2) plaintiffs' claims for injunctive relief were barred by the doctrine of laches; (3) doctrines of preclusion bar much of the plaintiffs' claims based on the resolution of similar class actions in the Northern District of California; and (4) the unjust enrichment claim duplicated the antitrust claims, was untimely, and, for 10 plaintiffs, was foreclosed by a settlement agreement and principles of claim preclusion. Plaintiffs appealed, challenging these conclusions.

In a summary order, the Second Circuit held that plaintiffs' claims were time barred. The continuing violation doctrine did not apply because the alleged anti-competitive conduct was plaintiffs transferring all rights to their NIL to defendants by signing Student-Athlete Statements each academic year, which ended before the statutory period. The court held that each commercial use of plaintiffs' NIL — including the NCAA's entry into commercial licensing agreements and discrete acts of advertising — was "a manifestation of the 'overt act,' the decision to enter the contract, rather than an independent overt act of its own." Additionally, the court held the damages caused by the alleged anti-competitive act were not so speculative or unprovable at the time of that act as to support application of the speculative damages exception. The limitations period was also not subject to equitable tolling because plaintiffs failed to allege that extraordinary circumstances prevented them from suing during the limitations period, or that they diligently pursued their rights.

The Second Circuit also agreed with the district court that plaintiffs' claims for injunctive relief were barred by laches and that the unjust enrichment claim was duplicative of the federal antitrust claims.

Silva v. Schmidt Baking Distribution, LLC, No. 24-2103-CV, 2025 WL 3703088 (2d Cir. Dec. 22, 2025)

Court holds agreements were exempt "contracts of employment" under the FAA.

Commercial truck drivers, who had been required to incorporate to continue performing delivery work, brought a putative class action in state court against a baked goods manufacturer and its delivery coordination subsidiary, alleging violation of state wage and overtime laws. Following removal, defendant moved to compel arbitration. The district court granted the motion, holding that "Distribution Agreements," which included mandatory arbitration clauses, were not "contracts of employment" under 9 U.S.C. § 1, and therefore were not exempt from the Federal Arbitration Act (FAA). The plaintiffs petitioned for leave to appeal, and the court granted their petition.

The Second Circuit held that the agreements were "contracts of employment" within the meaning of the FAA. The court considered the "personal guarantee" provisions of the agreements holding plaintiffs personally and unconditionally liable for the performance of the work as "telling evidence that these are employment contracts," as they blurred the line between a supposedly business-to-business contract and an agreement for personal services. The Second Circuit also found the genesis of the corporations informative, as plaintiffs were existing W-2 employees, whom the defendant directed to create corporations and use form contracts to continue their work as delivery drivers, though their work remained largely unchanged after signing the agreements.

Third Circuit

Valli v. Avis Budget Group Inc., F.4th, 2025 WL 3638356 (3d Cir. Dec. 16, 2025)

Court finds no waiver of right to compel arbitration of class members' claims, despite years of litigation activity.

Plaintiff, a car rental customer, brought a putative class action in the District of New Jersey against Avis Budget Group, Inc. and related entities (collectively, Avis). Plaintiff alleged that Avis's practice of paying traffic fines issued to Avis customers without notifying the customers and then charging them an

administrative and/or handling fee violated the New Jersey Consumer Fraud Act and constituted unjust enrichment. The Complaint's class definition did not specify a class period.

The court denied Avis's motion to dismiss the amended complaint. In its answer, Avis asserted several affirmative defenses, including that plaintiff's claims were barred to the extent they sought relief prohibited by the arbitration clause and/or the class-action waiver in Avis's rental agreement.

Plaintiff subsequently filed a second amended complaint, which added another named plaintiff. Avis again asserted the same affirmative defenses in its answer. Neither of the named plaintiffs' rental agreements contained an arbitration clause, as Avis did not add the arbitration clause and class-action waiver to its standard rental agreement until after plaintiffs had rented their vehicles.

Plaintiffs moved for class certification and, for the first time, defined the class period to run "through the Present." In opposition, Avis argued, among other things, that many putative class members were subject to the arbitration clause and class-action waiver contained in Avis's rental agreement, and therefore plaintiffs' claims were not typical of the class and plaintiffs could not adequately represent the interests of putative class members who were contractually obligated to arbitrate their claims.

The district court denied nationwide certification but certified a subclass. In its typicality analysis, the district court concluded that Avis had waived its right to arbitration by engaging in litigation for five years without moving to compel arbitration. Avis thereafter moved to compel bilateral arbitration and the district court denied the motion, again finding that Avis's litigation activity over several years demonstrated waiver. Avis appealed.

The Third Circuit reversed. In analyzing waiver – which is the "intentional relinquishment or abandonment of a *known* right" —the Third Circuit found that Avis "knew" of its prospective right to compel arbitration once it could anticipate that a class including renters subject to the arbitration clause could be certified, even if Avis lacked the ability to enforce it. Accordingly, the court ruled that pre-certification conduct may be considered in analyzing whether a party waived its right to arbitration as to unnamed members of a putative class, even when no motion to compel could have been granted. As the court explained, "when enforceability of a right to arbitration hinges on the occurrence of a foreseeable procedural event—in this case, certification of a class—futility excuses only the failure to seek judicial action which the court could not then grant"; but "[i]t does not remove all pre-event conduct from the waiver inquiry." Thus, a party ultimately intending to compel arbitration "must give clear, reasonably prompt record notice of its intent to exercise its arbitration right and then promptly move to do so once the event occurs."

Applying this framework, the Third Circuit found Avis's conduct in the litigation did not demonstrate an intentional relinquishment of a known right. Instead, Avis consistently raised the arbitration issue, then promptly moved to compel once it was no longer futile to do so.

The court thus vacated the district court's denial of Avis's motion to compel but directed the district court to determine enforceability on remand. Specifically, the Third Circuit instructed the district court to determine whether a valid agreement to arbitrate exists and whether the dispute falls within the scope of the agreement.

Lundeen v. 10 West Ferry Street Operations LLC, 156 F.4th 332 (3d Cir. Oct. 16, 2025)

FLSA's opt-in requirement does not bar release of FLSA claims in class settlement under Rule 23.

Plaintiff filed a hybrid class/collective action in the Eastern District of Pennsylvania against his restaurant-employer. Plaintiff alleged that his employer violated the Fair Labor Standards Act (FLSA) and the Pennsylvania Minimum Wage Act (PMWA) by permitting a supervisor to share in the restaurant's tip pool that was meant for bartenders. Plaintiff's FLSA claim was to proceed as a collective action under § 216(b) of the FLSA, and the PMWA claim was meant to proceed as a Rule 23(b)(3) class action.

During the litigation, the parties stipulated to – and the court ordered – conditional certification of an FLSA collective. As § 216(b) requires employees to "opt in" to an FLSA collective in writing. All putative collective members were mailed a notice stating that if they did not join the lawsuit, they would not be part of the collective and would not be affected by any judgment or settlement involving the FLSA claim. As a result of the notice, nine additional employees "opted in" to the case.

The parties ultimately reached an agreement to settle on a class-wide basis. The settlement agreement permitted all class members to receive notice of the settlement, advised them that they had an opportunity to object or exclude themselves from the lawsuit and that, unless they affirmatively opted out of the settlement, they would receive settlement funds in exchange for their release of wage-and-hour claims, as well as any FLSA claims.

Plaintiff sought preliminary approval of the class settlement, and the district court held a hearing to specifically address whether class members who had not opted into the FLSA collective action could nonetheless be required by the class action settlement to waive FLSA claims. The district court denied preliminary approval, finding that the proposed settlement agreement was neither fair nor reasonable because it required class members who did not opt in to the FLSA collective to release their FLSA claims. The district court denied defendant's motion for reconsideration, but certified the following question for interlocutory appeal, pursuant to 28 U.S.C. § 1292(b): "Whether Section 216(b) of the [FLSA] permits a party to obtain the release of unasserted FLSA claims through a Rule 23(b)(3) opt-out class settlement."

The Third Circuit granted the petition and reversed, holding that § 216(b) provides only a mechanism for opting in to collective litigation and does not address, let alone bar, the release of unasserted FLSA claims in a court-approved Rule 23 settlement. Accordingly, the Court of Appeals vacated the district court's order and remanded the case for a full fairness inquiry as required by Rule 23.

Fourth Circuit

Holmes v. Elephant Insurance Co., 156 F.4th 413 (4th Cir. Oct. 14, 2025)

Fourth Circuit holds that plaintiffs in data breach class actions must demonstrate public dissemination of personal information to establish Article III standing.

Plaintiffs brought a putative class action in the Eastern District of Virginia against Elephant Insurance Company and related entities following a data breach that compromised the driver's license numbers of nearly 3 million people. Plaintiffs alleged various injuries, including the risk of identity theft and emotional distress and sought damages, declaratory relief, and an injunction to improve data security.

The district court dismissed the case for lack of standing, concluding that plaintiffs did not demonstrate a concrete injury necessary for Article III standing. On appeal, the Fourth Circuit Court of Appeals affirmed in part and reversed in part, holding that only two plaintiffs, Cardenas and Holmes, had standing to seek damages because their driver's license numbers were found on the dark web, constituting a concrete injury. The court emphasized that standing must be demonstrated separately for each form of relief sought and that the requirements apply equally to class actions, meaning individual named plaintiffs must satisfy these requirements.

The court found that the other alleged injuries, such as the risk of future misuse of personal information and emotional distress, did not support standing because they were not imminent or concrete. The court also noted that time spent monitoring financial information and emotional distress could not independently furnish standing for damages without a separate imminent harm. As a result, only Cardenas and Holmes could proceed with their claims for damages, while the court dismissed the other two named plaintiffs' claims.

Fifth Circuit

Ackerman v. Arkema Inc., 157 F.4th 715 (5th Cir. 2025)

Fifth Circuit rules that Texas does not recognize cross-jurisdictional tolling of class action claims.

Plaintiffs sued Arkema Incorporated for property damage caused by industrial plant explosions in the wake of Hurricane Harvey in 2017. A group of property owners filed a putative class action in federal court, asserting federal and state-law claims and seeking injunctive and monetary relief. The district court certified a Rule 23(b)(2) injunctive relief class but denied certification of a Rule 23(b)(3) class for money damages. Two years later, the court approved a settlement on behalf of the injunctive-relief class. Just before that approval, and after the two-year limitations period had run on the claims, class members filed individual actions in Texas state court, seeking monetary damages. Arkema removed those state cases to federal court and moved to dismiss the claims, contending that they were time barred and that the pendency of the federal class action did not toll the statute of limitations. The district court agreed and dismissed the claims. Plaintiffs appealed.

A divided Fifth Circuit panel affirmed and held that Texas courts would not extend cross-jurisdictional tolling to plaintiffs' state-law claims. The Court of Appeals began by explaining *American Pipe* tolling and described how Texas intermediate appellate courts have uniformly adopted the doctrine for Texas state class actions. But citing two of its prior decisions, the Fifth Circuit recognized that Texas courts have not extended the doctrine to allow for cross-jurisdictional tolling — that is, they have not recognized that a federal class action tolls a state statute of limitations. Making an *Erie* guess, the Court of Appeals rejected plaintiffs' policy arguments, concluding that Texas courts only recognize tolling of state-law claims for class actions filed in Texas state courts.

Seventh Circuit

Fausett v. Walgreen Co., 2025 IL 131444 (Nov. 20, 2025)

Illinois Supreme Court reverses class certification based on lack of standing.

Asserting willful violations of the Fair and Accurate Credit Transactions Act (FACTA), plaintiff filed a putative class action for allegedly printing inappropriate debit card information on the receipts that defendant provided to consumers that increased her risk of identity theft. The named plaintiff had used a prepaid debit card at one of defendant's locations to add money to the card, resulting in a receipt that disclosed a portion of the prepaid card's number. The circuit court certified a nationwide class of consumers who had received similar receipts displaying card information. The defendant appealed on the basis that the named plaintiff did not have standing. However, the appellate court upheld the decision. The defendant then appealed to the Illinois Supreme Court.

The Illinois Supreme Court reversed the appellate court. The Court first confirmed that standing was a proper issue to be decided at the class certification stage because if a purported class representative cannot maintain his individual claim, he cannot represent the class. The Court next aligned with long-standing precedent that Illinois, as opposed to federal, standing law applied in this state court case, even where a federal statute is at issue. The Court further held that plaintiff's claim involved common-law standing, instead of statutory, because FACTA does not include standing language. Under Illinois common-law standing principles, the Court held that the plaintiff did not have standing. It appeared "undisputed" that the plaintiff was a "no-injury plaintiff," as she had not identified any concrete harm. As a "purely speculative future injury," the purported increased risk of identity theft did not suffice. The Court reversed the class certification decision for lack of standing and ultimately remanded the case to the circuit court for dismissal.

Eighth Circuit

Sorin v. Folger Coffee Co., 159 F.4th 1151 (8th Cir. 2025)

Eighth Circuit reverses consumer fraud class certification and holds Missouri statute requires individualized inquiries.

The plaintiff purchased a container of coffee that represented it could produce a certain number of cups, depending on the brewing method. Claiming that representation was either false or misleading, plaintiff brought a putative class action against defendant for violation of the Missouri Merchandising Practices Act (MMPA) and unjust enrichment. The case was consolidated with other similar matters around the country into a multi-district litigation that proposed six statewide classes. The district court considered first whether the Missouri class was viable before ruling on the remaining five classes and held that class certification was appropriate. The defendant appealed.

The Eighth Circuit reversed the district court. Noting that fraud cases are typically unsuitable for class treatment, the court rejected the plaintiff's argument that each consumer received the same representation and that individual evidence on reliance would be unnecessary. Although the class members would not need to show reliance, they would need to prove a causal connection between the alleged deceptive act and the harm the class suffered. By extension, proving causation in a consumer faction under the MMPA based on deceptive, misleading, or fraudulent statements would not be possible

without reliance. The court determined that, based on the representations, it is likely that many consumers were not deceived, and to sort out who was and was not would require individual inquiries that would overwhelm any commonality amongst the class. The court likewise held that class treatment was not appropriate for the unjust enrichment claims, which relied on the individual circumstances of each transaction.

Ninth Circuit

Faulk v. Jeld-Wen, Inc., 159 F.4th 618 (9th Cir. 2025)

Based on Supreme Court holding, Ninth Circuit overrules its prior precedent that diversity jurisdiction under CAFA is determined only at time of removal.

Plaintiffs brought a putative class action against defendants in Alaska state court, alleging state-law claims relating to windows defendants manufactured. Defendants removed the case under CAFA. Plaintiffs sought to remand the case to state court and to file a second amended complaint, which removed the class allegations. The district court denied the motion to remand because Ninth Circuit precedent at that time suggested that post-removal amendments to class action complaints amending the nature of the claims did not undermine federal jurisdiction. The Ninth Circuit vacated the district court's order and remanded unless defendants could establish another basis for federal jurisdiction. The court observed that in *Royal Canin U.S.A. v. Wullschleger*, 604 U.S. 22 (2025), the Supreme Court held that jurisdiction is lacking when a plaintiff amends her complaint post-removal and excises the class action provisions that had provided the sole basis for subject matter jurisdiction. The court held that prior precedent in the Ninth Circuit, holding that diversity jurisdiction under CAFA is determined only at the time of removal, is irreconcilable with *Royal Canin*.

Gerl v. Sheraton Operating, LLC, 2025 WL 3552281 (C.D. Cal. Dec. 11, 2025)

Plaintiffs must use admissible evidence to support exceptions to CAFA jurisdiction.

Plaintiff alleged a "bait-and-switch" pricing scheme at defendants' hotels where guests were charged higher prices on in-room dining as compared to prices displayed on the TV menu. Defendants removed the case from state court under CAFA and plaintiff moved to remand. The district court rejected plaintiff's three remand arguments.

First, plaintiff claimed the $5,000,000 amount-in-controversy requirement under CAFA was not satisfied. Because plaintiff challenged the truth of defendants' removal allegations, the burden was on defendants to show, by a preponderance of the evidence, that the amount in controversy exceeds the jurisdictional amount. Defendants provided an affidavit that assumed plaintiff's alleged 40% overcharge amount and demonstrated that the amount in controversy exceeded $5,000,000.

Second, plaintiff argued CAFA's local controversy exception required remand. Under the exception, a district court must decline jurisdiction "when more than two-thirds of the putative class members are citizens of the state where the action was filed, the principal injuries occurred in that same state, [] at least one significant defendant is a citizen of that state, and in the three years preceding the filing of that class action no other class action has been filed asserting the same or similar facts against any of the defendants." The burden to establish this exception is on the plaintiff. Defendants challenged plaintiff's claim that more than two-thirds of the putative class are California citizens. Plaintiff merely argued it was

"common sense" that more than two-thirds of the putative class were California citizens because the hotels are in California. But "[s]tatements made in briefs are not evidence," and plaintiff provided no data in a format that could be considered as evidence. As a result, plaintiff failed to meet its burden to establish the local controversy exception.

Third, plaintiff argued CAFA's home-state exception required remand. There is both a mandatory and discretionary basis for remand under the home-state exception. Under the mandatory exception, the court "shall" decline CAFA jurisdiction if "two-thirds or more of the members of all proposed plaintiff classes in the aggregate, and the primary defendants, are citizens of the State in which the action was originally filed." Under the discretionary exception, the court "may, in the interests of justice and looking at the totality of the circumstances, decline to exercise jurisdiction" "when more than one-third of the putative class, and the primary defendants, are citizens of the state where the action was originally filed." The burden was on plaintiff to show either of the home-state exceptions applied. But again, plaintiff submitted no evidence at all of the putative class members' citizenship. Thus, plaintiff failed to meet her burden to establish the home-state exception.

Tenth Circuit

Jacobs v. Salt Lake City Sch. Dist., 154 F. 4th 790 (10th Cir. 2025)

Tenth Circuit reverses after disagreeing with district court's narrow reading of students' civil rights allegations.

Plaintiffs were two elementary school students with intellectual disabilities that challenged the way their school district educates its intellectually disabled students. They alleged the school district used a system that automatically places students with intellectual disabilities in self-contained special education classes in a few designated schools located throughout the school district, without making an individualized assessment for each student. Plaintiffs, on behalf of themselves and others similarly situated, alleged the school district's system violated various civil rights statutes.

The Tenth Circuit reversed the district court's dismissal of plaintiffs' claims under Rule 12(b)(6). The district court had dismissed for failure to state a claim after construing plaintiffs' claims to be seeking only placement in their neighborhood schools, which the Tenth Circuit already held is unavailable under these statutes. The Tenth Circuit disagreed with the district court on its interpretation of plaintiffs' allegations being made only in an attempt to attend their neighborhood schools. Plaintiffs also alleged facts that the school district failed to make an individualized assessment of each intellectually disabled student's educational placement. Specifically, they alleged that, under the school district's system, students were categorized intellectually solely by their IQ. Finding these allegations were sufficient to allege plausible violations of the civil rights statutes, the Tenth Circuit reversed.

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