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Class Action Litigation Newsletter | Spring 2026

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

Highlights from this issue include:

- Supreme Court holds that the denial of *Yearsley* government-contractor protection is not immediately appealable under the collateral order doctrine.
- Second Circuit vacates dismissal of baby food heavy metals class action, holding plaintiffs sufficiently alleged an economic injury supporting Article III standing.
- Second Circuit holds that an ERISA plaintiff could not be compelled to individually arbitrate representative Section 502(a)(2) claims based on the effective-vindication doctrine.
- Fourth Circuit holds that district courts may deny class certification at the pleadings stage when the complaint shows the lack of predominance.
- Fifth Circuit withdraws prior endorsement of the "class certification approach" to representative plaintiff standing.
- Eighth Circuit affirms dismissal of multidistrict antitrust and RICO claims, holding generalized "group pleading" allegations were insufficient to plausibly allege a conspiracy.
- Ninth Circuit holds unnamed class members in damages actions must demonstrate Article III standing at summary judgment stage following class certification.

U.S. Supreme Court

Geo Grp., Inc. v. Menocal, 146 S. Ct. 774 (2026)

Supreme Court affirms judgment dismissing appeal for lack of jurisdiction, holding denial of merits defense protection did not qualify for interlocutory review.

A former immigration detainee brought a putative class action against a private detention facility operator, alleging that the operator's policies violated a federal bar on forced labor. The operator moved for summary judgment, arguing that the *Yearsley* doctrine – which provides a government contractor with a defense to liability – required dismissal because the government had authorized and directed the challenged labor policies. The district court denied the motion for summary judgment, holding that the operator had independently developed the policies and had not been instructed by the government to adopt them. The operator appealed, and the Tenth Circuit dismissed for lack of jurisdiction, holding that a denial of the *Yearsley* protection did not qualify for interlocutory review under the collateral order doctrine.

The Supreme Court affirmed. As the Court explained, the final-judgment rule provides appellate courts with jurisdiction over appeals only from final decisions, and the collateral-order doctrine provides only a narrow exception allowing interlocutory appeals for non-terminal orders that finally determine claims of a right separable from, and collateral to, rights asserted in the action. The three non-negotiable conditions for a pre-judgment order to get immediate review are that it (1) conclusively determines the undisputed question, (2) resolves an important issue completely separate from the merits of the action, and (3) is effectively unreviewable on appeal from a final judgment.

The Court held that because the *Yearsley* doctrine's protection runs out when a contractor may have violated the law – either by acting under an illegal authorization or by exceeding the scope of a legal one – it operates as a merits defense rather than an immunity. The Court also held that the right afforded by a merits defense — a finding of non-liability — can be fully vindicated on appeal from a final judgment, and therefore the denial of *Yearsley* protection fails the third condition of the collateral order doctrine. The Supreme Court thus held that a pretrial order denying *Yearsley* protection is not immediately appealable.

First Circuit

Glasner v. American Economy Insurance Co., No. 22-cv-11466, 2026 WL 395006 (D. Mass. Feb. 12, 2026)

Uniform policies and consistent practices drive class certification.

In this case, the court considered whether a group of policyholders could pursue class allegations related to how insurers calculate actual cash value (ACV) payments to insureds. Plaintiffs, homeowners insured under standard-form policies, argued that the insurer systematically underpaid claims by depreciating not just materials used in repairs but also labor costs. Plaintiffs argued that the uniform approach insurers took in adjusting claims was not authorized by the policies, constituted a breach of contract, and could be pursued on a class-wide basis.

The court agreed. It granted certification for several state-specific classes under Rule 23(b)(3), highlighting that the key liability question of whether labor depreciation was allowed could be resolved on

a class-wide basis, as it was a matter of contract interpretation. The issue was not whether the insurer's ACV payments were reasonable or sufficient, but whether the insurers were entitled to deduct labor deprecation in the first place. To that end, the insurer's policies were materially similar across class members, and their adjustments relied on standardized software and procedures. Thus, no individualized proof would be necessary to resolve this liability question on a class-wide basis because insurers did not dispute that during the class period they depreciated labor costs when calculating ACVs. This uniformity meant that common issues predominated over any individual differences and minor differences in state law, damages calculations, policy language, or individualized defenses like appraisal or full compensation.

Bartok v. Hometown America, LLC, No. 21-10790, 2026 WL 92831 (D. Mass. Jan. 8, 2026)

Court certifies rent-setting claims despite individualized lease and damages issues.

The District of Massachusetts considered renewed motions to certify three proposed classes challenging rent-setting practices at two manufactured housing communities. The court ultimately granted certification in part, despite substantial individualized issues raised by defendants. The case centers on plaintiffs' effort to convert individualized rent histories and lease arrangements into class allegations under Mass. Gen. Laws ch. 140, § 32L(2) and Chapter 93A. Defendant argued that rent levels were set under lawful lease agreements, reflected market conditions, and varied based on entry date, lease type, and community-specific circumstances – factors that, in defendant's view, required tenant-by-tenant analysis, inconsistent with Rule 23.

The court nevertheless certified two Rule 23(b)(3) damages classes, finding that numerosity and commonality were satisfied given the size of the communities and the existence of overarching rent-setting policies. The defense contended that liability would turn on individualized questions, including when any "change in rent" occurred, whether particular tenants were subject to prior owners' decisions, the legal significance of lifetime versus at-will leases, and whether the statutory presumption of unfairness could be rebutted with community-specific justifications. The court, however, concluded that the legality of Hometown's structured approach to base rent and consumer price index (CPI) adjustments presented common legal questions capable of class-wide resolution.

On predominance, Hometown emphasized that damages would require individualized calculations tied to each tenant's entry date, lease terms, CPI history, and payment record, and that defenses – such as voluntary payment, statute of limitations, and rebuttal of the statutory presumption – would vary across the class. The court decided that these issues did not overwhelm the central liability question and that damages could be addressed through formulaic methods using rental data.

The court also certified a Rule 23(b)(2) injunctive class of current and future rent-payers, rejecting the defense argument that differences among tenants and evolving rent structures defeated the cohesiveness required for injunctive relief. Although Hometown maintained that rent policies had changed over time – including transition efforts toward uniformity – the court found that the alleged nonuniform framework was sufficiently uniform to justify prospective relief on a class-wide basis.

Second Circuit

Cantor v. Beech-Nut Nutrition Co., No. 25-821-CV, 2026 WL 304246 (2d Cir. Feb. 5, 2026)

Vacating dismissal, court holds that plaintiffs plausibly alleged an economic injury sufficient for Article III standing.

Consumers brought a consolidated putative class action against a baby food manufacturer, alleging that the manufacturer produced and sold baby food products containing harmful levels of heavy metals while misrepresenting the products as safe and healthy for infants and toddlers. Plaintiffs asserted claims for breach of warranty, fraud, negligent misrepresentation, unjust enrichment, and violations of state consumer protection statutes. The district court granted the manufacturer's motion to dismiss for lack of Article III standing, holding that plaintiffs failed to sufficiently plead that the alleged presence of heavy metals rendered the food unsafe, unusable, and therefore, worthless. Plaintiffs appealed.

The Second Circuit vacated the dismissal, ruling that plaintiffs had plausibly alleged an economic injury sufficient for Article III standing by claiming they overpaid for baby food products that did not possess the safety characteristics the manufacturer represented. The court ruled that plaintiffs had pled an injury that was sufficiently concrete by pointing to certain documents that described the defendant's systemic failure to deliver on its bargained-for assurances regarding its testing and safety standards, and that explained how that failure allowed for other products to be brought to market with harmful levels of heavy metals. These documents included a staff report reflecting a 15-month investigation by the U.S. House of Representatives Committee on Oversight and Reform's Subcommittee on Economic and Consumer Policy, as well as a supplemental staff report from that Subcommittee citing an investigation by state of Alaska public health officials. The court also held that plaintiffs were allowed to plead their injury as an overpayment, rather than being required to allege injury from use of the product.

Stevenson v. Thornburgh, No. 24-1788, 2026 WL 276584 (2d Cir. Feb. 3, 2026)

Second Circuit affirms district court's dismissal of Swiss law claim on forum non conveniens grounds.

Shareholders of a Swiss bank brought a consolidated putative class action against the bank's U.S. subsidiaries, present and former officers and directors, and an auditor, alleging that continuous and systemic mismanagement caused the bank's collapse. Plaintiffs asserted one claim against all defendants for breach of statutory duties to shareholders under multiple provisions of Swiss law and two claims against most defendants under the federal Racketeer Influenced and Corrupt Organizations (RICO) Act. The district court dismissed the RICO claims with prejudice and dismissed the Swiss law claim on forum non conveniens grounds without prejudice to refiling in Switzerland. Plaintiffs appealed only from the dismissal of the Swiss law claim.

The Second Circuit affirmed, ruling that the district court did not abuse its broad discretion in dismissing the Swiss law claim on forum non conveniens grounds. As the court held, the district court reasonably concluded that plaintiffs' choice of a New York forum was not entitled to substantial deference because the conduct at issue and the dispute were overwhelmingly Swiss in nature. The court also held that Switzerland constituted an adequate alternative forum, rejecting plaintiffs' arguments that litigating there would cause financial hardship and deprive them of the ability to bring a class action suit or try their case to a jury, as such circumstances did not demonstrate the unavailability of an alternative forum. The court

also held that the district court acted within its discretion in concluding that public and private interest factors weighed in favor of litigation in Switzerland. Finally, the court held that the district court did not abuse its discretion in denying plaintiffs leave to amend their complaint a second time, where plaintiffs had been given one opportunity to amend, did not seek further leave to amend in the district court, and failed to identify other facts or legal theories they might assert if given leave to amend.

Moses v. The New York Times Co., No. 24-2979, 2026 WL 364231 (2d Cir. Feb. 10, 2026)

District court did not abuse its discretion in approving class settlement in an autorenewal class action.

California subscribers brought a class action against The New York Times, alleging that the company automatically renewed their subscriptions without proper notice in violation of the California Automatic Renewal Law. The parties reached an initial settlement in 2021, which the Second Circuit vacated on appeal because access codes provided to the class constituted "coupons" under the Class Action Fairness Act. On remand, the parties entered into a new settlement agreement. An objector appealed the district court's approval of the new settlement, challenging the settlement on multiple grounds, including Article III standing, the reasonableness of the settlement fund, the propriety of attorneys' fees, and the validity of an incentive award to the named plaintiff.

The Second Circuit affirmed, ruling that the district court did not abuse its discretion in approving the class settlement. The court held that the settlement's practice changes provision did not implicate Article III standing concerns because it memorialized steps already taken by the newspaper company and did not prohibit the company from reverting them, rendering the provision monetary rather than injunctive in nature. The court also held that all class members shared the named plaintiff's injury because each was charged for a subscription month that should have been provided as an unconditional gift under California law. The court further held that the district court properly evaluated the *Grinnell* factors for assessing settlement reasonableness: (1) the complexity, expense, and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery given all the attendant risks of litigation. The court rejected the objector's argument that the district court failed to properly evaluate the last two factors, holding the district court did not abuse its discretion by accepting a benchmark showing the settlement fund amounted to 74% of the best possible recovery.

The court also held that the district court applied the correct legal standard in approving attorneys' fees of one-third of the total settlement value after conducting a holistic assessment of the six factors used to evaluate reasonableness: (1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public-policy considerations. Finally, the court declined to revisit its prior holding that incentive awards are not per se impermissible and found the $5,000 incentive award to the named plaintiff reasonable in light of her active contributions to the litigation.

Duke v. Luxottica U.S. Holdings Corp., 167 F.4th 16 (2d Cir. 2026)

Second Circuit holds the effective vindication doctrine precludes individual arbitration of a retirement plan participant's representative claim.

A participant in a defined-benefit retirement plan brought a putative class action against her former employer, the plan, and its fiduciary committee, alleging that the committee's use of outdated actuarial assumptions violated ERISA's actuarial equivalence requirements and constituted a breach of fiduciary duty. The participant sought relief under Section 502(a)(2), on behalf of the plan, and Section 502(a)(3), on behalf of herself and other participants. She sought plan reformation, monetary restitution to the plan, and increased benefit payments. Defendants moved to compel individual arbitration under a dispute resolution agreement the participant signed, which included a class action waiver. The district court denied the motion to compel arbitration as to the Section 502(a)(2) claim and denied a stay of litigation pending arbitration of the Section 502(a)(3) claim. Defendants sought interlocutory appeal under the Federal Arbitration Act (FAA), 9 U.S.C. § 16(a)(1)(A)–(B).

The Second Circuit affirmed in part and reversed in part. First, the court held it had appellate jurisdiction to review the participant's standing to seek Section 502(a)(2) remedies on behalf of the plan, because it is routine practice to review a district court's subject matter jurisdiction on interlocutory appeal, and because plaintiff's standing was inextricably intertwined with an order appealable under the FAA.

The court then held that the participant had Article III standing to seek reformation, as the plan's alleged systemic noncompliance with ERISA and resulting jeopardy to its favorable tax status might constitute a cognizable plan injury that, if remedied, would also redress the participant's reduced benefits. But the court reversed the district court's finding that the participant had standing to seek monetary payments to the plan, holding that monetary repayment to a defined benefit plan would not personally benefit the participant because she had no equitable or property interest in the plan's assets. The court also held that the effective vindication doctrine precluded compelling the participant to individually arbitrate her Section 502(a)(2) claim, as that provision is inherently representational and individual arbitration would effectively eliminate her statutory right to pursue it.

Fourth Circuit

Oliver v. Navy Fed. Credit Union, 167 F.4th 106 (4th Cir. 2026)

Fourth Circuit affirms denial of class certification for damages class at pleadings stage but finds denial of injunctive class premature.

Plaintiffs, minority applicants for residential mortgage products, filed a putative class action against Navy Federal Credit Union, alleging discrimination in the underwriting process. Plaintiffs sought class-wide declaratory and injunctive relief under Rule 23(b)(2) and damages under Rule 23(b)(3). The trial court granted in part and denied in part Navy's motion to dismiss and granted Navy's alternative motion to strike the class allegations. The Court of Appeals granted Plaintiffs interlocutory review of the decision.

On appeal, the Fourth Circuit ruled that district courts are authorized by Rule 23(c)(1)(A) to make class certification decisions based solely on the pleadings and before any discovery – not by Rule 12(f) or Rule 23(d)(1)(D). The Court of Appeals emphasized that class certification decisions at the pleading stage

should be based solely on the face of the complaint and whether the allegations fail to satisfy the requirements of Rule 23(a) and (b) as a matter of law.

Applying that framework, the court found that the district court acted within its discretion to deny class certification under Rule 23(b)(3) because the complaint showed significant variations among the applicants, including different states of residence, types of mortgage products applied for, and outcomes with the credit union. The Court of Appeals thus affirmed denial of class certification under Rule 23(b)(3).

But the Court of Appeals found that the district court acted prematurely in denying class certification under Rule 23(b)(2) for declaratory and injunctive relief, because plaintiffs sufficiently alleged common questions of law or fact capable of class-wide resolution, such as whether Navy uses a single underwriting algorithm that could produce discriminatory results. Unlike damages classes, declaratory and injunctive classes need not satisfy the predominance or superiority requirements.

Trauernicht v. Genworth Fin. Inc., 169 F.4th 459 (4th Cir. 2026)

Fourth Circuit rules that claims under ERISA § 502(A)(2) are inappropriate for mandatory certification and require rigorous commonality analysis.

Plaintiffs, former employees of Genworth Financial, brought a putative class action alleging that the company breached its fiduciary duties under the Employee Retirement Income Security Act (ERISA) by selecting and retaining imprudent investment options for their defined contribution retirement plan. The United States District Court for the Eastern District of Virginia certified a mandatory class under Rule 23(b)(1), which does not require notice to class members or allow them to opt out. The Court of Appeals granted Genworth's petition for interlocutory review and reversed.

The Court of Appeals first concluded that plaintiffs' defined contribution plan claims under ERISA § 502(a)(2) were individualized monetary claims, and thus could not be joined in a mandatory class under Rule 23(b)(1). The court held that individualized monetary claims should instead be addressed under Rule 23(b)(3), which provides greater procedural protections, including notice and opt-out rights for class members.

The court also found that the district court erred in assuming that claims under ERISA § 502(a)(2) inherently satisfy the commonality requirement for class certification under Rule 23(a)(2). As the court highlighted, plaintiffs' claims involved individualized circumstances and not all class members suffered the same injury, which is necessary to establish commonality. The court stressed the need for a rigorous analysis to determine whether the proposed class members suffered the same injury, rather than relying on a generalized assumption of commonality.

D.C. by Chaplick v. Fairfax County School Bd., 2026 WL 772353 (4th Cir. Mar. 19, 2026)

Fourth Circuit finds no class-action exception to IDEA's administrative exhaustion requirement.

In a putative class action brought by two students receiving special education services, their parents, and a nonprofit advocacy organization against the Virginia Department of Education and the Fairfax County School Board, plaintiffs alleged systemic violations of the Individuals with Disabilities Education Act (IDEA), including the failure to provide a Free Appropriate Public Education (FAPE) and constitutional due process and equal protection violations. The district court dismissed the complaint because (among

other reasons) one of the students and his parents failed to exhaust IDEA's administrative process. Plaintiffs appealed. The Fourth Circuit affirmed, finding that IDEA's exhaustion requirement applied to all claims, and there is no class-action exception to the exhaustion requirement.

Fifth Circuit

Wilson v. Centene Management Co., L.L.C., 168 F.4th 217 (5th Cir. 2026)

Fifth Circuit withdraws prior endorsement of "class certification approach" to plaintiff standing.

Plaintiffs were health insurance policyholders who claimed they were denied access to in-network providers and sued their insurer. The district court denied class certification, ruling that plaintiffs' damages theory did not show a class-wide injury-in-fact and plaintiffs thus lacked Article III standing. In a prior decision, the Fifth Circuit vacated the district court's decision. Recognizing a circuit split, the Fifth Circuit joined the First, Third, Sixth and Ninth circuits and adopted the "class certification approach" to class-wide standing. Unlike the "standing approach," the class certification approach looks only at the named plaintiff's standing. The court determined that the individual plaintiff had standing, so it vacated the district court's decision and remanded.

In this decision, the Fifth Circuit withdrew its adoption of the "class certification" approach. The court determined that it was not required to take a side in the circuit split and thus "declined to determine the correct approach." The outcome remained the same — the court vacated the district court's ruling and remanded — but the Fifth Circuit determined that plaintiffs had shown standing under either approach.

Seventh Circuit

Chicago Headline Club v. Noem, 168 F.4th 1033 (7th Cir. 2026)

Seventh Circuit vacates ICE-related injunction and dismisses pending appeal.

In fall 2025, the Department of Homeland Security, Immigration Customs and Enforcement, and Customs and Border Protection initiated an immigration enforcement operation that resulted in protest activity at one facility outside the Chicago area. Alleging unconstitutional responses to this activity, protesters and journalists filed suit, asserting violations of the First and Fourth Amendments. Shortly after the case was filed, the district court granted a temporary restraining order against all federal law enforcement in the Northern District of Illinois, which prevented the Government and other federal agencies from using certain crowd control tactics and tools.

The district court later converted the temporary restraining order to a preliminary injunction targeting multiple federal agencies in Chicago. In doing so, the district court certified a class of individuals who either would or intended to peacefully be at protests in the Northern District of Illinois. The Government appealed, and at the Government's request, the Seventh Circuit stayed its enforcement pending resolution of the appeal. Several months later, the plaintiff class moved to voluntarily dismiss the case with prejudice because the Government had withdrawn the federal agent presence that initiated the suit, and there had been no reported violations in recent months. The district court granted the motion but dismissed the case without prejudice. The district court also sua sponte decertified the class. The Government appealed

to the Seventh Circuit, seeking to dismiss the pending appeal on the injunction and raised concerns related to the dismissal.

The Seventh Circuit granted the Government's request to dismiss the appeal of the injunction. Because the district court had resolved the case, the appeal was now moot. But under Federal Rule of Appellate Procedure 42, the court first exercised its discretion to vacate before dismissing the appeal. Noting that vacatur is reserved for extraordinary circumstances, the Seventh Circuit held that allowing the injunction to remain in effect could result in unintended future legal consequences, particularly given that the Government had removed the agents from the area. The court further noted that, even if it were not moot, the injunction improperly enjoined entire Government departments and required submission of all internal guidance for judicial review. According to the court, such requirements posed a separation-of-powers concern. These same concerns were present given the district court's decision to dismiss the case without prejudice and decertify the class, which could allow the plaintiffs to refile. To that end, the Seventh Circuit granted the Government's motion to vacate, vacated the preliminary injunction, and dismissed the appeal.

Gudex v. Franklin Collection Serv., 31 N.W.3d 338 (WI 2026)

Wisconsin Supreme Court reverses class certification under Wisconsin Consumer Act.

After receiving a debt letter from defendant advising plaintiff to contact an attorney, plaintiff filed a putative class action alleging violations of the Wisconsin Consumer Act (WCA) and the Federal Fair Debt Collection Practices Act. Plaintiff sent notice and demand of her intent to seek class damages, to which the defendant responded with an offer of relief. Plaintiff rejected the offer. When plaintiff later moved for class certification, defendant argued class damages were barred because, under the WCA, it had offered plaintiff "an appropriate remedy." The circuit court disagreed and certified the class, finding that the remedy must have been offered to the class – as opposed to the individual named plaintiff. Defendant appealed the certification decision, and the Wisconsin Court of Appeals affirmed. Defendant appealed again to the state's highest court.

The Wisconsin Supreme Court reversed the lower court's decision. Focusing on the plain language of the WCA, the court held that the relevant portions of the statute form a pre-suit mechanism allowing a defendant to avoid a class damages action by giving an appropriate remedy to "such party," meaning only the named plaintiff who had sent notice under the WCA. To reach this conclusion, the court pointed to other sections of the WCA that used different language that more clearly referred to class members as a whole, unlike the section at issue. Because the circuit court applied the wrong standard in granting certification, the Wisconsin Supreme Court reversed the certification order and remanded. The court declined to consider whether defendant's offer was in fact an "appropriate remedy," as well as other arguments raised below.

Eighth Circuit

U.H.A. v. Bondi, 2026 WL 222226 (D. Minn. Jan. 28, 2026)

Minnesota district judge grants class-wide injunctive relief without formal class certification.

Five refugees filed a putative class action challenging the federal government's immigration enforcement action (Operation PARRIS) that targeted refugees in Minnesota who were waiting for their green cards.

The court's procedural approach to this case is noteworthy: it deferred ruling on plaintiff's motion for class certification but issued a temporary restraining order that halted enforcement of the government's policy.

Holding that it did not need to "certify a class in order to grant temporary relief to a putative class," the court said it merely needed to determine that class certification was likely. And the court found that certification was likely because the government's refugee detention policy uniformly targeted all unadjusted refugees in Minnesota, and a single injunction halting the enforcement of that policy would provide uniform relief to the putative class, satisfying the indivisibility requirement set forth in *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011).

In re Crop Inputs Antitrust Litigation, 2026 WL 924130 (8th Cir. Apr. 6, 2026)

Court affirms dismissal of multidistrict antitrust and RICO class action brought by purchasers of crop protection products.

Plaintiffs filed consolidated actions against a broad array of manufacturers and distributors of fungicides, herbicides, and insecticides.

Plaintiffs alleged that defendants conspired to establish a "secretive distribution process that keeps Crop Inputs prices inflated at supracompetitive levels" by collectively boycotting online e-commerce sales platforms that would have introduced competition and price transparency. According to plaintiffs, retailer and wholesaler defendants induced manufacturer defendants (who relied on wholesalers and retailers to recommend and sell their products) to cut off the supply of crop inputs to e-commerce platforms. Manufacturers allegedly agreed to participate in the scheme because they feared losing substantial sales if they did not. Based on these allegations, the plaintiffs asserted claims under § 1 of the Sherman Act, the Racketeer Influenced and Corrupt Organizations Act (RICO), and various state laws.

The Eighth Circuit affirmed the district court's dismissal, noting that Section 1 only prohibits "restraints effected by a contract, combination, or conspiracy," and plaintiffs' complaint failed to adequately allege that the challenged anticompetitive conduct "stem[s] from independent decision or from an agreement, tacit or express."

The court also found allegations referring collectively to "Manufacturer Defendants," "Wholesaler Defendants," and "Retailer Defendants" were insufficient because the complaint did not identify which specific retailer or wholesaler allegedly induced which specific manufacturer. This type of "group pleading," the court explained, is improper because "liability is personal" and "each defendant is entitled to know" what unlawful conduct he or she allegedly committed.

Ninth Circuit

Healy v. Milliman, Inc., 164 F.4th 701 (9th Cir. 2026)

Following class certification, both named and unnamed class members must present evidence of standing at summary judgment.

Plaintiff filed a putative class action alleging that defendant violated the Fair Credit Reporting Act's requirements by performing so-called "fuzzy matching" of medical records in connection with applications for health insurance that purportedly resulted in the erroneous attribution of medical conditions of third parties, where the third parties had personal identifying information that was similar to, but not the same as, the applicants' data. The district court certified an "inaccuracy class" on this basis. After class certification, defendant moved for partial summary judgment, arguing that plaintiff needed to demonstrate class-wide standing for the inaccuracy class but could not do so because there was no way to determine on a class-wide basis whether a report for a given individual was actually a "mixed file" containing mismatched health information. Plaintiff argued that evidence of class-wide standing was not necessary at the summary judgment stage and that he merely needed to produce evidence that the named class member — but not unnamed class members – could satisfy standing requirements. The district court granted defendant's motion for partial summary judgment.

Upholding the district court's order in part, the Ninth Circuit held that under the Supreme Court's 2021 decision in *TransUnion LLC v. Ramirez*, which held that every class member must have Article III standing in order to recover individual damages, unnamed members of a certified class for money damages are required to demonstrate standing at summary judgment. The Ninth Circuit also held that plaintiffs can use either direct or circumstantial evidence of injury in fact to oppose summary judgment, and held that the district court applied an improperly narrow standard that required direct evidence of concrete injury on a class-wide basis.

Howard v. Republican Nat'l Comm., 164 F.4th 1119 (9th Cir. 2026)

Telephone Consumer Protection Act does not prohibit, absent prior express consent, the sending of text messages containing video files.

Plaintiff filed a putative class action alleging claims under the TCPA, alleging that the Republican National Committee violated the statute by sending a text message to his phone and to the putative class that included introductory text and a video that could be played if a recipient clicked the "play" button superimposed on the video. The Ninth Circuit held that plaintiff failed to state a claim under the TCPA because while the RNC's text message was a "call" and *contained* a video file with an artificial or prerecorded "voice" under the statute, plaintiff had not alleged that the RNC "made" or "initiated" those "calls" "using" the artificial or prerecorded voice, as required to state a claim.

Young v. Renewal by Andersen, LLC, No. 24-6095, 2026 WL 64286 (9th Cir. Jan. 8, 2026)

Waiving adequate-remedy-at-law defense at oral argument may be enough to avoid remand for lack of equitable jurisdiction.

Plaintiff filed a putative class action in California state court asserting claims under California consumer protection laws. Plaintiff only sought equitable restitution and injunctive relief. Defendants removed

under CAFA. The district court granted plaintiff's motion to remand on the grounds that it lacked equitable jurisdiction. Defendants appealed.

The Ninth Circuit reversed and remanded to the district court because defendants raised their intent to waive their adequate-remedy-at-law defense before remand. Plaintiff argued the defendants did not waive the defense or raise waiver in their opposition to remand. But defendants' counsel "appeared to indicate to the district court during oral argument that Defendants would not object to the lack of equitable jurisdiction." Under *Ruiz v. Bradford Exch., Ltd.*, 153 F.4th 907, 909 (9th Cir. 2025), this was enough to allow defendants to "perfect their waiver."

Huynh v. Boom Shakalaka, Inc., No. 2:25-CV-08121-HDV-SK, 2026 WL 247880 (C.D. Cal. Jan. 28, 2026)

Illegality of an arbitration agreement concerns enforceability rather than contract formation.

Plaintiff, a fantasy sports platform user, brought a putative class action under California's consumer protection laws and a common-law claims for unjust enrichment. Plaintiff's claims were based on allegations that defendant represented that its services were legal and never disclosed that the games were actually illegal sports wagers.

Defendant moved to compel arbitration under its platform's terms of service, which included an arbitration agreement. Defendant argued that every time plaintiff logged into the platform, he agreed to the terms of service, which were accessible via hyperlink on the sign-up and login screen. Plaintiff disagreed, primarily arguing that no valid contract was formed because the only consideration was access to an illegal gambling platform. Defendant argued that illegality pertained to enforceability rather than contract formation, which was an issue for the arbitrator.

The district court agreed with defendant. It held that plaintiff's challenge to the terms could not be severed from the challenge to the arbitration agreement itself. Thus, the crux of the allegations pertained to questions of validity and enforceability, which should be determined by an arbitrator in the first place.

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