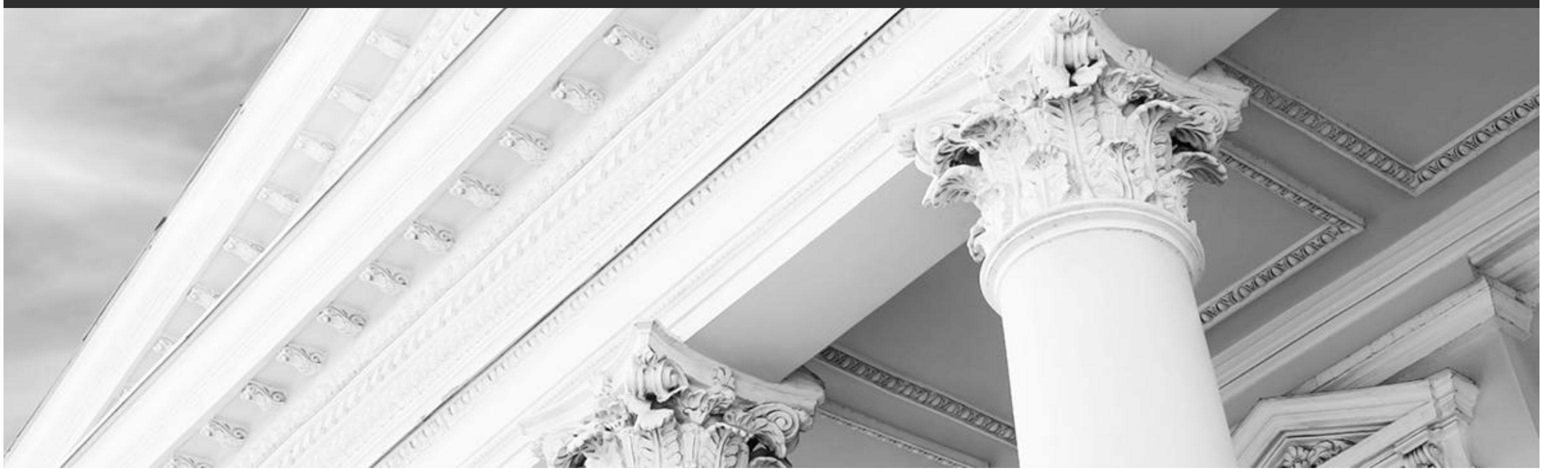
Class Action Litigation Newsletter | Summer 2026



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

Highlights from this issue include:

- Second Circuit affirms summary judgment for payment card network defendants, holding retailer plaintiffs were members of a prior federal antitrust settlement class.
- Third Circuit vacates attorneys' fee award in class action settlement, holding that courts generally cannot increase fees above the standard lodestar amount absent truly exceptional circumstances.
- Fourth Circuit holds that *American Pipe* tolling ends when class certification is denied and does not continue through appellate review.
- Sixth Circuit holds disputes over a vehicle's actual cash value require individualized valuation inquiries, defeating Rule 23 predominance.
- Seventh Circuit holds that jurisdiction under CAFA was proper after plaintiffs amended their complaint again to seek class treatment, effectively refiling the case as a class action.
- Ninth Circuit holds that courts cannot use issue preclusion to invalidate hundreds of individual arbitration agreements.
- Tenth Circuit rejects any administrative-feasibility requirement for class certification, holding that a class is ascertainable if it is defined by clear, objective criteria even when identifying class members may require significant record review.
- D.C. Circuit reaffirms that a Rule 23(b)(2) class seeking injunctive or declaratory relief may be certified so long as at least one class member has Article III standing.

U.S. Supreme Court

Flowers Foods, Inc. v. Brock, 146 S. Ct. 1358 (2026)

Supreme Court holds that Federal Arbitration Act exemption for workers engaging in interstate commerce does not require a worker to cross state lines or interact with vehicles that do.

An independent distributor brought a putative class action alleging that a baking company and its subsidiaries violated the Fair Labor Standards Act and a Colorado labor law by misclassifying employees as independent contractors and failing to pay overtime and other wages. The district court denied the defendants' motion to compel arbitration. The Tenth Circuit affirmed based on an exception in Section 1 of the Federal Arbitration Act (FAA) providing that "nothing" in the statute shall be used to compel arbitration in disputes involving "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." Reasoning that the independent distributor belonged to a class of workers engaged in interstate commerce, the Tenth Circuit concluded that it lacked authority to compel arbitration, despite acknowledging that the independent distributor did not cross state lines himself or interact directly with those who did. The Tenth Circuit held those facts were "not dispositive" and what mattered was that the distributor's "intrastate route formed a constituent part of the . . . interstate journey."

The Supreme Court affirmed, holding that Section 1 of the FAA does not require workers to cross state lines. Based on its statutory text, the Court held the exemption applies to intrastate activity that constitutes part of an interstate journey, even if the individual does not cross state lines or interact with a vehicle that does. The Court thus declined to adopt a bright-line rule that an individual can never qualify for Section 1's exemption unless he crosses state lines or interacts with vehicles that do.

The Court rejected the baking company's hinted-at argument that it conducts its business with the distributor through an agreement with an independently operated company, invoking the question of whether a contract of employment exists sufficient to trigger Section 1's exemption. The Court stated that while the baking company "discusses these facts in passing, it does not ask us to decide their legal significance."

First Circuit

Mongue v. Wheatleigh Corp., 165 F.4th 49 (1st Cir. 2026)

First Circuit upholds class settlement despite alleged conflict arising from counsel's concurrent representation of class and individual plaintiffs.

The First Circuit affirmed the approval of a class action settlement over the defendant's objection that class counsel had an impermissible conflict by simultaneously representing a certified class and three individual plaintiffs in related wage-and-hour lawsuits.

The litigation involved four related wage-and-hour actions against a Massachusetts hotel. One case proceeded as a certified Rule 23(b)(3) class action on behalf of tipped employees alleging improper tip-pool practices and unlawful payment of service wages, while three separate lawsuits asserted individual overtime and wage claims. The same attorney represented both the certified class and the individual plaintiffs and negotiated a single global settlement resolving all four cases.

After agreeing to the settlement, however, the defendant attempted to withdraw from it by arguing that class counsel's concurrent representation created an inherent conflict that rendered the settlement unenforceable and prevented approval under Rule 23. The First Circuit rejected the defendant's argument and emphasized that Rule 23(e) requires courts to evaluate the actual adequacy of counsel's representation as opposed to merely hypothetical or structural conflicts.

The court acknowledged that class actions inherently present potential conflicts of interest and that district courts serve as fiduciaries for absent class members. Nevertheless, it held that a potential conflict does not automatically bar settlement approval. Instead, the inquiry focuses on whether the alleged conflict actually impaired counsel's representation of the class. Because the record showed no evidence that counsel sacrificed the interests of the class in favor of the individual plaintiffs, the court concluded that the district court acted within its discretion in approving the settlement.

Turner v. Liberty Mutual Retirement Benefit Plan, No. 20-cv-11530, 2026 WL 1734859 (D. Mass. June 16, 2026)

Court denies ERISA misrepresentation class certification due to individualized reliance and communication issues.

In this ERISA fiduciary-duty case, the district court denied a renewed motion for class certification, holding that claims based on alleged individualized misrepresentations cannot satisfy Rule 23's commonality and predominance requirements.

The plaintiff, a former Safeco employee whose employer had been acquired by Liberty Mutual, alleged that company representatives misrepresented how his years of service would be credited in calculating post-retirement medical cost-sharing benefits. After prior rulings eliminated the plaintiff's plan-interpretation claims, the only surviving claim sought equitable relief under ERISA § 502(a)(3) based on the alleged misrepresentations. The plaintiff sought to certify a class of former Safeco employees who allegedly did not receive full credit for their years of service following the merger.

The court, however, concluded that the proposed class failed Rule 23(a)(2)'s commonality requirement because liability depended on what Liberty Mutual representatives told each individual employee, not on uniform written communications or common plan documents. Although the plaintiff argued that standardized summary plan descriptions (SPDs), benefit statements, and testimony from company officials supplied common proof, the court rejected that argument. Rather, the court emphasized several points: (i) the SPDs had previously been held unambiguous regarding benefit eligibility and therefore did not constitute common misrepresentations, (ii) the governing plan expressly provided that benefits were controlled by the operative SPD, undermining the theory that the plan documents themselves were misleading, (iii) the only potentially actionable representations were individualized telephone conversations, emails, and other communications with particular employees, and (iv) because determining liability would require examining those individualized communications, the litigation would devolve into what each employee was told and whether each employee relied on those statements. Relying on *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011), the court reiterated that Rule 23 requires not merely common questions, but common answers capable of resolving the litigation on a class-wide basis. Individualized oral representations could not satisfy that standard. Also, such representations would overwhelmingly predominate over any common issues because the dispositive evidence concerned person-specific communications rather than common proof applicable to the entire class.

Second Circuit

Smith v. Gap, Inc., No. 25-1130, 2026 WL 1502033 (2d Cir. May 28, 2026)

Second Circuit affirms district court's dismissal of securities class action for failure to state a claim.

Investors brought a putative securities class action alleging that a clothing retailer and its senior executives failed to disclose problems with a plus-size clothing initiative in risk-disclosure statements, earnings calls, and press releases, in violation of the Securities Exchange Act. The district court dismissed the complaint for failure to identify any false or misleading statement or plead that the defendants acted with scienter, and the investors appealed.

The Second Circuit affirmed. The court held that the defendant's incorporation and reiteration of disclosures in its annual report regarding risks of failing to successfully gauge apparel trends and changing consumer preferences, without also disclosing that those risks had materialized, were not misleading. The court held the challenged statements would not have misled a reasonable investor in light of the generic nature of the challenged risk disclosures, the absence of any specific connection to the plus-size clothing initiative, and the defendant's admission that the risks were not merely hypothetical but had materialized in the past and would reoccur.

The court further held statements about the initiative during earnings calls were not misleading because the statements were unactionable puffery and were consistent with the data at the time. The court also held the defendant's failure to disclose problems with the initiative in press releases attributing inventory problems to supply-chain issues resulting from COVID-19 did not render releases misleading because a company's decision to address one aspect of sales does not necessarily require it to address other issues. The court also found the defendant's failure to disclose problems with the initiative in its quarterly financial report did not render the report materially misleading.

The Second Circuit also held that the district court correctly concluded that the complaint failed to allege that defendants acted with scienter, as required under the Private Securities Litigation Reform Act.

Old Jericho Enter., Inc. v. Visa, Inc., 175 F.4th 172 (2d Cir. 2026)

District court did not clearly err in determining that the settling parties intended to include retailers in the settlement class.

Branded gasoline retailers filed a putative class action against payment card networks, asserting state-law antitrust claims seeking damages for allegedly supra-competitive interchange fees. The district court granted the defendants summary judgment upon concluding that the plaintiffs were members of a prior federal antitrust settlement class bound by the settlement's release, as the plaintiffs did not timely opt out of the class. The plaintiffs appealed.

The Second Circuit affirmed the summary judgment for defendants. The court rejected the plaintiffs' contention that they were not part of the settlement class, which was defined as "all persons, businesses, and other entities that have accepted" any of the defendants' cards. Plaintiffs argued that a prior Second Circuit decision, *Fikes Wholesale, Inc. v. HSBC Bank USA, N.A.*, 62 F.4th 704, 713-14 (2d Cir. 2023), required the district court to determine class membership solely by identifying the "direct payors" of the challenged fees. Plaintiffs argued the "direct payors" were the large gas brands the plaintiffs contracted with, which acted as intermediaries between the plaintiffs and the banks that forwarded the information to the defendants. The court disagreed, holding that *Fikes* concerned ascertainability and did not supplant the general rule that the district court should resolve disputes over class membership by construing the settlement agreement "in accord with the parties' intent," as required by New York contract law. The court therefore held that the district court did not clearly err in determining that the settling parties intended to include the plaintiffs in the settlement class, by finding that the plaintiffs "accepted" the payment cards for payment at the point of sale and thus were encompassed by the class definition.

The court also concluded that the plaintiffs' claims were validly released because they were adequately represented in the settlement agreement and rest on the same factual predicate as the other released claims. The plaintiffs argued that the factual predicate was different because of the presence or absence of an intermediary (the large gas brands) between the violator and the purchaser. The court disagreed, holding that every merchant in the settlement class had an intermediary between it and the defendants in the form of a bank or third-party processor, and plaintiffs did not explain why the presence of a second intermediary should be determinative. The court therefore held the settlement agreement barred the plaintiffs' claims.

Cantero v. Bank of Am., N.A., 175 F.4th 201 (2d Cir. 2026)

Second Circuit holds federal banking law preempts state law requiring interest on escrow.

Homebuyers filed putative class actions against a national bank, claiming breach of contract based on the bank's failure to pay 2% interest on the homebuyers' funds held in mortgage-escrow accounts, as allegedly required by New York law, incorporated in the contract. The district court denied in part the defendant's motion to dismiss for failure to state a claim, rejecting the argument that the National Bank Act preempted New York law, and then certified the preemption question for interlocutory appeal. The defendant appealed, and the Second Circuit reversed. Certiorari was then granted, and the Supreme Court reversed and remanded.

On remand, the Second Circuit held that federal banking law preempted New York's interest-on-escrow law as to national banks. The court reasoned that federal law gives national banks the power to "make, arrange, purchase or sell loans or extensions of credit secured by liens on interests in real estate," which, in conjunction with their "incidental powers," authorizes them to offer mortgage-escrow accounts. The court found that New York's law interferes with that power by limiting the terms on which banks may offer these accounts—specifically, by requiring them to pay at least 2% interest to customers. Thus, under federal law, banks may offer mortgage-escrow accounts without interest, but under New York law, they may not.

Having found New York's law affects a banking power, the court considered the nature and degree of its interference. As to the nature of its interference, the court concluded that it affects broad grants of federal power—national banks' power to set interest rates for mortgage-escrow accounts. As to the degree of its interference, the court concluded that the impact on national banks' ability to offer mortgage-escrow accounts is at least as severe as the interference in cases where the state law at issue was held preempted. The court thus held the New York law's interference with federal law resembled other preempted state laws' interference in both "nature and degree," and therefore was preempted.

Finding New York's interest-on-escrow law was preempted, the court further held the defendant was not required to pay interest on the plaintiffs' escrowed funds. The Second Circuit thus reversed the orders of the district court, denying the defendant's motions to dismiss, and remanded the cases for further proceedings.

The Second Circuit recognized that the First Circuit "reached the opposite conclusion" in ruling that Rhode Island's interest-on-escrow mandate is not preempted by federal law. *See Conti v. Citizens Bank, N.A.*, 157 F.4th 10 (1st Cir. 2025). Plaintiffs have petitioned for certiorari to the U.S. Supreme Court.

Third Circuit

Gelis v. BMW of North America, LLC, No. 24-2721, 2026 WL 1691583 (3d Cir. June 11, 2026)

Third Circuit curtails use of lodestar multipliers in fee-shifting class settlements.

Plaintiffs in this consumer class action lawsuit against BMW of North America and its German parent company alleged that defendants sold vehicles with defective timing chains. The class action settlement agreement specified that BMW would pay the attorneys' fees separate from the relief provided to the settlement class, indicating a fee-shifting arrangement rather than a common-fund arrangement.

The district court initially awarded $3.7 million in attorneys' fees using the lodestar method, which calculates fees based on the reasonable hours worked multiplied by a reasonable hourly rate, and applying a 1.94 multiplier. BMW appealed, and the Third Circuit vacated the fee award and remanded the case, questioning the justification for the multiplier and the reasonableness of the hours class counsel claimed.

On remand, the district court again awarded $3.7 million, even though it applied a reduced multiplier of 1.75. BMW again appealed, and the Third Circuit vacated the award. Citing the Supreme Court's decision in *Perdue v. Kenny A. ex rel. Winn,* 559 U.S. 542 (2010), the Third Circuit reasoned that, because the settlement agreement was a fee-shifting arrangement governed by federal law, a lodestar multiplier should be applied only in rare and exceptional circumstances not already accounted for in the baseline lodestar, and the use of the multiplier was not justified in this case. The Third Circuit also found that the baseline lodestar calculation was unreasonable and directed the district court to assess reasonableness on remand.

Fourth Circuit

Grace v. RTX Corporation, No. 25-2022, 2026 WL 1230384 (4th Cir. May 5, 2026)

Fourth Circuit agrees that *American Pipe* tolling ends when class certification is denied and does not extend through appeal.

In November 2024, plaintiffs, former employees of RTX Corporation, brought an action in the Eastern District of Virginia, alleging discrimination based on their religious objections to wearing face masks as required by the company's COVID-19 workplace safety policy. Years earlier, some of the same plaintiffs had filed a putative class action in the District of Arizona, which was dismissed with prejudice, and thus plaintiffs' motion for class certification was denied as moot. That decision was appealed to the Ninth Circuit, which affirmed, and then to the Supreme Court, which denied certiorari. Plaintiffs filed their second lawsuit in the Eastern District of Virginia after certiorari was denied. The second lawsuit was then dismissed as barred by both *res judicata* and the statute of limitations.

Plaintiffs appealed, arguing that the statute of limitations should be tolled under the rule from *American Pipe & Construction Co. v. Utah*, which tolls the statute of limitations for individual claims during the pendency of a class action. The Fourth Circuit disagreed and affirmed the dismissal, holding that

American Pipe tolling does not extend through the pendency of an appeal. The court clarified that tolling ends when class certification is denied by the district court. Plaintiffs' claims were therefore untimely as they were filed after the tolling period had expired.

Overby v. Anheuser-Busch, LLC, 178 F.4th 175 (4th Cir. 2026)

Fourth Circuit holds specific allegations regarding employees are needed to properly assess commonality and predominance in wage-and-hour class actions.

Plaintiffs, hourly employees at Anheuser-Busch's Williamsburg brewery, brought a class action against the company, alleging that Anheuser-Busch failed to compensate them for mandatory pre-and post-shift work activities in violation of the Fair Labor Standards Act (FLSA), Virginia Wage Payment Act (VWPA), and Virginia Overtime Wage Act (VOWA). The District Court for the Eastern District of Virginia certified the class, and Anheuser-Busch appealed.

Reviewing the district court's class-certification decision for abuse of discretion, the Fourth Circuit found the district court committed legal error by not properly applying the commonality and predominance requirements under Rule 23. The Fourth Circuit concluded that the district court had improperly relied on overly generalized questions regarding Anheuser-Busch's compensation policies, which masked significant variations in the tasks performed by employees, when and where these tasks occurred, and the legal standards applicable to different class members. The court found that the district court's class definition was overly broad, encompassing all hourly employees without considering the variations in their claims. This broad definition risked lumping together disparate plaintiffs with varying individual claims.

The Fourth Circuit thus vacated the class-certification order and remanded the case for further proceedings, suggesting that the district court could consider creating subclasses to address the variations among class members. The court noted that properly defined subclasses might exhibit greater homogeneity and be more likely to meet Rule 23's requirements.

Mebane v. GKN Driveline North America, Inc., 177 F.4th 543 (4th Cir. 2026)

Fourth Circuit holds representative interest alone is not enough to confer Article III standing.

James Mebane, a former employee of GKN Driveline North America, Inc., filed a class-action lawsuit alleging violations of the Fair Labor Standards Act (FLSA) and the North Carolina Wage and Hour Act (NCWHA) due to GKN's policies on rounding employees' time and automatically deducting meal breaks. The District Court for the Middle District of North Carolina initially certified two classes under Federal Rule of Civil Procedure 23 and conditionally certified an FLSA collective action. But the court later decertified these classes and the collective action, citing the need for individualized inquiries to determine the impact of GKN's policies on employees.

Mebane appealed the decertification order, but the Fourth Circuit found Mebane lacked Article III standing to appeal because he had already settled his individual FLSA and NCWHA claims. The Fourth Circuit held that Mebane's settlement, which included a general waiver of his substantive claims, left him without a concrete interest in the litigation necessary to invoke the court's jurisdiction. The court emphasized that a plaintiff who voluntarily dismisses their individual claims cannot rely on representative interests to establish standing for an appeal. Consequently, the appeal was dismissed for lack of jurisdiction.

Sixth Circuit

Clippinger v. State Farm Auto. Ins. Co., 173 F.4th 817 (6th Cir. 2026)

Sixth Circuit joins five other circuits in determining that "actual cash value" disputes require individual inquiries that preclude class certification.

Plaintiff brought a putative class action against State Farm alleging that the insurer systematically undervalued total loss vehicles by applying a "typical negotiation adjustment" when calculating actual cash value. The district court certified the class, concluding that the insurer's use of the adjustment presented a common question capable of class-wide resolution and that common issues predominated because damages could be determined by recalculating vehicle values via the same method but without the adjustment. The district court reasoned that the insurer could not dispute the calculation because it was the insurer's own model except for the negotiation adjustment.

Sitting en banc, the Sixth Circuit reversed. The court of appeals held that, even assuming the proposed common question satisfied the commonality requirement, plaintiffs failed to establish predominance. The court reasoned that liability and damages turned on individualized determinations of each vehicle's actual cash value, which depended on vehicle-specific factors such as the vehicle's make and model, year, condition, and mileage. The district court could not abridge the insurer's right to raise its unique defenses to individual claims by interpreting the claim to challenge only the typical negotiation adjustment. Because a factfinder would need to determine the actual cash value of each class member's vehicle before deciding whether any class member was underpaid, individualized valuation issues overwhelmed any common questions regarding the insurer's valuation methodology. In reaching that conclusion, the Sixth Circuit joined the Third, Fourth, Fifth, Seventh, and Ninth Circuits in holding that actual cash value claims are not suitable for class treatment where proving breach and damages requires individualized valuation inquiries.

Seventh Circuit

Zurbriggen v. Twin Hill Acquisition, Inc., 178 F.4th 1081 (7th Cir. 2026)

Seventh Circuit holds CAFA jurisdiction applies when class allegations are re-added via amendment.

Plaintiff employees filed a putative class action in federal court under the Class Action Fairness Act (CAFA), alleging defendant uniform manufacturer caused harm under products liability and intentional tort theories. In their third amended complaint, the plaintiffs expressly stated that they would not be seeking class certification, though they left their class allegations in the complaint. The plaintiffs later filed a fourth amended complaint, which still included class allegations but removed the prior assertion that the plaintiffs disclaimed class certification. The district court later granted summary judgment for the defendant, which the plaintiffs appealed.

The Seventh Circuit held that CAFA jurisdiction still applied in light of the fourth amended complaint, and thus the district court had jurisdiction to enter the summary judgment ruling. Highlighting the Supreme Court's recent ruling in *Royal Canin U.S.A., Inc. v. Wullschleger*, 604 U.S. 22 (2025), the court reaffirmed that the plaintiffs remain the masters of their complaint. This same concept controlled, even though *Royal Canin* involved issues of removal jurisdiction. The court noted that dropping the class allegations in the third amended complaint could have destroyed CAFA jurisdiction for a brief time. But by filing a fourth amended complaint that reinserted the intention to pursue class action allegations, the plaintiffs effectively refiled the case as a class action. The court determined that what matters under CAFA is whether the action, as amended, aligns with the requirements for a class action.

Craig v. City of Richmond, 179 F.4th 535 (7th Cir. 2026)

Seventh Circuit enforces local event or occurrence exception in CAFA.

In April 2023, an industrial facility in Indiana experienced a fire that lasted for over a week and allegedly emitted hazardous substances across nearby properties. The facility sat on three parcels of land, two of which were owned by the City of Richmond and one owned by private defendants. Two years after the fire, 150 plaintiffs filed a state court action against all the parcel owners, alleging injuries and property damage from the fire. The defendants removed the case to federal court under the Class Action Fairness Act (CAFA). Once in federal court, the magistrate judge sua sponte ordered briefing on whether the CAFA local event or occurrence exception applied, noting the complaint alleged no injuries before the fire. After briefing, the district court held that the exception did in fact apply and remanded the case to state court. The defendants appealed the district court's ruling that it lacked subject matter jurisdiction.

The Seventh Circuit agreed with the district court. It noted that the local event or occurrence exception to CAFA is jurisdictional because it defines what qualifies as a "mass action" under CAFA. The court explained that exclusions under 28 U.S.C. § 1332(d)(11)(B)(ii) were inherently connected to jurisdiction by shaping the "mass action" term. By comparison, exclusions under § 1332(d)(3-4) presented discretionary exceptions, which did not apply to this case. Because the local event or occurrence exception is jurisdictional, the district court was entitled to raise the question on its own at any time. Accordingly, the Seventh Circuit affirmed the district court's ruling.

Clay v. Union Pac. R.R. Co., 171 F.4th 975 (7th Cir. 2026)

Seventh Circuit holds BIPA damages amendment applies retroactively.

Section 20 of the Illinois Biometric Privacy Act (BIPA) creates a right of action for plaintiffs to sue private entities for BIPA violations and states that plaintiffs may recover "for each violation," allowing recovery for the greater of actual damages or liquidated damages. In prior authority analyzing BIPA, the Illinois Supreme Court recognized the potential for unintended massive penalties but declined to interpret the Act in a manner that contradicted its plain meaning, leaving the matter up to the Illinois legislature. Illinois amended BIPA in August 2024, clarifying that multiple collections of the same individual's biometric information constitutes a single violation. *See Cothron v. White Castle Sys., Inc.*, 216 N.E.3d 918, 928 (Ill. 2023). The legislature did not include an express retroactivity clause.

In *Clay*, each plaintiff filed BIPA claims before the 2024 amendment, alleging defendant repeatedly collected its employees' biometric information in violation of BIPA. Three district courts certified the same question to the Seventh Circuit: whether the 2024 amendment applies retroactively to cases pending before the amendment. The Seventh Circuit consolidated the appeals to address the question. Ultimately, it held that the 2024 amendment does apply retroactively. Because the provision is remedial and affects only damages, as opposed to liability standards, the Seventh Circuit applied Illinois Supreme Court precedent and found this indicated the amendment was procedural and therefore applied retroactively. The Seventh Circuit noted that this reading also comports with the Illinois Supreme Court's holding that damages under BIPA are discretionary and its recognition that nothing in BIPA authorizes "destructive" penalties, particularly in class actions, reinforcing trial courts' discretion to fashion class-wide awards. It reversed and remanded, instructing courts to follow the amendment when calculating class damages and to reassess case aspects potentially affected by its holding, including subject matter jurisdiction.

Eighth Circuit

Farella v. Benton County District Court, Division 4, 176 F.4th 562 (8th Cir. 2026)

Eighth Circuit reaffirms standing requirements for prospective relief and dismisses class action challenge to bail hearing practices.

A certified class of pretrial detainees alleged that a Benton County District Court Judge's bail hearing practices violated their Sixth Amendment right to counsel and their Fourteenth Amendment rights to due process and equal protection of the law. The district court granted plaintiffs' motion for summary judgment. Benton County District Court appealed.

The Eighth Circuit laid out two ways to establish standing for prospective relief. Plaintiffs must show either (1) a likelihood of future injury redressable by the relief sought, or (2) continuing, present adverse effects stemming from past exposure to illegal conduct. The court concluded that Plaintiffs failed on both grounds.

First, establishing a future injury required plaintiffs to demonstrate that they would again be arrested, charged with a criminal violation, and brought before the same judge for a bail hearing without appointed counsel. The court held this chain of contingent future events too speculative to satisfy Article III standing.

Second, even assuming plaintiffs could assert an ongoing injury, they failed to demonstrate how their requested relief would redress their past harm. Specifically, requiring the appointment of counsel for indigent defendants in that judge's future bail hearings would not alleviate any injury the plaintiffs themselves had suffered.

The court thus determined that because plaintiffs failed to allege a redressable injury, they could not satisfy the constitutional requirements for standing. The Eighth Circuit accordingly vacated the district court's judgment and remanded the case with instructions to dismiss.

Peck v. Mercy Health, No. 4:21-cv-00834, 2026 WL 1074010 (E.D. Mo. Apr. 21, 2026)

Court decertifies FLSA collective action because of variances in meal break practices.

The Eastern District of Missouri decertified a collective action of more than 3,700 opt-in plaintiffs brought under the Fair Labor Standards Act in which the named plaintiff challenged defendant Mercy Health's automatic meal-break deduction system.

Mercy Health's written policy automatically deducted meal periods from employee timesheets but required employees to cancel the deduction and record the time worked when they were unable to take a full, uninterrupted meal break. While the parties agreed that the written policy was lawful on its face, they disputed whether Mercy Health maintained a system-wide practice of discouraging employees from canceling deductions and reporting missed breaks.

Mercy Health moved to decertify the collective action, pointing to evidence that opt-in plaintiffs worked across multiple states and different hospital facilities, held varying job titles across departments with distinct workloads and responsibilities, and reported to different supervisors who applied meal break practices inconsistently. The frequency with which individual plaintiffs canceled automatic deductions — and their reasons for doing so — also underscored the differences among collective members. Employee testimony reflected a wide spectrum of experiences: some reported being discouraged from canceling deductions, others canceled them regularly, and still others did so only occasionally or had experiences that varied depending on the department in which they worked.

Characterizing the evidence as reflecting "variable practices variably applied" by individual supervisors, the court found no basis to infer a uniform, company-wide policy that would establish an FLSA violation as to each collective member. The court accordingly decertified the collective action, dismissed the opt-in plaintiffs' claims without prejudice, and permitted the named plaintiff's individual claims to proceed.

Ninth Circuit

O'Dell v. Aya Healthcare Servs., 171 F.4th 1173 (9th Cir. 2026)

Ninth Circuit rejects use of non-mutual offensive collateral estoppel to invalidate hundreds of arbitration agreements governed by the Federal Arbitration Act.

Former employees of a travel-nursing agency brought a putative class action alleging wage-and-hour violations. The employees signed arbitration agreements requiring individualized arbitration and delegating questions concerning the validity of the agreements to an arbitrator. Four employees proceeded with arbitration: two arbitrators found the agreements enforceable and two arbitrators found them unenforceable. After an additional 255 employees joined the action, the district court relied on the two decisions invalidating the agreements and applied non-mutual offensive collateral estoppel to deny enforcement of the remaining arbitration agreements.

The Ninth Circuit reversed the district court's ruling. The court held that the FAA requires arbitration agreements to be enforced according to their terms and does not permit plaintiffs to use arbitration rulings involving different employees to avoid their own agreements to arbitrate. The court further noted that non-mutual offensive collateral estoppel is not a generally applicable contract defense that permits revocation of a contract and therefore could not be used to preclude enforcement of the agreements.

The Ninth Circuit also held that allowing a handful of arbitral rulings to determine arbitrability for hundreds of other employees would undermine the FAA's core principle that arbitration is a matter of consent and must proceed on an individualized basis unless the parties agree otherwise. Because the parties agreed to individualized arbitration, the district court could not effectively create a class-or-bellwether-like mechanism that eliminated the separate arbitrations required by their agreements.

In re Orr, 178 F.4th 525, 535 (9th Cir. 2026)

A district court must determine the basis for its authority to compel arbitration and cannot delegate to an arbitrator the issue of whether the FAA applies.

A seasonal support driver for United Parcel Service, Inc. (UPS) brought a putative class action asserting California wage-and-hour claims, including a claim under the California Private Attorneys General Act (PAGA). When plaintiff applied for the job, she signed an arbitration agreement that included a delegation clause. After removing the case to federal court, UPS moved to compel arbitration. The district court granted UPS's motion to compel arbitration but declined to decide whether the FAA or the California Arbitration Act (CAA) governed the agreement, reasoning that the result would be the same under either statute. The court also relied on the delegation clause, concluding that because plaintiff had not specifically challenged that clause under California contract defenses, threshold arbitrability issues could proceed to the arbitrator.

The Ninth Circuit granted mandamus and held that the district court committed clear legal error. The court explained that a delegation clause does not allow an arbitrator to decide whether the FAA applies in the first instance. Before a court may compel arbitration under the FAA, the court must determine whether the agreement falls within the FAA's coverage, including whether the Section 1 transportation-worker exemption applies. Put differently, the court must first determine whether it has authority under the FAA before it uses the FAA to send the dispute to arbitration.

The Ninth Circuit also emphasized that the FAA/CAA distinction was not merely procedural but could affect the parties' substantive rights. If the FAA applied, it could preempt California rules that otherwise allow certain wage claims to proceed in court despite an arbitration agreement. However, if the FAA did not apply because the transportation-worker exemption covered the agreement, California law could control, and some claims might remain litigable in court. Accordingly, the Ninth Circuit directed the district court to vacate its order compelling arbitration and determine the statutory basis for any order compelling arbitration before referring the dispute to arbitration. The case reinforces that courts cannot skip the FAA applicability analysis where the FAA's transportation-worker exemption is raised and the governing law may affect whether claims must be arbitrated.

Panelli v. Target Corp., 172 F.4th 1120 (9th Cir. 2026)

Allegations of literal falsity raised questions of fact and did not trigger application of rule requiring dismissal of factually impossible claims.

Plaintiffs alleged that Target sold 100% cotton bedsheets with claimed thread counts of 800, which defendants claimed was purportedly impossible to achieve with 100% cotton textiles. The district court dismissed plaintiffs' claims with prejudice, concluding that *Moore v. Trader Joe's Co.*, 4 F.4th 874 (9th Cir. 2021) required dismissal of allegations of consumer deception based on factually impossible claims.

The Ninth Circuit held that the district court incorrectly interpreted *Moore*, skipping a step by not analyzing whether the labels on Target's sheets were ambiguous. Because the Ninth Circuit held that the labels were not ambiguous in claiming thread counts of 800, it held that *Moore* did not apply, and that plaintiffs' claims were actionable because they were based on allegations that the representation at issue was literally false.

Brown v. Brita Prods. Co., 172 F.4th 1113 (9th Cir. 2026)

Ninth Circuit upholds dismissal where a reasonable consumer would not expect defendant's products to remove or reduce common contaminants to below lab-detectable limits.

Plaintiff filed a putative class action alleging that he would not have purchased defendant's water filter had he known that it did not remove or reduce common contaminants to below detectable limits. Upholding the district court's order dismissing plaintiff's claims with prejudice, the Ninth Circuit held that no reasonable consumer would expect defendant's filter to perform as plaintiff alleged he subjectively expected it would. The court held that as a matter of law, under *Moore v. Trader Joe's Co.*, no reasonable consumer would expect defendant's low-cost filters to completely remove or reduce to below lab-detectable levels all contaminants from tap water, particularly in light of defendant's disclosure that its products "reduce" such contaminants, not eliminate them altogether. The court also noted that defendant specifically disclosed which contaminants are reduced and provided easily accessible data, available to consumers via a QR code on the product packaging.

Thakur v. Trump, 176 F.4th 1187 (9th Cir. 2026)

Ninth Circuit holds Tucker Act barred district court jurisdiction over Administrative Procedure Act claims relating to termination of research grants by executive order if they are essentially contract actions, but not over claims by plaintiffs alleging their grants were terminated because of their perceived DEI or environmental justice viewpoints.

In 2025, three federal agencies terminated research grants via form letters pursuant to executive orders issued by the President. Six researchers at the University of California who had their research grants terminated filed a putative class action against the President and various government agencies and officials, alleging constitutional and statutory claims. The district court issued a preliminary injunction and ordered the agencies to reinstate the grants.

The Ninth Circuit affirmed in part and reversed in part. The court first held that plaintiffs established Article III standing because they adequately alleged injury flowing from the grant terminations where they alleged that such action resulted in a loss of funding and no alternative funding was readily available. The court also found that plaintiffs alleged additional injury in terms of harm to reputation, disruption of projects, and the need to expend time and resources seeking alternate sources of funding.

The court reversed the preliminary injunction with respect to the putative class members whose grants were terminated by form letter without any grant-specific explanation, because the Tucker Act bars district court jurisdiction for an Administrative Procedure Act claim if that claim is at essence a contract action, and those plaintiffs were seeking to enforce an obligation to pay money pursuant to the grants at issue.

At the same time, the panel affirmed the preliminary injunction with respect to putative class members whose grants were terminated because of DEI Executive Orders and who alleged their First Amendment rights were violated, where the agencies selected particular grants for termination regardless of the programs through which they were funded and based only on the recipients' perceived expression of DEI or environmental justice viewpoints.

Tenth Circuit

Rider Trustee of Cherry Rider Fam. Tr. v. OXY USA, Inc., 175 F.4th 1214 (10th Cir. 2026)

Tenth Circuit rejects any "administrative feasibility" requirement for determining ascertainability.

Plaintiffs were landowners that brought a putative class action against oil companies, Merit and Oxy, on behalf of a putative class of persons or entities who were participating class members in a prior class action and have received, or are entitled to receive, royalty payments. Their claims arose from the oil companies' alleged breach of a settlement agreement between landowners and Oxy that resolved underpayment of royalties. Merit acquired Oxy's gas field assets. At acquisition, Oxy informed Merit about payments Oxy had been making under a settlement agreement. Merit was also informed of owners that opted out of the settlement. Plaintiffs argued that Merit had taken improper deductions from royalty payments in violation of the settlement agreement. Merit argued it was not bound by the settlement agreement. Oxy argued it had no obligation regarding royalty payments made by Merit. The district court denied class certification because it found that the class was not ascertainable. The Tenth Circuit reversed the district court's denial of class certification.

The key dispute was the feasibility of identifying successors in interest to the settlement agreement. In opposition to class certification, the oil companies argued that they would need to conduct individualized title examinations for each potential class member to identify the landowners entitled to benefits. Plaintiffs argued the oil companies could ascertain the class from their business records. The district court agreed with the oil companies, finding the class members were not readily ascertainable.

The Tenth Circuit started its analysis by noting it had recently clarified its ascertainability standard, which differed from that used by the district court. The district court applied the Third Circuit's standard, which required plaintiff to present an objectively defined class and show that a reliable and administratively feasible mechanism existed to determine the class members. But the Tenth Circuit recently clarified that it rejected the "administrative feasibility" requirement and held that "for class members to be ascertainable, the class definition must (1) be defined clearly and cannot be defined too vaguely, and (2) be defined objectively and cannot be based on subjective criteria." *Cline v. Sunoco, Inc. (R&M)*, 159 F.4th 1171 (10th Cir. 2025). Under that holding, plaintiffs must show that class members can be identified, although not necessarily already identified at the time of certification, "using reasonable—but not perfect—accuracy." *Id.*

The Tenth Circuit held that the district court should have applied *Cline's* ascertainability standard. At a minimum, the district court needed to reconsider ascertainability without considering administrative feasibility. The Tenth Circuit also held that, even on the record before it, the class was ascertainable and any finding to the contrary would be an abuse of discretion. First, the court held that the proposed class definition was clearly defined and not vague. It further noted that the class was defined by objective criteria. The Tenth Circuit also emphasized that neither gaps in defendants' record-keeping nor the large number of records to be reviewed could defeat certification.

D.C. Circuit

Refugee & Immigrant Ctr. for Educ. & Legal Servs. v. Mullin, 174 F.4th 81 (D.C. Cir. 2026)

D.C. Circuit affirms "one-person" rule for Rule 23(b)(2) class certification.

Thirteen individuals and three non-profit organizations brought a putative class action challenging Presidential Proclamation No. 10888 (issued Jan. 21, 2025). That Proclamation prevents non-citizens without a visa who crossed the U.S. southern border from applying for asylum and other removal protections otherwise available under the Immigration and Nationality Act of 1952 (INA), 8 U.S.C. § 1101 et seq. Plaintiffs claimed that the INA's removal procedures and protections preempt the Proclamation, and sought declaratory and injunctive relief pursuant to Federal Rule of Civil Procedure 23(b)(2).

The U.S. District Court for the District of Columbia certified a class of individuals who are, or would be, harmed by the Proclamation. The government appealed, arguing that the class should not include individuals who are not already in the United States (but may later enter the United States) because such individuals currently lack the imminent injuries required for Article III standing.

The D.C. Circuit disagreed with the government and affirmed the district court's certification, as clarified. Specifically, the D.C. Circuit held that well-established law provides that "the court may award class-wide injunctive or declaratory relief under Rule 23(b)(2) so long as one member of the class has standing," referred to as the "one-person rule." The D.C. Circuit distinguished between classes seeking monetary damages pursuant to Rule 23(b)(3)—which require current Article III standing to recover individual damages under *TransUnion LLC v. Ramirez*, 594 U.S. 413 (2021)—and those seeking declaratory or injunctive relief under Rule 23(b)(2). The court ruled that for Rule 23(b)(2) classes, the relief sought addresses systemic harms and should provide relief to both present and future class members such that the "scope of injunctive relief is dictated by the extent of the violation established."

One judge concurred in part and dissented in part, finding that the certified class was too broad, stating that it includes millions of individuals who have no intention of entering the United States and thus would never have standing. Accordingly, that judge would have limited the class to those individuals who are already in the United States or have a "particularized reason" for believing that they would enter the country and be harmed by the Proclamation.

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