

Table of Contents

CHAPTER 1. INTRODUCTION TO CALIFORNIA CLASS ACTIONS

- § 1:1 Introduction—National importance of California litigation
- § 1:2 —Applicable law and rules
- § 1:3 —Differences between California and federal practice
- § 1:4 —Effect of uniform statewide class action rules
- § 1:5 Due process requirements
- § 1:6 California class action procedure
- § 1:7 The advantages and disadvantages of class actions—In general
- § 1:8 —Advantages and disadvantages of federal class actions
- § 1:9 —Advantages and disadvantages of state class actions
- § 1:10 California class action authority—In general
- § 1:11 —Code of Civil Procedure § 382
- § 1:12 —Consumer Legal Remedies Act
- § 1:13 —California Rules of Court, Rules 3.760 to 3.771
- § 1:14 Federal authority: Federal Rules of Civil Procedure, Rule 23
- § 1:15 Differences between California state and federal class actions
- § 1:16 Class Action Fairness Act of 2005 (CAFA)
- § 1:17 Federal Arbitration Act
- § 1:18 References

CHAPTER 2. PREREQUISITES TO FILING A CALIFORNIA CLASS ACTION

- § 2:1 Introduction
- § 2:2 Ascertainable class
- § 2:3 Community of interest
- § 2:4 Adequacy of representation
- § 2:5 Consumer Legal Remedies Act
- § 2:6 Substantial benefit
- § 2:7 Class notice
- § 2:8 Comparison of federal and state court prerequisites
- § 2:9 References

CHAPTER 3. ALTERNATIVES TO CLASS ACTIONS

- § 3:1 Overview

- § 3:2 Injunctive relief
- § 3:3 Unfair competition injunctions
- § 3:4 Taxpayer lawsuits
- § 3:5 Suit based on association status
- § 3:6 Associations managing common-interest developments
- § 3:7 Association as representative party
- § 3:8 Court-appointed receivers
- § 3:9 Mandamus against government
- § 3:10 Class Arbitration/Arbitration Agreements
- § 3:11 Class treatment without notice
- § 3:12 Consumer Legal Remedies Act
- § 3:13 Mass torts—Consolidation/test cases
- § 3:14 Private Attorney General Act (PAGA)
- § 3:15 References

CHAPTER 4. PRELIMINARY CASE ANALYSIS

- § 4:1 Deciding whether to file—An overview
- § 4:2 Outline the case—Class definition—Need for precision
- § 4:3 — —Class size
- § 4:4 — —Class period
- § 4:5 — —Common questions of law and fact
- § 4:6 — —Residual questions
- § 4:7 — —Relief sought—Injunctive—declaratory
- § 4:8 — —Monetary
- § 4:9 — —Class representation—The class representative
- § 4:10 — —Counsel’s conflict with class
- § 4:11 — —Attorney’s fees
- § 4:12 — —Benefit to litigants and court
- § 4:13 Adverse California case law—Is there an obvious pitfall to your case?
- § 4:14 — —Is the cause unsympathetic, or is the class deprived of little?
- § 4:15 — —Are plaintiff’s recovery facts unique, or is there insufficient community of interest?
- § 4:16 — —Are multiple defendants accused of wrongdoing?
- § 4:17 — —Are the class members the defendants?
- § 4:18 — —Are remedial statutes superior to class treatment?
- § 4:19 — —Is the case a national class in a California court?
- § 4:20 — —Does the class have common law negligence claims or unique damage issues?
- § 4:21 — —Is it a ticket or personal enjoyment case?
- § 4:22 — —Are class members antagonistic to the class action?
- § 4:23 The effect of related litigation—Importance of early analysis

TABLE OF CONTENTS

- § 4:24 —Successive class actions or federal class actions
precluding state class treatment
- § 4:25 —Successive class actions or state class actions
precluding federal class treatment
- § 4:26 —Concurrent class actions
- § 4:27 —Extensive “group” litigation
- § 4:28 —Intervention
- § 4:29 References

CHAPTER 5. DRAFTING A CALIFORNIA CLASS ACTION COMPLAINT

A. TEXT

- § 5:1 Introduction
- § 5:2 Structuring the complaint—The caption
- § 5:3 —Jurisdiction
- § 5:4 —Venue and forum
- § 5:5 —The parties—Plaintiffs
- § 5:6 — —Subclasses
- § 5:7 — —Defendants
- § 5:8 —Class allegations—Separate heading
- § 5:9 —Causes of action
- § 5:10 Key issues in class action complaints—Issues central
to certification
- § 5:11 —Focusing and defining ascertainable class
- § 5:12 —Class damages
- § 5:13 —Class representative issues—Primary and secondary
issues
- § 5:14 — —Class representative
- § 5:15 — —Class counsel’s relationship with class
representative
- § 5:16 —Building the backbone of the case—Predominance of
common questions
- § 5:17 — —Defendants’ actions
- § 5:18 — —Inferences and presumptions
- § 5:19 —Toll the statute of limitations for plaintiff class
- § 5:20 —Multiple defendants
- § 5:21 —Class claims against presently unknown defendants
- § 5:22 —Malpractice
- § 5:23 References

B. FORMS

- § 5:24 Class action complaint [Consumer]

- § 5:25 Class Action Complaint [Employee]
- § 5:26 First Amended Class Action Complaint Adding PAGA
Claims [Employee]
- § 5:27 Notice of Motion and Demurrer (*Davis v CHC
Consulting, LLC.*)

CHAPTER 6. THE PRECERTIFICATION STAGE

A. TEXT

- § 6:1 General rules for precertification activity and
conduct—Fiduciary responsibility
- § 6:2 —Precertification case conferences
- § 6:3 —Demurrers to class allegations: The reasonable-
possibility standard
- § 6:4 —No default
- § 6:5 —No dismissal without court approval
- § 6:6 —Mandatory dismissal
- § 6:7 —Communications with proposed class members
- § 6:8 —Precertification notices
- § 6:9 —Limitation on precertification merits rulings
- § 6:10 Precertification motions—In general
- § 6:11 —Coordination
- § 6:12 —Consolidation
- § 6:13 —Intervention
- § 6:14 —Complex designation
- § 6:15 —Peremptory challenges to trial judge
- § 6:16 —Challenges for cause
- § 6:17 —Notice of related case
- § 6:18 —Removal
- § 6:19 —Remand
- § 6:20 Precertification discovery—In general
- § 6:21 —Class discovery
- § 6:22 —Defendant to plaintiff class—Unnamed class
members
- § 6:23 —Discovery from plaintiffs to defendants
- § 6:24 —Document depositories
- § 6:25 —Interrogatories—Judicial control
- § 6:26 — —Interrogatories to unnamed class members—
Court order required
- § 6:27 —Planning for class certification—Framing the issues
with the class—Discovery to determine class
composition
- § 6:28 — — —Causes of action

TABLE OF CONTENTS

- § 6:29 — — —Defendant’s conduct
- § 6:30 References

B. FORMS

- § 6:31 Petition for coordination (*Gardner/Rossi Company v. F. hoffmann-La Roche, Ltd.*)
- § 6:32 Notice of Motion and Motion to Compel Arbitration (*Maldonado, et al. v. Fast auto Loan, Inc.*)
- § 6:33 Opposition to Motion to Compel Arbitration (*Maldonado, et al. v. Fast auto Loan, Inc.*)
- § 6:34 Minute Order Re Motion to Compel Arbitration (*Maldonado, et al. v. Fast auto Loan, Inc.*)
- § 6:35 Motion to Remand to State Court (*Schiller v. Ashley Distribution Service, Inc.*)
- § 6:36 Order Granting Motion to Remand (*Schiller v Ashley Distribution Service, Inc.*)

CHAPTER 7. CALIFORNIA CLASS CERTIFICATION PROCEDURE

A. TEXT

- § 7:1 Differences in federal and California procedure
- § 7:2 Class certification hearing—In general
- § 7:3 —Required notice of hearing
- § 7:4 —Timing: “When practicable”
- § 7:5 —Nature of the hearing
- § 7:6 —Scope of inquiry
- § 7:7 —Burden on plaintiff
- § 7:8 —Superior benefit
- § 7:9 —Findings of fact and conclusions of law
- § 7:10 —Standard of review on appeal
- § 7:11 —Appointment of class counsel
- § 7:12 Class notice—When notice is required and what it must say
- § 7:13 —Hearing on class notice
- § 7:14 —Costs
- § 7:15 Successive certification motions—Difference between federal and state rules
- § 7:16 —“Intermediate” class ruling
- § 7:17 —Decertification motion or procedure
- § 7:18 —Mandatory class certification
- § 7:19 —Post-merits rulings/notice
- § 7:20 Federal appeal from class certification ruling
- § 7:21 References

B. FORMS

- § 7:22 Memorandum of points and authorities in support of plaintiffs' motion for class certification (*Arellano v. Container Connection*)
- § 7:23 Opposition to class certification (*Arellano v. Container Connection*)
- § 7:24 Reply in Support of Class Certification (*Arellano v. Container Connection*)
- § 7:25 Order Granting Class Certification (*Arellano v. Container Connection*)
- § 7:26 Order Approving Notice to the Class (*Arellano v. Container Connection*)
- § 7:27 P's & A's in Opposition to Motion to Deny Class Certification (*Ornelas v Teksystems, Inc.*)

CHAPTER 8. CASE MANAGEMENT: CONTROLLING THE ISSUES

A. TEXT

- § 8:1 Proposing a manageable trial
- § 8:2 Precertification case management—Case conferences
- § 8:3 —Precertification determinations
- § 8:4 —Appointing a discovery master
- § 8:5 Simplifying issues following certification
- § 8:6 References

B. FORMS

- § 8:7 Civil Case Cover Sheet
- § 8:8 Application for Complex Designation (*Pfeifer v Zesty, Inc.*)
- § 8:9 CRC 3.750—Initial Case Management Conference

CHAPTER 9. SETTLEMENT ISSUES AND PROCEDURE

A. TEXT

- § 9:1 Introduction
- § 9:2 Tactical considerations—Realistic evaluation of recovery sources
- § 9:3 —Discovery of insurance information at the outset
- § 9:4 —Early appointment of settlement master
- § 9:5 —Serial class settlements

TABLE OF CONTENTS

- § 9:6 —Defendant settlement considerations
- § 9:7 Dismissal—The requirement of court approval—
California Rules of Court, Rule 3.770 and Federal
Rules of Civil Procedure, Rule 23(e)
- § 9:8 —Settlement with class representative only
- § 9:9 —Settlement paying class attorney’s fees only
- § 9:10 Class settlement procedure—Ex parte or noticed court
approval of preliminary terms of settlement and
notice
- § 9:11 —Notice to class
- § 9:12 —Settlement hearing
- § 9:13 —Standing to object
- § 9:14 —Conditional classwide and precertification settlement
- § 9:15 —Postcertification settlement
- § 9:16 —Attorney’s fees conflicts
- § 9:17 —Notice in declaratory/injunctive relief cases
- § 9:18 —Notice in opt-out cases
- § 9:19 —Scope of bar order—State class settlements
- § 9:20 — —Federal class settlements
- § 9:21 —Settlement effective date
- § 9:22 —Class Action Fairness Act
- § 9:23 California Rule of Court 3.769 addition—Settlement of
class actions
- § 9:24 Cy Pres Distributions of Settlement funds/ Code of
Civil Procedure 384
- § 9:25 California Rule of Court 3.769 addition—References

B. FORMS

- § 9:26 Preliminary Approval Checklist
- § 9:27 Model Class Action Settlement Agreement & Notice
- § 9:28 Model PAGA Settlement Agreement
- § 9:29 Final Approval Checklist
- § 9:30 Procedural Guidance for Class Action Settlement
(District Court)
- § 9:31 Motion for Preliminary Approval

CHAPTER 10. ATTORNEY’S FEES

A. TEXT

- § 10:1 Fundamental principles
- § 10:2 Qualifications of class counsel
- § 10:3 Commercial reality in compensation
- § 10:4 Common fund compensation—Exception to rule that
party pay own attorney’s fees

- § 10:5 —Extra shares and benchmarks
- § 10:6 —Enhancing common fund fees with the private attorney general statute
- § 10:7 —Reasonableness requirement
- § 10:8 —Agreements between class counsel
- § 10:9 No fee award against class
- § 10:10 “Private attorney general doctrine” Code of Civil Procedure § 1021.5
- § 10:11 Court determines reasonableness
- § 10:12 References

B. FORMS

- § 10:13 Retainer agreement and duties of class representative
- § 10:14 Memorandum of points and authorities in support of plaintiff’s motion for final approval of class settlement, and award of attorney’s fees and costs
- § 10:15 Supplemental memorandum of points and authorities in support of motion for award of attorney’s fees, costs, and class representation enhancement

CHAPTER 11. TRIAL STRATEGIES

- § 11:1 Venue and court for trial
- § 11:2 Making the trial manageable—In general
- § 11:3 —Bifurcation
- § 11:4 —Severance
- § 11:5 —Pretrial master or reference reports
- § 11:6 —Arbitration of certain issues
- § 11:7 —Contribution bar orders
- § 11:8 —Statements of contested and uncontested issues
- § 11:9 —Summaries of voluminous documents for exchange with opposing parties
- § 11:10 —Pretrial discussion and disposition of disruptive evidentiary issues
- § 11:11 Additional considerations—In general
- § 11:12 —Determining trial issues before certification
- § 11:13 —Trial of remaining action
- § 11:14 —Appropriate inferences and presumptions
- § 11:15 References
- § 11:16 Plaintiffs’ Proposed Trial Plan (*Arellano v Container Connection*)
- § 11:17 Plaintiffs’ Proposed Trial Plan (*Raziano, et al. v Albertson’s LLC*)
- § 11:18 Plaintiffs’ Reply Re Proposed Trial Plan (*Raziano, et al. v Albertson’s LLC*)

TABLE OF CONTENTS

**CHAPTER 12. CLASS ACTIONS GROUPED
BY SUBSTANTIVE LAW**

§ 12:1	Overview
§ 12:2	Antitrust
§ 12:3	Discrimination
§ 12:4	Securities
§ 12:5	Bank and credit card overcharges
§ 12:6	Product liability
§ 12:7	Partnerships and investment schemes
§ 12:8	Brokerage agreement charges
§ 12:9	Real-property—Related class actions—Deeds of trust
§ 12:10	— —Nuisance and trespass
§ 12:11	— —Construction defect
§ 12:12	— —Landlord-tenant
§ 12:13	— —Mobile home rents
§ 12:14	— —Unlawful detainers
§ 12:15	— —Subdivision land sales
§ 12:16	— —Condominiums
§ 12:17	— —Escrow practices
§ 12:18	— —Title insurance practices
§ 12:19	Government benefits and taxes
§ 12:20	Medical treatment
§ 12:21	Ticketholders
§ 12:22	Employee-employer
§ 12:23	Rental cars
§ 12:24	Right of publicity
§ 12:25	Express warranty
§ 12:26	RICO
§ 12:27	Telephone Consumer Protection Act of 1991 (TCPA)
§ 12:28	False Advertising Law (Bus. & Prof. Code, §§ 17500 et seq.)
§ 12:29	Fair Credit Reporting Act (15 U.S.C. § 1681)
§ 12:30	References

**RELEVANT FEDERAL AND STATE
STATUTES AND RULES**

Appendix A.	Federal Rules of Civil Procedure - Rule 23
Appendix B.	California Civil Code - § 1781
Appendix C.	California Code of Civil Procedure - §§ 382 & 384
Appendix D.	California Rules of Court - Management of Class Actions

Appendix E. Class Action Fairness Act 2005

Appendix F. California Labor Code - § 2699

Table of Laws and Rules

Table of Cases

Index