

Perspectives from Across the Pond: Seeking Social Justice and Equality Through Class Action Litigation

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Federal Rules of Civil Procedure Rule 23. Class Actions

(a) Prerequisites. One or more members of a class may sue or be sued as representative parties on behalf of all members only if:

- (1) the class is so numerous that joinder of all members is impracticable;
- (2) there are questions of law or fact common to the class;
- (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
- (4) the representative parties will fairly and adequately protect the interests of the class.

(b) Types of Class Actions.

A class action may be maintained if Rule 23(a) is satisfied and if:

(1) prosecuting separate actions by or against individual class members would create a risk of:

(A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or

(B) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests;

(2) the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole; or

(3) the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The matters pertinent to these findings include:

- (A) the class members' interests in individually controlling the prosecution or defense of separate actions;
- (B) the extent and nature of any litigation concerning the controversy already begun by or against class members;
- (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
- (D) the likely difficulties in managing a class action.

Class Definitions

Current and future residents of New York City Housing Authority who have asthma that substantially limits a major life activity and who have mold and/or excessive moisture in their NYCHA housing.

Present and former female Wal-Mart employees who have been subjected to gender discrimination within four regions largely based in California (in contrast to the 41 regions that comprised the nationwide class).

(c) Certification Order; Notice to Class Members; Judgment; Issues Classes; Subclasses.

- Defining the class through order before merits and substance of claim
- Appointing class counsel
- Class Notice (b)(1) or (2) court may order, if (b)(3) must.
- The notice must clearly and concisely state in plain, easily understood language:
 - (i) the nature of the action;
 - (ii) the definition of the class certified;
 - (iii) the class claims, issues, or defenses;
 - (iv) that a class member may enter an appearance through an attorney if the member so desires;
 - (v) that the court will exclude from the class any member who requests exclusion;
 - (vi) the time and manner for requesting exclusion; and
 - (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

*Notice in (b)(3) allows class members to opt out.

(e) Settlement, Voluntary Dismissal, or Compromise.

Rule 23(e) Fairness Hearing:

(2) Approval of the Proposal. If the proposal would bind class members, the court may approve it only after a hearing and only on finding that it is fair, reasonable, and adequate after considering whether:

(A) the class representatives and class counsel have adequately represented the class;

(B) the proposal was negotiated at arm's length;

(C) the relief provided for the class is adequate,

(D) the proposal treats class members equitably relative to each other.

(5) Class-Member Objections.

(A) In General. Any class member may object to the proposal if it requires court approval under this subdivision (e). The objection must state whether it applies only to the objector, to a specific subset of the class, or to the entire class, and also state with specificity the grounds for the objection.

*Another opportunity for (b)(3) members to opt-out

CLASS NOTICE EXAMPLES:

Supreme Court of the State of New York, County of New York

Moises Jimenez et al. v. New York City Department of Education et al.

If you are a Black or Latinx student who attends or will attend a NYC Department of Education high school and play or will be able to play high school sports through the Public Schools Athletic League from 2021 through 2024, you are part of this class action lawsuit.

Your legal rights may be affected by this case whether or not you act. Read this notice carefully.

United States District Court for the Southern District of New York

Rafferty et al. v. Doar et al.

If You Are Blind or Seriously Visually Impaired And Need Information About Medicaid or SNAP (Food Stamps) Benefits In Accessible Alternate Formats, A Proposed Federal Court Settlement May Affect You.

The background features a complex geometric design. On the left side, there are several overlapping, semi-transparent shapes in various shades of green and a dark blue-grey. These shapes create a layered, abstract effect. The right side of the image is a solid, bright lime green. Centered on this green background is the text '▶ Thank you!!' in a white, sans-serif font.

▶ Thank you!!