

## **CALIFORNIA CLASS ACTION LAW**

A class action is a lawsuit in which one or more plaintiffs sue on behalf of a group or “class” of people with similar claims. As such, class actions resolve common issues of liability and/or damages that affect a large group of people. In California, there are two class action statutes, one quasi-class action statute, a set of uniform rules that govern the procedure of class actions, and robust case law on class actions. In this brief, I will present a general overview on the class action jurisprudence in California state law. I will present (1) the sources of law and requirements for class action lawsuits in California, and (2) the procedure of class actions in California.

### **I. SOURCES OF LAW & REQUIREMENTS**

In California, there are two statutory authorities for class actions: (1) California Code of Civil Procedure § 382 and (2) the California Consumers Legal Remedies Act, California Civil Code § 1781. California also has a quasi-class action statute in California’s Unfair Competition Law found in California Business and Professions Code §§ 17200, 17500.

#### **A. California Code of Civil Procedure § 382 (Permissive Joinder)**

California’s general class action statute is California Code of Civil Procedure § 382. Section 382 is a broad statute that authorizes class action lawsuits in California. Section 382 states that “when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, or more may sue or defend for the benefit of all.”<sup>1</sup>

Furthermore, the California Code of Civil Procedure has further statutes regarding the joinder of plaintiffs. California Code of Civil Procedure § 378 states what parties can join as plaintiffs for a class action lawsuit. Per California Code of Civil Procedure § 378, “[a]ll persons may join in one action as plaintiffs if:

1. They assert any right to relief jointly, severally, or in the alternative, in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action;

or

2. They have a claim, right, or interest adverse to the defendant in the property or controversy which is the subject of the action.”<sup>2</sup>

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<sup>1</sup> Cal. Code Civ. Pro. § 382.

<sup>2</sup> Cal. Code Civ. Pro. § 378.

Additionally, Section 378 explains that it is not necessary that every plaintiff have an interest in every cause of action, or every relief being sought.<sup>3</sup> Instead, judgment can be given for plaintiffs according to their respective rights to relief.<sup>4</sup> The legislative committee comments explain that the second prong, expressing that parties may join as plaintiffs if they have a claim, right, or interest adverse to the defendant, is not intended or needed to expand the scope of the first prong. On the contrary, the second prong is included to eliminate any possibility that Section 378 is interpreted (as compared to previous versions of the section) to preclude joinder in cases where it was formerly permitted.

Section 379.5 provides the court with additional powers. Per Section 379.5, If parties are joined under Section 378 or Section 379, a court can make orders to prevent any party from “being embarrassed, delayed, or put to undue expense. . .”.<sup>5</sup> Such orders may include orders to separate trials.<sup>6</sup>

Lastly, per *Vasquez v. Superior Court of San Joaquin County*, California courts also look to the federal rules (i.e., Federal Rules of Civil Procedure § 23) under the California Code of Civil Procedure for guidance if California law is silent on a particular issue.<sup>7</sup>

### **1. Certification Criteria**

To get a class certification in California, the plaintiff must establish that there is “an ascertainable class” and a “well-defined community of interest among . . . members.”<sup>8</sup> The “community of interest” requirement for class certification of an action has three factors: (1) predominant common questions of law or fact, (2) class representatives with claims or defenses typical of the class, and (3) class representatives who can adequately represent the class.<sup>9</sup> The party seeking class certification has the burden of proof.<sup>10</sup> Plaintiffs must also establish that resolving the claims in the type of lawsuit would provide “substantial benefits” to both the courts and the litigants.<sup>11</sup> To do so, the plaintiffs must show that the type of lawsuit is superior to alternative methods of resolving the disputes (including individual litigation).<sup>12</sup> Thus there are (a) numerosity and (b) commonality requirements. California Code of Civil Procedure § 382 requires that the individual joinder of all plaintiffs be impracticable. What is “impracticable” is

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Cal. Code Civ. Pro. § 379.5.

<sup>6</sup> *Id.*

<sup>7</sup> *Vasquez v. Superior Court of San Joaquin County*, 4 Cal. 3d 800, 821 (1971).

<sup>8</sup> *Sav-On Drug Stores v. Superior Court*, 34 Cal. 4th 319 (2004).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Bell v. Farmers Insurance Exchange*, 115 Cal. App. 4th 715 (2004).

<sup>12</sup> *Daar v. Yellow Cab Co.*, 67 Cal. 2d 695 (1967).

not expressly defined, yet the California Supreme Court has certified classes consisting of approximately 200 members, and also 5 million members.<sup>13</sup>

### **B. California Consumers Legal Remedies Act (CLRA)**

Civil Code § 1750 declares unlawful a lot of unfair and deceptive practices involve the sale of goods and services to consumers. As such, the scope of the CLRA limits class actions under it to those resulting from sale of goods and services to consumers. The key provision is Section 1781 on class actions, which states that “[a]ny consumer entitled to bring an action . . . may, if the unlawful method, act, or practice has caused damage to other consumers similarly situated, *bring an action on behalf of himself and such other consumers to recover damages or obtain other relief . . .*” (emphasis added).<sup>14</sup>

Section 1781 further states conditions for maintaining such a suit. The conditions are:

1. It must be impractical to bring all members of the class before the court;
2. The questions of law or fact common to the class must be substantially similar and predominant over the questions affecting the individual members;
3. The claims or defenses of the representative plaintiffs are typical of the claims or defenses of the class; and
4. The representative plaintiffs must fairly and adequately protect the interests of the class.<sup>15</sup>

Per Section 1781 of the CLRA, if an action is permitted as a class action, then the court may direct either party to notify each member of the class. If notifying each member personally is unreasonably expensive or difficult, then notice may be given by publication in a newspaper.<sup>16</sup> The notice must include (1) that the court will exclude a notified member if requested by a specific date, (2) that the judgment will include all members who did not request an exclusion, and (3) that any member who does not request exclusion may enter an appearance through counsel.<sup>17</sup> Moreover, dismissal, settlement, or any compromise of the action must be approved by the court and noticed to the class members who were noticed and did not request exclusion.<sup>18</sup> Finally, a judgement in a class action must (1) describe the class of persons whom were noticed and did not request exclusion.<sup>19</sup>

The remedies available under the CLRA include actual damages, punitive damages, injunctive relief, restitution, or any other relief that the court deems proper.<sup>20</sup> However, remedies

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<sup>13</sup> *Vasquez v. Superior Court of San Joaquin County*, 4 Cal. 3d 800 (1971); *Lazar v. Hetz*, 143 Cal. App. 3d 128 (1983).

<sup>14</sup> Cal. Civ. Code § 1781.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Cal. Civ. Code § 1780.

are only available to consumers who have actually suffered damages from the prohibited practices.

Compared to California Code of Civil Procedure § 378, the CLRA is more flexible. As with California Code of Civil Procedure § 382, the CLRA requires that the individual joinder of all plaintiffs be impracticable. However, California courts do not follow the provisions of Federal Rule 23 into the CLRA as they do with Section 382. Contrarily, there is a strong presumption against federal preemption of the CLRA because consumer protection laws are within the state's policy powers. As such, a showing of superiority is or substantial benefit to the public is not required for certification.<sup>21</sup> Lastly, the determination of whether the class certification requirements have been met is within the discretion of the trial court.<sup>22</sup>

### **C. California Unfair Competition Law (UCL)**

California's Unfair Competition Law, found in Business and Professions Code sections 17200 et seq. and 17500 et seq. act like quasi-class action statutes. Under the UCL, a person who has suffered an injury in fact and has lost money or property as a result of the unfair competition (unfair, deceptive, or unlawful act) may bring an action to obtain relief not only for himself but also for others. The UCL allows California residents to seek equitable forms of redress for group harms, including restitution, without or without formal class certification. However, the scope of available remedies may be narrower if the claim is unaccompanied by class allegations.

## **II. PROCEDURAL RULES**

California has rules on the procedural requirements for most stages of class action litigation (from initiation to settlement, trial, and judgment). The rules on the procedural requirements are found in the California Rules of Court (rules 3.760-71). Still, for procedural issues, California courts also look to the federal rules for guidance if California rules are silent on a particular issue.

### **A. California Rules of Court**

**Application.** California Rule of Court 3.760 defines the scope of the rules (i.e., what the rules apply to). The scope of the California Rules of Court is broad. That is, these rules apply to class actions under both the California Code of Civil Procedure and the California Consumers Legal Remedies Act.<sup>23</sup>

**Form of Complaint.** Rule 3.761 determines the required form of the complaint. Rule 3.761 has two sections: the caption, and the heading and class allegations. First, Rule 3.761

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<sup>21</sup> Cal. Civ. Code § 1781.

<sup>22</sup> *Petherbridge v. Altadena*, 37 Cal. App. 3d 193 (1974).

<sup>23</sup> Cal. Rules of Court § 3.760.

states that a complaint for or against a class party must include in the caption the designation of “CLASS ACTION” in capital letters on the first page below the case number.<sup>24</sup> Second, Rule 3.761 also states that a complaint must contain a separate heading entitled “CLASS ACTION ALLEGATIONS” where plaintiff(s) have to describe how the requirements for class certification are met.<sup>25</sup>

**Case Conference.** Rule 3.762 states that conferences, between the court and counsel for the parties, may be held to discuss the following: class issues, discovery, scheduling, etc.<sup>26</sup> However, no evidence may be presented at the conference.<sup>27</sup> In order to schedule such conference, notice must be filed and served at least 20 calendar days before the date of the conference.<sup>28</sup> To select a date for the conference, the party moving to schedule must first obtain approval from the court clerk and make reasonable efforts to accommodate the schedules of all parties.<sup>29</sup>

**Conference Order and Case Management.** At the conclusion of a case conference, the court may make an order that either (1) approves a stipulation of the parties, (2) establishes a schedule for discovery, (3) sets the date for the hearing on class certification, (4) sets dates for future conferences, or (5) addresses any other matters related to case management.<sup>30</sup>

**Motion to Certify or Decertify Class.** Parties can make motion to (1) certify a class, (2) determine the existence of (and certify) subclasses, (3) amend or modify any order certifying a class, or (4) decertify a class.<sup>31</sup> To do so, the motion must be filed before the deadline set in the case conference.<sup>32</sup> Such motion must be filed and served on all parties at least 28 calendar days before the date of the hearing.<sup>33</sup> Parties may oppose to such motions, but the opposition must be served at least 14 calendar days before the scheduled date of the hearing.<sup>34</sup> Lastly, a reply to the opposition may be filed. If so, it must be filed at least 5 days before the scheduled date of the hearing. Dates may change if the court finds good cause to do so.<sup>35</sup>

Additionally, the motion must consist of a notice of motion, a memorandum, evidence in support of the motion in the form of declarations of counsel, class representatives, or other appropriate declarants, and any request for judicial notice.<sup>36</sup> The opposition must consist of a

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<sup>24</sup> Cal. Rules of Court § 3.761.

<sup>25</sup> *Id.*

<sup>26</sup> Cal. Rules of Court § 3.762.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> Cal. Rules of Court § 3.763.

<sup>31</sup> Cal. Rules of Court § 3.764

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

memorandum, and evidence in opposition to the motion, including declarations of counsel or other appropriate declarants, and any requests for judicial notice.<sup>37</sup> The motion must not exceed 20 pages in length, and the opposition must not exceed 15 pages in length.<sup>38</sup>

**Class Action Order.** As mentioned previously, courts can both certify classes and subclasses. When certifying, amending, or modifying a class, the order must contain a description of the class and any subclasses.<sup>39</sup>

**Notice to Class Members.** The court may require either party to notify the class of the action in the manner specified by the court if the class is certified.<sup>40</sup> Then, a class proponent must submit a statement regarding class notice and a proposed notice to class members.<sup>41</sup> Such a statement must include (1) whether notice is necessary, (2) whether class members may exclude themselves from the action, (3) the time and manner in which notice should be given, (4) a proposal for which parties should bear the costs of notice, and (5) if cost shifting or sharing is proposed, an estimate of the cost involved in giving notice.<sup>42</sup>

Upon certification of a class, the court must then make an order which determines the following:

1. Whether notice to class members is necessary,
2. Whether class members may exclude themselves from the action,
3. The time and manner of notice,
4. The content of notice, and
5. The parties responsible for the cost of notice.<sup>43</sup>

The content of the class notice must be approved by the court. If members are given the right to request to be excluded from the class the notice must include the following:

1. A brief explanation of the case,
2. A statement that the court will exclude the member if requested by a specified date,
3. A procedure for the member to follow to request exclusion from the class,
4. A statement that the judgment will bind all members who do not request exclusion, and
5. A statement that any member who does not request exclusion may enter an appearance through counsel.<sup>44</sup>

In order to determine the manner of the notice, the court must consider the following:

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<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> Cal. Rules of Court § 3.765.

<sup>40</sup> Cal. Rules of Court § 3.766.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

1. The interests of the class,
2. The type of relief requested,
3. The stake of the individual class members,
4. The cost of notifying class members,
5. The resources of the parties,
6. The possible prejudice to class members who do not receive notice, and
7. The res judicata effect on class members.<sup>45</sup>

Lastly, the court may order means of notice. If personal notification is unreasonably expensive, or if the stake of individual class members is insubstantial, or if it appears that all members of the class cannot be notified personally, then the court may order a means of notice reasonably calculated to apprise the class members of the pendency of the action.<sup>46</sup> Examples include publication in newspapers, magazines, television, radio, internet, etc.

**Orders in Conduct of Class Actions.** During the course of a class action, the court can make orders (and amend or alter orders) that:

1. Require that some or all members of the class be given notice in a specific manner,
2. Impose conditions on the parties,
3. Require that the pleadings be amended to eliminate allegations of absent persons,
4. Facilitate the management of class actions through consolidation, severance, coordination, bifurcation, intervention, or joinder, and
5. Address similar procedural matters.<sup>47</sup>

**Discovery from Unnamed Class Members.** Discovery (oral deposition, written deposition, or deposition for production of business records and things) may be sought from a member of a class that is not a party representative or has not appeared through a subpoena without requiring a court order.<sup>48</sup> However, a party representative, deponent, or other affected person may move for a protective order to preclude or limit the discovery.<sup>49</sup>

If a party wants to serve interrogatories on a member of a class who is not a party representative or has not appeared, then the party needs a court order.<sup>50</sup> To determine whether to grant the order, the court must consider (1) the timing of the request, (2) the subject matter to be covered, (3) how material the information is, (4) how likely it is that class members have that information, (5) the possibility of reaching factual stipulations that would eliminate the need for such discovery, (6) whether class representatives are seeking discovery on the subject to be

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<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> Cal. Rules of Court § 3.767.

<sup>48</sup> Cal. Rules of Court § 3.768.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

covered, and (7) whether discovery will result in annoyance, oppression, or undue burden or expense for the members of the class.<sup>51</sup>

**Settlement of Class Action.** Judicial review and approval is required for any entire class action settlement, settlement of any cause of action, or the settlement as to any party.<sup>52</sup> Additionally, a party seeking the approval of any dismissal or settlement must set forth any agreement regarding the payment of attorney's fees.<sup>53</sup>

**Dismissal of Class Action.** A class action may be dismissed. However, dismissal of a class action, or of any party or cause of action, requires court approval.<sup>54</sup> Requests for dismissal need to be accompanied by a declaration which states the facts on which the party seeking for dismissal relies, and state whether consideration is being given for the dismissal.<sup>55</sup> The court may then grant the request without a hearing, but a party may seek a hearing within 15 calendar days of the service of the notice.<sup>56</sup> Lastly, a notice of dismissal must be provided to the class if the court has certified the class and the notice of the action has been provided to the class members.<sup>57</sup> Otherwise, the court may instruct on what persons to notify and the manner to do so, even allowing dismissal without requiring notice.<sup>58</sup>

**Judgment in Class Action.** Lastly, the judgement in a class action must include and describe the persons whom the court finds to be members of the class, and notice of such judgment must be given to the class in the manner specified by the court.<sup>59</sup>

### **III. CONCLUSION**

In conclusion, California has two class action statutes, which provide authority, and requirements, for class action lawsuits. There is also a quasi-class action statute, and also a set of uniform rules that govern the procedure of class actions (no matter under which authority). California Code of Civil Procedure § 382 is the widest source of authority; however, the California Consumers Legal Remedies Act is the most flexible (albeit limited to matters of goods and services). The UCL is also a good alternative for California resident to bring claims for restitution on behalf of others. Lastly, there is a robust body of case law under all different authorities. Therefore, all in all, California has a broad and extensive law on class actions.

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<sup>51</sup> *Id.*

<sup>52</sup> Cal. Rules of Court § 3.769.

<sup>53</sup> *Id.*

<sup>54</sup> Cal. Rules of Court § 3.770.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> Cal. Rules of Court § 3.771.