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Class Actions Update July 31, 2025

Class Actions 2025 Second Quarter Update

This update summarizes key class action-related developments from the second quarter of 2025 (April through June).

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I. End-of-Term Supreme Court Developments

The Supreme Court's OT 24 ended in June—and with it came two developments that will invite further litigation in the lower courts on foundational issues.

Rule 23(b)(3) and Uninjured Members. As previewed in recent alerts, the Supreme Court granted review in *Laboratory Corp. of America Holdings v. Davis* to resolve an important, recurring question that has split the courts of appeals: whether a Rule 23(b)(3) damages class can be certified when some class members lack Article III standing. 145 S. Ct. 1133, 1133 (2025). But following the grant, the respondents raised jurisdictional and prudential concerns and

urged the Supreme Court to dismiss review. After oral argument, the Court did so, dismissing the case as improvidently granted. 145 S. Ct. 1608, 1608 (2025) (per curiam)

Justice Kavanaugh dissented from the dismissal, attributing it to the Court's reluctance to address a threshold mootness issue relating to initial and revised class definitions. 145 S. Ct. at 1609-10. Justice Kavanaugh also wrote that he would hold that no Rule 23(b)(3) class can be certified when it contains uninjured class members, largely on the theory that individualized issues relating to injury would necessarily predominate over common questions. *Id.* at 1611. No other Justices weighed in on the question the Court had previously agreed to answer.

For now, then, the split remains in place. As previously detailed, some courts of appeals have held that no class can be certified when it contains uninjured members. Others have permitted certification only when the number of uninjured class members is *de minimis*. Others have held that a Rule 23(b)(3) class can be certified even with more than a *de minimis* number of class members, provided issues of Article III injury do not predominate over common questions. And still other circuits, to date, have avoided taking a position. With the dismissal in *Labcorp*, these issues remain live, and class-action defendants should be careful to preserve arguments on this front both in circuits that have not yet taken a side and in those that have.

Universal-Injunction Decision Spotlights Rule 23(b)(3). Late in the Term, a divided Court held in *Trump v. CASA* that federal courts likely exceed their equity powers by issuing most "universal" injunctions. 145 S. Ct. 2540, 2548-49 . As the Court explained, such injunctions violate traditional limits on equitable relief insofar as they go beyond awarding "complete relief" to the parties. *Id.* at 2556.

One issue implicated by the Court's decision, and debated across the splintering opinions, was the potential alternatives to universal injunctions—including Rule 23(b)(2) injunctive-relief class actions. The majority in *CASA* declined to address Rule 23(b)(2) classes, though it cautioned that Rule 23 comes with vital requirements that safeguard due process and fairness. *Id.* at 2555-56. But Justices writing separately dueled over the Rule 23(b)(2) issue. Justice Alito, concurring along with Justice Thomas, warned that Rule 23's requirements ought not be diluted to facilitate more sweeping relief. *Id.* at 2566. Justice Kavanaugh struck a similar chord in a separate concurrence. *Id.* at 2567. Conversely, Justice Sotomayor, dissenting along with Justices Kagan and Jackson, highlighted Rule 23(b)(2) as an "important" if "cumbersome" tool, particularly for challenging government conduct.

CASA leaves Rule 23(b)(2) as an open battleground and, in the coming years, lawsuits that challenge government policies or otherwise seek nationwide relief may generate further circuit splits and precedent affecting nongovernment class actions.

II. Sixth Circuit Issues Landmark En Banc Opinion

Authored by Chief Judge Sutton, the Sixth Circuit's en banc opinion in *Speerly v. GM, LLC* provides a robust analysis of Rule 23's commonality and predominance requirements that will be useful to defendants litigating product-defect and other class actions.

Commonality. The Sixth Circuit emphasized that Rule 23(a)'s commonality requirement may not be satisfied even when the factual variation among the class (there, differing consumer experiences with defective vehicle transmissions) is modest. Such variations may unstick the "glue" that Rule 23 requires. 2025 WL 1775640, at *5-7 (6th Cir. 2025). The court distinguished between common *questions* and common *answers*, cautioning that while all plaintiffs may advance the same "defect" theory, that alone does not resolve whether each was actually injured or misled in the same way. *Id.* at *7-8. The court's analysis of commonality—an independent requirement that is often overlooked or lumped together with predominance—could prove useful in future cases to support arguments about whether a proposed common question could yield an answer that actually resolves a material element (e.g., injury, causation, or reliance) of the claims of all class members.

Predominance. The Sixth Circuit also emphasized that predominance, with its "all-questions-considered" inquiry being far more demanding than commonality's "one-question" inquiry, requires a comparative evaluation: courts must look beyond the existence of common issues and assess, with an eye toward a potential classwide trial, whether those common issues outweigh individual ones. *Id.* at *7-9. In rejecting a sweeping class for lack of predominance, the court underscored the "high costs to a legal system that asks one district court to understand and apply nearly 60 causes of action across 26 states," the similar difficulties that arise with litigating a class action involving multiple "theories of defect," and the high costs that often accompany class certification. *Id.* at *8-9. Nationwide or multistate classes raising state law claims raise particularly serious concerns, given that even "slight variations" in state law often will eliminate any efficiencies to be gained in a class action. *Id.*

III. Courts of Appeals Provide Clarity on Enforcement of Arbitration Agreements

Three courts of appeals issued decisions addressing arbitration, an important issue that is often intertwined with class actions. Some high-level takeaways:

Avoid relying on arbitration clauses in other companies' contracts. In *Morales-Posada v. Culture Care, Inc.*, 141 F.4th 301 (1st Cir. 2025), the First Circuit affirmed the denial of a motion to compel arbitration based on an agreement to arbitrate between the plaintiffs and a third-party company. *Id.* at 305.

Culture Care argued it was a third-party beneficiary to the contract and so could compel arbitration. But the court of appeals held that Culture Care did not meet its burden of showing with "special clarity" that the plaintiffs and the third-party company had intended to confer *arbitration rights* on Culture Care. *Id.* at 313-14. The court also refused to apply equitable estoppel, reasoning that the plaintiffs were not relying on the terms of the contract containing the arbitration agreement and so could not be required to arbitrate under that contract. *Id.* at 319–20.

Morales-Posada provides an important caution: third- and non-party theories of enforcement of arbitration agreements often are viable, but their viability depends on the specific circumstances and the showing made by the party urging enforcement.

Use caution with online arbitration agreements. A panel in the Ninth Circuit recently analyzed the frequently recurring issue of assent with respect to online contracts in *Godun v. JustAnswer LLC*, 135 F.4th 699 (9th Cir. 2025).

JustAnswer moved to compel arbitration of users' claims based on the arbitration agreement in its terms of service, but the Ninth Circuit affirmed the district court's ruling that no agreement to arbitrate had been formed. *Id.* at 715. The court of appeals held that, as to some users, there was insufficient "reasonably conspicuous notice" of the terms because the notice was in small text, "blended into the background," and was not "directly above or below" the action button. *Id*. at 711-12. And for other users, the court held that clicking an "I Agree" button did not reveal "unambiguous assent" to the terms and to the arbitration agreement they contained. *Id.* at 712-13.

Godun shows the dramatic difference that the phrasing, placement, and prominence of terms can make in a court's analysis of whether an online agreement to arbitrate is valid.

In a concurrence, Judge Nelson critiqued the majority for "com[ing] very close" to requiring "magic words" to find assent in online contracts, a departure from traditional contract law. *Id.* at 715. Judge Nelson lauded the Second Circuit's approach, which looks to both the text and other evidence in context to determine assent. *Id.* at 716-17.

The panel in *Godun* reached a different conclusion from other decisions in the Ninth Circuit. For example, last year the Ninth Circuit emphasized that "mutual assent is based on 'the reasonable meaning' of the parties' words" and that "'[r]easonable meaning' considers 'the context or the surrounding circumstances and the conduct of the parties.'" *Keebaugh v. Warner Bros. Ent. Inc.*, 100 F.4th 1005, 1021 & n.6 (9th Cir. 2024). The majority in *Godun* cited *Keebaugh*, *see* 135 F.4th at 711, but did not engage with that aspect of *Keebaugh*'s analysis in the opinion.

Beware of waiving rights to compel arbitration. Finally, in *Merritt Island Woodwerx, LLC v. Space Coast Credit Union*, 137 F.4th 1268 (11th Cir. 2025), the Eleventh Circuit upheld the district court's ruling that Space Coast had waived its right to arbitration. *Id.* at 1276.

The parties' agreement selected AAA as the administrator but provided that "[i]f [the] AAA is unavailable to resolve the Claims, and if you and we do not agree on a substitute forum, then you can select the forum for the resolution of the Claims." *Id.* at 1271. When one of the plaintiffs demanded arbitration, AAA declined to administer the dispute due to Space Coast's failure to submit the required dispute resolution plan and fee. The Eleventh Circuit affirmed the district court's ruling that South Coast "failed to perform its contractual obligations under the arbitration agreement" and thus waived its right to arbitrate. *Id.* at 1271-72. The court of appeals was unimpressed with South Coast's submitting the agreement and fee to AAA two days after the plaintiffs sued in the district court, holding that "post-filing conduct cannot cure the prior noncompliance" because "[a]ny rule to the contrary would result in gamesmanship by companies attempting to remedy an arbitration roadblock that they knowingly caused." *Id.* at 1276.

Merritt Island sounds an important cautionary note: even where an arbitration agreement is validly formed and fully enforceable, a party can lose the right to demand arbitration by failing to comply with arbitral procedures.

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