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Class Actions Update

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Class Actions 2026 First Quarter Update

This update provides an overview of key class action–related developments from the first quarter of 2026 (January through March), plus a look ahead.

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- **Part III** discusses decisions from the Sixth, Seventh, and Ninth Circuits evaluating the enforceability of arbitration agreements.
- And **Part IV** discusses a Ninth Circuit opinion holding that the Supreme Court's decision in *Trump v. CASA, Inc.* does not limit classwide injunctive relief under Rule 23(b)(2).

I. The Fourth Circuit Elaborates on Rule for Pre-Discovery Motions Seeking Denial of Class Certification

Class certification is often decided in the later stages of litigation, following discovery and a plaintiff's motion to certify a class. But, where appropriate, defendants also may preemptively move for an order denying class certification—and may do so even as early as the pleading stage, *before* discovery occurs. But what legal standards govern such motions? The Fourth

Circuit recently addressed this question in *Oliver v. Navy Federal Credit Union*, 167 F.4th 106 (4th Cir. 2026).

The plaintiffs in *Oliver* brought claims on behalf of putative classes under Rules 23(b)(2) and (b)(3). 167 F.4th at 108-09. Before discovery, the defendant filed a motion to strike the class allegations as to both classes, which the district court granted. *Id.* at 108.

The Fourth Circuit affirmed in part and vacated in part. In so doing, the Fourth Circuit emphasized precedent requiring district courts to evaluate pre-discovery motions to deny class certification "based solely on the face of the complaint," asking "whether the complaint's allegations fail to satisfy Rule 23(a) and (b)'s requirements as a matter of law." *Oliver*, 167 F.4th at 108. Applying this standard, the Fourth Circuit concluded that the district court had properly stricken the Rule 23(b)(3) class because the complaint itself illustrated a degree of class-member-by-class-member variability—i.e., that the plaintiffs lived in different states, applied for different types of loan products, and had different loan application outcomes—that meant Rule 23(b)(3)'s predominance requirement was not satisfied. *Id.* at 114.

But the court of appeals reversed as to the portion of the order striking the Rule 23(b)(2) class, reasoning that the complaint's allegations that each plaintiff filled out the same loan form sufficed to make a prima facie showing of commonality, such that certification of an injunctive-relief class could be appropriate. *Oliver*, 167 F.4th at 115. The Fourth Circuit repeatedly emphasized that its rule was limited to cases in which a defendant seeks the preemptive denial of class certification "before any discovery has occurred." *E.g.*, *id.* at 108; *accord id.* at 110, 112-13, 116.

II. The Sixth Circuit Details *Erie* Analysis Necessary to Assess Predominance in Multistate Class Actions

A recent Sixth Circuit decision addresses the Rule 23(b)(3) predominance inquiry courts must conduct in class actions involving claims under multiple states' laws.

In *Generation Changers Church v. Church Mutual Insurance Co.*, 168 F.4th 354 (6th Cir. 2026), the plaintiff sued its property insurer on behalf of policyholders across ten states, alleging that the insurer improperly depreciated non-material costs when calculating payouts for storm damage. The district court certified a class of policyholders in four states where binding authority supported the church's position but denied certification for the remaining six states on the ground that the unsettled nature of those states' laws would render the proposed class "prohibitively unwieldy." *Id.* at 361. The Sixth Circuit vacated the order as to five of the six states for which the district court had denied certification, holding that the district court had abused its discretion by declining to conduct a detailed *Erie* analysis even though the plaintiff had supplied case law supposedly supporting its position. *Id.* at 365-67. But the court of appeals affirmed the denial of certification as to the sixth state on the ground that the plaintiff had not provided sufficient state-law authority to begin with. *Id.* at 367.

Generation Changers follows the Sixth Circuit's landmark decision in *Speerly v. GM, LLC*, 143 F.4th 306 (6th Cir. 2025) (en banc) (covered in a prior update), which likewise emphasized the rigorous analysis that district courts must undertake at class certification. As relevant to multi-state class actions in particular, the decision makes clear that once a plaintiff offers up binding or

persuasive legal authority—including federal appellate *Erie* predictions, intermediate state court decisions, and published sister-circuit precedent—the district court has an affirmative duty to analyze those authorities rather than dismiss them as insufficiently definitive. The decision also underscores that when parties grapple over certification in multi-state class actions, they should pay close attention to an array of authorities that could indicate state-by-state variations.

III. Three Circuits Consider Formation and Enforcement of Arbitration Agreements

Three decisions over this last quarter from the Sixth, Seventh, and Ninth Circuits address what it takes to validly form and enforce arbitration agreements.

Sixth Circuit Emphasizes the Importance of Intentional Website Design When Making a Hybrid Offer Containing Terms of Service

In *Dahdah v. Rocket Mortgage*, 166 F.4th 556 (6th Cir. 2026), the Sixth Circuit applied California contract law to hold that Rocket Mortgage's "hybrid" (or "sign-in wrap") offer—in which website users are advised of hyperlinked terms containing an obligation to arbitrate and are invited to manifest their assent by taking some action other than clicking on an explicit "I agree" button—was sufficient to form a valid arbitration agreement. *Id.* at 569, 577-78. Rocket Mortgage had provided a hyperlink to its terms of service, which contained an arbitration provision, beneath a mortgage calculator feature on its website, stating that if the user clicked on the "calculate" button, the user would be accepting the terms. *Id.* at 563-65. The plaintiff indisputably clicked on the "calculate" button; the question was whether Rocket Mortgage's website gave conspicuous enough notice that a reasonable person would expect to be entering into an arbitration agreement. *Id.* at 579-81.

The Sixth Circuit held that the notice was sufficient to form an arbitration agreement. The court of appeals emphasized that the page design was uncluttered, the disclosure of the terms of service was immediately below a single action button, the disclosure was repeated across several pages, and the blue hyperlink stood out. *Dahdah*, 166 F.4th at 569-79. And it held that the plaintiff's clicking on "calculate" in light of that conspicuous notice constituted assent to be bound by the terms, including by the arbitration provision they contain. *Id.* at 580-81.

Dahdah serves as a reminder of the importance of design choices, especially with respect to the layout of websites and the disclosure of hyperlinked terms, that affect whether courts will find that arbitration agreements have been formed.

Seventh Circuit Finds That Strong Training and Protocols Ensure Enforceability of Arbitration Provision in Terms of Service

Rose v. Mercedes-Benz USA, LLC, 167 F.4th 975 (7th Cir. 2026), illustrates steps that businesses can take to help ensure enforcement of arbitration agreements formed over the phone.

In *Rose*, the plaintiffs argued that the defendant's arbitration provision was unenforceable because they supposedly were not given sufficient notice of it. 167 F.4th at 978-89. In response, the defendant submitted evidence that it had trained call center representatives to direct

purchasers to the terms of service (which contained an arbitration agreement) as part of the onboarding process and instructed purchasers to review the agreement on the defendant's website. *Id.* at 977. The Seventh Circuit held that the arbitration agreement was enforceable because, in light of the defendant's evidence, a reasonable person would have realized they were assenting to the terms of the contract. *Id.* at 980. This decision illustrates that strong protocols and training can generate a helpful record that purchasers were on notice of an arbitration agreement.

Ninth Circuit Refuses to Enforce "Misleading" Mid-Litigation Arbitration Agreement

Defendants often enter into new or revised arbitration agreements with consumers or employees, and sometimes those consumers or employees are parties in certified classes or putative class members in ongoing litigation. The Ninth Circuit's recent decision in *Avery v. TEKsystems, Inc.*, 165 F.4th 1219 (9th Cir. 2026), strikes a cautionary note for defendants seeking to form new or revised agreements with members of a putative or certified class.

In *Avery*, the defendant rolled out a new arbitration agreement between it and its employees during the pendency of class litigation against it. 165 F.4th at 1224-25. Following class certification, the defendant moved to compel arbitration against class members who had failed to opt out of the arbitration agreement. *Id.* at 1225. The district court denied the motion, reasoning that it had broad authority to police communications between the defendant and class members in "conducting an action" under Rule 23(d). *Id.* at 1226.

The Ninth Circuit affirmed. *Avery*, 165 F.4th at 1234. The court of appeals emphasized that defendants' communications to class members regarding the arbitration agreement were misleading, and thus subject to invalidation under Rule 23(d), because they provided contradictory deadlines, disparaged class actions, and would tend to make class members believe they could not seek advice from class counsel regarding opt-out without paying fees out of pocket. *Id.* at 1232. Under *Avery*, a defendant seeking to form new arbitration agreements should take care to avoid misleading or coercive language that could trigger judicial skepticism under Rule 23(d).

IV. Ninth Circuit Holds That *Trump v. CASA* Does Not Curtail Classwide Injunctive Relief Under Rule 23(b)(2)

The Supreme Court's decision last Term in *Trump v. CASA, Inc.*, 606 U.S. 831 (2025), limited the use of "universal injunctions"—i.e., court orders that bar enforcement of a law against (or otherwise grant injunctive relief in favor of) people or companies who are not parties to the given lawsuit. Holding that such relief likely exceeds the equitable authority Congress granted to federal courts, the Court granted partial stays of three district court injunctions that had blocked enforcement of an executive order restricting birthright citizenship, limiting those injunctions to the parties before each court. But *CASA* left open an important question: what effect, if any, the decision would have on classwide injunctive relief under Rule 23(b)(2).

A recent Ninth Circuit decision concluded that federal courts remain empowered to order classwide injunctive relief through Rule 23. In *Pacito v. Trump*, 169 F.4th 895 (9th Cir. 2026), the

plaintiffs challenged an Executive Order that suspended the U.S. Refugee Admissions Program and obtained preliminary injunctive relief after the district court certified Rule 23(b)(2) classes. On appeal, the government argued, among other things, that the injunction was so broad that it amounted to an impermissible "universal injunction" under *CASA*. *Id.* at 939. The Ninth Circuit disagreed, explaining that "*CASA* did not affect district courts' ability to issue class-wide injunctive relief." *Id.* Citing Justice Alito's concurrence in *CASA*, the court of appeals emphasized that "[p]utting the kibosh on universal injunctions does nothing to disrupt Rule 23's requirements." *Id.* Because "a class has been certified," the court concluded, "the district court's injunctions comply with *CASA*." *Id.*

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