

Class Certification Rules Clarified: Harder for Plaintiffs to Certify Classes

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On September 3, 2013, in *Wang v. Chinese Daily News, Inc.*, the Ninth Circuit clarified the restrictions on class certification imposed by *Wal-Mart Stores, Inc. v. Dukes*. The net effect of this ruling is to make it harder for plaintiffs to certify classes.

In *Wang*, named plaintiffs were employees of Chinese Daily News (“CDN”) who alleged that they had been made to work more than eight hours per day and more than forty hours per week. They also alleged that they were wrongfully denied overtime compensation, meal and rest breaks, and accurate and itemized wage statements.

Plaintiffs sought to certify a class of non-exempt employees at a single facility (consisting of about 200 affected employees) as to violations of the Fair Labor Standards Act. The Ninth Circuit held that, in light of *Dukes*, the district court had wrongly certified the class.

The district court had purported to certify the class under several different parts of [Federal Rules of Civil Procedure, Rule 23](#). In each instance, the Ninth Circuit explained why class certification had been inappropriate, and remanded the rulings for further consideration in light of applicable law.

Rule 23(a)

As the Court explained, Rule 23(a) ensures that the named plaintiffs are appropriate representatives of the class whose claim they wish to litigate. It requires the party seeking certification to satisfy four requirements, one of which is “commonality,” specifically Rule 23(a)(2). After ruling that CDN had not waived its right to challenge the district court’s finding of commonality, the Ninth Circuit held that such finding was incorrect. Quoting *Wal-Mart*, the Court noted that

“What matters to class certification is not the raising of common questions — even in droves — but, rather the capacity of a classwide proceeding to generate common *answers* apt to drive the resolution of the litigation. . . . If there is no evidence that the entire class was subject to the same allegedly discriminatory practice, there is no question common to the class.”

Furthermore, the “rigorous analysis” under Rule 23(a) “sometimes [requires] the court to probe behind the pleadings before coming to rest on the certification question.” The Ninth Circuit remanded the district court’s Rule 23(a)(2) commonality finding for reconsideration in light of *Wal-Mart*.

Rule 23(b)(2)

In its earlier opinion, the Ninth Circuit had affirmed the district court’s certification under Rule 23(b)(2), which provides for relief “when a single injunction or declaratory judgment would provide relief to each member of the class.” The Supreme Court had reversed this decision, making clear that individualized monetary claims cannot be asserted under Rule 23(b)(2). The Court remanded to the district court to determine, in light of *Dukes*, whether the previously granted certification under Rule 23(b)(2) should continue for the purposes of injunctive relief. As with Rule 23(a)(2), the commonality requirement would need to be met.

Rule 23(b)(3)

Rule 23(b)(3) provides that class certification is permissible if the court finds that the questions of law or fact common to the class members predominate over questions affecting only individual members and that a class action is superior to other available methods. As the Ninth Circuit noted, the predominance analysis under Rule 23(b)(3) focuses on “the relationship between the common and individual issues” in the case and “tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.”

The Court remanded the certification question under Rule 23(b)(3) to the district court for reconsideration for three reasons: (1) The commonality requirement must again be met for certification under Rule 23(b)(3) to be appropriate; (2) the trial court erred in basing its predominance decision on the mere fact that CDN had a uniform policy classifying all reporters and account executives as exempt employees, but should have focused on other potential individual issues relevant to the predominance inquiry; (3) in the recent decision, *Brinker Restaurant Corp. v. Superior Court*, the California Supreme Court had held that an employer need not ensure that its employees take meal breaks, and, the Ninth Circuit ruled, the district court should reconsider its decision in light of *Brinker*.

The above ruling replaced and superseded the previous opinion issued March 4, 2013.

Please contact the author if you have any questions regarding class certification or any other issues addressed in *Wang v. Chinese Daily News*.

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