

GUIDELINES FOR MOTIONS RELATING TO CLASS CERTIFICATION
DEPARTMENTS 1 AND 3 – COMPLEX CIVIL LITIGATION

A. Sequencing

1. In many, if not most, cases, it makes financial and litigation sense to do class certification – related discovery first and stay merits discovery until after the class certification hearing. Parties seeking a different sequence of discovery should explain (with **specific details**) why their desired sequence is appropriate.

2. Parties could also consider the following “double-staging” procedure:

a. Plaintiffs do only the discovery they need to meet their certification needs. This is usually brief, as plaintiffs’ counsel typically have what they need before the suit is filed. No discovery is taken at this stage regarding anticipated defenses to the certification motion. Then plaintiffs serve the certification motion.

b. Defendants undertake discovery they need to defend against the motion, if any, and then file their opposition.

c. Plaintiffs then do the discovery they need, if any, to respond to the opposition, and then file the reply.

3. The Court usually does not permit any substantive motions before the motion for class certification to avoid a one-way intervention issue. (See *Fireside Bank v. Superior Court* (2007) 40 Cal. 4th 1069, 1081).

B. Contents of Papers

1. The party moving for or against class certification must present in the moving papers admissible evidence, as required by applicable law, establishing that the elements for certification are, or are not, present.

2. All facts other than purely rebuttal matters upon which the moving party will rely in the hearing must be set out in evidence submitted with the notice of motion and moving papers.

C. Trial Management Plans

Much of the trial judge’s work at the certification stage is to weigh individual issues versus common issues in an effort to determine which predominate. (*Mies v. Sephora U.S.A., Inc.* (2015) 234 Cal. App. 4th 967.) A trial management plan submitted as part of class certification briefing typically does the following (and does so with **specific details**):

1. discuss the elements of the claims and material affirmative defenses, and whether choice of law concerns may impact the analysis;

2. discuss the type of evidence to be presented;

3. show how a jury might decide these issues (e.g., a proposed jury verdict form)

4. provide realistic time estimates for the trial, based on an allocation by witness type;
5. propose (but only if useful) procedures such as bifurcation and phasing, the use of special masters for certain issues, using summaries and compilations of voluminous documents, etc.
6. discuss whether rulings are needed from both the court and a jury (such as when equitable and legal issues are presented based on overlapping evidence) and the timing of those rulings in the course of the trial; and
7. explain how statistical evidence will be used and its reliability (or lack thereof), and whether a special evidentiary hearing will be needed to discuss experts, evidence, etc.

D. Relevant Factors to Discuss in Class Certification Briefing

Each party should address all elements relevant to deciding the appropriateness of class certification in its particular case. The list of elements set forth below is offered by the Court as a general summary and is not intended to supplant substantive law. Depending on the kind of case, some elements listed below may not be applicable.

1. Commonality and Predominance
 - a. The class definition, including a statement of criteria that putative class members must possess to be eligible for class membership
 - b. A description/definition of proposed subclasses, if any
 - c. Those issues of law which are common to all class members
 - d. Those issues of law which are unique to one or more class members but which must be presented at trial. In describing these unique issues of law, the segments of the class to which they are applicable should be described with a statement of the number within the class to whom each unique issue applies
 - e. Whether, and if so how, common issues of law predominate
 - f. Those issues of fact which are common to all class members
 - g. Those issues of fact which are unique to one or more class members but which must be presented at trial. In describing these unique issues of fact, the segments of the class to which they are applicable should be described with a statement of the number within the class to whom each unique issue applies
 - h. Whether, and if so how, common issues of fact predominate
 - i. Conflicts, if any, between class members

2. Ascertainability
 - a. The manner in which and the time when the individual class members will be identified if such identification is contemplated
3. Numerosity
 - a. The approximate number of persons in the class, and if there are subclasses, the approximate number of persons in each subclass
 - b. The basis for the above approximations
 - c. The general geographic location[s] of the class members. If the class is not confined to the state of California, the description should include those locations outside California where class members are located
 - d. Whether, and if so why, joinder is impracticable
4. Typicality
 - a. Why the claims and status of each of the proposed class representative[s] are typical of those of the proposed class or of the proposed subclass
 - b. Factual and/or legal differences, if any, in the representative's status as a class member and those of any other persons within the class. If there are subclasses, a factual statement of the subclass of which the representative is a member
 - c. Unique legal and/or factual issues, if any, pertaining to the representative[s] which must be litigated
 - d. Conflicts, if any, between the class representative[s] and the class members
5. Adequacy
 - a. The adequacy of class counsel, including the ability of class counsel to represent class members with conflicting claims or interest
 - b. The adequacy of the class representative[s], including the ability of the class representative[s] to serve as fiduciaries for class members with conflicting or inconsistent claims or interests
 - c. The issues of law and/or fact which must be litigated between class members
6. Substantial Benefits/Superiority
 - a. Procedures alternative to a class action which might be used to adjudicate the issues involved in the action

b. Why a class action is, or is not, procedurally superior to each alternative procedure, unless superiority is not an element of certifying that cause of action, including a discussion of the ability of the Court to manage the alternative proceedings in relation to its ability to manage the conduct of the class action

c. Whether there are substantial benefits to the Court, the parties, and/or the public to proceeding as a class action

7. Notice

a. Counsel requesting class certification should provide specifics regarding necessary notice to class members and the methods proposed for giving notice.

8. Trial Management Plan (as discussed above) (optional)