



Class Action Jury Trials: Going The Distance

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United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re JDS UNIPHASE CORPORATION
SECURITIES LITIGATION

No. C 02-1486 CW

ORDER RE:
BIFURCATION OF
TRIAL

_____ /

Plaintiffs and JDSU Defendants have each filed a report regarding bifurcation of the trial and related issues. Having considered the parties' papers and good cause appearing therefor, the Court hereby orders that by Wednesday, October 17 at 9:00 AM, Defendants shall file a notice of their decision whether to waive their right to a jury trial on issues of reliance and individual damages. In making that decision, Defendants should consider the following two options available to them:

1. Waiver of Jury: At trial, Plaintiffs will proceed on a theory of per share damages. After the jury has made its determination of liability and per share damages, the parties may


United States District Court
For the Northern District of California

1 file briefs regarding the calculation of aggregate damages, the
2 proper amount to be placed in the common fund and outlining their
3 proposals for the claims procedure. The Court will determine
4 aggregate damages and the proper amount to be placed in the common
5 fund. Judgment will not enter until the conclusion of the claims
6 procedure.

7 2. No Waiver of Jury: All issues will be addressed during
8 the currently scheduled nineteen-day jury trial. If Defendants
9 elect not to waive their right to a jury, they shall file a
10 proposal regarding the amount of time they intend to reserve for
11 their individual damages defense by 5:00 PM on Wednesday, October
12 17, 2007. Plaintiffs shall file a response, including a notice of
13 the time they intend to reserve for rebuttal on these issues, by
14 5:00 PM on Thursday, October 18, 2007. At the Monday, October 22,
15 2007 conference, the Court will determine whether these issues will
16 be addressed by Defendants in their case-in-chief and the
17 Plaintiffs in their rebuttal or whether the parties will use their
18 reserved time to address these issues in a bifurcated proceeding
19 before the same jury following the entry of a verdict on liability.

20 IT IS SO ORDERED.

21
22 Dated: October 16, 2007



CLAUDIA WILKEN
United States District Judge

Judicial Council of California Civil Jury Instructions

CACI*

* Pronounced "Casey"

As approved at the
December 14, 2012, Judicial Council Meeting

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Series 100–2500



Judicial Council of California
Advisory Committee on Civil Jury Instructions

Hon. H. Walter Croskey, Chair

LexisNexis Matthew Bender
Official Publisher



115. “Class Action” Defined (Plaintiff Class)

A class action is a lawsuit that has been brought by one or more plaintiffs on behalf of a larger group of people who have similar legal claims. All of these people together are called a “class.” [Name of plaintiff] brings this action as the class representative.

In a class action, the claims of many individuals can be resolved at the same time instead of requiring each member to sue separately. Because of the large number of claims that are at issue in this case, not everyone in the class will testify. You may assume that the evidence at this [stage of the] trial applies to all class members [except as I specifically tell you otherwise]. All members of the class will be bound by the result of this trial.

In this case, the class(es) consist(s) of the following:

[Describe each class, e.g.,

Original Homebuyers: All current homeowners in the Happy Valley subdivision in Pleasantville, California, who purchased homes that were constructed and marketed by [name of defendant]. (“Class of Original Purchasers”)

Subsequent Homebuyers: All current homeowners in the Happy Valley subdivisions in Pleasantville, California, who purchased homes that were constructed and marketed by [name of defendant] from another homeowner. (“Class of Later Purchasers”).

New June 2011

Directions for Use

The first paragraph may be modified for use with a defendant class. If in the course of the trial the court decertifies the class or one of the classes as to some or all issues, a concluding instruction explaining the effect of the decertification should be given.

In the second paragraph, if class evidence and individual evidence will be received in separate stages of the trial, include the first bracketed language. If both class evidence and individual evidence will be received together, include the second bracketed language and specify the class evidence in a separate instruction.

Sources and Authority

- Code of Civil Procedure section 382 provides in part: “[W]hen 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, one or more may sue or defend for the benefit of all.”

- “Courts long have acknowledged the importance of class actions as a means to prevent a failure of justice in our judicial system. ‘ “By establishing a technique whereby the claims of many individuals can be resolved at the same time, the class suit both eliminates the possibility of repetitious litigation and provides small claimants with a method of obtaining redress” ’ Generally, a class suit is appropriate ‘when numerous parties suffer injury of insufficient size to warrant individual action and when denial of class relief would result in unjust advantage to the wrongdoer.’ ‘But because group action also has the potential to create injustice, trial courts are required to ‘ “carefully weigh respective benefits and burdens and to allow maintenance of the class action only where substantial benefits accrue both to litigants and the courts.” ’ ” (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 434–435 [97 Cal.Rptr.2d 179, 2 P.3d 27], internal citations omitted.)
- “The cases uniformly hold that a plaintiff seeking to maintain a class action must be a member of the class he claims to represent.” (*La Sala v. American Sav. & Loan Assn.* (1971) 5 Cal.3d 864, 875 [97 Cal.Rptr 849, 489 P.2d 1113].)

Secondary Sources

4 Witkin, *California Procedure* (5th ed. 2008) Pleading, § 267 et seq.

Cabraser, *California Class Actions and Coordinated Proceedings* (2d ed.), Ch. 3, *California’s Class Action Statute*, § 3.03 (Matthew Bender)

Deskbook on the Management of Complex Civil Litigation, Ch. 3, *Specialized Areas*, § 3.70 et seq. (Matthew Bender)

12 California Forms of Pleading and Practice, Ch. 120, *Class Actions*, §§ 120.11, 120.14 (Matthew Bender)

4 California Points and Authorities, Ch. 41, *Class and Representative Actions*, § 41.30 et seq. (Matthew Bender)

3 Matthew Bender Practice Guide: California Pretrial Civil Procedure, Ch. 33, *Class Actions*, 33.04

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE: UNIVERSAL SERVICE FUND)
TELEPHONE BILLING PRACTICES)
LITIGATION)
)
These Instructions Relate to All Cases)
_____)

Case No. 02-MD-1468-JWL

JURY INSTRUCTIONS

INSTRUCTION NO. 11

As I mentioned to you at the outset, this case is proceeding as a class action. A class action procedure allows the filing of one lawsuit by a representative or a small number of representatives on behalf of a whole group of plaintiffs who have similar claims. The procedure is intended to avoid having multiple plaintiffs filing separate identical lawsuits in different courts and trying the same case multiple times before different judges. Thus, it avoids duplication of effort and expense. Your verdict here will be binding on all class members.

For purposes of plaintiffs' antitrust claim, the class is defined to include the following:

- (a) All business long-distance customers of AT&T, Sprint, or MCI in the United States, and
- (b) all residential long-distance customers of AT&T in California, who paid a Universal Service Fund—or USF—charge on or between August 1, 2001, and March 31, 2003.

In addition, a subclass of plaintiffs brings a claim against AT&T for breach of contract.

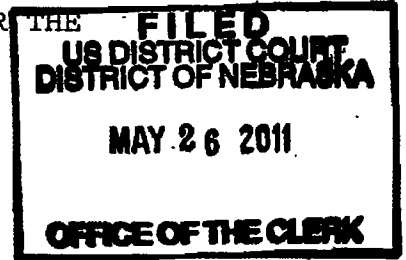
That subclass is defined to include the following:

All residential long-distance customers of AT&T in California who paid a USF charge on or between August 1, 2001, and March 31, 2003.

You should not construe the physical absence of any class member in any way as lack of concern or interest on his or her part as to the outcome of the litigation. It is the very purpose of the class action procedure to avoid having to bring a representative from

each class member here, and, therefore, the absence of class members from this trial should not be construed against the class in any way.

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA



DIMAS LOPEZ, et al.,)
individually and on behalf of)
a class of others similarly)
situated,)

Plaintiffs,)

v.)

TYSON FOODS, INC.,)
Defendant.)

8:06CV459

COURT'S CHARGE TO
THE JURY

INSTRUCTION NO. 1

Now that you have heard the evidence and the arguments of counsel have been made, it is my duty to inform you of the legal principles and considerations you are to use in arriving at a proper verdict.

In accordance with the oath which each of you took when you were selected as jurors to try this case, it is your duty to determine the disputed issues of fact in this case from the evidence produced and seek thereby to reach a verdict which shall speak the truth of the case and thereby do justice between the parties hereto, uninfluenced by sympathy, favor, affection or prejudice for or against any party. As I have already informed you, you are bound to receive and accept as correct the law as given you in this charge, and you are not privileged to entertain an opinion as to the law or what the law should be which conflicts in any respect with the law as stated in this charge.

INSTRUCTION NO. 11

This is a civil case brought by Dimas Lopez, on behalf of himself and other individuals similarly situated as plaintiffs against Tyson Foods, Inc. as defendant. Throughout these instructions, Dimas Lopez and the other individuals similarly situated are referred to as plaintiffs and Tyson Foods, Inc. is referred to as defendant or Tyson.

This is a civil class-action lawsuit. A class action is a lawsuit brought by one or more plaintiffs on behalf of a large group of persons who have a common legal claim. The plaintiffs in this action represent all the members that the Court has certified as a class. The Class is defined as:

Current and former production and support hourly employees who (1) don, doff, wash or sanitize any sanitary and protective clothing, equipment and gear; and/or (2) maintain knives, steels, and any other tools or equipment that are used in the production process at Tyson's Lexington, Nebraska, facility. The plaintiffs in the class are current or former employees who have worked in departments that were paid based on gang time.

This case arises under the Fair Labor Standards Act. This federal law provides for the payment of overtime pay. The plaintiffs claim that Tyson did not pay the plaintiffs the overtime pay required by the Fair Labor Standards Act for all of the time they spent working at Tyson's meat-processing facility in Lexington, Nebraska. Specifically, the plaintiffs allege that

they performed off-the-clock work for which they were not compensated. The activities for which the plaintiffs seek compensation include donning (putting on) personal protective equipment and sanitary items before their shift and after their meal period, walking to their workstations, sharpening their knives, washing and sanitizing their personal protective equipment, sanitary items, and tools at the end of their shift, walking from their workstations to the locker room, and doffing (taking off) their personal protective equipment and sanitary items after the end of their shift and before their meal period. The plaintiffs also claim that Tyson failed to pay plaintiffs wages for such activities within thirty days required by the Nebraska Wage Payment and Collection Act.

Tyson denies plaintiffs' allegations. Tyson claims that (1) some of the activities at issue in this case are not compensable, (2) even if they are compensable, it has sufficiently compensated plaintiffs, and (3) even if the activities are otherwise compensable, such remaining time is de minimis and therefore the plaintiffs are not entitled to further compensation.

INSTRUCTION NO. 13

Both parties presented various types of evidence, including stipulations of fact, documents and live testimony of hourly workers, supervisors, an expert, and others. Not all affected employees need testify for plaintiffs to prove their claims. Rather, if some employees testify about the activities they performed or the amount of unpaid overtime they worked, other non-testifying employees who performed substantially similar activities are deemed to have shown the same thing by inference. This is called "representative testimony."

There is no bright-line rule as to the percentage of representative employees necessary; rather, the weight to be accorded the evidence is a function not of its quantity but of its quality—whether the testimony covers similarly situated workers, and is generally consistent. You may also consider whether the witnesses who testified worked in similar positions and similar departments as the non-testifying employees, whether they wore similar sanitary and protective items, whether the testifying employees performed donning and doffing activities similarly to non-testifying employees, whether the witnesses who testified had the opportunity or ability to observe non-testifying employees, and whether there was evidence presented that either was consistent with or was inconsistent with the testimony of the testifying witnesses.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RYAN C. HENRY, individually and on
behalf of similarly situated employees,

Case No. 04-cv-40346

Plaintiffs,

HONORABLE STEPHEN J. MURPHY, III

v.

QUICKEN LOANS INC.,

Defendant.

JURY INSTRUCTIONS AND
VERDICT FORM

Collective Action; Representative Testimony

The FLSA allows employees to pursue their overtime claims as a group in one case, called a collective action. This case is a collective action brought by Plaintiff Ryan Henry and 358 other former employees of Quicken Loans. Because this case is a collective action, not every Plaintiff has testified. Rather, the Plaintiffs have offered testimony from a group of Plaintiffs they believe to be representative of the Plaintiffs as a whole, along with other evidence purporting to show all Plaintiffs are similarly situated.

You must decide whether the Plaintiffs who testified are "fairly representative" of those who did not testify. This means you must determine whether or not the group of Plaintiffs who testified, along with all of the other direct and circumstantial evidence produced at trial, establishes the non-testifying Plaintiffs claims, as well. If you find that the testifying Plaintiffs are "fairly representative" of the non-testifying Plaintiffs, you can infer from the testifying Plaintiffs whether or not the non-testifying Plaintiffs worked overtime hours while employed by Quicken, and the extent of the overtime work the non-testifying Plaintiffs performed.

The testifying Plaintiffs can only represent the non-testifying Plaintiffs if both groups perform substantially similar work. In considering whether the work the testifying and non-testifying Plaintiffs performed was substantially similar, you may take into consideration job duties, employer expectations, motivations, suggested work hours, familiarity with other employees' work hours, compensation, and first-hand knowledge of the "loan consultant" position. You may also take into consideration the time periods each Plaintiff worked in, the teams and supervisors each Plaintiff worked for, and the clients each Plaintiff served.

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The Plaintiffs are not required to have a specific number of employees give testimony; the "quality" of the sample, rather than the "quantity," is of overriding importance. Also, the testifying Plaintiffs do not need to have personal knowledge of the hours the non-testifying Plaintiffs worked

29 U.S.C. § 216(b); *Dept. of Labor v. Cole Enter., Inc.*, 62 F.3d 775, 781 (6th Cir. 1995); *Sec'y of Labor v. DeSisto*, 929 F.2d 789, 793 (1st Cir. 1991); *Martin v. Selker Bros., Inc.*, 949 F.2d 1286, 1298 (3d Cir.1991); *Baden-Winterwood v. Life Time Fitness, Inc.*, 2010 WL 3001749, at *31 (S.D. Ohio July 30, 2010).

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FILED
CLERK, U.S. DISTRICT COURT
JAN 10 2007
CENTRAL DISTRICT OF CALIFORNIA
BY _____ DEPUTY

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

LYNNE WANG, et al.,)
)
 Plaintiffs,)
)
 v.)
)
 CHINESE DAILY NEWS,)
 et al.,)
)
 Defendants.)

No. CV 04-1498-CBM (JWJx)
COURT'S INSTRUCTIONS

DOCKETED ON CM
JAN 24 2007
BY _____ 001

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COURT'S INSTRUCTION NO. 13

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In determining whether plaintiffs have established their claims on behalf of the entire class, you may consider the representative testimony of a few class members and expert witness testimony.

About Emily Harris

Partner | Corr Cronin Michelson Baumgardner & Preece | Seattle, WA

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http://www.corrchronin.com/our_team.html?id=2

Ms. Harris is a partner in the firm. Ms. Harris' practice focuses on complex civil litigation, class action defense, products liability, and environmental torts, at both the trial and appellate level.

Washington Law and Politics magazine selected Ms. Harris as a "Rising Star" in Seattle's legal community in 2008 and 2009.

Representative Cases

- Hearst/Seattle P-I v. Seattle Times – successful representation of Hearst and the Seattle P-I in litigation concerning the Seattle Times' attempt to end the parties' joint operating agreement (JOA). The litigation settled in 2007 when the Seattle Times agreed to pay Hearst \$24 million and continue the JOA for at least nine more years.
- Legal Malpractice – successfully defended major Seattle law firm against legal malpractice claims, obtaining dismissal on summary judgment.
- Aiello v. FKI – obtained dismissal of plaintiff's market-share alternate strict liability claim and grant of summary judgment on plaintiff's alternate liability negligence claim resulting in dismissal of all claims against all defendants in products liability case brought against multiple load binder manufacturers.
- Fiber Optic Right of Way Litigation – ongoing defense of telecommunications company in multiple class actions in state and federal courts alleging claims of trespass arising from installation of fiber-optic cable on railroad rights-of-way.
- Qwest v. City of Auburn – successfully represented telecommunications company in appeal of challenge to municipal telecommunications ordinances.
- Nilsen v. City of Long Beach et al. – defense of oil refinery in connection with claims asserting failure to warn of exposures to chemicals.
- Davey v. Locke – represented amicus curiae Anti-Defamation League in Establishment Clause case before United States Supreme Court.

Education / Background

- B.A., Communications Studies, University of California, Santa Barbara, California, 1989
- M.A., Communications Management, Annenberg School for Communications, University of Southern California, Los Angeles, California, 1990
- J.D., Loyola Law School, Los Angeles, California, 1998; Managing Editor, Loyola of Los Angeles Law Review; Sayre McNeil Scholar; American Jurisprudence Award, Constitutional Law
- Law Clerk, Hon. Thomas G. Nelson, Ninth Circuit Court of Appeals, 1998 - 1999
- Associate/Counsel, O'Melveny & Myers LLP, Los Angeles, California, 1999 - 2004