

Class Actions

WTK has an extensive practice defending corporations in a variety of industries against putative class action claims brought in state and federal court. We recognize that whether or not a class is certified can be more significant than the merits of the substantive claims asserted. We also understand that a class action can present significant litigation costs as well as substantial risk from a business standpoint and that the possibility of facing these costs and risk is growing due to the increasing number of class actions being filed. Our approach is to leanly staff cases with experienced class action litigators from the outset and to develop and implement a strong defense strategy immediately. We are efficient, economical and effective.

Employment Class Actions, Representative Actions and Collective Actions

WTK has broad experience defending against wage and hour class action claims as well as representative action claims brought under California's Labor Code Private Attorneys General Act of 2004 ("PAGA") and collective actions brought under the Fair Labor Standards Act ("FLSA"). We have defended against a wide variety of claims such as:

- > misclassification of retail management and sales employees;
- > failure to provide meal periods and/or rest breaks;
- > failure to reimburse for business expenses such as mileage, uniforms, and tools;
- > failure to provide suitable seats;
- > inaccurate wage statements;
- > off-the-clock work including claims of time-shaving and improper rounding;
- > challenges to piece-rate compensation plans; and
- > penalties sought under various provisions of the California Labor Code and IWC Wage Orders.

We have succeeded in having cases dismissed at the outset, have successfully opposed class certification, and, where appropriate, have negotiated favorable settlements of class claims both through mediation and independently.

Consumer and Product Liability Class Actions and Multidistrict Litigation

WTK also regularly defends a wide variety of product manufacturers and service providers against a broad array of claims brought by consumers. We have experience defending claims brought under California's unique procedural statutes -- the Unfair Competition Law, Business & Professions Code § 17200, and the Consumer Legal Remedies Act -- as well as obtaining coordination of cases by the California Judicial Council and the creation of multidistrict litigation dockets by the federal Judicial Panel on Multidistrict Litigation. Our depth of procedural experience spans a wide variety of substantive claims such as:

- > false advertising of the efficacy of homeopathic remedies;
- > violations of the Rees-Levering Motor Vehicle Sales and Finance Act;
- > violations of the Telephone Consumer Protection Act including use of prerecorded messages and automated telephone dialing systems, calls to numbers on the National Do-Not-Call Registry, and transmission of "junk faxes";
- > improper labeling of products as "Made in the USA";
- > breach of warranty under state and federal law;
- > violations of California's gift card statute;
- > improper recording of telephone calls;
- > improper labeling of food and beverages; and

- > improper collection of sales taxes on consumer purchases.

Representative Class Action Matters

Employment

- > Obtained dismissal of putative nationwide collective action under the FLSA that alleged misclassification of Assistant Managers of retail employer with more than 800 stores nationwide as exempt under the executive exemption. Plaintiffs had sought to take advantage of the three-year statute of limitations available for willful violations of the FLSA but failed to plead sufficient facts to support a finding of willfulness.
- > Represent a nationwide retailer in putative class action brought on behalf of all current and former cashiers in more than 200 California stores against a claim they are entitled to penalties under PAGA for failure to provide suitable seats pursuant to Wage Order 7-2001.
- > Obtained dismissal of putative statewide class action of delivery drivers for national healthcare distribution company alleging they were not provided meal or rest breaks as Plaintiffs had failed to plead sufficient facts to support their allegations.
- > Represented a national retailer of premium pet food and supplies in a putative class action brought on behalf of approximately 16,000 California hourly store employees. Plaintiff claimed defendant engaged in “time-shaving,” i.e., that the time records of the putative class were improperly adjusted so that hours were deducted and meal breaks inserted. Plaintiff also claimed the putative class was denied meal periods and required to work off the clock.
- > Represented a national wheel and tire retailer in a putative class action alleging employees in the primary hourly position in its stores were not provided with meal or rest breaks and were required to work off the clock.
- > Represent a nationwide retailer of pet food and supplies in a putative statewide class action alleging that its piece-rate pay plan for certain employees did not compensate for all hours worked and that employees should have been reimbursed for the purchase and maintenance of tools used on the job.
- > Represented a national retailer in a putative statewide class action claiming failure to reimburse managerial employees for the use of their personal vehicles for business purposes.
- > Represent a Fortune 50 healthcare distribution company in a putative statewide class action alleging delivery drivers were not provided with meal and rest periods and that pay stubs violated Labor Code section 226.
- > Represented a claims management company in a representative action brought under PAGA alleging the company violated the Labor Code by not timely paying non-exempt employees for all hours worked.
- > Represented a nationwide retailer in a putative statewide class action on behalf of more than 15,000 current and former employees for failure to provide meal breaks and rest periods for non-exempt employees and off the clock work and failure to pay all overtime. Successfully defeated Plaintiffs’ motion for class certification and obtained summary adjudication on Plaintiffs’ overtime claim.
- > Represented several national retailers in statewide class actions challenging the classification of Store Managers as exempt from California’s overtime provisions under the executive exemption.
- > Represented professional sports team in a section 17200 representative action alleging misclassification of a number of front office personnel as exempt from overtime pay under the inside sales exemption.
- > Served as liaison counsel for national retailer in a class action against over 100 retailers alleging applications for employment violated the California Labor Code because they included questions regarding applicants’ conviction records.
- > Obtained dismissal of a putative nationwide class action filed by a former employee of an international pharmaceutical company. The plaintiff claimed that a post-offer, pre-placement medical history form was obtained via fraud and violated his right to privacy and the rights of all applicants to the company. The

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dismissal was affirmed by the U.S. Court of Appeals for the Ninth Circuit.

Consumer and Product Liability

- > Successfully sought the creation of, and serve as co-lead counsel in, a federal multidistrict litigation (MDL) of more than a dozen class action and individual cases against a national alarm monitoring company alleging violations of the Telephone Consumer Protection Act (TCPA) for calls to numbers listed on the national Do Not Call Registry or made with prerecorded voice messages and/or automated telephone dialing systems by authorized dealers or others on our client's behalf.
- > Represented major farm equipment manufacturer in junk fax case claiming improper fax transmissions were sent to its dealers by its licensee.
- > Represented a national quick-lube franchisor in a statewide putative class action alleging the company violated the Unfair Competition Law and the Consumer Legal Remedies Act by recommending oil changes every 3000 miles when vehicle manufacturers recommend oil changes at longer intervals.
- > Represented a large automobile manufacturer in a section 17200 and fraud class action alleging deceptive marketing of minivans in California. Succeeded in obtaining partial summary judgment and subsequently obtained judgment on the pleadings on the remaining claim.
- > Represented the American subsidiary of a German automobile manufacturer in a putative nationwide class action alleging violations of section 17200 and the Magnuson-Moss Warranty Act with respect to various vehicle models' fuel gauge systems.
- > Represented one of the largest cellular telephone service providers in a putative class action claiming cellular telephones were unsafe.
- > Represented manufacturer of protein bars in putative class action challenging the accuracy of the nutritional profile provided on the labels of our client's product and asserting violations of the Unfair Competition Law and Consumer Legal Remedies Act.
- > Represented national retailer with hundreds of stores in California in several cases brought on behalf of putative classes of purchasers or holders of gift cards claiming our client's gift cards violate a state statute governing the expiration of gift cards.
- > Successfully defeated class certification for national construction materials company in putative statewide class action alleging violations of California Penal Code sections 632, 637 regarding "confidential communications" and the alleged recording of telephone calls without prior consent.
- > Obtained dismissal of three separate putative class actions (including one putative nationwide class) alleging improper collection of sales tax on certain purchases brought against national retailer.
- > Represented a national beverage manufacturer against claims that its marketing of products as "all-natural" violated section 17200, the Consumer Legal Remedies Act and the False Advertising Law because the products contained high fructose corn syrup, which Plaintiff alleged was not a natural ingredient.
- > Represented an automobile finance company in a statewide putative class action alleging failure to give proper notice and instructions to consumers who had their vehicles repossessed.
- > Represented a national oil company in a putative nationwide class action, alleging improper marketing and sales of gasoline when single hose nozzles are used in a transaction.

For more information on WTK's Class Action Defense Practice, contact Meryl C. Maneker at mmaneker@wilsonturnerkosmo.com or 619.236.9600

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