

Kimball, Tirey & St. John LLP

Recognizing Potential Class Actions for California Property Owners and Managers

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Class action lawsuits have a reputation for being costly. They are costly to defend and costly to pay out. Landlords often face real risks of large class action exposure on seemingly minor policies. In the last three years alone, there have been several high profile, multi-million dollar class action lawsuits against property management and owners alleging overcharging on utilities, doling out inaccurate security deposit accountings, and improperly issuing late fees.

Finding and eliminating liability that could develop into a weighty class action is a challenge in and of itself. It's not always easy to know when something is going to blow up into a class action battle for the ages. But class action lawsuits can be spotted—a savvy plaintiff's attorney can recognize credible class action claims instantly. The ability to spot class action lawsuits can more effectively inform risk management decisions, and effectively managing risk can mean the difference between conceding a simple charge to tenants or years of litigation and hundreds of thousands of dollars in attorney fees.

To recognize a class action, know first that a judge makes the call as to whether the case proceeds as a class action. The judge makes that determination when the plaintiff seeks "class certification." It's the reckoning point: many potential class actions fizzle out after an unsuccessful attempt at class certification. Conversely, a successful class certification designates a class and gives the lawsuit teeth.

Here is a quick and dirty guide for recognizing class actions. Class actions have an **ascertainable** class of persons that is **numerous**. An ascertainable class is a bunch of people that have something in common with one another, like tenants of an apartment complex, or purchasers of a certain vacuum cleaner. Class action cases typically involve a lot of people—generally, the larger the class, the more likely a judge deems class action necessary. The named plaintiffs must show that their claims are **typical** of the proposed class, and not *exceptional* cases. Finally, there has to be a **commonality** between the claims of the class members. As mentioned, class actions are concerned with uniform issues, such as when liability can be determined for all class members with presentation of facts in one case.

Habitability cases generally are not suitable for class actions: as an example, although the tenants may allege common problems of bugs, defective heat, pipe leaks, and ceiling leaks, not every tenant has the same extent of the problems. One tenant may have bugs and pipe leaks, but another may only have defective heat and ceiling leaks: each tenant has individual questions of law and fact. Contrast that example with the example of a defective vacuum; everyone who bought a vacuum with an alleged design defect has the same problem. If the named plaintiffs in the vacuum case prove there was a design defect, the case is won for everyone who bought that vacuum.

Risk management often involves gauging how much a risk threatens achievement of objectives, such as minimizing exposure. Though there are many considerations that go into a judge's decision as to whether or not to certify a class action lawsuit, knowing enough to be able to

recognize a potential class action lawsuit will help in making effective risk management decisions, perhaps before a lawsuit is filed. Being able to recognize when a class action lawsuit is coming your way could help cut off a multi-million dollar class action lawsuit.

If you have questions regarding class action lawsuits, please contact Sage Stone at (800) 577-4587 or sage.stone@kts-law.com.

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