

## [Dismissal of Class Allegations at Pleading Stage Disallowed - Again](#)

Posted on September 3, 2010 by [Larry Golub](#)

Another California appellate decision has restricted the ability to challenge class action allegations at the pleading stage, reiterating that the determination of class suitability in most instances should be made at the time of a motion for class certification.

In [Gutierrez v. California Commerce Club, Inc.](#) (published August 23, 2010), the class representative filed suit alleging the defendant unlawfully denied meal and rest breaks to hourly, non-union employees. After a challenge to the third amended complaint, the trial court sustained the demurrer to the class action allegation without leave to amend, observing that the plaintiffs had failed to “notify the court who is in the class, what they do, how they are related and why plaintiffs are the proper persons to represent this all-inclusive class.”

Division One of the Court of Appeal reversed, finding the trial court’s dismissal of the class premature and that the allegations of the operative complaint adequate to move beyond the pleading stage.

In so concluding the class could proceed, the court observed:

Judicial policy in California has long discouraged trial courts from determining class sufficiency at the pleading stage and directed that this issue be determined by a motion for class certification.

Quoting another recent decision from last year, the court explained that “the wisdom of permitting the action to survive a demurrer is elementary.” The court elaborated as follows:

It is clear that the more intimate the judge becomes with the character of the action, the more intelligently he may make the determination. If the judicial machinery encourages the decision to be made at the pleading stages and the judge decides against class litigation, he divests the court of the power to later alter that decision. . . . Therefore, because the sustaining of demurrers without leave to amend represents the earliest possible determination of the propriety of class action litigation, it should be looked upon with disfavor.

While the court did reference a number of California decision that had permitted class allegations to be dismissed or stricken at the pleading stage, it relegated those decisions to cases involving “mass torts or other actions in which individual issues predominate.” And, in the context of wage and hour cases (as was the situation in *Gutierrez*), the court explained that such cases “routinely proceed as class actions” since they “usually involve” a single set of facts that apply to all putative class members and a sole common question of law, usually involving “institutional practices.” The court then noted that “numerous courts” had “reached the same result in wage and hour cases.”

In light of this latest decision, defendants should consider very carefully the wisdom of challenging class allegations at the pleading stage of a lawsuit. Unless it is plainly evident from the allegations of the complaint that individual issues exists, the challenge to class allegations is more efficiently made at the time of a motion for class certification.