

# CONSUMER ACTION NEWS

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## The benefits of class actions

### Class actions: A powerful consumer tool

By Ruth Susswein

Class action cases are an important consumer protection tool. While they don't often provide full compensation to harmed consumers, they play a vital role in promoting fair corporate behavior.

Class actions are collective lawsuits brought on behalf of a group (class) of consumers who have suffered because of a company's alleged wrongdoing. When individuals are faced with corporate malfeasance, bringing an individual lawsuit is financially out of reach. No one person—or attorney—would file suit for a small-dollar injury such as a \$35 overdraft fee assessed by a bank, even when the fee is “inconsistent with customer account agreements and applicable laws,” but it's feasible to bring a case on behalf of thousands of consumers who were harmed because they were charged the illegal fee (<https://www.tdbankoverdraftclassaction.com/>).

In 2017, 147 million consumers' personal data was exposed to identity theft in the Equifax data breach. Huge numbers of affected individuals already have filed claims in the class action settlement (<https://www.ftc.gov/enforcement/cases-proceedings/refunds/equifax-data-breach-settlement#FAQ1>) that will provide them with four years of free credit monitoring or a tiny amount of money after divvying up the \$31 million earmarked for cash claims. (You can file a claim until Jan. 22, 2020 at <https://www.equifaxbreachsettlement.com/file-a-claim>.)

The 2.1 million Wells Fargo customers who learned that the bank had opened accounts in their names—without their permission—have become eligible to

benefit from class action lawsuits brought on their behalf. Class members are entitled to be compensated for damage to their credit records and for fees charged on the unauthorized accounts (<https://www.housingwire.com/articles/43698-court-finally-approves-wells-fargos-142-million-fake-account-class-action-settlement/>).

Sometimes the victims are obvious and the compensation is adequate. Often, though, as the FTC noted in a study released this fall, determining who has been harmed and how to reach them is a challenge.

#### FTC class action study

Consumers who may be affected by a class action suit can be difficult to convince to submit a claim, or even to contact, according to the FTC. As part of its Class Action Fairness project, the FTC in September released a report summarizing the findings of two studies involving consumer class actions. The Commission studied 149 class action cases, examining how variables like notice methods and compensation amounts affected consumer claims and check-cashing rates. The FTC also explored whether people understood their options as outlined in class action notices ([https://www.ftc.gov/system/files/documents/reports/consumers-class-actions-retrospective-analysis-settlement-campaigns/class\\_action\\_fairness\\_report\\_0.pdf](https://www.ftc.gov/system/files/documents/reports/consumers-class-actions-retrospective-analysis-settlement-campaigns/class_action_fairness_report_0.pdf)).

For the class actions studied, the FTC found that less than 10% of those who could file a claim actually did. Not surprisingly, the larger the dollar amount awarded to individuals, the more likely people were to cash the settlement check.

When the FTC analyzed how well consumers understood class action notices outlining their claims options, the commission surprisingly found that longer, more legalistic notices received a better response rate than briefer ones.

The agency surmised that consumers may not fully understand the value of class action lawsuits, and recommended educating consumers about the benefits of these collective legal actions. For details on the FTC's report, see "FTC says class action settlement claims and notices leave room for improvement," on page 4.

## Other class action outcomes

Class action lawsuits often result in a settlement that may ban or restrict the defendant's behavior, requiring a company to stop selling certain products or employing certain practices to prevent future financial, physical or discriminatory harm.

In some cases, individuals do not receive any money. Generally, these are cases where the victims number in the millions and financial compensation is very minimal—a few dollars per person—once the restitution is divvied up. The Equifax case may award consumers a mere 14 cents per person (<https://www.marketwatch.com/story/waiting-for-your-equifax-settlement-cash-dont-hold-your-breath-2019-12-06>).

In other cases, all known victims have been compensated, or have chosen not to file a claim, but refund dollars remain. To avoid consumer compensation being returned to the aggravating company, the court may decide to award the remaining funds to non-profit organizations that do work that relates to the issues addressed in the lawsuit—in other words, work that "indirectly benefits" those who've been harmed. These funds are called cy pres funds, from the French words for "as near as possible."

If, for example, there is a settlement before trial in a

# A class action primer

By Monica Steinisch

Class actions—lawsuits filed by one or a few on behalf of a large group—enable individuals to band together to hold corporations and other entities accountable for a similar loss or harm.

These suits often are not brought for individual financial gain. Many class actions typically result in little restitution for individual class members. The millions of consumers affected by the Equifax data breach will wind up with an estimated 14 cents each. However, class action lawsuits have a significant financial impact on the companies being sued. The Volkswagen emissions scandal resulted in a \$14.7 billion settlement and a severely

class action lawsuit that charged a company with predatory lending, but only a limited number of consumers claim compensation, the court might award cy pres funds to non-profits that work to educate consumers about unfair and deceptive lending. In this way, the "leftover" funds are used for the greater good. For more on cy pres awards, see "The great debate: Who is entitled to cy pres funds?"

## A meandering journey

Class action lawsuits remain a powerful tool for consumers to join together to shine light on harmful corporate practices. But companies lobby tirelessly for so-called "tort reform" to limit and block collective lawsuits (as well as those laws that give consumers a right to bring court cases against them). Most customer contracts with financial services companies and service providers contain "take-it-or-leave-it" terms requiring consumers to handle any dispute through arbitration, and prohibit class action against the company.

The founding leaders of the Consumer Financial Protection Bureau (CFPB) emphasized the value of class action lawsuits in a 2017 rule that would have given consumers the right to participate in class action lawsuits even when they were bound by coercive agreements to resolve disputes with companies through arbitration rather than in court.

Shortly after, this measure became a political football, and Congress overruled the CFPB regulation (using the Congressional Review Act). This meant that companies could continue to prevent customers from joining class actions against them.

At the time, then-CFPB Director Richard Cordray noted that repeal of the rule "means the courtroom doors will remain closed for groups of people seeking justice and relief when they are wronged by a company."

tarnished reputation. Presumably, the case will influence the car maker's future business practices.

Changing corporate behavior or industry norms can be the driving force behind a class action case. Possibly the most famous class action lawsuit was *Brown v. Board of Education* (<https://brownvboard.org/content/brown-case-brown-v-board>), which eradicated racial segregation in America's public schools.

In 2003, the class action lawsuit *Ting v. AT&T* (<https://caselaw.findlaw.com/us-9th-circuit/1213139.html>) resulted in a landmark ruling in which the court found that the phone company's mandatory arbitration clause was "illegal, unconscionable, and unenforceable because it

sought to strip [California] consumers of legal rights... including...the right to file and participate in class actions.” Consumer Action was party to the case (<http://sturdevantlaw.com/posts-cases/ting-v-att/>) that was waged on behalf of 7 million Californians. Unfortunately, later court rulings were preempted by the Federal Arbitration Act, which, in practice, eliminated California’s ability to remove class action bans.

## Resistance to class actions

Consider the efforts corporations and Wall Street-friendly legislators still go to to squash national class action lawsuits.

Companies routinely employ forced arbitration clauses in consumer and employment agreements that require individuals to settle all grievances through an arbitrator rather than a court and to surrender their right to join a class action lawsuit.

In 2017, a largely Republican Congress used a loophole known as the Congressional Review Act to wipe out the Consumer Financial Protection Bureau’s (CFPB) new rule that would have restored the right of individuals to participate in class actions against corporate wrongdoers.

The judiciary branch hasn’t furthered consumers’ rights in this area either. In May 2018, a 5-4 Supreme Court decision upheld employers’ right to require employees to forfeit their ability to bring class action claims against management (<https://www.reuters.com/article/us-usa-court-employment/u-s-top-court-backs-companies-over-worker-class-action-claims-idUSKCN1M1GW>). This was just one of a number of relatively recent decisions by the conservative-majority Supreme Court that curb various types of class action claims.

Direct pressure on companies has yielded some positive results. In early 2019, Google announced that it was ending the practice of requiring arbitration for its employees to resolve disputes. Yet, just a few months after Google’s pledge, Chase announced that it would reintroduce arbitration clauses in its credit card contracts. That decision bans holders of its Sapphire, United MileagePlus and Slate cards from pursuing legal action—including class actions—against the company in court. (The terms of a 2009 settlement requiring Chase to omit the arbitration clauses had expired, allowing the company to reintroduce them now.)

## Private right of action

Even if a consumer’s right to sue has been voided in a forced arbitration agreement, there is, in limited situations, another course for holding corporations and employers accountable for wrongdoing. The “private right of action,” when written into a law, allows a private individual or group (rather than the state) to bring

a civil lawsuit against corporate wrongdoers.

An individual’s private right of action can be very effective. Take the \$61 million verdict against DISH Network this year for telemarketing calls made to people who were on the National Do Not Call Registry (<https://www.mintz.com/insights-center/viewpoints/2776/2019-06-tcpa-class-action-update-dish-network-hook-61-million-third>). A DISH subscriber brought suit, but even non-subscribers benefited. The right to sue is granted in the Telephone Consumer Protection Act (TCPA), a federal statute enacted to protect consumers from unsolicited telephone marketing calls, and has resulted in numerous large judgments.

However, businesses are intent on limiting the benefits that private rights of action can offer consumers. Earlier this year, lawmakers tried to amend the California Consumer Privacy Act (CCPA) to allow a private right of action for all types of privacy violations (not just data breaches), but it was blocked in the state Senate—a victory for the tech companies most at risk of litigation. As it stands, the CCPA primarily allows the California Attorney General to sue for most potential violations of the law.

## ‘Tort reform’

Class action detractors (health care providers, manufacturers, insurers and other businesses most at risk of having a class action case brought against them) cite the high cost of defending themselves against a wave of lawsuits and potentially billions in settlements as a reason to block class actions. Companies claim that the money they could save if they didn’t have to purchase massive amounts of liability insurance would be passed on to consumers. Class action detractors argue that curbing victims’ ability to bring cases to court, or to cap damages, would still allow redress for wrongdoing but would limit frivolous suits and exorbitant attorneys’ fees. This proposed change to the civil justice system is called “tort reform.” A tort is harm that a company or a person causes another, either on purpose or through negligence.

Consumer advocates reject these arguments. The non-profit Center for Justice & Democracy points out that consumers have not seen financial gains in states where tort reform was used to limit consumers’ access to the courts (<https://www.justice.org/what-we-do/enhance-practice-law/publications/trial-magazine/qa-voice-against-tort-reform>). More important, it argues, is that the prospect of huge financial settlements and public airing of misconduct—through class action lawsuits—has the intended effect of incentivizing companies to do business fairly and safely.

## A history of support

Consumer Action has a long record of supporting consumers’ right to sue. In addition to Consumer Action’s participation in the class action *Ting v. AT&T*,

which prohibited the company from forcing California consumers into arbitration to resolve disputes, the organization was one of the plaintiffs in *Badie v. Bank of America* ([https://www.lawpipe.com/California/Badie\\_v\\_Bank\\_of\\_America.html](https://www.lawpipe.com/California/Badie_v_Bank_of_America.html)). The 1998 case challenged the validity of a forced arbitration clause that the bank attempted to impose on existing California cardholders without their consent to the contract modification. The court struck down the arbitration provision. In February 1999, the California Supreme Court denied Bank of America's petition for review of the decision ([https://www.mofo.com/resources/insights/california-supreme-court-denies-review-in-](https://www.mofo.com/resources/insights/california-supreme-court-denies-review-in-ibadie-v-bank-of-america.html)

[ibadie-v-bank-of-america.html](https://www.mofo.com/resources/insights/california-supreme-court-denies-review-in-ibadie-v-bank-of-america.html)).

Today, we continue to advocate for consumers' right to pursue their day in court. As a member of the Fair Arbitration Now (FAN) coalition, we support bills in Congress that oppose mandatory arbitration, such as Senator Richard Durbin's Court Legal Access and Student Support (CLASS) Act (S 608), with the hope that a new Congress in 2020 will pass legislation that would replace companies' forced arbitration clauses with a voluntary option and stop preventing customers from joining class actions.

# FTC says class action settlement claims and notices leave room for improvement

By Alegra Howard

Class action lawsuits allow a large group of plaintiffs to receive the compensation they're entitled to, even if they don't know they're eligible, and even if the individual claims are small. But what is the best way to notify consumers that they are eligible for a settlement, and what are the best methods to get consumers to file a claim and receive their due? These are questions that the Federal Trade Commission (FTC) sought answers to in its 2019 study "Consumers and Class Actions: A Retrospective and Analysis of Settlement Campaigns." ([https://www.ftc.gov/system/files/documents/reports/consumers-class-actions-retrospective-analysis-settlement-campaigns/class\\_action\\_fairness\\_report\\_0.pdf](https://www.ftc.gov/system/files/documents/reports/consumers-class-actions-retrospective-analysis-settlement-campaigns/class_action_fairness_report_0.pdf))

## Low claims rates

In its report, the FTC studied 149 class action settlements and found that only a small segment of eligible consumers actually claimed their portion of class action settlements. The study determined that generally only 9% of people responded when they received notice that they are eligible to file a claim. Possible reasons for the low rate include that consumers don't receive notice, they don't pay attention to it, or they suspect it's a scam. Others don't want to bother taking the steps or provide the documentation needed to file a claim. Some people are skeptical of how they were identified as part of the class action suit. In any case, the low response rate is yet another loss for consumers.

"In an era of weak federal regulators, class action lawsuits play a primary role in protecting consumers from abuse," said Ken McEldowney, Consumer Action's executive director. "When companies enter into a class action settlement, it's important that the funds go to wronged consumers, with any remaining funds awarded

to organizations that serve the plaintiff class as a whole. It would defeat the purpose of the settlement if excess funds went back to the company that harmed consumers."

Half of the settlements the FTC reviewed offered consumers an average award of \$69 or more; one-quarter awarded consumers \$200 or more. Although the report didn't find a significant relationship between the average award amount and the claims rate, the larger the settlement check, the more likely people were to cash it. Around 80% of consumers receiving direct payments (automatically received without having to file a claim) in the \$50 to \$100 range cashed their checks, while 90% of consumers who actively submitted claims cashed settlement checks in the same range.

Whatever the refund amount, those who went to the trouble to file a claim were more likely to cash the check, according to the report. In fact, the FTC found a relatively high check-cashing rate of 77% when consumers had to file a claim. However, only 9% of eligible consumers overall go to the trouble of filing a claim, resulting in a very small fraction of the class benefiting from the settlement.

On the other hand, the study found that if class members were to receive a direct payment, without being required to take any steps, many more wronged consumers would benefit. Although the check-cashing rate for consumers who do not file a claim drops to 55%, it is 55% of the entire class—a much, much larger population.

## Notification methods

The FTC found that how consumers receive notice, and how the notice is written, also makes a difference in consumer claims rates. Some of the most costly forms

of notice, like publications in magazines and national newspapers, do not significantly increase the claims rate.

When an email address for a customer affected by a class action is available, settlement administrators increasingly send electronic notices. The study found that respondents generally were suspicious of emails, and suggested that notices be carefully crafted to improve open rates and comprehension. As for snail mail, the FTC found that the claims rate was highest (on average, 10%) when a packet of class action information was received. The claims rate was 6% for postcards and 3% for emails.

Other methods of providing notice include buying website banners, newspaper or magazine advertisements, and targeted social media or search engine ads. However, public notices are expensive, and, the study said, only raise claims rates by a mere 2% when paired with direct notice.

### Improving class action settlement notices

As part of its report, the FTC conducted an internet study to explore how particular words and phrases used in class action emails impacted the likelihood that a consumer would open and understand the information presented.

The FTC study found that consumers were generally skeptical of emailed class action settlement notices. However, they were more likely to open an email if the class action was not referenced in the email's subject line. Also, when the amount of the settlement refund was omitted from the subject line, it improved both the reader's understanding of the suit and email opening rates.

The FTC found that the most significant impact on claims filing rates was the use of simple, precise, non-legal language to explain the claims process.

### Our recommendations

To increase the likelihood that eligible class members receive compensation, Consumer Action has several recommendations.

**Streamline the claims process.** Outreach to eligible class members might increase if there were a secure govern-

ment database or portal that consumers could access to find out which settlements they might qualify for, where to go to ask questions, and the necessary steps to file a claim. The downsides of a government-run database would be expense and possible threats to consumer privacy. (For a list of current class action lawsuits with open claims, see the Consumer Action Class Action Database at <https://www.consumer-action.org/lawsuits/>.)

**Require website notice.** At the very least, defendants should be required to post links to the settlement website on their own company website to help consumers learn about a class action settlement. Many companies don't post about the suit because they don't want the bad publicity, or feel it's an admission of guilt.

**Rely on a direct payment claims process where possible.** The FTC's research clearly showed that direct payments—not requiring class members to self-identify—had higher check-cashing rates. In cases where direct payments are not possible, the notices could allow claimants to select electronic payments to receive settlement funds.

**Require ongoing data collection.** Collecting class action claims data and check-cashing rates should be required by the courts. Currently, most cases do not demand it. Requiring this data collection would broaden our understanding of what communication and payment methods work best by region and type of case. More data would increase the likelihood that consumers receive the refund they're entitled to.

### Further education

The FTC report shows that more education is needed so that consumers understand the value of class action notices—in terms of both potential payments and changing corporate behavior—and how to object to a proposed class action settlement when it's a bad deal for class members, as was the 2019 Equifax settlement (<https://www.marketwatch.com/story/waiting-for-your-equifax-settlement-cash-dont-hold-your-breath-2019-12-06>), which awarded consumers far too little—roughly 14 cents per claimant—for the harm they have suffered or may suffer.

## The great debate:

# Who is entitled to cy pres funds?

By Ruth Susswein

When a class action lawsuit is settled, there's often money left over after those harmed (class members) have claimed financial relief. Often, funds remain because it can be difficult to identify and locate con-

sumers who are eligible for a portion. Also challenging is getting individuals to file a claim, especially when the payout may be just a few dollars each. Other times, consumers receive settlement checks but don't cash them because the amounts are tiny.

The FTC's recent report (<https://www.ftc.gov/system/>

[files/documents/reports/consumers-class-actions-retrospective-analysis-settlement-campaigns/class\\_action\\_fairness\\_report\\_0.pdf](#)) explains that often in class action suits, as in some of its own cases, “there is no list of known customers or there is insufficient contact information.” This requires the FTC and others administering group cases to use a claims process where consumers must apply for a refund. Alerting consumers by media, advertisements, email and postal mail of the opportunity to file a claim for monetary relief can be costly and often has limited success.

After efforts have been exhausted to notify all affected consumers, and claims have been distributed, there’s money left over. These monies are called cy pres funds, derived from the French *si près*, or “as near as possible.” A judge may agree to distribute the residual funds to non-profits that work directly or indirectly to assist those who’ve been harmed or to educate consumers on the issues addressed in the lawsuit. In other cases, if settlement dollars are too difficult or too costly to distribute directly to known injured parties, courts may decide to distribute the settlement in cy pres awards.

## Consumer Action and cy pres

Over the years, Consumer Action has been the recipient of cy pres funds that have been used to support many of our educational efforts. In a case involving Liberty Mutual and other brokerage and commercial insurance companies, the firms settled after class members sued them for violating antitrust and racketeering laws by selling consumers unnecessary casualty coverage. The insurance and brokerage companies paid 85% of the \$41 million settlement directly to class members to refund them for the premiums paid for useless casualty policies. Fifteen percent of the residual funds went to Consumer Action and another public interest group to help educate consumers about purchasing and maintaining comprehensive insurance policies.

Consumer Action has used the insurance cy pres award to create practical, easy-to-understand publications and training modules on numerous insurance topics, including how to make wise auto insurance choices ([https://www.consumer-action.org/modules/module\\_auto\\_insurance](https://www.consumer-action.org/modules/module_auto_insurance)) and how to conduct an annual insurance checkup ([https://www.consumer-action.org/english/articles/insurance\\_checkup](https://www.consumer-action.org/english/articles/insurance_checkup)). We describe the different types of policies and explain how to evaluate insurers, how to select the right deductible and how to lower insurance premiums.

In 2017, Consumer Action introduced a module, Insurance in the Sharing Economy ([https://www.consumer-action.org/modules/module\\_insurance\\_sharing\\_economy](https://www.consumer-action.org/modules/module_insurance_sharing_economy)), to help those who increasingly are earning income through peer-to-peer transactions, such as renting out their home or using their personal car for Uber or Lyft rides. These materials help consumers understand the liability

and tax implications of participating in the sharing economy.

In 2018, we created a Disaster Coverage module ([https://www.consumer-action.org/modules/module\\_disaster\\_coverage](https://www.consumer-action.org/modules/module_disaster_coverage)) to help homeowners and renters protect their assets before a disaster (hurricane, wildfire, etc.), and to recover if disaster strikes. Consumer Action has recently added healthcare coverage ([https://www.consumer-action.org/modules/module\\_health\\_insurance](https://www.consumer-action.org/modules/module_health_insurance)) to its list of insurance education modules.

We hosted a series of education roundtables across the country starting in 2015 to teach community group staff how best to use these materials to educate their low- and moderate-income clients.

We’ve also received cy pres funds from the \$3 million Smith v. National Corrective Group debt collection settlement (<https://topclassactions.com/lawsuit-settlements/lawsuit-news/31561-class-action-settlement-payments-way-bad-check-restitution-program-participants/>). Class members sued the debt collectors for fabricating district attorney letterhead and misleading consumers into paying hundreds of dollars in illegal fees for a Bad Check Restitution program because they had bounced checks. Consumers who didn’t pay up were threatened with criminal prosecution. After class members received settlement money, the court directed remaining funds to Consumer Action (and the National Foundation for Credit Counseling) to conduct debt collection educational trainings, specifically in California and Pennsylvania.

Consumer Action also created a debt collection module ([https://www.consumer-action.org/modules/module\\_debt\\_collection](https://www.consumer-action.org/modules/module_debt_collection)), including training materials and the “Debtors’ Rights” and “The Fair Debt Collection Practices Act” guides, to help consumers understand what their rights are, what collectors are prohibited from doing, and what recourse you have if a collector violates the law.

## Cy pres funds to other parties

In some cases, unclaimed funds are awarded to groups with a very limited connection to the original lawsuit and its class members. These awards have been challenged by those who argue that the money was being disbursed to undeserving groups or to fund issues unrelated to the lawsuit, and to cover attorneys’ fees.

In 2012, the Ninth Circuit Court of Appeals struck down a cy pres award, in the case Dennis v. Kellogg Company (<http://cdn.ca9.uscourts.gov/datastore/opinions/2012/09/04/11-55674.pdf>), because it failed to benefit class members or address the primary issues in the case.

Kellogg was found to have made false advertising claims when it said its Frosted Mini-Wheats cereal “helps improve children’s attentiveness by nearly 20%.” About \$800 million was awarded in claims (of up to \$15) to customers, and the balance of the funds (nearly

\$2 million) went to charities that feed the poor. The appeals court concluded that the residual settlement funds needed to retain a connection to the class members or the false advertising claims, and that outstanding funds should have gone to organizations protecting consumers from false advertising rather than feeding the hungry, even if that's a worthy cause.

In a recent case, where Google was found to have violated users' privacy rights by allowing other websites to view consumers' online searches, several privacy organizations and others were chosen to receive more than \$5 million of the \$8.5 million settlement. The cy pres funds were designated for non-profits since it was not feasible to send miniscule compensation individually to millions of internet users. Instead funds were awarded to groups that work to protect internet privacy, to universities, and to the attorneys who tried the case.

However, the distribution of settlement funds in the Google case was challenged by Ted Frank of the conservative think tank Competitive Enterprise Institute and its Center for Class Action Fairness. The case was brought to reduce attorneys' fees and to argue that the disbursement of funds to third parties was unfair to Google users who were directly affected but did not receive any financial compensation. Federal rules require that a class action settlement be "fair, reasonable and adequate" to its class members.

In 2019, the case *Frank v. Gaos* ([https://www.supremecourt.gov/opinions/18pdf/17-961\\_j42k.pdf](https://www.supremecourt.gov/opinions/18pdf/17-961_j42k.pdf)) went before the U.S. Supreme Court to determine when and how cy pres funds should be directed to third parties. The high

court rejected the standing judgment but did not rule on how the cy pres funds had been awarded. Instead, it returned the case to the Court of Appeals (Ninth Circuit) for review based on a completely separate issue called "standing."

## Standing

The law requires that those who bring a lawsuit have "standing," meaning they have the right to sue. In a separate case (*Spokeo, Inc. v. Robins*), the Supreme Court ruled that "standing requires a concrete injury." The Supreme Court wanted the lower court to consider whether the 129 million Google users whose privacy was violated technically had the right to sue. If the court ruled they did not, then there would be no reason to go further in deciding if the settlement and cy pres funds were properly and fairly distributed. The Supreme Court also noted that it was not siding with either party on Google users' right to sue. So far, the appeals court has not returned a position.

Cy pres funding is an effective way to dispense settlement money to non-profit organizations that can help address the wrongs that prompted particular class action lawsuits and help educate consumers to be aware of and fight harmful marketplace practices they encounter in the future. It also ensures that funds don't go back to the party that was in the hot seat for ill-gotten gains. How closely these funds must relate to the case from which they came is a hotly disputed question that courts are still wrestling with.

# Consumer Action's Class Action Database

By Lauren Hall

In an effort to raise awareness and increase participation in class action claims, Consumer Action began publishing a class action database. We have been very pleased with the attention it has brought to class action claims and settlements. The popular database has been visited by 946,263 people so far in 2019.

Consumer Action publishes a list of notable class actions on our website (<https://www.consumer-action.org/lawsuits>). It includes settlements for which eligible consumers can submit claims. Visitors to Consumer Action's homepage can access this valuable resource via the "Consumer Help Desk" menu on the right.

Each month, we discuss new and notable cases in our *INSIDER* e-newsletter. (To sign up, add your email on our homepage [<https://www.consumer-action.org>], where it says, "Join our email list.")

Once on the Class Action Database page, consum-

ers can sort class action listings by status: (1) Open to claims, (2) Pending, or (3) Closed (settled), or search by company name or keyword. In addition, a calendar displays upcoming deadlines to submit a claim.

Users who click on the "Claim Deadline" link will go directly to the class action's settlement page (off-site) for further claims details, such as whether they are eligible for cash refunds, products, services, debit cards, etc., and how to make a claim. In some cases, class members can file their claim directly through these official class action websites without providing additional proof.

Through mid-December, consumers who shopped at the trendy teen clothing store Hot Topic were eligible to file a claim in the recent \$2.9 million class action settlement (<https://www.consumer-action.org/lawsuits/article/hot-topic-tcpa>). The popular retailer was sued for sending consumers unsolicited texts without permission (between August 2012 and July 2019), in violation of the national Telephone Consumer Protection Act.

Closed class action settlements are left on the site as a public record of the actions we featured. Past settlements include the Western Union fraud case, in which the company was charged with aiding and abetting scammers' wire fraud activities (between January 2004 and January 2017). The Western Union settlement warned consumers that con artists have been attempting to scam Western Union case members out of money a second time, by contacting them and pretending to be "claims administrators" who are owed a fee before class members can receive payment. Be aware that no legitimate claims administrator will require that consumers pay a fee to receive settlement funds.

Pending cases listed in the Class Action Database are those being monitored by Consumer Action, but which have not yet been settled or adjudicated. Clicking on the title of a pending class action will open a popup summary listing the defendant and any upcoming dates of importance in the case.

To review class action settlements by their deadlines, click on the shaded (linked) dates in the calendar to see upcoming claims deadlines.

Consumer Action encourages readers to email us additional information that they have about pending class actions.

## Starting your own class action suit

By Alegra Howard

Have you reason to believe that the wrongdoing you've experienced with a company is widespread? Do you know, or suspect, that there are other consumers in the same boat? If you have exhausted all avenues to settle the complaints, and the problems remain unresolved, you may find yourself considering a class action lawsuit, with yourself as the "lead plaintiff."

When a class action case concludes, lead plaintiffs might receive an "incentive award" for serving as the class representative. While not a universal outcome, the award is designed to compensate the lead plaintiff for filing the lawsuit and for actively participating in the case.

If you are considering a class action, here are a few steps to take:

First, learn if the fine print in your service agreement includes a forced arbitration clause that prohibits you from suing or starting a class action suit (<https://www.consumeradvocates.org/for-consumers/arbitration>). This is important information to have when you speak to an attorney. But just because a contract you signed has a mandatory arbitration clause doesn't mean it's legally enforceable, so with the help of an attorney you may still be able to go to court.

To find a reputable class action attorney who can help you determine if you have a strong case, check with these organizations:

- The National Association of Consumer Advocates: <https://www.consumeradvocates.org/find-an-attorney>
- The Class Action Trial Lawyers Association: <https://thecatl.org/class-action-trial-lawyers/members/>
- The American Association for Justice: <https://directory.justice.org/>

If you are considering a lawyer who is not listed with

one of these three organizations, make sure to verify with your state bar association that any attorneys you consult are licensed (<https://www.lawyerlegion.com/promote-your-law-practice/directories-by-state-bar/>), and check for any disciplinary actions against them (<https://www.lawyer-legion.com/promote-your-law-practice/directories-by-state-bar/lawyer-disciplinary-agencies/>).

"Google" lawyers by name and location to learn of any client complaints, and check the lawyer's reviews on Yelp (<https://www.yelp.com>) and the Better Business Bureau (<https://www.bbb.org/>) before you reach out.

For existing cases you might be eligible to join or file a claim in, see Consumer Action's Class Action Database (<https://www.consumer-action.org/lawsuits/>).

# Consumer Action

[www.consumer-action.org](http://www.consumer-action.org)

Consumer Action has been a champion of underrepresented consumers nationwide since 1971. A non-profit 501(c)(3) organization, Consumer Action focuses on financial education that empowers low- and moderate-income and limited-English-speaking consumers to financially prosper.

By providing financial education materials in multiple languages, a free national hotline and ongoing financial services research, Consumer Action helps consumers assert their rights in the marketplace and make financially savvy choices.

## Advice and referral hotline

Submit consumer complaints to our hotline:

English: [http://bit.ly/CA\\_hotline\\_ENG](http://bit.ly/CA_hotline_ENG)

Spanish: [http://bit.ly/CA\\_hotline\\_ES](http://bit.ly/CA_hotline_ES)

(415) 777-9635

Chinese, English and Spanish spoken

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## Join Consumer Action

Consumer Action depends on the financial support of individuals. Consumer Action members receive a subscription to *Consumer Action News*. New members also receive *How to Complain*.

\$25, Regular Membership

**You can join or donate online with a credit, debit or prepaid card using our secure server: [www.consumer-action.org/join](http://www.consumer-action.org/join)**

\$15, Senior or Student Membership

\$\_\_\_\_\_ Donation to our Publications Fund, supporting the free distribution of Consumer Action materials to consumers

Name \_\_\_\_\_ Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_

Email address \_\_\_\_\_

Mail to: Consumer Action, 1170 Market St., Suite 500, San Francisco, CA 94102. Donations are tax-deductible. 1/20