

PUBLICATION UPDATE

Route to: _____ _____ _____ _____
 _____ _____ _____ _____

Deskbook on the Management of Complex Civil Litigation

Publication 1211

Release 10

November 2009

HIGHLIGHTS

Pleading UCL Claims

- California Supreme Court in *Tobacco II* held that class representative is not required to prove an unrealistic degree of specificity that the plaintiff relied on particular advertisements or statements when an unfair practice is a fraudulent advertising campaign; added to Ch. 3, *Specialized Areas*

Jurors' Use of Electronic Devices

- Discussion of preinstructing jurors not to use electronic means to communicate about the case in Ch. 2, *Case Management*

Recent Cases

- Recent cases have been added throughout the publication

This release of the Deskbook on the Management of Complex Civil Litigation includes new and revised material in these areas:

- Trial courts have no power to impose sanctions for which there

is no legislative authority [*Clark v. Optical Coating Laboratory, Inc.* (2008) 165 Cal. App. 4th 150, 164, 80 Cal. Rptr. 3d 812; *see* § 2.06].

- Overbroad motions *in limine* can, if granted, unfairly prejudice a party's ability to present a valid claim or defense [*Gordon v. Nissan Motor Co., Ltd.* (2009) 170 Cal. App. 4th 1103, 1114, 88 Cal. Rptr. 3d 778; *see* § 2.61[4][c]].
- Revised discussion of jurors' use of the Internet, PDAs, cell phones, and other electronic devices to blog, post, map, or do online research regarding the case [*see* § 2.82].
- Under Bus. & Prof Code § 17204, the plaintiff class representative must demonstrate actual reliance on the allegedly deceptive or misleading statements, but is not required "to plead or prove an unrealistic degree of specificity that the plaintiff relied on particular

advertisements or statements when the unfair practice is a fraudulent advertising campaign” [*In re Tobacco Cases II* (2009) 46 Cal. 4th 298, 306, 93 Cal. Rptr. 3d 559, 207 P.3d 20; *see* § 3.05].

- The class certification question must be decided on a noticed motion served on all parties [Cal Rules of Ct., Rule 3.764(c)]; either party may initiate the class certification process [*In re BCBG Overtime Cases* (2008) 163 Cal. App. 4th 1293, 1299, 78 Cal. Rptr. 3d 257; *see* § 3.71].
- Incentive agreements between class representatives and class counsel may create conflicts with the other class members [*Rodriguez v. West Publishing Corp.* (2009) 563 F.3d 948, 968; *see* § 3.73].
- Under Prop. 64, it is permissible to allow precertification discovery to identify potential class members when the circumstances made

it likely that class members would be denied relief if precertification discovery were not allowed and the class action were dismissed [*Safeco Insurance Co. v. Superior Court* (2009) 173 Cal. App. 4th 814, 829, 92 Cal. Rptr. 3d 814; *see* § 3.73].

- A proper evaluation of the adequacy of the settlement requires a court to determine whether counsel conducted a sufficient investigation to assess the strength of class members’ claims. The court then must “independently [satisfy] itself that the consideration being received for the release of the class members’ claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation” [*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116, 129, 85 Cal. Rptr. 3d 20; *see* § 3.76[2]].

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