

# 49

## Class Action

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### A. [49.1] Cause of Action

Class actions are representative lawsuits to which absent members are merely passive parties. Generally, courts are unable to entertain the actual appearance of all members of the class, and it is impractical for each member to prosecute his or her own individual claim. Class actions seek to eliminate repetitious litigation and the possibility of inconsistent adjudication involving requests for similar relief. They are an effective tool for those whose economic position is such that it is unrealistic to expect them to vindicate their rights in separate lawsuits. Class actions may be predicated on numerous underlying causes of action, including, but in no way limited to, statutory claims, contract theories, negligence, breach of warranty, fraud, consumer protection, environmental protection, and shareholder suits.

### B. [49.2] What Law Controls

Class actions are now creatures of statutory law and may be brought in Illinois state courts. Sections 2-801 through 2-807 of the Code of Civil Procedure, 735 ILCS 5/2-801 through 5/2-807, control and are essentially a codification of Illinois caselaw. The applicable federal rule for class certification is Federal Rule of Civil Procedure 23, discussed below. Section 2-801 of the Code of Civil Procedure is patterned after Fed.R.Civ.P. 23, and federal decisions interpreting Rule 23 are persuasive authority with regard to questions of class certification in Illinois. *Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill.2d 100, 835 N.E.2d 801, 819, 296 Ill.Dec. 448 (2005), *cert. denied*, 126 S.Ct. 1470 (2006).

**Diversity jurisdiction.** Class action suits filed in Illinois may ultimately be heard in federal court. As an initial matter, a number of causes of action can be filed only in federal court, such as actions under the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §1001,

*et seq.*, securities fraud, and federal antitrust claims. Class action suits may also be removed from state court to federal court when federal diversity jurisdiction exists. Federal diversity jurisdiction in general presents a complex issue that goes beyond the confines of this chapter, but a few important issues must be addressed. For instance, pursuant to 28 U.S.C. §1367, class action claims satisfy federal diversity requirements as long as at least one class member meets the amount in controversy requirement (currently \$75,000 under 28 U.S.C. §1332). *Exxon Mobil Corp. v. Allapattah Services, Inc.*, 545 U.S. 546, 162 L.Ed.2d 502, 125 S.Ct. 2611, 2620 – 2621 (2005) (finding that 28 U.S.C. §1367 effectively overruled *Zahn v. International Paper Co.*, 414 U.S. 291, 38 L.Ed.2d 511, 94 S.Ct. 505 (1973), and the Court’s previous refusal to aggregate plaintiffs’ claims to satisfy federal diversity jurisdiction). However, a split of circuits still exists regarding whether a court may determine the amount in controversy from the perspective of the plaintiff, the defendant, or either party. *See, e.g., Garcia v. Koch Oil Company of Texas Inc.*, 351 F.3d 636, 640 n.4 (5th Cir. 2003) (applying “plaintiff’s viewpoint” rule); *Ericsson GE Mobile Communications, Inc. v. Motorola Communications & Electronics, Inc.*, 120 F.3d 216, 219 – 220 (11th Cir. 1997) (same); *In re Brand Name Prescription Drugs Antitrust Litigation*, 123 F.3d 599, 609 – 610 (7th Cir. 1997) (applying “either viewpoint” rule); *Hatridge v. Aetna Casualty & Surety Co.*, 415 F.2d 809, 814 – 815 (8th Cir. 1969) (viewpoint of party invoking federal jurisdiction). For an explanation of the different ways to measure the amount, *see In re Microsoft Corp. Antitrust Litigation*, 127 F.Supp.2d 702 (D.Md. 2001), and *In re Ford Motor Company/Citibank (South Dakota), N.A., Cardholder Rebate Program Litigation*, 264 F.3d 952 (9th Cir. 2001).

**Class Action Fairness Act of 2005.** The Class Action Fairness Act of 2005 (CAFA), Pub.L. No. 109-2, 119 Stat. 4, amended 28 U.S.C. §1332 and applies to class action suits filed after February 18, 2005. CAFA provides greater opportunities to remove class actions to federal court by extending federal diversity jurisdiction over most cases in which (1) the class consists of at least 100 proposed members; (2) the amount in controversy exceeds \$5 million after aggregating the claims of the proposed class members, exclusive of interest and costs; and (3) any of the members of a class of plaintiffs is a citizen of a state different from the defendant. CAFA contains important exceptions. For instance, federal courts may not exercise jurisdiction in certain cases in which a large percentage of the putative class, key defendants, and key events all share a strong nexus with the forum state. Significantly, CAFA may apply to a suit filed before February 18, 2005, if the court finds new claims added after February 18, 2005, constitute commencement of a new action. *Knudsen v. Liberty Mutual Insurance Co.*, 435 F.3d 755, 758 (7th Cir. 2006). For a thorough discussion of the changes CAFA made to class action litigation, see Gregory P. Joseph, *Federal Class Action Jurisdiction after CAFA*, *Exxon Mobil and Grable*, 8 Del.L.Rev. 157 (2006).

**Multiparty, Multiform Trial Jurisdiction Act of 2002.** The Multiparty, Multiform Trial Jurisdiction Act of 2002 (MPMF), Pub.L. No. 107-273, Div. C, Title I, §11020, 116 Stat. 1826, also altered the scope of federal diversity jurisdiction over certain class action claims. In particular, the MPMF extended federal diversity jurisdiction over any civil action involving minimal diversity between adverse parties that arises from a single accident, when at least 75 natural persons have died in the accident at a discrete location. 28 U.S.C. §1369(a).

**Choice of forum.** While a good-faith punitive damage claim might be enough to support federal jurisdiction, most plaintiffs’ counsel believe that many cases, consumer cases in

particular, are more likely to be successful in state court, rather than in federal court. In fact, §2-801 of the Code of Civil Procedure originated in order to expand the availability of class actions beyond the strict requirements of Fed.R.Civ.P. 23. See Kevin M. Forde, *Class Actions in Illinois: Toward a More Attractive Forum for This Essential Remedy*, 26 DePaul L.Rev. 211 (1977). The same factors that motivate plaintiffs' attorneys to look to state courts as the forum of choice have motivated defendants' aggressive attempts to remove actions to federal courts. For in-depth treatment, see CLASS ACTIONS (IICLE, 2007).

**Other.** Several major amendments to Fed.R.Civ.P. 23 became effective on December 1, 2003. For example, in Rule 23(c), the requirement that the court determine whether to certify a class "as soon as practicable after commencement of an action" was changed to "at an early practicable time." Notes of Advisory Committee on 2003 amendments, Fed.R.Civ.P. 23(c). The notice provisions were also substantially revised, and Rule 23(e) was amended in an attempt to strengthen the process of reviewing proposed class action settlements. Notes of Advisory Committee on 2003 amendments, Fed.R.Civ.P. 23(e). Other changes and additions are addressed in §49.8 below.

### C. [49.3] Elements

Section 2-801 of the Code of Civil Procedure sets forth the elements necessary for the maintenance of a class action:

**An action may be maintained as a class action in any court of this State and a party may sue or be sued as a representative party of the class only if the court finds:**

- (1) The class is so numerous that joinder of all members is impracticable.**
- (2) There are questions of fact or law common to the class, which common questions predominate over any questions affecting only individual members.**
- (3) The representative parties will fairly and adequately protect the interest of the class.**
- (4) The class action is an appropriate method for the fair and efficient adjudication of the controversy.** 735 ILCS 5/2-801.

Fed.R.Civ.P. 23 differs from §2-801 in that §2-801 requires a finding that the class action is an appropriate method for adjudication of the controversy (735 ILCS 5/2-801(4)), whereas Fed.R.Civ.P. 23(b)(3) requires the court to find that a class action is a superior method to other available methods for the fair and efficient adjudication of the controversy.

To satisfy §2-801(4)'s appropriate method requirement, the plaintiff must demonstrate that the class action (1) can best secure the economics of time, effort, and expense and promote uniformity of decision; or (2) can accomplish the other ends of equity and justice that class actions seek to obtain. *Clark v. TAP Pharmaceutical Products, Inc.*, 343 Ill.App.3d 538, 798

N.E.2d 123, 134, 278 Ill.Dec. 276 (5th Dist. 2003). The *Clark* court held that a trial court's certification of a class will be disturbed only upon a clear abuse of discretion or an application of impermissible legal criteria. 798 N.E.2d at 128.

#### D. [49.4] Relevant Standard Jury Instructions

None specific to class, as class certification is a legal question left to the sound discretion of the trial court. See *Gordon v. Boden*, 224 Ill.App.3d 195, 586 N.E.2d 461, 464, 166 Ill.Dec. 503 (1st Dist. 1991).

#### E. [49.5] Statute of Limitations

The statute of limitations is dependent on the underlying cause of action. Commencement of a class action suspends the applicable statute of limitations for all putative plaintiffs. See *Crown, Cork & Seal Co. v. Parker*, 462 U.S. 345, 76 L.Ed.2d 628, 103 S.Ct. 2392, 2397 – 2398 (1983); *American Pipe & Construction Co. v. Utah*, 414 U.S. 538, 38 L.Ed.2d 713, 94 S.Ct. 756, 766 (1974).

#### F. [49.6] Parties

**Proper plaintiff.** A class suit may be maintained under proper circumstances, whether brought by plaintiffs or against defendants as a class. *Battles v. Braniff Airways, Inc.*, 146 F.2d 336, 339 (5th Cir. 1944). The Code of Civil Procedure requires that “[t]he representative parties will fairly and adequately protect the interest of the class.” 735 ILCS 5/2-801(3). Section 2-801(3) directs the focus on whether the named representative's claims have the same essential characteristics as the claims of the class at large, but in contrast to federal law, Illinois does not require “typicality.” Cf. *Krey v. Castle Motor Sales, Inc.*, 241 F.R.D. 608, 615 (N.D.Ill. 2007) (federal “typicality” rule requires that named representatives' claims advance same legal theory as other class members and arise from same course of conduct). While the interests of the named representative and the class members must be the same (*Miner v. Gillette Co.*, 87 Ill.2d 7, 428 N.E.2d 478, 482, 56 Ill.Dec. 886 (1981)), the factual distinctions between the claims of the named plaintiffs and those of other class members do not disqualify the representative. To be an adequate representative, the named plaintiff must have a valid claim of his or her own. See *Carrao v. Health Care Services Corp.*, 118 Ill.App.3d 417, 454 N.E.2d 781, 790, 73 Ill.Dec. 684 (1st Dist. 1983). The suitability of a class representative must be considered, including the named plaintiff's honesty, intelligence, and suitability as a fiduciary. The named plaintiff cannot have a conflict with the class' interests. *Id.*

**Proper defendant.** Defendant classes are specifically authorized by §2-801 of the Code of Civil Procedure, 735 ILCS 5/2-801. A defendant class involves different considerations than a plaintiff class. One who initiates a plaintiff class action does so voluntarily with the hope of receiving a benefit, whereas a representative of a defendant class normally does not enter the lawsuit voluntarily. Nevertheless, unless an agreement is reached with the other members of the defendant class, the defendant class representative must bear the expense of the defense for all of the other members of the class, with nothing to gain except the hope of defeating the claim. See *Ameritech Benefit Plan Committee v. Communication Workers of America*, 220 F.3d 814, 820

(7th Cir. 2000) (listing potential concerns about defendant class actions). One common use of defendant classes occurs in the challenges to the validity of state laws when the class consists of state officials who enforce the laws.

### G. [49.7] Special Considerations

**Adequate representation.** The requirement of adequate representation found in both 735 ILCS 5/2-801(3) and Fed.R.Civ.P. 23 relates not only to the class representative, but also to the attorney for the class. The attorney must be experienced, qualified, and generally able to conduct the proposed litigation. *Miner v. Gillette Co.*, 87 Ill.2d 7, 428 N.E.2d 478, 482, 56 Ill.Dec. 886 (1981). The attorney may not be a representative of the class. Class membership creates a per se disqualification of both the attorney and his or her law firm from continuing as the attorney for the class. *Barliant v. Follett Corp.*, 74 Ill.2d 226, 384 N.E.2d 316, 322, 23 Ill.Dec. 522 (1978). The purpose of the adequate representation requirement for class certification is to ensure that all class members will receive proper, efficient, and appropriate protection of their interests in the presentation of the claim. *Clark v. TAP Pharmaceutical Products, Inc.*, 343 Ill.App.3d 538, 798 N.E.2d 123, 133, 278 Ill.Dec. 276 (5th Dist. 2003).

Fed.R.Civ.P. 23(g) was added in 2003 and responds to the reality that the selection and activity of class counsel are critically important to the success of a class action suit. Notes of Advisory Committee on 2003 amendments, Fed.R.Civ.P. 23(g). Rule 23(g)(1) provides, inter alia, that in appointing class counsel a court must consider (1) the work counsel has done in identifying or investigating potential claims, (2) counsel's experience in handling class actions and other complex litigation, (3) counsel's knowledge of applicable law, and (4) the resources he or she will commit to representing the class.

**Costs.** The costs associated with class actions can be huge. Prior to establishing at least some success on the merits, the plaintiff, who in actuality is usually the attorney, has to bear any costs of notifying class members. Moreover, while in most cases it is desirable to have a deep-pocket defendant so that recovery is possible, this type of defendant will often mount a long and arduous defense, with the goal of wearing down the plaintiff and class counsel.

**Jurisdiction.** State courts can bind unnamed members of a plaintiff class who do not have minimum jurisdictional contacts with the forum state, even if the class member has not been personally served, as long as the due process requirements of proper notice and adequate representation are satisfied. When a plaintiff class seeks money damages, three requirements must be satisfied before a state court can assert jurisdiction over the claims of members of the class who are not personally subject to its jurisdiction:

1. The best practical notice under the circumstances must be given to the class members. Such notice must describe the action and plaintiffs' rights in it and provide each class member the opportunity to be heard, either in person or through counsel.
2. The class members must be informed of an opportunity to opt out of the class.
3. The interests of all members of the class must be adequately represented. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 86 L.Ed.2d 628, 105 S.Ct. 2965, 2974 (1985).

**Notice.** Notice to class members may be required at two stages in the prosecution of a class action: (1) at certification; and (2) prior to the approval of a settlement or dismissal. General notice requirements appear in both the federal and Illinois class action statutes; however, due process concerns primarily shape the analysis of proper notice. Due process does not require personal notice in all cases. Personal notice is required when the identities and addresses of class members are readily available. The exact means that must be employed to notify class members of the action depends on the specific circumstances of each case. 735 ILCS 5/2-803, 5/2-806. In most instances, courts have placed the burden of notifying the class on the representative of the class, but in certain situations, the burden of providing notice may be shifted in whole or in part to the party opposing the class (typically the defendant). See *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 57 L.Ed.2d 253, 98 S.Ct. 2380, 2391 (1978). The notice requirements theoretically ensure that potential class members have an opportunity to “opt out” of the class and not be bound by a judgment or settlement in the action.

**Choice of law.** The question of what law to apply arises in cases dealing with a national class. A forum state may apply its procedural rules uniformly in a multistate action, even if it is applying the substantive laws of other states. *Sun Oil Co. v. Wortman*, 486 U.S. 717, 100 L.Ed.2d 743, 108 S.Ct. 2117, 2125 (1988). As to substantive law, constitutional limitations on choice of law can prevent uniform application of the forum state’s substantive law. Illinois courts follow the RESTATEMENT (SECOND) OF CONFLICT OF LAWS and apply the broad principle that the rights and liabilities as to a particular issue are to be governed by the jurisdiction that retains the “most significant relationship” to the occurrence and the parties. *Barbara’s Sales, Inc. v. Intel Corp.*, 227 Ill.2d 45, 879 N.E.2d 910, 919, 316 Ill.Dec. 522 (2007). When a forum state has to apply the substantive laws of several different states, a problem arises with satisfying the “commonality” requirement. However, courts have allowed a case to proceed if a putative class is capable of being grouped into subclasses. See *Purcell & Wardrope Chartered v. Hertz Corp.*, 175 Ill.App.3d 1069, 530 N.E.2d 994, 998, 125 Ill.Dec. 585 (1st Dist. 1988). If the subclasses later become unmanageable, Illinois courts can set aside all or a portion of class certification. *Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill.2d 100, 835 N.E.2d 801, 826, 296 Ill.Dec. 448 (2005). Nevertheless, if Illinois law and the applicable laws of other states diverge too greatly in a class action, Illinois courts will not certify the class, even with the option of subclasses. *Health Cost Controls v. Sevilla*, 365 Ill.App.3d 795, 850 N.E.2d 851, 863, 303 Ill.Dec. 46 (1st Dist. 2006).

**Trends.** The requirement of §2-801(2) of the Code of Civil Procedure that common questions of fact or law predominate may be increasingly difficult to satisfy in Illinois state courts. Prior to 2005, a plaintiff satisfied the commonality requirement by alleging (and eventually establishing) that one common issue of fact or law predominates over all other issues. *Gordon v. Boden*, 224 Ill.App.3d 195, 586 N.E.2d 461, 465, 166 Ill.Dec. 503 (1st Dist. 1991). In *Avery, supra*, however, the Illinois Supreme Court refused to certify a nationwide class of plaintiffs alleging violations of the Consumer Fraud and Deceptive Business Practices Act due to, among other things, lack of commonality. In *Avery*, the court held that the defendant’s allegedly nationwide uniform practice of restoring policyholders’ cars to “pre-loss” condition did not satisfy the commonality and predominance requirement because the contracts at issue differed from state to state and contained materially different language regarding defendant’s duties to the policyholders. 835 N.E.2d at 829 – 830. *Avery* was widely interpreted as an attempt to discourage (1) inappropriately

broad class action lawsuits, and (2) improper forum shopping for overtly plaintiff-friendly courts. Subsequent Illinois Supreme Court decisions appear to support this interpretation. *See, e.g., Smith v. Illinois Central R.R.*, 223 Ill.2d 441, 860 N.E.2d 332, 337, 307 Ill.Dec. 678 (2006); *Price v. Philip Morris, Inc.*, 219 Ill.2d 182, 848 N.E.2d 1, 51 – 53, 302 Ill.Dec. 1 (2005).

#### H. [49.8] Remedies — Special Issues

**Relief sought.** Compensatory damages, costs, attorneys’ fees, expert fees, and punitive damages may be requested. Often, settlements include, especially in consumer cases, discounts on products sold by the defendant. Nonmonetary considerations, such as equitable relief, depend on the particular circumstances of each case. For example, a change in marketing practices or a product’s design would be appropriate in the context of a consumer class action. On the other hand, revisions in internal management, a change in directors, the elimination of conflicts of interest, or the liquidation of corporate assets and the appointment of a receiver might be appropriate in class actions against corporations. In class actions designed to rectify the civil rights of disadvantaged groups, the remedies can take numerous forms, such as ordering the formulation of a plan for desegregation of public housing (*Hills v. Gautreaux*, 425 U.S. 284, 47 L.Ed.2d 792, 96 S.Ct. 1538 (1976)), ordering an employer to abandon the use of certain job tests for hiring and promotion purposes when these tests were shown to be unrelated to job performance and the test results had a disparate impact on black applicants and employees (*Albemarle Paper Co. v. Moody*, 422 U.S. 405, 45 L.Ed.2d 280, 95 S.Ct. 2362 (1975)), and prohibiting political spying and harassment (*Alliance To End Repression v. City of Chicago*, 561 F.Supp. 537 (N.D.Ill. 1982)).

**Settlements.** The named representatives and their lawyers generally negotiate settlements and compromises of a class action. They are considered fiduciaries and must act accordingly, meaning that the interests of the class must take precedence over those of the individual plaintiffs. In order for a settlement to be approved, an Illinois court must find that it is fair, reasonable, and in the best interest of the class. *Steinberg v. System Software Associates, Inc.*, 306 Ill.App.3d 157, 713 N.E.2d 709, 717, 239 Ill.Dec. 178 (1st Dist. 1999). The most important factor when assessing fairness is the strength of the plaintiff’s claim on the merits compared to the amount offered in settlement. *Id. See also Synfuel Technologies, Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006).

Fed.R.Civ.P. 23(e) was amended in 2003 to strengthen the process of reviewing proposed class action settlements. Notes of Advisory Committee on 2003 amendments, Fed.R.Civ.P. 23(e). As amended, Rule 23(e)(2) requires a reviewing court to hold a hearing and make a written finding that the class action settlement is fair, reasonable, and adequate. The amendment takes into consideration the fact that while settlement may be a desirable means of resolving a class action, court review and court approval are essential to ensure adequate representation of class members who have not participated in shaping the settlement. Similarly, the Class Action Fairness Act of 2005 took a closer look at settlements and creates new restrictions with regard to “coupon” settlements, attorneys’ fees, and settlement notice. For instance, recognizing a conflict of interest between attorneys and their class action clients in coupon settlements, CAFA limits the amount of money paid to attorneys to the amount of coupons actually redeemed by customers, as opposed to the amount of coupons given to customers. 28 U.S.C. §1712(a).

**Settlement notice.** Settlement or dismissal of a class action requires notice as the court may direct. See §49.7 above. The question of what notice must be given and in what form will vary from case to case. For example, cases falling under CAFA are subject to its unique, detailed notice requirements. Broadly, any type of notice of class action settlement must inform the class members about the nature of the proposed settlement and the possible options the class members may pursue. *Fox v. Northwest Insurance Brokers, Inc.*, 113 Ill.App.3d 255, 446 N.E.2d 1260, 1262, 68 Ill.Dec. 863 (1st Dist. 1983). Costs associated with settlement notice may be substantial, so settlement agreements often stipulate which party will bear these costs.

**Attorneys' fees.** Normally, courts do not interfere with fee arrangements between an attorney and a client, as this is a question of contract to be resolved by the parties. In a class action with unnamed members, however, there can be no express contract between the attorney and the unnamed members of the class. Hence, any award of fees to the attorney for the class must be approved by the court. The practice of negotiating settlement agreements simultaneously with attorneys' fees has come under increasing fire because of possible conflicts of interest between class counsel and the class. Both Illinois and federal courts have used numerous methods to determine the proper award of attorneys' fees. Regardless, any award of attorneys' fees in class actions must be approved by the court. For an enlightening discussion about attorneys' fees in class action cases and methods of determining appropriate compensation, see *In re Synthroid Marketing Litigation*, 264 F.3d 712 (7th Cir. 2001).

Fed.R.Civ.P. 23(h) is based on the idea that fee awards are a powerful influence on the way attorneys initiate, develop, settle, or otherwise conclude class actions. Notes of Advisory Committee on 2003 amendments, Fed.R.Civ.P. 23(h). It also authorizes an award of reasonable attorneys' fees and nontaxable costs. Rule 23(h) was designed to work in tandem with Rule 23(g), which deals with the appointment of class counsel and affords the courts an opportunity to set an early framework for an eventual fee award. *Id.* Likewise, CAFA limits the collection of attorneys' fees in particular settlements, such as "coupon" settlements.

**Fluid recovery/cy pres.** Illinois permits "fluid recovery" or cy pres when it is not feasible to distribute all of the settlement funds to identifiable class members. See *Gordon v. Boden*, 224 Ill.App.3d 195, 586 N.E.2d 461, 468, 166 Ill.Dec. 503 (1st Dist. 1991). Beginning on July 1, 2008, there is a presumption that any unclaimed funds remaining from a class action award will go toward organizations that improve access to justice for low-income Illinois residents. See 735 ILCS 5/2-807, which was added by P.A. 95-479 (effective July 1, 2008).

## I. [49.9] Checklist for Complaint

1. Jurisdictional facts, including facts regarding jurisdiction under the Class Action Fairness Act of 2005, if necessary.
2. Venue.
3. Date, time, and place.
4. Class action allegations.

5. Plaintiffs bring action on their behalf.
6. Definitions of the class.
7. Numerical requirements.
8. Common questions of law and fact exist as to all class members and predominate over any questions that affect only individual members.
9. Named representatives' claims or defenses are typical of the claims of all class members (federal), or named representatives' claims or defenses have same essential characteristics as the claims of the class at large (Illinois).
10. Named representatives will fairly and adequately represent the interests of the class members.
11. Class action treatment is superior to the alternatives for the fair and efficient adjudication of the controversy (federal), or class action treatment is an appropriate method for adjudication of the controversy (Illinois).
12. Causes of action.
13. Damages sustained.
14. Request for relief.

**J. [49.10] Affirmative Defenses**

Specific to the cause of action on which the class action is predicated.

1. The class is not so numerous that joinder of all members is impractical.
2. There are questions affecting only individual members; common questions do not predominate.
3. The representative parties will not fairly and adequately protect the interests of the class.
4. A class action is an inappropriate method for the fair and efficient adjudication of the controversy.

**K. [49.11] Related Actions**

As noted in §49.1 above, class actions are predicated on numerous underlying causes of action. Plaintiffs frequently advance several different theories.

**L. [49.12] Sample Form**

[Caption]

**CLASS ACTION COMPLAINT FOR MONETARY DAMAGES**

**Plaintiffs, for themselves and all others similarly situated, bring this \_\_\_\_\_ action against Defendant[s], \_\_\_\_\_.**

- 1. Plaintiffs are residents of \_\_\_\_\_ County, Illinois.**
- 2. [Defendant, (individual), resides in \_\_\_\_\_ County, Illinois.] [Defendant, (corporation) has its principal place of business in \_\_\_\_\_.]**
- 3. This court has jurisdiction pursuant to the Illinois Constitution art. VI, §9, and 705 ILCS 35/25.**
- 4. The damages suffered are sought to be recovered by Plaintiffs, and the class they seek to represent totals in excess of the jurisdictional minimum of this Court, although the exact amount of damages caused to the class members cannot be precisely determined.**
- 5. Plaintiffs' individual damages and the damages of each class member do not exceed \$75,000. Plaintiffs assert no federal question or statute. Plaintiffs' state law causes of action are not federally preempted.**
- 6. Venue is proper in this court pursuant to 735 ILCS 5/2-101 because Plaintiffs reside in this county or the transaction or some part thereof out of which this cause of action arose occurred in this county.**
- 7. [provide a definition of the class]**
- 8. The class members are so numerous and geographically dispersed that individual joinder of all members is impractical. While the exact number of class members is unknown to Plaintiffs at this time, it is ascertainable by appropriate discovery.**
- 9. Common questions of law and fact exist as to all class members and predominate over any questions that affect only individual class members. The questions of law and fact that are common to the class and that predominate include, but are not limited to:**

[list]

[NOTE: Obviously, questions will vary depending on facts of particular case, but list as many as possible.]

- 10. Plaintiffs' claims are typical of the claims of all class members in that [give reason for typicality], and the relief sought is common to the class.**

**11. Plaintiffs will fairly and adequately represent the interests of the class members in that Plaintiffs are typical [give reason for typicality], and have no conflicts with any other class members.**

**12. Plaintiffs have retained competent counsel experienced in class action litigation.**

**13. Class action treatment is [superior to the alternatives, if any, for the fair and efficient] [an appropriate method for] adjudication of the controversy described herein because it permits a large number of injured persons to prosecute their common claims in a single forum simultaneously, efficiently, and without unnecessary duplication of evidence and effort. Class treatment will also permit the adjudication of claims by smaller class members who could not afford to litigate their claims on an individual basis.**

**14. [list causes of action on which class action is predicated]**

**WHEREFORE, Plaintiffs on their own behalf, and on behalf of all other members of the class, pray for judgment as follows:**

**A. Declaring this action to be a proper class action, certifying Plaintiffs as class representatives and their counsel as Class Counsel;**

**B. Declaring and determining that Defendant[s] violated the law by reason of [its] [their] conduct as alleged herein;**

**C. Awarding money damages against Defendant[s], in favor of Plaintiff and the other members of the class for all losses and injuries suffered as a result of the acts complained of herein;**

**D. Awarding civil penalties as provided by law;**

**E. Awarding Plaintiffs their costs and expenses incurred in this action, including reasonable attorneys' and experts' fees;**

**F. Ordering Defendant[s] enjoined from [provide reason for injunction]; and**

**G. Awarding such other relief as may be just and proper.**

[JURY DEMAND]

[Plaintiffs demand trial by jury on all issues so triable in this case.]

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**Attorney for Plaintiffs**

