

5 Trends to Watch: 2024 Class Actions

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- 1. Rise in Mass Arbitrations:** Mass arbitrations continued their rise in 2023, especially in the privacy and consumer areas. Courts have ordered defendants to pay filing fees for thousands of individual arbitration claimants and have largely rejected efforts by corporate defendants to obtain relief from onerous fees. The use of this tactic has led to the emergence of adaptations in arbitration agreements to specifically tackle mass claims and to new arbitration providers introducing mass arbitration protocols and fee structures. This shift has triggered court challenges to batching and bellwether procedures, with notable rulings finding that arbitration agreements containing such batching provisions may be unconscionable. We expect more companies will face mass arbitration threats in 2024, as the tools to defeat them are still being developed and tested.
- 2. Data Privacy Class Actions:** Data privacy continues to be a hot area for class action lawsuits. Claims asserting violations of the Video Privacy Protection Act have appeared given the availability of statutory damages of \$2,500 per violation, along with possible punitive damages and attorney fees. There is also another wave of website and telephonic wiretapping claims based on the use of “chatbot” web services, session replay, pixels, and voice verification. Hundreds of these cases were filed nationwide in 2023, predominantly in California, Pennsylvania and Maryland, and this trend is expected to continue in 2024.
- 3. Financial Services Class Actions:** 2023 saw an uptick in class actions asserting claims under the Electronic Funds Transfer Act and state consumer fraud statutes arising out of fraud schemes targeting customers using smart phones and other devices for electronic banking. Banks and other financial institutions should continue to monitor this trend and review policies and procedures for investigating and reimbursing allegedly unauthorized electronic consumer transactions. Another trend that is expected to continue in 2024 is the continued filing of overdraft fee class actions. The Consumer Financial Protection Bureau’s [recent announcement](#) of a proposed rule limiting overdraft fees will ensure that this topic stays in the spotlight.

4. **Cosmetics and Personal Care Class Actions:** No relief is in sight for companies in the cosmetics and personal care space due to the heightened scrutiny of product claims and ingredient transparency. Regulators and consumers alike are placing increasing importance on accurate labeling, safety standards, and environmental sustainability within the sector. Recent trends show an increase in claims targeting companies that make “clean beauty” representations about products—e.g., sustainable, nontoxic, ethically made, cruelty-free, or vegan—due to plaintiffs’ attorneys scrutinizing ingredient lists and conducting their own testing to identify potentially harmful components that allegedly make such claims misleading.

5. **Environmental, Social, and Governance Class Actions:** As companies face greater pressure to make aspirational statements and disclosures about their products and practices, the rise in “ESG” claims is expected to continue. Companies are facing a backlash from consumers and stakeholders asserting “greenwashing” and other claims in states with plaintiff-friendly consumer statutes that force defendants to either substantiate their product claims or face significant legal risk.

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National Law Review, Volumess XIV, Number 37

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