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California Court of Appeal Confirms that There is Only One Standard for the Admission of Expert Testimony and that Expert Opinion Must Be Admissible to be Considered on a Motion for Class Certification

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Deciding an issue of first impression, the California Court of Appeal issued a writ of mandate confirming that there is only one standard for the admissibility of expert opinion in California, and that standard applies when considering a motion for class certification. *Apple, Inc. v. Superior Court of San Diego County*, 2018 Cal. App. LEXIS 69 (Cal. Ct. App. Jan. 29, 2018). Accordingly, the Court of Appeal issued a peremptory writ of mandate directing the trial court to vacate its order granting Plaintiffs' motion for class certification for reconsideration in light of the standards for the admission of expert testimony set forth in *Sargon Enters., Inc. v. Univ. of S. Cal*., 55 Cal.4th 747 (2012).

Plaintiffs claimed that certain models of Apple's iPhone were sold with a defective power button that began to work intermittently or failed entirely during the life of the phone. *Apple, Inc.*, 2018 Cal. App. LEXIS at *2-3. Plaintiffs further alleged that Apple knew of the power button defects but, nonetheless, continued selling the phones. Plaintiffs sought to pursue claims under the Consumer Legal Remedies Act, the Song-Beverly Consumer Warranty Act, the Magnuson-Moss Warranty Act, the Unfair Competition Law and for breach of express and implied warranty on behalf of a class of California residents. *Id*. at *3-4. Plaintiffs moved for class certification asserting that they could prove damages on a classwide basis on several theories: cost of repair, diminution of value, and restitution. In response, Apple argued that individual issues predominated because many customers received free repairs, received replacement phones, were offered such repairs, or had phones fail for unrelated reasons. *Id*. at *5-6. The trial court was skeptical that Plaintiffs could show damages on a classwide basis and allowed plaintiffs to file supplemental briefing to address the concerns. *Id*. at *8.

After extensive briefing and multiple hearings, the trial court certified the class. The trial judge opined that *Sargon* did not apply on a motion for class certification, reasoning that it would "turn class cert[ification] motions into these massive hearings." *Id*. at *11. The trial court further held that Apple's criticisms of the expert methodologies raised issues common to the class and were issues for trial. *Id*. at *20. Apple challenged the certification order by petition for writ of mandate.

The Court of Appeal recognized that certification orders are within the discretion of the trial court and generally entitled to great deference on appeal. *Id*. at *24. However, the Court of Appeal confirmed

that a trial court must only consider admissible evidence at class certification. *Id*. While class certification is "merely a procedural device . . . it has profound consequences for the trial court's management of the litigation and the rights of the parties." *Id*. at *29 ("The corrosive effects of improper expert opinion testimony may be felt with substantial force at class certification, just as at summary judgment or at trial."). The Court of Appeal noted that federal courts are in accord and apply the analogous standard under *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) to expert opinion submitted in connection with motions for class certification. *Id.* at *29.

The Court of Appeal noted that if the trial court had applied *Sargon*, "there is a reasonable chance it would have excluded [the expert] declarations and found plaintiffs' showing [of class-wide damages] to be lacking." *Id*. at *34. Because the trial court analysis "does not follow *Sargon*, which expressly requires trial courts to consider the materials and methodologies of proposed expert opinion evidence," the Court of Appeal issued the writ of mandate directing the court to vacate its order certifying the class. *Id*. at *42.

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