

The Dentons logo is a white arrow pointing to the right, containing the word "DENTONS" in a bold, purple, sans-serif font.

**DENTONS**

# Hocus Pocus: Making Class Actions Disappear

November 19, 2025

Presented to ACC Southern California  
at the Magic Castle



# Speakers



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# Agenda

- Demand Letters
- Early Strategy and Motions
- Discovery Toolbox
- Settlements
- Trial
- What's Next?





The background features a dark, smoky texture with blue smoke on the left and red smoke on the right. A large, solid purple arrow shape points from the left towards the right, containing the text.

# **Demand Letters – To Respond or Not to Respond?**

**Poll: When you receive a class action demand letter, do you respond or ignore it and wait to see if you get sued?**



# Demand Letters

- Considerations for whether to respond:
  - Plaintiff's law firm
  - Type of claim
  - Amount potentially at issue
  - Contract provisions





# **Arbitration Agreements and Class Waivers**

# Class Waivers

- “[A]ny waiver by a consumer” of this right “is contrary to public policy and shall be unenforceable and void.” Cal. Civ. Code § 1751 (CLRA).
- The FAA preempts the CLRA anti-waiver provision because the latter “stands as an obstacle to the accomplishment and execution of the full purposes and objective of the FAA,” which is to enforce arbitration agreements according to their terms.



# **Class Waivers and Arbitration Provisions**

- Include class action waivers with arbitration agreements.
  - Specifically call out the FAA in the agreement.
  - Incorporate arbitration rules that do not provide for class actions.
- 
- What about mass arbitrations?
  - Individual appraisal provisions?

# Enforceability of Website Agreements

Browsewrap	Sign-in Wrap	Clickwrap	Scrollwrap
Puts a website's terms of use are generally posted on the website via a hyperlink at the bottom of the screen	The user both accepts the terms of use and performs a separate function, such as signing into an account or completing a purchase.	Requires website users to click on an “I agree” box after being presented with a list of terms of use	User is required to scroll through the terms before clicking on an “I agree” box or button

# Arbitration Agreements in Employment Contracts

- Must select California law/forum unless employee is individually represented by counsel (Cal. Labor Code 925)
- Require arbitration of the employee's individual PAGA claim; acknowledge that non-individual PAGA claims may proceed in court or require arbitration of those claims with a tailored severability clause (*Viking River/Adolph*)
- Delegate arbitrability to the arbitrator
- Neutral arbitrator; adequate discovery; written, reasoned award; all statutory remedies available; employer pays arbitration costs unique to arbitration; identify and provide access to JAMS/AAA rules (*Armendariz*)
- Provide an opt-out procedure (optional, but recommended)
- Pay arbitration fees within 30 days
- Separate agreement or part of an employment contract (not in a handbook)

# FRCP Rule 23(a)

(a) PREREQUISITES. One or more members of a class may sue or be sued as representative parties on behalf of all members only if:

- (1) the class is so numerous that joinder of all members is impracticable;
- (2) there are questions of law or fact common to the class;
- (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
- (4) the representative parties will fairly and adequately protect the interests of the class.

# **Private Attorneys General Act of 2004 (PAGA)**

- Not a class action, so class action requirements do not apply
- Pre-suit administrative exhaustion requirement
- Allows for recovery of civil penalties—no individual damages
- Barriers to removal
- Reformed effective June 19, 2024



# Early Motions

# Motions to Dismiss - Considerations

- Benefits
    - Not an easy target
    - Revealing chinks in the armor.
    - Plaintiff's counsel needs to invest in the case.
  - Drawbacks
    - Need to accept facts as pled
    - Plaintiff can perfect their pleading
    - Discovery can continue anyway
- *What about motions to strike class allegations?*



**Discovery**

# Discovery Asymmetry

- Defendant:
  - Company records, ESI
  - Depositions of company personnel
  - Merits vs class discovery
  - Expert witnesses
- Plaintiff:
  - Few documents
  - Deposition of named plaintiff
  - Investigation

**Bifurcation: informal or formal?**

# Adequacy of the Named Plaintiff

- Axes to grind
- Dishonesty
- Prior individual settlements
- Participation in many identical lawsuits
- Injury and standing





# Smoke and Mirrors - I've Filed "About Five" Lawsuits



Q How many lawsuits have you filed?

A I don't recall.

Q Give me your best estimate, please.

A About five.

# I've Filed "About Five" Lawsuits



No.	Filed On	Case Name	Class Action?	Dismissal Date
1	07/20/2022	Valenzuela v. Massage Envy Franchising	Class Action	09/06/2022
2	07/22/2022	Valenzuela v. Michael K		
3	07/26/2022	Valenzuela v. Nationwid		
4	07/27/2022	Valenzuela v. Under Arr		
5	08/01/2022	Valenzuela v. M.A.C. Co		
6	08/03/2022	Valenzuela v. BJ's Whole		
7	08/03/2022	Valenzuela v. The Kroge		
8	08/12/2022	Valenzuela v. Kaspersky		
9	09/06/2022	Valenzuela v. Aflac, Inc.		
10	09/06/2022	Valenzuela v. AIG Direct		
11	09/09/2022	Licea and Valenzuela v.		
12	10/11/2022	Valenzuela v. Papa Mur		
13	10/19/2022	Valenzuela v. Carvana, I		
14	10/19/2022	Valenzuela v. CNO Serv		
15	10/19/2022	Valenzuela v. Pear Spor		
16	10/19/2022	Valenzuela v. West Mar		
17	11/18/2022	Valenzuela v. VF Outdor		
18	11/23/2022	Valenzuela v. Dermacar		
19	11/23/2022	Valenzuela v. Hims & H		
20	11/23/2022	Valenzuela v. Pierre Fab		
21	12/01/2022	Valenzuela v. RugsUSA I		
22	12/20/2022	Valenzuela v. Engage3, I		
23	12/21/2022	Valenzuela v. Keurig Gr		
24	12/28/2022	Valenzuela v. Bootbarn		

No.	Filed On	Case Name	Class Action?	Dismissal Date
25	01/17/2023	Valenzuela v. Farfetch.com US, LLC	Single Plaintiff	10/20/2023
26	01/20/2023	Valenzuela v. Givenchy Corp.	Single Plaintiff	07/19/2023
27	02/09/2023	Valenzuela v. Bedding Pros LLC	Single Plaintiff	
28	02/09/2023	Valenzuela v. Fathead LLC	Single Plaintiff	05/03/2023
29	03/02/2023	Valenzuela v. Build-A-Bear Workshop, Inc	Class Action	10/13/2023
30	03/06/2023	Valenzuela v. Amica Mut. Ins. Co.	Single Plaintiff	09/21/2023
31	03/29/2023	Valenzuela v. C.C. Filson Co.	Class Action	05/10/2023
32	04/05/2023	Valenzuela v. Loews Hotels, LLC	Single Plaintiff	05/03/2023
33	04/05/2023	Valenzuela v. Noble House Hotels & Resc	Single Plaintiff	06/22/2023
34	04/05/2023	Valenzuela v. SIA Int'l Trading Ltd.	Class Action	
35	04/21/2023	Valenzuela v. Boxcom, Inc.	Class Action	08/08/2023
36	05/09/2023	Valenzuela v. As Beauty LLC	Class Action	10/17/2023

No.	Filed On	Case Name	Class Action?	Dismissal Date
56	07/11/2023	Valenzuela v. Stonex Grp. Inc.	Single Plaintiff	
57	07/12/2023	Valenzuela v. Ensinger, Inc.	Single Plaintiff	
58	07/14/2023	Valenzuela v. Lamar Media Corp.	Single Plaintiff	
59	07/27/2023	Valenzuela v. Air Hydro Power LLC	Single Plaintiff	
60	07/27/2023	Valenzuela v. Jivox Corp.	Single Plaintiff	
61	08/14/2023	Valenzuela v. Aerospike, Inc.	Single Plaintiff	
62	10/03/2023	Valenzuela v. Direct Digital, LLC	Single Plaintiff	
63	10/03/2023	Valenzuela v. Healthy Directions, LLC	Single Plaintiff	
64	10/03/2023	Valenzuela v. Nuts.com, Inc.	Single Plaintiff	
65	10/04/2023	Valenzuela v. Medtronic, Inc.	Single Plaintiff	

55	07/10/2023	Valenzuela v. Asteefflash USA Corp.	Single Plaintiff	
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# I don't have a Car or Insurance



Q Okay. And what was the reason for going onto Nationwide's website?

A I was searching for insurance.

Q Do you know what type of insurance Nationwide sells?

A Different types.

Q Do you know what types?

A Health and car insurance.

Q Who do you currently keep your car insurance with?

A I don't have one at this time.

# Individual Settlements





# Class Settlements





# Class Settlements – Value to the Class

- *Lowery v. Rhapsody* (9<sup>th</sup> Cir. 2023)
- *In re Wawa, Inc. Data Sec. Litig.*, 85 F.4th 712 (3d Cir. 2023)




*Giraffe mediator breaks ice with lame joke.*

**Trial**



# An Insurance Firm Took a \$500M Class Action to Trial ... and Won

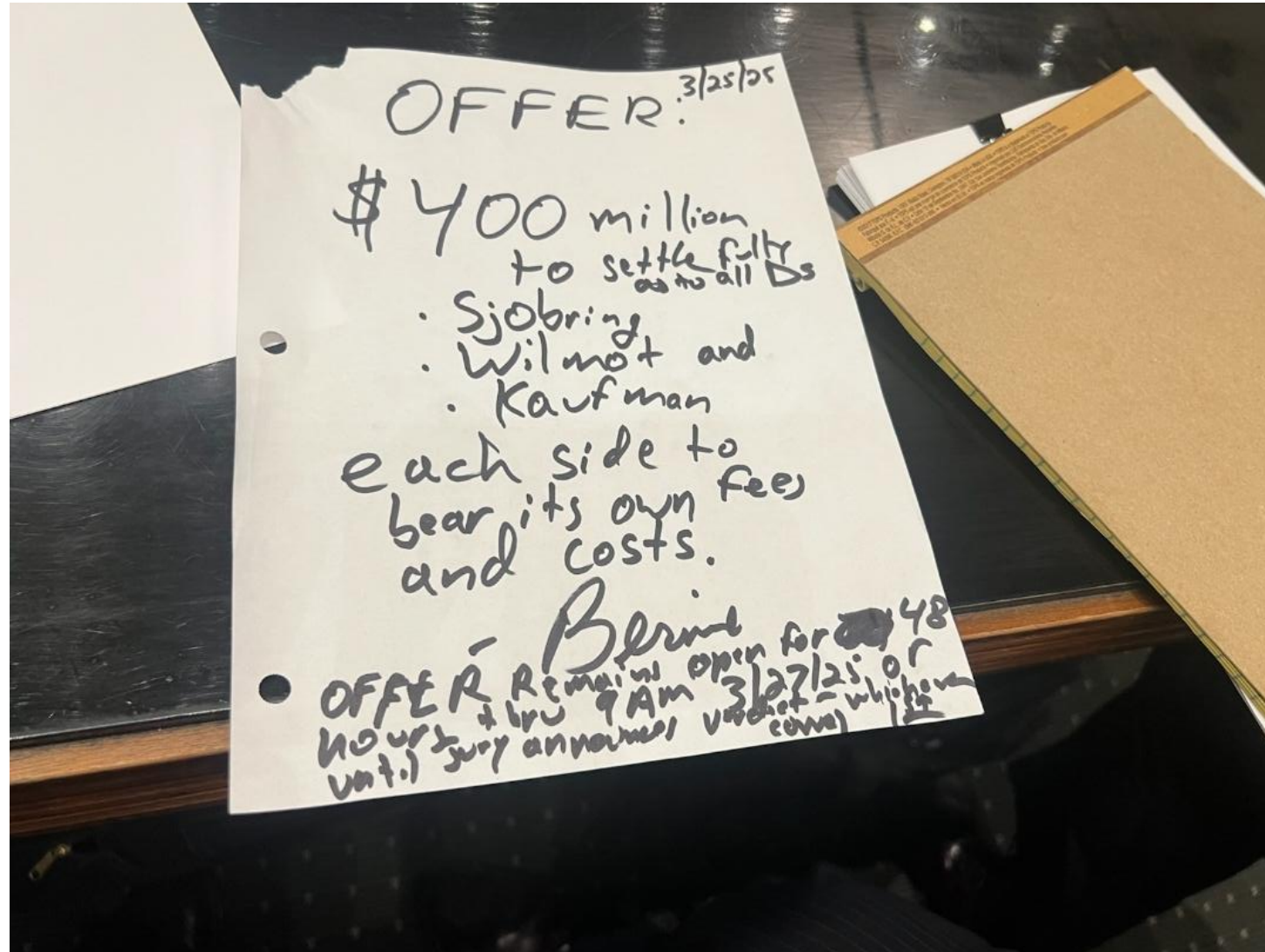
On March 26, a Los Angeles Superior Court jury sided with First American Title Insurance Co. in a class-action trial over rates on its loan policies.

4 minute read | March 31, 2025 at 09:53 AM By  **Amanda Bronstad**

## What You Need to Know

- On March 26, after one month of trial and 90 minutes of deliberations, jurors handed a defense verdict to First American Title Insurance Co., represented by Dentons partner Joel Siegel.
- Plaintiff's attorney Richard Friedman said it was a 'really complicated case in terms of what the jury was asked to do.'
- Most class actions settle, but an increasing number are going to trial.

## Compare: Plaintiff's Settlement Offer Hours before Verdict





# Compare: Verdict

16. Should the class receive p  
damages you have found against First  
YES \_\_\_\_\_ NO \_\_\_\_\_

If your answer to Question 5 is "Yes," then answer Question 6. If your answer to Question 5 is "No," then stop here, answer no further questions and have the presiding juror sign and date the Verdict Form.

17. State the amount of damages you have found against First American. If your answer to Question 5 is "No," then stop here, answer no further questions and have the presiding juror sign and date the Verdict Form.

18. Did First American oppress, coerce, or threaten you? YES \_\_\_\_\_

Stop here and answer Question 15. Subtraction Question 13. What is the amount of damages you have found against First American? Go to Question 16.

If your answer to Question 9 is "Yes," then answer Question 10. If your answer to Question 9 is "No," then stop here, answer no further questions and have the presiding juror sign and date the Verdict Form.

10. Was the class representation a substitution for the representation of First American? YES \_\_\_\_\_ NO \_\_\_\_\_

If you answered "Yes" to Question 10, then stop here, answer no further questions and have the presiding juror sign and date the Verdict Form.

11. What is the lender's policy? If your answer to Question 10 is "Yes," then stop here, answer no further questions and have the presiding juror sign and date the Verdict Form.

12. What is the amount of damages you have found against First American? Go to Question 13.

13. Subtraction Question 13. What is the amount of damages you have found against First American? Go to Question 16.

If your answer to Question 6 is "No," then stop here, answer no further questions and have the presiding juror sign and date the Verdict Form.

7. Did First American make a false representation of fact to the class members? YES \_\_\_\_\_ NO \_\_\_\_\_

If your answer to Question 7 is "Yes," then stop here, answer no further questions and have the presiding juror sign and date the Verdict Form.

8. Did First American rely on the representation? YES \_\_\_\_\_ NO \_\_\_\_\_

If your answer to Question 8 is "No," then stop here, answer no further questions and have the presiding juror sign and date the Verdict Form.

9. Did the members of the class make a false representation? YES \_\_\_\_\_ NO \_\_\_\_\_

If your answer to Question 3 is "Yes," then answer Question 4. If your answer to Question 3 is "No," then stop here, answer no further questions and have the presiding juror sign and date the Verdict Form.

4. Did the class make a false representation? YES \_\_\_\_\_ NO \_\_\_\_\_

If your answer to Question 4 is "Yes," then stop here, answer no further questions and have the presiding juror sign and date the Verdict Form.

5. Was the class representation a substitution for the representation of First American? YES \_\_\_\_\_ NO \_\_\_\_\_

If your answer to Question 5 is "Yes," then stop here, answer no further questions and have the presiding juror sign and date the Verdict Form.

6. Did First American make a false representation of fact to the class members? YES \_\_\_\_\_ NO \_\_\_\_\_

## VERDICT FORM

We the jury answer the questions submitted to us as follows:

1. Did First American make a false representation of fact to the class members?

YES \_\_\_\_\_ NO X

If your answer to Question 1 is "Yes," then answer Question 2. If your answer to Question 1 is "No," then stop here, answer no further questions and have the presiding juror sign and date the Verdict Form.

Signed: \_\_\_\_\_  
Presiding Juror

Dated: 3/26/2025

FILED  
Superior Court of California  
County of Los Angeles

MAR 26 2025

David W. Slayton, Executive Officer/Clerk of Court

By: A. Morales, Deputy



A crystal ball sits on a dark wooden stand, resting on a purple velvet surface. The interior of the crystal ball is filled with white, wispy smoke. The text "What's next?" is written in white, bold, sans-serif font across the center of the smoke.

**What's next?**

# Thank you