

# Spring 2016 Consumer Class Actions

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## SYLLABUS

L241.3

CONSUMER CLASS ACTIONS

BERKELEY LAW SPRING 2016

Mondays 3:35-5:25p.m.

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**NOTICE: Review session has been moved to Friday April 29th at 3:35 pm – 5:25 pm in Room 134 (Please note room change)**

Additional Course

Documents:

- *In re: Volkswagen “Clean Diesel” MDL*, Hearing Transcript, April 21, 2016
- Federal Rule of Civil Procedure 23 Advisory Notes (includes Rule text)
- Text of Federal Rule of Civil Procedure 23
- Advisory Committee on Civil Rules, 2016 Report
- Opinion, *Gutierrez v. Wells Fargo*, 704 F.3d 712, September 17, 2015
- Opinion, *Gutierrez v. Wells Fargo*, 589 Fed.Appx. 824, October 29, 2014

- *In re Volkswagen “Clean Diesel” MDL*, March 24, 2016 Further Case Management Conference Transcript
- *In re: Volkswagen “Clean Diesel” MDL*, Consolidated Consumer Class Action Complaint
- *In re: Volkswagen “Clean Diesel” MDL*, Pretrial Order No. 13: Coordination Order
- *In re: Volkswagen “Clean Diesel” MDL*, Pretrial Order No. 12: Stipulated Protective Order
- *In re: Volkswagen “Clean Diesel” MDL*, Pretrial Order No. 11: Protocol for Common Benefit Work and Expenses
- *In re: Volkswagen “Clean Diesel” MDL*, Pretrial Order No. 10: Order Regarding Motions to Remand
- *In re: Volkswagen “Clean Diesel” MDL*, Pretrial Order No. 9: Discovery Schedule
- *In re: Volkswagen “Clean Diesel” MDL*, February 25, 2016 Transcript of Proceedings
- *Stace Cheverez v. Plains All American Pipeline, LP*, Case 2:15-cv-04113-PSG-JEM, Order GRANTING Plaintiffs’ Motion for an Order Limiting Defendants’ Communications with Plaintiffs and Class Members and for Other Relief Pursuant to Federal Rule of Civil Procedure 23(d)
- AAJ Class Action Litigation Group National Law Student Writing Competition

CLASS	TOPIC	ASSIGNMENT
January 11, 2016	Introduction to Consumer Class actions: Limits and Opportunities	For background, peruse <i>Wal-Mart Stores v. Dukes</i> , 131 S. Ct. 2541 (2011); <i>Amchem Products, Inc. v. Windsor</i> , 521 U.S. 591 (1997); <i>Phillips Petroleum Co. v. Shutts</i> , 472 U.S. 797 (1985); <i>Comcast</i>

Under Contemporary  
Supreme Court  
Jurisprudence

*Corp. v. Behrend*, 133 S. Ct. 1426 (2013); *American Express v. Italian Colors Restaurant*, 133 S. Ct. 2304 (2013)

January 25, 2016	Our Unfolding Case Study: In Re Volkswagen “Clean Diesel” Marketing, Sales Practice, And Products Labeling Litigation, MDL No. 2672 (N.D. Cal.)	Review pretrial orders at <a href="http://cand.uscourts.gov/crb/vwmdl">cand.uscourts.gov/crb/vwmdl</a> ; Transcript of 12/22/15 Volkswagen Initial Status Conference; Text of Fed. R. Civ. P. 23; <i>The Recorder</i> , January 25, 2016, "Cabraser Picked to Lead Plaintiffs in VW Litigation; <i>The Daily Journal</i> , "Cabraser Hailed as Solid Choice to Lead VW Case" [Note: online & print article titles differ]
February 1, 2016	The Federalization of Consumer Law: The Class Action Fairness Act ("CAFA")	<i>Mazza v. American Honda Motor Co.</i> , 666 F.3d 581 (9th Cir. 2012); <i>Bruno v. Eckhart Corp.</i> , 280 F.R.D. 540 (C.D. Cal. 2012); <i>Vasquez v. Superior Court</i> , 4 Cal. 3d 800 (1971)
February 8, 2016	Federal and State Sources of "Consumer Law" Part I: Civil Rico	Skim "Third Amended Consolidated Class Action Complaint" at <a href="http://gmignitionmdl.com/">http://gmignitionmdl.com/</a> ; <i>Klay v. Humana Inc.</i> , 382 F. 3d 1241 (11th 2004)
February 22, 2016	Federal State Sources of "Consumer Law" Part II: State Consumer Statues and Warranty Law	<i>In re Whirlpool Corp. Front-Loading Washer Products</i> , 678 F. 3d 409 (6th Cir. 2012), 722 F. 3d 838 (6th Cir. 2013); <i>Suchanek v. Sturm Foods</i> , 764 F. 3d 750 (7th Cir. 2014)
February 29, 2016	Choice of Law Challenges and Complications	<i>In re Mercedes-Benz Tele Aid Contract Litigation</i> , 257 F.R.D. 46 (D.N.J. 2009); <i>FitBit</i> consumer class action complaint
March 7, 2016	Current Controversies in Achieving and Resisting Class Certification Part I: "Predominance"	<i>Butler v. Sears, Roebuck &amp; Co.</i> , 702 F. 3d 359 (7th Cir. 2012) and 727 F. 3d 796 (7th Cir. 2013); <i>Pella v. Saltzman</i> , 606 F. 3d 391 (7th Cir. 2010)

March 14, 2016	Current Controversies in Achieving and Resisting Class Certification Part II: “Ascertainability”	<i>Carrera v. Bayer Corp.</i> , 727 F. 3d 300 (3rd Cir. 2013); <i>Byrd v. Aaron’s Inc.</i> , 784 F. 3d 154 (3rd Cir. 2015); <i>Mullin v. Direct Digital, LLC</i> , 795 F. 3d 654 (7th Cir. 2015)
March 28, 2016	Test Cases and Bellwether Trials	ADR Alternatives Chart; Hon. Eldon E. Fallon, “ <i>Bellwether Trials in Multidistrict Litigation</i> ” 82 Tul. L. Rev. 2323 (2008); <i>In re Genetically Modified Rice Litigation</i> (MDL 1811) 2009 U.S. Dist. LEXIS 114731 (E.D. Missouri 2009); <i>GM Ignition</i> , Order No. 25
April 4, 2016	Consumer Class Action Trials	Opening and Closing Statements; Jury Instructions and Verdict Forms from Whirlpool Ohio statewide class action trial (2014); <i>In re Pharm. Indus. Average Wholesale Price Litigation</i> (MDL No. 1456), 252 F.R.D. 83 (D. Mass. 2008); NEW: <i>Tyson Foods v. Bouaphakeo</i> , _U.S._ (March 22, 2016)
April 11, 2016	Consumer Class Settlements Procedures and Pitfalls Part I	Skim <a href="https://www.toyotaelssettlement.com/">https://www.toyotaelssettlement.com/</a> ; <i>Redman v. Radioshack Corp.</i> , 768 F. 3d 622 (7th Cir. 2014)
April 18, 2016	Consumer Class Settlements Procedures and Pitfalls Part II: Objectors, Fees and More CAFA Complications	<i>Eubank v. Pella Corp.</i> , 753 F.3d 718 (7th Cir. 2014); <i>In re Southwest Airlines Voucher Litigation</i> , 799 F. 3d 701 (7th Cir. 2015)
April 25, 2016	TBA, Review	
April 27, 2016	Review Session	Wednesday 4/27 in Room 145 from 3:35 pm to 5:25 pm

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