

A woman and her wife believed that a company providing credit scores intentionally lowered their scores because they are a same-sex couple. The couple's lawyer discovered 10 other individuals who had their credit scores lowered by the same company. These individuals claim that their scores were lowered based on their race.

The lawyer filed suit in federal court on behalf of the couple and the 10 other individuals against the company for violating a federal statute. One provision of the statute forbids racial discrimination and another provision prohibits sexual-orientation discrimination. The couple are the only plaintiffs named in the complaint. The lawyer moved to certify the case as a class action.

Which of the following would be an invalid argument for the company to challenge class action certification?

- A. The class does not share common questions of law or fact.
- B. The class is not numerous.
- C. The company does not discriminate against any class when calculating credit scores.
- D. The named couple's claim is not typical of the class.

Explanation:

Certification requirements for class action

(FRCP 23)

Prerequisites

- Numerosity: class is so numerous that joinder of all members is impracticable
- Commonality: class shares common questions of law or fact
- Typicality: claims or defenses of named parties are typical of class AND
- Adequacy: named parties will fairly & adequately protect class's interests

Case suitable for class action

- Separate actions would create risk of (1) inconsistent decisions regarding parties or (2) impairment of absent class members' interests
- Injunctive or declaratory relief is appropriate because opposing party's actions generally applied to whole class OR
- Common questions of law or fact predominate over individual questions & class action is superior method to resolve dispute

FRCP = Federal Rule of Civil Procedure

A **class action** is a suit filed by one or more named plaintiffs as class representatives on behalf of similarly harmed unnamed plaintiffs.* All actions filed by a purported class representative **require certification** by the court at the earliest practical time. Plaintiffs seeking class action certification must establish—and the defendant can challenge certification on—all of the following **prerequisites**:

- **Numerosity** – the class is so numerous that joining all the members as named plaintiffs is impracticable (usually met when there are over 40 members) **(Choice B)**
- **Commonality** – the class shares common questions of law or fact **(Choice A)**
- **Typicality** – the named plaintiffs' claims are typical of the claims of the class **(Choice D)**
- **Adequacy** – the named plaintiffs will fairly and adequately protect the interests of the class

However, the argument that the company does not discriminate against any class when calculating credit scores goes toward the merits of the case—not class action

certification. Since the court will *not* consider the merits of the underlying action when determining whether to certify a class, this is an invalid argument to challenge certification.

*A class action may also be asserted against named defendants on behalf of similarly situated unnamed defendants, but this procedure is extremely rare.

Educational objective:

A party seeking class action certification must establish four prerequisites: numerosity, commonality, typicality, and adequacy. A court deciding whether to certify a class action will not consider the merits of the underlying case.

References

- Fed. R. Civ. P. 23(a) (prerequisites for class action certification).
- 32A Am. Jur. 2d Federal Courts § 1476 (2019) (explaining that a court will not examine a case's merits when deciding class action certification).

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