

Findings of the Study of California Class Action Litigation, 2000-2006

FIRST INTERIM REPORT
MARCH 2009



ADMINISTRATIVE OFFICE
OF THE COURTS

OFFICE OF COURT RESEARCH

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HILARY HEHMAN



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Judicial Council of California/Administrative Office of the Courts
Executive Office Programs Division/Office of Court Research
455 Golden Gate Avenue
San Francisco, California 94102-3688

Judicial Council of California
Administrative Office of the Courts (AOC)

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Assistant Director, AOC Executive Office Programs Division

Dag MacLeod
Manager, Office of Court Research

Barry Lynch
Supervisor, Office of Court Research

Ron Pi
Supervisor, Office of Court Research

Author

Hilary Hehman
Senior Research Analyst, Office of Court Research

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Introduction

To understand the impact of class action filings on the court system and litigants in this important area of civil law, the California Administrative Office of the Court's (AOC) Office of Court Research (OCR) initiated this Study of California Class Action Litigation in collaboration with the AOC's Office of the General Counsel and the University of California Hastings College of the Law (Hastings). This project was designed to establish baseline data on the prevalence and nature of class action lawsuits filed in California from 2000 to 2006.

To collect the type of detailed data not normally available through case-management systems and overcome the incompatibility of these systems across courts, the project relied primarily on case-file review of a large, random sample of class action cases across the state. In consultation with researchers from the Federal Judicial Center (FJC) and Hastings Professor Richard Marcus, the Office of Court Research developed a standardized data-collection instrument to capture essential data on class action cases. Student interns from Hastings used the data-collection instrument to review case files, collect relevant data, and report this information back to the OCR. Between June 2006 and September 2007, student interns conducted case-file reviews of over 1,500 class action cases. The OCR transferred, cleaned, and organized the case information into a searchable database for analysis and reporting.¹

Specific information collected on both open and closed cases included

- The number of class action cases filed;
- The types of cases and trends in filing over time;
- The size of the class and class definition;
- The basis of the claims alleged;
- The internal case events, including motions for certification;
- The duration of these cases;
- The type disposition;
- The outcome data, including verdict and settlement information; and
- The fees awarded to attorneys.

Using this data, the Office of Court Research will release a series of reports focusing on different aspects of California class action litigation based on analyses of the case database. This first installment lays out foundational information about class action filings, dispositions, case types, and duration. The second and third reports will focus on class certification analyses and examination of case outcome data, respectively. The Office of Court research hopes to also produce a fourth report, in collaboration with researchers at the FJC, which will follow class-action cases that are transferred to Federal court.

¹ The full study methodology will be set forth in the final, comprehensive report.

The Nature of a Class Action Analysis

Before beginning an examination of the study data, it is useful to discuss the character of class action litigation in the context of a traditional statistical analysis. Class action cases are a small subset of unlimited civil litigation and do not lend themselves to a typical empirical legal analysis of trends, patterns, and long-term behavior, for a number of reasons.

First, attorneys use class action lawsuits as a litigation tool on a relatively small scale as compared to other civil litigation. This fosters rapid change and evolution within the field. Even a small change in absolute numbers regarding class action lawsuits translates into a large variation in overall percentages in this area and produces a volatility that other types of litigation do not demonstrate. Class action data do not confirm trends built and maintained over multiple years as in larger-scale filing types, but rather often illustrate immediate reactions to events within the practitioner community or court jurisdiction.

Second, the “players” in the class action sphere are a somewhat exclusive group, and they have clear incentives to pursue the latest successful litigation tactics. Also, the field of class action practitioners is small and somewhat tight-knit, more so than in most other areas of practice, and the community is very active, with regularly read journals, news columns, and weblogs. Developments in the class action arena are publicized and discussed quickly among the specialists, and this cultivates rapid changes in response to the most recent case outcomes or litigation strategies. These considerations will often drive the data. News of a winning tactic often creates a demonstration effect where a singular occurrence—for example, a successful filing approach—leads to wide-spread use of a particular claim or case type.

Lastly, the trends and tendencies that do exist in class action data often exist on a local or micro level and do not stand out within a large dataset. Overall statewide data are the aggregate of these smaller, localized micro-trends, and it is necessary to consider the data almost on a case-by-case level to identify them. For instance, strong tendencies often develop as an offshoot of the local economy, as in the case of construction defect cases in Southern California where there was a housing construction boom or business torts filed by chemical purchasers in the San Francisco Bay Area, where there is a large biotechnology industry. These idiosyncrasies can easily be missed when analysis is taken to a higher, more comprehensive level. A statewide analysis of class action data somewhat dampens the significance of the information, as much of the most interesting class action behavior is obscured when viewed from that altitude.

In sum, extrinsic events and participant behavior reverberate greatly in this case area, and these factors undermine the development of more classic, long-term data patterns. Also, many of the data tendencies that do exist are at a granular level and, as such, they disappear when amassed into a statewide analysis. However, though a comprehensive class action database is not fully amenable to traditional trend analyses, it does contribute to a more rounded understanding of the overall system. It facilitates valuable cause-and-

effect scrutiny when evaluating occurrences that may have system-wide impact and points to pockets of data that are ripe for more targeted study.

Filings Analysis

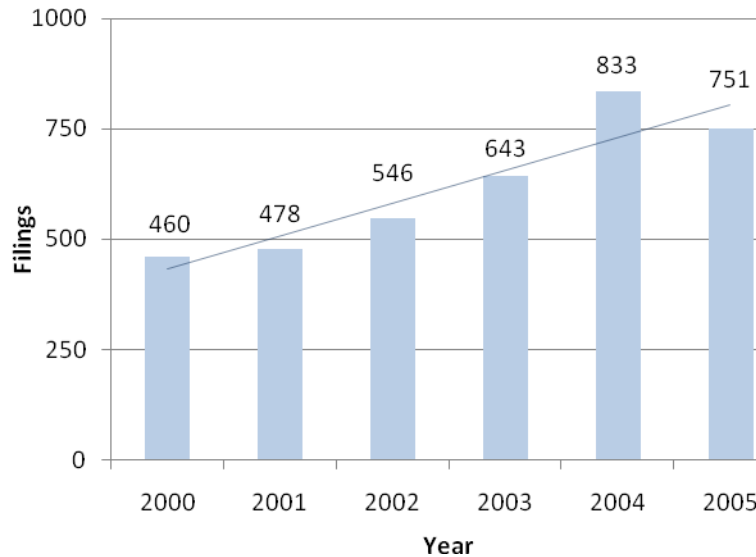


Figure 1. Total class action cases filed,² by year, as reported by the twelve courts in the study³

Study courts reported a total of 3,711 class action cases filed between 2000 and 2005. Filings steadily increased by 81% in the first five years of the study. However, the number of filings fell 9.8% between 2004 and 2005, the only decrease seen during the period. This decrease may be attributable to changes in standing requirements instituted by the passage of the Class Action Fairness Act in February of 2005.

CAFA broadened the scope of cases eligible for federal court and may have led to a decrease in state filings and an increase in original filings in the federal jurisdiction. (For further discussion of CAFA, see page 23, below.) However, the number of filings in 2004

² Missing data points were extrapolated by substituting the average yearly filings for the individual court. Before inclusion in the total filing figure, each court's reported total filings were dampened by the rate of false positive cases found in the individual court. The statewide average false positive rate was 22.2% of all cases identified as "class action" on the Civil Case Cover Sheet. This rate is high because often the "class action?" selection box on the cover sheet was marked in cases that simply were not class actions. In addition, the differences across case management systems led to variable accuracy in the initial search query. The highest false positive rate in a single court was 71% and the lowest was 6%. Figure 2, below, does not include filings for 2006 as the data from this year were incomplete and included only a half-year of information.

³ Study courts include the Superior Court of California, Counties of Alameda, Contra Costa, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Francisco, San Mateo, Santa Clara, Sonoma, and Ventura. These filing figures represent the *total number of class action filings* reported by the court. The case-file reviews were sampled from these filings. The twelve study courts account for 75.2% of all statewide unlimited civil filings.

was anomalous in its substantial increase over 2003. Filings increased by 29.5% between 2003 and 2004, as compared to the average 11.8% yearly increase seen in the three years prior. The decline in filings in 2005 may have been unrelated to CAFA if it represents normalization to the overall 6-year filing trend. It will be necessary to update the data for the ensuing years to determine if the filings decline continued after 2005.

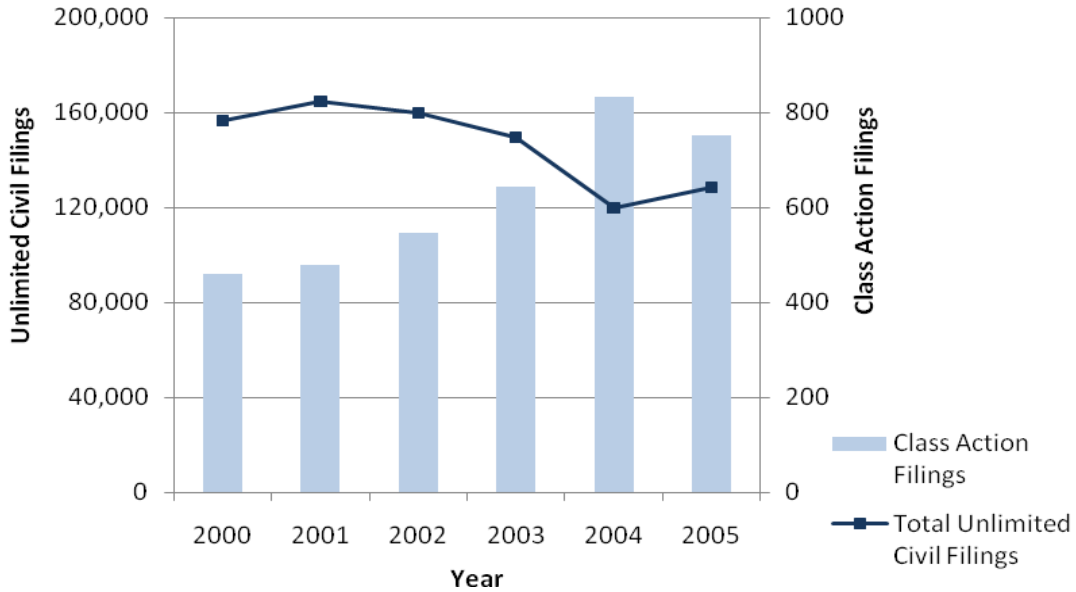


Figure 2. Total class action cases filed, by year, as reported by the twelve study courts versus total unlimited civil filings in those same courts

The number of class action cases filed from 2000 to 2005 increased in contrast to the total unlimited civil filings trend during the same period, which shows an overall decrease. Total unlimited civil filings decreased 17.8% between 2000 and 2005 in comparison to a 63.3% increase in class action filings.

It is important to note that class action cases represent less than one-half of one percent of all unlimited civil filings in the study courts during the study period. Very few class action cases are filed as compared to the entire unlimited civil category and, as previously discussed, discreet events can create an immediate filing effect in the class action segment. For example, a natural disaster may cause a significant increase in insurance-related class action activity without affecting overall unlimited civil filings. Similarly, a change in the law, as in the CAFA example cited above, may also have an effect on this litigation type that is not seen elsewhere. Both of these examples could create observed divergences from unlimited civil filings that are unique to the class action arena. Thus, filing trends in the overall unlimited civil category are not reliable predictors of class action behavior.

Case Type Analysis

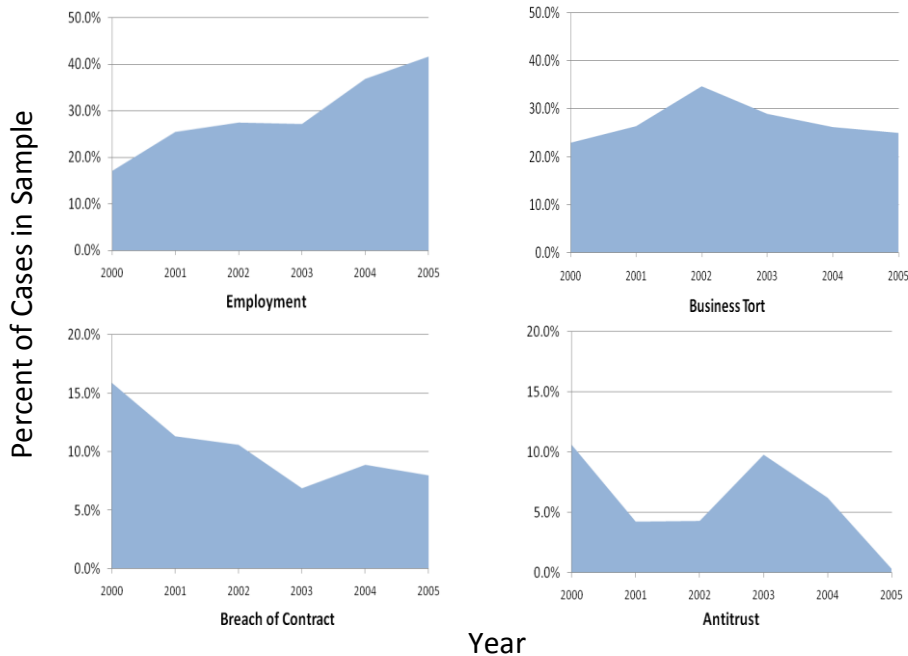


Figure 3. Major case types as a percent of all class action cases reviewed in the study sample, by year⁴

“Employment”⁵ and “Business Tort” cases are the most frequently filed case types in California, comprising more than half of all cases reviewed. “Employment” cases represented a yearly average of 29.3% of all class action cases. “Business Tort” cases represented a yearly average of 27.4% of filings during the same period. The employment category showed the most significant change since 2000, growing from 29 cases in 2000 to 120 cases in 2005, an overall increase of 313.8%. In comparison, filings of business tort cases steadily fell in California, starting in 2002. This case type dropped below employment for the first time in 2004, decreasing by 31.4% from a high of 105 business tort class actions filed in 2002 to 72 cases in 2005.

Other notable case types include “Breach of Contract” (“contract”) and “Antitrust.” The percentage of contract class action cases declined during the study period, dropping from 15.9% of yearly filings in 2000 to only 8.0% in 2005, with a six-year average representation of 10.3% of all cases filed. The reason for the decline in contract cases is unknown. Likewise, antitrust cases all but disappeared in 2005, dropping from a high of

⁴ In the study, 1,572 class action cases were reviewed, 47 of which were filed in 2006. Of the remaining 1,525 study cases filed between 2000 and 2005, 1,474 had an associated case type designation listed on the Civil Case Cover Sheet when filed. Figure 3 represents the four most frequently filed case types as a percentage of the total cases with a designation. Further case type analysis is available in Appendix A, Table A.1.

⁵ For purposes of this report, “Employment” cases are those filed under case type 15, “Other Employment,” on the Civil Case Cover Sheet. These include all employment cases except wrongful terminations.

10.6% of class actions filed in 2000 to only 0.3% in 2005, with a six-year average of 5.9%.

However, the antitrust case type is a useful example with which to illustrate the complexity of analyzing trends in the class action arena. The antitrust percentage is particularly susceptible to fluctuation driven by extrinsic events rather than adherence to an overall caseload trend, as in the steady rise of employment cases. The percentage of antitrust cases is often a product of many class action filings relating to the same transactional basis or occurrence. For instance, the increased rate of antitrust filings in 2000 is attributable to the California energy crisis, which began in May of 2000.⁶ Beginning at this time, consumers filed numerous class action suits citing violations of the California Cartwright Act,⁷ price-manipulation, and profiteering by energy companies and brokers.⁸ Many of these are proceeding collectively as the *Natural Gas Anti-trust Cases I, II, III and IV*, also known as the *Price-Indexing Cases*.⁹

Likewise, the secondary antitrust spike in 2003 is in large part due to multiple suits against the General Motors Corporation that were filed in quick succession. These suits against General Motors also allege Cartwright Act violations relating to the pricing of vehicles purchased in California. These antitrust filings proceeded in coordination as the *Automobile Antitrust Cases I and II*.¹⁰ Thus, the data show that actions taken by a singular corporation or industry can substantially affect filings in this area during any given year. Because of this, the antitrust area does not lend itself to a predictive trend analysis but is more useful when conducting a cause-and-effect examination in a historical context.

Lastly, the antitrust area exemplifies the need to consider the entirety of the class action data case before drawing conclusions about the overall system. In the case of antitrust, assessment of the filings in comparison to type of dispositions suggests that it may be unwise to utilize filings as a proxy by which to speculate about the overall congestion of this case area. Coordination and consolidation are fairly common in this case type, and a majority of the filings proceed in some collective fashion rather than each as a singular,

⁶ Bill Lockyer, *Attorney General's Energy White Paper: A Law Enforcement Perspective on the California Energy Crisis* (April 2004), at p. 16: "The beginnings of the California energy crisis became evident soon after May 22, 2000."

⁷ California Business and Professions Code sections 16720, 16726. The Cartwright Act is California's general antitrust law, prohibiting unreasonable restraints on trade.

⁸ Lockyer, at pp. 24–25: "The California Attorney General has filed a series of legal actions challenging, among other things, apparently fraudulent sales of power to the ISO, anticompetitive sales of power plants, and generators' failure to file actual rates, which effectively prevented FERC from exercising any real market oversight. Civil actions on behalf of large industrial users of energy, and class actions on behalf of consumers, have been filed against all of the major generators and traders involved in the crisis."

⁹ *Natural Gas Anti-trust Cases I, II, III and IV*, JCCP Nos. 4221, 4224, 4226, and 4228 (Superior Court of California, County of San Diego).

¹⁰ *Automobile Antitrust Cases I and II*, JCCP Nos. 4298 and 4303 (Superior Court of California, County of San Francisco).

autonomous class action.¹¹ Therefore, though antitrust is one of the eight most-frequently-filed case types, these cases are commonly condensed through procedures that promote efficiency, thereby reducing the docket impact of the original filings.

Primary Claim Base Analysis

As part of the case-file review, the data collection captured the claims listed in the block caption on the face of each class action complaint. These claim bases list any statutory violations and other foundations for suit. For purposes of the study, these violations were catalogued into primary, secondary, and tertiary claim bases, according to the order in which they were listed on the complaint. Most cases listed more than three bases for suit, but this study assumed that the claims cited are listed in order of importance and that the first three provided a reliable characterization of the nature of the case. These brief captions do not supply the exact transactional basis for the class action suit; however, they do offer a means of analyzing the general statutory base or legal theory at play in the case. The claim bases were also used as a cross-check to confirm the accuracy of the case type that was selected on the Civil Case Cover Sheet when the case was filed.

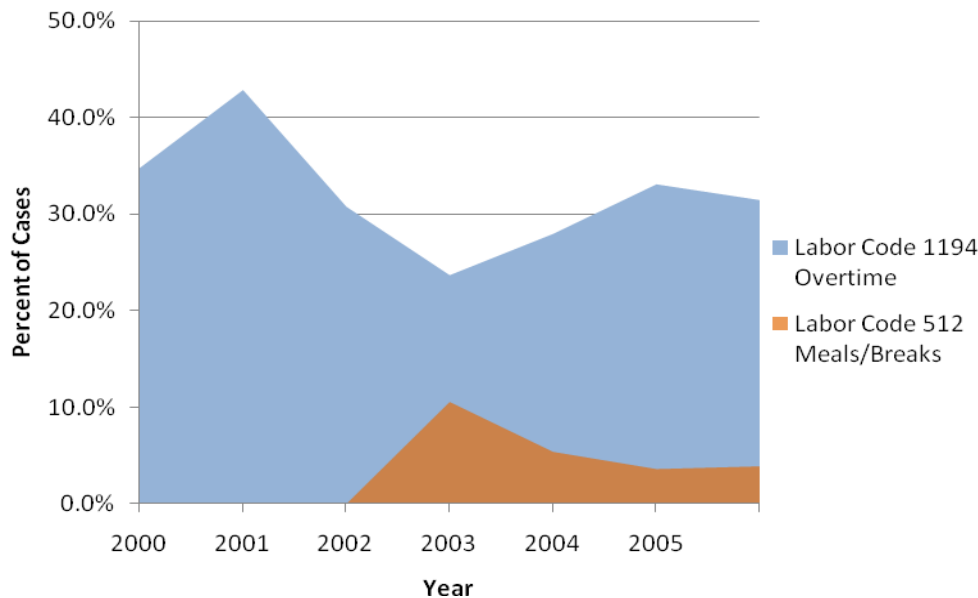


Figure 4. Primary claim base cited in cases filed as “Employment”¹²

Primary claim base analysis for employment cases shows that over half of these cases cited violations of the California Labor Code relating to overtime pay and general wage violations. On average, 31.5% of the cases referred to violations of the California Labor Code Section 1194 and 20.7% referred to a generalized wage violation. The claim base

¹¹ Of the 75 closed antitrust cases in the sample, 14 were consolidated (18.7%) and 33 were coordinated (44.0%). Antitrust cases represent 28.7% of all coordinations and consolidations in the study sample.

¹² Of 464 employment cases, 459 had primary claim bases available for analysis (98.9%). A further primary claim base analysis for employment cases can be found in Appendix B, Table B.1.

analysis also shows that usage of California Labor Code Section 512 relating to meal and rest breaks greatly increased in 2003. In 2003 10.5% of employment class action cited this code section as a primary claim base in comparison to 0% in 2002.

Although an amendment to Section 512 in 2000 created penalties if employers failed to provide meal and break periods under certain circumstances, Section 512 does not appear to have been a popular basis for suit until 2003. Between 2002 and 2003 numerous, widely-publicized suits claiming meal, break, and overtime violations were filed against Wal-Mart Stores, Inc. in many states, as well as in federal court. The success of these lawsuits in other jurisdictions may have contributed to the increased popularity of the Section 512 claim base in California in and after 2003.

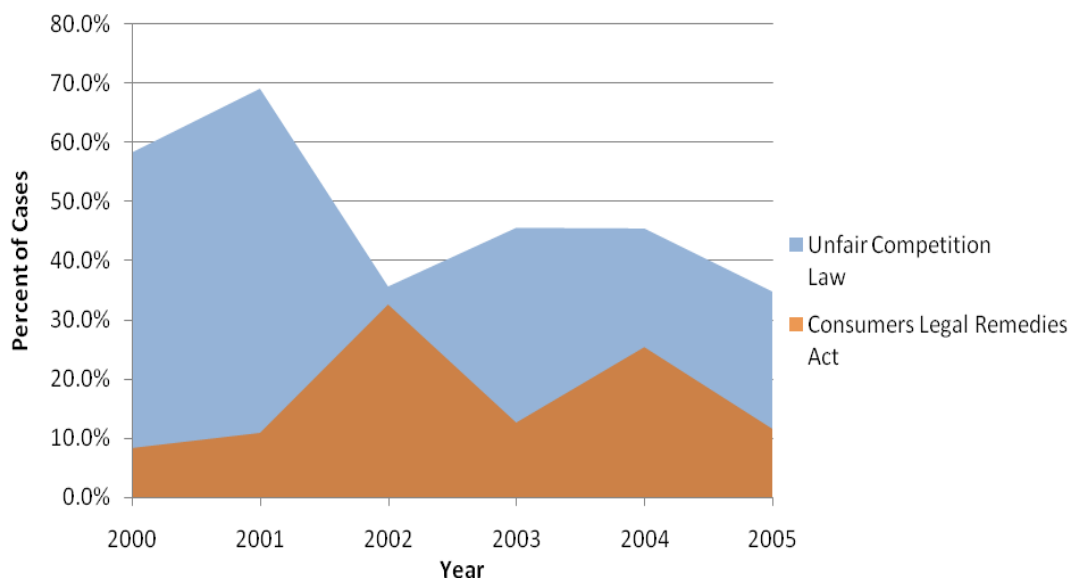


Figure 5. Primary claim base cited in cases filed as “Business Tort”¹³

The California Business and Professions Code section 17200 et seq., also known as the Unfair Competition Law (UCL), was the most commonly cited claim base in class action cases filed as “Business Tort.” The UCL was enacted to protect citizens against “unlawful,” “unfair,” and “fraudulent” business activities, including false advertising. As originally written, the UCL allowed for “private attorney general” actions, as the law conferred the right to sue on behalf of the “general public” without requiring that the plaintiff demonstrate actual harm or seek formal class certification for the representative action. The UCL became an extremely popular basis for suit because the standing and class action procedural requirements were almost nonexistent. On average, the UCL was

¹³ Several different claim base designations refer to the California Business and Professions Code section 17200 et seq., including “Section 17200,” “Unfair Business Practices,” “False Advertising,” and “Unfair Competition Law.” These are all designated “Unfair Competition Law” (UCL) for purposes of this report. Of 422 business tort cases, 395 had primary claim bases available for analysis (93.6%). A further primary claim base analysis for business tort cases can be found in Appendix B, Table B.2.

used in 45.6% of all business tort cases filed in the study sample. This percentage reached a peak in 2001, when 69.1% of all business torts filed cited the UCL as the primary claim base of the suit.

It is also interesting to evaluate UCL usage in comparison to the use of the Consumers Legal Remedies Act¹⁴ (CLRA) in the context of California Proposition 64.¹⁵ Proposition 64, which took effect in November of 2004, amended the UCL to include traditional standing requirements as well as imposing mandatory class certification in these representative actions. Post-Proposition 64, a plaintiff bringing a representative UCL claim must show injury-in-fact as well as meeting the procedural requirements of a class action lawsuit.

It was conceivable that the new requirements would lead to decreased usage of the UCL as a primary claim base. Some theories also held that plaintiff attorneys would turn instead to the CLRA as an alternative to the UCL because the CLRA offers broader remedies to offset the cost of the now-mandatory certification process.¹⁶ Also, unlike the UCL, the CLRA allows for compensatory and punitive damages as well as providing for mandatory attorney's fees.

Use of the Unfair Competition Law did decrease by 23.5% between 2004 and 2005, after Proposition 64 changed the law. However, 2005 UCL usage was comparable to rates seen in 2002, well before the passage of the proposition. In addition, CLRA primary claims did spike in 2004, but most of the year's data originated before the November enactment, so the CLRA increase in this year is likely attributable to *anticipation* of the effects of Proposition 64 and its associated amendments to the UCL. It appears that attorneys began to use CLRA claims prior to the popular vote, perhaps in expectation of the passage of the proposition. This led to a 50.2% increase in CLRA primary claims observed in 2004. Contrary to predictions, however, CLRA claim usage actually declined in 2005, the year after Proposition 64 passed.

More striking than the effect of Proposition 64 between 2004 and 2005 is the considerable decrease in usage of the UCL from 2001 to 2002. The percentage of UCL primary claims dropped by 48.5% across this period while CLRA primary claims increased threefold. During 2002, misuses of the UCL became highly publicized in the legal community and media,¹⁷ which resulted in a lawsuit filed by Attorney General Bill

¹⁴ Similar to the UCL, the Consumer Legal Remedies Act, Cal. Civ. Code section 1750 et seq., prohibits "unfair" and "deceptive" business practices, but includes traditional standing requirements.

¹⁵ The full title of Proposition 64 was "Limit on Private Enforcement of Unfair Business Competition Laws in the State of California."

¹⁶ Kimberly A. Kralowec, "The Consumers Legal Remedies Act: An Alternative to the UCL in the Post-Prop. 64 World," *Forum* (November 2006), at p. 21.

¹⁷ Office of the Attorney General News Release, *Attorney General Lockyer Files '17200' Consumer Protection Lawsuit Against Beverly Hills Law Firm* (February 26, 2003): "The Attorney General's Office continues to investigate four other law firms and their named-plaintiff organizations for possible abuses of

Lockyer in early 2003,¹⁸ as well as the introduction of legislative reforms bills aimed at curtailing the scope of the UCL.¹⁹ Legislators introduced reform bills in 2002, but the proposals failed and the law remained unchanged until the passage of Proposition 64 in 2004. However, the negative publicity and heightened awareness surrounding the misuse of the UCL may have driven the dramatic decrease in usage immediately after the abuses originally came under public scrutiny starting in 2002.

Thus, analysis of UCL and CLRA claims immediately post-Proposition 64 does not seem to support the theory that plaintiff attorneys would abandon Unfair Competition Law claims in favor of the Consumers Legal Remedies Act. Use of the UCL did decrease in 2005, but the decline was not accompanied by a substantial increase in CLRA claims as was predicted. The data suggest that the initial misuse scandals in 2003 significantly diminished the use of UCL prior to the passage of Proposition 64 in 2004 and that the voter initiative had a smaller effect in comparison.

Disposition Analysis²⁰

The disposition analyses include only study cases that were disposed at the time of the case-file review. Disposed cases represent the majority of cases in the database, with only 17.4% of sample cases still “pending” at the time of the review ($n=273$). Employment, business tort, and contract cases made up 68.1% of the total pending caseload.

Before proceeding with the examination of dispositions, it was necessary to determine whether the exclusion of pending cases distorted the time-to-disposition analyses. That is, if pending cases represent more complex cases, an analysis of only disposed cases may distort the true picture of dispositions by excluding those with unusually long times to disposition. To evaluate this, survival-time curves of the database were compared with and without pending cases. This analysis did not show any statistically significant differences between the two groups. In addition, further breakdown of the pending caseload showed that 71.4% of the pending cases were filed in or after 2004.²¹ Given the average time to disposition for a class action case, most of the pending caseload is made up of cases that simply had not had a chance to run their course at the time they were reviewed in 2006 or 2007. Exclusion of the pending cases from the analyses does not appear to affect the average times to disposition.

Section 17200. They include: Brar & Gamulin of Long Beach and Consumer Watchdog; Callahan, McCune & Willis of Tustin and Citizens for Fair Business Practices; Brian Kindsvater of Sacramento and Consumer Action League; and David Byers of Sacramento and Californians for Fair Business Practices.”

¹⁸ “Lawyers Sued by Attorney General,” *Silicone Valley / San Jose Business Journal*, February 26, 2003.

¹⁹ See for general issues affected by this topic, Karl D. Belgum and Charles M. Dyke, *Business & Professions Code §17200 Reform Proposals, Past and Future*, FindLaw <http://library.findlaw.com/2004/Oct/11/133603.html> (as of October 11, 2004).

²⁰ Unless specifically noted, these analyses include all disposed cases, including cases that had no class certification or in which class allegations were formally dropped during the life of the case.

²¹ Of the pending cases, 23.4% were filed in 2004, 40.3% were filed in 2005, and 7.7% were filed in 2006.

It is important to note at the outset that almost one third of the dispositions—consolidation, coordination, interlocutory appeal, stayed, and removal—are more properly characterized as “interim dispositions” rather than final dispositions. Because the case-file review did not allow for further data collection in these cases after they moved jurisdictions, the time to disposition in these cases is calculated at the point of the interim disposition. A useful follow-up will be to match these cases with the eventual lead or federal case and evaluate case life based on the final disposition. As noted in the introduction to this report, the OCR hopes to produce a fourth research report in this series that will follow cases that are transferred to federal court in collaboration with researchers at the Federal Judicial Center.

Frequency of dispositions

Disposition	<i>n</i>	Percent of Total Dispositions
Settlement	413	31.9%
Dismissed with prejudice	217	16.8%
Dismissed without prejudice	163	12.6%
Coordinated	141	10.9%
Removed to federal court	121	9.4%
Consolidated with another case	120	9.3%
Summary judgment for defendant	50	3.9%
Transferred	40	3.1%
Other disposition ²²	12	0.9%
Trial verdict	9	0.7%
Stayed	6	0.5%
Interlocutory appeal	2	0.2%
All Disposed Cases	1,294	100.0%

Table 1. Frequency of dispositions for all disposed class action cases in sample

Settlements were the most common type of disposition in study cases, representing 31.9% of all dispositions.²³ This was followed by dismissals with prejudice²⁴ and dismissals without prejudice. Because of their overall frequency, business torts and employment represent the majority of case types in all dispositions, except coordination. Of antitrust cases, 33 of 75 (or 44%) were coordinated, which is a higher percentage of coordination than in any other case type.

²² “Other disposition” includes cases that were sent to mediation or arbitration, for example.

²³ The percentage of settlement dispositions skyrockets to 89.2% if the analysis is confined to cases with a certified class (258 out of 289 total certified cases with a disposition) with 88.4% of these certified as part of the settlement itself (*n*=228).

²⁴ “Dismissed with prejudice” does not include cases that settle and dismiss after finalization of the settlement agreement. These were coded as settlements during the case file review.

This analysis highlights another unique trait of class action litigation in that class action cases very rarely proceed through trial to a verdict. Only seven-tenths of one percent of cases in the sample ended in a trial verdict, and, of these, only two cases reached trial with a certified class. This is considerably lower than the 8.6% average trial disposition rate for all unlimited civil cases in the study courts over the same time period (see Appendix C, Table C.2). Cases filed as class actions simply do not go to trial anywhere near as frequently as their unlimited civil counterparts, either as certified or uncertified cases.

Dispositions by case type

The case outcomes can also be analyzed to determine which case type shows the greatest tendency to end in any particular type of disposition. The following analysis looks at the two most frequent disposition types, settlement and dismissal with prejudice,²⁵ as a proportion of all outcomes across all case types to determine the relationship between case type and disposition type.

Case Type	Total Disposed	Total Settlements	Percent Settlement
Construction Defect	55	32	58.2%
Employment	372	174	46.8%
Securities Litigation	20	9	45.0%
Breach of Contract	119	36	30.3%
Business Tort	358	96	26.8%
Fraud	43	11	25.6%
Other	141	30	21.3%
Unknown	44	9	20.5%
Product Liability	46	6	13.0%
Antitrust	75	8	10.7%
Civil Rights	21	2	9.5%
All Cases	1,294	413	31.9%

Table 2. Proportion of settlement dispositions, by case type²⁶

Construction defect, employment, and securities litigation class actions have the highest settlement rate with percentages that are well above the overall average for all case types. However, construction defect settlements in this analysis deserve special note. Though class actions filed as construction defect cases show a relatively high frequency of settlement, these settlements are rarely traditional class settlements. In the sample, construction defect cases were often filed as class actions, but showed serial settlements

²⁵ Settlements and dismissals with prejudice make up 48.7% of all case outcomes. Case type compositions for each individual disposition are listed in Appendix C, Tables C.3–C.15.

²⁶ Table 2 shows the 11 most frequently settled case types. The “Other” category is composed of 17 less frequently settled case types, including “Insurance coverage,” “Mass tort,” “RICO,” “Other complaint,” and “Other contract,” among others. “Unknown” refers to filings that did not have a case type selected on the Civil Case Cover Sheet.

with individual subcontractor defendants during the course of the litigation. The case-file review identified 34 cases in the database that have “individual” settlements of this kind. Of these, 73.5% were construction defect cases ($n=25$). Only 9.4% of all construction defect settlements ended with a traditional class settlement through a singular settlement agreement ($n=3$).

Case Type	Total Disposed	Total Dismissed With Prejudice	Percent Dismissed With Prejudice
Business Tort	358	87	24.3%
Fraud	43	10	23.3%
Other	141	27	19.1%
Breach of Contract	119	21	17.6%
Construction Defect	55	9	16.4%
Civil Rights	21	3	14.3%
Employment	372	46	12.4%
Securities Litigation	20	2	10.0%
Antitrust	75	6	8.0%
Unknown	44	3	6.8%
Product Liability	46	3	6.5%
All Cases	1,294	217	16.8%

Table 3. Proportion of dismissals with prejudice, by case type²⁷

Unlike settlements, no single case type stands out as having a significantly higher rate of dismissals with prejudice, although business tort and fraud cases are dismissed more frequently than the overall average for this disposition. An interesting result of this analysis, however, is the relatively low proportion of dismissals with prejudice in employment cases. This case type falls in the lower half of the frequency range for this disposition, unlike in the analysis of settlements, where it fell in the high-frequency range. Taking these two analyses together, it appears that employment cases are relatively more successful than other case types, with many surviving to settlement without being dismissed for good reason during the course of litigation.

²⁷ See footnote 26.

Time to Disposition Analysis

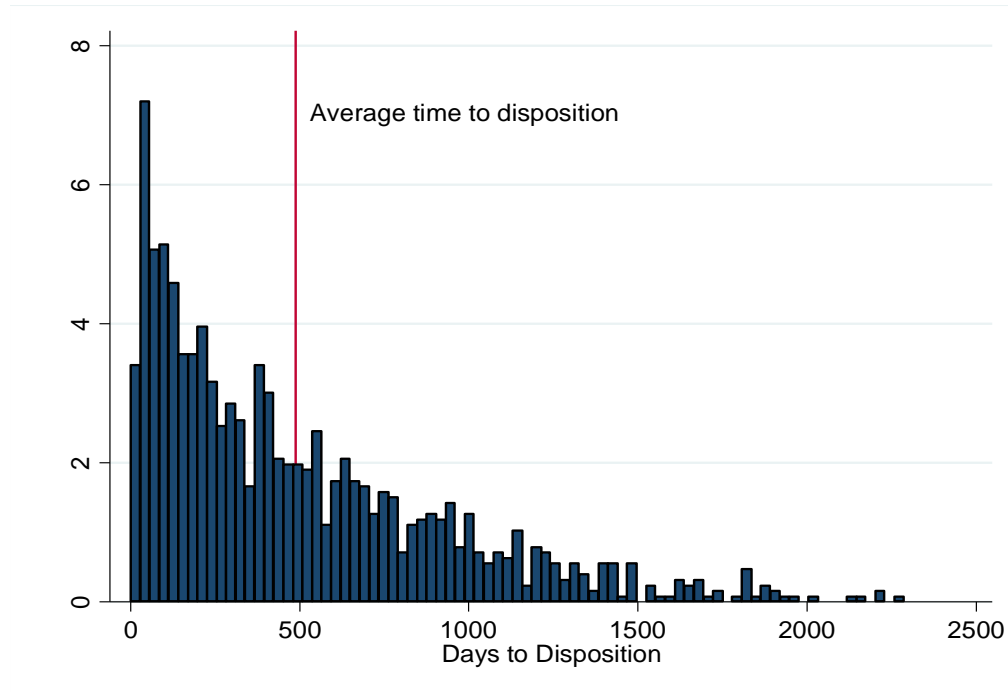


Figure 6. Time to disposition for cases in sample

The average time to disposition for a case originally filed as a class action was 488 days, or approximately 16 months. This average includes all dispositions and case types, including those that are technically speaking interim disposition—cases that were consolidated, coordinated, and removed to federal court, for example—as well as cases that had no class certification or in which class allegations were formally dropped during the life of the case. As a result, the overall average time to disposition for the entire sample of disposed cases will understate the time to disposition for cases that reach a final disposition. Thus, while most cases in the sample disposed quickly, with a large percentage of dispositions occurring in the first year after filing, the reasons behind this front-loaded disposition distribution become more apparent when the analysis is run separately by disposition type, by case type, and by cases with class certification.

Time to disposition, by disposition type

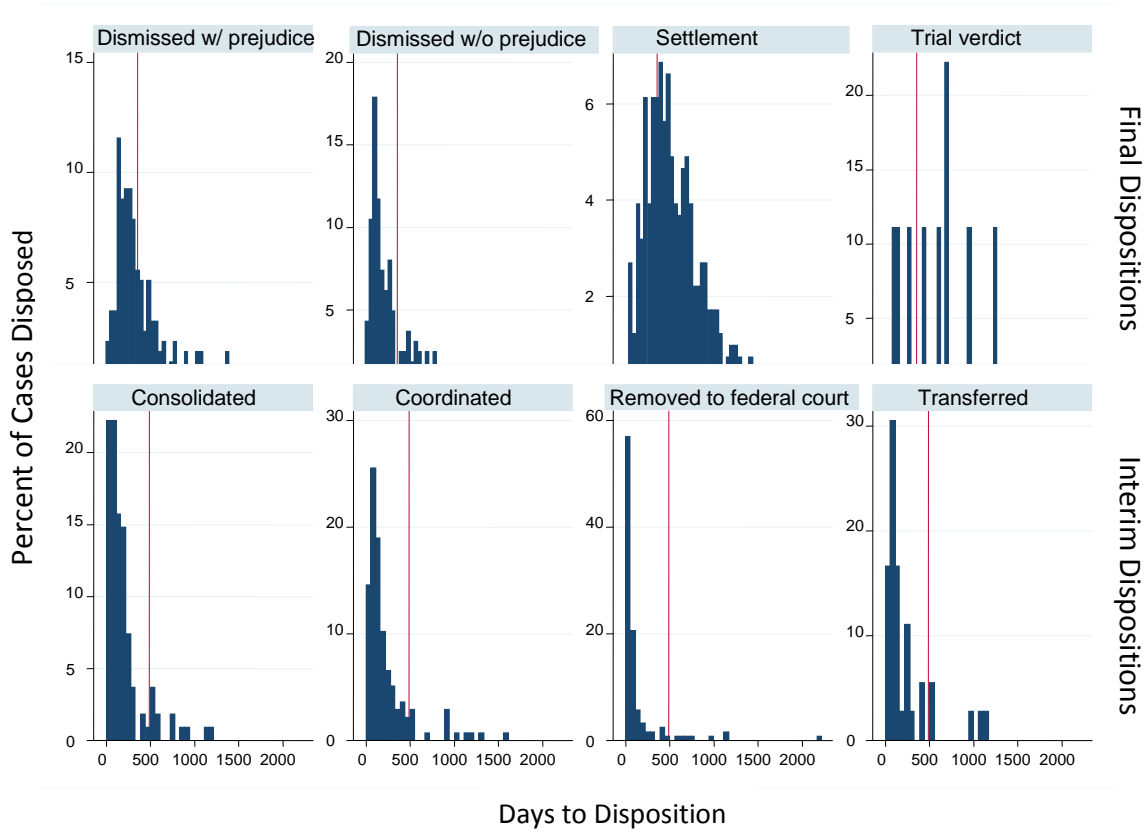


Figure 7. Time to disposition, by type of disposition²⁸

Removal to federal court had the shortest average time to disposition, followed by consolidation, transfer, and coordination. These occurred, on average, at 141, 196, 231, and 234 days, respectively.²⁹ It is not surprising that these types of dispositions occur sooner in the process than other disposition types because these are not final dispositions. Instead, these dispositions are interim stages in the life of a class action case involving changes in jurisdiction or the reorganization of the case’s structure to improve the efficiency of case management. Along with dismissals without prejudice, they make up the bulk of the early case dispositions and account for the front-loaded disposition distribution.

The nine cases in the sample that went through trial to verdict had lengthier case lives as compared to most other dispositions, with an average of 785 days. Only stayed cases have

²⁸ Time to disposition was calculated from the date that the disposition was approved or rendered by the court, and does not include post-disposition activity. For instance, time to disposition for settlement is calculated at the time that the final approval order was entered and does not include later fund distribution or settlement administration.

²⁹ All average and median times to disposition, by disposition, can be found in Appendix C, tables C.16–C.28.

a longer average time to disposition, at 1,054 days. This is likely because state cases often are stayed pending the outcome of an associated case in the federal jurisdiction and therefore have been litigated less actively in the state court. Overall, cases with a trial verdict show roughly the same time to disposition regardless of the prevailing party. The six verdicts for the defendant had an average time to disposition of 779 days while the three verdicts for the plaintiff took only slightly longer, at 797 days.

It is important to note that, because class action trial verdicts are so rare, the average times to verdict are based on very limited data and will change each time a new class action trial ends in the state of California. It may be more informative to consider the range of times to verdict as data of interest, rather than to draw any conclusions based on the averages themselves.

In contrast, an analysis of settlement dispositions is more conclusive because of the large number of cases that were disposed in this manner. Settlement dispositions in cases filed as class actions showed an overall average time to disposition of 743 days. However, certified settlement cases in the sample took 18.1% longer to dispose than uncertified cases.³⁰ Interestingly, the average overall time to settlement is nearly equivalent to the average time to disposition in cases that ultimately reached a verdict. That is not to say that trials and settlement cases impose the same courtroom time and judicial workload over the life of the case, but rather that settlements do not appear to be significantly more efficient than actual trials, from a pure time-to-outcome perspective. However, post-settlement activity and claims administration greatly increase the time that a case remains under the court's jurisdiction and would most likely extend the case life well beyond that of a verdict disposition. The Office of Court Research is exploring the feasibility of a future study that would involve following a subset of settlement cases through the claims administration process to create an accurate view of the entire process from filing through claims distribution.

³⁰ Average time to settlement in uncertified cases was 668 days ($n=155$, median at 639 days). Average time to settlement in certified cases was 789 days ($n=258$, median at 686 days).

Time to disposition, by case type

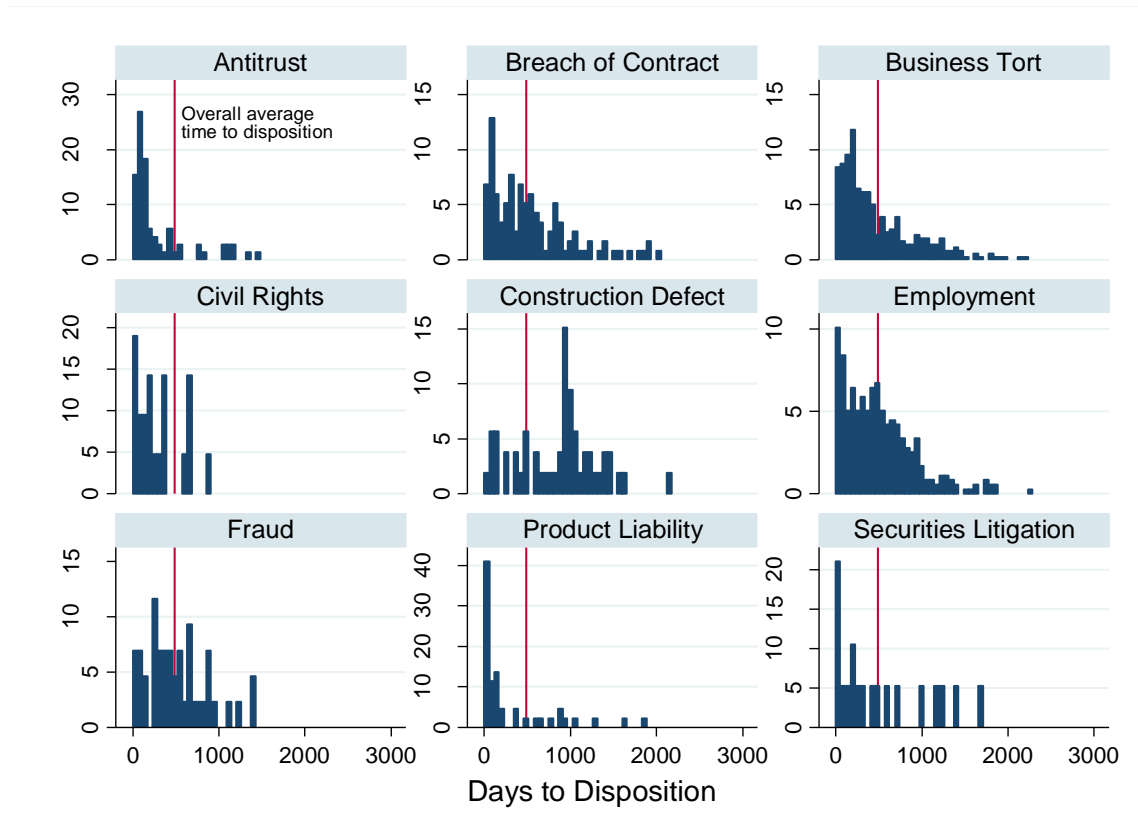


Figure 8. Time to disposition, by case type

In addition to the impact of disposition type and certification status on the time to disposition, different case types also show different time-to-disposition patterns. Frequently, case type is strongly correlated with a particular type of disposition, which explains the influence of case type on time to disposition. For example, civil rights class actions were disposed most rapidly, at an average of 306 days. Driving this average is the fact that removal to federal court was the most frequent disposition in this case type. Removal occurred in 38% of all civil rights cases in the sample ($n=8$), and removal disposition in a civil rights case typically occurs at 90 days.³¹

Antitrust and products liability cases had similarly low average time to disposition, at 301 and 321 days, respectively. As with civil rights cases, this short time to disposition can be attributed to the most frequent disposition in these casetypes: coordination. Coordination occurred in 44.0% of all disposed antitrust cases ($n=33$) and 34.8% of all products liability cases ($n=16$). The average time to coordination was 234 days. Again, the interest in litigating cases in the proper jurisdiction and with the most efficient court process is

³¹ Civil rights cases also had the shortest overall case life, with 95% of the cases being disposed within 686 days, well below the time to disposition for 95% of all cases in the sample, 1,384 days.

fundamental to case management, and therefore these dispositions typically arise early in the case life.

On the other end of the spectrum, construction defect cases had the longest case life, at an average of 850 days to disposition. This was driven in part by the fact that settlement was the most frequent type of disposition, but also by the typical manner and type of construction defect settlements. Almost 60% of construction defect cases ended in a settlement ($n=32$) and, as previously discussed, typically settled in a serial manner by individual defendant. This piecemeal settlement process is not as efficient as a traditional class settlement and thus prolongs the overall case life.

If the type of disposition is held constant while examining times to disposition across case types, it shows that case type exerts an effect on disposition time, independent of the type of disposition itself. The following analysis looks at the two most frequent dispositions—settlement and dismissal with prejudice—to examine how time to disposition differs by case type.

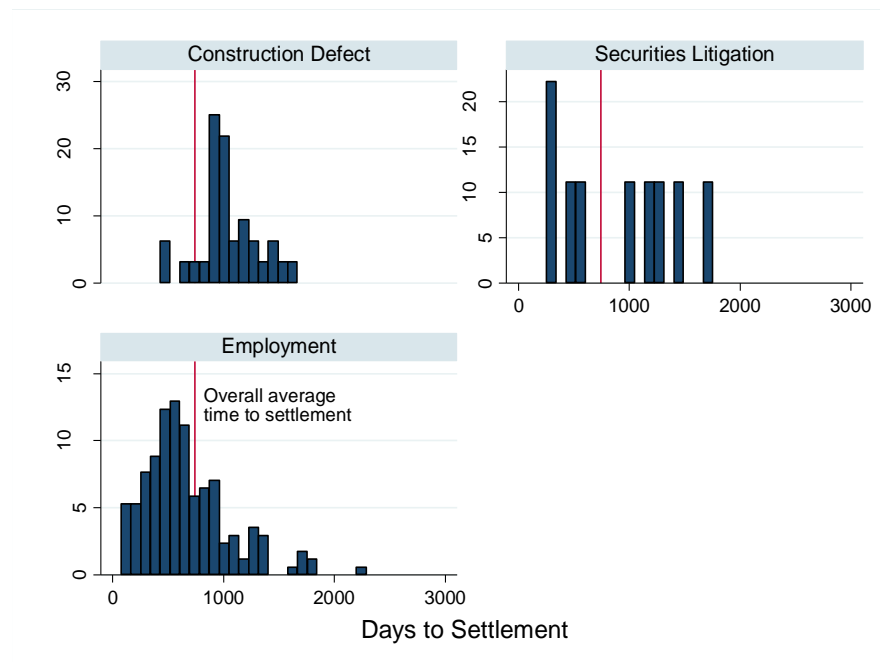


Figure 9. Time to settlement, by case type

The three case types with the highest frequency of settlement were construction defect, employment, and securities litigation.³² Of these, construction defect settlements had the longest average time to settlement, for the reasons discussed above. Construction defect cases have an average time to settlement of 1,034 days, 39.1% higher than the 743 day overall average for this disposition. The regularity of lengthy settlements in construction

³² These three case types represent 52.0% of all settlement dispositions. All average and median times to disposition, by disposition, can be found in Appendix C, tables C.16–C.28.

defect cases drives the overall time to disposition in this case type, and moves these cases to the top of the time to disposition analyses.

In contrast to this, a large proportion of employment cases settle faster than the overall average for settlement disposition. The average time to settlement for this case type is 670 days, 9.8% faster than the overall average. Thus, even though employment cases have a better chance of survival to settlement than most case types, they still reach settlement at an earlier date.

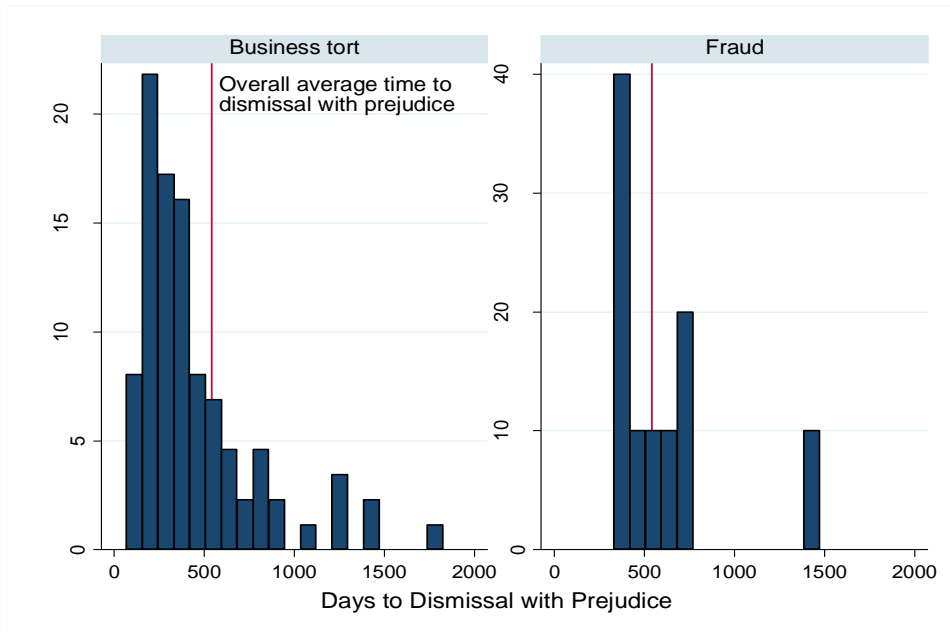


Figure 10. Time to dismissal with prejudice, by case type³³

Business torts and fraud cases had the highest percentage of dismissals with prejudice. Business tort cases show a large proportion of cases that dismiss with prejudice earlier than the average time to disposition for this case outcome. The average time to dismissal in business torts is 452 days, 16.5% shorter than the overall average for this outcome. Fraud cases do not show this same skewed distribution, and the dismissals are clustered close to the average time to dismissal for this case type, at 604 days.

Time to disposition, by certification status

Lastly, the study data also includes internal case events that could have a bearing on the overall time to disposition, including class certification. The case-file review tracked class certification data according to cases certified by motion³⁴ versus those certified as

³³ These two case types make up 44.7% of all dismissals with prejudice.

³⁴ For purposes of this interim report, “Certified Through Motion” means a case that had a motion for class certification granted or granted in part at any point during the life of the case. Future reports will break out “Certified by Motion” into cases that were certified on first, second, or third motion for certification, as

part of a settlement, and those that had no class certification either before case disposition or as part of a settlement.

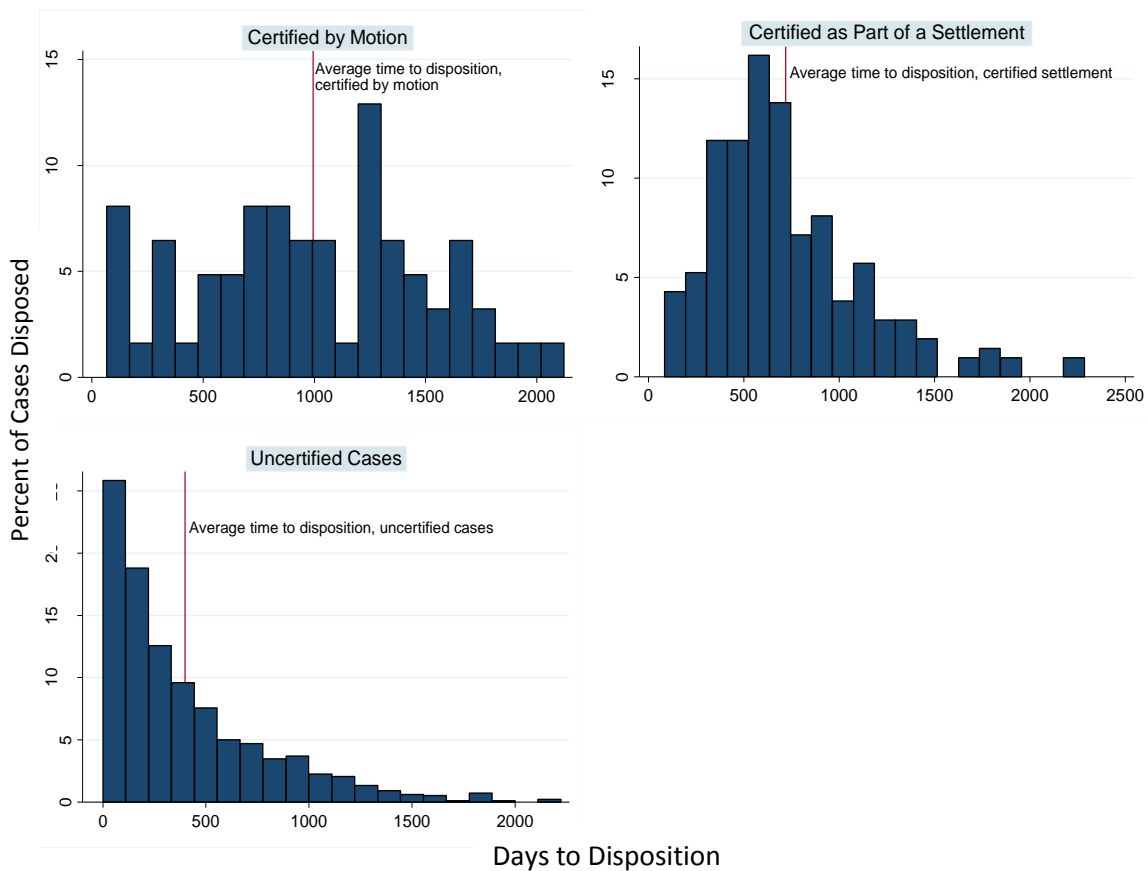


Figure 11. Time to disposition versus class certification status and means

Cases that were filed as class action but never certified represent the vast majority of the cases in the data set. These uncertified cases also had shorter average times to disposition than cases that were certified. Of all cases reviewed for this time to disposition analysis, 78.3 % had no class certification by any means ($n=979$). Of these, 850 cases have no record of a motion for certification or class certification at disposition. The filing of these cases as class action appears to have been part of a litigation strategy that cannot be inferred from the data. In the remaining, uncertified cases, class allegations were dropped without seeking certification by motion in 9.7% ($n=95$) of the cases. This most likely shortened the case life in these instances by removing the need to address class certification, which tends to be a contentious and time-consuming issue throughout the

well as presenting analysis of time to rulings on these motions and analysis of the effect of objections to these motions on overall time to disposition. Upcoming reports will also consider the case type breakdown of certified class actions and ultimate outcome versus uncertified cases.

litigation. The court denied or dismissed motions for class certification in 3.5% of the uncertified cases ($n=34$).

Cases with class certification achieved through the granting of a motion for certification had a case life that was roughly twice as long as the average class action case (see Appendix C, tables C.29 and C.30). This significant increase in time to disposition is not surprising due to the case processing obligations and litigation strategies that a motion for certification introduces into a class action case. The filing of the motion for certification generally increases the number of hearings, party responses required, and judicial time per case, as well as inviting objections to the motion.

Classes certified as a stipulation of the final settlement circumvent many of the appearances and responses required by a motion for certification, and this most likely contributes to the shorter time to disposition. The time to disposition in cases that were certified as part of a settlement was 27.6% shorter than the time to disposition in cases certified through motion.

Cases with a class certified as part of a settlement had a case life that was relatively similar to that of an average settlement disposition. On average, settlements disposed at 743 days, regardless of whether the settlement included class certification. Settlements with class certification stipulations as part of the settlement itself were only slightly shorter, at 720 days to disposition. These types of settlements represented 55.2% of all settlements in the sample ($n=228$).

Analysis of the Impact of the Class Action Fairness Act of 2005³⁵

The Class Action Fairness Act (CAFA) took effect on February 18, 2005. One of the most significant aspects of CAFA was the expansion of federal diversity jurisdiction for class actions. In general, CAFA provides federal jurisdiction when any class member and any defendant are citizens of different states. Under the law prior to CAFA, the complete diversity requirement of 28 U.S.C. 1332 meant that all named class representatives and all defendants had to be citizens of different states in order to have federal diversity jurisdiction. CAFA also relaxed the federal court requirement that each class member have a claim in excess of \$75,000, changing the sufficient classwide claim value to \$5,000,000.

Prior to the passage of the Act, commentators predicted that these changes would have sweeping effects on the class action caseload in state court as cases moved to the federal jurisdiction.³⁶ At the time of these predictions, there were essentially no state class action data available for any time period, and the hypotheses surrounding the implications of CAFA in state court have, until now, largely gone untested. This study of California class action litigation provides data that now allow for the first empirical assessment of the impact of the Class Action Fairness Act on a state judiciary.

Data collected over the six-year study period allow for comparison of class action behavior in the years leading up to the Class Action Fairness Act and any subsequent change in behavior in 2005, the year CAFA went into effect. California class action filings did decline by 9.8% in 2005, the only decline seen in the six-year study period (see Fig. 1, above). This overall decrease in 2005 could be attributed to CAFA; however, as stated earlier, it may also be normalization from the 2004 filings number which showed an increase of 29.5% over the previous year. It will be necessary to update the filing data for the years 2006 and 2007 to determine whether the decline in 2005 was due to this realignment or if it is a continuing trend that may be related to the Class Action Fairness Act.

³⁵ Though the case-file review included cases filed in 2006, the CAFA analysis includes cases filed 2000 through 2005, only. Study cases filed in 2006 were excluded from this analysis because the filing data for that year are incomplete.

³⁶ Congressional Budget Office, Cost Estimate, Senate Report 109-14 (February 28, 2005) at 76–78, quoted in Thomas E. Willging and Emery G. Lee III, “*The Impact of the Class Action Fairness Act on the Federal Courts: An Empirical Analysis of Filings and Removals*,” 156 *U. Pa. L. Rev.* (2008), p. 1740: “ ‘most class-action lawsuits would be heard in a federal district court rather than a state court.’ ”

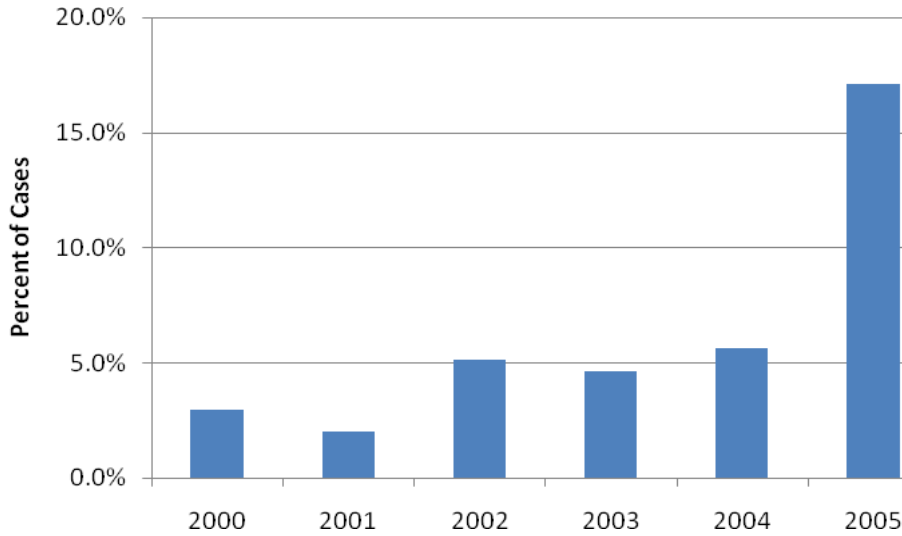


Figure 12. Cases permanently removed to federal court within the same year of filing, 2000–2005

Between 2000 and 2005, 107 of the cases in our sample were permanently removed to federal court. As a percentage of filings by year, an average of 4% of cases were filed and removed in the same year between 2000 and 2004. In 2005, 32 cases—over 17% percent of the cases both filed and disposed within 2005—were permanently removed to federal court.

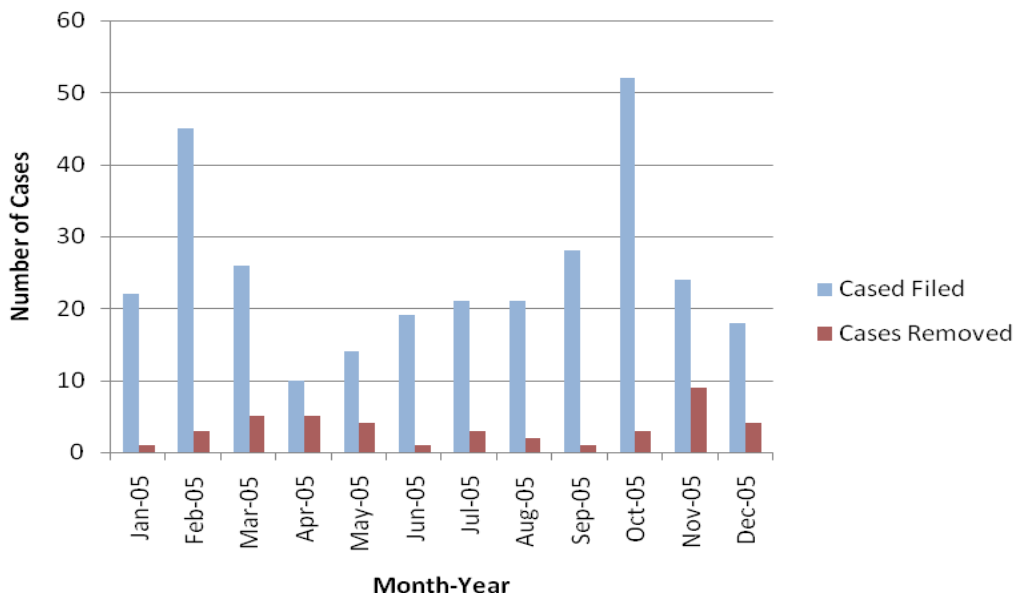


Figure 13. Class action cases filed and permanently removed in 2005, by month.

Looking more closely at the data, the filings and removals actually vary considerably by month. Indeed, filings of class action cases spiked in February of 2005, the month that

CAFA took effect. The data show another filing spike in October, eight months later. The reason for this second increase is unknown. The month-to-month pattern of permanent removals in 2005 appears to roughly follow that of the filings, at a one to two month lag.

	<i>n</i>	Mean	Median
Cases filed pre-CAFA (January 2000 through January 2005)	73	193 days	59 days
Cases filed post-CAFA (after February 2005)	34	52 days	40 days

Table 4. Mean time to disposition for cases permanently removed to federal court, filed pre- and post-CAFA³⁷

One effect of CAFA has been to decrease the amount of time before cases are permanently removed to federal court. Prior to the enactment of CAFA, removals to federal court occurred at 193 days, on average. Post-CAFA, the mean time to removal fell to 52 days. This decrease was also reflected in the median time to removal which shortened from 59 days to 40 days after CAFA took effect.

Filing Date	<i>n</i>
1-Feb-05	1
2-Feb-05	1
3-Feb-05	1
4-Feb-05	1
7-Feb-05	1
14-Feb-05	8
15-Feb-05	8
16-Feb-05	4
17-Feb-05	12
(CAFA effective date) 18-Feb-05	3
23-Feb-05	1
24-Feb-05	1
25-Feb-05	3
Total, February 2005	45

Table 5. February 2005 filing dates

Taking the analysis to a still more granular level, the data also show that there was a rush to file class action cases in state court immediately before CAFA's February 18 effective

³⁷ Of all removed cases, 95% were disposed within 21 months. The duration of the file-review period was 21 months after the filing cut-off in 2005, so the calculation assumes that most cases eligible for removal would have done so during the study period.

date. Closer inspection of the data shows that 32 of the 45 cases filed in February 2005 were filed in the four days prior to enactment, with the largest filing push seen on February 17, when 12 cases were filed in one day. This is the highest single-day filing figure in the entire study sample across the entire six years of data and highlights how attentive attorneys were to this legislation. This, together with the diminished time to removal post-CAFA and the dramatic increase in cases that were both filed and removed in 2005, suggests that the legislation prompted a rush to file class action cases in California state court, but that many of these were cases that were granted swift exit to federal court.

Of great interest in the analysis of the Class Action Fairness Act is the comparison of the overall rate of removal, or the frequency of removal dispositions per year.³⁸ This gives some insight into whether cases filed in the years prior to the enactment of the law were later removed after CAFA went into effect. The overall removal rate in California class action cases filed January 2000 through January 2005 was 6.6%³⁹ (73 permanent removals out of 1,111 total dispositions). This rate substantially increased after CAFA went into effect. The post-CAFA removal rate in the study sample was 19.2% (34 permanent removals out of 177 total dispositions), an increase of 190.9% as compared to the rate prior to enactment of the Act. The increase in the rate suggests that cases filed prior to CAFA that may not have been eligible for removal were later successfully moved to federal court based on the changes to the law.

While the data appear to confirm that CAFA had an effect on the *rate* of removal of state class action cases, the total number of cases removed pre-CAFA was so low that the effects of this increase on state courts is unremarkable. For example, if the removal rate found in our sample is applied to *total filings reported by the courts*, 195 cases would have been removed over a five-year period, or 39 cases per year.⁴⁰ Applying the post-CAFA removal rate to total filings would imply the removal of a total of 144 cases to federal court in 2005,⁴¹ or roughly 9 additional removals per year in an individual court.⁴² This increase in cases removed to federal court is unlikely to affect the overall docket load in any single court and is far from the dire predictions that CAFA “would result in

³⁸ The removal rate is calculated as a percent of total dispositions per year, and is calculated independent of the year that the case was actually filed.

³⁹ This removal rate calculation includes only cases that had been disposed before the end of the case-file review process in September 2007. Open cases were excluded from the removal rate calculation as they could potentially have removed or otherwise disposed subsequent to the case-file review. Prior to the review cut-off, 1,111 cases filed January 2000 through January 2005 had been disposed. Prior to September 2007, 177 cases filed February 2005 through December 2005 disposed.

⁴⁰ The 2,960 total filings, 2000–2004, multiplied by a 6.6% removal rate, yields an estimate of 195 total removed cases, or 39 cases per year.

⁴¹ The 751 total filings in 2005, multiplied by a 19.2% removal rate, yields an estimate of 144 total cases removed in 2005.

⁴² A difference of 105 removals between pre- and post-CAFA estimates, divided by 12 study courts translates to 8.75 cases per court. This is a theoretical breakdown. Individual courts would be variably affected depending on the court caseload.

the wholesale removal of State law class actions from the State courts to the Federal court.”⁴³

It is important to note that the post-CAFA data includes only cases filed from February 2005 through the end of that year. As previously stated, it will be necessary to update the study to include later cases in order to determine if the observed changes in filings, removal rates, and times to removal were a short-term, immediate response to the legislation or if they marked a permanent alteration in the California class action landscape.

Conclusion

This Study of California Class Action Litigation has successfully collected previously unavailable data regarding the California class action system. Even the most basic questions about the number of filings, case types filed, typical dispositions, and case durations were not readily answerable prior to the study. The documentation of this information in and of itself is useful to inform discussions about this often debated subject matter.

In addition, the study confirmed conclusions based on anecdotal evidence and courtroom experience. Previous discussions with members of the California Complex Litigation Judges’ Panel indicated that employment cases were on the rise, wage and hour claims in particular. The data confirmed this trend. Members of the judges’ panel also indicated that the number of removals due to the Class Action Fairness Act had not significantly affected the overall docket. The data support this conclusion as well.

Lastly, the data collected as part of the study does yield insight into the effects of real-world events on the California class action litigation and how these translate into system-wide changes. The California energy crisis, voter propositions, federal law modifications, and class action activity in other states all come to light through the changes they introduce into the California court system. The database itself is a valuable as a historical record of the class action system over the last six years, as well as a reference when predicting effects of events in the future.

Presently, the Office of Court Research is continuing analysis of the class action case database for continuation of this report series, and is organizing an update of the case-file review as part of an ongoing research agenda.

⁴³ Class Action Litigation: Hearing before the Committee on the Judiciary, 107th Cong. 12 (2002) (statement of Thomas J. Henderson, Chief Counsel, Lawyers’ Committee for Civil Rights Under Law), quoted in Thomas E. Willging and Emery G. Lee III, “*The Impact of the Class Action Fairness Act on the Federal Courts: An Empirical Analysis of Filings and Removals*,” 156 *U. Pa. L. Rev.* (2008), p. 1742.

Appendix A: Case Type Analysis

Table A.1
Case type filings in sample, by year

	2000	2001	2002	2003	2004	2005	6-Year Average
Employment	17.1%	25.5%	27.5%	27.2%	36.9%	41.7%	29.3%
Business Tort	22.9%	26.4%	34.8%	29.0%	26.2%	25.0%	27.4%
Other ⁴⁴	12.9%	15.6%	9.3%	13.0%	7.6%	7.3%	10.9%
Contract	15.9%	11.3%	10.6%	6.9%	8.9%	8.0%	10.3%
Antitrust	10.6%	4.2%	4.3%	9.8%	6.2%	0.3%	5.9%
Construction Defect	7.6%	8.0%	4.6%	4.3%	3.6%	4.2%	5.4%
Other Complaint	5.3%	1.9%	3.3%	1.4%	4.0%	8.0%	4.0%
Product Liability	2.9%	4.7%	3.3%	4.3%	4.0%	1.4%	3.5%
Fraud	4.7%	2.4%	2.3%	4.0%	2.7%	4.2%	3.4%
Total Sample Cases, 2000–2005	174	215	315	289	232	300	1525
Total sample cases with case designation	170	212	302	277	225	288	1474
Cases missing case type designation ⁴⁵	-4	-3	-13	-12	-7	-12	-51

⁴⁴ “Other” consists of twenty lesser-cited case types, including “Insurance coverage,” “Mass tort,” “RICO,” and “Asbestos,” among others.

⁴⁵ In some instances the Civil Cases Cover Sheet was not included in the case file.

Appendix B: Primary Claim Bases Analysis

Table B.1

Primary claim bases⁴⁶ cited in cases filed as an “Employment” case

Primary Claim Base	2000	2001	2002	2003	2004	2005	6-year Average
Labor Code 1194 Failure to Pay Overtime	34.8%	42.9%	30.8%	23.7%	28.0%	33.1%	31.5%
General Wage Complaint	26.1%	26.8%	10.3%	27.6%	20.4%	19.4%	20.7%
Other	30.4%	25.0%	43.6%	27.6%	36.6%	30.9%	32.8%
Unfair Competition Law (UCL)	4.3%	0.0%	7.7%	5.3%	5.4%	8.6%	6.0%
General Labor Complaint	4.3%	5.4%	7.7%	5.3%	4.3%	4.3%	5.2%
Labor Code 512 Failure to Provide Meals/Breaks	0.0%	0.0%	0.0%	10.5%	5.4%	3.6%	3.9%

Table B.2

Primary claim bases⁴⁷ cited in cases filed as a “Business Tort”

Primary Claim Base	2000	2001	2002	2003	2004	2005	6-year Average
Unfair Competition Law (UCL)	58.3%	69.1%	35.6%	45.6%	45.5%	34.8%	45.6%
Consumer's Legal Remedies Act (CLRA)	8.3%	10.9%	32.7%	12.7%	25.5%	11.6%	18.7%
Breach of Fiduciary Duty	2.8%	3.6%	1.0%	11.4%	7.3%	20.3%	7.8%
Damages	11.1%	3.6%	6.9%	6.3%	5.5%	8.7%	6.8%
Other Claim Base	19.4%	12.7%	23.8%	24.1%	16.4%	24.6%	21.0%

⁴⁶ “General labor” and “General wage” complaints are cases filed with a primary claim base that referred to a violation without citing a specific labor code section. Examples of a general wage claim include “Complaint for recovery of unpaid wages and penalties” or “Complaint for failure to pay wages.” An example of a general labor claim is “Complaint for violation of the California Labor Code.” The “Other” category includes 50 lesser-cited claim bases.

⁴⁷ “Damages” refers to an unspecified damages claim. The “Other Claim Base” category includes 34 lesser-cited statutory claim bases.

Appendix C: Disposition Analysis

Dispositions by Case Type

Table C.1

Disposition composition of all disposed cases in sample

Disposition	Total Disposed	Percent of Dispositions
Settlement	413	31.9%
Dismissed with prejudice	217	16.8%
Dismissed without prejudice	163	12.6%
Coordinated	141	10.9%
Removed to federal court	121	9.4%
Consolidated with another case	120	9.3%
Summary judgment	50	3.9%
Transferred	40	3.1%
Other disposition ⁴⁸	12	0.9%
Trial verdict	9	0.7%
Stayed	6	0.5%
Interlocutory appeal	2	0.2%
Total	1,294 ⁴⁹	100.0%

Table C.2

Overall trial disposition rate of unlimited civil cases in the study courts⁵⁰

	2000	2001	2002	2003	2004	2005	6-year Average
Total Unlimited Civil Dispositions	86,569	83,633	87,314	89,799	85,639	77,046	85,000
After court trial:	4,526	5,110	5,543	6,291	6,688	8,871	6,172
After jury trial:	1,413	1,172	980	977	1,011	828	1,064
Total Trial Verdicts	5,939	6,282	6,523	7,268	7,699	9,699	7,235
Percent Trial Disposition	6.9%	7.5%	7.5%	8.1%	9.0%	12.6%	8.6%

⁴⁸ The “Other disposition” category refers to cases with a disposition that did not fit into the categories listed in the data collection instrument. It includes cases that were sent to mediation or arbitration, for example.

⁴⁹ Of the 1,572 reviewed cases, 1,294 had a coded disposition. Five cases were missing a disposition code.

⁵⁰ The trial rate calculation excludes auto tort, unlawful detainer, judicial review, enforcement of judgment, other civil, and small claims appeals from the analysis for reasons of comparability.

Table C.3
Case type composition of all disposed cases in sample

Case Type	Total Disposed	Percent of Dispositions
Employment	372	28.7%
Business Tort	358	27.7%
Other Case Type ⁵¹	141	10.9%
Breach of Contract	119	9.2%
Antitrust	75	5.8%
Construction Defect	55	4.3%
Product Liability	46	3.6%
Unknown Case Type ⁵²	44	3.4%
Fraud	43	3.3%
Civil Rights	21	1.6%
Securities Litigation	20	1.5%
Total	1,294	100.0%

Table C.4
Case type composition of **consolidated** cases

Case Type	Total Disposed	Total Consolidated	Percent Consolidated
Business Tort	358	30	40.0%
Other Case Type	141	23	30.7%
Employment	372	21	28.0%
Antitrust	75	14	18.7%
Breach of Contract	119	11	14.7%
Construction Defect	55	8	10.7%
Unknown	44	5	6.7%
Securities Litigation	20	4	5.3%
Fraud	43	2	2.7%
Product Liability	46	2	2.7%
All Disposed Cases	1,294	120	9.3%

⁵¹ “Other Case Type” consists of 17 less frequently filed case types including “Insurance coverage,” “Mass tort,” “RICO,” “Other complaint,” and “Asbestos,” among others.

⁵² “Unknown Case Type” refers to filings that did not have a selected case type on the Civil Case Cover Sheet.

Table C.5
Case type composition of **coordinated** cases

Case Type	Total Disposed	Total Coordinated	Percent Coordinated
Antitrust	75	33	44.0%
Product Liability	46	16	34.8%
Unknown	44	12	27.3%
Breach of Contract	119	15	12.6%
Fraud	43	4	9.3%
Business Tort	358	32	8.9%
Other Case Type	141	10	7.1%
Employment	372	19	5.1%
All Disposed Cases	1,294	141	10.90%

Table C.6
Case type composition of cases **dismissed with prejudice**

Case Type	Total Disposed	Total Dismissed With Prejudice	Percent Dismissed With Prejudice
Business Tort	358	87	24.3%
Fraud	43	10	23.3%
Other	141	27	19.1%
Breach of Contract	119	21	17.6%
Construction Defect	55	9	16.4%
Civil Rights	21	3	14.3%
Employment	372	46	12.4%
Securities Litigation	20	2	10.0%
Antitrust	75	6	8.0%
Unknown	44	3	6.8%
Product Liability	46	3	6.5%
All Cases	1,294	217	16.8%

Table C.7

Case type composition of cases **dismissed without prejudice**

Case Type	Total Disposed	Total Dismissed Without Prejudice	Percent Dismissed Without Prejudice
Other Case Type	141	26	18.4%
Business Tort	358	55	15.4%
Breach of Contract	119	17	14.3%
Civil Rights	21	3	14.3%
Fraud	43	6	14.0%
Product Liability	46	5	10.9%
Securities Litigation	20	2	10.0%
Employment	372	36	9.7%
Antitrust	75	6	8.0%
Construction Defect	55	4	7.3%
Unknown	44	3	6.8%
All Disposed Cases	1,294	163	12.6%

Table C.8

Case type composition of cases with an **interlocutory appeal**

Case Type	Total Disposed	Total With an Interlocutory Appeal	Percent With an Interlocutory Appeal
Employment	372	2	0.5%
All Disposed Cases	1,294	2	0.2%

Table C.9

Case type composition of cases with “**other disposition**”⁵³

Case Type	Total Disposed	Total With "Other Disposition"	Percentage With "Other Disposition"
Construction Defect	55	3	5.5%
Securities Litigation	20	1	5.0%
Business Tort	358	5	1.4%
Other Case Type	141	1	0.7%
Employment	372	2	0.5%
All Disposed Cases	1,294	12	0.9%

⁵³ See footnote 48.

Table C.10

Case type composition of cases **removed to federal court**

Case Type	Total Disposed	Total Removed to Federal Court	Percentage Removed to Federal Court
Civil Rights	21	8	38.1%
Product Liability	46	9	19.6%
Fraud	43	7	16.3%
Employment	372	46	12.4%
Securities Litigation	20	2	10.0%
Business Tort	358	27	7.5%
Unknown	44	3	6.8%
Breach of Contract	119	8	6.7%
Other Case Type	141	8	5.7%
Antitrust	75	3	4.0%
All Disposed Cases	1,294	121	9.4%

Table C.11

Case type composition of cases with **settlement** disposition

Case Type	Total Disposed	Total Settlements	Percent With Settlement
Construction Defect	55	32	58.2%
Employment	372	174	46.8%
Securities Litigation	20	9	45.0%
Breach of Contract	119	36	30.3%
Business Tort	358	96	26.8%
Fraud	43	11	25.6%
Other	141	30	21.3%
Unknown	44	9	20.5%
Product Liability	46	6	13.0%
Antitrust	75	8	10.7%
Civil Rights	21	2	9.5%
All Cases	1,294	413	31.9%

Table C.12

Case type composition of **stayed** cases

Case Type	Total Disposed	Total Stayed	Percent Stayed
Product Liability	46	1	2.2%
Antitrust	75	1	1.3%
Breach of Contract	119	1	0.8%
Other Case Type	141	1	0.7%
Business Tort	358	2	0.6%
All Disposed Cases	1,294	6	0.5%

Table C.13

Case type composition of cases ending in **summary judgment**

Case Type	Total Disposed	Total With Summary Judgment	Percent With Summary Judgment
Civil Rights	21	3	14.3%
Other Case Type	141	10	7.1%
Fraud	43	3	7.0%
Breach of Contract	119	8	6.7%
Business Tort	358	14	3.9%
Employment	372	11	3.0%
Unknown	44	1	2.3%
All Disposed Cases	1,294	50	3.9%

Table C.14

Case type composition of **transferred** cases

Case Type	Total Disposed	Total Transferred	Percent Transferred
Unknown	44	8	18.2%
Product Liability	46	4	8.7%
Antitrust	75	4	5.3%
Employment	372	10	2.7%
Business Tort	358	8	2.2%
Other Case Type	141	3	2.1%
Construction Defect	55	1	1.8%
Breach of Contract	119	2	1.7%
All Disposed Cases	1,294	40	3.1%

Table C.15

Case type composition of cases with a **trial verdict**

Case Type	Total Disposed	Total With Trial Verdict	Percent With Trial Verdict
Civil Rights	21	2	9.5%
Business Tort	358	4	1.1%
Other Case Type	141	1	0.7%
Employment	372	2	0.5%
All Disposed Cases	1,294	9	0.7%

Time to Disposition

Table C.16

Average and median days to disposition, by disposition type

Disposition	<i>n</i>	Average	Median
Removed to federal court	121	141	48
Consolidated	108	196	124
Transferred	36	231	125
Coordinated	137	234	133
Dismissed without prejudice	162	404	271
Dismissed with prejudice	216	541	412
Other	11	602	339
Summary Judgment	50	665	588
Settlement	408	743	661
Verdict for defendant	6	779	667
Verdict for plaintiff	3	797	851
Stayed	5	1,054	926
Total	1,263 ⁵⁴	488	377

Table C.17

Average and median days to disposition, by case type

Case Type	<i>n</i>	Average	Median
Antitrust	71	301	126
Civil Rights	21	306	211
Unknown	43	319	164
Product Liability	44	321	95
Other	139	471	342
Business Tort	356	485	337
Employment	357	505	445
Fraud	43	518	421
Securities Litigation	19	529	310
Breach of Contract	117	557	447
Construction Defect	53	850	946
Total	1,263	488	377

⁵⁴ Although 1,294 cases in the sample had a coded disposition, 31 cases (2.4%) did not have an exact date of disposition and were not included in this calculation of time to disposition.

Table C.18

Average and median time to **consolidation**, by case type

Case Type	<i>n</i>	Average	Median
Securities Litigation	3	38	36
Product Liability	2	94	94
Antitrust	13	106	91
Construction Defect	6	148	106
Other	21	159	61
Business Tort	29	188	121
Breach of Contract	9	263	174
Unknown	4	272	253
Fraud	2	280	280
Employment	19	307	209
Total	108	196	124

Table C.19

Average and median time to **coordination**, by case type

Case Type	<i>n</i>	Average	Median
Product Liability	15	113	56
Antitrust	32	131	107
Other	10	179	194
Unknown	12	225	102
Breach of Contract	15	262	104
Business Tort	31	308	175
Fraud	4	348	374
Employment	18	378	280
Total	137	234	133

Table C.20

Average and median time to **dismissal with prejudice**, by case type

Case Type	<i>n</i>	Average	Median
Unknown	3	256	26
Civil Rights	3	395	387
Business Tort	87	452	363
Employment	45	482	413
Securities Litigation	2	595	595
Fraud	10	604	485
Breach of Contract	21	647	450
Other	27	652	483
Antitrust	6	657	490
Product Liability	3	869	652
Construction Defect	9	991	1,032
Total	216	541	412

Table C.21

Average and median time to **dismissal without prejudice**, by case type

Case Type	<i>n</i>	Average	Median
Securities Litigation	2	127	127
Civil Rights	3	318	388
Antitrust	6	327	140
Other	26	331	271
Business Tort	55	370	192
Product Liability	5	418	196
Breach of Contract	17	429	310
Construction Defect	4	451	422
Fraud	6	469	435
Employment	35	504	360
Unknown	3	573	297
Total	162	404	271

Table C.22

Average and median time to **other disposition**, by case type

Case Type	<i>n</i>	Average	Median
Construction Defect	1	112	112
Securities Litigation	1	186	186
Employment	4	354	339
Other	2	450	450
Business Tort	3	940	426
Total	11	508	308

Table C.23

Average and median time to **removal to federal court**, by case type

Case Type	<i>n</i>	Average	Median
Unknown	3	58	49
Product Liability	9	70	48
Securities Litigation	2	77	77
Employment	46	81	42
Civil Rights	8	90	75
Fraud	7	120	68
Breach of Contract	8	135	53
Business Tort	27	169	44
Other	8	448	93
Antitrust	3	540	423
Total	121	141	48

Table C.24

Average and median time to **settlement**, by case type

Case Type	<i>n</i>	Average	Median
Construction Defect	32	1,034	985
Product Liability	6	995	972
Securities Litigation	9	907	993
Antitrust	7	890	857
Breach of Contract	36	874	737
Fraud	11	750	749
Other	30	721	662
Business Tort	96	713	639
Employment	170	670	599
Unknown	9	576	612
Civil Rights	2	462	462
Total	408	743	661

Table C.25

Average and median time to a **stay**, by case type

Case Type	<i>n</i>	Average	Median
Other	1	377	377
Breach of Contract	1	870	870
Product Liability	1	926	926
Business Tort	2	1,548	1,548
Total	5	1,054	926

Table C.26

Average and median time to **summary judgment**, by case type

Case Type	<i>n</i>	Average	Median
Other	10	492	530
Breach of Contract	8	557	430
Employment	11	568	500
Civil Rights	3	605	648
Fraud	3	794	849
Business Tort	14	883	713
Unknown	1	1,063	1,063
Total	50	665	588

Table C.27
Average and median time to **transfer**, by case type

Case Type	<i>n</i>	Average	Median
Product Liability	3	13	11
Breach of Contract	2	53	53
Unknown	8	129	128
Employment	7	175	210
Construction Defect	1	237	237
Business Tort	8	239	91
Antitrust	4	504	412
Other	3	585	511
Total	36	231	125

Table C.28
Average and median time to **verdict**, by case type

Case Type	<i>n</i>	Average	Median
Employment	2	282	282
Civil Rights	2	412	412
Other	1	927	927
Business Tort	4	1,188	1,109
Total	9	785	851

Table C.29
Certification status of disposed cases

Certification Status	<i>n</i>	Percent
No Certification	1,005	77.7%
Certified by motion OR as part of a settlement	277	21.4%
Certified by BOTH motion and as part of a settlement	12	0.9%
All Cases	1,294	100.0%

Table C.30
Average and median time to disposition, by means of certification

Means of Certification	<i>n</i>	Average	Median
Certified by Motion	62	995	992
Certified as Part of Settlement	210	720	636
Uncertified Cases	979	399	264
All Cases	1,251 ⁵⁵	482	371

⁵⁵ Although 1,294 cases in the sample had a coded disposition, 31 cases did not have a disposition date and were not included. Twelve cases had both a certification by motion and later as part of a settlement. These 12 cases were also excluded from this particular analysis. These exclusions changed the average overall time to disposition from 488 to 482 days.