



by Peter Zablotsky and Sa'id Vakili

Still

STANDING

Defendants in shareholder derivative lawsuits are unlikely to disqualify plaintiffs who can meet ownership and demand requirements

UNDER CALIFORNIA LAW, to qualify as a derivative plaintiff and institute an action on behalf of a corporation, the plaintiff must show: 1) status as a shareholder of record, holder of a beneficial interest, or holder or a voting trust certificate, 2) shareholder status at the time of the wrong to the corporation giving rise to the action (the contemporaneous-ownership rule), and 3) that reasonable effort was made to inform the corporate directors about the action and induce them to commence suit (a prelitigation demand), unless those efforts would have been “useless” or “futile” (demand futility).¹ Various challenges have been advanced to disqualify plaintiff shareholders in derivative actions in state court. Whether based on the existence of a simultaneous direct claim or action, the lack of contemporaneous ownership, the principles of guardian ad litem, or even Rule 23.1 of the Federal Rules of Civil Procedure, these challenges have met with little success.

As a general rule, a shareholder may have

separate direct and derivative claims and may maintain a direct action and a derivative action.² Nothing prevents shareholders from enforcing their personal rights against the corporation while simultaneously enforcing the rights of the corporation in a derivative action. As the court held in *Denevi v. LGCC*, one who has “suffered injury both as an owner of a corporate entity and in an individual capacity is entitled to pursue remedies in both capacities.”³ Typically, the personal and derivative claims arise out of the same course of action, but the plaintiff’s injuries and claims differ from those of the corporation.⁴ Moreover, in the case of closely held corporations with a small number of shareholders, the distinction between direct and derivative actions may blur if the acts of one or a few director- or officer-shareholders directly affect the corporation and the other shareholders. Thus, even a shareholder who has other individual claims may also be a plaintiff in a derivative action.⁵

An exception exists when the interests of the plaintiff in the direct action are so adverse or in such conflict with the interests of the other shareholders that the plaintiff cannot adequately represent the other shareholders. For example, in *Hornreich v. Plant Industries*,⁶ which was prosecuted under the provisions of Rule 23.1,⁷ the plaintiff and his brother sold their company to an independent corporation in exchange for shares of the latter’s corporate stock. As part of the transaction, the plaintiff was also hired by the acquiring corporation in exchange for covenants not to compete. When a dispute arose several years later, the plaintiff was fired. He sued on the sales and employment contracts, and later filed a shareholder deriv-

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ative suit and an unlawful detainer action. He made three offers of omnibus settlement that appeared to include a settlement of the derivative case as well as the other actions. Under these facts, the court found that he could not adequately represent the other shareholders' interests.⁸

Similarly, in *Zarowitz v. Bank of America Corporation*,⁹ two sets of litigation were again involved: the bank sought damages from the plaintiff and other former employees for its losses, and one plaintiff—William T. Powers—sued individually for wrongful termination and defamation. Meanwhile, a series of four class actions and a dozen derivative actions were filed against the bank's officers and directors. With the exception of Powers, the other plaintiffs reached a comprehensive settlement agreement with the bank's insurers. Powers attempted to block two of the settlements because he thought they would have an adverse effect on his damages action for wrongful termination. Under these facts, the court agreed that the plaintiff had a conflict of interest with the other shareholders and thus had no standing to object to the settlement of the derivative action.¹⁰

Regarding close corporations, in *Smith v. Ayers*,¹¹ a derivative action involving a family feud over a closely held corporation, the court found that the derivative plaintiff could not adequately represent the interests of other similarly situated shareholders, largely because there were none. The plaintiff's stake in the corporation was 1/10,000,000 of the authorized shares. Moreover, he received no cooperation from any other shareholders; he was a class of one.¹² In holding that he could not fairly and adequately represent the interest of other similarly situated shareholders, the court distinguished another case, *Larson v. Dumke*,¹³ in which the court allowed a derivative action to proceed with a class of one because the plaintiff, who was the original founder of the franchise, still retained an interest of almost 25 percent.¹⁴

Similarly, in *Owen v. Modern Diversified Industries, Inc.*,¹⁵ the court held that the holder of a small number of shares of corporate stock of minimal value, who also owned debentures of substantial value issued by the same corporation, could not maintain a derivative action under Rule 23.1. The plaintiff did not "fairly and adequately represent the shareholders" because he owned only 24 shares of stock whose value did not exceed \$21, and debentures of the same corporation with a face value of \$34,900. Moreover, the court found that his real concern was to protect his status as holder of the debentures and not his investment as a shareholder.¹⁶

The cases above involved clear conflicts,

but others have permitted shareholders to act as plaintiffs in a derivative action despite having positions adverse to the defendant directors. For example, in *Tyco Laboratories, Inc. v. Kimball*,¹⁷ the plaintiffs who brought the derivative action owned a substantial interest in the corporation and may have been in an adversary position to the defendant directors earlier over control of the corporation. The court found, however, that this did not disqualify them from representing the corporation's shareholders in a derivative action. The court reasoned that the plaintiff shareholders were pursuing common interests with the other shareholders by seeking redress on the corporation's behalf for alleged breaches of fiduciary duties and other violations of state and federal laws, and that any recovery would inure to the corporation's benefit and not to the plaintiffs in their individual capacities.¹⁸

Finally, in *Ravenswood Investment Company, L.P. v. Bishop Capital Corp.*,¹⁹ the plaintiff shareholders had offered to buy the corporation's outstanding shares and had attempted to buy select assets from it. The court found that this history did not establish that they had an "antagonistic" economic interest and held that they were adequate representatives of all the shareholders.²⁰ The court concluded that "[u]ltimately, it is the defendant's burden to show that the derivative plaintiff does not fairly and adequately represent the other shareholders," and that the burden had not been met.²¹ Unless particular circumstances reveal a clear conflict between the direct and derivative actions (which would disqualify a plaintiff in any event), the mere existence of simultaneous direct and derivative claims will not lead to the disqualification of the plaintiff shareholder.

Contemporaneous Ownership

Conflicts of interest are not the only challenge raised against plaintiff shareholders. The contemporaneous ownership rule requires that the plaintiff be a shareholder when the action is filed and when some part of the transaction complained of occurred.²² In addition, the plaintiff must remain a shareholder for the duration of the proceeding.²³ Several challenges to plaintiff shareholder standing have been mounted pursuant to this rule, with limited success. For example, in *Pearce v. Superior Court*,²⁴ the appellate court reversed the trial court's dismissal of a derivative action on the ground that the plaintiff trust beneficiary had no standing because she was not a record owner of corporate stock, which was held in the name of the trust. The appellate court held that the plaintiff had a beneficial interest as a trust beneficiary, and that the law did not require the plaintiff to have stock registered in her name to give her standing to

bring a derivative action.²⁵

Along the same lines, in *Patrick v. Alacer Corporation*,²⁶ a wife sought standing as a plaintiff shareholder based on the community property interest in her husband's shares. In addition, she alleged that the increase in the stock's value, in excess of that attributed to a fair return on her husband's original investment, was community property. The court held that a wife could establish standing as a derivative plaintiff based on her community property interest in her husband's shares, a beneficial ownership that gave the spouse standing.²⁷ The court reasoned that since income arising from a spouse's skill, efforts, and industry is community property, the community should receive its fair share of the profits deriving from the spouse's devotion of more than minimal time and effort to handling his or her separate property.²⁸ The court noted that even if the stock was initially her husband's separate property, the plaintiff spouse might have acquired a community property interest in it through their alleged joint devotion of time and effort to it during their marriage.²⁹

In holding that the trial court erred in sustaining a demurrer to the derivative cause of action on the ground that the wife lacked standing, the appellate court commented on the nature of the standing requirements. The court stressed that the legislature extended standing from record owners to beneficial owners as part of "the 1975 liberalization of the standing requirements," which were intended to "bring California in line with the majority rule that 'it is sufficient that the plaintiff be an equitable shareholder or unregistered owner of shares.'" The court further reasoned that while a trust may be the only record shareholder, the plaintiff's alleged community property interest in a corporation essentially makes her an unregistered shareholder, and that the community property interest in the corporation satisfies the liberal standing requirement of beneficial ownership.³⁰

Finally, it is worth noting the relevance of the continuing-wrong doctrine in the contemporaneous ownership context. Specifically, Section 800(b)(1) of the California Corporations Code provides that the court has discretion to waive the contemporaneous-ownership requirement if it finds that no one else can enforce the claim on the corporation's behalf and that the defendants would otherwise retain the benefits derived from their willful breaches of fiduciary duties unless the action is permitted to proceed. As such, the continuing-wrong doctrine overcomes the contemporaneous-ownership rule if the alleged wrong was still in progress when the shareholder acquired his or her shares, even if the initial action was initiated previously.

MCLE Test No. 239

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1. A shareholder bringing a derivative action does not need to include the corporation as a party in the action.
True.
False.
2. A shareholder may assert both direct and derivative claims in the same action.
True.
False.
3. A nonshareholder spouse can establish standing as a derivative plaintiff through community property rights in his or her spouse's shares.
True.
False.
4. A plaintiff in a derivative action must show:
A. Status as shareholder of record.
B. Status as holder of a beneficial interest.
C. Status as a holder of a voting trust certificate.
D. Any of the above.
5. The contemporaneous-ownership rule requires a derivative plaintiff to be a shareholder:
A. At the time the action is filed.
B. For a portion of the time that the wrong complained of occurred.
C. For the duration of the action.
D. All of the above.
6. A derivative plaintiff must fairly and adequately represent all shareholders and not just those that are similarly situated.
True.
False.
7. A derivative plaintiff owning 20 percent of a closely held corporation cannot adequately represent the interest of the corporation in an action which his or her interests are adverse to the corporate officers owning the remaining 80 percent of the shares.
True.
False.
8. Under California law, a court can waive the contemporaneous-ownership rule if it determines that there is no one else to enforce the claims on the corporation's behalf against defendants who would otherwise retain their ill-gotten gains.
True.
False.
9. Fair and adequate representation is a requirement under:
A. The Federal Rules of Civil Procedure.
B. The California Corporations Code.
C. California case law.
D. None of the above.
10. The continuing-wrong doctrine is an exception to contemporaneous ownership rule if the alleged wrong was in progress when the shareholder acquired his or her shares.
True.
False.
11. Under federal law, factors that determine whether a derivative plaintiff can properly represent the interest of other shareholders include whether the plaintiff:
A. Is the real party in interest.
B. Has personal interests outweighing interests in the derivative action.
C. Has a personal commitment to the action.
D. All of the above.
12. California cases have required the appointment of a derivative plaintiff the same as one would appoint a guardian ad litem.
True.
False.
13. Demand futility is a prefiling requirement that a derivative plaintiff make a demand on the board to take action.
True.
False.
14. A derivative action inherently involves a conflict between the minority shareholders bringing the action and the majority shareholders whose administration is being challenged.
True.
False.
15. *Grosset v. Wenaas* was an action involving a derivative plaintiff
A. Who lost standing as a result of voluntarily selling his shares.
B. Who lost standing as a result of involuntarily selling his shares in a merger.
C. Who maintained his standing after involuntarily selling his shares in a merger.
D. None of the above.
16. Generally, in actions involving both derivative and direct claims, the claims arise from the same course of conduct, but the injuries differ.
True.
False.
17. A prelitigation demand is a necessary first step in a derivative action unless such a demand would be useless or futile.
True.
False.
18. A plaintiff can be disqualified for bringing both direct and derivative claims.
True.
False.
19. The Federal Rules of Civil Procedure and the California Corporations Code have analogous requirements for fair and adequate representation.
True.
False.
20. Any recovery in a derivative action goes to:
A. The nominal defendant.
B. The nominal plaintiff.
C. Both the nominal plaintiff and the nominal defendant.
D. The minority shareholders.



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14. True False
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16. True False
17. True False
18. True False
19. True False
20. A B C D

The Corporations Code incorporates this concept in its requirement that the plaintiff be a shareholder “at the time of the transaction or any part thereof of which plaintiff complains.”³¹ At least one court has interpreted the language to mean that “because every wrongful transaction may be viewed as a continuing wrong to the corporation until remedied...the ‘test to be applied in such situations concerns whether the wrong complained of is in actuality a continuing one or is one which has been consummated....”³²

Guardian Ad Litem

In addition to contemporaneous ownership, another question that may arise is whether a derivative plaintiff who brings an action for the benefit of a corporation must meet the fiduciary requirements for a guardian ad litem. Historically, some courts have made this analogy. For example, in *Hogan v. Ingold*,³³ the court reasoned that a shareholder who “has gone into equity seeking redress for a corporation under disability to obtain relief itself” has done so “precisely as the guardian ad litem goes into court to obtain like redress for a client under disability by reason of incompetency or nonage. The principles governing the conduct of a guardian ad litem are in full strictness applicable to the conduct of such a plaintiff stockholder.”³⁴

The statements in *Hogan*, in *Whitten v. Dabney*, and in similar cases should be considered, however, only in the context in which they were made. Specifically, the *Hogan* court held that the amendment to former Section 834 of the Corporations Code allowing the court to require the plaintiff to post a bond applied to pending actions. The *Whitten* court held that the plaintiff could not settle a derivative suit without the court’s approval.³⁵ Both cases recognized limitations on the conduct of plaintiffs who sought to enforce rights belonging to another. But neither of them, nor any other cases, require appointment of a plaintiff as one would appoint a guardian ad litem.³⁶

On a related guardianship issue, some courts have held that a guardian who pursues an interest adverse to his or her ward and the faithful performance of his or her duties may be removed. For example, in *Middlecoff v. Middlecoff*,³⁷ the guardian ad litem sought to initiate a will contest on her ward’s behalf so that she would be in a position to inherit from the ward. In *McCallum v. Hornaday*,³⁸ the guardian obstructed the sale of a corporation to other potential buyers and formed a new corporation with proxies through which the guardian intended to acquire his ward’s corporation for himself. Similarly, in *Howard v. Howard*,³⁹ the guardian set up a dummy sale of the minor’s jewelry so that he could purchase it for himself.

These cases, however, all involved guardians who were trying to steal from their wards. In contrast, a shareholder derivative action is “filed on behalf of the corporation for injury to the corporation for which it has failed or refused to sue.”⁴⁰ When the claim is derivative, the shareholder is merely a nominal plaintiff. Although the corporation is joined as a nominal defendant, the corporation is the real party in interest to which any

However, while fair and adequate representation is a requirement at the federal level, Corporations Code Section 800(b) contains no such requirement. In addition, no California case has held that fair and adequate representation is a requirement in derivative actions.

Nonetheless, some California authorities have suggested that the federal requirement potentially limits plaintiff standing in state

“The true measure of adequacy of representation under Rule 23.1 is not how many shareholders the plaintiff represents but rather how well the representative advances the interests of similarly situated shareholders.” Rule 23.1 does not require a derivative plaintiff to represent the interests of shareholders with whom he or she is not similarly situated.

recovery actually belongs.⁴¹ Indeed, unlike the guardian ad litem, in a shareholder derivative action, the shareholder plaintiff is required to have an ownership or beneficial interest in the corporation in order to bring the action.

Plaintiff Standing

In comparison to California law, federal law imposes an additional requirement in shareholder derivative actions. Specifically, Rule 23.1 provides that a “derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of shareholders or members who are similarly situated in enforcing the right of the corporation or association.”⁴² The question of whether derivative plaintiffs can fairly and adequately represent the interests of other shareholders turns on such factors as 1) whether the plaintiffs are the real parties in interest, 2) the plaintiffs’ familiarity with the litigation, 3) the support or opposition of other shareholders, 4) the existence of any adverse interests that might present an actual conflict with the corporation’s interests, 5) the degree of personal commitment to the action, 6) the relative magnitude of plaintiffs’ personal interests as compared to their interest in the derivative action, and 7) any “vindicative” motivation in bringing the action.⁴³

shareholder derivative actions, but the precedential value of these authorities is uncertain. For example, in *Grosset v. Wenaas*,⁴⁴ the court stated:

[The plaintiff-shareholder] argues the cases involving rule 23.1 of the Federal Rules of Civil Procedure are inapt because that rule contains a provision requiring a derivative plaintiff to “fairly and adequately represent” the interests of similarly situated shareholders... whereas section 800 does not...[W]e reject the implication that section 800’s failure to expressly state a fair and adequate representation requirement reflects any intent on the part of our Legislature to secure the standing of a derivative plaintiff who, for whatever reason, cannot provide fair and adequate representation.⁴⁵

This language, however, is mere dicta. The issue *Grosset* presented was whether, under the continuous-ownership requirement of Section 800(b), a plaintiff who ceased to be a stockholder by reason of a corporate merger lost standing to continue the derivative action. *Grosset* held that because, as a result of the merger, the plaintiff no longer owned stock, he lacked standing under California law to continue litigating the

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derivative action.⁴⁶ More specifically, shortly after the plaintiff brought a derivative action, he involuntarily sold his shares as part of a corporate merger. The California Supreme Court upheld the trial court's dismissal under Delaware's continuous-ownership rule.⁴⁷ The court then held that Corporations Code Section 800 imposed a similar rule.⁴⁸ The court made its statement about Rule 23.1 in a citation referring to courts in other jurisdictions that required continuous ownership of stock.⁴⁹ It rejected the plaintiff's suggestion that California's different statute requires a different rule.⁵⁰ Furthermore, the court inserted its discussion of Rule 23.1 in a footnote at the end of the paragraph quoted above. At the end of that footnote, it added, "[m]oreover, as noted previously, maintaining continuous stock ownership is reasonably viewed as a requirement that is distinct from the fair and adequate representation requirement."⁵¹ In another footnote, the court also points out that, under Section 7.41 of the American Bar Association's Model Business Corporation Act, "maintaining continuous stock ownership is a requirement that is distinct from the fair and adequate representation requirement."⁵²

The Rutter Group's practice guide on corporations also discusses a requirement for fair and adequate representation, stating: "A

shareholder pursuing personal litigation against a corporation ordinarily will not qualify to serve as the 'representative' plaintiff who must 'fairly and adequately' represent the other shareholders in the derivative suit.... Indeed, such a shareholder will also lack standing to object to settlement of the shareholders' derivative action."⁵³

The difficulty here is that, as authority for this statement, the authors of the treatise cite a federal case, *Zarowitz v. BankAmerica Corporation*,⁵⁴ brought under Rule 23.1 rather than under California law. In that case, a shareholder who was also the corporation's former employee objected to settlement of a derivative suit. That plaintiff, named Powers, had also initiated a wrongful termination action against it arising out of the same series of events. The court held that Powers had no standing to do so because under Rule 23.1, he

could not serve as a representative plaintiff. His personal litigation strategy militates against any settlement. Powers' interests converge with the interests of BAC's shareholders in a few respects, but they diverge from them significantly in others. Powers' interest in increasing the value of his BAC stock through a larger derivative suit recovery is dwarfed by his

interest in pursuing his litigation with the Bank.⁵⁵

The court did not state the criteria for fair and accurate representation, instead only observing that the employee's interests diverged from those of the other shareholders more than they converged.

In any event, when Rule 23.1 is applied, it requires that derivative plaintiffs fairly and adequately represent the interests of only those shareholders or members who are similarly situated in enforcing the right of the corporation of association.⁵⁶ By its nature, a derivative suit "poses inherent conflicts between those minority shareholders who are bringing the suit and the majority shareholders whose administration is challenged either directly or indirectly."⁵⁷

Adequacy of Representation

For example, in *Larson v. Dumke*, the Ninth Circuit emphasized that the issue was not whether the plaintiff could fairly and adequately represent all shareholders but whether he could fairly and adequately represent similarly situated shareholders.⁵⁸ Because the plaintiff before it was not similarly situated to other shareholders, whether he could fairly or adequately represent others was not at issue. The court noted a number of factors federal courts have considered in determining whether a plaintiff can adequately represent the interests of other similarly situated shareholders and then held that a single shareholder who owned 23.41 percent of the stock could pursue a derivative action even if he were the only shareholder similarly situated.⁵⁹ Similarly, in *Halsted Video, Inc. v. Guttillo*,⁶⁰ a shareholder who owned 20 of 100 shares of a closely held corporation was permitted to bring a derivative action against corporate officers owning the remaining 80 shares, notwithstanding the claims that his interests were adverse to those of the corporate officers. The court found that he could adequately represent the interest of the corporation on behalf of which the action was being maintained.⁶¹ As such, "Rule 23.1 does not require that derivative action plaintiffs have the support of a majority of the shareholders or even that they be supported by all of the minority shareholders." As the *Halsted Video* court held, "The true measure of adequacy of representation under Rule 23.1 is not how many shareholders the plaintiff represents but rather how well the representative advances the interests of similarly situated shareholders."⁶² Rule 23.1 does not require a derivative plaintiff to represent the interests of shareholders with whom he or she is not similarly situated.⁶³

The theoretical basis for challenges to plaintiff-shareholder standing are certainly



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interesting. There clearly is potential for conflicts between direct and derivative actions. Contemporaneous ownership can be subtle and nuanced. Certain aspects of guardian ad litem are analogous to derivative actions. At first blush, it appears that the California requirement of continuous ownership would be buttressed by the federal requirement of fair and adequate representation. To date, however, none of these theories have presented a significant obstacle to plaintiff-shareholder standing in derivative actions. Rather, despite the creativity of the theoretical arguments, plaintiffs have by and large been successful in their efforts to maintain their standing. ■

¹ See generally CORP. CODE §800.

² Denevi v. LGCC, 121 Cal. App. 4th 1211, 1221-22 (2004).

³ Id. at 1221 (citing Jones v. H.F. Ahmanson & Co., 1 Cal. 3d 93, 106-107 (1969)).

⁴ Id.

⁵ See Jara v. Supreme Meats, Inc., 121 Cal. App. 4th 1238, 1253-60 (2004).

⁶ Hornreich v. Plant Indus., 535 F. 2d 550 (9th Cir. 1976).

⁷ Id. at 550.

⁸ Id. at 552.

⁹ Zarowitz v. Bank of Am. Corp., 866 F. 2d 1164 (9th Cir. 1989).

¹⁰ Id. at 1166.

¹¹ Smith v. Ayers, 977 F. 2d 946, 949 (5th Cir. 1992).

¹² Id. at 948.

¹³ Larson v. Dumke, 900 F. 2d 1363 (9th Cir. 1990).

¹⁴ Smith, 977 F. 2d at 949.

¹⁵ Owen v. Modern Diversified Indus., Inc., 643 F. 2d 441 (6th Cir. 1981).

¹⁶ Id. at 443-44.

¹⁷ Tyco Labs., Inc. v. Kimball, 444 F. Supp. 292 (E.D. Pa. 1977).

¹⁸ Id. at 299.

¹⁹ Ravenswood Inv. Co., L.P. v. Bishop Capital Corp., 374 F. Supp. 2d 1055 (D. Wyo. 2005).

²⁰ Id. at 1062.

²¹ Id. (citations omitted).

²² Pacific Lumber Co. v. Superior Court, 226 Cal. App. 3d 371 (1990).

²³ See, e.g., Grosset v. Wenaas, 42 Cal. 4th 1100, 1114-15 (2008).

²⁴ Pearce v. Superior Court, 149 Cal. App. 3d 1058 (1983).

²⁵ Id. at 1067-68.

²⁶ Patrick v. Alacer Corp., 167 Cal. App. 4th 995 (2008) (citing Pearce v. Superior Court, 149 Cal. App. 3d 1058, 1065 (1983)).

²⁷ Id. at 1011-12.

²⁸ Id. at 1011 (citing Beam v. Bank of Am., 6 Cal. 3d 12, 17 (1971)).

²⁹ Id.

³⁰ Id. at 1011-12 (citations omitted).

³¹ CORP. CODE §800(b)(1).

³² Blasband v. Rales, 971 F. 2d 1034 (1992) (citing Newkirk v. W. J. Rainey, Inc., 76 A. 2d 121, 123 (Del. Ch. 1950) and Schreiber v. Bryan, 396 A. 2d 512, 516 (Del. Ch. 1978)).

³³ Hogan v. Ingold, 38 Cal. 2d 802, 809-10 (1952); see also Whitten v. Dabney, 171 Cal. 621, 631 (1915).

³⁴ Hogan, 38 Cal. 2d at 810.

³⁵ Whitten, 171 Cal. at 630-31.

³⁶ Cf. CODE CIV. PROC. §373.

³⁷ Middlecoff v. Middlecoff, 199 Cal. App. 2d 22 (1962).

³⁸ McCallum v. Hornaday, 30 Cal. 2d 297 (1947).

³⁹ Howard v. Howard, 133 Cal. App. 2d 535 (1955).

⁴⁰ Schuster v. Gardner, 127 Cal. App. 4th 305 (2005).

⁴¹ Id. at 312.

⁴² FED. R. CIV. P. 23.1.

⁴³ See Larson v. Dumke, 900 F. 2d 1363, 1367 (9th Cir. 1989).

⁴⁴ Grosset v. Wenaas, 42 Cal. 4th 1100 (2008).

⁴⁵ Id. at 1115, n.10.

⁴⁶ Id. at 1104.

⁴⁷ Id. at 1109.

⁴⁸ Id. at 1110-19.

⁴⁹ Id. at 1114 n.9.

⁵⁰ See id. at 1114-15.

⁵¹ Id. at 1115 n.10.

⁵² Id. at 1111 n.7.

⁵³ FRIEDMAN ET AL., CAL. PRACTICE GUIDE: CORPORATIONS §6.620.1 (Rutter 2014).

⁵⁴ Zarowitz v. BankAmerica Corp., 866 F. 2d 1164, 1166 (9th Cir. 1989).

⁵⁵ Id. at 1166.

⁵⁶ FED. R. CIV. P. 23.1.

⁵⁷ In re Applied Micro Circuits Corp. Secs. Litig., 2003 U.S. Dist. Lexis 9371, at *4 (9th Cir. 2003) (quoting Kirkpatrick v. J.C. Bradford Co., 827 F. 2d 718, 728 n. 7 (11th Cir. 1987)).

⁵⁸ Larson v. Dumke, 900 F. 2d at 1368-69.

⁵⁹ Id.

⁶⁰ Halsted Video, Inc. v. Guttillo, 115 F.R.D. 177 (N.D. Ill. 1987).

⁶¹ Id. at 179.

⁶² Id. (citations omitted).

⁶³ Id. at 180.

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