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PERSPECTIVE

## HP's long, winding road to face a nationwide class

By Michael Cypers and Julia Cherlow

Twelve years after Hewlett-Packard was sued in California in a class action alleging that it sold defective computers, the 6th District Court of Appeal reversed summary judgment rulings HP had won four years earlier, and said HP must face a nationwide class under California's consumer-friendly laws. This ruling came seven years after the same appellate panel denied HP's writ petition challenging the statewide class certified by the trial court.

The latest decision to come out of the HP litigation — *Rutledge v. Hewlett-Packard*, H036790 (Cal. Ct. App. July 22, 2015) — underscores several important principles: (a) California courts will permit nationwide classes to sue under California's broad consumer protection laws; (b) a defendant winning summary judgment may have it reversed on appeal; and (c) class action litigation can take years or, as in this case, more than a decade to resolve.

In *Rutledge*, purchasers of notebook computers brought a class action against HP alleging that certain notebook computers it manufactured contained faulty inverters that HP knew were likely to fail before the end of the computer's normal life. The original complaint, filed in 2003, included claims for violation of California's Unfair Competition Law, violation of California's Consumer Legal Remedies Act, unjust enrichment and breach of express warranty. The purchasers sought to certify a nationwide class in 2005, but the trial court denied the motion. In 2007, however, the trial court certified a class consisting of *California residents only*. See *Hewlett-Packard Co. v. Superior Court*, 167 Cal. App. 4th 87, 92 (2008). HP unsuccessfully sought to decer-

tify the class, and the 6th District subsequently denied HP's petition for writ of mandate.

Nearly *eight years* after the original complaint was filed, in April 2011, the trial court granted HP's "no-merits" motion, disposing of the CLRA claim, and granted summary judgment in favor of HP on all remaining claims. The class filed an appeal challenging the orders relating to the denial of certification of a nationwide class and the summary judgment motion in favor of HP on the CLRA and UCL claims.

The 6th District — consisting of the same panel who heard the writ of mandate — reversed the order denying certification of a nationwide class. The Court of Appeal explained that the trial court ruling applied improper criteria and was not supported by substantial evidence. In California, certification of a nationwide class requires the satisfaction of a two-party inquiry. First, the class representatives must establish that the defendant has sufficient contacts with California, to meet constitutional standards — basically to ensure "the choice of forum is not arbitrary or unfair" (internal quotation and citation omitted). If certification of a nationwide class is shown to be constitutional, then the burden shifts to the opponent of certification, to show that under a choice-of-law analysis the interests of another state outweighs California's interest in having its own law applied.

The appellate court held that the trial court erred in determining that HP had insufficient California contacts. That "HP's headquarters and principle place of business is California, policy decisions regarding the notebooks at issue, including issuing the service notes, were made in California, and all of the warranty repairs were performed in California," persuaded the Court of



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Appeal of this. Thus, it found HP had sufficient California contacts to satisfy the constitutionality requirement.

On the choice-of-law question, the Court of Appeal said the trial court applied the wrong legal standard: It placed the burden of persuasion on the wrong party. The party opposing class certification, the court explained, must prove that the interests of other states in litigating the matter outweigh California's interest. The court reasoned that a simple showing that other states' laws differ from California's laws was not sufficient to show that the states' respective interests were in conflict.

According to the Court of Appeal, it was improper for the trial court to ask the class to "articulate why California has a special obligation that would fairly call for it to assume the burden of adjudicating a nationwide class," rather than placing the burden on HP to show that non-California state interests outweighed California's interest in litigating the matter. Based on the absence of substantial evidence and the application of the wrong legal standard, the Court of Appeal found "that the trial court's order denying nationwide class certification must be reversed."

In addition, the Court of Appeal only affirmed the summary judg-

ment ruling as it pertained to one of the class representatives. The ruling of "no-merit" on the CLRA claim and all of the remaining summary judgment orders were reversed. In the end, this ruling revives claims HP thought had been laid to rest years before, while also significantly broadening the class of people to whom HP is potentially liable.

*Rutledge* may not break new ground, but it reaffirms several principles which class action litigants need to understand: (a) plaintiffs seeking a nationwide class under California law have a fighting chance at succeeding in California courts, which are strong protectors of consumer rights; (b) summary judgments are closely scrutinized on appeal; and (c) class litigation can take a long time — sometimes more than a decade — to resolve, at great expense to the litigants.

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