

# Ninth Circuit: Central District of California's 90-Day Deadline to Move for Class Certification Incompatible with Rule 23

*By Adam E. Polk*

In an August 20, 2018, decision, the Ninth Circuit in [\*ABS Entertainment, Inc. v. CBS Corp.\*](#), (900 F.3d 113), found that Central District of California Local Rule 23-3—setting a strict 90-day time frame from filing of a complaint to move for class certification—is impracticable and not consistent with Federal Rule of Civil Procedure 23. The *ABS* decision provides needed clarity to those practicing in the Central District as to the appropriate timing of parties' class certification motions in light of the plain language of Local Rule 23-3.

*ABS* centers on allegations by ABS—a company that digitally remasters pre-1972 sound recordings for broadcasting on digital formats—that CBS delivered music content ABS digitally remastered without paying ABS in violation of California law. ABS sued CBS on behalf of itself and a proposed class of others who similarly alleged CBS broadcast music they had remastered without compensating them.

Central District of California Local Rule 23-3 provides:

Within 90 days after service of a pleading purporting to commence a class action . . . the proponent of the class shall file a motion for certification that the action is maintainable as a class action, unless otherwise ordered by the Court.

In *ABS*—as is often the case in proposed class actions filed in the Central District of California—the parties stipulated to extend the 90-day deadline to allow for class certification discovery. The district court, however, denied the parties' stipulated request to extend deadlines on grounds there was “no show of cause, let alone good cause.” While ABS still filed a timely motion for class certification, the district court struck the motion, finding that it did not follow the local rules concerning setting a hearing date or conferring with opposing counsel prior to filing the motion.

On appeal, the Ninth Circuit found that the district court abused its discretion in strictly applying Local Rule 23-3. Reasoning that local rules specifying a short period within which a plaintiff must move for class certification are inconsistent with Rule 23's emphasis on the parties' obligation to provide the court with sufficient information to support an informed decision on certification, the court concluded that Local Rule 23-3 “is incompatible with Federal Rule of Civil Procedure 23.” In making its determination, the court acknowledged that local rules are

entitled to a large measure of discretion, but noted that they cannot be incompatible with the Federal Rules.

The court reversed and remanded for consideration of the class certification motion on the merits, including reconsideration of the propriety of pre-certification discovery.

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