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The Supreme Court's dismissal of *Labcorp v. Davis*

In a closely watched case that could have drastically reshaped class action law, the U.S. Supreme Court on June 5, 2025, dismissed the writ of certiorari as improvidently granted in *Labcorp v. Davis,* leaving intact a 9th Circuit ruling that permits class certification even when a class may include uninjured members—prompting relief among consumer advocates and preserving the status quo in class action jurisprudence, at least for now.

By Brian Danitz and Vasti Montiel

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"The writ of certiorari is dismissed as improvidently granted." With these words issued on June 5, 2025, the U.S. Supreme Court ended its current term without issuing a substantive opinion in a case that threatened to upend decades of class action practice and jurisprudence, and consumer rights groups across the country breathed a collective sigh of relief. Laboratory Corporation of *America Holdings d/b/a Labcorp v. Davis, et al*, No.24-0304 ("Labcorp"), was closely watched by Corporate America and consumer groups alike because the core issue on appeal–whether a class may be certified if it potentially includes uninjured class members–impacts the fundamental viability of a large swathe of consumer class action cases.

Labcorp is a clinical diagnostic laboratory. At issue was a self-service touchscreen kiosk for patients to use to expedite checking in for their appointments. Plaintiffs brought a class action on behalf of a putative class of all legally blind individuals in the U. S. District Court for the Central District of California, alleging that Labcorp's kiosks violated the Americans with Disabilities Act (ADA) and California's Unruh Act because they were not independently accessible to blind and visually impaired individuals.

The U.S. District Court for the Central District of California certified a nationwide injunctive class, under Rule 23(b)(2), and a damages subclass, under Rule 23(b)(3). Labcorp sought immediate review of the class certification order, arguing that many members of the class suffered no cognizable injury and therefore lacked Article III standing, either because they did not know about the kiosks or they did not intend to use them. The 9th Circuit affirmed the district court's decision, noting: "Labcorp's allegation that some potential class members may not have been injured does not defeat commonality at this time" because "Rule 23 permits certification of a class that potentially includes more than a de minimus number of uninjured class members." 2024 WL 489288 at *2, n.1 (9th Cir. Feb. 8, 2024), quoting *Olean Wholesale Grocery Coop. Inc. v. Bumble Bee Foods LLC,* 31 F.4th 651, 668-69 (9th Cir. 2022). Labcorp then petitioned for review by the U.S. Supreme Court as to whether a federal court may certify a class action when some of its members lack any Article III injury.

Labcorp argued that courts cannot certify proposed classes that contain any uninjured members because doing so would violate Article III standing requirements. In other words, the Petitioner argued that every potential member of the defined class–not just the named class representative plaintiffs– would need to show that they suffered a cognizable injury at the class certification stage. The Petitioner also argued that the potential existence of an appreciable number of uninjured class members would necessarily require separate mini-trials to determine actual class membership, thus defeating the requirement under Federal Rule 23(b)(3) that common issues predominate over individualized issues.

During oral argument, it quickly became evident that procedural questions regarding mootness given subsequent changes to the class definition in the trial court begged the question of whether the writ of certiorari should be dismissed as improvidently granted. Justices Sotomayor, Gorsuch, and Kagan questioned whether the Court was being asked to provide an advisory opinion and whether the matter was properly before the Court. It was also evident that the Justices varied widely in their views and there was no consensus on the substantive questions posed. Justice Jackson noted that only "one plaintiff" is needed to establish standing. Justice Sotomayor noted that, as a practical matter, class definitions often get amended during the duration of the litigation. Justice Gorsuch indicated that the issue should be handled under Rule 23 rather than as a constitutional standing requirement. Justices Jackson, Sotomayor, Kagan and Gorsuch noted that courts generally do not exercise jurisdiction over the

absent class members. And Justice Kavanaugh, who penned the only dissent in the 8-1 decision to dismiss the case, emphasized the corporate defendant's perspective "of being pressured into a settlement with an overly broad class once it's certified."

The circuit courts remain split on the question of uninjured class members. *See, e.g., In re Nexium Antitrust Litig.*, 777 F.3d 9, 14 (1st Cir. 2015) (de minimis number of uninjured class members is no bar to class certification provided those members can be weeded out at a later stage); *Johannessohn v. Polaris Indus. Inc.*, 9 F.4th 981, 987 (8th Cir. 2021) (class could not be certified because it was defined to include individuals who lack standing). Controlling 9th Circuit law does not preclude "certification of a class that potentially includes more than a de minimis number of uninjured class members." *Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651, 669 (9th Cir. 2022) (en banc) (rejecting de minimis rule as inconsistent with Rule 23(b)(3) requiring only that common questions predominate over individual ones). With the dismissal of the *Labcorp* appeal, Olean remains controlling authority in the 9th Circuit.

The question of how potentially uninjured class members should be handled at the class certification stage will likely be taken up again by the U.S. Supreme Court at some point in the near future. But for now, class plaintiffs' counsel seeking to vindicate consumer rights in the 9th Circuit, and around the country, can live to fight another day.

Brian Danitz *is a partner at Cotchett, Pitre & McCarthy LLP in Burlingame, focusing on consumer class actions, shareholder suits and business litigation.* **Vasti Montiel** *is a senior associate at CPM with a practice encompassing a broad range of civil litigation.*

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