Defending the Modern Mass Tort: Injunctive Class Actions, Privacy Risks, and MDL Enforcement

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Introduction

When corporate and defense counsel think about class actions, Rule 23(b)(3) damages classes tend to dominate the conversation. These cases carry the risk of substantial monetary exposure, require courts to wrestle with threshold requirements such as numerosity and commonality, and frequently drive settlement negotiations involving significant amounts. But recent developments in class action practice show that damages exposure is not the only risk. Defendants must also consider the increasing use of Rule 23(b)(2) injunctive classes, which allow plaintiffs to obtain broad, forward-looking relief without many of the procedural safeguards attached to damages classes. In the case of data breach class actions, plaintiffs increasingly seek to combine damages with structural injunctions, emergency relief, and reputational narratives that place companies on the defensive long before certification. As companies contend with these new tactics, they should continue to seek enforcement of case management procedures in class actions and multidistrict litigation. Effective use of these procedures can result in the dismissal of class claims or, in the case of MDLs, dismissal of hundreds of meritless cases. Success in class action and MDL practice requires both adaptability to new plaintiff strategies and persistence in enforcing established procedures.

Rule 23(b)(2): The Overlooked Class Action Vehicle

Rule 23(b)(2) allows certification of a class when "the party opposing the class has acted or refused to act on grounds that apply generally to the class," such that injunctive or declaratory relief is appropriate for the group as a whole. Historically, this provision was most often associated with civil rights and institutional reform litigation such as cases challenging school desegregation or discriminatory government benefit policies.

The differences between (b)(2) and (b)(3) classes are not mere technicalities. They carry substantial strategic implications:

- Nature of relief: (b)(2) classes are forward-looking, oriented toward injunctions or declarations, not retrospective money damages.
- Procedural safeguards: (b)(3) classes require findings that threshold requirements have been met and include notice and opt-out rights. 23(b)(2) classes typically do not.
- Binding effect: Because class members cannot opt out, absent members are bound by (b)(2) judgments, raising due process concerns if damages claims are blended in.
- Ease of certification: Plaintiffs often find (b)(2) easier to certify because individualized damages questions that doom (b)(3) classes are irrelevant to injunctive relief.

For corporate defendants, a (b)(2) injunction can require systemic changes to company policies or products. The compliance costs may rival or exceed damages exposure. Settlements in such cases can be equally onerous, focusing on structural reforms that are expensive, intrusive, and difficult to unwind.

Recent political debates over universal or nationwide injunctions in federal litigation have brought new attention to Rule 23(b)(2). In *Trump v. CASA, Inc.*, the Supreme Court held that federal courts generally lack the authority to issue universal or nationwide injunctions that apply

to everyone, not just the parties involved in the lawsuit. This decision curtailed a practice that federal judges have used to block President's Trump policies. The case involved a challenge to President Trump's January 2025 executive order that sought to restrict birthright citizenship. After the order was issued, several district courts granted nationwide preliminary injunctions against its enforcement. The effect of the Supreme Court's procedural ruling is that advocacy groups could no longer rely on a single lawsuit to secure a nationwide injunction blocking a federal policy. Some Justices warned that allowing nationwide class certification under Rule 23(b)(2) could become a "potentially significant loophole" that allows nationwide injunctions to "return from the grave." To nobody's surprise, in the days following the *Trump v. Casa* opinion, judges have certified nationwide classes under 23(b)(2), regardless of the impacted non-litigants' awareness of the case and whether or not they consented to the relief sought.

Corporate defendants facing Rule 23(b)(2) cases can (a) argue that the relief sought is not truly indivisible and depends on individualized circumstances, (b) show that damages claims predominate, pushing the case into (b)(3) territory, (c) raise due process objections to binding absent class members without opt-out rights, and (d) challenge hybrid classes that improperly blend (b)(2) and (b)(3) theories.

A recent data breach case filed in Louisiana shows how those strategies are being tested in real world cases.

Data Breach Litigation as a Hybrid Class Action Threat: *Karam v. Tea Dating Advice, Inc.*

Few areas illustrate the convergence of consumer expectations, corporate representations, and litigation risks more vividly than data breach class actions. In August 2025, plaintiffs filed a putative class action in Louisiana state court (subsequently removed to federal court) against Tea

Dating Advice, Inc., operator of the Tea App, which is allegedly marketed as a safe, women-centered platform for sharing dating experiences. The complaint alleged two catastrophic breaches in three days: one exposing over 13,000 verification selfies and government ID scans, stored for more than a year despite assurances of immediate deletion, and another exposing millions of private direct messages on intimate subjects such as infidelity and abortion. The complaint asserted claims ranging from negligence and invasion of privacy to consumer protection violations, and it requested both damages and sweeping injunctive relief. Most strikingly, plaintiffs sought a TRO to halt Tea's operations altogether until adequate security measures were implemented.

This case demonstrates how plaintiffs frame data breaches not just as technical failures but as threats to physical safety. The TRO motion argued that leaked PII and messages created risks of stalking, harassment, and domestic violence — harms that cannot be addressed by money damages alone.

Companies responding to data breaches can anticipate facing:

- Hybrid certification battles, in which plaintiffs pursue both damages and injunctive relief, testing the boundaries between (b)(2) and (b)(3).
- Emergency motions, in which TROs can shift early dynamics, forcing defendants to defend their right to remain in business before class certification.
- Plaintiffs who weaponize consumer trust as a liability, alleging that corporate assurances about safety and privacy become actionable when practices fall short.

Karam is not an isolated case. Regulators and plaintiff lawyers are focusing on the gap between what companies promise and what they deliver. In privacy and cybersecurity cases, marketing claims can be as damaging as technical flaws. Hybrid relief strategies are increasingly common, inviting courts to expand class certification frameworks in novel ways.

While *Karam* shows plaintiffs' creativity in stretching certification frameworks, defendants have also seen courts embrace discipline in mass torts. The *Bair Hugger* decision demonstrates how persistence in enforcing Plaintiff Fact Sheet obligations can lead to the dismissal of hundreds of cases.

MDL Enforcement and the *Bair Hugger* Dismissals

MDLs often sprawl for years, encompassing thousands of plaintiffs with varying claims and evidentiary support, or lack thereof. Plaintiff Fact Sheets are one of the few tools available to bring order to this chaos. The July 2025 *Bair Hugger* decision illustrates what happens when courts enforce those obligations.

The background is as follows. PTO 14, entered in 2016, required plaintiffs to submit verified PFSs within 90 days of filing. After summary judgment for defendants was reversed on appeal, the MDL revived, but compliance lagged badly. By 2025, defendants identified more than 300 cases with overdue or deficient PFSs.

Magistrate Judge Schultz recommended dismissal of more than 240 cases with prejudice under Rule 41(b), citing willful noncompliance, including 204 cases with no PFS at all, 15 cases with unverified PFSs, 24 loss of consortium claims dismissed for the same reason, and a handful dismissed by stipulation. The court emphasized repeated opportunities to cure and a clear record of delay, finding dismissal with prejudice warranted. Key takeaways for defendants include the following:

- MDL discipline matters: courts will dismiss when defendants build a strong record of deficiencies and persistence.
- Dismissals with prejudice are appropriate: despite judicial reluctance to cull MDL inventories en masse, this ruling shows it can be done.

- Documentation is key: defense spreadsheets and correspondence with plaintiffs were critical to the ruling.

Fact sheet enforcement is one of the most effective tools for eliminating unsupported claims. The *Bair Hugger* ruling shows courts are willing to act when defendants demonstrate systemic noncompliance.

Conclusion

Class action and MDL defense has always required vigilance, but the current landscape adds new layers of complexity. Rule 23(b)(2) classes demonstrate how plaintiffs can obtain sweeping injunctive relief with fewer procedural safeguards, data breach cases show how reputational narratives and hybrid remedies push the boundaries of certification, and MDL enforcement illustrates the payoff of persistence, as courts are willing to dismiss hundreds of cases when plaintiffs ignore their obligations.