

## Winston Defeats Class Certification for LifeVantage Corporation

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A team led by Winston & Strawn partner John Sanders defeated attempts to certify a class action against client LifeVantage Corporation last week. The suit brought claims on behalf of a putative class, alleging that LifeVantage's independent distributors were defrauded because LifeVantage allegedly operates a pyramid scheme.

LifeVantage is a direct-sales company with hundreds of thousands of independent distributors throughout the world. Although the plaintiffs' counsel was only able to find two unhappy distributors to bring suit against the company, the plaintiffs sought class certification on behalf of virtually all of LifeVantage's independent sales distributors. The plaintiffs contended that LifeVantage business opportunity is a fraud because most LifeVantage distributors receive commission checks that are less than their product purchases. However, LifeVantage presented the court with evidence demonstrating that numerous distributors joined simply to consume the products that they bought at a discount, while many others resold those products for a profit, and those profits cannot be tracked by the company.

On the other hand, the plaintiffs' class definition assumed that all consumption by distributors should be treated as a fraudulent sale, and no product resales occurred, despite abundant evidence of both consumption and resale. In essence, the plaintiffs' claimed that every distributor of LifeVantage was defrauded even if a distributor participated only to consume the sold goods or to resell products within their community.

Winston argued that LifeVantage distributors who joined to consume goods at a discount were no more defrauded than ordinary customers who walk into a GNC store to buy goods. Given the evidence of personal consumption and retail sales for a profit by distributors, the court held that individual issues of damages would predominate over common issues of the putative class. The court found "the evidence to prove damages varies from class member to class member and must be evaluated on an individualized basis." The court also noted that "[Plaintiffs] did not even attempt to show how individualized damages determinations could be carried out in a way that will not destroy the efficiencies gained by aggregating the class's common issues."

This denial of class certification is the most recent victory in a pattern of success for the Winston team representing LifeVantage. Previously, Winston successfully transferred the case to the District of Utah and achieved dismissal of the plaintiffs' claims of sale of unregistered securities, antitrust violations, and unjust enrichment. The Winston team representing LifeVantage includes partners Tom Melsheimer, John Sanders, Rex Mann, Katrina Eash, and Chase Cooper, of counsel Mike Gaddis, and associate Becca Loegering.

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John Sanders



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Rex Mann



Katrina Eash



Chase J. Cooper



Mike Gaddis