

Direct Seller Defeats Class Certification in Misclassification Case

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As we've written [previously](#), direct selling companies are facing a wave of lawsuits, primarily in California, claiming that distributors do not qualify as independent contractors and instead are misclassified employees. Just recently, however, a California court refused to certify a class on these claims—an important outcome for all direct sellers.^[1]

In the case at issue, Marites Perez was an It Works! distributor who alleged that It Works! misclassified its distributors as independent contractors rather than employees. She brought claims for wage and hour violations under California law and sought to certify a class of nearly 47,000 California distributors.

After full briefing and argument, the court denied the motion for class certification, finding that, among other class certification elements, Ms. Perez could not show common questions predominated across the proposed class of distributors. Ms. Perez pointed to the Distributor Agreement and terms and conditions that were shared among the distributors to try to establish predominance. The court disagreed, however, noting that such documents did not dictate **“how or when to work the business”** and that there was **“no performance supervision.”** Evidence of It Works!’s general policies was also not enough.

The court found that individualized questions—such as whether the direct seller, outside sales, or inside sales exemptions applied—would predominate over common ones. To get there, the court looked beyond surface-level contractual commonalities and into the practical realities of how distributors operate. It Works! distributors sell products in a variety of ways: in-person parties, corporate events, farmers’ market booths, and more. Their recruitment and sales numbers also varied widely. These differences were the difference-maker for the court.

Ms. Perez has petitioned the Ninth Circuit for permission to appeal the court’s order denying class certification. The appeal argues that the court erred by finding individualized issues predominated over common ones, by misapplying legal standards, and by refusing to allow post-certification discovery that could provide common proof. The appeal argues that denying class certification effectively ends the claims of thousands of California distributors, making appellate review especially important.

The underlying district court’s decision may signal a growing trend among federal district courts. For example, in rejecting class claims against LifeVantage, a federal judge in Utah denied class certification for a large number of distributors on the basis that the alleged harm varied among the proposed class members.^[2] In that case, the court

found that many distributors participated merely to consume products at a discount, while others sold for profit. Such differences defeated commonality and predominance, preventing certification of a class of direct seller distributors.

Several questions remain unanswered. Will the Ninth Circuit weigh in? How will California state courts react to the *It Works!* class certification denial? Will they follow suit when evaluating state class actions? And what about Private Attorney General Actions (PAGA) brought under California law? PAGA actions may lack similar certification requirements, but the operational realities of direct sellers remain unchanged. As a result, the full impact of this ruling on PAGA litigation remains uncertain.

At any rate, *It Works!* is a reminder that courts are increasingly scrutinizing the real-world operations of direct sellers and their distributors, not just their written agreements. It further underscores that diversity in how distributors run their businesses can help direct sellers defeat class certification.

[1] *Perez v. It Works Mktg., Inc.*, No. 23-cv-04829-TLT, ECF No. 60 (N.D. Cal. Sept. 2, 2025) (order granting in part and denying in part class certification).

[2] *Smith v. Lifevantage Corp. et al.*, No. 2:18-cv-621, ECF No. 214 (D. Utah Apr. 19, 2022) (order denying class certification).

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