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*Practice Group(s):**Class Action**Litigation Defense**Commercial Disputes*

The Expansion of Potential Class Size (and Exposure) Under *Aryeh v. Canon Business Solutions, Inc.*

By Matthew G. Ball and Megan Cesare-Eastman

On January 24, 2013, the California Supreme Court held that common law exceptions to the standard four-year statute of limitations apply to claims brought under California's Unfair Competition Law ("UCL").¹ The *Aryeh* decision may allow plaintiffs bringing class action cases under the UCL to expand class sizes beyond the UCL's four-year statute of limitations by using common law accrual exceptions, such as the delayed discovery rule and continuous accrual doctrine, to bootstrap potential class members with otherwise stale claims into a timely class.

Background

Plaintiff *Aryeh* ran a copy business that rented copiers from Defendant Canon. *Aryeh's* lease terms required him to pay a monthly rental fee for each copier, and included a maximum copy allowance. Copies made in excess of that allowance were subject to an additional fee. *Aryeh* alleged that Canon employees made substantial numbers of copies during service visits between 2002 and 2004, and that those additional copies caused *Aryeh* to exceed his copy maximum and owe excess copy charges and late fees to Canon.

Aryeh sued Canon in January 2008 for violation of the UCL, demanding restitution. Canon demurred, arguing that *Aryeh's* claims were time-barred by the four-year statute of limitations,² which began to run in 2002, when the first violation occurred. The trial court sustained Canon's demurrer on those grounds. A divided Court of Appeal affirmed, joining one side of a split among the appellate courts, and holding the UCL was not subject to common law rules that allow for modified accrual based upon delayed discovery and continuing-wrong principles.³

The *Aryeh* Decision

The Supreme Court reversed the trial court and Court of Appeal, holding that the UCL is subject to common law accrual rules, and that the theory of continuous accrual applies when determining the statute of limitations in UCL actions.⁴

Under the common law "last element" rule, a statute of limitations runs from "the occurrence of the last element essential to the cause of action."⁵ The Court noted that numerous equitable exceptions to the last element rule have developed over the years. Relevant to *Aryeh* was the theory of continuous accrual, by which "a series of wrongs or injuries may be viewed as each triggering its own limitations

¹ Cal. Bus. & Prof. Code §§ 17200, et seq.

² Cal. Bus. & Prof. Code § 17208.

³ --- P.3d ---, 2013 WL 263509 (Cal. Jan. 24, 2013), see also *Grisham v. Philip Morris USA, Inc.* (2007) 40 Cal.4th 623, 634, fn. 7.

⁴ *Id.* at *6.

⁵ *Id.* at *2, quoting *Neel v. Magna, Olney, Levy, Cathcart & Gelfand* (1971) 6 Cal.3d 176, 187.

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period, such that a suit for relief may be partially time-barred as to older events but timely as to those within the applicable limitations period.”⁶ The Court noted that there was nothing about the language or legislative history of the UCL’s statute of limitations that suggested the usual common-law rules of accrual should not apply to UCL claims.⁷

What *Aryeh* May Mean for Class Action Defendants

In UCL class actions, plaintiffs have typically pled classes that extend back four years from the filing date of the complaint. In its decision in *Aryeh*, the Supreme Court extended all common law exceptions to a statute of limitations defense to UCL cases. Class action plaintiffs may rely on *Aryeh* to expand the class size when bringing a UCL class action claim. In particular, plaintiffs may attempt to rely on the delayed discovery rule, which applies in certain situations to postpone the accrual of a cause of action until the plaintiff discovers, or should have discovered, the cause of action.⁸ A plaintiff may attempt to bootstrap stale claims into a UCL class, which otherwise might be limited to plaintiffs with claims accruing within four years of the filing date. This could potentially enlarge a defendant’s potential exposure, and thus, the value of the case.

The delayed discovery rule, however, could be a double-edged sword for class action plaintiffs, who must still show by their motions for class certifications that members of a potential class are sufficiently similar. A class or subclass based upon claims beyond the four-year statute of limitations that relies on the delayed discovery rule may result in certain claims that are too individualized to satisfy commonality requirements under federal and state law.

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⁶ *Id.* at *3, citing *Howard Jarvis Taxpayers Assn. v. City of La Habra* (2001) 25 Cal.4th 809, 818-822.

⁷ *Id.* at *4.

⁸ *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397.

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