

Today, the Supreme Court held unanimously that the 14-day deadline for filing a petition for interlocutory review of an order granting or denying class certification cannot be extended as a matter of equity.

Background: Respondent Troy Lambert filed a lawsuit against petitioner Nutraceutical Corp., alleging that Nutraceutical markets a dietary supplement in a manner that violates California law. A federal district court initially certified the case as a class action. But on February 20, 2015, the district court entered an order decertifying the class.

Federal Rule of Civil Procedure 23(f) authorizes a party to seek interlocutory review of an order granting or denying class certification by filing a petition for review “within 14 days after the order is entered.” During the 14-day period, Lambert notified the district court that he wanted to file a motion for reconsideration. The court afforded him ten days in which to do so. When he filed the motion for reconsideration on the tenth day, the 14-day period for filing a petition for review had expired. After the district court denied the motion for reconsideration, Lambert filed his petition for review. In opposing review, the defendant, Nutraceutical, contended that the petition was untimely. The Ninth Circuit nonetheless granted review, concluding that the 14-day deadline was subject to equitable tolling. The court proceeded to reverse the order decertifying the class.

Issue: The Supreme Court agreed to decide whether equitable exceptions apply to mandatory claim-processing rules, such as the 14-day deadline for filing a petition for permission to appeal a class certification order.

Court’s Holding: In an opinion authored by Justice Sotomayor, the Supreme Court unanimously reversed the Ninth Circuit’s decision. The Court explained that “[w]here the pertinent rule or rules invoked show a clear intent to preclude tolling, courts are without authority to make exceptions merely because a litigant appears to have been diligent, reasonably mistaken, or otherwise deserving.” Here, the Court continued, “the governing rules speak directly to the issue of Rule 23(f)’s flexibility and make clear that its deadline is not subject to equitable tolling.” In particular, read together, Rule 23(f) itself, Rule 5(a)(2), and Rule 26(b)(1) “express a clear intent to compel rigorous enforcement of Rule 23(f)’s deadline, even where good cause for equitable tolling might otherwise exist.”

The Court left open the question whether a 23(f) petition that is filed within 14 days of the denial of a motion for reconsideration that itself is filed within 14 days of entry of an order granting or denying class certification would be timely, noting that this is a question of when the 14-day limit begins to run, not the availability of tolling. But given the consequences of guessing wrong, it is unlikely that very many, if any, parties will defer filing a 23(f) petition during the pendency of a motion for reconsideration.

What It Means: Barring an amendment to the pertinent rules, the law is now clear that the deadline for filing a 23(f) petition is inflexible. Parties wishing to file such a petition must do so within 14 days of the entry of an order granting or denying class certification.