
ATTORNEYS of the YEAR

~~~~~ 2015 ~~~~~

## *Class Actions*



### **TIMOTHY FREUDENBERGER, ALISON TSAO, and KENT SPRINKLE**

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**T**his team secured a unanimous California Supreme Court decision addressing the use of surveys, sampling, and statistics to evaluate whether a trial plan satisfies due process for class certification. (*Duran v. U.S. Bank Nat'l Ass'n*, 59 Cal. 4th 1 (2014).) The wage-and-hour case, first filed in 2001, concerned the designation of certain bank officers as “outside salespeople” who are exempt from state overtime laws. To represent the class of 260 plaintiffs, the trial court allowed testimony from 21, but not all were randomly selected. And in the absence of time records, the court calculated the recovery based on a statistical model that had a 43-percentage-point margin of error. The Supreme Court rejected the certification, overturned the judgment, and held that the trial court’s case management violated the bank’s due process rights. The justices cautioned trial courts to develop statistical methods and plans for proof early on—preferably before a class is certified.

**STATUS:** Remanded. A hearing has been set on class certification.