

JAN 16 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GIBSON & COMPANY INSURANCE
BROKERS, INC., a California
Corporation and others similarly situated,

Plaintiff - counter-defendant - Appellant,

v.

AMERICAN EQUITY INVESTMENT
LIFE HOLDING COMPANY,

Defendant - Appellee,

AMERICAN EQUITY INVESTMENT
LIFE INSURANCE COMPANY, an Iowa
Corporation,

Defendant- counter-claimant - Appellee.

No. 07-55857

D.C. No. 06-5401 GHK (PLAx)

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
George H. King, District Judge, Presiding

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The Honorable Raner C. Collins, United States District Judge for the District of Arizona, sitting by designation.

Argued and Submitted October 23, 2008
Pasadena, California

Before: PREGERSON and NR SMITH, Circuit Judges, and COLLINS **,
District Judge.

Gibson & Company Insurance Brokers, Inc. (“Gibson”) appeals the district court’s decision. The parties are familiar with the facts and arguments and they need not be described in this memorandum. “We review the denial of class certification for abuse of discretion.” *Navellier v. Sletten*, 262 F.3d 923, 941 (9th Cir. 2001).

The district court did not abuse its discretion when it found that Gibson’s relationship with American Equity was not typical of the proposed class. It certainly is not an abuse of discretion for a court to find that a class representative with a unique defense is not typical of the proposed class. *See Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992). Accordingly, the district court did not meet the mandatory requirements for class certification under Federal Rule of Civil Procedure 23(a).

Lastly, it is not an abuse of discretion for the district court to admit evidence that was not initially disclosed pursuant to Federal Rule of Civil Procedure 26(a). *See Fed. R. Civ. P. 26(a)(1)(A)*. It is also not an abuse of discretion for the district

court to admit evidence that was not properly supplemented pursuant to Federal Rule of Civil Procedure 26(e). *See* Fed. R. Civ. P. 26(e)(1)(B).

Therefore, we **Affirm** the district court's decision.