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Food & Consumer Packaged Goods Litigation

Blue Diamond Almond Milk Class Decertified

Werdebaugh v. Blue Diamond Growers, No. 12-cv-02724 (N.D. Cal.): A federal judge in California granted defendant's motion to decertify the class in a putative class action alleging that defendant's package labeling is unlawful, deceptive, and misbranded due to Evaporated Cane Juice and "All Natural" statements on defendant's almond milk products. The court had previously denied a motion to certify the injunctive class, but had accepted plaintiffs' proposed regression model as sufficient under Comcast, rejecting as premature defendant's challenges to the robustness of the model. Following that order, plaintiffs filed a second amended complaint, and defendants' motion to decertify followed. In addition to the damages model proposed in their initial class certification motion, plaintiffs submitted a second regression analysis for the court, but did so in an untimely fashion, resulting in the court's decision not to review the second model. Turning to the initial regression, the court ruled it inconsistent with plaintiff's liability theory. Specifically, the court held that the model was incapable of controlling for the effect of defendant's advertising on the price such that it was impossible for the court to determine whether any price premium was due to the challenged claims or was instead the product of successful advertising and promotional expenditures. The court also faulted plaintiffs' expert for what the court perceived as a systematic failure to ensure the accuracy of assumptions used in developing his model (for example, assuming without investigating that competitor products do not use the same claims). [Order](#).

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