

Partial Class Certification Granted in “100% Natural” Cooking Oil Action

In re Conagra Foods, No. 2:11cv05379 (C.D. Cal.): A federal judge granted in part and denied in part plaintiff's amended motion for class certification in this putative class action alleging claims under various states' consumer protection laws, breach of express and implied warranty and unjust enrichment, based on the claim that defendants label their cooking oils at "100% Natural" when in fact they contain GMOs. Addressing objections to plaintiff's expert testimony, the Court first held that plaintiff's damages expert had remedied shortcomings identified in the Court's previous order denying certification by preparing a preliminary regression model that employed a number of independent variables as potential explanatory variables impacting price. The Court held that any alleged flaws in the model went to the weight, not the admissibility, of the evidence. The Court also granted in part defendant's motion to strike plaintiff's expert's opinions concerning survey data, concluding that her thorough explanation of her methodology and her background in performing similar conjoint analyses were sufficient to satisfy *Daubert* and Rule 702, but that she was not sufficiently familiar with the methodology used to design and administer the survey to opine that it was "conducted according to accepted principles" and reliable. Turning to the class certification motion, the Court found that due to the rectification of plaintiff's damages model, plaintiffs had adequately shown that they suffered injury in fact sufficient to confer standing on them. Regarding ascertainability, the Court noted a split in authority as to whether the inability to identify putative class members in a class of consumers of low priced products makes the class unascertainable, and sided with the Court's finding such classes ascertainable because the subject class was definable by "objective characteristics." The Court reasoned that because all putative class members were exposed to the same representations insofar as every bottle of oil contained the same statements, the fact that some class members may not have read or relied on the statements did not destroy ascertainability. Addressing Rule 23(b) requirements, the Court held that the injunctive class lacked Article III standing because their declarations stating that they "may consider" purchasing the products in the future was not sufficiently concrete to support constitutional standing. Analyzing the predominance of class issues over individual issues, the Court noted that the threshold question of whether each claim sought to be certified under each state requires a showing of reliance and/or causation, and if so, whether such elements may be established on a classwide basis. The Court proceeded to answer these questions with respect to each state claim for which class certification was sought by a thorough analysis the state-specific law. After determining which claims would permit a showing of reliance and/or causation on a classwide basis, the Court moved on to whether the materiality of such reliance could be proved on a classwide basis and concluded that it could. On the matter of damages, the Court concluded that while the plaintiffs' proposed hedonic regression analysis alone did not satisfy *Comcast*, that analysis and another expert's conjoint analysis in combination did meet *Comcast's* requirements for class certification purposes. Ultimately the Court granted class certification with respect to the following claims: California: (1) violations of the UCL, CLRA, and FAL, and (2) breach of express warranty; Colorado: (1) violation of the CCPA, (2) breach of express warranty, and (3) breach of implied warranty; Florida: (1) violation of the FDUTPA; Illinois: (1) Violation of the ICFA and (2) unjust enrichment; Indiana: (1) unjust enrichment and (2) breach of implied warranty; Nebraska: (1) unjust enrichment and (2) breach of implied warranty; New York: (1) violation of the GBL and (2) breach of express warranty; Ohio: (1) violation of the OCSPA; Oregon: (1) violation of the OUTPA and (2) unjust enrichment; South Dakota: (1) violation of the SDDTPL and (2) unjust enrichment; Texas: (1) violation of the TDTPA. [Order](#).

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