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Court Certifies California Class in Almond Milk Labeling Case, But Not National Class

Werdebaugh v. Blue Diamond Growers, No. 5:12-cv-02724 (N.D. Cal.): Judge Koh of the Northern District of California granted in part and denied in part plaintiff's motion for class certification in a case alleging that Blue Diamond falsely labels its almond milk products as containing "evaporated cane juice" instead of sugar and as being "all natural" when they actually contain synthetic ingredients. The court denied plaintiff's request for a Rule 23(b)(2) class, finding plaintiff lacked standing to seek injunctive relief where he had not shown any intent to purchase the challenged products in the future. The plaintiff did, however, have standing to represent a Rule 23(b)(3) damages class based on deposition testimony that he would not have purchased the products but for the alleged misrepresentation. Turning to ascertainability, the court found that class membership was based on an objective criteria (purchase of Blue Diamond almond milk products during the class period) and the challenged representations appeared on the actual products purchased by class members, making self-identification possible for prospective class members. The court further held that the plaintiff satisfied all the Rule 23(a) elements. Turning to the Rule 23(b)(3) analysis, the court found that the term "all natural" was subject to an objective definition that satisfied predominance. However, the court agreed with Blue Diamond that the predominance element was not satisfied as to a national class because, given each state's interest in applying its own consumer protection laws to its citizens, the court would be forced to apply the laws of all 50 states. As a result, the Court refused to certify a national class but did certify a Rule 23(b)(3) class of California consumers. Finally, applying the U.S. Supreme Court's decision in *Comcast Corp. v. Behrend*, the court rejected two of the three damages models proposed by plaintiff but found the third model was sufficient. Following other recent decisions, the court rejected the "full refund" model as running afoul of restitution principles and rejected the "price premium" model because the expert could not link price differences to the alleged misrepresentations. The court found adequate under *Comcast* the expert's proposed "regression model," which sought to compare sales prices before and after the launch of the alleged misrepresentations. [Order](#).

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