

## Recent Ruling: Ninth Circuit Rules that Dog Food Purchasers' Class Certification Campaign Has No Bite

Last week the Ninth Circuit concluded that a campaign for class certification brought by dog food purchasers was all bark and no bite. In a memorandum disposition issued on December 9, 2020, the Ninth Circuit affirmed the district court's denial of class certification on predominance grounds, because of the varying nature of the labeling representations at issue, and because plaintiffs failed to present a viable damages model. *Reitman v. Champion Petfoods USA, Inc., et al.*, No. 19-56467, 2020 WL 7238439 (9th Cir. Dec. 9, 2020). The panel also reaffirmed the principle that full refunds are not a recoverable form of damages for consumer goods that plaintiffs purchase and use—and thus receive some value from. Plaintiffs in *Reitman* alleged that the defendant's dog food was mislabeled as "natural" and free of contaminants when the products allegedly contained heavy metals and non-regional, non-fresh ingredients. The district court denied class certification on predominance grounds and also refused to certify a Rule 23(c)(4) liability-only or issue class. On appeal, the Ninth Circuit panel shot down each of the plaintiffs' arguments and affirmed the district court's opinion on four issues:

1. Plaintiffs failed to satisfy the predominance requirement because "each bag [of dog food] contains different information." The panel noted that labeling variations during the class period—whether by way of affirmative misrepresentations *or* omissions—can defeat predominance. at \*1.
2. Plaintiffs' "price premium" damages model failed to support certification. It only measured consumer expectations of different label statements but failed to measure, as required, "the price difference attributable to misleading statements on, or omissions from, the packaging."
3. Plaintiffs failed to show that "a full refund model" was appropriate where some class members potentially did not purchase contaminated product and, for those who might have, contamination did not render the product "valueless."
4. Plaintiffs' request for certification of liability-only or issue classes would be "inefficient" where "numerous individualized issues" still affected determinations of liability. at \*2.

*Reitman* reemphasizes the importance of predominance-based arguments in opposing class certification, both as to the uniformity of the alleged misrepresentations and as to damages. Defendants would do well to take note when making their next opposition to class certification.

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