

# J.M. Smucker Company Gets Out of a Jam in Food Labelling Case - Caldera v. The J.M. Smucker Co.

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On April 15, 2014, in the case *Caldera v. The J.M. Smucker Co.*, CV 12-4936-GHK, J.M. (C.D. Cal.), Smucker Company (“Defendant”) defeated the plaintiff’s motion for class certification in a case challenging the labels on Defendant’s Crisco shortening and Uncrustables food products. The lawsuit claimed that Defendant had mislabeled its Crisco shortening with false claims about its healthfulness (such as “50% Less Saturated Fat than Butter”), and that it misleadingly labeled its Uncrustables products as “wholesome” when they contain transfat and high-fructose corn syrup. As with many California food label class actions, the plaintiff brought suit under *California’s Unfair Competition Law (“UCL”)*, *False Advertising Law (“FAL”)*, the *Consumer Legal Remedies Act (“CLRA”)*, and *breach of express and implied warranties*. The plaintiff sought restitution on behalf of the purchasers of the Crisco and Uncrustable products.

The Court denied the plaintiff’s class certification motion by focusing, exclusively, on the predominance requirement of [Federal Rule of Civil Procedure 23\(b\)\(3\)](#). In particular, the Court held that the plaintiff failed to make the appropriate showing that classwide issues predominated over individual inquiries when it came to damages. In doing so, the Court joined the growing number of district courts that apply the United States Supreme Court’s opinion in [Comcast Corp. v. Behrend](#), 133 S.

Ct. 1426 (2013) to consumer class actions, holding that plaintiffs must meet the burden of “establishing that damages can be proven on a classwide basis” before certification.

In the certification motion, the plaintiff argued that the class was entitled to a full refund of the purchase price, and that “damages can be proven on a classwide basis based on Defendant’s California sales data.” The Court rejected this argument on two separate, but related grounds. First, there was no question that the putative class members received *some* benefit from the products, rendering a full refund improper as a calculation of restitution. Since a full refund was not appropriate, “Defendant’s sales data alone would not provide sufficient information to measure classwide damages.” Second, although the Court noted that restitution could theoretically be calculated by “computing the effect of unlawful conduct on the market price of the product purchased,” here, “Plaintiff has failed to offer any evidence, let alone expert testimony, that the damages can be calculated based on the difference between the market price and true value of the products.” Thus, the failure to present an actual damages model that (1) complies with restitution law and (2) is supported by expert evidence doomed the plaintiff’s certification motion.

*Caldera*, like the recent decision in [In re POM Wonderful LLC](#), 2014 WL 1225184 (C.D. Cal. Mar. 25, 2014), demonstrates that courts applying *Comcast* should deny plaintiffs who seek certification without a fully prepared damages model. Under these decisions, plaintiffs may no longer seek quick certification decisions on the mere promise of a damages model, or simply claim that damages can be figured out by a simple review of the defendant’s sales figures. Damages issues, then, can become a key area for defendants to attack during class certification, as a “one-size fits all” approach to class recoveries seems inappropriate in these consumer class action cases. After all, as the *Caldera* Court recognized, “In reality, the true value of the products to consumers likely varies depending on the individual consumer’s motivation for purchasing the products at issue.”

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