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WLF Defends Ascertainability Requirement for Consumer Class Actions in Key Ninth Circuit Case

(Jones v. ConAgra Foods, Inc.)

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—Cory Andrews, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) late yesterday asked the U.S. Court of Appeals for the Ninth Circuit to affirm a district court decision by Judge Charles Breyer (N.D. Cal.) that refused to certify a consumer class action over canned tomato products in which there was no administratively feasible way of identifying class members.

The case arises from a putative class-action lawsuit brought against food manufacturer ConAgra, in which the named plaintiff alleged that he and all others like him were deceived by ConAgra’s “all-natural” labeling on dozens of varieties of Hunt’s canned tomato products over a five-year period. The district court ultimately denied class certification, relying in part on the requirement imposed by most federal courts that the class members of a putative class action be “ascertainable”—that is, capable of being identified in some administratively feasible way.

In its brief filed in *Jones v. ConAgra Foods, Inc.*, WLF argues that imposing an ascertainability requirement for class actions not only protects defendants by ensuring that all people whom the final judgment will bind are clearly identifiable, but it also safeguards the rights of absent class members to receive fair notice of the litigation. If absent members so desire, notice allows them to opt out of the class and avoid the preclusive effects of a judgment or settlement. WLF’s brief also demonstrates that—contrary to melodramatic predictions from the trial lawyers’ bar—ascertainability does not foreclose certification of all consumer class actions. Rather, it simply ensures that a reliable, administratively feasible way of identifying class members actually exists.

Upon filing its brief, WLF issued the following statement by Senior Litigation Counsel Cory Andrews: “An unascertainable class is no class at all. Absent the fundamental threshold requirement that members of a putative class be ascertainable, the class action will be radically transformed from a device designed to avoid inefficiently trying the same claims repeatedly into one that alters substantive rights by excusing class-action plaintiffs from satisfying even the most basic prerequisite for class-wide relief: class membership.”

WLF is a national public interest law firm and policy center that regularly litigates to promote civil justice reform and end class-action abuse.

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