May 28, 2026

Ninth Circuit affirms class certification in product mislabeling case and rejects challenges to proposed damages model

by Stephanie N. Bedard

The Ninth Circuit recently affirmed the certification of California and New York classes in a product mislabeling action against Bayer Healthcare LLC ("Bayer"), holding that common questions of law and fact predominated over individualized issues under both the California Consumers Legal Remedy Act ("CLRA") and the New York General Business Law ("GBL"). *Drake v. Bayer Healthcare LLC*, No. 24-7158, 2026 WL 1079027 (9th Cir. Apr. 21, 2026).

In *Drake*, the plaintiffs alleged that Bayer mislabeled its Natural Fruit Bites products as "natural" and that consumers paid an inflated premium price as a result of the misrepresentation. 2026 WL 1079027, at *2. The district court certified both a California class and a New York class, and Bayer appealed. *Id.* at *1.

On appeal, the Ninth Circuit panel rejected Bayer's arguments on multiple grounds. First, Bayer argued that the proposed classes improperly included uninjured plaintiffs. *Id.* at *2. The panel disagreed, finding that under the plaintiffs' price-premium theory of injury, all class members were exposed to the same alleged misrepresentation on the product label, and the presence or absence of a price premium was an objective, reasonable consumer inquiry because "either all class members were injured or they were not." *Id.*

Second, Bayer challenged the sufficiency of the plaintiffs' expert's proposed damages model. *Id.* The plaintiffs' expert proposed a conjoint analysis designed to measure the value of the label claims and determine the price premium attributable to the word "natural." *Id.* Bayer objected that the expert's analysis was theoretical and had not yet been applied. *Id.* The panel rejected this argument, holding that "'[c]lass action plaintiffs may rely on a reliable though not-yet-executed damages model to demonstrate that damages are susceptible to common proof so long as the district court finds that the model is reliable and, if applied to the proposed class, will be able to calculate damages in a manner common to the class at trial.'" *Id.* (quoting *Lytle v. Nutramax Labs., Inc.*, 114 F.4th 1011, 1019 (9th Cir. 2024), *cert. denied*, 145 S. Ct. 1308 (2025)). The panel in *Drake* emphasized that, at the class certification stage, all that Rule 23(b)(3) requires is a demonstration of the "nexus" between the plaintiffs' legal theory and their damages model. *Id.*

Third, the panel held that the plaintiffs presented sufficient common evidence of deception and causation under both statutes. As to the CLRA, the Ninth Circuit reiterated that when material misrepresentations are made to the entire class, "an inference of reliance arises as to the class" and that this inference can be "established by reference to an objective, reasonable consumer standard." *Id.* at *3 (citations omitted). The panel found that the GBL similarly adopts an objective standard, asking whether a deceptive act is likely to deceive a reasonable consumer, making it "unnecessary to make any individualized inquiry into what each plaintiff knew and relied on in purchasing the product." *Id.* (quotations and citations omitted).

Finally, the panel concluded that the plaintiffs satisfied Rule 23(a)'s commonality, typicality, and adequacy prerequisites, noting that both named plaintiffs testified that they purchased the products because they believed them to be natural and thus were typical of the putative class. *Id.*

Judge Forrest dissented in part, arguing that certification of the California class was improper because the plaintiffs could not establish classwide reliance under the CLRA on the alleged misrepresentation. *Id.* at *4. In the dissent's view, though plaintiffs' expert's proposed conjoint analysis might show a factual injury in the form of a price premium, it was insufficient to demonstrate a legally cognizable injury because only those class members who actually relied on the misrepresentation suffered such an injury. *Id.* The dissent pointed to undisputed evidence that the plaintiffs' own materiality expert concluded that the challenged statement was not universally misleading, thus rebutting the inference of classwide reliance. *Id.* at *5.

Takeaway: *Drake v. Bayer Healthcare LLC* reaffirms the Ninth Circuit's position that mislabeling claims brought under the CLRA and the GBL are well-suited to class treatment because they rely on an objective, reasonable consumer standard that is susceptible to common proof. The opinion also underscores the Ninth Circuit's willingness to credit proposed (but not yet executed) expert damages models at the class certification stage, a point that defendants should bear in mind when opposing class certification in consumer mislabeling cases in the Ninth Circuit.