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The UCL—Now A Money Back Guarantee? Competition

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The Ninth Circuit issued its opinion in *Pulaski & Middleman, LLC v. Google, Inc.* on September 21, 2015. After adopting an expansive definition of restitution under the California Unfair Competition Law ("UCL"), *Pulaski* reversed the district court's denial of certification on the ground that calculating restitution under the UCL posed no individualized questions. Underlying its reversal of the district court's decision were three findings: (1) California law creates a "conclusive presumption" that a consumer is entitled to restitution once liability is established under the UCL thus making individualized proof of entitlement to restitution unnecessary; (2) the value received post-purchase is irrelevant to a restitution calculation because the proper measure is the difference between the amount the class member paid and the amount the class member would have paid had he or she known the truth; and, in any event, (3) individualized damage calculations cannot defeat certification in the Ninth Circuit, even after *Comcast Corp. v. Behrend*.

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