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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL KOSTA AND STEVE BATES,  
individuals on their own behalf and on behalf  
of all others similarly situated,

Plaintiffs,

vs.

DEL MONTE FOODS, INC.,

Defendant.

Case No.:12-cv-1722-YGR

**ORDER DENYING MOTION FOR CLASS  
CERTIFICATION WITHOUT PREJUDICE**

United States District Court  
Northern District of California

Plaintiffs filed their motion for class certification on May 6, 2014. (Dkt. No. 122). Before the briefing on that motion was completed, Plaintiffs filed a Motion for Leave to File Excess Pages for their Class Certification Reply Brief (Dkt. No. 124). In light of Plaintiffs' representations that significant discovery related to the class certification motion had not been completed, the motion for class certification was deemed withdrawn and the Court set a new briefing schedule. The parties then filed their briefing on the motion for class certification (Dkt. No. 128), as well as Defendant Del Monte Foods Inc.'s motions to strike the declarations of Plaintiffs' experts, Oral Capps and Julie Caswell submitted in support of the certification motion (Dkt. Nos. 132 and 133).

The Court heard oral argument on all motions on August 19, 2014. At the time of the hearing, Plaintiffs represented that they had agreed to withdraw certain claims on behalf of the

United States District Court  
Northern District of California

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class. Subsequent to the hearing, the parties submitted, and the Court approved, a stipulation narrowing the scope of the claims against Defendant.

The stipulation withdrawing the claims asserted by the putative class significantly changes the scope of the class Plaintiffs seek to certify. It also renders much of the evidence and arguments in the class certification briefing unhelpful, if not irrelevant. Further, Defendant has submitted a letter brief highlighting statements made at the hearing for which the class certification record provides no support. (Dkt. No. 158.)


Given the changes worked by the narrowing of the class claims, and the need for a clearer evidentiary record addressed to this more limited set of claims, the Court **DENIES** the pending motion for class certification without prejudice to Plaintiffs filing a motion for certification, and supporting evidence, tailored the narrowed set of claims. The parties are directed to meet and confer on a briefing schedule and submit a schedule for the Court’s approval.

The Court likewise **DENIES** the motions to strike the expert declarations submitted in support of the motion as moot in light of this ruling, and without prejudice to a motion on the same or similar grounds in connection with any new expert declarations submitted in connection with any future motion for class certification.

This Order terminates Docket Nos. 128, 132, and 133.

**IT IS SO ORDERED.**

**Date: September 4, 2014**

  
YVONNE GONZALEZ ROGERS  
UNITED STATES DISTRICT COURT JUDGE