IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

LINDA SUCHANEK, RICHARD MCMANUS, CAROL CARR, PAULA GLADSTONE, MELLIE BRACEWELL, EDNA AVAKIAN, CHARLES CARDILLO, BEN CAPPS, DEBORAH DIBENEDETTO, and CAROL J. RITCHIE,	)	
Plaintiffs,	)	
vs.	)	**Case No. 11-CV-565-NJR-PMF**
STURM FOODS, INC. and TREEHOUSE FOODS, INC.,	)	
Defendants.	)	

MEMORANDUM AND ORDER

ROSENSTENGEL, District Judge:

Currently before the Court is Defendants' Motion for Reconsideration of Class Certification, in which Defendants challenge the Court's conclusions regarding predominance (Doc. 246). Defendants argue the Court erred in concluding that "liability is established solely by a finding that a reasonable consumer was likely to be deceived by a representation on the Grove Square Coffee packaging" (*Id.*). Defendants reiterate that reliance and causation are also elements of liability, "which must be proved separately with respect to each individual class member" (*Id.*). Therefore, Defendants believe that individual issues predominate and class certification was inappropriate (*Id.*). Plaintiffs have not submitted a response, but their response is not necessary. Defendants' motion

can be denied without any input from Plaintiffs.

Contrary to Defendants' belief, the Court has always understood that resolving the question of whether the GSC packaging was likely to mislead a reasonable consumer will not completely resolve the issue of liability because reliance/proximate causation also bear on the issue of liability. The question of whether the packaging was likely to mislead a reasonable consumer, however, is the threshold question when it comes to determining Defendants' liability; a failure of proof on that question would end the case. *See Suchanek v. Sturm Foods, Inc.*, 764 F.3d 750, 757 (7th Cir. 2014) ("The claims of every class member will rise or fall on the resolution of that question.") As stated in the Court's previous Order, "it is the most central aspect of every class member's consumer fraud claim" (Doc. 247, p. 38). Because of its significance, and because continuously repeating "the question of whether the packaging was likely to mislead reasonable consumers" is cumbersome and impedes the readability of Order (which is already a chore to get through given that it is 50-plus pages in length), the Court simply referred to that question simply as the question of "liability." Proximate causation and reliance, on the other hand, were called just that. The Court apologizes for any confusion caused by its shorthand, but there is no reason to reconsider its finding that predominance is satisfied.

As explained in the previous Order, the question of whether the GSC packaging is likely to deceive a reasonable consumer is the threshold question common to each and every class member's claim and can be proven with class-wide evidence. Damages can also be proven on a class-wide basis. Reliance/proximate causation are the only issues that require individualized proof, and that is true for only for some of the class

members.[1] And reliance/causation are simpler issues than the question of whether the GSC packaging is likely to deceive a reasonable consumer, and the information needed to prove them is more accessible to the individual litigants. Accordingly, the Court found that predominance is satisfied. The Court stands by that determination.

Defendants' Motion for Reconsideration of Class Certification (Doc. 246) is **DENIED.**

IT IS SO ORDERED.

DATED: November 19, 2015

s/ Nancy J. Rosenstengel
NANCY J. ROSENSTENGEL
United States District Judge

[1] Based on Plaintiff's motion for class certification (Doc. 186, p. 45), and the Court's own limited research, courts in at least three states have permitted a presumption of reliance or proximate causation in class actions based on consumer protection statutes. In other words, reliance/causation can be proven on a class-wide basis and individual inquiries are not needed. *See Pulaski & Middleman, LLC v. Google, Inc.*, 802 F.3d 979, 985–86 (9th Cir. 2015); *Marcus v. BMW of N. Am., LLC*, 687 F.3d 583, 608 (3d Cir. 2012); *Garner v. Healy*, 184 F.R.D. 598, 599 (N.D. Ill. 1999); *Peterson v. H & R Block Tax Servs., Inc.*, 174 F.R.D. 78, 84-85 (N.D. Ill. 1997). *See also* 1 JOSEPH M. MCLAUGHLIN, MCLAUGHLIN ON CLASS ACTIONS § 5:55 (11th ed. 2014) ("[W]hen the record developed in discovery shows that there can be no doubt that class members relied on an alleged misrepresentation, certain courts have concluded that logic dictates application of a presumption of reliance."); WILLIAM RUBENSTEIN, NEWBERG ON CLASS ACTIONS §§ 4:59, 4:60 (5th ed. 2013).