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 FERRERO U.S.A., INC.
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10 UNITED STATES DISTRICT COURT
 11 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
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13	In re FERRERO LITIGATION)	CASE NO.: 11 CV 0205 H (CAB)
14)	DEFENDANT FERRERO U.S.A.,
15)	INC.'S RESPONSE TO PLAINTIFFS'
16)	SUPPLEMENTAL STATEMENT OF
17)	AUTHORITY (PURSUANT TO
18)	ORDER AT HEARING)
19)	Before: Hon. Marilyn L. Huff
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1 The case law cited in plaintiffs’ Supplemental Statement of Authority (Dkt. No. 92) does
2 not support certification on the record currently before the Court. In *Johnson v. Gen. Mills, Inc.*,
3 2011 U.S. Dist. LEXIS 103357 (C.D. Cal. Sept. 15, 2011), plaintiff submitted expert declarations
4 demonstrating (1) the ability to evaluate the health statements made by Yoplait, and (2) the
5 ability to determine customer interpretations of defendant’s advertising – i.e., the exact
6 declarations promised, but not submitted, by plaintiffs in this action. In denying General Mills’
7 motion for decertification, the court found the record satisfied “the standard set forth in *Wal-*
8 *Mart*” because plaintiff “present[ed] sufficient facts to show that all of the class members’ claims
9 have at their heart a common contention.” *Id.* at *5. Similarly, in *Mathias v. Smoking*
10 *Everywhere, Inc.*, 2011 U.S. Dist. LEXIS 121687 (E.D. Cal. Oct 20, 2011) (Docket No. 39-4)
11 and *Galvan v. KDI Distribution, Inc.*, 2011 U.S. Dist. LEXIS 127602 (C.D. Cal. Oct. 25, 2011)
12 (Docket No. 116-2, Exh. 5), plaintiffs submitted expert reports showing how they intended to
13 prove deception. *See also Public Employees Ret. Sys. of Miss. v. Merrill Lynch & Co, Inc.*, 2011
14 U.S. Dist. LEXIS 93222, at *26 (S.D.N.Y. Aug. 22, 2011) (conducting 30 paragraph analysis of
15 expert declarations, witness depositions and factual record pertaining to Rule 23(b)(3)
16 predominance requirement); *Youngblood v. Family Dollar Stores, Inc.*, 2011 U.S. Dist. LEXIS
17 115389, at *13-14 (S.D.N.Y. Oct. 4, 2011) (record contained excerpts from 23 depositions);
18 *Jermyn v. Best Buy Stores, L.P.*, 2011 U.S. Dist. LEXIS 104449, at *16-18 (S.D.N.Y. Sept. 15,
19 2011) (finding “significant (indeed ample) proof that that the illegal policy alleged in fact exists .
20 . . . Plaintiffs here have offered substantial proof that [an illegal] policy in fact existed”); *Smith*
21 *v. Ceva Logistics U.S., Inc.*, 2011 U.S. Dist. LEXIS 111941 (C.D. Cal. Sept. 28, 2011) (initially
22 denying motion for certification where “[t]he Court was not convinced, however, that plaintiff
23 established a plausible method of proving damages”). Unlike the record in these cases, plaintiffs
24 are asking the Court to certify a class on a record that does not support a finding under *Dukes*
25 that common issues will predominate or that plaintiffs can prove common issues on a classwide
26 basis.

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Dated: November 9, 2011

Respectfully submitted,
WILSON SONSINI GOODRICH & ROSATI
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By: /s/ Keith E. Eggleton
Keith E. Eggleton

Attorneys for Defendant Ferrero U.S.A., Inc.