

## **For Whom the Deadline Tolls - *Nutraceutical Corp. v. Lambert***

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The United States Supreme Court recently issued a decision clarifying the availability of equitable tolling to extend a party's time to appeal an order of class decertification. In *Nutraceutical Corp. v. Lambert*, 139 S.Ct. 710 (2019), Petitioner's counsel failed to file a motion for reconsideration or petition for appeal within the applicable 14-day window.

Troy Lambert purchased a dietary supplement from Nutraceutical Corporation. Lambert brought a putative class action lawsuit claiming deceptive advertising practices violated California's consumer protection laws. The District Court originally certified the class, but on February 20, 2015, the District Court decertified Lambert's class. Under FRCP 23(f), Lambert had fourteen (14) days to seek permission to appeal the order. Ten (10) days after the order, Lambert attended a status conference and informed the Court that he wanted to file a motion for reconsideration. The Court instructed Lambert to file the motion for reconsideration no later than March 12, 2015. On March 12, 2015, twenty (20) days after the order of declassification, Lambert timely filed the motion for reconsideration. On June 24, 2015, the District Court denied the motion for reconsideration. On July 8, 2015, fourteen (14) days later, Lambert petitioned the Court of Appeals for permission to appeal the order. Respondent argued Lambert could not appeal because more than four (4) months had passed from the entry of the appealable order. The Court of Appeals accepted the appeal by tolling the deadline because Lambert informed the District Court of his intention to seek reconsideration within the 14-day window.

The United States Supreme Court reversed, finding Rule 23(f) is not subject to equitable tolling, even where a litigant appears to have been diligent, reasonably mistaken, or otherwise deserving. Justice Sotomayor delivered the unanimous opinion of the Court, explaining that Rule 23(f) is a non-jurisdictional claim-processing rule, which may be waived or forfeited. The Court looked to applicable Codes to determine if there was any room for flexibility. While Appellate Rule 2 authorizes a court of appeals to suspend any provision, it includes the caveat: "except otherwise provided in Rule 26(b)." Appellate Rule 26(b) states, the Court of Appeals "may not extend the time to file ... a petition for permission to appeal."

Petitioner argued that Rule 23(f) is amenable to tolling because the deadline can be tolled by a motion for reconsideration filed within the original 14-day deadline. The Supreme Court disagreed indicating that a timely motion for reconsideration does not toll the deadline, but instead "renders an otherwise final decision of a district court not final" for purposes of appeal. Accordingly, the matter was reversed and remanded, holding that the 14-day deadline to file for permission to appeal could not be equitably tolled. This decision emphasizes the importance of not only diligence, but accuracy in calculating deadlines.

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