

## Food Litigation Newsletter



THIS NEWSLETTER AIMS to keep those in the food industry up to speed on developments in food labeling and nutritional content litigation.

### ABOUT

Perkins Coie's Food Litigation Group defends packaged food companies in cases throughout the country.

Please visit our website at [perkinscoie.com/foodlitnews](http://perkinscoie.com/foodlitnews) for more information.

### RECENT SIGNIFICANT RULINGS

#### Judgment Entered After Summary Judgment Victory in Juice False Advertising Suit

*Major v. Ocean Spray Cranberries, Inc.*, No. 5:12-cv-03067 (N.D. Cal.): As we previously reported [here](#), a federal judge recently granted Defendant's motion for summary judgment and denied as moot Plaintiff's motion for class certification in a putative class action alleging that Defendant's "100% Juice" labels were deceptive, given that they contained "No Sugar Added" messaging without a required disclaimer.

Having disposed of Plaintiff's claims, the Court entered final judgment on April 3, dismissing Plaintiff's case on the merits in its entirety. [Order](#).

#### Court Dismisses Claim for Injunctive Relief in "All Natural" Case, Remainder of Claims Survive

*Anderson v. The Hain Celestial Group, Inc.*, No. 5:14-cv-03895 (N.D. Cal.): In this putative class action alleging violations of California's CLRA, FAL and UCL, Plaintiff bases her claims on allegations that Defendant's "Sunflower Dream" drink is misleadingly labeled "all natural," while it contains artificial ingredients. Defendant moved for dismissal, and the Court granted in part and denied in part its motion.

While the Court found that Plaintiff had standing, at least in the early stages of litigation, to assert claims for products she did not purchase and that Plaintiff had raised plausible allegations, the Court nevertheless concluded that Plaintiff did not have standing to sue for injunctive relief because Plaintiff does not intend to purchase the product at issue in the future.

By the Court's order, Plaintiff's claim for injunctive relief is dismissed, but Plaintiff's remaining claims survive. [Order](#).

#### Cholesterol Case Survives Renewed Effort Dismissal

*Aguilar v. Boulder Brands, Inc.* No. 3:12-cv-01862 (S.D. Cal.): In this putative class action alleging violations of California's UCL and CLRA, Plaintiff claims that Defendant's Smart Balance spreadable butter is deceptively marketed as helping to block cholesterol, when it in fact does not contain a sufficient amount of plant sterols to do so.

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Plaintiffs had initially moved and was granted leave to file a second amended complaint. As part of its order granting Plaintiffs leave, the Court found that Defendant's labels could plausibly be read as implying that Defendant's spreadable butter carried a clinically meaningful cholesterol blocking benefit. Relying on this earlier order, the Court denied Defendant's motion to dismiss Plaintiffs' second amended complaint. The Court treated Defendant's motion to dismiss as one for reconsideration, and concluded that, in granting Plaintiffs leave to file an amended complaint, the Court already determined that the complaint stated a valid claim.

[Order.](#)

### NEW FILINGS

*Torrent v. Ollivier et al*, No. 2:15-cv-02511 (C.D. Cal.): On behalf of a statewide class of California consumers, Plaintiff alleges that Defendants falsely advertise their Himalania brand goji berries, creating the impression that the goji berries are harvested in and transported from the Himalayas mountain range, when in fact they are harvested in the Ningxia province of China. Plaintiff asserts violations of the California UCL and CLRA. [Complaint.](#)

*Center for Environmental Health v. James Keiller & Sons Limited et al*, No. RG15-765388 (Cal. Super. Ct.): Plaintiff, the Center for Environmental Health, alleges violations of California's Proposition 65 based on claims that Defendants do not warn consumers that their jam, marmalade or preserves made with ginger contain lead. [Complaint.](#)

*Slavinski v. Natural & Tasty LLC*, No. 9:15-cv-80451 (S.D. Fla.): Plaintiff alleges that Defendant's Goldbaum's Quinoa Crips are deceptively marketed and sold as "All Natural" and "GMO Free" when in fact they contain artificial and synthetic ingredients. The putative class action alleges violations of Florida's DUTPA, the Magnuson-Moss Warranty Act, as well as for negligent misrepresentation, breach of express warranty, and unjust enrichment. [Complaint.](#)

*Dedrick v. Snack Factory LLC*, No. 4:15-cv-01605 (N.D. Cal.): Putative class action alleging violations of California's CLRA, FAL and UCL, as well as for breach of express warranty and negligent misrepresentation. Plaintiff claims that Defendant markets and advertises its Pretzel Crips as "All Natural" when they contain artificial and genetically modified ingredients. [Complaint.](#)

*Rosado-Acha v. Red Bull GmbH et al*, No. 3:15-cv-1367 (D.P.R.): Plaintiff brings a putative class action alleging breach of express warranty and unjust enrichment based on allegations that Defendants falsely marketed their energy drinks. Plaintiff alleges that Defendants suggested that their energy drinks were a superior source of energy beyond caffeine and contained functional benefits that they did not have. [Complaint.](#)

*Lopez v. The Wine Group, Inc. et al*, No 2:15-cv-01131 (E.D. La.): Plaintiff brings a putative nationwide class action alleging that Defendants' wines contain inorganic arsenic in that levels that are not reasonably safe to consumers and are above those

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allowed in drinking water. Plaintiff raises claims under Louisiana's Deceptive and Unfair Trade Practices Act and the Magnuson-Moss Warranty Act, as well as for redhibition, negligence, and unjust enrichment. [Complaint.](#)

*McCartney v. Essential Living Foods et al*, No. CGC-15-545331 (Cal. Super. Ct.): In a California Proposition 65 case, Plaintiff alleges that Defendants do not warn consumers that their Essential Living Raw Organic Cacao Powder contains cadmium, a chemical that Plaintiff alleges causes birth defects and other reproductive harm. [Complaint.](#)