

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 for more information.

RECENT SIGNIFICANT DEVELOPMENTS AND RULINGS

Court rules that 'Kosher' suit poses religious question; dismisses with prejudice

Wallace v. ConAgra Foods, Inc., No. 19HA-CV-123237 (Minn. Dist.): A state court judge dismissed with prejudice on First Amendment grounds this suit alleging that Hebrew National hot dog products were falsely advertised as "100% Kosher." Plaintiffs alleged that the method the defendant and its contractors used to slaughter cattle violates what they contend are "objective" standards of kosher slaughter. The court found that it lacked subject matter jurisdiction, because determining whether or not the products are kosher would require the court to substitute its judgment for that of rabbinical authorities on "this purely religious question." The case was removed to federal court but dismissed by the district court – again due to lack of subject matter jurisdiction concerning the religious nature of the questions presented – and then remanded to Minnesota state court on appeal by the Eighth Circuit.. [Order](#).

Settlement terms approved in stevia sweetener suit

Aguiar v. Merisant, 2:14-CV-00670 (C.D. Cal.): Judge Klausner granted a motion for preliminary settlement approval in this putative class action alleging that defendants misleadingly market their Pure Via zero calorie sweetener as "natural" when it in fact contains synthetic dextrose and chemically processed ingredients derived from stevia. Under the terms of the approved settlement, defendants are to pay \$1.65 million into a fund to compensate consumers who purchased the products, with individual consumers eligible to claim between \$5.00 and \$30.00 each, and residual funds to be distributed on a *pro rata* basis to class members. Defendants have also agreed to change their product labeling to include an asterisk directing consumers to a website for more information about ingredients and the basis for the "natural" classification of the products. Finally, the settlement allocates attorneys' fees not in excess of 30% of the settlement sum, and an incentive award for the plaintiff not to exceed \$4,000. [Order](#).

Hain Waffle suit dismissed in part; key labeling claims live on

Ham v. Hain Celestial Grp. Inc., No. 3:14-CV-02044 (N.D. Cal.): A federal judge granted in part and denied in part a motion to dismiss this suit based on claims that defendant's waffles are misleadingly labeled "All Natural" when in fact they contain SAPP. Plaintiff's breach of contract claim was dismissed because the court held that the parties lacked

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privity. The court also dismissed plaintiff's unjust enrichment claim on the grounds that unjust enrichment is not an independent cause of action. Additionally, the court ruled that injunctive relief was not available, as plaintiff lacked standing due to the fact that she was now aware that the products contained SAPP and could therefore not allege that she could be fraudulently induced again. Likewise, the court held that plaintiff lacked standing to bring claims based on statements found on Hain's website and Facebook page, as she never alleged that she had seen them. The court denied the motion to dismiss the remaining claims. [Order](#).

Kraft Cheese complaint too light on facts to escape dismissal

Morales et al v. Kraft Foods Group, Inc. et al, No. 2:14-CV-04387 (C.D. Cal.). A federal judge dismissed without prejudice this putative class action alleging that defendants' cheese was misleadingly labeled "all natural" despite containing artificial ingredients such as food coloring. The court granted leave to amend, cautioning plaintiffs during oral argument about the lack of specificity with regard to exactly which labels and advertisements plaintiffs alleged were misleading. [Order](#).

Court gives green light to settlement terms in flax milk action

Madenlian v. Flax USA Inc., No. SACV13-1748 (C.D. Cal.): In a putative class action based on defendant's alleged misuse of the phrase "All Natural" on its Flaxmilk products, where the products contain "artificial, synthetic, or extensively processed ingredients", the court granted the parties' motion for preliminary approval of settlement. Under the terms of the settlement, Flax USA agreed to establish a settlement fund of \$260,000. Claimants may file a claim form identifying the retailer from which they purchased the offending products, and may be reimbursed in the amount of \$3.25 for each carton (up to ten cartons) of product purchased during the class period. Without retailer information, claimants may still file a claim form but will be entitled to only \$2.50 for each carton, up to ten cartons. Any remaining funds will revert to defendant. Flax USA also agreed to cease using the phrase "all natural" on any printed flax milk packaging. Finally, Flax USA agreed not to object to Plaintiff's counsel's motion for attorney's fees in an amount up to \$70,000, and for an incentive award for Plaintiff of up to \$5,000. [Order](#).

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NEW FILINGS

Alduey v. B&G Foods et al., No. 1:14-CV-7839 (S.D.N.Y.): This putative class action asserts claims based on allegations that defendants' spreadable fruit products are labeled "All Natural," but actually contain processed ingredients such as Maltodextrin. [Complaint.](#)

Bobo v. Optimum Nutrition, Inc., No. 3:14-CV-2408 (S.D. Cal.): This putative class action alleges that defendant has marketed and sold its premium protein as products being comprised of "100% Whey Protein," "100% Casein Protein" and "100% Soy Protein," despite the fact that the products contain other ingredients that are not protein. [Complaint.](#)