

## 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

#### Court Grants in Part and Denies in Part Motion to Dismiss In Juice False Advertising Suit

*Reynolds v. Wal-Mart Stores, Inc.*, No. 4:14-cv-00381 (N.D. Fla.): The Court granted in part and denied in part Defendant's motion to dismiss in this putative class action alleging violations of Florida's DUTPA, breach of express and implied warranty statutes, as well as unjust enrichment based on claims that Defendant's Great Value 100% Cranberry Pomegranate Juice misleads consumers into thinking it is made 100% out of cranberry juice and pomegranate juice when it is in fact a juice blend and contains very little pomegranate juice.

First, the Court found that Plaintiffs had Article III standing, having alleged sufficient economic injury-in-fact by claiming that they spent more money than they otherwise would have without the accused labelling. Next the Court found that Plaintiffs stated a viable claim, despite the fact that the accused products' labeling included the words "Flavored Juice Blend from Concentrate with Added Ingredients," because the "100% Cranberry Pomegranate" labelling in larger text undermined the entire label. The Court then moved on to spend the bulk of the discussion on Defendant's argument that the Nutrition Labeling and Education Act ("NLEA") preempts Plaintiffs' state law claims. The Court rejected this argument, reasoning that while the NLEA bars state labeling requirements that differ from federal rules, states may still allow damages remedies for claims premised on the FDCA. Finally, the Court granted Defendant's motion as to the requests for punitive and treble damages after Plaintiffs conceded such damages were not recoverable forms of relief. [Order](#).

#### Final Settlement Approval In Smoothie Kit "All Natural" Case

*Lilly et al v. Jamba Juice Co.*, No. 13cv02998 (N.D. Cal.): The Court has granted Plaintiffs' motion for final settlement approval for injunctive relief in a putative class action asserting claims under California's UCL, FAL, and CLRA based on allegations that Defendants' smoothie kits are falsely labeled as "All Natural" when in fact they contain synthetic and processed ingredients. The terms of the settlement are as follows: Defendants will re-label the challenged products, including on its website, to exclude the

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description “All Natural.” Additionally Plaintiffs were granted attorneys’ fees in the amount of \$410,637.13, costs in the amount of \$14,326.87, and an incentive award of \$5,000 for each named Plaintiff. [Order](#).

### NEW FILINGS

*Campbell v. Chiquita Brands Inc.*, No.15cv2860 (C.D. Cal.): Putative class action alleging violations of California’s CLRA and UCL, as well as claims for common law fraud by concealment and unjust enrichment based on allegations that Defendant promoted and sold its bananas “as though all of them are farmed in an ecologically friendly and otherwise sustainable manner” when in reality their “production methods contaminate water supplies, destroy the crops of local communities, and cause illness to children.” [Complaint](#).

*Short et al v. Kind LLC*, No. 15cv2214 (E.D.N.Y.), *Kaufer v. Kind LLC*, No. 15cv2878 (C.D. Cal), *McDonald et al v. Kind LLC*, No. 15cv615 (C.D. Cal), *Molina v. Kind LLC*, No. 2015ca003493 (Fla. Cir. Ct.), *Galvez v. Kind LLC*, No. 15cv3082 (C.D. Cal.), *Cooper v. Kind LLC*, No. 15cv1872 (N.D. Cal.): Arising as a result of the FDA’s recent warning letter to Kind LLC, multiple putative class actions alleging violations of various state consumer protection statutes as well as common law claims, alleging that four types of KIND bars are misbranded as “healthy” when in fact they contain more fat and saturated fat than the definition of “healthy” allows, and that the labeling falsely claims they are low-fat or rich in antioxidants when they are not. [Short, Kaufer, McDonald, Molina, Galvez, Cooper](#).

*Bustamante v. Kind LLC*, No. 15cv0891 (S.D. Cal.): Putative class action alleging violations of California’s CLRA, FAL and UCL as well as breach of express warranty based on claims that Defendant’s KIND bars are misbranded in violation of the FDCA and mislabeled as “All Natural” and “Non GMO” when the bars actually contain soy lecithin, soy protein isolate, and canola oil. [Complaint](#).

*George v. Blue Diamond Growers*, No. 1522-CC00850 (Mo. Cir. Ct.): Putative class action alleging violations of Missouri’s Merchandising Practices Act as well as unjust enrichment based on claims that Defendant deceptively labels its Almond Milk as being “All Natural” when it contains artificial or synthetic ingredients and claims that the product contains evaporated cane juice, leading consumers to believe it had less sugar than it does. [Complaint](#).

*Crespo-Bithorn v. The Wine Group, Inc.*, No. 15cv01424 (M.D. La.): Putative class action alleging violations of Louisiana’s Deceptive and Unfair Trade Practices Act and the Magnuson-Moss Warranty Act, as well as redhibition, negligence, and unjust enrichment based on the claim that Defendants’ wines contain inorganic arsenic in that levels that are not reasonably safe to consumers and are above those allowed in drinking water. [Complaint](#).

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*Consumer Advocacy Group v. Anhing Corporation*, No. BC579481 (Cal. Super. Ct.): Complaint alleges violations of Proposition 65 based on claims that Defendants do not warn consumers that their seaweed snacks contain lead. [Complaint.](#)

*Lam v. ConAgra Foods, Inc.*, No. 15cv02334 (E.D.N.Y.): Putative class action alleging violations of various states' consumer protection laws as well as negligent misrepresentation, breach of express warranty and unjust enrichment based on claims that Defendant's Slim Jim "Handi Pak" packages contain non-functional slack-fill. [Complaint.](#)

*Terlesky v. Fifth Dimension, Inc.*, No. A1502332 (Ohio Com. Pleas): Putative class action alleging violations of Ohio's Deceptive Trade Practices Act and Consumer Sales Practices Act, as well as unjust enrichment, promissory estoppel, negligent misrepresentation and fraud based on claims that Defendant's "Tito's Handmade Vodka" is falsely labeled and advertised as "Handmade" and "Crafted in an Old Pot Still" when the vodka is actually made using mechanized and automated processes with little human supervision or involvement. [Complaint.](#)

*Backus v. Nestle USA Inc.*, No. 15cv1963 (N.D. Cal.): Putative class action alleging violations of California's UCL, FAL, and CLRA, as well as breach of express and implied warranty based on claims that Defendant's Coffee-Mate coffee creamer products are falsely marketed and advertised as free of trans fat when they contain partially hydrogenated oil. [Complaint.](#)

*Laboon v. Unilever United States, Inc.*, No. 15cv60914 (S.D. Fla.): Putative class action alleging violations of Florida's DUTPA, as well as negligent misrepresentation and unjust enrichment based on claims that Defendant's Pure Leaf Iced Tea is falsely advertised as "All Natural" because it contains ingredients that are synthetic, artificial and/or genetically modified, including citric acid. [Complaint.](#)