

Food Litigation Newsletter

March 20, 2014

ISSUE NO. 29

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.



This newsletter aims to keep those in the food industry up to speed on developments in food labeling and nutritional content litigation.

Recent Significant Developments and Rulings

Court Rejects 'Grossly Excessive' Attorneys' Fee Claim in Dismissed Case

Henderson v. The J.M. Smucker Co., No. 2:10-4524 (C.D. Cal.): In a review of a prior order awarding fees, the court rejected plaintiff's \$3.3 million attorneys' fees claim as "grossly excessive." This case involved a putative class action alleging claims under California's consumer protection laws based on allegedly misleading "health claims" on defendant's products. Although the case was dismissed, plaintiff moved for attorneys' fees under a catalyst theory, arguing that defendants had changed their products as a result of the lawsuit. The court rejected as excessive the number of hours the attorneys spent on various tasks. The court further held that due to the limited success of the action, the multiplier should be adjusted downward to 10 percent of the lodestar. Ultimately, the court awarded \$92,000 in attorneys' fees and costs. [Order](#).

Voluntary Dismissal in Bumble Bee Class Action

Ogden v. Bumble Bee, No. 12cv1828 (N.D. Cal.): Plaintiff voluntarily dismissed a putative class action complaint alleging claims under California's consumer protection statutes, the FDCA, the Sherman Act, the Song-Beverly Consumer Warranty Act, and Magnuson-Moss Warranty Act. Previously, the court had granted partial summary judgment, dismissing the warranty claims along with plaintiff's claims for restitution and disgorgement, significantly reducing the remedies available. The court accepted the dismissal and entered judgment in favor of defendant. [Order](#).

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NEW FILINGS

Ree v. Pepsico, Inc., No. 8:14cv328 (C.D. Cal.), *Hall v. Pepsico Inc.*, No. 3:14 cv 1099 (N.D. Cal.), and *Ibusuki v. Pepsico, Inc.*, No. 2:14cv1724 (C.D. Cal.): Identical actions alleging that Pepsi One and Diet Pepsi beverages purchased by plaintiff contained 4-methylimidazole ("4-Mel"), a chemical subject to California's Proposition 65. [Ree. Hall. Ibusuki.](#)

Shaouli v. Barney's Premium Foods LLC, No. BC538558 (L.A. Super.): Putative class action alleging that several of defendant's "Barney's Butter" products are misbranded under the Sherman Act because the label lists evaporated cane juice instead of "sugar" or "dried cane syrup." [Complaint.](#)

Merritt v. BCI Coca-Cola Bottling Co. of L.A., No. 4:14cv1067 (N.D. Cal.): Putative class action complaint transferred from the Southern District of California seeks equitable and injunctive relief and alleges that defendant's products are misbranded and misleading because defendant's sodas state that they contain no artificial flavoring or chemical preservatives but allegedly contain phosphoric acid. [Complaint.](#)

Park v. Goya Foods Inc., No. 2:14cv1789 (C.D. Cal.): Putative class action alleging claims under California's UCL, CLRA and FAL and for breach of contract, intentional and negligent misrepresentation, unjust enrichment, and breach of warranty. The complaint alleges defendant mislabeled Malta Goya as "nutritious" when it contains 4-Mel. [Complaint.](#)