

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 RULINGS

Court Rejects Class Settlement Bid in MSG Case

Peterson v. CJ America, Inc., No. 3:14-cv-2570 (S.D. Cal.): Plaintiff in Peterson alleges that several of Defendant's pre-packaged food products were mislabeled as having "NO MSG ADDED" and as "100% all natural ingredients," when the products contain several ingredients containing MSG.

On Plaintiff's motion, the Court denied preliminary approval of a class settlement whereby Defendant agreed to contribute \$1.5 million to a Settlement Fund from which the following items would be paid: attorneys' fees and expenses not to exceed \$375,000, an incentive award to Plaintiff of \$5,000, settlement administration expenses, and cash awards to class members.

First, the Court found that Plaintiff had not demonstrated that the class action met the predominance requirement under Federal Rule of Civil Procedure 23(b)(3). In particular, Plaintiff failed to demonstrate that California law should apply to a nationwide class of consumers. Second, the Court found that there was not a "driving nexus" between the *cy pres* beneficiaries of leftover settlement funds (Mayo Clinic, Action for Healthy Kids and the National Farm to School Network) and the consumers' claims—a requirement in the Ninth Circuit. [Order](#).

Pepper MDL Grows

In re McCormick & Company, Inc., Pepper Products Marketing and Sales Practices Litigation, MDL-2665 (J.P.M.L.): Courts have recently transferred a number of lawsuits related to Defendant's alleged practice of slack-filling its ground black pepper tins to the U.S. Judicial Panel on Multidistrict Litigation for consolidation. Transferred actions include: *Theis v. McCormick & Co. Inc.* (originally filed in S.D. Ill.); *Linker v. McCormick & Co. Inc.* (originally filed in E.D. Mo.); *Vladimirsky v. McCormick & Co. Inc.* (originally filed in N.D. Ill.); and *Pellitteri et al v. McCormick & Co. Inc.* (originally filed in S.D. Fla.). [Order](#).

EVOO Case Presses Forward After Court Rejects Attempt to Stay

Kumar v. Salov North America Corp., No. 4:14-cv-02411 (N.D. Cal.): In this putative class action alleging claims arising under various California statutory and common laws,

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Plaintiff claims that Defendant falsely markets its extra virgin olive oil as “Imported from Italy” when in fact the olives Defendant uses in its products are not grown or pressed in Italy. Further, Plaintiff alleges that Defendant uses inferior bottles to package its extra virgin olive oil that do not preserve the oil as “extra virgin.” The Court recently denied Defendant’s motion to stay the action pending the Ninth Circuit’s resolution of *Jones v. ConAgra Foods, Inc.*, *Brazil v. Dole Packaged Foods*, and *Kosta v. Del Monte Foods*. In so holding, the Court concluded that the potential for prejudice to Plaintiff and needless delay outweighed any benefit of staying the case. [Order](#).

NEW FILINGS

Gates, et al. v. MusclePharm Corp., No. 3:15-cv-2870 (S.D. Cal.): Putative class action alleging negligent misrepresentation, violations of California’s consumer protection statutes (CLRA, UCL, and FAL), and violations of New York’s Deceptive Trade Practices Act. Plaintiffs claim that Defendant’s whey protein products are misleadingly packaged in large containers that contain a significant percentage (45%) of non-functional slack-fill. [Complaint](#).

Gioia, et al. v. GNC Holdings Inc., No. 3:15-cv-2871 (S.D. Cal.): Putative class action alleging negligent misrepresentation, violations of California’s consumer protection statutes (CLRA, UCL, and FAL), and violations of New York’s Deceptive Trade Practices Act. Plaintiffs claim that Defendant’s whey protein products are misleadingly packaged in large containers that contain a significant percentage (30%) of non-functional slack-fill. [Complaint](#).

Forsher v. The J.M. Smucker Co., No. 1:15-cv-7180 (E.D.N.Y): Putative class action alleging violations of California’s CLRA, FAL, and UCL, as well as violations of Ohio’s Deceptive Trade Practices Act and Consumer Sales Practices Act and other state law claims. Plaintiff claims that Defendant falsely represents that its Jif Natural Peanut Butter Spread is “natural,” when in fact it contains ingredients derived from bioengineered ingredients. [Complaint](#).

Gertsnecker v. McCormick & Co. Inc., No. 2:05-mc-2025 (W.D. Pa.): Putative class action alleging violation of Pennsylvania’s Unfair Trade Practice Act and a claim for unjust enrichment based on the claim that Defendant engaged in non-functional slack-filling of its pepper tins by using 25% less product. As reported [here](#), Courts have recently transferred a number of related lawsuits to the U.S. Judicial Panel on Multidistrict Litigation for consolidation.