

## 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

#### Motion to Dismiss Granted in Part, Denied in Part

*Albert v. Blue Diamond Growers*, No. 15cv4087 (S.D.N.Y.): In a putative class action alleging that Defendant's almond milk products are misrepresented as containing a significant amount of almonds when in fact they contain only 2 percent, the Court granted in part and denied in part Defendant's motion to dismiss. First, the Court held that Plaintiffs did not have standing for injunctive relief because they had not alleged an intent to purchase the products in the future. Second, turning to the merits of the statutory claims, the Court held without meaningful discussion that the claims were sufficiently pleaded. Finally, the Court refused to determine at the pleadings stage whether Plaintiffs could recover damages under the UCL. [Order](#).

#### Court Enters Final Judgment Approving Settlement in Beck's Beer Case

*Marty v. Anheuser-Busch Co.*, No. 13cv23656 (S.D. Fla.): In a putative class action alleging that Anheuser-Busch misled consumers and charged a premium price for Beck's beer by marketing Beck's as a German beer brewed in Germany when it is manufactured in the United States with domestic ingredients, the Court entered final judgment approving settlement. The terms of the final settlement are the same as we previously reported: (a) the settlement fund is uncapped, permitting those who purchased the challenged beers since May 2011 to refund claims ranging from \$0.10 per bottle up to \$1.75 per 20-can pack and (b) households may claim up to \$50 each with receipts or \$12 without and will have four months from the date of settlement to submit claims. The brewer also agreed to include the phrases "Brewed in USA" or "Product of USA" on the product labeling for the next five years. In addition, the Court ordered \$3.5 million in attorney fees and \$5,000 per class representation, as agreed by the parties. [Judgment](#).

#### Welch Foods Class Action Stayed Pending Outcome in Ninth Circuit Cases

*Park v. Welch Foods Inc.*, No. 12cv6449 (N.D. Cal.): In a putative class action alleging claims under California consumer protection statutes, as well as unjust enrichment, claiming that Defendant's juices and spreads are misrepresented as being healthier than they are and "all natural" when in fact they contain artificial colors, flavors, or preservatives, the parties jointly moved for stay pending the Ninth Circuit decisions in

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*Brazil v. Dole Food, Jones v. Conagra Foods and Kosta v. Del Monte Foods.* The Court granted the motion on the grounds that the parties may waste time and resources in motion practice if the Ninth Circuit's rulings change the requirements for class certification, standing, and damages in food labeling class actions. [Order.](#)

### Parties Move for Settlement Approval in Annie Chun MSG Case

*Petersen v. CJ America, Inc.*, No. 3:14-cv-02570 (S.D. Cal.): In a putative class action alleging claims under California's consumer protection statutes, as well as breach of express warranty, claiming that Defendant's Annie Chun's prepackaged food products are misrepresented as having "No MSG Added," when in fact they contain MSG, the parties moved for preliminary approval of settlement. The proposed settlement terms are as follows: Defendant will establish a settlement fund in the amount of \$1.5 million from which each class member may claim \$1.50 per product up to 10 products (or \$15.00) without proof of purchase. Defendants will pay up to \$5,000 per class representative as incentive awards from the settlement fund and up to \$375,000 in attorney fees. Any remainder will go in cy pres to the Mayo Clinic, Action for Healthy Kids, and National Farm to School Network. Finally, Defendant agrees not to order or print labels or packaging on the subject products bearing the phrase "No MSG Added" or to market or advertise them as such for a period of three years.

### NEW FILINGS

*Kline v. Post Holdings, Inc.*, No. 15cv2348 (S.D. Cal.): Putative class actions alleging claims under California and New York consumer protection statutes, as well as negligent misrepresentation, claiming that Defendants' whey protein products are sold in large, opaque containers that contain 45 percent slack fill. [Complaint.](#)

*Kline v. Iovate Health Sciences U.S.A., Inc.*, No. 15cv2387 (S.D. Cal.): Putative class actions alleging claims under California and New York consumer protection statutes, as well as negligent misrepresentation, claiming that Defendants' whey protein products are sold in large, opaque containers that contain 45 percent slack fill. [Complaint.](#)

*Arthur v. Wonder Natural Foods Corp.*, No. 1516-cv22273 (Mo. Cir. Ct.): Putative class action alleging a claim under Missouri's consumer protection statutes, as well as unjust enrichment, claiming Defendant misbrands and misrepresents its "Better 'n Peanut Butter" products as being peanut butter when it is not made with peanuts. [Complaint.](#)

*Rito v. Castella Imports, Inc.*, No. 15cv8395 (S.D.N.Y.): Putative class action alleging claims under the Illinois consumer protection statutes and Magnuson-Moss, as well as unjust enrichment, breaches of implied and express warranty, fraud, and negligent misrepresentation, claiming that Defendant's olive oil products are misrepresented as being "Extra Virgin Olive Oil" when in fact they are really a lower grade olive or pomace oil.

*Gerstnecker v. McCormick & Co., Inc.*, No. 15cv1380 (W.D. Pa.): Putative class action

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alleging claims under the Pennsylvania consumer protection statutes, as well as unjust enrichment, claiming that Defendant's ground black pepper products contain 25 percent slack fill.

*Garrett v. Peets Coffee & Tea, Inc.*, No. 2015ch15990 (Ill. Circuit Ct.): Putative class action alleging claims under multiple states' consumer protection statutes, as well as breach of contract and unjust enrichment, claiming that Defendant's press pot coffee products are misrepresented as containing either 12 or 32 ounces when in fact they contain 25 percent less than the advertised volume. [Complaint](#).

*Center for Environmental Health v. Mondelez Int'l, Inc.*, No 30-2015-817717 (Orange Cty. Super.): Prop 85 complaint alleging that Defendant's cookies with ginger and molasses contain lead. [Complaint](#).

*Environmental Research Ctr. v. Diet Direct, Inc.*, No. RG15790424 (Alameda Cty.): Prop 65 complaint alleging that Defendant's various "Wonderslim" diet drink products contain lead. [Complaint](#).

*Environmental Research Ctr. v. Fitlife Brands, Inc.*, No. RG15790616 (Alameda Super.): Prop 65 complaint alleging that Defendant's nutritional health products contain lead. [Complaint](#).

*Environmental Research Ctr. v. Enzymes, Inc.*, No. RG15790620 (Alameda Super.): Prop 65 complaint alleging that Defendant's nutritional health products contain lead. [Complaint](#).

*Environmental Research Ctr. v. Cyanotech Corp.*, No RG15791194 (Alameda Super.): Prop 65 complaint alleging that Defendant's nutritional health products contain lead. [Complaint](#).

*Environmental Research Ctr. v. Athletic Greens (USA) Inc.*, No RG15791200 (Alameda Super.): Prop 65 complaint alleging Defendant's nutritional health products that contain lead. [Complaint](#).

*Environmental Research Ctr. v. Vitamin Shoppe Inc.*, No RG15791206 (Alameda Super.): Prop 65 complaint alleging that Defendant's nutritional health products contain lead. [Complaint](#).