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FOOD FIGHT!

DOING BUSINESS IN THE GOLDEN STATE WEBINAR SERIES

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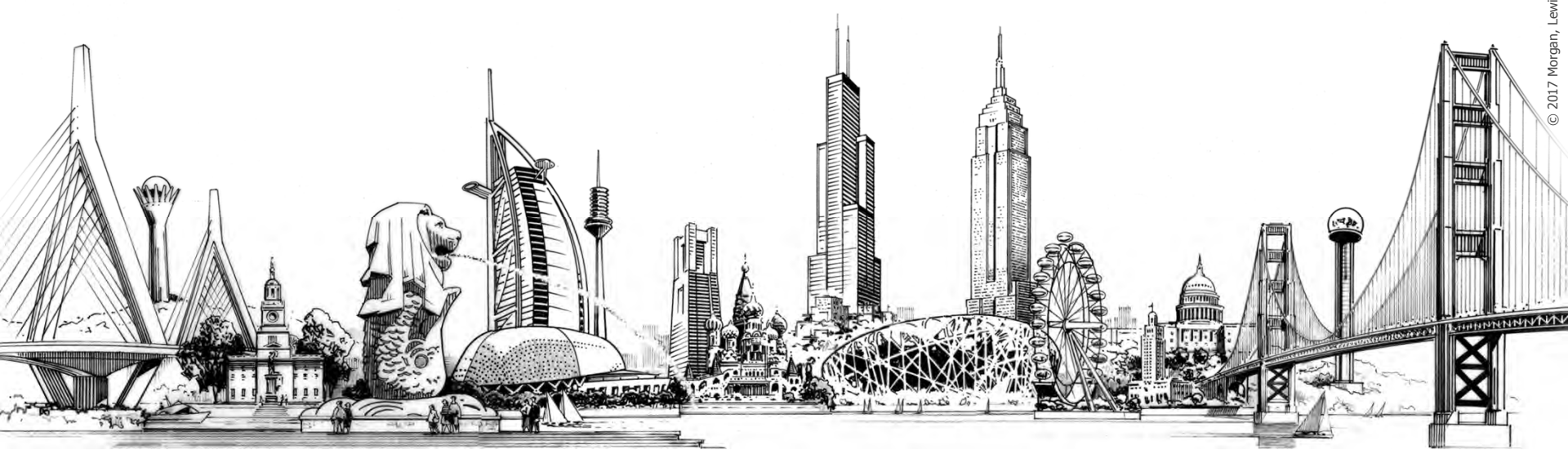


AGENDA

1. BACKGROUND AND THEORIES OF LIABILITY
   - FDA WARNING LETTERS
   - CALIFORNIA LAWS
   - “NATURAL” CLAIMS
   - SLACK FILL CLAIMS
   - COUNTRY OF ORIGIN CLAIMS

2. DEFENSE STRATEGIES
   - STANDING
   - PRIMARY JURISDICTION
   - PREEMPTION
   - CLASS ACTION REQUIREMENTS

3. DAMAGES & SETTLEMENTS

BACKGROUND & COMMON THEORIES OF LIABILITY

Background

- The food industry has become a fertile ground for class action lawsuits over the last few years and shows no signs of slowing down.
- This trend is driven in part by increased consumer demand for healthier food and more honest labeling.
- Plaintiffs' lawyers see the food industry as a "relatively untapped deep pocket."
- Between 2015-2016, there were more than 425 active class actions in federal courts -- a staggering increase from the 19 cases in 2008
- This trend is particularly prevalent in the federal courts of four states where 67% of food class actions are filed: California (36%), New York (22%), Florida (12%) and Illinois (7%).

Theories of Liability – FDA Warning Letters

- When the FDA has determined that a manufacturer has violated a labeling regulation, the agency will issue a warning letter to notify the manufacturer.
- The FDA primarily seeks voluntary compliance from food companies when food products are misleading or mislabeled.
- Warning letters are publicly available and have proven to be dangerous for manufacturers because they are often followed by "piggyback" putative class actions on labeling and advertising.
  - Plaintiffs filed class actions against Coca-Cola asserting consumer fraud claims based on the very same labeling and marketing issues in the FDA warning letter. *See Mason v. The Coca-Cola Co.*, 774 F. Supp. 2d 699, 701 (D.N.J. 2011) (asserting claims under NJCFA regarding the vitamin and mineral content in Diet Coke Plus).

Theories of Liability – California Consumer Protection Laws

- Cal. Health & Safety Code § 110100 (Sherman Food, Drug and Cosmetics Act)
- The Unfair Competition ("UCL") and False Advertising Laws ("FAL") (Cal. Bus. & Prof. Code § 17200 & § 17500)
- The Consumer Legal Remedies Act ("CLRA") (Cal. Civ. Code § 1770(a)).
- "In order to state a claim under the UCL, CLRA, or FAL, a plaintiff must allege that the labels are likely to deceive a reasonable consumer. These laws prohibit not only advertising which is false, but also advertising which[,] although true, is either actually misleading or which has a capacity, likelihood or tendency to deceive or confuse the public. " *Lam v. Gen. Mills, Inc.,* 859 F. Supp. 2d 1097, 1103 (N.D. Cal. 2012) (internal citations omitted)

These laws, along with a perceived plaintiff-friendly jury pool, have led the US District Court of the Northern District of California to be dubbed the "Food Court."

More California Theories of Liability

- Proposition 65 – threatened litigation and litigation claims

  - diethylhexyl phthalate (DEHP) from plastics leaching into cheese
  - arsenic in bottled water
  - lead in candy
  - mercury in fish

- UCL "law enforcement" actions by DAs, city attorneys, etc.

  - "County Bounty" civil penalty awards (up to $2500 per violation)
  - Slack fill for beauty products (not food)
  - Energy drinks and alleged marketing practices

Other Theories of Liability

- Food-labeling class actions often allege fraud and misrepresentation, breach of express and implied warranties, and unjust enrichment.
- Plaintiffs often allege damage (or seek restitution) from allegedly higher prices paid for premium "natural" products.
- Many food-labeling cases relate to disputes over the use of the term "natural," which the FDA has yet to define, but has recently taken comments and information relating to defining the term.
- In general, cases involve four issues surrounding the definition of the term "natural": (1) high fructose corn syrup; (2) GMOs; (3) artificial preservatives; and (4) chemically-processed foods.

"Slack-fill" Class Actions

- Despite mixed results in the courts, 14 slack fill lawsuits were filed in the first seven months of 2017, compared with 37 in 2016 (full year) and 30 in 2015.
- A relatively small number of law firms are filing these suits.
- FDA regulations prohibit "nonfunctional slackfill." 21 C.F.R. § 100.100. Cal. Bus. & Prof. Code §12606 is similar.
- Strategies: add fill lines, including statements about contents settling in transit, and explain why empty space in a container might serve a purpose.

Bush v. Mondelez, N.D. Cal. 3:16-cv-02460-JCS

Country of Origin Claims

- Two class actions were filed against Anheuser-Busch Companies for alleged misrepresentation of the origin of beer sold in the United States.
  - The label of Busch beer as "made in the USA" was misleading because it contained imported hops. Marty et al v. Anheuser-Busch Cos. LLC, Case No. 1:13-cv-23656, in the U.S. District Court for the Southern District of Florida.
  - Consumers purchased Becks beer under a mistaken belief that it was imported from Germany because the label states: "German quality," while "Product of USA" text was too small. Nixon et al v. Anheuser-Busch Cos. LLC, Case No. CGC-15-544985, Superior Court of California for the County of San Francisco
- FTC guideline: "For a product to be called Made in USA, or claimed to be of domestic origin without qualifications or limits on the claim, the product must be 'all' or 'virtually all' made in the U.S."

DEFENSE STRATEGIES

"Substantially Similar" Standing

- Many courts: "no purchase, no injury, no Article III standing."

But, in California:

- Standing can be found even when a plaintiff never used the product, so long as the product plaintiff purchased had substantially similar labeling. *See Anderson v. Jamba Juice Co.*, 888 F. Supp. 2d 1000, 1002 (N.D. Cal. 2012) (plaintiff can bring claims based on "all natural" smoothie kits he never purchased).
- This approach has been consistently applied in the Northern District of California. *Romero v. HP, Inc.*, No. 16-CV-05415-LHK, 2017 WL 386237, at *7 (N.D. Cal. Jan. 27, 2017) (citations omitted); *see also Miller v. Ghirardelli Chocolate Co.*, 912 F. Supp. 2d 861, 870 (N.D. Cal. 2012) (granting a motion to dismiss because the products not purchased were too different and their labeling dissimilar).

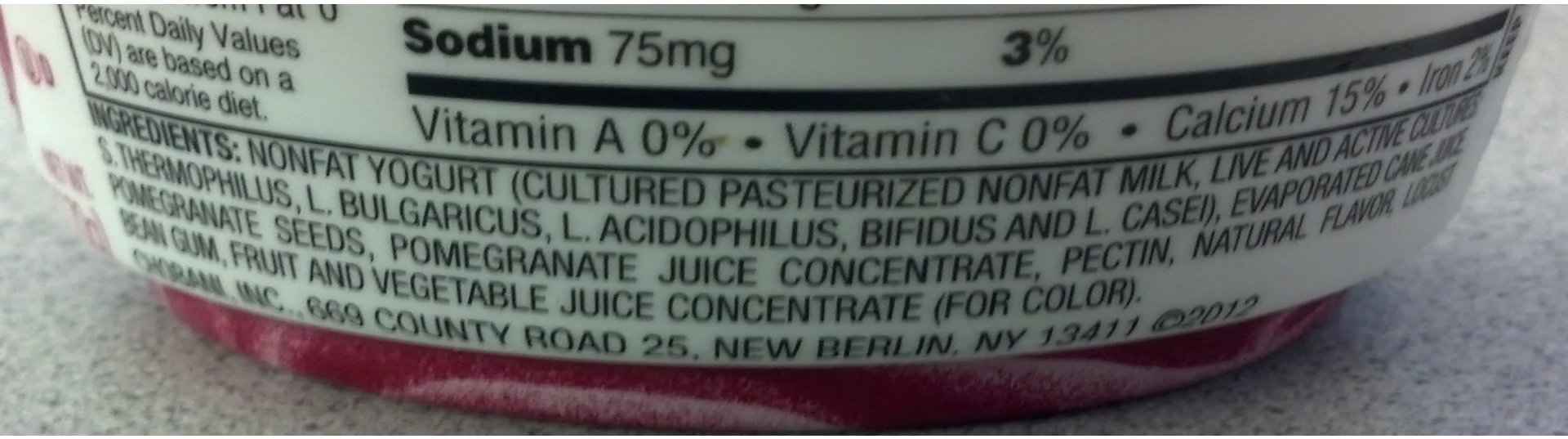
Standing – Injunctive Relief

- Split over whether named plaintiffs have standing to assert injunctive relief claims seeking label change.
- Defendants argue that once a plaintiff knows a label claim is "false," there is no risk of future injury; Plaintiffs argue that Article III standing cannot be so narrow.
- California courts are split.
  - Standing allowed for "All Natural" and "100% Natural" claims because, disallowing standing for those aware of misrepresentations "would eviscerate the intent of the California legislature in creating consumer protection statutes." *Larsen v. Trader Joe's Co.*, 2012 U.S. Dist. LEXIS 162402 at *11 (N.D. Cal. June 14, 2012)
  - Standing disallowed for false labeling claim, with court stating that while it was "certainly cognizant of the important state interest underlying California's consumer protection statutes, it almost goes without saying that such an interest can never overcome a constitutional standing prerequisite." *Anderson v. Hain Celestial Grp. Inc.*, 87 S. Supp. 3d 1226 (N.D. Cal. 2015)

Primary Jurisdiction

- In food-labeling litigation, "primary jurisdiction" means deferring to the FDA.
- Four factor test: (1) the need to resolve an issue that (2) has been placed by Congress within the jurisdiction of an administrative body having regulatory authority (3) pursuant to a statute that subjects an industry or activity to a comprehensive regulatory authority that (4) requires expertise or uniformity in administration. *Clark v. Time Warner Cable*, 523 F.3d 1110, 1114-15 (9th Cir. 2008).
- Successful use in litigation involving "evaporated cane juice" (ECJ), "all natural" claims, and particular health claims

Primary Jurisdiction – ECJ



- Lawsuits claim "evaporated cane juice" is a misnomer; "sugar" or "dried cane syrup" should be used instead.
- 2009 FDA warning letters: FDA considers "ECJ" to be false and misleading under the FDCA because it fails to reveal the basic nature of the food and its properties.
- In July 2015, the FDA represented that it expected to issue final guidance on the term by the end of 2016.

Primary Jurisdiction – ECJ

- **While awaiting the FDA's final guidance, several courts concluded that cases concerning ECJ claims should be stayed or dismissed under the primary jurisdiction doctrine.**
  - *Swearingen v. Yucatan Foods, L.P.*, 59 F. Supp. 3d 961, 964 (N.D. Cal. 2014) ("Considering the need for uniformity as well as the particular expertise the FDA may bring to bear on this issue in light of its renewed effort to offer guidance on use of the term "evaporated cane juice," it is appropriate to apply the primary jurisdiction doctrine.").
  - *Figy v. Lifeway Foods, Inc.*, No. 13-CV-04828-TEH, 2014 WL 1779251, at *4 (N.D. Cal. May 5, 2014) (finding that applying the primary jurisdiction doctrine "will enhance the Court's decision-making efficiency by allowing the Court to benefit from the FDA's definitive guidance on the issue …").
  - *Reese v. Odwalla, Inc.*, 30 F. Supp. 3d 935, 942 (N.D. Cal. 2014) (staying the action based on primary jurisdiction because any final pronouncement by the FDA regarding ECJ would have an effect on the issues in the litigation).

- *But see Swearingen v. Amazon Pres. Partners, Inc.*, No. 13–CV–04402–WHO, 2014 WL 1100944, at *4 n.3 (N.D. Cal. Mar. 18, 2014) (declining to apply the primary jurisdiction doctrine to ECJ claims because "[i]t remains unclear when or if the FDA will conclusively resolve this issue").

Primary Jurisdiction – ECJ

- The FDA issued its final guidance in May 2016, finding that "the term 'evaporated cane juice' is false or misleading because it suggests that the sweetener is 'juice' or is made from 'juice' and does not reveal that its basic nature and characterizing properties are those of a sugar." *Ingredients Declared as Evaporated Cane Juice: Guidance for Industry*, US Department of Health and Human Services, Food and Drug Administration, Center for Food Safety and Applied Nutrition, May 2016, p. 3.
- The guidance advises the industry to use the term "sugar" to refer to this ingredient on food labels preceded by one or more truthful, non-misleading descriptors if the manufacturer chooses (e.g., "cane sugar").

Primary Jurisdiction – "Natural"

- In 1991, the FDA adopted an *informal* policy stating that "natural" means "nothing artificial or synthetic (including colors regardless of source) is included in, or has been added to, the product that would not normally be expected to be there."

- The agency does not object to the use of the term on food labels if it is used in a manner that is truthful and not misleading and if the product does not contain added color, flavors, or synthetic substances.

- In early 2014, three judges requested the FDA to provide a definition for "natural," as they believed that the issue was one for which the FDA had primary jurisdiction.

Primary Jurisdiction – "Natural"

- Initially the FDA declined to address the issue, providing several reasons why it would not define the term "natural", including:
  - (1) amending its policy on the term would involve a public process;
  - (2) it would require coordination and cooperation with the USDA and other federal agencies;
  - (3) it would entail a consideration of a variety of things, such as scientific evidence, processing methods, consumer preferences and beliefs, food production, and First Amendment issues;
  - (4) it lacks the resources to do so and has more urgent matters to look into; and
  - (5) defining "natural" has implications well beyond the scope of the case immediately before the court.

Primary Jurisdiction – "Natural"

According to the FDA as of 2011, all but one of the following foods were properly using the term "natural." Which product did the FDA identify as improperly using the term "natural"?

From http://www.newhope.com/blog

Primary Jurisdiction – "Natural"

Erythritol (sugar alcohol) and "natural flavors"

GMO corn

rBGH milk and cream (reformulated in 2015)

Preservative disodium dihydrogen pyrophosphate

Primary Jurisdiction – "Natural"

- On November 12, 2015, the FDA announced that it would take information and comments on the use of the term "natural" after receiving citizen petitions requesting that the FDA define the term

- The FDA received nearly 7,700 comments and is now trying to determine how to revise its "longstanding policy" regarding the use of the term "natural" on food labels

- Comments run the gamut: from "take 'natural' off the chips, you __ing liars" to "standardize definitions among agencies" to recommendations that processing not be considered as part of definition.

- The comment period is now closed.

Primary Jurisdiction – "Natural"

- Prior to FDA's agreement to take comments on "natural" definition, the Ninth Circuit ruled that the primary jurisdiction doctrine applied.

  Astiana v. Hain Celestial Grp. Inc., 783 F.3d 753, 760 (9th Cir. 2015) ("Without doubt, defining what is 'natural' for cosmetics labeling is both an area within the FDA's expertise and a question not yet addressed by the agency.").

- Most cases regarding "natural" impose stays pending FDA decision.

  Kane v. Chobani, LLC, 645 F. App'x 593, 594 (9th Cir. 2016) (remanding with instructions that "the district court stay this action pending resolution of the FDA's 'natural' and 'evaporated cane juice' proceedings."); *George v. Blue Diamond Growers*, No. 4:15-CV-962 (CEJ), 2016 WL 1464644, at *3 (E.D. Mo. Apr. 14, 2016) (granting defendant's motion to stay plaintiff's case pursuant to the primary jurisdiction doctrine pending resolution of the FDA's proceedings pertaining to the terms "evaporated cane juice" and "natural").

Primary Jurisdiction – "Natural"

- Recently, the Eastern District of New York granted a stay for Newman's Own Inc. under the primary jurisdiction doctrine based on the potential rulemaking as to the definition of "natural" in food labeling. *Wong v. Newman's Own, Inc.*, No. 1:16-cv-06690-ARR-RML (E.D.N.Y. Apr. 7, 2017). The plaintiffs alleged that the term "all natural" on Newman's Own pasta sauce is misleading because the ingredient citric acid is not natural.

- In its Opinion, the court found four factors to support a stay: (1) the case involved technical or policy considerations within the FDA's particular field of expertise; (2) the question at issue is "unquestionably within the FDA's discretion"; (3) there is a danger of inconsistent rulings if this issue is decided by the federal courts; and (4) the issue is currently before the FDA.

Primary Jurisdiction – "Organic"

- Lesser developed

- California Supreme Court passes on primary jurisdiction issue, but does find that state law claims **not** preempted by Organic Foods Act. *Quesada v. Herb Thyme Farms, Inc.*, 62 Cal.4th 298, 324 (2015).

- SDNY has found that primary jurisdiction does not bar claims of false "organic" labeling. *Segedie v. Hain Celestial Grp.*, 2015 U.S. Dist. LEXIS 60739 at *34 (S.D.N.Y. May 7, 2015).

Primary Jurisdiction – Health Claims

- In *Haggag v. Welch Foods, Inc.*, the plaintiff filed a putative class action alleging that the defendant's grape juice made a health claim on its label, "Helps Support a Healthy Heart," which allegedly did not fall into any of the permissible categories of health claims permitted by the FDA. No. CV 13-00341-JGB OPX, 2014 WL 1246299 (C.D. Cal. Mar. 24, 2014)

- The defendant argued that the doctrine of primary jurisdiction applied to the issue of whether it was within the FDA's authority to determine whether such a label constituted an implied health claim. *Id.* at *7.

- The court agreed, dismissed the case without prejudice, and indicated that plaintiff could file a petition with the FDA, noting that "[i]t is evident from the FDA's commentary that it assumed the role of deciding whether a particular claim qualifies as an implied health claim." *Id.* at *5.

Preemption

- Preemption is another defense often raised in food-labeling litigation.

  See, e.g., *Nemphos v. Nestle Waters N. Am., Inc.,* 775 F.3d 616 (4th Cir. 2015) (finding the plaintiff's failure to warn and misleading marketing claims related to bottled water products were preempted by the FDCA and the Nutrition Labeling and Education Act of 1990 ("NLEA")); *Young v. Johnson & Johnson,* 525 F. App'x 179 (3d Cir. 2013) (holding that consumers' claims are preempted by the NLEA).

- The viability of the defense largely turns on whether the label or statement is directly governed by a statute or regulation.

- It is an appropriate defense to raise when a plaintiff brings a state law claim, but there is federal law already in place that governs the particular area of regulation.

Preemption

- "Federal preemption occurs when: (1) Congress enacts a statute that explicitly pre-empts state law; (2) state law actually conflicts with federal law; or (3) federal law occupies a legislative field to such an extent that it is reasonable to conclude that Congress left no room for state regulation in that field." *Brod v. Sioux Honey Ass'n, Co-op.*, 927 F. Supp. 2d 811, 823 (N.D. Cal. 2013), *aff'd*, 609 F. App'x 415 (9th Cir. 2015).

- The Nutrition Labeling and Education Act contains a provision that expressly preempts state laws addressing certain covered subjects, including food-labeling requirements:
  - "[N]o State or political subdivision of a State may directly or indirectly establish under any authority or continue in effect as to any food in interstate commerce . . . any requirement for the labeling of food of the type required by [Section 343] of this title that is not identical to the requirement of such section." 21 U.S.C § 341 et seq.

Preemption

- In *Brod v. Sioux Honey Association,* the Ninth Circuit affirmed the district court's dismissal of the claims on preemption grounds under the NLEA. 927 F. Supp. 2d 811 (N.D. Cal. 2013) *aff'd,* 609 F. App'x 415 (9th Cir. 2015).
- Plaintiff claimed that Sioux Honey filtered the all-natural pollen out of its honey, rendering sale of the product as "honey" unlawful.
- In affirming the district court's conclusion that the claims were preempted, the Ninth Circuit found Section 343(i) of the NLEA to expressly preempt state laws requiring a food to be labeled with something other than its common or usual name.
- The Ninth Circuit held that state law claims purporting to require Sue Bee Honey to be labeled as anything else, even with the removal of pollen, were preempted by the NLEA.

Preemption

- Preemption under NLEA applies to state law requirements for food labeling (1) other than the common or usual name of the food and (2) regarding artificial flavoring, coloring, or chemical preservatives.
- The NLEA does not preempt:
  - State law claims regarding carcinogens in food. *Cortina v. Goya Foods, Inc.*, 94 F. Supp. 3d 1174 (S.D. Cal. 2015).
  - State law claims regarding "natural" labeling. *See Briseno v. ConAgra*, 844 F.3d 1121, 1123 (9th Cir. 2017) (lawsuit regarding "100% natural" claims not preempted);*Garcia v. Kashi Co.*, 43 F. Supp. 3d 1359 (S.D. Fla. 2014) (no preemption of claims alleging misleading "all natural" label despite GMO content).

Class Action Issues - Ascertainability

- *Mirabella v. Vital Pharmaceuticals, Inc.* – denial of class certification given that customers of $3.00 energy drink unlikely to have kept receipt and could not otherwise be ascertained. No. 12-62086 (U.S. Dist. Ct., S.D. Fla., order entered Feb. 27, 2015).
- *Mladenov v. Wegman's Food Markets, Inc.* – sales records could not identify class members who bought product based on the defendants' advertisements. 124 F. Supp. 3d 360, 371-72 (D.N.J. 2015).

But, in California …

- *Briseno v. ConAgra,* 844 F.3d 1121, 1124 (9th Cir. 2017) – disagrees with Third Circuit and finds that Rule 23 does not impose any freestanding administrative feasibility prerequisite to class certification.

DAMAGES & SETTLEMENTS

Damages Model

Under Supreme Court's decision in *Comcast*, a plaintiff must be able to prove damages on a classwide basis with a damages theory tied to liability theory.

Some food class action plaintiffs have failed to do so. *See Caldera v. J.M. Smucker Co.*, No. CV 12-4936-GHK VBKX, 2014 WL 1477400, at *4 (C.D. Cal. Apr. 15, 2014) (plaintiff failed to offer any method of proving damages on a classwide basis in a case challenging the labels on Crisco shortening and "Uncrustables" food products).

Damages cannot be shown on a classwide basis based solely on defendants' sales records because, according to the Court:

(1) the putative class members received some benefit from the products, rendering a full refund improper as a calculation of restitution (since a full refund was not appropriate the "[d]efendant's sales data alone would not provide sufficient information to measure class-wide damages") and

(2) the "[p]laintiff has failed to offer any evidence, let alone expert testimony, that the damages can be calculated based on the difference between the market price and true value of the products."

Damages Model

- In *Morales v. Kraft Foods Group, Inc.,* Case No. 14-CV-04387-JAK (C.D. Cal. June 23, 2015), the court certified a class alleging that Kraft's use of the term "natural cheese" was misleading, supported by a damages model premised on both regression and conjoint analysis.
- Regression analysis estimates relationships among variables, and conjoint analysis is a technique to determine how people value certain attributes.
- Notwithstanding the lack of any completed damages calculations, the court found that the plaintiffs presented a method tied to their liability theory as required by *Comcast*.
- Case later decertified in June 2017.

Damages Model

- Plaintiffs have also begun to propose a technique called hedonic price analysis to establish damages.
- Experts claim that they can use this method to determine the existence and amount of the "price premium" resulting from specific labeling claims at issue. The assumption is that in the absence of the false labeling, the price of the product would have been lower by an amount equal to the value of the falsely advertised attribute.
- The district court in the *Briseno* case examined the balance between the hedonic and conjoint models. The court stated that the "proposed hedonic regression alone does not satisfy *Comcast,*" however the "hedonic regression and conjoint analysis in combination meet *Comcast's* requirements for class certification purposes." *In re ConAgra Foods, Inc.,* 90 F. Supp. 3d 919, 1025 (C.D. Cal. 2015), *aff'd sub nom. Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121 (9th Cir. 2017), and *aff'd sub nom. Briseno v. ConAgra Foods, Inc.,* No. 15-55727, 2017 WL 53421 (9th Cir. Jan. 3, 2017)

Damages Model

- The district court reasoned that the proposed conjoint analysis used to estimate the relative value of the product feature and thus the price premium consumers paid for that feature satisfied *Comcast.* *Id.* at 1027. ("[T]his methodology is capable of calculating damages attributable to plaintiffs' specific theory of liability on a classwide basis, notwithstanding the fact that it employs the "relative importance" of product attributes to consumers to calculate the relevant price premium.")
- "The assertedly imperfect correlation between the relative importance of a product feature to consumers and the price premium attributable to that feature about which ConAgra complains has not been an obstacle to certification of classes in other cases, and the court cannot conclude, at this stage, that [plaintiff's expert] will be unable to calculate the price premium attributable to a "GMO-free" interpretation of the "100% Natural" label." *Id.*
- The Ninth Circuit agreed, finding that "combining the two well-established models" tracked plaintiffs' theory of liability and was sufficient to survive class certification, and was therefore not an abuse of discretion by the district court. *Briseno v. ConAgra Foods, Inc.*, No. 15-55727, 2017 WL 53421, at *2 (9th Cir. Jan. 3, 2017).

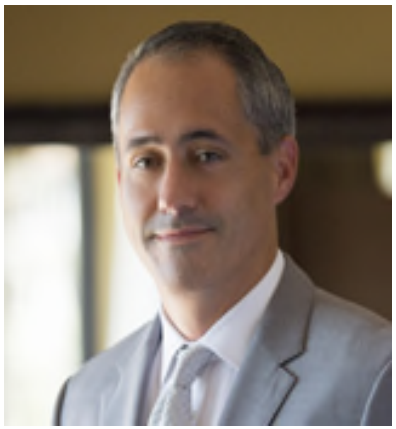
Class Settlements

- On August 25, 2017, the Seventh Circuit threw out a class-action settlement intended to resolve claims that the Subway sandwich chain deceived customers by selling "Foot-long" subs that were less than a foot long.
- The Court called the settlement "utterly worthless," and said that customers' lawyers were not entitled to attorney's fees for convincing Subway it was better to make the case go away than fight.
- "A class action that seeks only worthless benefits for the class and yields only fees for class counsel is no better than a racket and should be dismissed out of hand. That's an apt description of this case." – Circuit Judge Diane Sykes.

Examples of Food – Labeling Class Settlements

- In 2013, the parties agreed to a $9 million settlement over claims that Naked Juice products were deceptively advertised and labeled as "all natural" and "non-GMO" when its products actually contained processed and synthetic ingredients and ingredients from genetically modified crops. *Pappas v. Naked Juice Co. of Glendora*, No. 2:11-cv-08276-JAK-PLA (C.D. Cal. Aug. 7, 2013).
- Kellogg's settled a lawsuit for $4 million in which plaintiffs claimed that the company falsely advertised that its Frosted Mini-Wheats cereal improved kids' attentiveness, memory, and other cognitive functions to a degree not supported by competent clinical evidence. *Dennis v. Kellogg Co.*, No. 3:09-cv-01786-IEG-WMC (S.D. Cal. Sept. 10, 2013).
- In *Birbower v. Quorn Foods, Inc.*, the defendants agreed to establish a $2.5 million settlement fund and to disclose on its packages in a prominent place a warning that the product contains mold in a case alleging that the packaging falsely represents ingredients. No. 2:16-cv-1346 (C.D. Cal. Jan. 6, 2017).

Biography



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Benjamin P. Smith represents and defends clients in high-stakes disputes, principally in the life sciences and technology sectors. His clients include US and Asian companies involved in business tort, misappropriation, breach of contract, and fraud actions. Among his courtroom victories, Benjamin obtained one of the largest contested jury verdicts in United States history, and has successfully defended many clients against claims seeking hundreds of millions of dollars in damages.

Biography

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Ellie Chapman is experienced in disputes involving breach of contract, fraud, and California's Unfair Competition Law. She has experience in many stages of litigation, including fact investigation, motion practice, discovery, and depositions. Recently, Ellie served on a case team for a breach of contract and fraud case that obtained a favorable settlement on the eve of trial. She has also served a key support role in advising insurance companies on the application of California's Unfair Competition Law to insurer/provider disputes. Ellie is also actively involved in a series of class actions involving breach of representations and warranties.

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