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Food & Consumer Packaged Goods Litigation

# Court Dismisses In Part for Lack of Injury-In-Fact

*Leonhart v. Nature's Path Foods*, No. 5:13cv492 (N.D. Cal.): The court granted defendant's motion to dismiss with leave to amend in a putative class action alleging claims under California's UCL, FAL, and CLRA claiming that several of defendant's products were misbranded with respect to a) ECJ, b) unapproved health or drug claims, c) "low sodium" claims, d) "preservative free" claims, and e) slack-filled packaging. First addressing Article III standing, the court found no standing for lack of injury-in-fact because not only had plaintiff alleged claims regarding statements she never saw and products she did not buy, but she also failed to allege that the products were substantially similar to products she did buy. The court also addressed the preemption argument, finding no preemption because plaintiff's claims were predicated on the Sherman FDCA, which does not impose any requirements additional to the FDCA. Regarding primary jurisdiction, the court similarly found no bar, following the "majority of courts in this district." Next, addressing Rule 9(b), the court again confirmed that the UCL's unlawful prong was subject to Rule 9(b) and to the actual reliance standard, and found that plaintiff had failed to carry her Rule 9(b) burden for any of her claims. Specifically, she failed to identify which products' labels used the term ECJ, failed to allege what she believed ECJ was if not a sugar, failed to specify which health claims she saw on the products she purchased or her reliance on these claims, failed to specify what "preservative free" claims she saw, and failed to allege that she was deceived by the slack-filled packaging. Finally, the court dismissed plaintiff's unjust enrichment claim, holding that it was duplicative of the statutory claims. [Order](#).

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