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Food & Consumer Packaged Goods Litigation

Court Dismisses—For Now—“All Natural” Labeling Suit Against Diamond Foods

Surzyn v. Diamond Foods, Inc., No. 4:14-cv-00136 (N.D. Cal.): A California federal judge dismissed without prejudice a proposed class action alleging the Diamond Foods deceptively labels its Kettle Brand TIAS! tortilla chips made with synthetic ingredients as "all natural." Plaintiff brought claims for negligent misrepresentation and for violations of California unfair competition and false advertising statutes. Though the complaint challenged several of defendant's products, the complaint failed to identify which of the challenged products plaintiff had purchased. Because a defendant is entitled to fair notice of the particular product plaintiff purchased, the court concluded that the complaint did not satisfy Rule 9(b). The court also found that plaintiff failed to allege any facts suggesting she was exposed to the advertising she was challenging. The court went on to hold, however, that whether a particular "all natural" label would deceive reasonable consumers could not be resolved at the pleading stage. The court dismissed the complaint without prejudice and granted plaintiff leave to amend to cure the pleading deficiencies. [Order](#).

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