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Court Dismisses Some of Plaintiff's Claims In Pretzel Class Action

Figy v. Frito-Lay North America Inc., No. 3:13-cv-03988 (N.D. Cal.): In a putative class action alleging claims under California's UCL, FAL, and CLRA, claiming that defendant's pretzel products are misrepresented as being "Made with All Natural Ingredients" when in fact they contain "artificial, synthetic and unnatural ingredients," the court granted in part and denied in part defendant's motion to dismiss. Addressing standing over non-purchased products, the court adopted the "substantial similarity" test, finding that plaintiffs had sufficiently pleaded substantial similarity because all products at issue were pretzels, distinct only in shape and not in any other characteristic, and that they all contained the same alleged misrepresentations and unnatural ingredients. However, as to Article III standing to pursue injunctive relief, the court agreed that plaintiffs had failed to plead or present sufficient evidence demonstrating the threat of future harm and dismissed those claims without prejudice. The court also dismissed claims involving non-California residents who made non-California purchases, agreeing with defendant that the presumption against extraterritoriality applies where none of the alleged conduct or injuries occurred in California. The court also dismissed all of plaintiffs' remaining class claims without prejudice because plaintiffs had not pleaded an alternative California-specific subclass. The court also rejected plaintiffs' argument that they were not required to plead reliance under the UCL's unlawfulness prong, and then rejected plaintiffs' claim that they had alleged reliance on the "salability" of the products, as opposed to any actual misrepresentation. The court reiterated its position that the "mere alleged violation of the underlying regulations is insufficient to state a claim under the UCL," and dismissed the misbranding claims with prejudice. Finally, addressing whether plaintiffs had adequately pleaded deception and injury under Rule 9(b), the court agreed that plaintiffs had failed to plead that a reasonable consumer would be deceived by the "all natural" representations because they failed to provide any detail as to why the offending ingredients were not, in fact, natural. Thus, the court dismissed all of these claims without prejudice. [Order](#).

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