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Food & Consumer Packaged Goods Litigation

# Muffin Mix Class Action Survives Dismissal

*Musgrave v. ICC/Marie Callender's Gourmet Products Division*, No. 3:14-cv-02006-JST (N.D. Cal.): In this putative class action alleging that defendant's bread and muffin mixes are falsely labeled and marketed as "all natural" when they in fact contain Sodium Acid Pyrophosphate ("SAPP"), a synthetic ingredient, a federal judge in California dismissed plaintiff's unjust enrichment and injunctive claims but allowed various California statutory and common law consumer protection, warranty, and contract claims to proceed. The court began by rejecting defendant's preemption and primary jurisdiction arguments. Because the plaintiff seeks to enforce California laws that parallel federal requirements, rather than creating additional or different requirements, the court held the plaintiff's claims are not preempted. Regarding the primary jurisdiction argument, the court concluded that whether the use of the term "all natural" is misleading to consumers if the product contains a synthetic ingredient does not require the FDA's particular expertise. The court also noted that the FDA has already articulated a policy that a product is not "natural" if it contains synthetic substances, thus further guidance from the FDA is not necessary. In analyzing the plausibility of plaintiff's claims, the court found the complaint sufficiently alleged that (1) a reasonable consumer could interpret the phrase "all natural" to exclude synthetic compounds, and (2) a reasonable consumer could expect that an "all natural" food product should not contain SAPP. The court further found the plaintiff adequately alleged he was misled by the label and suffered economic injury because he paid more money than he would have for a product that was not "all natural." The court also concluded the plaintiff pled his fraud claims with specificity because he attached photograph exhibits of the challenged labels, described the misleading statements and related marketing, and alleged he personally purchased the products in reliance on the "all natural" label at least 18 times over three years, specifying five retailers and their locations. The court also concluded the plaintiff sufficiently alleged breach of warranty and contract claims, suggesting the product's label may create a contract under which defendant was required to provide food products that were "all natural." Regarding products that plaintiff did not buy, the court held that the plaintiff does not have standing to assert claims related to defendant's "similar" products he did not buy, but the plaintiff could seek to represent a class of people who purchased those similar products. The right time to determine whether the plaintiff may represent the proposed class, including individuals who purchased products that plaintiff did not, was at class certification. The court dismissed two of plaintiff's claims. First, the court held the plaintiff had not sufficiently alleged standing to pursue injunctive relief because he had not alleged he would purchase defendant's baking mixes in the future. The court thus dismissed plaintiff's demand for injunctive relief without prejudice. Second, the court dismissed plaintiff's unjust enrichment claim with prejudice, holding it was duplicative of his statutory and common law claims. [Order](#).

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