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Food & Consumer Packaged Goods Litigation

## **Slack Fill Class Action Time-Barred and Dismissed for Failure to Plead with Specificity**

[\*Kline, et al. v. Iovate Health Sciences, U.S.A., Inc.\*](#), No. 3:15-cv-02387 (S.D. Cal.): The Court issued an order granting in part and denying in part Defendant's motion to dismiss this putative class action alleging Defendant's supplement products are packaged in "large, opaque containers that contain more than 40% empty space." In granting the motion with leave to amend, the Court held that the complaint failed to specify when Plaintiffs purchased Defendant's products. According to the complaint, Plaintiffs purchased the products within the last four years, but claims under the FAL and CLRA have a three-year statute of limitations. The Court also held that Plaintiffs' failure to allege which specific products they purchased did not meet the heightened pleading standard required under Rule 9(b).

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