



Our weekly roundup aims to keep our readers up to date on recent notable rulings in the food & consumer packaged goods space.

- ***Sarah Vitort v. Kroger Co., et al.***, No. 22-35185 (9th Cir. - April 28, 2023): The U.S. Court of Appeals for the Ninth Circuit affirmed the dismissal of a putative class action alleging that the labeling and marketing of a ***spreadable fruit product*** were false or misleading when the products were labeled as "Just Fruit" when they also contain other ingredients. The court agreed with the district court's conclusion that the "Just Fruit" label is not objectively false and is not likely to mislead a reasonable consumer because spreadable fruit products, which do not exist in nature, necessarily contain ingredients other than fruit. The court held that the district court did not err in dismissing the case with prejudice because the plaintiff "has not alleged, and cannot allege, facts to state a plausible claim that the [Just Fruit] label is false, deceptive,

or misleading." [Opinion linked here.](#)

- **Maria Mendez Whitaker v. Pharmavite LLC**, No. 2:22-cv-04732-DMG-MAR (C.D. Cal. - May 9, 2023): The U.S. District Court for the Central District of California granted in part and denied in part a motion to dismiss a complaint alleging that the defendant's *vitamin C tablets* labeled "Extra Strength" are deceptive as they contain the same amount of vitamin C as their "Regular Strength" products. The court found that the plaintiff failed to show adequate remedy at law regarding their claims to restitution under California's FAL and UCL statutes and dismissed those claims with leave to amend their complaint. Additionally, the court found the plaintiff had adequately alleged facts showing that a reasonable consumer could be deceived by the "Extra Strength" labeling. [Opinion linked here.](#)

Authors



[David T. Biderman](#)

Partner

DBiderman@perkinscoie.com [310.788.3220](tel:310.788.3220)

Explore more in

[Food & Consumer Packaged Goods Litigation](#) [Food & Beverage](#)

Blog series

Food & Consumer Packaged Goods Litigation

Food & Consumer Packaged Goods Litigation shares timely insights into litigation developments, emerging arguments and challenges facing food and consumer packaged goods manufacturers and related industries.

[Subscribe ?](#)

[View the blog](#)