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Food & Consumer Packaged Goods Litigation

Court Allows “All Natural” Claims to Proceed Against Blue Diamond Chocolate Almond Milk

Werdbaugh v. Blue Diamond Growers, No. 12cv2724 (N.D. Cal.): The court denied defendant's motion to dismiss a complaint alleging that Blue Diamond's Chocolate Almond Milk is falsely labeled as "all natural" because it contains preservatives and other synthetic chemicals; lists ECJ as an ingredient rather than "sugar"; and makes unlawful health claims on the corporate website. After the named plaintiff abandoned claims based on products he did not purchase and claims based on statements on the website, the court denied the motion and allowed "all natural" and ECJ claims to proceed. The court rejected the argument that the FDCA impliedly preempts California's labeling laws, finding that because California's laws are identical to federal requirements, private enforcement is not inconsistent with federal law. The court also refused to find express preemption, ruling that listing "evaporated cane juice" as an ingredient violates a number of express provisions of FDA regulations. Similarly, although the court expressed some skepticism about the "all natural" claims, the court found those claims not preempted. Finally, the court rejected efforts to strike claims related to un-purchased products and national class allegations, leaving those determinations for development on a fuller record. [Order](#).

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