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Food & Consumer Packaged Goods Litigation

Denial of Class Certification in Tomato Products False Advertising Suit

Kosta v. Del Monte Corp., No. 4:12-cv-01722 (N.D. Cal.): For the third time, the Court denied class certification in this national class action raising claims under California's UCL, FAL and CLRA. Plaintiffs allege that Defendant's tomato products — which feature labels making antioxidant claims and statements that the products are a "natural source" of lycopene," with "no artificial flavors or preservatives" — are misbranded, as the products contain ingredients such as citric acid and high fructose corn syrup. Plaintiffs also claim that Defendant's SunFresh and FruitNaturals products are deceptively labeled as "fresh" and needing refrigeration. In rejecting Plaintiffs' third bid for class certification, the Court found that the numerosity and adequacy requirements were met. The Court did not find, however, that the class representatives satisfied the typicality requirement, because some representatives testified that they did not see some of the allegedly misleading statements and claims when they purchased the products-at-issue. The Court also concluded that the class was not ascertainable because the lawsuit involves a variety of products and not all products contain the challenged claims. Additionally, the Court found that Plaintiffs failed to demonstrate common questions of law and fact sufficient to support class certification. In the Court's view, the variations between the labels of the challenged products were so great that at least half would not evidence the violations alleged. Similarly, Plaintiffs failed to show that their claims were material; because Plaintiffs did not offer a method of proving that a reasonable consumer would find the challenged statements deceptive and material to their purchasing decision, which could be applied to the entire class. [Order](#).

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