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Food & Consumer Packaged Goods Litigation

Court Dismisses in Part Antioxidant and Honey Case

Salazar v. Honest Tea Inc., No. 2:13cv02318 (E.D. Cal.): In a putative class action alleging claims under California's CLRA, UCL, and FAL, as well as breaches of express and implied warranty, negligent misrepresentation, and fraud, plaintiff claimed that defendant misrepresents the amount of antioxidants and amount of honey contained in their tea products. The court granted in part, and denied in part, defendant's motion to dismiss. First, while the court noted that the FDCA does not preempt nutrient content claims that do not impose greater labelling requirements than does the FDCA itself, it nevertheless dismissed plaintiff's state law claims without prejudice to the extent they were based on alleged misstatements of the antioxidant level of the products. Next, the court rejected defendant's claim that plaintiff had failed to sufficiently plead reliance and injury. The court further found that plaintiff had standing to bring claims as to earlier versions of the product that she did not purchase. Finally, the court considered defendant's argument that the alleged misrepresentations were non-actionable puffery, agreeing and dismissing the claims as to alleged misrepresentations about the amount of honey in defendant's product. However the court rejected the argument as to defendant's advertisements regarding their and/or their products' "honesty," finding these claims raised fact issues that could not be resolved on Rule 12. [Order](#).

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