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Food & Consumer Packaged Goods Litigation

Court Rejects Repeat Plaintiff's Unsupported Bid for Class Certification in False Labeling Action Involving Goji Berries

Torrent v. Ollivier, et al., No. 2:15-cv-02511 (C.D. Cal.): The Court denied Plaintiff's motion for class action certification in this putative class action asserting violations of California's CLRA and UCL, based on the allegation that Defendants false represent that their goji berries were harvested from the Himalayas, when they, in fact, came from the Ningxia province of China. Plaintiff sought certification of a California class under Federal Rules of Civil Procedure 23(b)(1) and 23(b)(2). The Court rebuffed Plaintiff's certification effort, however, finding Plaintiff's arguments for certification were conclusory and entirely unsupported by evidence. The Court found Plaintiff's evidence to satisfy the Rule 23(a) prerequisites were "almost wholly unsupported by any evidence." For example, to establish commonality and typicality, Plaintiff offered only a "Declaration of Venue," which stated that Plaintiff purchased Defendant's brand of goji berries. But Defendants offered evidence that they sold several different varieties of the berries, in "nearly two dozen different types of packaging." Nor did Plaintiff offer any cogent rebuttal to Defendant's argument that the proposed class was unascertainable. Finally, the Court explained that restitution cannot form the basis for certification under Rule 23(b)(1) and that certification would not be appropriate under Rule 23(b)(2) because monetary relief through individual claims for restitution would not be merely incidental to the injunctive relief sought, especially considering Defendants already modified their packaging. [Order](#).

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