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October 09, 2017

Rulings, Orders, Settlements – October 9, 2017

### **Court Denies Motion to Dismiss Class Action Involving Healthfulness of Extra Virgin Coconut Oil**

[\*Traction v. Viva Labs, Inc.\*](#), No. 3:16-cv-02772 (S.D. Cal.): The Court issued an order denying Defendant's motion to dismiss this putative class action for violation of California's CLRA, UCL, FAC and breach of express and implied warranties. Plaintiff alleges Defendant misleadingly labels and markets its Organic Extra Virgin Coconut Oil as healthy, and as a healthy alternative to butter and other cooking oils, despite that it is actually inherently unhealthy and a less healthy alternative. The Court denied the motion based on lack of standing and declined to dismiss Plaintiff's UCL, FAL, and CLRA claims based on the reasonable consumer test. The Court also denied the motion with respect to Plaintiff's UCL unlawful claim, and breach of express and implied warranty claims. **Court "Cans" False Advertising Class Action About Canned Beans**

[\*Beckman, et al. v. Arizona Canning Co., LLC\*](#), No. 3:16-cv-02792 (S.D. Cal.): The Court entered an order granting Defendant's motion to dismiss this putative class action asserting violations of California's UCL, FAL, and CLRA. Plaintiffs allege that Defendant sold Sun Vista whole canned bean products to consumers, representing that the cans primarily are filled with beans, when they contain only a small amount of beans that are fully submerged in a large amount of water. The Court found that Plaintiffs have standing under the UCL and FAL because they suffered an economic injury caused by Defendant's alleged unfair business practice or false advertising. The Court also found that Plaintiffs sufficiently allege they relied on the alleged misrepresentation under the UCL, FAL and CLRA. However, the Court ruled that Plaintiffs do not have standing for products they did not purchase because the products and alleged misrepresentations are not sufficiently similar to permit standing for bean varieties not purchased by Plaintiffs. The Court then dismissed the Complaint in its entirety without prejudice for failure to meet the heightened pleading standard of Rule 9(b) because it is unclear which bean products Plaintiffs purchased. The Court reasoned that Plaintiffs failed to sufficiently provide the "who, what, where and how" of the alleged misconduct. **Court Grants-in-Part and Denies-in-Part Motion to Dismiss False Advertising Class Action Involving Flavor Infused Olive Oils**

[\*Quiroz v. Sabatino Truffles New York, LLC, et al.\*](#), No. 8:17-cv-00783 (C.D. Cal.): The Court issued an order granting in part and denying in part Defendants' motion to dismiss this putative class action for violation of California's CLRA, UCL, FAL, New York's GBL (deceptive acts or practices and false advertising), Pennsylvania's UTPCPL, the Magnuson-Moss Warranty Act, breach of express and implied warranties, unjust enrichment, negligent misrepresentation, and fraud. Plaintiffs allege Defendants falsely advertise their olive oils as being infused with actual white and black truffles when in reality the olive oils are instead are flavored with an industrially produced, chemically-driven perfume known as "2,4-dithiapentane." The Court denied Defendants' motion based on lack of standing finding that there is substantial similarity between Defendants' White Truffle Infused Olive Oil and Black Truffle Infused Olive Oil, therefore, Plaintiffs' allegations apply equally to both. The Court found that none of Plaintiffs' claims are barred by the statute of limitations, but in regards to members of the putative class(es), the Court will address statute of limitations issues, should they be relevant, at the class certification stage. The Court also denied Defendants' motion based on the failure to state a claim finding that Plaintiffs' factual contentions are sufficient to state a plausible claim. The Court denied the motion to dismiss the fraud claims finding that Plaintiffs have adequately pled all of the requisite elements of their fraud-based claims. With respect to the implied warranty claims, the Court denied the motion as to Plaintiffs' California and Pennsylvania implied warranty of merchantability claims and granted the motion as to Plaintiffs' New York implied warranty of merchantability claim. The Court denied the motion to dismiss Plaintiffs' California unjust enrichment claim, but granted the motion as to the New York unjust enrichment claim. Finally, the Court granted Defendants' motion to dismiss Plaintiffs' negligent misrepresentation and MMWA claims.

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