

## Whole Foods Wholly Escapes ECJ Claims in Putative Class Action

*Pratt v. Whole Foods Market California, Inc.*, No. 5:12-cv-5652-EJD (N.D. Cal.): In a putative class action claiming Defendants were unjustly enriched and violated California consumer protection statutes by (1) deceptively representing its 365 Everyday brand organic chicken broth, ketchup, and instant oatmeal products as containing "evaporated cane juice" (ECJ) instead of sugar, and (2) by false labeling its 365 Everyday brand colas as "natural" when they contain artificial ingredients, such as coloring and chemical preservatives, the Court granted in part Defendants' motion to dismiss Plaintiff's second amended complaint. First, the Court rejected Plaintiff's argument that Defendants could be strictly liable under California's Unfair Competition Law. Liability does not attach under the UCL simply because a product label allegedly violates a law. Instead, a Plaintiff must plead actual reliance to have standing to assert a UCL claim. The Court also rejected Plaintiff's attempt to evade the reliance element by reformulating his allegations into a hybrid "duty to disclose/illegal product" theory, finding such a theory preempted by federal law because it would imposed requirements not identical to those imposed by federal law. Second, the Court rejected the remainder of Plaintiff's ECJ claims, finding Plaintiff had not plausibly alleged reasonable reliance. The Court noted Plaintiff's shifting and "somewhat irreconcilable" statements about his understanding of evaporated cane juice. For example, Plaintiff simultaneously and contradictorily alleged (1) he was unaware that ECJ was a sweetener, and (2) he was aware ECJ was a sweetener but thought it was some type of healthy, unrefined sugar. The Court found it implausible that Plaintiff, "a self-styled health conscious consumer who wished to avoid 'added sugars'" would have purchased any of the accused products because he was unaware that ECJ is a refined sugar, instead of some other type of sugar. According to the Court, "[a]dded unrefined sugar is added sugar, no matter how Plaintiff tries to spin it." The Court also found it implausible that Plaintiff believed ECJ was healthy because it uses the word "juice," noting the Plaintiff cannot purport to be looking for sugar in ingredient lists but at the same time feign ignorance of common phrases that refer to sugar. The Court similarly rejected Plaintiff's claim that he did not know that ECJ was a sweetener because he failed to allege what he believed ECJ to be if not a sweetener. Having failed to plead reasonable reliance, the Court dismissed with prejudice all claims relating to ECJ. Third, the Court dismissed two new claims added to Plaintiff's second amended complaint—negligent misrepresentation and breach of the implied warranty of merchantability—because the Court's prior dismissal order allowing Plaintiff to amend the claims asserted in his first amended complaint did not permit Plaintiff to add new claims and because Plaintiff did not comply with the procedural requirements of Rule 15 to add new claims. The only surviving claim alleges that various of Defendants' sodas were falsely represented as "natural" when they contain artificial colors, flavors, or preservatives. [Order](#).

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