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Food & Consumer Packaged Goods Litigation

Court Allows Late July Snacks Claims to Proceed

Swearingen v. Late July Snacks, LLC, No. 3:13-cv-04324 (N.D. Cal.): The Court issued an order granting in part and denying in part Defendant's motion to dismiss this putative ECJ class action, which alleges violations of California's CLRA, FAL, and UCL, and a claim for unjust enrichment. Plaintiff alleges that Defendant has misleadingly used the term "evaporated cane juice" on the label of various products, including its Late July's Classic Saltines Crackers, Classic Rich Crackers, Sea Salt By The Seashore Multigrain Snack Chips, and other varieties of crackers and snack chips. In partially granting the motion, the court held that a reasonable consumer would be deceived by Defendant's use of the term ECJ on its labeling, its UCL, CLRA, and FAL claims were not preempted by federal law, and further held that Plaintiff satisfied its heightened pleading standard under Rule 9(b). With respect to Plaintiff's unjust enrichment claim, the court held that because Plaintiff adequately pled reliance on Defendant's misrepresentation, it could also state a claim for unjust enrichment. The court dismissed Plaintiff's nationwide class allegations with leave to amend because it failed to allege that putative class members purchased products outside of California. Finally, the court also dismissed Plaintiff's request for injunctive relief as it failed to allege that it planned to purchase Defendant's products in the future.

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