

# Food for Thought: Manufacturer Obtains Partial Summary Judgment in Lawsuit Alleging it Violated Consumer Protection Statutes by Labeling and Selling its House-Brand Baked Goods as “All Natural”

March 29, 2016

*Garrison v. Whole Foods Market, Inc., No. 3:13-cv-5222 (N.D. Cal., Mar. 29, 2019) and Garrison v. Whole Foods Mkt. Cal., Inc., No. 3:14-cv-0334 (N.D. Cal., Mar. 29, 2019)*

Plaintiffs’ putative class action alleged that defendant Whole Foods Market, Inc. violated California consumer protection statutes when it labeled and sold its house-brand baked goods as “all natural.” Specifically, plaintiffs alleged that sodium acid pyrophosphate and maltodextrin, both ingredients in defendants’ baked goods, are “synthetic.” The court granted defendants’ motion for summary judgment as to plaintiffs’ claims for violations of California’s Consumer Legal Remedies Act (CLRA) and the common law claim for breach of contract. The court denied defendants’ motion for summary judgment with respect to the claims for violation of California’s Unfair Competition Law, the False Advertising Law, and the common law claims of fraud, negligent misrepresentation, and breach of express warranty. The district court held that plaintiffs could not proceed with their CLRA claims because they failed to provide the required pre-suit notice to defendant. Plaintiff provided pre-suit warning to the wrong entity and, despite being aware of a problem with the notice, failed to provide notice to the correct entity. The court further held that plaintiffs could not proceed with their breach of contract claims because they were not in privity with the defendant. However, the court denied defendants’ motion for summary judgment on the remaining claims. The court expressed that it was “unlikely that a jury would find the Garrisons credible” on the contention that they were deceived by

the "all natural" label on the challenged products. The court also articulated additional concern with plaintiffs' inability to identify the dates on which they bought the challenged products and their failure to provide receipts for the purchase of said products. Nonetheless, the court held that plaintiffs' testimony that they recalled purchasing the products was sufficient to create an issue of fact for the jury. And, although the plaintiffs "apparently had a mistaken belief that organic foods (like "all natural" foods) contain no synthetic ingredients," the court did not believe that this rendered unreasonable their belief that products labeled as "all natural" would not contain synthetic ingredients. Thus, a genuine issue of fact remained for the jury regarding whether the plaintiff was deceived by the labels of the challenged products. Finally, defendants' contended that even if plaintiffs were deceived by the labels they did not suffer any "actual injury" as defined in California's consumer protection statutes. The court held that there was sufficient evidence from which a jury could conclude that the plaintiffs suffered an actual injury, particularly because the "'actual injury' threshold is not high." The court stated it was premature to address at summary judgment the remaining issues regarding price premiums because discovery was still open and evidence about price premiums would most likely come from experts.

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