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U.S. COURT OF APPEALS

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>ALESSANDRA BALSER, Individually and on Behalf of All Others Similarly Situated; RUTH KRESHA, Individually and on Behalf of All Others Similarly Situated,</p> <p style="text-align: center;">Plaintiffs - Appellants,</p> <p>v.</p> <p>THE HAIN CELESTIAL GROUP, INC.,</p> <p style="text-align: center;">Defendant - Appellee.</p>
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No. 14-55074

D.C. No. 2:13-cv-05604-R-RZ

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Manuel L. Real, District Judge, Presiding

Argued and Submitted February 8, 2016
Pasadena, California

Before: BERZON, DAVIS**, and OWENS, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The Honorable Andre M. Davis, Senior Circuit Judge for the U.S. Court of Appeals for the Fourth Circuit, sitting by designation.

Plaintiffs Alessandra Balsler and Ruth Kresha filed a putative class action lawsuit against The Hain Celestial Group, Inc. (“Hain”), alleging that Hain’s use of the word “Natural” on some of its products’ packaging is misleading because the products contain synthetic ingredients. The district court dismissed the case without leave to amend. We reverse and remand for further proceedings.

1. Plaintiffs pleaded their claims with sufficient particularity to satisfy Federal Rule of Civil Procedure 9(b). First, Plaintiffs adequately alleged “the who, what, when, where, and how of the misconduct charged.” *Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1124 (9th Cir. 2009) (citation omitted). They provided a definition of “natural,” and explained that “natural” means free of synthetic ingredients. Plaintiffs also alleged Hain used the phrase “100% Vegetarian” on the back of the products’ packaging, which, the complaint avers, means products derived from plants. These allegations are sufficient plausibly to allege a reasonable consumer’s understanding of “natural” as used on Hain’s packaging, and so are adequate under California law. *See Williams v. Gerber Prods. Co.*, 552 F.3d 934, 938-39 (9th Cir. 2008); *Hill v. Roll Int’l Corp.*, 195 Cal. App. 4th 1295, 1304 (2011). Additionally, the complaint gives rise to the reasonable inference that

Plaintiffs themselves believed the proffered definition of “natural.” *See Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-38 (9th Cir. 1996).

Second, assuming without deciding that Rule 9(b) requires specific allegations of reliance, Plaintiffs have satisfied the requirement. They alleged that they viewed the “natural” labeling on certain Alba Botanica products and, because of that labeling, paid a premium as compared to “products that do not purport to be natural.” Had the products not claimed to be “natural,” Plaintiffs alleged, they would not have paid a premium price for them. These allegations are sufficient plausibly to allege reliance.

Finally, Plaintiffs sufficiently pleaded how they were harmed by the “natural” representation. Allegations that one paid more than one otherwise would have because of a misrepresentation sufficiently allege economic injury. *See Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 595 (9th Cir. 2012).

2. Whether a business practice is deceptive, misleading, or unfair is ordinarily a question of fact to be decided by a jury. *Williams*, 552 F.3d at 938-39. As here, *Williams* involved claims of deceptive labeling. Plaintiffs challenged five aspects of Gerber’s Fruit Juice Snacks packaging, including “the statement that Fruit Juice Snacks was made with ‘fruit juice and other all natural ingredients.’” *Id.*

at 939. We held that the statement “could easily be interpreted by consumers as a claim that all the ingredients in the product were natural, which appears to be false,” and so reversed dismissal of the complaint. *Id.* In this case, similarly, the statements that the products were “natural” and “100% vegetarian” could be taken as a claim that no synthetic chemicals were in the products, a claim the complaint alleges, in detail, is false.

Moreover, *Williams* is clear that an ingredient list does not correct, as a matter of law, misrepresentations on the product’s label. Rather, the likely impact of such a list on a reasonable consumer is a factual issue, not determinable on the pleadings. *Id.* at 939-40. Given that holding, product information on a website also cannot override as a matter of law any misimpressions created by the label.

Williams therefore requires reversal.

3. Plaintiffs also argue that the district court abused its discretion by denying them precertification discovery. We note that the schedule contemplated by Central District of California Local Rule 23-3, when considered alongside federal rules regarding status conferences and the timing of discovery, is quite unrealistic in light of recent case law regarding the need to establish a sufficient factual record at the class certification stage. *See Wal-Mart Stores, Inc. v. Dukes*,

131 S. Ct. 2541, 2551 (2011); *see also* Barbara J. Rothstein & Thomas E. Willging, Federal Judicial Center, *Managing Class Action Litigation: A Pocket Guide for Judges* 9 (3d ed. 2010) (noting that local rules calling for specific time limits on class certification should be ignored as inconsistent with federal rules and obsolete).

By minute order, the district court deferred consideration of the Plaintiffs' motion for precertification discovery to a date after the Plaintiffs' motion for class certification was due, thereby implicitly denying the motion by rendering it moot. We vacate that decision and remand to the district court for consideration of whether precertification discovery is necessary, given Plaintiffs' particular document requests, updated requests, and recent case law.

REVERSED and REMANDED.

United States Court of Appeals for the Ninth Circuit

Office of the Clerk
95 Seventh Street
San Francisco, CA 94103

Information Regarding Judgment and Post-Judgment Proceedings

Judgment

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate ECF system or, if you are a pro se litigant or an attorney with an exemption from using appellate ECF, file one original motion on paper.

Petition for Panel Rehearing (Fed. R. App. P. 40; 9th Cir. R. 40-1)

Petition for Rehearing En Banc (Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3)

(1) A. Purpose (Panel Rehearing):

- A party should seek panel rehearing only if one or more of the following grounds exist:
 - ▶ A material point of fact or law was overlooked in the decision;
 - ▶ A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
 - ▶ An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

B. Purpose (Rehearing En Banc)

- A party should seek en banc rehearing only if one or more of the following grounds exist:

- ▶ Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
- ▶ The proceeding involves a question of exceptional importance; or
- ▶ The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

(2) Deadlines for Filing:

- A petition for rehearing may be filed within 14 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- *See* Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-2.

(3) Statement of Counsel

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- An answer, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

- The petition or answer must be accompanied by a Certificate of Compliance found at Form 11, available on our website at www.ca9.uscourts.gov under *Forms*.
- You may file a petition electronically via the appellate ECF system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at www.ca9.uscourts.gov under *Forms*.

Attorneys Fees

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at www.ca9.uscourts.gov under *Forms* or by telephoning (415) 355-7806.

Petition for a Writ of Certiorari

- Please refer to the Rules of the United States Supreme Court at www.supremecourt.gov

Counsel Listing in Published Opinions

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send a letter **in writing within 10 days** to:
 - ▶ Thomson Reuters; 610 Opperman Drive; PO Box 64526; St. Paul, MN 55164-0526 (Attn: Jean Green, Senior Publications Coordinator);
 - ▶ and electronically file a copy of the letter via the appellate ECF system by using “File Correspondence to Court,” or if you are an attorney exempted from using the appellate ECF system, mail the Court one copy of the letter.

United States Court of Appeals for the Ninth Circuit

BILL OF COSTS

This form is available as a fillable version at:

<http://cdn.ca9.uscourts.gov/datastore/uploads/forms/Form%2010%20-%20Bill%20of%20Costs.pdf>.

Note: If you wish to file a bill of costs, it MUST be submitted on this form and filed, with the clerk, with proof of service, within 14 days of the date of entry of judgment, and in accordance with 9th Circuit Rule 39-1. A late bill of costs must be accompanied by a motion showing good cause. Please refer to FRAP 39, 28 U.S.C. § 1920, and 9th Circuit Rule 39-1 when preparing your bill of costs.

v. 9th Cir. No.

The Clerk is requested to tax the following costs against:

Cost Taxable under FRAP 39, 28 U.S.C. § 1920, 9th Cir. R. 39-1	REQUESTED <i>(Each Column Must Be Completed)</i>				ALLOWED <i>(To Be Completed by the Clerk)</i>				
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TOTAL:				\$ <input type="text"/>	TOTAL:				\$ <input type="text"/>

* *Costs per page:* May not exceed .10 or actual cost, whichever is less. 9th Circuit Rule 39-1.

** *Other:* Any other requests must be accompanied by a statement explaining why the item(s) should be taxed pursuant to 9th Circuit Rule 39-1. Additional items without such supporting statements will not be considered.

Attorneys' fees **cannot** be requested on this form.

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Form 10. Bill of Costs - Continued

I, , swear under penalty of perjury that the services for which costs are taxed were actually and necessarily performed, and that the requested costs were actually expended as listed.

Signature

("s/" plus attorney's name if submitted electronically)

Date

Name of Counsel:

Attorney for:

(To Be Completed by the Clerk)

Date

Costs are taxed in the amount of \$

Clerk of Court

By: , Deputy Clerk