UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

NICOLAS TORRENT, on Behalf of Himself and All Others Similarly Situated, **Plaintiff,** **v.** **YAKULT U.S.A., Inc.,** **Defendant.**	**Case No.: SACV 15-00124-CJC(JCGx)** **ORDER DENYING PLAINTIFF'S RENEWED MOTION FOR CLASS CERTIFICATION**

I. INTRODUCTION & BACKGROUND

Plaintiff Nicolas Torrent brought this suit against defendant Yakult U.S.A., Inc. under California's Unfair Competition Law (UCL), Cal. Bus. & Prof. Code § 17200 *et seq*., on behalf of a putative class of California purchasers of Yakult, a yogurt drink.

Torrent alleges that Yakult's marketing and advertising claims concerning digestive health are false and likely to deceive reasonable consumers.

Torrent previously filed a motion for class certification under Rule 23(b)(1)(A) and (b)(2), which the Court denied on January 7, 2016, based in large part on its determination that he lacked standing to pursue the injunctive relief he sought. (Dkt. 52.) To have standing to pursue injunctive relief in federal court, a plaintiff must demonstrate that there is "a sufficient likelihood that [he] will be wronged in a similar way" in the future. *City of Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983). The Court determined that Torrent did not meet this threshold because he had not indicated that he planned to ever buy Yakult again—he therefore would suffer no future harm. Torrent's pleadings and an interrogatory response appear to rule out the possibility that he would purchase Yakult in the future. His Second Amended Complaint (SAC), dated July 27, 2015 states that "But for Defendant's misrepresentations, Plaintiff would not have purchased Yakult, and/or would not have paid a premium for Yakult over the price of other beverages that are not promoted as improving health." (Compl. ¶ 30.) Torrent expressed a similar view in an interrogatory response dated October 30, 2015, where he stated, "Had I known that Yakult was falsely, deceptively, and misleadingly advertised, I would not have purchased Yakult . . . Besides products routinely sold in close proximity to Yakult on store shelves, I consider yogurts and beverages to be comparable to Yakult, which is what I would have otherwise purchased but for being deceived by and relying on Yakult's advertising campaign." (Dkt. 46-1, Pl.'s Resp. to Def.'s Interrogatory 17.)

On January 14, 2016, ten days after this Court denied Torrent's motion to certify a class action for lack of standing to pursue injunctive relief, Torrent purchased Yakult for the first time in over a year. He has since filed a renewed motion for class certification, with his receipt from that purchase attached, along with a sworn declaration indicating without further explanation that "I intend to buy Yakult in California in the future." (Dkt.

53-3, Torrent Decl. ¶ 5.) Yakult opposed Torrent's renewed motion, arguing that Torrent has failed to satisfy the requirements for reconsideration imposed by Local Rule 7-18, and that the motion also fails on the merits. The Court concludes that Torrent's renewed motion for class certification is a motion for reconsideration, and DENIES the motion because it fails to meet the requirements of Local Rule 7-18.

II. ANALYSIS

The Federal Rules of Civil Procedure provide that "[a]n order that grants or denies class certification may be altered or amended before final judgment." Fed. R. Civ. P. 23(c)(1)(C). Rule 23(c)(1)(C) is "not a separate mechanism by which a party can seek reconsideration of a prior order relating to class certification. Rather it is simply a provision authorizing the court to alter or amend an order relating to class certification at any time prior to judgment." *Daniel F. v. Blue Shield of California*, No. C 09-2037 PJH, 2015 WL 3866212, at *3 (N.D. Cal. June 22, 2015). When confronting renewed motions for class certification previously denied, "courts uniformly apply the stringent law of the case standard to motions to reconsider initial class certification decisions." *Anderson Living Trust v. WPX Energy Prod., LLC*, 308 F.R.D. 410, 438 (D.N.M. 2015) (quoting William B. Rubenstein, Newberg on Class Actions § 7:35 (5th Ed.)); *accord Daniel F.*, 2015 WL 3866212, at *3-*6 (construing a plaintiff's "proposed renewed motion" for class certification as one seeking reconsideration).

Motions for reconsideration are governed by Local Rule 7-18, and may be brought based on "a material difference in fact or law from that presented to the Court before such decision that in the exercise of reasonable diligence could not have been known to the party moving for reconsideration at the time of such decision." "[N]ew material facts or a change of law occurring after the time of such decision, or . . . a manifest showing of a

failure to consider material facts presented to the Court before such decision" also provide grounds for filing a motion for reconsideration. L.R. 7-18.

Here, Torrent has not met any of the requirements that would allow this Court to grant his motion for reconsideration under Local Rule 7-18. He has obviously presented a new fact: his intent to purchase Yakult again soon after the Court's denial of his motion for class certification. But that fact was either in his possession when he filed his initial motion or, if it was not, it appears to be an effort to manufacture standing in direct response to this Court's prior ruling. Torrent's pleadings and interrogatory response indicate that he would not have purchased Yakult or at least would not have paid a premium for it absent reliance on its deceptive labeling. His current assertions that he plans to purchase Yakult in spite of its deceptive labeling run counter to these earlier positions. It is possible that a plaintiff would have standing to pursue injunctive relief based on ongoing harm—be it an inflated price or something else—caused by deceptive marketing claims. But given Torrent's earlier failure to assert his desire to buy Yakult in the future and his previous statements to the contrary, the Court does not see a basis to reconsider its earlier denial of class certification here.

Courts are generally "reluctan[t] to allow parties to have a 'second bite at the apple' by relitigating issues that have already been decided, thereby incentivizing parties to put their best foot forward at the outset to avoid costly delays to the proceedings." *Anderson Living Trust*, 308 F.R.D. at 438 (quoting William B. Rubenstein, Newburg on Class Actions §§ 7:34-7:35 (5th Ed.)). Allowing Torrent to seek injunctive relief based on his recently-expressed intention to purchase Yakult in the future would permit him to fundamentally alter his theory of the case, and would allow him to relitigate issues that this Court has already ruled on. Rule 23 does not require such a result and Local Rule 7-18 prohibits it.

III. CONCLUSION

Mr. Torrent's renewed motion for class certification is DENIED.

DATED: March 7, 2016

CORMAC J. CARNEY
UNITED STATES DISTRICT JUDGE