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Ninth Circuit Narrows Path for Omission-Based Consumer Claims in Baby Food Class Actions

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We previously wrote about conflicting decisions from New York federal courts on whether alleged economic damages establish Article III standing under a price premium theory in baby food toxic metals class actions. See [New York federal courts split on whether baby food purchasers have Article III standing in toxic metals baby food class actions](#) (April 29, 2025); [New York federal court tosses toxic metals baby food class action on the pleadings](#) (March 28, 2025).

In April 2025, the Ninth Circuit issued a decision in another baby food case that did not address Article III standing but rather clarified key aspects of omission-based consumer protection claims under California law. See *In re Plum Baby Food Litigation*, No. 24-2766, 2025 WL 1200700 (9th Cir. Apr. 25, 2025). In *In re Plum*, the plaintiffs alleged that Plum, PBC (“Plum”), violated the Consumer Legal Remedies Act (“CLRA”) and Unfair Competition Law (“UCL”) by failing to disclose that its baby food products may contain heavy metals and perchlorate. 2025 WL 1200700, at *1. Importantly, the plaintiffs did not allege that the products were unsafe or had caused any harm to their children. *Id.*

The district court granted summary judgment in favor of Plum, and the plaintiffs appealed. *Id.* at * 1. The Ninth Circuit affirmed the district court’s grant of summary judgment, issuing several notable rulings.

1. No Actionable Omission Without Duty to Disclose

The Ninth Circuit reiterated that liability for omissions under California law arises only when a company has made a misleading representation or is under a legal duty to disclose the omitted information. *Id.* at * 1. Absent a specific legal obligation or a partial statement rendered misleading by omission, companies are not generally required to disclose every potential product risk. *Id.* This holding confirms the narrow scope of actionable omission-based claims, ensuring greater predictability in compliance and advertising practices for businesses.

2. No Unreasonable Safety Hazard Shown

The Ninth Circuit rejected the argument that the mere presence of detectable levels of heavy metals and perchlorate constituted an unreasonable safety hazard, noting that the plaintiffs failed to provide evidence of actual injury or unsafe levels. *Id.* at *1. The plaintiffs also conceded that they were not asserting the products were unsafe or harmful. *Id.* The Ninth Circuit explained that hypothetical or speculative risks are insufficient and that concrete evidence is required to advance safety-based omission claims, raising the evidentiary bar for plaintiffs. *Id.*

3. Public Knowledge Defeats Exclusive Knowledge and Concealment Claims

Because reports of heavy metals and perchlorate in Plum's products were widely available from public sources, and because Plum itself acknowledged the presence of trace heavy metals on its website, the Ninth Circuit found that the company neither possessed exclusive knowledge nor actively concealed material facts. *Id.* at * 2. This holding reiterates that companies can defeat claims based on omissions when the relevant information is already in the public domain or has been affirmatively disclosed, confirming the defensive value of proactive disclosure.

4. No Certification to California Supreme Court

The Ninth Circuit declined the plaintiffs' request to certify a question regarding the standard for omission-based claims under the CLRA and UCL to the California Supreme Court, concluding Plum would be entitled to summary judgment under any "plausible legal standard" and noting that the California Supreme Court repeatedly had "declined requests to set forth a definitive standard for omission-based CLRA and UCL claims." *Id.* at * 2.

Takeaways:

This decision underscores the challenges that plaintiffs may face in bringing omission-based consumer protection actions under California law, particularly when the alleged risks are already publicly known. For manufacturers, ongoing monitoring of public disclosures and transparent communication about product content continue to be best practices for mitigating litigation risk.