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California federal court declines to dismiss putative class action over recalled mislabeled products

by Stephanie N. Bedard

A California federal court denied a Japanese convenience store chain's motion to dismiss and to strike classwide allegations of food mislabeling, finding the named plaintiff had standing to assert claims for injunctive relief and that defendant Daiso Holding USA Inc. ("Daiso")'s requests to strike the class allegations and disgorgement remedy were premature. *Fukaya v. Daiso California LLC, et al.*, No. 23-cv-00099-RFL, 2024 WL 4784420 (N.D. Cal. Nov. 12, 2024).

The named plaintiff, Makiko Fukaya, alleged that Daiso failed to properly label its packaged food as containing tree nuts where the English language sticker ingredient label covered the pre-printed Japanese language sticker label. 2024 WL 4784420, at *1. As a result, the plaintiff alleged she suffered a violent allergic reaction and had to be rushed to the emergency room. *Id.* She asserted claims against Daiso under California's Consumer Legal Remedies Act ("CLRA"), False Advertising Law ("FAL"), and Unfair Competition Law ("UCL"). *Id.*

In May 2023, the district court preliminarily held that that Fukaya did not have standing to pursue injunctive relief under the CLRA, FAL, and UCL and dismissed the claims with leave to amend. *Fukaya v. Daiso California LLC, et al.*, No. 3:23-cv-00099-JSC (N.D. Cal. May 11, 2023). Fukaya filed an amended complaint, and Daiso again moved to dismiss and to strike the class allegations.

Despite the fact that the product Fukaya consumed has since been recalled by the FDA, the district court nonetheless found that Fukaya had standing to assert claims for injunctive relief, for two reasons. First, the court found that an actual or imminent harm could be demonstrated by Fuyaka's "plausible allegations that she will be unable to rely on the product's advertising or labeling in the future, and so will not purchase the product although she would like to." *Id.* (citing *Davidson v. Kimberly-Clark Corp.*, 889 F.3d 956, 969–70 (9th Cir. 2018)).

Second, the district court found Fukaya had standing because she had plausibly alleged she encountered the same labeling issue on a different Daiso food product. *Id.* As a result, the court held that the allegations supported a "plausible inference of a systemic failure in Daiso's process of translating and labeling its English-language ingredient lists, such that other Daiso food products are also likely mislabeled." *Id.* Because Fukaya had sufficiently alleged a desire to purchase other Daiso food products, the court found she still had standing to seek injunctive relief because the harm was sufficiently imminent and non-speculative. *Id.*

The court also denied the motion to strike the class allegations as to the express warranty claim and deferred ruling on whether Fukaya had standing to assert multi-state class claims for breach of express warranty, finding that it was not a question of standing and should instead be resolved at the class certification stage after discovery. *Id.* at *2.

Finally, the court denied the motion to strike the disgorgement remedy, finding that striking claims for relief on the grounds that they are "precluded as a matter of law" was improper under Rule 12(f). *Id.* (citing *Whittlestone, Inc. v. Handi-Craft Co.*, 618 F.3d 970, 973–74 (9th Cir. 2010)).

Takeaway: California courts continue to take an expansive view of standing to seek injunctive relief in advertising and labeling class actions, even in situations where the product is no longer available for purchase due to a product recall.