

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Summer Whiteside v. Chosen Foods, LLC

Whiteside · No. 3:25-cv-00481-CAB-DDL · Decided August 26, 2025

SUMMARY

The United States District Court for the Southern District of California granted Chosen Foods, LLC’s motion to dismiss a putative class action challenging non-GMO labeling on avocado oil products. The court held that Plaintiff adequately alleged Article III standing but failed to plausibly allege that a reasonable consumer would be misled by the front or side labels under the California Consumers Legal Remedies Act and Unfair Competition Law. The complaint was dismissed with prejudice.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Cathy Ann Bencivengo
JURISDICTION	United States District Court for the Southern District of California
DECIDED	August 26, 2025
DOCKET	3:25-cv-00481-CAB-DDL
DISPOSITION	dismissed
PROCEDURAL POSTURE	Defendant moved under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) to dismiss a putative consumer class action alleging that non-GMO labeling on avocado oil products deceived consumers. The court denied the standing-based portion of the motion but granted dismissal under Rule 12(b)(6), dismissing the complaint with prejudice.
STANDARD OF REVIEW	On a Rule 12(b)(1) motion, Plaintiff bore the burden of establishing subject matter jurisdiction and Article III standing. On a Rule 12(b)(6) motion, the court accepted well-pleaded factual allegations as true and construed the pleadings in Plaintiff's favor, but disregarded legal conclusions and required nonconclusory factual content plausibly suggesting entitlement to relief.
PRECEDENTIAL VALUE	unpublished district court order; nonprecedential
PARTIES	Summer Whiteside v. Chosen Foods, LLC

TOPICS

consumer protection

deceptive trade practices

motions to dismiss

standing

class actions

PRACTICE AREAS

consumer protection

false advertising

civil procedure

federal subject matter jurisdiction

QUESTIONS PRESENTED

1. Whether Plaintiff adequately alleged Article III standing based on an alleged economic injury from paying more for the product or purchasing it when she otherwise would not have done so.
2. Whether the complaint plausibly alleged that the product's front label and side-label non-GMO statements were likely to deceive a reasonable consumer in violation of the California Consumers Legal Remedies Act and Unfair Competition Law.
3. Whether the court could consider the product side labels and articles submitted with Plaintiff's request for judicial notice on a motion to dismiss.
4. Whether the complaint should be dismissed with prejudice because amendment could not cure the pleading deficiency.

HOLDINGS

1. The court could consider the product side labels because they were incorporated by reference in the complaint and were also proper subjects of judicial notice, but it could take notice of the articles only for their existence and the statements they contained, not for the truth of disputed factual matters.
2. Plaintiff adequately pleaded Article III standing because allegations that she would not have purchased the product, or would have paid less for it, absent the alleged misconduct sufficiently alleged an economic injury in fact.
3. The front-label Non-GMO Project Verified logo did not plausibly deceive a reasonable consumer because it represented that the product was certified by the Non-GMO Project, not that other avocado oil products contained GMOs or that the product possessed a comparative quality that other avocado oils lacked.
4. The complaint failed to plausibly allege that the product's front and side labels would deceive a significant portion of reasonable consumers; Plaintiff's alleged interpretation that the labels implied other avocado oils contained GMOs was unreasonable and unsupported by the label's actual statements.
5. The complaint was dismissed with prejudice because the court determined that Plaintiff could not possibly amend the complaint to state a plausible consumer-deception claim.

KEY QUOTATIONS

"Standing is a threshold issue that the Court must reach before addressing the merits or any other substantive matter." (at 5)

"The reasonable consumer standard "requires more than a mere possibility that [a] label might conceivably be misunderstood by some few consumers viewing it in an unreasonable manner."" (at 7)

“No reasonable consumer would be misled into spending more on the Products than they would have spent on other avocado oil products because of the Non-GMO Project label.” (at 8)

“Because Plaintiff could not possibly amend her complaint to state a plausible claim, the case is DISMISSED WITH PREJUDICE.” (at 12)

FACTUAL BACKGROUND

Plaintiff purchased Chosen 100% Pure Avocado Oil Spray in California and alleged that the product prominently displayed non-GMO and Non-GMO Project Verified claims. She alleged that avocados are not commercially available in genetically modified form, making the claims meaningless or misleading and causing consumers to pay a premium. Plaintiff further alleged that she relied on the claims and would not have purchased the product, or would have paid less, absent the alleged misrepresentation.

PROCEDURAL HISTORY

Plaintiff filed a putative nationwide class action on February 28, 2025, asserting claims under the California Consumers Legal Remedies Act and Unfair Competition Law. Defendant moved to dismiss. The court took judicial notice of the product side labels and the existence, but not the truth, of articles concerning non-GMO labeling practices. The court held that Plaintiff adequately alleged Article III standing but failed to plausibly allege that a reasonable consumer would be deceived by the product labels, and dismissed the complaint with prejudice.

DISPOSITION

dismissed

CASES CITED

- Ass'n of Am. Med. Coll. v. U.S., 217 F.3d 770, 778-79 (9th Cir. 2000)
- Bates v. United Parcel Serv., Inc., 511 F.3d 974, 985 (9th Cir. 2007)
- Lujan v. Defs. of Wildlife, 504 U.S. 555, 560-61 (1992)
- Eclectic Props. E., LLC v. Marcus & Millichap Co., 751 F.3d 990, 996 (9th Cir. 2014)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 570 (2007)
- Manzarek v. St. Paul Fire & Marine Ins. Co., 519 F.3d 1025, 1031 (9th Cir. 2008)
- Moss v. U.S. Secret Serv., 572 F.3d 962, 969 (9th Cir. 2009)
- DeSoto v. Yellow Freight Sys., Inc., 957 F.2d 655, 658 (9th Cir. 1992)
- Schreiber Distrib. Co. v. Serv-Well Furniture Co., 806 F.2d 1393, 1401 (9th Cir. 1986)
- Khoja v. Orexigen Therapeutics, Inc., 899 F.3d 988, 998 (9th Cir. 2018)
- Lee v. City of Los Angeles, 250 F.3d 668, 690 (9th Cir. 2001)
- Gustavson v. Wrigley Sales Co., 961 F. Supp. 2d 1100, 1113 n.1 (N.D. Cal. 2013)
- EVO Brands, LLC v. Al Khalifa Grp. LLC, 657 F. Supp. 3d 1312, 1320-21 (C.D. Cal. 2023)

- Wash. Post v. Robinson, 935 F.2d 282, 291 (D.C. Cir. 1991)
- Ali v. Intel Corp., No. 18-CV-03981-LHK, 2018 WL 5734673, at *3 (N.D. Cal. Oct. 31, 2018)
- Gerritsen v. Warner Bros. Entm't Inc., 112 F. Supp. 3d 1011, 1028 (C.D. Cal. 2015)
- Stoianoff v. State of Mont., 695 F.2d 1214, 1223-24 (9th Cir. 1983)
- Hinojos v. Kohl's Corp., 718 F.3d 1098, 1104 & n.3 (9th Cir. 2013)
- In re Johnson & Johnson Talcum Powder Prods. Mktg., Sales Pracs. & Liab. Litig., 903 F.3d 278, 280-81 (3d Cir. 2018)
- Kwikset Corp. v. Superior Ct., 51 Cal. 4th 310, 330 (2011)
- Reid v. Johnson & Johnson, 780 F.3d 952, 958 (9th Cir. 2015)
- Kasky v. Nike, Inc., 27 Cal. 4th 939, 951 (2002)
- Leoni v. State Bar, 39 Cal. 3d 609, 626 (1985)
- Freeman v. Time, Inc., 68 F.3d 285, 289 (9th Cir. 1995)
- Lavie v. Procter & Gamble Co., 105 Cal. App. 4th 496, 506-07 (2003)
- Andrade-Heymsfield v. Danone US, Inc., 2019 WL 3817948, at *1, *7 (S.D. Cal. Aug. 14, 2019)
- Whiteside v. Kimberly Clark Corp., 108 F.4th 771, 777-82 (9th Cir. 2024)
- Ebner v. Fresh, Inc., 838 F.3d 958, 965 (9th Cir. 2016)
- Fitzhenry-Russell v. Coca-Cola, No. 5:17-CV-00603-EJD, 2017 WL 4680073, at *3 (N.D. Cal. Oct. 17, 2017)
- Garza, 760 F. Supp. 3d at 1047
- Chong v. Nestle Water N. Am., Inc., No. 20-56373, 2021 WL 4938128, at *1 (9th Cir. 2021)
- Myers v. Starbucks Corp., No. 22-55930, 2024 WL 3102800, at *1 (9th Cir. June 24, 2024)
- McGinity v. Procter & Gamble Co., 69 F.4th 1093, 1098 (9th Cir. 2023)
- Trader Joe's v. Moore, 4 F.4th 874, 882-85 (9th Cir. 2021)