

# Food for Thought: Ninth Circuit Revives Proposed Class Action Against Convenience Store Regarding Nutritional Content of Private Brand Potato Chips

June 07, 2016

*Bishop v. 7-Eleven, Inc., 651 Fed. Appx. 657 (9th Cir. 2016)*

Plaintiff Scott Bishop filed a proposed class action against defendant 7-Eleven based on allegations that the convenience store chain's private-label potato chips are deceptive. According to plaintiff, the front of the potato chips package states "0g trans fat" and "no cholesterol," despite the fact that the product actually contains some small amounts of trans fat and cholesterol. Thus, he claimed he would not have purchased the product if defendant had included the disclosure "See nutritional information for fat content" on the package, as required by the U.S. Food and Drug Administration (FDA). The district court dismissed plaintiff's second amended complaint. The Ninth Circuit reversed the district court's decision and held that the district court erred in its finding that plaintiff failed to allege facts sufficient to establish standing under California's False Advertising Law (FAL), California's Consumers Legal Remedies Act (CLRA), and California's Unfair Competition Law (UCL). The Ninth Circuit held that plaintiff had sufficiently alleged actual reliance. The Ninth Circuit held that even if the statements made are "not technically false," they are actionable pursuant to California's consumer protection statutes if they "have a tendency to mislead consumers because the statements fail to disclose or direct the consumer's attention to other relevant information."

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