

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ROMULO TORRES, et al.,

Plaintiffs,

v.

BOTANIC TONICS, LLC, et al.,

Defendants.

Case No. 23-cv-01460-VC

**ORDER CERTIFYING APPEAL OF  
ORDER DENYING 7-ELEVEN'S  
MOTION TO DISMISS**

Re: Dkt. No. 86

7-Eleven's motion for certification under 28 U.S.C. § 1292(B) of the Court's Order Denying 7-Eleven's Motion to Dismiss is granted. The statutory requirements are met. The Order interprets the standard for liability under the unfair-practices prong of California's Unfair Competition Law, and, in doing so, also interprets the Ninth Circuit's holding in *Hodsdon v. Mars, Inc.*, 891 F.3d 857, 867 (9th Cir. 2018). As the Order notes, other district courts have arguably taken a different view of certain language in *Hodsdon*—a view that aligns with 7-Eleven's interpretation. Moreover, in a nonprecedential memorandum disposition from around the same time as this Court's Order, the Ninth Circuit repeated the language from *Hodsdon* that 7-Eleven relies on. *In re Intel Corp. CPU Marketing, Sales Practices & Prods. Liab. Litig.*, No. 22-35652. 2023 WL 7211394, at \*2 (9th Cir. Nov. 2, 2023). It is appropriate under these circumstances to certify the question to the Ninth Circuit.

Discovery shall continue while the Ninth Circuit considers 7-Eleven's request. Additionally, if the Ninth Circuit does allow the appeal, then discovery will likely continue as to the other defendants—but that question can be revisited at that time.

**IT IS SO ORDERED.**

Dated: February 5, 2024



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VINCE CHHABRIA  
United States District Judge