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Food & Consumer Packaged Goods Litigation

Ninth Circuit Reverses Dismissal Based on Standing, Preemption

Reid v. Johnson & Johnson and McNeil Nutritionals, LLC, No. 12-56726 (9th Cir.): The Ninth Circuit reversed and remanded the district court's order dismissing the case for lack of standing. The Ninth Circuit held that the "reasonable consumer" standard is used to determine violations of the UCL, CLRA, and FAL, but not Article III standing. The appellate panel found that Article III standing requires only individual reliance, which Plaintiff had proved. The Ninth Circuit also reversed the district court's findings regarding preemption, holding that Plaintiffs' trans fat claims were not preempted, and affirmed the lower court's finding that the primary jurisdiction doctrine does not bar Plaintiffs' action because an interim final rule from the FDA was already in place and the agency previously declined to approve "no trans fat" language. [Order](#).

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