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Food & Consumer Packaged Goods Litigation

# Court Grants in Part and Denies in Part Motion to Dismiss in Instant Noodles False Advertising Suit

*Guttman v. Nissin Foods Company, Inc.*, No. 4:15-cv-00567 (N.D. Cal.): The Court granted in part and denied in part Defendant's motion to dismiss in this putative class action alleging violations of California's UCL, and raising claims of nuisance and breach of implied warranty, based on claims that Defendant's instant noodles are labeled as "Trans Fat: 0g" when they contain partially hydrogenated oil. First, the Court dismissed Plaintiff's UCL (fraudulent and unlawful prongs), FAL, CLRA, and breach of express warranty claims because they were preempted by 21 C.F.R. § 101.9(c)(2)(ii). Section 101.9(c)(2)(ii), which governs nutrition facts, provides that the content of a serving containing less than 0.5 grams of trans-fat shall be expressed as zero. The Court distinguished *Reid v. Johnson & Johnson*, 780 F.3d 952 (9th Cir. 2015), where defendant labeled products as "No Trans Fat" and "trans fat-free," by reasoning that the FDA has issued warning letters that these statements are unauthorized nutrient-content claims, but no such letter has been issued regarding "0g Trans Fat." The Court declined to find, however, that Plaintiff's "unfair prong" UCL claim, which alleges that trans-fat is a poisonous ingredient was preempted, because the Court reasoned the claim was about use, not labeling. Similarly, the Court declined to dismiss the breach of implied warranty of merchantability claim, after finding Plaintiff's allegations that products containing trans-fat are not fit for human consumption plausible. Finally, the Court dismissed the nuisance claim, without leave to amend, because Plaintiff had not suffered a specific personal injury that is different from harm suffered by all consumers of Defendant's products. [Order](#).

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