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Food & Consumer Packaged Goods Litigation

Chipotle Wraps Up Dismissal of GMO Feed Case

Gallagher v. Chipotle Mexican Grill, Inc., No. 3:15-cv-3952 (N.D. Cal.): The Court granted Defendant's motion to dismiss with leave to amend in this putative class action alleging violations of California's CLRA, FAL, and UCL. Plaintiff raises claims that Defendant, Chipotle Mexican Grill, misled consumers by claiming that it is the first national company in the food industry to serve a menu devoid of GMOs, when in fact its products contain GMOs (or, rather, are grown using GMO feed). The Court found that Plaintiff failed to plead that she had standing to bring her claims because she had not adequately alleged what economic injury that she suffered as a result of Defendant's purported misrepresentations. Although Plaintiff had only claimed that meat, dairy products, and sodas at Chipotle contained GMOs, she failed to plead what exactly she purchased at the chain, and therefore had not shown that she suffered any economic loss. Further, the Court also found that Plaintiff's failure to allege that she intends to purchase Defendant's food products in the future meant that she had not alleged "a real and immediate threat" of future injury sufficient to have standing to seek injunctive relief. Further, the Court indicated that Plaintiff's current allegations of false and misleading representations would not likely survive a motion to dismiss, as Plaintiff's chosen definition of "GMO" did not fit the allegedly misrepresented foods at issue (i.e., dairy and meat products raised using GMO feed). Plaintiff defined GMO as "any organism whose genetic material has been altered using . . . genetic engineering techniques," yet the Court noted the absence of any "allegation that the animals from which Defendant's meat and dairy ingredients were produced were genetically modified." The Court also questioned whether the facts alleged in the complaint plausibly supported Plaintiff's contention that "the reasonable consumer would interpret non-GMO ingredients to mean meat and dairy ingredients produced from animals that never consumed any genetically modified substances." [Order](#).

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