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Food & Consumer Packaged Goods Litigation

Partial Dismissal Without Prejudice In Pork and Beans False Advertising Suit

Tye v. Wal-Mart Stores, Inc., No. 8:15-cv-1615 (C.D. Cal.): The Court issued a minute order granting-in-part Defendants' motion to dismiss in this putative class action asserting violations of multiple states' (California, New Jersey, Pennsylvania) consumer protection statutes, and raising claims of breaches of warranty, unjust enrichment, breach of implied contract, and breach of the implied covenant of good faith and fair dealing. Plaintiffs claim Defendants misrepresent their Great Value Pork & Beans in Tomato Sauce product as containing pork when it does not. The Court rejected Defendants' argument that Plaintiffs' claims were: (1) federally preempted; and (2) that the complaint failed to allege the product's label is false and deceptive. The Court found these arguments were premised on the assumption that the product does not contain enough pork, although Plaintiffs alleged the product contains no pork. The Court was similarly unpersuaded by Defendants' arguments that Plaintiffs' allegations failed to satisfy the pleading requirements set forth in Rule 8 and 9(b). The Court was convinced, however, that Plaintiffs' decision to "lump together claims under the laws of all fifty states into two counts," had rendered the claims of unjust enrichment and breach of warranty inadequately pleaded. The Court dismissed those claims with leave to amend, and instructed Plaintiffs to identify which state or states' laws they intend to rely upon. [Order](#).

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