

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
FLORIDA

Garcia v. Kashi Co.

43 F. Supp. 3d 1359 (S.D. Fla. 2014) · Decided September 5, 2014

SUMMARY

The court addresses defendants’ motions to dismiss claims alleging that Kashi products were deceptively marketed as “all natural” and containing “nothing artificial” despite containing genetically modified organisms and other allegedly synthetic ingredients. It grants and denies in part the parties’ motions concerning judicial notice and holds that the plaintiffs’ claims are not expressly or impliedly preempted by federal food-labeling law. The excerpt also addresses the propriety of judicial notice of FDA and USDA materials.

CASE DETAILS

COURT	United States District Court for the Southern District of Florida
WRITING FOR THE COURT	Joan A. Lenard
JURISDICTION	Florida
DECIDED	September 5, 2014
DISPOSITION	other
PROCEDURAL POSTURE	Defendants moved under Federal Rule of Civil Procedure 12(b)(6) to dismiss the plaintiffs' second amended consolidated class-action complaint. Defendants also sought judicial notice, while the plaintiffs sought judicial notice and the parties sought to file documents under seal.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court accepted well-pleaded factual allegations as true and construed reasonable inferences in plaintiffs' favor. The complaint had to contain sufficient factual matter to state a facially plausible claim; fraud-based allegations also had to satisfy Rule 9(b)'s particularity requirement.
PRECEDENTIAL VALUE	district court opinion
PARTIES	Kashi Company, The Kellogg Company v. Katrina Garcia, Laura Eggnatz, Julie Martin

TOPICS

consumer protection

deceptive trade practices

motions to dismiss

standing

civil procedure

PRACTICE AREAS

consumer protection

food labeling

federal preemption

class actions

pleading and motion practice

QUESTIONS PRESENTED

1. Whether plaintiffs' state-law consumer-protection, warranty, negligent-misrepresentation, restitution, and related claims were expressly or impliedly preempted by the Federal Food, Drug, and Cosmetic Act and FDA policy.
2. Whether the primary jurisdiction doctrine required dismissal or referral of the labeling issues to the FDA.
3. Whether the second amended complaint pleaded sufficient facts under Rules 8 and 9(b).
4. Whether the allegations stated claims under FDUTPA, the California UCL, FAL, and CLRA.
5. Whether the negligent-misrepresentation claim was adequately pleaded.
6. Whether the warranty claims were barred by lack of privity.
7. Whether the declaratory-judgment, money-had-and-received, and standing claims were adequately pleaded.
8. Whether plaintiffs could assert claims concerning Kashi products they did not purchase.
9. Whether the complaint adequately pleaded a basis for holding Kellogg liable for Kashi's conduct.

HOLDINGS

1. The plaintiffs' claims were not expressly preempted because they challenged allegedly deceptive "all natural" labeling rather than seeking a state requirement concerning the disclosure of bioengineered ingredients or artificial flavoring, coloring, or preservatives that differed from federal requirements.
2. The plaintiffs' claims were not impliedly preempted because the FDA had not established a binding requirement permitting products containing GMOs or the challenged ingredients to be labeled "all natural," and compliance with federal law was not impossible.
3. Dismissal under the primary jurisdiction doctrine was unwarranted.
4. The second amended complaint sufficiently pleaded factual content under Rules 8 and 9(b), including the products purchased, the challenged representations, the circumstances of purchase, reliance, and the alleged price premium.
5. The complaint adequately stated consumer-protection and false-advertising claims based on the alleged use of "all natural" and "nothing artificial" labels on products containing GMOs and synthetic or artificial ingredients.
6. The complaint adequately stated a Florida negligent-misrepresentation claim based on the "all natural" and "nothing artificial" representations appearing on the product labels, even if the separate allegation concerning advertising unrelated to the labels was insufficiently specific.

7. The implied-warranty claim was dismissed with prejudice because Florida law requires contractual privity for an implied-warranty claim and the complaint did not allege privity between plaintiffs and defendants.
8. The express-warranty claim survived despite the absence of alleged privity because the alleged warranty appeared on the product packaging and plaintiffs alleged reliance on it. The "all natural" representation was sufficiently alleged to constitute an affirmation of fact or promise under Florida law.
9. The declaratory-judgment claim was dismissed with prejudice because the relief requested was injunctive rather than declaratory, and plaintiffs had not yet prevailed or shown the inadequacy of a legal remedy.
10. The money-had-and-received claim was adequately pleaded despite the lack of direct payment from plaintiffs to defendants.
11. The named plaintiffs lacked Article III standing to assert claims concerning Kashi products they did not purchase; the surviving claims were limited to the eight products identified as purchased in the complaint.
12. The claims against Kellogg were dismissed with prejudice because the complaint did not plead facts supporting a mere-instrumentality, alter-ego, or comparable theory of parent-company liability.

KEY QUOTATIONS

"This argument fails because the FDA does not have a policy permitting food containing GMOs to be described as "natural," nor has it regulated the term "all natural."" (1373)

"In sum, " '[t]his case is far less about science than it is about whether a label is misleading,' and the reasonable-consumer inquiry upon which some of the claims in this case depends is one to which courts are eminently well suited, even well versed. ' " (1381)

"The Court agrees with Toback that, in the Eleventh Circuit, a named plaintiff in a consumer class action "cannot raise claims relating to those other products which he did not purchase[.]'" (1394)

FACTUAL BACKGROUND

Kashi products were marketed and labeled as "ALL NATURAL" and/or containing "nothing artificial." Plaintiffs alleged that various Kashi cereals, bars, and other products contained genetically modified organisms and synthetic or artificial ingredients, including GMO soy and corn, synthetic vitamins, and hexane-processed soy. Plaintiffs alleged that they purchased the products in reliance on the labeling, paid a price premium, and would not have purchased them had they known the products contained the challenged ingredients.

PROCEDURAL HISTORY

Garcia and Eggnatz filed an action in the Southern District of Florida, and Martin filed a related class action in the Northern District of California. The California action was transferred to the Southern District of Florida, where the cases were consolidated and plaintiffs filed a second amended consolidated complaint. The court granted in part and denied in part the motions to dismiss and judicial notice, dismissed the claims against

Kellogg and the implied-warranty and declaratory-judgment claims with prejudice, and limited the surviving claims to products purchased by the named plaintiffs.

DISPOSITION

other

CASES CITED

- Ashcroft v. Iqbal, 556 U.S. 662 (2009)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007)
- Holk v. Snapple Beverage Corp., 575 F.3d 329 (3d Cir. 2009)
- Lockwood v. Conagra Foods, Inc., 597 F. Supp. 2d 1028 (N.D. Cal. 2009)
- Reiter v. Cooper, 507 U.S. 258 (1993)
- Williams v. Gerber Products Co., 552 F.3d 934 (9th Cir. 2008)
- McGee v. JP Morgan Chase Bank, N.A., 520 F. App'x 829 (11th Cir. 2013)
- Smith v. Wm. Wrigley Jr. Co., 663 F. Supp. 2d 1336 (S.D. Fla. 2009)
- David v. American Suzuki Motor Corp., 629 F. Supp. 2d 1309 (S.D. Fla. 2009)
- Alabama v. U.S. Army Corps of Engineers, 424 F.3d 1117 (11th Cir. 2005)
- Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992)
- Prado-Steiman v. Bush, 221 F.3d 1266 (11th Cir. 2000)
- Blum v. Yaretsky, 457 U.S. 991 (1982)
- Federated Title Insurers, Inc. v. Ward, 538 So. 2d 890 (Fla. Dist. Ct. App. 1989)
- SEB S.A. v. Sunbeam Corp., 148 F. App'x 774 (11th Cir. 2005)
- Salkin v. United Services Automobile Association, 767 F. Supp. 2d 1062 (C.D. Cal. 2011)
- Pom Wonderful LLC v. Coca-Cola Co., 679 F.3d 1170 (9th Cir. 2012), rev'd, POM Wonderful LLC v. Coca-Cola Co., 573 U.S. 102 (2014)