UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Barton v. The Procter & Gamble Company

No. 3:24-CV-01332-GPC-SBC (S.D. Cal. Aug. 8, 2025) · No. 3:24-CV-01332-GPC-SBC · Decided August 8, 2025

SUMMARY

The United States District Court for the Southern District of California considers Defendant The Procter & Gamble Company's motion to dismiss a putative class action concerning alleged lead in Tampax Pearl and Tampax Radiant tampons. The court finds that Plaintiffs plausibly pleaded California UCL, FAL, and CLRA claims based on alleged misleading packaging representations and testing allegations, and it denies the motion to dismiss.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Gonzalo P. Curiel
JURISDICTION	United States District Court for the Southern District of California
DECIDED	August 8, 2025
DOCKET	3:24-CV-01332-GPC-SBC
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiffs brought a putative class action asserting California consumer-protection claims concerning allegedly misleading labeling of tampon products. Defendant moved under Federal Rule of Civil Procedure 12(b)(6) to dismiss the Second Amended Complaint.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court accepted well-pleaded factual allegations as true and construed them in the light most favorable to plaintiffs, while disregarding conclusory allegations, unwarranted deductions, and unreasonable inferences. The court assessed whether the complaint stated a plausible claim for relief. Claims sounding in fraud were also subject to Rule 9(b)'s particularity requirement.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Allison Barton, Jana Moreno v. The Procter & Gamble Company

TOPICS

consumer protection | motions to dismiss | class actions | pleadings | injunctions

PRACTICE AREAS

consumer protection | civil procedure | products liability | class actions

QUESTIONS PRESENTED

1. Whether the Second Amended Complaint plausibly pleaded UCL, FAL, and CLRA claims based on affirmative misrepresentations in tampon labeling.
2. Whether the testing allegations satisfied Federal Rule of Civil Procedure 9(b) despite not testing the specific units purchased by plaintiffs or identifying the tested lots.
3. Whether plaintiffs plausibly alleged that the product representations were material and likely to mislead reasonable consumers based on alleged lead levels and potential health risks.
4. Whether the FTC Green Guides governed the alleged health-and-safety representations or required dismissal of the consumer-protection claims.
5. Whether plaintiffs stated a UCL claim under the unfair and unlawful prongs.
6. Whether plaintiffs adequately pleaded the inadequacy of legal remedies to pursue equitable relief under the UCL, FAL, and CLRA.

HOLDINGS

1. At the pleading stage, plaintiffs were not required to test the specific tampon units they purchased, allege that those units came from the same lot as the tested units, or plead that each specific purchase contained lead when they alleged uniform products and testing across all relevant sizes.
2. The testing allegations satisfied Rule 9(b) because plaintiffs identified the testing methodology, timing, laboratory qualifications, and the tested product sizes with sufficient detail.
3. Plaintiffs plausibly alleged that the packaging representations, read in context, could mislead reasonable consumers into believing that the tampons were free of potentially harmful substances, including lead.
4. Even representations that are true and discrete may plausibly be misleading when considered in the context of the product's overall packaging and marketing.
5. The FTC Green Guides did not require dismissal because plaintiffs challenged health-and-safety marketing representations rather than environmental marketing claims.
6. Plaintiffs failed to plausibly state a UCL claim under the unfair prong because their allegations merely recited the applicable tests and were conclusory.
7. Plaintiffs could proceed under the UCL unlawful prong based on their adequately pleaded CLRA affirmative-misrepresentation claim.
8. Plaintiffs adequately pleaded that legal remedies were inadequate and could pursue equitable relief under the UCL, FAL, and CLRA at the pleading stage.

KEY QUOTATIONS

> *“Instead, under their current misrepresentation claim, Plaintiffs are not required to prove that the Products create an “unreasonable safety hazard.” Instead, Plaintiffs must merely show that they were misled by affirmative packaging claims into believing that the tampons were free of amounts of lead which could affect their safety.”* (at 14)

> *“The Court does not view the MADL as a proxy for safety, but rather as a helpful measure that supports the allegation that there are more than trace amounts of lead.”* (at 17-18)

> *“But, without determining now whether the Representations are actually true, even discrete and true claims may be misleading.”* (at 19-20)

> *“The Court GRANTS the Motion as to the UCL claim premised on the “unfair” prong with prejudice, and DENIES the Motion as to the rest of the claims.”* (at 24)

FACTUAL BACKGROUND

Plaintiffs purchased Tampax Pearl and Tampax Radiant tampons bearing representations such as "free of perfume," "free of elemental chlorine bleaching," "tampon free of dyes," and "clinically tested gentle to skin." They alleged that independent laboratory testing detected lead in all tested product sizes and that ordinary use exposed consumers to lead levels exceeding California Proposition 65's maximum allowable dose level. Plaintiffs alleged that the packaging led reasonable consumers to believe the products were free of potentially harmful substances, that they would not have purchased the products had they known of the lead, and that legal remedies were inadequate to prevent future harm.

PROCEDURAL HISTORY

Barton filed the original complaint on July 29, 2024, and later filed an amended complaint joining Moreno. The court previously granted in part and denied in part an earlier motion to dismiss and granted leave to amend. Plaintiffs filed the Second Amended Complaint, defendant moved to dismiss it, and the court granted the motion with prejudice as to the UCL unfairness theory but denied it as to the remaining claims and requested equitable relief.

DISPOSITION

other

CASES CITED

- Election Integrity Project California, Inc. v. Weber, 113 F.4th 1072, 1081 (9th Cir. 2024)
- Navarro v. Block, 250 F.3d 729, 732 (9th Cir. 2001)
- Ashcroft v. Iqbal, 556 U.S. 662, 663, 678 (2009)
- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 547, 556 (2007)
- Dent v. Nat'l Football League, 968 F.3d 1126, 1130 (9th Cir. 2020)
- Coronavirus Rep. v. Apple, Inc., 85 F.4th 948, 954 (9th Cir. 2023)
- Vess v. Ciba-Geigy Corp. USA, 317 F.3d 1097, 1103-04 (9th Cir. 2003)

- Davidson v. Kimberly-Clark Corp., 889 F.3d 956, 964 (9th Cir. 2018)
- Whiteside v. Kimberly Clark Corp., 108 F.4th 771, 777, 784-85 (9th Cir. 2024)
- Mirkin v. Wasserman, 5 Cal. 4th 1082, 1092 (1993)
- Williams v. Gerber Prods. Co., 552 F.3d 934, 938 (9th Cir. 2008)
- Salazar v. Walmart, Inc., 83 Cal. App. 5th 561, 566 (2022)
- Andrade-Heymsfield v. NextFoods, Inc., 2023 WL 2576770, at *3 (S.D. Cal. Mar. 20, 2023)
- Arroyo v. Chattem, Inc., 926 F. Supp. 2d 1070, 1078-79 (N.D. Cal. 2012)
- Zeiger v. WellPet LLC, 526 F. Supp. 3d 652, 682 (N.D. Cal. 2021)
- In re Trader Joe's Co. Dark Chocolate Litig., 726 F. Supp. 3d 1150, 1168, 1172 (S.D. Cal. 2024)
- Loeb v. Champion Petfoods USA Inc., 359 F. Supp. 3d 597, 605 (E.D. Wis. 2019)
- Krystofiak v. BellRing Brands, Inc., 737 F. Supp. 3d 782, 801 (N.D. Cal. 2024)
- In re Hain Celestial Heavy Metals Baby Food Litig., 2024 WL 5239510, at *12 (E.D.N.Y. Dec. 27, 2024)
- Hayden v. Bob's Red Mill Nat. Foods, Inc., 2024 WL 1643696, at *8 (N.D. Cal. Apr. 16, 2024)
- Souter v. Edgewell Pers. Care Co., 2023 WL 5011747, at *3 (9th Cir. Aug. 7, 2023)
- Chase v. Hobby Lobby Stores, Inc., 2018 WL 786743, at *5 (S.D. Cal. Feb. 8, 2018)
- Sebastian v. Kimberly-Clark Corp., No. 17-cv-442-WQH-JMA, 2017 WL 6497675, at *5 (S.D. Cal. Dec. 18, 2017)
- Korea Supply Co. v. Lockheed Martin Corp., 29 Cal. 4th 1134, 1143 (2003)
- Nazemi v. Specialized Loan Serv., LLC, 637 F. Supp. 3d 856, 864 (C.D. Cal. 2022)
- Graham v. Bank of America, N.A., 226 Cal. App. 4th 594, 612 (2014)
- Hodsdon v. Mars, Inc., 891 F.3d 857, 866 (9th Cir. 2018)
- Doe v. CVS Pharm., 982 F.3d 1204, 1214-15 (9th Cir. 2020)
- Wright v. Charles Schwab & Co. Inc., 2020 WL 6822887, at *5 (N.D. Cal. Nov. 20, 2020)
- Sonner v. Premier Nutrition Corp., 971 F.3d 834 (9th Cir. 2020)
- Jeong v. Nexo Fin. LLC, 2022 WL 174236, at *27 (N.D. Cal. Jan. 19, 2022)
- Byton N. Am. Co. v. Breitfeld, 2020 WL 3802700, at *9 (C.D. Cal. Apr. 28, 2020)
- Coleman v. Mondelez Int'l Inc., 554 F. Supp. 3d 1055, 1065 (C.D. Cal. 2021)
- Krause-Pettai v. Unilever United States, Inc., 2021 WL 1597931, at *4 (S.D. Cal. Apr. 23, 2021)
- Guzman v. Polaris Indus. Inc., 49 F.4th 1308, 1310-12 (9th Cir. 2022)
- Carroll v. Myriad Genetics, Inc., 2022 WL 16860013, at *6 (N.D. Cal. Nov. 9, 2022)
- Epperson v. Gen'l Motors, LLC, 2023 WL 8628327, at *6 (S.D. Cal. Dec. 13, 2023)