UNITED STATES DISTRICT COURT **JS-6**
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. SA CV 20-00637-DOC-ADS Date: August 20, 2020

Title: ROBERT COHEN v. CONAGRA BRANDS, INC.

PRESENT:

THE HONORABLE DAVID O. CARTER, JUDGE

Kelly Davis	Not Present
Courtroom Clerk	Court Reporter
ATTORNEYS PRESENT FOR PLAINTIFF: None Present	ATTORNEYS PRESENT FOR DEFENDANT: None Present

PROCEEDINGS (IN CHAMBERS): ORDER GRANTING DEFENDANT'S MOTION TO DISMISS [15]

Before the Court is Defendant Conagra Brands, Inc.'s ("Defendant") Motion to Dismiss ("Motion") (Dkt. 15), accompanied by a supporting Memorandum (Dkt. 15-1). The Court finds this matter appropriate for resolution without oral argument. *See* Fed. R. Civ. P. 78; C.D. Cal. R. 7-15. Having reviewed the moving papers submitted by the parties, the Court now GRANTS the Motion.

I. Background

A. Facts

The following facts are drawn from Plaintiff Robert Cohen's ("Plaintiff") Complaint (Dkt. 1). Defendant produces a range of chicken products labeled "100% Natural" (collectively, the "Chicken Products"). Compl. ¶¶ 2, 25. The labeling also includes such representations as "NO PRESERVATIVES!," "NO ARTIFICIAL COLORS," and "NO ARTIFICIAL FLAVORS." *Id.* ¶ 3. However, the Chicken Products include synthetic ingredients, contrary to this labeling. *Id.* ¶ 4. This packaging, which Plaintiff contends is misleading, is also displayed on Defendant's website. *See id.* ¶ 41.

B. Procedural History

Plaintiff filed his Complaint on April 1, 2020, bringing the following three causes of action for violations of California law:

(1) Consumers Legal Remedies Act ("CLRA");
(2) Unfair Competition Law ("UCL"); and
(3) False Advertising Law ("FAL").

See generally Compl.

Defendant filed the instant Motion (Dkt. 15) on June 8, 2020. On July 13, 2020, Plaintiff filed his Opposition brief (Dkt. 21), and the Defendant submitted a Reply (Dkt. 23) on July 31, 2020.

II. Legal Standard

Rule 8(a)(2) of the Federal Rules of Civil Procedure requires that a complaint include "a short and plain statement of the claim showing that the pleader is entitled to relief." To meet that standard, a plaintiff must allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Conversely, a complaint must be dismissed under Rule 12(b)(6) when a plaintiff's allegations fail to set forth a set of facts that, if true, would entitle the complainant to relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009); *Twombly*, 550 U.S. at 555 (holding that a claim must be facially plausible in order to survive a motion to dismiss).

The pleadings must raise the right to relief beyond the speculative level; a plaintiff must provide "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555 (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). Making such a determination is a "context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Iqbal*, 556 U.S. at 679. On a motion to dismiss, a court accepts as true a plaintiff's well-pleaded factual allegations and construes all factual inferences in the light most favorable to the plaintiff. *See Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). A court is not required to accept as true legal conclusions couched as factual allegations. *Iqbal*, 556 U.S. at 678.

In evaluating a Rule 12(b)(6) motion, review is ordinarily limited to the contents of the complaint and material properly submitted with the complaint. *Van Buskirk v. Cable News Network, Inc.*, 284 F.3d 977, 980 (9th Cir. 2002); *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1555, n.19 (9th Cir. 1990). Under the incorporation by reference doctrine, the court may also consider documents "whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleading." *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994), *overruled on other grounds by Galbraith v. Cty. of Santa Clara*, 307 F.3d 1119, 1121 (9th Cir. 2002). The court may treat such a document as "part of the complaint, and thus may assume that its contents are true for purposes of a motion to dismiss under Rule 12(b)(6)." *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003).

When a motion to dismiss is granted, the court must decide whether to grant leave to amend. The Ninth Circuit has a liberal policy favoring amendments, and thus leave to amend should be freely granted. *See, e.g.*, *DeSoto v. Yellow Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992). However, a court need not grant leave to amend when permitting a plaintiff to amend would be an exercise in futility. *See, e.g.*, *Rutman Wine Co. v. E. & J. Gallo Winery*, 829 F.2d 729, 738 (9th Cir. 1987) ("Denial of leave to amend is not an abuse of discretion where the pleadings before the court demonstrate that further amendment would be futile.").

III. Request for Judicial Notice

Defendant requests that the Court take judicial notice of full-size images of the packaging of the Chicken Products. *See* Dkt. 15-3, 15-4. Plaintiff does not oppose the request. Dkt. 22.

Under Federal Rule of Evidence 201, a court may take judicial notice of court filings and other matters of public record. *Harris v. Cnty. of Orange*, 682 F.3d 1126, 1132 (9th Cir. 2012) (noting that a court may take judicial notice of "undisputed matters of public record"); *see also Reyn's Pasta Bella, LLC v. Visa USA*, Inc., 442 F.3d 741, 746, n.6 (9th Cir. 2006) (taking judicial notice of pleadings, memoranda, and other court filings). The Court does not, however, take judicial notice of reasonably disputed facts contained within the judicially noticed documents. *See Lee v. City of L.A.*, 250 F.3d 668, 688–89 (9th Cir. 2001).

Here, because Plaintiff includes smaller images of Defendant's packaging in the Complaint and does not object to the Court's notice of the full-size images, the Court GRANTS Defendant's Request for Judicial Notice.

IV. Discussion

Here, consistent with other district courts in the Ninth Circuit to consider similar suits, the Court finds that Plaintiff's claims are preempted by the Poultry Products Inspection Act (21 U.S.C. §§ 451 *et seq.*, and hereinafter "PPIA") and the Federal Meat Inspection Act (21 U.S.C. §§ 601 *et seq.*, and hereinafter "FMIA").

Defendant explains, and Plaintiff does not contest, that the United States Department of Agriculture's ("USDA") Food Safety and Inspection Service ("FSIS") inspected and approved the labels of the challenged Chicken Products. Mem. at 6. By statute, pre-approval requires that the FSIS has determined that the product marking and labeling is not false or misleading. *See*, *e.g.*, 21 U.S.C. § 457(c); *accord* 21 U.S.C. § 607(d) ("[M]arking and labeling and containers which are not false or misleading and which are approved by the Secretary are permitted.").

Both the PPIA and FMIA have preemption clauses limited non-federal jurisdiction. Under the PPIA, "Marking, labeling, packaging, or ingredient requirements . . . in addition to, or different than, those made under this chapter may not be imposed by any State." § 467(e). The FMIA includes a nearly verbatim provision. *See* § 678.

Because the FSIS approved the labeling of the Chicken Products, including the specific representations challenged by Plaintiff, exposing Defendant to liability under state law on the basis of said labeling would establish a different or additional standard under state law. This is expressly prohibited by the PPIA and FMIA. The Court also finds no reason to distinguish between the packaging itself and an image of the packaging viewed over the Internet. Therefore, as to both in-store and online versions of the Chicken Products, the Court finds that Plaintiff's claims, arising as they do under California law, are federally preempted. The Complaint must therefore be dismissed with prejudice.

V. Disposition

For the reasons set forth above, the Court GRANTS Defendat's Motion to Dismiss. Because his claims are federally preempted, Plaintiff's Complaint is hereby DISMISSED WITH PREJUDICE.

The Clerk shall serve this minute order on the parties.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

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MINUTES FORM 11 Initials of Deputy Clerk: kd

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