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Food & Consumer Packaged Goods Litigation

Motion to Dismiss Granted in Case Alleging Whole Foods Overstated Weights of Products

Bassolino v. Whole Foods Group Inc., No. 1:15-cv-6046 (S.D.N.Y.): The Court granted Defendant's motion to dismiss this consolidated class action that followed the heels of an investigation by the New York City Department of Consumer Affairs ("DCA"). Plaintiffs asserted violations of New York's GBL and Executive Law and raised claims of unjust enrichment and breach of contract, based on the allegation that Defendant falsely labeled and overstated the weights of its pre-packaged products. The Court was persuaded by Defendant's argument that Plaintiffs lacked Article III standing because they had not adequately pled that they had suffered an injury-in-fact, nor had they alleged irreparable harm. In the Court's view, the consolidated amended complaint made broad and conclusory generalizations about Plaintiffs' purchase of overweight foods at Whole Foods. Because the allegations were unsupported by facts, the Court found they were insufficient to confer standing. The Court also found Plaintiffs' claims were doomed by the exclusive reliance on the DCA's press release, which found that food sold by weight was "routinely" overpriced. This statement and the DCA's underlying analysis fell far short of the allegations of a systematic, uniform practice of overcharging that would have been necessary for Plaintiffs to plead a non-speculative injury-in-fact. The Court granted Defendant's motion and dismissed Plaintiffs' claims with prejudice. [Order](#).

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