

Food for Thought: Motion to Dismiss Denied in False “GMO” Advertising Suit Against Chipotle

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A Florida federal judge declined to dismiss a proposed class action against Chipotle Mexican Grill, Inc. accusing the company of deceptively advertising that its foods contain non-GMO ingredients. The plaintiff alleged, in short, that Chipotle sources its meat and dairy products from animals raised on GMO-rich feed, hence the company’s food products are not GMO-free as advertised. Chipotle argued in its motion to dismiss that the plaintiff failed to establish standing because she never identified which product(s) she purchased and never alleged a threat of future harm. Chipotle further argued that no reasonable consumer would assume that an advertisement claiming “no GMO ingredients” means that the animals sourced for the food only consume non-GMO feed. The district judge found that, unlike in *Gallagher v. Chipotle Mexican Grill, Inc.*, No. 15-cv-03592-HSG (N.D. Cal. Feb. 5, 2016), the plaintiff in this case sufficiently alleged that she paid premium prices for Chipotle food, meat and dairy products, which she believed were GMO-free but which contained GMOs; therefore, the plaintiff satisfied Article III’s standing requirements, showed that her claim was facially plausible (at this stage in the proceedings) based on her definition of “non-GMO ingredients,” and alleged sufficient grounds to state a claim for unjust enrichment against Chipotle. The judge agreed, however, that the plaintiff failed to demonstrate that Chipotle’s continued GMO-free advertising would cause her irreparable harm, because there were no allegations in her complaint that she planned to continue purchasing Chipotle’s products; therefore, the judge dismissed her count seeking injunctive relief but granted her leave to amend. This case is set for trial in November 2016. Read the update [here](#).

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