UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	2:19-cv-05526-SVW	Date	9/16/20
Title	*Angela Diamos v. Walmart Inc. and International Vitamin Corporation*		

Present: The Honorable	STEPHEN V. WILSON, U.S. DISTRICT JUDGE	
Paul M. Cruz		N/A
Deputy Clerk		Court Reporter / Recorder
Attorneys Present for Plaintiffs:		Attorneys Present for Defendants:
N/A		N/A

Proceedings: ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTIONS TO DISMISS [55], [58].

Plaintiff Angela Diamos ("Plaintiff") filed a class action complaint in this lawsuit on June 25, 2019 against Walmart Inc. ("Walmart"). After this Court denied Walmart's motion to dismiss, Plaintiff filed a First Amended Complaint ("FAC") on July 8, 2020 that added International Vitamin Corporation ("IVC") as a defendant.

Before the Court are motions to dismiss the First Amended Complaint filed by Walmart and IVC (collectively "Defendants"). The Court has reviewed the parties' briefing and rules as follows.

Defendant Walmart Inc.'s motion to dismiss is GRANTED with respect to Counts IV and VI. Those claims are dismissed in light of Plaintiff's failure to provide pre-suit notice. *See Alvarez v. Chevron Corp.*, 656 F.3d 925, 931–32 (9th Cir. 2011); *see also Arata v. Tonegato*, 152 Cal. App. 2d 837, 841 (1957) ("[T]he filing of the suit cannot constitute notice").

Both Defendants' motions are DENIED with respect to all other grounds for dismissal.

First, the Court rejects Defendants' federal preemption argument for the same reasons discussed in the Court's order denying Walmart Inc.'s first motion to dismiss. *See* Dkt. 40.

Second, the Court rejects Defendants' argument that Plaintiff cannot seek equitable remedies where they have an adequate remedy at law, as Plaintiffs may pursue equitable claims in the alternative

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to legal remedies at the pleading stage. *See Marshall v. Danone US, Inc.*, 402 F. Supp. 3d 831, 834 (N.D. Cal. 2019).

Third, the Court finds that Plaintiff's First Amended Complaint ("FAC") pleads sufficient facts to state a claim against the retailer, Walmart Inc. *See Dorfman v. Nutramax Labs. Inc.*, 2013 WL 5353043 (S.D. Cal. Sept. 23, 2013).

Finally, the Court finds that all other asserted grounds for dismissal are more appropriately resolved at the class certification stage.

Defendants are ordered to file an answer to Plaintiff's FAC on or before September 25, 2020.

The Court notes that, although Plaintiff's allegations are sufficient at the pleading stage, Plaintiff's FAC still does not allege any compliance with the 12-sample testing regiment required under 21 C.F.R. § 101.9(g). As the Court previously noted, neither party disputes that—regardless of whether Plaintiff's testing is sufficient at the pleading stage—compliance with 21 C.F.R. § 101.9(g) is required for Plaintiff to ultimately prevail in this case. *See* Dkt. 40.

Accordingly, in the interest of judicial economy, the Court orders Defendants to file a motion for summary judgment addressing only that issue by October 30, 2020. *Wright v. Schock*, 742 F.2d 541, 543–44 (9th Cir. 1984) ("Under the proper circumstances—where it is more practicable to do so and where the parties will not suffer significant prejudice—the district court has discretion to rule on a motion for summary judgment before it decides the certification issue."); *see also Corbin v. Time Warner Entm't-Advance/Newhouse P'ship*, 821 F.3d 1069, 1074 (9th Cir. 2016) (affirming grant of summary judgment prior to class certification). The Court's normal briefing schedule will apply to Defendants' motion for summary judgment.

IT IS SO ORDERED.

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