

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

**JILL CLARK, on behalf of herself and
others similarly situated,**

Plaintiff,

v.

**SAMSUNG ELECTRONICS AMERICA,
INC.,**

Defendant.

Civil Action No.:
2:20-cv-12969-WJM-MF

OPINION

WILLIAM J. MARTINI, U.S.D.J.:

Plaintiff Jill Clark (“Plaintiff”) brings this putative class action against Defendant Samsung Electronics America, Inc. (“Defendant”). This case was originally filed in the United States District Court for the Central District of California (the “California District Court”) in a case currently captioned *Baclija v. Samsung Electronics America, Inc.*, Case No. 5:16-CV-01953-DMG-KK as part of a broader putative class action, and, pursuant to that court’s order, was subsequently transferred to this Court. ECF No. 115. Plaintiff alleges, among other things, that through marketing campaigns related to certain of its cellular telephone products, Defendant violated both the New Jersey Consumer Fraud Act (“NJCFA”), N.J.S.A. § 56:8-1, *et seq.* and the Magnuson-Moss Warranty Act (“MMWA”), 15 U.S.C. §§ 2301-2312, and is further liable for common law fraud and unjust enrichment. This matter comes before the Court on Defendant’s motion to dismiss the Second Amended Complaint (the “Motion”). ECF No.139. For the reasons set forth below, the Motion is **GRANTED**.

I. BACKGROUND

A. Factual Background¹

Defendant is a manufacturer of electronic products incorporated under the laws of New York with a principal place of business in New Jersey. SAC ¶ 6; McBeth Decl. ¶ 2, ECF No. 76. Beginning in 2016, Defendant began selling its popular “Galaxy S7” series of cellphones.² SAC ¶ 14. As part of its marketing efforts to promote sales of the Galaxy

¹ Unless otherwise indicated, all facts in this section are taken from the Second Amended Complaint (the “SAC”), ECF No. 79-1.

² The Galaxy S7 series actually consists of three separate devices: the Galaxy S7, the Galaxy S7 Edge, and the Galaxy S7 Active. The SAC does not differentiate between these products, and

S7, Defendant engaged in a national advertising campaign highlighting the Galaxy S7's features, including its ability to resist water damage in up to five (5) feet of water for up to thirty (30) minutes. *Id.* ¶ 18. Among these advertisements were television commercials featuring people pouring champagne onto a Galaxy S7, dunking a Galaxy S7 in, or spraying a Galaxy S7 with, water, and using a Galaxy S7 while engaged in water-based sporting activities such as snorkeling, kayaking, and surfing. *Id.* ¶ 19. Defendant's website also prominently featured the Galaxy S7 and stated that the phones were water-resistant. *Id.* ¶ 20.

On or about December 27, 2017, after seeing advertisements and promotional materials describing its water resistance, Plaintiff purchased a Galaxy S7 from a third-party electronics retailer. *Id.* ¶¶ 32-33. Plaintiff alleges that she would not have purchased a Galaxy S7 but-for the phone's water-resistant features and Defendant's representations with respect thereto. *Id.* ¶¶ 33-34. Upon purchasing her Galaxy S7, Plaintiff alleges the phone was not as water resistant as Defendant advertised, and that it would begin "acting strange" whenever it was exposed to water. *Id.* ¶ 35. For example, Plaintiff alleges that the phone would go "'haywire,' with a flashing and jumping screen," whenever Plaintiff used her phone while her hand was wet, and that if a single drop of water were on the phone's screen, she would have to shut the phone off completely "dry it off, wait, and restart it." *Id.* Plaintiff contacted Defendant by phone and complained about these issues but alleges that Defendant did not address her concerns, did not follow up on her complaints, and refused to provide in-warranty repairs or offer replacement devices. *Id.* ¶¶ 36-37.

Plaintiff further alleges that the structural design of the Galaxy S7 itself suggests that, despite its advertisements to the contrary, Defendant knowingly manufactured the Galaxy S7 to not be water-resistant. *Id.* ¶ 38. Specifically, Plaintiff alleges that the internal components of a Galaxy S7 feature white moisture-detecting stickers that turn a pinkish color upon exposure to any moisture or liquid. *Id.* Plaintiff claims that these stickers do not contribute to the Galaxy S7's functionality but are merely indicators to repair technicians that the device was exposed to moisture or liquid. *Id.* ¶ 39. In addition, Plaintiff alleges that the Galaxy S7's circuit board is not protected by a "water-repellant coating" and that the "gaskets and seals adjoining the [Galaxy S7's] enclosure deteriorate with ordinary usage" rendering the enclosure "incapable of protecting the circuit board from damage caused by direct exposure to saltwater or jets of water." *Id.* ¶ 40.

B. Procedural History

This case has a long and complicated procedural history. As such, the Court will briefly recount the posture of this case only to the extent necessary for the resolution of the instant Motion.

On September 9, 2016, this putative class action was commenced by the filing of a complaint in the United States District Court for the Central District of California. The

unless otherwise specified, this Opinion refers to these devices collectively as the "Galaxy S7."

Complaint, and the subsequently filed First Amended Complaint, sought to pursue claims on behalf of both a nationwide class and California subclass of individuals who purchased Galaxy S7 devices. However, after several motions to dismiss and to compel arbitration, Defendant consented to the filing of the Second Amended Complaint pursuant to a stipulation with the then-named plaintiffs Dulce Alondra Velasquez-Reyes and Ken Shalley (the “Stipulation”), ECF No. 79, which was approved and entered by the California District Court on May 18, 2020. ECF No. 82. The Stipulation provided, among other things, for the filing of the Second Amended Complaint on the conditions that the plaintiffs remove their nationwide class allegations and would not seek leave to further amend the Complaint. Stipulation at 3.

Following entry of the Stipulation, the plaintiffs filed the SAC. The SAC removed the nationwide class allegations, removed Ken Shalley as a named plaintiff, and added two new named plaintiffs, Martin Bacliija and the Plaintiff in this action, Jill Clark.³ Along with the addition of Clark as a named plaintiff, the SAC sought to pursue claims on behalf of two putative classes: (1) a class comprised of individuals who purchased Galaxy S7 devices in California; and (2) a class comprised of individuals who purchased Galaxy S7 devices in New Jersey. Following Defendant’s motion to dismiss the SAC, and Plaintiff’s unopposed cross motion to transfer venue, the claims of the putative New Jersey class, lead by Plaintiff as named representative, were severed from the California action and transferred to this Court. Before the Court now is Defendant’s motion to dismiss the SAC.

II. LEGAL STANDARD

A. Dismissal for Lack of Subject Matter Jurisdiction

Under Rule 12(b)(1) of the Federal Rules of Civil Procedure (“FRCP”), a case may be dismissed “for lack of subject matter jurisdiction.” Fed. R. Civ. P. 12(b)(1). Where, as here, the Court’s subject matter jurisdiction is challenged, the party invoking the Court’s jurisdiction, here Plaintiff, bears the burden of persuasion. *Frederico v. Home Depot*, 507 F.3d 188, 193 (3d Cir. 2007). A challenge to the Court’s subject matter jurisdiction may be either “facial” or “factual.” *In re Schering Plough Corp. Intron/Temodar Consumer Class Action*, 678 F.3d 235, 243 (3d Cir. 2012) (citing *Mortensen v. First Fed. Sav. & Loan Ass’n*, 549 F.2d 884, 891 (3d Cir. 1977)). A facial attack is one that challenges the legal sufficiency of the pleadings and asserts that, on its face, a given claim cannot invoke the subject matter jurisdiction of the Court because some jurisdictional defect is present, such as the absence of a federal question or any indication of a diversity of citizenship between the parties. *Constitution Party of Pa. v. Aichele*, 757 F.3d 347, 358 (3d Cir. 2014). In considering a facial attack on its jurisdiction, a Court applies the same standard of review as a typical motion to dismiss brought under FRCP 12(b)(6): it “must only consider the allegations of the complaint and documents referenced therein and attached thereto, in the

³ Shortly after the filing of the Second Amended Complaint, the parties agreed to the stipulated dismissal of Velasquez-Reyes, leaving only Bacliija and Clark as the named plaintiffs in the case. ECF No. 97.

light most favorable to the plaintiff.” *Schering Plough*, 678 F.3d at 243 (quoting *Gould Elecs. Inc. v. United States*, 220 F.3d 169, 176 (3d Cir. 2000)). Assuming such allegations to be true, the Court must determine whether Plaintiff has alleged a plausible basis for the Court’s jurisdiction. See *Schuchardt v. President of the United States*, 839 F.3d 336, 344 (3d Cir. 2016) (noting that in facial challenge to jurisdiction based on lack of standing under FRCP 12(b)(1), plaintiff must “allege facts that affirmatively and plausibly suggest that [he] has standing to sue”).

A factual attack on the Court’s jurisdiction, however, is one based on the specific jurisdictional facts of the case. In other words, a “factual attack concerns the actual failure of a [plaintiff’s] claims to comport [factually] with the jurisdictional prerequisites.” *CNA v. United States*, 535 F.3d 132, 139 (3d Cir. 2008) (alterations in original). In making a factual attack on the Court’s subject matter jurisdiction, a defendant can submit proof that jurisdiction does not in fact exist, even though it may have been properly pleaded by the plaintiff in their complaint. *Aichele*, 77 F.3d at 358. As such, in considering a factual attack on its jurisdiction, the Court is not limited to the pleadings, and may weigh and consider outside evidence for itself to determine whether subject matter jurisdiction exists. *Gould Elecs., Inc. v. United States*, 220 F.3d 169, 176-77 (3d Cir. 2000). Importantly, unlike a facial attack, no presumption of truthfulness attaches to the plaintiff’s allegations of jurisdictional facts in a factual attack. *CNA*, 535 F.3d at 139.

B. Dismissal for Failure to State a Claim

FRCP 12(b)(6) provides for the dismissal of a complaint if the plaintiff fails to state a claim upon which relief can be granted. The movant bears the burden of showing that no claim has been stated. *Hedges v. United States*, 404 F.3d 744, 750 (3d Cir. 2005). In deciding a motion to dismiss under FRCP 12(b)(6), “all allegations in the complaint must be accepted as true, and the plaintiff must be given the benefit of every favorable inference to be drawn therefrom.” *Malleus v. George*, 641 F.3d 560, 563 (3d Cir. 2011). The court need not accept as true “legal conclusions,” and “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

To survive a 12(b)(6) motion, “a complaint must contain sufficient factual matter . . . to ‘state a claim to relief that is plausible on its face.’” *Id.* (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* “The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.*

III. DISCUSSION

Defendant moves to dismiss each of the counts asserted against it in the Second Amended Complaint on two separate grounds: (1) the Court lacks subject matter jurisdiction to hear the claims; and (2) Plaintiffs have failed to sufficiently state a claim upon which relief can be granted. The Court will address each ground for dismissal in turn.

A. Dismissal for Lack of Subject Matter Jurisdiction

The Court's jurisdiction in this case is premised on the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1332(d). Under CAFA, federal district courts have original jurisdiction over class actions raising state law claims where: "(1) the amount in controversy exceeds \$5,000,000, as aggregated across all individual claims; (2) any member of a class of plaintiffs is a citizen of a state different from any defendant; and (3) the class has at least 100 members." *Judon v. Travelers Prop. Cas. Co. of Am.*, 773 F.3d 495, 500 (3d Cir. 2014) (citing § 1332(d)(2), (5)(B), (6)). Defendant argues that Plaintiff has failed to meet her burden that the jurisdictional prerequisites with respect to minimum diversity and the amount-in-controversy under CAFA have been met. Plaintiff responds that the allegations in the Complaint, as well as the evidence submitted with her opposition brief, are sufficient to establish CAFA jurisdiction. The Court agrees with Defendant.

1. Defendant Raises a Facial Challenge to Jurisdiction

In resolving a challenge to its subject matter jurisdiction over any claim, the Court must first determine whether the party challenging jurisdiction raises a "facial" or a "factual" attack "because that distinction determines how the pleadings must be reviewed." *Schering Plough*, 678 F.3d at 243. Here, there appears to be some disagreement or confusion over the nature of Defendant's jurisdictional challenge in this case and the governing standard. Defendant argues that Plaintiff has failed to sufficiently plead the necessary elements for jurisdiction under CAFA in the SAC and has further failed to show, by a preponderance of the evidence, that CAFA jurisdiction exists. In essence, Defendant appears to be making both a facial attack on the sufficiency of the SAC as well as a factual attack on jurisdiction. Plaintiff, meanwhile, argues that at this stage of the litigation, Defendant may only properly raise a facial attack, not a factual attack, and that, under any standard, jurisdiction exists in this case.

Though stylized as both a facial and factual challenge to the Court's jurisdiction, the Court finds that Defendant has raised a purely facial challenge to CAFA jurisdiction. Rather than raise any particular factual disputes, Defendant's arguments rest almost entirely on the sufficiency of Plaintiff's allegations in the SAC. *Red Hawk Fire & Sec., LLC v. Siemens Indus. Inc.*, 449 F. Supp. 3d 449, 458 (D.N.J. 2020); *see, e.g.*, Mot. at 9-13 (arguing that Plaintiff has not alleged any facts that support CAFA jurisdiction); Reply at 7 n.6 ("Clark's SAC failed to allege any facts showing jurisdiction, leaving Samsung with no specific facts to contest."). Moreover, Defendant has not filed any answer to the SAC or controverted any of the factual allegations therein. *Aichele*, 757 F.3d at 358.⁴

⁴ Defendant suggests that its prior answer to the original complaint suffices for purposes of bringing a factual attack to jurisdiction. The Court disagrees. First, Defendant's prior answer did not relate at all to the New Jersey-based allegations raised by Plaintiff, who was not yet a party to the action. Second, as noted above, the clear thrust of Defendant's argument focuses on the sufficiency of Plaintiff's allegations, which, by definition, is a facial attack on jurisdiction.

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