NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IRIDA KIMCA, DERRICK SAMPSON, BRITTANY TOMKO, JANCY ORTIZ, DINATRA WYNN, SARAH WARDALE, and JUANITA CORNETT, *individually and on behalf of all others similarly situated,*	**Civil Action No. 21-12977 (SRC)**
Plaintiffs,	**OPINION**
v.	
SPROUT FOODS, INC. d/b/a SPROUT ORGANIC FOODS and SPROUT NUTRITION,	
Defendant.	

CHESLER, District Judge

This matter comes before the Court upon Defendant Sprout Foods, Inc.'s ("Defendant" or "Sprout") motion to dismiss the putative class action complaint filed by Plaintiffs Irida Kimca, Derrick Sampson, Brittany Tomko, Jancy Ortiz, Dinatra Wynn, Sarah Wardale, and Juanita Cornett (collectively "Plaintiffs"). Plaintiffs oppose Defendant's motion. The Court, having considered the papers filed by the parties, proceeds to rule on the motion without oral argument pursuant to Federal Rule of Civil Procedure 78. For the reasons that follow, the Court will grant Defendant's motion and dismiss Plaintiffs' First Amended Complaint without prejudice.

I. BACKGROUND

This case arises out of Defendant's marketing and advertising of its baby food products. The First Amended Complaint ("FAC") alleges Sprout's baby food products contained dangerous

levels of heavy metals. (FAC ¶¶ 6, 7, 81). Nevertheless, Plaintiffs allege Sprout "negligently, recklessly, and/or knowingly" failed to disclose to consumers the presence of these heavy metals, (FAC ¶ 81), and, even further, marketed its products as clean, healthy, and organic, (FAC ¶¶ 87, 88). As such, Plaintiffs, and others, purchased Sprout's products in reliance on these false and misleading representations. (FAC ¶¶ 20, 21, 22, 23, 24, 25, 26, 37).

Plaintiffs identify ten Sprout products that allegedly contained unsafe levels of heavy metals: Prunes Organic Baby Food, Carrot Apple Mango Organic Baby Food, Mixed Berry Oatmeal Organic Baby Food, Garden Vegetables Brown Rice with Turkey Organic Baby Food, Organic Veggie Power – Sweet Potato with Mango, Apricot & Carrot, Organic Puffs Baby Cereal Snack, Organic Crispy Chews Red Fruit Beet & Berry with Crispy Brown Rice Toddler Fruit Snack, Organic Wafflez, Organic Curlz, and Organic Crinklez. (FAC ¶ 6). The Court will refer to these products as the "Baby Food Products." According to the FAC, each of the Baby Food Products have been "tested and confirmed to contain" greater than 10 parts per billions (ppb) of arsenic, greater than 5 ppb of cadmium, greater than 5 ppb of lead, "and/or" greater than 5 ppb of mercury. (FAC ¶ 6 n.1). This testing was done by Plaintiffs' counsel, the non-profit organization Healthy Babies Bright Futures ("HBBF"), and Consumer Reports. (FAC ¶¶ 54–60).

Plaintiffs allege the amount of arsenic, lead, cadmium, and mercury in the Baby Food Products was harmful to their children. In support of this assertion, Plaintiffs rely on certain standards set forth by the Food and Drug Administration ("FDA"), the Environmental Protection Agency ("EPA"), and other organizations. With respect to arsenic, the FAC explains that the FDA and EPA have set a 10 ppb limit on arsenic in bottled and drinking water, respectively. (FAC ¶ 70). As to lead, the FAC identifies several possible standards concerning the potential danger arising from the metal's presence: one report from a non-profit concludes that "no safe level of

exposure has been identified," several different organizations recommend that lead in baby foods not exceed 1 ppb, and the European Union has set the limit at 20 ppb for infant formula. (FAC ¶¶ 71, 73). With respect to mercury, the FAC notes that the EPA has set a maximum of 2 ppb in drinking water. (FAC ¶ 77). Finally, regarding cadmium, the FAC states that the EPA and FDA have set a limit of 5 ppb in bottled and drinking water, and the World Health Organization ("WHO") has set a limit of 3 ppb in drinking water. (FAC ¶ 80).

To further bolster their allegations, plaintiffs also describe the deleterious health effects of heavy metals. They explain that lead, arsenic, cadmium, and mercury are all "neurotoxins," which alter the nervous system. (FAC ¶ 62). The FAC alleges that exposure to these heavy metals can cause cancer, the permanent loss of intellectual capacity, and behavioral disorders. (FAC ¶ 63). Because of these harmful effects, the FDA and WHO have recognized that arsenic, cadmium, lead, and mercury are dangerous to human health. (FAC ¶ 64). The FAC also describes the process of "bioaccumulation," through which heavy metals accumulate in the body over time, making the consumption of these metals even in small doses harmful, especially for vulnerable infants and babies. (FAC ¶¶ 66–68).

Finally, Plaintiffs allege that, despite the presence of these heavy metals in the Baby Food Products, Sprout marketed its food as safe and the "healthiest . . . on the market." (FAC ¶ 29). They cite Sprout's marketing materials, which labeled Sprout's food as "organic," "nutrient-dense," "wholesome," and "clean," among other descriptors. (FAC ¶¶ 32–35). Moreover, the FAC references the displays Sprout sent to retailers, which Plaintiffs allege "were designed to make consumers believe that Sprout [b]aby [f]ood was healthy and pure," and, thus did not contain heavy metals. (FAC ¶¶ 36, 37) (internal quotation omitted). As a result of these purportedly

misleading claims, Plaintiffs allege they and other consumers purchased Sprout's food for their children. (FAC ¶ 37).

The FAC contains eleven causes of action based on the above facts.[1] (FAC ¶¶ 108–90). It includes claims for breach of express and implied warranties, (FAC ¶¶ 108–28), negligent misrepresentation, (FAC ¶¶ 129–35), fraud, (FAC ¶¶ 136–40), unjust enrichment, (FAC ¶¶ 141–47), and violation of the consumer protection laws of various states, (FAC ¶¶ 148–90). Defendant has brought a motion to dismiss the FAC on a number of grounds. (ECF No. 45). Among other reasons, Defendant argues that the FAC should be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(1) because Plaintiffs do not have standing to pursue the monetary and injunctive relief they seek. (Def. Br. at 13–20, 38–39). As explained more fully below, the Court agrees with Defendant. Thus, the FAC will be dismissed without prejudice.[2]

II. DISCUSSION

A. Legal Standards

1. Standard of Review

Pursuant to Rule 12(b)(1), a court must grant a motion to dismiss if it lacks subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). "A motion to dismiss for want of standing is . . . properly brought pursuant to Rule 12(b)(1), because standing is a jurisdictional matter." Ballentine v. United States, 486 F.3d 806, 810 (3d Cir. 2007).

[1] Plaintiffs seek to certify eight separate classes pursuant to Federal Rule of Civil Procedure 23: one class including all consumers who purchased the Baby Food Products in the United States (the "Nationwide Class"), six separate classes comprising consumers from Connecticut, Illinois, New Jersey, Texas, New York, and Georgia, respectively (the "State Classes"), and a class seeking injunctive relief pursuant to Rule 23(b)(2) (the "Injunctive Relief Class"). (FAC ¶¶ 97–113).

[2] Because the Court dismisses the FAC on the threshold issue of standing, it need not address Sprout's other proposed grounds for dismissal here.

The Third Circuit has held that a motion to dismiss for lack of standing is a facial attack, rather than a factual attack, because it contests the sufficiency of the pleadings. In re Schering Plough Corp. Intron/Temodar Consumer Class Action, 678 F.3d 235, 243 (3d Cir. 2012); S.S. v. Hillsborough Twp. Bd. of Educ., No. 20-cv-13077, 2022 WL 807371, at *4 (D.N.J. Mar. 17, 2022) ("The Court of Appeals for the Third Circuit has held that motions to dismiss for lack of standing are best understood as facial attacks."). In reviewing a facial attack, a court applies the same standard it would apply under Rule 12(b)(6). Constitution Party of Pa. v. Aichele, 757 F.3d 347, 358 (3d Cir. 2014); In re Schering Plough Corp., 678 F.3d at 243. As such, the Court will apply the familiar Rule 12(b)(6) standard to Sprout's standing arguments.

Under this standard, "[w]ith respect to 12(b)(1) motions in particular, '[t]he plaintiff must assert facts that affirmatively and plausibly suggest that the pleader has the right he claims (here, the right to jurisdiction), rather than facts that are merely consistent with such a right.'" In re Schering Plough Corp., 678 F.3d at 244 (alteration in original) (quoting Stalley v. Cath. Health Initiatives, 509 F.3d 517, 521 (8th Cir. 2007)). A complaint will meet this plausibility standard when it includes more than mere "labels and conclusions." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). "[T]he tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

2. Article III Standing and the Injury Requirement

Article III of the Constitution limits the federal judicial power to "cases" and "controversies." U.S. Const., art. III, § 2. Standing—one of several justiciability doctrines that enforces Article III's case-or-controversy requirement—requires the plaintiff to allege "such a personal stake in the outcome of the controversy as to warrant his invocation of federal-court jurisdiction and to justify the exercise of the court's remedial powers on his behalf." Warth v.

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.