UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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AMY WARREN and IESHA CONLEY, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

WHOLE FOODS MARKET GROUP, INC.,

Defendant.
----------x

MEMORANDUM AND ORDER

19-CV-6448 (RPK) (LB)

RACHEL P. KOVNER, United States District Judge:

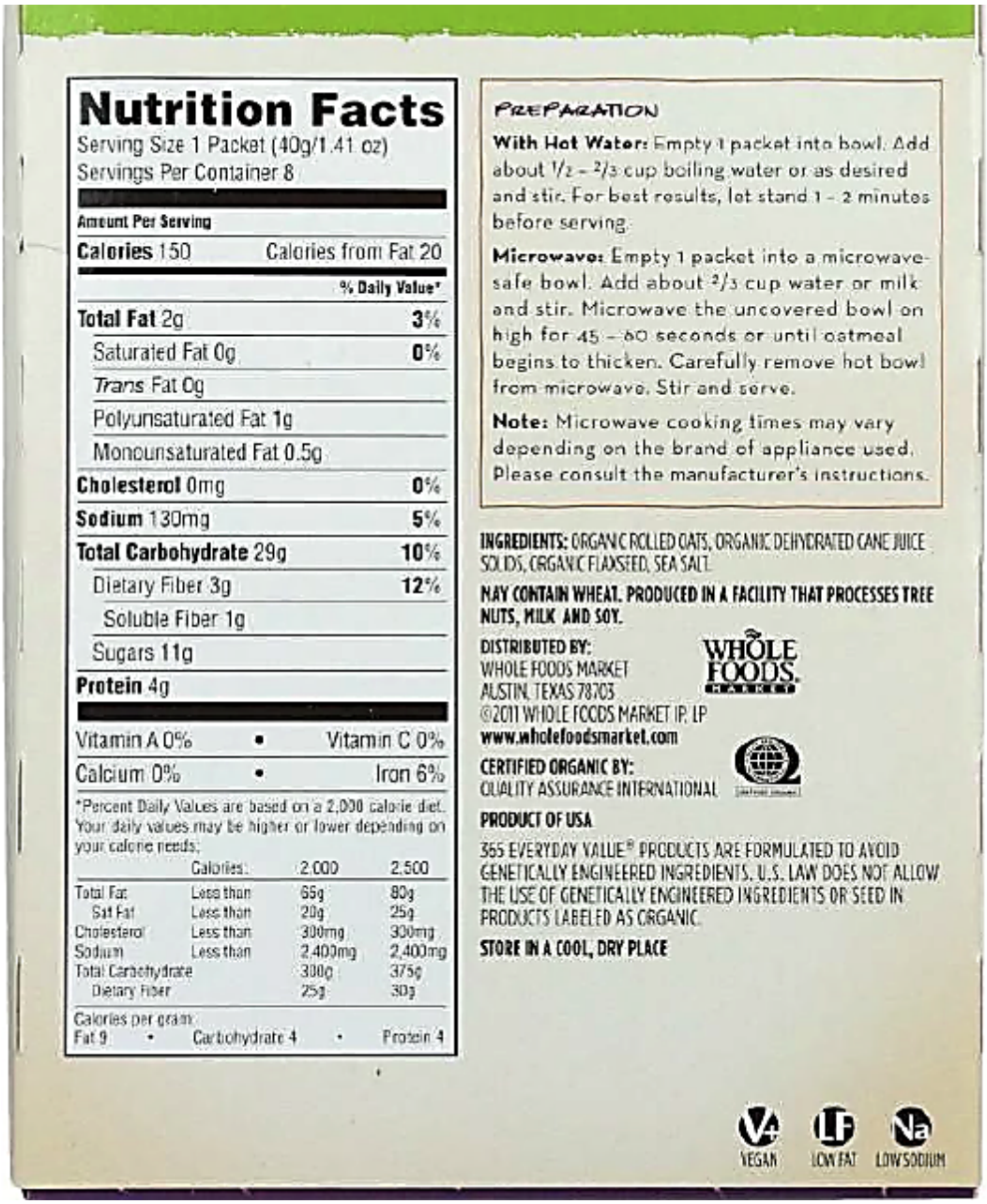
On behalf of themselves and all New Yorkers similarly situated, sugar-conscious plaintiffs Amy Warren and Iesha Conley bring this suit against defendant Whole Foods Market Group, Inc. ("Whole Foods"). Ms. Warren and Ms. Conley assert that the packaging of Whole Foods' "Oats & Flax" instant oatmeal tricked them into paying inflated prices. Whole Foods now moves to dismiss. I grant defendant's motion.

BACKGROUND

Under its 365 Everyday Value brand, Whole Foods sells "Oats & Flax Instant Oatmeal." Am. Compl. ¶ 9 (Dkt. #15). The front of each oatmeal box bears a stamp on its bottom right corner that says "100% Whole Grain – 18g or more per serving."

Am. Compl. 2 fig.1: The Box Front

The back lists the oatmeal's ingredients: "organic rolled oats, organic dehydrated cane juice solids, organic flaxseed, sea salt." *Id.* ¶ 10. "[D]ehydrated cane juice solids," as it turns out, is just another term for "sugar." *Id.* ¶ 16. Immediately to the left of the ingredient list, in text the same size or large, the nutrition label states "Sugars 11g." Def.'s Ex. 1 (Dkt. #22-1) ("Ex. 1").



Nutrition Facts

Serving Size 1 Packet (40g/1.41 oz)
Servings Per Container 8

Amount Per Serving	
Calories 150	Calories from Fat 20
	% Daily Value*
Total Fat 2g	**3%**
Saturated Fat 0g	**0%**
Trans Fat 0g	
Polyunsaturated Fat 1g	
Monounsaturated Fat 0.5g	
Cholesterol 0mg	**0%**
Sodium 130mg	**5%**
Total Carbohydrate 29g	**10%**
Dietary Fiber 3g	**12%**
Soluble Fiber 1g	
Sugars 11g	
Protein 4g	

Vitamin A 0% • Vitamin C 0%
Calcium 0% • Iron 6%

*Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Calories per gram:
Fat 9 • Carbohydrate 4 • Protein 4

PREPARATION

With Hot Water: Empty 1 packet into bowl. Add about 1/2 – 2/3 cup boiling water or as desired and stir. For best results, let stand 1 – 2 minutes before serving.

Microwave: Empty 1 packet into a microwave-safe bowl. Add about 2/3 cup water or milk and stir. Microwave the uncovered bowl on high for 45 – 60 seconds or until oatmeal begins to thicken. Carefully remove hot bowl from microwave. Stir and serve.

Note: Microwave cooking times may vary depending on the brand of appliance used. Please consult the manufacturer's instructions.

INGREDIENTS: ORGANIC ROLLED OATS, ORGANIC DEHYDRATED CANE JUICE SOLIDS, ORGANIC FLAXSEED, SEA SALT.

MAY CONTAIN WHEAT. PRODUCED IN A FACILITY THAT PROCESSES TREE NUTS, MILK AND SOY.

DISTRIBUTED BY:
WHOLE FOODS MARKET
AUSTIN, TEXAS 78703
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www.wholefoodsmarket.com

CERTIFIED ORGANIC BY:
QUALITY ASSURANCE INTERNATIONAL

PRODUCT OF USA

365 EVERYDAY VALUE® PRODUCTS ARE FORMULATED TO AVOID GENETICALLY ENGINEERED INGREDIENTS. U.S. LAW DOES NOT ALLOW THE USE OF GENETICALLY ENGINEERED INGREDIENTS OR SEED IN PRODUCTS LABELED AS ORGANIC.

STORE IN A COOL, DRY PLACE

VEGAN LOW FAT LOW SODIUM

Ex. 1: The Back Label

Amy Warren and Iesha Conley claim this packaging misled them into buying Whole Foods' oatmeal at premium prices. *Id.* ¶ 6. Hoping to avoid added sugar, they allege that they purchased the oatmeal believing that "dehydrated cane juice solids" referred to some sort of fruit juice—not sugar. *Id.* ¶ 71. Ms. Warren and Ms. Conley also say the whole grain stamp misled them into thinking the oatmeal contains only whole grains. *Id.* ¶¶ 30-31. In fact, though, it

contains flax, which, they note, is not a grain at all, but an "oilseed." *Id.* ¶ 31. Had they known the reality about Whole Foods' oatmeal, they say, they would never have paid so much. *Id.* ¶¶ 36-37. In their complaint, plaintiffs cite Food and Drug Administration ("FDA") guidance heavily. *Id*. ¶¶ 12-25.

Ms. Warren and Ms. Conley now bring this putative class action on behalf of themselves and all others in New York who were deceived by the packaging. Seeking damages and injunctive relief, *id*. ¶¶ 59, 65, they allege violations of (i) Sections 349 and (ii) Section 350 of New York's General Business Law ("GBL"), and they also pursue claims of (iii) negligent misrepresentation; (iv) breach of express warranty; (v) breach of implied warranty; (vi) breach of a written warranty under the Magnuson-Moss Warranty Act ("MMWA"); and (vii) unjust enrichment, *id*. ¶¶ 66-89. Whole Foods has moved to dismiss all claims.

STANDARD OF REVIEW

When evaluating a motion to dismiss under Rule 12(b)(6), a court must "accept[] all factual claims in the complaint as true, and draw[] all reasonable inferences in the plaintiff's favor." *Lotes Co., Ltd. v. Hon Hai Precision Indus. Co*., 753 F.3d 395, 403 (2d Cir. 2014) (quoting *Famous Horse Inc. v. 5th Ave. Photo Inc*., 624 F.3d 106, 108 (2d Cir. 2010)). To survive the motion, the complaint must allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). This means, for example, that a complaint is properly dismissed where, as a matter of law, "the allegations in a complaint, however true, could not raise a claim of entitlement to relief." *Twombly*, 550 U.S. at 558.

Where, as here, plaintiffs allege negligent misrepresentation, that claim must satisfy the heightened pleading requirements of Federal Rule of Civil Procedure 9(b). *See Aetna Cas. & Sur. Co. v. Aniero Concrete Co.*, 404 F.3d 566, 583 (2d Cir. 2005). Under Rule 9(b), plaintiffs must allege knowledge and intent, and they may do so "through allegations of a motive to deceive and access to accurate information." *Id.* at 579 (quoting *Cohen v. Koenig*, 25 F.3d 1168, 1173-74 (2d Cir. 1994)). To succeed, these allegations must be backed by a showing of "facts giving rise to a strong inference of fraudulent intent." *IUE AFL-CIO Pension Fund v. Herrmann*, 9 F.3d 1049, 1057 (2d Cir. 1993) (internal quotations omitted). Additionally, a plaintiff must allege "the time, place, speaker and sometimes even the content of the alleged misrepresentation." *Ibid*.

DISCUSSION

Seeking damages and injunctive relief, plaintiffs allege violations of (i) Section 349 and (ii) Section 350 of New York's General Business Law, which prohibit deceptive acts and false advertising respectively; (iii) negligent misrepresentation; (iv) breach of express warranty; (v) breach of implied warranty; (vi) breach of a written warranty under the MMWA; and (vii) unjust enrichment. Am. Compl. ¶¶ 59, 65-89. Whole Foods challenges plaintiffs' standing to seek injunctive relief and moves to dismiss their suit in its entirety. For the reasons that follow, I dismiss all seven claims. Since plaintiffs' claims all fail as a matter of law, the matter of injunctive standing need not be decided. *See Axon v. Florida's Nat. Growers, Inc.*, 813 F. App'x 701, 703 n.1 (2d Cir. 2020) (summary order); *Wallace v. Wise Foods, Inc.*, No. 20-CV-6831 (JPO), 2021 WL 3163599, at *1 n.2 (S.D.N.Y. July 26, 2021); *Boswell v. Bimbo Bakeries USA, Inc.*, No. 20-CV-8923 (JMF), 2021 WL 5144552, at *4 n.5 (S.D.N.Y. Nov. 4, 2021).

I. Plaintiffs Fail to State Claims Under Sections 349 and 350

Sections 349 and 350 of New York General Business Law protect New York's consumers. Section 349 prohibits "[d]eceptive acts or practices in the conduct of any business, trade or

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