

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,

MEMORANDUM AND ORDER

v.

19-CV-6448 (RPK) (LB)

WHOLE FOODS MARKET GROUP, INC.,

Defendant.

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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.

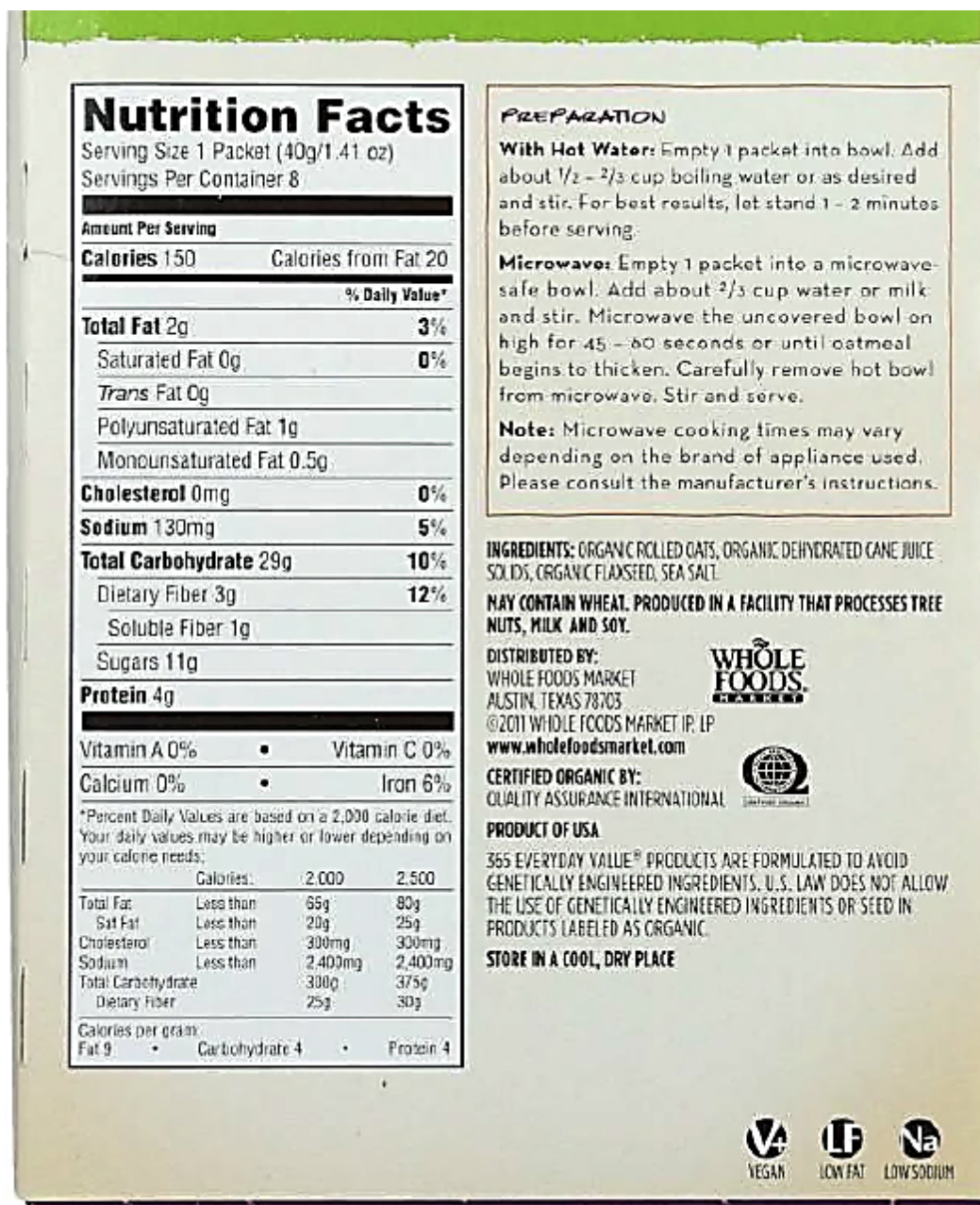
BACKGROUND

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”).



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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