

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
KALMAN ROSENFELD, individually  
and on behalf of all others similarly  
situated,

Plaintiff,

-against-

AC2T, INC., BONNER ANALYTICAL  
TESTING CO., and JEREMY HIRSCH,

Defendants.  
-----X

**MEMORANDUM AND ORDER**

Case No. 1:20-cv-04662-FB-PK

*Appearances:*

*For the Plaintiffs:*

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*For the Defendants:*

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**BLOCK, Senior District Judge:**

Plaintiff Kalman Rosenfeld (“Rosenfeld”) claims that Defendants AC2T, Inc. (“AC2T”), Bonner Analytical Testing Co. (“Bonner”), and Jeremy Hirsch (“Hirsch”) fraudulently marketed a mosquito control product called “Spartan

Mosquito Eradicator.” Bonner and Hirsch have moved to dismiss the complaint as against them for lack of personal jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(2), and each defendant has moved to dismiss the complaint in its entirety for failure to state a claim pursuant to Rule 12(b)(6). For the following reasons, this Court GRANTS Bonner and Hirsch’s motions to dismiss for lack of personal jurisdiction and DENIES AC2T’s remaining motion to dismiss for failure to state a claim.

### I.

The following facts are taken from the complaint. For the purposes of the pending motions to dismiss, the Court accepts them as true and draws all reasonable inferences in favor of the plaintiff. *See, e.g., Gamm v. Sanderson Farms, Inc.*, 944 F.3d 455, 458 (2d Cir. 2019).

In the summer of 2019, Rosenfeld purchased a mosquito control product known as “Spartan Mosquito Eradicator” (“Spartan”), believing it would “effectively eliminate mosquitos.” Complaint at ¶ 33. Rosenfeld used Spartan as directed but was disappointed when it did not provide “effective mosquito control.” *Id.*

Each defendant is connected to Spartan, which is manufactured and sold by AC2T. *Id.* at ¶ 34. Hirsch served as president and spokesperson of AC2T. *Id.* at ¶ 35. And Bonner conducted allegedly fraudulent testing of Spartan. *Id.* at ¶ 36.

Spartan’s advertising represents that the product will “significantly decrease[] [mosquito] population within 15 days,” and “[p]rovid[e] up to 95% mosquito control for up to 90 days.” *Id.* at ¶ 3. The product purports to work through three crucial ingredients: sugar, salt, and yeast. *Id.* at ¶ 7. Spartan advertising represents that when the product is mixed with water and ingested by a mosquito, the “crystalline structure” of salt cuts the mosquito’s stomach, “causing it to rupture.” *Id.* at ¶ 8. Meanwhile, the fermentation process of the yeast produces carbon dioxide inside the mosquito, also causing its stomach to rupture. *Id.*

The only problem, according to Rosenfeld, is that none of this is true. *Id.* at ¶ 9. Rosenfeld alleges that, as a matter of biology, sugar, salt, yeast and water simply cannot kill a mosquito in the way that the Spartan advertising represents. *Id.* at ¶ 10. Rosenfeld cites a number of studies to this effect. Moreover, he alleges that the defendants knew Spartan was an ineffective product, and nonetheless produced a phony study allegedly demonstrating Spartan’s efficacy, which they used to fraudulently market and sell it. *Id.* at ¶¶ 21, 25.

On September 30, 2020, Rosenfeld filed this lawsuit, alleging counts of deceptive acts or practices (Count I); false advertising (Count II); unjust enrichment (Count III); breach of express warranty (Count IV); violations of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 *et seq.* (Count V); and fraud (Count VI). Complaint at ¶¶ 47-87.

## II.

### A.

There are two means by which a court can acquire personal jurisdiction over a defendant: generally and specifically. *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1024 (2021). A court has general jurisdiction when a defendant is “essentially at home” in the forum state. *Id.* By contrast, specific jurisdiction arises only where a defendant makes deliberate contacts with the forum state and the plaintiff’s claim arises from those contacts. *Id.* at 1025.

To fend off a Rule 12(b)(2) jurisdictional challenge, a plaintiff must demonstrate a prima facie case for jurisdiction. *Charles Schwab Corp. v. Bank of Am. Corp.*, 883 F.3d 68, 81 (2d Cir. 2018). “Such a showing entails making legally sufficient allegations of jurisdiction, including an averment of facts that, if credited[,] would suffice to establish jurisdiction over the defendant.” *Id.* (quoting *Penguin Grp. (USA) v. Am. Buddha*, 609 F.3d 30, 34-35 (2d Cir. 2010)).

### B.

This Court lacks general jurisdiction over Bonner and Hirsh, because no facts have been pleaded indicating that either has affiliations with New York “so continuous and systematic as to render them essentially at home” here. *Daimler AG v. Bauman*, 571 U.S. 117, 119 (2014). Per the complaint, which must be construed in the light most favorable to Rosenfeld at this stage of the litigation, *Dorchester*

*Fin. Sec., Inc. v. Banco BRJ, S.A.*, 722 F.3d 81, 84 (2d Cir. 2013), Bonner is a Mississippi corporation with its primary place of business in Mississippi, and Hirsch is a Mississippi resident. Complaint at ¶¶ 35-36.

Nor has Rosenfeld adequately alleged specific jurisdiction. As the defendants note, the complaint does not allege any actions undertaken by either Bonner or Hirsch in New York. Nonetheless, Rosenfeld argues that each is subject to this Court's jurisdiction based upon a theory of conspiracy jurisdiction. Plaintiff's Memorandum in Opposition at 18.

“To establish personal jurisdiction on a conspiracy theory, Plaintiff[] must make a prima facie showing of conspiracy, allege specific facts warranting the inference that the defendant was a member of the conspiracy, and show that the defendant's co-conspirator committed a tort in New York.” *In re Terrorist Attacks on Sept. 11, 2001*, 349 F. Supp. 2d 765, 805 (S.D.N.Y.), *on reconsideration in part*, 392 F. Supp. 2d 539 (S.D.N.Y. 2005), *and aff'd*, 538 F.3d 71 (2d Cir. 2008), *and aff'd*, 538 F.3d 71 (2d Cir. 2008), *and aff'd*, 714 F.3d 118 (2d Cir. 2013) (internal citation and quotation omitted). Vague and general allegations of conspiracy are not enough: “[T]he bland assertion of conspiracy . . . is insufficient to establish jurisdiction[.]” *Id.* (internal citation and quotation omitted).

Yet vague and general allegations of conspiracy are all that Rosenfeld has offered. The complaint does not include a count of conspiracy. Nor does it factually

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