UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VALERIE SANTIFUL and TAMEKA RHODEN, *individually and on behalf of all others similarly situated*,

Plaintiffs,

-against-

WEGMANS FOOD MARKETS, INC.,

Defendant.

No. 20-CV-2933 (NSR)

OPINION & ORDER

NELSON S. ROMÁN, United States District Judge:

Plaintiffs Valerie Santiful and Tameka Rhoden, individually and on behalf of others similarly situated (collectively, "Plaintiffs"), bring this putative class action against Wegmans Food Markets, Inc. ("Defendant" or "Wegmans") asserting that Defendant's Gluten Free Vanilla Cake Mix (the "Product") is labeled in a way that is misleading to consumers. Specifically, Plaintiffs bring claims for violation of New York's General Business Law Sections 349 and 350, negligent misrepresentation, breach of express warranty, breach of implied warranty of merchantability, violation of the Magnuson Moss Warranty Act, fraud, and unjust enrichment. Before the Court is Defendant's motion to dismiss Plaintiffs' Amended Complaint under Federal Rule of Civil Procedure 12(b)(6).

For the following reasons, Defendant's motion to dismiss is granted.

BACKGROUND

The following facts are drawn from Plaintiffs' Amended Complaint (First Amended Class Action Complaint "Am. Compl.", ECF No. 12) and are assumed as true for purposes of this motion. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

Wegmans distributes, markets, labels, and sells[1] its store brand Gluten Free Vanilla Cake Mix with a front label stating "Vanilla," "Naturally Flavored," "Rich & Indulgent," and "No Artificial Colors, Flavors or Preservatives," as depicted in the image below:

(Am. Comp. ¶¶ 1–3.) This Product is sold in 14-ounce boxes to consumers in Wegman's retail stores in at least eight states, including New York, Massachusetts, Pennsylvania, Virginia, and New Jersey. (*Id.* ¶ 2.)

Plaintiffs allege the Product's label is misleading because the Product is not mainly flavored from vanilla, contains artificial flavors, and does not taste like vanilla. (*Id.* ¶¶ 4–6.) Plaintiffs allege that, contrary to the front label representations, the Product itself is "not flavored

[1] The Amended Complaint alleges that Wegmans also manufactures this product. (Am. Compl. ¶ 1.) However, Defendant clarified that while Wegmans markets and sells baking mixes under its store brand, it does not manufacture the products and instead obtains them from a supplier. (*See* ECF No. 17 at 4.)

mainly from vanilla and has no vanilla, or at most, a de minimis, or trace amount of vanilla." (*Id.* ¶ 4.) The Product is instead flavored from non-vanilla sources of ethyl vanillin, vanillin, maltol, and piperonal.[2] (*Id.* ¶ 5.) The flavor of the Product "lacks the complexity and flavor notes associated with vanilla because vanillin has never been synonymous with vanilla." (*Id.* ¶ 68.) The presence of non-vanilla flavors in the Product is also inferred from the Product's ingredient list, which lists "Natural Flavor" as the only flavoring ingredient. (*Id.* ¶ 33 (listing the ingredients "Sugar, Rice Flour, Potato Starch, Tapioca Starch, Corn Flour, Baking Powder (Sodium Acid Pyrophosphate, Baking Soda, Cornstarch, Monocalcium Phosphate), *Natural Flavor*, Sea Salt, Guar Gum, Xanthan Gum, Soy Flour") (emphasis added).) "Natural Flavor" is a technical term for an ingredient which is a mix of flavors and does not consist only of vanilla. (*Id.* ¶ 34.) Plaintiffs claim this ingredient list is misleading because does not identify vanillin as an ingredient or otherwise disclose the presence of vanillin and ethyl vanillin. (*Id.* ¶ 65.) Further, Plaintiffs claim "lab testing reveals that the 'Natural Flavor' in the Product consists mainly of ethyl vanillin and vanillin, both from non-vanilla sources." (*Id.* ¶ 36.)

Plaintiff Valerie Santiful purchased the Product on more than one occasion, including in December 2019, at a Wegmans store in Virginia Beach, Virginia. (*Id.* ¶ 90.) Plaintiff Tameka Rhoden purchased the Product on more than one occasion, including in November 2019, at a Wegmans store in Montvale, New Jersey. (*Id.* ¶ 91.) Plaintiffs bought the Product "expect[ing] a vanilla taste, and that such taste would come exclusively and/or predominantly from vanilla beans and did not expect a taste of vanillin." (*Id.* ¶ 93.) Had Plaintiffs known about the true source of

[2] Plaintiffs claim ethyl vanillin, vanillin, maltol, and piperonal are "artificial flavors." (*Id.* ¶¶ 5, 40.) However, as discussed *infra*, these flavors can either be artificial or natural depending on their derivation, *see* 21 C.F.R. § 101.22(a)(1), and the Amended Complaint is devoid of non-conclusory allegations that the flavors used in Defendant's product are of the artificial sort. *See Wynn v. Topco Assocs., LLC*, No. 19-CV-11104 (RA), 2021 WL 168541, at *1 n.3 (S.D.N.Y. Jan. 19, 2021).

the vanilla flavor in the Product, they would not have purchased it or would have paid less for it. (*Id.* ¶ 75.) Plaintiffs allege that they are not alone in this regard and that consumers are willing to pay more for products labeled "vanilla—naturally flavored" instead of "artificially flavored" or "does not taste like real vanilla." (*Id.* ¶¶ 69, 71–72.) Plaintiffs allege the Product's branding and packaging misled consumers who want a vanilla product containing flavoring mainly from vanilla beans and tastes like vanilla. (*Id.* ¶¶ 71–72.) As a result, Defendant sold more of the Product, at a premium of approximately $2.89 per 14 ounces as compared to other similar products presented in a non-misleading way. (*Id.* ¶¶ 74, 76.)

Plaintiffs filed the operative class action complaint on November 20, 2020 on behalf of all purchasers of the Product who reside in New York, Virginia, and New Jersey, asserting claims against Defendant for (1) violation of New York General Business Law Sections 349 and 350, (2) negligent misrepresentation, (3) breach of express warranty, (4) breach of implied warranty of merchantability, (5) violation of the Magnuson Moss Warranty Act, (6) fraud, and (7) unjust enrichment. (ECF No. 12.) Plaintiffs seek both monetary damages and injunctive relief that would require Defendant to correct the Product's allegedly misleading label. Defendant moved to dismiss the amended complaint on February 26, 2021. (ECF No. 16.)

LEGAL STANDARD

To survive a Rule 12(b)(6) motion to dismiss, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim for relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 678 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 554, 570 (2007)). Factual allegations must "nudge[] [a plaintiff's] claims across the line from conceivable to plausible." *Twombly*, 550 U.S. at 570. A claim is plausible when the plaintiff pleads facts which allow the court to draw a reasonable inference the defendant is liable. *Iqbal*, 556 U.S. at 678. To assess the sufficiency of

a complaint, the court is "not required to credit conclusory allegations or legal conclusions couched as factual allegations." *Rothstein v. UBS AG*, 708 F.3d 82, 94 (2d Cir. 2013). While legal conclusions may provide the "framework of a complaint," "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678–79.

DISCUSSION

Plaintiffs assert claims against Defendant for (1) violations of sections 349 and 350 of the New York General Business Law, (2) negligent misrepresentation, (3) breach of express warranty, (4) breach of implied warranty of merchantability, (5) violation of the Magnuson Moss Warranty Act, (6) fraud, and (7) unjust enrichment. (*See* Am. Compl.) Defendant seeks to dismiss all claims for failure to state a claim upon which relief may be granted pursuant to Rule 12(b)(6). (*See* Memorandum of Law in Support of Defendant's Motion to Dismiss Plaintiffs' First Amended Complaint ("Def.'s Mot."), ECF No. 17.) The Court addresses each claim below.

I. New York General Business Law Claims

Plaintiffs' first cause of action arises under sections 349 and 350 of the New York General Business Law ("GBL"). Section 349 prohibits "[d]eceptive acts or practices in the conduct of any business, trade or commerce," and section 350 prohibits "[f]alse advertising in the conduct of any business, trade or commerce." GBL §§ 349 & 350.

To state a plausible claim under sections 349 and 350 of GBL, "a plaintiff must allege that a defendant has engaged in (1) consumer-oriented conduct that is (2) materially misleading and that (3) plaintiff suffered injury as a result of the allegedly deceptive act or practice." *Orlander v. Staples, Inc.*, 802 F.3d 289, 300 (2d Cir. 2015) (citing *Koch v. Acker, Merrall & Condit Co.*, 944 N.Y.S.2d 452, 452 (2012)). The allegedly deceptive acts or representations must be misleading to

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