

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 19-12714
Non-Argument Calendar

D.C. Docket No. 0:18-cv-61924-RNS

MOUNIRA DOSS,
individually and on behalf of all others similarly situated,

Plaintiff-Appellant-Cross Appellee,

versus

GENERAL MILLS, INC.,

Defendant-Appellee-Cross Appellant.

Appeals from the United States District Court
for the Southern District of Florida

(May 20, 2020)

Before WILSON, MARTIN, and ANDERSON, Circuit Judges.

PER CURIAM:

Mounira Doss, individually and on behalf of a putative class, filed a complaint asserting that General Mills, Inc., does not tell consumers that one of its products—Cheerios—contains glyphosate. Glyphosate is a substance that is a “probable human carcinogen.” Doss brought four claims against General Mills, asserting a violation of Florida’s Deceptive and Unfair Trade Practices Act (“FDUTPA”); breach of warranty; breach of implied warranty of merchantability; and unjust enrichment. Doss is appealing the district court’s order granting General Mills’s motion to dismiss her complaint.

I.

Glyphosate, an herbicide, is often sprayed on oats before they are harvested. General Mills uses oats in manufacturing Original and Honey Nut Cheerios, the two cereals Doss addresses in her complaint. Testing has revealed trace amounts of glyphosate in samples of these cereals. The measured levels in the Cheerios that tested positive range between 470 and 1,125 parts per billion. According to Doss, “even ultra-low levels of glyphosate may be harmful to human health.” Doss relies on a study published by a nonprofit entity, the Environmental Working Group, which has determined that the “health benchmark” for glyphosate is 160 parts per billion.

Doss’s claims against General Mills stem from General Mills’s alleged failure to disclose to consumers that its Original and Honey Nut Cheerios contain

glyphosate. She seeks to represent a nationwide class defined as “all persons who purchased Cheerios and Honey Nut Cheerios in the United States” and a Florida class defined as “all persons in the State of Florida who purchased Cheerios and Honey Nut Cheerios.” Doss maintains that this putative class has been harmed by General Mills’s lack of disclosure because, if they had known the cereal contained glyphosate, they would never have purchased it.

General Mills filed a motion to dismiss Doss’s complaint on several grounds. It argued that Doss lacked Article III standing; her claims were preempted; the Environmental Protection Agency had exclusive jurisdiction over Doss’s claims; and Doss failed to state a claim under Federal Rule of Civil Procedure 12(b)(6). The district court agreed that Doss lacked standing, primarily finding that there is “no allegation that the cereal she purchased even contains glyphosate, never mind harmful levels of it.” It dismissed Doss’s complaint and declined to reach the other grounds General Mills raised. Doss challenges that decision.

II.

Whether a party has Article III standing is a threshold jurisdictional issue that must be resolved before any federal court can reach the merits of a plaintiff’s claim. Kawa Orthodontics, LLP v. Sec’y, U.S. Dep’t of the Treasury, 773 F.3d 243, 245 (11th Cir. 2014). We review de novo whether a plaintiff has Article III

standing. Id. “In assessing standing on a motion to dismiss, we presume the plaintiff’s ‘general allegations embrace those specific facts that are necessary to support the claim.’” Id. (quoting Lujan v. Defenders of Wildlife, 504 U.S. 555, 561, 112 S. Ct. 2130, 2137 (1992)). We must accept as true all material allegations of the complaint and construe the complaint in favor of the complaining party. Id.

III.

To have Article III standing, a plaintiff must have “(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” Spokeo, Inc. v. Robins, 578 U.S. ___, 136 S. Ct. 1540, 1547 (2016). To establish the first element, “a plaintiff must show that he or she suffered an invasion of a legally protected interest that is concrete and particularized and actual or imminent, not conjectural or hypothetical.” Id. at 1548 (quotation marks omitted). A “concrete” injury is “real[] and not abstract.” Id. (quotation marks omitted). For an injury to be “particularized,” it “must affect the plaintiff in a personal and individual way.” Id. (quotation marks omitted).

Doss says she has suffered an economic loss solely by purchasing Cheerios that she would not have purchased if she knew they contained glyphosate. Economic injuries are the “epitome” of concrete injuries. MSPA Claims 1, LLC v. Tenet Fla., Inc., 918 F.3d 1312, 1318 (11th Cir. 2019). A person experiences an

economic injury when, as a result of a deceptive act or an unfair practice, she is deprived of the benefit of her bargain. See Carriuolo v. Gen. Motors Co., 823 F.3d 977, 986–87 (11th Cir. 2016) (holding that class members bringing FDUTPA claims were denied the benefit of their bargain and thus injured when they purchased vehicles that were represented as having three perfect safety ratings but actually had no safety ratings). “Ordinarily, when a plaintiff purchases a product with a defect, the product retains some value, meaning her benefit-of-the-bargain damages are less than the entire purchase price of the product.” Debernardis v. IQ Formulations, LLC, 942 F.3d 1076, 1084 (11th Cir. 2019). However, one exception to this general rule applies when the “product is rendered valueless as a result of a defect.” Id. (quotation marks omitted). We analyze Doss’s allegations under this “valueless” framework.

Doss claims that “she was misled by General Mills’ health-related statements,” including that Cheerios are “packed with nutrients” and are “wholesome,” because those statements are irreconcilable with the presence of glyphosate. To evaluate a benefit-of-the-bargain theory in this context, we must consider whether Doss alleged that the presence of glyphosate lowers the value of the Cheerios she purchased. See Debernardis, 942 F.3d at 1084. Doss appears to be advancing a theory that the presence of glyphosate renders Cheerios unsafe to

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.