UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. SA CV 19-1683-DOC-JDE Date: March 2, 2020

Title: SHELLEY PRIDGEN v. CHURCH & DWIGHT CO., INC.

PRESENT:

THE HONORABLE DAVID O. CARTER, JUDGE

Kelly Davis	Not Present
Courtroom Clerk	Court Reporter
ATTORNEYS PRESENT FOR PLAINTIFF: None Present	ATTORNEYS PRESENT FOR DEFENDANT: None Present

PROCEEDINGS (IN CHAMBERS): ORDER GRANTING DEFENDANT'S MOTION TO DISMISS [19] AND DENYING AS MOOT DEFENDANT'S MOTION FOR DISCOVERY TO STAY [25]

Before the Court is Defendant Church & Dwight Co., Inc.'s ("Defendant") Motion to Dismiss ("Motion") (Dkt. 19). The Court finds this matter appropriate for resolution without oral argument. *See* Fed. R. Civ. P. 78; C.D. Cal. R. 7-15. Having reviewed the moving papers submitted by the parties, the Court GRANTS Defendant's Motion. The Court also DENIES AS MOOT Defendant's Motion for Discovery to Stay (Dkt. 25).

I. Background

A. Facts

The following facts are drawn from Plaintiff Shelley Pridgen's ("Plaintiff") Complaint (Dkt. 1). Defendant manufactures and sells the OxiClean line of stain removers. Compl. ¶ 4. The packaging on the various OxiClean products claims that the product contains enough OxiClean powder to treat a given number of loads (e.g., "290 Loads," "156 Loads," "75 Loads," etc.). *Id.* ¶ 7. Plaintiff contends that these claims are

deceptive, and that customers cannot stretch the product to remove stains from the stated number of loads. *Id.* ¶¶ 7-8.

Plaintiff offers the packaging of "OxiClean Versatile Stain Remover (3 lb.)," with a claim of "65 Loads" on its front label, as an example. *Id.* ¶¶ 10-13. To measure the amount of powder used, OxiClean products contain a scoop marked at different levels, with the lowest volume denoted by "Line 1" and increasing up to "Line 4." *See id.* ¶ 9. Plaintiff observes that, "buried at the bottom of the side panel" of the 3-lb. container, the packaging clarifies that the 3-lb. box "[d]elivers 65 regular loads/uses when measuring to line 1 on scoop." *Id.* ¶ 11. Plaintiff then turns to the back label to argue that this claim is deceptive, citing a portion of the back label that instructs users to fill the scoop to "Line 2 for typical stains or Line 4 for extra tough stains." *Id.* ¶ 12.

Thus, following the arithmetic implications, Plaintiff argues that the scoop must be filled to Line 2 or above to remove stains, and that the 3-lb. box cannot deliver on its promise of "65 Loads." *Id.* ¶ 13. Plaintiff alleges that the ambiguity of the term "load(s)" is deceptive and misleading, especially since the vast majority of consumers—some ninety percent, according to one study—make a purchase after considering a product's front packaging. *Id.* ¶¶ 14-17.

Plaintiff herself purchased the a 3-lb. container of OxiClean Versatile Stain Remover around May 2019 at a Target store in Santa Ana, California. *Id.* ¶ 54. Plaintiff relied on the claim of "65 Loads" when she bought the OxiClean. *Id.* ¶ 56. Despite following the usage instructions, Plaintiff found that the product was unable to remove "typical stains" for the full 65 loads advertised on the packaging. *Id.* ¶¶ 50, 57, 59. As a result, Plaintiff believes the product is worth less than she (and other consumers) paid for it. *Id.* ¶ 66.

Plaintiff thus brought the instant action, seeking to compensate consumers who were deceived by Defendant's labeling and to prevent Defendant's unjust enrichment. *Id.* ¶ 20. Plaintiff brings her claims on behalf of a proposed national class and a California subclass of OxiClean customers. *Id.* ¶ 73.

B. Procedural History

Plaintiff filed her Complaint in this Court on September 3, 2019, bringing the following six claims:

(1) violation of California's Consumers Legal Remedies Act (California Civil Code section 1750 *et seq.*);
(2) violation of California's False Advertising Law (California Business and Professions Code section 17500 *et seq.*);
(3) violation of California's Unfair Competition Law (California Business and Professions Code section 17200 *eet seq.*);
(4) breach of the implied warranty of merchantability (California Civil Code sections 1791-1792, 1794);
(5) violation of various state consumer protection laws (on behalf of the national class); and
(6) unjust enrichment.

See generally Compl.

On December 3, 2019, Defendant responded with the instant Motion to Dismiss (Dkt. 19). Defendant also filed a Motion for Discovery to Stay on December 30, 2019 (Dkt. 25), which the Court took off calendar during the hearing on January 6, 2020 (Dkt. 28). On January 22, 2020, Plaintiff filed an Opposition brief (Dkt. 32), and Defendant submitted its Reply on February 10, 2020 (Dkt. 38).

II. Legal Standard

Under Federal Rule of Civil Procedure 12(b)(6), a complaint must be dismissed when a plaintiff's allegations fail to set forth a set of facts that, if true, would entitle the complainant to relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (holding that a claim must be facially plausible in order to survive a motion to dismiss). The pleadings must raise the right to relief beyond the speculative level; a plaintiff must provide "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555 (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). On a motion to dismiss, a court accepts as true a plaintiff's well-pleaded factual allegations and construes all factual inferences in the light most favorable to the plaintiff. *See Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). A court is not required to accept as true legal conclusions couched as factual allegations. *Iqbal*, 556 U.S. at 678.

In evaluating a Rule 12(b)(6) motion, review is ordinarily limited to the contents of the complaint and material properly submitted with the complaint. *Van Buskirk v. Cable News Network, Inc.*, 284 F.3d 977, 980 (9th Cir. 2002); *Hal Roach Studios, Inc. v.*

Richard Feiner & Co., Inc., 896 F.2d 1542, 1555, n.19 (9th Cir. 1990). Under the incorporation by reference doctrine, the court may also consider documents "whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleading." *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994), *overruled on other grounds by Galbraith v. Cty. of Santa Clara*, 307 F.3d 1119, 1121 (9th Cir. 2002). The court may treat such a document as "part of the complaint, and thus may assume that its contents are true for purposes of a motion to dismiss under Rule 12(b)(6)." *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003).

When a motion to dismiss is granted, the court must decide whether to grant leave to amend. The Ninth Circuit has a liberal policy favoring amendments, and thus leave to amend should be freely granted. *See, e.g.*, *DeSoto v. Yellow Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992). However, a court need not grant leave to amend when permitting a plaintiff to amend would be an exercise in futility. *See, e.g.*, *Rutman Wine Co. v. E. & J. Gallo Winery*, 829 F.2d 729, 738 (9th Cir. 1987) ("Denial of leave to amend is not an abuse of discretion where the pleadings before the court demonstrate that further amendment would be futile.").

III. Discussion

A. Plaintiff Fails to State a Claim Under California's Consumers Legal Remedies Act, False Advertising Law, and Unfair Competition Law

In Counts I-III of the Complaint, Plaintiff alleges that Defendant violated California consumer protection laws by making false or misleading claims on its product labels about how many loads' worth of OxiClean were in a given container. In particular, Plaintiff brings her claims pursuant to the Consumers Legal Remedies Act ("CLRA"), Cal. Civ. Code § 1750 *et seq.*; the False Advertising Law ("FAL"), Cal. Bus. & Prof. Code § 17500 *et seq.*; and the Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200 *et seq.* Defendant argues that its numeric representations are neither false nor misleading, and that a reasonable consumer would understand the claims on the product labels.

The Ninth Circuit has recently held that "claims under the California consumer protection statutes are governed by the 'reasonable consumer' test," which requires a showing "that 'members of the public are likely to be deceived.'" *Ebner v. Fresh, Inc.*, 838 F.3d 958, 965 (9th Cir. 2016) (quoting *Williams v. Gerber Prods. Co.*, 552 F.3d 934, 938 (9th Cir. 2008) (applying "reasonable consumer" test to CLRA and UCL claims)); *see also Freeman v. Time, Inc.*, 68 F.3d 285, 288-89 (9th Cir. 1995) (applying

"reasonable consumer" test to FAL claims). Put differently, "the reasonable consumer standard requires a probability 'that a significant portion of the general consuming public or of targeted consumers, acting reasonably in the circumstances, could be misled'"—not merely that the labeling "might conceivably be misunderstood by some few consumers viewing it in an unreasonable manner." *Ebner*, 838 F.3d at 965 (quoting *Lavie v. Procter & Gamble Co.*, 105 Cal. App. 4th 496, 508 (2003)).

The Court finds that a significant portion of reasonable consumers are not likely to be misled by Defendant's labeling. The front label of the container claims "65 Loads." Mot. at 4. The back label—contrary to the small snippet Plaintiff provides out of context, *see* Compl. ¶ 12—then lists four main ways to use OxiClean Versatile Stain Remover: as a laundry additive, for tough laundry stains, for soft surface stains, and on hard surfaces. Mot. at 6. Only the first column makes any reference to the word "load": it advises the customer to "Add To Every Load," and explains that the customer should "[f]ill to Line 1 *for regular loads*, or more for large or heavily soiled loads." *Id.* (emphasis added).

The other three panels do not mention "loads," nor do they involve adding OxiClean to loads of laundry. The soft and hard surface columns instruct the user to mix OxiClean into a separate container of water and then apply it directly to the surface in question. And the "Tough Laundry Stains" column—the only one Plaintiff cites in the Complaint, *see* Compl. ¶ 12—does not involve "loads" either.

Rather, the "Tough Laundry Stains" column instructs the customer (1) to fill a separate tub with water, "[f]ill [the scoop] to line 2 to 4 per gallon of water" (recommending "Line 2 for typical stains or Line 4 for extra tough stains"), and add the clothes with tough stains to the solution; then (2) let soak for 1-6 hours; and finally (3) "WASH as normal with detergent and OxiClean." Again, this column never uses the word "load," and the process is entirely different from running a normal "load" of laundry; rather, the "Tough Laundry Stains" column shows customers how to use OxiClean to specially treat more severe clothing stains.

Plaintiff's argument—that "in order to treat 'typical stains,' one must fill the scoop to at least Line 2," and that "one must use more than that Line 1 amount on the scoop" to treat stains, Compl. ¶¶ 12-13—is unsupported by the actual packaging and without merit. Rather, a reasonable consumer would understand that the 3-lb. container advertises that it contains enough to run 65 "regular loads" of laundry, per the first column on the back label, and that they can use more product for different applications, such as treating tough stains or scrubbing their patio furniture. And a reasonable consumer would also realize

that these other uses require more OxiClean than just a Line 1 scoop; they would not think that, no matter how much OxiClean they used for a given task, the contents of the container would nevertheless stretch to accommodate 65 uses.

Even Plaintiff's Complaint claims that the "load" numbers displayed on OxiClean packaging advertise "*the number of laundry loads* one may expect to treat from a container of OxiClean." Compl. ¶ 7 (emphasis added). And only the first column on the back label has anything to do with "loads," and makes expressly clear that a "regular load[]" requires a Line 1 scoop. Mot. at 6.

Moreover, Plaintiff's Complaint does not allege that a scoop filled to Line 1 for a "regular load[]" of laundry will not deliver the advertised stain-removing benefits (i.e., "Cleaner, Whiter, Brighter" laundry; *see* Mot. at 6), and therefore does not allege that the 3-lb. container cannot deliver "65 Loads" when the scoop is filled to Line 1 and added to laundry.

Plaintiff's Claims I-III thus depend on an unreasonable reading of the product labeling and are inadequately pleaded. These claims are accordingly DISMISSED WITHOUT PREJUDICE.

B. Plaintiff Fails to State a Claim for Breach of the Implied Warranty of Merchantability

Count IV of Plaintiff's Complaint is brought pursuant to California Civil Code sections 1791-1792 and 1794 for breach of the implied warranty of merchantability. Plaintiff argues that "the Complaint plausibly alleges that the Products do not conform to the promises on their labels." Opp'n at 15. Specifically, the Opposition appears to focus on the allegations in the Complaint that "(a) the Products were mislabeled . . . (d) the Products were not fit for ordinary purposes for which such goods are used insofar as they would not adequately treat the number of loads claimed;" and "(e) for the same reason, the Products did not conform to the promises or affirmations of fact made on the container and/or label." Compl. ¶ 136.

As discussed above, however, the Court has already found that Defendant's labeling was not deceptive or misleading with respect to the claimed number of loads. Moreover, Plaintiff has not alleged in her Complaint that using a scoop filled to Line 1 and adding it to a "regular load[]" of laundry, per the back label on the container, would result in stain-removing performance below the minimum level of quality that a reasonable consumer would expect.

Therefore, the Complaint fails to state a claim for breach of the implied warranty of merchantability, and Count IV of the Complaint is DISMISSED WITHOUT PREJUDICE.

C. Because Plaintiff Has Not Demonstrated Any Underlying Wrongdoing, She Fails to State a Claim for Unjust Enrichment

Count VI, Plaintiff's claim for unjust enrichment, is predicated on Defendant's acceptance of "the unjust benefits of its fraudulent conduct"—i.e., the higher price extracted from customers misled by Defendant's labeling. *See* Compl. ¶¶ 150-154.

However, as detailed above, the Court finds that Plaintiff has not adequately pleaded any cause of action involving Defendant's "fraudulent conduct" and on which a claim for unjust enrichment could be predicated. Count VI of the Complaint is therefore DISMISSED WITHOUT PREJUDICE.

D. The Court Need Not Address Plaintiff's Standing to Seek Injunctive Relief or to Represent a Nationwide Class

Injunctive relief. Defendant argues, and Plaintiff concedes, that the Complaint does not allege facts to support a claim for injunctive relief. Plaintiff, however, argues that she should be given leave to amend, while Defendant responds that this claim should be dismissed with prejudice.

Again, the Court has not found that Plaintiff has adequately pleaded any claim to justify an injunction against "further misrepresentations or material omissions" or "requiring Defendant to commence with a corrective advertising campaign." *See* Compl., Prayer for Relief, E. On the other hand, it is conceivable that Plaintiff *could* adequately allege such a claim—e.g., if Plaintiff, as Defendant points out, were to allege that a Line 1 scoop is inadequate for its advertised purpose as a laundry additive. As it stands, no such claim has been pleaded or briefed, and the Court need not speculate as to its viability or the remedies it could support at this juncture. The claim for injunctive relief is therefore DISMISSED WITHOUT PREJUDICE.

The nationwide class. Constitutional standing doctrine has three requirements. First, the plaintiff must have suffered a concrete and particularized injury in fact, which must be actual or imminent, rather than speculative. Second, the injury must be fairly traceable to the defendant's alleged conduct. Third, the injury must be likely redressable

by a favorable decision by the court. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992). These requirements must be met for each claim the plaintiff brings, and for each remedy sought. *Davis v. FEC*, 554 U.S. 724, 734 (2008) (citing *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006)).

The requirements of standing apply with equal force to class actions as they do to individual litigants. *Lewis v. Casey*, 518 U.S. 343, 349 (1996). To determine whether a class has standing, courts analyze the standing of the class representatives. *NEI Contracting & Eng'g, Inc. v. Hanson Aggregates Pac. Sw., Inc.*, 926 F.3d 528, 532 (9th Cir. 2019). If none of the class representatives can establish standing, then they may not seek relief in federal court, either for themselves or on behalf of the class. *O'Shea v. Littleton*, 414 U.S. 488, 494 (1974).

Plaintiff's Complaint does not allege a viable claim on *her own* behalf. Therefore, without needing to analyze the constitutional questions as to whether Plaintiff could or could not bring suit under other states' laws, the Court can say with certainty that, with her claims as currently pleaded, Plaintiff cannot act as a class representative as to any claims in the current Complaint. Plaintiff's class action claims in Count V are therefore DISMISSED WITHOUT PREJUDICE.

IV. Disposition

For the reasons set forth above, the Court GRANTS Defendant's Motion to Dismiss. Plaintiff's Complaint is hereby DISMISSED WITH PREJUDICE.

If so desired, Plaintiff may file an amended complaint on or before March 16, 2020.

The Clerk shall serve this minute order on the parties.