United States District Court
Northern District of California

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ERIN FINNEGAN,
Plaintiff,
v.
CHURCH & DWIGHT CO., INC.,
Defendant.

Case No. 17-cv-05538-RS

ORDER DENYING MOTION TO DISMISS

I. INTRODUCTION

Defendant Church & Dwight Company moves to dismiss plaintiff Erin Finnegan's putative class action complaint alleging Church & Dwight falsely represents the health benefits of biotin supplements it markets and sells in stores throughout California. Pursuant to Civil Local Rule 7-1(b), the motion is suitable for disposition without oral argument, and the hearing set for January 25, 2018, is vacated. Because Church & Dwight's arguments for dismissal all fail, its motion is denied.

II. BACKGROUND[1]

Finnegan alleges Church & Dwight falsely, misleadingly, and deceptively claims on the labels of its vitafusion "extra strength" 5000 mcg biotin gummie supplements that these products

[1] All facts recited in this section are drawn from the First Amended Complaint ("FAC") and taken as true for the purposes of deciding this motion.

provide "Hair, Skin & Nails Support." Compl. ¶ 1. According to Finnegan:

> The human body only requires a finite amount of biotin on a daily basis for it to perform its enzymatic functions as there are a finite number of enzymes that use biotin. Once there is sufficient biotin in the body, saturation occurs and the body just does not use this surplus biotin. . . . More than sufficient biotin is derived from the daily diets of the general U.S. population as healthy persons ingest anywhere from 30mcg-60mcg of biotin from their daily diets. . . .
>
> While persons (1) with exceedingly rare conditions that cause biotin deficiencies, or (2) who chronically ingest inordinate amounts of raw egg whites, can require biotin supplementation, other than these few rare exceptions, healthy people already have more than adequate, if not excessive, amounts of biotin derived from their diet. In fact, average biotin intake among North American adults is anywhere from 35-70 mcg per day. Yet, Defendant's 5000 mcg Biotin Product is over 150 times more than the [adequate intake]. Thus . . . these mega-dose amounts are far beyond any conceivable range that would ever be beneficial . . . .
>
> As a result of the foregoing, the mega-dose Biotin Product to be taken in a daily dose of 5000 mcg as sold by Defendant is superfluous and unneeded and will not and does not support healthy hair, skin and nails.

Id. ¶¶ 3-4, 9. In response to Church & Dwight's allegedly false, misleading, and deceptive health benefit representations, Finnegan filed this putative class action, advancing claims under California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200, *et seq.*, and the California Consumers Legal Remedies Act ("CLRA"), Cal. Civ. Code §§ 1750, *et seq*. The UCL claim is brought on behalf of "All consumers who, within the applicable statute of limitations period until the date notice is disseminated, purchased [Church & Dwight's] Biotin Product in California, Florida, Illinois, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, and Washington," or, in the alternative, "All California consumers who within the applicable statute of limitations period until the date notice is disseminated, purchased [Church & Dwight's] Biotin Product." Compl. ¶¶ 21-22. The CLRA claim is brought on behalf of the putative California class only. Finnegan seeks restitution and an injunction in connection with the UCL claim, and an injunction, restitution, disgorgement, and damages in connection with the CLRA claim. Church & Dwight now seeks dismissal of Finnegan's claims.

III. LEGAL STANDARD

A complaint must contain "a short and plain statement of the claim showing that the

pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). While "detailed factual allegations are not required," a complaint must have sufficient factual allegations to "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 566 U.S. 662, 678 (2009) (citing *Bell Atlantic v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is facially plausible "when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* This standard asks for "more than a sheer possibility that a defendant acted unlawfully." *Id.* The determination is a context-specific task requiring the court "to draw on its judicial experience and common sense." *Id.* at 679.

A motion to dismiss a complaint under Federal Rule of Civil Procedure 12(b)(6) tests the legal sufficiency of the claims alleged in the complaint. *See Parks Sch. of Bus., Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995). Dismissal under Rule 12(b)(6) may be based on either the "lack of a cognizable legal theory" or on "the absence of sufficient facts alleged under a cognizable legal theory." *UMG Recordings, Inc. v. Shelter Capital Partners LLC*, 718 F.3d 1006, 1014 (9th Cir. 2013). When evaluating such a motion, the Court must "accept all factual allegations in the complaint as true and construe the pleadings in the light most favorable to the nonmoving party." *Knievel v. ESPN*, 393 F.3d 1068, 1072 (9th Cir. 2005). When a plaintiff has failed to state a claim upon which relief can be granted, leave to amend should be granted unless "the complaint could not be saved by any amendment." *Gompper v. VISX, Inc.*, 298 F.3d 893, 898 (9th Cir. 2002) (citation and internal quotation marks omitted).

IV. DISCUSSION

Church & Dwight argues that Finnegan's claims should be dismissed because she fails to allege any facts demonstrating the challenged health benefit representations are actually false, misleading, or deceptive. According to Church & Dwight, because Finnegan does not purport to have scientific background or expertise on the subject of biotin, her allegations must be supported by scientific testing, scientific literature, or anecdotal experience. Relying upon the Ninth Circuit's decision in *Kwan v. SanMedica Int'l*, 854 F.3d 1088 (9th Cir. 2017), Church & Dwight concludes that dismissal of the FAC hinges on Finnegan's reliance on an Institute of Medicine ("IOM")

report incorporated by reference.[2] Nothing in *SanMedica*, however, even remotely suggests that a plaintiff in a false advertising action must support his or her claims with irrefutable scientific evidence in order to survive a motion to dismiss. The *SanMedica* court affirmed that it is the plaintiff's burden to allege facts supporting his or her contentions that a given claim is false or misleading. *See SanMedica*, 854 F.3d at 1097-98 (rejecting the plaintiff's argument that Lanham Act burden shifting provisions should be imported into California's unfair competition and consumer protection law). It did not impose a requirement that the alleged facts must be verified with supporting documentation at the pleading stage. While Church & Dwight is free to challenge the sufficiency of Finnegan's evidence on a motion for summary judgment and/or at trial, Finnegan's claims would be plausible even if her complaint had made no mention of the IOM report.

Church & Dwight relies upon a number of district court cases in support of its insistence that the IOM report undermines Finnegan's falsity claims. While a plaintiff's complaint may certainly be dismissed if he or she fails to put forth any facts demonstrating that the defendant's claims are affirmatively false, rather than simply unsubstantiated, or if the factual material supplied actually contradicts his or her central claims, such is not the case here. Church & Dwight argues that the IOM report does not support Finnegan's conclusions that (1) humans require a finite amount of biotin, (2) the general population consumes sufficient, if not excessive, amounts of biotin from their daily diets, and (3) biotin intake above the adequate intake estimate is superfluous. Yet Church & Dwight cannot point to a single statement in the IOM report that explicitly contradicts any of Finnegan's assertions. At most, Church & Dwight presents its own analysis of the IOM report to show that Finnegan draws unreasonable conclusions from the information contained therein. This is insufficient to establish a "fundamental mismatch" between

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[2] In support of certain factual allegations, Finnegan's complaint cites *Dietary Reference Intakes for Thiamin, Riboflavin, Niacin, Vitamin B6, Folate, Vitamin B12, Pantothenic Acid, Biotin, and Choline*, a 2000 Institute of Medicine Report from the National Academy of Sciences. (Church & Dwight requests judicial notice of this report; notice will be taken of the existence of this report, but its contents will not be taken as true by way of judicial notice.)

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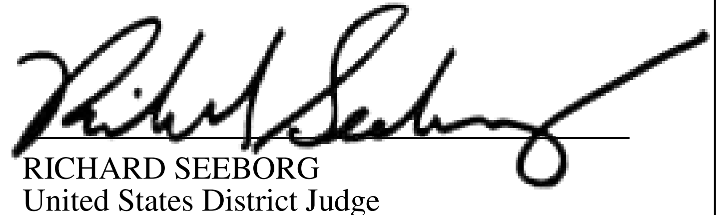
the authority cited in the FAC and the challenged statement. *See* Mot. Dismiss at 14. Whether Church & Dwight or Finnegan has the better interpretation of the report's findings is a question for summary judgment and/or trial. Because the IOM report is not inconsistent with any of the allegations in the FAC, Finnegan is entitled to have those allegations accepted as true at the pleading stage. As detailed above, the FAC avers that human beings generally cannot make use of supplemental biotin beyond that which they consume as part of a daily diet. Thus, Finnegan has advanced a plausible theory for finding Church & Dwight's "Hair, Skin & Nails Support" claim false and misleading.

V. CONCLUSION

For the reasons set forth above, the motion to dismiss is denied. Church & Dwight shall file an answer to the complaint within 21 days of the issuance of this order.

IT IS SO ORDERED.

Dated: January 18, 2018



RICHARD SEEBORG
United States District Judge