UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

Case No. CV 24-1563-MWF (JPRx) **Date: May 6, 2024**
Title: Perry Bruno v. BlueTriton Brands, Inc.

Present: The Honorable MICHAEL W. FITZGERALD, U.S. District Judge

Deputy Clerk:	Court Reporter:
Rita Sanchez	Not Reported
Attorneys Present for Plaintiff:	**Attorneys Present for Defendant:**
None Present	None Present

Proceedings (In Chambers): ORDER GRANTING DEFENDANT'S MOTION TO DISMISS [36]

Before the Court is Defendant BlueTriton Brands, Inc.'s Motion to Dismiss (the "Motion"), filed on April 1, 2024. (Docket No. 13). Plaintiff Perry Bruno filed an Opposition on April 15, 2024. (Docket No. 14). Defendant filed a Reply on April 22, 2024. (Docket No. 15).

The Court has read and considered the papers on the Motion and held a hearing on **May 6, 2024**.

The Motion is **GRANTED *with leave to amend*** because Plaintiff's claims are preempted by the Food, Drug, and Cosmetic Act.

I. BACKGROUND

On January 23, 2024, Plaintiff commenced this putative class action in Los Angeles Superior Court. (Notice of Removal (Docket No. 1) ¶ 1). Defendant subsequently removed the case under the Class Action Fairness Act. (*Id.* ¶¶ 11–26). On March 18, 2024, Plaintiff filed a First Amended Complaint ("FAC"). (Docket No. 11). The Court summarizes the allegations in the FAC in the light most favorable to Plaintiff as follows:

Defendant is a manufacturer and distributor of a variety of products, including Arrowhead brand bottled water (the "Product"). (FAC ¶¶ 8–9). The Product is labeled

as "100% Mountain Spring Water." (*Id.* ¶ 9). The following screenshot provides an example of the Product's label:

(*Id.* ¶ 37).

This label is misleading, however, because the Product also contains microplastics, which generally originate from the manufacturing process and the physical degradation of plastics. (*Id.* ¶¶ 10, 13–14, 20, 30, 36). Ingestion of and exposure to microplastics can lead to various health issues, including endocrine disruption and cardiovascular problems. (*Id.* ¶¶ 18). Due to the inaccurate labeling, Plaintiff believed that the Product did not contain microplastics when he made his purchase on October 19, 2022. (*Id.* ¶¶ 28–33).

Based on the foregoing allegations, the FAC asserts three claims for relief: (1) violation of California's Unfair Competition Law ("UCL"), California Business & Professions Code section 17200, *et seq.*; (2) California's Unfair Competition Law ("UCL"), California Business & Professions Code section 17200, *et seq.*; and (3) violation of California's Consumers Legal Remedies Act ("CLRA"), California Civil Code section 1750, *et seq.*

II. LEGAL STANDARD

In ruling on the Motion under Rule 12(b)(6), the Court follows *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), and their Ninth Circuit progeny. "To survive a motion to dismiss, a complaint must contain sufficient factual matter . . . to 'state a claim to relief that is plausible on its

face.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). The Court must disregard allegations that are legal conclusions, even when disguised as facts. *See id.* at 681 ("It is the conclusory nature of respondent's allegations, rather than their extravagantly fanciful nature, that disentitles them to the presumption of truth."); *Eclectic Props. E., LLC v. Marcus & Millichap Co.*, 751 F.3d 990, 996 (9th Cir. 2014). "Although 'a well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof is improbable,' plaintiffs must include sufficient 'factual enhancement' to cross 'the line between possibility and plausibility.'" *Eclectic Props.*, 751 F.3d at 995 (citation omitted).

The Court must then determine whether, based on the allegations that remain and all reasonable inferences that may be drawn therefrom, the complaint alleges a plausible claim for relief. *See Iqbal*, 556 U.S. at 679. "Determining whether a complaint states a plausible claim for relief is 'a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.'" *Ebner v. Fresh, Inc.*, 838 F.3d 958, 963 (9th Cir. 2016) (quoting *Iqbal*, 556 U.S. at 679).

III. DISCUSSION

Defendant moves to dismiss this action on three grounds. First, Defendant contends that this action is expressly preempted by the Food, Drug, and Cosmetic Act (the "FDCA"). (Motion at 5–7). Second, Defendant argues that Plaintiff fails to state a claim under Rule 12(b)(6). (*Id.* at 8). Third, Defendant argues that this action should be dismissed under the primary jurisdiction doctrine. (*Id.* at 20). The Court limits its analysis to Defendant's first argument as it is dispositive.

The Supremacy Clause provides that federal law is the "supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const., art. VI, cl. 2. State law is preempted "to the extent of any conflict with a federal statute," regardless of whether the conflict is express or implied. *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372 (2000). Courts must "find preemption where it is impossible for a private party to comply with both state and federal law . . . and where under the circumstances of a particular case, the

challenged state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Id.* at 372–73 (internal quotation marks, citations, and alterations omitted).

Two sections of the FDCA are relevant to the Court's analysis. 21 U.S.C. § 337(a) states that "all [] proceedings for the enforcement, or to restrain violations, of this chapter shall be by and in the name of the United States." 21 U.S.C. § 337(a). 21 U.S.C. § 343-1(a)(5) also "provides that no state may 'directly or indirectly establish . . . any requirement for a food which is the subject of a standard of identity established under section 341 of this title that is not identical' to federal requirements." *Baker v. Nestle S.A.*, No. CV 18-03097-VAP (PJWx), 2019 WL 960204, at *1 (C.D. Cal. Jan. 3, 2019) (citing 21 U.S.C. § 343-1(a)(5)); *see also* 21 C.F.R. § 100.1(c)(4) (defining "not identical to" as a "[s]tate requirement [that] directly or indirectly imposes obligations or contains provisions concerning the composition or labeling of food . . . that . . . [a]re not imposed by or contained in the applicable provision"). The Food and Drug Administration ("FDA") regulates, in relevant part, products sold using the term "spring water" as follows:

> The name of water derived from an underground formation from which water flows naturally to the surface of the earth may be "spring water." Spring water shall be collected only at the spring or through a bore hole tapping the underground formation feeding the spring. There shall be a natural force causing the water to flow to the surface through a natural orifice. The location of the spring shall be identified. . . .

21 C.F.R. § 165.110(a)(2)(vi).

Here, the crux of Plaintiff's claims is that Defendant violated California law by labeling the Product as "100% Mountain Spring Water" when, in fact, it contained microplastics. In other words, according to Plaintiff, the Product should provide additional or different information on its label to accurately reflect its contents. (*See* FAC ¶ 36 ("If Defendant is not forced to correct the fraudulent labeling or remove the microplastics, Plaintiff will by [*sic*] unable to determine if Defendant's '100%' labeled

products are actually 100% water, depriving Plaintiff of his right to obtain true and accurate information regarding the consumer products he chooses to buy.")). But federal and California courts alike have held similar claims to be preempted by the FDCA. *See, e.g.*, *Kanter v. Warner-Lambert Co.*, 99 Cal. App. 4th 780, 795, 122 Cal. Rptr. 2d 72 (2002) ("But when a state law claim, however couched, would effectively require a manufacturer to include ***additional or different*** information on a federally approved label, it is preempted." (emphasis added)); *Baker*, 2019 WL 960204, at *1 (concluding that state law claims regarding the use of "purified water" was preempted by the FDA's regulation of the term).

Plaintiff argues that his claims are not preempted because it is possible for Defendant to comply with both federal and state laws regarding product labeling. In so arguing, Plaintiff contends that he does not seek to proscribe Defendant's use of the term "spring water" (which is regulated by the FDA) but rather its characterization of the Product as "100%" water (which is not regulated by the FDA). (Opp. at 4–6). The Court is not persuaded.

As an initial matter, Plaintiff does not contend that the Product lacks the properties of "spring water" as defined in the FDCA, that the FDA prohibits the presence of microplastics in products labeled as "spring water," or that "spring water" does not and cannot contain microplastics. Said simply, this is not a case where Plaintiff is claiming that Defendant mislabeled the Product as "spring water" and is seeking to enforce compliance with the FDCA. *See Chacanaca v. Quaker Oats Co.*, 752 F. Supp. 2d 1111, 1118 (N.D. Cal. 2010) (noting that "[w]here a requirement imposed by state law effectively parallels or mirrors the relevant sections of the [FDCA], courts have repeatedly refused to find preemption").

Moreover, to the extent Plaintiff argues that Defendant should either remove "100%" from its label due to the presence of microplastics or more accurately disclose the composition of the Product, such a requirement would impose obligations that go beyond those provided in the FDCA. *See id.* at 1121 (holding that the plaintiffs' request for an order prohibiting a statement that was misleading but not required by the FDA were preempted because doing so would impose a non-identical burden).

Plaintiff's claims therefore violate the FDCA's express preemption provision. *See* 21 U.S.C. § 343-1(a)(5); 21 C.F.R. § 100.1(c)(4).

IV. LEAVE TO AMEND

Rule 15 requires that leave to amend "be freely given when justice so requires." Fed. R. Civ. P. 15(a)(2). "This policy is to be applied with extreme liberality." *Eminence Cap., LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003). The Supreme Court identified five factors a court should consider when deciding whether to grant leave to amend: (1) bad faith; (2) undue delay; (3) prejudice to the opposing party; (4) futility of amendment; and (5) whether the plaintiff has previously amended its complaint. *See Foman v. Davis*, 371 U.S. 178, 182 (1962). Of these, "the consideration of prejudice to the opposing party carries the greatest weight." *Sonoma Cnty. Ass'n of Retired Emps. v. Sonoma Cnty.*, 708 F.3d 1109, 1117 (9th Cir. 2013) (quoting *Eminence Cap., LLC*, 316 F.3d at 1052); *see also Sharkey v. O'Neal*, 778 F.3d 767, 774 (9th Cir. 2015) (indicating a court should explain reasons for denying leave to amend); *Parsittie v. Schneider Logistics, Inc.*, 859 F. App'x 106, 107 (9th Cir. 2021) (unpublished) (same).

Although the Court is skeptical that Plaintiff can amend his allegations to avoid preemption, the Court will grant Plaintiff ***one more chance*** to amend his complaint to address the deficiencies discussed in this Order and any other potential deficiencies raised in the Motion.

Accordingly, the Motion is **GRANTED *with leave to amend***.

Plaintiff may file a Second Amended Complaint ("SAC") by no later than **May 28, 2024**. Defendant shall respond to the SAC, if filed, by no later than **June 18, 2024**. Any future successful motion to dismiss will be granted without leave to amend. Failure to file a SAC will be construed as a decision to stand on the facts alleged in the FAC, and judgment will be entered accordingly.

IT IS SO ORDERED.