UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. SACV 16-168-JLS (DFMx) Date: June 16, 2016
Title: Steven Bailey et al. v. Kind, LLC

Present: **Honorable JOSEPHINE L. STATON, UNITED STATES DISTRICT JUDGE**

Terry Guerrero	N/A
Deputy Clerk	Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF:	ATTORNEYS PRESENT FOR DEFENDANT:
Not Present	Not Present

PROCEEDINGS: (IN CHAMBERS) ORDER DENYING DEFENDANT'S MOTION TO DISMISS (Doc. 14)

Before the Court is Defendant KIND, LLC's Motion to Dismiss. (Mot., Doc. 14.) Plaintiffs Steven Bailey and Loree Moran opposed, and Defendant replied. (Opp., Doc. 22; Reply, Doc. 23.) The Court finds this matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; C.D. Cal. R. 7-15. Accordingly, the hearing set for June 17, 2016, at 2:30 p.m., is VACATED. Having read and considered the parties' briefs, the Court DENIES the Motion to Dismiss.

I. BACKGROUND

The Complaint alleges the following facts:

Defendant KIND, LLC manufactures, distributes, and markets KIND bars in the United States. (Compl. ¶ 19, Doc. 1.) In 2008, Defendant's former affiliate, PeaceWorks Holdings LLC, financed a study from the Yale-Griffin Prevention Research Center that tracked two groups of overweight adults for eight weeks. (*Id.* ¶ 4.) While participants in the "control" group were given no instructions, participants in the "intervention" group were instructed to consume two KIND bars a day. (*Id.*) At the end of eight weeks, the study found that "[a]nthropometric measures (i.e. body mass index, weight and waist circumference) did not improve from baseline after consumption of fruit and nut snack bar compared to controls." (*Id.*) The study's authors concluded that "[t]he addition of

two daily fruit and nut snack bars to habitual baseline diet had no effect on body weight." (*Id*.)

From October 2012 until May 2014, KIND bars uniformly represented that "[a] study from the Yale-Griffin Prevention Research Center indicates that eating two KIND bars a day helps prevent weight gain." (*Id*. ¶ 2.) However, the above study found no difference in weight gain between participants who ate two KIND bars a day and those who did not. (*Id*. ¶ 3.) Plaintiffs assert there was nothing in the study's results indicating that eating two KIND bars a day *helps prevent* weight gain. (*Id*.) Plaintiffs also assert that the study "was fraught with design problems." (*Id*. ¶¶ 8.)

In late 2013, Defendant funded a second Yale-Griffin study that compared a group of people who consumed KIND bars daily with a group of people who consumed "conventional snack foods" daily, including Nabisco snackwell crème sandwiches, fig newtons, chips ahoy! cookies, and double stuffed chocolate oreos. (*Id*. ¶ 10.) To control for the subjects' diets outside the study, the research center gave subjects "clear guidance about the calorie content of snack items, and how to make room for those calories in their diets." (*Id*.) This second Yale-Griffin study found "[t]here were no significant differences between the two snack groups with regard to changes in weight." (*Id*. ¶ 11.) Defendant allegedly knew about the findings of the second study by January 2014, but it continued selling KIND bars with the weight gain prevention label for several months thereafter. (*Id*. ¶ 12.) Defendant removed the above language from the bar labels in or around May 2014. (*Id*.)

Plaintiffs allege that the misrepresentation regarding weight gain prevention was "central" to Defendant's marketing during the relevant period and consumers relied on it when purchasing KIND bars. (*Id*. ¶ 13.) The packaging for KIND bars bears the slogan "Fill up without filling out!" and, in a different marketing effort, Defendant sent 2,000 New Year's greeting cards with KIND bars that stated, "eat 2 KIND bars a day, and lose weight." (*Id*.) The misrepresentation allegedly appeared on the back of the KIND bar wrapper in a more prominent position than the nutritional information, which appeared underneath the fold of the wrapper. (*Id*. ¶ 14.) Plaintiffs allege that because of the above misrepresentation, Defendant was able to sell its bars "at a substantial premium over similar nut-based candy bars that did not contain the misrepresentation." (*Id*. ¶ 15.)

Plaintiff Steven Bailey purchased KIND bars at Sam's Club and Walmart in California "on many occasions since early 2013." (*Id.* ¶ 17.) Plaintiff Loree Moran also purchased KIND bars at Stop & Shop, King Cullen, and Trader Joe's in Nassau County, New York "on many occasions since 2013." (*Id.* ¶ 18.) Before purchasing the KIND bars, Plaintiffs carefully read the bars' label, including the statement that "[a] study from the Yale-Griffin Prevention Research Center indicates that eating two KIND bars a day helps prevent weight gain." (*Id.* ¶¶ 17-18.) Plaintiffs believed this statement to be true, and they relied on the statement when deciding to purchase the KIND bars. (*Id.*) Plaintiffs assert that if they had known the representation was false and misleading, they would not have purchased the KIND bars or would have purchased the bars only at a substantially reduced price. (*Id.*)

On February 1, 2016, Plaintiffs filed a putative class action complaint against Defendant that alleged the following claims: (1) breach of express warranty, (2) violation of California's Consumer Legal Remedies Act, Cal. Civ. Code § 1750 *et seq.*, (3) violation of California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.*, (4) violation of California's False Advertising Law, Cal. Bus. & Prof. Code § 17500 *et seq.*, (5) negligent misrepresentation, (6) fraud, (7) deceptive acts or practices, N.Y. Gen. Bus. Law § 349, (8) false advertising, N.Y. Gen. Bus. Law § 350, (9) unjust enrichment, and (10) breach of implied warranty of merchantability. (*Id.* ¶¶ 30-101.)

Defendant now moves to dismiss the Complaint in its entirety.[1] Defendant argues that dismissal is proper under Federal Rule of Civil Procedure 12(b)(1) because Plaintiffs

[1] Both parties identify an earlier case in the Southern District of New York that featured the same KIND Defendant, the same Plaintiff's counsel, and related claims, but different Plaintiffs. *Cohn v. KIND, LLC*, No. 13 Civ. 8365 (AKH) (S.D.N.Y.). In *Cohn*, the presiding judge issued an order granting in part and denying in part Defendant's motion to dismiss. *See Cohn v. KIND, LLC*, No. 13 Civ. 8365 (AKH), 2015 WL 9703527 (S.D.N.Y. Jan. 14, 2015.) On September 29, 2015, the parties voluntarily stipulated to dismiss the case with prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii). (Cohn Doc. 87.) Neither party argues that this Court is bound by the findings of the prior court's order, and neither party argues that the voluntary dismissal precludes the instant claims. Thus, to the extent this Order references or cites the *Cohn* decision, it does so to only to note its persuasive (rather than binding) reasoning.

lack Article III standing to pursue their claims. Defendant also seeks to dismiss the Complaint for failure to state a claim under Rule 12(b)(6).

II. LEGAL STANDARD

A. Rule 12(b)(1)

A defendant may move to dismiss an action for lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1). Fed. R. Civ. P. 12(b)(1). "Dismissal for lack of subject matter jurisdiction is appropriate if the complaint, considered in its entirety, on its face fails to allege facts sufficient to establish subject matter jurisdiction." *In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, 546 F.3d 981, 984-985 (9th Cir. 2008). In considering a Rule 12(b)(1) motion, the Court "is not restricted to the face of the pleadings, but may review any evidence, such as affidavits and testimony, to resolve factual disputes concerning the existence of jurisdiction." *McCarthy v. United States*, 850 F.2d 558, 560 (9th Cir. 1988). "The party asserting [] subject matter jurisdiction bears the burden of proving its existence." *See Chandler v. State Farm Mut. Auto. Ins. Co.*, 598 F.3d 1115, 1122 (9th Cir. 2010). "The plaintiff 'bears the burden of establishing subject matter jurisdiction by a preponderance of the evidence.'" *United States ex rel. Mateski v. Raytheon Co.*, 816 F.3d 565, 569 (9th Cir. 2016) (quoting *United States v. Alcan Elec. & Eng'g, Inc.*, 197 F.3d 1014, 1017 (9th Cir. 1999)).

B. Rule 12(b)(6)

In deciding a motion to dismiss under Rule 12(b)(6), courts must accept as true all "well-pleaded factual allegations" in a complaint. *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). Furthermore, courts must draw all reasonable inferences in the light most favorable to the non-moving party. *See Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998 (9th Cir. 2010). However, "courts 'are not bound to accept as true a legal conclusion couched as a factual allegation.'" *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). And while judicial review is

generally limited to the face of a complaint, courts may properly consider "documents incorporated into the complaint by reference, and matters of which a court may take judicial notice." *Harris v. Amgen, Inc.*, 738 F.3d 1026, 1035 (9th Cir. 2013) (quoting *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007)).

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, 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). "A claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Twombly*, 550 U.S. at 556). Although a complaint "does not need detailed factual allegations," the "[f]actual allegations must be enough to raise a right to relief above the speculative level . . . ." *Twombly*, 550 U.S. at 555. Thus, a complaint must (1) "contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively[,]" and (2) "plausibly suggest an entitlement to relief, such that it is not unfair to require the opposing party to be subjected to the expense of discovery and continued litigation." *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011).

III. REQUEST FOR JUDICIAL NOTICE

Defendant requests that the Court take judicial notice of three exhibits: (1) images of the front and back panels of a KIND PLUS bar, a KIND Fruit & Nut bar, and a KIND Nuts & Spices bar, (2) an allegedly true and correct copy of the expert declaration of Dr. Ran Kivetz in support of Defendant's motion to deny class certification in *Cohn v. Kind LLC*, 1:13-cv-08365 (S.D.N.Y, 2015), and (3) an allegedly true and correct copy of a joint discovery dispute letter dated September 30, 2015 filed in the above *Cohn* action. (RJN at 1, Doc. 15.)

"Generally, a court may not consider material beyond the complaint in ruling on a [Rule 12] motion." *Intri-Plex Techs., Inc. v. Crest Grp., Inc.*, 499 F.3d 1048, 1052 (9th Cir. 2007). However, courts may "consider certain materials—documents attached to the complaint, documents incorporated by reference in the complaint, or matters of judicial notice—without converting the motion to dismiss into a motion for summary judgment." *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). Under the "incorporation by

reference" doctrine, courts may take judicial notice of a document where "the plaintiff's claim depends on the contents of a document, the defendant attaches the document to its motion to dismiss, and the parties do not dispute the authenticity of the document, even though the plaintiff does not explicitly allege the contents of that document in the complaint." *Knievel v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005) (citing *Parrino v. FHP, Inc.*, 146 F.3d 699, 706 (9th Cir. 1998). Under Federal Rule of Evidence 201, a fact is appropriate for judicial notice if it is not subject to reasonable dispute in that it is (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b). A court "must take judicial notice if a party requests it and the court is supplied with the necessary information." Fed. R. Evid. 201(c)(2).

Plaintiff disputes the authenticity of the provided images. (RJN Opp. at 2, Doc. 22.) In relevant part, Plaintiff asserts that (1) the images are limited to only four flavors and omit images for the approximately twenty-one other flavors at issue in this case, (2) the images are undated, and (3) Defendant does not explain when, where, or how these images were obtained. (*Id*.) Defendant responds that it has submitted a "sworn declaration that the images are true and correct copies of labels of KIND bar products *from the relevant class period*," (RJN Reply at 2 (emphasis added), Doc. 24), but the relevant declaration makes no such assertion, (*see* Giali Decl. ¶ 2, Doc. 15-1). Accordingly, the Court declines to take judicial notice of the first exhibit.

Plaintiff also argues that taking judicial notice of an expert report and discovery dispute from another case is improper. (RJN Opp. at 2-5.) In its reply, Defendant emphasizes that as to these exhibits, it requests judicial notice not "for the truth of the matters asserted therein," but merely to notice the fact that such documents were filed in the *Cohn* action. (RJN Reply at 2-3.) Defendant intends to "create a timeline of the prior action." (*Id*. at 3.) However, "judicial notice is inappropriate where the facts to be noticed are irrelevant." *Meador v. Pleasant Valley State Prison*, 312 Fed. Appx. 954, 956 (9th Cir. 2009). Defendant fails to explain how a timeline of the prior action adequately relates to its motion to dismiss, and the Court finds that any such timeline is irrelevant to the instant motion. Accordingly, the Court declines to take judicial notice of the second and third exhibits.

IV. DISCUSSION

Defendant argues that dismissal of Plaintiff's claims is proper because (1) as a matter of law, the challenged statement is not false or misleading, (2) Plaintiffs fail to adequately allege reliance or causation, and (3) Plaintiffs lack standing under Article III and various state laws. (Mem. at 9-14, Doc. 14.) Defendant also raises arguments as to why dismissal is proper as to Plaintiffs' claims for fraud, negligent misrepresentation, breach of express warranty, breach of implied warranty of merchantability, and unjust enrichment. (*Id*. at 15-16.) The Court addresses each argument in turn.

A. The Challenged Statement

Defendant first argues that Plaintiff's claims are precluded as a matter of law because the challenged statement accurately reflects the findings of the Yale-Griffin study. (Mem. at 4-5.) Like the *Cohn* court, we find this argument unavailing. Based on the allegations asserted in the Complaint, "the study's conclusion and KIND's representation of that conclusion are not obviously congruent." *Cohn v. Kind, LLC*, No. 13 Civ. 8365 (AKH), 2015 WL 9703527, at *2 (S.D.N.Y. Jan. 14, 2015). "[T]he study indicates that adding two KIND bars per day does not cause weight gain in overweight individuals," and "KIND makes a leap in logic by reading the study to say that KIND bars affirmatively *prevent* weight gain." *Id*. Moreover, "the 'overweight' qualification is conspicuously absent from KIND's labels, implying that the snack bars' benefits are universal." *Id*. Given these considerations, Plaintiffs adequately allege that the challenged statement is misleading or false. Accordingly, the Court declines to dismiss Plaintiff's claims on this basis.

B. Reliance and Causation

Defendant then argues that Plaintiffs fail to adequately allege reliance or causation for many of its state-law claims. (Mem. at 12-14.) Defendants assert that the contested statement is "related to weight management, but no plaintiff claims to have bought KIND

bars for weight management or to have been injured with respect to frustrated expectations regarding weight management." (Mem. at 9.) Defendant argues that Plaintiffs fail to plead reliance under Rule 8 and the heightened particularly standard of Rule 9(b). (*Id*. at 9-11.)

As an initial matter, the Court notes that district courts in this circuit conflict on whether reliance must be pleaded with particularity when averments are grounded in fraud. *Compare Noll v. eBay, Inc*., 282 F.R.D. 462, 468 (N.D. Cal. 2012) (requiring reliance to be pleaded with particularity) *with Anthony v. Yahoo!, Inc*., 421 F. Supp. 2d 1257, 1264 (N.D. Cal. 2006) (reliance need not be pleaded with particularity). Here, the Court need not determine the applicable standard because, even under the heightened pleading standard of Rule 9(b), we find that Plaintiff adequately alleges reliance.

When applying Rule 9(b), a plaintiff "must plead reliance on alleged misstatements with particularity by alleging facts 'of sufficient specificity,' allowing a court to infer that 'misrepresentations caused injury to plaintiffs by inducing them to pay' for products or services." *Noll*, 282 F.R.D. at 468. Allegations of reliance have fallen short of this standard where they "do[] not specify which exact misrepresentation Plaintiff relied on, whether that misrepresentation induced Plaintiff's decision to [purchase the goods], or whether Plaintiff would have acted differently had there been no misrepresentation." *Id*. Here, Plaintiffs identify the specific misrepresentation relied upon and *why* the representation was misleading or false. (Compl. ¶¶ 2-15, 17, 18.) They also allege that they carefully read the statement, believed it to be true, and relied on the statement when purchasing the bars. (*Id*. ¶¶ 17-18.) Finally, they assert that had they known the representation was false or misleading, they would not have purchased the KIND bars or would have done so only at a substantially reduced price. (*Id*.) These allegations are pleaded with the requisite level of specificity under Rule 9(b). Contrary to KIND's assertions, specific details regarding Plaintiffs' frustrated expectations as to weight management are not required to survive the pleading stage. Accordingly, dismissal is not warranted on this basis.

C. Standing

Defendant also argues that Plaintiffs lack standing under both Article III and state law. (Mem. at 12-15.) For the following reasons, the Court finds that Plaintiffs adequately assert standing for the disputed claims.

With respect to Plaintiffs' UCL and FAL claims, "Proposition 64 requires that a plaintiff have 'lost money or property' to have standing to sue." *Kwikset Corp. v. Superior Court*, 51 Cal. 4th 310, 323 (2011). Moreover, for UCL, FAL, and CLRA claims, the alleged injury must "come 'as a result of'" the alleged violation. *Id*. at 326. "The phrase 'as a result of' in its plain and ordinary sense means 'caused by' and requires a showing of causal connection or reliance on the alleged misrepresentation." *Id*. In *Kwikset*, the California Supreme Court addressed the standing requirement for "[a] consumer who relies on a product label and challenges a misrepresentation contained therein." *Id*. at 330. In relevant part, the *Kwikset* court stated that such a consumer:

> can satisfy the standing requirement . . . by alleging . . . that he or she would not have bought the product but for the misrepresentation. That assertion is sufficient to allege causation—the purchase would not have been made but for the misrepresentation. It is also sufficient to allege economic injury. From the original purchasing decision we know the consumer valued the product as labeled more than the money he or she parted with; from the complaint's allegations we know the consumer valued the money he or she parted with more than the product as it actually is; and from the combination we know that because of the misrepresentation the consumer (allegedly) was made to part with more money than he or she otherwise would have been willing to expend, i.e., that the consumer paid more than he or she actually valued the product. That increment, the extra money paid, is economic injury and affords the consumer standing to sue. Were we to conclude otherwise, we would bring to an end private consumer enforcement of bans on many label misrepresentations, contrary to the apparent intent of Proposition 64.

Id. Here, Plaintiffs allege they would not have purchased the KIND bars but for the misrepresentation. (Compl. ¶¶ 17-18.) These allegations "are sufficient to allege causation" and satisfy the standing requirement for these California consumer protection claims. *See Kwikset*, 51 Cal. 4th at 330.

Contrary to Defendant's assertions, Plaintiffs also adequately allege an economic injury. Like the consumer in *Kwikset*, Plaintiffs assert they paid a "premium" on the KIND bars due to the alleged misrepresentation and would not have purchased the bars at their sticker price had they known, (Compl. ¶¶ 17-18, 34), *i.e*., that the consumer was allegedly "made to part with more money than [they] otherwise would have been willing to expend," *Kwikset*, 51 Cal. 4th at 330. This economic injury affords Plaintiffs the standing to sue under the above California laws, *id*., and it also affords Plaintiffs Article III standing. *See Fisher v. Monster Beverage Corp*., 125 F. Supp. 3d 1007, 1020 (C.D. Cal. 2013) ("In order to assert the type of economic injury that Plaintiffs are alleging, they must demonstrate they were allegedly deceived, and either purchased a product they would not have otherwise purchased, paid a premium or overpaid for the product, or would have purchased an alternative product.").

As for Plaintiffs' claims under New York state law, Defendant argues that the alleged deception cannot itself constitute the alleged injury. (Mem. at 13-14.) However, as noted above, Plaintiffs adequately allege an *economic injury* that arose as a result of the alleged deception. Accordingly, dismissal is not warranted on these bases.

D. Fraud and Negligent Misrepresentation

Defendant then argues that Plaintiffs' fraud and negligent misrepresentation claims fail because Plaintiffs cannot plausibly allege "deception, reliance, causation, and damage." (Mem. at 15-16.) As noted above, the Court finds that Plaintiffs adequately allege these elements. Accordingly, the Court DENIES the Motion as to these claims.

E. Breach of Express Warranty

Defendant then argues that Plaintiffs' express warranty claim fails because Plaintiffs have not identified an express warranty regarding the KIND bars, nor have they

alleged reliance on such a warranty. (Mem. at 16.) Here, Plaintiffs allege that the contested statement on the bars' labeling amounted to a specific and unequivocal warranty, (Compl. ¶ 32), and, as noted above, they adequately allege reliance on this statement. Accordingly, the Court DENIES the Motion as to this claim.

F. Breach of Implied Warranty of Merchantability

Defendant then argues that Plaintiffs' implied warranty of merchantability claim fails because Plaintiffs never allege that the bars are unfit for human consumption as food, their alleged primary purpose. (Mem. at 16.) However, this argument grossly mischaracterizes the nature of Plaintiffs' allegations as well as the relevant definition of merchantability. In a case cited by Defendant in its motion, the California Supreme Court observed that "[m]erchantability has several meanings," including that "the product must conform to the promises or affirmations of fact made on the container or label" and that the product "must be fit for the ordinary purposes for which such goods are used." *Hauter v. Zogarts*, 14 Cal. 3d 104, 117-18 (1975) (internal quotation marks and alterations omitted); (*see* Mem. at 16.) Courts have determined that an implied warranty of merchantability claim may rely solely on alleged affirmative representations made by the defendant on the products label, as Plaintiffs do here. *See, e.g.*, *Zakaria v. Gerber Products Co.*, No. LA CV 15-00200 JAK (Ex), 2015 WL 3827654, at *11 (C.D. Cal. June 18, 2015). Accordingly, the Motion is DENIED as to this claim.

G. Unjust Enrichment

Finally, Defendant moves to dismiss Plaintiffs' unjust enrichment claim. (Mem. at 16.) As an initial matter, the Court notes that in California, "there is not a standalone cause of action for 'unjust enrichment." *Astiana v. Hain Celestial Grp., Inc.*, 783 F.3d 753, 762 (9th Cir. 2015). However, "[w]hen a plaintiff alleges unjust enrichment, a court may 'construe the cause of action as a quasi-contract claim seeking restitution,'" as we do here. *Id.* (quoting *Rutherford Holdings, LLC v. Plaza Del Rey*, 223 Cal. App. 4th 221 (2014).

Defendant argues that because the unjust enrichment claim is duplicative of Plaintiffs' FAL claim, it should be dismissed for the same reasons. (Mem. at 16.) Given that the Court declined to dismiss Plaintiffs' FAL claim, dismissal is unwarranted on this basis. Defendant then cites a case, *In re Apple & AT&T iPad Unlimited Data Plan Litig.*, 802 F. Supp. 2d 1070, 1077 (N.D. Cal. 2011), for the proposition that "[P]laintiffs cannot assert unjust enrichment claims that are merely duplicative of statutory or tort claims." (Mem. at 16.) However, in *Astiana*, the Ninth Circuit summarily rejected this argument. 783 F.3d at 762 ("To the extent the district court concluded that the [quasi-contract claim seeking restitution] was nonsensical because it was duplicative of or superfluous to [the plaintiff's] other claims, this is not grounds for dismissal." (citing Fed. R. Civ. P. 8(d)(2)). Accordingly, the Court DENIES the Motion as to this claim.

IV. CONCLUSION

For the foregoing reasons, the Court DENIES the Motion to Dismiss.[2]

Initials of Preparer: tg

[2] In a separate motion to strike filed on May 23, 2016, Plaintiffs move to strike certain passages from the motion to dismiss as scandalous. (Mot. to Strike, Doc. 25.) Plaintiffs also request that the Court admonish defendant's counsel to comply with this district's Civility and Professionalism Guidelines. (*Id.*) The Court declines to strike these passages, but agrees that the language used by defendant's counsel merely served to detract from defendant's presentation of the legal issues. The Court, therefore, reminds defendant's counsel to comply with the guidelines, and it notes that any future violations may result in sanctions or any other consequences the Court deems appropriate. However, the Court declines, at this time, to expend further resources addressing the issue, and takes the motion to strike off calendar.