UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

IN RE: BABY FOOD PRODUCTS LIABILITY LITIGATION

This document relates to:

Watkins v. Nurture, LLC, et al.,

Case No. 24-cv-2832 JSC

Case No. 24-md-03101-JSC

ORDER RE DEFENDANT WHOLE FOODS' MOTION TO DISMISS THE FOURTH AMENDED PETITION

Re: Dkt. No. 505

PUBLIC REDACTED

On April 23, 2025, the Court granted Defendant Whole Foods' motion to dismiss Plaintiff's bad faith seller redhibition claim under Louisiana law, with leave to amend. (Dkt. No. 457.[1]) The Court permitted Plaintiff to amend only the basis for the redhibition claim, specifically to attempt to allege "Whole Foods' actual or constructive knowledge of the alleged defects." (*Id.* at 14.) Plaintiff timely filed the Fourth Amended Petition on May 9, 2025. (Dkt. No. 475.) Whole Foods once again moves to dismiss the bad faith seller redhibition claim under Federal Rule of Civil Procedure 12(b)(6).

Pursuant to Federal Rule of Civil Procedure 78(b) and Civil Local Rule 7-1(b), the Court finds this motion appropriate for decision without oral argument. Having reviewed the parties' submissions, and the relevant legal authority, the Court **DENIES** Whole Foods' motion to dismiss.

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[1] Record citations are to material in the Electronic Case File ("ECF"); pinpoint citations are to the ECF-generated page numbers at the top of the documents.

DISCUSSION

"To survive a motion to dismiss for failure to state a claim after the Supreme Court's decisions in *Iqbal* and *Twombly*, plaintiffs' allegations must suggest that their claim has at least a plausible chance of success." *Levitt v. Yelp! Inc.*, 765 F.3d 1123, 1134-35 (9th Cir. 2014) (cleaned up). On a 12(b)(6) motion, the Court must assume the plaintiff's allegations are true and draw all reasonable inferences in his favor. *Shields v. Credit One Bank, N.A.*, 32 F.4th 1218, 1220 (9th Cir. 2022). That said, the Court need not construe conclusory statements or unreasonable inferences as true. *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008).

Whole Foods moves to dismiss Plaintiff's lone claim for breach of the Louisiana state law warranty against redhibitory defects. (Dkt. No. 505-1.) Article 2520 of the Louisiana Civil Code provides:

> A defect is redhibitory when it renders the thing useless, or its use so inconvenient that it must be presumed that a buyer would not have bought the thing had he known of the defect. The existence of such a defect gives a buyer the right to obtain rescission of the sale.
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> A defect is redhibitory also when, without rendering the thing totally useless, it diminishes its usefulness or its value so that it must be presumed that a buyer would still have bought it but for a lesser price. The existence of such a defect limits the right of a buyer to a reduction of the price.

La. Civ. Code art. 2520. A seller's liability varies depending on the seller's knowledge of the alleged defect at the time of sale:

> A seller who knows that the thing he sells has a defect but omits to declare it, or a seller who declares that the thing has a quality that he knows it does not have, is liable to the buyer for the return of the price with interest from the time it was paid, for the reimbursement of the reasonable expenses occasioned by the sale and those incurred for the preservation of the thing, and also for damages and reasonable attorney fees. If the use made of the thing, or the fruits it might have yielded, were of some value to the buyer, such a seller may be allowed credit for such use or fruits.
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> A seller is deemed to know that the thing he sells has a redhibitory defect when he is a manufacturer of that thing.

La. Civ. Code art. 2545. Caselaw refers to a seller with knowledge of the redhibitory defect as a "bad faith seller." *See Vita v. Rooms to Go Louisiana Corp.*, No. CIV.A. 13-6208, 2014 WL

6835913, at *5 (E.D. La. Dec. 3, 2014). Here, the parties dispute whether Plaintiff has plausibly alleged Whole Foods is a bad faith seller—namely, that it had actual or constructive knowledge of the defect in the baby food at the time of sale.

Plaintiff has alleged facts to permit a reasonable inference that Whole Foods had actual knowledge of the redhibitory defect, i.e. the presence of toxic heavy metals in the baby food. In October 2019, Healthy Babies Bright Futures ("HBBF") published a report identifying certain baby food products with high levels of heavy metals. (Dkt. No. 474-3 ¶ 14.) Plaintiff alleges the Environmental Defense Fund sent a copy of this report to Whole Foods by email, and further stated:

> "Healthy Babies Bright Futures . . . also released a new report today documenting its testing of over 150 baby food for the presence of heavy metals."
>
> The email continued, "The report's findings – particularly that at least one heavy metal was detected in 95 percent of foods – reinforce that efforts by the Council, other industry members, and FDA are necessary to better protect the health of infants and toddlers."

(*Id.* ¶ 136.) Further, Plaintiff alleges Jody Villeco, Whole Foods' Principal Research Advisor for Global Quality Standards, shared the message—and the report—with Paige Brady, Whole Foods' Executive Leader of Quality Standards. (*Id.* ¶ 137.) Villeco then said to Brady she "imagined Whole Foods employees were 'working in response to this report, given that several Whole Foods products were featured[.]'" (*Id.*) Brady responded, "I haven't heard about it, but that doesn't mean anything. I forwarded to [other Whole Foods employees] and PR in case they were not aware." (*Id.* (alterations in original).) Of the products tested in the 2019 HBBF Report, at least one was purchased by Plaintiff after Whole Foods received the Report. (*Id.* ¶ 139.) These allegations permit a plausible inference that Whole Foods' employees were aware of the presence of heavy metals in the baby food prior to sale and disseminated that information internally.

Whole Foods raises three counterarguments in response—none persuades. First, Whole Foods cites *Zehner v. Nordskog Indus., Inc.*, No. CIV. A. 92-2508, 1992 WL 233984, at *1 (E.D. La. Sept. 2, 1992), for the proposition that a seller may not be liable for a redhibitory defect when the manufacturer provided no warning to the seller. (Dkt. No. 505-1 at 11.) But *Zehner* is distinguishable. There, the court considered a motion for remand and a motion for summary

judgment, where the factual record had been developed as to the defendant's knowledge. *Zehner*, 1992 WL 233984, at *4. Further, the evidence in *Zehner* showed no alternative basis for the defendant's knowledge of the redhibitory defect, unlike the instant case, where Plaintiff has alleged Whole Foods received a report detailing the heavy metal contents of the baby food. *Id*. at *3 - *4. *Zehner* does not hold a seller can be liable *only* if it receives a warning of the defect from the manufacturer; rather, the court reached its conclusion based on the lack of evidence showing any basis for the defendant's knowledge of the defect. *Id*.

Second, Whole Foods argues the HBBF Report did not provide actual knowledge of the defect because it did not designate any of the products tested as "unsafe for consumption." (Dkt. No. 505-1 at 14.) Whether the Report used the term "unsafe for consumption" is ultimately irrelevant. Here, it is sufficient that the Report stated which products were tested, which heavy metals were found, the levels of those heavy metals, and the health risks posed by exposure to those heavy metals.[2] Drawing inferences in favor of Plaintiff—as the Court must on a 12(b)(6) motion—Whole Foods' receipt of the Report permits an inference of actual knowledge of the heavy metals in the baby food.

Last, Whole Foods contends Plaintiff has failed to allege its knowledge of the defect because Plaintiff does not specify what level of heavy metals poses a risk to infant health. (Dkt. No. 505-1 at 12-13.) To start, the Court has already rejected the argument that Plaintiffs must allege the threshold dose of heavy metals to survive a motion to dismiss. *See In re Baby Food Prods. Liab. Litig.*, No. 24-MD-03101-JSC, 2025 WL 986959, at *16 (N.D. Cal. Apr. 2, 2025) ("In sum, there is no ironclad rule that Plaintiffs must allege the threshold dose of a toxic substance to advance their claims, and the Court will not require as much here."). Moreover,

[2] Healthy Babies Bright Futures, *What's in My Baby's Food* (Oct. 2019), at 5, 7-14, https://hbbf.org/sites/default/files/2022-12/BabyFoodReport_ENGLISH_R6_0.pdf. The Court may consider unattached evidence on which a complaint necessarily relies if the complaint refers to the document, the document is central to the plaintiff's claim, and no party questions the authenticity of the document. *United States v. Corinthian Colleges*, 655 F.3d 984, 999 (9th Cir. 2011). Neither party disputes the authenticity of the HBBF Report, and Plaintiff relies on the Report to form the basis of its bad faith seller redhibition claim. Therefore, the Court considers the HBBF Report incorporated by reference.

Whole Foods' cited authority does not counsel otherwise. For instance, in *Coleman Oldsmobile, Inc. v. Newman & Assocs., Inc.*, 477 So. 2d 1155, 1160 (La. Ct. App. 1985), the court determined the defendant did not have knowledge of a "bent pulley" defect in a vehicle even though he had previously sought repair of other engine issues. Whole Foods extends this reasoning to conclude mere knowledge of heavy metals in the baby food is insufficient to fall within the definition of a bad faith seller; rather, Whole Foods would need to know of the exact level of heavy metals at the time of sale. This argument fails for two reasons. First, *Coleman* was an appeal of a judgment at trial, not a motion to dismiss, and so the court was not required to assume the truth of any well-pleaded allegations or draw inferences in the plaintiff's favor. *Coleman*, 477 So. 2d at 1157. Here, the allegations support a reasonable inference of Whole Food's actual knowledge. Second, the *Coleman* court held attempts to repair certain parts of a vehicle did not indicate knowledge of a *different* defect than the ones repaired. But the 2019 HBBF Report does not involve a *different* alleged defect in the baby food: it speaks directly to the levels of heavy metals found in products sold by Whole Foods and the health risks they may pose.

On these allegations, Plaintiff has met his burden to allege facts sufficient to permit a plausible inference of Whole Foods' actual knowledge of a redhibitory defect at the time of sale. Consequently, the Court need not reach the parties' arguments as to Whole Foods' constructive knowledge of the defect.

CONCLUSION

For the reasons stated above, the Court **DENIES** Whole Foods' motion to dismiss for failure to state a claim.

This Order disposes of Docket No. 505.

IT IS SO ORDERED.

Dated: October 29, 2025

JACQUELINE SCOTT CORLEY
United States District Judge