SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

PLASTIC POLLUTION COALITION, A PROJECT OF EARTH ISLAND INSTITUTE **Plaintiff,** **v.** **THE WONDERFUL COMPANY, LLC, *et al.*** **Defendants.**	**Case No. 2025-CAB-000585** **Judge Ebony M. Scott** **Next Event: Remote Scheduling Conference August 8, 2025 at 9:30 a.m.**

ORDER

This matter is before the Court on: (1) Defendants The Wonderful Company's and FIJI Water Company LCC's ("Defendants") Motion to Dismiss the Complaint, filed on April 18, 2025; Plaintiff Plastic Pollution Coalition's, a Project of Earth Island Institute, ("Plaintiff") Memorandum of Points and Authorities in Opposition to Defendant's Motion to Dismiss, filed on June 6, 2025; and Defendants' Reply in Support of Motion to Dismiss, filed June 27, 2025; and (2) the Parties' Joint Motion to Continue the Initial Scheduling Conference, filed on August 4, 2025.[1]

I. Factual Background

Plaintiff's Complaint is brought pursuant to the D.C. Consumer Protection Procedures Act ("CPPA"), and alleges that Defendants The Wonderful Company LLC ("TWC") and Fiji Water, LLC[2] ("FIJI") falsely and deceptively market FIJI bottled water products. Compl. at 1.

[1] The Court notes that, in its March 17, 2025 Order, the Court set a briefing schedule for the Motion to Dismiss.

[2] Defendants state that Fiji Water Company LLC was "erroneously sued" as "Fiji Water, LLC." Mot. at 2.

Specifically, Plaintiff's Complaint alleges that Defendants falsely: (1) represent FIJI bottled water as a sustainable product by stating that the use of recycled materials in its bottles, and the recyclability of the bottles themselves, make the bottles sustainable and eco-friendly when they are not; and (2) represent the products as 'natural' when they are not. *Id*. at 17, 22, 36. Plaintiff seeks declaratory and injunctive relief. *Id*. at 43.

II. Legal Standard

At the outset, the Court notes that Super. Ct. Civ. R. 8(a)(2) requires that a "pleading that states a claim for relief must contain . . . (2) a short and plain statement of the claim showing that the pleader is entitled to relief." Nonetheless, dismissal under Rule 12(b)(6) is warranted "where the complaint fails to allege the elements of a legally viable claim." *Greenpeace, Inc. v. Dow Chem. Co.*, 97 A.3d 1053, 1060 (D.C. 2014) (quoting *Chamberlain v. Am. Honda Fin. Corp.*, 931 A.2d 1018, 1023 (D.C. 2007); citing *Potomac Dev. Co. v. District of Columbia*, 28 A.3d 531, 543 (D.C. 2011)). In deciding a Rule 12(b)(6) motion, this Court must accept "all of the allegations in the complaint as true" and "construe all facts and inferences in favor of the plaintiff." *Id.* (quoting *Murray v. Wells Fargo Home Mortg.*, 953 A.2d 308, 316 (D.C. 2008)).

To survive a motion to dismiss a claim must have facial plausibility, that is, "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Potomac,* 28 A.3d at 544 (quoting *Ashcroft v. Iqbal,* 556 U.S. 662, 677 (2009)). Conclusory pleadings are not entitled to an assumption of truth and will not sustain a complaint. *Grimes v. District of Columbia*, 89 A.3d 107, 112 (D.C. 2014) (internal citations omitted). Neither will "formulaic recitation[s] of the elements of a cause of action." *Logan v. Lasalle Bank Nat'l Ass'n*, 80 A.3d 1014, 1019 (D.C. 2013) (quoting *(Michael Patrick) Murray v. Motorola, Inc.*, 982 A.2d 764, 783 n.32 (D.C. 2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

III. Analysis

The CPPA states that:

> It shall be a violation of this chapter for any person to engage in an unfair or deceptive trade practice, whether or not any consumer is in fact misled, deceived, or damages thereby, including to:
>
> (a) represent that goods or services have a source, sponsorship, approval, certification, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have; …
>
> (d) represent that goods or services are of particular standard, quality, grade, style, or model, if in fact they are of another;
>
> (e) misrepresent as to a material fact which has a tendency to mislead;
>
> (f) fail to state a material fact if such failure tends to mislead;
>
> (f-1) use innuendo or ambiguity as to a material fact, which has a tendency to mislead; …
>
> (h) advertise or offer goods or services without the intent to sell them or without the intent to sell them as advertised or offered….

D.C. Code § 28-3904. "To state a misrepresentation claim under the CPPA, one need only plausibly allege that the 'merchant misrepresented or failed to state a material fact' related to its good or services." *Earth Island Inst. v. Coca-Cola Co.*, 321 A.3d 654, 664 (D.C. 2024) (quoting *Frankeny v. District Hosp. Partners, LP*, 225 A.3d 999, 1005 (D.C. 2020)).

In determining whether a complaint states a plausible CPPA claim, courts "consider an alleged unfair practice in terms of how the practice would be viewed and understood by a reasonable consumer." *Ctr. For Inquiry, Inc. v. Walmart, Inc.*, 283 A.3d 109, 120 (D.C. 2022) (internal citations omitted). "Whether a trade practice is misleading under the CPPA generally is a question of fact for the jury and not a question of law for the court." *Id.* (internal citations omitted). However, where a Court finds that it is "facially implausible that a reasonable customer could believe" what the Complaint alleges from the detailed trade practices, Courts are empowered to dismiss such claims as a matter of law. *Id.* at 120-121.

Defendants first argue that "the CPPA claim should be dismissed because: (i) the 'sustainability' marketing statements identified by [Plaintiff] cannot plausibly be interpreted or understood to mislead a reasonable consumer; and (ii) [Plaintiff's] claim that FIJI's 'natural artesian water' labeling is misleading is both implausible and preempted by the FDCA." Mem. in Supp. of Mot. at 6. The Court will evaluate these arguments in turn.

a. Sustainability Statements

The crux of Plaintiff's allegations regarding Defendants' sustainability statements is that, although Defendants market FIJI bottled water as sustainable, such statements are misleading because plastic water bottles, even if made partially from recycled plastic, are inherently unsustainable. *See* Compl. ¶¶ 94-139. For example, the Complaint alleges that "Defendants' sustainability representations lead consumers to believe that the Products are sustainable. . . and do not have an overall negative effect on the environment. . . . Contrary to these representations, Defendants, through their FIJI Product line, are a major source of plastic pollution. . . ." *Id*. at ¶ 94. Further, Plaintiff alleges that "[r]ecycling and recycled plastic are not solutions to the global pollution problem," and that "[r]ecycled plastics degrade in quality and are typically only able to be recycled once," noting that "[r]ecycled plastics ultimately end up disposed in a landfill or by incineration." *Id*. at ¶¶ 95-96. Plaintiff also alleges that the process of making recycled plastic "requires large amounts of energy, water, equipment, and infrastructure," and that such "plastic recycling facilities may be a source of microplastic pollution." *Id*. at ¶¶ 97-98.

The Complaint references several statements, including: (1) "stating to consumers that [FIJI is] 'Doing More With Less' and highlighting their 'pledge' to 'promote a circular economy;'" (2) highlighting "'sustainability initiatives' through representations about their sustainable actions, recyclability, and environmental footprint," including that FIJI products are "'from a sustainable

ancient artesian aquifer' and that FIJI has 'focused on improving the lives of the people of Fiji, and protecting the unique place they call home;'" (3) stating on bottles that they are made from "'100% recycled plastic,'" and that Defendants have made a "'substantial step in reducing [its] plastic waste' in 'replac[ing] nearly 70% of [its] bottle volume in the US with recycled material;'" (4) stating that "'sustainability and environmental responsibility are top priorities for FIJI water, which continually strives for energy efficiency and waste reduction through recycling initiatives and infrastructure improvements;'" (5) stating that FIJI Water has "'a lighter environmental footprint' and is 'committed to reducing [its] carbon footprint;'" (6) stating that they are "'proud to have transitioned [its] iconic 500 mL and 330 mL bottles to 100% recycled plastic (rPET) throughout the U.S.' [a]nd further explain[ing] that 'the transition to 100% recycled plastic (rPET) bottles means that no new plastic is being created and put into circulation with these bottles.'" *Id.* at ¶¶ 82-88.

First, insofar as Defendants argue that Plaintiff has not "alleged that any specific sustainability statement by Defendants is false," the Court notes that the CPPA's "prohibition[s] extend[] beyond literal falsehoods." Mem. in Supp. of Mot. at 6; *Earth Island Inst. v. Coca-Cola Co.*, 321 A.3d 654, 664 (D.C. 2024).

The Court of Appeals recently took up the issue of whether statements regarding sustainability could be actionable under the CPPA in a similar circumstance in *Coca-Cola*, which the Parties discuss extensively in their filings. *See generally Coca-Cola*, 321 A.3d 654. There, the Court of Appeals considered allegations that Coca-Cola's representations indicating the importance of sustainability to the company, its efforts to collect and recycle bottles, and future sustainability goals, were misleading because Coca-Cola "is far from what consumers would understand to be a sustainable business," the statements "greatly overstate[] the efficacy of

recycling in addressing the plastics crisis," and Coca-Cola is not, in effect "working toward environmental sustainability." *Id*. at 659-61. Ultimately, the Court found that the Complaint:

> Plausibly alleges that Coca-Cola misleads consumers about the extent to which recycling can offset the environmental impacts of its mass-scale plastic production. Given how Coca-Cola… trumpets how it is '[s]caling sustainability solutions,' a reasonable consumer could plausibly think that its recycling efforts will put a serious dent in its environmental impacts. That is misleading, Earth Island alleges, pointing to a recent study showing that 'only 8.7% of all recyclable plastics in the U.S. were recycled,' yet 'large producers such as Coca-Cola continue to push ineffective 'recycling' as a viable tool to assuage their environmental pollution." If those facts are borne out, then it is quite plausible that Coca-Cola misleads consumers both through its statements and by failing to qualify them…. That is, when it promotes recycling efforts, it omits the fact that those efforts will not prevent the vast bulk of its plastic products from ending up as waste or pollution….

Id. at 665. The Court also found that the Complaint plausibly alleged that: (1) Coca-Cola's representations regarding its efforts to be more sustainable while mass-producing single-use plastics "with no intention of stopping or significantly curtailing that production" was misleading; and (2) Coca-Cola "misleads consumers into thinking it is serious about hitting the concrete benchmarks it has announced for itself, when in fact its practices show no intention of doing so." *Id*. at 664-65.

Although Defendants argue that "[t]he facts alleged in this litigation are markedly distinguishable from those of *Coca-Cola*…," noting that Plaintiff has not identified goals to which Defendants have not indicated an intention of meeting, the Court agrees with Plaintiff that the Court's analysis in *Coca-Cola* is applicable to the instant allegations. *See* Mem. in Supp. of Mot. at 7; Opp'n. at 8. For example, while Defendants' focus is on the portion of the *Coca-Cola* Court's analysis as to future promises and lack of effort in achieving those goals, *see* Mem. in Supp. of Mot. at 7, Reply at 3, here, as in *Coca-Cola*, Plaintiff's Complaint alleges "[r]ecycling and recycled plastic are not solutions to the global pollution problem," and that "[r]ecycled plastics ultimately

end up disposed in a landfill or by incineration." Compl. ¶¶ 95-96; *Coca-Cola*, 321 A.3d 665 (finding the Complaint stated a CPPA claim by alleging that most recyclable plastic is not recycled and that recycling plastic into bottles, therefore, is not "a viable tool to assuage their environmental pollution"); Opp'n. at 8.

While Defendants note that FIJI is a significant purchaser of recycled plastics, arguing that such recognition in the Complaint marks FIJI as "part of the solution," the Court of Appeals specifically found that a recycler's efforts, when advertised to suggest ultimate sustainability, may be misleading. *Coca-Cola*, 321 A.3d 665 (stating "when [Coca-Cola] promotes recycling efforts, it omits the fact that those efforts will not prevent the vast bulk of its plastic products from ending up as waste or pollution"). The Court is additionally unpersuaded by Defendants' argument that such understanding would make it "categorically misleading… for any company that uses plastic packaging (including *recycled* plastic packaging) to make any reference to sustainability…," as Plaintiffs here allege not only that Defendants "reference" sustainability, but the Complaint alleges that Defendants avow that "'sustainability and environmental responsibility are top priorities for FIJI water." Reply at 4; Compl. ¶ 86; *see also* Compl. ¶ 82 (alleging that Defendants highlight their "pledge" to "promote a circular economy").

b. "Natural Artesian Water" Labeling

Plaintiff additionally alleges that Defendants advertise the purity of their water in a manner which is misleading. The Complaint references several statements, including: (1) "[o]n the back of the Products…, the label reads 'Natural ARTESIAN' followed by text that describes the water as 'protected from external elements' and 'untouched;'" (2) stating "that their products are 'untouched by man' and are 'protected and preserved naturally from external elements;'" (3) stating that its "'natural' water is 'collect[ed] in a sustainable artesian aquifer' and is 'protected

and preserved naturally from external elements; stating that, after the water is bottled, it is "'free from human contact until you unscrew the cap. Untouched by man;'" (4) and that "'FIJI Water bottles have never contained BPA.'" Compl. ¶¶ 159-162, 164. However, Plaintiff alleges that it, "through counsel purchased the Product and had it tested by a third-party lab, which revealed that the water in the Product contained microplastics and that the packaging of the Product contained BPA." *Id*. at ¶ 168. Further, Plaintiff alleges the harmful effects of these man-made substances, and alleges that "[r]epresenting the Products as 'natural' when they contain microplastics and BPA is misleading to the reasonable D.C. consumer, who would not expect to find these synthetic, harmful substances in bottles of 'natural artesian water.'" *See id*. at ¶¶ 172-181.

Defendants cite to various cases from other jurisdictions to support the proposition that reasonable consumers would not be misled by a label describing food or drink as "100% natural" if there were trace, molecular levels of other substances. Mem. in Supp. of Mot. at 10-11 (citing e.g. *Slowinski v. BlueTriton Brands, Inc.*, 744 F. Supp. 3d 867, 872 (N.D. Ill. 2024) ("[n]o reasonable consumer would think that '100% Natural Spring Water' is a guarantee at the molecular level")). However, the statements which Plaintiff attributes to Defendants do not simply address the purity of the water, but market the water as "'protected and preserved naturally from external elements,'" and "'free from human contact.'" Compl. ¶¶ 160-162. Additionally, the Complaint alleges specific false or misleading statements regarding BPAs in the bottle itself. *Id*. at ¶¶ 164, 176-81. Notably, "[h]ow a reasonable consumer might understand the term ['natural'] is a question of fact… for the jury and not a question of law for the court." *Animal Legal Def. Fund v. Hormel Foods Corps.*, 258 A.3d 174, 187 n.9 (D.C. 2021) (internal citations and quotation marks omitted).

Defendants also argue that a reasonable consumer would not think that FIJI bottle water products are entirely synthetic-free since "FDA regulations dictate allowable concentrations of 'inorganic substances,' 'organic chemicals,' and 'pesticides and other synthetic organic chemicals' for bottled waters." Mem. in Supp. of Mot. at 10 (quoting 21 C.F.R. § 165.110(b)(4)). However, the Court agrees with Plaintiff that such regulations are of no consequence, as Plaintiff's allegations concern Defendants' representation of the water as "natural," indicating not simply that FIJI water meets the FDA's "standard of quality for bottled water," which may contain non-natural substances, but that it surpasses minimum standards and is "natural." Opp'n. at 10; 21 C.F.R. § 165.110(b). The Court finds that a reasonable consumer could be misled by the alleged statements into believing that the water is indeed 100% natural and "untouched by man".

Defendants additionally argue that "[t]o the extent [Plaintiff's] claim relies upon the Product's 'Natural Artesian Water' labeling, the FDCA preempts [Plaintiff's] CPPA claim." Mem. in Supp. of Mot. at 16. Defendants argue that "the FDA expressly exempts manufacturers from having to disclose the presence of '[i]ncidental additives that are present in a food at insignificant levels and do not have any technical or functional effect in that food,' including '[s]ubstances migrating to food from equipment or packaging or otherwise affecting food that are not food additives as defined in section 201(s) of the act.'" Mem. in Supp. of Mot. at 13 (quoting 21 C.F.R. § 101.100(a)(3)(iii)). However, the Court notes that an exemption from including such trace elements as "ingredients" on a food label, *see* 21 C.F.R. § 101.100(a), does not explicitly conflict with the CPPA's requirement that Defendants' statements about the product not be misleading.

Additionally, Defendants state that "'[t]he FDCA contains an express preemption provision' that 'forbids states from imposing any requirement for a food … that is not identical to

[the] standard of identity or that is not identical to the requirement of section 343(g).'" Mem. in Supp. of Mot. at 11 (quoting *Slowinski,* 744 F. Supp. 3d at 882 (quoting 21 U.S.C. § 343-1(a)(1)) (internal quotations marks omitted)). The cases cited by Defendants from other jurisdictions consider directly whether the requested relief seeks a requirement "that is not identical to the standard of identity," namely how the FDA defines certain terms. Mem. in Supp. of Mot. at 11; Reply at 6-7; 21 U.S.C. § 343-1(a)(1); *Slowinski,* 744 F. Supp. 3d at 882 (finding plaintiffs' claim to be preempted where they sought "to impose a 'no microplastics' requirement for spring water" for it to be considered natural where the FDA's "definition of spring water makes no mention" of microplastics); *Bruno v. Bluetriton Brands, Inc.*, 2024 U.S. Dist. LEXIS 98451, *6-7 (C.D. Cal. May 6, 2024) (finding that plaintiff's claim was preempted because the requested relief added to the definition of "spring water," a term regulated by the FDA, a requirement on microplastics).

Here, Plaintiff's allegations pertain to descriptors of the water, including that it is "'natural,'" "'untouched by man,'" "'protected and preserved naturally from external elements,'" "'free from human contact,'" and that "'FIJI Water bottles have never contained BPA.'" Compl. ¶¶ 172-181; *see* Opp'n. at 4-5. Such affirmative statements are beyond the scope of any informational disclosures mandated or precluded by, or definitions regulated by, the FDA. *See* 21 C.F.R § 165.110(a)(2)(i) (defining artesian water for bottled water, not the term 'natural'); *see also Plastic Pollution Coal. v. Danone Waters of Am., LLC*, 2025 D.C. Super. LEXIS at *8 (D.C. Super. Ct. March 18, 2025) (finding that the defendant "voluntarily added this 'natural' modifier," and that "the instant CPPA suit as to the 'natural' language would not impose additional requirements in the federal standard identity of 'spring water' and the CPPA suit is not barred by the express preemption provision of the FCPA"); *see also* Opp'n. at 5. Therefore the Court does not find that Plaintiff's claims are preempted.

c. Whether Plaintiff States a Claim Against Defendant The Wonderful Company LLC (TWC)

In addition to challenging the sufficiency of the allegations under the CPPA and arguing preemption, Defendants argue that the Complaint fails to state a claim against Defendant TWC. Mem. in Supp. of Mot. at 14-15. Although the Complaint alleges that TWC "claims to 'build[s] [sic] healthy brands from the ground up,' including two brands that package its products in plastic bottles, such as the FIJI Waters water bottle products," *see* Compl. ¶ 54, Defendants argue that such allegation, absent any allegation that TWC "reviewed, considered, approved, or was otherwise involved in any of the marketing materials on which [Plaintiff's] claims are based," is insufficient. Mem. in Supp. of Mot. at 15. However, the Court disagrees and finds that Plaintiff's Complaint, plausibly establishes Defendant TWC's involvement. For example, the allegation referenced by Defendants plausibly alleges TWC's instrumental hand in "build[ing]" FIJI as a "healthy brand." Compl. ¶ 54. Additionally, as Plaintiff notes in Opposition, the Complaint alleges that "Defendants market, sell, and distribute the Products in the District of Columbia." *Id.* at ¶¶ 4, 57.

Therefore the Court denies Defendants' Motion to Dismiss the Complaint, filed on April 18, 2025. Further, the Parties' Joint Motion to Continue the Initial Scheduling Conference, filed on August 4, 2025, asks that the Court continue the Initial Scheduling Conference Hearing scheduled for August 8, 2025 pending determination of Defendants' Motion to Dismiss. Parties' Mot. to Continue at 1. In light of the Court's ruling, the Court denies the Motion to Continue as moot.

Accordingly, it is this **7th day of August, 2025**, hereby:

ORDERED that Defendants' Motion to Dismiss the Complaint is **DENIED**; it is further

ORDERED that Defendants FIJI Water, LLC, and The Wonderful Company, LLC **SHALL FILE** Answers on or before **August 21, 2025**; it is further

ORDERED that the Parties' Joint Motion to Continue the Initial Scheduling Conference, filed on August 4, 2025, is **DENIED AS MOOT**; and it is further

ORDERED that the Parties **SHALL APPEAR** for a Remote Initial Scheduling Conference on **August 8, 2025, at 9:30 a.m.**, in Remote Courtroom 219 before Judge Ebony M. Scott. Instructions for participation in the remote hearing are attached.

SO ORDERED.

Associate Judge Ebony M. Scott
(Signed in Chambers)

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VIRTUAL COURTROOM INSTRUCTIONS FOR COURTROOM 219

During the period of remote operation, as determined by the Chief Judge of the Superior Court, some proceedings in matters on Calendar 8 will take place in Virtual Courtroom 219, which the parties and counsel may access in the following ways:

(1) Going to the WebEx website at https://dccourts.webex.com/meet/ctb219 or going to https://dccourts.webex.com and entering meeting ID number 129 315 2924; or

(2) Downloading the WebEx Meetings app, opening the app, selecting Join Meeting, and entering https://dccourts.webex.com/meet/ctb219; or

(3) Calling 1-844-992-4726 or 202-860-2110, then entering meeting ID number 129 315 2924#, then pressing # again to enter the meeting.

Parties having trouble connecting to their remote hearing may contact chambers at judgescottchambers@dcsc.gov as staff will be monitoring the e-mails closely during hearings.

Failure to appear at a remote proceeding may result in the Court entering an unfavorable ruling against you, including dismissal of a case or entry of default.

COURTROOM PROTOCOL

Guidelines: When entering the virtual courtroom (by dialing in on a phone, or signing in through the website or app), a party or counsel should not attempt to speak because another hearing may be underway. Each party should be automatically muted by the courtroom clerk when you first arrive. If you are using the WebEx website or the app, you may check in with the courtroom clerk using the "chat" function. If you are on a telephone, you should wait for your case to be called.

Option to Appear In-Person for Remote Hearings: Even though your case has been set as a remote hearing, you have the choice to come in person to the Court for your hearing. If you would like to participate in person, please try to notify the Court before your hearing date. Whether you come in person or participate remotely, your case will still be fully heard by the Judge. Instructions for participation in remote hearings may be found above and here: https://www.dccourts.gov/services/remote-hearing-information.

Exhibits: If you intend to rely on exhibits or other documents during the hearing, you must e-mail the exhibits to the Court at judgescottchambers@dcsc.gov, copying all sides, no later than 5:00 p.m. two business days before the hearing. You must also file the exhibits on the docket and provide a copy of the exhibits to any witness before the hearing. The exhibits must be separately labeled so that they can be easily identified by all parties and the Court during the remote hearing.