United States District Court
Central District of California
Western Division

STEPHANIE ESCOBAR, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

JUST BORN, INC.,

Defendant.

CV 17-01826 TJH (PJWx)

Order

[98]

The Court has considered Defendant Just Born, Inc.'s ["Just Born"] motion for reconsideration of the Court's March 25, 2019, order ["the Order"] granting Plaintiff Stephanie Escobar's motion for class certification, together with the moving and opposing papers.

On May 3, 2018, Escobar moved to certify a class of individuals that purchased Just Born's products – Mike and Ikes, and Hot Tamales – in California on the basis that approximately 46% of the products were non-functional slack fill, or empty space, in violation of: (1) California Consumers Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.* ["CLRA"]; (2) California False Advertising Law, Cal. Bus. & Prof. Code § 17500, *et seq.* ["FAL"]; and (3) California Unfair Competition Law, Cal. Bus. & Prof.

Code § 17200, *et seq*. ["UCL"].

On March 25, 2019, the Court granted Escobar's motion for class certification. Just Born, now, moves for reconsideration of that order.

Motions for reconsideration are governed by the Local Rules and the Federal Rules of Civil Procedure. Under Local Rule 7-18, a party may move for reconsideration if: (1) Facts or law previously unknown and unknowable to the moving party come to light; (2) New facts or law emerge; or (3) There was a manifest failure to consider material facts. Under the Federal Rules of Civil Procedure 59 and 60(b), a party may move for reconsideration upon a showing of: (1) Mistake, surprise, or excusable neglect; (2) Newly discovered evidence; (3) Fraud; (4) A void judgment; (5) A satisfied or discharged judgment; or (6) Any other reason that justifies relief.

Just Born's motion for reconsideration is based on two main points: (1) That the Court did not "reference or analyze" material class member survey data that Just Born set forth in its opposition to the motion to certify the class; and (2) That the Court erred by finding that Escobar had standing and was an adequate class representative for a class of Hot Tamales consumers even though Escobar failed to allege or prove that she purchased Hot Tamales.

Just Born argued that the Court failed to rigorously analyze whether Escobar established Fed. R. Civ. P. 23's requirements because the Court did "not provide analysis or reasoning based on the nearly 750-plus pages of combined briefing submitted by the parties." Just Born, further, argued that two district court decisions – *Spacone v. Sanford L.P.*, 2018 WL 4139057 (C.D. Cal. Aug. 9, 2018) and *White v. Just Born*, 2018 WL 3748405 (W.D. Mo. Aug. 7. 2018) – both of which were decided after Just Born filed its opposition brief to the class certification motion in this matter – mandate reconsideration here. In sum, Just Born argued that its evidence mandated a different result and, therefore, the Court must not have considered Just Born's evidence when it granted Escobar's motion.

First, the length of the Court's order does not have to match the length of the

parties' briefs. The Court's brevity or lack of explicit analysis does not equate to insufficient, or lack of, consideration. Indeed, the Court considered all of the parties' arguments and evidence.

Second, Just Born's analysis arguments are misplaced. At the class certification stage, the Court merely determines whether class certification is warranted. Indeed, the Court has "no license to engage in free-ranging merits inquiries" at this juncture. *Stockwell v. City and Cty. of S.F.*, 749 F.3d 1107, 1111 (9th Cir. 2014). Just Born argued in its opposition to the motion for class certification and in its motion for reconsideration that certification was improper based on its proffered statistical data and expert analysis that the majority of the public was not *actually* misled or deceived. When the concern about a proposed class is a failure of proof as to an element of the putative class's claim, the concern is properly considered as a matter of summary judgment, not class certification. *Torres v. Mercer Canyons Inc.*, 835 F.3d 1125, 1140 (9th Cir. 2016).

Just Born's arguments regarding *Spacone* and *White* are, also, unpersuasive. As an initial matter, neither case is binding on this Court. Further, neither case is applicable, here. *Spacone* was decided primarily on the basis that the putative class representative lacked standing and that his alleged injury was so factually specific that his claims were not typical of the putative class. *See Spacone*, 2018 WL 4139057 at *5-6, 9. The claims in *White* are not based on California law, making it irrelevant to whether a determination of a class with California state law claims should be certified. *See White*, 2018 WL 3748405 at *1-2.

Finally, Just Born is correct as to its argument that Escobar's claims, as they relate to Hot Tamales, are not typical of the class she seeks to represent because there is no evidence or argument that she purchased Hot Tamales. The Court's inclusion of Hot Tamales was a scrivener's error.

Accordingly,

It is Ordered that the motion for reconsideration be, and hereby is, **Granted** in part.

The Court will issue an amended order.

Date: June 19, 2019

Terry J. Hatter, Jr.
Senior United States District Judge