Prepared by the Court

HAROLD M. HOFFMAN, individually and on behalf of those similarly situated,

Plaintiff,

vs.

PARADISE HERBS & ESSENTIALS, INC., and SCOTT BIAS,

Defendants,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

DOCKET NO.: BER-L-2538-14
Civil Action

ORDER

This matter having been brought before the Court upon the motion of Gibbons, P.C. attorneys for Defendants Paradise Herbs & Essentials, Inc. and Scott Bias, and Court having reviewed the Certification of Counsel in support of the motion and any timely opposition submitted thereto, and having heard oral argument, and good cause having been shown;

IT IS on this 2 day of March, 2015;

ORDERED the Defendant Paradise Herbs & Essentials's motion to dismiss is hereby GRANTED and the Plaintiff's complaint is DISMISSED WITHOUT PREJUDICE; and it is further

ORDERED that a copy of this Order be served on all parties to this action within 7 days of receipt of this Order.

FILED

MAR 02 2015

JOHN J. LANGAN, JR.
J.S.C.

Hon. JOHN J. LANGAN, JR., J.S.C.

HAROLD HOFFMAN, Plaintiff, v. **PARADISE HERBS & ESSENTIALS, INC.,** Defendant,	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: BERGEN COUNTY DOCKET NO.: BER-L-2538-14 Civil Action **RIDER**

Counsel for the Defendant, Paradise Herbs & Essentials, Inc. ("Paradise"), has moved before this Court for an Order dismissing the complaint pursuant to R. 4:6-2. The Plaintiff, Harold Hoffman, filed opposition to this motion. .

Background

Plaintiff has filed a complaint alleging violations of the New Jersey Consumer Fraud Act ("CFA"), N.J.S.A. § 56:8-1, et seq., and common law fraud with respect to Defendant's advertising, promoting, marketing, distribution, and sale of its Panax Red Ginseng ("the Product"). The complaint alleges that the Defendant's advertising of the Product claims a higher concentration of the key ingredient, ginseng, than is actually present. The Product, and ginseng more generally, are allegedly intended to improve "energy and vitality, particularly during times of fatigue or stress." Complaint, ¶ 8. The ginseng concentration is allegedly indicated in testing by the presence of ginsenosides, and the two phrases are used largely interchangeably for the purposes of this case. In particular, the Plaintiff alleges that "Defendant's Panax Red Ginseng states that each of its 200 mg capsules contains an '8:1' extract of ginseng root. An '8:1' extract indicates that the concentration of ginsenoside compounds should be 8 times that in ginseng root powder." Complaint, ¶ 9. The Complaint then states the level of ginsenosides allegedly found in

ginseng root, and represents that the level of ginsenosides in the Product is not eight times that amount. Ibid. Instead, the Complaint alleges that the Product only contains 76% of the ginsenosides that its "8:1" ratio claim would indicate. Ibid. This allegation is based upon "sophisticated, independent laboratory testing[.]" Ibid.

The Complaint then asserts three different causes of action against the Defendants based upon these allegations: (1) violation of the CFA; (2) common law fraud; and (3) unjust enrichment. The ascertainable loss claimed by the Plaintiff is the cost that he paid for the Product, which he claims misrepresented its formulation and over-stated the concentration of a key active ingredient.

Argument

The Defendant argues that the Plaintiff has failed to demonstrate the basic elements of any of the elements of his claims against the Defendant in his complaint and therefore the complaint must be dismissed. The Defendant submits that the Plaintiff failed to properly plead a cause of action for consumer fraud because: (1) the Plaintiff has failed to allege any unlawful practices; (2) the Plaintiff does not allege any ascertainable loss; and (3) the Complaint does not allege the causal connection between any alleged loss and any alleged unlawful conduct. Similarly, the Defendant argues that the Plaintiff failed to establish the elements of his common law fraud and unjust enrichment claims.

A motion to dismiss pursuant to R. 4:6-2(e) tests whether the allegations set forth in a complaint "state a claim upon which relief can be granted." As enunciated in New Jersey Ass'n of Health Plans v. Farmer:

> In deciding a motion to dismiss for failure to state a claim upon which relief can be granted under R. 4:6-2(e), the inquiry is confined to a consideration of the legal sufficiency of the alleged facts apparent on the face of the challenged claim. For purposes of

> determining the motion, all facts alleged in the complaint and legitimate inferences drawn therefrom are deemed admitted. A reviewing court searches the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary.
>
> [342 N.J. Super. 536, 550 (Ch. Div., 2000).]

Plaintiff "must make allegations, which, if proven, would constitute a valid cause of action." Island Mortgages of New Jersey v. 3M, 373 N.J. Super. 172, 175 (2004). A pleading sounding in fraud must, on its face, satisfy the heightened pleading requirements set forth in New Jersey Court R. 4:5-8. State ex rel. McCormac v. Qwest Commc'ns Int'l, Inc., 387 N.J. Super. 469, 484 (App. Div. 2006).

The Defendant argues that the Plaintiff has failed to plead a claim under the CFA. More particularly, the Plaintiff has not alleged unlawful practices under the CFA. To violate the CFA, the Defendant must commit an "unlawful practice" as defined by N.J.S.A. § 56:8-2. See Cox v. Sears Roebuck & Co, 138 N.J. 2, 17 (1994). The Defendant claims that the Plaintiff has failed to allege facts establishing any false representations or unconscionable commercial practices to show "unlawful conduct." The Defendant contends that the Plaintiff has not pled facts sufficient to establish that the Product lacked the advertised levels of ingredients, because Paradise does not advertise, as Mr. Hoffman alleges, that an 8:1 extraction ratio "indicates that the concentration of ginsenoside compounds should be 8 times that in ginseng root powder." See McDonald Decl., Ex. B at ¶ 9. The Defendant states that Paradise has never represented that the concentration of ginsenoside compounds in Defendant's Panax Red Ginseng should be 8 times that in ginseng root powder, and instead represents that this statement only means how many parts of raw material are used to obtain one part of the Product. The Defendant submits that the Plaintiff cannot allege unlawful conduct based upon a representation that Defendant did not

make. See Hodges v. Vitamin Shoppe, Inc., No. 13-3381 (SRC), 2014 U.S. Dist. LEXIS 5109, at *9-10 (D.N.J. Jan. 15, 2014).

The Defendant also argues that the Complaint is devoid of facts to support the allegations that the Product actually purchased by the Plaintiff lacked the advertised amounts of ginsenosides and that this insufficient amount of ginsenosides caused less than the advertised and desired effects. Defendant submits that the Plaintiff has provided absolutely no factual basis for the claim that "each capsule of Defendants' Panax Red Ginseng contains only 76% of the minimally expected amount of ginsenosides, the product's key constituent for biological activity." See McDonald Decl., Ex. B. The Complaint, in the Defendant's opinion, speculates that the Panax Red Ginseng purchased by Mr. Hoffman must have had the same percentage relying upon an "unidentified assertion" from the internet. The Defendant further argues that the Plaintiff has provided no factual basis for the claim that the product provides any less of the desired effect than advertised, since he does not identify his symptoms or ailment prior to his ingestion of Defendant's Panax Red Ginseng. According to the Defendant, there are a number of variables to be considered as to what the effect of ingesting these dietary supplements could be. The Defendant submits that the Complaint's speculative conclusions neither satisfy the pleading requirements for fraud set forth in R. 4:5-8, nor plead unlawful conduct under the CFA.

The Defendant further argues that the complaint also must fail because it does not allege an "ascertainable loss" as required by the CFA. See N.J.S.A. § 56:8-19; Meshinsky v. Nichols Yacht Sales, Inc., 110 N.J. 464, 475-76 (1988). Failure to establish ascertainable loss bars a private cause of action. See Weinberg v. Sprint Corp., 173 N.J. 233, 249-50 (2002). In this case, Plaintiff alleges that his "actual out of pocket payment and expenditure," constitutes an ascertainable loss. See Complaint, ¶¶ 16, 25-26. The Defendant argues that the mere purchase of

a product is not an actual loss under the CFA, since the statute plainly mandates an actual, ascertainable loss, not simply that an individual made a purchase. See Thiedemann v. Mercedes-Benz USA, LLC, 183 N.J. 234, 248 (2005). To equate a "purchase" with an "ascertainable loss" would eviscerate the CFA's private party standing requirement and would confer standing to assert an CFA claim on every individual who purchases a product, regardless of whether he has suffered any real, actual, or demonstrable loss of money or property.

The Defendant cites to Mason v. Coca-Cola Co., 774 F. Supp. 2d 699, 704-05 (D.N.J. 2011), which found that "plaintiffs have not adequately pled facts showing how they experienced any out-of-pocket loss because of their purchases, or that the soda they bought was worth an amount of money less than the soda they were promised." The Plaintiff claims that he suffered ascertainable losses "in the form of actual out of pocket payment and expenditure" because he received "a product less than, and different from, the product promised by Defendant[,]" which "failed to measure up to the consumers' reasonable expectations." The Defendant submits that this is an insufficient factual allegation to establish that the product he received was worth any less than the product he purchased and otherwise fails to demonstrate that Plaintiff suffered an ascertainable loss. The Defendant contends that the Plaintiff received exactly what he bargained for: a ginseng-based nutritional supplement that contained exactly what was printed on its label.

The Movant also seeks to distinguish this case from Hoffman v. Liquid Health Inc., No. 14-1838 (SRC) (CLW), 2014 U.S. Dist. LEXIS 90075 (D. N.J. July 2, 2014). The Liquid Health court found that Mr. Hoffman paid $40 for 32 ounces of 1,200 milligrams of the constituent ingredient, so his allegation that he received only 16% of the ingredient was a quantifiable ascertainable loss. See id., at *17-18 Here, the Defendant argues that the Plaintiff alleges Defendant made a misrepresentation of facts, which Defendant claims was never made. Even

beyond that distinction, Defendant argues that the Plaintiff also fails to state his exact purchase price or the retail price of any competitors. The allegation that the Product contains 76% of the "expected" amount of ginsenosides is not measurable according to the Defendant and, moreover, is not akin to the quantifiable 16% of the product Mr. Hoffman allegedly paid $40 for in Liquid Health. The Defendant/Movant argues, therefore, that the Complaint is bereft of any allegations of an actual, quantifiable loss. Plaintiff's failure to plead facts demonstrating that he suffered an ascertainable loss unquestionably warrants dismissal for failure to state a claim in the Defendant's opinion.

Movant further argues that the Complaint fails to properly plead that the Plaintiff's purported loss was causally related to the Defendants alleged unlawful conduct. The Defendant again refers to Thiedemann, 183 N.J. at 246, and also Dabush v. Mercedes-Benz USA, LLC, 378 N.J. Super. 105, 116 (2005), for the proposition that the Plaintiff must establish an actual loss attributable to conduct made unlawful by the CFA. In their opinion, a CFA plaintiff "bear[s] the ultimate burden of showing a causal link between the offending practice and the claimed loss, with the amount of the ascertainable loss to be demonstrated to a reasonable degree of certainty." Dabush, 378 N.J. Super. at 116. The Defendant submits that even assuming, arguendo, that Plaintiff alleged unlawful conduct and an ascertainable loss, he fails to plead a "causal link between the offending practice and the claimed loss." Ibid.

The Defendant similarly contends that the Plaintiff has failed to state a claim for common law fraud. A Plaintiff must allege facts that, if proven, would establish: "(1) a material misrepresentation of a presently existing or past fact; (2) knowledge or belief by the Defendant of its falsity; (3) an intention that the other person rely on it; (4) reasonable reliance thereon by the other person; and (5) resulting damages." Gennari v. Weichert Co. Realtors, 148 N.J. 582,

610 (1997) (citing Jewish Ctr. of Sussex County v. Whale, 86 N.J. 619, 624-25 (1981)). Furthermore, R. 4:5-8 (a) requires that a fraud claim be pled with specificity. See Hoffman v. Hampshire Labs, Inc., 405 N.J. Super. 105, 112 (App. Div. 2009). The Defendant argues that the Plaintiff has failed to plead specific facts to show that Defendant's representations about its Product were false. Plaintiff bases the purported "misrepresentation" on his claim that an 8:1 extraction ratio "indicates that the concentration of ginsenoside compounds should be 8 times that in ginseng root powder." See Complaint, ¶ 9. Paradise, however, stated that it has never represented that the concentration of ginsenoside compounds in Defendant's Panax Red Ginseng should be 8 times that in ginseng root powder. Instead, Paradise states on the Product label: "Truly Holistic 8:1 Full Spectrum" and "Panax Red Ginseng root extract 8:1." See McDonald Decl., Ex. E. In other words, the movant submits that Paradise's label only states how many parts of raw material are used to obtain one part of the Product.

The Defendant asks the Court to take note of other cases filed by this Plaintiff and asserts that the Plaintiff is aware of the need to establish fraud claims with specificity. The Defendant contends that the Plaintiff failed to allege with particularity that he relied upon Defendant's alleged misrepresentations when he purchased Defendant's Panax Red Ginseng, or that he purchased the product as a result of those particular representations. See Hampshire Labs, Inc., supra, 405 N.J. Super. at 116 ("[P]laintiff did not allege that he or any class-member purchased the product as a result of Defendants' allegedly false statements[.]"). The Defendant's alleged damages are illusory, speculative, and, at best, allege a baseless potential risk of injury. Consequently, Plaintiff does not allege cognizable damages to support a claim of common law fraud. The Defendant, therefore, seeks a dismissal of the common law fraud claims because the Complaint fails to meet the heightened pleading requirements under R. 4:5-8(a).

The Defendant further submits that the Plaintiff has failed to establish that the Defendant has been unjustly enriched. The doctrine of unjust enrichment "rests on the equitable principle that a person shall not be allowed to enrich himself unjustly at the expense of another." Assoc. Comm. Corp. v. Wallia, 211 N.J. Super. 231 (App. Div. 1986) (citing Callano v. Oakwood Park Homes Corp., 91 N.J. Super. 105 (App. Div. 1966)). To establish unjust enrichment, "a Plaintiff must show both that Defendant received a benefit and that retention of that benefit without payment would be unjust." VRG Corp. v. GKN Realty Corp., 135 N.J. 539, 554 (1994). Liquid Health, supra, at *33, found that an unjust enrichment claim is "not appropriate" in the absence of a direct relationship with the Defendant. The Defendant argues that the Plaintiff admits the absence of a "direct relationship" with Defendant, because he has pled that he purchased Defendant's Panax Red Ginseng "at a local health food shop," not directly from Defendant. See Complaint, ¶ 1. The Defendant further argues that the Plaintiff has failed to adequately plead that Defendant's Panax Red Ginseng failed to function as advertised or that he was injured by the product, so it was not unjust for Defendant to retain his money in exchange for delivery of the Product to Plaintiff through the third-party retailer.

In response to the Defendant's motion, Plaintiff restates the allegations of his Complaint, and also includes a summary of the legal standard of review for motions to dismiss and the requirements for a CFA cause of action. Plaintiff also attaches a copy of the recent decision in Liquid Health handed down by Judge Chester in United States District Court. The balance of Plaintiff's argument may be summed up by his reference to Printing Mart-Morristown v. Sharp Electronics Corporation, where the Court stated that complaint allegations must be viewed with "great liberality and without concern for the plaintiff's ability to prove the facts alleged in the

complaint." 116 N.J. 739, 746 (1989). He also submits that R. 4:6-2 motions "should be approached with great caution" and granted only "in the rarest of instances." Ibid.

In reply to the Plaintiff's brief and in further support of their motion, the Movant submits that Mr. Hoffman's untimely opposition submissions should be stricken, and the motions to dismiss should be considered unopposed in accordance with R. 1:6-3(a). Yes, the Plaintiff's opposition papers were untimely, but nevertheless, there was no prejudice to the Movant in so far as the Movant had ample time to reply therefore the court will consider the plaintiffs opposition to the defendants motion.

The Defendant also argues in its reply that Mr. Hoffman relies upon Liquid Health not for its substance, but for the proposition that each lawsuit "is entitled to an independent evaluation of its merits." Liquid Health, supra, at *17. Nevertheless, Defendant submits that the unopposed arguments set forth in their moving briefs demonstrate why an "independent evaluation" of this suit yields the same conclusions that the complaint herein must be dismissed. The Court concurs that the Plaintiff's opposition to the Defendant's motion consists of a two-page restatement of the allegations in his complaint in paragraph form. The Plaintiff offers no substantive opposition to the legal arguments set forth in Paradise Herbs' moving brief, leaving those arguments entirely unopposed in the movant's opinion. The Defendant argues that the Plaintiff just offers more conclusory assertions that were "cut and pasted" from a prior writing and could be filed in any case

Decision

It should immediately be noted that this Court gives no weight to the Defendant's arguments regarding the Plaintiff's other case filings and any implication that his status as a "frequent-filer" should subject this Complaint to a standard that is any different from that given

to any other complaint. Throughout its submissions, the Defendant references other cases filed by the Plaintiff and claims that they stand for things such as "Mr. Hoffman is well-aware of" what the CFA or common law fraud claims requires or that Mr. Hoffman should somehow be treated as a special. What the Plaintiff is particularly "well-aware of" is irrelevant to the question of whether this Complaint should be dismissed as a matter of law pursuant to R. 4:6-2 & -8. Any such implication concerning the Plaintiff's filing of other complaints is hereby disregarded by the Court.

R. 4:6-2 provides in relevant part, "[e]very defense, legal or equitable, in law or fact, to a claim for relief in any complaint . . . may at the option of the pleader be made by motion, with briefs" for "(e) failure to state a claim upon which relief can be granted." Pursuant to this rule, a complaint may be dismissed for failure to state a claim only if, after an in-depth and liberal search of the allegations therein, a cause of action cannot be gleaned from even an obscure statement in the complaint, particularly if further discovery is taken. See R. 4:6-2(e); see also Pressler, Current N.J. Court Rules, comment 4.1.1 on R. 4:6-2(e) (2012) (citing Printing Mart v. Sharp Elecs., 116 N.J. 739, 746 (1989)).

In evaluating a motion to dismiss for failure to state a claim, a court must give the non-movant every inference. See NCP Litigation Trust v. KPMG, LLP, 187 N.J. 353, 365 (2006); Banco Popular North America v. Gandi, 184 N.J. 161, 165–66 (2005); Fazilat v. Feldstein, 180 N.J. 74, 78 (2004). Furthermore, the motion is granted only rarely and without prejudice. See In re Contest of November 8, 2005, 192 N.J. 546 (2007). The "test for determining the adequacy of a pleading [is] whether a cause of action is suggested by the facts." Printing Mart, 116 N.J. at 746. Moreover, a complaint should not be dismissed under this rule where a cause of action is suggested by the facts and a theory of actionability may be articulated by amendment of the

complaint. See ibid. However, when the complaint states no basis for relief, dismissal of the complaint is appropriate. See Energy Receive v. Dep't of Env. Protection, 320 N.J. Super. 59 (App. Div. 1999).

To succeed on a claim under the CFA, a plaintiff must show (1) an unlawful practice by defendant, (2) an ascertainable loss on the part of plaintiffs, and (3) a causal relationship between the defendant's unlawful conduct and the plaintiffs' loss. Cox v. Sears Roebuck & Co., 138 N.J. 2, 24 (1994). The first element of a CFA claim, an unlawful practice by defendant, "typically involves an affirmative act of fraud and can arise from an affirmative act, an omission, or a violation of an administrative regulation." Adamson v. Ortho-McNeil Pharm., Inc., 463 F. Supp. 2d 496, 501 (D. N.J. 2006). "The misrepresentation has to be one which is material to the transaction and which is a statement of fact, found to be false, [and] made to induce the buyer to make the purchase." Gennari v. Weichert Co. Realtors, 148 N.J. 582, 366 (1997). Next, to properly plead an ascertainable loss, a plaintiff must allege facts showing "either an out-of-pocket loss or a demonstration of loss in value." Dist. 1199P Health and Welfare Plan v. Janssen, L.P., 784 F. Supp. 2d 508, 530 (D. N.J. 2011) (internal citations omitted). Finally, a plaintiff must show a causal nexus between the misrepresentation or concealment of the material fact by defendant and the loss suffered by any person. Dewey v. Volkswagen AG, 558 F. Supp. 2d 505, 526 (D. N.J. 2008).

- **Consumer Fraud Act**

Unlawful Conduct

The Plaintiff alleges that the Defendant committed an affirmative act of fraud by misrepresenting the amount of ginseng in the Product. The Defendant, however, debates whether the statement the Plaintiff is referencing means what he says it does. Defendant claims that the

statement does not represent the amount of ginseng that should be in the product, but merely how many parts of ginseng root were used to make one part of the Product. In any case, the Defendants also question the tests that are supposedly the basis for the Plaintiff's claims regarding the amount of ginsenosides in the Product, and assert that the Product that the Plaintiff actually purchased and consumed must be the subject of the test. Even given that the non-moving party is entitled to every reasonable inference in motions to dismiss for failure to state a claim, the Court finds that the Plaintiff's allegations regarding misrepresentations of ginsenoside concentrations are insufficient to state a cause of action for consumer fraud. See NCP Litigation Trust, 187 N.J. at 365. Even assuming that the statements by the Defendant mean what the Plaintiff alleges they do, there are insufficient facts plead to support any claim of misrepresentation. There are no facts presented about what was tested, by whom, or even how. There are also no facts plead about how 24% less ginseng in the Product would actually affect its efficacy; only conclusory allegations that it would. The Plaintiff, therefore, has failed to plead the necessary facts to demonstrate unlawful conduct under the CFA.

Ascertainable Loss

Here, the Plaintiff alleges that he suffered ascertainable loss in the form of "actual out of pocket payment and expenditure" when they "received something less than, and different from, what they reasonably expected in view of the Defendant's representations." Complaint, ¶ 25 & 28. In Hoffman v. Hampshire Labs, Inc., 405 N.J. Super. at 114-15, the Court ruled the plaintiff did not meet the requirement of ascertainable loss when he claimed monetary loss stemming from purchasing a product. In that case, plaintiff asserted that the ingredients in an erectile dysfunction pill would not lead to the results predicted and promised by the defendant. In that matter, the Court found the loss to be insufficient because "plaintiff [did] not allege[d] that he used the product and it

failed. Nor did plaintiff allege that he was dissatisfied with the product, demanded his money back, and defendants had refused to provide a refund. Thus, plaintiff's claimed monetary loss is purely hypothetical. Therefore, the facts as alleged in the complaint do not constitute an 'ascertainable loss.'" Ibid.

The Court finds the Plaintiff's claims in this case to be "broad and conclusory" and insufficient to "provide the specificity that is required in pleading ascertainable loss[.]" See Hoffman v. Nordic Naturals, Inc., 2014 U.S. Dist. LEXIS 53125, at *13-14 (D. N.J., Apr. 17, 2014). The Plaintiff never alleges in his Complaint that he used the Product and it failed, or that the Defendant failed to provide a refund upon demand. In addition, the Plaintiff has not alleged any facts or claims to demonstrate that the product he received was at all less valuable than what he thought he was paying for. See Mason v. Coca-Cola Co., 774 F. Supp. at 704-05. There is never any allegation of the amount of money that was paid for the Product by the Plaintiff and never any allegations about how it was less effective than advertised. The Plaintiff has therefore failed to demonstrate any ascertainable loss under the CFA. See N.J.S.A 56:8-19.

Causation

The Plaintiff's allegations are sufficient to demonstrate the third, causation element of a CFA claim. Under the CFA, a plaintiff must also demonstrate that his or her ascertainable loss was "attributable to conduct made unlawful by the [Act]." Thiedemann, supra, 183 N.J. at 246. A plaintiff must therefore "plead and prove a causal nexus between the alleged act of consumer fraud and the damages sustained." New Jersey Citizen Action v. Schering-Plough Corp., 367 N.J. Super. 8, 15 (App. Div. 2003). Assuming that the first two elements of a CFA claim are present, the Plaintiff's allegations that he and putative class members relied upon the misrepresentations

regarding the amount of ginseng in deciding to purchase the complaint would be enough to satisfy the third prong under the liberal pleading standards for R. 4:6-2 motions.

Common Law Fraud

Based upon the allegations in the Complaint, the Plaintiff also fails to state a claim for common law fraud. A Plaintiff must allege facts that, if proven, would establish: "(1) a material misrepresentation of a presently existing or past fact; (2) knowledge or belief by the Defendant of its falsity; (3) an intention that the other person rely on it; (4) reasonable reliance thereon by the other person; and (5) resulting damages." Gennari, supra, 148 N.J. at 610. Furthermore, R. 4:5-8 (a) requires that a fraud claim be pled with specificity. See Hampshire Labs, supra, 405 N.J. Super. at 112. As with the Plaintiff's CFA claims, the facts alleged in the Complaint in this case lack requisite specificity to demonstrate a material misrepresentation, or damages. For the same reasons that the Plaintiff failed to allege sufficient facts to demonstrate a misrepresentation or an ascertainable loss under the CFA, he cannot set forth a sufficient claim for common law fraud.

Unjust Enrichment

The Plaintiff also failed to sufficiently state a claim for unjust enrichment. "[A] Plaintiff must show both that Defendant received a benefit and that retention of that benefit without payment would be unjust." VRG Corp. v. GKN Realty Corp., 135 N.J. 539, 554 (1994). An unjust enrichment claim is "not appropriate" in the absence of a direct relationship between the plaintiff and the defendant. Liquid Health, supra, at *33. Here, there is no allegation of a direct relationship between the Plaintiff and the Defendant. The Plaintiff alleges that he bought the Product not from the Defendant, but from a third party health shop. The Plaintiff, therefore, cannot assert a direct relationship with the Defendant and cannot state a claim for unjust enrichment.

The Plaintiff also fails to state a claim for unjust enrichment because he cannot show how the Product was less valuable than what he expected. As previously stated, the Plaintiff does not allege sufficient facts to demonstrate how the conclusory statements about the composition or efficacy of the Product have been reached. There is nothing in the Complaint to back up the Plaintiff's claims that the Defendants have received any more value for the Product than they were entitled to receive. Therefore, the Plaintiff's claims for unjust enrichment must be dismissed.

Conclusion

For the foregoing reasons, the Plaintiff's Complaint against the Defendant, Paradise Herbs & Essentials, Inc., must be dismissed in its entirety for failure to state a claim. This dismissal is without prejudice and the Plaintiff may attempt to remedy the deficiencies with his Complaint by refiling within 45 days of this Order and Rider.