

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2025-007742

11/06/2025

HONORABLE SCOTT MINDER

CLERK OF THE COURT
M. R. Diaz
Deputy

STATE OF ARIZONA, et al.

GRETCHEN FREEMAN-CAPPIO

v.

C B R SYSTEMS INC

ANDREW GEORGE PAPPAS

JUDGE MINDER

ORDER DENYING MOTION TO DISMISS

On April 25, 2025, Defendant CBR Systems, Inc. moved to dismiss the complaint. The Court has reviewed the motion, response, and complaint. The parties provided oral argument on October 6, 2025. The motion is now denied but the Court also provides some guidance to address some of the points raised.

The State alleges that CBR deceived consumers and engaged in unfair business practices in violation of Ariz. Rev. Stat. § 44-1522, Arizona's Consumer Fraud Act. Both parties agree that CBR is a leading provider of cord blood banking services. The blood and tissue samples are collected from medical facilities throughout the country and transported to Arizona for storage. The complaint identifies a host of topics on which the State believes CBR misleads customers, including endorsements of medical professionals, payments to doctors, the likelihood and scope of potential uses for cord blood/tissue, appropriateness of public cord blood banking, viability of samples, quality of transportation and storage of samples, payment timing and processes, and notification to customers when problems arise.

In ruling on a Rule 12(b)(6) motion to dismiss, the Court will "assume the truth of the well-pled factual allegations and indulge all reasonable inferences therefrom." *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419 (2008). The Court will grant the motion only if the plaintiff is not

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entitled to relief “under any facts susceptible of proof in the statement of the claim.” *ELM Ret. Ctr., LP v. Callaway*, 226 Ariz. 287, 289 (Ct. App. 2010), quoting *Mohave Disposal, Inc. v. City of Kingman*, 186 Ariz. 343, 346 (1996). The Court will not “speculate about hypothetical facts that might entitle the plaintiff to relief.” *Cullen*, 218 Ariz. at 420. Nor will the Court “accept as true allegations consisting of conclusions of law, inferences or deductions that are not necessarily implied by well-pleaded facts, unreasonable inferences or unsupported conclusions from such facts, or legal conclusions alleged as facts.” *Jeter v. Mayo Clinic Ariz.*, 211 Ariz. 386, 389 (Ct. App. 2005).

Rule 9(b)

The parties dispute whether Ariz. R. Civ. P. 9(b) applies to the claims here. The Court finds, however, that the context of these claims, including both the factual allegations and the requirements of the CFA, renders the Complaint sufficient to meet Rule 9(b) and declines to assess whether the rule applies.

That is not to say that the Complaint is perfect. It isn't. CBR's complaints about the scope of the allegations and the nationwide implications are appropriate. Undoubtedly some of the examples of communications from CBR to consumers are aimed at those *outside* of Arizona, leaving them beyond the reach of the CFA or this Court. And other communications are not clearly limited to those made by Arizonans or to Arizonans. Again, this is problematic. Many allegations, however, meet the standards.

This Court has pondered the appropriate result. On the one hand, the Court could dismiss the complaint, essentially for overbreadth, with leave to amend. Doing so would ignore the number of well-pled allegations to remedy the remainder. That the complaint contains a single count for violation of the CFA makes the task no easier. And CBR has asked for a complete dismissal rather than a line item veto.

The more prudent course, this Court believes, is to leave the Complaint as is, and resolve any overbreadth through discovery. An interrogatory seeking confirmation as to which statements in the complaint targeted Arizonans (along with any unclear hows, and whens) could provide CBR the clarity they seek without this Court monitoring which paragraphs deserve to be sifted out of the Complaint. Indeed, this Court would even consider requests to permit a similar inquiry on an expedited basis outside the normal presumptive discovery limits. Doing so should alleviate CBR's concern, articulated in oral arguments, about case management going forward.

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Geographic Scope of Relief

The Court similarly recognizes that it and the State may not regulate interstate commerce not involving Arizona. The above discussion should reduce the possibility that inappropriate statements, omissions, and acts become lumped into this case. But any relief must recognize the same limitations. The Court will keep that in mind as the case nears resolution. Dismissal on the possibility that the relief sought might exceed the jurisdictional limits is inappropriate at this time.

Client Service Agreement

CBR separately argues that many of the complained-of statements differ from those made in the client service agreement entered into by each customer. The Court, however, agrees with the State that these agreements are not a central element of the complaint and are not for the Court's consideration on a 12(b)(6) motion. Yes, the complaint mentions that the customers contract with CBR. But a brief mention of the commercial realities does not elevate the agreements, of which the Court understands there to be many versions, to high status.

Any discrepancies between advertisements and the agreements is one that can be addressed later. For now, the Court must rely on the presumed truth of the factual allegations in the Complaint.

Puffery

CBR seeks dismissal for statements amounting to puffery. The Court does not disagree that some of the statements, such as "once in a lifetime" and "unique," may be puffery (and perhaps factual). But the Court declines to make that determination on this record. Context will matter and that context is not before the Court.

Unfair Practices Re: Storage and Handling of Samples in Arizona

The State has supported the viability of some allegations as being part of its claim for unfair practices. Because the storage facility is in Tucson, the State argues, CBR violates the unfair practices portion of the CFA when it fails to appropriately inform customers about storage or viability problems. Because that specific argument was not addressed in the motion, the Court declines to rule on it either way. And because Rule 9(b) would not clearly apply to it, the Court declines to assess the allegations further.

As with the alleged deception, some expedited discovery on the contours of that claim seems appropriate.

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IT IS ORDERED denying the April 25, 2025, *Motion to Dismiss*. CBR is ordered to file its answer to the Complaint, or other appropriate motion that tolls the time to file an answer, by **December 5, 2025**.