**UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF MISSOURI**
**SOUTHEASTERN DIVISION**

L&F BRANDS, INC.,

*Plaintiff,*

v.

CROWN VALLEY WINERY, INC.,

*Defendant.*

Civil Action No.: 1:19-cv-00134-SNLJ

**DEFENDANT CROWN VALLEY WINERY, INC.'S REPLY TO PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS COUNTS V, VI, AND VII OF PLAINTIFF'S AMENDED COMPLAINT**

Defendant Crown Valley Winery, Inc. ("Crown Valley"), hereby files this Reply to Plaintiff's Memorandum of law in Opposition to Defendant's Motion to Dismiss Counts V, VI, and VII of Plaintiff's Amended Complaint (the "Opposition") [D.E. 30], and in support thereof states as follows:

## I. INTRODUCTION

Rather than rectify the pleading deficiencies contained in Counts V, VI, and VII of Plaintiff's Amended Complaint as reflected in Crown Valley's Motion to Dismiss Counts V, VI, and VII of Plaintiff's Amended Complaint (the "Motion to Dismiss"), the Opposition attempts to obfuscate the glaring deficiencies by making arguments and citing authorities that do not reflect the factual scenario alleged here and that are potentially absent from the Amended Complaint. The Opposition's inability to refute the Motion to Dismiss' arguments predicated on the economic loss rule and L&F Brands, Inc.'s ("L&F") equitable claims indeed supports the fact

that Plaintiff failed to and cannot plead claims upon which relief can be granted and therefore these claims should be dismissed.

## II. MEMORANDUM OF LAW

### A. Plaintiff Fails to Plead a Fraud Claim Independent from its Breach of Contract Claim

The crux of the argument made by Crown Valley in the Motion to Dismiss is that L&F's alleged fraud claim is barred by the economic loss rule that "prohibits a commercial buyer of goods 'from seeking to recover in tort for economic losses that are contractual in nature.'" *Nestle Purina Petcare Co. v. Blue Buffalo Co. Ltd.*, 181 F. Supp. 3d 618, 639 (E.D. Mo. 2016) (citing *Dannix Painting, LLC v. Sherwin–Williams Co.*, 732 F.3d 902, 905–06 (8th Cir. 2013) (internal quotations omitted). While L&F does not dispute this relatively black letter principle, it still quite incredibly contends in its Opposition that L&F's fraud claims are independent of its' breach of contract claims and should be permitted to proceed. No amount of linguist gymnastics can allow L&F to escape the plain contract L&F attached as Exhibit "A" to the Amended Complaint (the "Agreement"), and what Plaintiff describes as the Coffee Cream Agreement, attached as Exhibit "B" to the Amended Complaint (collectively the "Agreements") which are alleged by Plaintiff to govern the relationship between the Parties.

In an attempt to save their fraud claim, Plaintiff tries to rely on multiple authorities it cites for the unremarkable proposition that one can maintain a fraud claim where such alleged false representations led to one entering into an agreement. *See Elkhart Metal Fabricating, Inc. v. Martin*, No. 14-cv-00705, 2014 WL 2972709 (E.D. Mo. July 1, 2014) (addressing pre-contract representations that did not impose any future obligations); *Web Innovations & Technology Services, Inc. v. Bridges to Digital Excellence, Inc.*, 69 F. Supp. 3d 928, 933 (E.D. Mo. 2014)

(addressing allegations that go to an ability to perform made prior to entering into a contract); and *Superior Edge, Inc. v. Monsanto Co.*, 44 F. Supp. 3d 890, 905-907 (D. Minn. 2014) (addressing alleged misrepresentations that led to one entering into a contract). In each case cited by Plaintiff the respective court addressed a factual scenario where the alleged fraud and supposed representation, occurred *prior* to the entry into a contract between the respective parties. This distinction is vital as here the Agreement was entered into on March 28, 2018, and all of the conduct Plaintiff seeks to allege as fraud occurred approximately five months after the Agreement was entered into. None of these authorities cited are relevant to the facts or allegations of this case. Indeed, in *Trademark Medical, LLC v. Birchwood Laboratories, Inc.*, the district court specifically recognized the difference and noted that a claim for fraudulent inducement to enter a contract may not be barred by the economic loss rule but allegations of fraudulent misrepresentation after a contract already exists fails based on the application of the economic loss rule. *See Trademark Medical, LLC v. Birchwood Laboratories, Inc.*, 22 F. Supp. 3d 998, 1103 (E.D. Mo. 2014).

L&F attempts to argue around this temporal conundrum by asserting that its fraud claim does not reference the Agreement[1] and that the alleged misrepresentations occurred as part of Crown Valley's alleged attempts to cover up mistakes made in producing products for L&F and thus are independent of the breach of contract claim asserted in Counts I and II of the Amended Complaint. This argument fails however based on a close analysis of the claims made in Counts I and II compared with the fraud allegations raised in Count V, as the claims are nearly identical.

[1] It is notable that this contention by L&F is incorrect. L&F incorporates all of the preceding paragraphs alleged in the Amended Complaint into the fraud claim in paragraph 73 of the Amended Complaint. Accordingly, all of the breach of contract allegations and the Agreement are indeed incorporated into the Fraud allegations.

For example, in Count I of the Amended Complaint, L&F alleges that the Agreement was breached by Crown Valley when it allegedly failed to produce the subject product according to the specifications set forth in the agreement (DE:23-¶40); when Crown Valley attempted to add an additional ingredient (DE:23-¶41); and that Crown Valley breached the Agreement by not producing the product in the sterile environment (DE:23-¶43). Compare these allegations to those contained in Count V of the Amended Complaint where Plaintiff alleges that fraud was committed because Crown Valley allegedly concealed its production mistake, misrepresented that it could fix such mistake, and misrepresented that the product was produced in a sterile environment. (DE:23-¶¶ 75,76,77,78,79, and 80). These allegations all relate to the same facts.

As to the Coffee Cream Agreement the same pattern emerges as Count II of the Amended Complaint seeks to allege a breach of the Coffee Cream Agreement by Crown Valley. (DE:23-¶¶ 48-54). Compare these allegations to those contained in Count V of the Amended Complaint where Plaintiff alleges that fraud was committed because Crown Valley never intended to purchase or use additional coffee cream for L&F. (DE:23-¶¶ 81-82). Just as with the Agreement, these allegations all relate to the same facts.

As Plaintiff correctly pointed out in their Opposition, the first step to see if the economic loss rule applies is to determine if the subject matter of the alleged misrepresentations was incorporated into the contract. *See OS33 v. CenturyLink Communs., L.L.C.,* 350 F. Supp. 3d 807, 806 (E.D. Mo. 2018). Here, Plaintiff clearly believes that these items were incorporated into the Agreement as they are suing Crown Valley for supposedly breaching such Agreement over the same items.

Further, the additional claims for damages that L&F has made here about the product or its quality fall squarely within the confines of the Agreement. L&F's claims are dependent on

duties that exist within the Agreement, and the Agreement contemplates the claims alleged and limits the damages available accordingly. (DE:23-1:3, §10) ("In no event shall [Crown Valley] be liable for any special, indirect, incidental, or consequential damages, including, but not limited to, loss of profits, or punitive damages"). This is what the parties bargained for and that is what L&F should be limited to seeking.

The mere allegation that Crown Valley supposedly made statements while operating under the Agreement about its ongoing performance under the Agreement is irrelevant. Both parties were operating under the Agreement and but for the Agreement, no work would be performed by Crown Valley for L&F. Accordingly, the Amended Complaint's failure to allege facts sufficient to support an independent fraud claim requires dismissal of Count V[2].

**B. L&F'S Claims for Unjust Enrichment (Count VI) and Money Had and Received (Count VII) Are Not Pled in the Alternative**

The Agreement attached to the Amended Complaint, and referenced at length in that Amended Complaint, negates the equitable claims L&F seeks to assert in Counts VI and VII. L&F does however correctly point out in its Opposition that equitable claims can be pled in the alternative. While this is true, the Amended Complaint makes no such pleading allegation and in fact seeks supposed separate damages for these equitable claims. (DE:23-¶¶ 100 & 110). While L&F perhaps could have pled these equitable claims in the alternative, as currently pled, these equitable claims are superfluous and unnecessary and dismissal is warranted.

The Agreement sets forth the terms of the entire relationship between the L&F and Crown Valley. There is no dispute that there is an express contract between the parties as it was

[2] L&F's request that it should be permitted discovery on its purported fraud claim prior to dismissal should not be entertained. There is no need for discovery on this issue as the claims are governed by the Agreement and the Agreement forecloses the remedies sought by L&F.

attached to the Amended Complaint and admitted by Crown Valley. Indeed, there would be no obligations or financial relationship but for the Agreement. There is no question that an express contract exists between the parties as it was alleged by L&F and admitted in the Answer to the Amended Complaint that was filed by Crown Valley in concert with this Motion to Dismiss. Accordingly, these equitable claims raised in Counts VI and VII are unavailable to Plaintiff and must be dismissed or, in the alternative, Plaintiff must amend their claims to specifically plead such in the alternative.

**CONCLUSION**

L&F concedes the remaining substantive arguments contained in the Motion to Dismiss, as L&F choose to either ignore the arguments in full or merely continued Plaintiff's improper pleading practice of asserting naked labels and conclusions devoid of any factual support. For the reasons stated in the Motion to Dismiss and herein, Counts V, VI and VII of Plaintiff's Complaint should be dismissed.

Dated: November 22, 2019.

Respectfully submitted,

**CAPES, SOKOL, GOODMAN & SARACHAN, P.C.**

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**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on November 22, 2019.

By: */s/ Amy L. Fehr*