

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

TRIUMPH FOODS, LLC, CHRISTENSEN FARMS MIDWEST, LLC, THE HANOR COMPANY OF WISCONSIN, LLC, NEW FASHION PORK, LLP, EICHELBERGER FARMS, INC., and ALLIED PRODUCERS' COOPERATIVE, individually and on behalf of its members,

Plaintiffs,

v.

ANDREA JOY CAMPBELL, in her official capacity as Attorney General of Massachusetts, and ASHLEY RANDLE, in her official capacity as Massachusetts Commissioner of Agriculture,

Defendants.

CIVIL ACTION
NO. 1:23-cv-11671-WGY

**DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR
MOTION TO DISMISS THE AMENDED COMPLAINT
FOR LACK OF ARTICLE III JURISDICTION**

Introduction

For the Court to have jurisdiction under Article III of the U.S. Constitution, a plaintiff must demonstrate that it has suffered an injury in fact that is concrete, particularized, and actual or imminent. Plaintiff Triumph Foods, LLC (“Triumph”) has not made this demonstration. While Massachusetts customers have bought millions of pounds of Triumph product, all sales of Triumph product are controlled by Seaboard Foods, LLC (“Seaboard”), a non-party, under an agreement between Triumph and Seaboard executed in 2004 and attached hereto. Triumph has not shown that Seaboard cannot continue to meet its obligation to sell Triumph product pursuant to the agreement, regardless of Massachusetts’ policies. Triumph has not substantiated harm *to*

Triumph causally connected to the Massachusetts Prevention of Farm Animal Cruelty Act for purposes of demonstrating standing at this stage. Given Plaintiffs' reliance on *Triumph*'s standing for establishing jurisdiction, and *Triumph*'s failure to make the necessary showing at this stage of the proceedings, the entire Amended Complaint is subject to dismissal for lack of jurisdiction. The Amended Complaint is reduced to a generalized grievance with the Act, which is insufficient to invoke federal court jurisdiction. As further explained below, the entire Amended Complaint must be dismissed for lack of subject matter jurisdiction pursuant to Fed. R. Civ. Proc. 12(b)(1).

BRIEF BACKGROUND

On July 31, 2023, Plaintiffs filed an Amended Complaint for Injunctive and Declaratory Relief challenging a Massachusetts law enacted by ballot initiative, and seeking an order enjoining enforcement of the law as it pertains to an in-state ban on the sale of certain whole pork meat products. ECF No. 17; see Mass. G. L. c. 129 App. § 1-3(C) ("sales ban"). Shortly after filing the Complaint, Plaintiffs moved for a preliminary and permanent injunction. ECF Nos. 26 – 27-8, 35, 35-1, 36 – 36-2. On September 6, 2023, the Court consolidated the motion for a preliminary injunction with a trial on the merits in accordance with Fed. R. Civ. P. 65(a). ECF No. 42. Defendants moved to dismiss the Amended Complaint, which resulted in dismissal of nine of Plaintiffs' ten claims. ECF No. 66. Defendants noted but did move to dismiss for lack of standing. ECF No. 35, p. 5 n. 4.

Plaintiffs then moved for partial summary judgment with respect to the discrimination theory of their remaining claim under the dormant Commerce Clause, which Defendants opposed and requested *sua sponte* entry of summary judgment in Defendants' favor on the entirety of the claim. ECF Nos. 53-54.1, 58-58.1, 87-89, 94.2, 98. The parties agreed to proceed

on a Case Stated basis to address a particular aspect of the Plaintiff's claim, and the Court granted summary judgment in Defendants' favor on Plaintiff's remaining theories of its claim. ECF No. 99. The case stated hearing is scheduled for December 19, 2023. ECF No. 101.

After conferring about the case stated, the parties filed a joint motion for clarification and expedited status conference, with attached Partial Stipulation of Facts. ECF Nos. 107, 107-1. Shortly thereafter, the parties filed briefs on case stated. ECF Nos. 109, 110. Plaintiff Triumph's brief asserts that, based on the Partial Stipulation of Facts, the Court should rule that Triumph has standing, though it also requested "an opportunity to be heard and brief the issues" and an opportunity to present "more of a factual record to evaluate [this] standing challenge." Plaintiff's Case-Stated Briefing (ECF No. 110), p. 18. ECF No. 110, p. 18. Defendants hereby advance their reasons in opposition and request that the Court rule that Triumph has not demonstrated standing. Thus, Triumph has the opportunity to be heard and to present evidence by filing a timely opposition to this motion. See Local R. 7.1(b)(2).

Factual Background

In discovery, Triumph produced the agreement between Triumph and Seaboard concerning the making of, and the sale of, Triumph product. Reynolds Aff., Ex. A (Marketing Agreement, bearing Bates Numbering TF0002077-TF0002129) (hereafter, Ex. A). Triumph and Seaboard agreed that "[Triumph] shall produce pork products at the TF Plant and that [Seaboard] shall purchase, market and sell such products pursuant to this Agreement." Ex. A, Sec. 2.01 (TF0002088);¹ see also Decl. of Matthew England ¶ 16, ECF No. 27-1 (Seaboard "sell[s] all of

¹ The "TF Plant" refers to a pork processing plant in St. Joseph, Missouri. Ex. A, TF0002080.

Triumph’s whole pork,” and “makes all sales decisions.”)² The parties agreed Seaboard “ha[s] the exclusive right to, and [is] obligated to, market and sell on behalf of [Triumph] all [Triumph] Plant Products.” Ex. A, Sec. 6.01(a) (TF0002098). Seaboard, which itself is a producer of pork products, further agreed it would “not discriminate in favor of its own products” with respect to “sales efforts.” *Id.*, Sec. 2.02(b) (TF0002088).

Further, Seaboard is obligated to sell *all* of Triumph’s pork. The agreement provides that Seaboard is to use “commercially reasonable efforts (taking into account customer needs and requirements) to schedule, market and sell to customers all of the [Triumph] Plant Products that the [Triumph] Plant is capable of producing in accordance with this Agreement so as to generate the highest combined net margins with respect to products produced at both the TF Plant and the [Seaboard] Plant.” Ex. A, Sec. 6.01(a) (TF0002098). Seaboard is “responsible, in accordance with standard industry practices, for all invoicing and collections with respect to sales of [Triumph] Plant Products by [Seaboard] to customers.” *Id.*, Sec. 8.03(a) (TF0002101); see also Reynolds Aff. Exhibit B (Seaboard Invoice produced by Triumph, TF0003471) (hereafter, Ex. B).³

² Matthew England is Triumph’s President and Chief Executive Officer. In support of Plaintiffs’ motion for preliminary injunction, England asserted that Triumph “receives 100% of the revenue from the sales of its products.” Declaration of Matthew England (ECF No. 36-2), ¶ 7. No citation to a particular provision of the agreement was provided nor is one obvious. *See generally* Ex. A. Defendants noticed a deposition of Mr. England to test the basis of this assertion, among others, on October 27, 2023. Counsel for Plaintiff informed Defendants that England was unavailable on the designated date. On November 28, 2023, Defendants issued an updated notice of deposition for December 5, 2023. Again, Defendants were informed that England was not available. The notice has not been withdrawn.

³ The invoice is the subject of the Court’s Protective Order, ECF No. 85, therefore, Defendants rely on a redacted version, but they will provide an unredacted version if the Court directs.

In 2022, Triumph processed over 11 million pounds of pork meat – some unidentified portion of which is covered product under Massachusetts law – that Seaboard sold into Massachusetts. Partial Stipulation of Facts ¶ 4, ECF No. 107-1 (hereafter, “SOF”). Importantly for the purposes of standing, Triumph has stipulated that “Triumph’s products continue to be sold into Massachusetts today, including product that is compliant with the Act.” *Id.* Seaboard’s invoicing refers to the compliant product as “Prop 12 Compliant,” a common reference to a similar California law. See Ex. B.

ARGUMENT

TRIUMPH HAS NOT DEMONSTRATED A COGNIZABLE INJURY IN FACT CAUSED BY THE MASSACHUSETTS ACT.

Introduction

The Court lacks Article III jurisdiction and the amended complaint must be dismissed for lack of subject-matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1). Article III of the Constitution limits the jurisdiction of federal courts only to actual cases and controversies involving the legal rights of litigants who have a “personal stake in the outcome of the controversy.” *Baker v. Carr*, 369 U.S. 186, 204 (1962); U.S. Const. art. III, §2, cl. 1; see also *TransUnion LLC v. Ramirez*, 141 S.Ct. 2190, 2203 (2021). A plaintiff invoking federal jurisdiction bears the burden of establishing standing. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992). It is an “indispensable part of the plaintiff’s case.” *Id.* “The basic requirements for Article III standing are that the petitioner is someone who has suffered or is threatened by injury in fact to a cognizable interest, that the injury is causally connected to the defendant’s action, and that it can be abated by a remedy the court is competent to give.” *Save Our Heritage, Inc. v. FAA*, 269 F.3d 49, 55 (1st Cir. 2001). To establish standing, plaintiffs must show (1) that they have suffered an injury in fact that is concrete, particularized, and actual or imminent, (2) that the

injury is fairly traceable to the allegedly unlawful action, and (3) the injury can be addressed by a favorable decision. Id.; see also Horne v. Flores, 557 U.S. 433, 445 (2009); Lujan, 504 U.S. at 560-61.

A. Triumph has not shown an injury-in-fact caused by the Act.

Triumph argues in its Case Stated brief that it has a cognizable injury because it “knowingly engage[s] in the sale”^{4,5} of non-compliant product when Triumph “ships” the product into Massachusetts.⁶ Plaintiff’s Case-Statement Briefing (ECF No. 110), pp. 16-17. Based on this assertion, Triumph raises the specter of enforcement under the Act against it. It is purely speculative, however, whether enforcement action would be taken against Triumph under the circumstances Triumph has thus far presented. The circumstances are: (1) the Marketing Agreement provides for Seaboard to “purchase” and to “sell” Triumph’s product (Ex. A, TF0002088, TF0002098); (2) Seaboard invoices the buyer, with instructions to remit payment to

⁴ Mass. G. L. c. 129 App. § 1-3 provides in pertinent part: “Notwithstanding any general or special law to the contrary, it shall be unlawful for a business owner or operator to knowingly engage in the sale within the Commonwealth of Massachusetts of any: . . . (C) Whole pork meat that the business owner or operator knows or should know is the meat of a covered animal that is confined in a cruel manner, or is the meat of the immediate offspring of a covered animal that was confined in a cruel manner.”

⁵ Mass. G. L. c. 129 App. § 1-5 provides in pertinent part: “For purposes of this act, the following terms shall, unless the context requires otherwise, have the following meanings: . . . “Sale,” a commercial sale by a business that sells any item covered by section 3; []; provided further, that for purposes of this section, a “sale” shall be deemed to occur at the location where the buyer takes physical possession of an item covered by said section 3.”

⁶ Contrary to Triumph’s gloss on the Partial Stipulation of Facts, there is neither stipulated fact nor credible evidence that “*Triumph ships* Whole Pork Meat directly into Massachusetts.” Plaintiff’s Case-Statement Briefing (ECF No. 110), p. 16 (emphasis added). Defendants have agreed only that “Triumph Whole Pork meat products are shipped directly from [Triumph’s] St. Joseph, Missouri facility into the Commonwealth of Massachusetts to buyers.” Partial Stipulation of Facts ¶ 4, ECF No. 107-1 (emphasis added).

Seaboard (Ex. B); (3) Triumph “receives 100% of the revenue from the sales of its products.” England Dec. (ECF No. 36-2), ¶ 7; (4) contrary to language in the agreement, Triumph has testified that “Seaboard does not purchase” its product, instead “facilitates the sale” of products from Triumph to the customer. *Id.*, ¶ 8; (5) no enforcement action has been threatened to date, and (6) Seaboard is not a party, so Defendants and the Court lack the benefit of Seaboard’s position on these matters. Under these circumstances, Triumph’s alleged injury from risk of enforcement is a hypothetical issue. Federal courts “do not sit to decide hypothetical issues or to give advisory opinions.” *Princeton Univ. v. Schmid*, 455 U.S. 100, 102, 102 S. Ct. 867, 869 (1982).⁷

Triumph also claims that “Triumph adjusted its operations” to enable its product to continue to be sold in Massachusetts, but it has not established that any such adjustments were caused by Massachusetts’ law or are redressable by the Court. Plaintiff’s Case-Stated Briefing (ECF No. 110), p. 17 n.4. Defendants have agreed that “Triumph has implemented physical segregation procedures, and additional tracking and inventory management tools (e.g., stock keeping units, or bar codes), new sorting procedures and new storage locations for purposes of ensuring Question 3 Whole Pork Meat remains segregated from conventional, non-compliant Whole Pork Meat.” ECF No. 107-1, ¶ 7. But, this does not concede a basis for standing. Triumph’s operations are plainly geared primarily to compliance with California’s law (see Ex. B, Triumph produced whole pork meat is sold as “Prop 12 Compliant,” not “Q3 Compliant”).

⁷ Plaintiff also argues that if Triumph is not “engaged in the sale” of Whole Pork Meat, “then this case should be easy to resolve through a public stipulated agreement that the Commonwealth agrees Triumph can sell its pork in the state and those customers are exempt as well,” “regardless of whether [the products] comply with the Act.” This argument is plainly not relevant to Triumph’s burden to establish its standing. Therefore, Defendants do not further address it.

Triumph has not shown that a favorable ruling from this Court would address this claimed injury, especially as Triumph would still do the same segregation for sales into the California market.

B. Triumph does not have standing because it has failed to show actual or imminent economic harm.

While even a “small” direct stake in the outcome of litigation can satisfy the injury-in-fact inquiry, there needs to be a showing of a particularized injury, such as “income and profits” information, to substantiate an allegation of economic injury. See Adams v. Watson, 10 F.3d 915, 920 (1st Cir. 1993). Triumph has not shown any economic impact on it from the sales ban. It has not produced any evidence of any lost customers, or any threatened loss of customers, due to the sales ban. This is because Triumph does not make its own sales; Seaboard is the party responsible for selling Triumph’s product, and Seaboard is contractually obligated to sell *all* of Triumph’s product. According to the agreement, Seaboard’s role is not limited to “marketing” or order fulfillment. Seaboard “purchase[s], market[s] and sell[s]” Triumph-made products, and it is required to make reasonable commercial efforts to sell “all” the product that Triumph makes. Ex. A, Sec. 2.01, 6.01(a) (TF0002088, TF0002098); England Dec. (ECF No. 27-1), ¶ 16. Thus, Seaboard is contractually required to sell *all* of Triumph’s product regardless of where that product gets sold. As a result, Triumph itself is economically agnostic about where its product is sold. If Seaboard cannot sell Triumph’s pork to Massachusetts customers, Seaboard must sell it to other customers to fulfill its contractual obligations—or, at least, make reasonable efforts to do so. While the effort to sell Triumph’s pork to other customers might constitute an injury to *Seaboard*, it is not an injury to *Triumph*. What is lacking here is any evidence that, due to the Massachusetts sales ban, Seaboard will be unable to fulfill its contractual obligation to sell all of Triumph’s product.

A recent case illustrates the point. In Ass'n des Éleveurs de Canards et d'Oies du Quebec v. Bonta, 33 F.4th 1107, 1120 (9th Cir. 2022), cert. denied, 143 S. Ct. 2493 (2023), the Ninth Circuit Court of Appeals addressed California's ban on force-fed foie gras, and held that a foie gras producer had standing based on threat of prosecution and economic harm. There, Hudson Valley Foie Gras LLC ("HVFG"), a company that produced foie gras in New York and sold it online through a third-party, produced credible evidence that as "a result of the sales ban, [HVFG] has been forced to stop accepting purchases from any buyer with a California address." The company also produced evidence that California District Attorneys had "threatened prosecution against [HVFG] if they sell to California consumers." Id. Based upon those facts, the Ninth Circuit concluded that the company "therefore alleged a sufficient injury in fact traceable to the Attorney General's enforcement of the sales ban and redressable by a declaratory order clarifying the scope of California law." Id.

Here, in contrast, Triumph utilizes an intermediary, Seaboard, that is not just facilitating sales, but is actually making the relevant sales of Triumph's product. The Court should conclude that Triumph has not presented admissible evidence that Seaboard will be unable to sell all of Triumph's product in the imminent future or that it will have to sell the product at a loss caused by the law. "Article III standing in the commercial context must be premised, at a minimum, on particularized future economic injury which, though latent, nonetheless qualifies as 'imminent.'" Adams v. Watson, 10 F.3d 915, 920–21 (1st Cir. 1993). Because Triumph has failed to make an adequate showing of either actual economic harm or future economic harm, it has failed to meet its burden to show injury in fact.

Furthermore, to the extent Plaintiffs rely on the causal chain theory in Casey v. City of Newport, R.I., 308 F.3d 106, 118-19 (1st Cir. 2002), the Court should be wary. Such a theory

relies on the independent, third-party decisions of both Seaboard (*i.e.*, where it chooses to offer Triumph-made product for sale) and Massachusetts buyers (*i.e.*, whether they want to buy compliant product). “The Supreme Court has cautioned against courts finding that a plaintiff’s injury is fairly traceable to a defendant’s conduct where the plaintiff alleges a causal chain dependent on actions of third parties.” Dantzler, Inc. v. Empresas Berrios Inventory & Operations, Inc., 958 F.3d 38, 48 (1st Cir. 2020); see id. at 48-49 (no standing where the plaintiff’s standing theory was based on assumptions about how the directly regulated parties would act, but where the challenged law did not “control” or “coerce” the relationship between the regulated parties and their customers, like the plaintiff).

Absent new evidence, Triumph cannot meet its burden to show that it has suffered or will suffer a cognizable injury in fact. Seaboard will use commercially reasonable efforts to ensure that all of Triumph’s product is sold and do so in a manner “as to generate the highest combined net margins with respect to products produced at both the TF Plant and the [Seaboard] Plant.” Ex. A, Sec. 6.01(a) (TF0002098). Perhaps Seaboard will continue to serve Massachusetts customers because it can supply enough compliant product to meet demand (*i.e.*, supply produced by Seaboard or by Triumph or in combination). Alternatively, Seaboard might decide to sell elsewhere. Those decisions are Seaboard’s exclusively to make under the agreement that Triumph made and defeat Triumph’s claim to standing here.

C. Every Plaintiff’s Standing Relies on Triumph’s Standing, so if Triumph Cannot Establish Standing, No Other Plaintiff Can.

From the outset of these proceedings, all plaintiffs have relied on Triumph for purposes of establishing standing. See Reply Memo. in Supp. of Plfs.’ Mot. for Prelim. Inj. (ECF No. 36-1) at 2 n.1 (“Plaintiffs have standing [because] Triumph owns, sells and ships pork directly to Massachusetts”). If Triumph cannot establish standing, then it logically follows from the

Plaintiffs' position that the other plaintiffs cannot. Absent an adequate demonstration by Triumph of a cognizable injury to Triumph attributable to the Massachusetts sales ban, the Court lacks Article III standing and the case should be dismissed. Lujan, 504 U.S. at 560-61.

Given Plaintiffs' reliance on Triumph's standing for establishing jurisdiction, and Triumph's failure to make the necessary showing at this stage of the proceedings, the entire Amended Complaint is subject to dismissal for lack of jurisdiction. Dismissing the Amended Complaint does not minimize the significance of the issues raised therein. But where a plaintiff's claim merely presents "abstract questions of wide public significance" and "generalized grievances," the Court should refrain from addressing the claim as the questions raised are more appropriately addressed by representative branches of government. Valley Forge Christian Coll. v. Am. United for Separation of Church & State, 454 U.S. 464, 474-75 (1982).

Conclusion

For all these reasons, the Court should conclude that Triumph cannot establish Art. III jurisdiction, and therefore, the Amended Complaint in its entirety must be dismissed.

Respectfully submitted,

ANDREA JOY CAMPBELL, in her official
capacity as Attorney General of Massachusetts, and

ASHLEY RANDLE, in her official capacity as
Commissioner of the Massachusetts Department of
Agricultural Resources,

By their attorneys,

/s/ Maryanne Reynolds

Maryanne Reynolds, BBO No. 627127
Assistant Attorney General
Massachusetts Office of the Attorney General
Constitutional and Administrative Law Division
10 Mechanic Street, Suite 301
Worcester, MA 01608

774-214-4407

maryanne.reynolds@mass.gov

Grace Gohlke, BBO No. 704218

Vanessa A. Arslanian, BBO No. 688099

Assistant Attorneys General

Massachusetts Office of the Attorney General

Constitutional and Administrative Law Division

One Ashburton Place

Boston, MA 02108

617-963-2527

grace.gohlke@mass.gov

617-963-2107

vanessa.arslanian@mass.gov

Dated: December 18, 2023

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.

/s/ Maryanne Reynolds

Maryanne Reynolds

Assistant Attorney General

Dated: December 18, 2023