

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

KIM NEUSS and ANTONIO NEUSS,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

RUBI ROSE, LLC, et. al.,

Defendants.

Civil Action No. 16-2339 (MAS) (LHG)


ORDER

This matter comes before the Court on Defendants Rubi Rose, LLC, doing business as Dapple Baby (“Dapple”), and Ruby Ventures, Inc.’s (“Ruby Ventures”) (collectively, “Defendants”) motion to dismiss the Amended Complaint pursuant to Rules 12(b)(1) and (6) of the Federal Rules of Civil Procedure. (ECF No. 17-1.) Plaintiffs Kim Neuss and Antonio Neuss (collectively, “Plaintiffs”) filed opposition and a cross-motion for leave to amend (ECF No. 23), and Defendants replied (ECF No. 24). Defendants also moved to strike the nationwide class allegations pursuant to Rule 23(d)(1)(D) of the Federal Rules of Civil Procedure. (ECF No. 18-5.) Plaintiffs filed opposition (ECF No. 22) and Defendants replied (ECF No. 25). The Court has carefully considered the parties’ submissions and decides the matter without oral argument pursuant to Local Civil Rule 78.1. For the reasons set forth in the accompanying Memorandum Opinion, and other good cause shown,

IT IS on this 31st day of May 2017, **ORDERED** that:

1. Defendants’ motion to dismiss (ECF No. 17-1) is granted in part and denied in part.
 - a. All Counts with respect to Defendant Ruby Ventures are dismissed.
 - b. Counts One, Two, Three, Four, and Six are dismissed without prejudice.

- c. Counts Five, Seven, Eight, and Nine are dismissed with prejudice with respect to Defendants Rubi Rose, LLC, and Ruby Ventures.
2. Defendants' motion to strike the nationwide class (ECF No. 18-5) is denied.
3. Plaintiffs' cross-motion (ECF No. 23) to amend is granted.
4. Plaintiffs may file a second amended complaint only with respect to the counts dismissed without prejudice within fourteen (14) days of this Order. Failure to file a second amended complaint within fourteen (14) of this Order will result in dismissal of those claims with prejudice.



MICHAEL A. SHIPP
UNITED STATES DISTRICT JUDGE