

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GILLIAN DAVIDSON, et al.,
Plaintiffs,
v.
SPROUT FOODS INC.,
Defendant.

Case No. [22-cv-01050-RS](#)

**ORDER GRANTING IN PART AND
DENYING IN PART MOTION TO
DISMISS**

I. Introduction

Plaintiffs Gillian and Samuel Davidson, a married couple, bring this putative class action against Defendant Sprout Foods Inc. (“Sprout”), which sells baby and toddler food products. Defendant brings a Rule 12(b)(6) motion to dismiss the Complaint. In the Complaint, Plaintiffs aver various violations of California law based on the inclusion of statements on Sprout products touting the nutrients included in its products, such as “3g of Protein” or “4g of Fiber.” For the reasons explained below, plaintiffs aver nutrient content claims potentially violative of federal Food and Drug Administration (“FDA”) regulations prohibiting such claims on products made specifically for children under two years of age. Plaintiffs have therefore stated a claim under the “unlawful” prong of California’s Unfair Competition Law (“UCL”), and have also stated a claim for unjust enrichment. Plaintiffs have not, however, stated a claim for violation of the California Consumers Legal Remedies Act (“CLRA”), the California False Advertising Law (“FAL”),

1 therefore granted in part and denied in part. Pursuant to Civil Local Rule 7-1(b), this motion is
 2 suitable for disposition without oral argument, and the hearing scheduled for July 14, 2022 is
 3 vacated.

4 **II. Background**

5 **A. Factual Background¹**

6 On February 19, 2022, the Davidsons filed this putative class action. Sprout sells branded
 7 baby and toddler food products. Plaintiffs aver that “Defendant misbrands its baby and toddler
 8 food products by making nutrient content claims on the product packages that are strictly
 9 prohibited by the Food and Drug Administration . . . and by misleading purchasers into believing
 10 that its products are healthier than other products for children under two years of age in order to
 11 induce parents into purchasing Defendant’s products.” Complaint, ¶ 3. During the putative class
 12 period, Plaintiffs stated that they purchased two types of Sprout pouches: Pumpkin, Apple, Red
 13 Lentil, and Cinnamon and Sweet Potato, White Beans, and Cinnamon.² *Id.* at ¶ 11; Exhibits B and
 14 C. The products addressed in this lawsuit contained statements about nutrition content in the front
 15 panel of the packaging, such as “3g of Protein, 4g of Fiber and 300mg Omega-3 from Chia ALA.”
 16 *Id.* at ¶ 34. This same information—along with additional nutrition information—was also
 17 included in the Nutrition Facts Panel on the back of the packaging.

18 Plaintiffs bring the following claims for relief: (1) violation of the CLRA, California Civil
 19 Code § 1750, *et seq.*; false advertising in violation of California Business and Professions Code §
 20 17500, *et seq.*; (3) common law fraud, deceit, and/or misrepresentation; (4) unlawful, unfair, and
 21 fraudulent trade practices in violation of Business and Professions Code § 17200, *et seq.*; and (5)
 22 unjust enrichment.

23
 24 _____
 25 ¹ Unless noted otherwise, all facts recited are from the Complaint, and are taken as true for the
 26 purposes of a Rule 12(b)(6) motion to dismiss. *See Knievel v. ESPN*, 393 F.3d 1068, 1072 (9th
 27 Cir. 2005).

² The Complaint states that Plaintiffs also purchased the Strawberry with Banana & Butternut
 Squash product, but this product is not listed in the Plaintiffs’ declarations.

1 particularity requirement of Rule 9(b).” *Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1125 (9th Cir.
 2 2009). “In alleging fraud or mistake, a party must state with particularity the circumstances
 3 constituting fraud or mistake.” Fed. R. Civ. P. 9(b). “Averments of fraud must be accompanied by
 4 ‘the who, what, when, where, and how’ of the misconduct charged.” *Kearns*, 567 F.3d at 1124
 5 (quoting *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097 (9th Cir. 2003)). Plaintiffs do not respond
 6 to Defendant’s assertion that Rule 9(b) applies to their pleading, and thus the particularity
 7 requirement is applied when analyzing this motion to dismiss.³

8 **B. California Statutes**

9 Plaintiff avers violations of the UCL, FAL, and CLRA. The UCL “bars ‘unfair
 10 competition’ and defines the term as a ‘business act or practice’ that is (1) ‘fraudulent,’ (2)
 11 ‘unlawful,’ or (3) ‘unfair.’” *Shaeffer v. Califia Farms, LLC*, 44 Cal. App. 5th 1125, 1135 (2020).
 12 “Each is its own independent ground for liability under the unfair competition law, but their
 13 unifying and underlying purpose is to protect both consumers and competitors by promoting fair
 14 competition in commercial markets for goods and services.” *Id.* (internal quotation marks and
 15 citations omitted).

16 “California’s false advertising law bars ‘any advertising device . . . which is untrue or
 17 misleading.’” *Id.* (quoting Cal. Bus. & Prof. Code § 17500). “[T]his law and the fraudulent prong
 18 of the unfair competition law substantively overlap[,]” and thus “plaintiff’s burden under these
 19 provisions is the same[.]” “[T]o state a claim under either the UCL or the false advertising law,
 20 based on false advertising or promotional practices, it is necessary only to show that members of
 21 the public are likely to be deceived.” *Kasky v. Nike, Inc.*, 27 Cal. 4th 939, 951 (2002) (internal
 22 quotation marks and citation omitted).

23 The CLRA defines various “unfair methods of competition and unfair or deceptive acts or
 24 practices.” Cal. Civ. Code § 1770. Some of the unfair methods or acts included are “[r]epresenting

26 ³ Even if Rule 9(b) was inapplicable, the result would be the same under the Rule 12(b)(6)
 27 standard.

1 that goods . . . have . . . characteristics [or] . . . benefits . . . that they do not have[,]” and
 2 “[r]epresenting that goods . . . are of a particular standard, quality, or grade . . . if they are of
 3 another[.]” *Id.* The UCL, FAL, and CLRA all utilize the reasonable consumer standard, *Califia*, 44
 4 Cal. App. 5th at 1136, “which requires a plaintiff to show potential deception of consumers acting
 5 reasonably in the circumstances-not just any consumers.” *Hill v. Roll Internat. Corp.*, 195 Cal.
 6 App. 4th 1295, 1304 (2011).

7 IV. Discussion

8 A. Standing

9 As a threshold matter, Defendant argues that Plaintiffs lack Article III and statutory
 10 standing to challenge label statements on products they did not see or buy. Plaintiffs purchased
 11 two products from Sprout, but challenge the labelling on 26 Sprout products. For Article III
 12 standing, a plaintiff must allege an injury-in-fact, and for statutory standing under the UCL and
 13 FAL, Plaintiffs must show they “suffered injury in fact and [] lost money or property as a result of
 14 the unfair competition.” Cal. Bus. & Prof. Code §§ 17204, 17535. Similarly, for the CLRA, the
 15 plaintiff must show “economic injury[.]” *Victor v. R.C. Bigelow, Inc.*, 13-cv-02976-WHO, 2014
 16 WL 1028881, at *5 (N.D. Cal. Mar. 14, 2014); *see also Carrea v. Dreyer's Grand Ice Cream, Inc.*,
 17 No. C 10-01044 JSW, 2011 WL 159380, at *2-3 (N.D. Cal. Jan. 10, 2011) (analyzing statutory
 18 standing jointly for FAL, UCL, and CLRA claims).

19 Other courts in this district have held that “a plaintiff may have standing to assert claims
 20 for unnamed class members based on products he or she did not purchase so long as the products
 21 and alleged misrepresentations are substantially similar.” *Miller v. Ghirardelli Chocolate Co.*, 912
 22 F.Supp.2d 861, 869 (N.D. Cal. 2012). In many of these cases, “the critical inquiry seems to be
 23 whether there is sufficient similarity between the products purchased and not purchased.” *Astiana*
 24 *v. Dreyer's Grand Ice Cream, Inc.*, No. C-11-2910 EMC, 2012 WL 2990766, at *11 (N.D. Cal.
 25 July 20, 2012). Like in *Astiana*, which concerned labels for different varieties of ice cream
 26 products, “Plaintiffs are challenging the same basic mislabeling practice across different product
 27 flavors[,]” and thus there is sufficient similarity. *Id.* at *13. Exhibit A to Plaintiffs’ complaint is a

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