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Superior Court of California
County of Los Angeles
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David W. Slayton, Executive Officer / Clerk of Court
By: R. Arraiga Deputy

FINAL RULINGS/ORDERS RE: DEMURRER TO PLAINTIFFS' COMPLAINT

Centeno et al. v. Dreamfields Brands Inc. et al., Case No.: 22STCV33980

Defendants' Demurrer to Plaintiffs' Complaint is **SUSTAINED** in part, and **OVERRULED** in part.

The Court sustains Defendants' Demurrer as to the seventh cause of action (unjust enrichment), with 20 days leave to amend.

Defendants' Demurrer is otherwise **OVERRULED.**

Defendants Request for Judicial Notice is **GRANTED,** (except as to truth).

As Plaintiffs stated they will not file a First Amended Complaint, Defendants must file and serve an Answer by July 17, 2023.

Non-Appearance Case Review is set for July 24, 2023, 8:30 a.m., Department 9.

I. INTRODUCTION

This is a putative consumer class action. Plaintiffs Jasper Centeno and Blake Wilson allege that Defendants Dreamfields Brands, Inc. and Med for America, Inc. make, sell, and market the "Jeeter" brand of prerolled cannabis cigarettes. Plaintiffs further allege that Defendants unlawfully overstate the THC content of its products to mislead consumers and charge an unwarranted premium.

On October 20, 2022, Plaintiffs filed their class action complaint. In their complaint, Plaintiffs assert the following causes of action: (1) violation of the Unfair Competition Law (UCL); (2) violation of the False Advertising Law (FAL); (3) violation of the Consumer Legal Remedies Act (CLRA); (4) breach of express warranty; (5) negligent misrepresentation; (6) intentional misrepresentation; and (7) unjust enrichment.

On March 6, 2023, Defendant demurred to Plaintiffs' complaint.

II.
DISCUSSION

A. Applicable Law

"[A] demurrer tests the legal sufficiency of the allegations in a complaint." Lewis v. Safeway, Inc. (2015) 235 Cal.App.4th 385, 388. A demurrer can be used only to challenge defects that appear on the face of the pleading under attack or from matters outside the pleading that are judicially noticeable. Donabedian v. Mercury Insurance Co. (2004) 116 Cal.App.4th 968, 994 (in ruling on a demurrer, a court may not consider declarations, matters not subject to judicial notice, or documents not accepted for the truth of their contents). For the purpose of ruling on a demurrer, all facts pleaded in a complaint are assumed to be true, but the reviewing court does not assume the truth of conclusions of law. Aubry v. Tri-City Hospital District (1992) 2 Cal.4th 962, 967.

B. Meet and Confer

Defendant's attorney Charles M. Clark attests in his declaration that he met and conferred telephonically with Plaintiff's counsel on November 15, 2022, pursuant to Code of Civil Procedure §§ 430.41(a). Such meet and confer attempt occurred more than five days before the demurrer was filed on March 6, 2023, pursuant to Code of Civil Procedure §§ 430.41(a)(2).

C. Request for Judicial Notice.

Defendants request judicial notice of Exhibit 1: California Department of Cannabis Control, Testing Laboratories Summary of Regulations, https://cannabis.ca.gov/licenses/testing-laboratories/.

Courts may take judicial notice of "[o]fficial acts of the legislative, executive, and judicial departments of the United States and of any state of the United States." Evid. Code, § 452(c). "Courts can take judicial notice of the existence, content and authenticity of public records and other specified documents, but do not take judicial notice of the truth of the factual matters asserted in those documents." Glaski v. Bank of America (2013) 218 Cal.App.4th 1079, 1090. Pursuant to Evidence

Code § 452(c), the Court will take judicial notice of Exhibit 1, but not of the truth of any reasonably disputable matters contained in the document.

D. Damages/Economic Harm are Sufficiently Plead.

In cases where a "consumer [] relies on a product label and challenges a misrepresentation contained therein," an allegation that "he or she would not have bought the product but for the misrepresentation" is "sufficient to allege economic injury." Kwikset Corp. v. Superior Court (2011) 51 Cal.4th 310, 330; Hansen v. Newegg.com Ams., Inc. (2018) 25 Cal.App.5th 714, 733 (to plead "economic injury," "a consumer need only allege that he or she relied on a misrepresentation when purchasing the product, and that he or she would not have purchased the product but for the representation"). Plaintiffs allege that, "[f]or each product [they] purchased, [they] saw and relied on representations on the product label," and "if [they] had known the truth, [they] would not have purchased the products." Complaint, ¶¶ 51, 52. Plaintiffs properly alleged an economic injury.

In addition, a plaintiff properly alleges "economic injury" by alleging that "the consumer paid more than he or she actually valued the product." Kwikset, 51 Cal.4th at 330. Plaintiffs allege that, if "[they] had known the truth"—i.e., if Defendants' labels did not misrepresent the THC content—"[they] would have paid less" for the products they purchased. Complaint, ¶¶ 51, 52, 48 ("Plaintiffs and each class member paid a substantial price premium because of Defendants' false and misleading labeling" and "Plaintiffs paid more for a superior product worth more, and received an inferior product worth less"). Moore v. Centrelake Med. Grp., Inc. (2022), 83 Cal.App.5th 515, 527 (2022) (economic injury properly alleged where plaintiffs "alleged they relied on [defendant's] false representations and promises" and "accept[ed] [defendant's] pricing terms, paying more than they would have had they known the truth").

Plaintiffs also allege why they and other consumers would not have paid the full price charged for Defendants' products if they knew their true THC content: "THC content of cannabis products . . . drives consumer purchasing decisions" because "the primary reason that consumers purchase cannabis is for its psychological and medicinal effects," and "THC is responsible for most of the psychological effects that cannabis produces." Complaint, ¶¶ 23, 43. Plaintiffs support these allegations with

quotes from multiple secondary sources in the cannabis industry, each confirming that THC content drives price. Id., ¶¶ 22-23.

Defendants argue around these allegations by claiming that Plaintiffs are required to allege that the products performed "less well" than expected, i.e., the products did not get them as "high" as expected. Not so. All that matters at the pleading stage is that Plaintiffs allege that had they known that the THC values were inaccurate, they would not have purchased the product. Such allegations suffice to show economic harm. Defendants cite no authority holding that a consumer must actually test the product before a defendant may be held liable for any associated misrepresentation of a product. In fact, Kwikset holds that there is no basis to limit economic injury to "functional defects" or to "exclud[e] the real economic harm that arises from purchasing mislabeled products in reliance on the truth and accuracy of their labels." 51 Cal.4th at 331. "This economic harm—the loss of real dollars from a consumer's pocket—is the same whether or not a court might objectively view the products as functionally equivalent." Id. at 329.

Nor are Plaintiffs required to quantify the amount of damages sought in their complaint. Defendants cite no authority holding that a plaintiff must plead an actual an actual dollar amount for damages. In fact, case law holds the contrary. Moncada v. West Coast Quartz Corp. (2013) 221 Cal.App.4th 768, 776 (reversing sustaining of demurrer where complaint alleged "[t]he exact amount of the aforesaid damages is not yet fully ascertained . . . and will be established according to proof at the time of trial").

E. First and Second Causes of Action: UCL and FAL are Sufficiently Plead.

Under Business and Professions Code § 17200, "unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising." Business and Professions Code § 17204, which was amended by Proposition 64, allows a private person to bring an action for violation of the UCL when he "has suffered injury in fact and has lost money or property as a result of such unfair competition." Durell v. Sharp Healthcare (2010) 183 Cal.App.4th 1350, 1359 (emphasis added). "[T]his second prong imposes a causation requirement. The phrase 'as a result of' in its plain and ordinary sense means "caused by" and requires a showing of a causal connection or

reliance on the alleged misrepresentation." Hall v. Time, Inc. (2008) 158 Cal.App.4th 847, 855.

To state a claim under the FAL, a plaintiff must allege that reasonable consumers are likely to be deceived by untrue or misleading advertising. Bus. & Prof. Code, § 17500; Shaeffer v. Califia Farms, LLC (2020) 44 Cal.App.5th 1125, 1136.

Here, Plaintiffs sufficiently allege their UCL and FAL causes of action. As to their UCL cause of action, Plaintiffs sufficiently allege UCL violations under the unlawful, unfair, and fraudulent prongs.

1. UCL Unlawful Prong.

The UCL's "unlawful" prong "borrows violations of other laws and treats them as unlawful practices that the unfair competition law makes independently actionable." AMN Healthcare, Inc. v. Aya Healthcare Services, Inc. (2018) 28 Cal.App.5th 923, 950 (internal quotations and citation omitted). California law and regulations state:

- "Cannabis goods labeling shall not contain any . . . information that is false or misleading." Cal. Code Regs., tit. 4, § 17408(5).

- "It is unlawful to misbrand cannabis or a cannabis product," and "[c]annabis or a cannabis product is misbranded if . . . [i]ts labeling is false or misleading in any particular." Bus. & Prof. Code, § 26039.5.

- "It is unlawful to . . . sell . . . or offer for sale cannabis or a cannabis product that is adulterated," and "[c]annabis or a cannabis product is adulterated if . . . [i]ts concentrations differ from, or its purity or quality is below, that which it is represented to possess." Bus. & Prof. Code, § 26039.6.

Plaintiffs' complaint details that Defendants violated these laws and regulations, e.g., the "THC content of Defendants' products is materially less than the amount listed on the label," which "is false and misleading" and "violate[s] DCC regulations" and "California law." Complaint ,¶¶ 9, 28-45.

In addition, Plaintiffs allege that Defendants violated two provisions of the CLRA: § 1770(a)(5) and § 1770(a)(9). Complaint, ¶¶ 85-88. Those allegations separately suffice to state a claim under the unlawful prong of the UCL. Gutierrez v.

Carmax Auto Superstores California (2018) 19 Cal.App.5th 1234, 1265 ("the alleged violations of Civil Code section 1770, subdivision (a)(5), (7), and (9), which are provisions of the CLRA, are sufficient to satisfy the unlawful practice variety of unfair competition under the UCL").

2. UCL Unfair Prong.

To state a claim under the "unfair" prong it is not sufficient to allege conduct that "offends an established public policy or [] is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers." Durell, 183 Cal.App.4th at 1365 (internal citation omitted) (reviewing California standard for "unfair" prong claims). Rather, a plaintiff must allege conduct that offends a public policy "tethered to an[] underlying constitutional, statutory or regulatory provision[.]" Id. at 1366.

Plaintiffs allege that Defendants' false labeling of THC content violates the cannabis statues and regulations, as well as the CLRA. As such, Plaintiffs adequately alleged that Defendants' conduct violates a legislatively declared policy and is "unfair" under the UCL.

3. UCL Fraudulent Prong.

To state a cause of action under the "fraudulent" prong of the UCL, "it is necessary only to show that members of the public are likely to be deceived. [Citations.] Allegations of actual deception, reasonable reliance, and damage are unnecessary." Committee On Children's Television, Inc. v. General Foods Corp. (1983) 35 Cal.3d 197, 211, superseded by statute as stated in Branick v. Downey Savings & Loan Assn. (2006) 39 Cal.4th 235, 241-242. Unlike for common law fraud, a plaintiff need not plead fraudulent business practices under the UCL with particularity. Id. at 216; Quelimane Co. v. Stewart Title Guaranty Co. (1998) 19 Cal.4th 26, 46-47 (fact-specific pleading requirements for common law fraud not applicable to UCL fraud-based claims). "Deception" under Section 17200 is measured by the "reasonable person" standard. Clemens v. DaimlerChrysler Corp. (9th Cir. 2008) 534 F.3d 1017, 1025-1026.

Here, as Plaintiffs allege throughout their complaint, Defendants represented that their products contained a specific amount of THC, even though Defendants knew or should have known that such representations were inaccurate. Plaintiffs also allege throughout that such representations are likely to

deceive a reasonable consumer. These allegations also suffice to state a cause of action under the FAL.

4. Defendants' Contentions to the Contrary Are Unpersuasive.

Defendants contend that Plaintiffs' UCL and FAL claims fail because: (1) they followed all applicable Department of Cannabis Control (DCC) regulations; (2) the alleged representations were made by third parties, not Defendants; and (3) Plaintiffs lack standing to bring UCL or FAL causes of action.

First, Plaintiffs allege that Defendants violated DCC regulations by misstating the THC content on its product labels. Complaint, ¶¶ 9; 35- 49 (detailing how the THC content on Defendants' labels is systematically overstated). Defendants' contention that they followed all DCC regulations is contradicted by such allegations, which the Court must take as true in ruling on Defendants' demurrer.

Second, Defendants are not immune from liability simply because they parroted third party misrepresentations. In support, Defendants rely on Gentry v. eBay, Inc. (2002) 99 Cal. App. 4th 816, 820. However, Gentry discusses internet service provider immunity under Section 230 of the Communications Decency Act, not product mislabeling under the UCL or FAL. As such, the Court declines to extend Gentry's reasoning to the present case. Even if Defendants did simply restate third party misrepresentations, this does not excuse Defendants from their own independent duty to ensure that the statements on their products - regardless of the statements' origin - are accurate and not deceptive or misleading. To the extent that Defendants contend that THC content varies based on shelf life, or that they were justified in relying on laboratory testing of THC content, these are factual issues not suitable for resolution on demurrer.

Third, Defendants' standing argument fails. As noted above, Plaintiffs have sufficiently alleged economic harm, which is enough for UCL and FAL standing.

F. Third Cause of Action: CLRA is Sufficiently Plead.

The CLRA prohibits "unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer." Civ. Code, §

1770(a). The CLRA allows any consumer "who suffers any damage as a result of the use or employment by any person of a method, act, or practice declared to be unlawful by Section 1770 [to] bring an action against that person" to recover, inter alia, actual damages, injunctive relief, restitution, punitive damages, and any other relief the Court deems proper. Civ. Code, §1780(a). The unlawful methods, acts, and practices are set forth in Civil Code § 1770.

"[T]o obtain relief under the CLRA, both the named plaintiff and unnamed class members must have suffered some damage caused by a practice deemed unlawful under Civil Code section 1770." Steroid Hormone Product Cases (2010) 181 Cal.App.4th 145, 156. Causation is a necessary element of proof in a CLRA claim. Wilens v. TD Waterhouse Group, Inc. (2003) 120 Cal.App.4th 746, 754. See also Massachusetts Mutual Life Insurance Company v. Superior Court (2002) 97 Cal.App.4th 1282, 1292.

In addition:

> Under Civil Code section 1780, subdivision (a), CLRA actions may be brought only by a consumer 'who suffers any damage *as a result of the use or employment* of a proscribed method, act, or practice. (Italics added.) This language does not create an automatic award of statutory damages upon proof of an unlawful act. Relief under the CLRA is specifically limited to those who suffer damage, making causation a necessary element of proof. Accordingly, plaintiffs in a CLRA action [must] show not only that a defendant's conduct was deceptive but that the deception caused them harm. A misrepresentation is material for a plaintiff only if there is reliance—that is, without the misrepresentation, the plaintiff would not have acted as he did[.]

Durell, 183 Cal.App.4th at 1366-1367 (internal citations omitted).

As noted above, Plaintiffs adequately alleged economic harm resulting from Defendants' conduct.

Defendants contend that an actionable CLRA claim requires allegations of intent to deceive and knowledge that the representation was false. See, e.g., Civ. Code, § 1770(a)(9) (the CLRA prohibits "[a]dvertising goods or services with intent

not to sell them as advertised"). However, of the 24 prohibited acts under the CLRA, only Sections 1770(a)(9) and (a)(10) mention intent. Section 1770(a)(23) mentions knowledge, but that subdivision applies only to home solicitation of senior citizens and home improvements.

In any event, Plaintiffs adequately allege both knowledge and intent in their complaint. Plaintiffs allege that "Defendants are intentionally and knowingly causing the THC content declared on the label of their products to be substantially, and systematically, overstated, either by misstating the results themselves or by intentionally and knowingly causing testing labs . . . to report fraudulently high THC content results." Complaint, ¶ 44. Plaintiffs also allege detailed facts explaining why Defendants have knowledge of the misrepresentation and why the misrepresentation would be material to a reasonable consumer. Id., ¶¶ 44-45, 23-27.

In addition, "[s]ection 1770(a)(9) is the only subsection that requires pleading fraud, since it specifically requires intent to defraud, which, in turn, implies knowledge of the falsity." Marolda v. Symantec Corp. (N.D. Cal. 2009) 672 F.Supp.2d 992, 1003. Other CLRA subsections do not require knowledge or intent. For example, Section 1770(a)(5) imposes liability when a defendant represents "that goods or services have . . . characteristics, ingredients, uses, benefits, or quantities that they do not have." Code Civ., § 1770(a)(5); see Complaint, ¶ 86 (alleging violation under Section 1770(a)(5)). That section requires neither knowledge nor intent. In re Sony PS3 Other OS Litigation (9th Cir. 2014) 551 Fed.Appx. 916, 920-921 (holding that the district court erred by imposing knowledge and intent requirement for § 1770(a)(5)).

Defendants further contend that no authority allows CLRA violations where a defendant simply relied on third party representations. However, Defendants have not provided any authority that *prohibits* CLRA violations based on third party representations. To state a cause of action under Section 1770(a)(5), "a plaintiff must allege: (1) a misrepresentation; (2) reliance on that misrepresentation; and (3) damages caused by that misrepresentation." In re Sony PS3, 551 Fed.Appx. at 920. Thus, it does not appear that Defendants must be the original source of the misrepresentation in order to be liable under Section 1770(a)(5).

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G. Fourth Cause of Action: Breach of Express Warranty is Sufficiently Plead.

"In order to plead a cause of action for breach of express warranty, one must allege the exact terms of the warranty, plaintiff's reasonable reliance thereon, and a breach of that warranty which proximately causes plaintiff injury." Williams v. Beechnut Nutrition Corp. (1986) 185 Cal.App.3d 135, 142. An express warranty is any "affirmation of fact or promise" or a "description of the goods." Weinstat v. Dentsply Internat., Inc. (2010) 180 Cal.App.4th 1213, 1227 (internal quotations and citation omitted).

Defendants contend that Plaintiffs do not allege the exact terms of the purported express warranty. Defendants also contend that Plaintiffs make "a conclusory allegation that the products purchased by Plaintiffs were part of the same batch that was tested by this unidentified laboratory that allegedly had less THC than represented on the package." Demurrer at 20.

On the contrary, Plaintiffs have alleged the exact terms of the express warranty. In the complaint, Plaintiffs identify specific and unequivocal statements of fact on the label of Defendants' products: "[A]ll of the Jeeter Products claim to have a specific, high THC content. This representation is in the same format and in the same place across all of the Jeeter Products." Complaint, ¶ 32 (reproducing representative image of Jeeter label specifically identifying "Total THC" at "46.18%"). Plaintiffs also allege that "Defendants intended that Plaintiffs and class members rely on these representations, and Plaintiffs read and reasonably relied on them." Complaint, ¶¶ 108, 50 (allegations identifying the specific statements of the THC content relied upon by Plaintiffs for each product they purchased).

H. Fifth and Sixth Causes of Action: Negligent and Intentional Misrepresentation are Sufficiently Plead.

"The elements of negligent misrepresentation are (1) the misrepresentation of a past or existing material fact, (2) without reasonable ground for believing it to be true, (3) with intent to induce another's reliance on the fact misrepresented, (4) justifiable reliance on the misrepresentation, and (5) resulting damage." National Union Fire Ins. Co. of Pittsburgh, PA v. Cambridge Integrated Services Group, Inc. (2009) 171 Cal.App.4th 35, 50 (internal quotations and citation omitted).

"To establish a claim for deceit based on intentional misrepresentation, the plaintiff must prove seven[] essential elements: (1) the defendant represented to the plaintiff that an important fact was true; (2) that representation was false; (3) the defendant knew that the representation was false when the defendant made it, or the defendant made the representation recklessly and without regard for its truth; (4) the defendant intended that the plaintiff rely on the representation; (5) the plaintiff reasonably relied on the representation; (6) the plaintiff was harmed; and (7) the plaintiff's reliance on the defendant's representation was a substantial factor in causing that harm to the plaintiff." Manderville v. PCG&S Group, Inc. (2007) 146 Cal.App.4th 1486, 1498.

Defendants contend that they reasonably relied on the THC testing results on their products from certified laboratories. According to Defendants, because they believed these tests to be accurate, Defendants are not liable for negligent or intentional misrepresentation by labeling their products with third-party assertions of THC content. Plaintiffs simply allegedly conclude that Defendants should have known that the test results were false. None of these contentions has merit.

"Each element of a fraud count must be pleaded with particularity so as to apprise the defendant of the specific grounds for the charge and enable the court to determine whether there is any basis for the cause of action, although less specificity is required if the defendant would likely have greater knowledge of the facts than the plaintiff." Chapman v. Skype Inc. (2013) 220 Cal.App.4th 217, 231.

Plaintiffs' allegations as to Defendants' knowledge and intent meet this standard. In the complaint, Plaintiffs allege why Defendants had every reason to disbelieve the conclusions of certified laboratories. For example, "as one of the largest players in California's cannabis industry, Defendants are aware of industry trends, aware of the rampant testing fraud in the cannabis market, and know which labs participate in the fraud." Complaint, ¶¶ 44, 28-29 (describing widespread testing fraud). Moreover, industry insiders know that there are "biological limits" on total THC content and that "[y]ou should almost never see a strain with more than 35% total THC," and yet Defendants' products are "on average" labeled at "over 35%." Id., ¶¶ 45, 50 (the ten Jeeter products purchased by one Plaintiff ranged from 37.29% to 46.23%), 28 (explaining how Defendants have an incentive to "lab shop" and pressure labs to inflate THC content). As such, Plaintiffs have sufficiently alleged that

Defendants knew or should have known that the laboratories' THC content results may have been inaccurate.

In addition, in ruling on Defendants' demurrer, the Court may not consider Defendants' assertions that they made the representations in good faith and lacked knowledge of the test results' falsity. "Whether a defendant had reasonable ground for believing his or her false statement to be true is ordinarily a question of fact." Quality Wash Group V, Ltd. v. Hallak (1996) 50 Cal.App.4th 1687, 1696. The Court must accept Plaintiffs' allegations as true and defer ruling on factual issues.

I. Seventh Cause of Action: Unjust Enrichment is Inadequately Plead.

Several Courts of Appeal have held that "there is no cause of action in California for unjust enrichment." Melchior v. New Line Productions, Inc. (2003) 106 Cal.App.4th 779, 793; see also Hooked Media Grp., Inc. v. Apple Inc. (2020) 55 Cal.App.5th 323, 337; Everett v. Mountains Recreation & Conservation Authority (2015) 239 Cal.App.4th 541, 553; Durell v. Sharp Healthcare (2010) 183 Cal.App.4th 1350, 1370. However, other Courts of Appeal have held that unjust enrichment is a viable, standalone cause of action. See, e.g., Rutherford Holdings, LLC v. Plaza Del Rey (2014) 223 Cal.App.4th 221, 231; Elder v. Pacific Bell Telephone Co. (2012) 205 Cal.App.4th 841, 857; Peterson v. Cellco (2008) 164 Cal.App.4th 1583, 1593; Lectrodryer v. SeoulBank (2000) 77 Cal.App.4th 723, 726. To state a cause of action for unjust enrichment, a plaintiff must allege "receipt of a benefit and unjust retention of the benefit at the expense of another." Lectrodryer, 77 Cal.App.4th at 726.

In O'Grady v. Merchant Exchange Productions, Inc. (2019) 41 Cal.App.5th 771, the plaintiff sought restitution of gratuities owed to her under both an unjust enrichment theory and the UCL. The O'Grady court noted that courts have "long taken the position that, even if unjust enrichment does not describe an actual cause of action, the term is 'synonymous with restitution,' which can be a theory of recovery." Id. at 791 (emphasis in original). As such, "there is no particular form of pleading necessary to invoke the doctrine of restitution." Id. at 792 (internal quotation and citation omitted). Because the plaintiff also alleged a UCL claim, the O'Grady court allowed the plaintiff to pursue restitution under UCL without resolving whether unjust enrichment is a standalone cause of action. Id.

Here, as in O'Grady, Plaintiffs allege causes of action under the UCL and FAL, and a separate cause of action for unjust enrichment. Each of these causes of action seek restitution for Defendants' conduct. If Plaintiffs had alleged only unjust enrichment, perhaps unjust enrichment may have been viable as a standalone cause of action invoking the doctrine of restitution. However, Plaintiffs' unjust enrichment cause of action appears duplicative of their UCL and FAL causes of action and therefore unnecessary for recovery of any restitution owed by Defendant.

J. Leave to Amend.

"Liberality in permitting amendment is the rule, if a fair opportunity to correct any defect has not been given." Angie M. v. Superior Court (1995) 37 Cal.App.4th 1217, 1227. "[H]owever, leave to amend should not be granted where, in all probability, amendment would be futile." Vaillette v. Fireman's Fund Ins. Co. (1993) 18 Cal.App.4th 680, 685.

The Court has not previously granted leave to amend. Accordingly, the Court will grant Plaintiffs leave to amend only as to their seventh cause of action for unjust enrichment.

Plaintiffs' counsel stated at the hearing on the motion that he will not file a First Amended Complaint. Therefore, Defendants must file and serve an Answer.

III.
CONCLUSION

Based upon the foregoing, the Court orders that:

1) Defendants' Demurrer to Plaintiffs' Complaint is SUSTAINED in part, and OVERRULED in part.

2) The Court sustains Defendants' Demurrer as to the seventh cause of action (unjust enrichment), with 20 days leave to amend.

3) Defendants' Demurrer is otherwise OVERRULED.

4) Defendants Request for Judicial Notice is GRANTED, (except as to truth).

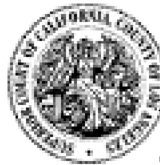
5) As Plaintiffs stated they will not file a First Amended Complaint, Defendants must file and serve an Answer by July 17, 2023.

6) Non-Appearance Case Review is set for July 24, 2023, 8:30 a.m., Department 9.

CLERK TO GIVE NOTICE TO MOVING PARTY. THE MOVING PARTY TO GIVE NOTICE TO ALL OTHER PARTIES.

IT IS SO ORDERED.

DATED: June 15, 2023



YVETTE M. PALAZUELOS
JUDGE OF THE SUPERIOR COURT
Yvette M. Palazuelos / Judge