

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA**

Leah Testone v. Go Macro, LLC

No. 25-cv-1743-RSH-KSC, United States District Court for the Southern District of California (December 17,
2025)

OPINION

1 2 3 4 5 6 7 8 9 UNITED STATES DISTRICT COURT 10 SOUTHERN DISTRICT OF
CALIFORNIA 11 12 LEAH TESTONE, on behalf of herself, Case No.: 25-cv-1743-RSH-KSC all
others similar situated, and the general 13 public, ORDER GRANTING DEFENDANT’S
MOTION TO DISMISS 14 Plaintiffs, 15 [ECF No. 10] v. 16 17 GO MACRO, LLC, 18
Defendant. 19 20 Pending before the Court is Defendant’s motion to dismiss Plaintiff’s
Complaint.

21 ECF No. 10. For the reasons below, the Court grants the motion. 22 I. BACKGROUND 23 On
July 8, 2025, Plaintiff filed this putative class action against Defendant, alleging 24 that
Defendant’s labelling of its snack bars as healthy is false and misleading, in light of 25 the added
sugar contained in the bars.

The products at issue include over 20 varieties of 26 snack and protein bars made by Defendant.
ECF No. 1 ¶ 1 n.1. Plaintiff alleges that the 27 following statements contained on the labelling for
the products are deceptive: “Finally— 28 a bar that’s both delicious and good for you!”; “Live
Long”; “Eat Positive”; “Be Well”; 1 and “have a healthy body.” Id. ¶¶ 2, 17.

Plaintiff also alleges that a small drawing of a heart 2 contained on the labelling is similarly
deceptive. Id. Plaintiff contends that scientific 3 studies, reports by governmental and
nongovernmental bodies, and the statements of the 4 U.S. Food and Drug Administration all
establish that the amount of added sugar contained 5 in each of the products is in fact unhealthy.

Id. ¶¶ 22-56. 6 Plaintiff alleges that she “regularly purchased the Products throughout the past four
7 years,” on average about 10-15 times per year. Id. ¶ 83. She made her purchases from 8 various
retail stores, buying single protein bars in three varieties. Id. She also occasionally 9 purchased the
products from online retailers like Amazon. Id. Plaintiff alleges, in general 10 terms, that “[i]n
purchasing the Products, [she] was exposed to, read, and relied on Go 11 Macro’s health and
wellness representations described herein.” Id. ¶ 84.

She does not 12 contend that Defendant failed to disclose the amount of added sugar in the
products, or that 13 it inaccurately disclosed the amount of added sugar. Instead, she contends that
despite any 14 such disclosures, Plaintiff was misled by Defendant’s statements because she “was

15 unaware of the extent to which consuming the amounts of added sugar found in the 16 Products adversely affects health, or what amount of added sugar might have such an 17 effect.” Id. ¶ 86.

Plaintiff does not contend that her health was harmed by consuming the 18 products, but rather that she was economically harmed, in that she would not have 19 purchased the products if she had known the statements at issue were false and misleading. 20 Id. ¶ 88. 21 Plaintiff seeks to represent a nationwide class and a California subclass of all persons 22 who purchased any of Defendant’s snack bars or protein bars for personal or household use 23 in the four years prior to the filing the Complaint.

Id. ¶ 100. 24 The Complaint brings claims for: (1) violation of California’s Unfair Competition 25 Law, Cal. Bus. & Prof. Code § 17200 et seq. (“UCL”); (2) violation of California’s False 26 Advertising Law, Cal. Bus. & Prof. Code § 17200 et seq. (“FAL”); (3) violation of 27 California’s Consumer Legal Remedies Act, Cal. Civ. Code § 1750 et seq. (“CLRA”); (4) 28 breach of express warranty, pursuant to Cal. Com.

Code § 2313(1); (5) breach of implied 1 warranty of merchantability, pursuant to Cal. Com. Code § 2314; (6) negligent 2 misrepresentation; (7) intentional misrepresentation; and (8) unjust enrichment. 3 On September 9, 2025, Defendant filed its motion to dismiss. ECF No. 10.

The 4 motion is fully briefed. ECF Nos. 11 (opposition), 12 (reply). 5 II. LEGAL STANDARD 6 A motion to dismiss under Rule 12(b)(6) “tests the legal sufficiency of a claim.” 7 *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). A pleading must contain “a short and 8 plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 9 8(a)(2).

However, a plaintiff must also plead “enough facts to state a claim to relief that is 10 plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); see Fed. R. 11 Civ. P. 12(b)(6). The plausibility standard demands more than a “formulaic recitation of 12 the elements of a cause of action,” or “‘naked assertions’ devoid of ‘further factual 13 enhancement.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. 14 at 555, 557).

Instead, a complaint “must contain sufficient allegations of underlying facts 15 to give fair notice and to enable the opposing party to defend itself effectively.” *Starr v. 16 Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011). 17 When reviewing a motion to dismiss under Rule 12(b)(6), courts assume the truth of 18 all factual allegations and construe them in the light most favorable to the nonmoving party.

19 *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-38 (9th Cir. 1996) (citing *Nat’l Wildlife 20 Fed’n v. Espy*, 45 F.3d 1337, 1340 (9th Cir. 1995)). But a court “disregard[s] ‘[t]hreadbare 21 recitals of the elements of a cause of action, supported by mere conclusory statements.’” 22

Telesaurus VPC, LLC v. Power, 623 F.3d 998, 1003 (9th Cir. 2010) (quoting *Iqbal*, 556 U.S. at 678-79).

Likewise, “conclusory allegations of law and unwarranted inferences are not sufficient to defeat a motion to dismiss.” *Pareto v. FDIC*, 139 F.3d 696, 699 (9th Cir. 25 1998) (citing *In re Syntex Corp. Sec. Litig.*, 95 F.3d 922, 926 (9th Cir. 1996)). “After eliminating such unsupported legal conclusions, [courts] identify ‘well-pleaded factual allegations,’ which [are] assume[d] to be true, ‘and then [courts] determine whether they plausibly give rise to an entitlement to relief.’” *Telesaurus VPC*, 623 F.3d at 1003.

1 Dismissal under Rule 12(b)(6) is proper where there is no cognizable legal theory to support the claim or when there is an absence of sufficient factual allegations to support a facially plausible claim for relief. *Shroyer v. New Cingular Wireless Servs., Inc.*, 622 F.3d 4 1035, 1041 (9th Cir. 2010). 5 For claims alleging “fraud or mistake,” a heightened pleading standard applies.

6 Federal Rule of Civil Procedure 9(b) requires a party alleging fraud to “state with 7 particularity the circumstances constituting fraud,” including “an account of the ‘time, 8 place, and specific content of the false representations as well as the identities of the parties 9 to the misrepresentations.’” *Swartz v. KPMG LLP*, 476 F.3d 756, 764 (9th Cir. 2007) 10 (quoting *Edwards v. Marin Park, Inc.*, 356 F.3d 1058, 1066 (9th Cir.

2004)). “Averments 11 of fraud must be accompanied by ‘the who, what, when, where, and how’ of the misconduct 12 charged.” *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003) (quoting 13 *Cooper v. Pickett*, 137 F.3d 616, 627 (9th Cir. 1997)); see also *Kearns v. Ford Motor Co.*, 14 567 F.3d 1120, 1124 (9th Cir. 2009) (“Rule 9(b) demands that the circumstances 15 constituting the alleged fraud be specific enough to give defendants notice of the particular 16 misconduct... so that they can defend against the charge and not just deny that they have 17 done anything wrong.” (citation and internal quotation marks omitted)).

A pleading must 18 also identify “what is false or misleading about the purportedly fraudulent statement, and 19 why it is false.” *Moore v. Mars Petcare US, Inc.*, 966 F.3d 1007, 1019 (9th Cir. 2020) 20 (quoting *Davidson v. Kimberly–Clark Corp.*, 889 F.3d 956, 964 (9th Cir. 2018)). 21 “A motion to dismiss a complaint or claim ‘grounded in fraud’ under Rule 9(b) for 22 failure to plead with particularity is the functional equivalent of a motion to dismiss 23 under Rule 12(b)(6) for failure to state a claim.” *Vess*, 317 F.3d at 1107. “When an entire 24 complaint, or an entire claim within a complaint, is grounded in fraud and its allegations 25 fail to satisfy the heightened pleading requirements of Rule 9(b), a district court may 26 dismiss the complaint or claim.” *Id.* 27 // 28 // 1 III.

ANALYSIS 2 A. Preemption 3 As a threshold matter, Defendant argues that Plaintiff’s claims are preempted by the 4 Nutrition Labeling and Education Act (the “NLEA”), specifically, 21 U.S.C. §

343-1(a)(2). 5 ECF No. 10 at 14. That provision states: 6 (a) Except as provided in subsection (b), no State or political subdivision of a State may directly or indirectly establish under any 7 authority or continue in effect as to any food in interstate commerce— 8....

(2) any requirement for the labeling of food of the type required 9 by section 343(c), 343(e), 343(i)(2), 343(w), or 343(x) of this 10 title that is not identical to the requirement of such section 11 21 U.S.C. § 343-1(a)(2). Defendant does not, however, articulate how Plaintiff’s claims 12 invoke a state-law “requirement for the labeling of food of the type required by section 13 343(c), 343(e), 343(i)(2), 343(w), or 343(x)” that is “not identical to the requirement of 14 such section.” Indeed, Defendant’s motion does not discuss or mention these subsections 15 of the NLEA.¹ These sections establish labelling requirements regarding imitation of 16 another food (§ 343(c)); package form (§ 343(e)); identification of ingredients (§ 17 343(i)(2)); major food allergens (§ 343(w)); and nonmajor food allergens (§ 343(x)).

None 18 of these provisions appears to apply to Plaintiff’s allegation that Defendant misrepresented 19 its products as healthy, and Defendant provides no further analysis of the statutory 20 language.² The Court is not persuaded that Plaintiff’s claims are preempted by 21 U.S.C. 21 22 23 1 Defendant’s reply brief does not address preemption. ECF No. 12. 24 2 Defendant also argues, “to the extent Plaintiff is seeking to require Go Macro to 25 change the way it discloses the amount of sugar or add a disclosure about sugar that is not required by FDA, her claims are preempted.” ECF No. 10 at 15.

In response, Plaintiff 26 expressly disclaims such a theory, stating that she is “not seeking to change how Go Macro 27 discloses the amount of sugar in the Products,” but rather alleging that Defendant’s statements about the healthfulness of the products are misleading in light of the products’ 28 1 § 343-1(a)(2). See *LeGrand v. Abbott Labs.*, 655 F. Supp. 3d 871, 888 (N.D.

Cal. 2023) 2 “(The burden is on the party arguing the federal law preempts the state law claim to show 3 preemption.”). 4 B. Failure to Plead With Particularity 5 Defendant argues that Plaintiff’s claims “sound in fraud” and are subject to the 6 heightened pleading requirements of Rule 9(b). ECF No. 10 at 7-9. Plaintiff does not 7 dispute this, but responds that her claims satisfy that heightened pleading requirement.

ECF 8 No. 11 at 15-18. The Court agrees that Plaintiff’s claims, each of which is based on 9 Defendant’s alleged misrepresentations about the healthy nature of its products, sound in 10 fraud and are subject to the heightened pleading standard. See *Kearns*, 567 F.3d at 1125 11 (“[W]e have specifically ruled that Rule 9(b)’s heightened pleading standards apply to 12 claims for violations of the CLRA and UCL.”); *Carter v. Rasier-CA, LLC*, No. 17-CV- 13 00003-HSG, 2017 WL 4098858, at *4 (N.D.

Cal. Sept. 15, 2017) (applying Rule 9(b) to 14 claims for intentional and negligent misrepresentation), *aff'd*, 724 F. App'x 586 (9th Cir. 15 2018); *Arabian v. Organic Candy Factory*, No. 2:17-cv-05410-ODW-PLA, 2018 WL 16 1406608, at *3 (C.D. Cal. Mar. 19, 2018) (applying Rule 9(b) standard to claims of breach 17 of express warranty, breach of implied warranty, breach of contract, and unjust enrichment 18 because the plaintiff's claims "ar[o]se from the unified course of conduct: Defendant 19 fraudulently misrepresenting that its products contain Real Flavors").

20 Applying that standard here, the Court cannot discern from the Complaint which 21 alleged misrepresentations Plaintiff reviewed prior to making her purchases. The 22 Complaint only specifically mentions her exposure to one statement: "Finally – a bar that's 23 both delicious and good for you." ECF No. 1 ¶¶ 17, 84.

The Complaint does not allege 24 when or where she saw this statement, or how this statement was connected to or associated 25 with the product(s) she bought. Plaintiff alleges that the statement was contained on "the 26 labeling of the Products," *id.* ¶ 84, but the Complaint's example of this labelling features 27 the statement as part of a narrative contained on the bottom of a box of bars, *id.* ¶ 18, and 28 Plaintiff alleges that she "would purchase single Protein Bars," and made unspecified 1 purchases of products online, *id.* ¶ 83.

Neither of these channels of purchase—single bars 2 at a retail store, or a purchase from a web page—would necessarily expose her prior to 3 purchase to a statement made on the bottom of a multi-pack carton. Additionally, Plaintiff 4 does not identify which statements, if any, she relied upon in making her purchases; and 5 what she interpreted them to mean.

Finally, Plaintiff does not explain which specific 6 products she purchased in reliance upon such statements; or when and where these specific 7 purchases were made. Plaintiff's blanket statements that "[i]n purchasing the Products, Ms. 8 Testone was exposed to, read, and relied on Go Macro's health and wellness 9 representations described herein," *id.* ¶ 84, and that she "acted reasonably in relying on the 10 challenged labeling claims," *id.* ¶ 87, are conclusory and do not satisfy Rule 9(b).

11 In responding to Defendant's Rule 9(b) arguments, Plaintiff offers that "[i]f 12 necessary, Plaintiff could make her allegations more direct on amendment." ECF No. 11 13 at 17 n.9. The Court concludes that Plaintiff's claims are subject to dismissal for failing to 14 satisfy Rule 9(b), but grants Plaintiff the opportunity to amend her pleading to satisfy Rule 15 9(b) and address the deficiencies identified in previous paragraph.

For each 16 misrepresentation that Plaintiff identifies as being one she relied upon, she must also allege 17 what is false about the statement, and why it is false.³ 18 In light of this disposition, the Court declines to address at this time Defendant's 19 remaining arguments for Rule 12(b)(6)

dismissal. 20 // 21 // 22 23 24 3 Separate from Rule 9(b), Defendant also argues that Plaintiff's common-law claims 25 for intentional misrepresentation, negligent misrepresentation, and unjust enrichment should be dismissed because the Complaint fails to specify under what state's law those 26 claims are brought.

ECF No. 10 at 23. Plaintiff responds that "[i]t can reasonably be 27 inferred that Plaintiff is alleging [these] claims under California law," and requests leave to amend "[t]o the extent the Court finds a more express allegation needed." ECF No. 11 28 1 C. Standing 2 Defendant's motion also challenges Plaintiff's standing to pursue certain class 3 claims "[i]f Plaintiff's claims are permitted to proceed," ECF No. 10 at 18-19, and argues 4 that Plaintiff does not have standing to seek the remedy of injunctive relief, *id.* at 17.

5 "Federal courts are courts of limited jurisdiction. They possess only that power 6 authorized by Constitution and statute." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 7 U.S. 375, 377 (1994). Article III, Section 2 of the U.S. Constitution requires that a plaintiff 8 have standing to bring a claim. See *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 9 (1992).

Article III standing requires that a plaintiff show that he or she has "suffered an 10 injury in fact—an invasion of a legally protected interest" (1) that is "concrete and 11 particularized" and "actual or imminent," (2) "that is fairly traceable to the challenged 12 conduct of the defendant," and (3) "that is likely to be redressed by a favorable judicial 13 decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338–39 (2016) (citing *Lujan*, 504 U.S. at 14 560).

The plaintiff has the burden to establish standing, and at the pleading stage, "the 15 plaintiff must clearly allege facts demonstrating each element." *Id.* (cleaned up). 16 Defendant does not contest that Plaintiff has standing to bring her own claims based 17 on any products she purchased in reliance on Defendant's alleged misrepresentations.

The 18 Court concludes that she does have standing, but—as set forth above—also concludes that 19 her Complaint is subject to dismissal for failure to plead with the required particularity. In 20 the event Plaintiff succeeds in stating a claim that makes available to her the remedy of 21 injunctive relief, the Court will determine whether she has standing to pursue such a 22 remedy in connection with that claim.

23 In a class action, "[p]laintiffs must show standing with respect to each form of relief 24 sought," and "[s]tanding exists if at least one named plaintiff meets the requirements." *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 978 (9th Cir. 2011).

The Court declines at this 26 stage to address, under the rubric of Article III standing, whether Plaintiff will be able to 27 serve as a class representative for class members who bought different products or who 28 reside in different states. See also *Melendres v. Arpaio*, 784 F.3d 1254, 1261-62 (9th Cir. 1 ||2015) (adopting the "class certification approach," which holds that "once the

named 2 || plaintiff demonstrates her individual standing to bring a claim, the standing inquiry is 3 concluded”).

The Court also declines to address the manageability of the putative class at 4 || this stage, particularly where Plaintiff has not yet pleaded a claim. 5 CONCLUSION 6 For the foregoing reasons, Defendant’s motion to dismiss is GRANTED.

The Court 7 || DISMISSES the Complaint with leave to amend. 8 The Court GRANTS Plaintiff leave to file an amended complaint within fourteen 9 || (14) days of the date of this order. The amended pleading shall comply with CivLR 15.1. 10 If Plaintiff fails to file an amended pleading within that timeframe, the action will be 11 || dismissed. 12 IT SO ORDERED. [ekut ¢ Lowe 13 Dated: December 17, 2025 14 Hon. Robert S. Huie United States District Judge 15 16 17 18 19 20 21 22 23 24 25 26 27 28