

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Summer Whiteside v. Chosen Foods, LLC

Whiteside · No. 3:25-cv-00481-CAB-DDL · Decided August 26, 2025

SUMMARY

The United States District Court for the Southern District of California granted Chosen Foods, LLC’s motion to dismiss a putative class action challenging non-GMO labeling on avocado oil products. The court held that Plaintiff adequately alleged Article III standing but failed to plausibly allege that a reasonable consumer would be misled by the front or side labels under the California Consumers Legal Remedies Act and Unfair Competition Law. The complaint was dismissed with prejudice.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Cathy Ann Bencivengo
JURISDICTION	United States District Court for the Southern District of California
DECIDED	August 26, 2025
DOCKET	3:25-cv-00481-CAB-DDL
DISPOSITION	dismissed
PROCEDURAL POSTURE	Defendant moved under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) to dismiss a putative consumer class action alleging that non-GMO labeling on avocado oil products deceived consumers. The court denied the standing-based portion of the motion but granted dismissal under Rule 12(b)(6), dismissing the complaint with prejudice.
STANDARD OF REVIEW	On a Rule 12(b)(1) motion, Plaintiff bore the burden of establishing subject matter jurisdiction and Article III standing. On a Rule 12(b)(6) motion, the court accepted well-pleaded factual allegations as true and construed the pleadings in Plaintiff's favor, but disregarded legal conclusions and required nonconclusory factual content plausibly suggesting entitlement to relief.
PRECEDENTIAL VALUE	unpublished district court order; nonprecedential
PARTIES	Summer Whiteside v. Chosen Foods, LLC

TOPICS

consumer protection

deceptive trade practices

motions to dismiss

standing

class actions

PRACTICE AREAS

consumer protection

false advertising

civil procedure

federal subject matter jurisdiction

QUESTIONS PRESENTED

1. Whether Plaintiff adequately alleged Article III standing based on an alleged economic injury from paying more for the product or purchasing it when she otherwise would not have done so.
2. Whether the complaint plausibly alleged that the product's front label and side-label non-GMO statements were likely to deceive a reasonable consumer in violation of the California Consumers Legal Remedies Act and Unfair Competition Law.
3. Whether the court could consider the product side labels and articles submitted with Plaintiff's request for judicial notice on a motion to dismiss.
4. Whether the complaint should be dismissed with prejudice because amendment could not cure the pleading deficiency.

HOLDINGS

1. The court could consider the product side labels because they were incorporated by reference in the complaint and were also proper subjects of judicial notice, but it could take notice of the articles only for their existence and the statements they contained, not for the truth of disputed factual matters.
2. Plaintiff adequately pleaded Article III standing because allegations that she would not have purchased the product, or would have paid less for it, absent the alleged misconduct sufficiently alleged an economic injury in fact.
3. The front-label Non-GMO Project Verified logo did not plausibly deceive a reasonable consumer because it represented that the product was certified by the Non-GMO Project, not that other avocado oil products contained GMOs or that the product possessed a comparative quality that other avocado oils lacked.
4. The complaint failed to plausibly allege that the product's front and side labels would deceive a significant portion of reasonable consumers; Plaintiff's alleged interpretation that the labels implied other avocado oils contained GMOs was unreasonable and unsupported by the label's actual statements.
5. The complaint was dismissed with prejudice because the court determined that Plaintiff could not possibly amend the complaint to state a plausible consumer-deception claim.

KEY QUOTATIONS

"Standing is a threshold issue that the Court must reach before addressing the merits or any other substantive matter." (at 5)

"The reasonable consumer standard "requires more than a mere possibility that [a] label might conceivably be misunderstood by some few consumers viewing it in an unreasonable manner."" (at 7)

“No reasonable consumer would be misled into spending more on the Products than they would have spent on other avocado oil products because of the Non-GMO Project label.” (at 8)

“Because Plaintiff could not possibly amend her complaint to state a plausible claim, the case is DISMISSED WITH PREJUDICE.” (at 12)

FACTUAL BACKGROUND

Plaintiff purchased Chosen 100% Pure Avocado Oil Spray in California and alleged that the product prominently displayed non-GMO and Non-GMO Project Verified claims. She alleged that avocados are not commercially available in genetically modified form, making the claims meaningless or misleading and causing consumers to pay a premium. Plaintiff further alleged that she relied on the claims and would not have purchased the product, or would have paid less, absent the alleged misrepresentation.

PROCEDURAL HISTORY

Plaintiff filed a putative nationwide class action on February 28, 2025, asserting claims under the California Consumers Legal Remedies Act and Unfair Competition Law. Defendant moved to dismiss. The court took judicial notice of the product side labels and the existence, but not the truth, of articles concerning non-GMO labeling practices. The court held that Plaintiff adequately alleged Article III standing but failed to plausibly allege that a reasonable consumer would be deceived by the product labels, and dismissed the complaint with prejudice.

DISPOSITION

dismissed

CASES CITED

- Ass'n of Am. Med. Coll. v. U.S., 217 F.3d 770, 778-79 (9th Cir. 2000)
- Bates v. United Parcel Serv., Inc., 511 F.3d 974, 985 (9th Cir. 2007)
- Lujan v. Defs. of Wildlife, 504 U.S. 555, 560-61 (1992)
- Eclectic Props. E., LLC v. Marcus & Millichap Co., 751 F.3d 990, 996 (9th Cir. 2014)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 570 (2007)
- Manzarek v. St. Paul Fire & Marine Ins. Co., 519 F.3d 1025, 1031 (9th Cir. 2008)
- Moss v. U.S. Secret Serv., 572 F.3d 962, 969 (9th Cir. 2009)
- DeSoto v. Yellow Freight Sys., Inc., 957 F.2d 655, 658 (9th Cir. 1992)
- Schreiber Distrib. Co. v. Serv-Well Furniture Co., 806 F.2d 1393, 1401 (9th Cir. 1986)
- Khoja v. Orexigen Therapeutics, Inc., 899 F.3d 988, 998 (9th Cir. 2018)
- Lee v. City of Los Angeles, 250 F.3d 668, 690 (9th Cir. 2001)
- Gustavson v. Wrigley Sales Co., 961 F. Supp. 2d 1100, 1113 n.1 (N.D. Cal. 2013)
- EVO Brands, LLC v. Al Khalifa Grp. LLC, 657 F. Supp. 3d 1312, 1320-21 (C.D. Cal. 2023)

- Wash. Post v. Robinson, 935 F.2d 282, 291 (D.C. Cir. 1991)
- Ali v. Intel Corp., No. 18-CV-03981-LHK, 2018 WL 5734673, at *3 (N.D. Cal. Oct. 31, 2018)
- Gerritsen v. Warner Bros. Entm't Inc., 112 F. Supp. 3d 1011, 1028 (C.D. Cal. 2015)
- Stoianoff v. State of Mont., 695 F.2d 1214, 1223-24 (9th Cir. 1983)
- Hinojos v. Kohl's Corp., 718 F.3d 1098, 1104 & n.3 (9th Cir. 2013)
- In re Johnson & Johnson Talcum Powder Prods. Mktg., Sales Pracs. & Liab. Litig., 903 F.3d 278, 280-81 (3d Cir. 2018)
- Kwikset Corp. v. Superior Ct., 51 Cal. 4th 310, 330 (2011)
- Reid v. Johnson & Johnson, 780 F.3d 952, 958 (9th Cir. 2015)
- Kasky v. Nike, Inc., 27 Cal. 4th 939, 951 (2002)
- Leoni v. State Bar, 39 Cal. 3d 609, 626 (1985)
- Freeman v. Time, Inc., 68 F.3d 285, 289 (9th Cir. 1995)
- Lavie v. Procter & Gamble Co., 105 Cal. App. 4th 496, 506-07 (2003)
- Andrade-Heymsfield v. Danone US, Inc., 2019 WL 3817948, at *1, *7 (S.D. Cal. Aug. 14, 2019)
- Whiteside v. Kimberly Clark Corp., 108 F.4th 771, 777-82 (9th Cir. 2024)
- Ebner v. Fresh, Inc., 838 F.3d 958, 965 (9th Cir. 2016)
- Fitzhenry-Russell v. Coca-Cola, No. 5:17-CV-00603-EJD, 2017 WL 4680073, at *3 (N.D. Cal. Oct. 17, 2017)
- Garza, 760 F. Supp. 3d at 1047
- Chong v. Nestle Water N. Am., Inc., No. 20-56373, 2021 WL 4938128, at *1 (9th Cir. 2021)
- Myers v. Starbucks Corp., No. 22-55930, 2024 WL 3102800, at *1 (9th Cir. June 24, 2024)
- McGinity v. Procter & Gamble Co., 69 F.4th 1093, 1098 (9th Cir. 2023)
- Trader Joe's v. Moore, 4 F.4th 874, 882-85 (9th Cir. 2021)

OPINION

Summer Whiteside v. Chosen Foods, LLC

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 SUMMER WHITESIDE, individually and Case No.: 3:25-cv-00481-CAB-DDL on behalf
of all others similarly situated, 12

ORDER GRANTING DEFENDANT'S

Plaintiff,

13 MOTION TO DISMISS

v. PLAINTIFF'S COMPLAINT

14

CHOSEN FOODS, LLC,

15 [Doc. No. 8] Defendant. 16 17 18 This matter comes before the Court on Defendant Chosen Foods, LLC's 19 ("Defendant") motion to dismiss. [Doc. No. 8.] The motion has been fully briefed, and 20 the Court finds it suitable for determination on the papers submitted and without oral 21 argument. See Civ. L.R. 7.1(d)(1). For the reasons set forth below, the Court GRANTS 22 the motion. 23

I. ALLEGATIONS IN THE COMPLAINT

24 A. Parties 25 Defendant manufactures, distributes, advertises, and sells Chosen® Foods branded 26 avocado oils. [Complaint ("Compl.") ¶ 1.] Plaintiff Summer Whiteside ("Plaintiff") is a 27 California citizen who purchased the Chosen 100% Pure Avocado Oil Spray 2-pack in 28 1 California. [Id. ¶¶ 10, 15.] Plaintiff purports to represent a class of nationwide consumers 2 of Defendant's avocado oil products ("Products"). [Id. ¶¶ 1, 11.] 3 B. Plaintiff's Class Allegations 4 The crux of Plaintiff's lawsuit is that Defendants mislead consumers by using a non- 5 GMO label on their Products, because all avocado products are free from GMOs. [See 6 Compl. ¶¶ 3, 5.] Plaintiff alleges that the packaging of Products prominently displays on 7 the front and side label claims that the Products are "non-GMO" and/or "non-GMO Project 8 Verified" (collectively, the "Non-GMO Claims"). [Compl. ¶ 3.] 9 The World Health Organization defines genetically modified organisms ("GMOs") 10 as "organisms (i.e. plants, animals or microorganisms) in which the genetic material (DNA) 11 has been altered in a way that does not occur naturally by mating and/or natural 12 recombination." [Compl. ¶ 4]; See Food, genetically modified, World Health Organization 13 (August 8, 2025), <https://www.who.int/news-room/questions-and-answers/item/food-14-genetically-modified>. Both parties agree that GMO avocados have never been sold to 15 consumers anywhere in the world. [Compl. ¶ 18; Doc. No. 8-1 at 12.] 16 Plaintiff alleges that the Non-GMO claims on the Products are meaningless and a 17 misleading attempt to use those claims to distinguish the Products from other avocado oil 18 products that do not exist on the market. [Id. ¶ 24.] In her complaint, Plaintiff states that 19 she saw and relied on the Non-GMO Claims on the label of the avocado oil. [Id. ¶ 45.] 20 Next, Plaintiff alleges that by using the non-GMO label, Defendant intentionally 21 misleads consumers into paying Defendant a premium for the Products. [Compl. ¶ 35, 37.] 22 Plaintiff alleges that she would not have purchased the Product, or at least would have paid 23 less for it, had she known the Product did not have qualities associated with the Non-GMO 24 Claims compared to similar avocado oil products without any such claims, in contradiction 25 to the label. [Id. ¶ 45.] 26 Finally, Plaintiff alleges that reasonable consumers relied on Defendant's non-GMO 27 claims when making purchasing decisions and suffered economic injury because of 28 Defendant's actions. [Id. ¶¶ 41–42.] 1 On February 28, 2025, Plaintiff, on behalf of herself and all others similarly situated, 2 filed a class action complaint against Defendant based on the above-described practices. 3 [Id.] The complaint asserts two causes of action: Violation of California's Consumers 4 Legal Remedies Act Cal. Civ. Code § 1750, et seq. ("CLRA") and Violation of California's 5 Unfair Competition Law Cal. Bus. & Prof. Code § 17200, et seq. ("UCL"). The Court 6 addresses these claims in relation to

Defendant's motion to dismiss.

7 II. LEGAL STANDARD

8 a. Motion to Dismiss under Rule 12(b)(1) 9 Federal Rule of Civil Procedure 12(b)(1) allows a party to move to dismiss based on 10 the court's lack of subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). Plaintiff has the 11 burden of establishing that the court has subject matter jurisdiction over an action. *Ass'n 12 of Am. Med. Coll. v. U.S.*, 217 F.3d 770, 778-79 (9th Cir. 2000). In a class action at least 13 one of the named plaintiffs must meet the Article III standing requirements. *Bates v. United 14 Parcel Serv., Inc.*, 511 F.3d 974, 985 (9th Cir. 2007). Article III requires that: (1) at least 15 one named plaintiff suffered an injury in fact, (2) the injury is fairly traceable to the 16 challenged conduct, and (3) the injury is likely to be redressed by a favorable decision. 17 *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992) (quotation marks and citations 18 omitted). 19 b. Motion to Dismiss under Rule 12(b)(6) 20 At the pleading stage, the Court looks to whether Plaintiff has plausibly stated a 21 claim: an exercise that draws on judicial experience and common sense. *Eclectic Props. 22 E., LLC v. Marcus & Millichap Co.*, 751 F.3d 990, 996 (9th Cir. 2014). Fed. R. Civ. P. 23 12(b)(6) permits a party to file a motion to dismiss for "failure to state a claim upon which 24 relief can be granted." "To survive a motion to dismiss, a complaint must contain sufficient 25 factual matter . . . to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 26 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). 27 Thus, the Court "accept[s] factual allegations in the complaint as true and construe[s] the 28 pleadings in the light most favorable to the nonmoving party." *Manzarek v. St. Paul Fire 1 & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). On the other hand, the Court is 2 "not bound to accept as true a legal conclusion couched as a factual allegation." *Iqbal*, 556 3 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555). "In sum, for a complaint to survive a 4 motion to dismiss, the non-conclusory factual content, and reasonable inferences from that 5 content, must be plausibly suggestive of a claim entitling the plaintiff to relief." *Moss v. 6 U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009) (quotation marks omitted). If a 7 complaint does not survive scrutiny under Rule 12(b)(6), the Court will grant leave to 8 amend unless it determines that no modified claims "consistent with the challenged 9 pleading . . . [will] cure the deficiency." *DeSoto v. Yellow Freight Sys., Inc.*, 957 F.2d 655, 10 658 (9th Cir. 1992) (quoting *Schreiber Distrib. Co. v. Serv-Well Furniture Co.*, 806 F.2d 11 1393, 1401 (9th Cir. 1986)). 12 c. Request for Judicial Notice 13 Plaintiff included images of the Product's front (but not side) labels in her complaint. 14 Plaintiff later filed a request for judicial notice which includes images of the Product's side 15 labels (Exhibit A) and articles about GMO foods (Exhibits B—F). [Doc. Nos. 10-1 to 10- 16 6.] 17 Generally, review of a complaint under Rule 12(b)(6) is limited to the pleading, and 18 the Court may not consider extra-pleading materials without converting the motion into a 19 motion for summary judgment. See Fed. R. Civ. P. 12(b)(6); 12(d). There are two 20 exceptions to this general rule: the Court may consider materials that are judicially 21 noticeable under Federal Rule of Evidence 201, and the Court may consider materials that 22 fall within the incorporation-by-

reference doctrine. *Khoja v. Orexigen Therapeutics, Inc.*, 23 899 F.3d 988, 998 (9th Cir. 2018). 24 Federal Rule of Evidence 201 permits judicial notice of “a fact that is not subject to 25 reasonable dispute” because it is “generally known” or “can be accurately and readily 26 determined from sources whose accuracy cannot reasonably be questioned.” A court may 27 take notice of “undisputed matters of public record,” but not of “disputed facts stated in 28 1 public records.” *Lee v. City of Los Angeles*, 250 F.3d 668, 690 (9th Cir. 2001) (emphasis 2 in original).

3 III. DISCUSSION

4 a. Request for Judicial Notice 5 Product labels are commonly judicially noticed in consumer protection advertising 6 actions. See, e.g., *Gustavson v. Wrigley Sales Co.*, 961 F. Supp. 2d 1100, 1113 n.1 (N.D.

7 Cal. 2013) (taking judicial notice of packaging labels that the complaint quoted). Here, the 8 Products’ side labels are incorporated by reference in the pleadings. [Compl. ¶ 3.] Also, 9 the Court may take notice of these labels under Fed. R. Evid. 201 as the labels referenced 10 in the complaint are not subject to reasonable dispute. Resultingly, the Court takes judicial 11 notice of the side labels found in Exhibit A. 12 “A court may not take judicial notice of the truth of disputed factual matters at the 13 pleading stage.” *EVO Brands, LLC v. Al Khalifa Grp. LLC*, 657 F. Supp. 3d 1312, 1320– 14 21 (C.D. Cal. 2023). A court may take judicial notice of the existence of news articles for 15 the purpose of determining what statements they contain. See *Wash. Post v. Robinson*, 935 16 F.2d 282, 291 (D.C. Cir. 1991). The Court takes judicial notice of the articles in Exhibits 17 B through F. [Doc. Nos. 10-2 through 10-6.] 18 Regarding Exhibits B through F, Plaintiff seeks judicial notice not of the fact of the 19 articles themselves, but rather, of the truth of the contents therein. Plaintiff introduces the 20 sources by stating that she has “compiled several sources that raise serious concerns about 21 the Non-GMO Project’s labeling practices” and argues that the articles demonstrate that 22 the Non-GMO statements would deceive consumers. [Doc. No. 9 at 9-11.] The articles in 23 Exhibits B through F discuss Non-GMO labelling practices. [See Doc. Nos. 10-2 through 24 10-6.] Courts, however, “do not take judicial notice of newspaper articles for the truth of 25 the contents of the articles.” *Ali v. Intel Corp.*, No. 18-CV-03981-LHK, 2018 WL 5734673 26 at *3 (N.D. Cal. Oct. 31, 2018). “This is because often, the accuracy of information in 27 newspaper articles . . . cannot be readily determined and/or can be reasonably questioned.” 28 1 *Gerritsen v. Warner Bros. Entm’t Inc.*, 112 F. Supp. 3d 1011, 1028 (C.D. Cal. 2015). 2 Therefore, the Court declines to take notice of Exhibits B through F for their truth. 3 b. Motions to Dismiss under Rule 12(b)(1) 4 Defendant moves to dismiss Plaintiff’s complaint in its entirety for lack of Article 5 III standing. Standing is a threshold issue that the Court must reach before addressing the 6 merits or any other substantive matter. See *Stoianoff v. State of Mont.*, 695 F.2d 1214, 7 1223-24 (9th Cir. 1983). Where plaintiffs in a false-advertising case “‘contend that [they] 8 paid more for [a product] than they otherwise would have paid, or bought it when they 9 otherwise would not have done so’ they have suffered an Article III injury in fact.” *Hinojos v. Kohl’s Corp.*, 718 F.3d 1098, 1104 n.3 (9th Cir. 2013). A plaintiff must “allege facts 11 that would

permit a factfinder to determine, without relying on mere conjecture, that the 12 plaintiff failed to receive the economic benefit of her bargain.” In re Johnson & Johnson 13 Talcum Powder Prods. Mktg., Sales Pracs. & Liab. Litig., 903 F.3d 278, 280, 281 (3d Cir. 14 2018). 15 Plaintiff pleads that she would not have purchased, or would have paid less for, the 16 Products absent Defendant’s alleged misconduct. [Compl. ¶ 43]. This is sufficient to 17 confer Article III standing. Hinojos, 718 F.3d at 1104; see also Kwikset Corp. v. Superior 18 Ct., 51 Cal. 4th 310, 330 (2011). “To establish standing to bring a claim under these 19 statutes [UCL and CLRA], plaintiffs must meet an economic injury-in-fact requirement, 20 which demands no more than the corresponding requirement under Article III of the U.S. 21 Constitution.” Reid v. Johnson & Johnson, 780 F.3d 952, 958 (9th Cir. 2015). For the 22 foregoing reasons, Plaintiff has sufficiently pled the Article III standing requirements, and 23 the Court DENIES Defendant’s motion to dismiss based on lack of Article III standing. 24 c. Motion to Dismiss under Rule 12(b)(6) 25 The UCL prohibits any “unlawful, unfair or fraudulent business act or practice.” 26 Cal. Bus. and Prof. Code § 17200. The CLRA prohibits a number of unfair methods of 27 competition and unfair or deceptive acts or practices. Cal. Civ. Code § 1750 et seq. The 28 California Supreme Court has recognized “that these laws prohibit ‘not only advertising 1 which is false, but also advertising which [,] although true, is either actually misleading or 2 which has a capacity, likelihood or tendency to deceive or confuse the public.’” Kasky v. 3 Nike, Inc., 27 Cal. 4th 939, 951 (2002), (quoting Leoni v. State Bar, 39 Cal.3d 609, 626 4 (1985)). 5 Appellants’ claims under these California statutes are governed by the “reasonable 6 consumer” test. Freeman v. Time, Inc., 68 F.3d 285, 289 (9th Cir.1995) (“[T]he false or 7 misleading advertising and unfair business practices claim must be evaluated from the 8 vantage of a reasonable consumer.” (citation omitted)); Lavie v. Procter & Gamble Co., 9 105 Cal.App.4th 496, 506–07 (Cal.App.2003) (“[U]nless the advertisement targets a 10 particular disadvantaged or vulnerable group, it is judged by the effect it would have on a 11 reasonable consumer.”). Under the reasonable consumer standard, Plaintiff must “show 12 that ‘members of the public are likely to be deceived.’” Freeman, 68 F.3d at 289 (quoting 13 Bank of W. v. Superior Ct., 2 Cal.4th 1254, 1267 (1992)). “[A]llegations of deception must 14 be assessed according to what the advertisement or label depicts and actually says, and not 15 allegations of implied meaning.” Andrade-Heymsfield v. Danone US, Inc., 2019 WL 16 3817948, 1, 7 (S.D. Cal. Aug. 14, 2019). 17 i. Review of the Front Label 18 As directed by the Ninth Circuit, the Court begins its analysis with the front label, 19 as reasonable consumers are not expected to look beyond unambiguously misleading 20 representations on the front label to determine the truth from the rest of the packaging. 21 Whiteside v. Kimberly Clark Corp., 108 F.4th 771, 778–82 (9th Cir. 2024). 22 Defendant first argues that Plaintiff’s complaint should be dismissed because the 23 Non-GMO Project certification logo on the front label of the Products is not false or 24 misleading to the reasonable consumer. [Doc. No. 8-1 at 14.] Defendant argues that 25 Plaintiff has an unreasonable interpretation of the Product’s label for two reasons. First, 26 the “Non-GMO Project Verified” certification logo cannot be false because the Products 27 are actually certified by the

Non-GMO Project, therefore, the “Non-GMO Project Verified” 28 logo cannot reasonably deceive consumers. [Doc. No. 8-1 at 10.] Second, the “Non-GMO 1 Project Verified” certification logo does not plausibly represent to consumers anything 2 other than that a product meets the standards of the Non-GMO Project, and Defendant is 3 entitled to bear its certifying mark. [Doc. No. 8-1 at 11.] 4 “California’s UCL, [False Advertising Law], and CLRA require basic fairness in 5 advertising and permit a civil remedy against those who deceive consumers.” Whiteside, 6 108 F.4th at 777. The reasonable consumer standard “requires more than a mere possibility 7 that [a] label might conceivably be misunderstood by some few consumers viewing it in 8 an unreasonable manner.” *Ebner v. Fresh, Inc.*, 838 F.3d 958, 965 (9th Cir. 2016) (internal 9 quotations and citations omitted). “Rather, the reasonable consumer standard requires a 10 probability that a significant portion of the general consuming public or of targeted 11 consumers, acting reasonably in the circumstances, could be misled.” *Id.* (internal 12 quotations and citations omitted). “Stated another way, a complaint asserting a violation 13 of these laws must allege that the packaging will deceive many consumers, not just that a 14 few might be deceived.” Whiteside, 108 F.4th at 778. 15 “Whether a reasonable consumer would be deceived by a product label is generally 16 a question of fact not amenable to determination on a motion to dismiss.” *Fitzhenry- 17 Russell v. Coca-Cola*, No. 5:17-CV-00603-EJD, 2017 WL 4680073, *3 (N.D. Cal. Oct. 18, 18 2017) (citation omitted). “However, the court may determine, as a matter of law, that the 19 alleged violations of the CLRA, UCL, and [False Advertising Law] are simply not 20 plausible.” *Garza*, 760 F.Supp.3d at 1047 (citing *Chong v. Nestle Water N. Am., Inc.*, No. 21 20-56373, 2021 WL 4938128, at *1 (9th Cir. 2021)) (“[T]his Court may conclude on the 22 pleadings that no reasonable consumer would be misled by any of the product labels at 23 issue in this suit.”). 24 Regarding the front label, the Court agrees with Defendant. If the well-pleaded facts 25 do not permit the Court “to infer more than the mere possibility of misconduct,” the 26 complaint fails to show “that the pleader is entitled to relief.” *Iqbal*, 556 U.S. at 678. No 27 reasonable consumer would be misled into spending more on the Products than they would 28 have spent on other avocado oil products because of the Non-GMO Project label. 1 Both parties agree that the Products are verified by the Non-GMO Project. [Doc.

2 No. 8-1 at 7; Doc. No. 9 at 7.] *Myers v. Starbucks Corporation* instructs the Court’s review 3 of the front label. *Myers v. Starbucks Corp.*, No. 22-55930, 2024 WL 3102800 (9th Cir. 4 June 24, 2024). In *Meyers*, the plaintiff also brought a suit under the CLRA and UCL. See 5 *id.* The plaintiff alleged that Mars’s Dove Dark Chocolate products that bore the Rainforest 6 Alliance Certified™ logo falsely led her to believe that the chocolate products were made 7 without employing child slave labor or contributing to rainforest deforestation. *Id.* at 1. 8 The Ninth Circuit upheld the district court’s dismissal of the claim, as the chocolate label 9 did not represent that Rainforest Alliance Certified™ farms avoid deforestation and the use 10 of child labor, nor did the plaintiff allege the label did so. *Id.* “A significant portion of 11 reasonable chocolate consumers thus would not be led to believe that Dove Dark Chocolate 12 contained

cocoa beans produced without child labor and deforestation.” Myers, No. 22- 13 55930, 2024 WL 3102800, at 1 (internal quotations omitted). 14 As a matter of law, the reasonable consumer and purchaser of the Products would 15 understand that the Non-GMO Project Verified label means that the Products are certified 16 by the Non-GMO Project. Plaintiff has alleged nothing more regarding the front label. A 17 significant portion of reasonable avocado oil consumers would not be led to believe that 18 the Products did not contain GMO’s while other avocado oils did. The Court does not find 19 that the front label deceives the reasonable consumer. 20 ii. Review of the Side Label 21 Considering that the Product’s front label does not plausibly deceive the reasonable 22 consumer, the Court next considers the package as a whole. See McGinity v. Procter & 23 Gamble Co., 69 F.4th 1093, 1098 (9th Cir. 2023). Customers who want to know more 24 about the non-GMO status of the product “would necessarily require more information 25 before reasonably concluding that the label is making a particular representation.” 26 Whiteside, 108 F.4th at 781. 27 In her complaint, Plaintiff alleges that Defendants label “their Products as “non- 28 GMO” and/or “non-GMO Project Verified” (collectively, the “Non-GMO Claims”). 1 [Compl. ¶ 3.] Plaintiff alleges she relied on Defendant’s Non-GMO Claims. [Compl. ¶ 2 41.] The Court notes that Plaintiff’s allegations are sufficient to state that Plaintiff 3 referenced claims that the Products are non-GMO on the side label as part of her decision 4 to purchase the Products, and for reasons described above, the Court takes judicial notice 5 of the photos of the side labels included in Plaintiff’s request for judicial notice. [Doc. No. 6 10-1 at 2—6.] 7 The Court turns next to the reasonableness of the Product’s non-GMO claims. 8 Plaintiff argues that, when considered together, the Non-GMO Project Verified logo and 9 the side-panel language suggest that Chosen Foods 100% Avocado Oil is non-GMO while 10 other avocado oil products are not. Plaintiff asks the Court to hold Defendants accountable 11 for misleading the reasonable consumer into believing other avocado oils are GMO and 12 tricking consumers into paying a premium for the Products. Defendant claims that a 13 reasonable consumer who cares about the GMO status of ingredients knows that there are 14 no commercially available genetically engineered avocados, and if consumers had any 15 questions about the Non-GMO Project’s certification standards, they would review those 16 standards. [Doc. No. 8-1 at 11.] 17 Again, the Court agrees with Defendant. Defendant’s Products do not suggest other 18 avocado oils contain GMO’s. Plaintiff’s imaginative interpretation of the label cannot 19 support a valid consumer deception claim. Plaintiff’s argument is an allegation of implied 20 meaning and does not apply to the reasonable consumer. See Andrade-Heymsfield, 2019 21 WL 3817948, at 7. 22 Trader Joe’s v. Moore guides the Court’s analysis. In Trader Joe’s, the Ninth Circuit 23 rejected the plaintiff’s argument that honey labeled “100% New Zealand Manuka Honey” 24 was misleading, even though the product consisted of “only between 57.3% and 62.6% 25 honey derived from Manuka flower nectar.” 4 F.4th at 876. The Circuit held that the 26 plaintiff’s belief that the honey was derived entirely from one floral source was 27 implausible. See id. at 882, 884. Trader Joe’s noted that the “information available to a 28 1 consumer is not limited to the physical label and may involve contextual inferences 2

regarding the product itself and its packaging.” Id. at 882. 3 Trader Joe’s reached three critical conclusions. First, “given the foraging nature of 4 bees, a reasonable honey consumer would know that it is impossible to produce honey that 5 is derived exclusively from a single floral source.” Id. at 883. Second, “the inexpensive 6 cost” of the honey “would signal to a reasonable consumer that the product has a relatively 7 lower concentration of honey derived from Manuka flower nectar,” as Trader Joe’s 8 Manuka Honey costs about 5% of the market rate for “92% honey derived from Manuka 9 flower nectar.” Id. at 884. Third, the label’s “10+” rating on the Unique Manuka Factor 10 (“UMF”) scale—a metric for the purity of honey which ranges from “5+ to 26+”—conveys 11 to the reasonable honey consumer that the honey fell “decidedly on the lower end of the 12 ‘purity’ scale,” even though the scale itself was found nowhere on the label or other 13 advertising. Id. at 883–85. Ultimately, reasonable consumers should have a basic 14 understanding of how the food that they choose to purchase is produced. 15 Applying Trader Joe’s, as a matter of law, the reasonable consumer of the Products 16 would understand that only certain foods are available in both non-GMO and GMO forms, 17 that certain ingredients—including avocado oil—are only available in a non-GMO form, 18 and that avocado oil is a non-GMO alternative to canola or vegetable oils. Given this 19 context, a reasonable consumer would not interpret the Products’ label to represent 20 anything about whether other avocado oil products contain GMOs or the GMO-free status 21 of commercially available avocados. Instead, a reasonable consumer would believe that 22 they are purchasing avocado oil that has been certified by the Non-GMO Project, which is 23 exactly what a reasonable consumer received. 24 When viewed in this precedential context, Plaintiff fails to point to any of the 25 Products’ statements that make assertions about the GMO status of other avocado oil 26 products. After considering Defendant’s GMO statements on the side label, Plaintiff has 27 failed to plausibly state a claim that Defendant has misled the reasonable consumer. The 28 Court therefore dismisses Plaintiff’s claim. 1 C. Standing for Injunctive Relief 2 Defendants moved to dismiss Plaintiff’s complaint for lack of standing. As the Court 3 || found that the complaint fails to plausibly allege consumer deception, the Court need not 4 || reach the issue of injunctive relief.

5 IV. CONCLUSION

6 For the reasons set forth above, the Court GRANTS Defendant’s motion to dismiss 7 || Plaintiff’s complaint. Because Plaintiff could not possibly amend her complaint to state a 8 || plausible claim, the case is DISMISSED WITH PREJUDICE. 9 It is SO ORDERED. 10 ||Dated: August 26, 2025 (GR 11 Hon. Cathy Ann Bencivengo 12 United States District Judge 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28