

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Pitre v. KeVita, Inc.

No. 24-cv-06309-JST, Order Granting Motion to Dismiss (N.D. Cal. Aug. 8, 2025) · No. 24-cv-06309-JST ·
Decided August 8, 2025

SUMMARY

The United States District Court for the Northern District of California granted KeVita, Inc.’s motion to dismiss Yolanda Pitre’s claims under California’s Consumer Legal Remedies Act, False Advertising Law, and Unfair Competition Law. The court held that the scientific study cited in the amended complaint did not support Pitre’s allegation that the product required at least 10 grams of gum arabic to provide a prebiotic benefit, and therefore the misrepresentation and deception theories were not plausibly pleaded. The court granted leave to amend within 21 days and declined to dismiss Pitre’s requests for injunctive and other equitable relief at the pleading stage.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Jon S. Tigar
JURISDICTION	United States District Court for the Northern District of California
DECIDED	August 8, 2025
DOCKET	24-cv-06309-JST
DISPOSITION	other
PROCEDURAL POSTURE	Defendant moved under Federal Rule of Civil Procedure 12(b)(6) to dismiss an amended putative class action complaint asserting claims under California's Consumer Legal Remedies Act, False Advertising Law, and Unfair Competition Law.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court accepts well-pleaded factual allegations as true and asks whether the complaint states a plausible claim for relief. Claims grounded in fraud must also satisfy Rule 9(b)'s particularity requirement.
PRECEDENTIAL VALUE	unpublished district court order
PARTIES	Yolanda Pitre v. KeVita, Inc.

TOPICS

consumer protection

deceptive trade practices

motions to dismiss

pleadings

injunctions

PRACTICE AREAS

consumer protection

civil procedure

false advertising

food and beverage labeling

equitable remedies

QUESTIONS PRESENTED

1. Whether the amended complaint plausibly alleged that KeVita's advertising and labeling were false or misleading under the CLRA, FAL, and UCL.
2. Whether the challenged label statements were nonactionable puffery.
3. Whether Pitre plausibly stated claims under the unlawful, unfair, and fraudulent prongs of the UCL.
4. Whether Pitre had Article III standing to seek injunctive relief.
5. Whether Pitre could seek restitution and disgorgement as equitable relief at the pleading stage.
6. Whether the court could consider product labels and scientific publications through judicial notice or incorporation by reference.

HOLDINGS

1. The amended complaint failed to plausibly allege that KeVita's product contained too little prebiotic fiber or too much added sugar to provide gut-health benefits because the study cited in the complaint did not establish that ten grams of gum arabic was a minimum effective dose.
2. Although deception ordinarily presents a factual question, dismissal at the pleading stage was appropriate in this rare case because Pitre had not plausibly alleged the factual premise necessary to show that the product's gut-health representations were misleading.
3. The statement "your tummy and taste buds will thank you!" could not be treated as nonactionable puffery at the pleading stage because, viewed in context with the product's repeated references to prebiotics and gut health, the label plausibly represented that the product promoted digestive health.
4. Pitre failed to state a UCL claim under any of the unlawful, unfair, or fraudulent prongs because each theory depended on the unsupported allegation that consumers had to drink more than three cans of the product to obtain a gut-health benefit.
5. A previously deceived consumer may have Article III standing to seek injunctive relief against allegedly false advertising or labeling when she plausibly alleges that she would like to purchase the product in the future but cannot rely on its advertising or labeling.
6. The court declined to dismiss Pitre's requests for restitution and disgorgement because, at the pleading stage, a plaintiff may plead that legal remedies are inadequate or plead equitable claims in the alternative.
7. The court considered the two studies and article at issue under the incorporation-by-reference doctrine because the parties agreed that the documents could be considered, but declined to consider the

remaining studies because Pitre did not show that they were described in or integral to the amended complaint.

KEY QUOTATIONS

“The study did not establish a minimum effective dose.” (Section IV.B)

“Taken in that context, the label as a whole makes representations about the impact of its prebiotics on “gut health.”” (Section IV.D)

“The Court finds Pitre has Article III standing to seek injunctive relief.” (Section IV.F.1)

FACTUAL BACKGROUND

KeVita manufactures and sells a beverage labeled "Sparkling Lemonade with Prebiotics" and displaying statements including "prebiotics for gut health" and "your tummy and taste buds will thank you!" Pitre purchased the product believing its prebiotics would benefit gut health. She alleged that each can contained three grams of acacia-derived dietary fiber and four grams of added sugar, and that more than three cans would be needed to reach the dosage discussed in a study concerning potential prebiotic effects of gum arabic. The court concluded that the study did not support Pitre's allegation that ten grams of fiber was necessary to obtain a gut-health benefit.

PROCEDURAL HISTORY

Pitre filed the action on September 6, 2024 and filed an amended complaint on October 30, 2024. KeVita moved to dismiss the amended complaint. The court granted the motion but allowed Pitre 21 days to amend solely to correct the deficiencies identified in the order; otherwise, the action would be dismissed with prejudice.

DISPOSITION

other

CASES CITED

- *Kniesel v. ESPN*, 393 F.3d 1068, 1072 (9th Cir. 2005)
- *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008)
- *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
- *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 556-557, 570 (2007)
- *Davidson v. Kimberly-Clark Corp.*, 889 F.3d 956, 964, 967, 969-970 (9th Cir. 2018)
- *In re Arris Cable Modern Consumer Litig.*, No. 17-cv-01834-LHK, 2018 WL 288085, at *8 (N.D. Cal. Jan. 4, 2018)
- *Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1126 (9th Cir. 2009)
- *Peviani v. Nat. Balance, Inc.*, 774 F. Supp. 2d 1066, 1071 (S.D. Cal. 2011)
- *Haskins v. Symantec Corp.*, No. 13-cv-1834-JST, 2013 WL 6234610 (N.D. Cal. Dec. 2, 2013)
- *Bruton v. Gerber Prods. Co.*, No. 12-cv-02412-LHK, 2014 WL 172111, at *5 (N.D. Cal. Jan. 15, 2014)

- *Graham v. Cent. Garden & Pet Co.*, No. 22-cv-06507-JSC, 2023 WL 2744391, at *2 (N.D. Cal. Mar. 30, 2023)
- *Housey v. Procter & Gamble Co.*, No. 21 Civ. 2286 (NRB), 2022 WL 874731, at *6 (S.D.N.Y. 2022), *aff'd*, 2022 WL 17844403 (2d Cir. 2022)
- *Eckler v. Wal-Mart Stores, Inc.*, No. 12-CV-727-LAB-MDD, 2012 WL 5382218, at *7 (S.D. Cal. 2012)
- *Becerra v. Dr Pepper/Seven Up, Inc.*, No. 17-CV-05921-WHO, 2018 WL 1569697, at *1, *6-*7 (N.D. Cal. Mar. 30, 2018)
- *Becerra v. Coca-Cola Co.*, No. C 17-05916 WHA, 2018 WL 1070823, at *4 (N.D. Cal. Feb. 27, 2018)
- *Williams v. Gerber Prods. Co.*, 552 F.3d 934, 938-939 (9th Cir. 2008)
- *Lavie v. Procter & Gamble Co.*, 105 Cal. App. 4th 496, 508 (2003)
- *Salazar v. Target Corp.*, 83 Cal. App. 5th 571, 584 (2022)
- *Krommenhock v. Post Foods, LLC*
- *Salazar v. Honest Tea, Inc.*, 74 F. Supp. 3d 1304, 1316 (E.D. Cal. 2014)
- *Andrade-Heymsfield v. NextFoods, Inc.*, No. 3:21-CV-1446-BTM-MSB, 2023 WL 2576770, at *1-*4 (S.D. Cal. Mar. 20, 2023)
- *Aton Ctr., Inc. v. United Healthcare Ins. Co.*, 93 Cal. App. 5th 1214, 1248 (2023)
- *Capito v. San Jose Healthcare Sys., LP*, 17 Cal. 5th 273, 284 (2024)
- *Zhang v. Superior Court*, 57 Cal. 4th 364, 380 n.9 (2013)
- *Smith v. State Farm Mut. Auto. Ins. Co.*, 93 Cal. App. 4th 700, 718-719 (2001)
- *Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009)
- *Ries v. Arizona Beverages USA LLC*, 287 F.R.D. 523, 533 (N.D. Cal. 2012)
- *Lilly v. Jamba Juice Co.*, No. 13-cv-02998-JST, 2015 WL 1248027, at *4 (N.D. Cal. Mar. 18, 2015)
- *Sonner v. Premier Nutrition Corp.*, 971 F.3d 834 (9th Cir. 2020)
- *Warren v. Whole Foods Mkt. Cal., Inc.*, No. 21-cv-04577-EMC, 2022 WL 2644103, at *9 (N.D. Cal. July 8, 2022)
- *Brown v. Van's Int'l Foods, Inc.*, No. 22-cv-00001-WHO, 2022 WL 1471454, at *13 (N.D. Cal. May 10, 2022)
- *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003)
- *Tunac v. United States*, 897 F.3d 1197, 1207 (9th Cir. 2018)
- *Coto Settlement v. Eisenberg*, 593 F.3d 1031, 1038 (9th Cir. 2010)

OPINION

Pitre v. Kevita, Inc.

PER CURIAM.

1 2 3

4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 7 YOLANDA PITRE, Case No. 24-cv-06309-JST 8 Plaintiff,

ORDER GRANTING MOTION TO

9 v. DISMISS

10 KEVITA, INC., Re: ECF No. 24

Defendant. 11 12 13 Before the Court is Defendant KeVita, Inc.'s motion to dismiss. ECF No. 24. The Court 14 will grant the motion.

15 I. BACKGROUND

16 For the purpose of deciding this motion, the Court accepts as true the following allegations 17 from the amended complaint. *Kniesel v. ESPN*, 393 F.3d 1068, 1072 (9th Cir. 2005). KeVita 18 manufactures, markets, and sells a beverage it calls "Sparkling Lemonade with Prebiotics." ECF 19 No. 21 ¶ 1. The product's packaging features the phrase "prebiotics for gut health." Id. ¶ 4. It 20 further states: "Trust your gut and grab the deliciously refreshing taste of real lemons with 21 prebiotics, your tummy and taste buds will thank you!" Id. 22 Plaintiff Yolanda Pitre purchased the product believing that it contained prebiotics that 23 were beneficial for her gut health. Id. ¶ 16. Pitre alleges, however, that the product is not, in fact, 24 beneficial for gut health. Each can of KeVita's Sparkling Lemonade contains three grams of 25 dietary fiber derived from acacia, also known as gum arabica, and four grams of added sugars. Id. 26 ¶ 32. According to the amended complaint, a study has suggested that gum arabica can provide 27 prebiotic benefits when taken at a dose of 10 grams per day for four weeks, id. ¶ 33, so KeVita's 1 meaningful impact on gut health." Id. ¶ 40. And, in order to ingest 10 grams of fiber from 2 KeVita's product, consumers would need to drink more than three cans per day, which also would 3 require consumption of 12 grams of added sugars per day. Id. ¶ 34. A diet that is high in added 4 sugars can eliminate healthful bacteria in the gut. Id. ¶ 35. "Thus, any hypothetically beneficial 5 effects to the gut microbiome derived from consuming enough cans of Product to reach the 10- 6 gram dosage at which acacia shows potential as an effective prebiotic supplement would be 7 reduced or eliminated by the detrimental effects to the gut microbiome and other adverse health 8 effects of 12 grams of added sugars." Id. ¶ 36. Moreover, experts say it is not clear that fiber 9 added to processed foods and drinks has the same health effects as fiber from whole foods. Id. 10 ¶ 37. 11 Pitre filed this action on September 6, 2024 on behalf of herself and a putative class of 12 consumers who purchased KeVita's Sparkling Lemonade. ECF No. 1. She filed an amended 13 complaint on October 30, 2024. ECF No. 21. She asserts claims pursuant to: (1) California's 14 Consumer Legal Remedies Act, Cal. Civ. Code § 1750, et seq. ("CLRA"); (2) California's False 15 Advertising Law, Cal. Bus. & Prof. Code § 17500, et seq. ("FAL"); and (3) California's Unfair 16 Competition Law, Cal. Bus. & Prof. Code § 17200, et seq. ("UCL"). 17 KeVita now moves to dismiss. ECF No. 24. Plaintiff opposes the motion, ECF No. 31, 18 and KeVita filed a reply. ECF No. 34. The Court held a hearing on February 13, 2025. ECF No. 19 35.

20 II. JURISDICTION

21 The Court has jurisdiction under 28 U.S.C. § 1332(d).

22 III. LEGAL STANDARD

23 To survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), a 24 complaint must contain “a short and plain statement of the claim showing that the pleader is 25 entitled to relief.” Fed. R. Civ. P. 8(a)(2). Dismissal “is appropriate only where the complaint 26 lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory.” 27 *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008). “[A] complaint 1 on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Factual allegations need not be detailed, but the facts must be “enough 3 to raise a right to relief above the speculative level.” *Twombly*, 550 U.S. at 555. 4 “A claim has facial plausibility when the plaintiff pleads factual content that allows the 5 court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” 6 *Ashcroft*, 556 U.S. at 678. While this standard is not “akin to a ‘probability requirement’ . . . it 7 asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.* (quoting 8 *Twombly*, 550 U.S. at 556). “Where a complaint pleads facts that are ‘merely consistent with’ a 9 defendant’s liability, it ‘stops short of the line between possibility and plausibility of entitlement to 10 relief.’” *Id.* (quoting *Twombly*, 550 U.S. at 557). 11 Where a plaintiff’s causes of action are “grounded in fraud,” see *Davidson v. Kimberly- 12 Clark Corp.*, 889 F.3d, 956, 967 (9th Cir. 2018), the Court also must apply the heightened 13 pleading requirements of Rule 9(b).¹ “When UCL, CLRA, and FAL claims are premised on 14 misleading advertising or labeling, Rule 9(b) requires the plaintiff to allege ‘the particular 15 circumstances surrounding [the] representations’ at issue.” *In re Arris Cable Modern Consumer 16 Litig.*, No. 17-cv-01834-LHK, 2018 WL 288085, at *8 (N.D. Cal. Jan. 4, 2018) (citing *Kearns v. 17 Ford Motor Co.*, 567 F.3d 1120, 1126 (9th Cir. 2009)); see also *Peviani v. Nat. Balance, Inc.*, 774 18 F. Supp. 2d 1066, 1071 (S.D. Cal. 2011); *Haskins v. Symantec Corp.*, No. 13-cv-1834-JST, 2013 19 WL 6234610 (N.D. Cal. Dec. 2, 2013). This includes “the who, what, when, where, and how of 20 the misconduct charged, as well as what is false or misleading about the purportedly fraudulent 21 statement, and why it is false.” *Davidson*, 889 F.3d at 964 (quoting *Cafasso, U.S. ex rel. v. Gen. 22 Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1055 (9th Cir. 2011)).

23 IV. DISCUSSION

24 KeVita argues that Pitre has failed to plausibly allege the theory underlying all of her 25 claims, namely that KeVita’s Sparkling Lemonade contains too little fiber and too much added 26 sugar to be beneficial to gut health. Kevita further argues that Pitre has not plausibly pled that 27 1 reasonable consumers would be misled by the challenged label statements, that some of the 2 challenged label statements are nonactionable puffery, that Pitre has not plausibly pled her UCL 3 claim, and that she has not pled entitlement to non-monetary relief. 4 A. Request for Judicial Notice 5 The Court starts by addressing KeVita’s request for judicial notice. KeVita asks the Court 6 to take judicial notice of (1) the complete labels for KeVita’s Sparking Lemonade products, and 7 (2) three scientific publications that Pitre cites in the complaint. ECF No. 25. Pitre opposes the 8 request. ECF No. 32. 9 1. Labels for KeVita’s Sparkling Lemonade Product 10 KeVita asks the

Court to take judicial notice of “a complete, high-resolution, color copy of 11 the Product’s labeling.” ECF No. 25 at 3. As an initial matter, KeVita does not explain why the 12 pictures of product labels in Pitre’s complaint are insufficient, or what benefit KeVita’s offered 13 version of the label will provide, other than to state that “[t]he Court and parties will benefit from 14 having complete images of the Products’ labeling to assess Plaintiff’s claims.” ECF No. 25 at 3. 15 To the Court’s eye, the labels depicted in Pitre’s complaint contain all the information necessary to 16 resolve this motion. Moreover, KeVita “does not provide any information that would authenticate 17 the images . . . or confirm that products with these labels were actually sold during the class 18 period.” *Bruton v. Gerber Prods. Co.*, No. 12-cv-02412-LHK, 2014 WL 172111, at *5 (N.D. Cal. 19 Jan. 15, 2014) (denying request for judicial notice of food product labels). Accordingly, the Court

20 denies KeVita’s request to take judicial notice of the product labels. 21 2. Publications 22 Pitre also opposes the Court taking judicial notice of the scientific publications, although 23 she appears to agree that “[t]he Court may take judicial notice of the studies because they are 24 incorporated by reference into the complaint.” ECF No. 32 at 6 (quoting *Graham v. Cent. Garden 25 & Pet Co.*, No. 22-cv-06507-JSC, 2023 WL 2744391, at *2 (N.D. Cal. Mar. 30, 2023)). 26 The parties appear to confuse judicial notice with incorporation-by-reference. “Although 27 often conflated,” the two are distinct. *Gammel v. Hewlett-Packard Co.*, 905 F. Supp. 2d 1052, 1 Certain written instruments attached to pleadings may be considered part of the pleading. See Fed. R. Civ. P. 10(c). Even if a document 2 is not attached to a complaint, it may be incorporated by reference into a complaint if the plaintiff refers extensively to the document or 3 the document forms the basis of the plaintiff’s claim. The defendant may offer such a document, and the district court may treat such a 4 document as part of the complaint, and thus may assume that its contents are true for purposes of a motion to dismiss under Rule 5 12(b)(6). 6 *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003) (citations omitted); see also *Tunac v. 7 United States*, 897 F.3d 1197, 1207 (9th Cir. 2018) (“Although mere mention of the existence of a 8 document is insufficient to incorporate the contents of a document, the document is incorporated 9 when its contents are described and the document is integral to the complaint.”) (internal 10 quotations omitted). However, “the mere mention of the existence of a document is insufficient to 11 incorporate the contents of a document.” *Coto Settlement v. Eisenberg*, 593 F.3d 1031, 1038 (9th 12 Cir. 2010) (citation omitted). Because the parties agree that the Court may consider the two 13 studies and the article that are the subject of KeVita’s request, the Court considers them under the 14 incorporation-by-reference doctrine. 15 Pitre states in her opposition that “[i]f the Court is inclined to incorporate any of the 16 studies, it should incorporate all of the studies for the sake of completeness.” ECF No. 32 at 7. 17 But Pitre does not make a showing that the contents of all 14 of the studies referenced in the 18 amended complaint are “described” in the complaint or that all 14 studies are “integral to the 19 complaint.” *Tunac*, 897 F.3d at 1207. Nor does Pitre provide the studies in question. 20 Accordingly, the Court declines to take judicial notice of the remaining 11

studies. 21 B. Pitre's Misrepresentation Theory 22 KeVita's first argument is that Pitre's claims "fail at the threshold" because her theory of 23 misrepresentations is contradicted by the studies she cites in the complaint. ECF No. 24 at 15. 24 Pitre's central theory, which underlies all her claims, is that KeVita deceives consumers by 25 advertising the gut health benefits of its Sparkling Lemonade, because the product has too little 26 fiber and too much added sugar to have any benefit to a person's gut microbiome. ECF No. 20 27 ¶ 7. The alleged misrepresentations include the phrase "prebiotics for gut health" on the front 1 the can. Id. ¶ 4 (capitalization omitted). 2 Pitre alleges these statements are misleading by citing a study (the "Prebiotic Study") that 3 "suggested that the consumption of gum arabica powder," the kind of fiber KeVita adds to its 4 Sparkling Lemonade, "can provide prebiotic benefits at a dose of 10 grams per day taken over four 5 weeks." Id. ¶ 33. She alleges that, assuming that 10 grams of gum arabic per day were required to 6 achieve a benefit to gut health, "a consumer would have to drink more than three cans a day for a 7 month to derive any meaningful benefit to the gut microbiome." ECF No. 1-1 ¶ 30. And 8 "[c]onsuming three cans of the Product would result in the consumption of 12 grams of added 9 sugar per day, roughly a quarter of the recommended daily maximum of added sugar under current 10 US dietary guidelines, and half the 25 grams of added sugar recommended as a daily maximum 11 for women by the American Heart Association." Id. ¶ 30. "A diet that is high in processed food 12 and added sugar can eliminate healthful bacteria in the gut and worsen early metabolic disease." 13 Id. ¶ 32. "Thus," the complaint continues, "any hypothetically beneficial effects to the gut 14 microbiome derived from consuming enough cans of Product to reach the 10-gram dosage at 15 which acacia shows potential as an effective prebiotic supplement would be reduced or eliminated 16 by the detrimental effects to the gut microbiome and other adverse health effects of 12 grams of 17 added sugars." Id. ¶ 33. 18 KeVita responds that Pitre's cited studies do not support her claims. It argues that the 19 Prebiotic Study showed that fiber from gum arabica can be beneficial to gut bacteria even at 5 20 grams per day and thus contradicts Plaintiff's theory of falsity. ECF No. 24 at 15. The motion to 21 dismiss thus turns, in large part, on the parties' conflicting interpretations of the Prebiotic Study. 22 "The aim of the [Prebiotic Study] was to investigate a potential prebiotic functionality by 23 gum arabic, and if any, establish a dose-effect relationship after a period of 4 weeks of daily 24 consumption." ECF No. 25-4 at 3. The study concluded, with regard to the production of 25 Bifidobacteria, a beneficial bacteria, that "the optimal dose with respect to the highest number of 26 bacteria was found to be around 10 g gum arabic." Id. at 5. With regard to the production of 27 Lactobacilli, another beneficial bacteria, an "optimum dose . . . was established at about 5–10 g." 1 demonstrated that the most optimal dose of gum arabic to achieve prebiotic efficacy lies around 5– 2 10 g." Id. at 6. The study did not establish a minimum effective dose. With regard to the existing 3 science, the study noted that "no recommended daily dose [of prebiotic fiber] has been established 4 so far." Id. at 3. 5 The Court finds that the Prebiotic Study does not support Pitre's contention that KeVita's 6 claims about its products' prebiotic benefits are false. Pitre's complaint says that "consumption of 7 at least 10

grams of [gum arabic] is necessary to improve gut health,” ECF No. 1-1 ¶ 6, but the 8 study does not support that contention. Pitre later characterizes the study as “suggest[ing] that 9 that the consumption of gum arabica powder dissolved in water can provide prebiotic benefits at a 10 dose of 10 grams per day taken over four weeks,” ECF No. 1-1 ¶ 30 (emphasis added), but that is 11 not what the study says either. What the study actually says is that “the most optimal dose of gum 12 arabic to achieve prebiotic efficacy lies around 5–10 g.” ECF No. 25-4 at 6. The study says 13 nothing about the minimum amount of gum arabic to produce some measurable prebiotic benefit, 14 and the lowest dose it measured—5 grams per day, not 10—did produce a measurable benefit. Id. 15 at 5. Courts have not hesitated to dismiss claims where evidence does not support the claims that 16 plaintiffs have pled. See *Housey v. Procter & Gamble Co.*, No. 21 Civ. 2286 (NRB), 2022 WL 17 874731, at *6 (S.D.N.Y. 2022), *aff’d*, 2022 WL 17844403 (2d Cir. 2022) (“Where a plaintiff has 18 chosen to use scientific evidence to state her claims, and that evidence does not support her claims, 19 plaintiff has not plausibly pled her claims.”); see also *Eckler v. Wal-Mart Stores, Inc.*, No. 12-CV- 20 727-LAB-MDD, 2012 WL 5382218, at *7 (S.D. Cal. 2012) (“Ultimately, the Court cannot accept 21 that the studies Eckler cites lend ‘facial plausibility’ to her claims that the Equate representations 22 are false or misleading.”).² 23 Pitre relies heavily on *Graham v. Central Garden & Pet Company*’s admonition that, in 24 examining Plaintiff’s study, “the Court must draw all reasonable inferences in Plaintiff’s favor at 25 2 The amended complaint suffers from an additional infirmity: neither that pleading nor the Sugar 26 Study defines how much sugar a person must consume to have “a diet that is high in . . . added sugar.” As KeVita points out, four grams of sugar amounts to only approximately 8% of the 27 FDA’s Daily Value for added sugars. See 21 C.F.R. § 101.9(c)(9). Thus, even if Pitre could 1 the motion to dismiss stage.” No. 22-CV-06507-JSC, 2023 WL 2744391, at *2 (N.D. Cal. Mar. 2 30, 2023). *Graham* is distinguishable, however. Plaintiff there sued defendant Central Garden 3 over its Comfort Zone-branded cat products, which utilized synthetic cat hormones. Id. at *1. 4 Labels on the products stated they were “‘trusted’ and ‘proven’ to ‘reduce multi-cat conflict and 5 destructive behavior,’ to provide ‘anxiety and stress relief,’ and to ‘reduce scratching’ and ‘urine 6 marking.’” Id. Plaintiff alleged the representations were “false and misleading because 7 [Defendant’s] products do not effectively treat stress or related behaviors in cats.” Id. Plaintiff 8 relied on three studies finding that synthetic pheromones had no effect on cat behavior. Id. at *2. 9 Central Garden asked the Court “to look beyond the complaint to the studies’ limitations, 10 including that the studies did not examine Defendant’s specific products,” but the Court declined. 11 Id. The Court found that Central Garden’s “interpretation of the studies requires the Court to draw 12 inferences in its favor, whereas the Court must draw all reasonable inferences in Plaintiff’s favor at 13 the motion to dismiss stage.” Id. Applying that rule, the Court found that “[t]he studies support a 14 reasonable inference that synthetic pheromones do not calm cats.” Id. 15 This case is not *Graham*. Unlike there, there is no reading of the Prebiotic Study, 16 favorable or otherwise, consistent with the allegation that 10 grams of gum arabic per day is 17 required to achieve a benefit to gut health.

Without that allegation, Pitre's remaining allegations 18 fail. 19 More apt is *Becerra v. Dr Pepper/Seven Up, Inc.*, No. 17-CV-05921-WHO, 2018 WL 20 1569697 (N.D. Cal. Mar. 30, 2018). In that case, plaintiff alleged that Defendant's use of the 21 word "diet" to describe its sodas was false and misleading because the aspartame in the sodas 22 caused weight gain. *Id.* at *1. However, the studies she cited in her complaint "[did] not allege 23 causation at all—at best, they support merely a correlation or relationship between artificial 24 sweeteners and weight gain, or risk of weight gain." *Id.* at *6. Because there was no reading of 25 Plaintiff's studies that supported the allegations in her complaint, the Court dismissed the 26 allegations as implausible. *Id.* at *7. The Court in *Becerra v. Coca-Cola Co.* reached the same 27 result. No. C 17-05916 WHA, 2018 WL 1070823 *4 (N.D. Cal. Feb. 27, 2018) ("Becerra's 1 raise legitimate concerns over the health value of replacing sweetened beverages with artificially 2 sweetened ones. But Becerra's studies do not show that Diet Coke causes weight gain."). So 3 here, the Prebiotic Study does not support the conclusion that 10 grams of fiber is necessary to 4 achieve a prebiotic benefit, and so it does not support the allegations in Plaintiff's complaint. 5 C. Likelihood of Consumer Deception 6 Under the UCL, FAL, and CLRA, conduct is considered deceptive or misleading if it is 7 likely to deceive a "reasonable consumer." *Williams v. Gerber Prods. Co.*, 552 F.3d 934, 938 (9th

8 Cir. 2008). This standard is higher than a "mere possibility" that the statement at issue "might 9 conceivably be misunderstood by some few consumers viewing it in an unreasonable manner." 10 *Lavie v. Procter & Gamble Co.*, 105 Cal. App. 4th 496, 508 (2003). Rather, the standard requires 11 a likelihood "that a significant portion of the general consuming public or of targeted consumers, 12 acting reasonable in the circumstances, could be misled." *Id.* Generally, the question of whether a 13 business practice is deceptive is a question of fact and dismissal on this basis is granted only in 14 "rare situation[s]." *Williams*, 552 F.3d at 939; see also *Salazar v. Target Corp.*, 83 Cal. App. 5th 15 571, 584 (2022) ("Whether a reasonable consumer is deceived by advertising is not properly 16 resolved at the pleading stage."). 17 The Court finds that this is the "rare situation" where dismissal of Pitre's deception claim 18 is appropriate. Plaintiff's theory of deception is that KeVita's "label misrepresents to consumers 19 that the Product will improve digestive health when, in fact, it does not contain enough prebiotics 20 to have any meaningful impact on gut health, and the added sugar negates any potential gut health 21 benefit." ECF No. 31 at 17–18. As set forth above, however, Pitre has not plausibly pled that the 22 amount of fiber in KeVita's products is insufficient to support gut health. Accordingly, there is no 23 basis to find that KeVita's conduct is deceptive or misleading. 24 D. Nonactionable Puffery 25 "Advertisements that amount to mere puffery are not actionable because no reasonable 26 consumer relies on puffery. Factual representations, however, are actionable. The Court may 27 determine as a matter of law whether a statement is puffery." *Krommenhock v. Post Foods, LLC*, 1 specific, non-measurable assertions are classic non-actionable puffery." *Salazar v. Honest Tea, 2 Inc.*, 74 F. Supp. 3d 1304, 1316 (E.D. Cal. 2014). 3 KeVita argues that its label statement "Trust your gut and

grab the deliciously refreshing taste of real lemons with prebiotics, your tummy and taste buds will thank you!” is nonactionable puffery. ECF No. 24 at 22–24. Pitre responds that, viewed in the context of the rest of the product label, the statement contributes to KeVita’s representation that the product will improve a consumer’s gut health. ECF No. 31 at 24–26. *Andrade-Heymsfield v. NextFoods, Inc.* is instructive. No. 3:21-CV-1446-BTM-MSB, 2023 WL 2576770 (S.D. Cal. Mar. 20, 2023). There, the defendant manufactured and sold a beverage called “GoodBelly,” which the defendant promised would “[r]eboot your belly . . . [b]ecause when your belly smiles the rest of you does too.” *Id.* at *1. Like here, the plaintiff alleged these statements were deceptive because they suggest that the beverage “promotes digestive health, when in fact it harms digestive health” because it contains excessive sugar. *Id.* at *2. The court concluded that the plaintiff had “plausibly alleged that the label as a whole—with the phrases ‘GoodBelly’ and ‘GoodHealth,’ along with the label’s suggestion that the drinks will ‘reboot’ the belly and make the belly ‘smile’—is likely to be read by a reasonable consumer as claiming to promote good digestive and overall health.” *Id.* at *3. Although the statement that “when your belly smiles the rest of you does too” might have been puffery when “[r]ead in isolation,” “when read together and in context, the Court [could not] determine that the reasonable consumer would not rely on the label as promoting good digestive and overall health.” *Id.* at *4. The same is true here. The statement “your tummy and taste buds will thank you,” in isolation, might amount to mere puffery. But this statement appears on a product label that names prebiotics three times: in the product name itself (“Sparkling Lemonade with Prebiotics”), on the front label (“prebiotics for gut health”), and in the same sentence that KeVita challenges as nonactionable puffery (“Trust your gut and grab the deliciously refreshing taste of real lemons with prebiotics, your tummy and taste buds will thank you!”). ECF No. 21 ¶ 4. Taken in that context, the label as a whole makes representations about the impact of its prebiotics on “gut tummy . . . will thank you” as a statement about the promotion of digestive health. See *Andrade-Heymsfield* at *4. 3 E. UCL Claim 4 KeVita next moves to dismiss Pitre’s claims under the UCL. “Because the UCL is written in the disjunctive, it established three varieties of unfair competition—acts or practices which are unlawful, or unfair, or fraudulent.” *Aton Ctr., Inc. v. United Healthcare Ins. Co.*, 93 Cal. App. 5th 1214, 1248 (2023) (citation and quotation omitted). “An act can be alleged to violate any or all of the three prongs of the UCL—unlawful, unfair, or fraudulent.” *Id.* (citation and quotation omitted). Pitre asserts violations of each of the three prongs. See ECF No. 21 ¶¶ 80–103. 10 “The UCL does not define ‘unfair,’ and the ‘standard for determining what business acts or practices are “unfair” in consumer actions under the UCL is currently unsettled.’” *Capito v. San Jose Healthcare Sys., LP*, 17 Cal. 5th 273, 284 (2024) (quoting *Zhang v. Superior Court*, 57 Cal. 13 4th 364, 380 n.9 (2013)). One frequently cited test of whether a business practice is unfair involves an examination of [that practice’s] impact on its alleged victim, balanced against the reasons, justifications and motives of the alleged wrongdoer. In brief, the court must weigh the utility of the defendant’s conduct against the gravity

of the harm to the alleged 16 victim [A]n “unfair” business practice occurs when that practice offends an established public policy or when the practice is 17 immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers. 18 19 *Smith v. State Farm Mut. Auto. Ins. Co.*, 93 Cal. App. 4th 700, 718–19 (2001) (citation modified). 20 The Court will dismiss Pitre’s UCL claim. As stated above, she has not plausibly alleged 21 that KeVita’s labels are “fraudulent.” Nor has she established that KeVita’s conduct was 22 “unlawful” or “unfair”: her claims under both prongs depend on the allegation that KeVita is 23 “promising a health benefit that the Product cannot confer” because consumers must drink more 24 than three cans of KeVita’s Sparkling Lemonade to improve gut health. ECF No. 31 at 28. But 25 Plaintiff has not plausibly alleged that consumption of that amount of KeVita’s product is actually 26 required. Accordingly, she fails to allege that KeVita’s conduct violates any law, that consumers 27 have suffered an injury, or that KeVita’s “is immoral, unethical, oppressive, unscrupulous, or 1 F. Non-Monetary Relief 3 2 Lastly, KeVita seeks to dismiss Pitre’s requests for non-monetary relief. 3 1. Injunctive Relief 4 KeVita challenges Pitre’s request for injunctive relief. It argues that Pitre “lacks Article III 5 standing because she can avoid any future injury simply by reviewing the accurate disclosures on 6 the Products’ labels.” ECF No. 24 at 26. KeVita’s argument fails in light of the Ninth Circuit’s 7 holding in *Davidson v. Kimberly-Clark Corporation*, 889 F.3d 956 (9th Cir. 2018). There, the 8 court held that 9 a previously deceived consumer may have standing to seek an injunction against false advertising or labeling, even though the consumer now knows or suspects 10 that the advertising was false at the time of the original purchase, because the consumer now knows or suspects that the advertising was false at the time of the 11 original purchase, because the consumer may suffer an ‘actual and imminent, not conjectural or hypothetical’ threat of future harm. 12

13 *Id.* at 969 (quoting *Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009)). The Davidson court

14 offered as an example a consumer who plausibly alleges “that she will be unable to rely on the 15 product’s advertising or labeling in the future, and so will not purchase the product although she 16 would like to.” *Id.* at 970 (citing *Ries v. Arizona Beverages USA LLC*, 287 F.R.D. 523, 533 (N.D.

17 Cal. 2012); *Lilly v. Jamba Juice Co.*, No. 13-cv-02998-JST, 2015 WL 1248027, at *4 (N.D. Cal.

18 Mar. 18, 2015)). Pitre has alleged exactly that here. See ECF No. 21 ¶ 20.

19 KeVita attempts to distinguish *Davidson* by misconstruing Pitre’s underlying theory of 20 deception, arguing that Pitre “does not need to rely on the challenged statements to determine 21 whether the products contain a certain amount of prebiotic fiber or added sugar” because she can 22 learn that information from the nutritional facts label. ECF No. 34 at 19. But Pitre is not seeking 23 to redress KeVita’s statements about prebiotic quantity, but rather its allegedly false statements 24 about gut health benefits. Pitre cannot verify those statements via the nutritional

label alone, and 25 thus, Kevita's argument fails. The Court finds Pitre has Article III standing to seek injunctive 26 relief. 27 1 2. Equitable Relief 2 Pitre's complaint seeks "damages, restitution, and/or disgorgement." ECF No. 21 at 22. 3 || KeVita challenges Pitre's requests for restitution and disgorgement, relying on *Sonner v. Premier 4 || Nutrition Corp.*, 971 F.3d 834 (9th Cir. 2020) to argue that Pitre cannot seek equitable relief when 5 she has an adequate remedy at law. ECF No. 24 at 27. But "Sonner has limited applicability to 6 || the pleading stage." *Warren v. Whole Foods Mkt. Cal., Inc.*, No. 21-cv-04577-EMC, 2022 WL 7 || 2644103, at *9 (N.D. Cal. July 8, 2022). At the pleading stage, it is sufficient for a "plaintiff to 8 || plead that her legal remedies are inadequate or plead equitable claims in the alternative because of 9 legal remedies are inadequate." *Brown v. Van's Int'l Foods, Inc.*, No. 22-cv-00001-WHO, 2022 10 WL 1471454, at *13 (N.D. Cal. May 10, 2022). This is what Pitre has alleged here. ECF No. 21 11 {| 78, 100-02. Accordingly, the Court declines to dismiss her requests for equitable relief.

12 CONCLUSION

5 13 For the foregoing reasons, the Court grants KeVita's motion to dismiss. The Court grants 14 || leave to file an amended complaint within 21 days solely to correct the deficiencies identified in 3 15 this order. If no amended complaint is timely filed, the case will be dismissed with prejudice. a 16 IT IS SO ORDERED. 3 17 Dated: August 8, 2025 . 18 Oped: Bap

JON S. TIGA

19 nited States District Judge 20 21 22 23 24 25 26 27 28