

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

RYAN RICHARDS,  
  
Plaintiff,  
  
v.  
  
SAFEWAY INC.,  
  
Defendant.

Case No. [13-cv-04317-JD](#)

**ORDER ON MOTION TO DISMISS**  
  
Re: Dkt. No. 49

**INTRODUCTION**

This case is one of several recent lawsuits challenging food products labelled as “100% natural” when they allegedly contain a synthetic ingredient known as sodium acid pyrophosphate (“SAPP”). Defendant Safeway, Inc. moves to dismiss portions of plaintiff Ryan Richard’s First Amended Complaint for failure to state a claim. The complaint and the motion to dismiss involve issues that other courts in this district have carefully considered, and the Court finds this motion suitable for disposition without oral argument under Civil Local Rule 7-1(b). Mr. Richards’ claims for unjust enrichment and injunctive relief are dismissed with prejudice. He has leave to amend certain factual allegations to comport with the pleading requirements of Federal Rule of Civil Procedure 9(b).

**BACKGROUND**

Mr. Richards filed an amended complaint on June 20, 2014, alleging eight claims for relief against Safeway. All claims relate to Safeway’s alleged labeling, marketing and sale of “100% Natural” products which, plaintiffs allege, actually contained one or more synthetic ingredients. Dkt. No. 45. The Safeway products at issue include Open Nature 100% Natural Multi-Grain

1 Waffles and Open Nature 100% Natural Multi-Grain Waffles. *Id.* at 2. Mr. Richards alleges that  
2 both of these products are advertised and labeled as “100% Natural,” but contain SAPP. *Id.* He  
3 asserts that Safeway falsely and dishonestly induced health-conscious customers into purchasing  
4 these products at a premium price. *Id.* at 8. Mr. Richard seeks to represent national and  
5 California-resident classes of consumers who purchased Safeway’s food products that were  
6 labeled “100% Natural,” yet contained SAPP. *Id.* at 5. The amended complaint alleges the  
7 following claims: (1) a violation of California’s False Advertising Law, Business & Professions  
8 Code §§ 17500 *et seq.* (“FAL”), (2) a violation of California’s Consumer Legal Remedies Act  
9 (“CLRA”), (3) common law fraud, (4) negligent misrepresentation, (5) breach of express  
10 warranty, (6) breach of contract, (7) a violation of California’s Unfair Competition Law, Business  
11 and Professions Code §§ 17200-17208 (“UCL”), and (8) quasi-contract/unjust enrichment. *Id.* at  
12 15-25.

13 On July 7, 2014, Safeway filed a motion to dismiss the unjust enrichment claim under  
14 Federal Rule of Civil Procedure 12(b)(6), plaintiff’s claims based on statements other than the  
15 “100% Natural” label statement under Federal Rule of Civil Procedure 9(b), and plaintiff’s claim  
16 for injunctive relief under Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6). *See* Dkt. No. 49.  
17 Mr. Richards filed an opposition to Safeway’s motion on July 21, 2014. Dkt. No. 55. Safeway  
18 replied on July 28, 2014. Dkt. No. 56.

### 19 DISCUSSION

20 Under Federal Rule of Civil Procedure 12(b)(6), a district court must dismiss a complaint  
21 if it fails to state a claim upon which relief can be granted. To survive a Rule 12(b)(6) motion to  
22 dismiss, the plaintiff must allege “enough facts to state a claim to relief that is plausible on its  
23 face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007).  
24 This “facial plausibility” standard requires the plaintiff to allege facts that add up to “more than a  
25 sheer possibility that a defendant has acted unlawfully.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129  
26 S.Ct. 1937, 173 L.Ed.2d 868 (2009). Although courts do not require “heightened fact pleading of  
27 specifics,” *Twombly*, 550 U.S. at 544, a plaintiff must provide “more than labels and conclusions,  
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1 and a formulaic recitation of the elements of a cause of action will not do,” *id.* at 555. The  
2 plaintiff must allege facts sufficient to “raise a right to relief above the speculative level.” *Id.*

3 Fraud claims are subject to a higher standard and must be pleaded with particularity under  
4 Federal Rule of Civil Procedure 9(b). “This is true of claims state law claims, such as those under  
5 the UCL, CLRA, and FAL, that are grounded in fraud, which must ‘be accompanied by the who,  
6 what, when, where, and how of the misconduct charged.’” *Victor v. R.C. Bigelow, Inc.*, Case No.  
7 13-cv-02976-WHO, 2014 WL 1028881, at \*3 (N.D. Cal. Mar. 14, 2014) (citing *Yess v. Ciba-*  
8 *Geigy Corp. USA*, 317 F.3d 1097, 1103, 1106 (9th Cir. 2003)). Claims alleging fraud “must be  
9 specific enough to give defendants notice of the particular misconduct which is alleged to  
10 constitute the fraud charged so that they can defend against the charge and not just deny that they  
11 have done anything wrong.” *Id.* (citing *Swartz v. KPMG LLP*, 476 F.3d 756, 764 (9th Cir. 2007)).

#### 12 **I. Statements Other Than “100% Natural”**

13 The amended complaint refers to alleged statements by Safeway outside of those on the  
14 products’ labels, including statements made on Safeway’s website. *See* Dkt. No. 45 at ¶¶ 24-29,  
15 58 (describing Safeway’s marketing efforts of its Open Nature and health-and-wellness products  
16 on its website). To the extent Mr. Richards’ claims are based on statements other than “100%  
17 Natural” statements on the products’ labels that he claims to have read and relied on, Safeway  
18 asserts Mr. Richards lacks standing to challenge them. Dkt. No. 49 at 5. Safeway also contends  
19 Mr. Richards failed to plead with particularity the specific purported misstatements that he read  
20 and relied on under Rule 9(b). *Id.* at 6-7.

21 The amended complaint does not state that Mr. Richards read or relied on the alleged  
22 misrepresentations outside of the statements on the products’ labels. *See* Dkt. No. 45 at ¶ 11  
23 (alleging that Mr. Richards read and relied on the “100% Natural” statement on the label of  
24 Safeway’s Open Nature Multi-Grain Waffles); *cf. id.* ¶ 24-29, 57-58 (describing statements on  
25 Safeway’s website without any allegation that Mr. Richards saw them). Consequently, Mr.  
26 Richards has stated a claim only with respect to the statements on the product labels that he relied  
27 on. *See Delacruz v. Cytosport, Inc.*, No. C 11-3532 CW, 2012 WL 1215243, at \*9 (N.D. Cal. Apr.  
28 11, 2012) (dismissing UCL, FAL and CLRA claims to the extent they were based on statements

1 that plaintiff did not allege she read or relied on in purchasing the product); *Garrison v. Whole*  
 2 *Foods Market Group, Inc.*, Case No. 13-cv-05222-VC, 2014 WL 2451290, at \*4 (N.D. Cal. June  
 3 2, 2014) (finding that to the extent plaintiffs sought to bring claims based upon statements other  
 4 than those included on the labels of products identified in their complaint, their claims failed to  
 5 satisfy Rule 9(b)).

6 Claims based on other non-label statements are dismissed without prejudice. Mr. Richards  
 7 may amend his complaint to adequately plead the statements not contained on the label of the  
 8 products at issue.

## 9 **II. Unjust Enrichment**

10 Mr. Richards' eighth claim for "quasi-contract/unjust enrichment" alleges that it would be  
 11 inequitable and unconscionable for Defendant to retain the profit, benefit, and/or compensation it  
 12 obtained from its deceptive, misleading, and unlawful conduct." Dkt. No. 45 at 25. The putative  
 13 class seeks restitution, disgorgement or a constructive trust of all profits obtained by Safeway as a  
 14 result of its allegedly unlawful conduct. *Id.*

15 Safeway moves to dismiss this claim because numerous courts have concluded that unjust  
 16 enrichment is not a standalone cause of action under California law, or when it is duplicative of  
 17 the statutory and common law claims. Dkt. No. 49.

18 While Courts in this district have treated standalone unjust enrichment claims disparately,<sup>1</sup>  
 19 the Court agrees with the growing consensus that, under California law, there is no standalone  
 20 cause of action for unjust enrichment. Unjust enrichment is merely "a basis for obtaining  
 21 restitution based on quasi-contract or imposition of a constructive trust." *Pirozzi v. Apple, Inc.*,  
 22 966 F.Supp.2d 909, 924 (N.D. Cal. 2013) (citing *Myers-Armstrong v. Actavis Totowa, LLC*, 382  
 23 Fed. Appx. 545, 548 (9th Cir. 2010); *McKell v. Washington Mut., Inc.*, 142 Cal.App.4th 1457,  
 24 1489, 49 Cal.Rptr.3d 227, 254 (2006)). Additionally, the claim is duplicative of Mr. Richards'  
 25 other statutory and common law claims, and so it can be dismissed on that basis as well. *See*  
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 28 <sup>1</sup> *See Ang v. Bimbo Bakeries USA, Inc.*, Case No. 13-cv-01196-WHO, 2013 WL 5407039, at \*11  
 (N.D. Cal. Sept. 25, 2013) (collecting cases).

1 *Pirozzi*, 966 F.Supp.2d at 924; *In re Tobacco II Cases*, 46 Cal.4th 298, 313 (2009). Because he  
2 cannot cure this defect by amendment, this claim is dismissed with prejudice.

### 3 **III. Injunctive Relief**

4 To establish standing for injunctive relief, a plaintiff must allege not only that he has  
5 “suffered or is threatened with a concrete and particularized legal harm,” but also that there is “a  
6 sufficient likelihood that he will again be wronged in a similar way.” *Bates v. United Parcel*  
7 *Serv., Inc.*, 511 F.3d 974, 985 (9th Cir. 2007) (citation and internal quotation marks omitted). In a  
8 class action, “[u]nless the named plaintiffs are themselves entitled to seek injunctive relief, they  
9 may not represent a class seeking that relief.” *Hodgers–Durgin v. de la Vina*, 199 F.3d 1037,  
10 1045 (9th Cir. 1999). While this is another issue that courts in this district have treated  
11 disparately,<sup>2</sup> a growing number of courts reject consumer class action plaintiffs’ claims for  
12 injunctive relief unless the plaintiff alleges that he or she intends to purchase the products at issue  
13 in the future. *See Morgan v. Wallaby Yogurt Co., Inc.*, No. 13-cv-00296-WHO, 2014 WL  
14 1017879, at \*6 (N.D. Cal. Mar. 13, 2014); *Rahman v. Mott’s LLP*, No. 13-cv-3482-SI, 2014 WL  
15 325241, at \*10 (N.D. Cal. Jan. 29, 2014); *Garrison*, 2014 WL 2451290, at \*5.

16 Mr. Richards does not plead -- now that he knows that the Safeway products contain SAPP  
17 -- that he intends to purchase these products again. He cannot plausibly allege that he would  
18 purchase the products in the future even if they were properly labeled. Therefore, injunctive relief  
19 is not available based on his allegations in this action, and are dismissed with prejudice. *See*  
20 *Morgan*, 2014 WL 1017879, at \*6.

### 21 **CONCLUSION**

22 Mr. Richard’s claims for unjust enrichment and injunctive relief are dismissed with  
23 prejudice. He may amend the complaint consistent with Rule 9(b) and this order only with respect  
24 to statements not on the labels of the products at issue. Any amended complaint must be filed and  
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28 <sup>2</sup> *See Morgan v. Wallaby Yogurt Co., Inc.*, No. 13-cv-00296-WHO, 2014 WL 1017879, at \* 6  
(N.D. Cal. Mar. 13, 2014) (collecting cases).

1 served within 10 days of this order. No new parties or claims may be added.

2 **IT IS SO ORDERED.**

3 Dated: September 22, 2014

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6 JAMES DONATO  
7 United States District Judge

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