UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No.	**CV 19-10901-DMG (KSx)**	Date	November 30, 2020
Title	***Connie Chong v. Nestlé Waters North America, Inc.***	Page	1 of 14

Present: The Honorable DOLLY M. GEE, UNITED STATES DISTRICT JUDGE

KANE TIEN	NOT REPORTED
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiff(s)	Attorneys Present for Defendant(s)
None Present	None Present

Proceedings: IN CHAMBERS—ORDER RE DEFENDANT NESTLÉ WATERS NORTH AMERICA'S MOTION TO DISMISS [11]

On December 27, 2019, Plaintiff Connie Chong filed a Class Action Complaint against Defendant Nestlé Waters North America, Inc., alleging that the labeling on Defendant's bottled water, sold under the brand Arrowhead Mountain Spring Water ("Arrowhead Water"), violates California's Unfair Competition Law ("UCL"), California's False Advertising Law ("FAL"), and California's Consumer Legal Remedies Act ("CLRA"), and also results in unjust enrichment. [Doc. # 1.] Defendant filed a motion to dismiss all claims ("MTD"). [Doc. # 11.] The MTD is fully briefed. [Doc. ## 14 ("Opp."), 15 ("Reply").] For the reasons set forth below, the Court **GRANTS** the MTD.

I.
JUDICIAL NOTICE

Federal Rule of Evidence 201 permits a court to take judicial notice of facts not subject to reasonable dispute and "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." *Campbell v. PricewaterhouseCoopers, LLP*, 642 F.3d 820, 824 n.3 (9th Cir. 2011) (citing Fed. R. Evid. 201(b)). Courts may take judicial notice of materials not included with a Complaint but on which "the plaintiff's complaint necessarily relies," as well as "matters of public record." *Lee v. City of Los Angeles*, 250 F.3d 668, 688-89 (9th Cir. 2001) (internal citation omitted).

Defendant requests that the Court take judicial notice of the following: (1) a copy of an Arrowhead Water 500-milliliter bottle label (Ex. 1), (2) a copy of an Arrowhead Water 2.5-gallon bottle label (Ex. 2), (3) a copy of an Arrowhead Water 1-liter bottle label (Ex. 3), (4) a printout of Arrowhead's webpage as of January 27, 2020 (Ex. 4), (5) an excerpt from the Federal Register of a proposed rule (Ex. 5), and (6) an excerpt from the Federal Register of a final rule (Ex. 6). *See* Request for Judicial Notice ("RJN") at 2 [Doc. # 11-1].

Plaintiff does not oppose the RJN. Exhibits 1, 2, and 4 (Arrowhead Water 500-millileter and 2.5-gallon bottle labels and webpage) are necessarily relied on in Plaintiff's Complaint. Thus, the Court **GRANTS** Defendant's RJN as to those documents. The Court **DENIES as moot** the RJN as to the remaining documents because the Court does not rely on them to render its opinion.

II.
FACTUAL AND PROCEDURAL BACKGROUND[1]

Defendant produces Arrowhead Water, which comes in various bottle sizes, including 355 milliliters, 500 milliliters, and 2.5 gallons, and is sold in convenience and grocery stores in Los Angeles, California, and elsewhere. Compl. at ¶¶ 2, 4. Arrowhead Water is sourced from six springs in California: (1) Southern Pacific Spring in Riverside County, (2) Arrowhead Springs in San Bernardino County, (3) Long Point Ranch in Running Spring, (4) Palomar Mountain Granite Springs in Palomar, (5) Deer Canyon Springs in San Bernardino County, and/or (6) Coyote Springs in Inyo County. *Id.* at ¶ 6.

Plaintiff learned of Arrowhead Water from seeing bottles in grocery stores and photographs of bottles on the Internet, including those displayed on Defendant's Arrowhead Water website ("Website"). *Id.* at ¶ 23. From 2015 onward, Plaintiff bought Arrowhead Water from various stores in Los Angeles, including Target, Costco, Hannam Chain, Galleria Market, and Smart & Final. *Id.* at ¶ 2.

On some Arrowhead Water products, including the small 355-millileter and 500-millileter bottles, the names of the springs from which Defendant sources the water are printed on the label on the back of the water bottle. *Id.* at ¶ 4; *see* RJN, Ex. 1 & 3. On the larger 2.5-gallon bottle, the source information is displayed on the front of the container under the brand name and instructions on how to open the bottle. *See* RJN, Ex. 2. The Website displays images of the Arrowhead Water logo, images and descriptions of various bottled water products, and the words "Arrowhead® Brand Products" in uppercase letters over a mountain background. *See id.*, Ex. 4.

Plaintiff alleges that she purchased Arrowhead Water based on the label on the front of some Arrowhead Water bottles, depicting the Arrowhead name with the Registered Trademark symbol and the word "Brand," the phrase "100% Mountain Spring Water," and images of a mountain and a body of water. *See* Compl. at ¶¶ 4, 7; RJN Ex. 1 & 2. She did not read the back

[1] The Court accepts all material facts alleged in the Complaint as true solely for the purpose of deciding the MTD.

of the label of the water bottles she purchased. Compl. at ¶ 4. Based on the front of the label, Plaintiff believed that Arrowhead Water "was from the springs of the Arrowhead mountain." Compl. at ¶ 4.[2] Plaintiff alleges that had she not believed that Arrowhead Water was from "Arrowhead mountain," she would not have bought the product. *Id.* at ¶ 8-9.

Plaintiff asserts that Defendant's Arrowhead Water labels violate the following: (1) the unlawful prong of the UCL, Cal. Bus. and Prof. Code § 17200; (2) the unfair prong of the UCL; (3) the FAL, Cal. Bus. and Prof. Code § 17500; and (4) the CLRA, Cal. Civ. Code § 1750. *See id.* at ¶¶ 53-76. Plaintiff also asserts a claim of unjust enrichment. *See id.* at ¶ 77-82.

III.
LEGAL STANDARD

Under Federal Rule of Civil Procedure 12(b)(6) a defendant may seek dismissal of a complaint for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). A court may grant such a dismissal only where the plaintiff fails to present a cognizable legal theory or fails to allege sufficient facts to support a cognizable legal theory. *Shroyer v. New Cingular Wireless Servs., Inc.*, 622 F.3d 1035, 1041 (9th Cir. 2010) (quoting *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001)).

To survive a Rule 12(b)(6) motion, a complaint must articulate "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Although a pleading need not contain "detailed factual allegations," it must contain "more than labels and conclusions" or "a formulaic recitation of the elements of a cause of action." *Id.* at 555 (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 556). "The plausibility standard is not akin to a 'probability requirement' but it asks for more than a sheer possibility that a defendant has acted unlawfully" or "facts that are 'merely consistent with' a defendant's liability." *Id.* (citing *Twombly*, 550 U.S. at 557). In evaluating the sufficiency of a complaint, courts must accept all factual allegations as true. *Iqbal*, 556 U.S. at 678. Legal conclusions, in contrast, are not entitled to the assumption of truth. *Id.*

[2] Defendant points out that it is unclear whether "Arrowhead Mountain" actually exists. MTD at 9 n.2.

All page references herein are to page numbers inserted by the CM/ECF system.

In addition, Federal Rule of Civil Procedure 9(b) mandates a heightened pleading standard for cases sounding in fraud. *See Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1125 (9th Cir. 2009). Under Rule 9(b)'s heightened pleading standard, "a party must state the particularity of the circumstances constituting fraud," meaning that the "pleading must identify the who, what, when, where, and how of the misconduct charged." *United States ex rel. Cafasso v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1055 (9th Cir. 2011) (internal citations and quotation marks omitted).

IV.
DISCUSSION

A. Preemption of State Law Claims

Defendant first argues that the Federal Food, Drug, and Cosmetic Act ("FDCA"), as amended by the Nutrition Labeling and Education Act of 1990 ("NLEA"), contains provisions expressly preempting Plaintiff's claims relating to federal bottled water standard of identity and labeling requirements. *See* MTD at 14.

Two federal requirements are at issue here. First, as authorized by the FDCA, the federal Food and Drug Administration ("FDA") has established a standard of identity for bottled water, including bottled spring water. *See* 21 C.F.R. § 165.110; 21 U.S.C. § 341 (authorizing the creation of standards of identity for any food, including bottled water). The standard of identity of bottled spring water provides that that "[t]he name of water derived from an underground formation from which water flows naturally to the surface of the earth may be 'spring water[,]'" if that water sold as spring water has the same properties as naturally flowing water." *Id.* § 165.110(a)(2)(vi). In addition, "[t]he location of the spring shall be identified." *Id.* Second, the statutory provisions regarding food labeling provide that a food product "shall be deemed to be misbranded" unless it conforms the prescribed standard of identity and its label bears the name of the food specified in the standard under 21 U.S.C. section 343(g), or, under 21 U.S.C. section 343(f):

> If any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not *prominently placed thereon with such conspicuousness* (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

21 U.S.C. § 343(f) (emphasis added).

Two provisions of the NLEA establish that the above provisions preempt state law. No state may establish any requirement for a food which is subject of a standard of identity under the FDCA "that is not identical to such standard of identity or that is not identical to the requirement of section 343(g)." 21 U.S.C. § 343-1(a)(1). And no state may establish any requirement for the labeling of food of the type required by, *inter alia*, 21 U.S.C. section 343(f), "that is not identical to the requirement of such section." *Id.* § 343-1(a)(3). By their plain terms, and as recognized by other courts, Sections 343-1(a)(1) and (3) expressly preempt any state "standard of identity" or labeling requirements that are not *identical* to 21 U.S.C. sections 341 and 343(e) and (g). *See, e.g.*, *Fisher v. Monster Beverage Corp.*, 656 F. App'x 819, 823 (9th Cir. 2016); *Nemphos v. Nestle Waters N. Am., Inc.*, 775 F.3d 616, 621 (4th Cir. 2015); *In re PepsiCo, Inc., Bottled Water Mktg. & Sales Practices Litig.*, 588 F. Supp. 2d 527, 532 (S.D.N.Y. 2008).

In other words, Plaintiff's state-law claims are preempted unless she seeks to impose state-law requirements that are identical to those imposed by the FDCA or state-law requirements that are not related to areas already covered by the FDCA or federal regulation. The California Supreme Court has interpreted a related provision of the FDCA to find that, while Congress specifically stated its intent to allow states to establish laws identical to the FDCA, it "said absolutely nothing about proscribing the range of available remedies states might choose to provide for the violation of those laws, such as private actions." *Farm Raised Salmon Cases*, 42 Cal. 4th 1077, 1090 (2008). Similarly, the United States Supreme Court has held that a different preemption provision of the amended FDCA "does not prevent a State from providing a damages remedy for claims premised on a violation of FDA regulations" where "the state duties in such a case 'parallel,' rather than add to, federal requirements." *Riegel v. Medtronic, Inc.*, 552 U.S. 312, 330 (2008) (citation omitted).

Plaintiff's claims under the UCL, FAL, and CLRA are all premised on violations of California's Sherman Food, Drug, and Cosmetic Law, Cal. Health & Safety Code, § 109875 *et seq.* ("Sherman Law"). The Sherman Law "incorporates '[a]ll food labeling regulations and any amendments to those regulations adopted pursuant to the [FDCA]' as 'the food labeling regulations of this state.' *Farm Raised Salmon*, 42 Cal. 4th at 1087 (quoting Cal. Health & Safety Code § 110100(a). As a result, the California Supreme Court has held that the Sherman Law imposes requirements that are identical to those under the FDCA and, therefore, claims brought under the Sherman Law are not expressly preempted. *See id.* at 1090, 1094.

Under one provision of the Sherman Law cited in Plaintiff's Complaint, "[a]ny food is misbranded if its labeling is false or misleading in any particular." Compl at ¶ 40 (quoting Cal.

Health and Safety Code § 110660). This language is identical to the federal statute deeming food to be misbranded if "its labeling is false or misleading in any particular." 21 U.S.C. § 343(a). Similarly, California Health & Safety Code section 110705 is nearly identical to its federal counterpart:

> Any food is misbranded if any word, statement, or other information required pursuant to this part to appear on the label or labeling is not prominently placed upon the label or labeling with conspicuousness, as compared with other words, statements, designs, or devices in the labeling and in terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

See Compl. at ¶ 40 (quoting Cal. Health & Safety Code § 110705); *see also* 21 U.S.C. section 343(f). In addition, California Health and Safety Code §111170(f) requires that every bottle of water sold in the state "shall include on its label, or on an additional label affixed to the bottle . . . the source of the bottled water, in compliance with applicable state and federal regulations." California Health & Safety Code § 111170(f). This statute, though not in precisely identical terms, adopts the federal requirement that food "shall be deemed to be misbranded" unless it conforms the prescribed standard of identity and its label bears the name of the food specified in the standard. 21 U.S.C. § 343(g). None of these state laws seek to "impose a duty" that differs in any way from the duties required by federal law. *See Nemphos*, 775 F.3d at 618-19, 621. Accordingly, none of the state laws described above are preempted. Plaintiff may assert state-law causes of action for disseminating a misleading food advertisement and misbranding through failure to prominently place required information, such as the federal standard of identity, on a water bottle label.

By contrast, one of the state statutes Plaintiff cites is expressly preempted by the NLEA:

> Any bottler, distributor, vendor of bottled water, or owner or operator of any water-vending machine or retail water facility, whose corporate name or trademark contains the words "spring" or "springs," or any derivative of either of these words, or "well," "artesian well," or "natural" *shall label each bottle or vending machine with the source of the water, if the source of the bottled or vended water is different from the in typeface at least equal to the size of the typeface of the corporate name or trademark source stated in the corporate name or trademark*.

Compl. at ¶ 38 (emphasis in original) (quoting Cal. Health & Safety Code § 111185). Because this statute includes typeface requirements for the name of the spring printed on a bottle of water, it is not identical to the federal labeling requirements, which require only that the name of the spring be on the label and prominently placed. *See* 21 C.F.R. § 165.110(a)(2)(vi); 21 U.S.C. § 343(f). This California law is thus expressly preempted. Plaintiff may not bring any state-law claims predicated on the typeface of the source of the water on Arrowhead Water bottles.

B. Rule 9(b) Pleading

Defendant argues that each of Plaintiff's California consumer law claims sounds in fraud and therefore must satisfy the heightened pleading requirements of Federal Rule of Civil Procedure 9(b). MTD at 13, 18. In her Opposition, Plaintiff concedes that Rule 9(b) pleading requirements apply to her claim of violation of the UCL unlawful prong "predicated on misrepresentation," but argues that Rule 9(b) does not apply to her claim for violation of the UCL unfair prong. Opp. at 13-14. Plaintiff does not mention her FAL and CLRA claims.

Plaintiff's Complaint shows that her UCL unfair prong claim rests entirely on allegations that Defendant's "labeling and advertising" of Arrowhead Water bottles is "likely to mislead reasonable consumers that the location of the spring is the Arrowhead mountain." Compl. at ¶ 59. It is not clear why Plaintiff believes her UCL unfair prong claim does not sound in misrepresentation and fraud just as her UCL unlawful prong claim does. In fact, all of her California consumer law claims are based on similar allegations that Defendant knowingly misrepresented the source of its water and misled or deceived reasonable consumers. *See, e.g.*, *id.* at ¶¶ 55, 59-60, 65-68, 72-73; *see Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1105 (9th Cir. 2003) ("Under California law, the 'indispensable elements of a fraud claim include a false representation, knowledge of its falsity, intent to defraud, justifiable reliance, and damages.'") (citation omitted). Where a plaintiff alleges "a unified course of fraudulent conduct and rel[ies] entirely on that course of conduct as the basis of that claim," the claim sounds in fraud, and the pleading "as a whole must satisfy the particularity requirement of Rule 9(b)." *Kearns*, 567 F.3d at 1125 (applying Rule 9(b) to CLRA and UCL claims); *see also Wilson v. Frito-Lay N. Am., Inc.*, No. 12-1586 SC, 2013 WL 1320468, at *5 (N.D. Cal. Apr. 1, 2013) (applying Rule 9(b) to a plaintiff's entire complaint based on allegedly fraudulent or deceptive labeling and advertising practices). Given the Complaint's reliance on a unified course of fraudulent conduct and the fact that Rule 9(b) applies to her UCL unlawful prong claim, Plaintiff's entire Complaint must satisfy Rule 9(b).

Though Plaintiff's Complaint is not a model of clarity, it sufficiently alleges "the who, what, when, where, and how" of the misconduct charged. *Vess*, 317 F.3d at 1106. Plaintiff

bought Defendant's Arrowhead Water bottles in the 355-millileter 500-millileter, and 2.5-gallon sizes, at specified stores in Los Angeles, for the relevant class period after 2015. Compl. at ¶¶ 2, 4, 23. As for the "how" of the alleged fraudulent conduct, she specifically notes that she "did not read the backside of the label" of the bottles and purchased the bottles in reliance on the Arrowhead brand name, "100% Mountain Spring Water" statement, and the background image of a mountain and lake printed on the front of the bottles and on the Arrowhead Water website, believing that the water "was from the springs in the Arrowhead mountain." *Id.* at ¶¶ 4, 23. In addition, she states that "[i]n the backside of the label of [the Arrowhead Water] bottle, the source of spring water was not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling), and is not easily legible," and she also notes that she "did not understand the source information." *Id.* at ¶¶ 5, 14. Plaintiff bases her claims on both the alleged misrepresentation of the source of the water and the insufficiently prominent placement of the source information.

Defendant argues that Plaintiff cannot simultaneously fail to read the label on the back of the bottle and also misunderstand the source information printed on that label, particularly since the 2.5-gallon Arrowhead Water bottle contains the source information on the *front* of the bottle. MTD at 19. But Plaintiff's Complaint, however inelegantly pled, makes clear that she purchased three sizes of Arrowhead Water bottles, each of which has a label that allegedly fails to prominently or accurately list the source, and that she reviewed Defendant's Arrowhead Water website. The Complaint therefore "give[s] notice to defendant[] of the specific fraudulent conduct against which [it] must defend." *Gen. Dynamics C4 Sys.*, 637 F.3d at 1057 (citation and internal quotation marks omitted).

Accordingly, Plaintiff's Complaint satisfies Rule 9(b)'s pleading requirement for misrepresentation-based claims under the UCL, the FAL, and the CLRA.

C. Statutory Standing

Plaintiff must establish statutory standing to bring her claims for violations of the UCL, FAL, and CLRA. To establish standing under the UCL and FAL, Plaintiff must have "suffered injury in fact *and* lost money or property as a result of the unfair competition." Cal. Bus. & Prof. Code § 17204 (emphasis added); *see Kwikset Corp. v. Superior Court*, 51 Cal. 4th 310, 330 (2011). A plaintiff who can show standing under the UCL and FAL can likewise show the economic injury required for standing under the CLRA. *See Klein v. Chevron U.S.A., Inc.*, 202 Cal. App. 4th 1342, 1357 (2012).

There is no question that Plaintiff meets the injury requirement necessary for standing based on the money she spent on Arrowhead Water bottles, but the parties dispute whether Plaintiff must meet a causation element as well. *See* MTD at 24; Opp. at 17. For UCL claims sounding in fraud, Plaintiff must demonstrate "actual reliance" and "that the defendant's misrepresentation is an 'immediate cause' of the plaintiff's conduct." *In re Tobacco II Cases*, 46 Cal. 4th 298, 326 (2009) (citation omitted).[3]

Plaintiff alleges that she viewed certain Arrowhead Water labels, which included the phrases "Arrowhead® Brand" and "100% Mountain Spring Water," as well as images of mountains and lakes, and "would not have purchased the [Arrowhead Water] bottles had she known that the spring water might not be from the arrowhead mountain [sic]." Compl. at ¶ 4. Generally, a "consumer who relies on a product label and challenges a misrepresentation contained therein" can satisfy the UCL's standing requirement by alleging "that he or she would not have bought the product but for the misrepresentation." *Kwikset*, 51 Cal. 4th at 330. That is what Plaintiff has alleged here. Construing the pleadings in the light most favorable to Plaintiff, the Court finds that she has sufficiently demonstrated statutory standing to sue under the UCL, FAL, and CLRA.

D. Reasonable Consumer Standard for UCL, FAL, and CLRA Claims

Deceptive labeling claims under the UCL, CLRA, and FAL are evaluated by whether a "reasonable consumer" would be likely to be deceived.[4] *Williams v. Gerber Prods. Co.*, 552 F.3d 934, 938 (9th Cir. 2008). To satisfy the reasonable consumer test, Plaintiff must show "a probability that a significant portion of the general consuming public or of targeted consumers, acting reasonably in the circumstances, could be misled" by the product's label. *Ebner v. Fresh*, 838 F.3d 958, 965 (9th Cir. 2016). Dismissal for failure to satisfy the reasonable consumer test is appropriate only "where a Court can conclude as a matter of law that members of the public are not likely to be deceived by the product packaging." *Id.*; *see Jones v. ConAgra Foods, Inc.*, 912 F. Supp. 2d 889, 899 (N.D. Cal. 2012) (collecting cases finding no reasonable consumer would be deceived based on the pleadings).

[3] Plaintiff's citation to *Franz v. Beiersdorf, Inc.*, 745 F. App'x 47 (9th Cir. 2018), is inapropos because her UCL claims are based on violations of California and federal law sounding in fraud, unlike the plaintiff's claims in *Franz*, which were based on violations of laws regarding the approval process for medical devices.

[4] Plaintiff's claims under UCL's unfair and unlawful prongs rest on allegations that she was "misled by the unlawful packaging," which also constitutes "unethical, oppressive, [and] unscrupulous" conduct. Opp. at 25, 29. Accordingly, the reasonable consumer test applies to determine whether a reasonable consumer would have been misled by such packaging.

Defendant argues that the combination of the Arrowhead brand name and trademark symbol, "100% Mountain Spring Water," and the mountain and lake imagery on Arrowhead Water bottles is not misleading and that "the label clearly lists the sources of the spring water." MTD at 20. Examining the 355-millileter, 500-millileter, and 2.5-gallon bottle labels, as well as the Website,[5] the Court finds that the Arrowhead brand name is displayed prominently, with the trademark symbol and the word "BRAND" printed near the brand name, separate from the phrase "100% Mountain Spring Water." *See* RJN, Ex. 1 & 2. On the back of the 355-millileter and 500-millileter bottles, in very small font, the six sources of the mountain spring water are listed. Those same sources are listed, in larger font, on the front of the 2.5-gallon bottle. In addition, the Website's header reads "Arrowhead® Brand Products," and the Website states, "Our non-carbonated mountain spring water is sourced from naturally occurring mountain springs in California, Colorado, and Canada." *See* Website.

No reasonable consumer could be misled by the 2.5-gallon bottle and the Website alone, a fact Plaintiff implies by focusing in her Complaint on the fact she did not read the "backside" of the labels. *See, e.g.*, Compl. at ¶¶ 4-6. Both the 2.5-gallon bottle and the Website prominently display the source information, which indicates that one source of the bottled water is Arrowhead Springs in San Bernardino County. *Id.* at ¶ 6. Accordingly, Plaintiff fails to state claims under the UCL, FAL, or CLRA for misleading labels on the 2.5-gallon bottles or on the Website.

The labels of the 355-millileter and 500-millileter bottles present only a marginally more difficult question. As with the 2.5-gallon label and Website, the Registered Trademark symbol is immediately next to the Arrowhead name along with the word "Brand," indicating that Arrowhead is the trademarked brand name, not necessarily the name of the source of the water. *See* RJN, Ex. 1. Nor is there any indication that the image of the mountain and lake refer to any specific mountain or lake, but rather to the true statement that Arrowhead Water is comprised entirely of mountain spring water. Moreover, the source information is in fact printed on the outside of the bottles, albeit on the opposite side of the bottles from the brand name. The brand name is not, for example, printed on the bottom of the bottle or in another location that would be concealed to a user during ordinary purchase and use of the product. *See In re Santa Fe Nat. Tobacco Mktg. & Sales Practices & Prod. Liability Litig.*, 288 F. Supp. 3d 1087, 1232 (D.N.M. 2017) (*In re Santa Fe*). As the court noted in *In re Santa Fe*, "[p]roduct packaging commonly has additional information about the product on the back and sides, so a reasonable consumer

[5] Plaintiff also cites to images of the bottles she saw "in the advertisements in google website [sic]." Compl. at ¶ 23. Having previously noted that references to the "Google website" are unclear, the Court will not entertain Plaintiff's claim to the extent it relies on images on that website. *See Shin v. Campbell Soup Co.*, No. CV 17-1082-DMG (JCx), 2017 WL 3534991, at *7 n.7 (C.D. Cal. Aug. 9, 2017).

would look there for disclaimers or qualifying information." *Id.* Here, Defendant presented information on its smaller water bottles on an outward-facing side of a cylindrical product, a place reasonable consumers would look for information about the product.

The labels of the 355-millileter and 500-millileter bottles also differ from the labeling at issue in *Williams*, in which the Ninth Circuit held that the packaging of Gerber "fruit juice snacks" had "a number of features . . . which would likely deceive a reasonable consumer." 552 F.3d at 939. Specifically, the product's packaging featured pictures of different fruits, "suggesting (falsely) that those fruits or their juices are contained in the product," and the claim that the snacks were made of "'fruit juice and other all natural ingredients' could easily be interpreted by consumers as a claim that all the ingredients in the product were natural, which appears to be false." *Id.* at 939. The defendant relied on disclosures made elsewhere on the product's packaging to correct what were essentially unqualified and false representations on the front of the packaging. *Id.* at 936, 939. Similarly, in *Brady v. Bayer Corp.*, 26 Cal. App. 5th 1156 (2018), the California Court of Appeal noted that the brand name "One a Day" Gummies was literally false where the back of the product's label instructed consumers to take two of the gummies each day, and the front of the packaging did not include the word "brand" to indicate that "One a Day" was a brand name, not a promise. *Id.* at 1172, 1177. Here, by contrast, the word "Arrowhead" is denoted as a brand name, Plaintiff does not dispute that the water is in fact "100% Mountain Spring Water," and the source location is disclosed in a location on the bottle that a consumer would reasonably be expected to look. *See In re Santa Fe*, 288 F. Supp. 3d at 1232. That the Registered Trademark symbol and the word "Brand" appear in smaller font size than the Arrowhead name on the labels would not result in a reasonable consumer missing that information or being misled. *Cf. Shaker v. Nature's Path Foods, Inc.*, No. ED CV 13-1138-GW (OPx), 2013 WL 6729802, at *5 (C.D. Cal. Dec. 16, 2013) (finding that a small font would not prevent a reasonable consumer from reading and understanding express information).

As for the mountains and lake imagery, such imagery "does not somehow delete" words on a label. *Robinson v. Unilever United States, Inc.*, No. CV 17-3010-DMG (AJWx), 2018 WL 6136139, at *6 (C.D. Cal. June 25, 2019). The mountain and lake images, when combined with the source information and explicit notation that Arrowhead is a brand name, would not mislead a reasonable consumer into believing that Arrowhead water is sourced exclusively from one "Arrowhead Mountain." *See Hill v. Roll Int'l Corp.*, 195 Cal. App. 4th 1295, 1301 (2011) (finding that a reasonable consumer would not be misled by green drop logo to think a product was environmentally friendly).

Thus, this case presents the rare case where this Court may conclude on the pleadings that no reasonable consumer would be misled by any of the product labels at issue in this suit.

Because Plaintiff's FAL and CLRA claims cannot satisfy the reasonable consumer standard, the Court **GRANTS** Defendant's MTD to as to those claims.

Because the parties do not clarify whether the reasonable consumer standard fully addresses Plaintiff's UCL claims under the unlawful and unfair prongs, the Court examines the UCL claims in more detail below.

E. UCL Claims

Under the UCL's "unlawful" prong, violations of other laws are "borrowed" and made independently actionable under the UCL. *Cel-Tech Commc'ns, Inc. v. L.A. Cellular Tel. Co.*, 20 Cal.4th 163, 180 (1999). Plaintiff alleges violations of several provisions of the Sherman Law as the predicates for her first UCL claim.

First, Plaintiff argues that Defendant may not source Arrowhead Water from multiple springs because federal standard of identity requires the water to be from only one spring, and not from multiple springs. Opp. at 8-9; *see* Cal. Health & Safety Code §111170 (requiring the source of the bottled water to comply with federal regulations). There is no basis for this interpretation of the federal standard of identity. The context of 21 C.F.R. section 165.110 does not limit spring water sourcing to one spring. Instead, the standard of identity merely requires that the spring from which water is sourced be identified on the product's label. 21 C.F.R. § 165.110(a)(2)(vi). Second, the Dictionary Act provides that "[i]n determining the meaning of any Act of Congress, unless context indicates otherwise—words importing the singular include and apply to several persons, parties, or things." 1 U.S.C. § 1. Thus, the presumption in interpreting statutes is that when Congress uses the singular, it also means the plural. Though section 165.110 is not a statute, given the regulations' silence on the matter, the Dictionary Act's prescription for statutory construction is persuasive in finding that "spring" does not mean one single spring. Defendant therefore has not violated the federal standard of identity by sourcing Arrowhead Water from multiple springs and identifying those springs on its water bottles.

Second, Plaintiff argues that the sourcing information, as required by the federal standard of identity, "is not prominently placed upon the label or labeling with conspicuousness, as compared with other words, statements, designs, or devices in the labeling and in terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use." Compl. at ¶ 40 (quoting Cal. Health & Safety Code § 110705); *see also* 21 U.S.C. section 343(f). As stated above, however, the sourcing information placed on any of the three bottle sizes Plaintiff purchased and on the Website are sufficiently prominent for a reasonable consumer to view and comprehend. Defendant therefore has not violated the labeling

statute, or any of the numerous other Sherman Law provisions Plaintiff cites regarding "false," "misleading," or "falsely advertised" products, or products that "misrepresent[] the source" of a good. *See* Compl. at ¶¶ 41-44, 46.

Without pleading unlawful acts by Defendant, Plaintiff has not shown any predicate acts for her UCL unlawful prong claim. Accordingly, the Court **GRANTS** Defendant's MTD as to this claim.

For Plaintiff's remaining UCL unfair prong claim, she must allege facts that Defendant's practice "offends an established public policy" or that "the practice is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers." *Smith v. State Farm Mut. Auto. Ins. Co.*, 93 Cal. App. 4th 700, 719 (2001) (internal quotation marks and citation omitted); *see* Cal. Bus. and Prof. Code § 17200. For the reasons stated above, Defendant's Arrowhead Water bottles and Website are not mislabeled or apt to mislead the reasonable consumer. Plaintiff does not suggest any other reason the Arrowhead Water labeling would be immoral, unethical, or otherwise satisfy the requirements for a UCL unfair prong claim, and the Court can discern none.

Thus, the Court **GRANTS** Defendant's MTD as to the UCL unfair prong claim as well.

F. Unjust Enrichment

The parties dispute whether Plaintiff's fifth cause of action, unjust enrichment, is a standalone claim. MTD at 30; Opp. at 13-14. The Court need not resolve that dispute, since Plaintiff failed to respond to Defendant's argument that a claim for unjust enrichment or breach of quasi-contract must be dismissed where it is duplicative of statutory claims. *See* MTD at 30. Typically, a non-movant's failure to respond to an issue in an opposition to a motion constitutes a waiver thereof. *See Jenkins v. Cty. of Riverside*, 398 F.3d 1093, 1095 (9th Cir. 2005) (finding that the plaintiff "abandoned" the claims she did not raise in opposition to the defendant's motion); *Stichting Pensioenfonds ABP v. Countrywide Fin. Corp.*, 802 F. Supp. 2d 1125, 1132 (C.D. Cal. 2011) ("[I]n most circumstances, failure to respond in an opposition brief to an argument put forward in an opening brief constitutes waiver or abandonment in regard to the uncontested issue.").

Because Plaintiff's failure to respond to Defendant's argument for dismissing her unjust enrichment claim concedes that point, the Court **GRANTS** Defendant's MTD as to the unjust enrichment claim.

V.
CONCLUSION

For the foregoing reasons, the Court **GRANTS** Defendant's Motion to Dismiss. Because the Court already has determined that Plaintiff's claims regarding Defendant's labels do not satisfy the reasonable consumer standard, it does not appear that Plaintiff can allege any additional facts regarding the wording of the labels that would change the outcome of this case. The Court therefore dismisses this action without leave to amend and with prejudice.

IT IS SO ORDERED.