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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ALEC FISHER,
INDIVIDUALLY AND ON
BEHALF OF ALL OTHERS
SIMILARLY SITUATED,

 Plaintiff,

 v.

MONSTER BEVERAGE
CORPORATION, MONSTER
ENERGY COMPANY, AND DOES
1-20, INCLUSIVE,

 Defendants.)

Case No. EDCV 12-02188-VAP
(OPX)

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS**

**[Motion filed on August 30,
2013]**

Defendants Monster Beverage Corporation and Monster Energy Company's (collectively, "Monster" or "Defendants") Motion to Dismiss or in the Alternative, Motion to Strike, came before the Court for hearing on October 21, 2013. The Court considered all papers filed in support of, and in opposition to, the Motion, and the arguments put forth at the hearing, and for the reasons set forth below, the Court GRANTS the Motion without prejudice.

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I. BACKGROUND

A. Procedural Background

Plaintiffs Alec Fisher, Matthew Townsend, and Connor Rucks¹ (collectively, "Plaintiffs"), on behalf of themselves, and putatively, others similarly situated, bring this action against Monster, seeking redress for Monster's allegedly "unfair and deceptive business and trade practices on behalf of anyone who purchased for personal consumption any of the Monster-branded energy drinks sold under the Monster Rehab® brand name and the original Monster Energy®." (Second Amended Complaint ("SAC") ¶ 1 (Doc. No. 51.))

Plaintiffs allege six claims: (1) violations of California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, et seq. ("UCL Claim"); (2) violations of California's False Advertising Law, Cal. Bus. & Prof. Code § 17500, et seq. ("FAL Claim"); (3) violations of California's Consumer Legal Remedies Act, Cal. Civ. Code § 1750, et seq. ("CLRA Claim"); (4) breach of express and implied warranty ("Breach of Warranty Claim"); (5) violations of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, et seq. ("MMWA Claim"); and (6) unjust enrichment ("Unjust Enrichment Claim").

¹Connor Rucks is no longer a Plaintiff in this Action.

1 Plaintiffs filed their First Amended Complaint on
2 March 7, 2013. (Doc. No. 20.) Defendants filed a Motion
3 to Dismiss, and on July 9, 2013, the Court granted
4 Defendants' Motion to Dismiss the First Amended Complaint
5 with limited leave to amend. (July 9, 2013 Minute Order
6 Granting Defendants' Motion to Dismiss ("MTD I Order")
7 (Doc. No. 48.)) The Court dismissed the Complaint on
8 several grounds, including: (1) Plaintiffs Fisher and
9 Rucks did not allege Article III standing sufficiently;
10 (2) the allegations failed to meet Federal Rule of Civil
11 Procedure Rule 9(b)'s specificity requirement; (3)
12 Plaintiffs' consumer protection claims (UCL, FAL, and
13 CLRA) based on Monster's failure to label and warn
14 adequately were preempted; (4) failure to state a claim
15 under the UCL, FAL, and CLRA; (5) failure to allege any
16 representations constituting an express warranty; (6)
17 allegations supporting the breach of implied warranty
18 were preempted; and (7) failure to allege a quasi-
19 contractual theory in support of their unjust enrichment
20 claim.

21

22 The Court granted Plaintiffs limited leave to amend,
23 instructing that Plaintiffs "may not pursue consumer
24 protection claims that are preempted, i.e., that seek to
25 impose requirements 'not identical' to the FDCA or those
26 required by the FDA. Plaintiff is also instructed to
27 comply with FRCP 8 ('a short and plain statement of the
28

1 claim') and FRCP 9(b) ('fraudulent conduct must be
2 alleged with particularity.')." (MTD I Order at 25.)

3
4 Plaintiffs filed their Second Amended Complaint on
5 July 26, 2013. Defendants filed their Motion to Dismiss,
6 or in the Alternative, Motion to Strike, along with
7 Appendices A and B on August 30, 2013. Defendants also
8 filed a Request for Judicial Notice in Support of their
9 Motion to Dismiss Second Amended Complaint ("RJN"), the
10 Declaration of Purvi G. Patel, and Exhibits 1-8. (Doc.
11 Nos. 59, 60-60-8.) On September 25, 2013, Plaintiffs
12 filed their Opposition to Defendants' Motion to Dismiss
13 the Second Amended Complaint ("Opp'n.") (Doc. No. 63) and
14 Opposition to Defendants' Request for Judicial Notice
15 ("Opp'n. to RJN.") (Doc. No. 64.). On October 7, 2013,
16 Defendants submitted their Reply in Support of
17 Defendants' Motion to Dismiss Second Amended Complaint
18 ("Reply") (Doc. No. 65.) Defendants also filed (1) a
19 Reply in support of its RJN ("RJN Reply") (Doc. No. 66);
20 (2) a supplemental request for judicial notice (Doc. No.
21 67); (3) the Declaration of Eva Lilja in support of the
22 supplemental request (Doc. No. 68); (4) the Declaration
23 of Purvi Patel in support of the Motion to Dismiss (Doc.
24 No. 69).

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1 **B. Request for Judicial Notice**

2 Monster filed a RJN requesting the Court to take
3 judicial notice of eight exhibits, and a Supplemental RJN
4 asking the Court to take judicial notice of two
5 additional exhibits. The Court finds it appropriate to
6 take judicial notice of exhibits (1) a public letter from
7 the Food and Drug Administration ("FDA") to Congress
8 regarding the FDA's investigation into energy drinks
9 (Doc. No. 59-1); (2) a public notice from the FDA
10 announcing the FDA's investigation regarding the safety
11 of caffeine in food products, available on the FDA's
12 website (Doc. No. 59-2); (3) a letter from Monster to
13 Margaret A. Hamburg, FDA Commissioner of Food and Drugs,
14 in response to FDA's request for further substantiation
15 (Doc. No. 59-3); (4) a letter from the American Beverage
16 Association to Margaret A. Hamburg, FDA Commissioner of
17 Food and Drugs, in response to the FDA's investigation
18 regarding the safety of caffeine as an ingredient in
19 energy drinks (Doc. No. 59-4); (5) a public notice from
20 the Institute of Medicine of the National Academies
21 ("IOM") announcing its two-day public workshop to discuss
22 potential health impacts stemming from the consumption of
23 caffeine, available on IOM's website (Doc. No. 59-5); and
24 (6) an excerpt from the "Agenda Book" for the Institute
25 of Medicine (IOM) Workshop on Potential Health Hazards
26 Associate with Consumption of Caffeine in Food and
27 Dietary Supplements (Doc No. 59-6).

28

1 Exhibits 1-4 are judicially noticeable because the
2 information "was made publicly available by government
3 entities [], and neither party disputes the authenticity
4 of the websites or the accuracy of the information
5 displayed therein." Daniels-Hall v. Nat'l Educ. Ass'n.,
6 629 F.3d 992, 998-99 (9th Cir. 2010) (courts may take
7 judicial notice of information posted on an official
8 government website). The Court has taken judicial notice
9 of the existence of these documents, and does not accept
10 as true the facts or contents of the documents. (See
11 Opp'n. to RJN at 6.)

12
13 Exhibits 5 and 6 are judicially noticeable because
14 they are "not subject to reasonable dispute [and] can be
15 accurately and readily determined from sources whose
16 accuracy cannot reasonably be questioned." Fed. R. Evid.
17 201(b)(2).

18
19 The Court GRANTS Monster's RJN with respect to
20 exhibits 1-6. The Court finds no need to rely on the
21 additional exhibits (7-10) in the disposition of this
22 Motion, and DENIES Monster's RJN for these exhibits.

23
24 **C. Relevant Factual Allegations**

25 **1. Common Factual Allegations**

26 In their Opposition, Plaintiffs divide their claims
27 against Monster into "on-label" and "off-label" claims.

28

1 (Opp'n. at 1.) "On-label" claims are specific
2 misrepresentations on the labels and packaging of the
3 Monster Drinks.² (Id. at 1.) The "off-label" claims
4 concern Monster's false and deceptive marketing campaign
5 targeting children. (Id. at 2.)

6
7 Plaintiffs allege three specific misrepresentations
8 on the labels of the Original Monster and Rehab Varieties
9 cans. Plaintiffs allege the Rehab Varieties contained
10 the following two misrepresentations: (1) "quenches
11 thirst, hydrates like a sports drink, and brings you back
12 after a hard day's night"³ ("Hydrates Like A Sports
13 Drink Statement") (Id. at 5); (2) "RE-FRESH, RE-HYDRATE,
14 REVIVE" or "RE-FRESH, RE-HYDRATE, RE-STORE" ("Re-Hydrate
15 Statement"). (Id.) Plaintiffs allege these statements
16 are misrepresentations because, in fact, Rehab Varieties

17
18 ²It is unclear from the SAC and the Opposition
19 whether Plaintiffs allege that "Consume responsibly - Max
20 1 can per four hours, with limit 3 cans per day. Not
21 recommended for children, people sensitive to caffeine,
22 pregnant women or women who are nursing" ("Consume
23 Responsibly Statement") is an "on-label"
24 misrepresentation. Although it appears the SAC alleges
25 the Consume Responsibly Statement is a misrepresentation
(see SAC ¶¶ 24-25, 42-45), the statement is not listed in
the Opposition as one of the "three on-label
misrepresentations." (Opp'n. at 5-6.) Relying on
Plaintiffs' arguments and interpretation of their SAC,
the Court has not considered the Consume Responsibly
Statement an alleged misrepresentation for the purposes
of this Motion.

26
27 ³In March 2013 Defendants changed the language on the
28 label to: "quenches thirst, fires you up, and is the
perfect choice after a hard day's night." (SAC ¶ 5)

1 do not hydrate like a sports drink, and actually could
2 cause dehydration. (SAC ¶ 6.) The elevated levels of
3 caffeine in energy drinks can act as a diuretic and lead
4 to dehydration. (SAC ¶¶ 36-37.) To the extent the
5 Monster Drinks do hydrate, they do not hydrate like a
6 sports drink. (SAC ¶ 36.)

7
8 Plaintiffs allege the labeling for Monster Original
9 drinks contains the following misrepresentation: "It's
10 the ideal combo of the right ingredients in the right
11 proportion to deliver the big bad buzz that only Monster
12 can" ("Ideal Combo Statement") (Id. ¶ 7.) Plaintiffs
13 allege this statement is false and misleading because "it
14 is not the ideal combo of the right ingredients in the
15 right proportion" and the statement omits "material facts
16 regarding the potential health risks associated with the
17 frequent consumption of Monster Drinks." (Id. ¶¶ 7, 41.)

18
19 Plaintiffs also allege "off-label" claims related to
20 Monster's advertising strategy. (Opp'n. at 1-2.)
21 Plaintiffs allege that Monster specifically targets youth
22 between the ages of 9 to 24 despite the high caffeine
23 levels in Monster Drinks and the evidence of serious
24 health risks these levels may pose. (SAC ¶ 12.) In
25 addition, Monster fails to include specific warnings for
26 teenagers and youth. (Id. ¶ 46.) Plaintiffs argue that

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1 targeting young people without including any warnings
2 directed at them is deceptive. (Id. ¶ 50.)

3
4 Plaintiffs allege that Monster targets adolescents
5 and youth through a variety of strategies including, free
6 samples and other promotions at high schools (SAC ¶ 9),
7 references to sex and alcohol (id. ¶¶ 51-54), prize
8 promotions (id. ¶ 55), pages on the social networking
9 site, Facebook (id. ¶ 56), and sponsoring extreme sports
10 events and concerts (id. ¶ 48). Monster has sought
11 endorsements from music celebrities and popular sports
12 figures. (Id. ¶ 57.) Few of these celebrities, however,
13 actually consume Monster Drinks. (Id.) Rather, Monster
14 invented "Monster Tour Water" for celebrities to consume,
15 which is water packaged in the same cans as Monster
16 Drinks. (Id. ¶¶ 58-60.)

17
18 Monster's misrepresentations and deceptive
19 advertising campaign has caused serious bodily injury to
20 consumers and continues to pose a danger. (Id. ¶¶ 62,
21 66.) Consumption of Monster Drinks "can raise one's
22 heart rate" and increase blood pressure. (Id. ¶ 65.)
23 Consumption of energy drinks may also result in "heart
24 palpitations." (Id.)

25
26 Plaintiffs allege Monster has profited immensely and
27 has been unjustly enriched from its "false and

28

1 misleading" marketing, advertising, and labeling. (Id. ¶
2 15.)

3

4 **2. Allegations Specific to Individual Plaintiffs**

5 **i. Plaintiff Alec Fisher**

6 Plaintiff Fisher ("Fisher") first consumed a Monster
7 Drink in or around 2007 at the age of sixteen. (Id. ¶
8 23.) Monster sent trucks to park outside Fisher's high
9 school and hand out free Monster Drinks. (Id.) The
10 Monster employees did not ask people their ages before
11 dispensing the free cans of Monster Drinks. (Id.)
12 Fisher believed that the Monster Drinks were safe for
13 consumption and saw nothing on the label of the Monster
14 Drink can to believe otherwise. (Id.) Fisher most
15 frequently consumed the Original Monster and Monster
16 Energy Assault.⁴ If Fisher had known of the health risks
17 of Monster Drinks he would not have consumed or purchased
18 the drinks. (Id.)

19

20 **ii. Plaintiff Matthew Townsend**

21 Plaintiff Townsend ("Townsend") has been purchasing
22 and consuming a variety of Monster Drinks for the past
23 six years, since he was 37 years old. (Id. ¶ 24.)
24 Townsend first tried an Original Monster drink in June
25

26

26 ⁴Monster Energy Assault is not a variety of Monster
27 Beverages included in this action.

28

1 2007, which he purchased from a vitamin store. (Id.)
2 Townsend read the label on an Original Monster drink and
3 decided to buy it because the label indicated that the
4 drink had 100 percent of daily values of vitamins B2, B3,
5 B6, B12 and supplements. (Id.) A few days later,
6 Townsend bought and consumed a Monster Drink instead of
7 coffee because he believed it was better than coffee
8 because of the vitamins. Over the past six years,
9 Townsend has "tried every variety ever created,"
10 including Monster Original and the Rehab Varieties, and
11 frequently purchased multi-packs of Monster Drinks. (Id.
12 ¶ 24(a).)

13
14 Plaintiff Townsend read the Monster Drink label and
15 made sure never to drink more than three cans a day as
16 prescribed on the label. (Id.) Townsend also read and
17 relied on the Rehab Varieties product label Hydrates Like
18 a Sports Drink Statement.⁵ (Id.) Townsend believed

19 _____
20 ⁵Monster contends the Court should disregard this
21 allegation because it is "inconsistent" with FAC ¶ 32,
22 where Townsend alleged he was "amused by Monster's
23 comments on the back of the can, which he thought were
24 very clever." (Mot. at 8.) An "amended complaint may
25 only allege other facts consistent with the challenged
26 pleading." Reddy v. Litton Indus., Inc., 912 F.2d 291,
27 297 (9th Cir. 1990) (citations omitted.) Townsend's
28 statement that he relied on the Hydrates Like a Sports
Drink Statement on Rehab Varieties is not necessarily
inconsistent or contradictory to his statement he was
generally amused by Monster's comments on the back of the
cans. Monster has a variety of different products, with
different labels that contain multiple "comments".
Furthermore, it is conceivable a person could both rely
on and be amused by a single comment.

(continued...)

1 Monster Drinks were safe for consumption, and he did not
2 see anything in the product labels to contradict this.
3 (Id.)

4
5 Plaintiff Townsend's addiction to Monster Drinks
6 resulted in serious health issues, beginning in the
7 summer of 2012. (Id. ¶ 24(b).) Townsend's heart
8 frequently pounded too fast, and he had chest pains and
9 trouble sleeping. (Id.) He attempted to stop drinking
10 Monster Drinks, but without the drinks, he experienced
11 severe headaches. (Id.)

12
13 In September 2012, Townsend became faint and
14 feverish, and had a heightened heart rate. (Id.)
15 Townsend went to the emergency room at a local hospital.
16 (Id.) His blood pressure was registered at an average of
17 225 over 139, which is "critically high". (Id.)

18
19 **iii. Plaintiff Ted Cross**

20 Plaintiff Cross ("Cross") began purchasing and
21 consuming Monster Drinks in or around 2008. (Id. ¶ 25.)
22 For approximately two years, he consumed one can of
23 Original Monster per day. (Id.) After approximately two
24 years Cross increased his consumption to two cans per
25 day, a few days per week. (Id.) He frequently purchased

26 _____
27 (...continued)

28

1 Monster Energy Absolutely Zero and Java Monster Mean
2 Bean.⁶ (Id.)

3

4 At a 2011 dental appointment on a morning when
5 Plaintiff Cross had consumed two Monster Drinks, Cross's
6 blood pressure registered at 260 mm Hg systolic. (Id.)
7 In October 2012, Cross experienced vision problems,
8 dizziness, nausea, and a severe headache after drinking
9 two Monster Energy Absolutely Zero drinks. (Id.) He was
10 transported by ambulance to a hospital and operated on
11 for a bleeding blood vessel in his brain. (Id.) At the
12 time he was admitted to the hospital his blood pressure
13 was 280 mm Hg systolic. (Id.)

14

15 Plaintiff Cross relied on the Consume Responsibly
16 Statement that Monster Drinks were safe to consume if
17 limited to three cans per day. (Id. ¶ 25(a).) He also
18 relied on the Ideal Combo Statement on the Original
19 Monster label. (Id.) Cross understood this to mean that
20 "Monster Drinks were safe (or not unsafe) for consumption
21 and would provide energy without exposing people to
22 health risks." (Id.) If he had known the "true facts,"
23 Plaintiff Cross would not have purchased and consumed
24 Monster Drinks.

25

26

27 ⁶These two varieties of Monster Beverages are not
28 included in Plaintiffs' claims.

II. LEGAL STANDARD

1
2 Federal Rule of Civil Procedure 12(b)(6) allows a
3 party to bring a motion to dismiss for failure to state a
4 claim upon which relief can be granted. Rule 12(b)(6) is
5 read in conjunction with Rule 8(a), which requires only a
6 short and plain statement of the claim showing that the
7 pleader is entitled to relief. Fed. R. Civ. P. 8(a)(2);
8 Conley v. Gibson, 355 U.S. 41, 47 (1957) (holding that
9 the Federal Rules require that a plaintiff provide "'a
10 short and plain statement of the claim' that will give
11 the defendant fair notice of what the plaintiff's claim
12 is and the grounds upon which it rests." (quoting Fed. R.
13 Civ. P. 8(a)(2))); Bell Atl. Corp. v. Twombly, 550 U.S.
14 544, 555 (2007). When evaluating a Rule 12(b)(6) motion,
15 a court must accept all material allegations in the
16 complaint – as well as any reasonable inferences to be
17 drawn from them – as true and construe them in the light
18 most favorable to the non-moving party. See Doe v.
19 United States, 419 F.3d 1058, 1062 (9th Cir. 2005); ARC
20 Ecology v. U.S. Dep't of Air Force, 411 F.3d 1092, 1096
21 (9th Cir. 2005); Moyo v. Gomez, 32 F.3d 1382, 1384 (9th
22 Cir. 1994).

23
24 "While a complaint attacked by a Rule 12(b)(6) motion
25 to dismiss does not need detailed factual allegations, a
26 plaintiff's obligation to provide the 'grounds' of his
27 'entitlement to relief' requires more than labels and
28

1 conclusions, and a formulaic recitation of the elements
2 of a cause of action will not do." Twombly, 550 U.S. at
3 555 (citations omitted). Rather, the allegations in the
4 complaint "must be enough to raise a right to relief
5 above the speculative level." Id.

6
7 To survive a motion to dismiss, a plaintiff must
8 allege "enough facts to state a claim to relief that is
9 plausible on its face." Twombly, 550 U.S. at 570;
10 Ashcroft v. Iqbal, 556 U.S. 662, 677-78 (2009). "The
11 plausibility standard is not akin to a 'probability
12 requirement,' but it asks for more than a sheer
13 possibility that a defendant has acted unlawfully. Where
14 a complaint pleads facts that are 'merely consistent
15 with' a defendant's liability, it stops short of the line
16 between possibility and plausibility of 'entitlement to
17 relief.'" Iqbal, 556 U.S. at 678 (quoting Twombly, 550
18 U.S. at 556). Recently, the Ninth Circuit clarified that
19 (1) a complaint must "contain sufficient allegations of
20 underlying facts to give fair notice and to enable the
21 opposing party to defend itself effectively," and (2)
22 "the factual allegations that are taken as true must
23 plausibly suggest an entitlement to relief, such that it
24 is not unfair to require the opposing party to be
25 subjected to the expense of discovery and continued
26 litigation." Starr v. Baca, 652 F.3d 1202, 1216 (9th
27 Cir. 2011).

28

1 Although the scope of review is limited to the
2 contents of the complaint, the Court may also consider
3 exhibits submitted with the complaint, Hal Roach Studios,
4 Inc. v. Richard Feiner & Co., 896 F.2d 1542, 1555 n.19
5 (9th Cir. 1990), and "take judicial notice of matters of
6 public record outside the pleadings." Mir v. Little Co.
7 of Mary Hosp., 844 F.2d 646, 649 (9th Cir. 1988).

8

9

III. DISCUSSION

10 Monster has moved to dismiss, pursuant to Federal
11 Rules of Civil Procedure 8, 9(b), 12(b)(1), and 12(b)(6),
12 on the following grounds: (1) Plaintiffs lack standing;
13 (2) Plaintiffs fail to satisfy basic pleading standards
14 and the heightened pleading standard for the purported
15 deliberately deceptive conduct they allege; (3)
16 Plaintiffs fail to state a claim for relief; (4)
17 Plaintiffs' claims are preempted or subject to the FDA's
18 primary jurisdiction; and (5) Plaintiffs' SAC is not a
19 "short and plain statement" of facts showing Plaintiffs
20 are entitled to relief.

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1 **A. Standing**⁷

2 Monster argues that Plaintiffs Fisher, Townsend, and
3 Cross do not satisfy Article III standing requirements.
4 (Mot. at 10.) If a plaintiff lacks standing under
5 Article III of the U.S. Constitution, then the Court
6 lacks subject matter jurisdiction. See Fed. R. Civ. P.
7 12(b)(1). Defendants make a facial attack on Plaintiffs'
8 standing, and when evaluating a facial attack, the Court
9 "must accept as true all material allegations in the
10 complaint, and must construe the complaint in"
11 Plaintiffs' favor. Chandler v. State Farm Mut. Auto.
12 Ins. Co., 598 F.3d 1115, 1121-22 (9th Cir. 2010).

13
14 Article III of the Constitution gives federal courts
15 jurisdiction over "cases and controversies." U.S. Const.
16 Art. III § 2, cl. 2. "In essence the question of
17 standing is whether the litigant is entitled to have the
18 court decide the merits of the dispute or of particular

19 _____
20 ⁷In the SAC, Plaintiffs narrowed the definition of
21 "Monster Drinks"; the FAC included 28 different
22 beverages, but the SAC only included the original Monster
23 Energy product and the products under the Monster Rehab
24 brand name. In the Opposition, Plaintiffs argue that
25 they continue to represent mislabeling claims concerning
26 all varieties of Monster-brand energy drinks. (Opp'n. at
27 12 n. 11.) Plaintiffs mention this argument in a
28 footnote, and have not sufficiently alleged facts showing
that all Monster-branded energy drinks are sufficiently
similar to support standing for all Monster-branded
energy drinks. See Astiana v. Dreyer's Grand Ice Cream,
Inc., 2012 WL 2990766, *1, 11 (N.D. Cal. July 20, 2012)
("the critical inquiry seems to be whether there is
sufficient similarity between the products purchased and
not purchased."); Colucci v. ZonePerfect Nutrition Co.,
2012 WL 6737800, *1, 4 (N.D. Cal. Dec. 28, 2012).

1 issues." Warth v. Seldin, 422 U.S. 490, 498 (1975).
2 Standing, therefore, is a threshold issue in every
3 federal case. Elk Grove Unified Sch. Dist. v. Newdow,
4 524 U.S. 1, 11 (2004); Warth, 422 U.S. at 517-18. Claims
5 brought under California's UCL, FAL, or CLRA must satisfy
6 federal standing requirements under Article III as well.
7 See Cantrell v. City of Long Beach, 241 F.3d 674, 683
8 (9th Cir. 2001) (parties asserting state claims in
9 federal court must meet Article III standing
10 requirements).

11
12 A plaintiff must satisfy "the irreducible
13 constitutional minimum of standing" by demonstrating: (1)
14 he has suffered an "'injury in fact' -- an invasion of a
15 legally protected interest which is (a) concrete and
16 particularized, and (b) actual or imminent, not
17 conjectural or hypothetical"; (2) there is a causal
18 connection between the injury and the conduct complained
19 of -- that is, the injury is "fairly traceable" to the
20 challenged action of the defendant, and not the result of
21 the independent action of some third party not before the
22 court; and (3) it is "likely," as opposed to merely
23 "speculative," that the injury will be redressed by a
24 favorable judicial decision. Lujan v. Nat'l Wildlife
25 Fed'n, 504 U.S. 555, 560-61 (1992). "At the pleading
26 stage, general factual allegations of injury resulting
27 from defendant's conduct may suffice" Id.

28

1 For the purposes of Article III standing an injury
2 may be physical or economic. See Sierra Club v. Morton,
3 405 U.S. 727, 733-34 (1972) ("[P]alpable economic
4 injuries have long been recognized as sufficient to lay
5 the basis for standing.") In order to assert the type of
6 economic injury that Plaintiffs are alleging, they must
7 demonstrate they were allegedly deceived, and either
8 purchased a product they would not have otherwise
9 purchased, paid a premium or overpaid for the product,
10 or would have purchased an alternative product. See
11 Pirozzi v. Apple Inc., 2012 WL 6652453, *1, 4 (N.D. Cal.
12 Dec. 20, 2012) ("Overpaying for goods or purchasing goods
13 a person otherwise would not have purchased based upon
14 alleged misrepresentations by the manufacturer would
15 satisfy the injury-in-fact and causation requirements for
16 Article III standing"); Lanovaz v. Twinings N. Am., Inc.,
17 2013 WL 675929, *1, 6 (N.D. Cal. Feb. 25, 2013) ("The
18 alleged purchase of a product that plaintiff would not
19 otherwise have purchased but for the alleged unlawful
20 label is sufficient to establish an economic injury-in-
21 fact for plaintiff's unfair competition claims."); Boysen
22 v. Walgreen Co., 2012 WL 2953069, *1, 7 (N.D. Cal. July
23 19, 2012) (an economic injury is sufficiently alleged if
24 plaintiff would have purchased an alternative beverage
25 "had defendant's [beverage] been differently labeled.");
26 Chavez v. Blue Sky Natural Beverage Co., 340 F. App'x
27 359, 360-61 (9th Cir. 2009) (unpublished) (Article III

28

1 standing where Plaintiff "purchased beverages that he
2 otherwise would not have purchased in absence of the
3 alleged misrepresentations.").

4
5 Although Article III standing may be satisfied with
6 either a physical or an economic injury, standing under
7 the UCL, FAL, and CLRA requires an economic injury. In
8 re Sony Gaming Networks & Customer Data Sec. Breach
9 Litig., 903 F. Supp. 2d 942, 965 (S.D. Cal. 2012). To
10 have standing under the UCL and FAL, a Plaintiff must
11 allege he "has suffered injury in fact and has lost money
12 or property as a result of the unfair competition." See
13 Cal. Bus. & Prof. Code §§ 17204, 17203; Kwikset Corp. v.
14 Superior Court, 51 Cal. 4th 310, 320 (2011). Similarly,
15 the CLRA requires Plaintiffs to allege a "tangible
16 increased cost or burden to the consumer." Meyer v.
17 Sprint Spectrum L.P., 45 Cal. 4th 634 (2009).
18 Accordingly, the Court evaluates standing both under
19 Article III and the UCL, FAL, and CLRA statutory
20 requirements.

21
22 **1. Plaintiff Fisher**

23 In the MTD I Order, the Court dismissed all claims
24 brought by Fisher because he failed to plead an "injury
25 in fact" for the purposes of Article III standing. (MTD
26 I Order at 10.) In the SAC, Plaintiff Fisher again fails
27 to allege an injury.

28

1 Fisher alleges he suffered an economic injury because
2 he relied on specific misrepresentations in purchasing
3 Monster Drinks. (Opp'n. at 16.) As in the FAC, the SAC
4 does not allege Plaintiff Fisher relied on any specific
5 misrepresentations by Monster, and only states that
6 Fisher "had no reason to believe" that Monster Drinks
7 were "not safe or posed a health risk", and that if he
8 had known of the health risks he would not have continued
9 to purchase Monster Drinks. (SAC ¶ 23.) As before,
10 Fisher is not alleging Monster made any
11 misrepresentations or deceived him; rather, he alleges
12 only that Monster failed to label their products in a way
13 that would lead Plaintiffs to "believe" that the Monster
14 Drinks "could" be injurious to their health.⁸ The Court
15 finds Plaintiff Fisher has not alleged Article III
16 standing sufficiently, and accordingly the claims brought
17 by Plaintiff Fisher are DISMISSED.

18

19

20 ⁸Plaintiffs acknowledge this deficiency, and argue
21 that "to the extent Plaintiff Fisher did not rely upon a
22 specific misrepresentation, he also has standing by
23 virtue of being a Member of Monster's target group -
24 young adolescent males - when he began purchasing and
25 consuming Monster Drinks." (Opp'n. at 17 n. 15.)
26 Plaintiff's membership in the target group does not
27 constitute a "concrete" or "actual" injury as required by
28 Article III. See Johns v. Bayer Corp., 2010 WL 476688,
*1, 5 (S.D. Cal. Feb. 9, 2010) ("Plaintiff does not
allege exposure to a long-term advertising campaign . . .
He cannot expand the scope of his claims to include a
product he did not purchase or advertisements relating to
a product that he did not rely upon".).

27

28

1 **2. Plaintiff Townsend**

2 Plaintiff Townsend has alleged sufficient facts to
3 support standing. Townsend frequently purchased "Monster
4 Drinks", which as defined in the SAC, includes Original
5 Monster and the Rehab Varieties.⁹ (SAC ¶ 8.) Townsend
6 alleges he read and relied on the "Monster Drinks"
7 Consume Responsibly Statement and the Rehab Varieties'
8 Hydrates Like a Sports Drink Statement. (Id.)
9 "Purchasing goods a person otherwise would not have
10 purchased based upon alleged misrepresentations by the
11 manufacturer" satisfies the injury in fact and causation
12 standing requirements. Pirozzi, 2012 WL 6652453, at *4.
13 Townsend alleges that he relied on these representations
14 in purchasing Monster Drinks, and would not otherwise
15 have bought the drinks. (SAC ¶ 24.) Townsend has
16 adequately pled an economic injury.

17
18 In addition, Townsend alleges that as a result of his
19 consumption of Monster Drinks, he suffered physical

20
21 ⁹Defendants argue that the SAC does not specifically
22 allege that Townsend purchased any of the products from
23 the Monster Rehab variety. Although Plaintiffs' use of
24 "Monster Drinks" is confusing and at times inconsistent,
25 the Court must make all inferences in favor of the
26 Plaintiffs. When the Plaintiffs' definition of "Monster
27 Drinks" is applied, the SAC sufficiently alleges Townsend
28 purchased all of the five Rehab drink varieties. This is
consistent with other statements in the SAC that Townsend
has consumed "every variety of energy drink created by
Monster, including every Monster Rehab product and
Monster Energy." (SAC ¶ 24(a).)

1 injuries, including his heart frequently pounding too
2 fast, chest pains, trouble sleeping, high blood pressure,
3 and a visit to the emergency room. (SAC ¶ 24(a).) This
4 injury is also sufficient to meet the Article III injury,
5 causation, and redressability requirements. Accordingly,
6 Plaintiff Townsend has adequately alleged Article III
7 standing and UCL, FAL, and CLRA statutory standing.

8 9 **3. Plaintiff Cross**

10 Plaintiff Cross has alleged sufficient facts to
11 support standing for claims related to the Original
12 Monster drink label. Cross frequently purchased multi-
13 packs of Original Monster.¹⁰ (Id. ¶ 25.) Cross alleges
14 he read and relied on the Consume Responsibly and Ideal
15 Combo Statements on the Original Monster label. (Id. ¶
16 25(a).) Cross understood the Ideal Combo Statement to
17 mean that "Monster Drinks were safe (or not unsafe) for

18
19 ¹⁰Defendants argue Plaintiff Cross does not have
20 standing for claims related to the Rehab Varieties
21 because the SAC does not allege he ever purchased the
22 Rehab varieties. (Mot. at 10.) Here, the Court agrees
23 with Defendants. The SAC uses the term "Monster Drinks"
24 to describe drinks purchased by Plaintiff Cross, but also
25 states specifically that Cross drank a can of the
26 "original Monster Energy" per day, and that Cross "bought
27 and consumed Monster Energy Absolutely Zero and Java
28 Monster Mean Bean." (SAC ¶ 9.) Here, it would not be
fair to read the term "Monster Drinks" to include the
Rehab variety, as defined in the SAC, since that reading
is explicitly contradicted by other statements in the
SAC. In paragraph 25, it seems that "Monster Drinks"
only refers to the types of Monster beverages Plaintiff
Cross consumed, which does not include the Rehab
Varieties.

1 consumption and would provide energy without exposing
2 people to health risks" and he would not have purchased
3 Original Monster otherwise. (Id.) In other words
4 Plaintiff Cross has alleged he would not have purchased
5 the product but for the alleged misrepresentation.¹¹ (Id.
6 ¶ 25.) Accordingly, Plaintiff Cross has adequately
7 alleged an economic injury in fact in relation to the
8 claims involving the Original Monster sufficient for
9 Article III standing and UCL, FAL, CLRA statutory
10 standing.

11

12 **B. Fed. R. Civ. P. 9(b) Particularity Requirements and**
13 **Fed. R. Civ. P. 8 Plausibility Requirements**

14 Monster argues Plaintiffs fail to meet Rule 9(b)'s
15 particularity requirement. The heightened pleading
16 standard of Rule 9(b) applies to state law claims
17 sounding in fraud that are brought in a federal action.
18 Vess v. Ciba-Geigy Corp. USA, 317 F.3d 1097, 1102-03 (9th
19 Cir. 2003). The fraudulent conduct must be alleged with
20 particularity under Rule 9(b). Kearns v. Ford Motor Co.,

21

22 ¹¹Plaintiff Cross also alleges he suffered high blood
23 pressure, a physical injury, after consuming two "Monster
24 Drinks." It is unclear, however, whether the "Monster
25 Drinks" consumed were among the varieties involved in the
26 instant action because Plaintiffs' use of the term
27 "Monster Drinks" is confusing and inconsistent in SAC
28 paragraph 25. Plaintiff Cross also alleges that after
drinking two Monster Energy Absolutely Zero drinks, he
was hospitalized and underwent surgery for a bleeding
blood vessel in his brain. (SAC ¶ 10.) Since Monster
Energy Absolutely Zero is a variety of drink not included
in this action, Plaintiff Cross does not have standing
based on this injury.

28

1 567 F.3d 1120, 1125 (9th Cir. 2009). To meet the
2 particularity requirement, Plaintiffs must allege
3 adequately, "the who, what, when, where and how" of the
4 purportedly misleading statements. Vess, 317 F.3d at
5 1106. "[A] plaintiff must set forth more than the
6 neutral facts necessary to identify the transaction. The
7 plaintiff must set forth what is false or misleading
8 about a statement, and why it is false." Decker v.
9 GlenFed, Inc. (In re GlenFed, Inc. Sec. Litig.), 42 F.3d
10 1541, 1548 (9th Cir. 1994).

11

12 **1. Plaintiff Fisher**

13 Plaintiff Fisher does not allege he was exposed to or
14 relied on any specific misrepresentations by Monster.
15 Fisher alleges he was exposed to Monster's marketing
16 strategy, part of Plaintiffs' "off-label" claims, when he
17 received a free Monster Drink at his high school when he
18 was sixteen, and that Monster employees were not asking
19 people their ages before dispensing Monster Drinks. (SAC
20 ¶ 23.) Fisher does not allege what was false or
21 misleading about this transaction, except to state that
22 he "had no reason to believe that Monster Drinks were not
23 safe or posed health risks." (Id.) This is not
24 sufficient to support a fraud claim. Accordingly, all
25 claims by Plaintiff Fisher are DISMISSED for lack of
26 particularity under Rule 9(b).

27

28

1 **2. Plaintiff Townsend**

2 **i. Original Monster**

3 Plaintiff Townsend alleges purchasing an Original
4 Monster drink in early June 2007 in a vitamin store, and
5 subsequently purchasing multi-packs of "Monster Drinks",
6 which as defined by Plaintiffs includes Original Monster
7 and Rehab Varieties, "frequently" (SAC ¶ 25(a).) In the
8 SAC, Townsend seems to allege he read and relied on the
9 Consume Responsibly Statement on the Original Monster and
10 Rehab Varieties (Id.) In their Opposition, however,
11 Plaintiffs explicitly limit the "on-label"
12 misrepresentations at issue to three statements, which do
13 not include the Consume Responsibly Statement. (Opp'n.
14 at 5, 13.) Following Plaintiffs' interpretation of their
15 Complaint, the Court finds Plaintiff Townsend has not
16 alleged a specific misrepresentation in relation to
17 Original Monster, and therefore fails to meet the Rule
18 9(b) particularity requirements in relation to the
19 Original Monster drink.

20
21 **ii. Rehab Varieties**

22 Plaintiff Townsend fails to plead with particularity
23 his claims concerning Rehab Varieties. The SAC does not
24 allege when, during a six-year period of time, Townsend
25 actually purchased a Rehab Variety drink, read the
26 Hydrates Like a Sports Drink Statement, and relied on the
27 statement in making the purchase. The SAC merely alleges
28

1 that since 2007 he "frequently" purchased multi-packs of
2 "Monster Drinks", and that "Monster Drinks" is defined to
3 include all the Rehab Varieties. (SAC ¶ 24(a).)
4 Townsend also does not allege what was false or
5 misleading about the Hydrates Like a Sports Drink
6 Statement. (SAC ¶ 25.)

7
8 Plaintiffs argue that other Courts have found that
9 alleging the product was purchased in a specific state
10 during a specific time period is sufficient to answer the
11 questions of "when and where" and put Defendants on
12 notice of the allegations. See Jones v. ConAgra Foods,
13 Inc., 912 F. Supp. 2d 889, 902 (N.D. Cal. 2012)
14 ("Plaintiffs' allegations that they bought the products
15 in California since April 2008 are sufficient to put
16 Defendant on notice of the claims against it."); Peviani
17 v. Natural Balance, Inc., 774 F. Supp. 2d 1066, 1071
18 (S.D. Cal. 2011) (Particularity requirement satisfied
19 where Plaintiff pleaded the year and vendor where product
20 was purchased).

21
22 Another Court in this District found that a similar
23 pleading was not sufficient to meet the particularity
24 requirements under FRCP 9. See Yumul v. Smart Balance,
25 Inc., 733 F. Supp. 2d 1117, 1124 (C.D. Cal. 2010) (Claim
26 dismissed when Plaintiff alleged purchasing the product
27 "repeatedly" throughout the class period but gave no
28

1 additional specifics and did not specify which retailers
2 the product was purchased from); see also Edmunson v.
3 Procter & Gamble Co., 2011 WL 1897625 (S.D. Cal. May 17,
4 2011) (Plaintiff did not allege when during the class
5 period, where, how many, or how many times he purchased
6 the product at issue or was exposed to the alleged
7 misrepresentations).

8
9 Assuming that Townsend's allegations that he
10 purchased the product within California since June 2007
11 is sufficient to meet the "when and where" requirements
12 and put Defendants on notice as to the claims, Plaintiff
13 Townsend still does not satisfy the Rule 9b particularity
14 requirements. Townsend has not alleged with enough
15 particularity when the Rehab Variety drinks were
16 purchased because in March 2013 Defendants changed the
17 label on Monster Rehab varieties to remove the Hydrates
18 Like a Sports Drink Statement that Plaintiff relied on.
19 See Jones, 912 F. Supp. 2d at 903 (since Defendants
20 recently changed the label, it is "necessary to know more
21 specifically when Plaintiffs purchased" the products).
22 It should also be noted that the period of time alleged
23 in the SAC is longer than the class period, which is
24 December 12, 2008 to the present, so it is possible that
25 while Plaintiff Townsend may have purchased Rehab
26 Varieties between 2007 to 2008, he did not actually
27 purchase a Rehab Variety drink during the class period.

28

1 Plaintiff Townsend's claims related to the Rehab
2 Varieties as DISMISSED for failure to comply with Rule
3 9(b).

4

5 **3. Plaintiff Cross**

6 Plaintiff Cross fails to plead with particularity his
7 claims related to Original Monster and the Rehab
8 Varieties. Cross does not allege relying on any
9 misrepresentations in relation to the purchase of the
10 Rehab Varieties, and accordingly has failed to plead with
11 sufficient particularity any claims related to the Rehab
12 Varieties.¹²

13

14 With respect to the Original Monster drink, Plaintiff
15 Cross alleges that the misrepresentation he relied on was
16 the Ideal Combo Statement. Plaintiff Cross believed this
17 statement meant the drinks "would safely provide energy
18 without exposing him to health risks." (SAC ¶ 25(a).)
19 Assuming Plaintiff Cross meets the Rule 9(b)
20 particularity requirements, this claim would be dismissed
21 under the plausibility standards of Rule 8. In order for
22 a statement to be a misrepresentation under CLRA, FAL,
23 and UCL, it must be likely to deceive a reasonable

24

¹²As with Plaintiff Townsend, the SAC again appears
25 to allege that Plaintiff Cross relied on the Consume
26 Responsibly Statement on both the original Monster Energy
27 and the Monster Rehab varieties (see SAC ¶ 25(a)), but in
28 light of Plaintiffs' arguments in their Opposition, the
Court has not analyzed this statement as a
misrepresentation.

1 consumer. See Williams v. Gerber Products Co., 552 F.3d
2 934, 938 (9th Cir. 2008); Freeman v. Time, Inc., 68 F.3d
3 285, 289 (9th Cir. 1995). Here, it is not plausible that
4 a reasonable consumer would understand the Ideal Combo
5 Statement to constitute a representation of safety.
6 Accordingly, Plaintiff Cross's claims are DISMISSED for
7 failure to comply with Rule 8.

8

9 **4. "Off-label" Claims**

10 Plaintiffs' "off-label" claims in relation to
11 Monster's marketing and advertising strategy are not
12 plead with particularity. Plaintiffs, relying on In re
13 Tobacco II Cases, 46 Cal.4th 298, 306 (2009), argue they
14 may base their UCL, FAL, and CLRA claims on Monsters'
15 prolonged marketing and advertising campaign even if the
16 Plaintiffs do not identify specific advertisements or
17 statements. (Opp'n. at 14.) The decision in In re
18 Tobacco was "predicated on Plaintiff's exposure to an
19 'extensive and long-term advertising campaign.'" Bronson
20 v. Johnson & Johnson, Inc., 2013 WL 1629191, *1, 3 (N.D.
21 Cal. Apr. 16, 2013). In the SAC Plaintiffs have not
22 alleged a similarly extensive and lengthy advertising
23 campaign, and even if they had, the existence of a
24 prolonged marketing and advertising strategy does not
25 relieve Plaintiffs of the need to allege exposure to the
26 marketing strategy and particular misrepresentations
27 relied upon. See id.; Kearns v. Ford Motor Co., 567 F.3d

28

1 1120, 1126 (9th Cir. 2009) (failed to allege particular
2 circumstances surrounding allegedly fraudulent marketing
3 materials); In re WellPoint, Inc. Out-of-Network UCR
4 Rates Litig., 903 F. Supp. 2d 880, 926 (C.D. Cal. 2012);
5 In re Ferrero Litig., 794 F. Supp. 2d 1107, 1112 (S.D.
6 Cal. 2011) (failed to allege exposure to marketing
7 materials); see also Comm. On Children's Television, Inc.
8 v. Gen. Foods Corp., 35 Cal. 3d 197, 219 (1983)
9 ("Plaintiffs should be able to base their cause of action
10 upon an allegation that they acted in response to an
11 advertising campaign even if they cannot recall the
12 specific advertisements.").

13
14 In regard to actual exposure to Defendants' marketing
15 strategy, the SAC merely alleges that Plaintiff Fisher
16 received a free "Monster Drink" from a truck parked
17 outside his high school, but as stated earlier, does not
18 allege what was false or misleading about this
19 transaction, as required under Rule 9(b).

20
21 Although the Court finds that Plaintiffs' SAC is
22 subject to dismissal on a number of other grounds, as set
23 forth below, the Court finds the SAC should be DISMISSED
24 on the additional ground that the allegations fail to
25 meet Rule 9(b)'s specificity requirement.

26
27
28

1 **C. Failure to State a Claim**

2 Monster argues Plaintiffs' UCL, FAL, CLRA and breach
3 of express and implied warranty claims fail as a matter
4 of law because Plaintiffs have not alleged reliance or a
5 duty to disclose and Plaintiffs' affirmative
6 misrepresentations claims involve non-actionable
7 "puffery."¹³ (Mot. at 19.)
8

9 **1. UCL, FAL, and CLRA Claims**

10 The UCL prohibits "any unlawful, unfair or fraudulent
11 business act or practice and unfair, deceptive, untrue or
12 misleading advertising" Cal. Bus & Prof. Code §
13 17200. "An act can be alleged to violate any or all of
14 the three prongs of the UCL -- unlawful, unfair, or
15 fraudulent." Berryman v. Merit Prop. Mgmt., Inc., 152
16 Cal. App. 4th 1544, 1554 (2007). "To support a claim for
17 a violation of the UCL, a plaintiff cannot simply rely on
18 general common law principles." Textron Fin. Corp. v.
19 Nat'l Union Fire Ins. Co. of Pittsburgh, 118 Cal. App.
20 4th 1061, 1072 (2004).
21
22

23 _____
24 ¹³Monster also argues Plaintiffs' UCL, FAL, and CLRA
25 claims fail as a matter of law because Monster's
26 compliance with FDCA regulations provides a "safe harbor"
27 under Cel-Tech Commc'ns Inc. v. Los Angeles Cellular Tel.
28 Co., 20 Cal. 4th 163, 182 (1999) for the conduct at
issue. (Mot. at 19.) As the Court finds Plaintiffs'
claims are dismissed on multiple other grounds, it is not
necessary to address Monster's Cel-Tech safe harbor
argument.

1 The FAL prohibits the dissemination of false or
2 misleading statements in connection with advertising.
3 Cal. Bus. & Prof. Code § 17500. "Section 17500 has been
4 broadly construed to proscribe 'not only advertising
5 which is false, but also advertising which[,] although
6 true, is either actually misleading or which has a
7 capacity, likelihood or tendency to deceive or confuse
8 the public.'" Colgan v. Leatherman Tool Group, Inc., 135
9 Cal. App. 4th 663, 679 (2006).

10

11 The CLRA makes illegal various "unfair methods of
12 competition and unfair or deceptive acts or practices
13 undertaken by any person in a transaction intended to
14 result or which results in the sale or lease of goods or
15 services to any consumer." Cal. Civ. Code § 1770(a).
16 Conduct that is "likely to mislead a reasonable consumer"
17 violates the CLRA. Colgan, 135 Cal. App. 4th at 680.

18

19 Claims under the UCL, FAL, and CLRA are governed by
20 the reasonable consumer test. Williams v. Gerber Prods.
21 Co., 552 F.3d 934, 938 (9th Cir. 2008) (citations
22 omitted). Under this test, the plaintiff must show that
23 members of the public are likely to be deceived. Id.
24 However, for a statement to be actionable, there is no
25 requirement that the statement be false –these laws also
26 prohibit "advertising which, although true, is either
27 actually misleading or which has a capacity, likelihood

28

1 or tendency to deceive or confuse the public." Id.
2 (citation and alteration omitted). Under California law,
3 "whether a business practice is deceptive will usually be
4 a question of fact not appropriate for decision" on a
5 motion to dismiss, and it is a "rare situation" where
6 granting a motion to dismiss a false advertising claim is
7 appropriate. Id. (citations omitted)

8
9 Plaintiffs' claims sound in fraud. When claims under
10 the UCL, FAL, or CLRA sound in fraud, "plaintiffs are
11 required to prove actual reliance on the allegedly
12 deceptive or misleading statements, and that the
13 misrepresentation was an immediate cause of the injury-
14 producing conduct." Sateriale v. R.J. Reynolds Tobacco
15 Co., 697 F.3d 777, 793-94 (9th Cir. 2012); Low v.
16 LinkedIn Corp., 900 F. Supp. 2d 1010, 1026 (N.D. Cal.
17 2012). "For fraud-based claims under all three consumer
18 statutes the named Class members must allege actual
19 reliance to have standing." In re Sony Gaming Networks
20 and Customer Data Security Breach Lit., 903 F. Supp. 2d
21 942, 969 (S.D. Cal. 2012).

22
23 Plaintiffs allege three specific "on-label"
24 misrepresentations: (1) Hydrates Like A Sports Drink
25 Statement, (2) Re-hydrate Statement, and (3) Ideal Combo
26 Statement. The Court previously held that the Hydrates
27 Like a Sports Drink Statement and Ideal Combo Statement
28

1 are non-actionable "puffery" and accordingly fail to
2 support claims under the UCL, FAL, and CLRA.¹⁴ (MTD I
3 Order at 21.)

4
5 Non-actionable puffery includes statements that are
6 "either vague or highly subjective" as opposed to
7 "specific, detailed factual assertions." Newcal Indus.,
8 Inc. v. Ikon Office Solution, 513 F.3d 1038, 1053 (9th
9 Cir. 2008) ("a statement that is quantifiable, that makes
10 a claim as to the "specific or absolute characteristics
11 of a product," may be an actionable statement of fact
12 while a general, subjective claim about a product is non-
13 actionable puffery.")

14
15 Plaintiffs argued in their Opposition and at the
16 hearing that the Hydrates Like a Sports Drink and the Re-
17 hydrate Statements (together, "Hydration Statements") are

18 ¹⁴Plaintiffs argue that even if the statements are
19 non-actionable puffery on their own, the statements must
20 be considered as part of the Monster Drink packaging as a
21 whole. (Opp'n. at 20.) Plaintiffs fail to allege what
22 specific statements or elements of the Original Monster
23 and Rehab Varieties labels and packaging, when considered
24 together as a whole, constitute an actionable
25 misrepresentation. See Williams, 552 F.3d at 939 n.3
26 (Statement that snacks are "nutritious" could, standing
27 on its own, constitute puffery, but statement not
28 dismissed as puffery because it "contributes to the
deceptive packaging as a whole."); Henderson v. J.M.
Smucker Co., 2011 WL 1050637, *1, 4 (C.D. Cal. Mar. 17,
2011) ("even if certain statements would be
non-actionable on their own, where there are multiple
statements at issue, we must consider the packaging as a
whole."). The Court is not convinced, based on the on-
label misrepresentations alleged, that the statements
considered together as a whole amount to an actionable
misrepresentation.

1 false and misleading statements. Plaintiffs argue these
2 statements are not puffery because they are quantifiable
3 and describe absolute and specific qualities. See
4 Newcal, 513 F.3d at 1053. Plaintiffs argue that these
5 are specific statements, "designed to induce consumers"
6 to rely on the statement and "choose Monster Drinks over
7 other sports drinks."¹⁵ (Opp'n. at 20.) Therefore,
8 Plaintiffs argue the Hydration Statements are not
9 puffery, because puffery is a statement that is
10 "extremely unlikely to induce consumer reliance."
11 Newcal, 513 F.3d at 1053.

12
13 Defendants argue that the statements are too vague
14 and indeterminate. (Reply at 11 n. 18.) Defendants
15 argue the term "like" is "so vague and indeterminate that
16 it will be understood as a mere expression of opinion."
17 (Reply at 11 n. 8); see Baltazar v. Apple, Inc., 2011 WL
18 3795013, at *4-6 (N.D. Cal. Aug. 26, 2011) (claim that
19 iPad is "just like a book" is mere puffery). Finally,
20 Defendants argue that "sports drink" is an undefined term
21 that is "used by industry and has not been defined by the
22 agency [the FDA]." (Reply at 11 n. 18.) To claim
23 something is "like a sports drink" is too vague and
24 indeterminate to be a misrepresentation.

25

26
27 ¹⁵Plaintiffs have not alleged any facts supporting
28 the claim that Plaintiffs chose Rehab Varieties over
other sports drinks.

1 The Court finds that both the "Hydrates Like a Sports
2 Drink" and "Rehydrate" statements are non-actionable
3 puffery.¹⁶ The concept of "re-hydration" or "hydration"
4 is difficult to measure concretely, and has no
5 discernable meaning in the context of energy drinks or
6 beverages See Viggiano v. Hansen Natural Corp., 2013 WL
7 2005430, *1, 10 (C.D. Cal. May 13, 2013) ("premium soda"
8 mere puffery because it has no concrete, discernable
9 meaning). Both Hydration Statements are "vague",
10 "subjective", and unlikely to induce consumer reliance.
11 Accordingly all of Plaintiffs "on-label" claims under the
12 UCL, FAL, CLRA are dismissed as non-actionable puffery.

13
14 Plaintiffs have also failed to allege actual reliance
15 on the alleged Re-hydration Statement, as well as all of
16 the "off-Label" claims regarding Monster's marketing and

17
18
19 ¹⁶Plaintiffs argue for the first time in their
20 Opposition that the statements related to hydration
21 (Hydrates Like a Sports Drink and Re-hydrate) are
22 nutrient content and structure/function claims. This
23 argument should have been made in the SAC. In addition,
24 this argument fails on the merits. A nutrient claim
25 requires Monster to make a claim about a level of
26 nutrient in the product. For example, "Healthy" has been
27 found by FDA regulations to constitute an "implied
28 nutrient content claim" because it characterizes the
level of nutrients in a product. See Chacanaca v. Quaker
Oats Co., 752 F. Supp. 2d 1111, 1117 (N.D. Cal. 2010).
"Hydrates like a Sports Drink" or "Re-hydrate" cannot, at
this time, be similarly linked to a characterization of
nutrients in a product. In addition, the hydration
statements are not structure or function claims because
they do not claim that a specific nutrient in the drink
hydrates or re-hydrates.

1 advertising strategy.¹⁷ Accordingly, Plaintiffs' claims
2 under the UCL, FAL, and CLRA are DISMISSED for failure to
3 state a claim.

4

5 **2. Breach of Express and Implied Warranty**

6 Defendants argue that none of the "on-label"
7 misrepresentations constitute "warranties" and Plaintiffs
8 fail to state a claim for breach of express or implied
9 warranty.

10

11 Under California law, an express warranty is created
12 by "[a]ny affirmation of fact or promise made by the
13 seller to the buyer which relates to the goods and
14 becomes part of the basis of the bargain" Cal.
15 Comm. Code § 2313(1)(a). "Statements that are puffery
16 are not actionable under a theory of breach of express
17 warranty." In re Clorox Consumer Litig., 894 F. Supp. 2d
18 1224, 1235 (N.D. Cal. 2012). The Court has found that
19 all three specific misrepresentations the Plaintiffs
20 identify are non-actionable puffery, and accordingly
21 Plaintiffs' breach of warranty claims are DISMISSED for
22 failure to state a claim.

23

24

25

26 ¹⁷To the extent Plaintiff Fisher was exposed to
27 Monster's marketing campaign when he received a free
28 Monster Drink at his high school, the Court has dismissed
this claim for failure to comply with Rule 9(b) and
failure to state a claim.

28

1 Generally, an implied warranty of merchantability
2 ("IWM") accompanies every retail sale of consumer goods
3 in the state. Cal. Civ. Code § 1792. An IWM guarantees
4 that "consumer goods meet each of the following: (1) Pass
5 without objection in the trade under the contract
6 description; (2) Are fit for the ordinary purposes for
7 which such goods are used; (3) Are adequately contained,
8 packaged, and labeled; (4) Conform to the promises or
9 affirmations of fact made on the container or label."
10 Cal. Civ. Code § 1791.1(a).

11
12 Plaintiffs argue Monster Original and the Rehab
13 Varieties do not conform to the "container's promises or
14 affirmations." (Opp'n. at 23.) This argument is based
15 on the same three misrepresentations discussed above in
16 relation to the express warranty claim. As stated above,
17 these statements are non-actionable puffery and
18 Plaintiffs' breach of implied warranty claims are
19 DISMISSED for failure to state a claim.

20
21 **D. Preemption**

22 Monster argues Plaintiffs' claims should be dismissed
23 because Plaintiffs' claims are expressly preempted,
24 impliedly preempted, and subject to the FDA's primary
25 jurisdiction. (Mot. at 13-19.) Specifically, Monster
26 argues that the Food, Drug, and Cosmetic Act ("FDCA") and
27 the Nutrition Labeling and Education Act ("NLEA"), and
28

1 their implementing regulations, detail the federal
2 provisions prohibiting "misbranding" of food and grant
3 the FDA exclusive authority to ensure that foods are
4 properly labeled. (See Mot. at 12.) Plaintiffs argue
5 that their claims are not preempted because the "off-
6 label" claims are in a field, marketing and advertising¹⁸,
7 that is not subject to federal preemption, and their on-
8 label claims¹⁹ are merely enforcing state labeling
9 requirements that are identical to federal counterparts.
10 (Opp'n. at 3.)

11

12 The Supremacy Clause of the United States
13 Constitution empowers Congress to enact legislation that
14 preempts state law. See Gibson v. Ogden, 22 U.S. 1, 82
15 (1824); Law v. General Motors Corp., 114 F.3d 909, 909
16 (9th Cir. 1997). "Federal preemption occurs when: (1)

17

18 ¹⁸The Court does not address preemption of the "off-
19 label" claims by the Federal Trade Commission as they are
20 already dismissed based on the Plaintiffs failure to
21 allege Article III standing and comply with Rule 9(b) in
22 regard to these "off-label" claims. The Court notes that
23 to the extent the "off-label" claims are failure to warn
24 or inadequate warning claims they are expressly preempted
25 and subject to the FDA's primary jurisdiction.

22

23 ¹⁹The Court does not address preemption or the FDA's
24 primary jurisdiction of the UCL, FAL, and CLRA "on-label"
25 claims related to the Hydrates Like a Sports Drink
26 Statement and Re-hydrate Statement because those claims
27 are subject to dismissal on other grounds. Claims
28 related to the Hydrates Like a Sports Drink Statement are
dismissed for failure to meet the Rule 9(b) particularity
requirements and failure to state a claim. Claims
related to the Re-hydrate Statement are dismissed for
lack of standing, failure to meet the Rule 9(b)
particularity requirements, and failure to state a claim.

28

1 Congress enacts a statute that explicitly preempts state
2 law; (2) state law actually conflicts with federal law;
3 or (3) federal law occupies a legislative field to such
4 an extent that it is reasonable to conclude that Congress
5 left no room for state regulation in that field." Chae
6 v. SLM Corp., 593 F.3d 936, 941 (9th Cir. 2010).

7
8 There is a presumption against preemption of state
9 laws. See Medtronic, Inc. v. Lohr, 518 U.S. 470, 485
10 (1996) ("we 'start with the assumption that the historic
11 police powers of the States were not to be superseded by
12 the Federal Act unless that was the clear and manifest
13 purpose of Congress'"); In re Farm Raised Salmon Cases,
14 42 Cal. 4th 1077, 1088 (2008) (noting that consumer
15 protection laws such as the UCL, FAL, and CLRA are within
16 the states' historic police powers and therefore subject
17 to the presumption against preemption).

18
19 The FDCA empowers the FDA (a) to protect public
20 health by ensuring that "foods are safe, wholesome,
21 sanitary, and properly labeled," 21 U.S.C. §
22 393(b)(2)(A); (b) to promulgate regulations implementing
23 the statute; and (c) to enforce its regulations through
24 administrative procedures. See 21 C.F.R. § 7.1, et seq.
25 The FDCA deems a food "misbranded" if its labeling is
26 "false or misleading in any particular." 21 U.S.C. §
27 343(a).

28

1 Congress amended the FDCA by enacting the NLEA "to
2 'clarify and to strengthen the Food and Drug
3 Administration's legal authority to require nutrition
4 labeling on foods, and to establish the circumstances
5 under which claims may be made about the nutrients in
6 foods.'" Nutritional Health Alliance v. Shalala, 144
7 F.3d 220, 223 (2d Cir. 1998) (citing H.R. Rep. No. 101-
8 538, at 7 (1990)).

9

10 **1. Express Preemption**

11 Monster argues Plaintiffs' claims are expressly
12 preempted because they seek to impose labeling and
13 warning requirements "not identical" to what the FDA has
14 mandated. (Mot. at 12.) The NLEA added an express
15 preemption provision to the FDCA, prohibiting a state
16 from "directly or indirectly establish[ing]" requirements
17 for food or any labeling requirements for food that are
18 not identical to certain requirements set forth in 21
19 U.S.C. § 343. See 21 U.S.C. § 343-1(a). 21 U.S.C. § 343
20 sets forth when a food is deemed misbranded.

21

22 The NLEA preemption provision does not preempt state
23 laws on the same subject; rather, "it allow[s] States to
24 adopt requirements identical to the federal standards,
25 which could then be enforced under state law." Kosta,
26 2013 WL 2147413, at *6. Therefore, preemption only
27 occurs when a state law claim requires a party to go

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1 beyond the FDA regulations by, for example, "includ[ing]
2 additional or different information on a federally
3 approved label" Kanter v. Warner-Lambert Co., 99
4 Cal. App. 4th 780, 795 (2002); Chacanaca v. Quaker Oats
5 Co., 752 F. Supp. 2d 1111, 1121-23 (N.D. Cal. 2010) (UCL
6 and other state law claims that sought to impose labeling
7 requirements not identical to FDA regulations were
8 expressly preempted); see also Kosta, 2013 WL 2147413, at
9 *7. A state law claim imposes a "not identical"
10 requirement if:

11
12 the State requirement directly or indirectly imposes
13 obligations or contains provisions concerning the
14 composition or labeling of food, or concerning a food
15 container, that (i) Are not imposed by or contained
16 in the applicable provision [or regulation] or (ii)
17 Differ from those specifically imposed by or
18 contained in the applicable provision [or
19 regulation].

20 21 C.F.R. § 100.1(c)(4).

21
22 As the Court previously found, Plaintiffs' consumer
23 protection claims based on inadequate labeling regarding
24 the amount of caffeine or the failure to warn are
25 preempted because they seek requirements beyond what is
26 imposed by the FDA. (See MTD I Order at 15-17.)
27 Although Plaintiffs claim to have removed all claims
28

1 regarding caffeine content (Opp'n. at 5), Defendants
2 rightly point out that there remain many allegations
3 "attacking Monster's warning labels or lack there of."
4 (Reply at 7; Mot. at 13-15 (citing SAC ¶¶ 7, 8, 23, 45.)
5 For example, Plaintiffs allege the Ideal Combo statement
6 is false and misleading because of the omission of
7 material facts regarding potential health risks. (SAC ¶
8 41.) Accordingly, the Ideal Combo Statement claim,
9 although also subject to dismissal on other grounds, is
10 preempted and DISMISSED because it is in essence a
11 failure to warn claim.
12

13 In addition, although unclear what Plaintiffs'
14 allegations are in relation to the Consume Responsibly
15 Statement, to the extent Plaintiffs claim the statement
16 is a specific misrepresentation and fails to warn of the
17 dangers of caffeine, or inadequately labels the drinks in
18 regard to caffeine content, these claims are preempted
19 and DISMISSED.
20

21 **2. Implied Preemption**

22 Monster argues Plaintiffs' claims are impliedly
23 preempted because they indirectly seek to enforce FDA
24 regulations through state consumer protection statutes.
25 (Mot. at 14-15.) Defendants argue this is preempted
26 because there is no private right of action to enforce
27 the FDCA. (Id. (relying on POM Wonderful LLC v. Coca-
28

1 Cola Co., 679 F.3d 1170, 1175 (9th Cir. 2010)). As noted
2 in the MTD I Order, the Court is not persuaded by
3 Defendants' argument that POM Wonderful prohibits
4 lawsuits that indirectly bring claims to enforce alleged
5 FDA violations. (MTD I Order at 14.) The POM Wonderful
6 Court limited the ruling to the federal Lanham Act, and
7 declined to address whether plaintiff's state law claims
8 were preempted. POM Wonderful, 679 F.3d at 1179; see
9 also Brazil v. Dole Food Co., Inc., 2013 WL 1209955, at
10 *7 (N.D. Cal. Mar. 25, 2013); Kosta v. Del Monte, 2013 WL
11 2147413 (N.D. Cal. May 15, 2013). Defendants have not
12 demonstrated that Plaintiffs' claims are impliedly
13 preempted.

14

15 **3. Primary Jurisdiction Doctrine**

16 "The primary jurisdiction doctrine allows courts to
17 stay proceedings or to dismiss a complaint without
18 prejudice pending the resolution of an issue within the
19 special competence of an administrative agency . . . and
20 is to be used only if a claim involves an issue of first
21 impression or a particularly complicated issue Congress
22 has committed to a regulatory agency." Clark v. Time
23 Warner Cable, 523 F.3d 1110, 1114 (9th Cir. 2008). A
24 court traditionally weighs four factors in deciding
25 whether to apply the primary jurisdiction doctrine: "(1)
26 the need to resolve an issue that (2) has been placed by
27 Congress within the jurisdiction of an administrative

28

1 body having regulatory authority (3) pursuant to a
2 statute that subjects an industry or activity to a
3 comprehensive regulatory authority that (4) requires
4 expertise or uniformity in administration." Syntek
5 Semiconductor Co. v. Microchip Tech., Inc., 307 F.3d 775,
6 781 (9th Cir. 2002).

7
8 "[T]he doctrine is a 'prudential' one, under which a
9 court determines that an otherwise cognizable claim
10 implicates technical and policy questions that should be
11 addressed in the first instance by the agency with
12 regulatory authority over the relevant industry rather
13 than by the judicial branch." Clark, 523 F.3d at 1114.
14 "Normally, if the court concludes that the dispute which
15 forms the basis of the action is within the agency's
16 primary jurisdiction, the case should be dismissed
17 without prejudice so that the parties may pursue their
18 administrative remedies." Syntek, 307 F.3d at 782;
19 Astiana v. Hain Celestial Group., Inc., 905 F. Supp. 2d
20 1013, 1015-16 (N.D. Cal. 2012) (dismissing claims where
21 the absence of FDA rules or policy statements would
22 require court to make an independent determination that
23 would "risk undercutting the FDA's expert judgments and
24 authority").

25
26 Monster argues the primary jurisdiction doctrine
27 applies because Congress has vested the FDA with
28

1 jurisdiction over issues involving food safety and
2 labeling, the FDA has specialized expertise in the
3 "technical and policy" questions involved here; the FDA's
4 expertise is necessary because this is an issue of first
5 impression; and the FDA has commenced a science-based
6 evaluation of the safety of caffeine-containing food
7 products, including energy drinks. (Mot. at 16-17.) The
8 Court finds that Monster has sufficiently alleged that
9 the FDA has primary jurisdiction because the agency has
10 special competence over the matters involving the "off-
11 label claims", inadequate warnings, and failure to warn
12 issues in this case.

13

14 First, the matters at issue here have been placed by
15 Congress within the jurisdiction of the FDA pursuant to
16 statute and regulations that require the FDA's expertise.
17 The FDA has regulatory authority over food labeling. See
18 21 U.S.C. § 341, et seq. The FDCA establishes a uniform
19 federal scheme of food regulation to ensure that food is
20 labeled in a manner that does not mislead consumers. See
21 id. Food labeling enforcement is a matter that Congress
22 has indicated requires the FDA's expertise and uniformity
23 in administration.

24

25 Second, Plaintiffs' claims ultimately involve
26 "technical and policy claims" about the effects of
27 caffeine and whether Monster should be allowed to

28

1 advertise and label their products in a way that appeals
2 to a younger demographic. See Monster Beverage Corp. v.
3 Herrera, 2013 WL 4573959, *1, 15 (C.D. Cal. Aug. 22,
4 2013). To the extent that Plaintiffs have removed claims
5 about the caffeine content, Plaintiffs remaining claims
6 are still grounded in allegations about
7 misrepresentations about the effects of high levels of
8 caffeine in energy drinks and how these effects should be
9 explained to the public, and to youth in particular.
10 Plaintiffs allege the claims are about the conduct of a
11 single company (Opp'n. at 10), but throughout the SAC
12 Plaintiffs cite to studies examining the effects of
13 "energy drinks," demonstrating that issues raised in the
14 SAC affect an entire industry.²⁰

15
16 Third, the FDA has taken an interest in investigating
17 and resolving whether energy drinks, including Monster,
18 contain unsafe levels of caffeine. (See Exs. 1-6 to
19 Mot.) Unlike cases cited by Plaintiffs where the FDA has
20 declined, despite repeated requests, to act, the FDA's
21 interest in regulating the safety of caffeine weighs in
22 favor of exercising the primary jurisdiction doctrine.
23 See Jones, 912 F. Supp. 2d at 898.

24
25 ²⁰See SAC ¶ 12 ("Energy Drinks: What Teenagers (and
26 Their Doctors) Should Know"); id. ¶ 36 (2009 Mayo Clinic
27 study on energy drinks); id. ¶ 38 (National Council on
28 Sports & Fitness "Youth and Energy Drinks"); id. ¶¶ 62-66
(Drug Abuse Warning Network (DAWN) reports related to
energy drinks); Ex. C to SAC (Letter to FDA Commissioner
Hamburg Re: The Use of Caffeine in Energy Drinks.)

1 The Court finds Plaintiffs' claims based on the Ideal
2 Combo Statement, the Consume Responsibly Statement, and
3 other allegations related to the failure to warn or
4 adequately label Monster Drinks in relation to caffeine
5 content, are preempted by the FDA under the Primary
6 Jurisdiction Doctrine. In finding these claims preempted
7 under the Primary Jurisdiction Doctrine, the Court notes
8 that these claims may be actionable in the future if the
9 FDA ceases their investigation and pending regulation of
10 the safety of caffeine in food products and energy
11 drinks. See Janney v. Mills, 2013 WL 1962360, *1, 7
12 (N.D. Cal. May 10, 2013) (holding that since the FDA
13 repeatedly declined to promulgate regulations governing
14 the use of "natural" as it applies to food products, the
15 FDA has signaled a relative lack of interest and referral
16 to the FDA would likely prove futile). Accordingly,
17 these claims are DISMISSED WITHOUT PREJUDICE.

18

19 **E. MMWA Claim**

20 Plaintiffs allege that Monster violated the MMWA.
21 Plaintiffs allege Monster's "written affirmations of
22 fact, promises and/or descriptions [] are each a 'written
23 warranty' and/or there exists an implied warranty for the
24 sale of [the Monster Drinks] within the meaning of the
25 MMWA, i.e., that they are safe for consumption." (SAC ¶
26 144.)

27

28

1 To succeed on a claim under the MMWA, a plaintiff
2 must plead successfully a breach of state warranty law.
3 See Birdsong v. Apple, Inc., 590 F.3d 955, 958 n. 2
4 (2009). Since Plaintiffs have failed to state a claim
5 for breach of an express or implied warranty, their MMWA
6 claim is properly DISMISSED. Id.

7
8 **F. Unjust Enrichment**

9 Monster argues that Plaintiffs' Unjust Enrichment
10 Claim should be dismissed because it is not an
11 independent cause of action. (Mot. at 25.) Plaintiffs
12 argue they are entitled to plead the claim in the
13 alternative, based on a quasi-contract theory. (Opp'n.
14 at 24.)

15
16 "[A] claim for unjust enrichment cannot stand alone
17 without a cognizable claim under a quasi-contractual
18 theory or some other form of misconduct." Berenblat v.
19 Apple, Inc., 2009 WL 2591366, at *6 (N.D. Cal. Aug. 21,
20 2009). Plaintiffs have not alleged any quasi-contractual
21 theory. Plaintiffs' other claims have been dismissed, as
22 well. Accordingly, since it cannot stand alone, the
23 Court DISMISSES the Unjust Enrichment Claim.

24
25 **G. Fed. R. Civ. P. 8**

26 Monster argues that Plaintiffs' SAC should be
27 dismissed because it fails to satisfy FRCP 8. (Mot. at
28

1 4-5.) FRCP 8 requires "a short and plain statement of
2 the claim showing that the pleader is entitled to
3 relief." Fed. R. Civ. P. 8(a)(1). "[A] district court
4 has the discretion to dismiss a prolix complaint that
5 fails to comply with the requirements of Rule 8,
6 notwithstanding the existence of a viable cause of
7 action." Bravo v. L.A. County, 2008 WL 4614298,*1, 2
8 (C.D. Cal. Oct. 10, 2008).

9
10 In the Order dismissing the FAC, the Court noted that
11 many of the allegations in the FAC are unnecessary and
12 irrelevant, and provided a list of examples. (MTD I
13 Order at 24 n. 8.) Surprisingly, many of the facts
14 specifically noted by the Court as irrelevant and
15 unnecessary were present in the SAC.²¹ The Court again
16 reiterates that almost all of the information in the SAC
17 related to the advertising and marketing strategy of
18 Monster is irrelevant, as none of the Plaintiffs have
19 alleged any exposure to Monster's marketing, aside from
20 reading can labels. Although Plaintiffs' claims are
21 dismissed on other grounds, the Court notes Plaintiffs'
22 failure to comply with Rule 8.

23 _____
24 ²¹See e.g. MTD I Order at 24 n.8 and compare to: SAC ¶
25 11 ("Joe Camel always seems to be on the move. . . or
26 just hanging out with other hip young camels."; id. ¶ 55
27 (Monster gear promotion is remarkably similar to the now-
28 banned Joe Camel promotional advertising..."); id. ¶ 53
(transcript of a video with Ash Hodges); id. ¶ 54 ("It
is commonly known that MILF is an acronym for 'Mother/Mom
I'd Like to F*#k.' See en.wikipedia.org/wiki/MILF").

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IV. CONCLUSION

For the reasons set forth above, the Court:

(1) DISMISSES Plaintiffs' UCL, FAL, and CLRA claims related to the Hydrates Like a Sports Drink Statement for failure to comply with Rule 9(b) and failure to state a claim for relief;

(2) DISMISSES Plaintiffs' UCL, FAL, and CLRA claims related to the Re-hydrate Statement for lack of standing, failure to comply with Rule 9(b), and failure to state a claim for relief;

(3) DISMISSES Plaintiffs' UCL, FAL, and CLRA claims related to the Ideal Combo Statement for failure to comply with Rule 8, failure to state a claim for relief and preemption;

(4) DISMISSES Plaintiffs' "off-label" UCL, FAL, and CLRA claims related to Monster's marketing and advertising campaign for lack of standing, failure to comply with Rule 9(b), failure to state a claim, and preemption to the extent they are based on claims Monster failed to warn or adequately label the Monster Drinks;

(5) DISMISSES Plaintiffs' claims for breach of express and implied warranty for failure to state a claim;

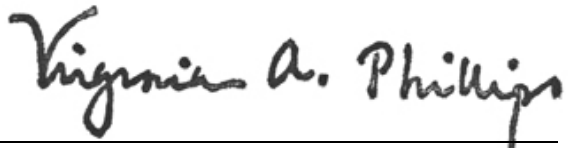
(6) DISMISSES Plaintiffs' MMWA claim for failure to state a claim;

(7) DISMISSES Plaintiffs' unjust enrichment claim for failure to state a claim.

1 Accordingly, the Court GRANTS Monster's Motion and
2 dismisses Plaintiffs' SAC without prejudice.

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Dated: November 12, 2013



VIRGINIA A. PHILLIPS
United States District Judge