

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ALHARETH ALOUDI,
Plaintiff,
v.
INTRAMEDIC RESEARCH GROUP, LLC,
Defendant.

Case No. 15-cv-00882-HSG

**ORDER GRANTING MOTION TO
DISMISS FIRST AMENDED
COMPLAINT**

Re: Dkt. No. 42

On February 26, 2015, Plaintiff Alhareth Aloudi filed a class action complaint on behalf of a putative nationwide class, alleging violations of California’s Unfair Competition Law (“UCL”), Consumers Legal Remedies Act (“CLRA”), and False Advertising Law (“FAL”), as well as violation of the Magnuson-Moss Warranty Act (“MMWA”), breach of express warranty, and breach of implied warranty. Dkt. No. 1. Plaintiff’s claims are based on Defendant Intramedic Research Group, LLC’s advertising representations regarding its JavaSLIM Green Coffee Extract supplement (“Product”).

On July 9, 2015, the Court granted Defendant’s motion to dismiss the complaint. Dkt. No. 33. The Court dismissed with prejudice those claims that were based on allegations of a lack of substantiation and dismissed with leave to amend those claims based on allegations of falsity. *Id.* at 9. On July 30, 2015, Plaintiff filed a first amended complaint (“FAC”), alleging the same causes of action that were alleged in the complaint. Dkt. No. 34.

Pending before the Court is Defendant’s motion to dismiss the FAC. The Court finds that the FAC did not cure the defects identified in the original complaint, as discussed at length in the July 9 Order. Plaintiff continues to impermissibly assert claims based on a lack of substantiation. Additionally, the allegations in the FAC still do not adequately explain why Defendant’s Product

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

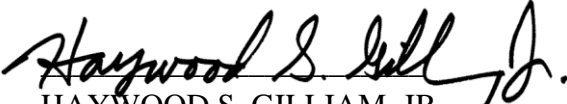
representations are false.

However, at the November 12, 2015 motion hearing, Plaintiff relied on numerous facts not alleged in the FAC to argue that Defendant’s Product representations are false. While Plaintiff failed to explain why such facts were not included as part of the first round of amendments, the Court finds that further amendment of the complaint would not be “futile” and therefore dismisses the FAC with leave to amend. *See Deveraturda v. Globe Aviation Sec. Servs.*, 454 F.3d 1043, 1049 (9th Cir. 2006) (holding that leave to amend may be properly denied where amendment would be futile).

For the reasons stated above, Defendant’s motion is GRANTED WITH LEAVE TO AMEND. Plaintiff shall file an amended complaint within 21 days of the date of this order. The Court cautions Plaintiff that this will be his final opportunity to amend; accordingly, Plaintiff must allege with specificity *all* facts he claims support his contention that Defendant’s Product representations are false. The Court will not consider any extrinsic facts when assessing the sufficiency of the amended complaint.

IT IS SO ORDERED.

Dated: November 13, 2015


HAYWOOD S. GILLIAM, JR.
United States District Judge