

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
10

11 BRYON STAFFORD, individually and on  
12 behalf of all others similarly situated,  
13 Plaintiff,

14 v.

15 RITE AID CORPORATION and RITE  
16 AID HDQTRS. CORP.,  
17 Defendants.

Lead Case No.: 17-CV-1340 TWR (JLB)  
(consolidated with No. 18-CV-152 TWR  
(JLB))

**ORDER GRANTING IN PART AND  
DENYING IN PART DEFENDANTS'  
MOTION FOR PARTIAL  
JUDGMENT ON THE PLEADINGS**

(ECF No. 266)

18 Presently before the Court is the Motion for Partial Judgment on the Pleadings  
19 (“Mot.,” ECF No. 266) filed by Defendants Rite Aid Corporation and Rite Aid Hdqtrs.  
20 Corp. (together, “Rite Aid”), as well as Plaintiffs Bryon Stafford and Robert Josten’s  
21 Response in Opposition to (“Opp’n,” ECF No. 277) and Defendants’ Reply in Support of  
22 (“Reply,” ECF No. 282) the Motion. The Court held a hearing on March 23, 2023. (*See*  
23 ECF No. 284.) Having carefully considered the pleadings, the Parties’ arguments, and the  
24 relevant law, the Court **GRANTS IN PART AND DENIES IN PART** Defendants’  
25 Motion, as follows.

26 **BACKGROUND**

27 Plaintiff Bryon Stafford initiated this putative class action on June 30, 2017, alleging  
28 causes of action against Rite Aid Corporation for violations of the California Unfair

1 Competition Law (“UCL”), violations of the California Consumer Legal Remedies Act  
2 (“CLRA”), unjust enrichment, and negligent misrepresentation. (*See generally* ECF No.  
3 1.) Specifically, Plaintiff alleged that, “[a]t bottom, this action concerns Rite Aid’s illegal  
4 practice of overcharging customers enrolled in public or private health care plans for  
5 generic prescription drugs by submitting to third-party payors claims for payment at prices  
6 that Rite Aid has knowingly and intentionally inflated above its ‘usual and customary’  
7 prices.” (*See id.* ¶ 8.)

8 Plaintiff Stafford amended his Complaint on July 28, 2017, (*see generally* ECF No.  
9 18), and Rite Aid Corporation moved to dismiss. (*See generally* ECF No. 19.) On  
10 December 19, 2017, the Honorable Anthony J. Battaglia granted Rite Aid Corporation’s  
11 motion to dismiss, dismissing without prejudice Plaintiff Stafford’s claims as time-barred.  
12 (*See generally* ECF No. 29.)

13 Plaintiff Stafford filed a further amended complaint on January 9, 2018, adding  
14 allegations to support equitable tolling of the statute of limitations. (*See generally* ECF  
15 No. 30.) Defendant Rite Aid Corporation again moved to dismiss on January 23, 2018,  
16 arguing, among other things, that Plaintiff Stafford’s UCL claim must fail because “there  
17 is an adequate remedy at law.” (*See generally* ECF No. 32.)

18 Plaintiff Robert Josten also filed his own putative class action on January 23, 2018,  
19 alleging similar causes of action for negligent misrepresentation, unjust enrichment,  
20 violation of the unfair and unlawful prongs of the UCL, violation of the CLRA, and  
21 declaratory and injunctive relief. (*See generally* No. 18-CV-152, ECF No. 1.) Rite Aid  
22 Corporation moved to dismiss the *Josten* action on March 16, 2018. (*See generally* No.  
23 18-CV-152, ECF No. 15.)

24 On September 28, 2018, Judge Battaglia denied Rite Aid Corporation’s motion to  
25 dismiss the *Stafford* action, concluding that Plaintiff Stafford had adequately alleged his  
26 causes of action. (*See generally* ECF No. 41.) As is relevant to the instant Motion, Judge  
27 Battaglia rejected Rite Aid Corporation’s argument that “Stafford’s UCL claims should be  
28 dismissed because the remedies at law are unsupported under the UCL” because that

1 “argument . . . assume[d] Stafford’s claims are grounded only in contract law—a  
2 contention the Court reject[ed].” (*See id.* at 14 n.1.) Judge Battaglia also found “Stafford’s  
3 representation that he is seeking restitution adequate and not grounds for dismissal of his  
4 UCL claims.” (*See id.* at 15.) Rite Aid Corporation subsequently answered Stafford’s  
5 Second Amended Complaint, (*see generally* ECF No. 42), and the case proceeded to  
6 discovery. (*See generally* Docket.) Rite Aid Corporation then moved to compel arbitration  
7 on June 17, 2019. (*See generally* ECF No. 78.)

8 Meanwhile, Judge Battaglia granted Rite Aid Corporation’s motion to dismiss the  
9 *Josten* action for failure adequately to plead tolling of the statute of limitations on  
10 November 20, 2018. (*See generally* No. 18-CV-152, ECF No. 25.) Plaintiff Josten filed  
11 an amended complaint on December 11, 2018, (*see generally* No. 18-CV-152, ECF No.  
12 27), which Rite Aid Corporation moved to dismiss on December 21, 2018. (*See generally*  
13 No. 18-CV-152, ECF No. 28.) Judge Battaglia denied the motion on August 7, 2019,  
14 concluding that Plaintiff Josten had “appropriately allege[d] tolling” and that “Josten’s  
15 claims do not arise under The Medicare Act and are thus not subject to its exhaustion  
16 requirements.” (*See generally* No. 18-CV-152, ECF No. 38.)

17 At the Parties’ request, (*see* ECF No. 100; No. 18-CV-152, ECF No. 57), the *Stafford*  
18 and *Josten* actions were consolidated on October 24, 2019. (*See* ECF No. 101; No. 18-  
19 CV-152, ECF No. 58.) Rite Aid filed a motion to compel arbitration as to Plaintiff Josten  
20 on December 30, 2019. (*See generally* ECF No. 114.) Judge Battaglia denied the motion  
21 to compel arbitration as to Plaintiff Stafford on February 25, 2020, (*see* ECF No. 134), and  
22 granted the Parties’ joint motion to add Rite Aid Hdqtrs. Corp. as a Defendant on March 4,  
23 2020. (*See* ECF No. 138.) Plaintiffs filed their respective operative complaints on  
24 March 6, 2020. (*See* ECF Nos. 145 (“Stafford’s TAC”), 146 (“Josten’s SAC”) (together,  
25 the “Operative Complaints”).)

26 On March 24, 2020, Defendant Rite Aid Corporation appealed Judge Battaglia’s  
27 denial of its motion to compel arbitration as to Plaintiff Stafford. (*See* ECF No. 148.) The  
28 Parties then proceeded to discovery, (*see, e.g.*, ECF No. 152), and Defendant Rite Aid

1 Hdqtrs. Corp. moved to compel arbitration as to Plaintiff Stafford, (*see* ECF No. 163), and  
2 Plaintiff Josten. (*See* ECF No. 166.) On June 10, 2020, Defendants moved *ex parte* to stay  
3 the consolidated actions in light of their then-pending appeal of the arbitration issue, (*see*  
4 ECF No. 183), and Judge Battaglia granted that request on July 30, 2020. (*See* ECF No.  
5 196.)

6 These consolidated actions were then transferred to the undersigned on October 6,  
7 2020, (*see* ECF No. 201), at which time the Court denied without prejudice the pending  
8 motion to compel arbitration as to Plaintiff Josten. (*See* ECF No. 202.) On May 21, 2021,  
9 the Ninth Circuit affirmed Judge Battaglia’s denial of Defendant Rite Aid Corporation’s  
10 motion to compel arbitration as to Plaintiff Stafford. *See Stafford v. Rite Aid Corp.*, 998  
11 F.3d 862 (9th Cir. 2021). The Court therefore lifted the stay on July 20, 2021. (*See* ECF  
12 No. 209.)

13 On August 3, 2021, however, the Parties jointly moved to stay these proceedings  
14 pending mediation. (*See* ECF No. 211.) These consolidated actions remained stayed  
15 pending mediation for over a year until the Court lifted the stay on September 1, 2022, (*see*  
16 ECF No. 227), following an “impasse” in the Parties’ settlement negotiations. (*See* ECF  
17 No. 226.)

18 On September 15, 2022, Rite Aid moved to stay these consolidated actions pending  
19 resolution of the Ninth Circuit’s appeal in *Washington v. CVS Pharmacy, Inc.*, No. 21-  
20 16162 (9th Cir. filed July 12, 2021). (*See generally* ECF No. 230.) The Court denied the  
21 motion on November 3, 2022, and directed the Parties to contact Magistrate Judge Allison  
22 H. Goddard’s chambers to obtain an updated scheduling order. (*See generally* ECF No.  
23 239.) Judge Goddard issued a Scheduling Order on November 15, 2022, requiring that any  
24 motion for judgment on the pleadings be filed by January 9, 2023. (*See* ECF No. 242.)  
25 This Motion followed on that deadline. (*See generally* ECF No. 266.)

26 ///

27 ///

28 ///

1 **LEGAL STANDARD**

2 A party may file a motion for judgment on the pleadings after that party files an  
3 answer. Fed. R. Civ. P. 12(c). A motion for judgment on the pleadings pursuant to Rule  
4 12(c) is functionally identical to a Rule 12(b)(6) motion and “the same standard of review  
5 applies to motions brought under either rule.” *Gregg v. Haw. Dep’t of Pub. Safety*, 870  
6 F.3d 883, 887 (9th Cir. 2017) (quotation omitted). The court must accept all factual  
7 allegations as true, draw reasonable inferences in favor of the non-moving party, and decide  
8 whether the allegations “plausibly suggest an entitlement to relief.” *Id.* (quoting *Ashcroft*  
9 *v. Iqbal*, 556 U.S. 662, 681 (2009)). Under this standard, “[a] pleading that offers ‘labels  
10 and conclusions’ or ‘a formulaic recitation of the elements of a cause of action will not do.’  
11 Nor does a complaint suffice if it tenders ‘naked assertion[s]’ devoid of ‘further factual  
12 enhancement.’” *Iqbal*, 556 U.S. at 678 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544,  
13 555, 557 (2007)). While a complaint need not contain detailed factual allegations, it “must  
14 contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible  
15 on its face.” *Id.* A claim is facially plausible when it “allows the court to draw the  
16 reasonable inference that the defendant is liable for the misconduct alleged.” *Id.*

17 “If a complaint is dismissed for failure to state a claim, leave to amend should be  
18 granted ‘unless the court determines that the allegation of other facts consistent with the  
19 challenged pleading could not possibly cure the deficiency.’” *DeSoto v. Yellow Freight*  
20 *Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992) (quoting *Schreiber Distrib. Co. v. Serv-Well*  
21 *Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986)); *see also Cafasso*, 637 F.3d at 1058  
22 (“Normally, when a viable case may be pled [under Rule 12(c)], a district court should  
23 freely grant leave to amend.” (citing *Lipton v. Pathogenesis Corp.*, 284 F.3d 1027, 1039  
24 (9th Cir. 2002))). “A district court does not err in denying leave to amend where the  
25 amendment would be futile.” *Id.* (citing *Reddy v. Litton Indus.*, 912 F.2d 291, 296 (9th Cir.  
26 1990), *cert. denied*, 502 U.S. 921 (1991)).

27 ///

28 ///

## ANALYSIS

1  
2 Through the instant Motion, Rite Aid seeks partial judgment on the pleadings as to  
3 “each of Plaintiffs’ claims seeking equitable relief fail because they cannot show the lack  
4 of an adequate legal remedy.” (*See Mot.* at 1.) The specific claims at issue are Plaintiff  
5 Stafford’s first cause of action for violation of the UCL, second cause of action for violation  
6 of the CLRA, and third cause of action for unjust enrichment, as well as Plaintiff Josten’s  
7 second cause of action for unjust enrichment, third and fourth causes of action for violation  
8 of the UCL, fifth cause of action for violation of the CLRA, and sixth cause of action for  
9 declaratory and injunctive relief. (*See id.*) Rite Aid’s Motion relies on two recent Ninth  
10 Circuit cases: *Sonner v. Premier Nutrition Corp.*, 971 F.3d 834, 844 (9th Cir. 2020), and  
11 *Guzman v. Polaris Indus. Inc.*, 49 F.4th 1308, 1312 (9th Cir. 2022). (*See ECF No.* 266-1  
12 (“Mem.”) at 3.)

13 In *Sonner*, the named plaintiff brought a class action for false advertising seeking  
14 restitution under the UCL and CLRA and damages under the CLRA. *See* 971 F.3d at  
15 837–38. Two months before trial, the named plaintiff sought to dismiss her \$32 million  
16 damages claim under the CLRA so that she could instead seek the same amount in  
17 restitution through a bench trial. *See id.* at 838. The district court granted her motion and  
18 vacated the jury trial, following which the defendant moved to dismiss on the grounds that  
19 the lead plaintiff could not establish that she lacked an adequate remedy at law. *See id.*  
20 The district court granted the defendant’s motion, finding that the plaintiff “could not  
21 proceed on her equitable claims for restitution in lieu of a claim for damages” because she  
22 had “failed to establish that she lacked an adequate legal remedy.” *See id.* The Ninth  
23 Circuit affirmed, concluding that the lead plaintiff was required to “establish that she  
24 lack[ed] an adequate remedy at law before securing equitable restitution for past harm  
25 under the UCL and CLRA, but that she had “fail[ed] to make such a showing” because  
26 “the operative complaint d[id] not allege that [she] lack[ed] an adequate legal remedy” and,  
27 “[m]ore importantly, . . . she s[ought] the same sum in equitable restitution as ‘a full refund  
28 of the purchase price’—\$32,000,000—as she requested in damages to compensate her for

1 the same past harm.” *See id.* at 844. The Ninth Circuit noted that the lead plaintiff had  
2 “fail[ed] to explain how the same amount of money for the exact same harm is inadequate  
3 or incomplete,” *see id.*, or “how damages are any less prompt, certain, or efficient than  
4 restitution.” *See id.* at 844 n.8.

5 Similarly, in *Guzman*, the named plaintiff brought a class action for false advertising  
6 alleging claims under the CLRA; UCL; and California’s False Advertising Law (“FAL”),  
7 Cal. Bus. & Prof. Code §§ 17500 *et seq.* *See* 49 F.4th at 1310. The district court dismissed  
8 the CLRA and FAL claims as time-barred, leaving only the UCL claims. *See id.* at 1311.  
9 Relying on *Sonner*, the district court granted summary judgment in the defendant’s favor  
10 on the UCL claim on the grounds that he did not have an inadequate remedy at law because  
11 he “still had an adequate legal remedy under the CLRA, even though his CLRA claim for  
12 damages had been dismissed as time-barred.” *See id.* On appeal, the Ninth Circuit  
13 “agree[d] with the district court that [the named plaintiff] could not bring his equitable  
14 UCL claim in federal court because he had an adequate legal remedy in his time-barred  
15 CLRA claim.”<sup>1</sup> *See id.*

16 According to Defendants, “[c]ourts in this district . . . have applied *Sonner* and  
17 *Guzman* to not only bar claims for restitution under the UCL and CLRA, but to also bar  
18 claims for injunctive relief under the UCL and CLRA as well as claims for restitution under  
19 the unjust enrichment doctrine.” (*See* Mem. at 3–4 (collecting cases).) Plaintiffs respond  
20 that “[n]umerous district courts have correctly recognized that *Sonner*’s holding applies to  
21 **securing** equitable remedies, not to **pleading** them.” (*See* Opp’n at 6–7 (emphasis in  
22 original) (collecting cases).)

23 Although the Court recognizes that there is a split among the district courts in this  
24 Circuit, as the Honorable Cynthia Bashant recently explained in *Fierro v. Capital One*,  
25

---

26  
27 <sup>1</sup> Nonetheless, the Ninth Circuit remanded the case on the grounds that it was error for the district court  
28 to dismiss the lead plaintiff’s UCL claim with prejudice because the dismissal was for lack of equitable  
jurisdiction and “a California court might allow [the named plaintiff] to pursue his UCL claim.” *See*  
*Guzman*, 49 F.4th at 1313–15.

1 N.A., No. 22-CV-00493-BAS-BLM, --- F. Supp. 3d ---, 2023 WL 1999482 (S.D. Cal.  
2 Feb. 14, 2023), “[m]uch ink has been spilled on this issue already, including in this  
3 District.” *See id.* at \*6. “In *Shay v. Apple Inc.*, the Honorable Gonzalo P. Curiel thoroughly  
4 examined *Sonner* and rebutted a plaintiff’s attempts to escape its reach.” *Id.* (citing *Shay*,  
5 No. 20-cv-1629-GPC(BLM), 2021 WL 1733385, at \*2–5 (S.D. Cal. May 3, 2021)). “Judge  
6 Curiel concluded ‘*Sonner* is binding on this Court’ and requires a UCL plaintiff to plausibly  
7 allege ‘an inadequate remedy at law’ before pursuing equitable relief in the form of  
8 restitution or an injunction.” *Id.* (quoting *Shay*, 2021 WL 1733385, at \*5) (citing *Goldstein*  
9 *v. Gen. Motors LLC*, No. 19-cv-1778-LL-AHG, 2022 WL 484995, at \*5 (S.D. Cal. Feb. 16,  
10 2022) (Lopez, J.); *Rivera v. Jeld-Wen, Inc.*, No. 21-cv-01816-AJB-AHG, 2022 WL  
11 3702934, at \*13 (S.D. Cal. Feb. 4, 2022) (Battaglia, J.)). Like Judge Bashant and the other  
12 judges in this District, “[t]he Court finds this reasoning persuasive and adopts it here.” *See*  
13 *id.* Accordingly, Plaintiffs’ prayer for equitable relief must plausibly allege “the  
14 inadequacy of a legal remedy.” *See, e.g., Sharma v. Volkswagen AG*, 524 F. Supp. 3d 891,  
15 907 (N.D. Cal. 2021).

16 Plaintiffs fail to do so in their Operative Complaints. As Defendants note, (*see* Mem.  
17 at 5; Reply at 4), and Plaintiffs conceded at oral argument, Stafford’s Third Amended  
18 Complaint does not even contain the phrase “inadequate remedy at law.” (*See generally*  
19 Stafford’s TAC.) Stafford’s claims for equitable relief are therefore facially deficient and  
20 warrant dismissal. *See, e.g., Sonner*, 971 F.3d 834 (noting that the plaintiff failed to  
21 establish that she lacked an adequate remedy at law because “the operative complaint does  
22 not allege that [the plaintiff] lacks an adequate legal remedy” (citing *O’Shea v. Littleton*,  
23 414 U.S. 488, 502 (1974))).

24 As for Josten, his Second Amended Complaint alleges only that “[l]egal remedies  
25 are inadequate to address the substantial likelihood of future harm Plaintiff will sustain in  
26 making purchases of PSC Generics,” explicitly conceding that “monetary damages will  
27 compensate Plaintiff for Rite Aid’s past misconduct.” (*See* Josten’s SAC ¶ 159.) Thus,  
28 with the exception of Josten’s claim for declaratory relief under the Declaratory Judgments



1 Act, *see, e.g., Steen v. Am. Nat'l Ins. Co.*, No. 2:20-cv-11226-ODW (SKx), 2022 WL  
 2 2358464, at \*4 (C.D. Cal. June 30, 2022), his equitable claims for alleged past harm must  
 3 be dismissed.

4 This leaves Josten's claims for future equitable relief. Defendants argue only that  
 5 Plaintiffs can suffer no future harm because Rite Aid discontinued the underlying Rx  
 6 Savings Program ("RSP") in October 2020. (*See* Mem. at 6 n.1; Reply at 9–10.) The Court  
 7 agrees with Plaintiffs that it may not consider that fact for purposes of the instant Motion.  
 8 (*See* Opp'n at 11 n.3.) Not only is that fact not "generally known" or capable of being  
 9 "accurately and readily determined from sources whose accuracy cannot reasonable be  
 10 questioned," *see* Fed. R. Evid. 201(b), but Defendants were not certain at the hearing that  
 11 documents establishing the discontinuation of the RSP had been produced to Plaintiffs in  
 12 this litigation. The Court therefore **DENIES** Defendants' Motion as to Josten's claims for  
 13 future equitable relief.

14 Plaintiffs raise one other argument in their Opposition that merits further  
 15 consideration,<sup>2</sup> namely, that dismissal of their equitable claims for relief is not warranted  
 16 if "the allegations sufficiently plead that restitution under the CLRA or UCL would be  
 17 more certain, prompt, or efficient than the monetary damages [they] seek[], but may  
 18 ultimately not attain." (*See* Opp'n at 9 (quoting *Coleman v. Mondelez Int'l Inc.*, 554 F.  
 19 Supp. 3d 1055, 1065 (C.D. Cal. 2021)). Specifically, Plaintiffs contend that their legal  
 20 claims are not equally prompt and certain as their equitable claims because their "legal  
 21 claims 'require proof of conduct beyond that which must be shown to establish liability  
 22 under the [equitable claims].'" (*See id.* (alteration in original) (quoting *Elgindy v. AGA*  
 23 *Serv. Co.*, No. 20-cv-06304-JST, 2021 WL 1176535, at \*15 (N.D. Cal. Mar. 29, 2021)).)

---

24  
 25  
 26 <sup>2</sup> The Court is unpersuaded by Plaintiffs' argument that Rite Aid should be precluded from bringing a  
 27 "successive" motion under Rule 12(g) or the law-of-the-case doctrine, (*see* Mem. at 12–16), because both  
 28 *Sonner* and *Guzman* were issued after the resolution of Rite Aid's last challenge to Plaintiffs' pleadings.  
 (*Cf.* 17cv1340 ECF No. 41 (September 28, 2018 Order denying Rite Aid's motion to dismiss Stafford's  
 Second Amended Complaint); 18cv152 ECF No. 38 (August 7, 2019 Order denying Rite Aid's motion to  
 dismiss Josten's First Amended Complaint).)

1 Plaintiffs argue, for example, that their “CLRA damages claim requires that Rite Aid  
 2 engaged in deceptive acts as defined by that particular statute.” (*See id.* (citing Stafford’s  
 3 TAC ¶ 146; Josten’s SAC ¶ 101).) But Plaintiffs’ cases—*Coleman* and *Elgindy*—“were  
 4 decided before *Guzman*, in which the Ninth Circuit stated that despite the plaintiff’s UCL  
 5 and CLRA claims not being perfectly interchangeable due to the different statutes of  
 6 limitations, there was still no support for the plaintiff’s argument that the CLRA claim did  
 7 not provide an adequate legal remedy.”<sup>3</sup> *See Clevenger v. Welch Foods Inc.*, No. SACV-  
 8 20-01859-CJC-JDEX, 2022 WL 18228288, at \*5 (C.D. Cal. Dec. 14, 2022) (citing  
 9 *Guzman*, 49 F.4th at 1313 n.2); *see also Zeller v. Optavia, LLC*, No. 22-CV-434-DMS-  
 10 MSB, 2022 WL 17858032, at \*7 (S.D. Cal. Dec. 22, 2022) (“Plaintiffs’ arguments that  
 11 equitable claims provide greater remedy and are easier to prove does not make their  
 12 equitable claims proper.”). In any event, Plaintiffs have made no allegations that this is the  
 13 type of case in which “the process of seeking damages would create . . . complications that  
 14 make that remedy inadequate.” *Cf. Sharma*, 524 F. Supp. 3d at 908.

15 Because Stafford fails plausibly to allege that he lacks an adequate remedy at law,  
 16 the Court **GRANTS** Defendants’ Motion and **DISMISSES** his claims for equitable relief  
 17 in their entirety. As for Josten, the Court **GRANTS IN PART AND DENIES IN PART**  
 18 Defendants’ Motion consistent with the above analysis. “It is hard to fathom how  
 19 Plaintiff[s] can correct this deficiency considering the Court has greenlit several  
 20 substantive claims that provide for damages and other relief. Nonetheless, because the  
 21 Court has not previously addressed this point, the Court **GRANTS** Plaintiff[s] leave to  
 22 amend.” *See Fierro*, 2023 WL 1999482, at \*7 (emphasis added).

### 23 CONCLUSION

24 In light of the foregoing, the Court **GRANTS IN PART AND DENIES IN PART**  
 25 Defendant’s Motion for Partial Judgment on the Pleadings (ECF No. 266). Specifically,  
 26 \_\_\_\_\_

27 <sup>3</sup> *Guzman*’s holding on this point also disposes of Plaintiffs’ argument premised on *Rivera v. Jeld-Wen*,  
 28 *Inc.*, No. 21-cv-1816-AJB-AHG, 2022 WL 3219411, at \*5 (S.D. Cal. Aug. 9, 2022), (*see Opp’n* at 13),  
 which was decided before the Ninth Circuit issued its decision in *Guzman* on September 29, 2022.

1 the Court **GRANTS** the Motion and **DISMISSES WITHOUT PREJUDICE** Plaintiff  
2 Stafford’s first cause of action for violation of the UCL, second cause of action for violation  
3 of the CLRA, and third cause of action for unjust enrichment and, solely to the extent they  
4 are predicated on past harms, Plaintiff Josten’s second cause of action for unjust  
5 enrichment, third and fourth causes of action for violation of the UCL, fifth cause of action  
6 for violation of the CLRA, and sixth cause of action for injunctive relief. The Motion is  
7 otherwise **DENIED**. The Court **GRANTS** Plaintiffs leave to file amended complaints  
8 remedying the deficiencies identified herein within fourteen (14) days of the electronic  
9 docketing of this Order. *Should Plaintiffs decline to file further amended complaints, this*  
10 *action shall proceed as to their surviving claims.*

11 **IT IS SO ORDERED.**

12 Dated: April 10, 2023



Honorable Todd W. Robinson  
United States District Judge

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28