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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JESSE HELEMS, on behalf of all those
similarly situated,

Plaintiff,

v.

GAME TIME SUPPLEMENTS, LLC dba
RSP NUTRITION, a Florida corporation,

Defendant.

Case No. 3:22-cv-01122-L-AHG

**ORDER GRANTING DEFENDANT’S
MOTION TO DISMISS WITH LEAVE
TO AMEND [ECF NO. 10]**

Pending before the Court in this putative class action alleging deceptive advertising practices is Defendant Game Time Supplements, LLC.’s, Motion to Dismiss the Complaint. [ECF No. 10]. Plaintiff has filed a Response in Opposition. [ECF No. 11.] Defendant has filed a Reply. [ECF No. 12.] The matter is submitted on the briefs without oral argument. *See* Civ. L. R. 7.1(d)(1). For the reasons stated below, Defendant’s Motion is GRANTED.

1 I. FACTUAL BACKGROUND¹

2 Plaintiff Jesse Helems ordered RSP Nutrition’s AminoLean Pre-Workout powder
3 (“AminoLean”) blackberry pomegranate flavor on or about May 13, 2022. (Compl. at ¶
4 6). Plaintiff purchased AminoLean in order to maintain the substantial weight loss he
5 achieved in 2016 when he dropped 160 pounds out of 300 through cardio-based fitness
6 and careful tracking of his daily caloric intake.

7
8 Defendant Game Time Supplements, LLC dba RSP Nutrition (“Defendant” or
9 “RSP Nutrition”), is a Florida corporation with its principal place of business in that
10 state. RSP Nutrition manufactures “pre-workout” nutritional powders including
11 AminoLean. These dietary supplements are meant to boost energy and encourage muscle
12 growth, workout recovery, and weight loss. RSP Nutrition states on the front and back
13 labels of AminoLean, and in advertising materials, that these Products contain zero
14 calories per serving.

15 Plaintiff claims that AminoLean contains between 20 to 30 calories per serving, as
16 measured by all the relevant methods that the federal Food and Drug Administration
17 (“FDA”) uses to estimate caloric content, therefore, Defendant makes deceptive
18 statements and omits material relevant information from its labels and advertising
19 material in order to deceive consumers who are seeking low-calorie products for weight
20 loss and maintenance. Plaintiff contends that RSP Nutrition’s zero-calorie
21 representations are thus in direct violation of FDA guidance for labeling calories under
22 21 C.F.R. § 101.9(c) and state law. Through this action, Helems seeks to represent a
23 class of individuals who purchased AminoLean and seeks damages, injunctive relief,
24 and attorneys’ fees and costs.

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28 ¹ The majority of the facts are taken from the Complaint and for purposes of ruling on the Defendant’s Motion to Dismiss, the Court assumes the truth of all plausible non-conclusory allegations in the Complaint. *Grabowski v. Ariz. Bd. Of Regents*, 69 F.4th 1110 (9th Cir. 2023).

1 II. PROCEDURAL BACKGROUND

2 On August 1, 2022, Plaintiff Jesse Helems (“Helems”) filed the Complaint in this
3 putative class action alleging the following claims: (1) violation of the Florida Deceptive
4 and Unfair Trade Practice Act (“FDUTPA”) Fla. Stat. 501.204, et seq. (nationwide
5 class); (2) violation of the “unfair” prong of California’s Unfair Competition Law
6 (“UCL”), Bus. & Prof. Code § 17200, et seq. (California subclass); (3) violation of the
7 UCL’s “fraudulent” prong (California subclass); (4) violation of the UCL’s “unlawful”
8 prong (California subclass); (5) violation of California’s False Advertising Law
9 (“FAL”), Bus. & Prof. Code § 17500, et seq. (California subclass); (6) violation of the
10 Consumer Legal Remedies Act, Cal. Civ. Code § 1750, et seq. (“CLRA”) (California
11 subclass); and (7) unjust enrichment. (Compl. [ECF No. 1.]
12

13 Defendant Game Time Supplements (“Game Time”) filed the present Motion to
14 Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) on October 14, 2022. (Mot.
15 [ECF No. 10.]) On October 31, 2022, Plaintiff filed a Response in Opposition to the
16 Motion. (Oppo. [ECF No. 11.]) On November 7, 2022, Defendant filed a Reply. (Reply
17 [ECF No. 12.]) On July 17, 2023, Defendant filed a Supplemental Document citing a
18 recently decided case. (Supp. Doc. [ECF No. 13.]) On September 1, 2023, Defendant
19 filed a Notice of Supplemental Authority. (Supp. Auth. [ECF No. 14.]
20

21 III. LEGAL STANDARD

22 The court must dismiss a cause of action for failure to state a claim upon which
23 relief can be granted. Fed. R. Civ. P. 12(b)(6). A motion to dismiss under Rule 12(b)(6)
24 tests the complaint’s sufficiency. *See N. Star Int’l v. Ariz. Corp. Comm’n.*, 720 F.2d 578,
25 581 (9th Cir. 1983). “To survive a motion to dismiss, a complaint must contain sufficient
26 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’”
27 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “A claim has facial plausibility when the
28 plaintiff pleads factual content that allows the court to draw the reasonable inference that
the defendant is liable for the misconduct alleged.” *Id.* The court must assume the truth

1 of all factual allegations and “construe them in the light most favorable to [the nonmoving
2 party].” *Gompper v. VISX, Inc.*, 298 F.3d 893, 895 (9th Cir. 2002); *see also Walleri v.*
3 *Fed. Home Loan Bank of Seattle*, 83 F.3d 1575, 1580 (9th Cir. 1996). A complaint may
4 be dismissed as a matter of law either for lack of a cognizable legal theory or for
5 insufficient facts under a cognizable theory. *Robertson v. Dean Witter Reynolds, Inc.*, 749
6 F.2d 530, 534 (9th Cir. 1984).

7 As the Supreme Court explained, “[w]hile a complaint attacked by a Rule 12(b)(6)
8 motion to dismiss does not need detailed factual allegations, a plaintiff’s obligation to
9 provide the ‘grounds’ of his ‘entitlement to relief’ requires more than labels and
10 conclusions, and a formulaic recitation of the elements of a cause of action will not do.”
11 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citations and
12 quotation marks omitted). Instead, the allegations in the complaint “must be enough to
13 raise a right to relief above the speculative level.” *Id.*

14 IV. DISCUSSION

15 A. Standing

16
17 Under Article III of the U.S. Constitution, a court may only adjudicate “cases”
18 and “controversies.” *Davidson v. Kimberley-Clark Corp.*, 889 F.3d 956, 967 (9th Cir.
19 20187). Standing is “an essential and unchanging part of the case-or-controversy
20 requirement of Article III.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). A
21 plaintiff must demonstrate injury-in-fact, causation, and redressability to establish
22 standing. *Id.* at 560-61. An injury-in-fact must be “concrete, particularized, and actual
23 or imminent; fairly traceable to the challenged action; and redressable by a favorable
24 ruling.” *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 149 (2010). A plaintiff
25 must demonstrate that he is likely to suffer future injury from defendant’s conduct to
26 show standing to pursue injunctive relief. *City of Los Angeles v. Lyons*, 461 U.S. 95, 105
27 (1983). A “threatened injury must be certainly impending to constitute injury in fact,
28

1 and ...allegations of possible future injury are not sufficient.” *Clapper v. Amnesty Int’l*
2 *USA*, 568 U.S. 398, 409 (2013)(internal citations omitted).

3 Defendant argues that the Complaint does not include any assertion that Plaintiff
4 intends to purchase AminoLean in the future therefore he has not established a threat of
5 actual or imminent harm to demonstrate standing. (Mot. at 6). Because Plaintiff now
6 knows that AminoLean has 5 grams of amino acids per serving, which purportedly
7 means it is not zero calorie per serving, an injunction would serve no meaningful purpose
8 as to Plaintiff. (*Id.*)

9
10 In response, Plaintiff claims that he has standing and relies on *Davidson* for the
11 proposition that a consumer who was previously deceived by false advertising may still
12 have standing to pursue an injunction even after the consumer knows that the advertising
13 was false at the time of purchase because the consumer may suffer a future harm. (Oppo.
14 at 15).

15 In the present case Plaintiff has not asserted an ongoing interest or intention to
16 purchase AminoLean in the future. As a result, Plaintiff has failed to establish standing
17 for his injunctive relief claim. *See also, Scheibe v. Performance Enhancing Supplements,*
18 *LLC.*, No. 23-cv-0219-H-DDL, 2023 WL 3829694, at *4 (S.D. Cal. June 5, 2023)(no
19 standing because plaintiff failed to allege intention to purchase products again.) The
20 Court finds *Davidson* distinguishable because there the plaintiff alleged that she had the
21 desire to buy flushable wipes manufactured by the defendant again but only if it was
22 possible to ensure the wipes were truly flushable. *Id.* at 963. The *Davidson* Court relied
23 upon this representation by plaintiff, and determined that:

24 We are required at this stage of the proceedings to presume the truth of Davidson's
25 allegations and to construe all of the allegations in her favor. (Internal citations
26 omitted) Though we recognize it is a close question, based on the FAC's
27 allegations, we hold that Davidson adequately alleged that she faces an imminent
28 or actual threat of future harm due to Kimberly–Clark's false advertising. Davidson
has alleged that she desires to purchase Kimberly–Clark's flushable wipes.”

1 *Id.* at 971 (citations omitted). Because Plaintiff has not alleged that he would like to
2 purchase AminoLean again, he has failed to allege that he faces an imminent or actual
3 threat of future harm due to Defendant’s false advertising. Accordingly, Defendant’s
4 Motion to Dismiss is GRANTED on the issue of standing.

5 *B. Federal Law Preemption*

6
7 Under the Federal Food, Drug and Cosmetics Act (“FDCA”), the nutrition
8 labeling of food must provide the total number of calories per serving, if any. 21 U.S.C.
9 § 343(q)(1)(C). “To avoid a patchwork quilt of conflicting state labeling laws, the
10 FDCA includes a preemption provision that establishes a national and uniform standard
11 for certain labeling statements.” *Greenberg v. Target Corp.*, 985 F.3d 650, 655 (9th Cir.
12 2021). “Federal law preempts state law to the extent that state law imposes a
13 requirement on nutrition content claims governed by § 343(r)(1) that are not identical to
14 the requirements set forth in § 343(r) generally.” *Fernandez v. Atkins Nutritionals, Inc.*,
15 17-cv-1628-GPC-WVG, 2018 WL 280028 *5 (S.D. Cal Jan. 3, 2018); *Burke v. Weight*
16 *Watchers*, 983 F.Supp.2d 478, 483 (D.New Jersey 2013)(quoting 21 U.S.C. § 343-
17 1(a)(4)). This express preemption provision applies unless “the state law seeks to impose
18 liability consistent with Section 343(q).” *Id.*

19 Regulations of the U.S. Food and Drug Agency (“FDA”) 21 C.F.R. §
20 101.9(c)(i)(1) permit the use of any of “Five Methods” of determining the caloric content
21 of foods. The actual calories per serving of the Product cannot exceed 20 percent of the
22 label claim per § 101.9(g)(5). The “Five Methods” include (1) the Atwater method; (2)
23 a method that assigns 4, 4, and 9 calories per gram for protein, total carbohydrate, and
24 total fat, respectively; (3) a method that assigns 4, 4 and 9 calories per gram for protein,
25 total carbohydrate less the amount of insoluble dietary fiber, and total fat, respectively;
26 (4) data for specific food factors for particular foods or ingredients approved by the Food
27 and Drug Administration (FDA); or (5) bomb calorimetry data. 21 C.F.R. § 101.9(c).
28 Section 101.9(c) provides no restrictions or limitations on what method a company may

1 choose to use for its particular products. *See* 21 U.S.C. § 101.9(c). Under any of the Five
2 Methods, any amount less than five calories per serving may be considered zero calories.
3 *Id.* § 101.9(c)(1)(ii). A “safe-harbor” provision also affords companies a 20% margin of
4 error on the total number of calories measured by any of the Five Methods. 21 C.F.R. §
5 101.9(g)(5).

6 Defendant makes two arguments in support of preemption. First, Defendant
7 contends that Plaintiff has not alleged well-pleaded factual content establishing
8 mislabeling under all of the Five Methods, but instead only asserts that counsel had a
9 laboratory conduct bomb calorimetry analysis which is just one of the Five Methods.
10 (Mot. at 10). Second, Defendant argues that the only way the 4, 4, 9 method could result
11 in the calories per serving alleged by Plaintiff would be if Plaintiff is counting the
12 individual amino acids as “protein,” even though the FDA mandates that such amino
13 acids shall not be treated as protein. (*Id.* at 10-11).

14 Plaintiff responds that he has sufficiently alleged in the Complaint that
15 AminoLean fails to satisfy all of the FDA approved methods for calculating caloric
16 content by claiming “[u]nder any of the FDA’s relevant Five Methods, the Product is
17 mislabelled [sic]...” (Oppo. at 13). He further argues that his claims regarding the
18 website advertising are not preempted because the NLEA’s preemption provision
19 applies only to labeling and not to marketing statements made elsewhere. (*Id.* at 7).
20 Regarding calories from amino acids, Plaintiff contends that Defendant misrepresented
21 the calories in AminoLean that are associated with amino acids. (Oppo. at 9-10).
22 According to Plaintiff, a label must show calories from amino acids along with other
23 ingredients, but here, Defendant failed to include that information on the labeling of
24 AminoLean. (*Id.* at 12).

25
26 While a plaintiff is generally not required to submit evidence to support
27 allegations in a complaint, those allegations must be at least plausible to survive a motion
28 to dismiss. Here, Plaintiff plausibly alleges that he had a laboratory conduct bomb

1 calorimetry analysis on AminoLean and those results indicated that AminoLean
2 contained about 30 calories per serving and about 2,140 calories in the entire container.
3 (Compl. ¶¶ 30-31). However, bomb calorimetry is only one of the approved Five
4 Methods. Plaintiff argues he has explicitly pleaded that he analyzed and evaluated
5 AminoLean in accordance with each of the Five Methods identified by the FDA
6 regulations and has determined that every result showed “that AminoLean exceeds the
7 caloric value on the label by more than 20 percent.” (Oppo. at 13). However, in the
8 Complaint, Plaintiff states only that “Under any of the FDA’s relevant Five Methods,
9 the Product is mislabelled [sic]. . .” (Compl. at § 34). This conclusory statement that
10 AminoLean is mislabeled under any of the Five Methods without more is insufficient
11 under *Iqbal*. There is no indication that AminoLean was subjected to testing under all of
12 the methods, but instead, Plaintiff rests his allegations on “[t]hreadbare recitals of the
13 elements of a cause of action, supported by mere conclusory statements” and asks the
14 Court to assume the products are mislabeled under all Five Methods. *Iqbal*, 556 U.S. at
15 678.

16 Plaintiff’s reliance on *Metague v. Woodbolt Distribution, LLC.*, No. 8:20-cv-
17 02186-PX, 2021 WL 2457153, at *1 (D.Md. June 16, 2021) is unavailing. First, *Metague*
18 is not binding on this Court because it is a decision from the United States District Court
19 of Maryland.² Second, the plaintiff in *Metague* alleged that he conducted independent
20 research on the product, XTEND, using each of the five FDA methods applicable to
21 measuring caloric content which revealed that XTEND exceeded the value represented
22 by greater than 20% making it “misbranded.” *Id.* at *2. Unlike in *Metague*, Plaintiff only
23 alleged only that he conducted the bomb calorimetry method on AminoLean.³
24

25 ² District court opinions are not binding on this Court. *See Camreta v. Green*, 563 U.S.
26 692, 709 n.7 (2011) (“A decision of a federal district court judge is not binding precedent
27 in either a different judicial district, the same judicial district, or even upon the same judge
in a different case.”). To the extent Defendant cites out-of-circuit appellate authorities,
the Court finds them unpersuasive in the context of this case.

28 ³ Because the Court finds that the Plaintiff’s caloric theory has not been pleaded with
sufficiency, it does not reach Defendant’s alternative arguments.

1 Plaintiff has failed to plead a sufficient factual basis for his claim that AminoLean
2 is mislabeled under all of the approved FDA methods. Accordingly, the Court GRANTS
3 Defendant’s Motion to Dismiss Plaintiff’s caloric labeling misrepresentation claim with
4 leave to amend.

5 *C. Equitable Relief*
6

7 “It is a basic doctrine of equity jurisprudence that courts of equity should not act
8 ... when the moving party has an adequate remedy at law.” *Mort v. United States*, 86
9 F.3d 890, 892 (9th Cir. 1996). A plaintiff “must establish that she lacks an adequate
10 remedy at law before securing equitable restitution for past harm under the UCL and
11 CLRA.” *Sonner v. Premier Nutrition Corp.*, 971 F.3d 834, 844 (9th Cir. 2020).

12 Defendant argues that Plaintiff’s UCL and FAL claims (Claims 2 through 5), the
13 unjust enrichment claims (Claim 7), and Plaintiff’s claims for equitable relief under the
14 CLRA and FDUTPA should be dismissed because Plaintiff has not alleged any set of
15 facts which, if true, would show that an award of damages would not be an adequate
16 remedy. (Mot. at 14). The CLRA and FDUTPA claims for actual damages are based on
17 exactly the same alleged conduct as all of Plaintiff’s claims for restitution and injunctive
18 relief but Plaintiff fails to plead any facts which show that an award of damages would
19 be inadequate. (*Id.*) Plaintiff counters that he has pleaded alternative relief under the
20 UCL and FAL if he lacks an inadequate remedy at law. (Oppo. at 16).
21

22 Here, Plaintiff seeks to recover equitable remedies under the UCL and FAL, and
23 actual damages along with equitable remedies under the CLRA and the FDUTPA.
24 However, he has not alleged that damages are inadequate. Instead, he argues that he is
25 pursuing alternative relief *if* he lacks an adequate remedy at law, but under *Sonner* a
26 plaintiff at a minimum must state they have *no* adequate remedy at law, even at the
27 motion to dismiss stage. See *Sonner*, 971 F.3d at 844; *McKinney v. Corsair Gaming,*
28 *Inc.*, No. 22-CV-00312-CRB, 2022 WL 2820097, at *10 (N.D. Cal. July 19, 2022).

1 Because Plaintiff failed to assert that he had no adequate remedy at law, the Court
2 GRANTS Defendant’s Motion to Dismiss on Plaintiff’s equitable restitution claims
3 under the UCL, CLRA, FAL and FDUTPA.

4 *D. FDUTPA Claim*

5
6 FDUTPA provides a cause of action for “[u]nfair methods of competition,
7 unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct
8 of any trade or commerce[.]” Fla. Stat. § 501.204(1) (alterations added). Florida
9 appellate courts have limited the extraterritorial reach of the FDUTPA. *See Hutson v.*
10 *Rexall Sundown, Inc.*, 837 So.2d 1090, 1094 (Fla. Dist. Ct. App. 2003) (holding that the
11 FDUTPA did not protect nonresident customers of products sourced from Florida).

12 Defendant argues that the Court should dismiss Plaintiff’s FDUTPA claim
13 because he alleges his purchase took place in California, not Florida, and the FDUTPA
14 does not apply extraterritorially to purchases made in California. (Mot. at 15). In
15 response, Plaintiff argues that the plain language of the statute does not confine the
16 provisions of FDUTPA to commercial transactions involving only Florida residents,
17 citing *Millenium*, 761 So.2d at 1261.

18
19 In the Complaint, Plaintiff asserts that he is a citizen of California who purchased
20 AminoLean from Defendant, a Florida corporation, using the third-party website
21 Amazon.com and that Defendant advertises the product through marketing, sells it to
22 consumers residing in this district through their own website and through third-party e-
23 commerce sites, and ships the products to consumers in this district. (Compl. at ¶16). In
24 *Hutson*, as in the present case, the alleged deceptive labeling was included on purchases
25 made nationwide, therefore, the damage was arguably done at the site of the sale.
26 *Hutson*, 837 So.2nd 1094. Because the alleged damage was done in California, the
27 reasoning in *Hutson* is controlling. Accordingly, the Court GRANTS Defendant’s
28 motion on this ground.

1 *E. Unjust Enrichment*

2 “The equitable doctrine of unjust enrichment ‘is based on the idea that “one person
3 should not be permitted unjustly to enrich himself at the expense of another, but should
4 be required to make restitution of or for property or benefits received, retained, or
5 appropriated, where it is just and equitable that such restitution be made, and where such
6 action involves no violation or frustration of law or opposition to public policy, either
7 directly or indirectly.” ’ ’ *City of Oakland v. Oakland Raiders*, 83 Cal.App.5th 458, 478
8 (2022). There is no unjust enrichment cause of action in California, instead there is only
9 a claim for restitution. *DeHavilland v. FX Networks, LLC.*, 21 Cal.App.5th 845, 870 (Cal.
10 Ct. App. Mar. 26, 2018). When a plaintiff alleges unjust enrichment, a court may
11 “construe the cause of action as a quasi-contract claim seeking restitution.” *Rutherford*
12 *Holdings, LLC v. Plaza Del Rey*, 223 Cal.App.4th 221 (2014). However, restitution
13 based on quasi-contract is an equitable remedy, subject to the same requirements as other
14 equitable remedies. See generally, *Oakland Raiders*, 83 Cal.App.5th at 478.
15

16 According to Defendant, Plaintiff’s unjust enrichment claim fails as a matter of
17 law because Plaintiff does not allege facts establishing his legal remedies are inadequate,
18 and because California does not recognize a separate cause of action for unjust
19 enrichment. (Mot. at 15). Plaintiff argues in response that the Ninth Circuit has
20 recognized a claim for unjust enrichment can be construed as a quasi-contract claim
21 seeking restitution. (Oppo. at 19).

22 Whether Plaintiff titles the cause of action “unjust enrichment” or “quasi-
23 contract” it remains a cause of action for equitable relief, and as noted above, he has not
24 alleged that his legal remedies are inadequate, therefore, Plaintiff cannot pursue an
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1 equitable claim. For this reason, Defendant’s Motion to Dismiss the unjust enrichment
2 claim is GRANTED.⁴

3
4 *F. CLRA, UCL, and FAL Claims- Actual Reliance*

5 “In alleging fraud ... a party must state with particularity the circumstances
6 constituting fraud.” Fed. R. Civ. P. 9(b). To meet Rule 9(b) particularity requirement “a
7 pleading must identify the who, what, when, where, and how of the misconduct charged,
8 as well as what is false or misleading about the purportedly fraudulent statement, and
9 why it is false.” *Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047,
10 1055 (9th Cir. 2011) (internal quotation marks and alterations omitted). Furthermore,
11 claims sounding in fraud must also meet *Iqbal's* plausibility standard. *Id.* “Rule 9(b)'s
12 particularity requirement applies to state-law causes of action.” *Vess v. Ciba-Geigy*
13 *Corp. USA*, 317 F.3d 1097, 1103–04 (9th Cir. 2003).

14
15 Defendant argues that Plaintiff’s CLRA, UCL, and FAL claims require actual
16 reliance but Plaintiff has not alleged specific facts establishing he actually relied on the
17 zero calorie claim in deciding to purchase AminoLean. (Mot. at 16). Plaintiff counters
18 that he sufficiently alleged in the Complaint that he relies on supplements’ label claims,
19 he understood Defendant’s statements to mean that AminoLean contained zero calories
20 as represented and he reasonably relied on those statements such that he would not have
21 purchased the products otherwise. (Oppo. at 19-20).

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23
24 ⁴ Defendant contends that the Court should dismiss the class allegations as to this claim
25 because individualized determinations on liability are required making it unsuitable for
26 class-wide resolution. (Mot. at 17-18). In response, Plaintiff contends that Defendant has
27 not provided analysis of the variations in the law of unjust enrichment of the states that
28 would require individualized determinations among class members. (Oppo. at 21).
Moreover, Plaintiff argues that Defendant’s challenge is better suited for the class
certification stage making it premature at this time. (*Id.* at 22).

In light of the finding that the unjust enrichment claim is denied, the Court need not reach Defendant’s request to dismiss the claim on these grounds.

1 Because Plaintiff's CLRA, FAL, and UCL causes of action are all grounded in
2 fraud, the Complaint must satisfy the traditional plausibility standard of Rules 8(a) and
3 12(b)(6), as well as the heightened pleading requirements of Rule 9(b). *Kearns*, 567 F.3d
4 at 1125 ("Rule 9(b)'s heightened pleading standards apply to claims for violations of the
5 CLRA and UCL."); *Vess*, 317 F.3d at 1103–04. Plaintiff has not sufficiently alleged
6 reliance to support these claims. Plaintiff makes only general statements that consumers
7 rely on labeling statements. In the Complaint he alleges "consumers including Plaintiff
8 would reasonably understand Defendant's statements to mean that each Products[sic]
9 contained zero calories as advertised and represented" (Compl. at ¶ 45) and that
10 "[c]onsumers including Plaintiff would reasonably rely on Defendant's statements such
11 that they would not have purchased the Products from Defendant if the truth about the
12 Products caloric content were known, or would have only been willing to pay a
13 substantially reduced price for the Products had they known that Defendant's
14 representations were false and misleading" (*Id.* at ¶ 46). Plaintiff also contends that
15 "[c]onsumers including Plaintiff especially rely on the 'zero calorie' label claims made
16 by food product manufacturers such as RSP nutrition, as they cannot confirm or disprove
17 those claims simply by viewing or even consuming the Product." (*Id.* at ¶ 47).

18
19 Nowhere does Plaintiff state that he read the label on AminoLean and relied upon
20 the representations of zero-calories when deciding to purchase the product. The lack of
21 particularized factual allegations that he actually relied on the caloric statements prior to
22 purchase is insufficient to meet the heightened pleading standard for a fraud claim under
23 CLRA, UCL, or FAL. *Cafasso*, 637 F.3d at 1055. Defendant's Motion to Dismiss is
24 GRANTED on these claims.

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1 *V. Conclusion and Order*

2 For the foregoing reasons, the Court **GRANTS** the Motion to Dismiss without
3 prejudice and with leave to amend.
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5 **IT IS SO ORDERED**

6 Dated: September 14, 2023

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8 Hon. M. James Lorenz
9 United States District Judge
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