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

JACOB SCHEIBE, *individually and on behalf of all others similarly situated*,
Plaintiff,
v.
LIVWELL PRODUCTS, LLC d/b/a
Adapted Nutrition, a Maryland limited liability company,
Defendant.

Case No. 23-cv-216-MMA-BLM

**ORDER GRANTING DEFENDANT’S
MOTION TO DISMISS**

[Doc. No. 10]

On February 6, 2023, Jacob Scheibe (“Plaintiff”), on behalf of himself and all others similarly situated, filed a putative class action Complaint against Defendant Livwell Products, LLC d/b/a Adapted Nutrition (“Defendant”). Doc. No. 1 (“Compl.”). On March 6, 2023, Plaintiff filed a First Amended Complaint. Doc. No. 9 (“FAC”). Defendant now moves to dismiss Plaintiff’s request for equitable relief. Doc. No. 10. Plaintiff filed an opposition, to which Defendant replied. Doc. Nos. 11, 12. The Court found the matter suitable for determination on the papers and without oral argument

1 pursuant to Federal Rule of Civil Procedure 78(b) and Civil Local Rule 7.1.d.1. *See* Doc.
2 No. 13. For the reasons set forth below, the Court **GRANTS** Defendant’s motion to
3 dismiss.

4 **I. BACKGROUND**¹

5 The factual allegations as initially alleged in the Complaint remain largely
6 unchanged. Defendant sells and manufactures a dietary supplement called Keto K1000
7 powder, which comes in a variety of flavors (the “Products”). FAC. ¶ 20. On October
8 18, 2022, Plaintiff purchased the Products’ watermelon, orange, lemonade, and raspberry
9 flavors from Amazon.com. *Id.* ¶ 18. The front label of the Products state that they
10 contain “Nothing Artificial.” *Id.* ¶ 22. According to Plaintiff, he carefully reviews
11 dietary supplement labels, including the Products’ label, because he prefers to consume
12 only products that contain all-natural ingredients and flavorings. *Id.* ¶ 19. However,
13 Plaintiff alleges that the Products’ labelling claim is false because the Products are
14 flavored using an artificial flavoring agent, DL malic acid. *Id.* ¶ 24. Plaintiff contends
15 that he would not have purchased the Products, or would have paid a substantially
16 reduced price, had he known that the “Nothing Artificial” representation was false. *Id.*
17 ¶ 49.

18 Plaintiff originally pleaded eight claims: (1) violation of Maryland’s Consumer
19 Protection Act (“MCPA”), Md. Code Com. Law § 13-101 *et seq.*; (2–4) violation of
20 California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code § 17200 *et seq.*;
21 (5) violation of California’s False Advertising Law (“FAL”), Cal. Bus. & Prof. Code
22 § 17500 *et seq.*; (6) violation of California’s Consumer Legal Remedies Act (“CLRA”),
23 Cal. Civ. Code § 1750 *et seq.*; (7) unjust enrichment; and (8) breach of express warranty.
24 Compl. ¶¶ 49 at 14–70 at 22.

27 ¹ Reviewing Defendant’s motion to dismiss, the Court accepts as true all facts alleged in the Complaint
28 and construes them in the light most favorable to Plaintiff. *See Snyder & Assocs. Acquisitions LLC v.*
United States, 859 F.3d 1152, 1157 (9th Cir. 2017).

1 In ruling on Defendant’s motion to dismiss the Complaint, the Court dismissed
2 Plaintiff’s MCPA and unjust enrichment claims, as well as his request for equitable relief.
3 See Doc. No. 8 at 17. Additionally, the Court dismissed all of Plaintiff’s claims to the
4 extent they were premised upon the DL malic acid naming theory. See *id.*

5 By way of his First Amended Complaint, Plaintiff asserts three causes of action:
6 (1) violation of the CLRA; (2) unjust enrichment; and (3) breach of express warranty. He
7 also reasserts his request for equitable relief.

8 **II. LEGAL STANDARD**

9 “A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) for failure to
10 state a claim upon which relief can be granted ‘tests the legal sufficiency of a claim.’”
11 *Conservation Force v. Salazar*, 646 F.3d 1240, 1241–42 (9th Cir. 2011) (quoting
12 *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001)). “A district court’s dismissal for
13 failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) is proper if there is
14 a ‘lack of a cognizable legal theory or the absence of sufficient facts alleged under a
15 cognizable legal theory.’” *Id.* at 1242 (quoting *Balistreri v. Pacifica Police Dep’t*, 901
16 F.2d 696, 699 (9th Cir. 1988)).

17 “To survive a motion to dismiss, a complaint must contain sufficient factual
18 matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.*
19 (quoting *Twombly*, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff
20 pleads factual content that allows the court to draw the reasonable inference that the
21 defendant is liable for the misconduct alleged.” *Id.* (citing *Twombly*, 550 U.S. at 556).
22 “[W]here the well-pleaded facts do not permit the court to infer more than the mere
23 possibility of misconduct, the complaint has alleged—but it has not ‘show[n]’—‘that the
24 pleader is entitled to relief.’” *Id.* at 679 (second alteration in original) (quoting Fed. R.
25 Civ. P. 8(a)(2)).

26 “If a complaint is dismissed for failure to state a claim, leave to amend should be
27 granted ‘unless the court determines that the allegation of other facts consistent with the
28 challenged pleading could not possibly cure the deficiency.’” *DeSoto v. Yellow Freight*

1 *Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992) (quoting *Schreiber Distrib. Co. v. Serv-Well*
2 *Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986)). “A district court does not err in
3 denying leave to amend where the amendment would be futile.” *Id.* (citing *Reddy v.*
4 *Litton Indus.*, 912 F.2d 291, 296 (9th Cir. 1990), *cert. denied*, 502 U.S. 921 (1991)).

5 **III. DISCUSSION**

6 Defendant’s motion to dismiss solely challenges Plaintiff’s reassertion of equitable
7 relief as a remedy for his claims. In connection with his CLRA claim, Plaintiff seeks
8 “injunctive relief, disgorgement, and restitution,” *see* FAC ¶ 77, in addition to monetary
9 damages, *see id.* ¶ 79. Plaintiff also seeks disgorgement and restitution in connection
10 with his unjust enrichment claim. *See id.* ¶ 87. There is no specific demand for relief
11 identified underneath Plaintiff’s claim for breach of express warranty. *Se id.* at 17–18.
12 But generally speaking, Plaintiff prays for an order and judgment:

- 13
- 14 a. Certifying the Class;
- 15 b. Declaring that Defendant violated the CLRA;
- 16 c. Awarding actual and other damages as permitted by law, and/or ordering
17 an accounting by Defendant for any and all profits derived by Defendant from
18 the unlawful, unfair, and/or fraudulent conduct and/or business practices
19 alleged herein;
- 20 d. Ordering an awarding of injunctive relief as permitted by law or equity,
21 including enjoining Defendant from continuing the unlawful practices as set
22 forth herein, and ordering Defendant to engage in a corrective advertising
23 campaign;
- 24 e. Ordering Defendant to pay reasonable attorneys’ fees and litigation costs to
25 Plaintiff;
- 26 f. Ordering Defendant to pay both pre- and post-judgment interest on any
27 amounts awarded; and
- 28 g. Such other relief as the Court may deem just and proper.

25 *Id.* at 18.

26 In its Order on Defendant’s motion to dismiss the Complaint, the Court dismissed
27 Plaintiff’s request for equitable relief for failure to plead that he lacks an adequate
28 remedy at law. Doc. No. 8 at 17. The Court also found that Plaintiff’s request for

1 injunctive relief was subject to dismissal on the independent ground that he failed to
2 plead an actual threat of future harm. *Id.* at 16. According to Plaintiff’s opposition, he
3 intended “to withdraw all equitable claims in his First Amended Complaint” and the
4 retention was merely a clerical error. Doc. No. 11 at 2. Notwithstanding this concession,
5 Plaintiff substantively opposes Defendant’s motion as it relates to his standing to pursue
6 injunctive relief. *See id.* at 3–5.

7 The Court was clear that dismissal of Plaintiff’s claims for equitable relief
8 “includ[es] injunctive relief.” Doc. No. 8 at 17. For the sake of clarity, the Court
9 elaborates that “federal courts sitting in diversity may exercise equitable jurisdiction only
10 to the extent federal equitable principles allow them to do so.” *Guzman v. Polaris Indus.*,
11 49 F.4th 1308, 1315 (9th Cir. 2022). “In order to entertain a request for equitable relief, a
12 district court must have equitable jurisdiction, which can only exist under federal
13 common law if the plaintiff has no adequate legal remedy.” *Id.* at 1313; *see also*
14 *Schroeder v. U.S.*, 569 F.3d 956, 963 (9th Cir. 2009) (“[E]quitable relief is not
15 appropriate where an adequate remedy exists at law.”). As one district court explained:
16

17 Applying federal equitable principles even to state-law claims, the Ninth
18 Circuit explained, has long been federal practice. *Sonner*, 971 F.3d at 839. It
19 wrote that “[i]t has been a fundamental principle for well over a century that
20 state law cannot expand or limit a federal court’s equitable authority.” *Id.* at
21 841 (citing *Payne*, 74 U.S. (7 Wall.) at 430). State law, therefore, “can neither
22 broaden nor restrain a federal court’s power to issue equitable relief.” *Id.*

23 *Guthrie v. Transamerica Life Ins. Co.*, 561 F. Supp. 3d 869, 875 (N.D. Cal. 2021).

24 In *Sonner v. Premier Nutrition Corp.*, the Ninth Circuit held in no uncertain terms
25 that a plaintiff “must establish that she lacks an adequate remedy at law before securing
26 equitable restitution for past harm under the [] CLRA.” 971 F.3d 834, 844 (9th Cir.
27 2020). The court in *Sonner* relied on the Supreme Court’s decision in *Guaranty Trust*
28 *Co. of New York v. York*, 326 U.S. 99 (1945), which did not draw any distinction among
the various forms of equitable relief. As a result, district courts have not limited *Sonner*

1 to restitution but rather have held that the inadequate remedy at law requirement applies
2 to all forms of equitable relief, including injunctive relief. *See Shay v. Apple Inc.*,
3 No. 20cv1629-GPC(BLM), 2021 U.S. Dist. LEXIS 84415, at *7 (S.D. Cal. May 3, 2021)
4 (collecting cases). Additionally, district courts routinely apply *Sonner*'s instruction to
5 claims for equitable relief in connection with an unjust enrichment claim. *See, e.g.*,
6 *Sharma v. Volkswagen AG*, 524 F. Supp. 3d 891, 907 (N.D. Cal. 2021); *see also Scheibe*
7 *v. Performance Enhancing Supplements, Ltd. Liab. Co.*, No. 3:23-cv-00219-H-DDL,
8 2023 U.S. Dist. LEXIS 148773, at *13 (S.D. Cal. Aug. 23, 2023). Therefore, *Sonner*
9 applies to all of the forms of equitable relief Plaintiff's seeks.

10 A review of the FAC reveals that Plaintiff has made no attempt to include
11 allegations that he lacks an adequate remedy at law. Guided by Plaintiff's opposition, it
12 is apparent that this was because Plaintiff has abandoned his equitable relief claims.
13 What is not apparent, however, is whether Plaintiff understands this encompasses his
14 request for injunctive relief. In any event, it does. *See Weinberger v. Romero-Barcelo*,
15 456 U.S. 305, 311 (1982) ("It goes without saying that an injunction is an equitable
16 remedy."). Even if the Court were inclined to assign any misunderstanding to a lack of
17 specificity in the prior Order, Plaintiff was advised in advance of filing an opposition, and
18 therefore prior to abandoning these remedies, that equitable relief includes injunctions
19 and that the latter is subject to the inadequate remedy at law requirement. *See Scheibe*,
20 2023 U.S. Dist. LEXIS 148773, at *12.

21 As discussed in the prior Order, in order to pursue equitable relief Plaintiff must
22 plead that he lacks an adequate remedy at law. He fails to do so here. The Court
23 previously granted leave to amend to cure this defect and Plaintiff has not done so but has
24 instead voluntarily dismissed his requests for equitable relief. The Court therefore
25 **DISMISSES** Plaintiff's requests for equitable relief—including restitution,
26 disgorgement, and injunctive relief—**without leave to amend**.

27 Additionally, because Plaintiff only seeks equitable relief as a remedy for his
28 unjust enrichment claim, regardless of whether Plaintiff may pursue this claim in the

1 alternative, his failure to plead he lacks an adequate remedy at law renders this claim
2 subject to dismissal. *See Helems v. Game Time Supplements, LLC*, No. 3:22-cv-01122-
3 L-AHG, 2023 U.S. Dist. LEXIS 163814, at *16 (S.D. Cal. Sep. 14, 2023) (dismissing
4 claim for unjust enrichment because the plaintiff “has not alleged that his legal remedies
5 are inadequate, therefore, Plaintiff cannot pursue an equitable claim”). Moreover, as all
6 three of Plaintiff’s claims are premised upon the same, singular harm, it is clear on these
7 facts that Plaintiff has an adequate remedy available: damages under the CLRA. As such,
8 amendment would be futile. Accordingly, the Court **DISMISSES** Plaintiff’s claim for
9 unjust enrichment **without leave to amend**.

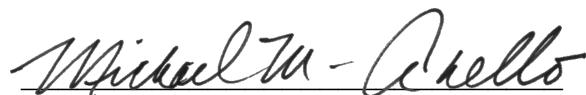
10 Because the Court finds that Plaintiff fails to plead that no adequate remedy exists
11 at law, it is unnecessary to consider whether Plaintiff has adequately pleaded a threat of
12 future harm to pursue an injunction as a form of equitable relief. For this reason,
13 Plaintiff’s notice of supplemental authority, *see* Doc. No. 14, does not change the
14 outcome.

15 **IV. CONCLUSION**

16 Based upon the foregoing, the Court **GRANTS** Defendant’s motion to dismiss.
17 The Court **DISMISSES** Plaintiff’s request for equitable relief and **DISMISSES**
18 Plaintiff’s unjust enrichment claim **without leave to amend**. The Court **DIRECTS**
19 Defendant to file an answer to the FAC, responding to Plaintiff’s CLRA (Claim 1) and
20 breach of express warranty (Claim 3) causes of action within **twenty-one (21) days** of the
21 date of this Order.

22 **IT IS SO ORDERED.**

23 Dated: October 16, 2023

24 

25 HON. MICHAEL M. ANELLO
26 United States District Judge