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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

STACY GRADNEY and SHARON TOLL, Plaintiffs, vs. POLAR BEVERAGES, Defendant.	CASE NO. 4:25-CV-2149-EMC **MOTION TO DISMISS** Date: May 29, 2025 Time: 1:30 p.m. Complaint filed: Mar. 2, 2025

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TABLE OF CONTENTS

Gordon Rees Scully Mansukhani
101 W. Broadway Suite 2000
San Diego, CA 92101

TABLE OF AUTHORITIES

Page(s)

Cases

Gordon Rees Scully Mansukhani
101 W. Broadway Suite 2000
San Diego, CA 92101

Gordon Rees Scully Mansukhani
101 W. Broadway Suite 2000
San Diego, CA 92101

Gordon Rees Scully Mansukhani
101 W. Broadway Suite 2000
San Diego, CA 92101

Statutes

Rules

Gordon Rees Scully Mansukhani
101 W. Broadway Suite 2000
San Diego, CA 92101

Gordon Rees Scully Mansukhani
101 W. Broadway Suite 2000
San Diego, CA 92101

NOTICE OF MOTION

PLEASE TAKE NOTICE that defendant POLAR CORP., d/b/a POLAR BEVERAGES, moves to dismiss the complaint pursuant to Rule 12 of the Federal Rules of Civil Procedure. The motion will be heard at 1:30 p.m. on May 29, 2025, in Courtroom 5 of the above-entitled Court.

Polar seeks an order dismissing the action without leave to amend. The motion is based on this notice, the following memorandum of points and authorities, the pleadings on file in this matter, and such other matters as may be presented before or at the hearing of the motion, if any.

Dated: April 18, 2025

GORDON REES SCULLY MANSUKHANI, LLP

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MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF ISSUES TO BE DECIDED (L.R. 7-4(A)(3))

Whether the complaint requires dismissal for failure to state a claim under Rule 12(b)(6)?

Whether certain claims require dismissal for lack of subject matter jurisdiction under Rule 12(b)(1)?

II. INTRODUCTION

This putative class action alleges that consumers overpaid for an unspecified assortment of Polar's seltzer products, some of which years ago bore "100% Natural" labeling before a packaging re-design. Plaintiffs claim that was technically misleading because some small percentage of the products' atoms of carbon, the quintessential natural element, are somehow non-natural despite their allegedly "fossil" form. Dismissal is required because what Plaintiffs do not allege overrides their insufficient, often conclusory allegations.

Most basically, the complaint gives no notice of what supposedly non-natural substances Polar allegedly allowed into its products. Carbon is, of course, just an elemental, natural building block of innumerable chemical molecules and compounds. Yet, nowhere does the complaint identify what substance(s) this case is even about, much less offer a plausible account of how or why Plaintiffs believe they are somehow not natural.

Worse, Plaintiffs do not allege that their own seltzer purchases contained any non-natural substances. They invite the Court to speculate that they might have, pointing to thin allegations that they hired a lab to test as few as two retail samples of unknown varieties. Among other critical gaps, the complaint does not allege those samples bore the natural labeling, or even that they came from the same seltzer varieties Plaintiffs purchased. That is a crucial omission given their allegation that the supposed synthetics inhere in the different flavorings that make each variety unique.

Beyond that, the complaint does not allege that any of the seltzers contained more than the faintest, legally inert quantities of non-natural substances, itself a fatal flaw. Courts roundly dismiss cases plying theories that traces of this-or-that allegedly non-natural substance render

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natural labeling false -- even where, quite unlike here, the substances in question are cast as poisons.

Moreover, Plaintiffs fail to directly allege that they actually encountered the natural labeling when they made their purchases, all of which took place in 2023 and 2024. The likely reason is they simply *cannot* plead it, given than Polar revamped the labeling in 2022, well before Plaintiffs purchased. Yet, the Court need not accept that fact to find that the complaint just doesn't squarely or plainly allege Plaintiffs' actual exposure to the challenged labeling at the time of purchase, a threshold requirement without which no claim can proceed.

In addition, the complaint exhibits several claim-specific defects. There is no basis for equitable relief because the sole injury is purely monetary, fully redressable by legal damages. The unjust enrichment claim is impermissibly duplicative, the New York warranty claim lacks the required privity, and the demands for punitive damages are devoid of basic allegations required for such relief.

Finally, Plaintiffs lack standing to challenge flavor varieties they did not purchase, to seek injunctive relief, or to assert unmanageable nationwide class claims invoking the varied laws of four dozen states where neither Plaintiff purchased seltzers.

In sum, the complaint and each of its claims falter in several serious ways. Polar therefore asks the Court to grant the motion and dismiss the complaint, as more fully set out below.

III. THE COURT SHOULD DISMISS THE COMPLAINT.

A. In Multiple Ways, The Liability Theory Does Not Meet Rule 8(a), Much Less The Particularity Requirements Of Rule 9(b), Which Governs Here.

Rule 9(b)'s particularity standard governs the entire complaint since all its claims rest upon the same unified course of allegedly fraudulent conduct. *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1103–1104 (9th Cir. 2003); *In re Apple Inc. Device Performance Litig.*, 347 F. Supp. 3d 434, 443 (N.D. Cal. 2018) (dismissing UCL, CLRA, and FAL claims for failure to satisfy Rule 9(b)); *In re NJOY, Inc. Consumer Class Action Litig.*, No. 14-cv-428-MMM, 2014 WL 12586074 at *14 (C.D. Cal. Oct. 20, 2014) (Rule 9(b) applies to N.Y. GBL claims under

Gordon Rees Scully Mansukhani
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Ninth Circuit precedent, citing *Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1125 (9th Cir. 2009)); *Anderson v. Kimpton Hotel & Restaurant Grp.*, No. 19-cv-1860-MMC, 2019 WL 3753308 at *8 (N.D. Cal. Aug. 8, 2019) (similarly applying Rule 9(b) to N.Y. GBL claim).

Rule 9(b) particularity requires Plaintiffs to "identify the who, what, when, where, and how of the misconduct charged, as well as what is false or misleading about the purportedly fraudulent statement, and why it is false." *Davidson v. Kimberly-Clark Corp.*, 889 F.3d 956, 964 (9th Cir. 2017). Despite this, in multiple dimensions the complaint fails to plead the liability theory with even Rule 8(a) plausibility, let alone the particularity Rule 9(b) demands.

1. The Complaint Gives No Notice What Supposedly Non-Natural Substance(s) This Case Is About, Or Why They're Non-Natural.

The complaint does not give Polar notice of what supposedly non-natural substances render the labeling deceptive or why. Plaintiffs charge that the seltzers all contain synthetics without once identifying the supposedly offending synthetic compounds their case is all about. The complaint simply divides the universe of all potential contents of a food product into a chemical dichotomy of natural vs. synthetic substances, and then charges that something or other in the seltzers falls into the latter category without naming what it is. It's comparable to a plaintiff alleging the presence of toxins, without identifying them, and posing that as fair notice. *Krakauer v. REI, Inc.*, No. C22-5830 BHS, 2024 WL 1494489 at *10 (W.D. Wa. Mar. 29, 2024) ("REI cannot meaningfully defend itself without knowing the chemical at issue so it can prove the chemical is not in the [product]…and/or would not be material to reasonable consumers.").

Indeed, the complaint itself concedes that the offending synthetic(s), if any, may have been one or more of "many individual components" that went into flavoring the seltzers, "any number of which could have been prepared industrially." Dkt. 1, ¶ 56. That is insufficient. *Nelson v. Campbell Soup Co.*, No. 14-cv-2647 DMS (JLB), 2015 WL 13534353, at *1-2 (S.D. Cal. May 18, 2015) (dismissal where plaintiff "does not identify which ingredient is genetically modified in the [pasta] sauce," "fall[ing] short of the notice requirements" of Rule 8(a) and "clearly… short of Rule 9(b)'s more exacting requirements"); *see also Lowe v. Edgewell Personal Care Co.*, 711 F. Supp. 3d 1097, 1104 (N.D. Cal. 2024) ("Plaintiffs merely speculate

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San Diego, CA 92101

that the hydrophobic components…*must* or are *likely* to contain forever chemicals because those chemicals are 'frequently' used to make materials water-repellant.") (emphases in original).

It is no answer for Plaintiffs to point out the complaint's hesitant gesturing toward "terpineols" or "ocimene quintoxide." Dkt. 1, ¶¶ 9, 57. Nowhere does the complaint allege that these are the offending substances giving rise to the alleged liability. It merely implies that they *might* be. *Lowe*, 711 F. Supp. 3d at 1104. There is no allegation that Polar used these substances as ingredients, or as components or constituents of ingredients. The complaint does not allege that Plaintiffs' seltzer purchases even contained them, much less that all or even a significant fraction of the seltzers sold to other consumers did so.

Moreover, the complaint does not plausibly or particularly allege that "ocimene quintoxide" or "terpineols" are non-natural substances in the first place, much less how or why they qualify as such. It only alleges that terpineols are "often" synthetic, meaning they might or might not be synthetic if used in the seltzers or any given product. Dkt. 1, ¶¶ 9, 57.

Even then, the complaint ventures no account of what makes a substance synthetic, artificial, or non-natural, except by disparaging anything "which could have been prepared industrially." Dkt. 1, ¶ 56. It's as though Plaintiffs expected Polar to pluck finished, full cans of flavored seltzer waters fresh out of a bubbly mountain spring. *Pelayo v. Nestle USA, Inc.*, 989 F. Supp. 2d 973, 978 (C.D. Cal. 2013) ("the reasonable consumer is aware that Buitoni Pastas are not 'springing fully-formed from Ravioli trees and Tortellini bushes'"); *Karabas v. T.C. Heartland, LLC*, __ F. Supp. 3d. __, 2025 WL 777001, at *6 (E.D.N.Y. Mar. 11, 2025) (in case challenging "100% Natural" label, "[n]o reasonable consumer would conclude that a product contains artificial ingredients merely because it is produced 'in industrial factories' using 'synthetic processes,' as that is the way most consumer goods are produced").

Similarly, the complaint's allegations regarding whether, how, and why ocimene quintoxide somehow qualifies as non-natural or synthetic amount to a single bald conclusion that that these matters are simply "known." *Id.* at ¶ 9 ("a known synthetic"); *id.* at ¶ 57 (identical conclusion). "It is insufficient under Rule 9(b) to simply assert, no matter how foreign or synthetic sounding an ingredient's name might be, that an ingredient is non-natural." *Figy v.*

Frito-Lay N.A., Inc., 67 F. Supp. 3d 1075, 1090 (N.D. Cal. 2014); *see also Dotson v. Ariz. Beverages USA, LLC*, No. 2:22-cv-923-SVW-MAA, 2022 WL 17886015, at *4, *1 (C.D. Cal. June 27, 2022) (where plaintiff protested an allegedly "synthetic" ingredient, "the Court is not persuaded that the [complaint] plausibly explains what a reasonable consumer would understand the term '100% Natural' to mean," such that court could not infer consumers would expect drinks "not to contain *any* synthetic malic acid") (emphasis in original).

2. Plaintiffs Do Not Allege Their Purchases Contained Anything Non-Natural.

Aside from the basic failure to say what substances their case is about, or why they're somehow non-natural, the complaint does not plausibly or particularly allege that Plaintiffs actually purchased seltzers containing any non-natural substances whatsoever.

The complaint does not even contain a basic or plain assertion that Plaintiffs' purchases contained *any* synthetic substances. *Morales v. Kraft Foods Grp., Inc*., 2014 WL 12597034, at *8 (C.D. Cal. Oct. 23, 2014) (failure to satisfy Rule 9(b) where plaintiffs did not allege that their own food purchases contained "artificial color" to render "natural" labeling misleading). Instead, it invites the Court to speculate as much by sparse allusions to chemical testing Plaintiffs commissioned for litigation purposes. Dkt. 1, ¶¶ 53-57. For that testing to supply an inference that Plaintiffs' purchases contained synthetics, at minimum it must demonstrate that so large a proportion of Polar's seltzers sold during the span of Plaintiffs' 2023-2024 purchase histories contained non-natural substances that Plaintiffs' own purchases must also have.

Yet, the complaint's testing allegations are too thin to indulge that inference. The complaint divulges next to nothing significant about the testing upon which their case depends. *Barton v. Procter & Gamble Co.*, __ F. Supp. 3d. __, 2025 WL 486180, at *7 (S.D. Cal. Feb. 13, 2025) ("as to the 'why' and 'how' the statement is false, this question does implicate the testing performed because the misrepresentations can only be false if there are facts supporting the presence of lead in the [p]roducts purchased by the [p]laintiffs"); *Lowe*, 711 F. Supp. 3d at 1104 ("the testing allegations are cursory, providing no specificity as to the results reached or any other finding that would support Plaintiffs' interpretation of those results").

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Most crucially, the complaint does not even disclose what Polar seltzer product(s) in what flavor(s) Plaintiffs tested. This is a glaring void in view of the complaint's "near definitive" (dkt. 1, ¶ 56) assertion that the supposedly synthetic substances are components of the seltzers' different flavorings. To impart taste profiles as disparate as "orange vanilla" and "ruby red grapefruit" (*id*. at ¶¶ 15, 23), flavorings vary in composition from one flavor to the next. Yet, for all this complaint alleges, Plaintiffs' lab tested flavor products and varieties that neither Plaintiff ever purchased. *Barton*, __ F. Supp. 3d. at __, 2025 WL 486180 at *8 ("Plaintiffs rely on unidentified independent testing" of "the super Tampax Peral and super Tampax Radiant products," not the "light and regular" products Plaintiff purchased, and instead "rely on extrapolation from the super-size Products without any explanation as to why extrapolation is appropriate"); *see Krakauer*, 2024 WL 1494489, at *10, *6 (dismissal where plaintiff "has not plausibly alleged that his raincoat contained" forever chemicals, where he failed to allege having "tested the same model of jacket he purchased"); *Scheibe v. Performance Enhancing Supplements, LLC*, No. 3:23-cv-219-H-DDL, 2023 WL 3829694, at *3 (S.D. Cal. June 5, 2023) (defendant "is left to guess whether all three of the products' flavors were tested, it was some combination…, or only one of the flavors was tested").

Other critical voids abound in the complaint's account of the testing. It does not disclose how many retail units of the seltzers Plaintiffs tested. It alleges only that the samples were "multiple," meaning they tested as few as two units to launch a lawsuit indicting an entire line of products sold nationwide. It does not even say who performed the testing. *Barton*, __ F. Supp. 3d. at __, 2025 WL 486180 at *8. Nor does the complaint say who handpicked the retail samples off which store shelves for the anonymous testing, using what criteria, or when. Tellingly, the complaint does not even allege that Plaintiffs tested samples that bore the challenged "100% Natural" labeling, let alone any such (non-existing) units manufactured during spans overlapping Plaintiffs' 2023-2024 purchase histories.

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3. The Complaint Does Not Allege That Any Seltzer Products Contained More Than The Faintest, Legally Meaningless Traces Of Non-Natural Substances.

In addition, the complaint does not allege that Plaintiffs' purchases or any unit of the disputed seltzers contained more than legally meaningless traces of non-natural substances. Its only allegation about the quantity or concentration of synthetic substances is that 9% to 13% *of the carbon* in the test sample was not "biobased," which supposedly means that it is "fossil" carbon. Dkt. 1, ¶ 55.[1] Even if the Court credits the complaint's unexplained, headscratcher assertion that there can be such a thing as a synthetic, non-natural fossil, Plaintiffs have not alleged that the supposedly synthetic "fossil" carbon atoms belong to compounds that comprise more than the faintest miniscule trace of the product as a whole. *See Lowe*, 711 F. Supp. 3d at 1104 ("The complaints are silent as to the amount of organic fluorine detected and whether that amount is negligible or significant."); *Bullard v. Costco Wholesale Corp*., No. 24-cv-3714-RS, 2025 WL 506271, at *2 (N.D. Cal. Feb. 14, 2025) (for baby wipes labeled "made with naturally derived ingredients," plaintiff "failed to allege sufficient facts that, if proven, would show that the product…contains ingredients of a type and in such quantities to make" label deceptive).

That failure is fatal. Courts roundly reject theories that traces of non-natural or synthetic substances render labeling deceptive. *Yu v. Dr. Pepper Snapple Grp., Inc*., No. 18-cv-6664-BLF, 2020 WL 5910071, at *1, *5, *7 (N.D. Cal. Oct. 6, 2020) (per "weight of authority in the federal courts," "not plausible" to expect no pesticide in food even if labelled "All Natural Ingredients"); *Parks v. Ainsworth Pet Nutrition, LLC*, No. 18-cv-6936 (LLS), 2020 WL 832863, at *1 (S.D.N.Y. Feb. 20, 2020) ("reasonable consumer[s] would not be so absolutist as to require that 'natural' means there is no glyphosate, even an accidental and innocuous amount, in the products"); *Axon v. Citrus World, Inc.*, 354 F. Supp. 3d 170, 184 (E.D.N.Y. 2018) (affirmed, 813

[1] The complaint cannot be intelligibly read to suggest that 9-13% of the entire products are "fossil carbons," while the remaining 87-91% are "biobased" carbons. Such a reading reduces to a facially absurd proposition: a seltzer water 100% made of carbon. It is common knowledge that seltzer waters are mixtures of water (H_2O), which consists of hydrogen and oxygen, and carbon dioxide (CO_2), which consists of carbon and oxygen.

Gordon Rees Scully Mansukhani
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Fed. Appx. 701 (2d Cir. 2020)) ("Florida's Natural" and "100% Orange Juice" labeling did not plausibly support expectation that juice would contain no trace of synthetic herbicide); *see In Re Gen. Mills Glyphosate Litig.*, No. 16-2869 (MJD/BRT), 2017 WL 2983877, at *5-*6 (D. Minn. July 12, 2017) (dismissal with prejudice where label stating "Made with 100% Natural Whole Grain Oats" "did not represent or warrant that [granola bars] would be free from trace glyphosate" because "[i]t would be nearly impossible to produce a processed food with no trace of any synthetic molecule"); *see also Rugg v. Johnson & Johnson*, No. 17-cv-05010-BLF, 2018 WL 3023493, at *3 (N.D. Cal. June 18, 2018) ("completely implausible" to take "the term 'hypoallergenic' on a product's label to mean that the product does not contain *any* ingredients, in any concentration, which could 'sensitize' the skin, cause cancer, or have *any* other negative effect") (emphasis original).

4. Plaintiffs Do Not Plead Their Exposure To The Challenged Labeling At The Time Of Their Purchases.

Next, the complaint does not plead Plaintiffs' basic exposure to the disputed labeling, let alone their reliance upon it. Plaintiffs' allegations must contain "an account of the time, place, and specific content of the false representations" to which each Plaintiff was exposed and relied upon. *Swartz v. KPMG LLP*, 476 F.3d 756, 764 (9th Cir. 2007)).

Yet, in conclusory terms, Plaintiffs merely recite that at some unpled point in time they subjectively "*believed"* labeling representations that the products were "100% Natural." Dkt. 1, ¶¶ 16, 24 (emphasis added). For this motion's purposes, what Plaintiffs subjectively "believed" is no matter. The case-dispositive issue is an objective matter of unpled fact: whether Plaintiffs were actually *exposed* to the challenged labeling when they made their "2023-2024" purchases. Nowhere do Plaintiffs squarely and plainly allege that they actually encountered the challenged labeling when making their purchases in 2023 or 2024.

The lack of any such basic allegation is conspicuous. So too is the complaint's resort to rhetorical sleight of hand about what Plaintiffs "believed." In fact, it is likely that Plaintiffs cannot plead such exposure or any corresponding reliance, given that Polar removed the challenged labeling three years ago when revising the seltzers' packaging, considerably before

Gordon Rees Scully Mansukhani
101 W. Broadway Suite 2000
San Diego, CA 92101

Plaintiffs purchased.

The absence of these allegations is dispositive. *Krakauer*, 2024 WL 1494489, at *11 (though "[h]e need not provide granular detail," plaintiff "did not provide adequate facts to clarify when and where he was exposed to each representation"); *Scheibe v. eSupplements, LLC*, 681 F. Supp. 3d 1101, 1116 (S.D. Cal. 2023) (where plaintiff "did not specify whether he relied on the alleged statements before purchasing," complaint "lack[ed] clarity regarding 'when' the actual reliance occurred"); *Brown v. Madison Reed, Inc.*, No. 21-cv-1233-WHO, 2021 WL 3861457, at *1 (N.D. Cal. Aug. 30, 2021) (dismissal where plaintiffs generally alleged that they relied on misrepresentations that the product was "free of ammonia," "resorcinol," and "PPD," but "fail[ed] to specifically allege which, if any, of those statements they actually saw and relied upon"); *see Turner v. Apple, Inc.*, No. 5:20-cv-07495-EJD, 2022 WL 445755, at *5 (N.D. Cal. Feb. 14, 2022) ("Plaintiff must allege that he saw and reviewed" the allegedly deceptive materials "before he purchased his iPhone").

B. Plaintiffs Fail To Allege Cognizable Claims For Equitable Relief.

The UCL, FAL, and unjust enrichment claims in total, along with all of the other demands for restitution, injunction, or other equitable relief, require dismissal because Plaintiffs cannot plausibly allege an indispensable prerequisite: the inadequacy of legal remedies.

Instead, their complaint frames the wrong as a breach of a contractual warranty, the quintessential antipode of equity. Dkt. 1, ¶¶ 88-95. And the injury they claim, the dollar value of a partial refund of their purchase prices, is purely monetary. Such an injury would be fully redressable by the legal remedy of the money damages they seek in connection with the warranty claim, a remedy also available via the CLRA claim. Their claim for damages is based on the same alleged conduct as the claims for restitution and injunctive relief -- *i.e.*, that Polar misrepresented the natural aspect of the seltzers. *Id*. at ¶¶ 126, 131. In other words, their allegations leave no room to plausibly assert that their purely monetary injury would somehow elude legal recompense.

The law compels dismissal in these circumstances. In *Sonner*, another food-labeling class action, the plaintiff brought claims for restitution under the UCL and CLRA, as well as a

Gordon Rees Scully Mansukhani
101 W. Broadway Suite 2000
San Diego, CA 92101

claim for money damages under the CLRA. *Sonner v. Premier Nutrition Corp*., 971 F.3d 834, 838 (9th Cir. 2020). The district court dismissed the restitution claims, finding the plaintiff's CLRA claim alleged an adequate legal remedy. The Ninth Circuit affirmed, holding that the plaintiff failed to show how damages under the CLRA would be inadequate compared to restitution. *Id*. at 844.

Rejecting the plaintiff's arguments about the broad availability of equitable relief under state law, the court rested its decision on the principle, "fundamental…for well over a century," "that state law cannot expand or limit a federal court's equitable authority." *Sonner*, 971 F.3d at 841. Accordingly, "the traditional principles governing equitable remedies in federal courts, including the requisite inadequacy of legal remedies," applied with full force to preclude the plaintiff's UCL and CLRA demands for restitution. *Id*. at 844. Equitable remedies are simply not available in federal courts unless legal remedies are inadequate. *Id*.

Here, that principle requires dismissal of each of Plaintiff's claims for equitable remedies, including the FAL, UCL, and unjust enrichment claims in total, as well as all demands for restitution and injunctive relief. *Williams v. Apple, Inc*., No. 19-CV-04700-LHK, 2020 WL 6743911, at *10 (N.D. Cal. Nov. 17, 2020) (dismissing UCL and FAL claims); *Alvarado v. Wal-Mart Associates, Inc*., No. CV 20-01926-AB (KKx), 2020 WL 6532868, at *3 (C.D. Cal. Oct. 22, 2020) (similarly dismissing UCL claim due to inability to allege legal remedies' inadequacy).

C. The Unjust Enrichment Claim Requires Dismissal.

1. Plaintiffs Fail To Identify Applicable State Law.

"[D]ue to variances among state laws, failure to allege which state law governs a common law claim is grounds for dismissal." *Vance v. Google LLC*, No. 20-cv-4696-BLF, 2024 WL 1141007, at *5 (N.D. Cal. Mar. 15, 2024); *In re TFT–LCD (Flat Panel) Antitrust Litig.*, 781 F. Supp. 2d 955, 966 (N.D. Cal. 2011) ("Several other courts in this district have similarly held that a plaintiff must specify the state under which it brings an unjust enrichment claim."); *In re Packaged Seafood Prods. Antitrust Litig*., 242 F. Supp. 3d 1033, 1088 (S.D. Cal. 2017) (plaintiffs' claim of "unjust enrichment generally" without listing "any particular jurisdiction to which the allegations should apply" was "fatal"). Plaintiffs' failure to identify which state law

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governs their unjust enrichment claim, which is vaguely asserted on behalf of a putative nationwide class, mandates dismissal.

2. The Unjust Enrichment Claim Is Impermissibly Duplicative.

New York and California courts dismiss unjust enrichment claims that duplicate contract or tort claims. *Clancy v. The Bromley Tea Co.*, No. 12-cv-3003-JST, 2013 WL 4081632, at *11 (N.D. Cal. Aug. 9, 2013) (dismissing unjust enrichment/restitution claim as duplicative); *Dwyer v. Allbirds, Inc.*, 598 F. Supp. 3d 137, 157 (S.D.N.Y. 2022) (courts "routinely dismiss an unjust enrichment claim that "simply duplicates, or replaces, a conventional contract or tort claim"). Plaintiffs' unjust enrichment claim relies on the same factual allegations underpinning their statutory, contract, and tort law claims. *Compare* dkt. 1, ¶¶ 148-149 *with id.* at ¶¶ 101-106, 110-112, 116-117, 123-124, 131-133, 140, 144-146; *Barton v. Pret A Manger (USA) Ltd.*, 535 F. Supp. 3d 225, 249 (S.D.N.Y. 2021) (dismissing unjust enrichment claims that were "duplicative of GBL claims"); *Campbell v. Whole Foods Market Grp., Inc.*, 516 F. Supp. 3d 370, 394 (S.D.N.Y. 2021) (dismissing unjust enrichment claim as duplicative of GBL claim, even though plaintiff claimed to make unjust enrichment claim in the alternative); *Robie v. Trader Joe's Co.*, No. 20-cv-7355-JSW, 2021 WL 2548960, at *7 (N.D. Cal. 2021) ("Plaintiff's claim for unjust enrichment fails to identify any independent theory…that does not rise or fall with her statutory claims or are merely duplicative of those claims."); *In re Hard Disk Suspension Assemblies Antitrust Litig.*, No. 19-md-2918-MMC, 2021 WL 4306018, at *24 (N.D. Cal. 2021) (dismissing unjust enrichment claim as "duplicative" where plaintiffs also sought restitution under the UCL).

This fault is especially acute here, given the complaint alleges breach of contract in the form of a warranty without alleging that the warranty is void or unenforceable. *Saroya v. Univ. of the Pac.*, 503 F. Supp. 3d 986, 998-99 (N.D. Cal. 2020); *Nguyen v. Stephens Inst.*, 529 F.Supp.3d 1047, 1057 (N.D. Cal. 2021) (dismissing plaintiff's quasi-contract claim because he failed to allege that the contract was unenforceable or void). Dismissal is warranted.

3. Plaintiffs Fail To Allege A Direct Benefit.

Plaintiffs do not adequately allege that they conferred any direct benefit on Polar. On the contrary, the complaint concedes that Plaintiffs purchased seltzers from third-party grocery

Gordon Rees Scully Mansukhani
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stores. Dkt. 1, ¶¶ 15, 23. Such claims cannot support a New York unjust enrichment theory because it is the third party, not the product manufacturer, that receives the benefit of the transaction. *In re Keurig Green Mountain Single- Serve Coffee Antitrust Litig.*, 383 F. Supp. 3d 187, 272 (S.D.N.Y. 2019). On this basis, too, the unjust enrichment claim fails to the extent asserted under New York law.

D. The New York Warranty Claim Fails For Lack Of Contractual Privity.

Under New York law, breach of express warranty claims seeking to recover for financial injuries require a showing of privity between the manufacturer and the plaintiff. *Ebin v. Kangadis Food, Inc.*, No. 13-cv-2311 (JSR), 2013 WL6504547, at *6 (S.D.N.Y. Dec. 11, 2013). Plaintiff Toll alleges that she purchased the seltzers from grocery stores. Dkt. 1, ¶ 23. Her failure to allege that she held a relationship of contractual privity with Polar, the manufacturer, dooms her express warranty claim. *Klausner v. Annie's, Inc.*, 581 F.Supp.3d 538, 550 (S.D.N.Y. 2022) (dismissing express warranty claims based on purely economic damages for lack of privity when plaintiff purchased from a grocery store and not directly from the defendant); *Ebin*, 2013 WL 6504547, at *6.

E. The Complaint Alleges No Basis For Punitive Damages.

Plaintiff prays for punitive damages. Dkt. 1, ¶ E (prayer). Yet, the only cause of action that could possibly confer such a recovery is the CLRA claim, which does not yet allege any damages, let alone punitives. *Id*. at ¶ 135. That alone justifies dismissal.

In any event, punitive damages under the CLRA are limited to circumstances of "oppression, fraud, or malice." CAL. CIV. CODE § 3294(a). Yet, "a company simply cannot commit willful and malicious conduct – only an individual can." *Robinson v. J.M. Smucker Co*., No. 18-cv-04654-HSG, 2018 WL 2029069, at *6-7 (N.D. Cal. May 8, 2019) (internal quotation omitted); CAL. CIV. CODE § 3294(b) ("[w]ith respect to a corporate employer," the conduct "must be on the part of an officer, director, or managing agent of the corporation").

Plaintiffs do not plead any facts to support an award of punitive damages because they do not allege that any individual committed willful and malicious conduct sinking to the standard of Civil Code section 3294(a). *See Ducre v. Veolia Transp.*, No. CV 10-02358 MMM (AJWx),

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2010 WL 11549862, at *6-7 (C.D. Cal. June 14, 2010) (dismissing claim for punitive damages because plaintiff did not sufficiently allege culpable conduct on the part of an officer, director, or managing agent); *N. Am. Co. for Life & Health Ins. v. Zhang*, No. CV 18-01872 AG (FFMx), 2019 WL 1060616, at *3-4 (C.D. Cal. Jan. 3, 2019) (similar).

In fact, the complaint includes no allegations that even mention a Polar officer, director, or managing agent. Far less does the complaint plausibly allege that such a person perpetrated or ratified any acts of fraud, oppression, or malice that correspond to the liability theory. Plaintiffs' demand for punitive damages therefore requires dismissal to the extent asserted under California law.

Meanwhile, punitive damages are not available under the complaint's New York claims. *Hobish v. AXA Equit. Life Ins. Co.*, __ N.E.3d __, 2025 WL 83783, at *6 (N.Y. Ct. App. Jan. 14, 2025) (statutory treble damages only); N.Y. GEN. BUS. LAW §§ 349(h), 350 (no provision for punitive damages).

F. Plaintiffs Lack Article III Standing In Key Respects.

1. The Court Should Dismiss Or Strike The Nationwide Class Allegations.

The Court should dismiss the complaint's attempt to assert a nationwide class because Plaintiffs lack standing to assert claims arising under the laws of states other than California or New York. California's choice-of-law rules mandate the application of the laws of the jurisdictions where consumers made their respective purchases. *Mazza v. Am. Honda Motor Co., Inc.*, 666 F.3d 581, 593-594 (9th Cir. 2012) (*overruled on other grounds at* 31 F.4th 651, 682 n.32). Plaintiffs each purchased their seltzers within their home states of California and New York, and they do not allege making purchases in any other states. Dkt. 1, ¶¶ 15, 23. Under these circumstances, "dismissal is appropriate with respect to claims asserted under the laws of states in which no Plaintiff resides or has purchased products." *Los Gatos Mercantile, Inc v. E.I. DuPont De Nemours & Co.*, No. 13-cv-1180-BLF, 2014 WL 4774611, at *4 (N.D. Cal. Sept. 22, 2014); *In re Carrier IQ, Inc.*, 78 F. Supp. 3d 1051, 1075 (N.D. Cal. 2015) (Chen, J.) (plaintiffs lacked standing at the pleadings phase to assert claims based on the laws of states in which they

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do not reside or did not purchase the product at issue); *Jones v. Micron Tech. Inc.*, 400 F. Supp. 3d 897, 908-11 (N.D. Cal. 2019) (same).

Alternatively, dismissal or striking of the attempt to assert nationwide claims remains appropriate if the Court is inclined to view the matter as one of Rule 23 adequacy, typicality, predominance, or manageability. This is because the law of the relevant claims varies markedly and unmanageably across the nation.

Unjust enrichment is the complaint's only overt gesture at a nationwide class claim. Yet, the Ninth Circuit explained that the "elements necessary to establish a claim for unjust enrichment…vary materially from state to state." *Mazza*, 666 F.3d at 591. As such, courts routinely determine that material state-by-state variations in the law of unjust enrichment preclude nationwide certification of such claims. *E.g., Phan v. Sargento Foods, Inc.*, No. 20-cv-9251-EMC, 2021 WL 2224260, at *7-8 (N.D. Cal. Jun. 2, 2021) (Chen, J.) (surveying case authorities and striking attempt at nationwide unjust enrichment class in another food labeling case).

The same goes for express warranty claim. The complaint does not specify the breadth of the putative class on whose behalf Plaintiffs assert a breach of warranty. To the extent Plaintiffs intend the warranty claim to extend nationwide, courts also reject such attempts, considering that "significant" and "material" differences among the states' express warranty laws render the venture untenable. *Darisse v. Nest Labs, Inc.*, No. 5:14-cv-1363-BLF, 2016 WL 4385849, at *11-13 (N.D. Cal. Aug. 15, 2016); *Phan*, 2021 WL 2224260, at *9-10 (this Court's finding to that effect upon surveying case authorities).

2. Plaintiffs Lack Standing to Challenge Products And Varieties They Did Not Purchase.

At the outset, the complaint evinces a basic failure to give notice what the unpled "Class Products" are. Dkt. 1, ¶ 77 ("Class Products" not even named); *id.* at ¶ 82 (same). It does not set out what products in what flavor varieties Polar must defend. *See id.*

Whatever the scope of the challenged products, seltzer products and their varieties that Plaintiffs did not purchase cannot possibly have caused them any injury-in-fact capable of

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conferring Article III standing. *Granfield v. NVIDIA Corp.*, No. C 11-05403 JW, 2012 WL 2847575, at *6 (N.D. Cal. July 11, 2012) ("when a plaintiff asserts claims based both on products that she purchased and products that she did not purchase, claims relating to products not purchased must be dismissed for lack of standing"); *Carrea v. Dreyer's Grand Ice Cream, Inc.*, No. C 10-01044 JSW, 2011 WL 159380, at *3 (N.D. Cal. Jan. 10, 2011) (dismissal with prejudice of claims relating to unpurchased products because plaintiff did not "allege[] that he purchased Defendant's Dibs products or otherwise suffered any injury or lost money or property with respect to those products").

Even if a supposed similarity among the products could confer standing for Plaintiffs to dispute products they never purchased, the complaint falls short of alleging as much. *Ang v. Bimbo Bakeries USA, Inc.*, No. 13-cv-01196-WHO, 2014 WL 1024182, at *8 (N.D. Cal. Mar. 13, 2014) (evaluating "whether the resolution of the asserted claims will be identical between the purchased and unpurchased products."). To start, it does not allege the synthetic substance(s) that supposedly rendered the natural labeling of Plaintiffs' own purchases deceptive. Let alone does the complaint allege what synthetic substance(s) the unpurchased products contain that allegedly make their labels deceptive. As such, the complaint leaves it impossible to conclude that resolution of the asserted claims could somehow be identical between the purchased and unpurchased range of products. *Id.* at *9 ("fact-specific analyses of each product" required to determine whether "ingredients and formation" are "in fact 'processed and preserved' to such a level that the use of the term 'fresh' becomes misleading").

This failure to allege that the seltzers Plaintiffs purchased are substantially similar to products Plaintiffs did not purchase warrants dismissal for lack of standing. *Gonzales v. Nat. Factors Nutritional Prods. Inc.*, No. 2:24-cv-2584-DSF, 2024 WL 4609853, at *6 (C.D. Cal. June 28, 2024) (dismissing for lack of standing where plaintiff failed to allege that unpurchased products were substantially similar); *Gamez v. Summit Nats., Inc.*, No. 22-cv-5894 DSF, 2022 WL 17886027, at *7 (C.D. Cal. Oct. 24, 2022) (dismissing for lack of standing where plaintiff failed to allege unpurchased products were substantially similar to products she purchased).

Going beyond a *mere failure* to plausibly assert similarity, the complaint affirmatively

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makes similarity *implausible* by asserting that the seltzers' flavorings are "the near definitive source[s]" of synthetic substances that allegedly make the labeling deceptive. Dkt. 1, ¶ 56. Of course, each of those flavorings has its own distinct chemical composition special to each flavored variety of seltzer. Indeed, the complaint acknowledges that the differences among the flavorings' chemical compositions are potent enough to create a wide and varied array of tastes. *Id*. at ¶ 2 (lime, cranberry lime, black cherry, ginger lime mule); *id*. at ¶ 3 (ruby red grapefruit); *id*. at ¶ 23 (blackberry, orange vanilla, lemon). This drains plausibility from any (unpled) contention that the supposedly offending flavorings match each other for standing purposes, especially since Plaintiffs do not even say what seltzer product(s) in what flavor(s) they tested. *Krystofiak v. BellRing Brands, Inc*., 737 F. Supp. 3d 782, 794 (N.D. Cal. 2024) (where plaintiffs tested some flavors but not others, "there is no indication of the lead content in the other 14 untested flavors," so court would "not infer the lead content of the untested flavors" for standing purposes).

Thus, Plaintiff would lack standing to litigate the unpurchased products even if Article III's injury-in-fact requirement could be set aside or relaxed to suit class pleading. *But see Amchem Prods. v. Windsor*, 521 U.S. 591, 613 (1997) (Rule 23 "must be interpreted in keeping with Article III constraints, and with the Rules Enabling Act, which instructs that rules of procedure 'shall not abridge, enlarge or modify any substantive right'"); 28 U.S.C. § 2072(b); FED. R. CIV. P. 82 ("These rules do not extend…the jurisdiction of the district courts").

3. Plaintiffs Lack Standing To Seek Injunctive Or Declaratory Relief.

Plaintiffs also lack Article III standing to pursue an injunction or corresponding declaratory relief because they fail to plausibly allege future risk of injury. To seek such prospective relief, a plaintiff must show that the threat of future injury is "actual and imminent, not conjectural or hypothetical." *Davidson*, 889 F.3d at 967. "Where standing is premised entirely on the threat of repeated injury, a plaintiff must show a sufficient likelihood that he will again be wronged in a similar way." *Id*. Plaintiffs fail to do so.

Rather, the complaint effectively alleges that Plaintiffs will not repurchase, since it firmly declares they would not have purchased the products if they knew then what they (claim to)

know now. Dkt. 1, ¶¶ 19, 27. Even if they purchase again, they are now wise to their alleged deception and cannot be so deceived anew, thus foreclosing any "actual and imminent, not conjectural or hypothetical," threat of future harm. *Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009).

The Ninth Circuit's *Davidson* decision does not save Plaintiffs' injunctive or declaratory demands because they allege no imminent desire to repurchase the products, let alone plausibly. *Davidson*, 889 F.3d at 969-971. Barring themselves from the narrow refuge that *Davidson* opened, they effectively admit they will not repurchase until the alleged deception is cured to their satisfaction (dkt. 1, ¶¶ 21, 29), and even then, they might or might not. *Id.*, ¶ 76 (merely "would be willing"). Plaintiffs cannot allege any "certainly impending" harm of an actual or imminent gravity to justify prospective injunctive or declaratory relief. *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013); *Summers*, 555 U.S. at 493.

IV. CONCLUSION

Polar respectfully asks the Court to grant this motion and dismiss the complaint.

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