UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No. CV 20-2311-MWF (GJSx) **Date: November 13, 2020**
Title: Mocha Gunaratna v. Dennis Gross Cosmetology LLC et al.

Present: The Honorable MICHAEL W. FITZGERALD, U.S. District Judge

Deputy Clerk:	Court Reporter:
Rita Sanchez	Not Reported
Attorneys Present for Plaintiff:	**Attorneys Present for Defendant:**
None Present	None Present

Proceedings (In Chambers): ORDER DENYING DEFENDANT'S MOTION TO DISMISS [28]

Before the Court is Defendant Dr. Dennis Gross Skincare, LLC's Motion to Dismiss Complaint (the "Motion"), filed on September 25, 2020. (Docket No. 28). Plaintiff Mocha Gunaratna filed an opposition on October 19, 2020. (Docket No. 32). Defendant filed a reply on October 26, 2020. (Docket No. 33).

The Motion was noticed to be heard on November 9, 2020. The Court read and considered the papers on the Motion and deemed the matter appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78(b); Local Rule 7-15. Vacating the hearing was also consistent with General Order 20-09 arising from the COVID-19 pandemic.

For the reasons stated below, the Motion is **DENIED *in part*** and **GRANTED *in part***. The Motion is granted with leave to amend the claims brought pursuant to state consumer protection statutes outside of California, as Plaintiff failed to demonstrate that she has standing to bring these claims and failed to plead these claims with specificity. The Motion is otherwise denied.

I. BACKGROUND

Plaintiff commenced this putative class action on March 10, 2020, against Defendants Dennis Gross Cosmetology LLC, Dennis Gross Dermatology LLC, and Dr. Dennis Gross Skincare, LLC. (*See* Complaint (Docket No. 1)). On June 18, 2020, Defendants filed a motion to dismiss the Complaint, asserting that Plaintiff had filed

suit against the improper entities. (Docket No. 18). On July 15, 2020, the Court denied the motion without prejudice and ordered the parties to meet and confer on the merits of the motion to dismiss and which Defendants should be named. (Docket No. 22). On July 22, 2020, the parties filed a joint stipulation agreeing that Dr. Dennis Gross Skincare, LLC is the proper Defendant and permitting Plaintiff to amend the Complaint to dismiss Defendants Dennis Gross Cosmetology LLC and Dennis Gross Dermatology LLC. (Docket No. 23). On July 23, 2020, the Court issued an order pursuant to the parties' stipulation. (Docket No. 24). On August 26, 2020, Plaintiff filed the First Amended Complaint ("FAC") against Defendant Dr. Dennis Gross Skincare, LLC, the only remaining defendant in this action. (Docket No. 27).

The FAC contains the following allegations, which the Court takes as true and construes any inferences arising from those facts in the light most favorable to Plaintiff. *See Schueneman v. Arena Pharm., Inc.*, 840 F.3d 698, 704 (9th Cir. 2016) (restating generally-accepted principle that "[o]rdinarily, when we review a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), we accept a plaintiff's allegations as true 'and construe them in the light most favorable' to the plaintiff") (quoting *Zucco Partners, LLC v. Digimarc Corp.*, 552 F.3d 981, 989 (9th Cir. 2009)).

Collagen is a protein found in the cartilage, bone, and tissues of animals, fish, and humans, and is not found in plants. (FAC ¶ 15). Because collagen has been linked to maintaining youthful skin, hair, and nails, there is a booming market of anti-aging skincare products containing collagen in the United States. (*Id.* ¶ 16).

Defendant sells a skincare product line called Dr. Dennis Gross C + Collagen (the "Products") online and at retail outlets throughout California and the United States. (*Id.* ¶ 2). Defendant lists "Collagen Amino Acids" as an ingredient in the product. (*Id.* ¶ 19). While the Products do contain Vitamin C, they contain zero collagen. (*Id.* ¶ 18).

Plaintiff purchased the C + Collagen Deep Cream and C + Collagen Serum Products at a Sephora store located at The Grove in Los Angeles, California in 2018 for approximately $75 each. (*Id.* ¶ 8). In making her purchase decision, Plaintiff relied upon Defendant's labeling, packaging, and advertising claims, including the front label

which states "Collagen" in bold typeface, under the mistaken belief that the Products contained collagen. (*Id.*). Plaintiff would not have purchased the Products had she known that the Products did not contain collagen. (*Id.* ¶ 9).

Plaintiff seeks to represent the following class:

> All persons who purchased the Products in the United States or, alternatively, the State of California, for personal use and not for resale during the time period of four years prior to the filing of the complaint through the present (the "Nationwide Class" and "California Subclass").

(*Id.* ¶ 29). On behalf of herself and the putative Class, Plaintiff asserts eight claims for relief: (1) violation of California's Consumers Legal Remedies Act ("CLRA"); (2) violation of California's False Advertising Law ("FAL"); (3) violation of California's Unfair Competition Law ("UCL"); (4) breach of express warranty; (5) breach of implied warranty; (6) violation of written warranty under the Magnuson Moss Warranty Act ("MMWA"); (7) violation of the implied warranty of merchantability under state law pursuant to the MMWA; and (8) restitution based on quasi-contract/unjust enrichment. (*Id.* ¶¶ 40-140).

II. REQUEST FOR JUDICIAL NOTICE

As a general rule, "a district court may not consider any material beyond the pleadings in ruling on a Rule 12(b)(6) motion." *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001). The Court may, however, take judicial notice of matters of public record outside the pleadings that are not subject to reasonable dispute. Fed. R. Evid. 201(b); *see Skilstaf, Inc. v. CVS Caremark Corp.*, 669 F.3d 1005, 1016 n.9 (9th Cir. 2012).

Though Defendant does not submit a formal request for judicial notice, Defendant argues that the Court should consider photographs of the packaging of the Products, which Defendant submitted as an exhibit in support of the Motion. (Motion at 5-7) (citing Declaration of Jennifer Hargrove ("Hargrove Decl."), Ex. A (Docket No.

28-1)). Defendant argues that the exhibit is subject to judicial notice because the FAC incorporates the Products' packaging by reference. (*Id.* at 7).

Plaintiff opposes Defendant's request and argues that the FAC does not necessarily rely on the Products' packaging, but rather, never referenced the side or back labels of the Products. (Opposition at 2-4).

The Court agrees with Defendant that the Products' packaging is incorporated by reference. Courts routinely incorporate product labels where the complaint challenges their adequacy. *See e.g., Eidson v. Medtronic, Inc.*, 40 F. Supp. 3d 1202, 1214 (N.D. Cal. 2014) ("[The plaintiff] directly challenges the sufficiency of the FDA-approved warnings and the contents of those warnings are thus incorporated in his complaint."); *Altman v. HO Sports Co., Inc.*, No. 1:09-CV-1000 AWI (SMS), 2009 WL 4163512, at *8 (E.D. Cal. Nov. 23, 2009) (taking judicial notice of a warning label because "[the plaintiff] does not sufficiently question the authentication of the warning" and "the warning itself forms the basis for one of [the plaintiff's] strict liability theories.").

Moreover, the authenticity of photographs was verified by declaration and is not in dispute. While Plaintiff disputes Defendant's ***characterization*** of the Products' packaging in Defendant's Motion, Plaintiff does not dispute the ***authenticity*** of the photographs or that they are fair and accurate depictions of the Products' packaging. Application of the incorporation by reference doctrine is therefore permissible. *See Knievel v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005) (incorporation by reference doctrine applies where "plaintiff's claim depends on the contents of a document, the defendant attaches the document to its motion to dismiss, and the parties do not dispute the authenticity of the document, even though the plaintiff does not explicitly allege the contents of that document in the complaint").

Accordingly, Defendant's request for judicial notice is **GRANTED**.

III. DISCUSSION

Defendant argues that the FAC should be dismissed for seven reasons: (1) Plaintiff's claim is not plausible because it contradicts the actual product label; (2)

Plaintiff's conclusory nationwide claims fail to allege facts or explain how Defendant violated each state's statute; (3) Plaintiff failed to plead sufficient facts to show false advertising; (4) Plaintiff failed to allege that a warranty under the MMWA existed; (5) Plaintiff failed to plead any facts showing Defendant was unjustly enriched; (6) Plaintiff lacks standing to bring claims for the Products she did not purchase; and (7) FDA regulations preempt Plaintiff's claim. (Motion at 4-21).

A. Legal Standard

"Dismissal under Rule 12(b)(6) is proper when the complaint either (1) lacks a cognizable legal theory or (2) fails to allege sufficient facts to support a cognizable legal theory." *Somers v. Apple, Inc.*, 729 F.3d 953, 959 (9th Cir. 2013).

In ruling on the Motion under Rule 12(b)(6), the Court follows *Bell Atlantic v. Twombly*, 550 U.S. 544 (2007), *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), and their Ninth Circuit progeny. "To survive a motion to dismiss, a complaint must contain sufficient factual matter . . . to 'state a claim for relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). The Court must disregard allegations that are legal conclusions, even when disguised as facts. *See id*. at 681 ("It is the conclusory nature of respondent's allegations, rather than their extravagantly fanciful nature, that disentitles them to the presumption of truth."); *Eclectic Props. E., LLC v. Marcus & Millichap Co*., 751 F.3d 990, 996 (9th Cir. 2014). "Although 'a well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof is improbable,' plaintiffs must include sufficient 'factual enhancement' to cross 'the line between possibility and plausibility.'" *Eclectic Props.*, 751 F.3d at 995 (quoting *Twombly*, 550 U.S. at 556-57) (internal citations omitted).

The Court must then determine whether, based on the allegations that remain and all reasonable inferences that may be drawn therefrom, the complaint alleges a plausible claim for relief. *See Iqbal*, 556 U.S. at 679; *Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1054 (9th Cir. 2011). "Determining whether a complaint states a plausible claim for relief is 'a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.'" *Ebner v. Fresh, Inc.*, 838 F.3d 958, 963 (9th Cir. 2016) (quoting *Iqbal*, 556 U.S. at 679). Where

the facts as pleaded in the complaint indicate that there are two alternative explanations, only one of which would result in liability, "plaintiffs cannot offer allegations that are merely consistent with their favored explanation but are also consistent with the alternative explanation. Something more is needed, such as facts tending to exclude the possibility that the alternative explanation is true, in order to render plaintiffs' allegations plausible." *Eclectic Props.*, 751 F.3d at 996-97; *see also Somers*, 729 F.3d at 960.

Fraud-based allegations are governed by Rule 9(b). "Rule 9(b) demands that, when averments of fraud are made, the circumstances constituting the alleged fraud be specific enough to give defendants notice of the particular misconduct so that they can defend against the charge[.]" *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003) (internal citations omitted). Under Rule 9(b), fraud allegations must include the "time, place, and specific content of the false representations as well as the identities of the parties to the misrepresentations." *Swartz v. KPMG LLP*, 476 F.3d 756, 764 (9th Cir. 2007) (citing *Edwards v. Marin Park, Inc.*, 356 F.3d 1058, 1066 (9th Cir. 2004)). In other words, "[a]verments of fraud must be accompanied by 'the who, what, when, where, and how' of the misconduct charged." *Vess*, 317 F.3d at 1106. Such averments must be specific enough to "give defendants notice of the particular misconduct . . . so that they can defend against the charge and not just deny that they have done anything wrong." *Id*. (quoting *Bly–Magee v. California*, 236 F.3d 1014, 1019 (9th Cir. 2001)).

B. Standing

As a preliminary matter, Defendant argues that Plaintiff lacks standing to bring claims for products that she did not purchase. (Motion at 16-19). The FAC alleges that Plaintiff purchased two of Defendant's products in the C + Collagen skincare line, the Deep Cream and the Serum, but does not allege that she purchased the Mist or Eye Cream. (FAC ¶ 8).

To establish standing to bring a false-advertising-related claim, whether the claims are brought under the CLRA, FAL, and/or UCL, the plaintiff must show that: (1) the plaintiff suffered some economic or reputational injury, and (2) the plaintiff's

injury was caused by the defendant's deceptive advertising. *See* Cal. Bus. & Prof. Code § 17204 (private UCL claim may only be brought "by a person who has suffered injury in fact and has lost money or property as a result of the unfair competition"); *Prescott v. Rady Children's Hospital-San Diego*, 265 F. Supp. 3d 1090, 1105 (S.D. Cal. 2017) ("The standing requirements under California's UCL and FAL are . . . identical.") (citing *Kwikset Corp. v. Super. Ct.*, 51 Cal. 4th 310, 320-21, 120 Cal. Rptr. 3d 741 (2011)); *Hinojos v. Kohl's Corp.*, 718 F.3d 1098, 1108 (9th Cir. 2013) ("[A]ny plaintiff who has standing under the UCL's and FAL's 'lost money or property' requirement will, *a fortiori*, have suffered 'any damage' for purposes of establishing CLRA standing."). "In order to have standing under the UCL, FAL, or CLRA, the named plaintiff must demonstrate actual reliance." *Reed v. NBTY, Inc.*, No. EDCV130142JGBOPX, 2014 WL 12284044, at *7 (C.D. Cal. Nov. 18, 2014).

The Ninth Circuit has not yet decided whether a plaintiff has standing to assert claims on behalf of consumers who purchased similar but not identical products, and district courts are split on the issue. *Compare, e.g., Brown v. Hain Celestial Grp., Inc.*, 913 F. Supp. 2d 881, 890 (N.D. Cal. 2012) (holding that plaintiff has standing to bring "claims for unnamed class members based on products he or she did not purchase so long as the products and alleged misrepresentations are substantially similar"); *with* G*ranfield v. NVIDIA Corp.*, CV 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"). Some district courts have decided to defer ruling on this issue until the class certification stage. *See, e.g.*, *Cardenas v. NBTY, Inc.*, 870 F. Supp. 2d 984, 992-93 (E.D. Cal. 2012) (analyzing "solely under Rule 23" whether plaintiff may assert claims on behalf of purchasers of products she did not purchase); *Forcellati v. Hyland's, Inc.*, 876 F.Supp.2d 1155, 1161 (C.D. Cal. 2012) (denying defendants' motion to dismiss because the "argument is better taken under the lens of typicality or adequacy of representation, rather than standing").

For reasons of judicial economy, the Court finds persuasive the reasoning of district courts holding that the issue of standing turns on whether the products and the alleged misrepresentations are sufficiently similar. *See Brown*, 913 F. Supp. 2d at 890

(holding that putative named plaintiff had standing to challenge entire line of products because although unpurchased products were for different uses and were marketed differently, the allegedly false "organic" label was consistent among all products); *Anderson v. Jamba Juice Co.*, 888 F. Supp. 2d 1000, 1006 (N.D. Cal. 2012). In *Anderson*, for example, the court held that the plaintiff had standing to survive the motion to dismiss claims based on smoothie kits that plaintiff did not purchase, reasoning that, although the unpurchased kits contained different flavors as the purchased kits, the alleged misrepresentation was the same on all smoothie kits. 888 F. Supp. 2d at 1006. The court explained that "[i]f there is a sufficient similarity between the products, any concerns regarding material differences in the products can be addressed at the class certification stage." *Id.*

Here, Plaintiff's claims involve one skincare line of four different products, all of which have a cohesive aesthetic, and share the same name, which is prominently displayed on the front label of the product: "C + Collagen."

(FAC ¶ 2). The alleged misrepresentation is also the same for all four products, in that each product is named "C + Collagen" but contains no collagen. The Court adopts the persuasive reasoning of *Brown* and *Anderson*. Any material differences between these products can be addressed during a motion for class certification.

C. Preemption

Defendant argues that FDA regulations preempt Plaintiff's labeling claims. (Motion at 19-21). Defendant contends that the FDCA "explicitly regulates" the disclosure of ingredients, and because the Products are in compliance with this requirement, Plaintiff's claims are preempted because they are necessarily "in addition to" or "different from" the FDCA. (*Id.* at 20).

Defendant's theory is foreclosed by *Astiana v. Hain Celestial Grp., Inc.*, 783 F.3d 753, 758 (9th Cir. 2015), which held that "[t]he FDCA does not expressly preempt state causes of action predicated on federal cosmetics labeling laws. [The plaintiff's] state law claims that [defendant's] products were labeled in a way that was 'false or misleading in any particular' may proceed." *See id.* ("We do not think that the FDA requires an ingredient list so that manufacturers can mislead consumers and then rely on the ingredient list to correct those misinterpretations and provide a shield for liability for the deception.") (quoting *Williams v. Gerber Prods. Co.*, 552 F.3d 934, 939 (9th Cir. 2008)).

Accordingly, the Motion with respect to preemption is **DENIED**.

D. Reasonable Consumer Standard

Defendant claims that the FAC fails to state a plausible claim because the allegedly misleading "collagen" label is contradicted by the rest of the Products' packaging, which clearly states that the Products contain "collagen amino acids" and are "vegan." (Motion at 6-8).

Although there are important differences between the UCL, FAL, and CLRA, to state a viable claim under any of those statutes, Plaintiff must allege facts showing that

the advertisement in question is misleading to a reasonable consumer. *In re: 5 Hour Energy*, MDL 13-2438 PSG (PLAx), 2014 WL 5311272, at *23 (C.D. Cal. Sept. 4, 2014) (holding that the "reasonable consumer" standard applies to UCL, FAL, and CLRA claims) (citing *Williams*, 552 F.3d at 938). False advertisement laws prohibit "not only advertising which is false, but also advertising which[,] although true, is either actually misleading or which has a capacity, likelihood or tendency to deceive or confuse the public.'" *Williams*, 552 F.3d at 938 (quoting *Kasky v. Nike, Inc.*, 27 Cal. 4th 939, 951, 119 Cal. Rptr. 2d 296 (2002)). "[T]he reasonable consumer standard requires a probability that a significant portion of the general consuming public or of targeted consumers, acting reasonably in the circumstances, could be misled." *Ebner*, 838 F.3d at 965 (internal quotation marks omitted). Whether advertising is misleading "is determined by considering a reasonable consumer who is neither the most vigilant and suspicious of advertising claims nor the most unwary and unsophisticated, but instead is the ordinary consumer within the target population." *Chapman v. Skype Inc.*, 220 Cal. App. 4th 217, 226, 162 Cal. Rptr. 3d 864 (2013) (internal quotation marks omitted). The reasonable consumer standard raises questions of fact that are appropriate for resolution on a motion to dismiss only in "rare situation[s]." *Williams*, 552 F.3d at 939.

This action does not present one of those rare situations.

The Products have the word collagen in their name, which is prominently displayed on the front of the Products' packaging. (*See* Hargrove Decl., Ex. A). Plaintiff alleges that the Products contained no collagen and that collagen is not found in plants. (FAC ¶ 15). Defendant asserts that the packaging is not misleading because it truthfully lists "collagen amino acids" in both the ingredients and the "What's In It For You" sections on the back of the box. (Motion at 8). This argument is unpersuasive. The Court fails to see how the modifier "amino acids" would clear up a consumer's potential confusion if, in fact, the Products contained no collagen. If anything, the additional mention of collagen may have the effect of reassuring a consumer that the Products do contain collagen. (*See* Hargrove Decl., Ex. A) ("This weightless, fast-absorbing gel-serum is power-packed with our 3-O C vitamin C technology, collagen amino acids, and proprietary energy complex."). Equally

unavailing is Defendant's argument that the packaging contains a "vegan" disclaimer. The vegan symbol and accompanying text are quite small and difficult to find, located on the bottom right corner of the side of the box that otherwise is written in French. (*See* Hargrove Decl., Ex. A).

But even accepting Defendant's argument that no reasonable consumer viewing the package as a whole would conclude that the Products contain collagen, the Ninth Circuit has warned that "reasonable consumers should [not] be expected to look beyond misleading representations on the front of the box to discover the truth from the ingredient list in small print on the side of the box." *Williams*, 552 F.3d at 939. The Court determines that Plaintiff has stated a claim that could plausibly prove that a reasonable consumer would be deceived by Defendant's packaging.

Accordingly, the Motion with respect to the reasonable consumer standard is **DENIED**.

E. Pleading Standard of Rule 9(b)

Defendant argues that Plaintiff failed to plead any facts showing that the label and representations of the Products are false. (Motion at 5). The Court disagrees.

Plaintiff alleges that the label of the Products is false and misleading because the Products are named "C + Collagen" but contain no actual collagen. (FAC ¶ 18). These facts show why the labeling of the Products was false. Plaintiff has met the heightened pleading standard for Rule 9(b). *See Vess v. Ciba–Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003) ("The plaintiff must set forth what is false or misleading about a statement, and why it is false."); *Davidson v. Kimberly-Clark Corp.*, 76 F. Supp. 3d 964, 974 (N.D. Cal. 2014) ("It is not enough . . . to simply claim that [an advertisement] is false — [the plaintiff] must allege facts showing *why* it is false.").

F. Nationwide Class Allegations

Defendant argues that the Court should strike Plaintiff's nationwide class allegations because Plaintiff pleads no facts showing how Defendant violated consumer protection statutes in all fifty states and offers no explanation for how these statutes differ. (Motion at 8-10). Plaintiff responds that Defendant's choice-of-law argument is premature and should be decided at the class certification stage. (Opposition at 11-15). Defendant replies that it is not making a choice-of-law argument, but rather, Rule 8 and 9(b) arguments. (Reply at 11-13).

The Court agrees with Defendant. The Court need not engage in a choice-of-law analysis here because Plaintiff has not requested that the Court apply California law to claims of unnamed class members in other states. Rather, the FAC alleges in a conclusory fashion that Defendant violated consumer protection laws in all fifty states and brings Counts One through Five "on behalf of the Nationwide Class, in conjunction with the substantively similar consumer protection laws [and similar common laws] of other states and the District of Columbia to the extent California consumer protection law is inapplicable to out-of-state Class members." (*See* FAC description of Count One through Five); (*id.* ¶ 7) (listing statutes of fifty states).

Plaintiff fails to meet pleading requirements as to these claims, as the FAC's conclusory assertions offer no explanation as to how these state laws differ and include no facts showing how Defendant allegedly violated each of these laws. "[T]he other 49 states' consumer protection statutes differ significantly from California's UCL, FAL, and CLRA." *Darisse v. Nest Labs, Inc.*, No. 5:14-CV-01363-BLF, 2016 WL 4385849, at *9 (N.D. Cal. Aug. 15, 2016); *see also, e.g., Davison v. Kia Motors Am., Inc.*, No. 15-00239, 2015 WL 3970502, at *2 (C.D. Cal. June 29, 2015) (holding that differences in scienter and other "essential requirements to establish a claim" are material). Merely listing the name and code section of other states' consumer protection statutes does not suffice to state a claim.

Plaintiff also fails to show that she has standing to bring claims under other state laws. Article III standing is measured claim by claim. *In re Capacitors Antitrust Litigation*, 154 F. Supp. 3d 918, 924 (N.D. Cal. 2015) (citing *DaimlerChrysler Corp. v.*

Cuno, 547 U.S. 332, 352 (2006)). A putative named plaintiff must have standing to bring each claim alleged. *Id.* at 925 (citing *Lewis v. Casey*, 518 U.S. 343, 357-58 (1996)). Accordingly, in a putative multi-state class, the "named plaintiff must have Article III standing to bring a claim under the laws of each state included in the alleged multi-state class." *Razuki v. Nationstar Mortg., LLC*, 18-CV-03343-JD, 2020 WL 1478374, at *3 (N.D. Cal. Mar. 26, 2020) (citing *In re Capacitors*, 154 F. Supp. 3d at 926-27).

Plaintiff offers no explanation for how she has standing under other state laws. She does not allege that she was "injured by [Defendant's] conduct in any state other than California." *See id.* Since the FAC lists the statutes of fifty other states which Defendant allegedly violated, it appears that Plaintiff also does not "suggest that California law applies to all putative class members." *See id.* As a result, the FAC does not establish that Plaintiff may sue on behalf of customers outside of California. *See id.*

Accordingly, the Motion as to the nationwide class allegations is **GRANTED *with leave to amend***. If Plaintiff chooses to amend on the standing issue, she should clearly delineate the particular state laws on which she brings each of her claims, the elements of those laws, and facts describing with specificity how Defendant allegedly violated those laws.

G. Breach of Warranty, Magnuson-Moss Warranty Act, and Unjust Enrichment

Defendant argues that because Plaintiff failed to plead sufficient facts to show false advertising, her claims for breach of warranty and unjust enrichment also fail. (Motion at 10-13; 15-16). Defendant also argues that Plaintiff failed to identify a warranty made as defined by the MMWA and a breach of a written warranty. (*Id.* at 13-15).

"To prevail on a breach of express warranty claim under California law, a plaintiff must prove that: (1) the seller's statements constitute an affirmation of fact or promise or a description of the goods; (2) the statement was part of the basis of the

bargain; and (3) the warranty was breached." *Brown*, 913 F. Supp. 2d at 900-01 (citing *Weinstat v. Dentsply Int'l, Inc.*, 180 Cal. App. 4th 1213, 1227, 103 Cal. Rptr. 3d 614 (2010)). The plaintiff must allege the "exact terms of the warranty." *Nabors v. Google, Inc.*, CV 10-03897 EJD (PSG), 2011 WL 3861893, at *4 (N.D. Cal. Aug. 30, 2011) (citing *Williams v. Beechnut Nutrition Corp.*, 185 Cal. App. 3d 135, 142, 229 Cal. Rptr. 605 (1986)); *Rosales v. FitFlop USA, LLC*, 882 F. Supp. 2d 1168, 1178 (S.D. Cal. 2012) ("Defendant is correct that a breach of express warranty claim must describe the exact terms of the warranty at issue.").

As discussed above, Plaintiff alleged that the Products' label expressly described the goods as containing collagen and that the Products did not, in fact, contain collagen. Plaintiff has stated a plausible claim for breach of express warranty. Plaintiff's claim pursuant to MMWA may also proceed, since "claims under the Magnuson-Moss Act stand or fall with [plaintiff's] express and implied warranty claims under state law." *Clemens v. DaimlerChrysler Corp.*, 534 F.3d 1017, 1022 (9th Cir. 2008) ("this court's disposition of the state law warranty claims determines the disposition of the Magnuson-Moss Act claims.").

Because Plaintiff has sufficiently alleged facts showing that Defendant's advertising is false, Defendant's unjust enrichment argument fails.

Accordingly, the Motion as to Plaintiff's breach of express warranty, MMWA, and unjust enrichment claims is **DENIED**.

IV. CONCLUSION

The Motion is **DENIED *in part*** and **GRANTED *in part***. The Motion is granted ***with leave to amend*** as to Plaintiff's claims based on laws of states other than California. The Motion is otherwise denied.

Plaintiffs may file a Second Amended Complaint ("SAC") on or before **November 30, 2020**. Defendant shall file a response to the SAC by D**ecember 14, 2020**. If Plaintiff fails to file the SAC on or before November 30, 2020, the FAC's nationwide allegations and claims will be **DISMISSED *with prejudice***.

While Plaintiff may file a Second Amended Complaint, there will be no Third. Plaintiff is warned that failure to remedy the defects detailed in this Order will result in dismissal of the defective claims and/or allegations ***with prejudice***.

IT IS SO ORDERED.