UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 8:25-cv-01112-JLS-PD Date: November 05, 2025
Title: Kevin Shahinian v. IQBAR, Inc.

Present: **Honorable JOSEPHINE L. STATON, UNITED STATES DISTRICT JUDGE**

Kelly Davis	N/A
Deputy Clerk	Court Reporter

Attorneys Present for Plaintiffs:	Attorneys Present for Defendant:
Not Present	Not Present

PROCEEDINGS: (IN CHAMBERS) ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT IQBAR'S MOTION TO DISMISS AND/OR STRIKE (Doc. 10)

Before the Court is a Motion to Dismiss and/or Strike filed by Defendant IQBAR, Inc. (Mot., Doc. 10.) Plaintiff Kevin Shahinian opposed, and Defendant replied. (Opp., Doc. 14; Reply, Doc. 15.) Having taken this matter under submission, and for the following reasons, the Court GRANTS IN PART and DENIES IN PART Defendant's Motion.

I. BACKGROUND

Plaintiff is a purchaser of Defendant's nutrition bars (the "Bars"), which purport on their packaging to contain 12 grams of protein, constituting 24% of the recommended daily value of protein ("%DRV"). (Compl. ¶¶ 18, 39, 42, Doc. 1.) Plaintiff asserts three claims: (1) violation of the Consumer Legal Remedies Act ("CLRA"), Cal. Civ. Code § 1750, *et seq.* (*id.* ¶ 80); (2) unjust enrichment (*id.* ¶ 89); and (3) breach of express warranty (*id.* ¶ 98).

For each claim, Plaintiff asserts two theories of liability: (1) that the packaging overrepresents the %DRV because the value is not adjusted for the protein's usability by the body as required by federal regulations (*id.* ¶¶ 27–44); and (2) that many flavors of the Bars contain less than the purported 12 grams of total protein (*id.* ¶¶ 45–49.) To support his second theory of liability, Plaintiff submits the results of two tests conducted on each of the seven flavors of Bar. (*Id.* ¶¶ 45–46.) The results indicate that six of those flavors rounded to less than 12 grams of protein for at least one test, and two of those flavors failed both tests. (*Id.*) Defendant moves to dismiss, arguing that Plaintiff has not stated a claim on two bases: (1) under the total protein theory of liability, five flavors of bar had at least one test result rounding to 12 grams, making it implausible that those flavors would not comply with federal food-testing standards, thereby preempting the state law claims (Mot. at 6–8); and (2) Plaintiff may not seek restitution as a remedy because he has adequate remedies at law (*id.* at 8–9).

II. LEGAL STANDARD

A. Rule 12(b)(6)

In deciding a motion to dismiss under Rule 12(b)(6), courts must accept as true all "well-pleaded factual allegations" in a complaint. *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). However, "courts are not bound to accept as true a legal conclusion couched as a factual allegation." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citation modified). The complaint must contain "sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Iqbal*, 556 U.S. at 678 (cleaned up).

"A 12(b)(6) motion must seek to dispose of an entire claim." *Kan v. Gen. Motors LLC*, 2023 WL 11197090, at *1 (C.D. Cal. Nov. 7, 2023) (Staton, J.); *see also Hernandez v. Path*, 2012 WL 5194120, at *6 n.7 (N.D. Cal. Oct. 19, 2012) ("Federal Rule of Civil Procedure 12(b)(6) is not an appropriate device to eliminate a portion of a claim."); *Thompson v. Paul*, 657 F. Supp. 2d 1113, 1129 (D. Ariz. 2009) ("The Court is unaware

. . . of any situation in which a Rule 12(b)(6) motion may be used to strike certain allegations in support of a claim, where the underlying claim itself is not challenged.”).[1]

Additionally, Courts are to “freely give leave [to amend] when justice so requires.” Fed. R. Civ. P. 15(a)(2); *see also Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003) (indicating that the Rule 15(a)(2) policy is to be applied with “extreme liberality”). But Rule 15’s “liberality does not apply when amendment would be futile.” *Ebner v. Fresh, Inc.*, 838 F.3d 958, 968 (9th Cir. 2016). A proposed amendment is futile where “no set of facts can be proved under the amendment that would constitute a valid claim.” *Abels v. JBC Legal Grp., P.C.*, 229 F.R.D. 152, 157 (N.D. Cal. 2005).

III. ANALYSIS

Defendant makes two arguments in support of its Motion to Dismiss. First, Defendant argues that Plaintiff’s CLRA, unjust enrichment, and breach of express warranty claims should be dismissed as preempted insofar as they stem from the total protein theory of liability for five Bars. Second, Defendant argues that Plaintiff’s unjust enrichment claim should be dismissed because Plaintiff has adequate remedies at law. The Court addresses each argument in turn.

[1] While Defendant’s motion is captioned as a “Motion to Dismiss and/or Strike Plaintiff’s Complaint,” nowhere in the motion or supporting memorandum does Defendant identify the legal standard for a Rule 12(f) motion to strike, nor does the supporting memorandum provide any legal argument for striking any or all of the Complaint. Rather, the last paragraph of the supporting memorandum simply states “[t]he Court should dismiss the unjust enrichment claim and also dismiss or strike any other claim for restitution.” The Court finds this bare statement insufficient to constitute a proper motion to strike. The Court, therefore, treats the present motion solely as a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6).

A. Motion to Dismiss CLRA and Breach of Express Warranty Claims as to Five Bars

Defendant's motion to dismiss allegations stemming from the total protein theory fails to dispose of an entire claim. Defendant focuses on Plaintiff's second theory of liability, and only as it pertains to five flavors of Bar. (*See* Mot. at 6.) Even assuming *arguendo* that the Court agreed with Defendant, Defendant's motion would not—as it is required to—dispose of an entire claim because Plaintiff's claims would go unchallenged as to two flavors, as would Plaintiff's entire first theory of liability rooted in %DRV. *See Kan*, 2023 WL 11197090, at *1; *Hernandez*, 2012 WL 5194120, at *6 n.7; *Thompson*, 657 F. Supp. 2d at 1129.

Because Defendant fails to address all of Plaintiff's asserted theories of liability, Defendant's motion to dismiss the CLRA and Breach of Express Warranty claims is DENIED.

B. Motion to Dismiss Plaintiff's Unjust Enrichment Claim

Defendant next moves to dismiss Plaintiff's unjust enrichment claim, arguing that Plaintiff cannot seek restitution because he has not plausibly alleged that he lacks an adequate remedy at law. (Mot. at 8–9.) In response, Plaintiff argues that, at this early stage, he is entitled to plead inconsistent, alternative remedies. (Opp. at 14–15.) The Court concludes that Plaintiff's "election-of-remedies" argument misses the mark.

Under California law, "[t]here is no cause of action for unjust enrichment. Rather, unjust enrichment is a basis for obtaining restitution based on quasi-contract or imposition of a constructive trust." *McKell v. Wash. Mut., Inc.*, 49 Cal. Rptr. 3d 227, 254 (Cal. Ct. App. 2006). As Plaintiff's claim for unjust enrichment requests restitution, (Compl. ¶ 96), the Court construes the claim as one for restitution, an equitable remedy.

See VIZIO, Inc. v. Gemtek Tech. Co., 2014 WL 12691575, at *1 (C.D. Cal. Jan. 21, 2014).

After *Sonner v. Premier Nutrition Corp.*, 971 F.3d 834, 844 (9th Cir. 2020), to avoid dismissal of claims seeking equitable remedies, "plaintiffs must include substantive allegations in the complaint that explain why monetary damages are not an adequate remedy." *Chebul v. Tuft and Needle*, 2024 WL 5257021, at *3 (C.D. Cal. Oct. 9, 2024) (Staton, J.) (internal quotation and citation omitted). As this Court has previously held, "[t]he question is not whether or when Plaintiff[is] required to choose between two available inconsistent remedies, it is whether equitable remedies are available to Plaintiff[] at all. In other words, the question is whether Plaintiff[] ha[s] adequately pled [his] claims for equitable relief, and that question is not premature at this stage." *Heredia v. Sunrise Senior Living LLC*, 2021 WL 819159, at *4 (C.D. Cal. Feb. 10, 2021) (Staton, J.) (internal quotation and citation omitted); *see also In re Accellion, Inc. Data Breach Litig.*, 713 F. Supp. 3d 623, 648 (N.D. Cal. 2024) (concluding that plaintiffs failed to withstand motion to dismiss unjust enrichment claim by simply alleging that they lack an adequate remedy at law).

Because Plaintiff "fails to allege facts supporting the Court's equitable jurisdiction," *In re Accellion*, 713 F. Supp. 3d at 648, plaintiff's claim for unjust enrichment is DISMISSED WITH LEAVE TO AMEND.

IV. CONCLUSION

For the above reasons, Defendant's Motion is GRANTED IN PART AND DENIED IN PART. Plaintiff may file an amended complaint consistent with this Order on or before **November 15, 2025.** Plaintiff may not add new claims or parties.

Initials of Deputy Clerk: kd