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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

VANESSA BELL, DESTINEY MURRAH, and SEAN NUGENT, individually and as the representatives of a class of similarly situated persons, Plaintiffs, v. R.J. REYNOLDS VAPOR COMPANY, R.J. REYNOLDS TOBACCO COMPANY, REYNOLDS AMERICA INC., and BRITISH AMERICAN TOBACCO P.L.C., Defendants.	Case No. 3:25-cv-04521-TLT **REYNOLDS DEFENDANTS' NOTICE OF MOTION AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS FIRST AMENDED COMPLAINT FOR LACK OF SUBJECT-MATTER JURISDICTION AND FAILURE TO STATE A CLAIM** *[Concurrently filed with Request for Judicial Notice, Declaration of Darren K. Cottriel, Exhibits, and [Proposed] Orders]* Date: Feb. 3, 2026 Time: 2:00 PM Place: Courtroom 9, 19th Floor Judge: Honorable Trina L. Thompson FAC Filed: Sept. 30, 2025

NOTICE OF MOTION AND MOTION

TO THE COURT AND ALL PARTIES OF RECORD:

PLEASE TAKE NOTICE that on February 3, 2026, at 2:00 PM, or as soon thereafter as the matter may be heard before the Honorable Trina L. Thompson, in Courtroom 9, 19th floor, Defendants R.J. Reynolds Vapor Company, R.J. Reynolds Tobacco Company, and Reynolds American Inc. (collectively, "Reynolds") will and hereby do move to dismiss Plaintiffs' First Amended Complaint for lack of subject-matter jurisdiction and failure to state a claim upon which relief can be granted. Reynolds brings this motion under Rules 12(b)(1), 12(b)(6) and 9(b) of the Federal Rules of Civil Procedure.

This motion is based upon this Notice of Motion and Motion, the Memorandum of Points and Authorities in support thereof, the accompanying Request for Judicial Notice, any reply memorandum Reynolds may file, any arguments of counsel, and any other matter that the Court deems appropriate.

Dated: October 21, 2025

Respectfully submitted,

JONES DAY

/s/ Darren K. Cottriel
Darren K. Cottriel

Attorney for Defendants
R.J. Reynolds Vapor Company,
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Reynolds American Inc.

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INTRODUCTION

This case is about whether Defendants misled consumers by stating that a brand was "carbon neutral," when independent third-party organizations had in fact certified that brand as carbon neutral. Plaintiffs *admit* that Defendants bought carbon-offset credits verified by an independent organization as supporting certain forestry projects.[1] And Plaintiffs do not dispute that a second organization then certified—based in part on those credits—that the brand had become carbon neutral. But Plaintiffs claim it was false for Defendants to *say* the brand was carbon neutral, because Plaintiffs disagree with those independent organizations as to the emissions reductions generated by some of the underlying forestry projects. In doing so, Plaintiffs advance one side of a scientific and policy debate within the carbon-offset industry, and seek to use it to hold Defendants liable for *true* statements. This effort fails as a matter of law.

Stepping back, here is what happened—based on Plaintiffs' own allegations and judicially noticeable materials. Defendants are R.J. Reynolds Vapor Company, R.J. Reynolds Tobacco Company, and Reynolds American Inc. (collectively, "Reynolds")—along with RAI's indirect parent, British American Tobacco p.l.c. It is undisputed that the relevant Defendants have taken significant steps to reduce the environmental impact of their products, including the Vuse-brand products at issue here. They cut Vuse's direct carbon emissions nearly in half by switching to sea-based shipping. They also drastically reduced the plastic in Vuse packaging. To offset the remainder of Vuse's emissions, they commissioned an independent analysis of Vuse's carbon footprint and then purchased carbon-offset credits certified by Verra, a leading organization with expertise on this complex issue. Verra uses exhaustive processes to validate the carbon-offset projects in which it supports investments. Relying on those processes, it is undisputed that Defendants invested in over 500,000 carbon-offset credits through Verra—equivalent to roughly a half-million metric tons of CO_2 removed from the atmosphere. *Another* expert organization, Vertis Environmental Finance Ltd., then certified that Vuse had become carbon neutral.

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[1] The First Amended Complaint ("FAC") fails to allege which Defendant took certain actions. This Memorandum uses "Defendants" where the FAC is unclear. Defendants do not, in so doing, admit that any particular Defendant took the relevant action. As explained in Reynolds American Inc.'s ("RAI's") separate Motion to Dismiss for lack of personal jurisdiction, RAI had no role whatsoever in the manufacture, marketing, or sale of the products at issue here.

Relying on Verra's validation procedures and Vertis's independent certification, the relevant Defendants announced the results of their efforts: that the Vuse brand had become carbon neutral. Plaintiffs point to statements in press releases, an investor report, and website and social-media posts (but not on any product packages). These statements also consistently explained the basis for that representation: that Vuse's carbon neutrality had been certified by a third party.

What Defendants said was thus *true*. That fact forecloses all of Plaintiffs' claims. Plaintiffs seek to make Defendants' statements *untrue* simply by asserting that some Verra-supported projects in which they invested did not yield the benefits that Verra certified. But even in Plaintiffs' telling, the "carbon neutral" representations were made long before any questions were raised as to those projects. Plaintiffs do not allege that Defendants made any such statements after November 2024, when a media article questioned the benefits of one Verra-supported project. Anyway, Plaintiffs' disagreement with *Verra*'s conclusions does not make *Defendants'* statements false or misleading.

After all, the law requires Plaintiffs to show "a *probability* that a *significant portion* of the general consuming public or of targeted consumers, acting reasonably in the circumstances, could be misled." *Moore v. Trader Joe's Co.*, 4 F.4th 874, 882 (9th Cir. 2021) (cleaned up; emphases added). But Plaintiffs do not plausibly allege that a significant number of reasonable consumers would have believed Defendants were representing that they had *themselves* confirmed that the forestry projects yielded the benefits that Verra had determined. Nor *can* they make that allegation. Courts have consistently dismissed—at the pleadings stage—similar efforts at holding companies liable for *accurately* stating that they had secured a third party's certification of an environmental quality. And regulations promulgated by the Federal Trade Commission—and codified as a defense under California law—specifically allow companies to make environmental claims based on reliable scientific evidence. Plaintiffs' own allegations confirm that that is exactly what Defendants did, by relying on the rigorous processes backing the Verra-supported projects.

Plaintiffs thus do not plausibly allege deception. And this only becomes clearer under the heightened Rule 9(b) standard that governs all of their claims. Several of their causes of action also fail for additional reasons. And all of this is on top of the fact that Plaintiffs lack standing to pursue any of the relief sought in the Complaint. The FAC should be dismissed with prejudice.

STATEMENT OF THE ISSUES TO BE DECIDED

Plaintiffs seek to hold Defendants liable for allegedly deceiving Vuse consumers by stating that Vuse products were "carbon neutral." But it is undisputed that Defendants obtained third-party certifications that the products were, in fact, carbon neutral. Do Plaintiffs lack standing to pursue the relief sought? And does the FAC state a claim upon which relief can be granted—particularly when held to Rule 9(b)'s heightened pleading standards?

STATEMENT OF FACTS[2]

A. The Reynolds Defendants

R.J. Reynolds Vapor Company ("RJRV") manufactures e-cigarette vapor products under the Vuse brand name, and distributes them for resale. FAC ¶ 14 (ECF 55). R.J. Reynolds Tobacco Company ("RJRT") manufactures Vuse products on RJRV's behalf. *Id.* ¶ 15.

RJRV and RJRT are indirect subsidiaries of RAI, "a holding company." *Id.* ¶ 16. RAI, in turn, is an indirect subsidiary of British American Tobacco p.l.c. ("BAT"). *Id.* ¶ 17. As explained in the Motions to Dismiss under Rule 12(b)(2) that RAI and BAT are filing contemporaneously with this Motion, neither RAI nor BAT is subject to personal jurisdiction here. And RAI has no role in manufacturing, marketing, or selling Vuse products.

B. The Vuse brand secures independent certification as carbon neutral

Vuse's certification as carbon neutral was the culmination of a significant undertaking. Defendants directly reduced the Vuse brand's carbon emissions—"by nearly half"—by transitioning most international shipments from air freight to sea freight. Vuse, *Sustainability FAQs* (screenshot at FAC pp. 17-18). Defendants also significantly reduced Vuse's use of plastic packaging materials, "keep[ing] approximately 165,000 pounds of plastic out of landfills." *Id.*

To mitigate the remainder of Vuse's carbon impact, Defendants performed a "Life Cycle Assessment" (or "LCA"). *Id.* An LCA involves "assessing the carbon impact and associated environmental impact for a product through all stages of its lifecycle—from material pre-processing and manufacturing, to distribution, use, and disposal." *Id.* As explained on the Vuse website (and

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[2] For purposes of this Motion, Reynolds assumes the truth of Plaintiffs' allegations. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

as included in a screenshot in the FAC), the Vuse LCA "was prepared in accordance with … the leading international standard on life cycle assessments," and "was calculated, assured, and validated by independent third parties." *Id.* (screenshot at FAC pp. 17-18).

Based on the LCA results, Defendants bought credits to offset the Vuse brand's remaining carbon emissions. *Id.*; FAC ¶ 51. As Plaintiffs explain, carbon offsetting entails a company's "purchas[ing] carbon 'credits' in environmental projects such as forest preservation, renewable energy initiatives, and reforestation efforts," which "offset emissions from the production and use of [the company's] products." FAC ¶ 33. The verification of these credits—i.e., confirming that they reflect real reductions in carbon emissions or real removal of carbon from the atmosphere—is a key component of the carbon-offset system. But most companies cannot themselves investigate a carbon-offset project and determine the amount of carbon emissions it offsets. Doing so would require vast amounts of time and money, and would necessitate the company's becoming an expert in what Plaintiffs recognize as the "technical[ly] complex[]" subject of carbon accounting. *Id.* ¶ 37.

Instead, companies like Defendants rely on independent entities with the expertise and resources needed to verify the impact of carbon-offset projects. Defendants bought the credits at issue here from projects certified and credited by one such organization: Verra, "a nonprofit organization … that administers and manages the Verified Carbon Standard (VCS) Program." FAC ¶ 50. That program "is the world's most widely used greenhouse gas (GHG) crediting program." Decl. of Darren K. Cottriel ("Cottriel Decl."), Ex. E. "VCS projects have reduced or removed more than one billion tons of carbon and other GHG emissions from the atmosphere." *Id.*[3]

As Plaintiffs recognize, "[c]ompanies buying credits from Verra-listed projects rely on Verra as the third-party validator." FAC ¶ 50. And Verra implements a painstaking process for validating the carbon reductions and removals secured by projects it supports. Among other things:

Standards. Verra maintains "rules and requirements that projects must follow in order to

[3] As explained in the Reynolds Defendants' Request for Judicial Notice, the Court can take judicial notice of Verra materials, because they are "readily accessible to the public" on Verra's website "and not subject to reasonable dispute." *Bodenburg v. Apple Inc.*, No. 23-cv-04409, 2024 WL 6084050, at *5 (N.D. Cal. May 8, 2024) (Thompson, J.), *aff'd,* 146 F.4th 761 (9th Cir. 2025). These materials are also incorporated by reference into the FAC, as Defendants' representations regarding Vuse's carbon neutrality—based on Verra's verification—form the basis for Plaintiffs' claims. Cottriel Decl., Ex. E; *see, e.g.*, FAC ¶ 50.

be certified." Cottriel Decl., Ex. E. Its Verified Carbon Standard relies upon strict methodologies for "quantify[ing] [greenhouse gas] emission reductions and/or carbon dioxide removals." Cottriel Decl., Ex. F. And those methodologies "undergo public stakeholder consultation and a comprehensive review process, including a review by a group of independent experts." *Id.*

Audits. Every project is "subject to independent auditing by both Verra staff and qualified third parties." Cottriel Decl., Ex. E. The auditors "determine[] whether a project meets all [of Verra's] rules and requirements," and confirm that outcomes were "achieved and quantified" appropriately. Cottriel Decl., Ex. G. Verra also audits the auditors, using a 17-factor standard. *Id.*

Public comment. All project information is posted publicly on the Verra Registry. Cottriel Decl., Ex. H. Verra also facilitates a public-comment period, "during which anyone can indicate whether they believe the project meets VCS Program standards." Cottriel Decl., Ex. E. All comments "enter the Verra Registry and must be considered by the project leads." *Id.*

Buffer pool. As a backstop, Verra maintains a "global buffer pool." Cottriel Decl., Ex. I (under "What is permanence?"). "[A]ll land-based projects" must put credits in that pool. *Id.* If the credits associated with a project are later found invalid, buffer credits can be issued to entities that invested in that project, ensuring that the credits they bought are tied to genuine carbon offsets. *Id.*

Defendants purchased Verra-registered and -certified credits associated with a number of carbon-offset projects. FAC ¶¶ 51, 53, 62, 70, 78. In selecting those projects, Defendants relied on another industry leader, Vertis Environmental Finance Ltd. *Sustainability FAQs* (screenshot at FAC pp. 17-18). Vertis, which has operated in the carbon-offset market for nearly three decades, assists companies in selecting and procuring carbon-offset credits. Cottriel Decl., Ex. J.

Plaintiffs' claims center on a subset of the projects in which Defendants invested between 2021 and 2024: the Guanaré Forest Plantations Project (in Uruguay), the Yunnan Xishuangbanna Improved Forest Management Project (in China), the Hubei Hongshan IFM Project (in China), and the Inner Mongolia Wu'erqihan IFM Project (in the Inner Mongolia Autonomous Region of China). FAC ¶¶ 51, 53-84. Each project is listed on Verra's registry. Cottriel Decl., Exs. K-N. Documents laying out the methodologies and accounting underlying these projects are also available there. *Id.*

Plaintiffs admit that—as Verra's registry confirms—Defendants "purchased and retired" offset credits in each of these projects: 186,990 credits in the Guanaré project; 98,000 in the Yunnan Xishuangbanna project; 91,530 in the Hubei Hongshan project; and 48,647 in the Inner Mongolia project. FAC ¶¶ 53, 62, 70, 78.[4] *Id.* All told, along with their investments in other projects, Defendants purchased 501,815 credits "in relation to the [Vuse] Products"—"equivalent to approximately 0.5 million metric tons of CO_2." *Id.* ¶ 51. To put that in perspective, it offsets a year's worth of emissions by 117,000 gas-powered cars. EPA, *Greenhouse Gas Equivalencies Calculator* (last accessed August 21, 2025), https://tinyurl.com/ar52wn3w (select "Emissions data"; input 501,815 into the "Carbon Dioxide" field; select "Convert data").

On the basis of these efforts—including the carbon-offset credits purchased from Verra-certified projects—Vertis "independently validated" Vuse's carbon neutrality. Cottriel Decl., Ex. A at 45 ("2021 ESG Report"). That was the fact BAT is alleged to have announced in May 2021.

C. Plaintiffs' allegations

Plaintiffs are three adult consumers who allegedly purchased Vuse products. FAC ¶¶ 11-13, 49.[5] They claim that they were misled by statements that BAT, RJRT, and RJRV made regarding the Vuse brand's certification as carbon neutral. E.g., *id.* ¶¶ 4-5. The challenged statements all occurred *after* Vertis independently verified Vuse's carbon neutrality, and *before* any questions were raised as to that determination. And the statements were consistently grounded in Vertis's independent verification. Specifically, Plaintiffs allege that (all emphases added):

In a May 28, 2021, press release announcing that "Vuse has become the first global carbon neutral vape brand," BAT explained the basis for this representation: "Vuse's carbon neutrality has been **independently validated by Vertis based on product Life Cycle Assessment data provided by an independent third party**." Cottriel Decl., Ex. B. ("May 2021 Press Release")

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[4] A credit is "retired" when it is "used to compensate for emissions," at which point it is "taken out of circulation and can no longer be sold." Cottriel Decl., Ex. I.

[5] Many putative class members' claims are subject to arbitration agreements requiring individual arbitration. But because "putative class members are not parties to the suit" when no class has been certified, "the enforceability of the[ir] arbitration agreement[s]" is "not yet properly before the Court." *Conde v. Open Door Marketing, LLC*, 223 F. Supp. 3d 949, 961 (N.D. Cal. 2017). Reynolds reserves all rights with regard to the arbitration of such claims, and will move to compel arbitration and stay non-arbitrable claims at the appropriate time (and depending on the class Plaintiffs ultimately seek to certify).

(partially quoted at FAC ¶ 41). BAT also explained that "Vuse's carbon neutrality has been delivered through carbon offset through reforestation projects." *Id.*; *see also* FAC p. 14 (screenshot of tweet from alleged BAT executive, noting that Vuse had "secure[d] carbon neutral status").

BAT's 2021 ESG Report (i.e., Environmental, Social, Governance) again noted that Vuse had achieved "[c]arbon neutral **certification**." 2021 ESG Report at 2 (quoted at FAC ¶ 42). In a "Spotlight" section, the report explained that "Vuse's carbon neutrality has been **independently validated by Vertis**." *Id.* at 45; *see also* FAC p. 13 (screenshot of tweet calling Vuse "the first global, **independently certified**, carbon neutral vaping brand" and linking to the ESG Report).

BAT allegedly issued additional press releases stating that Vuse was the "first global, **independently certified**, carbon neutral vaping brand." Cottriel Decl., Ex. C ("June 2022 Press Release") (quoted at FAC ¶ 42 n.42); *see also* Cottriel Decl., Ex. O ("Vuse is … the first global carbon neutral vape brand." (quoted at FAC ¶ 42 n.42)). The June 2022 Press Release linked to an earlier one from July 2021, which again explained that "Vuse's carbon neutrality was **certified by BAT's sustainability partner, Vertis**." Cottriel Decl., Ex. D ("July 2021 Press Release"); *see also* FAC at p. 13 (screenshot of tweet calling Vuse "the first global #carbonneutral #vape brand" and linking to the July 2021 Press Release).

On the Vuse website that Plaintiffs allege is maintained by RJRV and RJRT (FAC ¶ 44), there was both a description of Vuse as "carbon neutral" and an explanation of what that meant. The website explained that carbon-offset credits can "be purchased in the marketplace and traded to businesses in an effort to reduce their carbon footprint." *Sustainability FAQs* (screenshot at FAC pp. 17-18). It also explained *how* Vuse's emissions were calculated: by "perform[ing] a[n] [LCA]" based on "the leading international standard," with that assessment "**calculated, assured, and validated by independent third parties.**" *Id.* And it noted that Vertis had "used the assured LCAs and data to broker investments in carbon credits." *Id.*; *see also* FAC p. 17 (screenshot of tweet, linking to the Vuse sustainability webpage); *id.* at pp. 17-18 (screenshots purportedly from "Vuse's website," explaining steps taken to make Vuse "a more sustainable brand").

Despite claiming to have been misled by these representations, Plaintiffs do not dispute that Vertis independently certified Vuse as carbon neutral. Nor do Plaintiffs dispute key facts underlying

Vertis's independent certification. Namely, they do not dispute the direct emissions reductions that Vuse achieved. Nor do they dispute that, to offset Vuse's remaining emissions, Defendants purchased the credits discussed above from Verra-certified projects. To the contrary, Plaintiffs *admit* that Defendants purchased those credits. FAC ¶¶ 53, 62, 70, 78.

Nevertheless, Plaintiffs allege that the representations regarding Vuse's certification as "carbon neutral" were misleading because, based on Plaintiffs' own subjective "satellite and geospatial analysis" of satellite imagery associated with the four projects discussed above, those projects "do not provide genuine, additional carbon reductions." FAC ¶¶ 52, 57-58, 65, 73, 81. They claim this imagery shows that the Guanaré project would have been "financially viable … independent of carbon offset funding," and that the Yunnan Xishuangbanna project, Hubei Hongshan project, and Inner Mongolia project all supported areas facing a "low risk" of deforestation. *Id.* ¶¶ 57, 66, 74, 83; *see generally id.* ¶ 4. Plaintiffs' sole independent support for these opinions is a November 2024 media article reporting a different carbon-crediting entity's assertion that one of the projects (in Guanaré) would not yield the benefits that Verra had attributed to it. *Id.* ¶¶ 59-60 (citing Cottriel Decl., Ex. P ("Harvard Article")). As to the other three projects, Plaintiffs rely on nothing but their own "satellite and geospatial analysis." *Id.* ¶¶ 65, 73, 81.

Plaintiffs do not allege that any Defendant made any "carbon neutral" representations *after* the publication of that November 2024 article. As they allege, a BAT spokesperson explained at the time of that report "that all Vuse communications around carbon neutrality were terminated in December 2023." FAC ¶ 48 (citing Cottriel Decl., Ex. Q ("Tobacco Giant Article")). And although Plaintiffs assert that the Vuse website contained "carbon neutral" statements—and the basis for those statements—until November 2024, they do not allege that Defendants made any such representations after publication of the sole outside media story that they rely upon to question any of the underlying projects' validity. FAC ¶ 48; *id.* at pp. 17-18 (screenshots purportedly of Vuse website in November 2023 and November 2024).

Plaintiffs' claims thus rest on the notion that, even though Defendants *did* purchase Verra-certified carbon credits, and even though Vertis *did* certify Vuse as carbon neutral, it was false or misleading for Defendants to *say* Vuse was carbon neutral—simply because Plaintiffs later formed a different opinion regarding the benefits yielded by certain projects in which Defendants invested. And they seek to hold Defendants responsible for making such representations *before* any questions were raised as to any of the projects. On this basis, they assert claims against all Defendants under California's Consumer Legal Remedies Act (the "CLRA"), Unfair Competition Law (the "UCL"), and False Advertising Law (the "FAL"); as well as claims for breach of an express warranty, breach of an implied warranty, and "unjust enrichment / quasi-contract." FAC ¶¶ 109-61 (cleaned up). They seek to bring these claims on behalf of themselves and a class of all California residents who purchased any Vuse product after May 28, 2021. *Id.* ¶ 99.

After Defendants moved to dismiss Plaintiffs' complaint, Plaintiffs filed the operative FAC. They made minimal changes to their prior allegations, and have not altered the substance of their claims. *See* ECF 55-1 (redline showing changes to prior complaint).

STANDARD

Plaintiffs "bear[] the burden of establishing" that they have Article III standing, including that they have "suffered an injury in fact." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016).

"To survive a motion to dismiss [under Rule 12(b)(6)], a 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 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). This requires Plaintiffs to "plead[] factual content" supporting a "reasonable inference that [Defendants] are liable for the misconduct alleged." *Id.* Plaintiffs cannot carry their burden with "naked assertions devoid of further factual enhancement." *Id.* (cleaned up).

Because all of Plaintiffs' claims "allege that [Reynolds] engaged in fraudulent conduct," they are also subject to Rule 9(b)'s heightened pleading requirement. *Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1125 (9th Cir. 2009). "Rule 9(b) demands" that Plaintiffs allege "the circumstances constituting the alleged fraud" with enough specificity "'to give [Reynolds] notice of the particular misconduct … so that they can defend against the charge.'" *Id.* at 1124 (citation omitted). Plaintiffs thus must "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. 2018) (cleaned up).

ARGUMENT

Plaintiffs lack standing to pursue any of the relief sought because they have not alleged any specifics regarding actual economic damages and admit there is no impending threat of future harm. Further, all of Plaintiffs' claims fail, because Plaintiffs do not—and cannot—plausibly allege that the challenged statements were false or misleading. They do not dispute the core point that those statements communicated: Vuse had been certified as carbon neutral. And Plaintiffs' disagreement with *Verra* as to the methodology or validity of some forestry projects underlying that certification does not render *Defendants'* alleged representations deceptive. Plaintiffs cannot show that reasonable consumers would have understood Defendants as claiming to have independently verified the carbon-offset projects in which they invested—particularly when Defendants consistently noted that Vuse's carbon neutrality had been verified by an independent entity with expertise in this complex area. Courts have repeatedly dismissed claims like these that seek to hold companies liable for relying on a third party's certification. And California law codifies FTC regulations allowing companies to make environmental claims that have a reasonable scientific basis. That is exactly what Defendants did. These points doom all of Plaintiffs' claims. And their UCL and common-law claims fail for other reasons, too.

I. All of Plaintiffs' claims fail, because Plaintiffs lack Article III standing.

As a threshold matter, Plaintiffs lack Article III standing. To demonstrate an "injury in fact" sufficient to confer standing, Plaintiffs must "demonstrate a concrete and particularized injury caused by" Defendants. *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021). "No concrete harm, no standing." *Id.* at 417.

Plaintiffs fail to adequately allege a concrete harm. They assert in conclusory fashion that they "paid a price premium for products they believed were 'carbon neutral' but instead received products whose claimed carbon neutrality relies on ineffective and redundant offset projects that fail to provide genuine environmental benefits." FAC ¶ 92. But Plaintiffs do not allege what price they paid for Vuse products, what they believe they would have spent were it not for the "carbon-neutral" representations, or *any* other facts regarding the supposed premium. *E.g., id.* ¶¶ 91, 92.

That is fatal. "Courts within the Ninth Circuit, when applying California law, have …

concluded that a conclusory allegation of a price premium, without supporting well-pleaded facts, fails to satisfactorily allege standing under the applicable federal pleading standard." *Blackburn v. Etsy, Inc.*, No. 23-cv-5711, 2023 WL 9105662, at *4 (C.D. Cal. Oct. 12, 2023) (collecting cases). As the Ninth Circuit has explained, "[t]he bare recitation of the word 'premium' does not adequately allege a cognizable injury." *Naimi v. Starbucks Corp.*, 798 F. App'x 67, 70 (9th Cir. 2019) (unpublished). Where, as here, "Plaintiffs did not allege how much they paid for the [product], how much they would have paid for it absent the alleged deception, whether [the defendant] … was responsible for any overpayment, or any other details regarding the price premium," they have not pled sufficient facts to establish standing. *Id.* at 70.

Plaintiffs similarly lack standing to seek injunctive relief. They vaguely assert that "several" representations "are still available and accessible on BAT's website." FAC ¶ 48. But conclusory allegations that Plaintiffs face a "threat of future harm" (FAC ¶ 95) are insufficient to establish standing. *Twombly*, 550 U.S. at 555-56; *see also Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013) (Article III standing requires an "injury [that] is 'certainly impending'" (citation omitted)). That is particularly true given that, by their own admission, Plaintiffs now know that the carbon-neutral statements were based in part on credits from the four forestry projects that Plaintiffs claim do not provide legitimate carbon reductions. *See, e.g.*, FAC ¶¶ 86, 91.

The FAC should thus be dismissed for lack of Article III standing.

II. All of Plaintiffs' claims fail, because Plaintiffs do not and cannot plausibly allege that the challenged representations are false or deceptive. (Counts 1–6)

"To survive dismissal, each [of Plaintiffs'] claim[s] must pass two tests: (1) the 'reasonable consumer' test set forth in California case law, and (2) the heightened pleading standard set forth in Fed. R. Civ. P. 9(b)." *Bodenburg v. Apple Inc.*, 146 F.4th 761, 768 (9th Cir. 2025) (affirming this Court's dismissal of the plaintiffs' CLRA, UCL, and FAL); *see also Weinstat v. Dentsply Int'l, Inc.*, 103 Cal.Rptr.3d 614, 626 (Cal. Ct. App. 2010) (explaining that breach-of-warranty claims require an actionable misrepresentation); *Gudgel v. Clorox Co.*, 514 F. Supp. 3d 1177, 1188 (N.D. Cal. 2021) ("[P]laintiff's failure to identify an actionable deception in the context of the 'reasonable consumer' test also requires the dismissal of her unjust enrichment claim."); *supra* at 9 (explaining that all of Plaintiffs' claims are subject to Rule 9(b)). Plaintiffs' claims fail both tests.

A. Plaintiffs fail the reasonable-consumer test, because a significant portion of reasonable consumers would not be deceived by *true* representations that Vuse had been independently certified as carbon neutral.

Plaintiffs do not and cannot allege that a reasonable consumer would have been misled by the description of Vuse products as "carbon neutral." The "reasonable consumer" test requires Plaintiffs to "show that 'members of the public are likely to be deceived'" by the representation. *Ebner v. Fresh, Inc.*, 838 F.3d 958, 965 (9th Cir. 2016) (citations omitted). "This is not a negligible burden." *Moore*, 4 F.4th at 882. It is not enough for Plaintiffs to demonstrate "a mere possibility" that the "carbon neutral" statements "might conceivably be misunderstood by some few consumers viewing [them] in an unreasonable manner." *Id.* at 882 (cleaned up). The reasonable-consumer test "requires a *probability* that a *significant portion* of the general consuming public or of targeted consumers, acting reasonably in the circumstances, could be misled." *Id.* (cleaned up; emphases added). "[A] plaintiff's unreasonable assumptions … will not suffice." *Id.* (citation omitted).

Plaintiffs cannot overcome the reasonable-consumer standard.

1. It is undisputed that Vuse was independently certified as carbon neutral.

Start with the facts that Plaintiffs do not dispute—several of which they affirmatively *admit*.

First, Plaintiffs do not dispute that Defendants directly—and significantly—reduced the Vuse brand's emissions. In particular, they do not deny that, by largely shifting to shipping by sea, Defendants cut Vuse's emissions "by nearly half." FAC ¶ 44; *Sustainability FAQs* (screenshot at FAC pp. 17-18). Nor do they dispute that Defendants "removed unnecessary plastic wrap" from Vuse packaging, keeping "165,000 pounds of plastic out of landfills." *Id.*

Second, Plaintiffs concede that "Defendants retired 501,815 carbon credits, through the voluntary carbon market, specifically in relation to the Products." FAC ¶ 51. And they admit that Defendants bought credits associated with the four at-issue projects. *Id.* ¶¶ 51, 53, 62, 70, 78.

Third, Plaintiffs admit that BAT's, RJRV's, and RJRT's alleged characterization of Vuse as "carbon neutral" was based on third parties' independent verification. They concede that the credits that Defendants bought were certified by Verra, whom companies "rely on … as the third-party validator" for carbon-offset claims. FAC ¶¶ 50, 53, 62, 70, 78. They recognize that the at-issue projects were administered under Verra's "Verified Carbon Standard (VCS) Program." *Id.* ¶ 50. And they rely on Verra's registry, which sets forth the documentation showing that Verra had substantiated the credits associated with each of the at-issue products at the time of the challenged representations. *Id.* ¶¶ 53, 62, 70, 78; Guanaré Registry; Yunnan Xishuangbanna Registry; Hubei Hongshan Registry; Inner Mongolia Registry. Plaintiffs also do not dispute that Defendants determined the number of carbon offsets to purchase through an LCA that was conducted in accordance with "the leading international standard" and that "was calculated, assured, and validated by independent third parties." *Sustainability FAQs* (screenshot at FAC pp. 17-18). And they do not dispute that, as Defendants consistently noted when highlighting Vuse's carbon neutrality, this status had been "independently validated by Vertis," another third party. May 2021 Press Release (partially quoted at FAC ¶ 41); *supra* at 5-7.

Finally, Plaintiffs do not allege that any Defendant made any "carbon neutral" statements *after* November 2024, when the sole articles upon which Plaintiffs rely were published. In fact, they note an alleged BAT spokesperson's explanation that all such statements "were terminated" nearly a year earlier, in December 2023. FAC ¶ 48. The only representations they point to after that date are pre-existing statements that they say remained on the Vuse website until November 2024, and that explained the basis for describing Vuse as "carbon neutral." *Id.*; *supra* at 7-8.

In sum, Plaintiffs do not dispute that Defendants bought carbon-offset credits that were validated by Verra, and that Vertis independently certified that those credits—combined with direct reductions in the Vuse brand's emissions—rendered Vuse carbon-neutral. So when BAT, RJRV, and RJRT purportedly announced that Vuse was "carbon neutral"—a determination that they consistently noted had been "independently certified" by a third party (*supra* at 7-8)—they were telling the truth. And they did not leave consumers to guess at what they meant by "carbon neutral": They consistently explained *how* the brand had achieved carbon neutrality—including via "carbon offset through reforestation projects"—and explained that this status was "independently validated by Vertis based on product Life Cycle Assessment data provided by an independent third party." May 2021 Press Release (quoted at FAC ¶ 41); *see also* 2021 ESG Report at 45 (cited at FAC ¶ 42) (explaining the same points); *Sustainability FAQs* (screenshot at FAC pp. 17-18) (same).

Plaintiffs thus challenge *true* statements. To be sure, they insist that those straightforward and verified representations were "false," "misleading," "deceptive," "fraudulent," and so on. *E.g.*, FAC ¶¶ 4, 9-10, 85, 89, 127. But those are just the sort of "labels and conclusions" that the Supreme Court has stressed "will not do." *Twombly*, 550 U.S. at 555 . Given all that Plaintiffs do not dispute, they do not and cannot plausibly allege that reasonable consumers were "likely to be deceived." *Ebner*, 838 F.3d at 965 (cleaned up; citations omitted).

2. Plaintiffs' disagreement with *Verra* as to specific carbon-offset projects does not render *Defendants'* representations false or misleading.

Against all of this, Plaintiffs try finding a way to claim that the challenged statements were false or misleading. Their theory of liability proceeds as follows: (1) based on Plaintiffs' own "satellite and geospatial analysis," four projects did not yield the carbon-offset benefits that Verra had determined (FAC ¶¶ 57-58, 65, 73, 81); (2) given this, it was improper for those projects to be counted in calculating Vuse's carbon offset; and (3) it was therefore false and misleading for BAT, RJRV, and RJRT to say that Vuse products were carbon neutral. In other words, Plaintiffs' theory is that *Verra* (and, by extension, Vertis) was wrong about the carbon-offset credits, and therefore that *BAT, RJRV, and RJRT* misled consumers by relying on Verra's (and Vertis's) certification of the facts establishing the Vuse brand's carbon neutrality. This theory fails.

a. Plaintiffs do not plausibly allege that reasonable consumers would believe that Defendants *themselves* verified the carbon-offset benefits yielded by the underlying forestry projects.

Even accepting their premises, Plaintiffs cannot show that a "significant portion" of reasonable consumers would "probab[ly]" have been misled by the challenged statements. *Moore*, 4 F.4th at 882 (citation omitted). Again, those statements—that Vuse had secured "[c]arbon neutral certification" and become the "first global, independently certified, carbon neutral vaping brand"—were true. 2021 ESG Report at 2 (partially quoted at FAC ¶ 42); June 6, 2022 Press Release (partially quoted at FAC ¶ 42 n.42). Those statements do not become untrue—and capable of misleading a critical mass of reasonable consumers—simply because Plaintiffs contest Verra's assessment of some underlying projects. Their quarrel with *Verra's* methodology or standards for verifying projects is not a basis for concluding that *Defendants* misrepresented anything.

In fact, Plaintiffs at no point even try alleging that a reasonable consumer would understand statements like "Vuse has become the first global carbon neutral vape brand" to mean that Defendants had *themselves* assessed the Verra-supported projects and validated those projects' "true environmental impact." FAC ¶ 41 (quoting May 2021 Press Release); *id.* ¶ 87. Although they invoke "research show[ing] that consumers actively seek out environmentally sustainable products" (*id.* ¶ 88), they offer no basis for concluding that consumers understand "carbon neutral" statements to mean that the company has itself undertaken the complex scientific analysis to verify that status. And Plaintiffs "cannot proceed simply by asserting [their] own belief and conclusions about consumers' beliefs." *Dawson v. Better Booch, LLC*, 716 F. Supp. 3d 949, 957 (S.D. Cal. 2024) (cleaned up); *see also Gedalia v. Whole Foods Mkt. Servs., Inc.*, 53 F. Supp. 3d 943, 955 (S.D. Tex. 2014) (in dismissing CLRA, UCL, and FAL claims, noting that plaintiffs "offer[ed] no reason that the reasonable consumer would assume 365 Brands organic products are any more organic than what organic certifying agencies require").

Plaintiffs thus seek to turn the reasonable consumer into one who adopts implausible interpretations of straightforward claims. But the Ninth Circuit has stressed that the *reasonable*-consumer standard is not satisfied by allegations that a representation "might conceivably be misunderstood by some few consumers viewing it in an *unreasonable* manner." *Ebner*, 838 F.3d at 965 (emphasis added) (citation omitted); *see also, e.g.*, *Moore*, 4 F.4th at 882-83 ("[W]here plaintiffs base deceptive advertising claims on unreasonable or fanciful interpretations of labels or other advertising, dismissal on the pleadings may well be justified." (cleaned up)).

Other courts have recognized the unreasonableness of the position that Plaintiffs advance here, and have rejected efforts like this to hold companies liable for environmental claims based on a third party's certification. Take the Northern District of Illinois's decision last year in *Sanchez v. Walmart Inc.*, 733 F. Supp. 3d 653, 660-61 (N.D. Ill. 2024). There, the plaintiff claimed Walmart misled consumers by labeling, as "sustainably sourced," seafood products that had been certified as such by the Marine Stewardship Council. *Id.* at 661-62. Like Plaintiffs here, the *Sanchez* plaintiff did not deny that the products had secured that certification, but claimed that "Walmart knew or should have known that MSC-certified fisheries engage in unsustainable fishing practices." *Id.* at 663. The court, applying the reasonable-consumer standard, rejected that theory: "Plaintiff takes issue with *MSC's* sustainability representation because it certifies fisheries that engage in unsustainable practices, but *Walmart's* representation remains true—the product meets the Council's standards." *Id.* at 668, 671 (emphases added). That "factually true" representation was "not actionable as a deceptive or misleading statement by Walmart." *Id.* at 671.

The Southern District of New York reached the same conclusion in *Dwyer v. Allbirds, Inc.*, 598 F. Supp. 3d 137 (S.D.N.Y. 2022). The plaintiff there took issue with (among other things) the defendant's use of a particular index to support its claim that it had fully offset its products' carbon emissions. *Id.* at 145. But like the *Sanchez* court, the *Dwyer* court—again, applying the reasonable-consumer test—recognized that "this is a criticism of the tool's methodology, not a description of a false, deceptive, or misleading statement about the [p]roduct." *Id.* at 149. The plaintiff's "belie[f] that Defendant should use a different method of measuring the Product's carbon footprint[] does not plausibly suggest that what Defendant in fact says is materially misleading." *Id.* at 150 (citations omitted). In other words, "[t]hat the relevant standards may be inadequate does not render Defendant's representations as to compliance with those standards false or misleading." *Id.* at 151 (quoting *Lee v. Canada Goose US, Inc.*, No. 20-cv-9809, 2021 WL 2665955, at *6 (S.D.N.Y. June 29, 2021) (cleaned up)).

Same here. Plaintiffs' criticisms of *Verra's* methodology "do[] not plausibly suggest that what *Defendant[s]* in fact say[] is materially misleading." *Id.* at 150 (emphasis added).

b. The FTC's Green Guides, which are codified into California law, provide a complete defense to companies that make environmental representations supported by a reasonable basis—which is all that Plaintiffs allege here.

For Plaintiffs' theory to work, they would need some basis for establishing that reasonable consumers *would* understand representations about "carbon neutral" certifications as meaning that Reynolds itself verified that certification. But as a matter of law, Plaintiffs cannot make that showing. FTC regulations that have been codified into California law specifically allow companies like Reynolds to make environmental claims supported by a reasonable basis, and to rely on a third-party expert's verified certification.

The FTC has promulgated Guides for the Use of Environmental Marketing Claims, also known as the "Green Guides." 16 C.F.R. § 260 *et seq.* (2012). The Guides seek to "help marketers avoid making environmental marketing claims that are unfair or deceptive." *Id.* § 260.1(a), (d). They require marketers to " ensure that all reasonable interpretations of their claims are truthful, not misleading, and supported by a reasonable basis." *Id.* § 260.2. A "reasonable basis often requires competent and reliable scientific evidence," such as "tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results." *Id.*

The Green Guides specifically address marketers' reliance on a third party's certification as the basis for an environmental claim: "Third-party certification does not eliminate a marketer's obligation to ensure that it has substantiation for all claims reasonably communicated by the certification." 16 C.F.R. § 260.6(c). In other words, a marketer *may* trust a third-party certification that *is* substantiated.

"The Green Guides are more than persuasive authority in California; they have been codified as law." *Whiteside v. Kimberly Clark Corp.*, 108 F.4th 771, 784 (9th Cir. 2024). Specifically, § 17580.5(b) of the Business and Professional Code establishes a defense where an entity's "environmental marketing claims conform to the standards or are consistent with the examples contained in the [Green Guides]." So where a plaintiff's allegations show that challenged representations "conform to" the Green Guides (*id.*), the plaintiff's claims fail. *See, e.g.*, *Dinan v. SanDisk LLC*, 844 F. App'x 978, 979-80 (9th Cir. 2021) (affirming dismissal where plaintiffs challenged defendant's use of a measurement that "is permitted by state and federal statutes").

That is exactly the situation here. Plaintiffs' allegations show that they are challenging representations that the Green Guides—and thus California law—expressly allow. Plaintiffs admit that the challenged representations that Vuse was "carbon neutral" were based on purchases of carbon-offset credits certified by Verra, which subjects its supported projects to rigorous verification processes. *Supra* at 4-6; FAC ¶¶ 50, 53, 62, 70, 78. Defendants' representation of Vuse as "carbon neutral" was thus grounded in "competent and reliable scientific evidence." 16 C.F.R.

§ 260.2. Those representations were also supported by "third-party certification." *Id.* § 260.6(c). Indeed, Defendants repeatedly highlighted Vertis's certification in the representations that Plaintiffs challenge. E.g., FAC ¶ 7; *Sustainability FAQs* (screenshot at FAC pp. 17-18). And that is on top of the certification that, as Plaintiffs acknowledge, Verra provided regarding the projects in which Defendants invested. FAC ¶¶ 53, 62, 70, 78. The description of Vuse as "carbon neutral" is thus precisely the sort of representation that the Green Guides and California law protect: one that is grounded in evidence and verified by experts on the complex issue of carbon offsets.

In arguing to the contrary, Plaintiffs seek to turn the Green Guides inside-out. ***First,*** they ask the Court to disregard the "reasonable basis" that Defendants had for calling Vuse "carbon neutral," and to instead credit Plaintiffs' subjective view that some of the projects supporting that certification "fail to provide genuine, additional carbon reductions." FAC ¶ 4. But those allegations are based on little more than Plaintiffs' assertions as to what they say their own "satellite and geospatial analysis" shows—supposedly, that eucalyptus plantations in Uruguay are "financially viable … independent of carbon offset funding," and that the relevant areas of China and Inner Mongolia face a "low risk" of deforestation. *Id.* ¶¶ 57, 65-66, 73-74, 81. This second-guessing cannot nullify Verra's processes for certifying the relevant projects.

The November 2024 media coverage that Plaintiffs cite does not overcome these deficiencies. FAC ¶¶ 2, 48 (citing Tobacco Giant Article); *id.* ¶¶ 59-60 (citing Harvard Article). In reporting that other entities questioned the emissions avoided or removed by just one of the projects (the Guanaré project), the articles merely showed that this was a matter of scientific debate within the environmental community. They note that another ratings agency (a competitor of Verra's) did not entirely rule out that the Guanaré project would yield the benefits that Verra had verified, and instead gave that outcome only a "'low' likelihood." Harvard Article; Tobacco Giant Article. And Plaintiffs show that some criticisms were grounded not in an assessment of the carbon emissions that the Guanaré project would avoid or remove, but in an environmental-policy view of such projects more generally. *See* Harvard Article (noting a criticism of the project on the grounds that "[i]ndustrial tree plantations in Uruguay … replace an extremely important ecosystem—grasslands—to plant tree monocultures, destroying biodiversity and watersheds"). Plaintiffs are entitled to share the views of these organizations as to the utility of tree-plantation projects like the one in Guanaré, and as to the carbon benefits yielded by that project. But they cannot weaponize this scientific debate to render the challenged representations deceptive.

This is especially true given the timing of those representations. Plaintiffs admit that no questions were raised until November 2024. FAC ¶ 59. And they do not identify a *single* instance, from that point on, in which any Defendant represented that Vuse was carbon neutral. Again, Plaintiffs say BAT stated that it had by then ceased making "carbon neutral" representations regarding Vuse, and Plaintiffs fail to identify any such statements after November 2024 (beyond a vague allegation that some unidentified statements remained accessible in some unidentified location on "BAT's website"). *Id.* ¶ 48. And the only representations that Plaintiffs claim were still on the Vuse website in November 2024 specifically explained that the representations were based on Vertis's independent certification. *Id.*; *see also id.* at pp. 17-18. Plaintiffs are thus attempting to hold Defendants liable for not foreseeing that someone might, at some future point, question some of the Verra-supported projects. But Plaintiffs' down-the-road reading of satellite imagery cannot reach back in time to undo the "reasonable basis" that Defendants had for calling Vuse "carbon neutral." 16 C.F.R. § 260.2. The "question [is] whether [the claimant] had a reasonable basis to make such … claims *at the time they were made*." *FTC v. Johnson*, 96 F. Supp. 3d 1110, 1150 (D. Nev. 2015) (emphasis added). And Plaintiffs' allegations show that BAT, RJRV, and RJRT *did* have a reasonable basis at the relevant time, given Verra's and Vertis's certification of the key facts.

Second, Plaintiffs assert that Defendants "should have *independently* verified" that the projects provided the claimed carbon offsets. FAC ¶ 86 (emphasis added). In other words, they say that it was not enough that Defendants had the support of *two* outside entities with subject-matter expertise in carbon offsets, and that Defendants—who have no expertise in this field—needed to undertake *their own* "substantiation for all claims reasonably communicated." *Id.*

That argument fails under California law. "It is well settled that private litigants may not bring claims on the basis of a lack of substantiation." *Aloudi v. Intramedic Research Group, LLC*, No. 15-cv-882, 2015 WL 4148381, at *3 (N.D. Cal. July 9, 2015). California law authorizes "[p]rosecuting authorities, but *not* private plaintiffs," to sue advertisers for failing to "substantiate advertising claims." *Nat'l Council Against Health Fraud, Inc. v. King Bio Pharm., Inc.*, 133 Cal.Rptr.2d 207, 212 (Cal. Ct. App. 2003) (discussing Cal. Bus. & Prof. Code § 17508) (emphasis added). The Ninth Circuit has explained that this rule—which "is firmly established law in California"—"preclude[s] private citizens from bringing actions that allege that the challenged advertising language lacked proper scientific substantiation." *Kwan v. SanMedica Int'l*, 854 F.3d 1088, 1095-96 (9th Cir. 2017). So Plaintiffs cannot use a non-substantiation theory to sidestep the Green Guides.[6]

Against all of this, Plaintiffs assert in passing that Defendants violated two provisions of the Green Guides, sections 260.4 and 260.5. FAC ¶¶ 39-41, 125. They are wrong on both counts. Section 260.4(b) prohibits "[u]nqualified general environmental benefit claims," which "are difficult to interpret and likely convey a wide range of meanings." But Plaintiffs admit that "carbon neutral" is *easy* to interpret and has a *straightforward* meaning: "[T]he production and use of a product results in no net addition of CO2 to the atmosphere." FAC ¶ 32; *see also id.* ¶ 142. They do not offer any other interpretation of the phrase, do not allege that there is disagreement regarding what "carbon neutral" means, and do not claim to have been confused by the term. This stands in stark contrast to § 260.4's examples of unqualified claims: generic terms like "eco-friendly" or "greener," which convey "far-reaching environmental benefits" that cannot be "substantiate[d]."

Plaintiffs fare no better with § 260.5. FAC ¶ 125. They rely on a subsection requiring "sellers" of carbon credits to "employ competent and reliable scientific and accounting methods to properly quantify claimed emission reductions." 16 C.F.R. § 260.5(a). But *Defendants* are not a "seller" because they do not sell carbon-offset credits. And Verra—which also is not a "seller" subject to § 260.5—*does* use "competent and reliable scientific and accounting methods" to verify the projects it supports. *Supra* at 4-5.[7] Plaintiffs allege no facts about the credits' actual sellers.

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[6] Plaintiffs' argument also (again) turns the Green Guides on their head. Requiring a marketer to *itself* substantiate an environmental claim that relies on an independent expert's robust vetting procedures would negate the entire idea of invoking a third party's certification—but § 260.6(c) expressly *allows* such reliance. Plaintiffs' rule would discourage any company from investing in carbon-offset credits, knowing it could not disclose such efforts unless it invested tremendous time and resources in becoming an expert in the "technical complexit[ies] of carbon accounting." FAC ¶ 37. Unsurprisingly, neither the FTC nor any court has endorsed that rule.

[7] Plaintiffs also mention § 260.5(c)'s statement that it is deceptive to claim that a carbon offset

Because Plaintiffs' allegations show that the challenged statements "conform to the standards … contained in" the Green Guides (Bus. & Prof. Code § 17580.5(b)), those statements are not actionable. At the very least, Defendants' compliance with the Green Guides fatally undercuts Plaintiffs' attempt to show that the challenged representations were false or misleading.

3. Plaintiffs' passing mentions of a fraudulent-omission theory fail.

Plaintiffs also throw in fleeting references to supposed fraudulent "omissions." FAC ¶¶ 116-17, 124. But they never say what they think Defendants omitted. Such "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678. To the extent that Plaintiffs mean to suggest that Defendants failed to disclose that the at-issue projects did not yield the benefits that Verra found, that theory would fail.

First, Plaintiffs' second-guessing of Verra's determinations does not establish that those determinations were inaccurate. At most, Plaintiffs advance a different opinion on a complex scientific question. That difference of opinion does not amount to Defendants' omission of a "material fact." *Hodsdon v. Mars, Inc.*, 891 F.3d 857, 862 (9th Cir. 2018) (citation omitted).

Second, even indulging Plaintiffs' armchair criticisms, Plaintiffs never claim that Defendants knew of those issues—and do not allege a single instance in which any Defendant characterized Vuse as "carbon neutral" *after* questions were raised as to any of the projects. *Supra* at 8-9; *see also, e.g.*, *Cortez v. Handi-Craft Co., Inc.*, No. 4:24-cv-3782, 2025 WL 1452561, at *4 (N.D. Cal. Apr. 29, 2025) ("To assert fraudulent omission under the UCL, FAL, and CLRA, a plaintiff must show that the defendant had … actual knowledge of the defect or falsity at issue.").

Third, Plaintiffs do not allege facts to establish that Defendants had a duty to disclose any such facts. *See, e.g.*, *Hodsdon*, 891 F.3d at 861 ("[T]o be actionable the omission must be … of a fact the defendant was obliged to disclose." (cleaned up)). They do not even claim that any Defendant had such a duty.

* * * * *

Plaintiffs do not—and cannot—plausibly allege that a "significant portion" of reasonable

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represents an emission reduction if the relevant activity is "required by law." FAC ¶ 39; 16 C.F.R. § 260.5(c). But they do not allege that any of the at-issue projects were required by law.

consumers would "probab[ly]" be misled by the representations that the Vuse brand was "carbon neutral." *Moore*, 4 F.4th at 882. Their theory of deception fails as a matter of law.

B. Plaintiffs fail Rule 9(b)'s heightened pleading requirement, because they do not allege fundamental aspects of their fraud-based claims.

Even if Plaintiffs could somehow clear the reasonable-consumer bar, they would fail once that bar is raised to the 9(b) height. Again, all of their claims are grounded in allegations of fraud, so they must "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*, 889 F.3d at 964 (cleaned up; citation omitted).

Plaintiffs have not done this—not even close. They claim that each named Plaintiff "viewed at least one of the representations above"—but without specifying *which* representation(s) any particular Plaintiff saw. FAC ¶ 49; *see also, e.g.*, *Ahern v. Apple*, 411 F. Supp. 3d 541, 564 (N.D. Cal. 2019) (dismissing claims under Rule 9(b) because "Plaintiffs have not specified which statements any of them saw or relied on"); *In re Arris Cable Modem Consumer Litig.*, No. 17-CV-01834, 2018 WL 288085, at *9 (N.D. Cal. Jan. 4, 2018) (same). They allege that each Plaintiff "believe[d] that the Products were, in truth, carbon neutral"—but without claiming that any Plaintiff understood Defendants to mean they had *themselves* verified the underlying projects. FAC ¶ 49. They baldly assert that each Plaintiff "relied on the Defendants' representations … when making their purchasing decisions"—but without alleging how any supposed belief that Defendants had independently verified the carbon-offset credits affected any Plaintiff's choice to buy Vuse products. *Id.* And they baldly assert that consumers paid a "price premium" for these products—but without alleging any facts supporting that assertion. FAC ¶ 91-92; *see also, e.g.*, *Babaian v. Dunkin' Brands Group, Inc.*, No. 17-cv-4890, 2018 WL 11445614, at *8 (C.D. Cal. Feb. 16, 2018) ("[T]he Court cannot allow Plaintiff to proceed on a barebones assertion of a price premium without some factual basis for that assertion."); *Naimi v. Starbucks Corp.*, 798 F. App'x 67, 70 (9th Cir. 2019) (similar). This "formulaic recitation" is not enough to satisfy even the baseline Rule 8 standard, let alone the heightened Rule 9(b) standard. *Twombly*, 550 U.S. at 555-56.

III. Plaintiffs' UCL and common-law claims fail for additional reasons. (Counts 2, 4–6)

For the above reasons, Plaintiffs have failed to adequately allege a theory of deception, and so all of their claims fail. Their UCL and common-law claims also fail for other reasons.

A. Plaintiffs fail to state a claim under any prong of the UCL. (Count 2)

The UCL proscribes "unlawful, unfair, or fraudulent business act or practice[s]." Cal. Bus. & Prof. Code § 17200. Each prong captures a separate theory of liability. *Doe v. CVS Pharmacy, Inc.*, 982 F.3d 1204, 1214 (9th Cir. 2020). Plaintiffs do not plausibly allege a claim under any prong.

Not unlawful. The "unlawful" prong "borrows violations of other laws." *Id.* (cleaned up; citation omitted); *see also* FAC ¶ 125 (claiming that Defendants' conduct was "unlawful because it violates the CLRA and [FTC] regulations"). So Plaintiffs' failure to plausibly allege that Defendants violated those laws means they have no claim under the "unlawful" prong. *Supra* § II.

Not fraudulent. The "fraudulent" prong requires showing that "members of the public are likely [to be] deceived." *Snapkeys, Ltd. v. Google LLC*, 442 F. Supp. 3d 1196, 1208 (N.D. Cal. 2020) (cleaned up). Again, Plaintiffs have not plausibly made that allegation. *Supra* § II.

Not unfair. The failure of Plaintiffs' claims under the other prongs means they do not have a claim that the same conduct violates the "unfair" prong. *See Hadley v. Kellogg Sales Co.*, 243 F. Supp. 3d 1074, 1104-05 (N.D. Cal. 2017) (claim under the unfair prong "cannot survive if the claims under the other two prongs of the UCL do not survive"). In any event, their three-sentence attempt at alleging unfair conduct (FAC ¶ 126)—which relies entirely on a "threadbare recital[]" of legal principles (*Iqbal*, 556 U.S. at 678)—fails. They claim that Defendants' conduct "offends established public policy" (FAC ¶ 126), but identify no such policy. They contend that the supposed "harm caused by Defendants' conduct outweighs any possible utility" (*id.*), but do not plausibly allege any such harm. *Supra* § II. And they assert that Defendants' conduct violated "the CLRA and FTC regulations" (FAC ¶ 126), but do not plausibly allege any such violation. *Supra* § II.

B. Plaintiffs fail to state a claim for breach of an express or implied warranty. (Counts 4–5)

Plaintiffs' claims for breach of an express or implied warranty also fail.

Express Warranty. The elements of breach of an express warranty are "that the seller

(1) made an affirmation of fact or promise or provided a description of its goods; (2) the promise or description formed part of the basis of the bargain; (3) the express warranty was breached; and (4) the breach caused injury to the plaintiff." *Strumlauf v. Starbucks Corp.*, 192 F. Supp. 3d 1025, 1031 (N.D. Cal. 2016) (cleaned up). A plaintiff must "identify a specific and unequivocal written statement about the product that constitutes an explicit guarantee." *Valentine v. Crocs, Inc.*, 783 F. Supp. 3d 1204, 1211 (N.D. Cal. May 19, 2025) (Thompson, J.) (cleaned up). Plaintiffs' cursory claim, spanning just five sentences (FAC ¶¶ 141-45), fails these requirements.

First, Plaintiffs do not allege that the representations regarding Vuse's carbon neutrality were an "explicit guarantee" that Reynolds had "independently verified that the projects they invest in" provided the claimed carbon benefits. *Strumlauf*, 192 F. Supp. 3d at 1031 (citation omitted); FAC ¶ 86. *See, e.g.*, *McMahon v. Take-Two Interactive Software, Inc.*, 745 F. App'x 786, 787 (9th Cir. 2018) (holding that "the statement 'Featuring GTA [a video game] Online' did not specifically and unequivocally promise, or provide an explicit guarantee of, immediate access to GTA Online"); *Valentine*, 783 F. Supp. 3d at 1212 (holding that "visual images of [] Crocs shoes set in certain surroundings[] made no explicit guarantees" that "Crocs shoes would not shrink").

Second, even if Plaintiffs had plausibly alleged that the "carbon neutral" representations constituted a warranty, they cannot show that Defendants breached that warranty or caused them any injury. Again, the "carbon neutral" representations were *true*. *Supra* § II.

Implied Warranty. There are two forms of implied warranty: an "implied warranty of fitness for a particular purpose," and "the implied warranty of merchantability." *T & M Solar & Air Conditioning, Inc. v. Lennox Int'l. Inc.*, 83 F. Supp. 3d 855, 876-78 (N.D. Cal. 2015). Plaintiffs never clarify which version they are invoking (FAC ¶¶ 146-54), but it does not matter: They do not plausibly allege a breach of either version. A claim for breach of an implied warranty of fitness for a particular purpose would require Plaintiffs to "identify [the] particular purpose for which [they] obtained" the Vuse products—one that "is peculiar to the nature of [their] business." *T & M*, 83 F. Supp. 3d at 877 (citations omitted). But they allege nothing of the sort. And a claim for breach of the implied warranty of merchantability would require Plaintiffs to allege "that the product 'did not possess even the most basic degree of fitness for ordinary use.'" *Id.* at 878 (citation omitted). But they do not try making that lofty claim, either. And they cannot do so, as their allegations about Vuse's carbon emissions have nothing to do with the Vuse products themselves or their fitness for their ordinary purpose.

This claim also fails because an implied warranty requires vertical privity between Plaintiffs and Defendants. *Mosher-Clark v. Gravity Defyer Med. Tech. Corp.*, 691 F. Supp. 3d 1113, 1123-24 (N.D. Cal. 2023). But Plaintiffs allege that they bought Vuse products from unidentified "stores"—not from Defendants. FAC ¶¶ 11-13.

C. Plaintiffs fail to state a claim for unjust enrichment or quasi-contract. (Count 6)

Plaintiffs' final cause of action, for "unjust enrichment / quasi-contract," also fails. Compl. ¶¶ 155-61 (cleaned up). There is no "standalone cause of action for unjust enrichment in California." *Astiana v. Hain Celestial Grp., Inc.*, 783 F.3d 753, 762 (9th Cir. 2015) (cleaned up). And although California courts sometimes let plaintiffs assert a similar theory "as a quasi-contract claim seeking restitution" (*id.* (citation omitted)), Plaintiffs have not plausibly alleged such a claim.

First, doing so would require them to allege that they lack an adequate remedy at law. *Phillips v. Brooklyn Bedding LLC*, No. 23-cv-03781, 2024 WL 2830663, at *1 (N.D. Cal. Mar. 28, 2024). But they do not make that claim.

Second, "an unjust enrichment claim does not lie where the parties have an enforceable express contract." *Durell v. Sharp Healthcare*, 108 Cal.Rptr.3d 682, 699 (Cal. Ct. App. 2010). So the fact that Plaintiffs simultaneously assert a claim for breach of express warranty—which "requires privity of contract" (*In re Nexus 6P Prods. Liab. Litig.*, 293 F. Supp. 3d 888, 941 (N.D. Cal. 2018))—dooms their quasi-contract claim.

Finally, a quasi-contract claim requires Defendants to have been "*unjustly* enriched at the expense of another." *Durell*, 108 Cal.Rptr.3d at 699 (cleaned up; emphasis added). But Plaintiffs cannot plausibly make that allegation either, because the challenged representations were true. *Supra* § II.

CONCLUSION

Reynolds respectfully requests that the Court dismiss the FAC in its entirety, with prejudice.

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