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

REY MARILAO, for himself and All  
Others Similarly Situated,  
  
Plaintiff,  
  
vs.  
  
MCDONALD’S CORPORATION, a  
Delaware corporation doing business in  
California; and DOES 1 through 20,  
inclusive,  
  
Defendants.

**CASE NO. 09-CV-01014-H (NLS)  
ORDER GRANTING MOTION  
TO DISMISS THE COMPLAINT**

On April 6, 2009, Plaintiff Rey Marilao filed a class action complaint in the Superior Court of California, in and for the County of San Diego, against Defendant McDonald’s Corporation (“McDondald’s”). (Doc. No. 1, Ex. A., Compl.) On May 11, 2009, Defendant McDonald’s removed the case to this Court based on the Class Action Fairness Act of 2005 (“CAFA”). (Doc. No. 1.) On May 18, 2009, McDonald’s filed a motion to dismiss Plaintiff’s complaint. (Doc. Nos. 3 & 4.) On May 28, 2009, Plaintiff filed a response in opposition. (Doc. No. 6.) McDonald’s filed a reply on June 8, 2009. (Doc. Nos. 9 &10.)

The Court, pursuant to its discretion under Local Rule 7.1(d)(1), determined this matter was appropriate for resolution without oral argument and submitted it on the parties’ papers on June 5, 2009. For the reasons set forth below, the Court grants Defendant McDonald’s motion to dismiss the complaint.

## Background

1  
2 Plaintiff brings this class action against McDonald's on behalf of himself and a class  
3 of all other customers who received McDonald's gift cards not redeemable for cash. (Compl.  
4 ¶ 7.) Plaintiff asserts that he desired to redeem a gift card he received for cash instead of  
5 dining at McDonald's, but was told when he attempted to redeem it that he could not receive  
6 cash for his gift card. (Id. ¶ 5.) Plaintiff alleges that McDonald's gift cards provide that, "[t]he  
7 value on this card may not be redeemed for cash . . . unless required by law." (Id. ¶ 4.) Based  
8 upon McDonald's failure to redeem his gift card for cash, Plaintiff asserts two causes of action  
9 against McDonald's for violation of California Business & Professions Code § 17200 and  
10 unjust enrichment. (Id. ¶¶ 15-19; 20-23.)

11 Defendant McDonald's moves to dismiss Plaintiff's complaint under Federal Rule of  
12 Civil Procedure 12(b)(6) for failure to state a claim. (Doc. Nos. 3 &4.)

## Discussion

### **I. Motion to Dismiss Pursuant to 12(b)(6)**

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15 A motion to dismiss a complaint under Federal Rule of Civil Procedure 12(b)(6) tests  
16 the legal sufficiency of the claims asserted in the complaint. Navarro v. Black, 250 F.3d 729,  
17 731 (9th Cir. 2001). A complaint generally must satisfy only the minimal notice pleading  
18 requirements of Federal Rule of Civil Procedure 8(a)(2) to evade dismissal under a Rule  
19 12(b)(6) motion. Porter v. Jones, 319 F.3d 483, 494 (9th Cir. 2003). Rule 8(a)(2) requires that  
20 a pleading stating a claim for relief contain "a short and plain statement of the claim showing  
21 that the pleader is entitled to relief." The function of this pleading requirement is to "give the  
22 defendant fair notice of what the . . . claim is and the grounds upon which it rests." Conley v.  
23 Gibson, 355 U.S. 41, 47 (1957). "While a complaint attacked by a Rule 12(b)(6) motion to  
24 dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the  
25 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a  
26 formulaic recitation of the elements of a cause of action will not do." Bell Atlantic Corp. v.  
27 Twombly, 550 U.S. 544, 127 S.Ct. 1955, 1964-65 (2007). A complaint does not "suffice if  
28 it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" Ashcroft v. Iqbal, 129

1 S.Ct. 1937, 1949 (2009) (quoting id. at 556). “Factual allegations must be enough to raise a  
2 right to relief above the speculative level.” Twombly, 127 S.Ct. at 1965 (citing 5 C. Wright  
3 & A. Miller, Federal Practice and Procedure § 1216, pp. 235–36 (3d ed. 2004)). “All  
4 allegations of material fact are taken as true and construed in the light most favorable to  
5 plaintiff. However, conclusory allegations of law and unwarranted inferences are insufficient  
6 to defeat a motion to dismiss for failure to state a claim.” Epstein v. Wash. Energy Co., 83  
7 F.3d 1136, 1140 (9th Cir.1996); see also Twombly, 127 S.Ct. at 1964–65.

8 “Generally, a district court may not consider any material beyond the pleadings in ruling  
9 on a Rule 12(b)(6) motion.” Hal Roach Studios, Inc. v. Richard Feiner & Co., 896 F.2d 1542,  
10 1555 n .19 (9th Cir.1990). The court may, however, consider the contents of documents  
11 specifically referred to and incorporated into the complaint. Branch v. Tunnell, 14 F.3d 449,  
12 454 (9th Cir.1994). Additionally, the Court may take judicial notice of matters of public  
13 record. See Lee v. City of Los Angeles, 250 F.3d 668, 689–90 (9th Cir.2001). McDonald’s  
14 requests the Court take judicial notice of Opinion 1488 of the Legislative Counsel of  
15 California, dated February 11, 1997 and a March 27, 1997 letter from California State  
16 Assembly Member Jan Goldsmith to California State Assembly Member Barbara Alby. (Doc.  
17 No. 4, Ex. A; Doc. No. 10, Ex. 1.) Plaintiff requests the Court take judicial notice of a Bill  
18 Analysis for AB 2466, a Bill Analysis for SB 250, and another Bill Analysis for SB 250.  
19 (Doc. No. 6.) The Court grants the parties’ requests and takes judicial notice of these  
20 documents.

### 21 **A. Unfair Competition Law**

22 Plaintiff’s first cause of action is for a violation of California’s Unfair Competition Law  
23 (“UCL”), Cal. Bus. & Prof. Code § 17200, et seq. (Compl. ¶¶ 15-19.) The UCL prohibits  
24 “any unlawful, unfair or fraudulent business act or practice.” Cal. Bus. & Prof. Code § 17200.  
25 Persons authorized to bring claims under the UCL are “those who have suffered injury in fact  
26 and lost money or property as a result of the unfair competition.” Id. § 17204. “[A] UCL  
27 action ‘borrows’ violations of other laws and treats these violations, when committed pursuant  
28 to business activity, as unlawful practices . . . .” Peterson v. Cellco Partnership, 164

1 Cal.App.4th 1583, 1590 (2008) (quoting Farmers Ins. Exchange v. Superior Court, 2 Cal.4th  
2 377, 383 (1992)).

3 Plaintiff alleges that McDonald's has engaged in unfair competition by violating  
4 California Civil Code § 1749.5(b)(1). (Compl. ¶¶ 6, 16-17.) Section 1749.5(b)(1) provides  
5 that, "[a]ny gift certificate sold after January 1, 1997, is redeemable in cash for its cash value,  
6 or subject to replacement with a new gift certificate at no cost to the purchaser or holder."  
7 Plaintiff alleges that he desired to redeem his gift card for cash instead of dining at a  
8 McDonald's Restaurant, but when he attempted to redeem his gift card for cash, he was told  
9 he could not receive cash for his gift card. (Compl. ¶ 5.) Plaintiff alleges that McDonald's gift  
10 cards state that, "[t]he value on this card may not be redeemed for cash . . . unless required by  
11 law." (Id. ¶ 4.) Plaintiff alleges that as a result of this conduct, he has suffered an injury in  
12 fact. (Id. ¶ 18.)

13 The Court concludes that Plaintiff fails to state a claim for a violation of the UCL.  
14 Section 1749.5(b)(1) provides that a gift certificate, which includes gift cards pursuant to  
15 California Civil Code § 1749.45, "is redeemable in cash for its cash value, or subject to  
16 replacement with a new gift certificate at no cost to the purchaser or holder." California Civil  
17 Code § 1448, entitled "Right of Selection," provides that, "[i]f an obligation requires the  
18 performance of one of two acts, in the alternative, the party required to perform has the right  
19 of selection, unless it is otherwise provided by the terms of the obligation." Here, the vendor  
20 of the gift card is the party required to perform by either redeeming a gift card in cash for its  
21 cash value or by replacing a gift card with a new card at no cost to the purchaser or holder.  
22 Section 1749.5 does not otherwise provide the right of selection. Therefore, it is the vendor  
23 who holds the right to select whether to redeem a gift card in cash for its cash value or to  
24 provide a replacement card at no cost to the purchaser or holder. Accordingly, Plaintiff's  
25 allegation that McDonald's violated § 1749.5(b)(1) by failing to provide a full cash refund  
26 upon demand is without merit. Opinion 1488 of the Legislative Counsel of California, dated  
27 February 11, 1997, supports this interpretation of § 1749.5, which states that "section 1749.5  
28 allows the merchant or other issuer to choose one of the available options to meet his or her

1 obligation” and “does not require a merchant to redeem a gift certificate in cash whenever it  
2 is presented by a consumer.” (Doc. No. 4, Ex. A.) Plaintiff cites no binding authority  
3 interpreting § 1749.5(b)(1) as entitling a gift card purchaser or holder to redeem a gift card in  
4 cash for its full cash value whenever it is presented. Accordingly, the Court dismisses  
5 Plaintiff’s first cause of action for a violation of the UCL as Plaintiff fails to plead a violation  
6 of § 1749.5(b)(1).

7 While §1749.5(b)(1) does not require a merchant to redeem a gift card in cash for its  
8 cash value whenever presented by a purchaser or holder, §1749.5(b)(2) was added in 2007 to  
9 provide that, “[n]otwithstanding paragraph (1), any gift certificate with a cash value of less  
10 than ten dollars (\$10) is redeemable in cash for its cash value.” This section does not give the  
11 vendor or merchant a right of selection. Plaintiff, however, does not allege that McDonald’s  
12 violated this provision and has not alleged that his gift card had a cash value of less than ten  
13 dollars. Plaintiff has offered various bill analyses, which only support that the legislature  
14 amended § 1749.5 to include subsection (b)(2) because consumers with small values on their  
15 gift cards often cannot buy anything in the store with the remaining value on the card, and they  
16 cannot get change for the value. (See Doc. No. 6, Exs. B & C.) Thus, under § 1749.5(b)(1),  
17 consumers were unable to get cash refunds on unused gift card balances on demand, whenever  
18 presented and without regard to the vendor’s right of selection. Plaintiff contends that  
19 §1749.5(b)(2) was added for the purpose of expanding the scope of the right to redeem gift  
20 cards for cash provided by subsection (b)(1), which applies to gift certificates sold, to holders  
21 of promotional gift cards and the like. However, § 1749.5(d)(1) explicitly states that this  
22 section does not apply to, “[g]ift certificates that are distributed by the issuer to a consumer  
23 pursuant to an awards, loyalty, or promotional program without any money or thing of value  
24 being given in exchange for the gift certificate by the consumer.” Furthermore, the bill  
25 analyses offered by Plaintiff do not recognize that subsection (b)(2) was adopted in order to  
26 expand the scope of those entitled to redeem gift cards for cash value, but indicate it was  
27 adopted in order to provide a right to cash value redemption that was lacking in the current  
28 version of the statute. (See Doc. No. 6, Exs. B &C.)

1 Defendants also assert that Plaintiff lacks standing to assert a UCL claim because  
2 Plaintiff does not allege that he lost money or property as a result of the alleged unlawful  
3 practice. Under Cal. Bus. & Prof. Code § 17204, only a person who has (1) suffered injury in  
4 fact and (2) has lost money or property as a result of the unfair competition may bring a private  
5 action under the UCL. “A plaintiff suffers an injury in fact for purposes of standing under the  
6 UCL when he or she has: (1) expended money due to the defendant’s acts of unfair  
7 competition [citations omitted]; (2) lost money or property [citations omitted]; or (3) been  
8 denied money to which he or she has a cognizable claim [citations omitted].” Hall v. Time  
9 Inc., 158 Cal.App.4th 847, 854-55 (2008).

10 Plaintiff has not alleged that he suffered an injury in fact under any of these definitions.  
11 Plaintiff did not expend money on his gift card, as he alleges that he received it as a gift.  
12 (Compl. ¶ 5.) Plaintiff does not allege that he lost money or property, as his gift card still  
13 retains its value to redeem it for McDonald’s products. Plaintiff also does not sufficiently  
14 allege that he has been denied money to which he has a cognizable claim, as Plaintiff is not  
15 entitled to redeem his McDonald’s gift card for cash whenever presented to McDonald’s under  
16 § 1749.5(b)(1). Accordingly, the Court concludes that Plaintiff fails to sufficiently allege his  
17 standing to bring a claim under the UCL.

## 18 **B. Unjust Enrichment**

19 Plaintiff’s second cause of action is for unjust enrichment. (Compl. ¶¶ 20-23.) The  
20 elements of an unjust enrichment claim are the “receipt of a benefit and [the] unjust retention  
21 of the benefit at the expense of another.” Lectrodryer v. SeoulBank, 77 Cal.App.4th 723, 726  
22 (2000).

23 Plaintiff alleges that by creating a national policy whereby McDonald’s gift card users  
24 cannot redeem balances for cash, McDonald’s has dramatically increased the probability that  
25 card users will end up with partial and essentially unusable balances, which funds all revert to  
26 McDonald’s. (Compl. ¶ 21.) Plaintiff alleges that McDonald’s is unjustly enriched by its  
27 unfair and unlawful practice of refusing cash redemption on unused card balances because the  
28 additional funds on unused cards simply revert to McDonald’s. (Id. ¶ 22.)

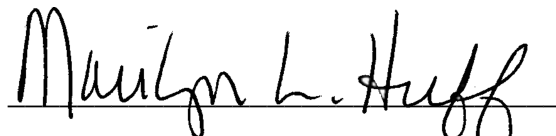
1 The Court concludes that Plaintiff fails to state a claim for unjust enrichment.  
2 Plaintiff's cause of action is premised on his allegations that McDonald's unfairly and  
3 unlawfully refuses to give cash refunds on unused gift card balances in violation of  
4 §1749.5(b)(1). Because Plaintiff's cause of action under the UCL fails based on these  
5 allegations, Plaintiff fails to sufficiently plead that McDonald's has been unjustly enriched as  
6 Plaintiff alleges no wrongful conduct by McDonald's. "There is no equitable reason for  
7 invoking restitution when the plaintiff gets the exchange which he expected." Comet Theatre  
8 Enterprises, Inc. v. Cartwright, 195 F.2d 80, 83 (9th Cir. 1952). As Plaintiff notes in his  
9 opposition, Plaintiff can still use the gift card to buy any McDonald's product until the card  
10 is used up. (Doc. No. 6 at 1.) Accordingly, the Court dismisses Plaintiff's second cause of  
11 action for unjust enrichment.

12 **Conclusion**

13 For the reasons set forth above, the Court GRANTS Defendant McDonald's motion to  
14 dismiss the complaint. Plaintiff may file an amended complaint within 30 days of the date of  
15 this order.

16 **IT IS SO ORDERED.**

17 DATED: June 25, 2009

18   
19 MARILYN L. HUFF, District Judge  
20 UNITED STATES DISTRICT COURT

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