UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MATTHEW HAWKINS, on behalf of himself and all others similarly situated, Plaintiff, v. WALMART, INC., Defendant.	No. 1:24-cv-00374-KES-SKO ORDER GRANTING MOTION TO DISMISS (Doc. 8)

Plaintiff Matthew Hawkins brings this putative class action against defendant Walmart, Inc., alleging false and deceptive advertising and labeling in connection with the sale of Walmart's Great Value Avocado Oil ("Avocado Oil"). Complaint, Exhibit 1 to Notice of Removal ("Complaint"), Doc. 1-1. Walmart moves to dismiss this action. Motion to Dismiss ("Motion"), Doc. 8. This matter is suitable for resolution without a hearing pursuant to Local Rule 230(g). Doc. 18. The Court has considered the parties' briefs and notices of supplemental authority, and for the reasons explained below, grants the motion to dismiss.

I. BACKGROUND

On February 20, 2024, Hawkins filed this action on behalf of himself, and others similarly situated, alleging violations of California's (1) Consumer Legal Remedies Act ("CLRA"), Cal. Civ. Code § 1750, et seq., (2) False Advertising Law ("FAL"), Cal. Bus. & Prof. Code § 17500,

et seq., (3) Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200 et seq., (4) breach of express warranty, Cal. Com. Code § 2313; (5) breach of implied warranty, Cal. Com. Code § 2314(2)(f); and (6) intentional misrepresentation. Walmart removed this action from Tuolumne Superior Court pursuant to the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1332. Notice of Removal, Doc. 1.

The following facts are taken from the complaint:[1]

Walmart markets, labels, advertises, and sells its Great Value Avocado Oil ("Avocado Oil") with packaging that "prominently" contains an "unequivocal message" that the product is pure avocado oil. Complaint, Doc. 1-1 ¶¶ 1-2, 14-15. The front of the bottle identifies the product as "Refined Avocado Oil." *Id.* at 6. The message that the product is pure avocado oil is reinforced by the ingredient list on the back label, which lists avocado oil as the only ingredient. *Id.* ¶ 15. Moreover, Walmart's website lists pure avocado oil as the only ingredient. *Id.* ¶ 17. Based on that representation, reasonable consumers believe that the oil is pure avocado oil. *Id.* ¶ 3. However, unbeknownst to consumers, the Avocado Oil is adulterated with other oils. *Id.* ¶ 3.

Hawkins purchased a bottle of Avocado Oil at a Walmart store in Sonora, California, reasonably believing and relying on the claim that the product was pure avocado oil. *Id.* ¶¶ 3, 8. Hawkins would not have purchased the Avocado Oil, or would have only paid a lower price for it, had he known that the product was not pure avocado oil. *Id.* ¶ 2. If Hawkins knew that the Avocado Oil was pure, he would continue purchasing it, but he is refraining from making further purchases for the time being. *Id.* ¶ 9.

Walmart moves to dismiss the complaint, arguing among other grounds that Hawkins fails to sufficiently allege that Walmart made claims as to the Avocado Oil that would mislead a reasonable consumer and fails to state a claim. *See* Motion, Doc. 8; Reply to Motion, Doc. 16. Hawkins opposes dismissal, arguing that his complaint contains allegations sufficient to state a claim. Opposition to Motion ("Opposition"), Doc. 14. Hawkins also filed two notices of supplemental authority. Docs. 15, 17.

[1] The factual allegations in the complaint are presumed to be true for purposes of the motion to dismiss. *See Murguia v. Langdon*, 61 F.4th 1096, 1106 (9th Cir. 2023).

II. LEGAL STANDARD

Federal Rule of Civil Procedure 12(b)(6) tests the legal sufficiency of a complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). "Dismissal can be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). In evaluating a motion to dismiss under Rule 12(b)(6), the Court presumes the factual allegations within the complaint to be true and draws all reasonable inferences in favor of the nonmoving party. *Murguia v. Langdon*, 61 F.4th 1096, 1106 (9th Cir. 2023) (citing *Usher v. City of L.A.*, 828 F.2d 556, 561 (9th Cir. 1987)).

Rule 8(a) requires that a pleading contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 677–78 (2009). Under federal notice pleading standards, the complaint must "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." *Bell Atlantic v. Twombly*, 550 U.S. 544, 555 (2007) (internal citation and quotations omitted). "This simplified notice pleading standard relies on liberal discovery rules and summary judgment motions to define disputed facts and issues and to dispose of unmeritorious claims." *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002). Though Rule 8(a) does not require detailed factual allegations, a plaintiff is required to allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *Iqbal*, 556 U.S. at 677–78. "[I]t demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Iqbal*, 556 U.S. at 678. "[B]are assertions . . . amount[ing] to nothing more than a formulaic recitation of the elements . . . are not entitled to be assumed true." *Id.* at 681. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* at 678. The complaint must contain facts that "nudge [the plaintiff's] claims across the line from conceivable to plausible." *Twombly*, 550 U.S. at 570.

"In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake." Fed. R. Civ. P. 9(b). To plead fraud with particularity under Rule

9(b), "a pleading 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) (quoting *Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1055 (9th Cir. 2011) (internal quotation marks omitted). Rule 9(b) requires that the circumstances constituting the alleged fraud be "specific enough to give defendants notice of the particular misconduct . . . so that they can defend against the charge and not just deny that they have done anything wrong." *Id.* (quoting *Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1124 (9th Cir. 2009) (internal quotation marks omitted)).

If a court dismisses a complaint for failure to state a claim, it should "freely give leave" to amend "when justice so requires." Fed. R. Civ. P. 15(a)(2). The "underlying purpose of Rule 15 [is] to facilitate decisions on the merits, rather than on the pleadings or technicalities." *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc) (cleaned up). However, a court has discretion to deny leave to amend due to "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendment previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [or] futility of amendment." *Leadsinger, Inc. v. BMG Music Pub.*, 512 F.3d 522, 532 (9th Cir. 2008).

III. ANALYSIS

Walmart argues that this action should be dismissed because Hawkins fails to plausibly allege that reasonable consumers would be misled by the Avocado Oil label and fails to sufficiently allege claims for breach of the implied warranty of merchantability and intentional misrepresentation. Motion, Doc. 8 at 2. The Court first examines whether Hawkins has sufficiently alleged that Walmart's Avocado Oil product representations would mislead a reasonable consumer.

A. False Advertising

Hawkins alleges that the representation that the Avocado Oil was pure avocado oil is misleading in violation of California's CLRA and FAL, and under each prong of the UCL. Complaint, Doc. 1. The allegedly deceptive label serves as the basis for each claim, with the

alleged FAL and CLRA violations serving as the predicate unlawful conduct under the UCL. *Id.* ¶¶ 36-61. "Because the same standard for fraudulent activity governs all three statutes, courts often analyze the three statutes together." *Hadley v. Kellogg Sales Co.*, 243 F. Supp. 3d 1074, 1089, 1094–95, (N.D. Cal. 2017); *Moore v. Mars Petcare US, Inc.*, 966 F.3d 1007, 1016, n.7 (9th Cir. 2020) ("Because the cause of action under each California state law is premised on the same allegedly misleading acts in this case . . . [the Court] evaluate[s] the UCL, FAL, and CLRA claims collectively[.]").

The CLRA prohibits "unfair methods of competition and unfair or deceptive acts or practices[,]" which includes representing that goods have "characteristics, ingredients, uses, benefits, or quantities that they do not have[,]" representing that a good is of a "particular standard, quality or grade" if it is not, and "[a]dvertising goods or services with intent not to sell them as advertised." Cal. Civ. Code § 1770(a). The FAL prohibits dissemination of a statement concerning a product "which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading[.]" Cal. Bus. & Prof. Code § 17500. The UCL prohibits business practices that are unlawful, unfair, or fraudulent. Cal. Bus. & Prof. Code § 17200. Each prong under the UCL provides a separate theory of liability. *Lozano v. AT&T Wireless Servs.*, Inc., 504 F.3d 718, 731 (9th Cir. 2007).

California's CLRA, FAL, and UCL "require basic fairness in advertising" and "prohibit not only false advertising, but also advertising that is 'either actually misleading or which has a capacity, likelihood or tendency to deceive or confuse the public.'" *Whiteside v. Kimberly Clark Corp.*, 108 F.4th 771, 777 (9th Cir. 2024) (quoting *Williams v. Gerber Prods. Co.*, 552 F.3d 934, 938 (9th Cir. 2008)). Claims under the CLRA, FAL, and UCL are governed by the "reasonable consumer standard." *Id.* "This is not a negligible burden." *Moore v. Trader Joe's Co.*, 4 F.4th 874, 882 (9th Cir. 2021).

Under the reasonable consumer standard, a plaintiff must show a probability "that a significant portion of the general consuming public or of targeted consumers, acting reasonably in the circumstances, could be misled" by the defendant's marketing claims. *Whiteside*, 108 F.4th at 778. "[W]hether a practice is deceptive will usually be a question of fact not appropriate for

decision on demurrer or motions to dismiss." *Moore v. Mars Petcare US, Inc.*, 966 F.3d at 1017 (internal quotation marks and citation omitted). However, "if common sense would not lead anyone to be misled, then the claim may be disposed of at a motion to dismiss stage." *Moore v. Mars Petcare US, Inc.*, 966 F.3d at 1018. Dismissal of CLRA, FAL, and UCL claims at the pleading stage is appropriate when "the advertisement itself [makes] it impossible for the plaintiff to prove that a reasonable consumer [is] likely to be deceived." *Whiteside*, 108 F.4th at 778 (internal quotation marks and citation omitted).

Hawkins alleges that the Avocado Oil representation is deceptive because it falsely claims that the product contains only avocado oil. Opposition, Doc. 14 at 9. According to Hawkins, listing the product as "Refined Avocado Oil" and listing avocado oil as the only ingredient in the back of the label leads a reasonable consumer to believe that the product is pure avocado oil. Complaint, Doc. 1-1 ¶15-18. Further, Walmart's website lists the product as pure avocado oil. *Id.* ¶ 17. Hawkins alleges that third-party laboratory testing confirms that the "fatty acid and sterol profiles" of the Avocado Oil show that it is not "pure" avocado oil. *Id.* ¶ 19.

Although Hawkins asserts that the Avocado Oil conveys that the product is "pure," the label itself does not contain any such statement. There is no assertion on the label that the avocado oil is "pure" or "100%" avocado oil. While Walmart's website stated that the product was "Pure Avocado Oil," that is not reflected on the label or elsewhere on the product. Even considering this reference on the website in conjunction with the label, Hawkins has failed to establish any defined meaning of the term "pure" based on which a reasonable consumer would be misled.

Hawkins points to *Koller v. Med Foods, Inc.*, to support his argument that he sufficiently pled that the label was misleading. No. 14-CV-02400-RS, 2015 WL 13653887 (N.D. Cal. Jan. 6, 2015). However, the plaintiff in *Koller* pleaded that the oils did not meet established standards for "extra virgin" olive oil when bottled and/or through degradation resulting from the defendant's packaging and handling practices. *Id.* at *3. The *Koller* court held that those allegations were sufficiently detailed and plausible to establish a claim. In contrast, Hawkins' complaint does not contain any such type of allegations or identify any defined meaning of the

term "pure."

In *McConnon v. Kroger Co.*, the plaintiff made similar vague allegations that an avocado oil was not "pure." No. 2:24-CV-02601-SB-E, 2024 WL 3941340, at *3 (C.D. Cal. June 21, 2024). The *McConnon* court held that plaintiff's failure to define "pure" warranted dismissal because the court could not evaluate the merits of the claim. *Id.* In reaching that conclusion, the *McConnon* court noted that purity could have different meaning, including whether the only ingredient used was avocado, whether there were no impurities, or whether a different oil or ingredient was introduced to render the product impure. *Id.* Similarly, Hawkins vaguely alleges that third-party laboratory testing confirmed that the oil was not "pure," but Hawkins provides no allegation as to why the "fatty acid and sterol profiles" mean that the avocado oil is not pure, no measure for purity, no allegation as to whether or how any such "purity" was compromised during the manufacturing or processing process, and no specific facts as to any other oils or ingredients allegedly present in the Avocado Oil. *See Tran v. Sioux Honey Ass'n, Coop.*, 471 F. Supp. 3d 1019, 1028 (C.D. Cal. 2020) (noting that the term 'pure' has no fixed meaning); *see also In re Avocado Oil Mktg. & Sales Pracs. Litig.*, No. MDL 3133, 2025 WL 428016, at *1 (U.S. Jud. Pan. Mult. Lit. Feb. 6, 2025) (holding that avocado oil litigations could not be centralized, because, among other reasons, the results of a study of oils produced widely varying results regarding the oils' chemical profiles).

Because the complaint fails to provide sufficient allegations to provide Walmart with notice as to what makes the Avocado Oil representation misleading, Hawkins has not adequately pled that the representation is misleading. Accordingly, the CLRA, FAL, and UCL claims fail and are dismissed with leave to amend.

B. Implied Warranty of Merchantability

Walmart also argues that Hawkins fails to allege a breach of the implied warranty of merchantability. Motion, Doc. 8 at 18-19. A contract for the sale of goods implies a warranty of merchantability that goods are fit for ordinary purposes for which such goods are used. *Birdsong v. Apple, Inc.*, 590 F.3d 955, 958 (9th Cir. 2009); Cal. Com. Code § 2314(2)(c). The implied warranty "provides for a minimum level of quality." *Birdsong*, 590 F.3d at 958 (internal

quotation marks and citation omitted). A breach of the implied warranty of merchantability occurs if the product lacks "even the most basic degree of fitness for ordinary use." *Id.* (internal quotation marks and citation omitted). The California Commercial Code also requires merchantable goods to "[c]onform to the promises or affirmations of fact made on the container or label if any." Cal. Com. Code § 2314(2)(f).

Hawkins does not allege that the avocado oil was unfit for consumption. Rather, Hawkins asserts that Walmart breached the implied warranty of merchantability because the representation that the Avocado Oil was "pure" constitutes an implied promise that the product is pure avocado oil and the product failed to conform to that promise. Opposition, Doc. 14 at 16. "When an implied warranty of merchantability cause of action is based solely on whether the product in dispute conforms to the promises or affirmations of fact on the packaging of the product, the implied warranty of merchantability claim rises and falls with express warranty claims brought for the same product." *Hadley v. Kellogg Sales Co.*, 273 F. Supp. 3d 1052, 1096 (N.D. Cal. 2017). As set forth above, the allegations set forth in the complaint fail to sufficiently allege facts showing a representation concerning the Avocado Oil that would mislead a reasonable consumer. Accordingly, Hawkins' claim for breach of the implied warranty of merchantability must also be dismissed. The dismissal is likewise with leave to amend.

C. Intentional Misrepresentation

Walmart also seeks to dismiss Hawkins' claim for intentional misrepresentation, arguing that Hawkins failed to allege intent and knowledge to sufficiently plead intentional misrepresentation. Motion, Doc. 8 at 19-20. Intentional misrepresentation claims require that the defendant knew of the material fact and either misrepresented or concealed that fact to induce reliance by the plaintiff. *Chapman v. Skype Inc.*, 220 Cal. App. 4th 217, 230–31 ("The essential elements of a count for intentional misrepresentation are (1) a misrepresentation, (2) knowledge of falsity, (3) intent to induce reliance, (4) actual and justifiable reliance, and (5) resulting damage."); *see also Tomek v. Apple Inc.*, 636 F. App'x 712, 713 (9th Cir. 2016).

Because the complaint fails to sufficiently allege a misrepresentation, the intentional misrepresentation claim also fails. Accordingly, Hawkins' claim for intentional

misrepresentation is dismissed, also with leave to amend.

IV. CONCLUSION

Based upon the foregoing, it is ORDERED that:

1. Defendant's motion to dismiss, Doc. 8, is granted;
2. Plaintiffs' complaint is dismissed with leave to amend;
3. Within thirty (30) days of the date of this order, Hawkins shall either (1) file a first amended complaint or (2) notify the Court that he does not wish to file an amended complaint.
4. The failure to comply with this order may result in dismissal of this action due to failure to prosecute and to comply with a Court order.

IT IS SO ORDERED.

Dated: February 13, 2025

UNITED STATES DISTRICT JUDGE