

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 18-6479 PSG (SSx)	Date	February 22, 2019
Title	Valerie Watson v. Solid Gold Pet, LLC		

Present: The Honorable Philip S. Gutierrez, United States District Judge

Wendy Hernandez

Not Reported

Deputy Clerk

Court Reporter

Attorneys Present for Plaintiff(s):

Attorneys Present for Defendant(s):

Not Present

Not Present

Proceedings (In Chambers): The Court GRANTS in part and DENIES in part Defendant's motion to dismiss

Before the Court is Defendant Solid Gold Pet, LLC's ("Defendant") motion to dismiss Plaintiff Valerie Watson's ("Plaintiff") second amended complaint. *See* Dkt. # 32 ("Mot."). Plaintiff opposes the motion, *see* Dkt. # 33 ("Opp."), and Defendant replied, Dkt. # 37 ("Reply"). The Court finds the matter appropriate for decision without oral argument. *See* Fed. Civ. P. 78; L.R. 7-15. Having considered the moving papers, the Court **GRANTS** in part and **DENIES** in part Defendant's motion.

I. Background

Defendant manufactures, markets, and sells certain dry and wet cat food products under the brand name "Solid Gold." *See Second Amended Complaint*, Dkt. # 29 ("SAC"), ¶¶ 27–28. Plaintiff is a customer of Solid Gold. *Id.* ¶ 23. She brings suit on behalf of a class of individuals who purchased Solid Gold cat food products¹ ("Products") in California, alleging that the labels on the Products and advertising used to promote the Products misled customers into believing that those products are nutritious and high-quality cat foods, when in fact they contain contaminants such as heavy metals and BPA. *Id.* ¶¶ 19, 23.

¹ Specifically, Plaintiff complains of the following products: (1) Solid Gold Grain Free Fit as a Fiddle Fresh Caught Alaskan Pollock Dry Cat Food, (2) Solid Gold Grain Free Indigo Moon Chicken and Egg Dry Cat Food, (3) Solid Gold Grain Free High Protein with Chicken Dry Cat Food, (4) Solid Gold Blended Tuna Recipe in Gravy Wet Cat Food, (5) Solid Gold Mackerel and Tuna Recipe in Gravy Wet Cat Food, and (6) Solid Gold Sea Bream and Tuna Recipe in Gravy Wet Cat Food. *See id.* ¶ 27.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 18-6479 PSG (SSx)	Date	February 22, 2019
Title	Valerie Watson v. Solid Gold Pet, LLC		

Plaintiff's allegations focus on specific representations made on the product packaging, labeling, and various marketing and advertising mediums that she alleges are false or misleading. *Id.* ¶ 5. These representations include claims that Defendant's products:

- Are holistic, made from "only the best quality ingredients," and "designed to support your pet's overall health and well-being";
- Possess premium nutrition, high quality, and are safe for consumption;
- Are made of ingredients that needed to "pass strict quality control measures" and "undergo multiple checkpoints against key health and safety criteria as they are brought into [Defendant's] U.S. manufacturing facilities"; and
- Offer pet parents the opportunity to give their pets great nutrition just like they want to give their child. (collective "Quality Claims")

Id. ¶ 4.

Plaintiff alleges that these Quality Claims are "deceptive, misleading, unfair, and/or false" because the Products include Bisphenol A ("BPA") and heavy metals like arsenic, mercury, lead, and cadmium (collectively "Heavy Metals"), which are all known to pose health risks to humans and animals. *Id.* ¶¶ 6–7. Plaintiff further asserts that she relied on the nutritional claims on the Products' packaging and that Defendant's failure to disclose the presence of "Heavy Metals, BPA, and/or other unnatural ingredients" misled her into purchasing the Products at a premium price. *Id.* ¶¶ 23–24.

Plaintiff filed her complaint in this Court on July 27, 2018 on behalf of a proposed class of California consumers, invoking the Court's jurisdiction under the Class Action Fairness Act. *See Complaint*, Dkt. # 1, ¶ 16. Since then, Plaintiff has amended the complaint twice, making the Second Amended Complaint ("SAC") the operative pleading. *See Dkt. # 26; SAC*. Plaintiff asserts the following causes of action against Defendant:

First Cause of Action: Violation of California's Consumer Legal Remedies Act ("CLRA"), Cal. Civ. Code §§ 1750 et seq. *SAC* ¶¶ 112–21.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 18-6479 PSG (SSx)	Date	February 22, 2019
Title	Valerie Watson v. Solid Gold Pet, LLC		

Second Cause of Action: Violation of California’s False Advertising Law (“FAL”), Cal. Bus. & Prof. Code §§ 17500 et seq. *Id.* ¶¶ 122–27.

Third Cause of Action: Violation of Unfair Competition law (“UCL”), Cal. Bus. & Prof. Code §§ 17200 et seq. *Id.* ¶¶ 128–36.

Fourth Cause of Action: Breach of express warranty. *Id.* ¶¶ 137–47.

Fifth Cause of Action: Breach of implied warranty of merchantability. *Id.* ¶¶ 148–61.

Sixth Cause of Action: Fraudulent misrepresentation. *Id.* ¶¶ 162–68.

Seventh Cause of Action: Fraud by omission. *Id.* ¶¶ 169–76.

Eighth Cause of Action: Negligent misrepresentation. *Id.* ¶¶ 177–182.

Defendant now moves to dismiss the SAC, arguing that Plaintiff’s allegations fail to state a claim under Federal Rule of Civil Procedure 12(b)(6). *See generally Mot.*

II. Legal Standard

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.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). In assessing the adequacy of the complaint, the court must accept all pleaded facts as true and construe them in the light most favorable to the plaintiff. *See Turner v. City & Cty. of San Francisco*, 788 F.3d 1206, 1210 (9th Cir. 2015); *Cousins v. Lockyer*, 568 F.3d 1063, 1067 (9th Cir. 2009). The court then determines whether the complaint “allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678. However, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Id.* Accordingly, “for a complaint to survive a motion to dismiss, the non-conclusory factual content, and reasonable inferences from that content, must be plausibly suggestive of a claim entitling the plaintiff to relief.” *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009) (internal quotation marks omitted).

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 18-6479 PSG (SSx)	Date	February 22, 2019
Title	Valerie Watson v. Solid Gold Pet, LLC		

III. Discussion

Defendant presents a number of reasons for why the SAC should be dismissed. The Court will first address Defendant's arguments that apply to all claims. It will then turn to arguments against specific causes of action.

A. All Claims

Defendant first moves to dismiss all claims in the SAC for a global failure to state a plausible claim. *See Mot.* 8:17–16:16. Specifically, Defendant argues that the SAC fails to allege that the Quality Claims are misleading, which is a required element for all of the causes of action alleged. *See id.* First, it asserts that the Quality Claims are not deceptive because they are “non-actionable puffery.” *Id.* 9:17–11:18. Second, it argues that the mere existence of Heavy Metals or BPA in the Products does not contradict the Quality Claims to render them misleading. *Id.* 12:1–16:16. The Court rejects both arguments.

i. Whether Quality Claims Are Puffery

Although false or misleading statements of some specific or absolute characteristics of a product are actionable, “[g]eneralized, vague, and unspecified assertions constitute ‘mere puffery’ upon which a reasonable consumer could not rely, and hence are not actionable.” *Anunziato v. eMachines, Inc.*, 402 F. Supp. 2d 1133, 1139 (C.D. Cal. 2005) (quoting *Glen Holly Entm’t, Inc. v. Tektronix, Inc.*, 343 F.3d 1000, 1005 (9th Cir. 2003)). Defendant asserts that the Quality Claims at issue are “merely statements about the Products that highlight general positive attributes,” and therefore not legally actionable. *Mot.* 9:18–19. The Court is not persuaded.

The SAC alleges that Defendant's Products promise, among other things, “only the best quality ingredients,” *SAC* ¶¶ 4, 80, that they are “designed to support your pet's overall health and well-being,” *id.* ¶¶ 4, 38, 143, “premium nutrition,” *id.* ¶¶ 4, 40, 80, and ingredients that “pass strict quality control measures” and “undergo multiple checkpoints against key health and safety criteria as they are brought into [Defendant's] U.S. manufacturing facilities,” *id.* ¶¶ 4, 41. Courts have repeatedly found similar statements of quality assurance to be actionable and not mere puffery. *See, e.g., Williams v. Gerber Prods. Co.*, 552 F.3d 934, 939 (9th Cir. 2008) (reversing the district court's dismissal of a case alleging that a fruit juice's “all natural” and “nutritious” claims were misleading); *Zieger v. WellPet LLC*, 304 F. Supp. 3d 837, 851 (N.D. Cal. 2018) (finding claims of strict quality control such as “during production, rigorous standards and practices are put in place to protect the nutritional integrity of our food”

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 18-6479 PSG (SSx)	Date	February 22, 2019
Title	Valerie Watson v. Solid Gold Pet, LLC		

actionable); *Lack v. Cruise Am., Inc.*, No. 17-cv-03399-YGR, 2017 WL 3841863, at *3 (N.D. Cal. Sept. 1, 2017) (finding “specific representations about the processes [the defendant] had completed before offering for sale a particular [product]” actionable); *Anunziato*, 402 F. Supp. 2d at 1140 (finding the phrase “most stringent quality control tests” actionable). Defendant’s claims that its Products are safe and nutritious due to its quality control measures are “neither objectively true . . . , nor a subjective opinion about the Products,” but rather “measurable claims that [Plaintiff] indeed seek[s] to prove are false through this very suit.” *Zeiger*, 304 F. Supp. 3d at 851.

In contrast, the cases Defendant cites in support are distinguishable. For example, Defendant relies on *Viggiano v. Hansen Nat. Corp.*, 944 F. Supp. 2d 877 (C.D. Cal. 2013), which found that the word “premium” on a beverage company’s soda package was “mere puffery.” *Id.* at 894. However, the court further explained that the defendant’s use of “premium” was “general and lack[ed] any context indicating the scope of what [was] being warranted; the label [did not even] say the beverage contain[ed] ‘premium flavors’ or ‘premium ingredients.’” *Id.* at 895. Here, the word “premium” has been used to describe “nutrition,” which provides the specificity needed to determine what is being warranted. *SAC* ¶¶ 4, 40, 80.

In sum, the Court concludes that the Quality Claims are not mere puffery but instead measurable claims that Plaintiff may pursue in this suit.

ii. Whether Quality Claims Are Misleading

Defendant next argues that the mere existence of Heavy Metals or BPA does not make the Quality Claims misleading, because Plaintiff has not pleaded “how the asserted levels in the Products (if true), or their mere existence, no matter how low the levels, are harmful to pets, or even material to a reasonable consumer.” *Mot.* 12:8–11.

However, courts have case after case held that whether a reasonable consumer would be materially deceived by a defendant’s advertising or statements about its product is a question of fact that is not generally appropriate for determination on a motion to dismiss. *See Williams*, 552 F.3d at 938–39; *Zeiger*, 304 F. Supp. 3d at 852. At the very least, the Court finds Plaintiff’s allegation that a reasonable consumer would understand the Quality Claims to mean that the Products did not contain Heavy Metals or BPA to be plausible.

The fact that Plaintiff has not alleged what levels of Heavy Metals and BPA are unsafe for pets does not doom her claims. To borrow the language in *Hadley v. Kellogg Sales Co.*, 324

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 18-6479 PSG (SSx)	Date	February 22, 2019
Title	Valerie Watson v. Solid Gold Pet, LLC		

F. Supp. 3d 1084 (N.D. Cal. 2018), “the actual physical ‘impact’ of the products at issue on any ‘specific [class member’s] health’ has no bearing on whether the challenged health statements are false, deceptive, or materially misleading Instead, the falsity or deceptiveness of the challenged health statements on the products at issue will be determined based solely on whether the health statements are likely to deceive or mislead a hypothetical *reasonable consumer*” in light of the amount of Heavy Metals and BPA present in the Products. *Id.* at 1100–01.

As such, the Court concludes that Plaintiff has provided an actionable theory for why the Quality Claims are misleading.

iii. “*Other Unnatural Ingredients*”

As discussed above, the thrust of Plaintiff’s claims against Defendant is that its failure to disclose the presence of “Heavy Metals, BPA, and/or other unnatural ingredients” in its Products was misleading to the consumers. SAC ¶¶ 23–24. Although the Court finds that Plaintiff has adequately stated a claim that the presence of Heavy Metals and BPA was misleading, *see id.* ¶¶ 66–88, it is not so convinced that her catch-all claim about “other unnatural ingredients” is sufficient. Although Plaintiff has gone in length about why undisclosed presence of Heavy Metals and BPA in Defendant’s Products renders its Quality Claims misleading, it has not done the same with respect to “other unnatural ingredients.”

Further, the SAC fails to identify any product label claiming that it was a “natural” product. The only mention of the term “natural” is from a statement on Defendant’s website that Defendant wished to give pets “what they deserve—premium, holistic, *natural* products that allow these amazing animals to look and feel great while they live life to the fullest.” *Id.* ¶ 63 (emphasis added). However, this statement does not directly apply to any single, identified product. Nor does Plaintiff allege that she saw, read, or relied on this statement at any point—she only alleges that “prior to purchasing the [Products], Plaintiff saw the product’s nutritional claims on the packaging, which she relied on in deciding to purchase the [Products].” *Id.* ¶ 23.

Because Plaintiff has not adequately pleaded that the presence of unidentified “unnatural ingredients” makes Defendant’s Quality Claims misleading, the Court **DISMISSES** Plaintiff’s claims to the extent that they rely on this theory.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 18-6479 PSG (SSx)	Date	February 22, 2019
Title	Valerie Watson v. Solid Gold Pet, LLC		

B. Consumer Protection and Fraud Claims

As an independent basis for the dismissal of Plaintiff's CLRA, FAL, and UCL claims, along with her fraudulent and negligent misrepresentation claims, Defendant contends that the SAC fails to meet the heightened pleading requirements of Federal Rule of Civil Procedure 9(b). *Mot.* 16:17–18:10.

Rule 9(b) requires a party alleging fraud to “state with particularity the circumstances constituting fraud or mistake,” Fed. R. Civ. P. 9(b), including “the who, what, when, where, and how of the misconduct charged.” *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003) (citation and internal quotation marks omitted). The allegations “must set forth more than neutral facts necessary to identify the transaction. The plaintiff must set forth what is false or misleading about the statement, and why it is false.” *Id.* In essence, the defendant must be able to prepare an adequate answer to the allegations of fraud.

Here, the Court finds that Plaintiff's claims have satisfied this heightened pleading standard. The SAC clearly names Plaintiff and Defendant (the “who”) and alleges when Plaintiff began purchasing the Products, how frequently, and when she stopped (the “when”). *See SAC* ¶ 23. Plaintiff notes where she purchased the Products as well as where the Quality Claims were made—the product labels (the “where”). *See id.* ¶¶ 23–24. The SAC describes the claims Plaintiff contends are false or misleading (the “what”). *See id.* ¶¶ 4, 32–44. Lastly, Plaintiff alleges why these Quality Claims are misleading (the “how”). *See id.* ¶¶ 46, 62–63, 67–75. She explains that pet owners are “becoming increasingly concerned with what they feed their pets” and that their purchases of pet foods are “more and more functionally driven as health becomes a top priority.” *Id.* ¶¶ 57, 62. Plaintiff further asserts that Defendant has exploited this shift in paradigm of pet owners by promising holistic and premium products that support the pets' overall health and well-being. *See id.* ¶ 63. Given that consumption or exposure to Heavy Metals and BPA carries known risks, Plaintiff alleges that Defendant's Quality Claims have led consumers to believe the Products do *not* contain Heavy Metals or BPA. *See id.* ¶¶ 46, 67. Finally, Plaintiff states that she paid a premium price for Defendant's cat foods and that she would not have purchased the Products had she known about the presence of Heavy Metals or BPA. *Id.* ¶ 24.

The Court finds that Plaintiff has sufficiently alleged facts to put Defendant on notice of the circumstances giving rise to her claims. Therefore, the Court **DENIES** Defendant's motion to dismiss the CLRA (Claim 1), FAL (Claim 2), UCL (Claim 3), fraudulent representation (Claim 6), and negligent representation (Claim 8) claims.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 18-6479 PSG (SSx)	Date	February 22, 2019
Title	Valerie Watson v. Solid Gold Pet, LLC		

C. Fraudulent Omission Claim

Defendant argues that Plaintiff has failed to adequately plead a fraudulent omission claim. Under California law, a plaintiff must show that the seller had a duty to disclose a material fact to establish a fraudulent omission claim. *Mui Ho v. Toyota Motor Corp.*, 931 F. Supp. 2d 987, 999 (N.D. Cal. 2013). “To allege a duty to disclose, a plaintiff must show that the defendant (1) is in a fiduciary relationship with the plaintiff; (2) had exclusive knowledge of material facts not known to the plaintiff; (3) actively concealed a material fact from the plaintiff; or (4) made partial representations but also suppresses some material fact.” *David v. Kimberly-Clark Corp.*, No. C 14-1783 PJH, 2014 WL 3919857, at *10 (N.D. Cal. Aug. 8, 2014). Defendant claims that Plaintiff has pleaded a duty to disclose in a purely conclusory fashion. *Mot.* 18:12–19:17. The Court disagrees.

Here, Plaintiff alleges that the presence of Heavy Metals and BPA is a material fact for a reasonable consumer when purchasing the products, that she would not have purchased the products or paid a premium if she had known about the contaminants, and that she had no way of acquiring this information on her own. *See SAC* ¶¶ 23–24, 84–86, 172–73. Further, Plaintiff alleges that Defendant knew that this information was important for the consumers. *Id.* ¶¶ 57–65. At a motion to dismiss stage, the Court accepts these allegations as true. Therefore, these allegations give rise to a plausible inference that Defendant had a duty to disclose. Defendant’s motion to dismiss Plaintiff’s fraudulent omission claim (Claim 7) is **DENIED**.

D. Breach of Warranty Claimsi. Breach of Express Warranty

“To plead a claim for breach of express warranty, the plaintiff must allege the terms of the warranty, reasonable reliance, and that a breach of the warranty proximately caused his or her injury.” *Allred v. Frito-Lay N. Am., Inc.*, No. 17-CV-1345 JLS (BGS), 2018 WL 1185227, at *6 (citing *Williams v. Beechnut Nutrition Corp.*, 185 Cal. App. 3d 135, 142 (1986)). Defendant does not dispute that statements on a food label can create an express warranty under California law. *Mot.* 19:23–24 (citing *Brown v. Hain Celestial Grp., Inc.*, 913 F. Supp. 2d 881, 889–90 (N.D. Cal. 2012)). However, Defendant argues that Plaintiff fails to plead a breach of express warranty claim, because the statements made in the alleged warranty are mere puffery and because Plaintiff has not explained why the mere existence of Heavy Metals or BPA in the Products constitute a breach. *Mot.* 19:20–20:10.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 18-6479 PSG (SSx)	Date	February 22, 2019
Title	Valerie Watson v. Solid Gold Pet, LLC		

Yet the Court has already rejected these arguments as discussed above. The Court has found that many of the Quality Claims are actionable and that whether those claims were actually misleading is a question of fact that is inappropriate to decide at the motion to dismiss stage. *See supra*. For the same reasons, the Court finds that whether Defendant has breached its express warranty is a question of fact that is to be determined through this suit. Therefore, the Court **DENIES** Defendant’s motion to dismiss the express warranty claim (Claim 4).

ii. Breach of Implied Warranty of Merchantability

“The California Commercial Code implies a warranty of merchantability that goods ‘[a]re fit for ordinary purposes for which such goods are used.’” *Birdsong v. Apple, Inc.*, 590 F.3d 955, 958 (9th Cir. 2009) (quoting Cal. Com. Code § 2314(2)(c)). The implied warranty of merchantability provides for a minimum level of quality, and a breach occurs if the product lacks “even the most basic degree of fitness for ordinary use.” *Id.* (quoting *Mocek v. Alfa Leisure, Inc.*, 114 Cal. App. 4th 402, 406 (2003)). However, in order to state a claim for breach of the implied warranty under California law, the plaintiff must stand in vertical contractual privity with the defendant. *See Clemens v. Daimler*, 534 F.3d 1017, 1023 (9th Cir. 2008); *Anunziato*, 402 F. Supp. 2d at 1141 (C.D. Cal. 2005).

Defendant moves to dismiss Plaintiff’s claim for breach of implied warranty of merchantability on the ground that no privity exists between Plaintiff and Defendant. *See Mot.* 20:19–22:19. Plaintiff has not alleged that she was in vertical contractual privity with Defendant. Instead, she argues that an exception to the privity requirement under California law applies to her because she was the third-party beneficiary of the contract between Defendant and the retailers. *See SAC* ¶ 155; *Opp.* 17:23–19:9.

Courts are divided over whether the third-party beneficiary exception allows a consumer who purchases a product from a retail store to bring a breach of implied warranty claim against the product’s manufacturer. *Compare Xavier v. Philip Morris USA, Inc.*, 787 F. Supp. 2d 1075, 1083 (N.D. Cal. 2011) (finding that the exception does not apply because “[n]o reported California decision has held that the purchase of a consumer product may dodge the privity rule by asserting that he or she is a third-party beneficiary of the distribution agreements linking the manufacturer to the retailer who ultimately made the sale”) *with In re MyFord Touch Consumer Litig.*, 46 F. Supp. 3d 936, 984 (N.D. Cal. 2014) (allowing a consumer who purchased a car from a dealer to bring a breach of implied warranty claim against the manufacturer).

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 18-6479 PSG (SSx)	Date	February 22, 2019
Title	Valerie Watson v. Solid Gold Pet, LLC		

However, this Court has already taken a side on this issue in another case. *See Skiathitis v. Nyko Techs., Inc.*, No. CV 18-3584, Dkt. # 30. In that case, having reviewed the case law, the Court concluded that “the best reading of California law is that the exception does not apply,” because “[n]o reported California decision applied the exception to allow a retail purchaser to bring a breach of implied warranty claim against a manufacturer.” *Id.* at 17. Further, the Court reasoned that “applying the exception to retail purchasers in a time when products are often sold through retail stores rather than directly by manufacturers has the potential to swallow the privity rule.” *Id.*

Here, Plaintiff has not come forward with any reason that persuades the Court to change its previous conclusion. Therefore, the Court finds that Plaintiff cannot bring a breach of implied warranty claim here, because she lacks vertical privity with Defendant. Accordingly, the Court **GRANTS** Defendant’s motion to dismiss the breach of implied warranty claim (Claim 5).

IV. Leave to Amend

Whether to grant leave to amend rests in the sound discretion of the trial court. *See Bonin v. Calderon*, 59 F.3d 815, 845 (9th Cir. 1995). Courts consider whether leave to amend would cause undue delay or prejudice to the opposing party, and whether granting leave to amend would be futile. *See Sisseton-Wahpeton Sioux Tribe v. United States*, 90 F.3d 351, 355 (9th Cir. 1996). Generally, dismissal without leave to amend is improper “unless it is clear that the complaint could not be saved by any amendment.” *Jackson v. Carey*, 353 F.3d 750, 758 (9th Cir. 2003).

Defendants argue that Plaintiff should not be granted leave to amend because she has already had three opportunities to draft a legally actionable complaint. *Mot.* 22:21–28. Plaintiff, however, has not had the opportunity to amend in light of the Court’s concerns. Accordingly, the Court **GRANTS** Plaintiff leave to amend her claim regarding the presence of “other unnatural ingredients.” However, because the Court finds that Plaintiff’s breach of implied warranty claim fails as a matter of law, leave to amend this claim is **DENIED**. If Plaintiff chooses to amend her complaint, she must do so no later than **March 18, 2019**.

V. Conclusion

For the foregoing reasons, Defendant’s motion to dismiss is **GRANTED** in part and **DENIED** in part. The Court **DISMISSES** Plaintiff’s claims to the extent that they rely on the theory that the presence of “other unnatural ingredients” renders Defendant’s Quality Claims

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 18-6479 PSG (SSx) Date February 22, 2019

Title Valerie Watson v. Solid Gold Pet, LLC

misleading. Further, the Court **DISMISSES** Plaintiff's fifth cause of action for breach of implied warranty. Plaintiff may proceed on her CLRA, FAL, UCL, breach of express warranty, fraudulent misrepresentation, fraud by omission, and negligent misrepresentation claims to the extent they allege that the presence of Heavy Metals or BPA makes Defendant's Quality Claims misleading. If Plaintiff wishes to amend her complaint, she must do so no later than **March 18, 2019**.

IT IS SO ORDERED.