UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No.	**EDCV 19-2329 JGB (KKx)**	Date	September 25, 2020
Title	***Charles Ballard, et al., v. Bhang Corporation, et al.***		

Present: The Honorable	JESUS G. BERNAL, UNITED STATES DISTRICT JUDGE

MAYNOR GALVEZ	Not Reported
Deputy Clerk	Court Reporter

Attorney(s) Present for Plaintiff(s):	Attorney(s) Present for Defendant(s):
None Present	None Present

Proceedings: **Order (1) GRANTING in part and DENYING in part Defendant's Motion to Stay, Strike, and Dismiss (Dkt. No. 51); and (2) VACATING the September 28, 2020 Hearing (IN CHAMBERS)**

Before the Court is a Motion to Stay; to Strike under Federal Rule of Civil Procedure 12(f); and to Dismiss under Federal Rules of Civil Procedure 8, 9(b), and 12(b)(6) filed by Defendant Kaya Management. ("Motion," Dkt. No. 51.) The Court determines this matter is appropriate for resolution without a hearing. See Fed. R. Civ. P. 78; L.R. 7-15. After considering all papers filed in support of and in opposition to the Motion, the Court GRANTS-IN-PART and DENIES-IN-PART Defendant's Motion. The September 28, 2020 hearing is VACATED.

I. BACKGROUND

On December 4, 2019, Plaintiff Charles Ballard, on behalf of himself and all others similarly situated and the general public, filed a complaint against Defendant Bhang Corporation and Does 1 through 25. ("Complaint," Dkt. No. 1.) Plaintiff filed a First Amended Complaint on February 20, 2020, which added Kaya Management, Inc. ("Kaya Management") and others as defendants. ("FAC," Dkt. No. 17.) The parties stipulated that Plaintiff would file a Second Amended Complaint on August 4, 2020. (Dkt. No. 39.) On August 5, 2020, the Court granted Plaintiffs leave to amend complaint. (Dkt. No. 40.) On August 7, 2020, Plaintiff filed a Second Amended Complaint. ("SAC," Dkt. No. 41.)

The SAC alleges six causes of action: (1) violations of California Consumers Legal Remedies Act, Cal. Civ. Code § 1750 et seq.; (2) false advertising, in violation of Cal. Bus. & Prof. Code § 17500 et seq.; (3) breach of express warranty, in violation of Cal. Com. Code §

2313(1); (4) fraud; (5) negligent misrepresentation; and (6) violations of California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 et seq. (SAC ¶¶ 42-92).

On August 28, 2020, Plaintiff settled with Defendant Bhang Corporation (Dkt. No. 49), leaving Defendant Kaya Management and others. On August 28, 2020, Defendant Kaya Management filed the Motion. Plaintiff opposed on September 4, 2020. ("Opposition," Dkt. No. 52.) Defendant replied on September 11, 2020. ("Reply," Dkt. No. 54.)

II. FACTUAL ALLEGATONS

Plaintiff alleges the following facts, which are assumed to be true for the purposes of this motion. Plaintiff Charles Ballard purchased Bhang Medicinal Chocolate between 2016 and 2018 across Southern California. SAC ¶ 4. This chocolate was labelled as having a specific quantity of THC and CBD, and Plaintiff bought it for that purpose. SAC ¶ 5. Defendant Bhang Corporation controlled this marketing. SAC ¶ 9. Defendants CannaRoyalty Corp., Kaya Management, Fluid South, Inc., and Jeff and Shanna Droege participated in this marketing. SAC ¶¶ 10-13. Independent lab testing commissioned by Plaintiff revealed that Bhang chocolate did not contain the amount of CBD advertised. SAC ¶ 14. Plaintiff brings this action on behalf of all people who purchased Bhang chocolate for personal use nationwide between December 4, 2014 and December 31, 2018. SAC ¶¶ 27-28.

III. LEGAL STANDARD

A. Motion to Stay

The primary jurisdiction doctrine allows courts to stay proceedings or to dismiss a complaint without prejudice pending the resolution of an issue within the special competence of an administrative agency. Clark v. Time Warner Cable, 523 F.3d 1110, 1114 (9th Cir.2008). A court's invocation of the doctrine does not indicate that it lacks jurisdiction. Reiter v. Cooper, 507 U.S. 258, 268–69 (1993). Rather, the doctrine is a prudential one, under which a court determines that an otherwise cognizable claim implicates technical and policy questions that should be addressed in the first instance by the agency with regulatory authority over the relevant industry rather than by the judicial branch. See Syntek Semiconductor Co. v. Microchip Tech. Inc., 307 F.3d 775, 780 (9th Cir.2002). Four factors aid the Court in evaluating primary jurisdiction: "(1) the need to resolve an issue that (2) has been placed by Congress within the jurisdiction of an administrative body having regulatory authority (3) pursuant to a statute that subjects an industry or activity to a comprehensive regulatory authority that (4) requires expertise or uniformity in administration." Id., 307 F.3d at 781.

Use of the primary jurisdiction doctrine in food-labeling claims in the Ninth Circuit often turns on whether pending FDA guidance will define an unclear labeling term. The Ninth Circuit has recently invoked the primary jurisdiction doctrine to stay a claim that the label "all-natural" was misleading, where FDA guidance on the term "natural" was thought to be forthcoming. Astiana v. Hain Celestial Grp., Inc., 783 F.3d 753, 761-762 (9th Cir. 2015); see Kane v. Chobani,

LLC, 645 F. App'x 593, 594 (9th Cir. 2016) (unpublished) (staying proceedings under primary jurisdiction doctrine pending FDA definition of "natural").

However, the Ninth Circuit has declined to invoke the primary jurisdiction doctrine where the court could address false advertising claims without additional FDA clarification. Reid v. Johnson & Johnson, 780 F.3d 952, 967 (9th Cir. 2015) ("The issue that this case ultimately turns on is whether a reasonable consumer would be misled by [defendant's] marketing, which the district courts have reasonably concluded they are competent to address in similar cases."); see Fisher v. Monster Beverage Corp., 656 F. App'x 819, 824 (9th Cir. 2016) (unpublished) (primary jurisdiction doctrine did not apply where plaintiffs alleged state-law consumer protection claims over terms that did not require FDA clarification).

B. Motion to Dismiss

Under Federal Rule of Civil Procedure 12(b)(6) ("Rule 12(b)(6)"), a party may bring a motion to dismiss for failure to state a claim upon which relief can be granted. Rule 12(b)(6) must be read in conjunction with Federal Rule of Civil Procedure 8(a), which requires a "short and plain statement of the claim showing that a pleader is entitled to relief," in order to give the defendant "fair notice of what the claim is and the grounds upon which it rests." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007); see Horosny v. Burlington Coat Factory, Inc., No. 15–05005, 2015 WL 12532178, at *3 (C.D. Cal. Oct. 26, 2015). When evaluating a Rule 12(b)(6) motion, a court must accept all material allegations in the complaint — as well as any reasonable inferences to be drawn from them — as true and construe them in the light most favorable to the non-moving party. See Doe v. United States, 419 F.3d 1058, 1062 (9th Cir. 2005); ARC Ecology v. U.S. Dep't of Air Force, 411 F.3d 1092, 1096 (9th Cir. 2005); Moyo v. Gomez, 32 F.3d 1382, 1384 (9th Cir. 1994).

"While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Twombly, 550 U.S. at 555 (citations omitted). Rather, the allegations in the complaint "must be enough to raise a right to relief above the speculative level." Id.

To survive a motion to dismiss, a plaintiff must allege "enough facts to state a claim to relief that is plausible on its face." Twombly, 550 U.S. at 570; Ashcroft v. Iqbal, 556 U.S. 662, 129 S. Ct. 1937, 1949 (2009). "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it stops short of the line between possibility and plausibility of 'entitlement to relief.'" Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 556). The Ninth Circuit has clarified that (1) a complaint must "contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively," and (2) "the factual allegations that are taken as true must plausibly suggest an entitlement to relief, such that it is not unfair to require the opposing

party to be subjected to the expense of discovery and continued litigation." Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011).

Federal Rule of Civil Procedure 8(a) requires that a complaint contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a). Rule 9(b) imposes a heightened pleading standard for claims that "sound in fraud." Fed. R. Civ. P. 9(b) ("In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake."). A plaintiff must identify "the who, what, when, where, and how" of the alleged conduct, so as to provide defendants with sufficient information to defend against the charge. Cooper v. Pickett, 137 F.3d 616, 627 (9th Cir. 1997).

IV. DISCUSSION

A. Central District of California Local Rule 7-3

Local Rule 7-3 provides, in part: "[C]ounsel contemplating the filing of any motion shall first contact opposing counsel to discuss thoroughly, preferably in person, the substance of the contemplated motion and any potential resolution. The conference shall take place at least seven (7) days prior to the filing of the motion." L.R. 7-3. Defendant represented in its motion that the parties conducted the Rule 7-3 conference on May 6, June 5, June 12, July 14, and August 28 of 2020. (Motion, 2.)

Plaintiff contends that despite this representation, Defendant failed to comply with its Local Rule 7-3 obligation. First, Plaintiff notes that because the SAC was not filed until August 7, 2020, no meet and confer could have occurred beforehand. (Opposition, 2.) Second, Plaintiff notes that because the Motion was filed on August 28, 2020, the phone call on that date could not have satisfied Local Rule 7-3's requirement that a conference occur at least seven days before filing. Id. Thus, none of the cited dates satisfied Rule 7-3. Furthermore, Plaintiff contends that the exchanges cited by Defendant concerned "case management issues like potential settlement, information exchanges, Rule 26 obligations and proposed stipulations," not "asserted federal preemption, primary jurisdiction, an intention to request a stay, or [] any specific grounds to dismiss." Id., 3. And finally, Plaintiff contends that Defense counsel affirmatively declined to participated in a telephonic discussion on August 14, 2020 – a date that, unlike any of the above dates, would have satisfied Local Rule 7-3. Id.

Defendant contends that, as the SAC merely adds Defendants Jeff and Shanna Droege and a claim for money damages to the FAC but does not otherwise change the text, Defendant's three hours of phone calls with Plaintiffs since the filing of the FAC satisfy Local Rule 7-3. (Reply, 2-3.) And, while Defendant does not aver that Plaintiff was aware of every issue to be covered by the Motion, Defendant claims that Plaintiff was aware of a forthcoming Motion and, rather than raise any shortcomings with Local Rule 7-3 with Defendant directly, asked to negotiate "with the motions pending." Id., 4.

If a party does not suffer any prejudice as a result of non-compliance with Local Rule 7-3, the Court may consider the merits of the motions. Reed v. Sandstone Properties, L.P., CV 12-05021 MMM VBKX, 2013 WL 1344912 at *6 (C.D. Cal. Apr. 2, 2013) ("Because Reed suffered no real prejudice as a result of the late conference, however, the court elects to consider the motion on the merits."); see De Walshe v. Togo's Eateries, Inc., 567 F. Supp. 2d 1198, 1205 (C.D. Cal. 2008) ("[T]he Court finds that any potential violation of Local Rule 7-3 did not prejudice Plaintiff and the Court exercises its discretion to evaluate Defendant's motion on its merits."); Wilson-Condon v. Allstate Indem. Co., CV 11-05538 GAF PJWX, 2011 WL 3439272 at *1 (C.D. Cal. Aug. 4, 2011) ("[Defendant] does not appear to have suffered any prejudice from Plaintiff's failure to meet and confer sufficiently in advance, and [Defendant] was able to prepare and submit an opposition. Thus, it appears that no prejudice will result if the Court considers the motion to remand on the merits notwithstanding Plaintiff's failure to comply with Local Rule 7–3.").

Although Defendant could have been more diligent in its efforts to adhere to Local Rule 7-3, Plaintiff has not alleged any material prejudice resulting from Defendant's failure to comply. Accordingly, the Court will consider the Motion. See, e.g., ECASH Techs., Inc. v. Guagliardo, 35 Fed. Appx. 498, 500 (9th Cir. May 13, 2002) (Unpub. Disp.) ("The Central District of California's local rules do not require dismissal of appellee's motions for failure to satisfy the meet-and-confer requirements" (citations omitted)); CarMax Auto Superstores California LLC v. Hernandez, 94 F. Supp. 3d 1078, 1088 (C.D. Cal. 2015) ("Failure to comply with the Local Rules does not automatically require the denial of a party's motion, ... particularly where the non-moving party has suffered no apparent prejudice as a result of the failure to comply") (collecting cases).[1]

B. Motion to Stay

Defendant contends that this case should be stayed under the primary jurisdiction doctrine pending FDA action because purportedly forthcoming FDA "regulations concerning how cannabinoid content is measured and labeled – and particularly the allowable error tolerance for such labeling – could be central [to the case] if not entirely dispositive." (Reply, 10.)

Defendant's papers make clear that the FDA is aware of cannabinoids in food products. (Motion, 15-17; Reply, 9-12.) The Agricultural Improvement Act of 2018 ("2018 Farm Bill") explicitly recognized the FDA's authority to regulate cannabinoids in food products. Motion, 5. The 2018 Farm Bill allows states or the FDA to regulate products containing THC concentrations of "not more than .3 percent on a dry weight basis." 7 U.S.C.A. § 1639o,

[1] The parties are warned that the Court will not be so lenient if this rule is treated lightly in the future.

16390p.[2] The FDA has not yet promulgated regulations concerning cannabinoids in food products under this authority. Defendant cites FDA sources demonstrating that the FDA currently takes action against products containing more CBD or THC than the legal limit. Motion, 17, citing FDA.gov, "FDA warns 15 companies for illegally selling various products containing cannabidiol as agency details safety concerns," (November 25, 2019), https://www.fda.gov/news-events/press-announcements/fda-warns-15-companies-illegally-selling-various-products-containing-cannabidiol-agency-details. Additionally, these sources suggest that the FDA is beginning to address the safety of cannabinoids in food products.[3] But nothing Defendant cites suggests that the FDA has imminent or even definite plans to promulgate the regulations envisioned by the 2018 Farm Bill.[4]

Plaintiff contends that the primary jurisdiction doctrine does not apply because this case alleges violations of California consumer protection law, not FDA regulations, and thus FDA guidance will not clarify any crucial but ill-defined terms. Additionally, Plaintiff notes that "courts must also consider whether invoking primary jurisdiction would needlessly delay the resolution of claims." Reid, 780 F.3d at 967-68.

Plaintiff has the better argument here. Plaintiff's claims are simple: there is less THC and CBD in Bhang chocolates than advertised, and this discrepancy violates various California consumer protection laws. Whether Plaintiff has pleaded these claims sufficiently is discussed

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[2] Interestingly, a quick back-of-the-envelope calculation shows that the Bhang chocolate wrapper provided by plaintiffs (SAC, ¶ 14) contains approximately .3% THC by weight. It is not clear if all Bhang chocolate similarly falls just under the legal limit.

[3] The FDA currently reports that it is "seeking reliable and high-quality data . . . on, among other things: the sedative effects of CBD; the impacts of long-term sustained or cumulative exposure to CBD; transdermal penetration and pharmacokinetics of CBD; the effect of different routes of CBD administration (e.g., oral, topical, inhaled) on its safety profile; the safety of CBD for use in pets and food-producing animals; and the processes by which 'full spectrum' and 'broad spectrum' hemp extracts are derived, what the content of such extracts is, and how these products may compare to CBD isolate products." FDA.gov, "FDA Advances Work Related to Cannabidiol Products with Focus on Protecting Public Health, Providing Market Clarify," (March 5, 2020), https://www.fda.gov/news-events/press-announcements/fda-advances-work-related-cannabidiol-products-focus-protecting-public-health-providing-market (cited at Motion, 17).

[4] Defendants point to a Notice of a Public Hearing and Request for Comments on "Scientific Data and Information about Products Containing Cannabis or Cannabis-Derived Compounds" published by the FDA on April 3, 2019, as a suggestion that the FDA has begun rulemaking on levels of cannabis in food. 84 Fed. Reg. 12,969. However, this document explicitly states that the "FDA does not intend for this hearing to produce any decisions or new positions on specific regulatory questions." Id. While the FDA may eventually promulgate the types of rules Defendant suggests would be useful, it clearly has no definite plans to do so.

below. But Defendant has not demonstrated that possible FDA regulations on the safety of CBD will clarify whether its advertising lines up with its product. As other district courts in the Ninth Circuit have recognized, this is an appropriate question for a trial court to determine. See, e.g., Jones v. ConAgra Foods, Inc., 912 F. Supp. 2d 889, 898–99 (N.D. Cal. 2012) (declining to stay the case for FDA regulations about the use of the word "natural" in food marketing: "this case is far less about science than it is about whether a label is misleading. Plaintiff's allegations of deceptive labeling do not require the expertise of the FDA to be resolved in the courts, as every day courts decide whether conduct is misleading. The FDA's expertise is not necessary to determine whether the labels are misleading.") (internal citations omitted).

Defendant cites several stay orders in similar litigation. However, these orders demonstrate why a stay is not appropriate in this case. One court in this district stayed a CBD case under primary jurisdiction where the plaintiff alleged that "had she known CBD products are 'not legally sold in the United States,' she would not have purchased [Defendant's products]." Colette v. CV Scis., Inc., 2020 WL 2739861, at *1 (C.D. Cal. May 22, 2020); see Glass v. Glob. Widget, LLC, 2020 WL 3174688, at *3 (E.D. Cal. June 15, 2020) (Plaintiff similarly claimed they were deceived by the legality of CBD). The legality of purchasing CBD is an area where FDA guidance would clarify parties' legal obligations. By contrast, Plaintiff in the instant case does not claim to have been defrauded or hoodwinked by the legal status of CBD; he simply got less CBD than he thought he was paying for. This type of straightforward dispute is one that this Court is well-suited to handle.

Defendant also cites the stay in Pfister v. Charlotte's Web Holdings, Inc. to show that other courts have stayed CBD cases under the primary jurisdiction doctrine. However, Pfister also demonstrates that a stay is appropriate in cases that turn on unclear terms. In Pfister, the parties stipulated to a stay because plaintiffs and defendant disagreed about the meaning of the phrase "hemp extract," and both parties felt that "a final FDA guidance document or regulation regarding the labeling of hemp-derived products may assist the Court in resolving this case." 1:20-cv-00418 (N.D. Ill. 2020). In the instant case, however, Defendants have not claimed that a definitional disagreement requiring the FDA's technical expertise caused the instant dispute over Defendant's labeling.

Several courts have stayed similar litigation over a difference of opinion in the imminence, not the relevance, of forthcoming FDA guidance. One court stayed a similar consumer protection suit because "it appears to the Court that the FDA is exercising regulatory authority over ingestible and other CBD products, but there is uncertainty with respect to whether the FDA will conclude that some or all CBD products are food additives, supplements or nutrients that can be safely marketed to the public and, if nutrients, whether the labelling standards and requirements for CBD products will be different or the same as for other nutrients." Snyder v. Green Roads of Fla. LLC, 430 F. Supp. 3d 1297, 1308 (S.D. Fla. 2020). See also Ahumada v. Global Widget LLC, 1:19-cv-12005 (D. Mass 2020) (finding that the inclusion of "language in the FY2020 appropriations bill requiring the FDA to hasten progress toward regulating the market for CBD products" suggested "imminence"). This Court, however, reads the record presented by Defendants differently than the above two courts did. While the record shows that the FDA is

investigating CBD, "uncertainty" over if or when the FDA might promulgate labelling regulations that would alter this Court's analysis of state-law consumer protection claims counsels against an indefinite stay.

C. Motion to Strike

Federal Rule of Civil Procedure 12(f) provides, in part: "The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). Defendant moves to strike the phrase "general public" from the SAC, a "phantom" implied warranty cause of action mentioned only in ¶ 2, and a claim for nonrestitutionary disgorgement under the UCL. Motion, 13-14. Because Plaintiff concedes that the references to claims brought on behalf of the general public and the phantom implied warranty claim "never should have been brought before the Court," the Court GRANTS the motion to strike these two phrases, suspecting that they are typos and therefore immaterial. (Opposition, 15.)

Additionally, as Defendant recognizes, this Court has previously held that "nonrestitutionary disgorgement is not available in a UCL individual or representative action." Mack v. LLR, Inc., No. EDCV1700853JGBDTBX, 2018 WL 6927860, at *6 (C.D. Cal. Aug. 15, 2018). The Court thus GRANTS Defendant's Motion to strike Plaintiff's allegations seeking nonrestitutionary disgorgement as also immaterial.

D. Motion to Dismiss

1. Implied Preemption

"A fundamental principle of the Constitution is that Congress has the power to preempt state law." Crosby v. Nat'l Foreign Trade Council, 530 U.S. 363, 372 (2000). Congress preempts state law when it intends to "occupy the field," leaving no room for state law, or when it is not possible to comply with both state and federal law. Id. Finding that Congress has preempted a statute is a high burden: "because the States are independent sovereigns in our federal system, we have long presumed that Congress does not cavalierly pre-empt state-law causes of action." Medtronic, Inc. v. Lohr, 518 U.S. 470, 485 (1996). Because preemption is an affirmative defense, the party that raises it bears the burden of establishing that it applies. See Trazo v. Nestle USA, Inc., 2013 WL 4083218, at *6 (N.D. Cal. Aug. 9, 2013).

Defendant asserts that because the 2018 Farm Bill explicitly granted the FDA authority to regulate cannabinoids in food products, it preempted Plaintiff's state law claims. Motion, 5. But Defendant does not point to any language in the 2018 Farm Bill preempting state false-advertising laws. In fact, the 2018 Farm Bill explicitly goes out of its way to avoid preempting some state laws: "Nothing in this subsection preempts or limits any law of a State or Indian tribe that (i) regulates the production of hemp; and (ii) is more stringent than this subchapter." 7 U.S.C.A. § 1639p(a)(3)(A). The only case Defendant cites for this proposition is Perez v. Nidek Co., which held that the Food, Drug, and Cosmetics Act preempted state tort "fraud-on-the-

FDA claims," or claims that failure to disclose certain FDA requirements violated state tort law. 711 F.3d 1109, 1119 (9th Cir. 2013). Clearly, that sort of state claim conflicts with the FDA's own enforcement of the FDCA – but as plaintiff is not claiming here that Defendant violated FDA labelling requirements, Perez does not apply.

Moreover, Plaintiff offers a convincing argument that the 2018 Farm Bill did not preempt state false advertising claims because it neither conflicted with nor is impeded by state false advertising laws, and because the Supreme Court has held that at least some FDA regulations do not preempt state tort law claims. (Opposition, 6.) Because Defendant declined to address this argument at all in the Reply, and because Defendant bears the burden of demonstrating that preemption applies, we hold that Defendant failed to meet its burden and DENY the Motion as to its preemption claims.

2. Rules 8, 9(b), and 12(b)(6)

With these opening fusillades out of the way, we now wade into the main battle: Defendant's motion that Plaintiff's complaint be dismissed for failure to state a claim under Rules 8 and 12(b)(6). Happily, and unlike the numerous sideshows and diversions addressed above, this is not terribly complex. While Defendant's claims are numerous, see Motion at 5-13, they boil down to a demand that Plaintiff be specific as to which chocolates he bought, when he bought them, how they were advertised, and how they fell short of that advertisement before he sue Defendant over them.

Defendant demonstrates that in the Ninth Circuit, false advertising/consumer fraud suits require this information. See, e.g, Haley v. Macy's, Inc., 263 F. Supp. 3d 819, 824 (N.D. Cal. 2017) ("Plaintiffs must allege with specificity what products they purchased, on what statements they relied in making those purchases, and why those statements were false or misleading.") (collecting cases where plaintiffs survived a Motion to Dismiss by alleging specific dates, prices, and articles purchased); Jones, 912 F. Supp. 2d at 903 (dismissing with leave to amend "Plaintiff's claims to the extent the products are not specifically identified, such as 'other Hunt's canned tomato products.'").

Plaintiff contends that he need not provide Defendant with any of this information: "[T]he following references provide sufficient facts[:] . . . Plaintiff identifies the specific products at issue and alleges to have purchased one or more within the class period. Plaintiff provides exemplar images of the product labels . . ." (Opposition, 12) (internal citations omitted). Unfortunately, the "specific products at issue" include at least fifteen types of chocolate, and the "class period" is several years long. SAC ¶¶ 6, 4. As other courts in this circuit have recognized, this falls short of the Rule 12(b)(6)'s requirement that a plaintiff provide "fair notice" such that a defendant can defend itself. Twombly, 550 U.S. at 555.

Oddly, Plaintiff is clearly in possession of this information, as he tested at least one Bhang chocolate he purchased in a lab in order to determine that its CBD and/or THC content fell below the advertised levels. (SAC ¶ 14.) He does not cite any caselaw contradicting Defendant

in defense of his refusal to reveal this information. All six causes of action hinge on this withheld information. Plaintiff needs to turn it over.

Clarity from Plaintiff on which chocolates he bought, when he bought them, how they were advertised, and how they fell short – at the very least as to the chocolates that Plaintiff had lab-tested – would state a claim that Defendant could defend and the Court could consider. Once Plaintiff provides that clarity, Defendant will be better prepared to dispute the timeliness of the action, the applicability of the economic loss doctrine, and the possible express warranty, such that the Court can rule on these sub-points. (Motion, 9, 11, 12).

The court therefore GRANTS the Motion to Dismiss as to all six claims.

V. LEAVE TO AMEND

Generally, a "district court should grant leave to amend even if no request to amend the pleading was made, unless it determines that the pleading could not possibly be cured by allegation of other facts." Lopez v. Smith, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc) (internal quotation marks and citation omitted). Here, the Court identifies specific factual deficiencies which may be cured by amendment. Thus, the Court GRANTS LEAVE TO AMEND.

VI. CONCLUSION

For the reasons above, the Court GRANTS-IN-PART and DENIES-IN-PART Defendants' Motion. The September 28, 2020 hearing is VACATED. Plaintiff shall file an amended complaint, if any, by October 9, 2020.

IT IS SO ORDERED.