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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BENJAMIN PEREZ,
Plaintiff,
v.
MONSTER INC., et al.,
Defendants.

Case No. 15-cv-03885-EMC

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO DISMISS

Docket No. 22

United States District Court
For the Northern District of California

Plaintiff Benjamin Perez has filed a putative class action against Defendants Monster Inc. and two Best Buy entities (Best Buy Stores, LP and Bestbuy.com LLC) (collectively, “Best Buy”), based on Monster’s sale of certain High-Definition Multimedia Interface (“HDMI”) cables. The gist of the case is that Defendants purportedly claim that “1080p and 4K HDTVs will not work properly unless consumers use Monster HDMI cables with bandwidths of 18.0, 22.5 or 27.0 gigabits per second (“Gbps”)” when, “[i]n fact, any HDMI cable with a bandwidth of just 10.2 Gbps can transmit all 1080p and 4K signals perfectly.” Compl. ¶ 2. Currently pending before the Court is Defendants’ motion to dismiss.

Having considered the parties’ briefs, as well as the oral argument of counsel, the Court hereby **GRANTS** in part and **DENIES** in part Defendants’ motion.

I. FACTUAL & PROCEDURAL BACKGROUND

In the complaint, Mr. Perez alleges as follows.¹

“HDMI is a proprietary standard [which belongs to HDMI Licensing, LLC] for

¹ Although the Court has before it a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), both parties have submitted evidence outside the four corners of the complaint. The Court shall not consider any of this evidence.

1 transmitting digital video and audio from high definition (‘HD’) sources (e.g., digital cable boxes
 2 and Blu-ray players) to HD monitors (e.g., HDTVs).” Compl. ¶ 17. “The HDMI format was
 3 intended to streamline the numerous methods for transmitting digital video and audio signals then
 4 in use with a single connection and cable type that could transmit digital video, multi-channel
 5 surround audio and advanced control data through a single cable, thereby simplifying installation
 6 and clutter.” Compl. ¶ 20.

7 Currently, HDMI cables have two basic classifications: “Standard” (Category 1) and “High
 8 Speed” (Category 2).² See Compl. ¶ 26. HDMI High Speed “is ‘designed and tested to handle
 9 video resolutions of 1080p and beyond, including advanced display technologies such as 4K, 3D,
 10 and Deep Color.’” Compl. ¶ 28. “To qualify as ‘HDMI High Speed,’ an HDMI cable must have a
 11 bandwidth of 10.2 Gbps, meaning that it can transmit 10.2 billion bits of digital information per
 12 second.” Compl. ¶ 27. “[A]ny HDMI cable with a bandwidth of just 10.2 Gbps can transmit all
 13 1080p and 4K signals perfectly.” Compl. ¶ 2.

14 Monster sells cable that meets the bandwidth requirement of 10.2 Gbps. It labels that cable
 15 “High Speed.” But Monster also sells cable that exceeds that bandwidth. Those cables are labeled
 16 as follows:

- 17 • “Advanced High Speed” – bandwidth of 18.0 Gbps.
- 18 • “Ultra High Speed” – bandwidth of 22.5 Gbps.
- 19 • “Ultimate High Speed” – bandwidth of 27.0 Gbps.

20 See Compl. ¶ 32. According to Mr. Perez, these labels “have no established standard or meaning.”
 21 Compl. ¶ 36 (“While HDMI Licensing, LLC created and regulates the term ‘HDMI High Speed,’
 22 Monster invented the terms ‘Advanced high Speed,’ ‘Ultra High Speed’ and ‘Ultimate High
 23 Speed’ entirely from whole cloth.”).

24 In or about March 2014, Mr. Perez purchased a Monster Ultra High Speed HDMI cable
 25 (22.5 Gbps) from a Best Buy retail store in Orange, California, for about \$189. See Compl. ¶ 11.
 26 Before buying the product, Mr. Perez “carefully reviewed the product’s packaging.” Compl. ¶ 11.

27
 28 ² There are other categories of cables, see Compl. ¶ 26, but they are not relevant for purposes of
 this litigation – or at least for purposes of this motion to dismiss.

1 According to Mr. Perez, the product packaging falsely represented that a HDMI cable “with a
2 bandwidth exceeding 10.2 Gbps was needed to transmit video signals to his television,” when in
3 fact 10.2 Gbps was all that was needed. *See* Compl. ¶ 11; *see also* Compl. ¶ 31 (“Despite the fact
4 that any HDMI High Speed cable with a bandwidth of 10.2 Gbps can transmit a perfect digital
5 picture, Monster misrepresents to consumers that they need even faster cables for their HD
6 connections.”).

7 Mr. Perez indicates that the above representations were made in the product packaging via
8 a chart that is “[o]n the back of the packaging of all [Monster’s] HDMI cables.” Compl. ¶ 32
9 (emphasis added). That chart is replicated below.



19

20 Compl. ¶ 32. Notably, the chart includes the following statement: “Use This Bandwidth
21 Comparison Chart *To Get The Speed You Need.*” Compl. ¶ 32 (emphasis added). According to
22 Mr. Perez, the implication is that, to get the speed you need for, *e.g.*, a 4K television, you need a
23 HDMI cable with at least a bandwidth of 18.0 Gbps.

24 Mr. Perez also claims that Monster’s chart above is “bunk” as established by the fact that
25 “Defendants[] have ramped up the bandwidth requirements on their Performance Chart over time.
26 According to Defendants, video connections that previously required only 17.8 Gbps now require
27 27.0 Gbps.” Opp’n at 14 (citing Compl. ¶ 35); *see also* Opp’n at 6.

28 Based on, *inter alia*, the above allegations, Mr. Perez has asserted the following claims for

1 relief:

- 2 (1) Violation of the Magnuson-Moss Warranty Act (“MMWA”). See 15 U.S.C. § 2301 et seq.
- 3 (2) Breach of express warranty.
- 4 (3) Breach of the implied warranty of merchantability.
- 5 (4) Unjust enrichment.
- 6 (5) Negligent misrepresentation.
- 7 (6) Fraud.
- 8 (7) Violation of California’s Consumer Legal Remedies Act (“CLRA”). See Cal. Civ. Code §
- 9 1750 et seq.
- 10 (8) Violation of California Business & Professions Code § 17200.
- 11 (9) Violation of California Business & Professions Code § 17500.

12 As Defendants point out, the above claims can generally be grouped into two categories:

- 13 (1) the fraud-based claims and (2) the warranty-based claims.

14 **II. DISCUSSION**

15 **A. Legal Standard**

16 Under Federal Rule of Civil Procedure 12(b)(6), a defendant may move to dismiss for
17 failure to state a claim for relief.

18 “To survive a motion to dismiss, a complaint must contain sufficient
19 factual matter, accepted as true, to ‘state a claim to relief that is
20 plausible on its face.’” A claim is facially plausible “when the
21 plaintiff pleads factual content that allows the court to draw the
22 reasonable inference that the defendant is liable for the misconduct
23 alleged.” The plausibility standard requires more than the sheer
24 possibility or conceivability that a defendant has acted unlawfully.
25 “Where a complaint pleads facts that are merely consistent with a
26 defendant’s liability, it stops short of the line between possibility
27 and plausibility of entitlement to relief.” Dismissal under Rule
28 12(b)(6) is proper only when the complaint either (1) lacks a
cognizable legal theory or (2) fails to allege sufficient facts to
support a cognizable legal theory.

26 *Li v. Kerry*, 710 F.3d 995, 999 (9th Cir. 2013) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79
27 (2009)); see also *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007).

1 B. Fraud-Based Claims

2 1. All Fraud-Based Claims

3 Defendants challenge all of the fraud-based claims³ on the ground that the claims do not
 4 satisfy the requirements of either Federal Rule of Civil Procedure 8 or Rule 9(b). For the most
 5 part, the Court does not agree. Mr. Perez has adequately pled the “who, what, when, where, and
 6 how” of the alleged misconduct. *See Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th
 7 Cir. 2003). According to Mr. Perez, a misrepresentation was made to him in or about March
 8 2014, when he purchased a Monster Ultra High Speed HDMI cable (22.5 Gbps) from a Best Buy
 9 retail store in Orange, California, for about \$189. *See* Compl. ¶ 11. The misrepresentation was
 10 made by Monster, through its product packaging for the cable. More specifically, the
 11 misrepresentation was made in a chart contained on the product packaging, and the packaging
 12 falsely implied the misrepresentation was that “a Monster Ultra High Speed HDMI cable with a
 13 bandwidth exceeding 10.2 Gbps was needed to transmit video signals to his television.” Compl. ¶
 14 11. The representation was false because only a bandwidth of 10.2 Gbps is needed for 1080p and
 15 4K HDTVs.⁴

16 The Court, however, agrees with Defendants that Mr. Perez’s fraud-related allegations are
 17 lacking in one respect – reliance. In his complaint, Mr. Perez does state that he “carefully
 18 reviewed the product’s packaging,” that the packaging included a representation that “cable with a
 19 bandwidth exceeding 10.2 Gbps was needed to transmit video signals to his television,” and that
 20 he “attributed value to the promised benefit and would not have purchased the Monster HDMI
 21 cable had he known that the promised benefit was illusory.” Compl. ¶ 11. But under the specific
 22 circumstances of this case, these allegations are not sufficient to support reliance. For example,
 23 the chart on the product packaging indicates that a 1080p HDTV *can* use a 10.2 Gbps cable. Thus,

24
 25 _____
 26 ³ This covers claims 5 through 9 – *i.e.*, negligent misrepresentation, fraud, violation of the CLRA,
 violation of § 17200, and violation of § 17500.

27 ⁴ The Court acknowledges that the representations on the chart address not only picture resolution
 28 (1080p or 4K) but also refresh rate and color depth. But Mr. Perez has implied in his complaint
 that, regardless of the refresh rate and color depth, the 10.2 Gbps bandwidth cable is adequate
 bandwidth requirements.

1 if Mr. Perez had a 1080p HDTV, there is a significant issue as to why he purchased a 22.5 Gbps
2 cable (especially as the chart references only a 4K television for 22.5 Gbps cable).

3 Both in his papers and at the hearing, Mr. Perez argued that reliance may be presumed so
4 long as a representation is material and, here, materiality can be inferred here because Monster
5 placed its chart on the “need for speed” “prominently and conspicuously on the packaging of
6 every HDMI cable that it sells throughout the United States.” Opp’n at 7 (quoting Compl. ¶ 3).
7 While this argument is not necessarily without merit, the fact remains that Ms. Perez has pled that
8 he *did* actually rely, and therefore it is not unfair for him to substantiate his claim of actual
9 reliance.

10 2. CLRA Claim

11 According to Defendants, the fraud-based CLRA claim should also be dismissed for
12 independent reasons. As reflected in the complaint, Mr. Perez invokes three different provisions
13 of the CLRA – *i.e.*, Cal. Civ. Code § 1770(a)(5), (7), and (9). The Court concludes that Mr. Perez
14 has adequately stated a claim for relief based on two of the three provisions.

15 A § 1770(a)(5) violation is adequately pled because the provision covers, *inter alia*, a
16 representation that a good has characteristics, uses, and benefits that it does not have. Here, Mr.
17 Perez has alleged that Monster represented its cables with a bandwidth exceeding 10.2 Gbps are
18 needed for 1080p and 4K HDTVs when that in fact is not true. This states a claim under §
19 1770(a)(5).

20 However, a § 1770(a)(7) violation is not adequately pled because the provision covers a
21 representation that “goods or services are of a particular standard, quality, or grade, or that goods
22 are of a particular style or model, if they are of another.” Cal. Civ. Code § 1770(a)(7). Here, Mr.
23 Perez does not allege the cables themselves do not meet, *e.g.*, a particular quality. *Cf. Marolda v.*
24 *Symantec Corp.*, 672 F. Supp. 2d 992 (N.D. Cal. 2009). Unlike subsection (a)(5), subsection
25 (a)(7) does not appear to address representations about a product’s use or benefit.

26 Finally, a § 1770(a)(9) violation is adequately pled because the provision covers
27 “[a]dvertising goods or services with intent not to sell them as advertised.” Cal. Civ. Code §
28 1770(a)(9). Here, Mr. Perez asserts that Defendants did not sell the cables as advertised because,

1 “while Defendants advertised Monster HDMI cables as necessary for 1080p and 4K video
2 connections, they were not actually necessary for such connections.” Opp’n at 5-6.

3 3. Negligent Misrepresentation Claim

4 Defendants further assert that there is an independent basis to dismiss, at the very least, the
5 fraud-based negligent misrepresentation claim – more specifically, because of the economic loss
6 rule. Mr. Perez did not respond to this substantive argument. Accordingly, the Court grants the
7 motion to dismiss the negligent misrepresentation claim as unopposed.

8 4. Summary

9 With respect to the fraud-based claims, the Court dismisses with prejudice the § 1770(a)(7)
10 claim and the negligent misrepresentation claim. All other fraud-based claims are dismissed
11 without prejudice but Mr. Perez has leave to amend to address the deficiency regarding reliance.

12 C. Warranty Claims

13 1. MMWA Claim

14 “The MMWA provides in relevant part that ‘a consumer who is damaged by the failure of
15 a supplier, warrantor, or service contractor to comply with any obligation under this title, or under
16 a written warranty, implied warranty, or service contract, may bring suit for damages and other
17 legal and equitable relief.’” *In re MyFord Touch Consumer Litig.*, 46 F. Supp. 3d 936, 985 (N.D.
18 Cal. 2014) (quoting 15 U.S.C. § 2310(d)); *see also Anderson v. Gulf Stream Coach, Inc.*, 662 F.3d
19 775, 781 (7th Cir. 2011) (stating that “the MMWA ‘allows consumers to enforce [limited] written
20 and implied warranties in federal court, [as provided in section 2310(d)(1),] borrowing state law
21 causes of action”). Although the parties have somewhat glossed over the distinction between
22 “written warranty” and “implied warranty,” that difference is critical for purposes of resolving the
23 motion to dismiss the MMWA claim.

24 The MMWA defines “written warranty” as, *inter alia*, “any written affirmation of fact or
25 written promise made in connection with the sale of a consumer product by a supplier to a buyer
26 which relates to the nature of the material or workmanship and affirms or promises that such
27 material or workmanship is defect free or will meet a specified level of performance over a
28 specified period of time.” 15 U.S.C. § 2301(6)(A). In contrast, “implied warranty” is defined as

1 “an implied warranty arising under State law (as modified by sections 108 and 104(a)) [15 U.S.C.
2 §§ 2308 and 2304(a)] in connection with the sale by a supplier of a consumer product.” *Id.* §
3 2301(7).

4 In the instant case, Mr. Perez’s MMWA claim does reference both a written warranty and
5 an implied warranty (albeit the reference to the latter is cursory). *See* Compl. ¶¶ 50, 55.

6 Therefore, the MMWA claim actually has two components.

7 For the reasons discussed below, Mr. Perez has adequately pled state law implied warranty
8 claims, and therefore his MMWA claim based on an implied warranty is also adequately pled.

9 The written warranty claim, however, is a different matter. As noted above, “written
10 warranty” is defined in the statute as, *inter alia*, “any written affirmation of fact or written promise
11 made in connection with the sale of a consumer product by a supplier to a buyer which relates to
12 *the nature of the material or workmanship* and affirms or promises that such material or
13 workmanship is defect free or will meet a specified level of performance over a specified period of
14 time.” 15 U.S.C. § 2301(6)(A) (emphasis added). Courts have generally held that “[a] product
15 description does not constitute a written warranty under the MMWA.” *Anderson v. Jamba Juice*
16 *Co.*, 888 F. Supp. 2d 1000, 1004 (N.D. Cal. 2012) (Gonzalez Rogers, J.). “[S]tatements merely
17 describing the materials contained in a product are not considered written warranties under the
18 MMWA, [because] such statements do not guarantee performance or lack of defects.” *Ruszecki v.*
19 *Nelson Bach USA Ltd.*, No. 12-cv-495-L(NLS), 2015 U.S. Dist. LEXIS 151946, at *10 (S.D. Cal.
20 June 25, 2015). Moreover, “[s]tatements indicating when or how to use a product, such as
21 ‘designed to act more like milk,’ have similarly been held to be merely descriptive statements. [¶]
22 Alternatively, statements promising a product can effectively achieve a specific result have been
23 considered written warranties under the MMWA” – *e.g.*, “drug product labels such as ‘Sleep Aid,’
24 ‘For Stress, Nervousness or Nervous Headache,’ and ‘Relieves Stress to Help You Sleep’
25 constituted written warranties because they guaranteed stress relief would be performed to some
26 degree.” *Id.* Below are some examples where courts have held that there is no MMWA claim
27 because at best the plaintiff has implicated only a product description or something akin to that:

- 28 • “Restores Enamel.” *See Bowling v. Johnson & Johnson*, 65 F. Supp. 3d 371, 378

1 (S.D.N.Y. 2014) (stating that this is not a promise of performance over time).

- 2 • “Doctor Tested, Doctor Approved.” *See Dorsey v. Rockhard Labs., LLC*, No. CV 13-
3 07557 DDP (RZx), 2014 U.S. Dist. LEXIS 132161, at *25 (C.D. Cal. Sept. 19, 2014). *But*
4 *see id.* at *24-25 (but also concluding that “Sexual Performance Enhancer for Men” and
5 “Fast & Effective” are “claims [that] relate to the nature of the product and are not mere
6 product descriptions”; an ineffective product is a defective one).
- 7 • “All natural.” *See Hairston v. S. Beach Beverage Co.*, No. 12-1429-JFW, 2012 U.S. Dist.
8 LEXIS 74279, at *18 (C.D. Cal. May 18, 2012).
- 9 • “Made in the USA.” *See Greenfield v. Sears, Roebuck & Co.*, No. MDL-1703, 2012 U.S.
10 Dist. LEXIS 39561, at *9-10 (N.D. Ill. Mar. 22, 2012).

11 In the instant case, Mr. Perez does not allege that a representation was made that the cables
12 would meet a certain level of performance but failed to do so. Rather, instead of substandard
13 performance compared to what was advertised, the claim is that the higher quality of cables are
14 not needed as Monster represents. Mr. Perez points out that Monster promises that the cables will
15 live forever, *see* Opp’n at 17, but Mr. Perez is not basing his MMWA written warranty claim on
16 that specific promise.

17 Accordingly, the Court concludes that the MMWA claim, to the extent based on a written
18 warranty, is futile and shall be dismissed with prejudice. The remainder of the MMWA claim is
19 adequately pled.

20 2. Express Warranty Claim

21 Defendants’ challenge to Mr. Perez’s express warranty claim is similar to their challenge to
22 the MMWA claim. According to Defendants, “Plaintiff’s general allegation that he bought a cable
23 with more bandwidth than he needed clearly is not a warranty because it is not an express
24 guarantee of performance or capability.” Mot. at 14. “[T]he only ‘guarantee’ found in the
25 packaging materials is that the cables will transfer data at their represented speeds (10.2 Gbps,
26 18.0 Gbps, etc.)” Mot. at 14.

27 The problem for Defendants is that the MMWA has a specific definition for written
28 warranty that is not necessarily applicable under state law.

1 Although Mr. Perez does not identify which state law he is implicating for his express
2 warranty claim, U.C.C. Section 2-313(1) defines an express warranty (in relevant part) as follows:

3 (a) Any affirmation of fact or promise made by the seller to the
4 buyer which relates to the goods and becomes part of the
5 basis of the bargain creates an express warranty that the
6 goods shall conform to the affirmation or promise.

7 (b) Any description of the goods which is made part of the basis
8 of the bargain creates an express warranty that the goods
9 shall conform to the description.

10 U.C.C. § 2-313(1). The California Commercial Code uses the same language. *See* Cal. Com.
11 Code § 2313(1); *see also Weinstat v. Dentsply Int'l, Inc.*, 180 Cal. App. 4th 1213, 1227 (2010)
12 (stating that, “to prevail on a breach of express warranty claim, the plaintiff must prove (1) the
13 seller’s statements constitute an affirmation of fact or promise or a description of the goods; (2)
14 the statement was part of the basis of the bargain; and (3) the warranty was breached”) (internal
15 quotation marks omitted).

16 Given this broader definition of express warranty which encompasses a fact or promise
17 “which relates to the goods,” the Court declines to dismiss the state law express warranty claim.
18 *Yastrab v. Apple Inc.*, No. 5:14-cv-01974-EJD, 2015 U.S. Dist. LEXIS 37119 (N.D. Cal. Mar. 23,
19 2015), on which Defendants primarily rely, is not to the contrary. There, the court dismissed the
20 express warranty claim only because it was not clear which particular advertisements and
21 webpages were at issue; “[w]ithout more information, the exact terms of the purported warranty
22 are not established with the requisite level of clarity.” *Id.* at *21.

23 3. Implied Warranty Claim

24 The U.C.C. has a provision that covers implied warranties, not just express warranties.
25 Under U.C.C. § 2-314, there is an implied warranty of merchantability.

26 Goods to be merchantable must be at least such as

27 (a) pass without objection in the trade under the contract
28 description; and

.....

1 (c) are fit for the ordinary purposes for which such goods are
used; and

2

3 (f) conform to the promise or affirmations of fact made on the
4 container or label if any.

5 U.C.C. § 2-314(2). The California Commercial Code uses the same language. *See* Cal. Com.
6 Code § 2314(2).

7 Here, Defendants argue that “[t]he ordinary purpose of the Monster cables is to transfer
8 data at the represented speeds,” and “Plaintiff does not allege that his Monster cable failed to
9 transmit data at the represented speeds.” Mot. at 16. In response, Mr. Perez asserts that he is
10 relying on subsections (a) and (f) above, not subsection (c), to support his implied warranty claim:
11 “The packaging stated that 1080p and 4K HDTVs require monster HDMI cables with bandwidths
12 exceeding 10.2 Gbps. That statement was untrue.” Opp’n at 16. In reply, Defendants argue that
13 case law reflects that, “collectively, [*all* of the above provisions] mean nothing more than that the
14 product must lack the most basic degree of fitness to breach the implied warranty.” Reply at 8
15 (emphasis added).

16 But Defendants’ position is not supported by the U.C.C. comments. For example, the
17 U.C.C. comments state that

18 [s]ubsection (2) [quoted above] does not purport to exhaust the
19 meaning of “merchantable” nor to negate any of its attributes not
20 specifically mentioned in the text of the statute, but arising by usage
21 of trade or through case law. The language used is “must be at least
such as . . . ,” and the intention is to leave open other possible
attributes of merchantability.

22 U.C.C. § 2-314, comments. The U.C.C. comments also state:

23 Paragraph (f) applies . . . wherever there is a label or container on
24 which representations are made, even though the original contract,
25 either by express terms or usage of trade, may not have required
26 either the labeling or the representation. This follows from the
27 general obligation of good faith which requires that a buyer should
not be placed in the position of reselling or using goods delivered
under false representations appearing on the package or container.

28 U.C.C. § 2-314, comments.

1 Defendants point to *Mocek v. Alfa Leisure, Inc.*, 114 Cal. App. 4th 402 (2003), where the
 2 court did look at the various provisions and then stated: “[The implied warranty] provides for a
 3 minimum level of quality. Thus, a breach of the implied warranty of merchantability means the
 4 product did not possess even the most basic degree of fitness for ordinary use.” *Id.* at 406
 5 (internal quotation marks omitted). But there is also case law to the contrary. For example, in
 6 *Zakaria v. Gerber Products Co.*, No. LA CV15-00200 JAK (Ex), 2015 U.S. Dist. LEXIS 80428
 7 (C.D. Cal. June 18, 2015), the court noted that

8
 9 Plaintiff’s breach of implied warranty claim is based on alleged
 10 affirmative representations made by Defendant on the labeling of the
 11 formula. Thus, the claim is not based on an alleged failure by
 12 Defendant to conform to the intended purpose of infant formula in
 13 general. Therefore, the claim is one that is appropriate under Cal.
 14 Commercial Code § 2314(2)(f), which modifies the common law
 15 definition of merchantability.

13 *Id.* at *30-31. Here, as stated in subsection (f), Mr. Perez alleges a false promise or affirmation of
 14 fact made on the container or label.

15 Accordingly, the Court shall not dismiss the state law implied warranty claim.

16 D. Miscellaneous Claims

17 1. Unjust Enrichment Claim

18 Defendants argue that the claim for unjust enrichment should be dismissed because
 19 “[u]njust enrichment is not a cause of action under California law,” but rather just a remedy. Mot.
 20 at 22. Defendants acknowledge (in a footnote) that, in *Astiana v. Hain Celestial Group, Inc.*, 783
 21 F.3d 753 (9th Cir. 2015), the Ninth Circuit stated as follows:

22
 23 [I]n California, there is not a standalone cause of action for “unjust
 24 enrichment,” which is synonymous with “restitution.” However,
 25 unjust enrichment and restitution are not irrelevant in California law.
 26 Rather, they describe the theory underlying a claim that a defendant
 27 has been unjustly conferred a benefit “through mistake, fraud,
 28 coercion, or request.” The return of that benefit is the remedy
 “typically sought in a quasi-contract cause of action.” When a
 plaintiff alleges unjust enrichment, a court may “construe the cause
 of action as a quasi-contract claim seeking restitution.”

28 *Id.* at 762. But, according to Defendants, “Plaintiff here does not assert a quasi-contract theory of

1 liability.” Mot. at 22 n.7.

2 Defendants’ argument lacks merit. The Ninth Circuit, in *Astiana*, allowed a court to
3 construe an unjust enrichment cause of action as a quasi-contract cause of action, even if the
4 plaintiff did not so identify. Mr. Perez’s quasi-contract theory of liability is basically predicated
5 on the alleged warranty. Accordingly, Mr. Perez’s quasi-contract claim survives just as the
6 express and implied warranty claims survive.

7 2. UCL Claim

8 The UCL claim is largely predicated on the other claims asserted by Mr. Perez in his
9 pleading. Accordingly, as a derivative claim, the UCL claim rises or falls with the fraud-based
10 and warranty-based claims.

11 E. Best Buy

12 Finally, Best Buy moves for dismissal of all claims asserted against it on the ground that
13 Mr. Perez has failed to adequately allege that it engaged in any wrongdoing or that it can be
14 charged with Monster’s conduct.

15 The allegations against Best Buy are as follows:

- 16 • “Monster places [its] misrepresentations prominently and conspicuously on the packaging
17 of every HDMI cable that it sells throughout the United States. Best Buy affirms these
18 misrepresentations at the time of sale.” Compl. ¶ 3.
- 19 • “Best Buy advertises, promotes, distributes and sells Monster HDMI cables to hundreds of
20 thousands of consumers in the United States, including at retail outlets in this district. Best
21 Buy authorizes false and misleading representations about Monster HDMI cables through
22 its officers, directors, and agents.” Compl. ¶ 13.

23 As Best Buy contends, the allegations are thin and quite conclusory. There are no factual
24 allegations indicating *how* Best Buy affirms or authorizes Monster’s alleged misrepresentations.
25 Likewise, there are no factual allegations as to *what* Best Buy says in its advertisements or
26 promotions about Monster HDMI cables – *e.g.*, does it repeat the alleged misrepresentations in the
27 chart? *See Dorfman v. Nutramax Labs., Inc.*, No. 13cv0873 WQH (RBB), 2013 U.S. Dist. LEXIS
28 136949, at *40 (S.D. Cal. Sept. 23, 2013) (stating that “[a] defendant’s liability [under the UCL]

1 must be based on [its] personal participation in the unlawful practices and unbridled control over
2 the practices[;] [s]imilarly, under the CLRA, a defendant’s liability must be based upon
3 participation or control in the alleged unlawful advertising scheme”) (internal quotation marks
4 omitted); *see also Dremak v. Iovate Health Scis. Grp., Inc.*, 299 F.R.D. 648, 657 (S.D. Cal. 2014)
5 (noting that, “[t]o the extent that *Dorfman* can be read as holding that a retailer defendant who
6 disseminates or repeats deceptive statements can be held liable under the UCL and CLRA for
7 statements on product packaging that the retailer did not control, the Court disagrees . . . [;] [i]f a
8 retailer goes above and beyond selling a product and displays additional promotional materials,
9 the retailer arguably can be held liable for those specific advertisements, but should not be deemed
10 to have adopted all representations made by the manufacturer about the product”). While Mr.
11 Perez has provided evidence that Best Buy employees get training about Monster’s cable products,
12 *see Arisohn Decl., Ex. C*, that is evidence outside the four corners of the complaint. Moreover, the
13 evidence says nothing about the substance of the training – *e.g.*, what Best Buy employees are told
14 to tell customers about Monster’s products.

15 Mr. Perez protests, in his opposition, that he has alleged in his complaint that, “[w]hile [he
16 was] at the Best Buy store, a Best Buy employee affirmed the claimed benefits found on the
17 packaging of the Monster HDMI cable that he purchased.” Opp’n at 19. However, Mr. Perez
18 cites ¶ 3 of the complaint to support this claim, and, as indicated above, ¶ 3 does not state such.

19 Once Mr. Perez’s conclusory allegations are cast aside, Mr. Perez is basically left with the
20 position that Best Buy is liable simply because it sells Monster’s HDMI cables (*i.e.*, is a retailer
21 for Monster). Mr. Perez has cited no authority to support the proposition that Best Buy can be
22 held liable on this basis alone. *Compare, e.g., Dzielak v. Whirlpool Corp.*, 26 F. Supp. 3d 304,
23 334 (D.N.J. 2014) (concluding that plaintiff adequately pled a claim for relief under the New
24 Jersey Consumer Fraud Act because of allegations that “the retailers adopted Whirlpool’s
25 misrepresentations as their own by promoting and selling the machines as Energy Star-compliant”
26 – *e.g.*, retailers displayed the Energy-Star compliant labels).

27 Accordingly, all claims against Best Buy shall be dismissed but Mr. Perez shall be given
28 leave to amend.

1 **III. CONCLUSION**

2 For the foregoing reasons, the Court grants in part and denies in part Defendants' motion
3 to dismiss. More specifically, the Court rules as follows:

4 (1) All claims against Best Buy are dismissed without prejudice. Mr. Perez has leave
5 to amend but he may assert against Best Buy only those claims that have not been dismissed or for
6 which the Court has given leave to amend.

7 (2) With respect to the fraud-based claims, all claims are dismissed. The § 1770(a)(7)
8 claim and the negligent misrepresentation claim are dismissed with prejudice. All remaining
9 fraud-based claims are dismissed without prejudice and Mr. Perez has leave to amend to address
10 the reliance issue.

11 (3) With respect to the warranty-based claims, only the MMWA written warranty
12 claim is dismissed, and with prejudice. All remaining warranty-based claims (including the
13 MMWA implied warranty claim) survive this motion to dismiss.

14 Any amended complaint shall be filed within thirty (30) days from the date of this order.

15 This order disposes of Docket No. 22.

16
17 **IT IS SO ORDERED.**

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19 Dated: January 20, 2016

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22 EDWARD M. CHEN
23 United States District Judge
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