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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

PATRINA HARRISON,  
Plaintiff,  
v.  
IFIT HEALTH & FITNESS, et al.,  
Defendants.

Case No. 21-cv-10079-PJH

**ORDER GRANTING DEFENDANT'S  
MOTION TO DISMISS**

Re: Dkt. No. 15

Defendant iFit, Inc.'s motion to dismiss came on for hearing before this court on April 28, 2022. Plaintiff, proceeding pro se, appeared on her own behalf. Defendant appeared through its counsel, Bradley R. Mathews. Having read the papers filed by the parties and carefully considered their arguments and the relevant legal authority, and good cause appearing, the court hereby GRANTS defendant's motion, for the following reasons.

**BACKGROUND**

This is a products liability case involving treadmills purchased for in-home use. Plaintiff Patrina Harrison is an asthma and allergy sufferer who resides in San Francisco. Compl. ¶ 8. Defendant iFit, Inc. (hereafter "iFit," erroneously sued as IFIT HEALTH & FITNESS, ICON HEALTH & FITNESS/NORDICTRACK, and UTS) is a manufacturer of fitness equipment, including treadmills, based in Utah. Compl. ¶ 10. Defendant makes no distinction between the names of the entities identified in the complaint, representing only that they are all one and the same as iFit. Defendant manufactures the Nordic Track 2450 Commercial and Freemotion treadmills. Compl. ¶ 10.

1     **A.     Narrative**

2             Plaintiff purchased a Nordic Track 2450 Commercial treadmill from Dick’s Sporting  
3     Goods in Daly City, California, on January 16, 2021. Compl. ¶¶ 14-20. She purchased  
4     the treadmill for aerobic exercise and selected the treadmill in particular because the  
5     salesperson represented that it did not emit any kind of chemical odors. Compl. ¶¶ 14-  
6     18. Plaintiff paid \$2,299.99 for the treadmill, along with \$135.00 for delivery to her  
7     residence and assembly, and when it was delivered and assembled in her home on  
8     January 29, 2021, she paid the delivery person a \$40.00 tip. Compl. ¶¶ 20-22.

9             Plaintiff began an exercise session on the treadmill following the delivery person’s  
10    departure, and she describes,

11                     Within 15 minutes of Plaintiff’s aerobic exercise session on the  
12                     treadmill, a burst of hot, steaming, offensive, chemical odor  
13                     immediately started to emitted [sic] from the internal console of  
14                     the treadmill, resulting in Plaintiff inhaling all such chemical  
15                     fumes, immediately resulting in Plaintiff experiencing shortness  
                          of breath, uncontrollable coughing, itching throat, dizziness,  
                          burning eyes, and burning nostrils, all caused from exposure to  
                          the chemical odor that was emitted from the treadmill’s console  
                          . . .

16             Compl. ¶ 24. The chemical odor filled plaintiff’s apartment and remained. Compl. ¶ 25.  
17             Plaintiff called Dick’s Sporting Goods to initiate a return of the treadmill the same day, but  
18             she was told that it would not be picked up until February 28, 2021, at the earliest.  
19             Compl. ¶ 27. Plaintiff hired a moving company to pick up the treadmill from her home  
20             and return it to Dick’s Sporting Goods to mitigate further damage to her health on  
21             February 9, 2021, paying \$494.00 plus a tip of \$140.00. Compl. ¶ 28.

22             Plaintiff then purchased a Freemotion treadmill from Fitness Warehouse Direct on  
23             July 8, 2021, for a cost of \$1,975.50, and a tip of \$120.00, which included delivery,  
24             assembly, and an option for an extended manufacturer warranty. Compl. ¶ 30. She  
25             purchased a four-year extended service plan for the treadmill from Icon Health and  
26             Fitness for \$279.99 on July 10, 2021. Compl. ¶ 31. Plaintiff reports that she intended for  
27             the extended service plan to apply to the Freemotion treadmill, but the paperwork for the  
28             extended service plan applied to the Nordic Track 2450 Commercial treadmill she

1 purchased earlier. Compl. ¶¶ 34-37. Defendant’s representatives informed plaintiff that  
2 the extended warranty would not cover the second-hand treadmills sold by Fitness  
3 Warehouse Direct. Compl. ¶ 37.

4 **B. Procedural History**

5 Plaintiff filed the complaint in this lawsuit on December 31, 2021, alleging the  
6 following causes of action against all defendants:

- 7 1. Manufacturing defect,
- 8 2. Negligence – duty to warn,
- 9 3. Strict liability – inadequate warning,
- 10 4. Breach of contract,
- 11 5. Implied warranty of merchantability,
- 12 6. Implied warranty of fitness for a particular purpose, and
- 13 7. Violation of California Business and Professions Code Section 17200.

14 See Compl. ¶¶ 46-113. For each claim, she “seeks special damages, general damages,  
15 expectancy damages, punitive damages, and statutory damages” without specificity. Id.

16 The court granted plaintiff’s motion to proceed in forma pauperis and screened the  
17 complaint pursuant to Title 28 U.S.C. § 1915(a)(1), concluding that the pleading satisfied  
18 the requirements of Rule 8. Dkt. 7. In the screening order, the court noted its concern  
19 with plaintiff’s initial showing of subject matter jurisdiction. Dkt. 7 at 4.

20 Defendant iFit filed the instant motion seeking dismissal of the complaint on  
21 several grounds, including lack of subject matter jurisdiction, failure to state a claim, and  
22 failure to plead with specificity a cause of action sounding in fraud. Defendant asks for  
23 dismissal of the entire action, or in the alternative, certain causes of action and the claim  
24 for punitive damages.

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1 **DISCUSSION**

2 **A. Legal Standards**

3 **1. Sufficiency of Pleading**

4 A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests for the  
5 legal sufficiency of the claims alleged in the complaint. Ileto v. Glock, Inc., 349 F.3d  
6 1191, 1199-1200 (9th Cir. 2003). Review is limited to the contents of the complaint.  
7 Allarcom Pay Television, Ltd. v. Gen. Instrument Corp., 69 F.3d 381, 385 (9th Cir. 1995).  
8 To survive a motion to dismiss for failure to state a claim, a complaint generally must  
9 satisfy only the minimal notice pleading requirements of Federal Rule of Civil Procedure  
10 8, which requires that a complaint include a “short and plain statement of the claim  
11 showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2).

12 A complaint may be dismissed under Rule 12(b)(6) for failure to state a claim if the  
13 plaintiff fails to state a cognizable legal theory or has not alleged sufficient facts to  
14 support a cognizable legal theory. Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 699  
15 (9th Cir. 1988). The court is to “accept all factual allegations in the complaint as true and  
16 construe the pleadings in the light most favorable to the nonmoving party.” Outdoor  
17 Media Group, Inc. v. City of Beaumont, 506 F.3d 895, 899-900 (9th Cir. 2007).

18 However, legally conclusory statements, not supported by actual factual  
19 allegations, need not be accepted. Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009). The  
20 allegations in the complaint “must be enough to raise a right to relief above the  
21 speculative level.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007) (citations  
22 and quotations omitted). “A claim has facial plausibility when the plaintiff pleads factual  
23 content that allows the court to draw the reasonable inference that the defendant is liable  
24 for the misconduct alleged.” Iqbal, 556 U.S. at 678 (citation omitted).

25 In the event dismissal is warranted, it is generally without prejudice, unless it is  
26 clear the complaint cannot be saved by any amendment. See Sparling v. Daou, 411 F.3d  
27 1006, 1013 (9th Cir. 2005). As a general rule, courts have a liberal policy favoring  
28 amendments to pleadings, which is “applied even more liberally to pro se litigants.”

1 Eldridge v. Block, 832 F.2d 1132, 1135 (9th Cir. 1987).

2 For plaintiffs' claims that sound in fraud, the complaint must also meet the  
3 heightened pleading standard of Federal Rule of Civil Procedure 9(b). See Kearns v.  
4 Ford Motor Co., 567 F.3d 1120, 1125 (9th Cir. 2009). Rule 9(b) requires a party alleging  
5 fraud or mistake to state with particularity the circumstances constituting fraud or mistake.  
6 "To satisfy Rule 9(b)'s particularity requirement, the complaint must include an account of  
7 the time, place, and specific content of the false representations as well as the identities  
8 of the parties to the misrepresentations." Depot, Inc. v. Caring for Montanans, Inc., 915  
9 F.3d 643, 668 (9th Cir. 2019) (internal quotation marks omitted). In other words,  
10 "[a]verments of fraud must be accompanied by 'the who, what, when, where, and how' of  
11 the misconduct charged." Kearns, 567 F.3d at 1124.

12 **2. Subject Matter Jurisdiction**

13 Rule 12(b)(1) of the Federal Rules of Civil Procedure provides that a defendant  
14 may move to dismiss for lack of subject matter jurisdiction. Federal courts are courts of  
15 limited subject matter jurisdiction and cannot hear every dispute presented by litigants.  
16 Stock West, Inc. v. Confederated Tribes of the Colville Reservation, 873 F.2d 1221, 1225  
17 (9th Cir. 1989). Federal courts can only adjudicate cases which the Constitution or  
18 Congress authorize them to adjudicate: those cases involving diversity of citizenship  
19 (where the parties are from diverse states and the amount in controversy is at least  
20 \$75,000), or a federal question, or those cases to which the United States is a party. See  
21 28 U.S.C. § 1332(a)(1); see also Kokkonen v. Guardian Life Insurance Co. of America,  
22 511 U.S. 375 (1994). Federal courts are presumptively without jurisdiction over civil  
23 cases and the burden of establishing that the court has jurisdiction rests upon the party  
24 asserting jurisdiction. Kokkonen, 511 U.S. at 377. If the court determines that it lacks  
25 subject matter jurisdiction, then the action must be dismissed. Fed. R. Civ. P. 12(h)(3).

26 "Where the plaintiff originally files in federal court, 'the amount in controversy is  
27 determined from the face of the pleadings.'" Geographic Expeditions, Inc. v. Estate of  
28 Lhotka ex rel. Lhotka, 599 F.3d 1102, 1106 (9th Cir. 2010) (citation omitted). "The

1 amount in controversy alleged by the proponent of federal jurisdiction—typically the  
2 plaintiff in the substantive dispute—controls so long as the claim is made in good faith.”  
3 Id. at 1106. “To justify dismissal, it must appear to a legal certainty that the claim is really  
4 for less than the jurisdictional amount.” Id.

5 **B. Analysis**

6 Defendant does not challenge subject matter jurisdiction based on diversity—iFit’s  
7 home in Utah is uncontested. Defendant instead focuses on the second prong of the  
8 assessment, that the amount in controversy is insufficient to support federal jurisdiction.

9 Analysis of the amount in controversy begins with the amount expressly sought by  
10 plaintiff to compensate for her alleged harm, or compensatory damages. Because the  
11 compensatory damages as pleaded do not meet the jurisdictional threshold, the court  
12 turns to also assess whether punitive damages would help the plaintiff reach the \$75,000  
13 threshold—punitive damages may also be considered as part of the amount in  
14 controversy if they are properly pleaded. Gibson v. Chrysler Corp., 261 F.3d 927, 945  
15 (9th Cir. 2001) (“It is well established that punitive damages are part of the amount in  
16 controversy in a civil action.” (citation omitted)). The court discusses both forms of  
17 damages in turn to determine whether it may exercise jurisdiction over the case. Finally,  
18 the court addresses the sufficiency of plaintiff’s allegations related to the claim for fraud  
19 under California’s Unfair Competition Law (“UCL”) to determine whether that claim must  
20 be dismissed.

21 **1. Compensatory Damages**

22 As noted above, this federal court only has jurisdiction or authority to hear cases in  
23 certain circumstances, such as where the plaintiff and defendants are legal residents of  
24 different states and the amount at issue in the controversy exceeds \$75,000. 28 U.S.C.  
25 § 1332(a). An amount in controversy “reflects the *maximum* recovery the plaintiff could  
26 reasonably recover.” Arias v. Residence Inn by Marriott, 936 F.3d 920, 927 (9th Cir.  
27 2019). Determination of the amount in controversy is based on the plain language of the  
28 complaint. Reule v. H.O. Seiffert Co., 430 Fed. Appx. 584 (9th Cir. 2011).

1 Here, plaintiff does not allege an amount in controversy that exceeds \$75,000.  
2 Plaintiff specifically pleads her damages, including economic losses for medical care, as  
3 follows: “As a result of the exposure to the offensive, chemical odor emitting from the  
4 internal components of the treadmill, Plaintiff suffered injuries, exacerbated asthma and  
5 allergy symptoms, and an economic loss of \$634.00.” Compl. ¶¶ 29. Plaintiff does not  
6 point to any allegations in her complaint that demonstrate that the case meets the  
7 \$75,000 threshold. Even if the court considered the amounts paid for the defective  
8 treadmill and the replacement treadmill and their deliveries, the sum still would not reach  
9 \$75,000. The sum of all plaintiff’s expenditures enumerated in the complaint, including  
10 the costs of the two treadmills, the delivery charges, the tips to delivery staff, and the  
11 extended service plan, reaches only \$5,484.48.<sup>1</sup> See Compl. ¶¶ 20, 22, 28, 29, 30, 31.

12 Plaintiff states in her opposition brief that the case involves “a damage amount of  
13 \$2,000,000.00,” but this contention is unsupported by any citation or any allegations  
14 included within the complaint. Dkt. 17 at 5. Plaintiff suggested at the hearing that she  
15 seeks to recover damages for emotional distress and medical expenses, but she  
16 provides no facts indicating that she sought and received medical care, for how long, and  
17 whether her allergic response to the fumes was anything other than temporary. These  
18 damages must be alleged in the complaint with greater specificity than “general  
19 damages” to establish the court’s jurisdiction. Additionally, in her prayer for relief, plaintiff  
20 says nothing about compensatory damages or medical expenses, and instead seeks an  
21 award of out of pocket expenses, injunctive and equitable relief (unspecified), and  
22 punitive damages. Therefore, the complaint lacks clarity and fails to establish that this  
23 court has jurisdiction to hear the dispute, and it must be dismissed.

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26 <sup>1</sup> The court understands from the hearing that plaintiff received a refund of the amount  
27 paid for the first treadmill and that she retains the second treadmill, leaving her only out-  
28 of-pocket damages for (1) the cost of delivery of the first treadmill, \$135.00 plus \$40.00  
tip, (2) the cost to return the first treadmill to Dick’s Sporting Goods, \$494.00 plus  
\$140.00 tip, and (3) the cost for the service plan that does not apply to the used treadmill  
that she still retains, \$279.00.

1           **2. Punitive Damages**

2           “It is well established that punitive damages are part of the amount in controversy  
3 in a civil action.” Gibson v. Chrysler Corp., 261 F.3d 927, 945 (9th Cir. 2001) (citing Bell  
4 v. Preferred Life Assur. Soc’y, 320 U.S. 238, 240 (1943)). Two steps are necessary  
5 before punitive damages may be included in the amount in controversy, however. “First,  
6 the party asserting jurisdiction must establish that punitive damages would be permitted  
7 under the applicable state law based on the conduct alleged.” In re Volkswagen “Clean  
8 Diesel” Mktg., Sales Pracs., & Prod. Liab. Litig., No. MDL 2672 CRB (JSC), 2019 WL  
9 1501577, at \*4 (N.D. Cal. Apr. 5, 2019). Second, the party seeking jurisdiction must  
10 determine the amount of punitive damages that are in controversy, which may be  
11 accomplished through introduction of “evidence of jury verdicts in cases involving  
12 analogous facts.” Surber v. Reliance Nat. Indem. Co., 110 F. Supp. 2d 1227, 1232 (N.D.  
13 Cal. 2000).

14           California law provides for punitive damages as follows: “In an action for the  
15 breach of an obligation not arising from contract, where it is proven by clear and  
16 convincing evidence that the defendant has been guilty of oppression, fraud, or malice,  
17 the plaintiff, in addition to the actual damages, may recover damages for the sake of  
18 example and by way of punishing the defendant.” Cal. Civ. Code § 3294. In assessing  
19 whether a plaintiff sufficiently alleges oppression, fraud, or malice, courts look to the  
20 definitions of those terms provided in section 3294:

21                   (1) ‘Malice’ means conduct which is intended by the defendant  
22 to cause injury to the plaintiff or despicable conduct which is  
23 carried on by the defendant with a willful and conscious  
24 disregard of the rights or safety of others.

25                   (2) ‘Oppression’ means despicable conduct that subjects a  
26 person to cruel and unjust hardship in conscious disregard of  
27 that person’s rights.

28                   (3) ‘Fraud’ means an intentional misrepresentation, deceit, or  
concealment of a material fact known to the defendant with the  
intention on the part of the defendant of thereby depriving a  
person of property or legal rights or otherwise causing injury.

Cal. Civ. Code § 3294(c)(1)-(3)) (italics in original); see also Jackson v. East Bay Hosp.,  
980 F. Supp. 1341, 1353 (N.D. Cal. 1997). “Although the court will apply the substantive



1 law embodied in section 3294, determinations regarding the adequacy of pleadings are  
2 governed by the Federal Rules of Civil Procedure.” Jackson, 980 F. Supp. at 1353  
3 (citations omitted).

4 “[P]unitive damages may not be awarded for breach of contract.” City of Hope  
5 National Medical Center v. Genentech, Inc., 43 Cal. 4th 375, 392 (2008). Punitive  
6 damages are not available under section 17200 either. Korea Supply Co. v. Lockheed  
7 Martin Corp., 29 Cal. 4th 1134, 1148 (2003) (“A UCL action is equitable in nature;  
8 damages cannot be recovered. . . We have stated that under the UCL, prevailing  
9 plaintiffs are generally limited to injunctive relief and restitution”) (cleaned up).

10 Here, the only claims alleged in the complaint that can support an award for  
11 punitive damages are those for products liability. Plaintiff nowhere specifies, however,  
12 that defendant acted with oppression, fraud, or malice in relation to the manufacture or  
13 marketing of either treadmill. Plaintiff alleges how she was injured, but she fails to allege  
14 any particularly oppressive actions by defendant. Plaintiff specifically and repeatedly  
15 alleges that defendant’s conduct was “negligent,” (Compl. ¶¶ 60, 69, 86, 94, & 98), not  
16 that iFit willfully or consciously acted in a way that resulted in her harm. Therefore,  
17 plaintiff’s prayer for punitive damages is insufficiently pleaded, and the prayer for punitive  
18 damages does not change the court’s amount in controversy assessment.

19 **3. Pleading of Fraud**

20 The UCL prohibits “any unlawful, unfair or fraudulent business act or practice.”  
21 Cal. Bus. & Prof. Code § 17200. The pleading requirements of Rule 9(b) apply to UCL  
22 claims sounding in fraud. Kearns, 567 F.3d at 1125. As noted above, “Averments of  
23 fraud must be accompanied by ‘the who, what, when, where, and how’ of the misconduct  
24 charged.” Vess v. Ciba-Geigy Corp. USA, 317 F.3d 1097, 1106 (9th Cir. 2003).

25 Here, plaintiff’s UCL claim expressly relies on both the unfair and fraudulent  
26 prongs of the statute. Plaintiff avers under a header, “‘Fraudulent’ Prong,” that she relied  
27 on misrepresentations regarding both the applicability of the extended service plan to the  
28 Freemotion treadmill and the lack of warnings in the instructional manual for the Nordic

1 Track 2450 Commercial treadmill. Compl. ¶¶ 108-11. While these allegations may  
2 generally address elements for a claim of fraud, they fail to specifically address the “who,  
3 what, when, where, and how” of the alleged fraudulent conduct as is necessary to meet  
4 federal pleading requirements under Rule 9(b). Therefore, plaintiff’s UCL claim is  
5 insufficiently pleaded and must be dismissed.

6 **CONCLUSION**

7 For the foregoing reasons, including that plaintiff’s alleged damages do not meet  
8 the jurisdictional threshold and that the punitive damages that could have made up the  
9 difference are insufficiently pleaded, the court GRANTS defendant’s motion to dismiss  
10 with leave to amend. Plaintiff’s amended complaint must specify how the amount in  
11 controversy exceeds the jurisdictional threshold of \$75,000, and, if plaintiff renews her  
12 fraud-based claim under the UCL, the amended complaint must specify the “who, what,  
13 when, where, and how” of the alleged fraud to satisfy the particularity requirements of  
14 Rule 9(b). The amended complaint must be filed on or before June 10, 2022. No  
15 additional parties or claims may be added without leave of court or stipulation of  
16 defendant.

17 **IT IS SO ORDERED.**

18 Dated: May 13, 2022

19 /s/ Phyllis J. Hamilton

20 PHYLLIS J. HAMILTON  
21 United States District Judge  
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