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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

PATRICIA FIERRO,  
  
Plaintiff,  
  
v.  
  
CAPITAL ONE, N.A.,  
  
Defendant.

Case No. 22-cv-00493-BAS-BLM

**ORDER GRANTING IN PART  
AND DENYING IN PART  
DEFENDANT’S MOTION TO  
DISMISS (ECF No. 5)**

Plaintiff Patricia Fierro filed this action against Defendant Capital One, N.A. asserting state law claims arising out of a dispute involving her automobile financing. (Compl., Ex. A to Notice of Removal, ECF No. 1.) Defendant, invoking federal diversity jurisdiction, removed the case to federal court and filed a motion to dismiss pursuant to Federal Rule of Civil Procedure (“Rule”) 12(b)(6). (Mot., ECF No. 5.) Plaintiff opposes the motion (Opp’n, ECF No. 6) and Defendant replies (Reply, ECF No. 10). For the following reasons, the Court **GRANTS IN PART** and **DENIES IN PART** Defendant’s motion, and **GRANTS** Plaintiff leave to amend her complaint to correct the deficiencies noted in this Order.

1 **I. BACKGROUND**

2 In August 2014, Plaintiff purchased a used car from El Cajon Ford, a non-  
3 party car dealership. (Compl. ¶ 13.) To complete the purchase, Plaintiff signed a  
4 retail installment sales contract (the “Sales Contract”) requiring her to pay the  
5 dealership monthly installments of \$301.85 for five years. (*Id.*; Sales Contract, Ex.  
6 2 to Compl.) The dealership retained a security interest in the vehicle. (Sales  
7 Contract at 1.)

8 For an additional \$795.00, Plaintiff executed a Guaranteed Asset Protection  
9 Addendum (the “GAP Addendum”). (Compl. ¶ 14; GAP Addendum, Ex. 1 to  
10 Compl.) In the event Plaintiff’s car was stolen or totaled before she made all her  
11 payments under the Sales Contract, the GAP Addendum would cover the difference  
12 between her car insurance payout and the remaining balance on the Sales Contract.  
13 (Compl. ¶ 8.) Without the GAP Addendum, Plaintiff would remain obligated to  
14 make payments under the Sales Contract even after her car is gone. (*Id.*)

15 After Plaintiff bought the car, Defendant acquired the Sales Contract and  
16 GAP Addendum and assumed the dealership’s rights and liabilities. (*Id.* ¶ 18.) A  
17 few years later, Plaintiff was involved in a collision and her car was totaled. (*Id.* ¶  
18 20.) At the time of the accident, Plaintiff still owed Defendant \$6,232.33 on the  
19 Sales Contract. (*Id.* ¶ 21.) Plaintiff’s insurance company paid Defendant proceeds  
20 of \$3,758.34, leaving a remaining balance of \$2,473.99. (*Id.*) Plaintiff performed  
21 the conditions required to obtain her benefits under the GAP Addendum, expecting  
22 that Defendant would then waive the outstanding balance on the Sales Contract  
23 pursuant to the GAP Addendum. (*Id.* ¶ 22.) Defendant, however, did not waive the  
24 entire gap. (*Id.*) Instead, without providing a satisfactory explanation, Defendant  
25 waived only \$48.82 and pursued Plaintiff for the remaining deficiency. (*Id.* ¶¶ 22–  
26 23.)

27 Defendant indicated to Plaintiff that her three late payments and fourteen late  
28 charges resulted in its low waiver calculation. (*Id.* ¶ 23.) According to Defendant’s

1 own records, however, at the time of the accident Plaintiff had only one late payment  
2 and two late charges due. (*Id.*) In the weeks after the accident, she made additional  
3 payments to bring her account current as of the date of the accident. (*Id.*)  
4 Nonetheless, Defendant attempted to collect over \$2,000 from Plaintiff and  
5 incorrectly reported to credit bureaus that she had defaulted on the Sales Contract.  
6 (*Id.* ¶ 22.)

7 Plaintiff alleges that the GAP Addendum she executed is deceptive and  
8 designed to mislead consumers. (*Id.* ¶ 16.) In particular, she claims that the GAP  
9 Addendum was a mandatory component of her automobile purchase but that she did  
10 not receive an explanation of what it covered, or the terms, conditions, and  
11 exclusions that applied. (*Id.* ¶ 14.) She asserts that the GAP Addendum purports to  
12 provide insurance coverage by deceptively using insurance terminology. (*Id.*)  
13 Rather than provide insurance coverage, the GAP Addendum is an agreement by the  
14 dealer and assignee to waive Plaintiff’s payments after a loss, subject to exclusions  
15 that are confusing, hidden in fine print, and contrary to ordinary consumer  
16 expectations. (*Id.* ¶¶ 15–17.)

17 Plaintiff claims that Defendant breached the implied covenant of good faith  
18 and fair dealing by interpreting her Sales Contract and GAP Addendum in an unfair,  
19 unreasonable, and dishonest manner. (*Id.* ¶ 33.) She also claims that Defendant  
20 violated provisions of California’s Commercial Code (“Commercial Code”) and  
21 Consumer Credit Reporting Agencies Act (“CCRAA”) and brings independent  
22 claims for declaratory and injunctive relief. (*Id.* ¶¶ 35–56.)

## 23 **II. LEGAL STANDARD**

24 A complaint must plead sufficient factual allegations to “state a claim to  
25 relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)  
26 (internal quotation marks and citations omitted). “A claim has facial plausibility  
27 when the plaintiff pleads factual content that allows the court to draw the reasonable  
28 inference that the defendant is liable for the misconduct alleged.” *Id.*

1 A motion to dismiss pursuant to Rule 12(b)(6) tests the legal sufficiency of  
2 the claims asserted in the complaint. Fed. R. Civ. P. 12(b)(6); *Navarro v. Block*,  
3 250 F.3d 729, 731 (9th Cir. 2001). The court must accept all factual allegations pled  
4 in the complaint as true and must construe them and draw all reasonable inferences  
5 therefrom in favor of the nonmoving party. *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d  
6 336, 337–38 (9th Cir. 1996). To avoid a Rule 12(b)(6) dismissal, a complaint need  
7 not contain detailed factual allegations; rather, it must plead “enough facts  
8 to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*,  
9 550 U.S. 544, 570 (2007). “[A] formulaic recitation of a cause of action's elements  
10 will not do.” *Id.* at 545.

11 Generally, “when the legal sufficiency of a complaint’s allegations is tested  
12 by a motion under Rule 12(b)(6), [r]eview is limited to the complaint.” *Lee v. City*  
13 *of Los Angeles*, 250 F. 3d 668, 688 (9th Cir. 2001) (quoting *Cervantes v. City of San*  
14 *Diego*, 5 F.3d 1273, 1274 (9th Cir. 1993)). However, a court may also “consider  
15 certain materials—documents attached to the complaint, documents incorporated by  
16 reference in the complaint, or matters of judicial notice—without converting the  
17 motion to dismiss into a motion for summary judgment.” *United States v. Ritchie*,  
18 342 F.3d 903, 908 (9th Cir. 2003).

### 19 **III. ANALYSIS**

#### 20 **A. Breach of the Implied Covenant of Good Faith and Fair Dealing**

21 “In California, the factual elements necessary to establish a breach of the  
22 covenant of good faith and fair dealing are: (1) the parties entered into a contract;  
23 (2) the plaintiff fulfilled his obligation under the contract; (3) any conditions  
24 precedent to the defendant’s performance occurred; (4) the defendant unfairly  
25 interfered with the plaintiff’s right to receive the benefit of the contract; and (5) the  
26 plaintiff was harmed by the defendant’s conduct.” *Rosenfeld v. JPMorgan Chase*  
27 *Bank, N.A.*, 732 F. Supp. 2d 952, 968 (N.D. Cal. 2010) (citing Judicial Council of  
28 California Civil Jury Instruction 325).

1 Defendant challenges Plaintiff’s claim for breach of the implied covenant of  
2 good faith and fair dealing for two reasons. First, Defendant argues it could not  
3 have frustrated Plaintiff’s rights under the GAP Addendum because the addendum  
4 was between Plaintiff and third-party “Classic,” and because Plaintiff received the  
5 balance-waiver she was entitled to under the GAP Addendum. (Mot. 4.) Second,  
6 Defendant argues that it could not have breached the implied covenant as a matter  
7 of law because the GAP addendum disclosed the amounts that would not be covered.  
8 (*Id.*) Defendant contends that “[b]ecause such actions were sanctioned under the  
9 GAP [Addendum], Plaintiff cannot now maintain that her rights or reasonable  
10 expectations . . . were frustrated.” (*Id.*)

11 Plaintiff pleads sufficient facts to support her claim for breach of the implied  
12 covenant of good faith and fair dealing. She alleges that she signed the GAP  
13 Addendum, which was then assigned to Defendant who assumed the rights and  
14 liabilities under the contract. (Compl. ¶ 19.) The GAP Addendum, which Plaintiff  
15 attached to the complaint and incorporated by reference, confirms that:

16 This GAP protection contract addendum . . . amends the FINANCING  
17 CONTRACT. This addendum is between the CUSTOMER shown  
18 above . . . and the DEALER shown above . . . or if the financing  
CONTRACT is assigned to another party, the ASSIGNEE.

19 (GAP Addendum.) Plaintiff does not plead—nor does the GAP Addendum  
20 indicate—that it is between Plaintiff and third-party “Classic” as Defendant argues.  
21 (Mot. 2, 4.) Instead, the GAP Addendum identifies Plaintiff as the customer, El  
22 Cajon Ford as the dealer, and Defendant as the assignee and provides that if  
23 assigned, the addendum is between the customer and assignee. (*Id.*) Thus, Plaintiff  
24 has adequately pled that the GAP Addendum is between herself and Defendant.  
25 (Compl. ¶ 19.)

26 Plaintiff also sufficiently pleads that she fulfilled her obligations under the  
27 contract—by paying \$795 for it—and that she fulfilled the conditions precedent to  
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1 Defendant’s performance. (*Id.* ¶¶ 14, 22.) Defendant does not dispute these  
2 elements.

3 With respect to the fourth element of Plaintiff’s implied covenant claim—  
4 unfair treatment that interfered with her right to receive the contract benefit—  
5 Defendant’s primary arguments are that Plaintiff received what she was entitled to  
6 under the contract and that the contract disclosed the amounts it did not cover. (Mot.  
7 4.) Defendant’s arguments presume, however, that Defendant’s interpretation of  
8 the GAP Addendum and its calculation of Plaintiff’s benefit were correct.

9 Plaintiff argues that Defendant miscalculated the amount of waiver she was  
10 entitled to in bad faith, which deprived her of the contract benefit of the full waiver.  
11 (Opp’n 2–3.) Plaintiff pled Defendant falsely claimed she had three past due  
12 payments and fourteen late charges on the date of the loss (Compl. ¶¶ 26–27), and  
13 that Defendant: (1) failed to credit her for an overpayment she made (*id.*); (2) falsely  
14 claimed that the GAP Addendum was between Plaintiff and a third party (*id.* ¶¶ 28–  
15 30); (3) falsely claimed that because Defendant was not a party to the GAP  
16 Addendum, it was not bound to waive any portion of the “gap” due to miscalculation  
17 of the gap benefits (*id.* ¶¶ 29–29); and (4) refused to explain how Defendant  
18 calculated the waiver and resulting deficiency on the Sales Contract (*id.* ¶¶ 37–39).  
19 Plaintiff claims that Defendant has wrongly attempted to collect more than \$2,000  
20 from her, which the Court infers negatively impacts her credit, and which Plaintiff  
21 states has caused her to incur costs and expend resources. (*Id.* ¶ 22, 34.) Plaintiff’s  
22 complaint sufficiently posits that because of Defendant’s bad faith or unfair  
23 interference, Plaintiff did not receive her full benefits under the GAP Addendum  
24 and as a result suffered harm. (*Id.*)

25 Defendant argues Plaintiff’s claim fails as a matter of law because the GAP  
26 Addendum expressly disclosed limitations, including that it does not cover the full  
27 gap amount in all circumstances. (Mot. 4.) That the GAP Addendum includes  
28 limitations to its coverage, however, is not dispositive. Plaintiff’s theory is that

1 Defendant did not abide by the express provisions of the contract and instead  
2 miscalculated or misapplied the contractual limitations. (Opp’n 3.) Thus, while it  
3 may be the case that the GAP Addendum disclosed limitations, it can simultaneously  
4 be true that Defendant misapplied those limitations in Plaintiff’s case resulting in an  
5 unfair denial of benefits.

6 The Court finds that Plaintiff has made out a plausible claim for breach of the  
7 implied covenant of good faith and fair dealing and **DENIES** Defendant’s motion  
8 to dismiss this claim.

9 **B. Violation of the California Commercial Code**

10 Plaintiff’s second claim is for violation of California Commercial Code  
11 (“Commercial Code”) §§ 9616 and 9626. Section 9616 provides that:

12 *In a consumer-goods transaction in which . . . a consumer obligor is*  
13 *liable for a deficiency under Section 9615, the secured party shall do*  
14 *either of the following: (1) Send an explanation to the debtor or*  
15 *consumer obligor . . . [or] (2) . . . within 14 days after receipt of a*  
16 *request, send to the consumer obligor a record waiving the secured*  
*party’s right to a deficiency.*

17 Cal. Com. Code § 9616(b) (emphasis added). Plaintiff alleges that Defendant  
18 neither provided her with an explanation nor waived her deficiency, and is therefore  
19 barred from pursuing the deficiency under § 9626. (Compl. ¶¶ 35–41.) Section  
20 9626 provides that in an action in which a deficiency is at issue the secured creditor  
21 bears the burden of proving compliance with the “provisions of this chapter” and  
22 that the debtor is liable for a deficiency only where certain conditions are met. Cal.  
23 Com. Code § 9626(b). One of these conditions is that “the collection, enforcement,  
24 *disposition, and acceptance* by the secured party were conducted in good faith and  
25 in a commercially reasonable manner. *Id.* § 9626(b)(2)(C) (emphasis added).  
26 Defendant’s primary challenge to Plaintiff’s Commercial Code claim is that Plaintiff  
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1 did not establish that Defendant’s alleged violation of § 9616 would relieve her of  
2 liability for the deficiency under § 9626.<sup>1</sup> (Mot. 7.)

3 The Court is skeptical of Plaintiff’s ability to make out a claim based on the  
4 Commercial Code. The portion of the Commercial Code on which Plaintiff relies  
5 governs debtor default and secured creditors’ obligations when disposing of  
6 collateral after default. The provisions generally prohibit a creditor from accepting  
7 an unreasonably low price for the security interest or collateral, which results in  
8 excessive liability on the consumer obligor. The facts Plaintiff pleads in this case  
9 do not support her reliance on these provisions.

10 For instance, Plaintiff does not allege that she is a consumer obligor liable for  
11 a deficiency under § 9615, which is a prerequisite to invoking § 9616(b). Section  
12 9615 provides that “[i]f the security interest *under which a disposition is made*  
13 *secures payment or performance of an obligation . . . [s]ubject to subdivision (b) of*  
14 *Section 9626, the obligor is liable for any deficiency.”* Cal. Com. Code § 9615(d).  
15 Furthermore, Section 9626 suggests that an obligor is not liable for a deficiency  
16 where “the collection, enforcement, *disposition, and* acceptance by the secured party  
17 were conducted in good faith and in a commercially reasonable manner. *Id.* §  
18 9626(b)(2)(C). Both provisions on which Plaintiff’s claim is based, §§ 9616 and  
19 9626, appear to apply where a security interest was disposed of by the creditor, and  
20 Plaintiff has not provided any authority to the contrary.

21 Here, Defendant did not dispose of the security interest—Plaintiff’s car—  
22 after she defaulted on the Sales Contract. Her car was totaled. The “deficiency”  
23 represents the difference in the balance on Plaintiff’s Sales Contract and the amount  
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26 <sup>1</sup> Defendant also challenges Plaintiff’s claim because she did not plead actual damages.  
27 (Mot. 6.) Defendant, however, did not provide authority to establish that actual damages are an  
28 element of Plaintiff’s claim, especially where Plaintiff has requested statutory penalties pursuant  
to Commercial Code § 9625(e). Thus, the Court does not find this Defendant’s argument to be  
persuasive.



1 her insurer paid to Defendant for the value of the car at the time it was totaled.  
2 (Compl. ¶¶ 20–22.) Since there was no disposition of a security interest by  
3 Defendant, Plaintiff cannot establish that she is a “consumer obligor [] liable for a  
4 deficiency under § 9615.” See Cal. Com. Code § 9616. And if § 9615 does not  
5 apply, then § 9616—one of the bases of Plaintiff’s Commercial Code Claim—  
6 likewise cannot not apply.

7 Plaintiff’s reliance on § 9626 is similarly flawed. That section would relieve  
8 a consumer obligor from liability for a deficiency owed to a secured creditor where  
9 the secured creditor disposed of collateral in a bad faith or commercially  
10 unreasonable manner. *Id.* § 9626(b)(2)(C). That is not the case here. Thus, the  
11 Court is not persuaded that the Commercial Code provisions invoked by Plaintiff  
12 are applicable to the facts she pled and finds that Plaintiff has not stated a claim  
13 under the Commercial Code. The Court **DISMISSES** Plaintiff’s claim and  
14 **GRANTS** Plaintiff leave to amend the complaint to attempt to state a claim that is  
15 plausible under the Commercial Code.

### 16 C. Violation of the CCRAA

17 Plaintiff’s third claim is for violation of the CCRAA. In relevant part, the  
18 CCRAA provides that “[a] person shall not furnish information on a specific  
19 transaction or experience to any consumer credit reporting agency if the person  
20 knows or should know the information is incomplete or inaccurate.” Cal. Civ. Code  
21 (“Civil Code”) § 1785.25(a). To support this claim, Plaintiff alleges that Defendant  
22 reported to credit bureaus that she defaulted on the Sales Contract and that she owes  
23 the bank more than \$2,000. (Compl. ¶ 22.) Plaintiff further pled that Defendant  
24 willfully furnished inaccurate and misleading information to consumer reporting  
25 agencies about Plaintiff, the Sales Contract, and the purported deficiency. (*Id.* ¶ 44.)

26 Defendant challenges Plaintiff’s claim on two grounds. (Mot. 9–12.) First,  
27 Defendant argues that Plaintiff did not allege that the information reported to the  
28 credit agencies was inaccurate. (*Id.*) Second, Defendant contends that Plaintiff

1 failed to plead that she suffered actual damages because of Defendant’s conduct.  
2 (*Id.*)

3 Plaintiff sufficiently pleads that Defendant reported incomplete or inaccurate  
4 information to credit reporting agencies. At the motion to dismiss stage, the Court  
5 accepts as true facts asserted by Plaintiff. *See Cahill*, 80 F.3d at 337–38. This  
6 includes Plaintiff’s assertions that Defendant miscalculated the amount of waiver  
7 she was entitled to under the GAP Addendum, failed to correct the calculation, and  
8 deprived her of benefits pursuant to the agreement. If these facts are accepted as  
9 true, it follows that Plaintiff does not owe Defendant the full amount that Defendant  
10 then knowingly and inaccurately reported to credit agencies. Defendant asserts that  
11 Plaintiff failed to explain why it was inaccurate for Defendant to report the \$2,000  
12 outstanding balance and subsequent default to credit agencies. (Mot. 10.) But  
13 Plaintiff did explain. (Compl. ¶¶ 22, 25–27, 42–46.) Her position is that Defendant  
14 reported a debt that Plaintiff does not owe, which is inaccurate. (*Id.*) Defendant’s  
15 arguments are based on the factual assumption that Defendant followed the GAP  
16 Addendum and accurately calculated the waiver and resulting Sales Contract  
17 balance. But the Court does not accept as true Defendant’s interpretation of the facts  
18 at this stage. Instead, the Court finds that Plaintiff has sufficiently alleged that  
19 Defendant reported inaccurate information to credit reporting agencies.

20 With respect to actual damages, Plaintiff’s only allegation is that Defendant’s  
21 statutory violation was “a substantial factor in causing harm to plaintiff, for which  
22 she is entitled to recover actual damages and statutory penalties.” (Compl. ¶ 45.)  
23 This bare assertion, without factual support, is insufficient to establish the particular  
24 injury Plaintiff alleges was caused by Defendant’s purported CCRAA violation. *See*  
25 *Levinson v. Transunion LLC*, No. CV 16-00837-RSWL-PLAx, 2016 WL 3135642,  
26 at \*6 (C.D. Cal. June 2, 2016) (“Actual damage is required to state a claim under  
27 the CCRAA.”) The Court therefore **DISMISSES** Plaintiff’s claim because she did  
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1 not sufficiently plead her entitlement to damages. The Court **GRANTS** Plaintiff  
2 leave to amend her claim to cure this deficiency.

3 **D. Declaratory and Injunctive Relief**

4 Defendant moves to dismiss Plaintiff’s standalone claims for declaratory and  
5 injunctive relief because they are not legally cognizable. (Mot. 12–13.) Indeed,  
6 “[d]eclaratory and injunctive relief are not independent claims, rather they are forms  
7 of relief.” *Santos v. Countrywide Home Loans*, No. CIV.20902642-WBS-DAD,  
8 2009 WL 3756337, at \*5 (E.D. Cal. Nov. 6, 2009) (citing *McDowell v. Watson*, 59  
9 Cal. App. 4th 1155, 1159 (1997)). Here, the question is whether Plaintiff’s  
10 complaint states plausible claims that entitle her to the declaratory and injunctive  
11 remedies she seeks. *See Brown v. Option One Mortg. Corp.*, No. C 09-5705 MHP,  
12 2010 WL 1267774, at \*4 (N.D. Cal. Apr. 1, 2010) (dismissing claims for declaratory  
13 and injunctive relief where the plaintiff had not adequately pled “predicate causes  
14 of action”). While Plaintiff may well be entitled to declaratory and injunctive relief,  
15 she must plead substantive claims that provide for those remedies. *Id.*

16 Plaintiff proffered Civil Code § 1780(a)(3) and California Business and  
17 Professions Code (“Bus. & Prof. Code”) § 12703 as bases to support her claim for  
18 injunctive relief. (Opp’n 11.) However, as Defendant points out, Plaintiff did not  
19 bring substantive claims against Defendant for violation of these statutes and has  
20 not adequately pled a violation of either within her claim for injunctive relief. (Mot.  
21 13; Compl. ¶¶ 53–57.) Plaintiff’s allegations with respect to these statutory  
22 violations are conclusory and lack sufficient explanation for the Court to find that  
23 plausible claims exist. (Compl. ¶¶ 55–56.) The Court must dismiss Plaintiff’s claim  
24 for injunctive relief as drafted, because it is based on claims that she did not  
25 adequately raise in her complaint. However, the Court grants Plaintiff leave to  
26 amend her complaint to attempt to state claims under Civil Code § 1780(a)(3) and  
27 Bus. & Prof. Code § 12703 that would entitle her to injunctive relief.

1 Plaintiff notes in her opposition that she brought her declaratory relief claim  
2 as an independent claim to ensure Defendant has notice that she is seeking a  
3 declaratory judgment. (Opp'n 11.) However, Plaintiff does not specify which of  
4 her claims entitles her to the requested declaratory relief. The Court, therefore,  
5 agrees with Defendant that Plaintiff's claim for declaratory relief should be  
6 dismissed because it is a remedy rather than a standalone claim. *See Chen v. U.S.*  
7 *Bancorp*, No. 12CV2895 JAH(NLS), 2013 WL 12114619, at \*4 (S.D. Cal. June 26,  
8 2013) (finding that declaratory relief is a remedy rather than an independent claim).  
9 Again, the Court grants Plaintiff leave to amend her complaint to: (1) specify which  
10 of her claims entitles her to declaratory relief, and (2) include the relief as a part of  
11 her other claims rather than as a standalone claim.

12 Thus, the Court **DISMISSES** Plaintiff's independent claims for declaratory  
13 and injunctive relief, but **GRANTS** Plaintiff leave to amend her complaint to  
14 address the deficiencies noted above.

15 **IV. CONCLUSION**

16 The Court **GRANTS IN PART AND DENIES IN PART** Defendant's  
17 motion to dismiss (ECF No. 5). The Court **DENIES** Defendant's motion with  
18 respect to Plaintiff's claim for breach of the implied covenant of good faith and fair  
19 dealing, and **GRANTS** Defendant's motion with respect to Plaintiff's claims for  
20 violation of the Commercial Code, violation of the CCRAA, declaratory relief, and  
21 injunctive relief. Finally, the Court **GRANTS** Plaintiff leave to amend the  
22 complaint to correct the deficiencies noted in this Order. Should Plaintiff choose to  
23 amend, she must file her amended complaint **no later than September 8, 2022**.


24 **IT IS SO ORDERED.**

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26 **DATED: August 9, 2022**

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**Hon. Cynthia Bashant**  
**United States District Judge**