

II. BACKGROUND

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2 Monica Bruce and Donna Stubbs, residents of Texas and Kansas respectively,
3 purchased floral arrangements from Teleflora. (FAC ¶¶ 13, 14, 44–45, 51–52.)
4 Teleflora is not a florist, nor does it hold any flowers in inventory. (FAC ¶ 21.)
5 Instead, Teleflora maintains a network of more than 18,000 local florists to fill
6 customers’ orders. (FAC ¶¶ 21, 26.) Customers purchase floral arrangements through
7 Teleflora by visiting www.Teleflora.com, selecting products for purchase, inputting
8 specific delivery dates, and paying Teleflora with their credit cards. (FAC ¶¶ 22–23.)
9 Teleflora’s website provides an extensive photo gallery of all the floral arrangements
10 for sale. (FAC ¶ 22.) Alongside each color photo, Teleflora describes the specific
11 flowers, vase, and other items used in the arrangement. (*See* Walker-Roletter Decl.
12 Ex. A.)

13 Although Teleflora is incorporated in Delaware and headquartered in Los
14 Angeles, California, it markets and sells floral products to consumers throughout the
15 United States via its member-florist network, various websites, advertisements, and
16 toll-free phone numbers. (FAC ¶¶ 15–16, 21.) Plaintiffs state that Teleflora’s
17 marketing and sales decisions regarding its floral arrangements are made, managed,
18 and emanate from its California headquarters. (FAC ¶ 16.)

19 Bruce purchased two floral arrangements after relying on corresponding
20 photographs and descriptions on Teleflora’s website. (FAC ¶¶ 44–45.) On December
21 21, 2012 she bought a *Sunny Smiles* arrangement, which was delivered to her cousin
22 in Virginia. (FAC ¶ 44.) On December 26, 2012, Bruce purchased a *Jumping for Joy*
23 arrangement for her mother. (FAC ¶ 45.) Bruce’s mother received this arrangement
24 in Florida. (*Id.*) Shortly thereafter, Bruce’s cousin sent her a card thanking her for the
25 flowers and a picture of the actual arrangement she received. (FAC ¶ 46, Ex. 4.)
26 Bruce’s mother also showed Bruce pictures of the *Jumping for Joy* arrangement.
27 (FAC ¶ 47, Ex. 6.) Upon viewing these photographs, Bruce was “extremely
28 disappointed” that both arrangements were “far different from and inferior to” the

1 representative photographs and descriptions on Teleflora’s website. (FAC ¶¶ 46, 47.)
2 When Bruce complained to Teleflora about the inferior arrangements, she received a
3 30%-off coupon that she deemed worthless. (FAC ¶¶ 48–49.) Teleflora did not
4 refund her purchases. (FAC ¶ 49.)

5 In August 2011, Stubbs ordered two *Rosy Birthday Presents*, with balloons and
6 chocolates, from Teleflora’s website. (FAC ¶ 51.) On her purchase order, Stubbs
7 requested that the arrangements be delivered to her relatives on their birthdays,
8 September 1, 2011, and September 8, 2011. (*Id.*) In May 2012, Stubbs ordered an
9 *Always a Lady* arrangement, with a balloon and chocolates, to be delivered to her
10 sister on May 13, 2012. (FAC ¶ 52.) None of the three arrangements were delivered.
11 (FAC ¶¶ 51, 52.) Stubbs complained about the non-delivery of her orders but never
12 received a refund from Teleflora. (FAC ¶ 53.)

13 Plaintiffs’ FAC seeks damages on behalf of themselves and all others similarly
14 situated, who have purchased Teleflora’s floral arrangements from May 8, 2009, to
15 the present, and (1) received inferior or different floral arrangements than what they
16 ordered, or (2) did not receive floral arrangements on the scheduled delivery dates or
17 at all. (FAC ¶ 55.)

18 The FAC raises five claims, each centered on Teleflora’s marketing and sales
19 conduct, or its failure to timely deliver floral arrangements. These claims are as
20 follows:

- 21 • violation of the California Consumer Legal Remedies Act, Civil Code
22 sections 1770(a)(5), (7), (9) (“CLRA”) (Claim 1);
- 23 • violation of California Unfair Competition Law, Business and
24 Professions Code section 17200 (“UCL”) (Claim 2);
- 25 • breach of express contract (Claims 3, 4);
- 26 • breach of express warranty (Claim 5).

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III. LEGAL STANDARD

Dismissal under Rule 12(b)(6) can be based on “the lack of a cognizable legal theory” or “the absence of sufficient facts alleged under a cognizable legal theory.” *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). A complaint need only satisfy the minimal notice pleading requirements of Rule 8(a)(2)—a short and plain statement—to survive a motion to dismiss for failure to state a claim under Rule 12(b)(6). *Porter v. Jones*, 319 F.3d 483, 494 (9th Cir. 2003); Fed. R. Civ. P. 8(a)(2). For a complaint to sufficiently state a claim, its “[f]actual allegations must be enough to raise a right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While specific facts are not necessary so long as the complaint gives the defendant fair notice of the claim and the grounds upon which the claim rests, a complaint must nevertheless “contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

Iqbal’s plausibility standard “asks for more than a sheer possibility that a defendant has acted unlawfully,” but does not go so far as to impose a “probability requirement.” *Id.* Rule 8 demands more than a complaint that is merely consistent with a defendant’s liability—labels and conclusions, or formulaic recitals of the elements of a cause of action do not suffice. *Id.* Instead, the complaint must allege sufficient underlying facts to provide fair notice and enable the defendant to defend itself effectively. *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011). The determination whether a complaint satisfies the plausibility standard is a “context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Iqbal*, 556 U.S. at 679.

When considering a Rule 12(b)(6) motion, a court is generally limited to the pleadings and must construe “[a]ll factual allegations set forth in the complaint . . . as true and . . . in the light most favorable to [the plaintiff].” *Lee v. City of L.A.*, 250 F.3d 668, 688 (9th Cir. 2001). Conclusory allegations, unwarranted deductions of fact, and

1 unreasonable inferences need not be blindly accepted as true by the court. *Sprewell v.*
2 *Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). Yet, a complaint should be
3 dismissed only if “it appears beyond doubt that the plaintiff can prove no set of facts”
4 supporting plaintiff’s claim for relief. *Morley v. Walker*, 175 F.3d 756, 759 (9th Cir.
5 1999).

6 As a general rule, leave to amend a complaint that has been dismissed should be
7 freely granted. Fed. R. Civ. P. 15(a). However, leave to amend may be denied when
8 “the court determines that the allegation of other facts consistent with the challenged
9 pleading could not possibly cure the deficiency.” *Schreiber Distrib. Co. v. Serv-Well*
10 *Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir.1986); *see Lopez v. Smith*, 203 F.3d
11 1122, 1127 (9th Cir. 2000).

12 IV. DISCUSSION

13 Teleflora moves to dismiss the CLRA and UCL claims because Plaintiffs are
14 out-of-state residents. (Mot. 7.) Specifically, Teleflora attacks Plaintiffs’ CLRA and
15 UCL claims as improper because the alleged misconduct and corresponding injury
16 took place in Texas and Kansas—not California—and thus Plaintiffs cannot assert
17 California’s consumer-protection laws. (Mot. 9–10.) Plaintiffs respond that
18 California law applies because Teleflora’s deceptive conduct took place in California,
19 where it manages its sales transactions and website. (Opp’n 1.)

20 To assert a California state-law cause of action, an out-of-state party must suffer
21 injury from wrongful conduct that occurs in California. *Norwest Mortg., Inc. v.*
22 *Superior Court*, 72 Cal. App. 4th 214, 224–25 (1999). In *Norwest*, the court held that
23 out-of-state plaintiffs could not raise UCL claims because their injuries were “caused
24 by conduct occurring outside of California’s borders by actors headquartered and
25 operating outside of California.” *Norwest*, 72 Cal. App. 4th at 226.

26 In deciding a motion to dismiss for CLRA or UCL claims, a court must
27 ascertain whether a complaint has sufficiently alleged a connection between the
28 injuries, misconduct, and California. *See In re Toyota Motor Corp.*, 785 F. Supp. 2d

1 883, 917 (C.D. Cal. 2011) (dismissing plaintiffs’ CLRA and UCL claims because
2 plaintiffs’ allegation that “[Toyota’s] decision to . . . engage in deceptive marketing
3 was made, in part, in California” was unsupported by facts). Moreover, a transaction
4 or injury with little relation to the forum state may violate constitutional due process if
5 there are insignificant contacts (or aggregation of contacts) with the state. *Phillips*
6 *Petroleum Co. v. Shutts*, 472 U.S. 797, 821 (1985).

7 Here, Plaintiffs reside in Texas and Kansas, and neither have alleged any injury
8 or interaction in California. (FAC ¶¶ 13, 14.) Both Plaintiffs visited Teleflora’s
9 website and purchased the floral arrangements, but the FAC does not state any facts
10 suggesting that the underlying transactions were in California or that Teleflora’s web
11 servers were located in California. (FAC ¶¶ 44, 45, 51.) Bruce alleges that the
12 materially inferior floral arrangements purchased through Teleflora were received by
13 her relatives in Virginia and Florida—not California. (FAC ¶¶ 44, 45.) Regardless
14 who was actually injured (Bruce as purchaser or her relatives as recipients), these
15 injuries did not occur in California. As for Stubbs, she did not indicate the delivery
16 location of her floral arrangements. But that matters not since they were never
17 delivered. (FAC ¶¶ 51, 52.) Her injury from the non-delivery occurred in Kansas, her
18 state of residence, and not California.

19 Plaintiffs also fail to demonstrate that Teleflora’s wrongful conduct occurred in
20 California. On one hand, Plaintiffs vaguely assert that Teleflora makes its marketing
21 and sales decisions throughout the U.S. from its California headquarters. (FAC ¶ 16.)
22 Yet on the other hand, Plaintiffs also acknowledge that Teleflora “is not a florist, does
23 not employ any florists, . . . has no flowers in inventory,” and uses over 18,000 local
24 florists nationwide to fill customers’ orders. (FAC ¶ 21.) Despite the fact Teleflora’s
25 headquarters is in California, the FAC is unclear as to exactly where the wrongful
26 conduct occurred. Plaintiffs baldly argue that “the wrongful conduct complained of
27 was conducted by Teleflora in California, not by the local florists in Plaintiffs’ states
28 of residence.” (Opp’n 2 n.3.) But upon review of the FAC, the Court finds no facts

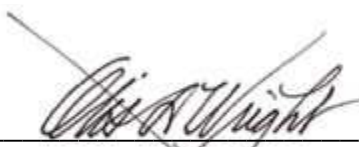
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VI. CONCLUSION

Accordingly, Teleflora's Motion to Dismiss is **GRANTED** and Plaintiffs' CLRA and UCL claims are **DISMISSED WITH PREJUDICE**. Teleflora's Motion to Strike is **DENIED**.

IT IS SO ORDERED.

September 19, 2013



OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE