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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

STEFANIE MLEJNECKY,)	Case No. 2:10-CV-02630 JAM-KJN
)	
Plaintiff,)	
)	
v.)	<u>ORDER DENYING IN PART AND</u>
)	<u>GRANTING IN PART DEFENDANT'S</u>
)	<u>MOTION TO DISMISS</u>
)	
OLYMPUS IMAGING AMERICA INC.,)	
)	
Defendant.)	

This matter comes before the Court on Defendant Olympus Imaging America Inc.'s ("Defendant") Motion to Dismiss (Doc. #17) Plaintiff Stefanie Mlejnecky's ("Plaintiff") First Amended Complaint ("FAC") (Doc. #16). Plaintiff opposes the motion.¹

I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff purchased a new Stylus 1030 SW camera in July 2008 after viewing an advertisement in Parents Magazine. The advertisement stated that the cameras were "the world's toughest digital cameras - waterproof to 33 feet [and] shockproof from

¹This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for February 23, 2011.

1 6.6 feet. . . .” FAC at 3:3-4. In July 2008, after viewing
2 the advertisement in Parents Magazine, Plaintiff visited
3 Defendant’s website, which allegedly contained the same
4 statements regarding the cameras. Based on the advertisement
5 and statements on Defendant’s website, Plaintiff purchased the
6 Stylus 1030 SW. Plaintiff did not see a copy of the camera’s
7 warranty or know its provisions until after she received the
8 camera and opened the package.

9 On September 2, 2010, Plaintiff dropped her camera.
10 Plaintiff claims that although she dropped the camera from about
11 3 feet above the ground, the plastic latch for the battery/card
12 cover broke, preventing the cover from closing. The message
13 “card cover open” appeared, and the cover would not close,
14 making the camera inoperative. Soon after the incident,
15 Plaintiff called Defendant to report the camera’s defect and
16 obtain repair or replacement of her camera. An Olympus
17 representative informed her that she would have to pay around
18 \$150 for repairs.

19 Plaintiff brings this lawsuit as a class action. The
20 Complaint alleges five causes of action: 1) Violation of
21 California’s Consumer Legal Remedies Act (“CLRA”), Cal. Civ.
22 Code section 1750 et seq.; (2) Unlawful business practices,
23 violation of California’s Unfair Competition Law (“UCL”), Cal.
24 Bus. & Prof. Code section 17200, et seq.; (3) Unfair business
25 practices, violation of UCL; (4) Fraudulent business practices,
26 violation of UCL; and (5) False advertising, violation of UCL.
27 The Court has jurisdiction under 28 U.S.C. § 1332.
28

1 II. OPINION

2 A. Legal Standard

3 1. Standing

4 The Article III case or controversy requirement limits
5 federal courts' subject matter jurisdiction by requiring that
6 plaintiffs have standing. Allen v. Wright, 468 U.S. 737, 750
7 (1984). The party asserting federal subject matter jurisdiction
8 bears the burden of proving its existence. Kokkonen v. Guardian
9 Life Insurance Co., 511 U.S. 375, 377 (1994). Standing
10 addresses whether the plaintiff is the proper party to bring the
11 matter to the court for adjudication. Chandler v. State Farm
12 Mutual Automobile Insurance Co., 598 F.3d 1115, 1122 (9th Cir.
13 2010). Because standing pertains to federal courts' subject
14 matter jurisdiction, it is properly raised in a 12(b)(1) motion
15 to dismiss. White v. Lee, 227 F.3d 1214, 1242 (9th Cir. 2000).

16 2. Motion to Dismiss

17 A party may move to dismiss an action for failure to state
18 a claim upon which relief can be granted pursuant to Federal
19 Rules of Civil Procedure 12(b)(6). In considering a motion to
20 dismiss, the court must accept the allegations in the complaint
21 as true and draw all reasonable inferences in favor of the
22 plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236 (1975),
23 overruled on other grounds by Davis v. Scherer, 468 U.S. 183
24 (1984); Cruz v. Beto, 405 U.S. 319, 322 (1972). Assertions that
25 are mere "legal conclusions," however, are not entitled to the
26 assumption of truth. Ashcroft v. Iqbal, 129 S.Ct. 1937, 1950
27 (2009), citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555
28 (2007). To survive a motion to dismiss, a plaintiff needs to

1 plead "enough facts to state a claim to relief that is plausible
2 on its face." Twombly, 550 U.S. at 570. Dismissal is
3 appropriate where the plaintiff fails to state a claim
4 supportable by a cognizable legal theory. Balistreri v.
5 Pacifica Police Department, 901 F.2d 696, 699 (9th Cir. 1990).

6 Upon granting a motion to dismiss for failure to state a
7 claim, the court has discretion to allow leave to amend the
8 complaint pursuant to Federal Rules of Civil Procedure 15(a).
9 "Dismissal with prejudice and without leave to amend is not
10 appropriate unless it is clear . . . that the complaint could
11 not be saved by amendment." Eminence Capital, L.L.C. v. Aspeon,
12 Inc., 316 F.3d 1048, 1052 (9th Cir. 2003).

13 B. Claims for Relief

14 1. Injury Sufficient to Confer Standing

15 Defendant characterizes Plaintiff's lawsuit as a post-
16 warranty action and argues that she generally lacks standing
17 because her camera broke more than a year beyond the expiration
18 of the warranty and she does not allege that there was a safety
19 issue or a representation about the lifespan of the product that
20 would give her standing to assert a post-warranty claim.
21 Defendant further argues that the challenged representations
22 reiterate the terms of the express warranty, which warrants the
23 camera's ability to operate in water at depths of up to 10
24 meters and sustain accidental impact for one year. Defendant
25 also contends that in the absence of representations
26 contradicting the terms of the warranty, "the only expectation
27 buyers could have had about the [product] was that it would
28 function properly for the length of [the] express warranty, and

1 it did.” Daugherty v. American Honda Motor Co., Inc., 144
2 Cal.App.4th 824, 838 (Cal.App.Ct.2d 2006). Thus, by framing
3 Plaintiff’s lawsuit as a post-warranty action, Defendant argues
4 that Plaintiff’s claims are barred because she has no standing
5 to assert an injury for a defect arising after the warranty
6 expired.

7 Plaintiff counters that this is not a post-warranty action,
8 but an affirmative misrepresentation lawsuit. Plaintiff argues
9 that Defendant’s representations that the Stylus SW cameras are
10 waterproof and shockproof are untrue and that Defendant’s
11 failure to disclose the defects inherent in its Stylus SW
12 cameras run counter to those affirmative misrepresentations.
13 Plaintiff also avers that Defendant’s express warranty excludes
14 defects and damage caused by shock and water exposure. Thus,
15 Plaintiff contends that Defendant cannot point to the expiration
16 of a warranty that never covered the defects in the first place
17 to insulate it from liability for fraudulent misrepresentations
18 regarding the cameras’ characteristics. See Fundin v. Chicago
19 Pneumatic Tool Co., 152 Cal.App.3d 951, 958 (Cal.App.Ct.4d 1984)
20 (finding that where a product has been described by its
21 manufacturer as having certain detailed capacities under certain
22 conditions, it would be both unfair and unreasonable to disclaim
23 those features in the express warranty); see also In re Toyota
24 Motor Corp., No. 8:10ML 021515, 2010 WL 4867562, *13 (C.D. Cal.
25 Nov. 30, 2010) (concluding warranty based defenses do not
26 preclude standing even if the warranty covered the defect in
27 question).

28 Under California law, where a manufacturer of consumer

1 goods has warranted a product for a limited period, the
2 manufacturer is liable under the CLRA or UCL for failing to
3 disclose information about a defect that manifests itself
4 outside the express warranty period when (1) the omitted fact
5 runs counter to a representation made by the defendant, or
6 (2) the defendant had a duty to disclose the omitted
7 information. Daugherty, 144 Cal.App.4th at 835.

8 The Court finds that Plaintiff's FAC asserts affirmative
9 misrepresentation claims, not a post-warranty case. Unlike the
10 plaintiffs in Daugherty, the principle case upon which Defendant
11 relies, Plaintiff is not alleging a breach of an express
12 warranty or a violation of the Manuson-Moss Warranty-Federal
13 Trade Commission Improvement Act. Additionally, the facts in
14 Daugherty are dissimilar to the facts in the instant case. In
15 Daugherty, Plaintiffs alleged that Honda's F22 engine had a
16 defect which manifested after the express warranty expired.
17 Here, Plaintiff alleges that the defect is inherent in the
18 product. Finally, and most significantly, the Daugherty court
19 summarizes and agrees with the holding of Outboard Marine Corp.
20 v. Superior Court, 52 Cal.App.3d 30 (Cal.App.Ct.3d 1975). In
21 Outboard Marine, the plaintiff alleged that the defendant had
22 represented its off-road vehicles as able to climb very steep
23 hills, drive on the sides of hills, and safely descent very
24 steep grades. Outboard Marine, 52 Cal.App.3d at 34. The
25 plaintiff also alleged that defendant knew, but failed to
26 disclose, that the vehicle "would not operate within 'its design
27 criteria,'" "would roll over forward on a downgrade," and that
28 "its braking system was totally defective." Id. The Outboard

1 Marine court denied the defendant's motion to dismiss, holding
2 that the CLRA "includes a proscription against the concealment
3 of the characteristics, use, benefit, or quality of the goods
4 contrary to that represented." Id. at 37. The difference
5 between this case, Outboard Marine, and Daugherty, is that in
6 the instant case and in Outboard Marine, plaintiffs allege a
7 concealment of characteristics or quality contrary to that
8 represented, but in Daugherty, no representation was made to
9 which the alleged concealment was contrary. Daugherty, 144
10 Cal.App.4th at 834. Therefore, because the Court finds that
11 Plaintiff's case is based on an affirmative misrepresentation
12 theory, and not a post-warranty theory, Defendant's Motion to
13 Dismiss the entire FAC on general lack of standing grounds is
14 DENIED.

15 2. Standing Under the CLRA and UCL

16 In addition to its general lack of standing argument,
17 Defendant contends that Plaintiff lacks standing under the CLRA
18 and UCL on numerous grounds discussed below. Plaintiff responds
19 that she has sufficiently pled enough facts to give her
20 standing.

21 a) Injury In Fact

22 Defendant argues that Plaintiff has not alleged an injury
23 sufficient to confer standing under the UCL and CLRA. Plaintiff
24 counters that she has standing based on Defendant's affirmative
25 misrepresentations.

26 To have standing under the UCL, as well as to serve as a
27 class representative, plaintiff must "(1) establish a loss or
28 deprivation of money or property sufficient to qualify as injury

1 in fact, i.e., economic injury, and (2) show that the economic
2 injury was the result of, i.e., caused by, the unfair business
3 practice or false advertising that is the gravamen of the
4 claim." Kwikset Corp. v. Superior Court, --- Cal. Rptr.3d ---,
5 2011 WL 240278, at *5 (Cal. Jan. 27, 2011). Under the CLRA,
6 Plaintiff must show a tangible increased cost or burden
7 resulting from an alleged unlawful practice. Cal. Civ. Code
8 § 1780(a); Meyer v. Sprint Spectrum L.P., 45 Cal.4th 634, 643
9 (Cal. 2009) (holding that the CLRA only applies when an
10 allegedly unlawful practice results in a tangible increased cost
11 or burden to the consumer).

12 Plaintiff alleges that Defendant affirmatively represented
13 in advertisements and on its website that the Olympus Stylus SW
14 cameras were "waterproof to 33 feet" and "shockproof from 6.6
15 feet." FAC ¶ 8. Plaintiff alleges those representations are
16 false. FAC ¶ 3, 48, 62, 75, 88, 101-02. She alleges that she
17 saw the false statements in an advertisement and on Defendant's
18 website and she relied on those statements in purchasing her
19 Stylus 1030 SW camera. FAC ¶ 8. She alleges she would not have
20 purchased a Stylus SW camera had Defendant not made the
21 misrepresentations in its advertisements and on its website.

22 Id. Finally, Plaintiff alleges she was damaged when the camera
23 turned out not to be as advertised. Id. Thus, taking all of
24 these allegations as true, as the Court must, the Court finds
25 that Plaintiff has properly alleged an injury, sufficient to
26 confer standing for the Stylus 1030 SW, under the UCL and CLRA.

1 b) Standing For a Product Plaintiff Did Not
2 Purchase

3 Plaintiff makes no allegations that she viewed any
4 advertisements for the Stylus 850 SW or that she ever owned such
5 a camera. Instead, Plaintiff argues she has standing because
6 the Stylus 850 SW has the same underlying defects as the Stylus
7 1030 and Defendant used the same advertisement for all Stylus
8 cameras.

9 District courts in this circuit have split over whether a
10 named plaintiff has standing for a product she did not purchase.
11 Defendant relies on Johns v. Bayer Corp., No. 09-cv-1935, 2010
12 WL 476688, *4-5 (S.D.Cal. Feb. 9, 2010) which held that the
13 plaintiff lacked standing to sue for a vitamin product he did
14 not purchase, even though it contained the same alleged defect
15 and was part of the same uniform advertising campaign as the
16 vitamin product the plaintiff purchased. The court reasoned
17 that plaintiff "cannot expand the scope of his claims to include
18 a product he did not purchase or advertisements relating to a
19 product that he did not rely upon." Johns at *5. Plaintiff
20 relies on two cases, Carideo v. Dell, Inc., 706 F.Supp.2d 1122
21 (W.D. Wash. 2010) and Hewlett-Packard v. Superior Court, 167
22 Cal.App.4th 87 (Cal.App.Ct.6d 2008). In Carideo, the court
23 allowed the complaint to include computer models that the named
24 plaintiffs did not purchase, but for which the plaintiffs
25 pleaded the same core factual allegations and causes of actions
26 regarding the alleged defects in the computer models. 706
27 F.Supp.2d at 1134. In Hewlett-Packard, the court allowed a
28 class action lawsuit to proceed past the class certification

1 stage based on a common defect in the HP notebook computers and
2 their display screens where the named plaintiff had purchased
3 one of the many models at issue. 167 Cal.App.4th at 89-91.

4 The Court finds Johns to be more persuasive than those
5 cases relied upon by Plaintiff, because the Johns court's
6 reasoning is more in line with the recent standard delineated by
7 the California Supreme Court in Kwikset, 2011 WL 240278.
8 Kwikset, discussed supra, held that to have standing, a
9 plaintiff must allege an economic injury and must allege that
10 the economic injury was caused by Defendant's unfair business
11 practices. See Kwikset, 2011 WL 240278 at *5. Plaintiff does
12 not claim that she suffered any economic injury from any alleged
13 misrepresentations regarding the Stylus 850 SW. Accordingly,
14 the Court GRANTS, WITH LEAVE TO AMEND, Defendant's Motion to
15 Dismiss Plaintiff's claims concerning the Stylus 850 SW.

16 c) Defects Plaintiff Did Not Experience

17 Plaintiff asserts claims based on the purported shockproof
18 and waterproof features of the Stylus 1030 SW, despite making no
19 allegation that her camera suffered from any defects relating to
20 the waterproof feature.

21 Plaintiff relies on Falk v. General Motors Corp., 496
22 F.Supp.2d 1088 (N.D. Cal. 2007) to argue that the manner in
23 which a product defect manifests is not material to whether a
24 plaintiff may state a claim under the CLRA or UCL. Falk is not
25 persuasive. While the court in Falk denied the motion to
26 dismiss the CLRA and UCL claims based on defective speedometers
27 that manifest the defect in different ways for different
28 consumers, the named plaintiffs all alleged an injury stemming

1 from the defect. In this case, Plaintiff has not alleged that
2 she was affected in any way by the alleged misrepresentation
3 that the Stylus 1030 SW is waterproof. “[A] plaintiff who has
4 been subject to injurious conduct of one kind [does not] possess
5 by virtue of that injury the necessary stake in litigating
6 conduct of another kind, although similar, to which he has been
7 subject.” Blum v. Yaretsky, 457 U.S. 991, 999 (1982).

8 Accordingly, Defendant’s Motion to Dismiss Plaintiff’s claims to
9 the extent they concern a defect she did not experience, i.e.
10 that the Stylus 1030 SW is not waterproof, is GRANTED WITH LEAVE
11 TO AMEND.

12 d) Advertising Plaintiff Did Not View

13 Plaintiff specifically identifies statements in the Parents
14 Magazine advertisement and on Defendant’s website that she
15 relied on in purchasing her Stylus camera. Defendant argues
16 that Plaintiff lacks standing for her broad challenge of
17 statements made in unspecified “marketing materials” and “other
18 places.” FAC ¶¶ 24-25, 37. The allegations concerning the
19 Parents Magazine advertisement and Defendant’s website are
20 sufficient to confer Plaintiff’s standing to challenge those
21 representations. However, she cannot broaden her argument to
22 materials upon which she did not specifically rely. See Durell
23 v. Sharp Healthcare, 183 Cal.App.4th 1350, 1363-64
24 (Cal.App.Ct.4d 2010) (dismissing claim after plaintiff failed to
25 allege that he relied on or viewed the website that he claimed
26 contained misrepresentations). Since Plaintiff does not allege
27 a long-term advertising campaign or exposure to any other
28 advertisements, Plaintiff lacks standing to sue Defendant for

1 advertisements and statements other than those she saw and
2 relied upon. See In re Tobacco II Cases, 46 Cal.4th 298, 328
3 (Cal. 2009) (holding that where plaintiffs have been exposed to
4 and had relied upon a long-term advertising campaign, they are
5 not required to specify with detail which of the particular
6 advertisements they relied upon). Accordingly, the Court finds
7 that Plaintiff has standing to challenge only the
8 representations made in the advertisements Plaintiff saw in
9 Parents Magazine and on Defendant's website unless she can
10 allege that she was exposed to a long-term advertising campaign.
11 The Court GRANTS WITH LEAVE TO AMEND Defendant's Motion to
12 Dismiss the allegations found in ¶¶ 24, 25 and 37 of the FAC
13 concerning alleged statements made by Defendant in unspecified
14 "marketing materials" and "other places".

15 3. Claims Grounded in Fraud

16 Defendant argues that the FAC sounds in fraud and should be
17 dismissed because Plaintiff fails to plead fraud with the
18 particularity required by Rule 9(b) and Plaintiff fails to plead
19 falsity and a failure to disclose. Plaintiff responds that she
20 has alleged the fraud-based claims with specificity.

21 When allegations of fraud are made, Rule 9(b) requires
22 plaintiffs to "state with particularity the circumstances
23 constituting fraud. . . ." FED.R.CIV.P. 9(b).

24 Rule 9(b) requires fraud claims to be "specific enough to
25 give defendants notice of the particular misconduct . . . so
26 that they can defend against the charge and not just deny that
27 they have done anything wrong." Bly-Magee v. California, 236
28 F.3d 1014, 1019 (9th Cir. 2001) (internal quotations omitted).

1 "Averments of fraud must be accompanied by the who, what, when,
2 where, and how of the misconduct charged." Vess v. Ciba-Geigy
3 Corp. USA, 317 F.3d 1097, 1106 (9th Cir. 2003) (internal
4 citations omitted). Plaintiffs must not only specify how
5 alleged statements were false, but must specify how statements
6 were false when they were made. In re Glenfed, Inc. Securities
7 Litigation, 42 F.3d 1541, 1548-49 (9th Cir. 1994) (en banc),
8 (superseded by statute on other grounds); Vess, 317 F.3d at
9 1106.

10 Plaintiff does not dispute that Rule 9(b) applies to her
11 claims but argues that the FAC satisfies the heightened pleading
12 requirements for the fraud-based claims. Contrary to Defendant's
13 argument, the Court finds that the FAC repeatedly identifies
14 Defendant as responsible for the alleged misrepresentations, it
15 specifically identifies the substance of the alleged
16 misrepresentations, it includes the specific month and year the
17 alleged misrepresentations appeared in Parents Magazine and on
18 Defendant's website, and it describes how the alleged
19 misrepresentations are false. Thus, the FAC's fraud allegations
20 are sufficiently specific to provide Defendant sufficient notice
21 against Plaintiff's charges.

22 Plaintiff alleges that Defendant knew of the falsity of its
23 alleged misrepresentations from the online reviews and
24 complaints from consumers. "The requirements of Rule 9(b) may
25 be 'relaxed as to matters peculiarly within the opposing party's
26 knowledge,' if the plaintiffs cannot be expected to have
27 personal knowledge of the facts prior to discovery." In re
28 Gupta Corp. Securities Litigation, 900 F.Supp.1217, 1228 (N.D.

1 Cal 1994), quoting Wool v. Tandem Computers Inc., 818 F.2d 1433,
2 1439 (9th Cir. 1987). “[T]he particularity requirements may be
3 satisfied if the allegations are accompanied by a statement of
4 the facts upon which the belief is founded.” Wool, 818 F.2d at
5 1439. The FAC includes a detailed statement of the facts upon
6 which the belief is founded in the form of online reviews and
7 complaints from consumers. Based on those reviews, Plaintiff
8 sufficiently pleads that Defendant was aware that its Stylus
9 cameras were not as shockproof as advertised to survive the
10 Motion to Dismiss.

11 Furthermore, because Plaintiff is alleging affirmative
12 material representations, she does not need to allege the useful
13 life of the product. See Daugherty, 144 Cal.App.4th at 838
14 (citing Bardin v. DaimlerChrysler Corp., 136 Cal.App.4th 1255,
15 1275 (Cal.App.Ct.4d 2006). Accordingly, Defendant’s Motion to
16 Dismiss Plaintiff’s FAC for failing to properly plead the
17 averments of fraud is DENIED.

18 4. Unfair Business Practice

19 Defendant argues that Plaintiff’s third claim for an
20 “unfair business practice” under the UCL fails because Plaintiff
21 does not tether her claims to any legislatively-declared public
22 policy. Plaintiff responds that the tethering test does not
23 apply to claims brought by consumers alleging misleading
24 advertising. In the alternative, she argues that she
25 sufficiently alleges an “unfair” claim under the UCL.

26 In Cel-Tech Communications, Inc. v. L.A. Cellular Telephone
27 Co., 20 Cal.4th 163, 180-81, (Cal. 1999), the California Supreme
28 Court ruled that conduct is “unfair” between business

1 competitors under the UCL only if it is "tethered" to an
2 underlying law. Cel-Tech, 20 Cal.4th at 186-87. The California
3 Supreme Court limited the context of its ruling by specifying
4 that "[n]othing we say relates to actions by consumers or by
5 competitors alleging other kinds of violations of the unfair
6 competition law such as . . . untrue or misleading advertising."
7 Id. at 187 n. 12. Whether the tethering test is applicable to
8 allegations of unfair practices as applied to consumers,
9 however, is not settled. California appellate courts have split
10 on whether to apply the tethering test or an older balancing
11 test to consumers alleging unfair business practices. Compare
12 Gregory v. Albertson's, Inc., 104 Cal.App.4th 845, 854, 389
13 (Cal. App. Ct. 1d 2002) (applying tethering test to consumers);
14 and Scripps Clinic v. Superior Court, 108 Cal.App.4th 917, 938
15 (Cal.App.Ct.4d 2003) (same); with Smith v. State Farm Mutual
16 Automobile Insurance Co., 93 Cal.App.4th 700, 718-19
17 (Cal.App.Ct. 2d 2001) (applying balancing test). The Ninth
18 Circuit has not stated its preference. See Lozano v. AT&T
19 Wireless Services, Inc., 504 F.3d 718, 737 (9th Cir. 2007)
20 (holding that the tethering test and the balancing test are not
21 mutually exclusive and upholding the district court's
22 application of the balancing test).

23 The Court finds that the application of the balancing test
24 to the case at bar is appropriate. This case involves a
25 consumer alleging misrepresentation and the California Supreme
26 Court specified that its holding does not apply to misleading
27 advertisements. Plaintiff's allegation that Defendant's acts
28 and practices cause injuries to consumers, which outweigh their

1 benefits, combined with the specific descriptions of harm faced
2 by Plaintiff, is sufficient to survive a motion to dismiss.
3 Furthermore, even if the Court were to find that tethering to
4 public policy were required, Plaintiff adequately alleges
5 tethering by stating that Defendant's unfair business acts or
6 practices violate established public policy reflected in the UCL
7 and CLRA, including but not limited to California Civil Code
8 sections 1770(a)(5) and 1770(a)(7) and California Business and
9 Professions Code section 175000. Accordingly, Defendant's
10 Motion to Dismiss the "unfair" claim (claim 3) is DENIED.

11
12 III. ORDER

13 For the reasons set forth above,

14 Defendant's Motion to Dismiss the FAC for a generalized
15 lack of standing is DENIED.

16 Defendant's Motion to Dismiss Plaintiff's FAC in so far as
17 it concerns the Stylus 1030 SW and its shockproof features is
18 DENIED.

19 Defendant's Motion to Dismiss Plaintiff's FAC in so far as
20 it concerns the Stylus 850 SW, any waterproof defects of any
21 camera, and any advertisements upon which Plaintiff did not
22 specifically rely is GRANTED WITH LEAVE TO AMEND.

23 Defendant's Motion to Dismiss Plaintiff's FAC for failing
24 to plead her fraud-based claims with specificity is DENIED.

25 Defendant's Motion to Dismiss Plaintiff's FAC for failing
26 to allege facts supporting the elements of her "unfair" business
27 claim is DENIED.

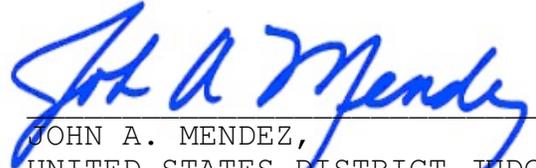
28 Plaintiff shall file her Second Amended Complaint within

1 twenty (20) days of the date of this Order.

2 IT IS SO ORDERED.

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4 Dated: April 18, 2011



JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE

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