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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

WILLIAM LANDES,

No. 2:12-cv-01252-MCE-KJN

Plaintiff,

v.

MEMORANDUM AND ORDER

SKIL POWER TOOLS, et al.,

Defendants.

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Plaintiff William Landes ("Plaintiff") initiated this action to recover for injuries suffered by Plaintiff during the operation of a table saw designed, manufactured and sold by Defendants Skil Power Tools ("Skil Power Tools"), Robert Bosch Tool Corporation ("Robert Bosch"), Lowe's HIW, Inc. (hereafter, "Lowe's"), and Lowe's Companies, Inc. ("Lowe's Companies"), (collectively, "Defendants").¹

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¹ Defendants Skil Power Tools and Lowe's, Inc., are in the process of being dismissed via stipulation of the parties. See ECF No. 28).

1 Presently before the Court are a Motion to Dismiss Plaintiff's
2 fifth cause of action for breach of implied warranty and a Motion
3 to Strike Plaintiff's punitive damages allegations filed by
4 Lowe's. For the reasons set forth below, Lowe's Motions are
5 GRANTED with leave to amend.²

6
7 **BACKGROUND**³
8

9 According to Plaintiff, Defendants Skil Power and Robert
10 Bosch designed and manufactured for sale a 10-inch portable table
11 saw, namely the SkilSaw Model Number 3305 ("SkilSaw"). Skil
12 Power and Robert Bosch sold the SkilSaw to the Lowe's Defendants
13 for distribution at their Stockton retail Lowe's Home Improvement
14 store.

15 In approximately March of 2010, the Lowe's Defendants sold
16 the SkilSaw to Plaintiff. On April 14, 2012, while operating
17 that saw, Plaintiff was severely injured, suffering lacerations
18 and completely severing all or part of two of his fingers.

19 Plaintiff avers that Skil Power and Robert Bosch knew of and
20 failed to utilize safer technology in the manufacture of their
21 saws.

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26 ² Because oral argument will not be of material assistance,
27 the Court ordered this matter submitted on the briefing. E.D.
28 Cal. Local Rule 78-230(h).

³ Unless otherwise stated, the following facts are derived,
at times verbatim, from Plaintiff's Complaint.

1 More specifically, Plaintiff alleges that flesh-detection
2 technology has been available for years, that such technology
3 would stop a saw blade immediately upon touching human flesh, and
4 that Defendants failed to take advantage of this technology to
5 make their product safer.

6 In light of his injuries, Plaintiff initiated the instant
7 action in state court on April 6, 2012, alleging the following
8 causes of action: 1) negligence (against Skil Power and Robert
9 Bosch); 2) strict products liability (against Skil Power and
10 Robert Bosch); 3) breach of implied warranty (against Skil Power
11 and Robert Bosch); 4) negligence (against Lowe's and Lowe's
12 Companies); and 5) breach of implied warranty (against Lowe's and
13 Lowe's Companies). Defendants thereafter removed the case to
14 this Court and filed various Motions to Dismiss and Motions to
15 Strike. The only Motions remaining before the Court are Lowe's
16 Motion to Dismiss Plaintiff's fifth cause of action for breach of
17 implied warranty and Motion to Strike Plaintiff's punitive
18 damages allegations. For the following reasons, both Motions are
19 GRANTED with leave to amend.

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1 In re Gilead Sciences Sec. Litig., 536 F.3d 1049, 1055 (9th Cir.
2 2008) (internal citations and quotations omitted). "Factual
3 allegations must be enough to raise a right to relief above the
4 speculative level." Twombly, 550 U.S. at 555.

5 Furthermore, "Rule 8(a)(2)...requires a 'showing,' rather
6 than a blanket assertion, of entitlement to relief." Twombly,
7 550 U.S. at 556 n.3 (internal citations and quotations omitted).
8 "Without some factual allegation in the complaint, it is hard to
9 see how a claimant could satisfy the requirements of providing
10 not only 'fair notice' of the nature of the claim, but also
11 'grounds' on which the claim rests." Id. (citation omitted). A
12 pleading must contain "only enough facts to state a claim to
13 relief that is plausible on its face." Id. at 570. If the
14 "plaintiffs...have not nudged their claims across the line from
15 conceivable to plausible, their complaint must be dismissed."
16 Id. However, "a well-pleaded complaint may proceed even if it
17 strikes a savvy judge that actual proof of those facts is
18 improbable, and 'that a recovery is very remote and unlikely.'"
19 Id. at 556 (quoting Scheuer v. Rhodes, 416 U.S. 232, 236 (1974)).

20 A court granting a motion to dismiss a complaint must then
21 decide whether to grant a leave to amend. Leave to amend should
22 be "freely given" where there is no "undue delay, bad faith or
23 dilatory motive on the part of the movant,...undue prejudice to
24 the opposing party by virtue of allowance of the amendment, [or]
25 futility of the amendment...." Foman v. Davis, 371 U.S. 178, 182
26 (1962); Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048,
27 1052 (9th Cir. 2003) (listing the Foman factors as those to be
28 considered when deciding whether to grant leave to amend).

1 Dismissal without leave to amend is proper only if it is clear
2 that "the complaint could not be saved by any amendment." Intri-
3 Plex Techs., Inc. v. Crest Group, Inc., 499 F.3d 1048, 1056 (9th
4 Cir. 2007) (internal citations and quotations omitted).

5
6 **B. Motion to Strike Pursuant to 12(f).**

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8 The Court may strike "from a pleading any insufficient
9 defense or any redundant, immaterial, impertinent, or scandalous
10 matter." Fed. R. Civ. Pro. 12(f). The "function of a 12(f)
11 motion to strike is to avoid the expenditure of time and money
12 that must arise from litigating spurious issues by dispensing
13 with those issues prior to trial...." Sidney-Vinsein v. A.H.
14 Robins Co., 697 F.2d 880, 885 (9th Cir. 1983). "Immaterial
15 matter is that which has no essential or important relationship
16 to the claim for relief or the defenses being pleaded." Fantasy,
17 Inc. v. Fogerty, 984 F.2d 1524, 1527 (9th Cir. 1993) (rev'd on
18 other grounds Fogerty v. Fantasy, Inc., 510 U.S. 517 (1994))
19 (internal citations and quotations omitted). "'Redundant'
20 allegations are those that are needlessly repetitive or wholly
21 foreign to the issues involved in the action." California Dept.
22 of Toxic Substances Control v. Alco Pacific, Inc.,
23 217 F. Supp. 2d 1028, 1032-33 (C.D. Cal. 2002).

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1 ANALYSIS

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3 **A. Lowe's Motion to Dismiss Plaintiff's Fifth Cause of**
4 **Action for Breach of Implied Warranty of**
5 **Merchantability.**

6 Lowe's moves to dismiss Plaintiff's fifth cause of action
7 for Breach of the Implied Warranty of Merchantability. According
8 to Lowe's, this cause of action fails because Plaintiff failed to
9 allege he provided Lowe's with the requisite pre-suit notice of
10 his claim. Lowe's is correct.

11 "To avoid dismissal of a breach of contract or breach of
12 warranty claim in California, a buyer must plead that notice of
13 the alleged breach was provided to the seller within a reasonable
14 time after discovery of the breach." Alvarez v. Chevron Corp.,
15 656 F.3d 925, 932 (9th Cir. 2011) (internal citations and
16 quotations omitted). "The purpose of giving notice of the breach
17 is to allow the breaching party to cure the breach and thereby
18 avoid the necessity of litigating the matter in court." Id.
19 Plaintiff includes no allegation in his Complaint indicating he
20 provided any pre-suit notice of his claims to Lowe's, nor has he
21 pointed the Court to any relevant authority indicating his claim
22 is not subject to the notice requirements. See, e.g.,
23 Opposition, 7:22-26 (citing Keegan v. American Honda Motor Co.,
24 Inc., 838 F. Supp. 2d 929, 2012 WL 75443 15-16 (C.D. Cal.) (no
25 requirement that a plaintiff provide notice to a non-defendant
26 car dealership when filing suit against defendant care
27 manufacturers)). Lowe's Motion to Dismiss Plaintiff's fifth
28 cause of action is thus GRANTED with leave to amend.

1 **B. Lowe's Motion to Strike Plaintiff's Punitive Damages**
2 **Allegations.**

3 Lowe's moves to strike Plaintiff's punitive damages
4 allegations pursuant to Rule 12(f). Rule 12(f), however, is the
5 improper vehicle by which to attack damages allegations.
6 Whittlestone, Inc. v. Handi-Craft Co., 618 F.3d 970, 974-75
7 (9th Cir. 2010). Such attacks should instead be made pursuant to
8 Rule 12(b)(6). Id. Accordingly, the Court construes Lowe's
9 instant Motion as a second motion to dismiss and GRANTS that
10 Motion with leave to amend.

11 California Civil Code § 3294 provides, in pertinent part,
12 that "where it is proven by clear and convincing evidence that
13 the defendant has been guilty of oppression, fraud, or malice,
14 the plaintiff, in addition to the actual damages, may recover
15 damages for the sake of example and by way of punishing the
16 defendant." In this case, however, Plaintiff alleges only the
17 most basic transaction-related facts as to Lowe's, facts that go
18 nowhere to support the theory that Lowe's acted with "oppression,
19 fraud, or malice." Indeed, while Plaintiff alleges that the
20 conduct of Defendants Skil Power and Robert Bosch "was reckless
21 and in conscious disregard for consumers," see, e.g., Complaint,
22 ¶ 35, no such allegations, conclusory as they may be, are made
23 with respect to Lowe's. As alleged, the Complaint thus fails to
24 state a claim for the recovery of punitive damages against
25 Lowe's. Accordingly, Defendant's Motion to Strike, which this
26 Court construes as a Motion to Dismiss pursuant to Rule 12(b)(6),
27 is GRANTED with leave to amend.

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1 **CONCLUSION**

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3 For the reasons stated above, Lowe's Motion to Dismiss and
4 Motion to Strike are GRANTED with leave to amend. Not later than
5 twenty (20) days following the date this Memorandum and Order is
6 electronically filed, Plaintiff may (but is not required to) file
7 an amended complaint. If no amended complaint is filed within
8 said twenty (20) day period, without further notice to the
9 parties, the causes of action dismissed by virtue of this
10 Memorandum and Order will be dismissed with prejudice.

11 IT IS SO ORDERED.

12 Dated: July 13, 2012

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15 MORRISON C. ENGLAND, JR.
16 UNITED STATES DISTRICT JUDGE
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