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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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THE MOUNTAIN CLUB OWNER'S
ASSOCIATION,

 Plaintiff,

 v.

GRAYBAR ELECTRIC COMPANY,
INC., and DOES 1-50,

 Defendants.

CIV. NO. 2:13-1835 WBS KJN

MEMORANDUM AND ORDER RE: MOTION
TO DISMISS FIRST AMENDED
COMPLAINT

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Plaintiff The Mountain Club Owner's Association brought this action against defendant Graybar Electric Company, Inc., arising out of an electrical fire at plaintiff's property located in Kirkwood, California. Defendant now moves to dismiss plaintiff's First Amended Complaint ("FAC") pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted.

I. Factual & Procedural History

Plaintiff is a homeowners' association and the owner of

1 property located at 1399 Kirkwood Meadows Drive in Kirkwood,
2 California ("the property"). (FAC ¶ 1 (Docket No. 26).)
3 Defendant allegedly supplied electric cable to a subcontractor
4 who installed it during the construction of the property. (Id. ¶
5 8-10.) On May 23, 2011, wires within the cable allegedly formed
6 an electric arc. (Id. ¶ 12.) Due to a lack of sufficient
7 insulation, the electric arc allegedly came into contact with the
8 wood frame of the property and set it ablaze. (Id.) This fire
9 allegedly caused over six million dollars in damage to the
10 property. (Id. ¶ 13.)

11 On September 5, 2013, plaintiff brought this action
12 against defendant and asserted claims under California law for
13 strict products liability and negligence. (Docket No. 2.) The
14 court granted defendant's motion to dismiss on January 14, 2014,
15 (Docket No. 23), and plaintiff timely amended its Complaint,
16 (Docket No. 26). Defendant now moves to dismiss the FAC pursuant
17 to Rule 12(b)(6) for failure to state a claim upon which relief
18 can be granted. (Docket No. 28.)

19 II. Discussion

20 On a motion to dismiss under Rule 12(b)(6), the court
21 must accept the allegations in the complaint as true and draw all
22 reasonable inferences in favor of the plaintiff. Scheuer v.
23 Rhodes, 416 U.S. 232, 236 (1974), overruled on other grounds by
24 Davis v. Scherer, 468 U.S. 183 (1984); Cruz v. Beto, 405 U.S.
25 319, 322 (1972). To survive a motion to dismiss, a plaintiff
26 must plead "only enough facts to state a claim to relief that is
27 plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S.
28 544, 570 (2007). This "plausibility standard," however, "asks

1 for more than a sheer possibility that a defendant has acted
2 unlawfully," and where a complaint pleads facts that are "merely
3 consistent with a defendant's liability," it "stops short of the
4 line between possibility and plausibility." Ashcroft v. Iqbal,
5 556 U.S. 662, 678 (2009) (quoting Twombly, 550 U.S. at 557).

6 "While a complaint attacked by a Rule 12(b)(6) motion
7 to dismiss does not need detailed factual allegations, a
8 plaintiff's obligation to provide the 'grounds' of his
9 entitle[ment] to relief' requires more than labels and
10 conclusions" Twombly, 550 U.S. at 555 (alteration in
11 original) (citations omitted). "Threadbare recitals of the
12 elements of a cause of action, supported by mere conclusory
13 statements, do not suffice." Iqbal, 556 U.S. at 678; see also
14 Iqbal, 556 U.S. at 679 ("While legal conclusions can provide the
15 framework of a complaint, they must be supported by factual
16 allegations.").

17 A. Strict Products Liability

18 Plaintiff's strict products liability claim is
19 predicated on the allegation that "[t]he subject cable was
20 defectively manufactured and unreasonably dangerous." (FAC ¶
21 18.) In order to state a manufacturing defect claim, a plaintiff
22 must "identify [and] explain how the [product] either deviated
23 from [the manufacturer's] intended result [or] design or how the
24 [product] deviated from other seemingly identical . . . models."
25 Lucas v. City of Visalia, 726 F. Supp. 2d 1149, 1155 (E.D. Cal.
26 2010) (Ishii, J.) (citing Barker v. Lull Eng'g Co., 20 Cal. 3d
27 413, 429 (1978)).

28 In its previous Order, the court granted defendant's

1 motion to dismiss because plaintiff's original Complaint failed
2 to "identify the particular type of cable or the alleged defect,
3 let alone explain how the cable was defective or how that defect
4 resulted in a fire on plaintiff's property." (Docket No. 23 at
5 3-4.) Plaintiff subsequently amended its complaint to allege
6 that the cable was defective and unreasonably dangerous because
7 it "lacked sufficient insulation on the electrical wiring." (FAC
8 ¶ 18.)

9 Despite defendant's insistence to the contrary, neither
10 the court's previous Order nor the cases defendant cites require
11 plaintiff to identify the cable's "brand name, trade name,
12 manufacturer's name, model number, manufacturing date, function,
13 appearance, [or] color." (Def.'s Mem. at 7 (Docket No. 28).)
14 Two of the cases cited by defendant involved manufacturing defect
15 claims alleging injuries based on an unidentified component part.
16 See Markel Am. Ins. Co. v. Pac. Asian Enters., Civ. No. 07-5749
17 SC, 2008 WL 2951277, at *6 (N.D. Cal. July 28, 2008) (dismissing
18 a products liability complaint alleging only that "the Vessel and
19 certain components thereof were defective, deficient, and/or
20 otherwise not fit for the purpose intended"); Fontalvo v.
21 Sikorsky Aircraft Corp., Civ. No. 13-331 GPS KSC, 2013 WL 440137,
22 at *3-4 (S.D. Cal. Aug. 15, 2013) (dismissing a strict product
23 liability claim where plaintiff failed to identify which
24 component part allegedly caused a helicopter to crash). A third
25 case, Smith v. Adobe Systems, Inc., is also inapposite; the
26 plaintiff in that case alleged a design defect, rather than a
27 manufacturing defect, and failed to identify which of Adobe's
28 many software programs resulted in her computer being hacked.

1 See Civ. No. 11-1480, 2011 WL 4404152, at *2 (N.D. Cal. Sept. 21,
2 2011).

3 Here, by contrast, plaintiff has identified the
4 location and function of the cable, the subcontractor who
5 installed it, and the particular defect in the construction of
6 the cable that allegedly caused the electrical fire. (See FAC ¶
7 12.) It is immaterial that plaintiff has not identified the
8 manufacturer of the cable or specific defects in the
9 manufacturing process. Currier v. Stryker Co., Civ. No. 2:11 JAM
10 EFB, 2012 WL 1037940 (E.D. Cal. Mar. 27, 2012), is illustrative.
11 There, the plaintiff alleged that he received a prosthetic femur
12 manufactured by the defendant, and that the prosthesis he
13 received was defective because it contained a weak spot at the
14 site where it broke. See id. at *1. The court held that the
15 plaintiff had stated a manufacturing defect claim because he
16 identified a “manufacturing flaw that caused [the prosthesis] to
17 have a weak spot and suddenly break.” Id. at *3. The court
18 specifically rejected the suggestion that the plaintiff must
19 “offer an extensive explanation of the manufacturing process” or
20 how that process resulted in a defective prosthesis; as the court
21 noted, that “level of detail is not necessary at this stage of
22 the pleadings.” Id.

23 As in Currier, plaintiff has identified a specific
24 defect in the manufacture of the electric cable--insufficient
25 insulation--and alleged that this defect exposed the copper
26 wiring, resulted in an electric arc, and set a nearby wood frame
27 ablaze. (FAC ¶¶ 12, 18.) Manufacturers of electric cables
28 presumably design those cables so that they do not ignite nearby

1 wooden structures. The suggestion that plaintiff "cannot
2 plausibly claim that the cable deviated from its intended
3 design," (Def.'s Mem. at 7), is absurd, especially given that the
4 parties have not yet had the opportunity to conduct discovery.
5 Cf. Currier, 2012 WL 1037940 at *3.

6 In short, plaintiff has identified the alleged defect
7 in the cable with a sufficient degree of specificity to allege
8 that the cable deviated from the manufacturer's intended result.
9 See Lucas, 726 F. Supp. 2d at 1155. Accordingly, the court must
10 deny defendant's motion to dismiss this claim.

11 B. Negligence

12 A plaintiff injured by an allegedly defective product
13 may also seek to recover in negligence. See Merrill v. Navegar,
14 Inc., 26 Cal. 4th 465, 479 (2001). "In order to establish
15 negligence under California law, a plaintiff must establish four
16 required elements: (1) duty; (2) breach; (3) causation; and (4)
17 damages." Illeto v. Glock, Inc., 349 F.3d 1191, 1203 9th (Cir.
18 2003) (citing Martinez v. Pac. Bell, 225 Cal. App. 3d 1557 (1st
19 Dist. 1990)).

20 At oral argument, plaintiff clarified that its
21 negligence claim was premised solely on a theory of negligent
22 failure to warn.¹ Under California law, distributors of a

23 ¹ Even if the court determined that plaintiff also
24 attempted to allege a negligent distribution theory, plaintiff
25 has not stated a claim under that theory. Under a negligent
26 distribution theory, a distributor owes a duty of care to its
27 customers only if it "knows or has reason to know that the
28 product might be dangerous." In re Mattel, Inc., 588 F. Supp. 2d
111, 1118 (C.D. Cal. 2008); see also Restatement of Torts (2d) §
402 ("A seller of a chattel manufactured by a third person, who
neither knows nor has reason to know that it is likely to be,

1 product do not have an absolute duty to warn of defects in that
2 product; rather, they have a duty to warn only of risks that a
3 reasonably prudent distributor knew or should have known about.
4 Carlin v. Superior Court, 13 Cal. 4th 1104, 1113 (1996).

5 Here, while plaintiff has sufficiently alleged that the
6 cable defendant distributed was defective, it has not alleged
7 that defendant knew or should have known that the cable lacked
8 sufficient insulation or was otherwise defective and has not
9 alleged any facts that permit such an inference. Even if
10 plaintiff's failure to allege defendant's knowledge of the
11 alleged defect is immaterial under a strict liability theory,
12 that failure is fatal to its claim for negligence. See id. at
13 1112 (holding that absent allegations that a reasonable
14 distributor would know of the alleged defect, a distributor will
15 "escape liability under negligence principles"). Accordingly,
16 the court must grant defendant's motion to dismiss plaintiff's
17 negligence claim.

18 IT IS THEREFORE ORDERED that defendant's motion to
19 dismiss is GRANTED with respect to plaintiff's negligence claim
20 and DENIED with respect to plaintiff's strict products liability
21 claim.

22 Plaintiff has twenty days from the date this Order is
23 signed to file an amended complaint, if it can do so consistent
24 with this Order.

25 dangerous, is not liable in . . . negligence . . . because of his
26 failure to discover the danger by an inspection or test of the
27 chattel before distributing it." Because plaintiff has not
28 alleged any facts suggesting that defendant knew or should have
known of the allegedly deficient insulation, it has not stated a
claim for negligent distribution.

1 Dated: March 25, 2014



WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE

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