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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOCELYN J. OVERHOLT, an individual,

Plaintiff,

v.

CARMAX AUTO SUPERSTORES CALIFORNIA, LLC, a Virginia Limited Liability Company; and DOES 1 through 75, inclusive,

Defendants.

2:13-cv-02009-GEB-AC

ORDER GRANTING IN PART AND DENYING IN PART MOTION TO DISMISS; AND GRANTING IN PART AND DENYING IN PART MOTION TO STRIKE

Defendant Carmax Auto Superstores, LLC moves under Federal Rule of Civil Procedure ("Rule") 12(b)(6) for dismissal of Plaintiff's Complaint. Plaintiff alleges in the Complaint violations of section 11713.18(a)(6) of the California Vehicle Code, the Consumers Legal Remedies Act ("CLRA"), the Unfair Competition Law ("UCL"), and common law fraud. Defendant also moves under Rule 12(f) for an order striking certain allegations contained in the Complaint. Plaintiff opposes both motions.

1 **I. FACTUAL ALLEGATIONS AND CLAIMS**

2 The motions concern the following factual allegations
3 in the Complaint. "Plaintiff was shopping for a small SUV: and
4 saw CarMax's television advertisements." (Compl. ¶ 8.) "Car Max
5 describes the vehicles it sells as 'CarMax Quality Certified,'
6 and describes the inspection it performs on vehicles as a
7 'Certified Quality Inspection,' or 'CQI.'" (Id. ¶ 7.) "Plaintiff
8 went to CarMax in Roseville, CA[,] [where] [t]here were stickers
9 representing CarMax's CQI on the windows of the vehicles she
10 looked at." (Id. ¶ 8.) "Plaintiff relied on the CarMax
11 advertisements she had seen on TV touting the benefits of buying
12 a CarMax 'Certified' vehicle, and the CQI information on the
13 stickers posted on the vehicles on the CarMax lot, in deciding to
14 buy a car from CarMax." (Id. ¶ 9.)

15 "Plaintiff . . . bought the 2010 Jeep Liberty, . . .
16 that is the subject of this litigation." (Id. ¶ 10.) After
17 "Plaintiff agreed to buy the vehicle," "Plaintiff was . . .
18 provided with [a] . . . []CQI[] Certificate," which was "a
19 generic list of components that were purportedly inspected." (Id.
20 ¶¶ 13, 14.) The CQI certificate did not "disclos[e] the results
21 of [CarMax's] inspection [of Plaintiff's car]." (Id. ¶ 14.)

22 "It is CarMax's . . . policy that, during CarMax's
23 'CQI[]' inspection, a [different document called the] 'CQI[]
24 Checklist' is filled out[,] [which] is the authentic record of
25 the . . . inspection. But it it[sic] CarMax's . . . policy to
26 destroy the . . . Checklist." (Id. ¶ 15.) "On information and
27 belief, the . . . Checklist for Plaintiff's vehicle was
28 destroyed." (Id.)

1 "[Plaintiff's] vehicle was subject to repair six times
2 within the first sixteen months she owned the vehicle." (Id. ¶
3 22.) "Plaintiff also learned that the vehicle was a prior
4 rental[;] [however, CarMax had not] "clearly identif[ied] the
5 vehicle's previous rental status on the vehicle and/or in its
6 advertisements." (Id. ¶ 29.)

7 "Plaintiff . . . requested CarMax repurchase her
8 vehicle . . . [.] CarMax refused, and offered her a . . . trade-
9 in offer instead." (Id. ¶ 22.)

10 "[Defendant] violated the CLRA" and "'engaged in . . .
11 unlawful' business acts and/or practices [proscribed by the UCL]
12 by":

13 (1) Misrepresenting that the vehicle had
14 been subject to a thorough 125-point
15 inspection; (2) Representing that the
16 vehicle was "Certified," despite failing
17 to provide a completed inspection report
18 indicating all the components inspected
19 prior to sale; (3) Failing to provide an
20 inspection report for the vehicle at any
21 time that complies with California law;
22 (4) Failing to disclose the defective
23 nature of the vehicle; (5) Calling the
24 vehicle "Certified" when CarMax does not
25 oversee, supervise and/or enforce any
26 "certification" standards; (6) Using the
27 terms "Certified," "Certify," and/or
28 similar terms in the promotion, sales
and advertising of the vehicle, despite
failing to provide a completed
inspection report indicating all the
components inspected prior to sale; (7)
On information and belief, destroying
the CQI[] Checklist after the CQI[]
inspection took place in violation of 18
C.C.R. 22 272.00 and 18 C.C.R. 272.02;
(8) Violating Vehicle Code § 11713.18;
(9) Selling a vehicle as "Certified"
that would not pass a legitimate
certification inspection; (10) Selling a
vehicle as "Certified" that is in need
of substantial repair; (11) Actively
concealing and suppressing the results

1 of the vehicle inspection when it has a
2 duty to disclose those results; and (12)
3 Failing to disclose the prior rental
4 status of the vehicle.

5 (Id. ¶¶ 40, 50.)

6 "CarMax [also] fraudulently misrepresented that the
7 vehicle was a 'Certified' vehicle when it was not" and "actively
8 concealed and suppressed the results of its vehicle inspection."

9 (Id. ¶¶ 57, 61.)

10 **II. DISMISSAL MOTION**

11 **a. Legal Standard**

12 Decision on a Rule 12(b)(6) dismissal motion requires
13 determination of "whether the complaint's factual allegations,
14 together with all reasonable inferences, state a plausible claim
15 for relief." United States ex rel. Cafasso v. Gen. Dynamics C4
16 Sys., Inc., 637 F.3d 1047, 1054 (9th Cir. 2011) (citing Ashcroft
17 v. Iqbal, 556 U.S. 662, 678-79 (2009)). "A claim has facial
18 plausibility when the plaintiff pleads factual content that
19 allows the court to draw the reasonable inference that the
20 defendant is liable for the misconduct alleged." Iqbal, 556 U.S.
21 at 678 (citing Bell Atlantic v. Twombly, 550 U.S. 544, 556
22 (2007)).

23 When determining the sufficiency of a claim under Rule
24 12(b)(6), "[w]e accept factual allegations in the complaint as
25 true and construe the pleadings in the light most favorable to
26 the non-moving party." Fayer v. Vaughn, 649 F.3d 1061, 1064 (9th
27 Cir. 2011) (internal quotation marks omitted). However, this
28 tenet does not apply to "legal conclusions . . . cast in the form
of factual allegations." Id. (internal quotation marks omitted).

1 "Therefore, conclusory allegations of law and unwarranted
2 inferences are insufficient to defeat a motion to dismiss." Id.
3 (internal quotation marks omitted); see also Iqbal, 556 U.S. at
4 678 (quoting Twombly, 550 U.S. at 555) ("A pleading that offers
5 'labels and conclusions' or 'a formulaic recitation of the
6 elements of a cause of action will not do.'")

7 **b. CLRA and UCL Claims**

8 Defendant argues Plaintiff's CLRA claims should be
9 dismissed since Plaintiff fails to allege which subsections of
10 the CLRA apply to each alleged act of wrongdoing. However, "[a]
11 complaint need not identify the statutory . . . source of the
12 claim raised in order to survive a motion to dismiss." Alvarez v.
13 Hill, 518 F.3d 1152, 1157 (9th Cir. 2008). Therefore, this
14 portion of the dismissal motion is denied.

15 Defendant also seeks dismissal of Plaintiff's CLRA and
16 UCL claims in which Plaintiff alleges Defendant sold her a car
17 labeled as certified without providing a completed vehicle
18 inspection report prior to sale, thereby violating section
19 11713.18(a)(6) of the California Vehicle Code. Specifically,
20 Defendant argues these claims are not actionable under the CLRA
21 and UCL since "[P]laintiff cannot show 'actual damage.'" (Def.'s
22 Mot. 12:14.)

23 Plaintiff alleges in the Complaint:

24 9. Plaintiff relied on . . . the CQI
25 information on the stickers posted on the
26 vehicles on the CarMax lot, in deciding to
buy a car from CarMax.

27

28 13. CarMax . . . label[led] the vehicle
"Certified" without providing a completed

1 inspection report prior to sale.

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3 19. . . . Plaintiff paid for a Certified 2010
4 Jeep Liberty. What Plaintiff received was an
5 uncertified 2010 Jeep Liberty[.] Thus, a
6 component of Plaintiff's damages is the
7 difference in value between a Certified 2010
8 Jeep Liberty and an uncertified 2010 Jeep
9 Liberty. Plaintiff would have paid less
10 and/or not purchased the vehicle if CarMax
11 had not represented that the vehicle was
12 "Certified."

13 These allegations are sufficient to allege standing
14 since Plaintiff alleges that Defendant's misrepresentation of the
15 certified status of the vehicle "induced [her] to buy a product
16 [s]he would not have purchased or to spend more than [s]he
17 otherwise would have." Hinojos v. Kohl's Corp., 718 F.3d 1098,
18 1102 (9th Cir. 2013). Therefore, this portion of Defendant's
19 motion is denied.

20 Defendant further seeks dismissal of the CLRA and UCL
21 claims in which Plaintiff alleges Defendant violated California
22 Vehicle Code section 11713.18(a)(6), arguing that Plaintiff
23 inadequately alleges these claims.

24 Section 11713.18(a)(6) prescribes in pertinent part:

25 It is a violation of this code for the holder
26 of any dealer's license issued under this
27 article to advertise for sale or sell a used
28 vehicle as "certified" or use any similar
descriptive term in the advertisement or the
sale of a used vehicle that implies the
vehicle has been certified to meet the terms
of a used vehicle certification program if
. . . [p]rior to sale, the dealer fails to
provide the buyer with a completed inspection
report indicating all the components
inspected.

29 Cal. Veh. Code § 11713.18(a)(6) (emphasis added). Since Plaintiff
30 alleges in her Complaint that Defendant's "'CQI' Certificate [] .

1 . . was not provided to Plaintiff before she agreed to buy the
2 vehicle," this portion of the dismissal motion is denied. (Compl.
3 ¶ 13.)

4 Defendant also seeks dismissal of Plaintiff's CLRA and
5 UCL claims which are based on the following allegations, arguing
6 in essence that Plaintiff fails to allege these claims with the
7 particularity required by Rule 9(b):

8 CarMax violated the CLRA [and UCL] by: (1)
9 Misrepresenting that the vehicle had been
subject to a thorough 125-point inspection; .
10 . . [2] Calling the vehicle "Certified" when
CarMax does not oversee, supervise and/or
11 enforce any "certification" standards; . . .
[3] Selling a vehicle as "Certified" that
12 would not pass a legitimate certification
inspection

13 (Compl. ¶¶ 40, 50.)

14 Rule 9(b) prescribes in pertinent part: "In alleging
15 fraud or mistake, a party must state with particularity the
16 circumstances constituting fraud or mistake." Fed. R. Civ. P.
17 9(b). "[T]he complaint must allege the time, place, and content
18 of the fraudulent representation; conclusory allegations do not
19 suffice." Shroyer v. New Cingular Wireless Servs., Inc., 622 F.3d
20 1035, 1042 (9th Cir. 2010) (citing Moore v. Kayport Package
21 Express, Inc., 885 F.2d 531, 540 (9th Cir. 1989)). Further, Rule
22 9(b) requires "[t]he plaintiff [to] set forth what is false or
23 misleading about a statement, and why it is false." Vess v. Ciba-
24 Geigy Corp. USA, 317 F.3d 1097, 1106 (9th Cir. 2003).

25 Plaintiff's allegations concerning Defendant's alleged
26 misrepresentation that Plaintiff's vehicle "had been subject to a
27 . . . 125-point inspection," (Compl. ¶¶ 40, 50), fail to plead
28 with particularity the "time [and] place" of this alleged

1 misrepresentation. Shroyer, 622 F.3d at 1042. (See also Compl. ¶
2 9.) Therefore, this portion of the dismissal motion is granted.

3 Furthermore, Plaintiff's allegations that Defendant
4 "[c]all[ed] the vehicle 'Certified' [without] oversee[ing],
5 supervis[ing] and/or enforce[ing] any 'certification' standards,"
6 are conclusory and therefore do not satisfy Rule 9(b). (Compl. ¶¶
7 40, 50; see also id. ¶ 26.) Accordingly, this portion of the
8 dismissal motion is granted.

9 Moreover, Plaintiff's allegations that Defendant
10 "[sold] a vehicle as 'Certified' that would not pass a legitimate
11 certification inspection," fail to set forth in a nonconclusory
12 fashion why Defendant's representation was false since Plaintiff
13 does not allege what constitutes a "legitimate certification
14 inspection" and why Plaintiff's vehicle would not have passed the
15 referenced inspection. (Id. ¶¶ 40, 50.) Therefore, this portion
16 of the dismissal motion is granted.

17 Defendant further seeks dismissal of Plaintiff's CLRA
18 and UCL claims that are predicated on the allegation that
19 Defendant "[f]ail[ed] to disclose the prior rental status of the
20 vehicle." (Compl. ¶¶ 40, 50.) Defendant argues that "plaintiff
21 pleads no facts regarding this issue anywhere in the Complaint,"
22 and that Plaintiff lacks standing to bring these claims since
23 Plaintiff fails to plausibly plead "'actual damage' resulting
24 from the purported nondisclosure." (Def.'s Mot. 17:2-4; 7:5-7.)
25 Plaintiff's Complaint contains the following allegations
26 concerning these claims:

27 28. After purchasing the vehicle, Plaintiff .
28 . . learned that the vehicle was a prior
rental . . . 13 California Code of

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Regulations [s]ection 260.02(b) provides that rental vehicles "shall be clearly identified as such if the previous status is known to the seller."

. . . .

29. Thus, a selling dealer is required to clearly identify the vehicle's previous rental status on the vehicle and/or in its advertisements. CarMax did not.

30. CarMax violated [13] Cal. Code Regs. § 260.02(b)

31. . . . [N]either the Buyer's Guide nor CarMax's advertisements disclosed the prior rental history of the vehicle. Nothing at all was done to "clearly identify" the rental car status.

. . . .

41. . . . Plaintiff was damaged by Car Max's violations. Plaintiff paid for a Certified and non-rental 2010 Jeep Liberty. Plaintiff received an uncertified and prior rental 2010 Jeep Liberty. Thus a component of Plaintiff's damages is the difference in value between a Certified/non-rental 2010 Jeep Liberty and an uncertified/prior rental 2010 Jeep Liberty.

(Compl. ¶¶ 28, 29, 30, 31, 41.)

These allegations adequately allege that Defendant failed to disclose the vehicle's prior rental history and thereby caused Plaintiff damages. Therefore, this portion of Defendant's motion is denied.

c. Common Law Fraud Claims

Defendant seeks dismissal of Plaintiff's common law fraud claim, in which she alleges that Defendant misrepresented that her vehicle was certified. Specifically, Defendant argues that Plaintiff has not alleged the circumstances of the fraud with particularity; and has not pled facts showing that Defendant

1) made a misrepresentation, 2) knew that any statement it made was false, and 3) intended to defraud Plaintiff.

"The elements of a cause of action for fraud in California [include, inter alia,]: (a) misrepresentation . . . ; (b) knowledge of falsity (or 'scienter'); (c) intent to defraud, i.e., to induce reliance;" Davis v. HSBC Bank Nevada, N.A., 691 F.3d 1152, 1163 (9th Cir. 2012) (quoting Kearns v. Ford Motor Co., 567 F.3d 1120, 1126 (9th Cir. 2009)) (emphasis in original) (internal quotation marks omitted). "While the factual circumstances of the fraud itself must be alleged with particularity, the state of mind -- or scienter -- of the defendants may be alleged generally." Odom v. Microsoft Corp., 486 F.3d 541, 554 (9th Cir. 2007).

Plaintiff alleges in the Complaint:

7. . . . CarMax describes the vehicles it sells as "CarMax Quality Certified," and describes the inspection it performs on vehicles as a "Certified Quality Inspection," or "CQI."

. . . .

9. Plaintiff relied on . . . CQI information on the stickers posted on the vehicles on the CarMax lot, in deciding to buy a car from CarMax.

. . . .

13. CarMax . . . label[led] the vehicle "Certified" without providing a completed inspection report prior to sale.

. . . .

24. Since the Car Buyer's Bill of Rights [which includes section 11713.18(a)(6)] was passed, . . . CarMax has known that it is illegal to use the term "certified" or any similar descriptive term in its sales or advertising if, "Prior to sale, the

1 dealership fails to provide the buyer with a
2 completed inspection report indicating all
3 the components inspected." CarMax opposed the
4 passage of the Car Buyer's Bill of Rights .

5
6 25. With full knowledge of this law, CarMax's
7 policies require each California CarMax
8 dealership to violate the law in every sale,
9 including the sale of the vehicle to
10 Plaintiff.

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12 28. . . . CarMax markets its cars as
13 certified to increase car sales, to increase
14 the perceived value of its vehicles, and to
15 make increased profits from consumers,
16 including Plaintiff. CarMax's policies
17 regarding the use of the term "Certified" are
18 instituted at the highest corporate levels,
19 with full knowledge that its use of the term
20 violates California law and defrauds and
21 cheats California consumers.

22 (Compl. ¶¶ 7, 9, 13, 24, 25, 28.)

23 These allegations are sufficient to withstand this
24 portion of the dismissal motion, and therefore it is denied. Cf.
25 Johnson v. Wal-Mart Stores, Inc., 544 F. App'x 696, 698 (9th Cir.
26 2013) (finding Plaintiff satisfied Rule 9(b) where she alleged
27 that retailer posted a sign which "implicitly misrepresented to
28 her that it was required by law to charge [a] nine dollar
'recycling fee[,]'. . . charg[ed] the fee . . . [and] 'actively
concealed' [that the fee was not required by California law].")

Defendant also seeks dismissal of Plaintiff's common
law fraudulent concealment claim, arguing that it had no duty to
disclose defects in Plaintiff's vehicle.

"[A] claim for fraudulent concealment requires that .
. . . the defendant must have been under a duty to disclose the
fact [at issue] to the plaintiff." Davis, 691 F.3d at 1163

1 (quoting Marketing West, Inc. v. Sanyo Fisher (USA) Corp., 6 Cal.
2 App. 4th 603, 613 (1992)) (internal quotation marks omitted).

3 Plaintiff alleges: "Vehicle Code § 11713.18[(a)(6)]
4 creates a duty to the dealership to disclose the results of its
5 vehicle inspection." (Compl. ¶ 16; see also id. ¶ 64.) However,
6 Plaintiff has not shown that section 11713.18(a)(6)'s requirement
7 that dealers "provide the buyer with a completed inspection
8 report indicating all the components inspected," requires
9 Defendant to disclose the results of the vehicle inspection. Cal.
10 Veh. Code § 11713.18(a)(6). Therefore, this portion of the
11 dismissal motion is granted.

12 **d. Punitive Damages Claim**

13 Defendant also argues Plaintiff's punitive damages
14 claim should be dismissed because Plaintiff has not adequately
15 alleged that Defendant is guilty of oppression, fraud, or malice
16 as required by section 3294(a) of the California Civil Code.

17 Section 3294(a) prescribes in pertinent part:

18 In an action for the breach of an obligation
19 not arising from contract, where it is proven
20 by clear and convincing evidence that the
21 defendant has been guilty of oppression,
22 fraud, or malice, the plaintiff . . . may
23 recover damages for the sake of example and
24 by way of punishing the defendant.

25 Cal. Civ. Code § 3294(a).

26 However, since Plaintiff's fraud claim survives
27 Defendant's dismissal motion, this portion of the motion is
28 denied. See Tamburri v. Suntrust Mortgage, Inc., 875 F. Supp. 2d
1009, 1028 (N.D. Cal. 2012) ("Plaintiff has stated a claim for
fraud which would, if successful, support her request for
punitive damages.")

1 Defendant also argues that Plaintiff fails to properly
2 allege a punitive damages claim under section 3294(b) since
3 Plaintiff fails to "allege specific acts of specific corporate
4 officers with power to bind the corporation . . . or ratification
5 . . . [of] corporate employees['] [wrongful conduct]." (Def.'s
6 Mot. 20:26-21:3.)

7 Section 3294(b) prescribes in pertinent part:

8 An employer shall not be liable for damages
9 pursuant to subdivision (a), based upon acts
10 of an employee of the employer, unless the
11 employer . . . authorized or ratified the
12 wrongful conduct for which the damages are
13 awarded or was personally guilty of
14 oppression, fraud, or malice. With respect to
a corporate employer, the . . .
authorization, ratification or act of
oppression, fraud, or malice must be on the
part of an officer, director, or managing
agent of the corporation.

15 Cal. Civ. Code § 3294(b).

16 Plaintiff alleges: "[a]ll acts of the dealership and
17 corporation's employees . . . were authorized or ratified by the
18 owner or managing agent of CarMax[,]" and "CarMax's policies
19 regarding the use of the term 'Certified' are instituted at the
20 highest corporate levels, with full knowledge that its use of the
21 term violates California law and defrauds and cheats California
22 consumers." (See Compl. ¶¶ 4, 23.)

23 These allegations are sufficient to withstand this
24 portion of the motion, and therefore it is denied. See Tamburri
25 v. Suntrust Mortgage, Inc., C-11-2899 EMC, 2012 WL 3582924, at *3
26 (N.D. Cal. Aug. 20, 2012) (denying motion for judgment on the
27 pleadings on punitive damages claim where Plaintiff alleged "that
28 corporate defendants acted 'through [their] authorized officers,

1 directors, agents, servants, and/or employees, acting within the
2 course and scope of their duties, [and] that the act or omission
3 was authorized and/or ratified by the business entity.'" "
4 (alteration in original)); Taheny v. Wells Fargo Bank, N.A., CIV.
5 S-10-2123-LKK, 2011 WL 1466944, at *5 (E.D. Cal. Apr. 18, 2011)
6 (denying motion to strike punitive damages claim where Plaintiff
7 alleged "defendants consented, acquiesced, approved and ratified
8 the behavior and conduct of its employees . . . in causing harm
9 to plaintiffs."); Brownstein v. Am. Airlines, C-05-3435 JCS, 2005
10 WL 2988720 (N.D. Cal. Nov. 7, 2005) ("[T]he allegations . . . that
11 all defendants were acting within the course and scope of their
12 employment 'with the advance knowledge, acquiescence or
13 subsequent ratification of each and every remaining defendant' --
14 are sufficient at the pleading stage to support a claim for
15 punitive damages under § 3294(b).")

16 **III. MOTION TO STRIKE**

17 Defendant also seeks an order striking certain
18 allegations in the Complaint under Rule 12(f), arguing, inter
19 alia, that several of Plaintiff's allegations are redundant. Rule
20 12(f) prescribes in pertinent part: "The court may strike from a
21 pleading . . . any redundant . . . matter." Fed. R. Civ. P.
22 12(f).

23 Defendant argues in a conclusory manner the following
24 allegations are redundant:

25 [CarMax violated the CLRA and UCL by] . . .

26 [1] Representing that the vehicle was
27 'Certified.' despite failing to provide a
28 completed inspection report indicating all
the components inspected prior to sale;

1 [2] Failing to provide an inspection report
2 for the vehicle at any time that complies
with California law;

3 [3] Failing to disclose the defective nature
4 of the vehicle; . . .

5 [4] Using the terms "Certified," "Certify,"
6 and/or similar terms in the promotion, sales
7 and advertising of the vehicle, despite
failing to provide a completed inspection
report indicating all the components
inspected prior to sale; . . .

8 [5] Selling a vehicle as "Certified" that is
9 in need of substantial repair;

10 [6] Actively concealing and suppressing the
11 results of the vehicle inspection when it has
12 a duty to disclose those results.

13 (Compl. ¶¶ 40, 50). Since Defendant has not shown these
14 allegations are redundant, this portion of the motion is denied.

15 Defendant also moves to strike the following allegation
16 in the Complaint, arguing, inter alia, that it is redundant:
17 "[Defendant violated the CLRA and UCL by]: . . . Violating
18 Vehicle Code § 11713.18." (Compl. ¶¶ 40, 50.) Although the
19 referenced allegation does not specify which subsection of
20 section 11713.18 Defendant allegedly violated, a review of other
21 allegations in the Complaint indicates that Plaintiff alleges
22 Defendant violated subsection (a)(6) of this statute. Since the
23 Complaint contains multiple allegations concerning Defendant's
24 alleged violation of this subsection, the allegation is
25 redundant. (See e.g., Compl. ¶¶ 6, 13, 16, 40, 50.) Therefore,
26 this portion of the motion is granted.

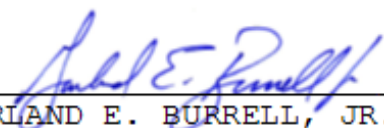
27 Defendant further seeks to have the following
28 allegation in the Complaint stricken on the grounds that it is
"redundant and immaterial": "[Defendant violated the CLRA and UCL

1 by] . . . On information and belief, destroying the CQI[]
2 Checklist after the CQI[] inspection took place in violation of
3 13 C.C.R. 272.00 and 13 C.C.R. 272.02." (Def.'s Mot. to Strike,
4 5:1-7, 8:10-16; Compl. ¶¶ 40, 50.) However, the essence of
5 Defendant's argument is that this allegation fails to state a
6 claim. Since "Rule 12(f) cannot be read . . . in a manner that
7 allow[s] litigants to use it as a means to dismiss some or all of
8 a pleading," this portion of the motion is denied. Whittlestone,
9 Inc. v. Handi-Craft Co., 618 F.3d 970, 974 (9th Cir. 2010).

10 **IV. CONCLUSION**

11 For the stated reasons, Defendant's motion to dismiss
12 is granted in part and denied in part. However, Plaintiff is
13 granted fourteen (14) days from the date on which this order is
14 filed to file an amended complaint addressing deficiencies in any
15 dismissed claim. Plaintiff is notified that a dismissal with
16 prejudice could be entered under Rule 41(b) if Plaintiff fails to
17 file an amended complaint within the prescribed time period.
18 Further, the motion to strike is granted in part and denied in
19 part.

20 Dated: April 7, 2014

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23 _____
24 GARIAND E. BURRELL, JR.
25 Senior United States District Judge
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