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United States District Court
Northern District of California

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

KRYSTAL WALLACE, individually, and
on behalf of a class of similarly situated
individuals,

Plaintiff,

v.

SHARKNINJA OPERATING, LLC, a
Massachusetts limited liability company,

Defendant.

Case No. 18-cv-05221-BLF

**ORDER GRANTING IN PART,
WITHOUT LEAVE TO AMEND, AND
DENYING IN PART MOTION TO
DISMISS THIRD AMENDED
COMPLAINT**

[Re: ECF 69]

Defendant SharkNinja Operating, LLC (“SharkNinja”) has filed a motion to dismiss in part the third amended complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). The motion is opposed by Plaintiff Krystal Wallace (“Wallace”). The Court previously determined that the motion is appropriate for decision without oral argument and vacated the hearing. See Order Vacating Hearing, ECF 79.

For the reasons discussed below, the motion is GRANTED IN PART, WITHOUT LEAVE TO AMEND, and DENIED IN PART.

I. BACKGROUND

This putative class action arises from an alleged design defect in blenders manufactured and distributed by SharkNinja. The blenders in question have a unique “Stacked Blade Assembly” consisting of multiple sharp blades mounted at different heights inside the blender pitcher. The Stacked Blade Assembly is separate from, and does not lock to, the blender base, pitcher, or lid. Wallace’s definition of the alleged defect in this blender design has evolved over the life of this lawsuit, as described below.

1 Original Compliant and First Amended Complaint

2 Wallace alleged in both her original complaint and first amended complaint (“FAC”) that
3 the blenders are defective because the Stacked Blade Assembly does not lock into place, such that
4 consumers are at an increased risks of lacerations during use and cleaning of the blender. See
5 Compl. ¶ 2, ECF 1; FAC ¶ 2, ECF 20. There is no dispute that this is by design – the Stacked
6 Blade Assembly is separate from, and does not lock to, the blender base, pitcher, or lid. See
7 Compl. ¶¶ 3-4; FAC ¶¶ 3-4.

8 SharkNinja successfully moved to dismiss the FAC under Rule 12(b)(6), asserting that
9 Wallace cannot maintain a lawsuit simply because she would prefer a different design in which the
10 blade assembly locks into place. See Mot. to Dismiss FAC, ECF 23. At the motion hearing, the
11 Court advised Wallace that more specificity was required as to the nature of the defect. The Court
12 also noted that the FAC excluded from the class anyone who suffered personal injuries from the
13 blender, but it also alleged that Wallace was cut by the blender. The Court made an oral ruling
14 dismissing the FAC in its entirety with leave to amend, and issued a brief written order. See Order
15 Memorializing Oral Ruling, ECF 47.

16 Second Amended Complaint

17 Wallace filed a second amended complaint (“SAC”) refining her defect allegations as
18 follows: “the Ninja Stacked Blade Blenders contain one or more design defects whereby the
19 Stacked Blade Assembly improperly dislodges while blending (the “Stacked Blade Defect” or
20 “Defect”). SAC ¶ 2 (emphasis added), ECF 45. Wallace alleged that “the Stacked Blade Defect
21 can result in the Stacked Blade Assembly cracking, shattering, or otherwise damaging the
22 blending pitcher when it detaches while blending.” Id. (emphasis added).

23 SharkNinja again moved to dismiss under Rule 12(b)(6), but this time with only limited
24 success. The Court determined that although “[e]arlier versions of Wallace’s complaint were not
25 clear as to what constituted the alleged defect,” that problem had “been remedied.” See Order
26 Granting in Part Mot. to Dismiss SAC at 9, ECF 67. The Court found that Wallace had clarified
27 that she was not alleging merely that a locked blade assembly would be a safer alternative to the
28 subject blenders’ design, but was alleging that the Stacked Blade Assembly dislodges in an unsafe

1 manner during normal operation of the blenders. See *id.* at 10. The Court rejected SharkNinja’s
2 argument that Wallace must identify the cause of the defect, stating “Wallace alleges that the
3 mechanism holding the Stacked Blade Assembly in place during blending is flawed, resulting in
4 the Stacked Blade Assembly coming dislodged.” *Id.* at 11. The Court concluded that, “[h]aving
5 pointed SharkNinja to the defective component of the blender, Wallace need not plead whether the
6 shaft is not quite long enough, or the materials from which [the shaft is] made were not strong
7 enough, or any particular cause of the defect.” *Id.* (quotation marks omitted).

8 In light of Wallace’s clarification regarding the alleged defect, the Court found that most
9 claims in the SAC were adequately alleged. The Court denied SharkNinja’s motion to dismiss
10 Claim 2 for violation of California’s unfair competition law (“UCL”), Cal. Bus. & Prof. Code §
11 17200 *et seq.*, to the extent that claim is brought under the unlawful prong; Claim 3 for breach of
12 implied warranty under the Song-Beverly Consumer Warranty Act, Cal. Civ. Code §§ 1792 and
13 1791.1, *et seq.*; Claim 4 for breach of implied warranty under the Magnuson-Moss Warranty Act,
14 15 U.S.C. § 2303 *et seq.*; and Claim 5 for unjust enrichment. See Order Granting in Part Mot. to
15 Dismiss SAC at 26, ECF 67.

16 The Court found the SAC lacking, however, with respect to Claim 1 for violation of
17 California’s Consumers Legal Remedies Act (“CLRA”), Cal. Civ. Code § 1750, *et seq.*; Claim 2
18 for violation of the UCL to the extent brought under the fraud and unfair prongs; and the claim for
19 injunctive relief. See Order Granting in Part Mot. to Dismiss SAC at 26. The Court dismissed
20 Claim 1, portions of Claim 2, and the claim for injunctive relief, with leave to amend. See *id.*

21 Third Amended Complaint

22 The operative third amended complaint (“TAC”) reiterates the definition of the defect set
23 forth in the SAC: “the Ninja Stacked Blade Blenders contain one or more design defects whereby
24 the Stacked Blade Assembly improperly dislodges while blending (the “Stacked Blade Defect” or
25 “Defect”).” TAC ¶ 2, ECF 68. The TAC also repeats the allegation that “the Stacked Blade
26 Defect can result in the Stacked Blade Assembly cracking, shattering, or otherwise damaging the
27 blending pitcher when it detaches while blending.” *Id.* However, the TAC contains the following
28 new allegations regarding the cause of the Stacked Blade Defect:

1 On information and belief, this defect occurs as a result of over-pressurization in
2 the pitcher while blending thicker materials, such as ice or frozen fruit, that results
3 in the blade assembly pushing the lid up such that the stacked blade assembly
4 dislodges and/or the pitcher exploding from the pressure. This issue is exacerbated
5 by SharkNinja's use of plastic components, including the shaft of the Stacked
6 Blade Assembly, the entirety of the pitcher and lid, and the blending gears, which
wear down quickly. Additionally, because the Stacked Blade Assembly is not
locked in place while blending, larger particles such as ice or frozen fruit force the
Stacked Blade Assembly to move during use and cause severe stress cracks around
the base of the pitcher, as evidenced by consumer complaints, some of which are
copied below.

7 TAC ¶ 31, ECF 68. Wallace also adds new allegations of customer complaints regarding the
8 defect. See TAC ¶¶ 39, 41-42.

9 SharkNinja argues that the new allegations in the TAC do not cure the pleading
10 deficiencies that resulted in the Court's earlier dismissal of the CLRA claim, portions of the UCL
11 claim, and the claim for injunctive relief. Wallace asserts that the CLRA and UCL claims are
12 pleaded with adequate specificity in the TAC. She does not address the claim for injunctive relief.

13 **II. LEGAL STANDARD**

14 "A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) for failure to state a
15 claim upon which relief can be granted tests the legal sufficiency of a claim." *Conservation Force*
16 *v. Salazar*, 646 F.3d 1240, 1241-42 (9th Cir. 2011) (quotation marks and citation omitted). While
17 a complaint need not contain detailed factual allegations, it "must contain sufficient factual matter,
18 accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556
19 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is
20 facially plausible when it "allows the court to draw the reasonable inference that the defendant is
21 liable for the misconduct alleged." *Id.*

22 When evaluating a Rule 12(b)(6) motion, the district court is limited to the allegations of
23 the complaint, documents incorporated into the complaint by reference, and matters which are
24 subject to judicial notice. *Louisiana Mun. Police Employees' Ret. Sys. v. Wynn*, 829 F.3d 1048,
25 1063 (9th Cir. 2016) (citing *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322
26 (2007)).

27 **III. DISCUSSION**

28 SharkNinja challenges five aspects of the TAC. First, SharkNinja contends that Wallace

1 has waived or abandoned any claims based on a theory of fraudulent misrepresentation, but the
2 TAC nonetheless refers to “misrepresentations.” SharkNinja asks the Court to dismiss any
3 misrepresentation-based claims. Second, SharkNinja seeks dismissal of the fraudulent omission-
4 based claims brought under the CLRA and the fraud prong of the UCL. SharkNinja asserts that
5 Wallace still has not pled that SharkNinja knew of the Stacked Blade Defect prior to Wallace’s
6 purchase of the blender. Third, SharkNinja seeks dismissal of the claim under the unfair prong of
7 the UCL. Fourth, SharkNinja seeks dismissal of the claim for injunctive relief, pointing out that
8 Wallace has not made any changes to that claim. Fifth, SharkNinja asks the Court to dismiss or
9 strike numerous allegations on the grounds that they are either “irrelevant holdovers” from prior
10 pleadings or “improper attempts to exceed the scope of the Court’s order granting leave to
11 amend.” Mot. to Dismiss at 1, ECF 69.

12 In opposition, Wallace contends that her allegations regarding SharkNinja’s
13 misrepresentations give context to her fraudulent omission-based claims. She also asserts that she
14 has pled SharkNinja’s pre-sale knowledge of the Stacked Blade Defect, such that her claims under
15 the CLRA and fraud prong of the UCL should go forward. Wallace additionally argues that she
16 has made out a claim under the unfair prong of the UCL. She does not respond to SharkNinja’s
17 motion to dismiss her claim for injunctive relief. Finally, Wallace disputes SharkNinja’s
18 characterization of certain allegations in the TAC as irrelevant or improper.

19 **A. Misrepresentation-Based Claims**

20 In its prior ruling on SharkNinja’s motion to dismiss the SAC, the Court noted that
21 Wallace’s CLRA claim was based on a theory of fraudulent omission rather than fraudulent
22 misrepresentation. See Order Granting in Part Mot. to Dismiss SAC at 8-9, ECF 67. The Court
23 cited California law for the proposition that “[a]n actionable fraudulent omission is either an
24 omission that is contrary to a representation actually made by the defendant, or an omission of a
25 fact the defendant was obliged to disclose.” See *id.* at 8 (quotation marks and citation omitted).
26 The Court determined that Wallace was proceeding only under the latter theory, that is, that
27 SharkNinja had a duty to disclose the Stacked Blade Defect but failed to do so. See *id.* at 8-9.
28 SharkNinja asserts that Wallace nonetheless includes several paragraphs in the TAC alleging that

1 SharkNinja made affirmative misrepresentations. SharkNinja seeks dismissal of any claim based
2 on misrepresentations rather than omissions.

3 In response, Wallace states that she “has previously conceded that she is only pursuing a
4 fraudulent omission theory of liability.” Opp. at 2, ECF 73. She contends that the challenged
5 allegations regarding SharkNinja’s representations are relevant to her fraudulent omission theory.
6 She asserts that SharkNinja was obligated to disclose the Stacked Blade Defect both because it
7 was a known safety hazard and because it was contrary to representations actually made by
8 SharkNinja. Under California law, a duty to disclose may arise “when the defendant makes partial
9 representations but also suppresses some material facts.” *Bigler-Engler v. Breg, Inc.*, 7 Cal. App.
10 5th 276, 311 (2017). As SharkNinja points out in its reply, however, this Court has construed
11 Wallace’s CLRA claim narrowly to encompass only a theory that SharkNinja had an obligation to
12 disclose a known safety hazard but failed to make such a disclosure. See Order Granting in Part
13 Mot. to Dismiss SAC at 8-9. In reviewing the briefing on SharkNinja’s prior motion to dismiss
14 the SAC, as well as this Court’s prior order, the Court concludes that Wallace previously
15 abandoned any fraudulent omission claim based on SharkNinja’s partial representations.

16 Moreover, Wallace has failed to identify any representations in the TAC that are contrary
17 to the existence of the Stacked Blade Defect. She points to paragraph 17, which alleges that
18 “Plaintiff further relied on Defendant’s representation that the Ninja Blender’s ‘Total Crushing
19 Pitcher pulverizes ice to snow in seconds for creamy frozen drinks and smoothies,’ which
20 indicated to Plaintiff that the pitcher and blades were secured together as one unit.” TAC ¶ 17.
21 The representation that the blender has the “total crushing” power to pulverize ice to snow says
22 nothing about the blender’s design. No reasonable consumer would believe that this
23 representation indicates that the pitcher and blades are secured together as one unit. See *Becerra*
24 *v. Dr. Pepper/Seven Up, Inc.*, 945 F.3d 1225, 1229 (9th Cir. 2019) (“[N]o reasonable consumer
25 would assume that Diet Dr. Pepper’s use of the term ‘diet’ promises weight loss or
26 management.”).

27 Accordingly, the Court finds that Wallace has abandoned, or failed to allege facts to
28 support, any claims based on a theory of fraudulent misrepresentation or on a theory of fraudulent

1 omission grounded in partial representations. The Court GRANTS SharkNinja’s motion to
2 dismiss any claims based on alleged misrepresentations.

3 **B. Fraudulent Omission-Based Claims under CLRA and UCL Fraud Prong**

4 SharkNinja next asks the Court to dismiss Wallace’s fraudulent omission-based claims
5 with prejudice, asserting that she again has failed to plead SharkNinja’s pre-sale knowledge of the
6 Stacked Blade Defect. The fraudulent omission-based claims – the CLRA claim and the UCL
7 claim based on the fraud prong – are discussed below.

8 **1. CLRA Claim (Claim 1)**

9 In evaluating Claim 1 under the CLRA in its prior dismissal order, the Court held that
10 Wallace must plead the following elements: (1) the existence of the Defect; (2) that the Defect
11 posed an “unreasonable safety hazard”; and (3) SharkNinja’s knowledge of the Defect prior to
12 Wallace’s purchase. See Order Granting in Part Mot. to Dismiss SAC at 9, ECF 67. The Court
13 determined that Wallace had pled the first two elements, but not the third. See *id.* at 9-17.

14 With respect to the third element, SharkNinja’s knowledge of the Stacked Blade Defect,
15 the SAC alleged on information and belief that “since at least 2012, SharkNinja knew about the
16 Stacked Blade Defect through sources not available to consumers, including pre-release testing
17 data, early consumer complaints, high failure rates and replacement part sales data, and other
18 internal sources, including warranty data and private messages via social media and call places to
19 customer support.” SAC ¶ 38. The Court found those allegations inadequate to show knowledge,
20 as they were merely conclusory. See Order Granting in Part Mot. to Dismiss SAC at 13-14. The
21 Court determined that the only facts in the SAC relevant to SharkNinja’s pre-sale knowledge were
22 customer complaints. See Order Granting in Part Mot. to Dismiss SAC at 13-14.

23 Knowledge may be inferred from customer complaints under some circumstances.
24 *Williams v. Yamaha Motor Co.*, 851 F.3d 1015, 1028 (9th Cir. 2017). In *Williams*, the Ninth
25 Circuit reversed the district court’s dismissal of consumer fraud claims where knowledge was
26 based on customer complaints, finding allegations of a “unusually high volume of complaints
27 specific to” the alleged defect, along with a description of the defendants’ consumer response
28 system, sufficient to show the defendants’ knowledge of the defect for pleading purposes. See *id.*

1 Williams acknowledged that the plaintiffs had not alleged specific names and dates with respect to
2 the customer complaints, noting that some district courts have dismissed consumer fraud claims as
3 speculative absent specific allegations that customer complaints were made pre-sale and that the
4 defendant actually received the complaints. See *id.* at 1027. However, Williams distinguished
5 those decisions from the case before it, finding adequate plaintiffs’ allegations of the approximate
6 timing of the customer complaints and explanation that the defendants maintained “a private
7 internal complaint system” such that the details of the complaint were not available to the public.
8 *Id.* at 1027-28.

9 Applying Williams to the SAC, this Court found that the customer complaints upon which
10 Wallace relied either did not describe the Stacked Blade Defect or did not involve the Ninja
11 Professional Blender model number BL660 purchased by Wallace. See Order Granting in Part
12 Mot. to Dismiss SAC at 16. The Court indicated that Wallace could have relied on customer
13 complaints regarding other models if she had alleged that they were sufficiently similar to the
14 purchased BL660 model. *Id.* The Court found Wallace had not alleged such similarity or any
15 other facts from which SharkNinja’s pre-sale knowledge could be inferred. *Id.* at 16-17.

16 SharkNinja contends that the TAC has not cured these pleading deficiencies. SharkNinja
17 first addresses Wallace’s new allegation that “unbeknownst to consumers, sometime between
18 January and June 2018, SharkNinja modified the Stacked Blade Assembly to include a metal tip as
19 opposed to a plastic tip where the Stacked Blade Assembly supposedly ‘connects’ with the lid.”
20 TAC ¶ 38. This allegation apparently is intended to suggest that SharkNinja recognized and
21 corrected a design defect relating to the plastic tip. SharkNinja argues that the allegation regarding
22 the switch to a metal tip in 2018 is implausible in light of other allegations in the TAC suggesting
23 earlier versions of the blender had a metal tip. SharkNinja also points out that it is unclear
24 whether the asserted design modification occurred before Wallace’s March 2018 purchase,
25 because the alleged time frame for the asserted modification runs from January to June 2018.
26 After completion of the briefing on the present motion to dismiss, Wallace withdrew the allegation
27 regarding the asserted design modification. See Stipulation, ECF 78; Def.’s RJN, ECF 80. She
28 filed a stipulation stating, “Plaintiff, without averring as to or denying the accuracy of such

1 statement, hereby withdraws the following allegation at paragraph 38 of her Third Amended
2 Complaint (Rec. Doc. 68): ‘In fact, unbeknownst to consumers, sometime between January and
3 June 2018, SharkNinja modified the Stacked Blade Assembly to include a metal tip as opposed to
4 a plastic tip where the Stacked Blade Assembly supposedly ‘connects’ with the lid.’” Id. The
5 Court therefore has not considered that allegation.

6 SharkNinja next challenges Wallace’s new allegation that “SharkNinja heavily relies on its
7 social media platforms and relationships with its authorized retailers to provide feedback on
8 consumer experiences.” TAC ¶ 39. Wallace alleges that SharkNinja monitors its own social
9 media accounts and the websites of retailers, including Target and Amazon.com, and responds to
10 customers’ questions and complaints. See id. The TAC contains screenshots of several customer
11 complaints posted on SharkNinja’s Facebook page and on the websites of Target and
12 Amazon.com as evidence that SharkNinja had pre-sale knowledge of the Stacked Blade Defect.
13 See TAC ¶¶ 39, 42. SharkNinja argues that these complaints were posted after Wallace purchased
14 her blender in March 2018, do not relate to the Stacked Blade Assembly dislodging during
15 operation, and/or do not relate to the BL660 model purchased by Wallace.

16 Taking these arguments in reverse order, Wallace alleges on information and belief that
17 “all Ninja Stacked Blade Blenders utilize the same or substantially identical Stacked Blade
18 Assemblies and the Stacked Blade Defect is the same for all Ninja Stacked Blade Blenders.” TAC
19 ¶ 33. SharkNinja points out that the same allegation was included in the SAC and, apparently,
20 found by the Court to be inadequate to allege similarity between SharkNinja’s products. Compare
21 TAC ¶ 33 with SAC ¶ 33. However, the Court did not expressly address paragraph 33 or the
22 allegation of similarity contained therein when it ruled on the SAC. See Order Granting in Part
23 Mot. to Dismiss SAC at 16. Considering the matter now, the Court finds Wallace’s allegation in
24 paragraph 33 sufficient to show, for pleading purposes, that the Stacked Blade Assembly and
25 Stacked Blade Defect are the same across all Ninja Stacked Blade Blenders. The Court therefore
26 considers all customer complaints regarding Stacked Blade blenders regardless of model number.
27 See *Deras v. Volkswagen Grp. of Am., Inc.*, No. 17-CV-05452-JST, 2018 WL 2267448, at *4
28 (N.D. Cal. May 17, 2018) (“VW argues that the Court should only consider complaints made on

1 2013 Volkswagen Jettas, the same vehicle purchased by Deras, but the Court considers all of the
2 complaints based on Deras’s allegation that all Class Vehicles had sunroofs of similar design.”).
3 SharkNinja may, of course, argue on a more developed record that Wallace’s allegation regarding
4 the similarity between models is untrue.

5 With respect to the subject matter of the complaints, SharkNinja asserts that the alleged
6 defect is limited to the dislodging of the Stacked Blade Assembly during blending, and therefore
7 that complaints regarding other defects such as exploding blenders are irrelevant. As discussed
8 above, Wallace has broadened her definition of the Stacked Blade Defect to explain that the
9 dislodging of the Stacked Blade Assembly is caused by over-pressurization in the pitcher while
10 blending thicker materials, such as ice or frozen fruit. See TAC ¶ 31. Wallace now alleges that
11 the over-pressurization can cause the Stack Blade Assembly to dislodge, the blender to explode,
12 and stress cracks around the base of the pitcher. See *id.* SharkNinja argues that the Court did not
13 grant Wallace leave to amend the definition of the Stacked Blade Defect, and it asks the Court to
14 strike those allegations. Wallace responds that she expanded on the definition of the Stacked
15 Blade Defect to show that customer complaints disregarded by the Court in its prior order actually
16 do relate to the defect at issue in this case.

17 It is a close call whether Wallace’s additional allegations regarding the defect are outside
18 the scope of the leave to amend granted in the Court’s prior order. The additional allegations do
19 not add new parties or claims, and they do relate to the viability of Wallace’s fraudulent omission-
20 based claims, which she was granted leave to amend. However, the new allegations also change
21 the nature of the defect previously alleged in the SAC and accepted by the Court. After careful
22 consideration, the Court concludes that the new allegations in paragraph 31 are within the scope of
23 the leave to amend previously granted. Even if the Court were to find to the contrary, Wallace
24 would be entitled to file a motion for leave to amend under Federal Rule of Civil Procedure 15(a)
25 to add the new defect allegations. Given the procedural posture of the case and the liberal
26 standard for amendment under Rule 15(a)(2), such motion almost certainly would be granted.
27 Accordingly, there would be little point in granting SharkNinja’s request to strike the allegations
28 from the TAC. The Court continues its analysis based on the expanded defect definition.

1 The Court finds that the TAC alleges multiple customer complaints about the BL660
2 model or other models, addressing the Stacked Blade Defect as defined in the TAC, that pre-date
3 Wallace’s March 2018 purchase of her blender. The relevant customer complaints include several
4 filed with the Consumer Product Safety Commission (“CPSC”) that previously were alleged in the
5 SAC but not considered by the Court in its prior dismissal order because they did not relate
6 specifically to the BL660 model or the dislodging of the Stacked Blade Assembly. Among the
7 customer complaints allegedly made to the CPSC are: 2012 complaint that the blender cracked
8 and popped during blending, sending smoothie mixture all over, TAC ¶ 36.a; 2013 complaint that
9 the blender blade flew off the axis during use, TAC ¶ 36.c; 2015 complaint that the blender
10 exploded during use, TAC ¶ 36.d; 2015 complaint that the top of the blender and sharp blades flew
11 off the blender and went 12 feet, TAC ¶ 36.e; 2015 complaint that the blender shattered during
12 use, TAC ¶ 36.h; and February 2018 complaint that the blender exploded during use, TAC ¶ 36.n.
13 Among the customer complaints posted online are: 2015 complaint that blender exploded and
14 sent blade flying, TAC ¶ 39; 2017 complaint that the blade went crazy and sliced the pitcher, TAC
15 ¶ 42; 2017 complaint that blade came off the assembly into the user’s smoothie, TAC ¶ 42; 2017
16 complaint that the blender broke during use, TAC ¶ 42; 2015 complaint that the blade scraped the
17 inside of the pitcher, TAC ¶ 42; 2017 complaint that blender pitcher cracked, and the replacement
18 cracked, TAC ¶ 42; 2017 complaint that black plastic from the inside of the blender was shredded
19 into a smoothie, TAC ¶ 42; and 2017 complaint that the blender exploded during use, TAC ¶ 42.
20 Most of the online complaints show online responses from SharkNinja, and several of the
21 responses direct the customer to communicate with SharkNinja via private message. See TAC ¶
22 42. Wallace alleges that SharkNinja’s practices of requesting private messages, and of removing
23 older posts, prevent customers from knowing about the defect. See TAC ¶ 39.

24 The Court finds that these allegations are adequate to satisfy the pre-sale knowledge
25 pleading requirement for a CLRA claim. In making this determination, the Court is guided by the
26 Ninth Circuit’s comments in Williams when reversing the district court’s dismissal of consumer
27 fraud claims for failure to allege pre-sale knowledge. The Ninth Circuit stated that, “Importantly,
28 [the defendants] have filed a motion to dismiss, not a motion for summary judgment. Discovery

1 has not yet occurred.” Williams, 851 F.3d at 1028. The court went on to say that “[p]re-
2 discovery, when the court must take [the plaintiffs’] factual allegations as true, [the plaintiffs’]
3 description of a separate consumer response system dedicated to handling an unusually high
4 volume of complaints specific to” the alleged defect supported the plaintiffs’ claim of presale
5 knowledge. Id. This Court likewise must credit Wallace’s factual allegations of numerous pre-
6 sale customer complaints, SharkNinja’s responses to complaints, SharkNinja’s actions in moving
7 conversations regarding complaints offline into private messages, and SharkNinja’s removal of
8 older complaint posts. The Court concludes that these factual allegations give rise to a reasonable
9 inference that SharkNinja knew of the Stacked Blade Defect prior to Wallace’s March 2018
10 purchase.

11 The Court has considered the cases cited by SharkNinja, and finds them to be factually
12 distinguishable from the present case. In *Espineli v. Toyota Motor Sales, Inc., USA*, the plaintiffs
13 alleged thirteen customer complaints about a claimed defect in Lexus vehicles, but they did not
14 allege “how or where these complaints were made, or otherwise allege how defendants could have
15 been aware of them.” *Espineli v. Toyota Motor Sales, U.S.A., Inc., No. 2:17-cv-00698-KJM-
16 CKD*, 2019 WL 2249605, at *6-7 (E.D. Cal. May 24, 2019). In the present case, Wallace has
17 alleged the dates and other specifics of the customer complaints, and other facts showing
18 SharkNinja’s knowledge of the complaints prior to Wallace’s purchase of her blender.

19 In *Deras v. Volkswagen Grp. of Am., Inc.*, the plaintiff alleged fifty-six customer
20 complaints over a seven-year period in which the defendant, VW, sold “hundreds of thousands of
21 vehicles.” *Deras*, 2018 WL 2267448, at *4. The district court held the complaints were so few in
22 number compared to the volume of total sales that it could not be inferred that the complaints
23 would have put VW on notice of the defect. See *id.* The district court found that the plaintiff’s
24 allegations regarding VW’s internal monitoring of defects was insufficient because the plaintiff
25 did “not provide any allegations regarding the method by which complaints were recorded and
26 transmitted to management, or otherwise reviewed or received.” See *id.* at *5. These facts are
27 distinguishable from those in the present case, in which there is no suggestion that SharkNinja
28 sold hundreds of thousands of blenders, or so many that the alleged complaints would not catch its

1 notice; and Wallace has alleged specific facts showing how the complaints were made and that
2 SharkNinja received notice of them.

3 In Sloan v. General Motors LLC, the district court determined that eighty-one customer
4 complaints were not sufficient to establish GM's pre-sale knowledge of an alleged oil-ring defect,
5 where "none of the complaints explicitly states that the cause of the excessive oil consumption
6 was the Low-Tension Oil Ring Defect," and most of the complaints were posted after the
7 marketing and sales of the subject vehicles had ended. Sloan v. Gen. Motors LLC, No. 16-CV-
8 07244-EMC, 2017 WL 3283998, at *7 (N.D. Cal. Aug. 1, 2017). In the present case, Wallace has
9 alleged complaints regarding the alleged defect that were received by SharkNinja prior to the date
10 Wallace purchased her blender.

11 The Court emphasizes that its only task at this stage in the proceedings is to determine
12 whether Wallace has alleged a plausible CLRA claim based upon a fraudulent omission theory.
13 The Court previously dismissed the CLRA claim on the sole basis that Wallace had not alleged
14 SharkNinja's pre-sale notice of the defect. The Court concludes that Wallace has cured that
15 pleading deficiency by adding factual allegations sufficient to give rise to a reasonable inference
16 that SharkNinja had notice of the asserted defect prior to Wallace's purchase of her blender.

17 Accordingly, the motion to dismiss the CLRA claim is DENIED.

18 **2. UCL Fraud Prong Claim (Claim 2)**

19 The Court previously dismissed the UCL claim asserted under the fraud prong on the basis
20 that it was grounded in the same fraudulent omission theory underlying its CLRA claim, which the
21 Court found to be inadequately alleged in the SAC. See Order Granting in Part Mot. to Dismiss
22 SAC at 21-22. SharkNinja contends that the fraud prong claim fails once again because Wallace
23 has not cured this pleading deficiency. As discussed above, however, the Court concludes that
24 Wallace has stated a claim under the CLRA based on a fraudulent omission theory. Thus,
25 SharkNinja's motion to dismiss the fraud prong claim is without merit.

26 Accordingly, the motion to dismiss the UCL fraud prong claim is DENIED.

27 **C. Claim under UCL Unfair Prong (Claim 2)**

28 The Court previously dismissed the UCL claim to the extent it is asserted under the unfair

1 prong, holding that “Wallace’s theory appears to be premised on the same fraudulent omission as
2 its CLRA claim.” See Order Granting in Part Mot. to Dismiss SAC at 22. SharkNinja seeks
3 dismissal of the unfair prong claim on the ground that Wallace has not cured the deficiencies in
4 her fraudulent omission theory. The Court has concluded that Wallace adequately has alleged that
5 theory in the TAC.

6 Accordingly, the motion to dismiss the UCL unfair prong claim is DENIED.

7 **D. Claim for Injunctive Relief**

8 The Court previously dismissed Wallace’s claim for injunctive relief, with leave to amend,
9 on the basis that she had not alleged a likelihood of future injury, a requirement for obtaining an
10 injunction. See Order Granting in Part Mot. to Dismiss SAC at 24-25. SharkNinja moves to
11 dismiss the claim once again, pointing out that the TAC contains no new allegations regarding the
12 likelihood of future injury. Wallace has not responded to this aspect of SharkNinja’s motion. The
13 Court therefore finds that Wallace has waived her claim for injunctive relief. See *Sciacca v.*
14 *Apple, Inc.*, 362 F. Supp. 3d 787, 801-02 (N.D. Cal. 2019) (“Therefore, because Plaintiff has failed
15 to respond to Apple’s arguments, the Court GRANTS Apple’s motion to dismiss the breach of the
16 implied warranty of merchantability claim with prejudice because Plaintiff has waived the issue.”).

17 The motion to dismiss Wallace’s claim for injunctive relief is GRANTED WITHOUT
18 LEAVE TO AMEND.

19 **E. Particular Allegations**

20 Finally, SharkNinja asks the Court to strike certain allegations that SharkNinja contends
21 exceed the scope of leave to amend or bear no relevance to Wallace’s claims. Wallace responds
22 that the allegations in question are properly included in the TAC and should not be stricken.

23 “The court may strike from a pleading an insufficient defense or any redundant,
24 immaterial, impertinent, or scandalous matter.” Fed. R. Civ. P. 12(f). Motions to strike are
25 generally disfavored and “should not be granted unless the matter to be stricken clearly could have
26 no possible bearing on the subject of the litigation.” *Platte Anchor Bolt, Inc. v. IHI, Inc.*, 352 F.
27 Supp. 2d 1048, 1057 (N.D. Cal. 2004) (citations omitted). A court should not strike allegations
28 supplying background or historical material unless it is unduly prejudicial to the opponent. See

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1 LeDuc v. Ky. Cent. Life Ins. Co., 814 F. Supp. 820, 830 (N.D. Cal. 1992). Indeed, if there is any
2 doubt whether the challenged matter might bear on an issue in the litigation, the motion to strike
3 should be denied, and assessment of the sufficiency of the allegations left for adjudication on the
4 merits. Rees v. PNC Bank, N.A., 308 F.R.D. 266, 271 (N.D. Cal. 2015). A court should view the
5 pleading in the light most favorable to the nonmoving party. Id. Whether to grant a motion to
6 strike lies within the sound discretion of the district court. Id.

7 SharkNinja contends that the new allegations in paragraph 31 that expand the definition of
8 the defect should be stricken as outside the scope of the leave to amend granted by the Court upon
9 dismissal of the SAC. That argument has been considered and rejected, above.

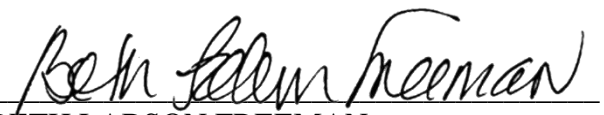
10 Next, SharkNinja contends that allegations regarding the 2015 recall and consumer
11 complaints are not relevant. The basis for this contention seems to be SharkNinja’s position that
12 the fraudulent-omission based claims are not viable. However, for the reasons discussed above,
13 the Court takes a different view. The Court concludes that the allegations in question are relevant
14 to Wallace’s fraudulent omission-based claims and/or provide relevant background to her claims.

15 The motion to strike is DENIED.

16 **IV. ORDER**

- 17 (1) SharkNinja’s motion to dismiss is GRANTED IN PART, WITHOUT LEAVE TO
- 18 AMEND, as to any claims based on a theory of fraudulent misrepresentation and as
- 19 to the claim for injunctive relief;
- 20 (2) The motion to dismiss is DENIED as to Claim 1 for violation of the CLRA and
- 21 Claim 2 for violation of the UCL;
- 22 (3) SharkNinja SHALL file an answer to the TAC on or before December 7, 2020; and
- 23 (4) This order terminates ECF 69.

24
25 Dated: November 23, 2020

26 
27 BETH LABSON FREEMAN
28 United States District Judge