

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DONALD DIEHL; DEANNE
CONSOLE; KENNETH P. DUBS,
SR.; DAN FENN; KAREN
McELLIOTT; MARK E. ROEHR;
JACK ROWE; LONNIE C.
TALBERT; FRANK VIRGADAMO;
LARRY L. WESTFALL; and EILEEN
WESTFALL,

Plaintiffs,

v.

STARBUCKS CORPORATION d/b/a
STARBUCKS COFFEE COMPANY,
and d/b/a STARBUCKS
MANUFACTURING COMPANY, a
Washington corporation; and DOES
1-50, inclusive,

Defendants.

Case No. 12CV2432 AJB (BGS)

ORDER GRANTING IN PART AND
DENYING IN PART
DEFENDANT’S MOTION TO
DISMISS THE FAC

[Doc. No. 14]

Before the Court is Defendant Starbucks Corporation’s (*hereinafter* Defendant or “Starbucks”) motion to dismiss Plaintiffs’s First Amended Complaint (“FAC”). (Doc. No. 14.) Plaintiffs filed an opposition on December 16, 2013. (Doc. No. 16.) Defendant replied on December 23, 2013. The Court entertained oral arguments on January 23, 2014 and took the matter under submission. Upon consideration of the motion and the parties’ arguments in support and opposition, the Court GRANTS in part and DENIES in part the motion to dismiss.

1 **I. BACKGROUND**¹

2 Plaintiffs are former shareholders of Mellace Family Brands, Inc. (“MFB”) (Doc.
3 No. 13 at 2.) Incorporated in 2001, MFB mainly produced oil roasted almonds, cashews,
4 and fruit and nut combinations that were then sold in local shopping centers. (*Id.* at 4.)
5 In 2007, Starbucks approached MFB for a potential deal to begin selling MFB products
6 in Starbucks’ stores. (*Id.*) Before entering into a business relationship with MFB,
7 Starbucks performed due diligence and reviewed all of MFB’s contracts and obligations
8 with other retailers. Starbucks was also permitted to review MFB’s books and records at
9 all times. (*Id.* at 5.) The parties began their business relationship in late 2007 and early
10 2008. (*Id.*)

11 The general course of the parties’ conduct is as follows: (1) Starbucks would
12 provide MFB with volume projections so that MFB could determine the quantity of raw
13 product and packaging materials needed for production of specific products; (2) Starbuc-
14 ks would then send MFB Blanket Purchase Agreements (BPA’s) formalizing the scope
15 of orders based upon annual projections provided; (3) MFB would begin purchasing raw
16 materials and packaging materials; (4) MFB would confirm to Starbucks the availability
17 of product to satisfy the BPA; (5) Starbucks then confirms the amount/size of the order
18 and shipment of products to Starbucks’ facilities through a BPA Release; (6) after the
19 issuance of the BPA Release, MFB would ship the specified amount of product reflected
20 on the BPA Release; and (7) Starbucks would pay MFB the amount(s) reflected on the
21 BPA Release. (*Id.* at 5-6.)

22 Plaintiffs allege that although each BPA contained language that disclaims a legal
23 obligation arising from a contract and does not authorize the purchase of inventory, MFB
24 acted in reliance on the amount of products sought by Starbucks in volume projections
25 and the amount of prepared products requested through verbal agreements, “usually
26 confirmed by the BPAs.” (*Id.* at 6.) Plaintiffs allege that in reliance on the relationship
27 with Starbucks, MFB had to upgrade machinery, hire new staff, and increase orders for
28

¹ The following factual allegations are taken from Plaintiff’s FAC.

1 raw products and packaging, all of which Starbucks had intimate knowledge of. (*Id.* at
2 7.) MFB received its first BPA from Starbucks on or about December 5, 2007 and
3 delivered its first shipment to Starbucks in March 2008 “pursuant to the terms outlined in
4 Starbucks volume projections, BPAs, and BPA Releases.” (*Id.*)

5 In March 2008, Starbucks provided volume projections to MFB forecasting sales
6 for product orders through September 2008. In September 2008, Starbucks provided
7 additional volume projection for the months of January through March 2009. (*Id.* at 8).
8 In September of 2008, Starbucks informed MFB that it had received complaints about
9 the quality of MFBs products. (*Id.*) Upon investigation, MFB discovered the reason for
10 the defect and reimbursed Starbucks for the costs related to the product’s withdrawal.
11 (*Id.*) In June of 2009, Starbucks received further complaints regarding some MFB
12 products and initiated a product withdrawal. In August 2009, Starbucks representatives
13 toured MFB facilities and discussions led to an agreement to work with Starbucks
14 representatives to ensure product quality. In September 2009, Starbucks Product
15 Manager Lori Harris informed MFB that the business was being put out to bid. (*Id.* at 9)
16 MFB reprocessed the bid forms and was awarded business in November 2009. In
17 awarding MFB the business, Starbucks and Ms. Harris imposed certain other conditions
18 upon MFB through an “Action Plan” dated December 9, 2009, including further product
19 specifications, increased quality reporting to Starbucks, additional investment in
20 equipment for internal testing, and upgrading machinery used for product packaging.
21 (*Id.* at 9-10.) Plaintiffs allege that MFB complied with conditions imposed at significant
22 costs. (*Id.* at 10.)

23 In January 2010, MFB informed Starbucks Retail Lobby Jane Wong and represen-
24 tative Destiny Linayao that it was having difficulty maintaining current price levels due
25 to a rise in commodity prices. (*Id.*) They instructed MFB to forward an updated pricing
26 analysis. Plaintiffs allege that Starbucks then began a business relationship with Sahale
27 Snacks and provided Sahale Snacks MFB’s confidential pricing information in an effort
28 to surreptitiously remove MFB from future business with Starbucks. (*Id.*)

1 On March 30, 2010, Ms. Wong provided MFB with a volume estimate and “made
2 MFB an offer: that Starbucks would provide purchase orders through October 2010
3 exceeding \$3.1 million in product if MFB would provide a price decrease for product
4 order.” (*Id.* at 10-11.) Plaintiffs alleged that MFB accepted and decreased the unit price.
5 Plaintiffs refer to this as the “3.1 Million Dollar Contract.” (*Id.* at 11.) Starbucks then
6 issued a BPA for \$1,839,656.46, on April 2, 2010, for the months of June through
7 August of 2010. (*Id.*) On April 6, 2010, Ms. Wong notified MFB that Starbucks released
8 the April 2, 2010 BPA, which Plaintiffs allege constitutes partial performance on the
9 \$3.1 Million Contract. (*Id.*) Plaintiffs allege that in reliance on this Release and oral
10 representations made by Ms. Wong, MFB entered into a contract to purchase approxi-
11 mately \$1,000,000 in cashews to fulfill those orders and that Starbucks knew MFB
12 would do so to fulfill Starbucks’ order. (*Id.* at 11-12.)

13 In March and April of 2010, Starbucks informed MFB that it had received
14 complaints regarding MFB’s cashew products. (*Id.* at 8.) Plaintiffs allege that Starbucks
15 conducted a conference call with the Food and Drug Administration (“FDA”) which
16 MFB was denied participation in and denied any information afterwards. (*Id.* at 12.)
17 Later in April 2010, Ms. Wong informed MFB that MFB products were “consistently
18 rising and doing well,” and that there were no further customer complaints. (*Id.*)
19 However, on April 23, 2010, MFB was notified of a second complaint. (*Id.*) Starbucks
20 did not provide details to MFB, but retained samples of the product were tested with no
21 defects found by MFB. (*Id.*) MFB forwarded the results of its internal testing to
22 Starbucks to demonstrate that all retained products met the requirements of the Action
23 Plan instituted by Starbucks in 2009. (*Id.* at 13.)

24 On May 14, 2010 MFB received a termination letter from Starbucks indicating
25 that no new orders would be issued due to product quality concerns. (*Id.*) On May 17,
26 2010 Starbucks informed MFB that neither current BPA Releases nor past BPA Releases
27 would be honored. (*Id.*) Plaintiffs allege Starbucks representative Destiny Linayao
28 informed MFB that the cost of film and packaging would be reimbursed to MFB,

1 however Starbucks never did so and MFB was left with over \$37,000 of unusable
2 Starbucks film and packaging materials. (*Id.*) On May 24, 2010, MFB received an
3 investment and merger proposal from R.C. Frontis Partners, which was soon withdrawn
4 after the firm learned of MFB's financial hardship that allegedly resulted from
5 Starbucks' conduct. (*Id.* at 14.)

6 On May 25, 2010 an independent laboratory testing of retained samples found all
7 samples to be within the acceptable range of quality specification as provided by the
8 Action Plan. On May 28, 2010, despite having just terminated the business relationship,
9 Starbucks informed MFB that it would still accept all almond orders for the open
10 purchase orders. (*Id.*) Plaintiffs allege that MFB shipped the almonds at Starbucks'
11 request as partial performance of the \$3.1 Million Dollar Contract. (*Id.*) Plaintiffs allege
12 that on June 1, 2010, Starbucks informed MFB that all outstanding payments to MFB
13 were on hold from Starbucks' legal department, which included payment for the open
14 purchase orders of almonds Starbucks had just requested. (*Id.*)

15 On June 4, 2010, Starbucks informed MFB that its products were being withdrawn
16 due to FDA concerns. (*Id.* at 9.) MFB requested return of their product to mitigate
17 damages, but under condition that it was not admitting to liability. (*Id.*) On June 11,
18 2010, Starbucks and MFB executed an agreement to return products. The return was
19 completed on or about June 19, 2010. (*Id.* at 15.) Plaintiffs allege that the FDA investi-
20 gation revealed that certain MFB products had been tainted by a gas leak at a Starbucks
21 facility, through no fault of MFB. (*Id.*)

22 Plaintiffs allege that because of the Defendant's actions, MFB suffered extreme
23 financial difficulty and was forced into insolvency. (*Id.*) MFB was unable to fulfill
24 contractual obligations with other wholesalers and lost its venture capital commitments.
25 (*Id.*) After MFB's insolvency, their rights and assets were assigned to Insolvency
26 Services Group ("ISG") for the benefit of their creditors. (*Id.* at 2.) Plaintiffs, the former
27 shareholders, then purchased "certain assets" from ISG. (*Id.* at 15.) Plaintiffs allege that
28 each of them lost the entire value of their respective investments in MFB. (*Id.*)

1 Plaintiffs initiated this action in San Diego County Superior Court of California on
2 September 6, 2012. On October 9, 2012, Defendant filed a notice of removal pursuant to
3 28 U.S.C. § 1441(B), asserting diversity jurisdiction under 28 U.S.C. § 1332. (Doc. No.
4 1.) On October 16, 2012, the Defendant filed a Motion to Dismiss (Doc. No. 4), arguing
5 that Plaintiffs have failed to state a claim upon which relief may be granted. That motion
6 was granted by this Court after finding that, though Plaintiffs had standing to bring the
7 action, they could not state a claim for breach of contract based on the BPA which
8 expressly disclaimed any intent to be bound. (Doc. No. 12 at 7-9.) The Court granted
9 Plaintiffs leave to amend and they did so, filing a timely FAC on November 15, 2013.
10 (Doc. No. 13.) Plaintiffs' FAC brings five causes of action: (1) breach of contract; (2)
11 negligent misrepresentation; (3) intentional misrepresentation; (4) intentional interfer-
12 ence with prospective economic advantage; and (5) unfair business practice under
13 Business and Professions Code § 17200. (*Id.*) Defendant again seeks to dismiss the
14 complaint, arguing Plaintiffs have failed to cure the deficiencies noted within the Court's
15 previous dismissal order and have not alleged a valid contract existed. (Doc. No. 14)

16 **II. LEGAL STANDARDS**

17 A complaint must contain "a short and plain statement of the claim showing that
18 the pleader is entitled to relief." Fed. R. Civ. P. 8(a). A motion to dismiss pursuant to
19 Rule 12(b)(6) of the Federal Rules of Civil Procedure tests the legal sufficiency of the
20 claims asserted in the complaint. Fed. R. Civ. P. 12(b)(6); *Navarro v. Block*, 250 F.3d
21 729, 731 (9th Cir. 2001). The court must accept all factual allegations pled in the
22 complaint as true, and must construe them and draw all reasonable inferences from them
23 in favor of the nonmoving party. *Cahill v. Liberty Mutual Ins. Co.*, 80 F.3d 336, 337-38
24 (9th Cir.1996). To avoid a Rule 12(b)(6) dismissal, a complaint need not contain
25 detailed factual allegations, rather, it must plead "enough facts to state a claim to relief
26 that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A
27 claim has "facial plausibility when the plaintiff pleads factual content that allows the
28

1 court to draw the reasonable inference that the defendant is liable for the misconduct
2 alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 677 (2009) (citing *Twombly*, 550 U.S. at 556).

3 Under Federal Rule of Civil Procedure 9(b), allegations of fraud must be pled with
4 particularity. *See* Fed. R. Civ. P. 9(b). Rule 9(b) requires that, when fraud is alleged, "a
5 party must state with particularity the circumstances constituting fraud. . ." *Id.* Any
6 averments which do not meet that standard should be "disregarded," or "stripped" from
7 the claim for failure to satisfy Rule 9(b). *Id.* "Averments of fraud must be accompanied
8 by 'the who, what, when, where, and how' of the misconduct charged." *Vess v. Ciba-*
9 *Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003) (quoting *Cooper v. Pickett*, 137
10 F.3d 616, 627 (9th Cir.1997)).

11 Dismissal under Rule 12(b)(6) is proper only when a complaint exhibits either a
12 "lack of cognizable legal theory or the absence of sufficient facts alleged under a
13 cognizable legal theory." *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir.
14 1988). "A complaint should not be dismissed 'unless it appears beyond doubt that the
15 plaintiff can prove no set of facts in support of his claim which would entitle him to
16 relief.'" *Gilligan v. Jamco Dev. Corp.*, 108 F.3d 246, 248 (9th Cir. 1997) (quoting
17 *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S. Ct. 99 (1957)).

18 **III. DISCUSSION**

19 **A. Breach of Contract**

20 In California, to establish a claim for breach of contract, a plaintiff must show: (1)
21 a contract existed; (2) plaintiff performed his duties or was excused from performing his
22 duties under the contract; (3) the defendant breached the contract; and (4) the plaintiff
23 suffered damages as a result of that breach. *See First Commercial Mortgage Co. v.*
24 *Reece*, 89 Cal. App. 4th 731, 745 (2001). An essential element of a contract is the
25 consent of the parties, or mutual assent; in other words there must be a meeting of the
26 minds. Cal. Civ. Code § 1550(2); *see also Bustamante v. Intuit, Inc.*, 141 Cal. App. 4th
27 199, 209 (2006).

28

1 Plaintiffs allege that Starbucks breached three separate contracts. (*Id.* at 17-18.)
2 First, a March 17, 2010 BPA Release issued by Starbucks for a purchase price of
3 \$585,772.56 entered into based upon “negotiations and agreements between the parties.”
4 Likewise, a second March 26, 2010 Release for a purchase price of \$293,898.72. Third,
5 the \$3.1 Million Dollar Contract entered into on or about March 30, 2010. (*Id.*) Plain-
6 tiffs allege that Starbucks breached the two March Releases by “accepting the products
7 shipped by MFB pursuant to the BPA releases and thereafter withholding payment for
8 the product received,” and breached the \$3.1 Million Dollar Contract (after partially
9 performing by releasing the April 2, 2010 BPA) by “terminating the contract after MFB
10 accepted the offer and took action in reliance on the agreement.” (*Id.* at 17.)

11 1. The \$3.1 Million Dollar Contract

12 Defendant argues that Plaintiffs’ claim fails as a matter of law as they have failed
13 to establish the existence of a valid contract. (*Id.*) Defendant contends that the March
14 2010 volume projection email from Ms. Wong is not a valid contract nor is the April 2,
15 2010 BPA. Specifically, the March 2010 email was merely the start of preliminary
16 negotiations therefore no legal obligation between the two parties arose. (*Id.* at 7.)
17 Moreover, the subsequent April 2, 2010 BPA cannot form the basis of a contract as the
18 express language contained therein states “[a]ny listed QUANTITY is non-binding and
19 is included for the sole purpose of establishing a limitation on Releases to this BPA
20 during the Effective period.” (*Id.* at 9.) Thus, disclaiming any intent to bind the parties.
21 (*Id.*)

22 In its previous order, the Court dismissed Plaintiffs’ breach of contract claim for
23 failing to allege a valid contract showing mutual assent. (Doc. No. 12.) The Court noted
24 that asserting the BPA as a valid contract failed, as the express language therein gave
25 MFB “reason to know that the person making it did not intend to conclude a bargain
26 until he has made a further manifestation of assent.” (*Id.* at 9.) Specifically, that further
27 manifestation of assent would come in the form of the BPA Release or a separate
28 purchase order. For the \$3.1 Million Dollar Contract, that release never materialized and

1 therefore the Court could not conclude that the parties intended to be bound. Although
2 Plaintiffs do not allege they received the actual Release, Plaintiffs have pled additional
3 facts to support their contention that a legal obligation existed.

4 Specifically, Plaintiffs allege that prior to the issuance of the April 2, 2010 BPA,
5 the parties entered into a new negotiation on the terms of their business relationship.
6 Plaintiffs allege that Starbucks, represented by Ms. Wong, made an oral offer to provide
7 MFB with purchase orders through October of 2010 if MFB would in turn provide a
8 price decrease for products ordered. (Doc. No. 13 at 10-11.) According to Plaintiffs, Ms.
9 Wong supported her offer with a copy of the volume projection. (*Id.* at Ex. A.) MFB
10 accepted the offer and decreased the price of their products. (*Id.* at 11.) Thereafter, Ms.
11 Wong made a verbal representation that a Release had been issued for the April 2, 2010
12 BPA.

13 Defendant contends, and the Court does note, that the sequence of events Plaintiffs
14 have alleged for the \$3.1 Million Dollar Contract digresses from the normal course of
15 dealings Plaintiffs first established. However, Plaintiffs allege, and the Court can
16 conceive, that this alternative transaction occurred because the parties renegotiated the
17 product price. In addition, Plaintiffs allege Ms. Wong made false representations to
18 MFB regarding the release of the April 2, 2010 BPA. Thus, as this is a motion to dismiss
19 and the Court must take all factual allegations as true and make all reasonable inferences
20 in favor of Plaintiff, the Court cannot definitely state that a valid contract supported by
21 mutual assent did not exist.

22 The existence of mutual assent is determined by objective criteria, not by one
23 party's subjective intent. The reasonable person test governs, in other words, whether a
24 reasonable person would conclude there was mutual agreement by looking at the parties'
25 conduct. *Marin Storage & Trucking, Inc. v. Benco Contracting and Eng'g, Inc.*, 89 Cal.
26 App. 4th 1042, 1051 (Cal. Ct. App. 2001) (internal citations omitted). Here the verbal
27 agreement as alleged was that Starbucks would provide for purchase orders through
28 October 2010 if MFB provided a price decrease. The parties conduct as alleged, appear

1 to support the inference that a contract was made; MFB did indeed decrease the unit
2 price for their products and Starbucks issued a volume projection and BPA as if confirm-
3 ing that verbal agreement. Additionally, Plaintiffs allege that despite any disclaimer
4 language contained within the BPA, MFB relied upon the Ms. Wong’s “assurances and
5 agreement” in regards to the verbal \$3.1 Million Dollar Contract. (Doc. No. 13 at 11.)
6 Specifically, Plaintiffs contend Ms. Wong made verbal assurances that a release had
7 been issued for the April 2, 2010 BPA. (*Id.* at 11.)

8 Plaintiffs’ theory is a reasonable inference given the facts as alleged. Although
9 Plaintiffs may have difficulty sustaining and proving this theory, given the express terms
10 of the projection email and BPA, at this early stage, it would be improper for the Court to
11 nonchalantly dismiss Plaintiffs’ well pled claim without allowing Plaintiffs the opportu-
12 nity to conduct factual discovery.

13 Finally, Defendant asks this Court to dismiss Plaintiffs’ claim as the FAC alleges a
14 breach of contract claim that is “in direct contradiction to the factual allegation in the
15 original complaint, where the April 2010 BPA was the alleged contract at issue.” The
16 Court is unpersuaded by this argument. First, the Court must examine the pleading that
17 is currently before it - the FAC. *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967). Second,
18 the Court does not find the FAC to be “factually inconsistent” with the original Com-
19 plaint. Indeed, the FAC merely contains additional factual allegations that allows
20 Plaintiffs to rely on an alternative theory to establish a breach of contract. Thus, this is
21 not the situation where two pleadings are irreconcilably at odds with each other.

22 2. The March 17, 2010 and March 26, 2010 BPA Releases

23 In addition to the \$3.1 Million Dollar Contract, Plaintiffs allege that Starbucks
24 breached its contract with MFB by failing to honor the March 17, 2010 and March 26,
25 2010 BPA Releases. (*Id.* at 17.) Plaintiffs allege that despite accepting the products
26 shipped pursuant to the terms of the Releases, Starbucks withheld payments owed to
27 MFB. (*Id.*) Defendants argue that any breach of contract claims based upon these
28

1 Releases must fail as Plaintiffs failed to “allege that any BPA exists with respect to the
2 alleged releases . . . failed to attach any such BPA . . . failed to attach any BPA Releases
3 . . . [and] failed to state verbatim the terms of these releases.” (Doc. No. 14 at 11.) Citing
4 to California state law and an unpublished case from this district, Defendant contends
5 that these failures necessitate dismissal of Plaintiffs’ breach of contract claims based
6 upon these March Releases.

7 Federal law does not require a plaintiff to recite the contract terms verbatim or to
8 attach a copy of the contract to the complaint. Pleading is governed by Rule 8 of the
9 Federal Rules of Civil procedures, not state procedural requirements. Under Rule 8(a), a
10 “short and plain statement of the claim” suffices. Federal Rules of Civil Procedure forms
11 note that a “plaintiff may set forth the contract verbatim in the complaint or plead it, as
12 indicated, by exhibit, or plead it according to its legal effect.” *See* Fed. R. Civ. P Official
13 Form 3, 12; *see also* 5 Charles Alan Wright & Arthur R. Miller, *Federal Practice &*
14 *Procedures* § 1235 (2004).

15 Presently, Plaintiffs have sufficiently pled the “legal effect” of the contract.
16 Plaintiffs have alleged sufficient facts to enable Defendant to understand and respond to
17 the claims. Plaintiffs alleged that on March 2, 2010, BPAs were “pending.” (Doc. No.
18 13 at 10.) It is also important to note that in the instant case, the terms of the contract are
19 not confined in a singular document. Instead, the parties’ obligations towards one
20 another and basis of dealings between them are shown through the general course of
21 conduct as alleged by Plaintiffs. Indeed, the claims based upon the two March Releases
22 conform to the general course of conduct established by Plaintiffs’ FAC. Based upon
23 these alleged facts, the Court can reasonably infer that a BPA did exist and that the
24 March Releases were for the existing BPA. Plaintiffs further stated that MFB shipped
25 the product in accordance with the terms of the Releases, however Starbucks failed to
26 tender payment, thereby constituting a breach. Plaintiffs have also stated the total
27 outstanding amount due to MFB for the Releases, \$585,7272.56 for the March 17
28

1 Release and \$293,898.72 for the March 26 Release. Given the factual allegations
2 contained in the FAC, Defendant is sufficiently on notice of Plaintiffs' claims against it.

3 Accordingly, Defendant's motion to dismiss the breach of contract claims is
4 DENIED.

5 **B. Fraud Claims (Intentional and Negligent Misrepresentation)**

6 Plaintiffs' second and third causes of action allege that Starbucks, through their
7 representative Ms. Wong, made statements to MFB that constitute both negligent and
8 intentional misrepresentation. Defendant moves to dismiss on two grounds. First, a
9 valid contract did not exist and thus Plaintiffs' reliance was not justified or reasonable.
10 Second, Plaintiffs did not allege a violation of an independent duty under tort principles
11 as required under California law, thus Plaintiffs attempt to bring another breach of
12 contract claim masked as a fraud claim. (Doc. No. 14 at 12-13.)

13 As to the first ground, the Court has already disposed of the matter by finding that
14 Plaintiffs alleged enough facts to sufficiently plead the existence of a valid contract.
15 Moreover, Plaintiffs have alleged MFB relied upon Starbucks' representations to its
16 detriment. This reliance is manifested by the factual allegation that MFB entering into
17 agreements to purchase raw materials, as well as shipping and packaging supplies.

18 As to the second ground, Defendant brings forth two arguments. First, Defendant
19 contends that Plaintiff has impermissibly brought a tort claim predicated on the breach of
20 contract. Second, Defendant argues Plaintiff failed to establish the intent element of a
21 misrepresentation claim. California law imposes tort liability only when a breach of
22 contract violates an independent duty arising from principles of tort law. *Applied Equip.*
23 *Corp. v. Litton Saudi Arabia Ltd.*, 7 Cal. 4th 503, 515 (1994). The FAC has met this
24 requirement. Plaintiffs do not plead the breach of contract itself as the tortious conduct,
25 instead the tort claims are based on the alleged misrepresentations and false promise of
26 performance, thereby constituting fraud. As alleged by the FAC, Plaintiffs have pled a
27 misrepresentation regarding the performance of contractual obligation, knowledge, intent
28

1 to defraud, justifiable reliance, and resulting damage. *Robinson Helicopter Co., Inc. v.*
2 *Dana Corp.*, 34 Cal. 4th 979, 990 (2004).

3 Additionally, where a fraud or misrepresentation is predicated on a failure to
4 perform contractual obligations, California law requires “something more than nonperfor-
5 mance” to prove the “defendant’s intent not to perform his promise.” *Tenzer v. Supersco-*
6 *pe Inc.*, 39 Cal. 3d 18, 30 (Cal. 1985); *see also Riverisland Cold Storage, Inc. v. Fresno-*
7 *Madera Prod. Credit Ass’n*, 151 Cal. 4th 1169, 1183 (2013) (finding intent must be
8 shown by more than proof of an unkept promise or mere failure to perform). Fraudulent
9 intent may be established or inferred by circumstantial evidence. *Id.* (citing Prosser and
10 Keeton on Torts 764-765 (5th ed. 1984)). Here, Plaintiffs allege that Starbucks intended
11 to meet its supply needs through Sahale Snacks and/or other suppliers by negotiating
12 with Sahale Snacks as well as sharing MFB’s confidential pricing information with
13 Sahale Shacks. (*See* Doc. No. 13 at 10; 21.) Allegedly, this was done to “surreptitiously
14 remove MFB from further business with Starbucks . . . [and] Starbucks had no intent to
15 fulfill its \$3.1 Million Dollar Contract with MFB . . .” (*Id.* at 21.) Taking the allegations
16 as true, as this Court must in ruling on a motion to dismiss, Plaintiffs have sufficiently
17 pled facts that would show Starbucks’ intent not to perform the contractual obligation
18 thereby making any alleged oral statements to the contrary fraudulent. The Court thus
19 DENIES the motion to dismiss the fraud based claims.

20 **C. Intentional Interference with Prospective Economic Advantage (IIPEA)**

21 To state a claim for IIPEA, a plaintiff must show (1) an economic relationship
22 between the plaintiff and third person containing the probability of future economic
23 benefit to the plaintiff; (2) knowledge by the defendant of the existence of the relation-
24 ship; (3) intentional acts on the part of the defendant designed to disrupt the relationship;
25 (4) actual disruption of the relationship; and (5) damages to plaintiff proximately caused
26 by the defendant’s acts. *Blank v. Kirwan*, 39 Cal.3d 311, 330 (1985). To satisfy the third
27 element, a “plaintiff must plead and prove the defendant’s acts are wrongful apart from
28

1 the interference itself. *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134,
2 1154 (Cal. 2003).

3 Defendants move to dismiss on grounds that Plaintiffs failed to allege how any
4 conduct by Starbucks was independently unlawful under a “constitutional, statutory,
5 regulatory, common law, or other determinable legal standard” as required by *Korea*
6 *Supply*. *Id.* at 1159. In *Korea Supply*, the California Supreme Court emphasized the
7 distinction between the two torts of intentional interference with contract and IIPEA. *Id.*
8 at 1157 (“We caution that although we find the intent requirement to be the same . . .
9 these torts remain distinct.”). The California Court explained that the tort of IIPEA is
10 “considerably more inclusive than actions based on contract or interference with con-
11 tract,” and it is possible for a plaintiff to state causes of action for both torts. *Id.* (internal
12 citation omitted). Because of this, courts must be more demanding of a plaintiff
13 attempting to plead IIPEA. *Id.* at 1159.

14 As it stands now, the FAC does not meet the more rigorous pleading requirements
15 mandated by *Korea Supply*. The FAC alleges that Starbucks was aware of existing
16 business relationships with other retailers, was aware that MFB had to pre-order raw
17 materials to meet its obligation to Starbucks, and was aware that MFB had lucrative
18 prospective business opportunities and offers for private investment. (Doc. No. 13 at 23-
19 24.) The FAC contends that as a result of Starbucks’ breach of contract, MFB was
20 forced to cancel product orders of raw materials, could no longer sustain its business
21 operations, compromised its relationship with other retailers, which ultimately resulted in
22 MFB’s insolvency. (*Id.* at 24.) However, the tort of IIPEA “is not intended to punish
23 individuals or commercial entities for . . . their pursuit of commercial objectives.” *Korea*
24 *Supply*, 29 Cal. 4th at 1159. The current FAC seeks to do just this. Instead, IIPEA can
25 only be brought if a defendant’s “interference amounts to independently actionable
26 conduct.” *Id.* The California Supreme Court has defined this to mean an act that is
27 “proscribed by some constitutional, statutory, regulatory, common law, or other determi-
28 nable legal standard.” *Id.* (internal citations omitted). As Plaintiffs have failed to

1 establish how Starbucks' interference with prospective economic advantage was a wrong
2 independent from the act itself, the Court GRANTS the motion to dismiss with leave to
3 amend.

4 **D. Unfair Competition Law ("UCL") Claim**

5 California Business and Professions Code § 17200 prohibits unfair competition,
6 defined to include any "unlawful, unfair or fraudulent business act or practice that is
7 unfair, deceptive, untrue or misleading advertising." Cal. Bus. Prof. Code § 17200. The
8 UCL is "written in the disjunctive, it establishes three varieties of unfair competition -
9 acts or practices which are unlawful, unfair, or fraudulent. An act can be alleged to
10 violate any or all of the three prongs of the UCL - unlawful, unfair, or fraudulent."
11 *Berryman v. Merit Prop. Mgm't, Inc.*, 152 Cal. App. 4th 1544, 1554 (2007). The scope
12 of California's UCL is "sweeping, embracing anything that can properly be called a
13 business practice and at the same time is forbidden by law." *Rubin v. Green*, 4 Cal. 4th
14 1187, 1200 (1993). Plaintiffs allege that the above mentioned conduct on Starbucks'
15 part amounts to an "unfair" business practice. (Doc. No. 13 at 28.) In response, Starbuc-
16 ks contends that Plaintiffs have failed to plead how the alleged conduct is unfair under
17 the UCL. (Doc. No. 14 at 15.) In their reply, Plaintiffs attempt to show they've suffi-
18 ciently alleged a UCL violation predicated on the "unlawful prong." (*See* Doc. No. 17 at
19 16-17.)

20 California courts have continuously expanded upon what constitutes an unfair
21 business act. *See Motors, Inc. v. Times Mirror Co.*, 102 Cal. App. 3d 735, 739-40 (1980)
22 (noting it would be impossible to draft in advance detailed legislation of all acts and
23 conduct prohibited, "since unfair or fraudulent business practices may run the gamut of
24 human ingenuity and chicanery.") The scope of the UCL is broad but not unlimited and
25 courts should not impose their own notions of fairness. *McCann v. Lucky Money, Inc.*,
26 129 Cal. App. 4th 1382, 1387 (2005). A business practice is unfair within the meaning
27 of the UCL if it violates established public policy or if it is immoral, unethical, oppres-
28 sive or unscrupulous and causes injury to consumers which outweighs its benefits.

1 *McKell v. Washington Mut., Inc.*, 142 Cal. App. 4th 1457, 1474 (2006). The crux of
2 Starbucks’ argument is that Plaintiffs have failed to establish how any alleged conduct
3 falls under these definitions. (Doc. No. 14 at 15.)

4 Plaintiffs’ opposition to the motion to dismiss relies upon the “unlawful” prong of
5 the UCL. The “unlawful” prong borrows from other sources of law. Under this prong,
6 violations of other laws, whether criminal or civil, federal or state, statutorily or judi-
7 cially created, are separately actionable under the UCL. *See State Farm Fire & Cas. v.*
8 *Super. Ct.*, 45 Cal. App. 4th 1093, 1103 (1996); *see also Bowland, Inc. v. Rolf C. Hagen*
9 *(USA) Corp.*, 685 F. Supp. 2d 1094, 1110 (E.D. Cal. 2010) (“As to unlawful acts, the
10 UCL ‘borrows’ violations of other laws.”). Plaintiffs contend in their opposition, that by
11 sharing MFB’s information with competitors, Defendant’s conduct violates provisions of
12 the Uniform Trade Secrets Act (“UTSA”) and the “spirit of anti-trust laws.” (Doc. No. 16
13 at 17-18.)

14 Although the FAC contains factual allegations with regards to Starbucks’ alleged
15 sharing of confidential pricing information with MFB competitors, it did not attempt to
16 plead the alleged conduct as violations of anti-trust or trade secret laws. Given the
17 expansive scope of the UCL and the broad array of conduct that falls under this “disjunc-
18 tive” statute, it would be impractical to ask Defendants to just know exactly what
19 Plaintiffs meant to allege. As such, Defendants would not have sufficient notice of the
20 claim to properly prepare an answer and/or defense. Accordingly, the Court GRANTS
21 the motion to dismiss with leave to amend.

22 **E. Punitive Damages**

23 California law authorizes exemplary damages “in an action for the breach of an
24 obligation not arising from contract, where it is proven by clear and convincing evidence
25 that the defendant has been guilty of oppression, fraud, or malice,” in addition to actual
26 damages Cal. Civ. Code § 3294.

27 Under their fraud based claim, Plaintiffs seek an award of punitive damages
28 against Starbucks to “deter similar conduct in the future and punish Starbucks for its

1 conduct.”² (Doc. No. 13 at 19-23.) Defendant brings a Rule 12(b)(6) motion challeng-
2 ing the sufficiency of Plaintiffs’ request, arguing that punitive damages are “purely
3 personal,” therefore unassignable and unrecoverable by Plaintiffs. (Doc. No. 14 at 16.)

4 Defendant relies on *Murphy v. Allstate Ins. Co.*, 17 Cal. 3d 937 (1976) to support
5 their contention that Plaintiffs are not entitled to punitive damages based on their
6 standing as assignees. The *Murphy* decision made clear that a “purely personal” tort
7 cause of action is not assignable in California, and therefore, damage for emotional
8 distress is not assignable either. *Id.* at 942. The language in *Murphy* at issue is:

9 The insured may assign his cause of action for breach of the duty to settle
10 without consent of the insurance carrier . . . However, part of the damage
11 arises from the personal tort aspect of the bad faith cause of action. And
12 because a purely personal tort cause of action is not assignable in California,
13 it must be concluded that damage for emotional distress is not assignable.
14 *The same is true of a claim for punitive damage.*

15 *Id.* (emphasis added) (citations omitted). Defendant would have the Court find
16 that *Murphy* creates a blanket rule that punitive damages may never be assigned.
17 However, the state of the law is never so black and white or easily adjudicated.
18 Moreover, the California Supreme Court has never definitely ruled punitive damages
19 may never be assigned no matter what cause of action they are brought under.³ Plaintiffs
20 ask this Court to discount several other cases interpreting *Murphy* to stand for the
21 proposition that punitive damages are not assignable, on the basis that these cases do so
22 only in dicta or failed to carefully analyze the context of *Murphy*. (Doc. No. 16 at 19.)
23 The Court finds an independent analysis appropriate.

24 ² Plaintiffs also sought punitive damages under their IIPEA claim, however that
25 claim has been dismissed. (Doc. No. 13 at 23-25.)

26 ³ In *Nelson v. Exxon Mobile Corp.*, 102 Cal. Rptr.3d 311 (2009), Justice Cantil-
27 Sakauye, who now sits as the Chief Justice of the California Supreme Court, concluded
28 that a punitive damages claim incident to a property tort was assignable as it is “not the
nature of the relief that prohibits a claim for . . . punitive damages from being assigned.”

The California Supreme Court granted review on the issue of the assignability of
punitive damages on February 10, 2010. *Nelson*, 225 P.3d 1080. However, due to the
parties settling, review was dismissed on April 27, 2011. *Nelson*, 271 P.3d 1040. Such a
clarification would have been beneficial in the instant case, regrettably it did not come to
light.

1 In California, “assignability of things in action is now the rule; nonassignability,
2 the exception; and this exception is confined to wrongs done to the person, the reputa-
3 tion, or the feelings of the injured party, and to contracts of a purely personal nature . . .”
4 *Wikstrom v. Yolo Fliers Club*, 206 Cal. 461, 464 (1929) (internal quotations and citation
5 omitted). Although the issue before the court is not whether the causes of action
6 themselves were assignable, it is still worthy to note that assignability necessarily relies
7 on the “purely personal nature” of a cause of action, some of which allow the recovery of
8 punitive damages.

9 In California, every contract holds an implied covenant of good faith and fair
10 dealing requiring the insurer to settle in an appropriate case. *Murphy*, 17 Cal.3d at 940-
11 41. California law recognizes the existence of a tortious breach of this covenant in some
12 circumstances, including insurance. *See e.g., Egan v. Mutual of Omaha Ins. Co.*, 24
13 Cal.3d 809 (1979) (explaining that the special relationship between the insured and the
14 insurer supports the imposition of tort liability for a breach of the implied covenant of
15 good faith and fair dealing). *Murphy* involved an assignment of a cause of action against
16 an insurer for a breach of the duty to settle. *Murphy*, 17 Cal.3d at 941. When a carrier
17 breaches the duty to settle, the injured insured is allowed to recover, among other
18 damages, emotional distress and punitive damages suffered from the defendant’s tortious
19 breach. *Id.* at 942. The *Murphy* Court took note that part of the damages recoverable
20 from a breach of the duty to settle arises from the “*personal tort aspect* of the bad faith
21 cause of action.” *Id.* (emphasis added) (citing *Crisci v. Security Ins. Co.*, 66 Cal.2d 425,
22 433 which discusses the injury of mental and emotional suffering.) Because that tort was
23 purely personal and thus unassignable, the same would be true for the emotional distress
24 and the punitive damages permitted by that tort. *See Schlauch v. Hartford Accident &*
25 *Indem. Co.*, 146 Cal. App. 3d 926, 931 (1983) (finding an insured may assign the breach
26 of contract aspect of the bad faith claim but not the tort aspect). So in actuality, the issue
27 before the *Murphy* Court was the assignability of a particular claim, not the assignability
28 of a particular remedy. *Murphy* declared punitive damages unassignable because the

1 underlying action was unassignable. It would then appear that whether punitive damages
2 may be assigned does not rely on the nature of the relief, instead it relies upon the nature
3 of the cause of action it is brought under.

4 This is further supported by the fact that punitive damages is not a cause of action
5 in and out itself, instead it is an incidental relief a plaintiff may recover in some circum-
6 stances. Under California law, punitive damages are properly awarded to punish
7 wrongdoers and deter others from committing future wrongful acts, thereby making its
8 purpose one that benefits the public at large. *Century Sur. Co. v. Polisso*, 139 Cal.
9 App.4th 922, 947 (2006) (citing *Pacific Mut. Life. Ins. Co. V. Haslip*, 499 U.S. 1, 19, 111
10 S. Ct. 1032 (1991)); *Power Standards Lab, Inc. v. Federal Exp. Corp*, 127 Cal. App. 4th
11 1039, 1047 (2005) (“[T]he purpose of punitive damages is a purely public one. The
12 public’s goal is to punish wrongdoing and thereby to protect itself from future miscon-
13 duct, either by the same defendant or other potential wrongdoers.”). Nothing about the
14 relief itself makes it “purely personal” and therefore unassignable.

15 Plaintiffs direct the Court’s attention to cases applying California law and
16 interpreting *Murphy* to stand for the proposition that punitive damages are not assign-
17 able. (Doc. No. 16 at 19.) The Court agrees these cases do not inform the analysis in the
18 instant motion. In *GATX/Airlog Co. v. Evergreen Intern. Airlines Inc.*, 52 Fed. Appx.
19 940 (2002), the Ninth Circuit affirmed the district court’s decision barring the assignor’s
20 claim for punitive damages. *Id.* at 942. In the unpublished opinion, the Ninth Circuit did
21 not explain its reasoning other than citing to *Smith v. State Farm Mut. Auto. Inc. Co.*, 5
22 Cal. App. 4th 1104 (1992), for the proposition that California law bars assignment of
23 claims for punitive damages. Like, *Murphy*, *Smith* involved an assignment of a cause of
24 action against the insurer for the breach of the implied covenant of good faith and fair
25 dealing, this time the duty to defend. *Smith* cites to *Murphy* stating that “courts have
26 barred assignment only of claims for punitive damages or emotional distress.” *Id.* at
27 1111. The Court has already discussed its interpretation of *Murphy* and why it does not
28 stand for a blanket rule that all punitive damages, no matter the cause of action, are

1 unassignable. *Drazen v. Atlantic Mut. Ins. Co.*, 2010 WL 2629576, at *1 (N.D. Cal.
2 2010) also involved an insurance company’s refusal to defend and indemnify. The
3 District Court refused to grant assignee plaintiffs’ request for punitive damages by
4 relying upon *Murphy*. *Id.* at *4. The Court’s interpretation of *Murphy* today would not
5 disturb these cases as the decisions therein, precluding an assignment of punitive
6 damages, relied on the finding that the punitive damages sought by the assignees
7 stemmed from the purely personal tort aspect of the breach of the implied covenant in the
8 insurance policies. This requisite does not exist in the instant case, as this Court is not
9 dealing with an insurance policy and thus we are not dealing with a “purely personal”
10 tortious breach.

11 In the instant case, punitive damages are sought under the fraud causes of action.
12 Due to the alleged fraud, MFB, the business entity, was harmed as it had to expend
13 money to purchase raw materials and other items to meet its obligation under the alleged
14 \$3.1 Million Dollar Contract. In this respect, MFB’s property interest was harmed as its
15 assets were diminished. The Court finds the instant case more comparable to *Nelson v.*
16 *Exxon Mobil Corp.*, 179 Cal. App. 4th 633, 102 Cal. Rptr. 3d 311 (2009) than *Murphy*.
17 Although the case was superseded, Justice Cantil-Sakauye’s reasoning is nevertheless
18 persuasive.⁴ *Nelson* involved an injury to property, rather than personal injury, the
19 property at issue was held in a trust, the entirety of the trust asset was subsequently
20 transferred to a corporation. The issue before the court was whether the corporation had
21 a claim to punitive damages. The Court of Appeal declared that “the assignment of the
22 punitive damages claim is incident to the transfer of real property” and therefore punitive
23 damages could be assigned under the given circumstances. *Nelson*, 102 Cal. Rptr. 3d at
24 319-23. The *Nelson* Court reasoned that it is the nature of the of the cause of action that

26
27 ⁴ Ultimately, the appeal was dismissed due to the parties settling the matter.

28 The Court’s interpretation of *Murphy* today is consistent with that of Justice
Cantil-Sakauye’s. See *Nelson*, 102 Cal. Rptr. 3d at 317-19.

1 determines whether the punitive damages permitted by it are assignable or not. There-
2 fore, the corporation had a valid claim for punitive damages.

3 Furthermore, in *Nelson*, title to the real property was held in a trust on behalf of
4 the trust beneficiaries, those same trust beneficiaries became the shareholders of the
5 corporate assignee. Therefore “the identity of the parties allegedly injured by [defen-
6 dant’s] actions remained the same. *Id.* at 322. In the instant case, although not dispositi-
7 ve to the instant issue, Plaintiffs were former shareholders of MFB who now bring the
8 claims in their individual capacity. The damage alleged in the instant case was damage
9 to the corporation, an entity that exists for the benefit of its shareholders. Thus, similarly
10 the identity of the parties allegedly injured by Starbucks’ conduct remains the same.

11 It is also worthy to take note of how other states address the issue. The *Nelson*
12 court examined two, Illinois and Indiana. *See Nelson*, 102 Cal. Rptr. 3d at 321-23. In
13 *Federal Deposit Insurance Corp. v. W.R. Grace & Co.*, 691 F. Supp. 87 (N.D. Ill. 1988),
14 the court reasoned that punitive damages are a type of relief “which is part and parcel of
15 the underlying cause of action and do not constitute an independent basis of recovery.”
16 Accordingly, as the fraud cause of action was properly assigned, so too the correspond-
17 ing punitive damages claim. *Id.* at 92. Similarly, the Illinois Supreme Court has stated
18 “punitive damages are a component of the relief available in an action and are therefore
19 deemed a part of the underlying action.” *Kleinwort Benson N. Am. Inc. v. Quantum Fin.*
20 *Serv., Inc.*, 181 Ill. 2d 214, 274 (1998). *Kleinwort* involved an assignment by one
21 corporation of its interest in a lawsuit, for fraud in connection with the sale of a broker-
22 age firm which included a claim for punitive damages, to two shareholders. The
23 *Kleinwort* court rejected the argument that the shareholders had no standing to pursue
24 the punitive damages claim. *Id.* In *Summit Account and Computer Serv., Inc. v. RJH of*
25 *Florida, Inc.*, 690 N.E.2d 723 (Ind. App. 1998), claims for legal malpractice and punitive
26 damages were found to be transferable when the injured corporation sold off its assets,
27 including the claims, to an intermediary corporation which in turn sold the assets to the
28 litigating corporation. The Indiana appeals court found that there was a direct “continua-

1 tion” of the original corporation, notably because one individual was the sole share-
2 holder for each of the three corporations. *Id.* at 728.


3 Consequently, the Court does not find *Murphy* to establish a blanket rule preclud-
4 ing the assignment of punitive damages in any and all actions. Defendant’s argument on
5 this basis is rejected. However upon an examination of the FAC, the Court finds that
6 Plaintiffs have failed to adequately plead the requisite elements to warrant an award of
7 punitive damages. Punitive damages are only permitted where a defendant is guilty of
8 “oppression, fraud, or malice . . .” Cal. Civ. Code § 3294. Under their Intentional
9 Misrepresentation claim, Plaintiffs state “Starbucks acted with fraud, malice and
10 oppression, justifying an award of punitive damages to Plaintiffs . . .” (Doc. No. 13 at
11 23.) Merely employing the magic words does not render a claim sufficiently alleged.
12 Plaintiffs’ current allegations are conclusory and fail to show Starbucks acted with an
13 intent to cause injury to MFB, acted in a “despicable” manner that subjects a person to
14 cruel or unjust hardship, or acted fraudulently with the intent to injure MFB. *See* Cal.
15 Civ. Code § 3294. The Court thus GRANTS the motion to dismiss the punitive damages
16 claim with leave to amend.

17 **IV. CONCLUSION**

18 For the reasons stated above, the Court GRANTS in part and DENIES in part
19 Defendant’s Motion to Dismiss. Plaintiffs’ intentional interference with prospective
20 economic advantage, California UCL, and punitive damages claims are DISMISSED
21 with leave to amend. Plaintiffs shall have thirty (30) days of the entry of this Order to
22 file the Second Amended Complaint. No new claims or parties may be added without
23 leave of the Court.

24 IT IS SO ORDERED.

25
26 DATED: January 27, 2014

27 
28 _____
Hon. Anthony J. Battaglia
U.S. District Judge