

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10

11 JORGE MARTINEZ,

12 Plaintiff,

13 v.

14 FORD MOTOR COMPANY, NORM
15 REEVES FORD LINCOLN, ETHOS
16 GROUP INC. and DOES 1 through 10,
inclusive,

17 Defendant.
18
19

Case No. 22-cv-1082-MMA (BGS)

**ORDER GRANTING DEFENDANT
FORD MOTOR COMPANY'S
MOTION TO DISMISS AND**

[Doc. Nos. 5]

**GRANTING DEFENDANT ETHOS
GROUP INC.'S MOTION TO
DISMISS**

[Doc. No. 6]
20

21 On June 24, 2022, Jorge Martinez (“Plaintiff”) commenced the instant action
22 against Ethos Group Inc. (“Defendant Ethos”), Ford Motor Company (“Defendant
23 Ford”), Norm Reeves Ford Lincoln, and Does 1–10 in the San Diego County Superior
24 Court. *See* Doc. No. 1-2 (“Compl.”). On July 25, 2022, Defendant Ford removed the
25 action to this Court based on federal question jurisdiction. *See* Doc. No. 1. Defendant
26 Ethos consented to removal. *See* Doc. No. 1 at 2. Both Defendant Ethos and Defendant
27 Ford now move to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). *See*
28 Doc. Nos. 5, 6. Plaintiff filed oppositions, to which Defendants Ford and Ethos replied.

1 *See* Doc. Nos. 9, 10, 12, 13. The Court found the matters suitable for determination on
2 the papers and without oral argument pursuant to Civil Local Rule 7.1.d.1. *See* Doc. No.
3 14. For the reasons set forth below, the Court **GRANTS** Defendant Ethos’s motion to
4 dismiss and **GRANTS** Defendant Ford’s motion to dismiss.

5 **I. BACKGROUND**¹

6 Plaintiff purchased a “new 2014 Ford Edge” (the “Vehicle”). Compl. ¶ 6.
7 Elsewhere Plaintiff states that the Vehicle was “Certified Pre-Owned.” *Id.* ¶ 7. Plaintiff
8 contends that Defendant Ford is the manufacturer “and or” distributor of the Vehicle. *Id.*
9 ¶ 6. Plaintiff also purchased a service contract from Defendant Ethos “that covered some
10 repair costs of the Vehicle.” *Id.* ¶ 64.

11 The Vehicle subsequently developed issues. *See id.* ¶ 9. Plaintiff alleges the
12 following mechanical failures:

13
14 During the warranty period, the Vehicle contained or developed
15 nonconformity(s) to warranty, including but not limited to defect(s) which
16 have manifested as check engine lights, cooling fan defect, power steering
17 defect, coolant leaks, oil leaks, and Evaporative Emission Control System
leaks. Said defects substantially impair the use, value, or safety of the Vehicle.

18 *Id.* ¶ 9.

19 Plaintiff maintains that Defendant Ethos failed to provide the “services” and parts
20 necessary for normal operation. *Id.* ¶ 66. In sum, Plaintiff asserts Defendant Ethos
21 “fail[ed] to comply with their obligations” under the service contract. *Id.* ¶ 67. As to
22 Defendant Ford, Plaintiff asserts that it failed to repair or replace the vehicle as required
23 by the warranties, and failed to reimburse him for expenses. *See id.* ¶¶ 6–44.

24
25
26
27 ¹ Because this matter is before the Court on a motion to dismiss, the Court must accept as true the
28 allegations set forth in the Complaint. *See Hosp. Bldg. Co. v. Trs. of Rex Hosp.*, 425 U.S. 738, 740
(1976).

1 II. LEGAL STANDARD

2 A Rule 12(b)(6) motion to dismiss tests the sufficiency of the complaint. *Navarro*
3 *v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). A pleading must contain “a short and plain
4 statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P.
5 8(a)(2). However, plaintiffs must also plead “enough facts to state a claim to relief that is
6 plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *see also*
7 Fed. R. Civ. P. 12(b)(6). The plausibility standard demands more than a “formulaic
8 recitation of the elements of a cause of action,” or “‘naked assertions’ devoid of ‘further
9 factual enhancement.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*,
10 550 U.S. at 555). Instead, the complaint “must contain allegations of underlying facts
11 sufficient to give fair notice and to enable the opposing party to defend itself effectively.”
12 *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011).

13 In reviewing a motion to dismiss under Rule 12(b)(6), courts must assume the truth
14 of all factual allegations and must construe them in the light most favorable to the
15 nonmoving party. *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337–38 (9th Cir. 1996)
16 (citing *Nat’l Wildlife Fed’n v. Espy*, 45 F.3d 1337, 1340 (9th Cir. 1995)). The court need
17 not take legal conclusions as true merely because they are cast in the form of factual
18 allegations. *Roberts v. Corrothers*, 812 F.2d 1173, 1177 (9th Cir. 1987) (quoting *W. Min.*
19 *Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981)). Similarly, “conclusory allegations
20 of law and unwarranted inferences are not sufficient to defeat a motion to dismiss.”
21 *Pareto v. FDIC*, 139 F.3d 696, 699 (9th Cir. 1998).

22 In determining the propriety of a Rule 12(b)(6) dismissal, courts generally may not
23 look beyond the complaint for additional facts. *United States v. Ritchie*, 342 F.3d 903,
24 907–08 (9th Cir. 2003). “A court may, however, consider certain materials—documents
25 attached to the complaint, documents incorporated by reference in the complaint, or
26 matters of judicial notice—without converting the motion to dismiss into a motion for
27 summary judgment.” *Id.* at 908; *see also Lee v. City of Los Angeles*, 250 F.3d 668, 688
28 (9th Cir. 2001). “However, [courts] are not required to accept as true conclusory

1 allegations which are contradicted by documents referred to in the complaint.” *Steckman*
 2 *v. Hart Brewing, Inc.*, 143 F.3d 1293, 1295–96 (9th Cir. 1998) (citing *In re Stac Elecs.*
 3 *Sec. Litig.*, 89 F.3d 1399, 1403 (9th Cir. 1996)).

4 Additionally, allegations of fraud or mistake require the pleading party to “state
 5 with particularity the circumstances constituting fraud or mistake.” Fed. R. Civ. P. 9(b).
 6 The context surrounding the fraud must “be ‘specific enough to give defendants notice of
 7 the particular misconduct . . . so that they can defend against the charge and not just deny
 8 that they have done anything wrong.’” *Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1124
 9 (9th Cir. 2009) (quoting *Bly-Magee v. California*, 236 F.3d 1014, 1019 (9th Cir. 2001)).
 10 “‘Averments of fraud must be accompanied by “the who, what, when, where, and how”
 11 of the misconduct charged.’ A party alleging fraud must ‘set forth more than the neutral
 12 facts necessary to identify the transaction.’” *Kearns*, 567 F.3d at 1124 (citation omitted)
 13 (first quoting *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003); and
 14 then quoting *In re GlenFed, Inc. Sec. Litig.*, 42 F.3d 1541, 1548 (9th Cir. 1994),
 15 *superseded by statute on other grounds*).

16 Where dismissal is appropriate, a court should grant leave to amend unless the
 17 plaintiff could not possibly cure the defects of the pleading. *Knappenberger v. City of*
 18 *Phoenix*, 566 F.3d 936, 942 (9th Cir. 2009) (quoting *Lopez v. Smith*, 203 F.3d 1122, 1127
 19 (9th Cir. 2000)).

20 **III. DISCUSSION**

21 Defendants move to dismiss all causes of action against them on the ground that
 22 Plaintiff fails to state a claim under Rule 12(b)(6). *See* Doc. Nos. 5-1, 6. The Court
 23 addresses each of Defendants’ motions in turn.

24 **A. Defendant Ethos’s Motion to Dismiss**

25 Plaintiff brings two causes of action against Defendant Ethos: (Claim 9) breach of
 26 a service contract in violation of Cal. Civ. Code § 1794.4 (“Song-Beverly Act”); (Claim
 27 5) unlawful business practice in violation of Cal. Bus. & Prof. Code § 17200 *et seq.*
 28 (“Unfair Competition Law” or “UCL”).

1 As Defendant Ethos correctly notes, “without Count Nine, [Plaintiff] cannot
2 maintain his Fifth Cause of Action.” Doc. No. 6. At 9. This is because “the [unlawful
3 prong of the] UCL ‘borrows violations of other laws and treats them as unlawful
4 practices that the unfair competition law makes independently actionable.’” *Beaver v.*
5 *Tarsadia Hotels*, 816 F.3d 1170, 1177 (9th Cir. 2022) (quoting *Cel-Tech Commc’ns, Inc.*
6 *v. L.A. Cellular Tel. Co.*, 973 P.2d 527, 539–40 (Cal. 1999) (citations omitted)). As will
7 be discussed below, Plaintiff only pleads an unlawful UCL violation. Accordingly, the
8 Court begins its discussion with Plaintiff’s Song-Beverly Act claim before turning to his
9 UCL claim.

10 *1. Ninth Cause of Action: Violation of Song-Beverly Act § 1794.4(b)*

11 “[A] Song-Beverly Act claim arises by virtue of the contractual relationship
12 between a plaintiff (buyer) and a defendant (seller).” *Boyd v. Jaguar Land Rover N. Am.,*
13 *LLC*, No. 11CV1580 JLS (WMC), 2012 WL 12868253, at *3 (S.D. Cal. Sept. 20, 2012).
14 Plaintiff specifically cites the “service contract” provisions of the Song-Beverly Act,
15 §§ 1794.4 and 1794.4(b). Compl. ¶ 67. The relevant language states that “[e]xcept as
16 otherwise expressly provided in the service contract, every service contract shall obligate
17 the service contractor to provide to the buyer of the product all of the services and
18 functional parts that may be necessary to maintain proper operation and service” of the
19 Vehicle. Cal. Civ. Code § 1794.4(b).

20 Here, the nature of the “contractual relationship” between Plaintiff and Defendant
21 Ethos is for service. *Boyd*, 2012 WL 12868253, at *3. Plaintiff pleads the service
22 contract covered at least some costs of repair. *See* Compl. ¶ 64. But Plaintiff does not
23 plead how Defendant Ethos allegedly violated this service contract. *See id.* ¶¶ 66–67.
24 Plaintiff has not alleged any facts—such as dates of service, failures of repayment, or
25 functional parts withheld—to afford Defendant Ethos fair notice of its alleged violation.
26 *See id.* ¶¶ 63–67; Doc. No. 10 at 9–10. Moreover, if the service contract contains unique
27 terms that fall within the qualifying language of the Song-Beverly Act, Plaintiff has made
28 no such showing of how Defendant Ethos breached these provisions. *See* § 1794.4(b)

1 (“Except as otherwise expressly provided in the service contract . . .”). Instead, the
2 ninth cause of action contains nothing more than a “formulaic recitation” of the Song-
3 Beverly 1794.4(b) provision quoted above. *Iqbal*, 556 U.S. at 678; *see* Compl. ¶ 66. A
4 mere copy-and-paste of the statute is insufficient to state a claim under Rule 12(b)(6).
5 *See* Compl. ¶ 66 (“Defendant failed to provide Plaintiff with all of the services and
6 functional parts that may be necessary to maintain proper operation of the entire product
7 under normal operation and service . . .”).

8 Plaintiff elsewhere pleads a violation of the service contract by incorporating the
9 mechanical failures from his first cause of action. *See* Doc. No. 10 at 9. However, “a
10 service contract is not an express warranty . . .” *Gavaldon v. DaimlerChrysler Corp.*, 90
11 P.3d 752, 756 (Cal. 2004). The Song-Beverly Act “does not permit a service contract to
12 cover the same items as an express warranty. Section 1794.4 specifies that service
13 contracts are sold in addition to or in lieu of express warranties. And section 1794 refers
14 to express warranties and service contracts in the alternative.” *Id.* at 757. In drafting the
15 Song-Beverly Act, the California legislature “thought of the purchase of a service
16 contract as distinct from the purchase of the product, and not as a representation of fitness
17 but only an agreement to provide repair services, a kind of insurance.” *Id.* at 758.
18 Accordingly, Plaintiff has not stated a Song-Beverly Act claim based upon the
19 mechanical failures that underly his express warranty claims.

20 For these reasons, the Court finds that Plaintiff fails to plead a violation of the
21 Song-Beverly Act. Consequently, the Court **GRANTS** Defendant Ethos’s motion to
22 dismiss the ninth cause of action.

23 2. *Fifth Cause of Action: Violation of B&P Code § 17200*

24 California’s UCL prohibits “any unlawful, unfair or fraudulent business act or
25 practice . . .” Cal. Bus. & Prof. Code § 17200. “Because the statute is written in the
26 disjunctive, it applies separately to business acts or practices that are (1) unlawful,
27 (2) unfair, or (3) fraudulent.” *Wilson v. Gateway, Inc.*, No. CV 09-7560-GW(VBKX),
28 2011 WL 13187108, at *9 (C.D. Cal. Apr. 21, 2011). It is unclear which of the three

1 prongs are at issue here. *See* Compl. ¶¶ 31–33. Plaintiff vaguely asserts Defendant Ethos
2 “committed several statutory violations.” Compl. ¶ 32. However, the Court declines to
3 invent or imagine what these violations might be. Plaintiff attempts to revise the
4 Complaint by arguing in opposition that Defendant Ethos violated all three prongs of the
5 UCL. *See* Doc. No. 10 at 8–9. However, Plaintiff’s claim as pleaded is limited to the
6 ‘unlawful’ prong. *See Dong v. BMW of N. Am., LLC*, No. 19-CV-2202 DMS (BGS),
7 2021 WL 824771, at *6 (S.D. Cal. Mar. 4, 2021); *see* Compl. ¶ 33 (“These violations of
8 law serve as a basis for a *per se* unlawful business practice under B & P § 17200).
9 Nonetheless, for the sake of completeness, the Court addresses each prong in turn.

10 As an initial matter, “Rule 9(b)’s particularity requirement applies to these state-
11 law causes of action. In fact, [the Ninth Circuit] [has] specifically ruled that Rule 9(b)’s
12 heightened pleading standards apply to claims for violations of the CLRA and UCL.”
13 *Kearns*, 567 F.3d at 1125 (citing *Vess*, 317 F.3d at 1102–1105). Here, “[t]he Federal
14 Rules of Civil Procedure apply irrespective of the source of subject matter jurisdiction,
15 and irrespective of whether the substantive law at issue is state or federal.” *Vess*, 317
16 F.3d at 1102.

17 First, Plaintiff does not sufficiently plead the fraudulent prong because he fails to
18 “state with particularity the circumstances constituting fraud or mistake.” Fed. R. Civ. P.
19 9(b). “In the context of Rule 9(b), a plaintiff must include a description of the ‘time,
20 place, and specific content of the false representations as well as the identities of the
21 parties to the misrepresentations.’” *In re Facebook PPC Advert. Litig.*, No. 5:09-CV-
22 03043-JF, 2010 WL 3341062, at *9 (N.D. Cal. Aug. 25, 2010) (quoting *Swartz v. KPMG*
23 *LLP*, 476 F.3d 756, 764 (9th Cir.2007)) (discussing claims under the UCL’s fraudulent
24 prong). Here, Plaintiff does not allege the time, place, or specific content that caused him
25 harm. *See* Compl. ¶¶ 31–33; Doc. No. 10 at 8. Therefore, Plaintiff fails to adequately
26 plead the fraudulent prong.

27 Second, although “Plaintiff may state a violation under the unfair category” of the
28 UCL, a perfunctory listing of the elements is insufficient “to state a claim to relief that is

1 plausible on its face.” Doc. No. 10 at 8; *Twombly*, 550 U.S. at 570. “An act or practice is
2 unfair if the consumer injury is substantial, is not outweighed by any countervailing
3 benefit to consumers or to competition, and is not an injury the consumers themselves
4 could reasonably have avoided.” *Tietsworth v. Sears*, 720 F. Supp. 2d 1123, 1137 (N.D.
5 Cal. 2010) (quoting *Daugherty v. Am. Honda Motor Co.*, 51 Cal. Rptr. 3d 118, 129 (Cal.
6 Ct. App. 2006)). “To sufficiently plead a claim under the UCL’s ‘unfair’ prong, plaintiffs
7 must allege facts supporting all three elements.” *In re Sony Grand Wega KDF-E*
8 *A10/A20 Series Rear Projection HDTV Television Litig.*, 758 F. Supp. 2d 1077, 1091
9 (S.D. Cal. 2010). Here, Plaintiff neglects to include any facts that might support the
10 unfair prong’s elements. *See* Compl. ¶¶ 31–33; Doc. No. 10 at 8–9. Accordingly,
11 Plaintiff fails to adequately plead the unfair prong.

12 Finally, Plaintiff fails to plead the unlawful prong of the UCL because—as
13 discussed in the preceding section—he fails to adequately plead a violation of the Song-
14 Beverly Act. “A UCL claim ‘stands or falls depending on the fate of antecedent
15 substantive causes of action.’” *Portelli v. WWS Acquisition, LLC*, No. 17-CV-2367 DMS
16 (BLM), 2018 WL 9539773, at *4 (S.D. Cal. July 6, 2018) (quoting *Krantz v. BT Visual*
17 *Images*, 107 Cal. Rptr. 2d 209, 219 (Cal. Ct. App. 2001)). Here, Plaintiff’s unlawful
18 UCL claim against Defendant Ethos depends on a violation of the Song-Beverly Act. *See*
19 Compl. ¶ 32. Because Plaintiff’s Song-Beverly Act claim fails, his fifth cause of action
20 against Defendant Ethos also fails.

21 Accordingly, because Plaintiff fails to adequately plead his UCL cause of action
22 under all three prongs, the Court **GRANTS** Defendant Ethos’s motion to dismiss the fifth
23 cause of action.

24 **B. Defendant Ford’s Motion to Dismiss**

25 Plaintiff brings six causes of action against Defendant Ford: (Claim 1) breach of
26 express warranty in violation of California Civil Code § 1793.2(d); (Claim 2) failure to
27 repair in violation of California Civil Code § 1793.2(b); (Claim 3) breach of express
28 warranty in violation of California Civil Code § 1794 and the Uniform Commercial Code

1 (“UCC”); (Claim 4) breach of the implied warranty of merchantability in violation of
 2 California Civil Code § 1791.1; (Claim 5) violation of UCL § 17200 *et seq*; and (Claim
 3 6) violation of the Magnusson-Moss Warranty Act, 15 U.S.C. § 2301 *et seq*. The Court
 4 addresses each in turn.

5 *1. First Cause of Action: Violation of Cal. Civ. Code § 1793.2(d)*²

6 To prevail on a section 1793.2(d) breach of warranty claim, the plaintiff

7
 8 has the burden to prove that (1) the vehicle had a nonconformity covered by
 9 the express warranty that substantially impaired the use, value or safety of the
 10 vehicle (the nonconformity element); (2) the vehicle was presented to an
 11 authorized representative of the manufacturer of the vehicle for repair (the
 12 presentation element); and (3) the manufacturer or his representative did not
 repair the nonconformity after a reasonable number of repair attempts (the
 failure to repair element).

13 *Oregal v. American Isuzu Motors, Inc.*, 109 Cal. Rptr. 2d 583, 588 (Cal. Ct. App. 2001).

14 Plaintiff argues that Defendant Ford provided an express written warranty, that the
 15 Vehicle developed mechanical defects within the warranty period, and that “[s]aid defects
 16 substantially impair the use, value, or safety of the Vehicle.” Compl. ¶¶ 7, 9. The defects
 17 Plaintiff specifies could support a plausible inference that the nonconformity element is
 18 met. *See id.* ¶ 9.

19 However, Plaintiff does not sufficiently plead the “presentation” and “failure to
 20 repair elements.” *Oregal*, 109 Cal. Rptr. 2d at 588. Plaintiff’s allegations are conclusory
 21 and unsupported factually. *See* Compl. ¶ 10 (“Defendant and its representatives in this
 22 state have been unable to service or repair the Vehicle to conform to the applicable
 23 express warranties after a reasonable number of opportunities”). For example, Plaintiff
 24 does not plead when he presented the Vehicle, or how many times it was brought for
 25

26
 27 ² Though Plaintiff also cites § 1793.1(a)(2), the Court declines to infer a cause of action in the absence
 28 of such a pleading. Compl. ¶¶ 10–11; *see* Cal. Civ. Code § 1793.1(a)(2) (describing the font and
 language requirements for work orders and repair invoices).

1 repair. As a result, Defendant Ford cannot adequately defend itself from such “naked
2 assertions.” *Twombly*, 550 U.S. at 555. Therefore, the Court **GRANTS** Defendant
3 Ford’s motion to dismiss the first cause of action.

4 2. *Second Cause of Action: Violation of Cal. Civ. Code § 1793.2(b)*

5 Plaintiff’s second cause of action arises from nonconforming goods that were not
6 “serviced or repaired to conform to the applicable warranties within 30 days.” Cal. Civ.
7 Code § 1793.2(b). Plaintiff alleges that he “presented the Vehicle to Defendant’s
8 representative in this state, Defendant and its representative failed to commence the
9 service or repairs within a reasonable time and failed to service or repair the Vehicle so as
10 to conform to the applicable warranties within 30 days.” Compl. ¶ 17; *see Potts v. Ford*
11 *Motor Co.*, No. 321CV00256BENBGS, 2021 WL 2014796, at *6 (S.D. Cal. May 20,
12 2021).

13 But as this Court ruled in *Potts*, “this allegation is simply another recital of the
14 elements of the cause of action.” 2021 WL 2014796 at *6 (citing *Iqbal*, 556 U.S. at 678).
15 Defendant Ford does not know “where, when, or how [Plaintiff] presented the Vehicle
16 for service.” *Id.* Further, as with the first cause of action, Defendant Ford does not know
17 who Plaintiff presented the vehicle to for service. For these same reasons, the Court finds
18 that Plaintiff has not sufficiently pleaded his failure to repair claim. Therefore, the Court
19 **GRANTS** Defendant Ford’s motion to dismiss the second cause of action.

20 3. *Third Cause of Action: Express Warranty — Violation of UCC*

21 According to the Complaint, Plaintiff brings his third cause of action pursuant to
22 California Civil Code § 1794 and UCC § 2725. *See* Compl. ¶ 8. However, Plaintiff
23 concedes in opposition that he pleaded the incorrect commercial code section. *See* Doc.
24 No. 9 at 12. According to Plaintiff, his third cause of action is for violation of UCC
25 § 2313. *See id.* The Court agrees with Plaintiff that this typographical error, while
26 requiring correction, is not a proper basis for substantive dismissal.

27 This cause of action—brought pursuant to the California Civil Code and UCC—
28 arises from an alleged breach of an express warranty. *See* Cal. Com. Code. § 2313.

1 “Under California law, to establish breach of express warranty, ‘the plaintiff must prove
2 (1) the seller’s statements constitute an affirmation of fact or promise or a description of
3 the goods; (2) the statement was part of the basis of the bargain; and (3) the warranty was
4 breached.’” *Zuehlsdorf v. FCA US LLC*, No. EDCV181877JGBKKX, 2019 WL
5 2098352, at *11 (C.D. Cal. Apr. 30, 2019) (quoting *Weinstat v. Dentsply Int’l, Inc.*, 103
6 Cal. Rptr. 3d 614, 626 (Cal. Ct. App. 2010)).

7 While Plaintiff need not prove these elements at the pleading stage under Fed. R.
8 Civ. P. 8, he must still provide some factual support to survive a 12(b)(6) motion to
9 dismiss. That support is not present here. Plaintiff only asserts that “the representative
10 failed to repair the Vehicle, breaching the terms of the written warranty on each
11 occasion” that it was presented. Compl. ¶ 23. Considering the conjunctive elements, this
12 pleading is insufficient. Accordingly, the Court **GRANTS** Defendant Ford’s motion to
13 dismiss the third cause of action.

14 4. *Fourth Cause of Action: Implied Warranty of Merchantability — Violation*
15 *of Cal. Civ. Code § 1791.1(a)*

16 Plaintiff’s fourth cause of action is for violation of California Civil Code
17 § 1791.1(a). Compl. ¶¶ 28–29. At the most basic level, “[a]n implied warranty of
18 merchantability . . . requires that consumer goods ‘[a]re fit for the ordinary purposes for
19 which such goods are used.’” *Victorino v. FCA US LLC*, 326 F.R.D. 282, 290 (S.D. Cal.
20 2018) (quoting Cal. Civ. Code § 1791.1(a)). The duration of the implied warranty may
21 vary depending on whether the vehicle is new or used. *See* Cal. Civ. Code § 1791.1(c)
22 (setting a minimum of sixty days and a maximum of one year for new vehicles); Cal Civ.
23 Code § 1795.5(c) (setting a minimum of thirty days and a maximum of three months for
24 used vehicles). “[P]ursuant to California Commercial Code § 2725, ‘implied warranty
25 claims must be brought within four years of the date when the breach occurred.’” *Tanner*
26 *v. Ford Motor Co.*, 424 F. Supp. 3d 666, 671 (N.D. Cal. 2019) (quoting *Gerstle v. Am.*
27 *Honda Motor Co., Inc.*, No. 16-CV-04384-JST, 2017 WL 2797810, at *11 (N.D. Cal.
28 June 28, 2017)).

1 Defendant Ford contends that Plaintiff’s claim is time-barred. *See* Doc. No. 5-1 at
2 12–13. As Plaintiff argues, “[t]here is nothing that suggests a requirement that the
3 purchaser discover and report to the seller a latent defect within that time period.” *Daniel*
4 *v. Ford Motor Co.*, 806 F.3d 1217, 1222 (9th Cir. 2015) (quoting *Mexia v. Rinker Boat*
5 *Co.*, 95 Cal. Rptr. 3d 285, 295 (Cal. Ct. App 2009). Plaintiff’s contention is partially
6 correct. *See* Doc. No. 9 at 16. A latent defect may give rise to a cause of action if it
7 exists during—but is discovered subsequent to—the statutory warranty period. *See*
8 *Mexia*, 95 Cal. Rptr. 3d at 295. However, claims for latent defects must still be brought
9 within four years of discovery. *See Harris v. LSP Prod. Grp., Inc.*,
10 No. 218CV02973TLNKJN, 2021 WL 2682045, at *6 (E.D. Cal. June 30, 2021) (“[*Daniel*
11 and *Mexia*] held that latent defects may breach the implied warranty even when they are
12 not discovered within the implied warranty’s one-year duration under § 1791.1 because
13 § 2725 extends the statute of limitations duration *to four years*”) (emphasis added).
14 Defendant Ford and Plaintiff dispute when this four-year statutory period begins to run,
15 but they do not dispute that it remains applicable. *See* Doc. No. 5-1 at 13; Doc. No. 9 at
16 16.

17 Regardless, Plaintiff does not plead sufficient factual information for the Court to
18 determine whether his claim is time-barred. As noted above, Plaintiff pleads that the
19 Vehicle was both “new” and “Certified Pre-Owned.” Compl. ¶¶ 6, 7. Accordingly, the
20 Court **DENIES** Defendant Ford’s motion on this basis without prejudice to Defendant
21 Ford reasserting this argument.

22 However, even assuming his claim is timely, Plaintiff’s claim appears to
23 nonetheless fail. To the extent Plaintiff alleges the vehicle was “new” as defined in Cal.
24 Civ. Code § 1793.22(e)(2), *id.* ¶ 6, that provision limits the definition of a “new motor
25 vehicle” to § 1793.2(d), and it is inapplicable to this cause of action, *see* Cal. Civ. Code
26 § 1793.22(e).

27 Further, Plaintiff also alleges he purchased a “Certified Pre-Owned . . . 2014 Ford
28 Edge.” Compl. ¶ 7–8. A claim under California Civil Code § 1791.1(a) extends to used

1 goods, but “[i]t shall be the obligation of the distributor or retail seller making express
2 warranties with respect to used consumer goods (and not the original manufacturer,
3 distributor, or retail seller making express warranties with respect to such goods when
4 new).” Cal. Civ. Code § 1795.5(a); *see also Goldstein v. General Motors LLC*, 445 F.
5 Supp. 3d 1000, 1018 (S.D. Cal. 2020). Defendant Ford correctly contends that Plaintiff’s
6 claim fails if the Vehicle was purchased used because this cause of action may only be
7 brought against the distributor or retail seller, not the manufacturer. *See* Doc. No. 5-1 at
8 11–12.

9 While Plaintiff alleges Defendant Ford is both the distributor and manufacturer, the
10 Court rejects these conclusory and seemingly inconsistent allegations. *See* Compl. ¶¶ 6–
11 8. “Courts routinely dismiss implied warranty claims for used cars that are directed at the
12 manufacturer.” *Goldstein*, 445 F. Supp. 3d at 1018–19. Plaintiff also names co-
13 defendant Norm Reeves Ford Lincoln here—perhaps a plausible retail seller—but it is
14 unclear from the facts presented which defendant is liable under this cause of action and
15 why. *See* Compl. ¶¶ 31–33.

16 Moreover, as in *Potts*, “the complaint contains form language alleging [*inter alia*]
17 ‘the Vehicle . . . does not conform to the promises or affirmations of fact made on the
18 container or label,’ even though there is no suggestion the Vehicle was purchased in a
19 labeled container. As discussed in the preceding claims, this fails to meet the pleading
20 standard in federal court.” 2021 WL 2014796, at *6 (citing *Iqbal*, 556 U.S. at 678); *see*
21 Compl. ¶ 29 (using the same form language quoted). Therefore, the Court **GRANTS**
22 Defendant Ford’s motion to dismiss the fourth cause of action.

23 5. *Fifth Cause of Action: Violation of B&P Code § 17200*

24 For the same reasons that Plaintiff’s UCL claim against Defendant Ethos fails, his
25 UCL claim against Defendant Ford fails. As discussed above and will be explained
26 below, Plaintiff fails to state a predicate cause of action against Defendant Ford that his
27 unlawful UCL claim can borrow from. Nor does he plausibly plead any fraudulent or
28 unfair conduct. Accordingly, the Court **GRANTS** Defendant Ford’s motion to dismiss

1 Plaintiff's fifth cause of action. For the sake of completeness, the Court addresses
2 Defendant Ford's remaining contention: that Plaintiff seeks improper relief under this
3 cause of action. *See* Doc. No. 5-1 at 14–15.

4 Plaintiff seeks injunctive relief and restitution. Compl. ¶ 33. Plaintiff also asserts
5 that he is entitled to “disgorgement of improper fees penalties [*sic*] and interest.” Compl.
6 ¶ 33. In general, remedies for a violation of the UCL are confined to injunctive relief
7 and restitution. *See Potts*, 2021 WL 2014796, at *6. Though “a plaintiff may not recover
8 monetary damages” under the UCL, remedies can include disgorgement if equitable in
9 nature. *See id.*; *Cortez v. Purolator Air Filtration Prod. Co.*, 999 P.2d 706, 714–15 (Cal.
10 2000) (citing Cal. Bus. & Prof. Code § 17203).

11 However, a party seeking equitable relief must specifically plead the inadequacy of
12 monetary damages in federal court. *See Sonner v. Premier Nutrition Corp.*, 971 F.3d
13 834, 844 (9th Cir. 2020); *Potts v. Ford Motor Co.*, No. 321CV00256BENBGS, 2021 WL
14 3112471, at *5 (S.D. Cal. July 22, 2021). Plaintiff fails to do so here. *See* Compl. ¶ 31–
15 33.

16 Defendant Ford also contends that Plaintiff lacks standing to pursue injunctive
17 relief. *See* Doc. No. 5-1 at 15. “A plaintiff must demonstrate constitutional standing
18 separately for each form of relief requested.” *Davidson v. Kimberly-Clark Corp.*, 889
19 F.3d 956, 967 (9th Cir. 2018). Injunctive relief is a “prospective” remedy utilized to
20 prevent a legitimate threat of future injury. *Id.* Plaintiff has not alleged any threat of
21 future harm. *See* Compl. ¶ 31–33.

22 For these reasons, the Court **GRANTS** Defendant Ford's motion to dismiss
23 Plaintiff's fifth cause of action.

24 6. *Sixth Cause of Action: Magnusson-Moss — Violation of 15 U.S.C. § 2301(3)*

25 “To state a claim under the Magnuson Moss Warranty Act (‘MMWA’), Plaintiffs
26 must adequately plead a cause of action for breach of a written or implied warranty under
27 state law.” *Zuehlsdorf*, 2019 WL 2098352, at *11 (citing *Clemens v. DaimlerChrysler*
28 *Corp.*, 534 F.3d 1017, 1022 (9th Cir. 2008)). For the reasons set forth above, Plaintiff

1 failed to adequately plead any breach of warranty under California law. Therefore, the
2 Court **GRANTS** Defendant Ford’s motion to dismiss the sixth cause of action.

3 **C. Leave to Amend**

4 Federal Rule of Civil Procedure 15(a) states that “leave to amend shall be freely
5 given when justice so requires.” *Carvalho v. Equifax Info. Servs., LLC*, 629 F.3d 876,
6 892 (9th Cir. 2010); *see also Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074,
7 1079 (9th Cir. 1990) (noting leave to amend should be granted with “extreme liberality”).
8 A court should grant leave to amend unless the court “determines that the pleading could
9 not possibly be cured by the allegation of other facts.” *Lopez*, 203 F.3d at 1127.

10 In determining whether to grant leave to amend, courts generally consider four common
11 factors: (1) undue delay, (2) bad faith or dilatory motive, (3) prejudice to the opposing
12 party, and (4) futility of amendment. *Ditto v. McCurdy*, 510 F.3d 1070, 1079 (9th Cir.
13 2007); *Foman v. Davis*, 371 U.S. 178, 182 (1962).

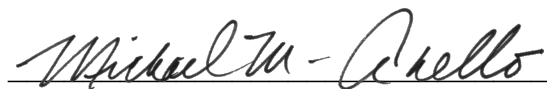
14 Here, the Court finds no undue delay, bad faith or dilatory motive, prejudice to the
15 opposing party, or futility of amendment. Therefore, the Court **GRANTS** Plaintiff
16 twenty-one (21) days leave to file an amended complaint.

17 **IV. CONCLUSION**

18 For the foregoing reasons, the Court **GRANTS** Defendants’ motions and
19 **DISMISSES** all claims. Plaintiff must file a First Amended Complaint, if any, on or
20 before **November 18, 2022**.

21 **IT IS SO ORDERED.**

22 Dated: October 24, 2022

23 

24 HON. MICHAEL M. ANELLO
25 United States District Judge