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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SHARYN BUKSBAUM, JANINE
SABELLA, DEBORAH THAYER,
DIESHA HODGES, California residents,
individually, and on behalf of all other
similarly situated,

Plaintiffs,

v.

BOAR'S HEAD PROVISIONS CO.,
INC., DOES 1 to 10, inclusive,

Defendants.

Case No.: 25-cv-597-RSH-BLM

**ORDER GRANTING IN PART
AND DENYING IN PART
DEFENDANT'S MOTION TO
DISMISS**

[ECF No. 18]

Pending before the Court is a motion to dismiss Plaintiffs' Second Amended Complaint, filed by defendant Boar's Head Provisions Company ("Boar's Head" or "Defendant"). ECF No. 18. As set forth below, Boar's Head's motion to dismiss is granted in part and denied in part.

I. BACKGROUND

On February 13, 2025, Plaintiffs filed this putative class action against Boar's Head in the Superior Court of California, County of San Diego. ECF No. 1. On March 13, 2025, Defendant removed the action to this Court. *Id.*

1 On April 10, 2025, Plaintiffs filed a First Amended Complaint (the “FAC”), as of
2 right pursuant to Federal Rule of Civil Procedure 15(a)(1). ECF No. 5. On April 24, 2025,
3 Defendant filed a motion to dismiss the FAC. ECF No. 7. On August 1, 2025, the Court
4 granted Defendant’s motion to dismiss and granted Plaintiffs leave to amend. ECF No. 13.
5 On August 22, 2025, Plaintiffs filed a Second Amended Complaint (the “SAC”), the
6 operative pleading. ECF No. 14.

7 The SAC alleges as follows. Defendant manufactures, markets, and distributes food
8 products nationwide, including through major retailers in California. ECF No. 14 ¶¶ 1, 10.
9 Defendant markets its products as being high-quality and prepared under sanitary
10 conditions. *Id.* ¶ 1.

11 Plaintiffs Sharyn Buksbaum, Janine Sabella, Deborah Thayer, and Diesha Hodges
12 (“Plaintiffs”) are four California consumers who allegedly purchased various Boar’s Head
13 food products—including but not limited to EverRoast Chicken, Vermont Cheddar Cheese,
14 Mesquite Wood Smoked Roasted Turkey, Ovengold Turkey Breast, Sweet B’s Honey
15 Barbeque Glazed Chicken Breast, and Hard Salami (the “Products”)—from retailers
16 between June 2022 and January 2025. *Id.* ¶¶ 14–40. Plaintiffs further allege that they each
17 read, understood, and relied on marketing representations from Defendant’s website before
18 making their purchases. *Id.* ¶ 46.

19 On January 15, 2025, an AP News report disclosed unsanitary conditions
20 documented by U.S. Department of Agriculture (“USDA”) inspection reports at a number
21 of Defendant’s facilities. *Id.* ¶ 54. Plaintiffs allege that the Products they purchased were
22 manufactured at three of Defendant’s facilities. *Id.* ¶¶ 13, 22, 31, 39. The three facilities at
23 issue, referred to herein as the “Three Plants,” are located in Forrest City, Arkansas; New
24 Castle, Indiana; and Petersburg, Virginia. *Id.* ¶ 10. Plaintiffs allege that the reported
25 conditions at the Three Plants included “meat and fat residue left on equipment and walls,”
26 “dripping condensation contaminating food,” “mold growth,” and “insect infestations.” *Id.*
27 ¶ 55.

28 The SAC alleges that Defendant’s representations about the quality of its products

1 and hygiene of its production methods were false and/or misleading as to products that
2 were made at any of the Three Plants. *Id.* ¶¶ 51–66. The SAC specifically identifies
3 nineteen representations on Defendant’s website and three representations from
4 Defendant’s printed *Nutrition Facts & Recipes* booklet.¹ *Id.* ¶ 15. Plaintiff Thayer is the
5 only named plaintiff who reviewed and relied on the representations from the *Nutrition*
6 *Facts & Recipes* booklet. *Id.* ¶ 32.

7 Plaintiffs seek certification of a class consisting of: “All persons in California who
8
9

10 ¹ The website representations are: (1) “Skillfully hand trimmed and handcrafted”; (2)
11 “Uncompromising quality means maximum results in your kitchen”; (3) “Since 1905, our
12 standards of quality have never wavered”; (4) “We will continuously improve our time-
13 honored traditional processes through the involvement of our dedicated employees”; (5)
14 “Our standards for quality have never wavered”; (6) “The highest standards... We insist
15 on the same unwavering commitment to quality we established over a century ago,
16 standards mostly abandoned in a mass-produced world”; (7) “Each meets our highest
17 standards of excellence”; (8) “No cutting corners, no compromises. No sacrificing quality
18 for profits”; (9) “Products made to standards rarely found today”; (10) “Our standards for
19 quality have never wavered—a value passed down from one family member to the next”;
20 (11) “We choose to only bring to market products that we believe in, products that meet
21 the standards set for us long ago”; (12) “Our products are not highly processed”; (13) “Food
22 safety is at the core of everything we do”; (14) “Strict food safety standards and protocols
23 are embedded in our processes and procedures”; (15) “Production locations are Safe
24 Quality Food (SQF)-certified and meet Global Food Safety Initiative (GFSI) standards”;
25 (16) “Facilities undergo scrupulous daily cleaning and sanitation processes”; (17) “Our
26 commitment to the highest standards of sanitation is evidenced through stringent cleaning
27 protocols, regular inspections, and advanced sanitation technologies”; (18) “Sanitation is a
28 cornerstone of our food safety commitment”; (19) and “By embracing the latest
advancements, we meet or exceed industry standards, reinforcing our commitment to
delivering safe, high-quality products every step of the way.” ECF No. 14 ¶¶ 15–45.

The representations in the booklet are: (20) “No artificial ingredients, minimally
processed”; (21) “All of our products are made with exceptional care and attention to
quality”; (22) “Since 1905, Boar’s Head has been a family business. In the beginning, we
had a very simple idea. Make the finest cold cuts possible. Nothing less. We still insist on
the same unwavering commitment to those standards we established long ago.” *Id.* ¶ 137.

The numbering of the statements above is added by the Court, for use in referring to
those statements in this order.

1 purchased any Boar’s Head product originating from plants in Forrest City, Arkansas, New
2 Castle, Indiana, and Petersburg, Virginia, from the time beginning three years before this
3 Complaint is filed until the resolution of this litigation.” *Id.* ¶ 72.

4 The SAC asserts claims for (1) intentional misrepresentation; (2) negligent
5 representation; (3) violation of California’s False Advertising Law (“FAL”), Cal. Bus. &
6 Prof. Code § 17500 *et seq.*; (4) violation of California’s Unfair Competition Law (“UCL”),
7 Cal. Bus. & Prof. Code § 17200 *et seq.*; (5) breach of express warranty; and (6) violation
8 of California’s Consumer Legal Remedies Act (“CLRA”), Cal. Civ. Code § 1770(a)(5). *Id.*
9 ¶¶ 79–151. Plaintiffs seek damages, restitution, disgorgement, and injunctive relief. *Id.* at
10 74–75.

11 On October 6, 2025, Defendant filed a motion to dismiss the SAC. ECF No. 18. The
12 motion is fully briefed. ECF Nos. 23 (Opposition), 24 (Reply).

13 **II. LEGAL STANDARD**

14 Defendant moves to dismiss pursuant to Rule 12(b)(6) for failure to state a claim,
15 including for failure to plead allegations of fraud with particularity under Rule 9(b).

16 A motion to dismiss under Rule 12(b)(6) “tests the legal sufficiency of a claim.”
17 *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). A pleading must contain “a short and
18 plain statement of the claim showing that the pleader is entitled to relief[.]” Fed. R. Civ. P.
19 8(a)(2). However, plaintiffs must also plead “enough facts to state a claim to relief that is
20 plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *see* Fed. R.
21 Civ. P. 12(b)(6). The plausibility standard demands more than a “formulaic recitation of
22 the elements of a cause of action,” or “‘naked assertions’ devoid of ‘further factual
23 enhancement.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S.
24 at 555, 557). Instead, a complaint “must contain sufficient allegations of underlying facts
25 to give fair notice and to enable the opposing party to defend itself effectively.” *Starr v.*
26 *Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011).

27 When reviewing a motion to dismiss under Rule 12(b)(6), courts assume the truth of
28 all factual allegations and construe them in the light most favorable to the nonmoving

1 party. *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337–38 (9th Cir. 1996) (citing *Nat’l*
2 *Wildlife Fed’n v. Espy*, 45 F.3d 1337, 1340 (9th Cir. 1995)). But a court “disregard[s]
3 ‘[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
4 statements[.]’” *Telesaurus VPC, LLC v. Power*, 623 F.3d 998, 1003 (9th Cir. 2010)
5 (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009)). Likewise, “conclusory
6 allegations of law and unwarranted inferences are not sufficient to defeat
7 a motion to dismiss.” *Pareto v. FDIC*, 139 F.3d 696, 699 (9th Cir. 1998) (citing *In re*
8 *Syntex Corp. Sec. Litig.*, 95 F.3d 922, 926 (9th Cir. 1996)). “After eliminating such
9 unsupported legal conclusions, [courts] identify ‘well-pleaded factual allegations,’ which
10 [are] assume[d] to be true, ‘and then [courts] determine whether they plausibly give rise to
11 an entitlement to relief.’” *Telesaurus VPC*, 623 F.3d at 1003. Dismissal under Rule
12 12(b)(6) is proper where there is no cognizable legal theory to support the claim or when
13 there is an absence of sufficient factual allegations to support a facially plausible claim for
14 relief. *Shroyer v. New Cingular Wireless Servs., Inc.*, 622 F.3d 1035, 1041 (9th Cir. 2010).

15 For claims alleging “fraud or mistake,” a heightened pleading standard applies.
16 Federal Rule of Civil Procedure 9(b) requires a party “alleging fraud or mistake [to] state
17 with particularity the circumstances constituting fraud or mistake.” Rule 9(b) “requires ...
18 an account of the ‘time, place, and specific content of the false representations as well as
19 the identities of the parties to the misrepresentations.’” *Swartz v. KPMG LLP*, 476 F.3d
20 756, 764 (9th Cir. 2007). “Averments of fraud must be accompanied by ‘the who, what,
21 when, where, and how of the misconduct charged.’” *Vess v. Ciba-Geigy Corp. USA*, 317
22 F.3d 1097, 1106 (9th Cir. 2003) (quoting *Cooper v. Pickett*, 137 F.3d 616, 627 (9th Cir.
23 1997)). A pleading must also identify “what is false or misleading about the purportedly
24 fraudulent statement, and why it is false.” *Moore v. Mars Petcare US, Inc.*, 966 F.3d 1007,
25 1019 (9th Cir. 2020) (quoting *Davidson v. Kimberly–Clark Corp.*, 889 F.3d 956, 964 (9th
26 Cir. 2018)). *See also Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1124 (9th Cir. 2009) (“Rule
27 9(b) demands that the circumstances constituting the alleged fraud be specific enough to
28 give defendants notice of the particular misconduct . . . so that they can defend against the

1 charge and not just deny that they have done anything wrong.”) (citation and internal
2 quotation marks omitted)).

3 **III. ANALYSIS**

4 **A. Standing**

5 Standing is a threshold matter that a plaintiff must establish for each form of relief
6 requested. *Friends of the Earth, Inc. v. Laidlaw Env'tl. Servs. (TOC) Inc.*, 528 U.S. 167,
7 185 (2000). Standing requires that (1) the plaintiff suffered an injury-in-fact — one that is
8 “sufficiently concrete and particularized” and “actual or imminent, not conjectural or
9 hypothetical,” (2) the injury is “fairly traceable” to the challenged conduct, and (3) the
10 injury is “likely” to be “redressed by a favorable decision.” *See Lujan v. Defenders of*
11 *Wildlife*, 504 U.S. 555, 561 (1992). A “quintessential injury-in-fact” can occur when a
12 plaintiff alleges that they “spent money that, absent defendants’ actions, they would not
13 have spent.” *Maya v. Centex Corp.*, 658 F.3d 1060, 1069 (9th Cir. 2011).

14 Defendant challenges Plaintiffs’ standing in several ways. First, Defendant argues
15 that Plaintiffs have failed to allege an injury-in-fact that is traceable to the challenged
16 conduct, because “Plaintiffs still have not alleged facts to show that the products they
17 purchased were manufactured at the Three Plants as opposed to having been manufactured
18 at other plants or by copackers.” ECF No. 18 at 9. However, the SAC does indeed allege,
19 for each Plaintiff, that the Products that he or she purchased were made at the Three Plants,
20 explaining that these facilities processed specified products for sale in California, where
21 each Plaintiff purchased them. ECF No. 14 ¶¶ 13, 22, 31, 39. Although Defendant derides
22 these allegations as “guesswork,” ECF No. 18 at 9, they are sufficient for purposes of
23 standing at this stage.

24 Second, Defendant argues, “Plaintiffs still do not refute that they consumed the
25 products, had no issues therewith, and received the complete benefit therefrom.” *Id.* at 11.
26 These arguments misconstrue Plaintiffs’ theory: Plaintiffs allege that they were
27 economically harmed by relying on specified false representations in paying an “artificially
28 inflated price premium.” ECF No. 14 ¶ 47. These allegations are sufficient to establish that

1 Plaintiffs have suffered an economic injury in reliance on Defendant’s misrepresentations.
2 *Singh v. Google LLC*, 824 F. App’x 512, 513–14 (9th Cir. 2020) (concluding plaintiff
3 adequately alleged an economic injury when he alleged that he would not have purchased
4 the product but for his reliance on defendant’s alleged misrepresentations); *Johnson v. Wal-*
5 *Mart Stores, Inc.*, 544 F. App’x 696, 697–98 (9th Cir. 2013) (concluding that a plaintiff
6 suffers an economic injury if he “surrender[s] in a transaction more . . . than he . . .
7 otherwise would have.”).

8 Finally, Defendant argues that Plaintiffs lack standing to seek injunctive relief
9 because Plaintiffs have not shown a threat of “repeated injury”; according to Defendant,
10 Plaintiffs can consult publicly available reports from the U.S. Department of Agriculture
11 before deciding whether to purchase products from Defendant in the future—such that they
12 would not be misled in the future. ECF No. 18 at 24.

13 In the Ninth Circuit, “[a] previously deceived consumer may have standing to seek
14 an injunction against false advertising or labeling, even though the consumer now knows
15 or suspects that the advertising was false at the time of the original purchase,” if the plaintiff
16 “adequately allege[s] that she faces an imminent or actual threat of future harm caused by
17 [the defendant’s] false advertising.” *Davidson v. Kimberly–Clark Corp.*, 889 F.3d 956, 970
18 (9th Cir. 2018). Here, the SAC alleges that “Plaintiffs would purchase the products again
19 if they were assured the products were not prepared in unsanitary, dangerous, and
20 contaminated conditions, and were in fact prepared with the superior level of quality and
21 care claimed by Defendant.” ECF No. 14 ¶ 48. Under *Davidson*, such allegations,
22 presumed to be true, are sufficient at the pleading stage. *See* 889 F.3d at 970–71; *Zeiger v.*
23 *WellPet LLC*, 526 F. Supp. 3d 652, 688 (N.D. Cal. 2021) (concluding that plaintiff had
24 standing because he was open to purchasing products if he could rely on defendant’s
25 representations); *Takahashi-Mendoza v. Coop. Regions of Organic Producer Pools*, 673
26 F. Supp. 3d 1083, 1093 (N.D. Cal. 2023) (applying *Davidson* and concluding that
27 plaintiff’s allegations that she “would consider purchasing” defendant’s products in the
28 future were sufficient to confer standing). The fact that Plaintiffs can consult past

1 government reports about Defendant’s facilities does not deprive Plaintiffs of standing to
2 seek to enjoin future false advertising.

3 **B. Consumer Deception**

4 Under the FAL, the CLRA, and the UCL, conduct is considered deceptive or
5 misleading if the conduct is “likely to deceive” a “reasonable consumer.” *Williams v.*
6 *Gerber Prods. Co.*, 552 F.3d 934, 938 (9th Cir. 2008). This standard also applies to
7 common law claims for negligent and intentional misrepresentation. *See Girard v. Toyota*
8 *Motor Sales, U.S.A., Inc.*, 316 Fed. App’x. 561, 562 (9th Cir. 2008) (concluding that the
9 justifiable reliance element of negligent misrepresentation equates to the reasonable
10 consumer standard); *Correia v. Johnson & Johnson Consumer*, No. CV 18-9918 PSG
11 (ASX), 2019 WL 2120967, at *3 (C.D. Cal. May 9, 2019) (applying the reasonable
12 consumer standard to intentional misrepresentation claim). The Ninth Circuit has
13 explained, in the context of a motion to dismiss, that “[t]his is not a negligible burden. To
14 meet this standard, Plaintiffs must demonstrate ‘more than a mere possibility that [the
15 seller’s] label might conceivably be misunderstood by some few consumers viewing it in
16 an unreasonable manner ... [r]ather, the reasonable consumer standard requires a
17 probability that a significant portion of the general consuming public or of targeted
18 consumers, acting reasonably in the circumstances, could be misled.’” *Moore v. Trader*
19 *Joe’s Co.*, 4 F.4th 874, 882 (9th Cir. 2021) (quoting *Ebner v. Fresh Inc.*, 838 F.3d 958, 965
20 (9th Cir. 2016)). Courts should “take into account all the information available to
21 consumers and the context in which that information is provided and used.” *See id.*

22 In contrast to statutory consumer claims, a breach of express warranty claim focuses
23 not on deception, but on whether an express factual representation was breached. *See*
24 *Strumlauf v. Starbucks Corp.*, 192 F. Supp. 3d 1025, 1031 (N.D. Cal. 2016) (“To prevail
25 on a breach of express warranty claim, a plaintiff must prove that the seller (1) made an
26 affirmation of fact or promise or provided a description of its goods; (2) the promise or
27 description formed part of the basis of the bargain; (3) the express warranty was breached;
28 and (4) the breach caused injury to the plaintiff.”).

1 “[T]o be actionable as an affirmative misrepresentation, a statement must make a
2 specific and measurable claim, capable of being proved false or of being reasonably
3 interpreted as a statement of objective fact.” *Vitt v. Apple Computer, Inc.*, 469 F. App’x
4 605, 607 (9th Cir. 2012) (citation and internal quotation marks omitted). “[G]eneralized,
5 vague[,] and unspecific assertions[,] constitute mere ‘puffery’ upon which a reasonable
6 consumer could not rely.” *Glen Holly Ent., Inc. v. Tektronix Inc.*, 343 F.3d 1000, 1015 (9th
7 Cir. 2003). Puffery does not include “misdescriptions of specific or absolute characteristics
8 of a product.” *Southland Sod Farms v. Stover Seed Co.*, 108 F.3d 1134, 1145 (9th Cir.
9 1997) (quoting *Cook, Perkiss and Liehe, Inc. v. N. Cal. Collection Serv., Inc.*, 911 F.2d
10 242, 246 (9th Cir. 1990)). Statements that constitute puffery also cannot serve as a basis
11 for a breach of warranty claim. *See Hong v. RugsUSA, LLC*, --- F. Supp. 3d ---, No. 24-cv-
12 8799-AMO, 2025 WL 2710096, at *6 (N.D. Cal. Sept. 23, 2025).

13 Defendant argues that the majority of the representations at issue constitute non-
14 actionable puffery, and as such, cannot form the basis for Plaintiffs’ claims. ECF No. 18 at
15 12, 16. For purposes of the analysis herein, the Court divides the representations into
16 categories, as follows.

17 First are general statements about the quality of the Products.² None of these
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20 ² The statements include: (2) “Uncompromising quality means maximum results in
21 your kitchen”; (3) “Since 1905, our standards of quality have never wavered”; (5) “Our
22 standards for quality have never wavered”; (6) “The highest standards... We insist on the
23 same unwavering commitment to quality we established over a century ago, standards
24 mostly abandoned in a mass-produced world”; (7) “Each meets our highest standards of
25 excellence”; (8) “No cutting corners, no compromises. No sacrificing quality for profits”;
26 (9) “Products made to standards rarely found today”; (10) “Our standards for quality have
27 never wavered—a value passed down from one family member to the next”; (11) “We
28 choose to only bring to market products that we believe in, products that meet the standards
set for us long ago”; (19) “By embracing the latest advancements, we meet or exceed
industry standards, reinforcing our commitment to delivering safe, high-quality products
every step of the way”; (21) “All of our products are made with exceptional care and
attention to quality”; (22) “Since 1905, Boar’s Head has been a family business. In the
beginning, we had a very simple idea. Make the finest cold cuts possible. Nothing less. We

1 statements—whether phrased in terms of the quality of products, the company’s
2 commitment to quality, or the company’s standards of quality—relate to a specific or
3 absolute characteristic of the Products, and none of these representations can be objectively
4 verified or disproved. These statements are too vague to be actionable. *See Shroyer*, 622
5 F.3d at 1043 (affirming dismissal of fraud claim as puffery where defendant company’s
6 advertisement was a “vague statement” containing no concrete assertions); *Glen Holly Ent.,*
7 *Inc. v. Tektronix, Inc.*, 352 F.3d 367, 379 (9th Cir. 2003) (defendant’s statements describing
8 “high priority” placed on product development were non-actionable puffery); *Cook*, 911
9 F.2d at 246 (an advertising claim is mere puffery—as opposed to a verifiable representation
10 of fact-when it is so vague, highly subjective, or meaninglessly general as to preclude
11 consumer reliance); *Fraker v. KFC Corp.*, No. 06CV1284 JM(WMC), 2006 WL 8430934,
12 at *3 (S.D. Cal. Oct. 19, 2006) (“The claims ‘highest quality’ and ‘best food’ are vague,
13 highly subjective claims not subject to empirical verification.”); *Golden W. Trading, Inc.*
14 *v. BelGioioso Cheese, Inc.*, No. CV097803GHKAGR, 2010 WL 11515277, at *3 (C.D.
15 Cal. Feb. 19, 2010) (concluding that representations of “freshest milk and highest quality
16 ingredients available” were not objectively verifiable); *Anunziato v. eMachines, Inc.*, 402
17 F. Supp. 2d 1133, 1141 (C.D. Cal. 2005) (statements regarding quality and reliability are
18 puffery).

19 Second are general statements about *commitments* to sanitation or safety.³ These
20 statements of commitment—similar to the statements of commitment to quality—are
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22
23 still insist on the same unwavering commitment to those standards we established long
24 ago.”

25 ³ The statements are: (13) “Food safety is at the core of everything we do”; (17) “Our
26 commitment to the highest standards of sanitation is evidenced through stringent cleaning
27 protocols, regular inspections, and advanced sanitation technologies”; (18) “Sanitation is a
28 cornerstone of our food safety commitment”; and (19) “By embracing the latest
advancements, we meet or exceed industry standards, reinforcing our commitment to
delivering safe, high-quality products every step of the way.”

1 vague, generalized, and aspirational. They do not support the reliance of a reasonable
2 consumer. *See Retail Wholesale & Dep't Store Union Loc. 338 Ret. Fund v. Hewlett-*
3 *Packard Co.*, 845 F.3d 1268, 1276 (9th Cir. 2017) (concluding that statements
4 “emphasiz[ing] a desire to commit to certain ‘shared values’ [are]... not capable of
5 objective verification”); *Hawkins v. Shimano N. Am. Bicycle Inc.*, No. 8:23-CV-02038-JVS
6 (JDE), 2024 WL 4405249, at *4 (C.D. Cal. Aug. 1, 2024) (concluding that defendant’s
7 statement about its commitment to innovation was aspirational puffery); *Nathanson v.*
8 *Polycom, Inc.*, 87 F. Supp. 3d 966, 976–77 (N.D. Cal. 2015) (concluding that commitment
9 to ethical practices was “inherently aspirational and hence immaterial”); *Plumley v. Sempra*
10 *Energy*, 2017 WL 2712297, at *7 (S.D. Cal. June 20, 2017) (determining statements
11 regarding “commitment to or prioritization of safety” to be corporate puffery because they
12 were “too nonspecific and unmeasurable”).

13 Third are statements about manufacturing and related processes. Some of these
14 statements are vague and generalized, while others contain elements that are specific and
15 objectively measurable claims. In some instances, however, those elements that are specific
16 and objectively measurable are not elements that Plaintiffs contend are false.

17 (1) “*Skillfully hand trimmed and handcrafted.*” This statement is non-actionable
18 puffery as to “skillfully” and as to “handcrafted.” *See Welk v. Beam Suntory Imp. Co.*, 124
19 F. Supp. 3d 1039, 1043–44 (S.D. Cal. 2015) (concluding that the word “handcrafted” on a
20 bourbon bottle was puffery because it was “generalized, vague, and unspecified”). The
21 claim that the Products are “hand trimmed” is a closer case; in a given context, such a claim
22 could be construed as more concrete and subject to verification. But Plaintiffs’ theory of
23 falsity here is not that no trimming was done by hand; instead, it is that the Products “were
24 mass-produced on automated equipment under filthy conditions, not skillfully hand-
25 trimmed.” ECF No. 14 ¶ 16(a). The use of automated equipment is not inconsistent with
26 human hands being used to trim lunchmeat; and a representation that such trimming is
27 “skillful” is not one on which a reasonable consumer would rely.

28 (4) “*We will continuously improve our time-honored traditional processes through*

1 *the involvement of our dedicated employees.*” Like the statements of commitment
2 discussed above, this statement is vague and aspirational, and is non-actionable. *See In re*
3 *Splash Tech. Holdings, Inc. Sec. Litig.*, 160 F. Supp. 2d 1059, 1077 (N.D. Cal. 2001)
4 (determining that “strong,” “robust,” “well positioned,” “solid,” and “improved” were too
5 vague to be actionable).

6 (12) *“Our products are not highly processed.”* Because deli meats are widely
7 understood to be processed to some degree, at issue here is whether the assertion that the
8 Products are “highly” processed is actionable. *See* ECF No. 14 ¶ 69. Defendant points out
9 that this statement is made in an FAQ portion of the website in response to the question
10 “How long do your deli meats stay fresh in the refrigerator?”⁴ ECF No. 18 at 14. The
11 complete answer is: “Our products are not highly processed. In order for you to enjoy
12 optimum flavor, we recommend that you do not purchase more product than you can
13 consume within three days.” *Id.* The Court concludes that the adjective “highly” as used
14 here, in a claim about the shelf life of lunchmeat, is not susceptible of objective verification,
15 and would not induce the reliance of a reasonable consumer. *See O’Neil v. Kroger Co.*,
16 2020 Cal. Super. LEXIS 1874, *3–6 (Cal. Super. Ct. July 9, 2020) (concluding that
17 description of a product as “artisan,” with a further definition in the complaint as “not mass
18 produced in a highly mechanized way,” was non-actionable puffery).

19 (14) *“Strict food safety standards and protocols are embedded in our processes and*
20 *procedures.”* The SAC describes this statement as a “process claim about internal
21 systems.” ECF No. 14 ¶¶ 18, 26. Defendant’s opening brief does not appear to address this
22 statement with any specificity—either arguing that it is non-actionable puffery or arguing
23 that Plaintiffs have failed to plead facts plausibly establishing that the statement is false.
24 Nor does Defendant’s reply brief. Courts have held similar statements about quality
25 assurance and quality control tests to be actionable as objective statements capable of being
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27
28 ⁴ The Court takes judicial notice of the web page at issue, ECF No. 18-3, which
Plaintiffs do not oppose. *See* ECF No. 23 at 24.

1 verified through discovery. *See Watson v. Solid Gold Pet, LLC*, No. CV 18-6479 PSG
2 (SSX), 2019 WL 3308766, at *3 (C.D. Cal. Feb. 22, 2019) (concluding that defendant’s
3 statement that ingredients “pass strict quality control measures” and “undergo multiple
4 checkpoints against key health and safety criteria” was not puffery); *Anunziato*, 402 F.
5 Supp. 2d at 1140 (finding that the phrase “most stringent quality control tests” is actionable,
6 and not puffery); *Zieger v. WellPet LLC*, 304 F. Supp. 3d 837, 851 (N.D. Cal. 2018)
7 (finding statements that “during production, rigorous standards and practices are put in
8 place to protect the nutritional integrity of our food” actionable); *Lack v. Cruise Am., Inc.*,
9 No. 17-cv-03399-YGR, 2017 WL 3841863, at *3 (N.D. Cal. Sept. 1, 2017) (concluding
10 “specific representations about the processes [defendant] had completed before offering
11 for sale a particular [product]” were actionable). Plaintiffs allege that this statement is false.
12 *See* ECF No. 14 ¶¶ 18, 26, 44, 45, 81. Similar to the cases cited above, this Court concludes
13 that this statement is actionable.

14 (15) “*Production locations are Safe Quality Food (SQF)-certified and meet Global*
15 *Food Safety Initiative (GFSI) standards.*” Defendant agrees that this particular statement
16 is not puffery. ECF No. 18 at 17 n.11. Indeed, whether Defendant’s production locations
17 have a particular certification is a fact subject to verification. However, Plaintiffs explain
18 their theory as follows:

19 Plaintiffs are not challenging the truth of the SQF statement itself (Mot.
20 at 20), but only the surrounding “scrupulous cleaning” and “strict
21 protocols” claims, and that Defendant’s actual practices fall far below
22 standards despite certification. The defect is not the certification, but
23 that Boar’s Head used the existence of SQF certification to reinforce
24 factual assurances about daily cleaning practices, sanitation rigor, and
25 embedded protocols that contemporaneous USDA findings contradict.

26 ECF No. 23 at 12. In other words, in Plaintiffs’ view, this statement becomes misleading
27 when coupled with the earlier statement, “Strict food safety standards and protocols are
28 embedded in our processes and procedures.” Plaintiffs’ explanation of their theory renders
this statement, on its own, non-actionable.

1 (16) “*Facilities undergo scrupulous daily cleaning and sanitation processes.*” This
2 statement is aspirational and non-actionable as to the description of cleaning and sanitation
3 processes as “scrupulous.” *See Kalin v. Semper Midas Fund, Ltd.*, No. 22-16766, 2023 WL
4 8821325, at *1 (9th Cir. Dec. 21, 2023) (concluding that “‘rigorous’ cannot be proven
5 objectively true or false,” thus the statement is non-actionable puffery). In contrast, the
6 claim that the company has processes for daily cleaning and sanitation is subject to
7 verification. But Plaintiffs’ theory of falsity is not that the company lacks processes for
8 daily cleaning and sanitation; rather, it is that the company’s processes are not sufficiently
9 “scrupulous” to remove residue from prior days. ECF No. 14 ¶ 19(d). Like the preceding
10 statement, this statement is non-actionable puffery as it applies to Defendant’s theory of
11 deception.

12 (20) “*No artificial ingredients, minimally processed.*” Defendant does not contend
13 that this particular statement, contained in the *Nutrition Facts & Recipes* booklet, is
14 puffery. Instead, Defendant’s motion argues that “the booklet is clear that the statement
15 pertains only to the ‘All Natural’ product line.” ECF No. 18 at 21. Defendant continues:

16 The statement appears as a footnote that is connected by asterisk only
17 to the All Natural product line. Plaintiffs do not allege any facts to show
18 that this description of the All Natural product line is false. *Nor do*
19 *Plaintiffs allege they purchased any All Natural products* (let alone
Thayer, who is the only Plaintiff that allegedly saw this booklet).

20 *Id.* Plaintiffs do not respond to this argument. Given that the booklet statement at issue was
21 limited to the All Natural product line, and the only Plaintiff who allegedly viewed the
22 booklet does not allege that she purchased those products, the Court concludes that
23 Plaintiffs have failed to state a claim of deception or breach of warranty as to this
24 statement.⁵

25 In summary, the *only* statement that Court determines to be actionable here is the
26

27 ⁵ The Court takes judicial notice of the booklet, ECF No. 18-2, which Plaintiffs do not
28 oppose. *See* ECF No. 23 at 24.

1 following statement from Defendant’s website: (14) “*Strict food safety standards and*
2 *protocols are embedded in our processes and procedures.*” The SAC alleges that plaintiff
3 Buksbaum read this statement on Defendant’s website before purchasing EverRoast
4 Chicken and Cracked Pepper Mill Turkey at Sprouts and Ralph’s between December 2024
5 and January 2025. *See* ECF No. 14 ¶ 18. The SAC identifies the addresses of these grocery
6 store locations. *Id.* ¶ 14. The SAC includes allegations with a similar level of detail as to
7 plaintiffs Sabella and Hodges. *See id.* ¶¶ 23, 26, 40, 44. The SAC does not allege that
8 plaintiff Thayer relied upon or was aware of this representation. *See id.* ¶¶ 28-36. The Court
9 is satisfied that the level of detail provided satisfies the requirements of Rule 9(b) as to the
10 purchases made by Buksbaum, Sabella, and Hodges. *See* ECF No. 13 at 8.

11 Finally, the SAC appears to allege omissions as an independent basis for liability.
12 These allegations are highly generalized. The SAC contains allegations about the subject
13 matter of these omissions—an alleged lack of sanitation—but does not identify with
14 particularity what, in Plaintiffs’ view, Defendant was required to disclose. “Omissions may
15 be the basis of claims under California consumer protections laws, but ‘to be actionable
16 the omission must be contrary to a representation actually made by the defendant, or an
17 omission of a fact the defendant was obliged to disclose.’” *Hodsdon v. Mars, Inc.*, 891 F.3d
18 857, 861 (9th Cir. 2018) (quoting *Daugherty v. Am. Honda Motor Co.*, 51 Cal. Rptr. 3d
19 118, 126 (Ct. App. 2006)). In *Hodson*, the Ninth Circuit held that a plaintiff failed to state
20 a claim for consumer fraud on an omission theory, where the plaintiff failed to allege that
21 the undisclosed fact—there, “the existence of slave or child labor in a product’s supply
22 chain”—“affects the product’s central function.” 891 F.3d at 864. The Ninth Circuit
23 explained, “[h]ere, the alleged lack of disclosure about the existence of slave labor in the
24 supply chain is not a physical defect at all, much less one related to the chocolate’s function
25 as chocolate. Plaintiff contends that he has “‘no practical use’ for the products tainted by
26 slave or child labor, but the central functionality of the product is not based on subjective
27 preferences about a product.” *Id.* The Ninth Circuit affirmed the district court’s dismissal
28 of the plaintiff’s consumer claims on this theory. *Id.* at 868.

1 Plaintiffs’ response is that conditions under which the Products were produced here
2 “go directly to the safety, sanitation, and value of ready-to-eat meat, which is the ‘central
3 function’ of the product.” ECF No. 23 at 18. But this reasoning is foreclosed by *Hodson*.
4 Plaintiffs allege no physical defect in the Products, much less one related to the Products’
5 central function as lunchmeat. The Court concludes that the SAC fails to state a standalone
6 claim for consumer fraud based on material omissions.

7 **C. Damages Under the CLRA**

8 The CLRA provides a thirty-day pre-filing notice requirement for “an action for
9 *damages*.” Cal. Civ. Code § 1782(a) (emphasis added). For these purposes, “[c]laims for
10 restitution and disgorgement qualify as actions for damages.” *See Sebastian v. Kimberly-*
11 *Clark Corp.*, No. 17cv442-WQH-JMA, 2017 WL 6497675, at *7 (S.D. Cal. Dec. 18, 2017);
12 *see also Acosta v. Ethicon, Inc.*, No. CV205992DSFGJSX, 2021 WL 2548686, at *6 (C.D.
13 Cal. Apr. 16, 2021) (same); *Reed v. Dynamic Pet Prod.*, No. 15CV0987-WQH-DHB, 2015
14 WL 4742202, at *7 (S.D. Cal. July 30, 2015) (same). In contrast, the CLRA permits a claim
15 for *injunctive relief* without giving pre-filing notice, and permits a plaintiff to amend his or
16 her complaint to add a damages request after giving the required notice. *Id.* § 1782(d). “The
17 CLRA’s notice requirement is not jurisdictional, but compliance with this requirement is
18 necessary to state a claim.” *Cattie v. Wal-Mart Stores, Inc.*, 504 F. Supp. 2d 939, 949 (S.D.
19 Cal. 2007) (collecting cases).

20 The Court previously determined that for purposes of seeking monetary relief under
21 the CLRA, Plaintiffs’ pre-filing notice was untimely; the notice was sent on March 26,
22 2025, fewer than 30 days before filing the FAC on April 10, 2025. ECF No. 13 at 11.
23 Thereafter, on August 19, 2025, Plaintiffs sent Defendant an amended CLRA notice. But
24 this notice was untimely too, because Plaintiffs sent it fewer than 30 days before they filed
25 the SAC on August 22, 2025. *See Corra v. Energizer Holdings, Inc.*, 962 F. Supp. 2d 1207,
26 1222 (E.D. Cal. 2013) (analyzing timeliness of CLRA notice based on the filing date of the
27 operative pleading). Accordingly, the Court dismisses Plaintiffs’ CLRA claim inasmuch as
28 it seeks monetary relief. *See Laster v. T-Mobile USA, Inc.*, 407 F. Supp. 2d 1181, 1196

1 (S.D. Cal. 2005) (concluding that courts have required “[s]trict adherence to the statute’s
2 notice provision ... to accomplish the Act’s goals of expeditious remediation before
3 litigation”).

4 **D. Preemption of Injunctive Relief**

5 Lastly, Defendant contends that the injunctive relief that Plaintiffs seek is preempted
6 by the Poultry Products Inspection Act (“PPIA”) and the Federal Meat Inspection Act
7 (“FMIA”). ECF No. 18 at 24-25. Those two federal statutes include parallel express
8 preemption provisions that prohibit states from imposing requirements within the scope of
9 the acts “with respect to premises, facilities and operations of any establishment at which
10 inspection is provided under” the acts, and “[m]arking, labeling, packaging, or ingredient
11 requirements” which are “in addition to, or different than those made under” the acts. *See*
12 21 U.S.C. §§ 467e, 678.

13 Defendant argues that “[t]he safety of Boar’s Head’s operations and products is
14 determined by USDA/FSIS when they stamp the products ‘inspected and passed,’ thereby
15 allowing for commercial sale.” ECF No. 18 at 25 (citing 21 U.S.C. §§ 458(a)(2), 606(a)).
16 The Court considers this argument in the context of the determinations above—that
17 Plaintiffs have alleged a single actionable statement, from Defendant’s website, that
18 “[s]trict food safety standards and protocols are embedded in our processes and
19 procedures.” If this statement is determined by a jury to be deceptive, the Court does not
20 see how ordering appropriate injunctive relief—including enjoining Defendant from
21 continuing to make that statement—would be preempted by federal product labelling
22 regulations. There is no indication that this same statement is contained on product
23 labelling or has been approved by federal regulators. *See Cohen v. ConAgra Brands, Inc.*,
24 16 F.4th 1283, 1291 (9th Cir. 2021) (“[T]he website representation materially differs from
25 the product label. Accordingly, Cohen’s state law claims challenging ConAgra’s website
26 representation that the chicken products as a whole contain no preservatives, artificial
27 flavors, or artificial colors, are not preempted (whether or not the product labels were
28 reviewed and approved by FSIS.”). The Court declines to dismiss Plaintiffs’ request for

1 injunctive relief.⁶

2 **E. Leave to Amend**

3 “Rule 15(a) declares that leave to amend shall be freely given when justice so
4 requires[.]” *Foman v. Davis*, 371 U.S. 178, 182 (1962) (citation and internal quotation
5 marks omitted). At the same time, “a district court may dismiss without leave where a
6 plaintiff’s proposed amendments would fail to cure the pleading deficiencies and
7 amendment would be futile.” *Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034,
8 1041 (9th Cir. 2011) (citation omitted). “[T]he district court’s discretion to deny leave to
9 amend is particularly broad where plaintiff has previously amended the complaint.”
10 *Metzler Inv. GMBH v. Corinthian Colls., Inc.*, 540 F.3d 1049, 1072 (9th Cir. 2008)
11 (quotations omitted).

12 Plaintiffs have previously amended their complaint twice. Here, the Court
13 determined that most of the alleged misrepresentations are non-actionable puffery because
14 they are not verifiable factual representations. The allegations of additional facts cannot
15 cure this defect. *Cook*, 911 F.2d at 247 (affirming the district court’s denial of leave to
16 amend because “the advertisement was not a factual representation and therefore not
17 actionable, no amendment would have been able to cure this defect”). Nor is there any
18 indication in Plaintiffs’ briefing of an intent to offer new theories of deceptiveness, or to
19 support their existing theories with additional material facts. Additionally, Plaintiffs have
20 twice failed to provide timely notice of the CLRA claim for damages; and on neither
21 occasion did Plaintiffs provide a meaningful response to the argument that their notice was
22 untimely. *See* ECF No. 8 at 23-24; ECF No. 23 at 20. The Court concludes that, in light of
23 prior amendments, granting further leave to amend would be futile and result in undue
24 delay. The Court exercises its discretion to decline further leave to amend. *Chodos v. W.*
25 *Publ’g Co.*, 292 F.3d 992, 1003 (9th Cir. 2002) (“[W]hen a district court has already
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28 ⁶ Given the reasoning above, the Court denies as moot Defendant’s request for judicial
notice of Food Safety and Inspection Service records. *See* ECF Nos. 18-4, 18-5.

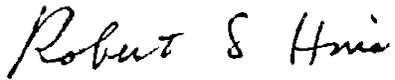
1 granted a plaintiff leave to amend, its discretion in deciding subsequent motions to amend
2 is ‘particularly broad.’”).

3 **IV. CONCLUSION**

4 For the foregoing reasons, the Court **GRANTS in part** Defendant’s motion to
5 dismiss [ECF No. 18]. Of the twenty-one misleading statements alleged in the SAC,
6 Plaintiffs may proceed only as to the following: “Strict food safety standards and protocols
7 are embedded in our processes and procedures.” Because plaintiff Deborah Thayer does
8 not allege awareness of this representation, she is **DISMISSED** from the action as a
9 plaintiff. As set forth above, Defendant’s motion is in other respects **DENIED**.⁷ The Court
10 **DENIES** further leave to amend.

11 **IT IS SO ORDERED.**

12 Dated: March 5, 2026



13 Hon. Robert S. Huie
14 United States District Judge
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25 ⁷ Defendant’s motion seeks, as an alternative to dismissal, to strike unspecified
26 portions of the SAC. *See* ECF No. 18 at 3 (“Notwithstanding that the Court already
27 dismissed, without leave to replead, Plaintiffs’ claims based on products and labels, the
28 SAC continues to assert such claims. The Court should dismiss and/or strike such claims
and allegations.”). In light of the ruling herein, and the lack of specificity in Defendant’s
request, the Court declines the request to strike.