

United States District Court
Central District of California

CARYN COLLAZO; KYM HALL;
CINDY PETERSON; CAROL SAUER;
KRIS THORSEN MICHELS; and
AMANDA TAPSCOTT,

Plaintiffs,

v.

WEN BY CHAZ DEAN, INC.; GUTHY-
RENKER LTD.; GUTHY-RENKER
PARTNERS, INC.; and GUTHY-
RENKER LLC,

Defendants.

Case No. 2:15-CV-01974-ODW-AGR

**ORDER DENYING
DEFENDANTS' MOTION TO
DISMISS [23]**

I. INTRODUCTION

Pending before the Court is a Motion to Dismiss filed by Defendants WEN by Chaz Dean, Inc., Guthy-Renker Ltd., Guthy-Renker Partners, Inc., and Guthy-Renker LLC. (ECF No. 23.) In their putative Class Action Complaint, Plaintiffs Caryn Collazo, Kym Hall, Cindy Peterson, Carol Sauer, Kris Thorsen Michels, and Amanda Tapscott (collectively "Plaintiffs") allege six causes of action, including violations of two California consumer protection statutes. (ECF No. 1.) Defendants now move to

1 dismiss both consumer protection causes of action on grounds that an extra-territorial
2 application of the laws is improper and the claims were not plead with the proper
3 specificity under Federal Rule of Civil Procedure 9. For the reasons discussed below
4 WEN's motion is **DENIED**.¹

5 I. BACKGROUND

6 "WEN by Chaz Dean" is a hair care product line developed by Los Angeles-
7 based hair stylist, Chaz Dean, in collaboration with Guthy-Renker, a large direct-
8 marketing company. (Compl. ¶ 26.) WEN products are primarily distributed through
9 direct marketing techniques, including infomercials, television ads, magazine ads,
10 QVC, and the WEN website. (*Id.* ¶ 26.) Defendant Wen by Chaz Dean, Inc. is a
11 California corporation with its principal place of business in Santa Monica, California.
12 (*Id.* ¶ 20.) Defendants Guthy-Renker, Ltd., Guthy-Renker Partners, Inc., and Guthy-
13 Renker LLC are Delaware corporations with their principal place of business in Santa
14 Monica, California. (*Id.* ¶¶ 21–22.)

15 In their Complaint, Plaintiffs allege that they purchased WEN hair care
16 products after viewing Defendants' various advertisements, which consisted of an
17 "extensive marketing campaign, including the use of ubiquitous infomercials and
18 television advertising with celebrity testimonials, the Internet and widely circulated
19 popular style and fashion magazines." (*Id.* ¶¶ 6, 46–51.) Defendants advertised that
20 WEN products would leave "their hair smoother, shinier, stronger, fuller, more
21 manageable with no frizz" and that the products would also "limit or repair damage as
22 a result of other hair treatments." (*Id.* ¶ 2.) However, each Plaintiff alleges "extreme
23 hair loss and damage" after using the products "as instructed." (*Id.* ¶¶ 46–51.)
24 Plaintiffs claim that "one or more of [WEN] products acts as a depilatory or caustic
25 agent," that damages the hair strand and/or follicle, and that Defendants failed to
26 disclose and properly warn Plaintiffs of this hazardous ingredient. (*Id.* ¶¶ 2–4.)

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28 ¹ After carefully considering the papers filed in support of and in opposition to the Motion, the Court
deems the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; L.R. 7-15.

1 Plaintiffs contend that Defendants knew or should have known of WEN’s hazards, but
2 they “continued to conceal the dangers of the products” and continued to claim that
3 WEN products were “safe when properly applied.” (*Id.* ¶ 4.)

4 Plaintiffs make numerous allegations that WEN, Chaz Dean, and Guthy-Renker
5 misrepresent the ingredients, safety, and effects of their products. (*Id.* ¶¶ 63–80.)
6 Specifically, Plaintiffs point to allegedly false and misleading statements found on
7 Chaz Dean’s, Guthy-Renker’s, and WEN’s websites. Chaz Dean’s website states:
8 “[Chaz Dean] believes in a natural, healthy lifestyle ... dedicate[ed] to harmony and
9 holistic methods.” (*Id.* ¶ 24.) WEN’s website states: “WEN isn’t like an ordinary
10 shampoo so you want to use more of it, not less. You can never use too much! The
11 more you use, the better the results.” (*Id.* ¶ 27.) The website continues: “[WEN]
12 cleanses hair thoroughly without lathering or harsh ingredients. It’s designed not to
13 strip your hair and scalp of natural oils, leaving your hair with more strength,
14 moisture, manageability and better color retention.” (*Id.*) WEN’s website allegedly
15 states that “WEN has no harsh ingredients” (*Id.* ¶ 29.) Guthy-Renker’s website
16 states: “[Guthy-Renker] is one of the largest and most respected direct marketing
17 companies in the world” and “since 1988 has discovered and developed dozens of
18 well-loved, high quality consumer products in the beauty, skincare, entertainment and
19 wellness categories.” (*Id.* ¶ 26.)

20 Plaintiffs argue that Defendants’ representations continued to “perpetuate and
21 create a false public perception that there was little or no risk from the use of [WEN
22 products],” thus violating the California’s consumer protection laws. (*Id.* ¶ 11.) Each
23 Plaintiff hails from a different state: (1) Caryn Collazo is a citizen of Florida; (2) Kym
24 Hall’s a citizen of New Jersey; (3) Kris Thorsen Michels is a citizen of Hawaii; (4)
25 Cindy Peterson is a citizen of Minnesota; (5) Carol Sauer is a citizen of North
26 Carolina; and (6) Amanda Tapscott is a resident of Indiana. (*Id.* ¶¶ 14–19.)

27 The Complaint, which was filed on March 17, 2015, raises six causes of action:
28 (1) breach of warranty; (2) violation of California’s Unfair Competition Law

1 (“UCL”), Cal. Bus. & Prof. Code §§ 17200 *et seq.*; (3) violation of California’s False
2 Advertising Law (“FAL”), Cal. Bus. & Prof. Code §§ 17500 *et seq.*; (4) failure to
3 warn negligence; (5) failure to test negligence; and (6) strict product liability. (See
4 ECF No. 1.) Defendants filed their Motion to Dismiss on May 26, 2015. (ECF No.
5 23.) Defendants’ Motion seeks to dismiss Plaintiffs’ UCL and FAL causes of action.
6 Plaintiffs filed a timely Opposition on June 22, 2015 (ECF No. 30), and Defendants a
7 timely Reply on June 29, 2015 (ECF No. 33).

8 **II. LEGAL STANDARDS**

9 **A. Federal Rule of Civil Procedure 12(b)(6)**

10 Pursuant to Rule 12(b)(6), a defendant may move to dismiss an action for
11 failure to allege “enough facts to state a claim to relief that is plausible on its face.”
12 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A claim has facial plausibility
13 when the plaintiff pleads factual content that allows the court to draw the reasonable
14 inference that the defendant is liable for the misconduct alleged. The plausibility
15 standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer
16 possibility that a defendant has acted unlawfully.” *Ashcroft v. Iqbal*, 556 U.S. 662,
17 678 (2009) (internal citations omitted). For purposes of ruling on a Rule 12(b)(6)
18 motion, the Court “accept[s] factual allegations in the complaint as true and
19 construe[s] the pleading in the light most favorable to the non-moving party.”
20 *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008).

21 The Court is not required to “assume the truth of legal conclusions merely
22 because they are cast in the form of factual allegations.” *Fayer v. Vaughn*, 649 F.3d
23 1061, 1064 (9th Cir. 2011) (internal quotation marks and citations omitted). Mere
24 “conclusory allegations of law and unwarranted inferences are insufficient to defeat a
25 motion to dismiss.” *Adams v. Johnson*, 355 F.3d 1179, 1183 (9th Cir. 2004) (internal
26 quotation marks and citations omitted). “If a complaint is accompanied by attached
27 documents, the court is not limited by the allegations contained in the complaint.
28 These documents are part of the complaint and may be considered in determining

1 whether the plaintiff can prove any set of facts in support of the claim.” *Durning v.*
2 *First Boston Corp.*, 815 F.2d 1265, 1267 (9th Cir. 1987) (internal citations omitted).
3 The Court may consider contracts incorporated in a complaint without converting a
4 motion to dismiss into a summary judgment hearing. *United States v. Ritchie*, 342
5 F.3d 903, 907–08 (9th Cir. 2003).

6 **B. Federal Rule of Civil Procedure 9**

7 Rule 9 states that an allegation of “fraud or mistake must state with particularity
8 the circumstances constituting fraud.” Fed. R. Civ. P. 9(b). The “circumstances”
9 required by Rule 9(b) are the “who, what, when, when, where, and how” of the
10 fraudulent activity. *Vess v. Ciba–Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir.
11 2003). In addition, the allegation “must set forth what is false or misleading about a
12 statement, and why it is false.” *Id.* The heightened pleading standard ensures that
13 “allegations of fraud are specific enough to give defendants notice of the particular
14 misconduct which is alleged to constitute the fraud charged so that they can defend
15 against the charge and not just deny that they have done anything wrong.” *Semegen v.*
16 *Weidner*, 780 F.2d 727, 731 (9th Cir. 1985).

17 **III. DISCUSSION**

18 In its Motion to Dismiss, Defendants challenge Plaintiffs’ California consumer
19 protection claims. First, Defendants argue that Plaintiffs cannot assert claims under
20 the UCL or FAL because Plaintiffs are not California residents and did not suffer their
21 injuries while in California. (Mot. 5–6.) Second, Defendants argue that Plaintiffs’
22 Complaint lacks sufficient specificity as required under Rule 9. (*Id.* at 6.)

23 **A. Plaintiffs’ UCL and FAL Claims Do Not Seek Extraterritorial Application** 24 **of California Law.**

25 Defendants argue that Plaintiffs’ California consumer protection claims must be
26 dismissed because Plaintiffs do not allege that the harm occurred *inside* California.

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1 (*Id.* at 5–6.)² According to Defendants, because Plaintiffs did not live in California
2 when they saw Defendants’ advertisements or when they used WEN products,
3 Plaintiffs cannot avail themselves of California’s statutory consumer protection laws.
4 (*Id.*) WEN believes that Plaintiffs are only protected by the consumer protection laws
5 of their home states or of the states where the advertisements actually originated. (*Id.*)

6 “Whether a nonresident plaintiff can assert a claim under California law is a
7 constitutional question based on whether California has sufficiently significant
8 contracts with the plaintiff’s claims.” *Forcellati*, 876 F. Supp. 2d at 1160 (citing
9 *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 589–90 (9th Cir. 2012)). With respect
10 to California’s consumer protection laws, such as the UCL and FAL, non-California
11 residents are foreclosed from bringing such claims “where none of the alleged
12 misconduct or injuries occurred in California.” *Churchill Village, LLC v. Gen. Elec.*
13 *Co.*, 169 F. Supp. 2d 1119, 1126 (N.D. Cal. 2000) (citing *Norwest Mortg. Inc. v. Super*
14 *Ct.*, 72 Cal. App. 4th 214, 222 (1999)); *see also Tidenberg v. Bidz.com, Inc.*, No. 08-
15 cv-5553, 2009 WL 605249, *4 (C.D. Cal. Mar. 4, 2009) (“The critical issues here are
16 whether the injury occurred in California and whether the conduct of the Defendants
17 occurred in California. If neither of these questions can be answered in the
18 affirmative, then Plaintiff will be unable to avail herself of [the UCL and FAL].”). In
19 deciding whether California’s consumer protection laws should apply, courts consider
20 the defendant’s residency, the plaintiff’s residency, and “where decisions about the
21 behavior in question were made.” *Wilson v. Frito-Lay N. Am., Inc.*, 961 F. Supp. 2d
22 1134, 1148 (N.D. Cal. 2013).

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25 ² In its Motion to Dismiss, Defendants originally challenged Plaintiffs “standing” to bring suit.
26 (Mot. 3.) Defendants wisely abandoned this argument in its Reply. *See Forcellati v. Hyland’s, Inc.*,
27 876 F. Supp. 2d 1155, 1160 (C.D. Cal. 2012) (explaining the difference between a plaintiff’s
28 misguided “standing” argument and the choice of law analysis necessary to apply the UCL outside
of California).

1 Here, there is no dispute that Plaintiffs neither live nor suffered their alleged
2 injuries inside California. The critical issue then becomes: where did the decisions
3 regarding the alleged misconduct occur? See *Churchill Village*, 169 F. Supp. 2d at
4 1126; *Wilson*, 961 F. Supp. 2d at 1148. This Court must determine where decisions
5 regarding WEN’s product ingredients and product advertisements—the alleged
6 misconduct in this case—occurred. The Complaint clearly alleges that WEN by Chaz
7 Dean. is incorporated in California and has its principle place of business in
8 California. (Compl. ¶ 20.) The Complaint also alleges that Defendants Guthy-Renker
9 Ltd., Guthy-Renker Partners, Inc., and Guthy-Renker LLC have their principle place
10 of business in California. (*Id.* ¶¶ 21–22.)

11 Defendants argue that allegations regarding their citizenship is not enough to
12 demonstrate that the alleged harmful conduct—the manufacturing, distributing, and
13 advertising a harmful product—occurred in California. (Mot. 5.) In its Reply,
14 Defendants claim that “[a]llowing such a conclusion would require this Court to make
15 an inference that is unreasonable to the point of becoming a purely arbitrary mandate.”
16 (Reply 4.)

17 The only unreasonableness is Defendants’ insolent argument, which is severely
18 misguided for several reasons. First, Defendants’ impudent assertion is unsupported
19 by any controlling law. In fact, there is not a single published case that suggests a
20 California company, with a principal place of business and headquarters in California,
21 cannot be sued in California for violating California consumer protection laws.
22 Defendants principally rely on the California Court of Appeals decision in *Norwest*
23 *Mortgage*, however, this case does Defendants no favors. In *Norwest Mortgage*, the
24 defendant was incorporated in California, but had its principal place of business and
25 headquarters in Iowa. *Norwest*, 72 Cal. App. 4th at 217. A group of plaintiffs, to
26 include non-California residents, challenged a business practice that was created at the
27 Iowa headquarters and implemented from the Iowa headquarters. *Id.* at 218. Relying
28 on the Due Process Clause of the Fourteen Amendment, the court held that the non-

1 California residents could not bring UCL claims against the defendant. *Id.* at 226.
2 The court explained that while the defendant's place of incorporation permitted
3 personal jurisdiction in California, this was the *only* California connection between the
4 defendant and the non-California plaintiffs. *Id.* at 227. Such a connection cannot
5 subject a party to all laws of the forum. *Id.* (citing *Phillips Petroleum Co. v. Shutts*,
6 472 U.S. 797, 821 (1985)). The *Norwest Mortgage* court concluded that "[b]ecause
7 [the defendant's] headquarters and principal place of business, the place [the non-
8 California plaintiffs] were injured, and the place the injury-producing conduct
9 occurred are outside California, we conclude application of the UCL to the claims of
10 [non-California] plaintiffs would be arbitrary and unfair and transgress due process
11 limitations." *Id.*

12 Similar to *Norwest Mortgage*, numerous other courts have relied on the
13 defendant's principle place of business and headquarters location in determining
14 whether the UCL or FAL apply. *See, e.g., Chavez v. Blue Sky Natural Beverage Co.*,
15 268 F.R.D. 365, 379 (N.D. Cal. 2010) ("Defendants are headquartered in California
16 and their misconduct allegedly originated in California. With such significant contacts
17 between California and the claims asserted by the class, application of the California
18 consumer protection laws would not be arbitrary or unfair to defendants."); *Forcellati*,
19 876 F. Supp. 2d at 1160 ("[The New Jersey] Plaintiff alleges that Defendants are
20 headquartered in Los Angeles, California. Therefore, application of California law
21 poses no constitutional concerns."); *Wilson*, 961 F. Supp. 2d at 1148 (finding a Texas
22 corporation cannot be sued by non-California residents in California under the UCL
23 and FAL when the Texas corporation only advertised and sold products in California);
24 *Clothesrigger, Inc. v. GTE Corp.*, 191 Cal. App. 3d 605, 613 (1987) (concluding that
25 non-California residents could assert claims under California law when the
26 defendant's principal officers were in California and the alleged fraudulent
27 misrepresentations were prepared in California).

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1 Second, the practical consequence of Defendants’ argument highlights the
2 absurdity of its position. In arguing that its principal place of business is not
3 dispositive to the inquiry, Defendants argue that “[i]n reality, the WEN marketing, the
4 website hosting, the television commercials (all of which Plaintiffs’ allege they
5 viewed) could have originated in any state.” (Reply 4.) Defendants want the Court to
6 believe that no decision-making originates from its *principal place of business*.
7 Instead, all decisions regarding product ingredients and advertising is done by third-
8 party marketing agencies or web-hosting companies located in some mysterious
9 location. If Defendants use a web-hosting service out of Russia, then Defendants
10 believe it should only be subject to Russia’s consumer protection laws for all web-
11 based consumer protection claims. After all, that is where the conduct “originated.”

12 Not only is there no authority to support this position, but it stretches all logic.
13 Decisions regarding contents of a product and advertising a product are decisions that
14 inherently begin and end at a company’s principal place of business. Defendants are
15 not blind to the contents of its products or the advertising promoting its products, nor
16 can it avoid liability under California law by burrowing its head in the sand. The
17 Court rejects Defendants’ claim that the Plaintiffs failed to allege where the harmful
18 conduct originated.

19 Third, Defendants failed to carry its burden of proving California’s consumer
20 protection laws do not apply. A defendant challenging the assertion of a California
21 statutory cause of action by out-of-state plaintiffs carries a “burden to defeat the
22 presumption that California law applies and to ‘show[] a compelling reason justifying
23 displacement of California law.” *Forecellati*, 876 F. Supp. 2d at 1160 (quoting
24 *Rasidescu v. Midland Credit Mgmt., Inc.*, 496 F. Supp. 2d 1155, 1159 (S.D. Cal.
25 2007)). The Court soundly rejects Defendants assertion that all of its marketing and
26 product-composition decisions—the alleged wrongful conduct in this case—originate
27 anywhere else than the state where all Defendants have their principle place of
28 business. Defendants failed to carry this burden by asserting unreasonable and legally

1 unfounded claims. As a result, the Court concludes that there is no constitutional,
2 legal, or practical concern with Plaintiffs’ decision to bring claims under the UCL and
3 FAL. The Court rejects Defendants’ first argument.

4 **B. Plaintiffs’ Consumer Protection Claims are Plead With Sufficient**
5 **Particularity to Satisfy Rule 9.**

6 Defendants argue that Plaintiffs’ UCL and FAL claims, both based on the same
7 “fraudulent course of conduct,” should be dismissed for failure to meet the heightened
8 pleading standard under Rule 9(b). (Mot. 6.) Defendants contend that the allegations
9 are conclusory and do not state with particularity “which statements each Plaintiff saw
10 or read before making the purchase, which statements each Plaintiff found material, or
11 which statements each Plaintiff relied upon in deciding to purchase a WEN product.”
12 (*Id.* at 7.) Defendants also argue that Plaintiffs fail to distinguish between Defendants
13 in alleging fraudulent conduct. (*Id.*) In opposition, Plaintiffs argue that they have
14 pleaded the “who, what, when, where and how” with sufficient particularity and
15 clarify each factor in detail. (Opp’n 12.) Plaintiffs further point out that “Rule 9(b)’s
16 heightened pleading standard may be relaxed when the allegations of fraud relate to
17 matters particularly within the opposing party’s knowledge.” (*Id.*)

18 The UCL prohibits “any unlawful, unfair or fraudulent business act or practice
19 and unfair, deceptive, untrue or misleading advertising.” Cal. Bus. & Prof. Code
20 § 17200. California’s FAL makes it unlawful for a business to disseminate any
21 statement “which is untrue or misleading, and which is known, or which by the
22 exercise of reasonable care should be known, to be untrue or misleading.” Cal. Bus. &
23 Prof. Code § 17500. Rule 9(b)’s heightened pleading standards apply to UCL and
24 FAL claims grounded in fraud. *Vess*, 317 F.3d at 1103–06; *Kearns v. Ford Motor Co.*,
25 567 F.3d 1120, 1125 (9th Cir. 2009). UCL and FAL claims alleging fraud “must be
26 accompanied by ‘the who, what, when, where, and how’ of the misconduct charged.”
27 *Vess*, 317 F.3d at 1106 (quoting *Cooper v. Pickett*, 137 F.3d 616, 627 (9th Cir. 1997)).

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1 Plaintiffs' Complaint adequately articulates the "who, what, when, where and
2 how" that is required to plead fraud under the UCL and FAL. The first requirement is
3 "who." "Rule 9(b) does not allow a complaint to merely lump multiple defendants
4 together but requires plaintiffs to differentiate their allegations when suing more than
5 one defendant." *Swartz v. KPMG LLP*, 476 F.3d 756, 765 (9th Cir. 2007). Although
6 the Complaint is not required to detail "participation by each conspirator in every
7 detail in the execution of the conspiracy" to establish liability, a plaintiff must at a
8 minimum, identify the role of each defendant in a fraud suit involving multiple
9 defendants. *Id.* Plaintiffs adequately allege that Chaz Dean and Guthy-Renker acted
10 "jointly" in the design, manufacture, marketing, sale, and distribution of WEN
11 products. (Compl. ¶ 26.) Plaintiffs' Complaint specifically identifies Chaz Dean as
12 "the founder of WEN" and "a Los Angeles-based hair care stylist who 'has a celebrity
13 clientele list that reads like a who's who in Hollywood,'" and Guthy-Renker as "one
14 of the largest and most respected direct marketing companies in the world." (*Id.*
15 ¶¶ 24, 26.) Moreover, Chaz Dean's business relationship with Defendants is clearly
16 described, or can be reasonably inferred, from the allegations. (*Id.* ¶ 26.) Chaz Dean
17 "creates hair care products ... including [WEN] products," while Guthy-Renker
18 "credits itself for . . . marketing campaigns featuring some of today's leading
19 celebrities." (*Id.* ¶¶ 24, 26.) The Court finds that these detailed allegations describing
20 the respective roles of Defendants is sufficient to satisfy the "who" requirement under
21 Rule 9.

22 Plaintiffs also properly allege the "what" requirement by pointing to the specific
23 misrepresentations on which they relied when purchasing WEN products. Plaintiffs'
24 Complaint directly quotes numerous statements from WEN's website which details
25 the product ingredients, directions for use, and safety, as well as claims that WEN will
26 leave "hair with more strength" (*Id.* ¶¶ 27–30.) There are also allegations that
27 Defendants' marketing scheme was ubiquitous and consistently misrepresented the
28 safety of the products through numerous channels of communication. (*Id.*) With

1 regard to “when,” Plaintiffs allege dates during which they purchased or used the
2 WEN products. (*Id.*) As to the “where,” Plaintiffs contend they were exposed to
3 Defendants’ alleged deceptive representations “by way of the WEN website, magazine
4 advertising, infomercials, television ads, QVC and other direct marketing channels.”
5 (*Id.* ¶ 27.) Lastly, with respect to the “how” requirement, Plaintiffs contend that
6 Defendants misrepresented its hair care products as “gentle, natural, free from harsh or
7 damaging chemicals, conditioning and safe,” while concealing the alleged fact that the
8 products contained a “depilatory or caustic agent, causing a chemical reaction that
9 damages the hair strand and/or follicle.” (*Id.* ¶¶ 31–33.)

10 The Court finds that these allegations put Defendants on notice as to “who,
11 what, when, where and how” as required for fraud claims under Rule 9(b). Given the
12 sufficient detail in Plaintiffs’ Complaint which lists Defendants’ alleged fraudulent
13 representations, it is disingenuous for Defendants’ to claim they have not received
14 sufficient notice of what is at issue in this case. The policy supporting Rule 9(b)’s
15 heightened pleading requirements is that it “protects potential defendants—especially
16 professionals whose reputations in their field of expertise are most sensitive to
17 slander—from the harm that comes from being charged with the commission of
18 fraudulent acts.” *Semegen*, 780 F.2d at 731. Defendants clearly represented that their
19 products were safe, and Plaintiffs’ pedestrian allegation that those representations
20 were made fraudulently does not place Defendants at any enhanced risk of
21 reputational harm. Plaintiffs’ allegations comply with Rule 9(b) thus protecting
22 Defendants from the inherent harm attached to fraud allegations.

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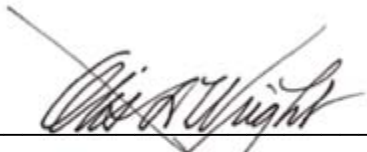
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IV. CONCLUSION

For the reasons discussed above, the Court hereby **DENIES** Defendants' Motion to Dismiss. (ECF No. 23.)

IT IS SO ORDERED.

July 17, 2015



OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE