

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

**American Ice Machine Company v. Modern Ice Equipment
Company, Inc.**

American Ice Machine · No. 3:24-cv-02083 · Decided June 2, 2025

OPINION

American Ice Machine Company v. Modern Ice Equipment Company, Inc.

PER CURIAM.

1 2 3 4 5 6 7

UNITED STATES DISTRICT COURT

8

SOUTHERN DISTRICT OF CALIFORNIA

9 10 AMERICAN ICE MACHINE Case No.: 24-cv-02083-H-BJC 11 COMPANY, a California
corporation,

12 ORDER GRANTING MOTION TO

Plaintiff,

DISMISS DEFENDANT NVENIA,

13

v. LLC WITH PREJUDICE

14

MODERN ICE EQUIPMENT

15 COMPANY, INC. et al., [Doc. No. 31.] 16 Defendants. 17 On March 12, 2025, Defendant
Nvenia, LLC (“Nvenia”) filed a motion to dismiss 18 Plaintiff American Ice Machine Company’s
first amended complaint for failure to state a 19 claim against it. (Doc. No. 31.) On April 7, 2025,
Plaintiff filed its response in opposition 20 to Nvenia’s motion. (Doc. No. 34.) On April 21, 2025,
Nvenia filed its reply. (Doc. No. 21 39.) On May 5, 2025, the Court took the matter under
submission. (Doc. No. 40.) For the 22 reasons below, the Court grants Nvenia’s motion to dismiss
without leave to amend. 23 Background 24 The following background is taken from the
allegations in Plaintiff’s first amended 25 complaint. Modern Ice is an Ohio corporation that sells
and distributes ice-bagging 26 machines to its customers. (FAC ¶ 1, 8.) Defendant Nvenia, LLC
(“Nvenia”) is a 27 Delaware corporation that manufactures certain models of ice-bagging
machines that 28 1 Modern Ice distributes. (Id. ¶ 1, 7.) Plaintiff is a California corporation that is
in the 2 business of packaged-ice retail sales and distribution. (Id. ¶ 6.) 3 In December 2022,
Plaintiff’s founder and principal, Mr. Hani Toma, viewed 4 information concerning a Hamer 540E
ice-bagging machine on Nvenia’s website. (Id. 5 ¶¶ 11–12.) Shortly thereafter, Mr. Toma

contacted Modern Ice and spoke with two of 6 Modern Ice's employees about purchasing a Hamer 540E. (Id. ¶ 15.) Mr. Toma told 7 Modern Ice's employees that he wished to purchase a Hamer 540E to use in Plaintiff's 8 production facility beginning in March of 2024. (Id.) During this discussion, Modern Ice's 9 employees represented to Mr. Toma that (1) the manufacturer's warranty on the Hamer 10 540E would be for one year beginning on the date when the machine was first operated at 11 Plaintiff's production facility and (2) the labor charge for setup of the Hamer 540E would 12 be between \$3,000 and \$5,000. (Id. ¶ 16.) On December 16, 2022, Plaintiff executed an 13 invoice with Modern Ice for the purchase of a Hamer 540E for \$110,000. (Id. ¶¶ 1, 17, 14 Ex. B.) 15 In April 2023, Modern Ice informed Plaintiff that the Hamer 540E Plaintiff had 16 purchased had been manufactured and was ready for delivery. (Id. ¶ 18.) Plaintiff 17 objected, stating it could not accept delivery until March of 2024. (Id.) Modern Ice 18 responded that Plaintiff needed to accept delivery immediately or be in breach of contract. 19 (Id.) In April 2023, Modern Ice delivered the Hamer 540E to Plaintiff. (Id. ¶ 19.) Plaintiff 20 accepted delivery and stored the Hamer 540E, without setting up or initiating it, in its 21 production facility. (Id. ¶¶ 18–19.) On March 20, 2024, about a year after accepting 22 delivery, Plaintiff hired one of Modern Ice's technicians to set up and initiate the Hamer 23 540E. (Id. ¶ 20.) The technician did so shortly afterward. (Id. ¶ 21.) Modern Ice invoiced 24 Plaintiff for \$9,500 for the technician's labor. (Id.) After the machine was initiated, 25 Plaintiff noticed several deficiencies with the machine, including that bags produced by the 26 machine leak, that several parts needed frequent replacement, and that the machine 27 repeatedly shut down due to malfunction. (Id. ¶ 14.) 28 1 On April 16, 2024, Plaintiff contacted Modern Ice and Nvenia and demanded that 2 the Hamer 540E's one-year warranty period commence from the date of first initiation in 3 March 2024. (Id. ¶ 22.) Modern Ice and Nvenia informed Plaintiff that the manufacturer's 4 warranty period began when the Hamer 540E was first shipped from Nvenia's 5 manufacturing plant and, thus, had already expired. (Id.) Plaintiff claims that it would not 6 have accepted delivery or initiation of the Hamer 540E at its production facility but for the 7 representation by Modern Ice's employees that the manufacturer's warranty would begin 8 on the date the machine was first operated, not on the date the machine was shipped from 9 Nvenia's plant. (Id. ¶ 23–25.) 10 On September 6, 2024, Plaintiff filed a complaint in the Superior Court of California, 11 County of San Diego against Defendants Modern Ice and Nvenia. (Doc. No. 1, Compl.) 12 On November 6, 2024, Modern Ice, with Nvenia's consent, removed Plaintiff's complaint 13 to the United States District Court for the Southern District of California. (Doc. No. 1, 14 Notice of Removal ¶ 14.) On December 5, 2024, Nvenia filed a motion to dismiss 15 Plaintiff's complaint against it for failure to state a claim. (Doc. No. 12.) On January 27, 16 2025, the Court granted Nvenia's motion to dismiss and dismissed Nvenia from the action 17 without prejudice. (Doc. No. 22.) 18 On February 26, 2025, Plaintiff filed its first amended complaint against Modern Ice 19 and Nvenia, alleging causes of action for: (1) negligent misrepresentation; (2) breach of 20 implied warranty of merchantability; (3) breach of implied warranty of fitness for a 21 particular

purpose; (4) breach of contract; (5) breach of express warranty; (6) rescission; 22 (7) violation of California’s False Advertising Law, California Business & Professional 23 Code §§ 17500, et seq.; and (8) violation of California’s Unfair Competition Law (“UCL”), 24 California Business & Professional Code §§ 17200, 17500 et seq. (Compl. ¶¶ 26–77.) 25 Nvenia moves pursuant to Federal Rule of Civil Procedure 12(b)(6) to dismiss Plaintiff’s 26 claims against it in their entirety for failure to state a claim. 27 \ 28 \ 1 Discussion 2 I. Legal Standard 3 A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests the legal 4 sufficiency of the pleadings and allows a court to dismiss a complaint if the plaintiff has 5 failed to state a claim upon which relief can be granted. See *Conservation Force v. Salazar*, 6 646 F.3d 1240, 1242 (9th Cir. 2011) (citing *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 7 2001)). Federal Rule of Civil Procedure 8(a)(2) requires that a pleading contain “a short 8 and plain statement of the claim showing that the pleader is entitled to relief.” The function 9 of this pleading requirement is to give the defendant fair notice of the claim and its grounds. 10 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 11 U.S. 41, 47 (1957)). 12 A complaint will survive a Rule 12(b)(6) motion to dismiss if it contains “enough 13 facts to state a claim to relief that is plausible on its face.” *Id.* at 570. “A claim has facial 14 plausibility when the plaintiff pleads factual content that allows the court to draw the 15 reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. 16 Iqbal*, 556 U.S. 662, 678 (2009). Dismissal for failure to state a claim is proper where the 17 claim “lacks a cognizable legal theory or sufficient facts to support a cognizable legal 18 theory.” *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008); 19 see *Los Angeles Lakers, Inc. v. Fed. Ins. Co.*, 869 F.3d 795, 800 (9th Cir. 2017). 20 In reviewing a Rule 12(b)(6) motion to dismiss, a district court must “accept the 21 factual allegations of the complaint as true and construe them in the light most favorable 22 to the plaintiff.” *Los Angeles Lakers*, 869 F.3d at 800 (quoting *AE ex rel. Hernandez v. 23 Cty. of Tulare*, 666 F.3d 631, 636 (9th Cir. 2012)). If the court dismisses a complaint for 24 failure to state a claim, it must then determine whether to grant leave to amend. See *Doe 25 v. United States*, 58 F.3d 494, 497 (9th Cir. 1995); *Telesaurus VPC, LLC v. Power*, 623 26 F.3d 998, 1003 (9th Cir. 2010). Courts may deny leave to amend where the “allegation of 27 other facts consistent with the challenged pleading could not possibly cure the deficiency.” 28 *Telesaurus*, 623 F.3d at 1003 (quoting *Schreiber Distrib. Co. v. Serv-Well Furniture Co.*, 1 806 F.2d 1393, 1401 (9th Cir. 1986)).

2 II. Analysis 3 A. New Allegations 4 At the outset, as the Court explained in its previous order and again explains below, 5 many of Plaintiffs claims against Nvenia require that it allege some sort of direct 6 interaction, relationship, or transaction have existed between Plaintiff and Nvenia. The 7 Court provided Plaintiff with leave to amend its complaint to add the necessary allegations, 8 but it has failed to do so. Plaintiff’s first amended complaint contains the following new 9 allegations: (1) that Plaintiff viewed information about the Hamer 540E on Nvenia’s 10 website prior to purchasing a Hamer 540E from Modern Ice, and (2) a list of several issues 11 with the Hamer 540E that Plaintiff experienced after the machine was initiated in March 12 2024. (FAC ¶¶

11–14.) These allegations do not address many of the deficiencies the 13 Court identified in its previous order. (See Doc. No. 22 at 5–8.) 14 Plaintiff asserts that Modern Ice’s interactions with Plaintiff can be imputed to 15 Nvenia under an agency theory. (Doc. No. 34-1 at 18, 21.) Plaintiff’s first amended 16 complaint, however, has provided no allegations regarding Modern Ice and Nvenia’s 17 relationship beyond conclusory statements. (See FAC ¶ 10.) In order for Plaintiff to 18 proceed against Nvenia under an agency theory, it must allege facts that would allow the 19 Court to reasonably infer that Modern Ice “represent[e]d” Nvenia “in dealings with third 20 persons.” Cal. Civ. Code § 2295. Such allegations, at a minimum, must describe “conduct 21 by each party manifesting acceptance of a relationship whereby one of them is to perform 22 work for the other under the latter’s direction.” *Acevedo v. Sunnova Energy Corp.*, 738 F. 23 Supp. 3d 1268, 1277 (C.D. Cal. 2024). Plaintiff has not even attempted to allege such 24 facts.¹ With that, the Court will proceed to address why each count in Plaintiff’s FAC fails 25 26 1 Plaintiff alleges that Nvenia manufactures the Hamer 540E and that Modern Ice is a 27 distributor of the Hamer 540E. (FAC ¶¶ 1, 7–8.) But a manufacturer-distributor relationship is not, by itself, sufficient to establish agency. See *Murphy v. DirecTV, Inc.*, 28 1 to state a claim against Nvenia. 2 B. Count I 3 In Count I of the FAC, Plaintiff brings a claim against Nvenia for negligent 4 misrepresentation. (FAC ¶¶ 26–31.) Plaintiff alleges that Nvenia made misrepresentations 5 on its website regarding the Hamer 540E’s functionality and applicable one-year warranty. 6 (See *id.* ¶ 12.) Plaintiff alleges its principal, Mr. Toma, viewed Nvenia’s website and relied 7 on those misrepresentations in subsequently purchasing the Hamer 540E from Modern Ice. 8 (See *id.* ¶¶ 11–13, 15.) Nvenia argues that Count I should be dismissed because Plaintiff 9 has failed to plead with particularity what misrepresentation Nvenia made. (Doc. No. 31 10 at 13–15.) The Court notes that although the claim in Count I is brought as a negligent 11 misrepresentation claim, Plaintiff explains the underlying theory of this claim by stating 12 that Nvenia “failed to disclose” and “actively concealed” information from Plaintiff. (FAC 13 ¶¶ 28–29.) In its briefing, Plaintiff also shifts between the legal standards for 14 misrepresentation and fraudulent concealment throughout its argument. (See Doc. No. 34- 15 1 at 12–17.) For the sake of completeness, the Court will address both negligent 16 misrepresentation and fraudulent concealment. 17 i. Negligent Misrepresentation 18 Under California law, “[t]he elements of negligent misrepresentation are: ‘(1) the 19 misrepresentation of a past or existing material fact, (2) without reasonable ground for 20 believing it to be true, (3) with intent to induce another’s reliance on the fact 21 misrepresented, (4) justifiable reliance on the misrepresentation, and (5) resulting 22 damage.’” *Aton Ctr., Inc. v. United Healthcare Ins. Co.*, 311 Cal. Rptr. 3d 564, 593 (Cal. 23 Ct. App. 2023) (quoting *Apollo Cap. Fund, LLC v. Roth Cap. Partners, LLC*, 70 Cal. Rptr. 24 3d 199 (2007)). Negligent misrepresentation sounds in fraud, so a plaintiff must describe 25 “the who, what, when, where, and how” of the alleged misconduct to satisfy Federal Rule 26 of Civil Procedure 9(b) and avoid dismissal. *Kearns v. Ford Motor Corp.*, 567 F.3d 1120, 27 1124, 1126 (9th Cir. 2009); *Monreal v. GMAC Mortg., LLC*, 948 F. Supp. 2d 1069, 1077– 28 78 (S.D. Cal.

2013). Specifically, a plaintiff must aver “the statements they relied upon in 1 making their purchases, what is false or misleading about the statements, and why those 2 statements turned out to be false.” *In re iPhone 4S Consumer Litig.*, No. 12-cv-1127, 2014 3 WL 589388, at *5 (N.D. Cal. Feb. 14, 2024). 4 Here, Plaintiff’s complaint alleges that it relied statements Nvenia made on its 5 website that the Hamer 540E would “form pouches with product and seal them under sterile 6 conditions,” “would remain free from defects,” and would “be repaired at no cost . . . for a 7 period of twelve (12) months from the date of installation and setup at Plaintiff’s facilities.” 8 (FAC ¶¶ 11–12.) Plaintiff attached several screenshots of Nvenia’s website as Exhibit A 9 to its FAC in support of these allegations. (See FAC Ex. A.) However, the screenshots of 10 Nvenia’s website clearly do not contain many of the representations that Plaintiff attributes 11 to it. After reviewing the screenshots submitted as Exhibit A to the FAC, the Court did not 12 find any mention that the Hamer 540E would remain free of defects or that there would be 13 no-cost repair offered. (See *id.*) More troublingly, Exhibit A contradicts Plaintiff’s 14 allegation that Mr. Toma viewed this information on Nvenia’s website in 2022, because 15 the screenshots are dated February 26, 2025 along the footer. (*Id.*) The Court, then, cannot 16 take it as true that Nvenia advertised the statements as alleged. See *Daniels-Hall v. Nat’l 17 Educ. Ass’n*, 629 F.3d 992, 998 (9th Cir. 2010) (holding that courts are not “required to 18 accept as true allegations that contradict exhibits attached to” a complaint). 19 To be fair, the screenshot of Nvenia’s website does represent that the Hamer 540E 20 “enables forming, filling and sealing of all popular bag sizes [of ice],” but the FAC does 21 not explain what about this statement is false. (*Id.*) Indeed, Plaintiff alleges that the Hamer 22 540E does bag ice up to ten pounds. (See FAC ¶ 14.) Plaintiff has failed to allege specific 23 statements from Nvenia it relied upon and what about the statements are misleading. 24 Plaintiff therefore fails to state a claim for negligent misrepresentation against Nvenia. 25 ii. Fraudulent Concealment 26 “A claim for fraud based on concealment or omission requires that: (1) the defendant 27 must have concealed or suppressed a material fact; (2) the defendant must have been under 28 a duty to disclose the fact to the plaintiff; (3) the defendant must have intentionally 1 concealed or suppressed the fact with intent to defraud the plaintiff; (4) the plaintiff must 2 have been unaware of the fact and would have acted otherwise if he had known of the 3 concealed or suppressed fact; and (5) as a result of the concealment or suppression of the 4 fact, the plaintiff sustained damage.” *In re Ford Motor Co. DPS6 Powershift Transmission 5 Prod. Liab. Litig.*, No. 18-ml-02814, 2019 WL 3000646, at *5 (C.D. Cal. May 22, 2019). 6 Allegations of fraud must set forth “the who, what, when, where, and how of the 7 misconduct charged.” *Kearns*, 567 F.3d at 1124. 8 Nvenia asserts that Plaintiff fails to plead a claim for fraudulent concealment because 9 Plaintiff does not allege facts to support that Nvenia owed a duty of disclosure to Plaintiff. 10 (Doc. No. 39 at 9.) “Under California law, there are four circumstances in which an 11 obligation to disclose may arise.” *Smith v. Ford Motor Co.*, 749 F. Supp. 2d 980, 987 12 (N.D. Cal. 2010). These include “(1) when the defendant is in a fiduciary relationship with 13 the plaintiff; (2) when the defendant had exclusive knowledge of

material facts not known 14 to the plaintiff; (3) when the defendant actively conceals a material fact from the plaintiff; 15 and (4) when the defendant makes partial representations but also suppresses some material 16 fact.” *Falk v. Gen. Motors Corp.*, 496 F. Supp. 2d 1088, 1095 (N.D. Cal. 2007). 17 Plaintiff argues that Nvenia owed it a duty to disclose under the partial representation 18 theory because Nvenia made a “misleading affirmative statement” or “half-truth” regarding 19 the functionality of the Hamer 540E. (Doc. No. 34-1 at 14, 16.) But “a duty to disclose 20 arises in this context only where there is already a sufficient relationship or transaction 21 between the parties.” *Bigler-Engler v. Breg, Inc.*, 213 Cal. Rptr. 3d 82, 114 (Cal. Ct. App. 22 2017). As explained above, Plaintiff’s first amended complaint contains no allegations that 23 allow the Court to infer that there was a direct relationship or transaction between Plaintiff 24 and Nvenia. See *supra* Section II.A. Instead, Plaintiff’s allegations concern its direct 25 interactions and transaction with Modern Ice. The allegation that Plaintiff viewed Nvenia’s 26 website and marketing materials prior to its purchase are of no help, because the necessary 27 relationship “cannot arise between the defendant and the public at large.” *Bigler-Engler*, 28 1 213 Cal. Rptr. 3d at 113. Plaintiff, therefore, fails to state a claim for fraudulent 2 concealment against Nvenia. 3 C. Counts II, III, and V 4 Plaintiff’s first amended complaint bring claims against Nvenia for breach of express 5 warranty, breach of the implied warranty of merchantability, and breach of the implied 6 warranty of fitness for a particular purpose. (FAC ¶¶ 32–45; 52–55.) The Court will 7 address each claim in turn. 8 i. Express Warranty 9 To prevail on a motion to dismiss a breach of express warranty claim, a plaintiff 10 must adequately allege that the seller “(1) made an affirmation of fact or promise or 11 provided a description of its goods; (2) the promise or description formed part of the basis 12 of the bargain; (3) the express warranty was breached; and (4) the breach caused injury to 13 the plaintiff.” *Viggiano v. Hansen Nat. Corp.*, 944 F. Supp. 2d 877, 893 (C.D. Cal. May 14 13, 2013). Furthermore, a plaintiff “must allege the exact terms of the warranty” and 15 “plaintiff’s reasonable reliance thereon.” *Williams v. Beechnut Nutrition Corp.*, 185 Cal.

16 App. 3d 135, 142 (Cal. Ct. App. 1986).

17 Nvenia argues that the breach of warranty claim against it should be dismissed 18 because Plaintiff has again failed to plead the terms of the alleged warranty. (Doc. No. 39 19 at 10–11.) Plaintiff’s FAC alleges that Nvenia’s website and marketing materials 20 advertised that the Hamer 540E would remain free of defects, be “effective, proper, and 21 safe for its intended use,” and be repaired at no cost for a twelve-month period after the 22 date it was first initiated. (FAC ¶¶ 53, 12.) In short, Plaintiff’s alleges that Nvenia publicly 23 advertised that the Hamer 540E “would come with a warranty period of one year from the 24 date of its initial operation.” (FAC ¶ 53; see Doc. No. 34-1 at 21.) Plaintiff’s allegations 25 and argument are directly contradicted by the screenshots of Nvenia’s website and 26 marketing materials that are attached to the FAC. (See FAC Ex. A.) Nowhere in these 27 materials does Nvenia advertise a one-year warranty for the Hamer 540E. The Court 28 cannot reasonably infer, then, that Nvenia made an affirmation of fact,

promise, or 1 description regarding a one-year warranty to Plaintiff. See Daniels-Hall, 629 F.3d at 998. 2 Plaintiff fails to state a claim for breach of express warranty. 3 ii. Implied Warranty of Merchantability 4 To state a claim for breach of the implied warranty of merchantability, a consumer 5 must demonstrate that the good is not “fit for the ordinary purposes for which such goods 6 are used.” Cal. Com. Code § 2314(2)(c); see Birdsong v. Apple, Inc., 590 F.3d 955, 958 7 (9th Cir. 2009). The plaintiff also “must stand in vertical contractual privity with the 8 defendant.” Clemens v. DaimlerChrysler Corp., 534 F.3d 1017, 1023 (9th Cir. 2008). An 9 “end consumer . . . who buys from a retailer is not in privity with a manufacturer.” (Id.) 10 Nvenia argues Plaintiff is barred from bringing this claim because vertical privity 11 does not exist between Plaintiff and Nvenia. (See Doc. No. 31 at 17.) Plaintiff responds 12 that an exception to the privity requirement is applicable here because it relied on 13 representations made on Nvenia’s website regarding the Hamer 540E. (See Doc. No. 34- 14 1 at 26.) A party’s reliance on the written labels or advertisements of a manufacturer is an 15 established exception to the privity requirement, however, it only applies when the labels 16 or advertisements relied upon establish an express warranty between the manufacturer and 17 end-consumer. See Clemens, 534 F.3d at 1023; Burr v. Sherwin Williams Co., 268 P.2d 18 1041, 1049 (Cal. 1954). As the Court explains above, Plaintiff has not adequately pled 19 what statements Nvenia made that constitute an express warranty, so this exception is not 20 applicable. See supra Section II.C.i. Accordingly, Plaintiff fails to state a claim for breach 21 of the implied warranty of merchantability. 22 iii. Implied Warranty of Fitness for a Particular Purpose 23 Plaintiff has failed to add any allegations to its first amended complaint that address 24 the deficiencies that the Court previously identified in Plaintiff’s original complaint for this 25 claim. Specifically, Plaintiff has not alleged that it had any direct contact with Nvenia that 26 would allow the Court to infer that Nvenia, “at the time of contracting ha[d] reason to know 27 of [Plaintiff’s] particular purpose” for the Hamer 540E. Keith v. Buchanan, 173 Cal. App. 28 3d 13, 25 (Cal. Ct. App. 1985); see supra Section II.A. For the same reasons identified in 1 the Court’s previous order, Plaintiff fails to state a claim for breach of the implied warranty 2 of fitness for a particular purpose. (See Doc. No. 22 at 6.) 3 D. Counts IV and VI 4 Counts IV and VI of Plaintiff’s first amended complaint set out claims for breach of 5 oral contract and rescission against Nvenia. (FAC ¶¶ 46–51; 56–61.) As explained above, 6 Plaintiff has failed to add any allegations to its first amended complaint that address the 7 deficiencies that the Court previously identified in Plaintiff’s original complaint for these 8 claims. See supra Section II.A. Therefore, for the same reasons explained in the Court’s 9 previous order, Plaintiff fails to state a claim against Nvenia for breach of oral contract and 10 rescission. (See Doc. No. 22 at 7–8.) 11 E. Counts VII and VIII 12 Counts VII and VIII of Plaintiff’s FAC bring claims against Nvenia for violations of 13 the UCL and California’s False Advertising Law. (FAC ¶¶ 62–77.) Nvenia moves to 14 dismiss these claims, and Plaintiff does not address Nvenia’s arguments regarding these 15 claims in its opposition. (See Doc. No. 39 at 14.) These claims appear to be based on the 16 same allegations and theories that underly the claim in Count I and are properly dismissed 17

on the basis that the underlying theories fail to state a claim. (FAC ¶¶ 64, 71-72); see supra 18 Section II.B; Monreal, 948 F. Supp. 2d at 1076–77 (dismissing UCL claim brought under 19 unfair, unlawful, and fraudulent prongs where UCL claim was based on same allegations 20 used to support deficiently pled concealment and misrepresentation claims). 21 F. Leave to Amend 22 Finally, Plaintiff requests that this Court grant it leave to amend. (Doc. No. 34-1 at 23 27.) “Although leave to amend should be given freely, denying leave is not an abuse of 24 discretion if it is clear that granting leave to amend would have been futile.” In re Cloudera 25 Sec. Litig., 121 F.4th 1180, 1190 (9th Cir. 2024) (quoting Lathus v. City of Huntington 26 Beach, 56 F.4th 1238, 1243 (9th Cir. 2023)). Because Plaintiff has failed for a second time, 27 despite guidance from the Court, to put forward basic allegations to sustain its claims 28 against Nvenia, the Court determines Plaintiff is unable to do so and so amendment is futile. 1 id. at 1190-91 (affirming denial of leave to amend where one amendment had been 2 allowed and plaintiff made no effort to correct deficiencies previously identified). The 3 || Court therefore denies Plaintiff leave to amend. 4 Conclusion 5 For the reasons above, the Court grants Nvenia’s motion to dismiss and dismisses 6 || Nvenia from this action with prejudice. 7 IT IS SO ORDERED. 8 || DATED: June 2, 2025 10 UNITED STATES DISTRICT COURT 1] 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28