

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

AMBER TAKAHASHI-MENDOZA,

Plaintiff,

v.

COOPERATIVE REGIONS OF ORGANIC  
PRODUCER POOLS,

Defendant.

Case No. 22-cv-05086-JST

**ORDER GRANTING IN PART AND  
DENYING IN PART MOTION TO  
DISMISS**

Re: ECF No. 15

Before the Court is Defendant Cooperative Regions of Organic Producer Pools d/b/a/ Organic Valley’s motion to dismiss. ECF No. 15. The Court will grant the motion in part and deny it in part.

**I. BACKGROUND**

Plaintiff Amber Takahashi-Mendoza brings claims, on behalf of herself and a putative class, under the California Consumers Legal Remedies Act (“CLRA”) and Unfair Competition Law (“UCL”). ECF No. 1. For purposes of deciding this motion, the Court accepts as true the following factual allegations contained in Plaintiff’s complaint.

Defendant is an organic dairy seller that sources milk from member farms. Plaintiff is a California resident who regularly purchased Defendant’s dairy milk. The labels of the challenged milk products, pictured below, state that:

1. “Organic Valley’s *commitment to the highest organic standards and animal care practices* helps make all our food delicious and nutritious”;<sup>1</sup>

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<sup>1</sup> Plaintiff only challenges the emphasized portions of each statement. To determine whether the product packaging is deceptive, the Court considers the statements in full and in context. *See Williams v. Gerber Prods. Co.*, 552 F.3d 934, 939 n.3 (9th Cir. 2008).

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2. “*Humane Animal Practices*[:] Our organic animal care focuses on holistic health practices, including daily doses of sunshine, fresh air, and pasture”;
3. “*Pasture-Raised Goodness*[:] Organic Valley’s commitment to *high standards of animal care go above and beyond* organic standards because we know *the best milk comes from happy cows*”;
4. “*We Hold Ourselves to the Highest Standards*”;
5. “*Our cows are social and so are we!*”
6. “We are your neighbors, a national cooperative of real farmers *growing real food the right way*”; and
7. “*Pasture-Raised with Love*”.



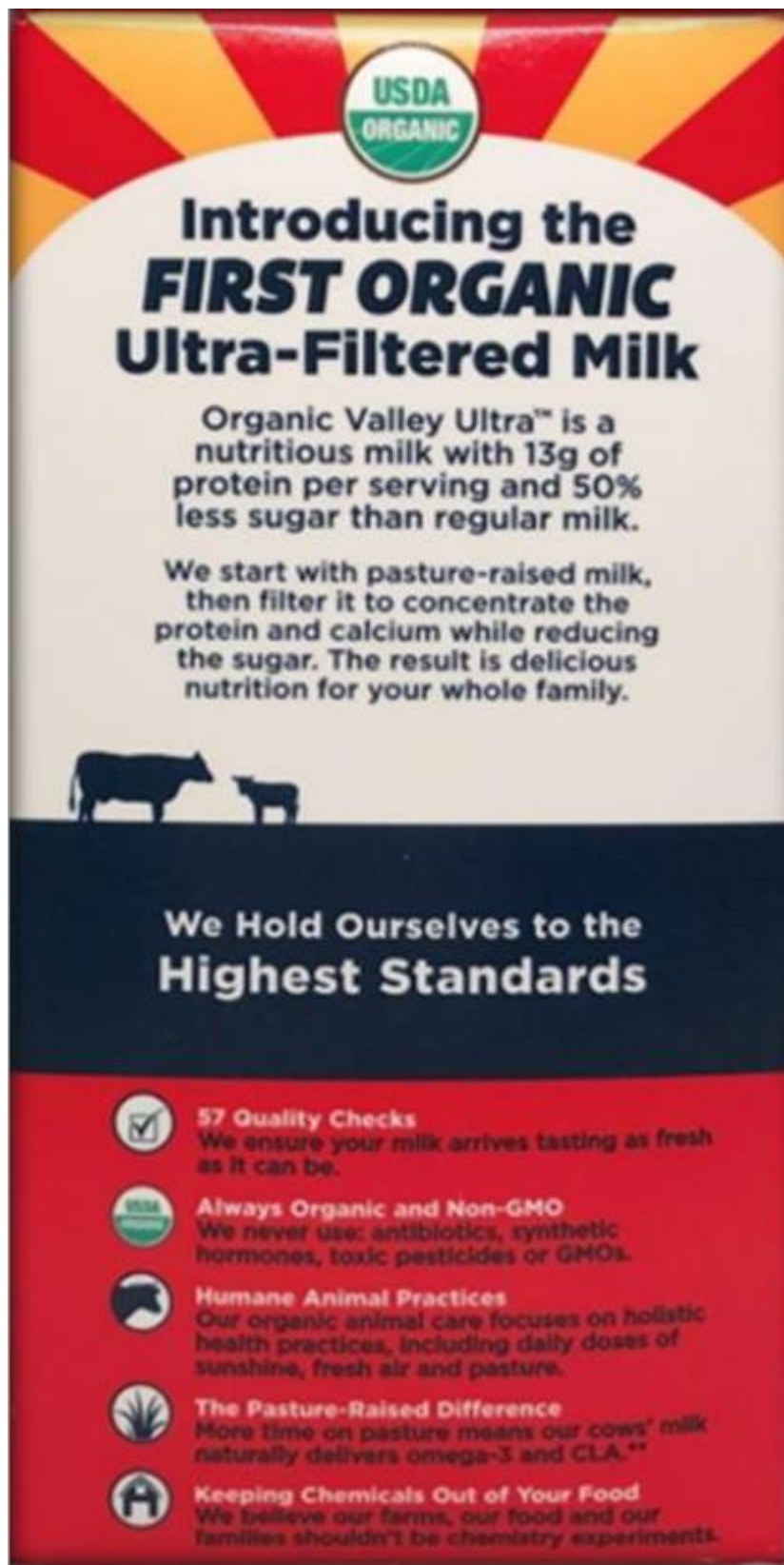
United States District Court  
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*Id.* ¶¶ 22-23.<sup>2</sup> Plaintiff alleges that these statements, together with the “idyllic imagery” of the labels – some of which feature images of human mothers and children and at least one of which

1 includes “an image of what any reasonable consumer would infer to be a mother and her calf” –  
2 would lead a reasonable consumer to infer Defendant’s milk products meet the highest standards  
3 for humane treatment of dairy cows, such as those promulgated by industry certification groups A  
4 Greener World and Global Animal Partnership. *Id.* ¶ 24.

5 However, Defendant sources milk from farms that do not meet the highest standards for  
6 humane treatment of dairy cows in several ways. First, Defendant’s member farms separate cows  
7 and calves “shortly after birth,” a practice which may inflict stress upon the cows and impair their  
8 immune responses. *Id.* ¶¶ 37, 43. Second, some farms house calves individually, a practice  
9 associated with “poor growth and chronic hunger.” *Id.* ¶ 55.<sup>3</sup> Finally, male calves are sold to  
10 commercial farms to be raised and slaughtered for meat, and, once their milk production levels  
11 drop, female cows are also slaughtered. *Id.*

12 Surveys show the majority of consumers agree that cows should not be separated from  
13 their calves early after birth or within a few hours of birth and that participants would pay the  
14 same or more for milk from cows not separated from their calves shortly after birth. *Id.* ¶¶ 28-32.  
15 Consumers pay a premium for Defendant’s products in order to support humane farming practices,  
16 which they believe do not involve separating cows and calves shortly after birth. *Id.* ¶¶ 10, 18, 25.

17 When purchasing milk for house guests, Plaintiff regularly purchased Defendant’s milk,  
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19 <sup>2</sup> Defendant requests that the Court judicially notice printer’s proofs of current product labels for  
20 the four products whose labels are featured in the complaint. ECF Nos. 16, 17. Plaintiff disputes  
21 that these proofs accurately represent product labels in circulation in California when she relied  
22 upon them. ECF No. 22. Defendant does not dispute the accuracy of the label images featured in  
the complaint, which show each of the challenged statements in context, as they appear to the  
consumer. Because the Court does not rely on the proofs, Defendant’s request for judicial notice  
is denied as moot.

23 <sup>3</sup> The complaint states that, “[o]n information and belief, some farms supplying Defendant rear  
24 female calves in small hutches,” and provides three blurry screenshots of aerial photographs of  
25 alleged member farms sourced from Google Earth. ECF No. 1 ¶ 50. The photographs feature  
26 large rectangular structures alongside smaller round and rectangular structures that are arranged in  
27 rows. A plaintiff may plead facts alleged upon information and belief “where the facts are  
28 peculiarly within the possession and control of the defendant or where the belief is based on  
factual information that makes the inference of culpability plausible.” *Soo Park v. Thompson*, 851  
F.3d 910, 928 (9th Cir. 2017). The factual information provided in the complaint is insufficient  
for the Court to reasonably infer these alleged member farms are housing individual calves in the  
smaller structures. Because the practices of Defendant’s member farms are facts within the sole  
possession and control of the Defendant, however, the Court will permit Plaintiff to plead this fact  
upon information and belief.

1 paying a premium to support what she believed, based on Defendant’s advertising, were humane  
2 husbandry practices. Plaintiff “would not have paid a premium price for the products if she had  
3 known the true nature of Defendant’s practices.” *Id.* ¶ 25.

4 Plaintiff filed suit on July 19, 2022, in the Superior Court of California, Alameda County.  
5 ECF No. 1. Defendant removed the case to federal court on September 7, 2022, and now moves  
6 to dismiss the suit. ECF No. 15.

## 7 **II. JURISDICTION**

8 The Court has jurisdiction under 28 U.S.C. § 1332(d).

## 9 **III. LEGAL STANDARD**

10 “Dismissal under [Federal Rule of Civil Procedure] 12(b)(6) is appropriate only where the  
11 complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory.”  
12 *Mendondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008). A complaint must  
13 contain “a short and plain statement of the claim showing that the pleader is entitled to relief.”  
14 Fed. R. Civ. P. 8(a)(2). Facts pleaded by a plaintiff “must be enough to raise a right to relief  
15 above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). “To survive a  
16 motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a  
17 claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting  
18 *Twombly*, 550 U.S. at 570)). “A claim has facial plausibility when the plaintiff pleads factual  
19 content that allows the court to draw the reasonable inference that the defendant is liable for the  
20 misconduct alleged.” *Id.* In determining whether a plaintiff has met this plausibility standard, the  
21 Court must “accept all factual allegations in the complaint as true and construe the pleadings in the  
22 light most favorable to the nonmoving party.” *Knievel v. ESPN*, 393 F.3d 1068, 1072 (9th Cir.  
23 2005).

24 Because Plaintiff’s CLRA and UCL causes of action are grounded in fraud, the complaint  
25 must also satisfy Rule 9(b), which requires that “identify[ing] the who, what, when, where, and  
26 how of the misconduct charged, as well as what is false or misleading about the purportedly  
27 fraudulent statement, and why it is false.” *Davidson v. Kimberly-Clark Corp.*, 889 F.3d 956, 964  
28 (9th Cir. 2018) (quoting *Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1055

1 (9th Cir. 2011)).

2 “Whether a business practice is deceptive is generally a question of fact that requires  
3 weighing of evidence from both sides.” *Organic Consumers Ass’n v. Sanderson Farms, Inc.*, 284  
4 F. Supp. 3d 1005, 1014 (N.D. Cal. 2018) (citing *Linear Tech. Corp. v. Applied Materials, Inc.*,  
5 152 Cal. App. 4th 115, 134–35 (2007)). “For that reason, courts grant motions to dismiss under  
6 the reasonable consumer test only in rare situations in which the facts alleged in the complaint  
7 ‘compel the conclusion as a matter of law that consumers are not likely to be deceived.’” *Id.*  
8 (quoting *Chapman v. Skype Inc.*, 220 Cal. App. 4th 217, 226–27 (2013)). However, Plaintiff must  
9 show “more than a mere possibility that [Defendant’s] label ‘might conceivably be misunderstood  
10 by some few consumers viewing it in an unreasonable manner.’” *Ebner v. Fresh, Inc.*, 838 F.3d  
11 958, 965 (9th Cir. 2016) (quoting *Lavie v. Procter & Gamble Co.*, 105 Cal. App. 4th 496, 508  
12 (2003)). “Rather, the reasonable consumer standard requires a probability ‘that a significant  
13 portion of the general consuming public or of targeted consumers, acting reasonably in the  
14 circumstances, could be misled.’” *Id.* (quoting *Lavie*, 105 Cal. App. 4th at 508).

#### 15 **IV. DISCUSSION**

16 Plaintiff alleges that Defendant engaged in deceptive marketing practices in violation of  
17 the UCL and CLRA. Plaintiff additionally alleges that Defendant’s business practices are  
18 unlawful under the UCL because Defendant’s animal husbandry practices violate California Penal  
19 Code § 597, which criminalizes cruelty to animals.

#### 20 **A. Equitable Relief**

##### 21 **1. Standing to Seek Injunctive Relief**

22 Defendant argues Plaintiff lacks Article III standing to seek injunctive relief. In the Ninth  
23 Circuit, “[a] previously deceived consumer may have standing to seek an injunction against false  
24 advertising or labeling, even though the consumer now knows or suspects that the advertising was  
25 false at the time of the original purchase,” where she plausibly alleges that “she will be unable to  
26 rely on the product’s advertising or labeling in the future, and so will not purchase the product  
27 although she would like to” or that “she might purchase the product in the future, despite the fact  
28 that it was once marred by false advertising . . . as she may reasonably, but incorrectly, assume the

1 product was improved.” *Davidson*, 889 F.3d at 969-70.

2 Plaintiff alleges she “would consider purchasing Defendant’s milk again if Defendant were  
3 to treat cows in a manner consistent with its advertising.” ECF No. 1 ¶ 11. This allegation is  
4 sufficient to confer Article III standing. *Davidson*, 889 F.3d at 970-71 (ruling that plaintiff had  
5 standing where she “would purchase truly flushable wipes”); *Zeiger v. WellPet LLC*, 526 F. Supp.  
6 3d 652, 688 (N.D. Cal. 2021) (ruling that plaintiff had standing where he “open to” purchasing  
7 products if issues were remedied).<sup>4</sup>

## 8 2. Adequate Remedy at Law

9 Defendant argues the Court must dismiss Plaintiff’s claims for equitable relief because she  
10 does not allege that her claim for money damages under the CLRA is inadequate. Under  
11 “traditional principles governing equitable remedies in federal courts,” Plaintiff “must establish  
12 that she lacks an adequate remedy at law” before securing equitable relief under the UCL and  
13 CLRA. *Sonner v. Premier Nutrition Corp.*, 971 F.3d 834, 844 (9th Cir. 2020). “[M]ost district  
14 courts applying *Sonner* have . . . ‘understood it to require that a plaintiff must, at a minimum,  
15 plead that she lacks adequate remedies at law if she seeks equitable relief.’” *Johnson v. Trumpet*  
16 *Behavioral Health, LLC*, No. 21-cv-3221-WHO, 2022 WL 74163, at \*3 (N.D. Cal. Jan. 7, 2022)  
17 (emphasis in original) (quoting *Guthrie v. Transamerica Life Ins. Co.*, 561 F. Supp. 3d 869, 875  
18 (N.D. Cal. 2021)); *Hrapoff v. Hisamitsu Am., Inc.*, No. 21-cv-1943-JST, 2022 WL 2168076, at \*6  
19 (N.D. Cal. June 16, 2022). Plaintiff does not plead that she lacks an adequate remedy at law. As  
20 such, the Court will dismiss Plaintiff’s claims for equitable relief with leave to amend.

## 21 B. Statutory Relief

### 22 1. Standing

23 Defendant argues that Plaintiff lacks statutory standing because she fails to properly plead  
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25 <sup>4</sup> Defendant argues that *Lanovaz v. Twinings N. Am., Inc.*, 726 F. App’x 590 (9th Cir. 2018)  
26 (Mem.) forecloses this conclusion. The *Lanovaz* panel ruled that the plaintiff lacked standing  
27 because there was insufficient and conflicting evidence of risk of future harm: the plaintiff stated  
28 at a deposition that she would not purchase defendant’s products again, but stated in response to  
an interrogatory that she would “consider” doing so. There is no such conflicting evidence here.



1 economic injury. To sue under the CLRA and UCL, Plaintiff must “allege that she was exposed to  
2 false information about the product purchased, which caused the product to be sold at a higher  
3 price, and that she ‘would not have purchased the goods in question absent this  
4 misrepresentation.’” *Davidson*, 889 F.3d at 966 (quoting *Hinojos v. Kohl’s Corp.*, 718 F.3d 1098,  
5 1105 (9th Cir. 2013)).

6 Plaintiff alleges that Defendant misleadingly marketed its products as “humane,” a  
7 characteristic associated with a price premium. ECF No. 1. Plaintiff alleges that she purchased  
8 Defendant’s milk because, “after seeing Defendant’s advertising on its milk cartons,” she  
9 “believed Defendant’s milk came from cows treated in a humane manner,” and that, “[h]ad she  
10 known the truth, she would not have paid premium prices for Defendant’s milk or would not have  
11 purchased it at all.” *Id.* ¶ 10. Plaintiff alleges that she and others who purchase Defendant’s milk  
12 “are told they are supporting humane farming practices and pay premium prices for doing so.” *Id.*  
13 ¶ 2. These allegations are sufficient to establish that Plaintiff has suffered an economic injury for  
14 the purposes of statutory standing under the CLRA and UCL. *See Reid v. Johnson & Johnson*,  
15 780 F.3d 952, 958 (9th Cir. 2015) (finding allegation that consumer “would not have been willing  
16 to pay as much . . . if anything, had he not been misled” sufficient for statutory standing).

## 17 2. Deceptive Statements

18 Plaintiff alleges that the milk product labels are deceptive because the challenged  
19 statements on the product labels, when considered alongside the “idyllic imagery” of the labels –  
20 some of which feature images of human mothers and children and at least one of which includes  
21 “an image of what any reasonable consumer would infer to be a mother and her calf” – would lead  
22 a reasonable consumer to infer Defendant’s milk products meet the highest standards set by certain  
23 third-party certification groups for humane treatment of dairy cows, ECF No. 1 ¶ 24, or are  
24 contrary to consumer expectations regarding the humane treatment of cows, *id.* ¶ 25.

25 Defendant argues that the challenged statements are not actionable statements of fact and  
26 are not deceptive.

### 27 a. Whether Statements Are Actionable

28 “A statement that is quantifiable, that makes a claim as to the ‘specific or absolute

1 characteristics of a product,’ may be an actionable statement of fact while a general, subjective  
 2 claim about a product is non-actionable puffery.” *Newcal Indus., Inc. v. Ikon Office Sol.*, 513 F.3d  
 3 1038, 1053 (9th Cir. 2008) (quoting *Cook, Perkiss, & Liehe v. N. Cal. Collection Serv., Inc.*, 911  
 4 F.2d 242, 246 (9th Cir. 1990)). Puffery includes “product superiority claims that are vague or  
 5 highly subjective” and “exaggerated advertising, blustering, and boasting upon which no  
 6 reasonable buyer would rely.” *Southland Sod Farms v. Stover Seed Co.*, 108 F.3d 1134, 1145 (9th  
 7 Cir. 1997). “Whether a statement is puffery or a representation of fact is a question of law that can  
 8 be properly decided on a motion to dismiss.” *Ahern v. Apple Inc.*, 411 F. Supp. 3d 541, 555 (N.D.  
 9 Cal. 2019).

10 Several of the statements Plaintiff challenges make unmeasurable, subjective claims about  
 11 Defendant’s products on which no reasonable buyer would rely. Considered in context, “growing  
 12 real food the right way,” “Pasture-Raised with *Love*,”<sup>5</sup> “the best milk comes from happy cows,”  
 13 and “[o]ur cows are social and so are we”<sup>6</sup> are unmeasurable opinions. *See Consumer Advocs. v.*  
 14 *Echostar Satellite Corp.*, 113 Cal. App. 4th 1351, 1361 (2003) (“crystal clear” and “CD quality”  
 15 are “boasts, all-but-meaningless superlatives . . . which no reasonable consumer would take as  
 16 anything more weighty than an advertising slogan” and therefore not actionable); *People for the*  
 17 *Ethical Treatment of Animals v. Whole Foods Mkt. Cal., Inc.*, No. 15-cv-4301-NC, 2016 WL  
 18 1642577, at \*3 (N.D. Cal. Apr. 26, 2016) (“Great-Tasting Meat From Healthy Animals” and  
 19 “Raised Right Tastes Right” are not quantifiable, objective statements and therefore not  
 20 actionable); *Myers-Taylor v. Ornuva Foods N. Am., Inc.*, No. 3:18-cv-01538-H-MDD, 2019 WL  
 21 424703, at \*4 (S.D. Cal. Feb. 4, 2019) (images of cows accompanied by statement about “happy  
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23 <sup>5</sup> Plaintiff does not challenge the use of the term “pasture-raised,” but only the use of the term  
 24 “love.” ECF No. 1.

25 <sup>6</sup> In opposition, Plaintiff argues that two dictionary definitions of the word “social” provide an  
 26 objective standard that Defendant’s practices do not meet. ECF No. 21 at 20 (defining “social” as  
 27 “tending to form cooperative and interdependent relationships with others” and “living and  
 28 breeding in more or less organized communities especially for the purposes of cooperation and  
 mutual benefit: not solitary”). The definitions Plaintiff offers do not provide a usable standard for  
 defining a social cow. Further, no reasonable consumer would interpret the phrase, “Our cows are  
 social and so are we,” when followed immediately by several logos for social media networks, to  
 mean that the cows are never alone.

1 grass-fed cows” constitutes non-actionable puffery); *Perez v. Bath & Body Works, LLC*, No. 21-  
2 CV-05606-BLF, 2022 WL 2756670, at \*5 (N.D. Cal. July 14, 2022) (dismissing claims about a  
3 statement as non-actionable puffery because “[I]ove [is] a subjective emotion”). Considering the  
4 challenged product labels in their entirety, the Court finds that these statements constitute non-  
5 actionable puffery.

6 The remaining statements, considered in context, are actionable statements of fact.  
7 Whether Defendant observes “Humane Animal Practices” in its milk production does not amount  
8 to puffery. *See Animal Legal Defense Fund v. HVFG LLC*, 939 F. Supp. 2d 992 (N.D. Cal. 2013)  
9 (finding that the term “humane” was susceptible to definition, such that “[a] claim that [a] product  
10 is ‘the humane choice’ might therefore constitute a statement that could either be proved false or  
11 ‘reasonably interpreted as a statement of objective fact’”). While statements about a party’s  
12 “commitment to the highest . . . standards” or use of “high standards” may amount to puffery,  
13 considering the statements in context renders them more definite. Plaintiff only challenges select  
14 phrases from these statements: “Organic Valley’s *commitment to the highest* organic standards and  
15 *animal care practices* helps make all our food delicious and nutritious” and “Pasture-Raised  
16 Goodness[:]  
17 Organic Valley’s commitment to *high standards of animal care go above and beyond*  
18 organic standards.” ECF No. 1 ¶¶ 23-24. The label itself thus communicates that Defendant’s  
19 products meet or exceed organic standards and practices. This is a measurable, objective claim.  
20 “We Hold Ourselves to the Highest Standards” is similarly definite, as it is immediately followed  
21 by a list of five standards: (1) “57 Quality Checks[:]  
22 We ensure your milk arrives tasting as fresh  
23 as it can be.”; (2) “Always Organic and Non-GMO[:]  
24 We never use antibiotics, synthetic  
25 hormones, toxic pesticides or GMOs.”; (3) “Humane Animal Practices[:]  
26 Our organic animal care  
27 focuses on holistic health practices, including daily doses of sunshine, fresh air[,]  
28 and pasture.”; (4) “The Pasture-Raised Difference[:]  
More time on pasture means our cows’ milk naturally  
delivers omega-3 and CLA.”; (5) “Keeping Chemicals Out of Your Food[:]  
We believe our farms,  
our food and our families shouldn’t be chemistry experiments.” These statements, in context, are  
not puffery.

**b. Whether Statements Are Deceptive**

1 Whether the remaining statements are deceptive is governed by the “reasonable consumer”  
 2 test. *Williams*, 552 F.3d at 938 (“[U]nless the advertisement targets a particular disadvantaged or  
 3 vulnerable group, it is judged by the effect it would have on a reasonable consumer.”) (quoting  
 4 *Lavie*, 105 Cal. App. 4th at 506-07). “Under the reasonable consumer standard, [plaintiff] must  
 5 ‘show that “members of the public are likely to be deceived”’” by the product label. *Id.* (quoting  
 6 *Freeman v. Time*, 68 F.3d 285, 289 (9th Cir. 1995)). “[W]hether a business practice is deceptive  
 7 will usually be a question of fact not appropriate for decision on demurrer.” *Id.* Courts grant  
 8 motions to dismiss on this ground only where “the advertisement itself ma[kes] it impossible for  
 9 the plaintiff to prove that a reasonable consumer [is] likely to be deceived,” *Williams*, 552 F.3d at  
 10 939, or where the facts alleged otherwise “compel the conclusion as a matter of law that  
 11 consumers are not likely to be deceived,” *Chapman*, 220 Cal. App. 4th at 226-27.

12 Plaintiff challenges as deceptive Defendant’s statement that “Organic Valley’s *commitment*  
 13 *to the highest organic standards and animal care practices* helps make all our food delicious and  
 14 nutritious.” Plaintiff does not allege that Defendant does not meet the highest organic standards or  
 15 animal care practices, but rather that this statement would lead a reasonable consumer to believe  
 16 that Defendant is committed to “the highest . . . animal care practices,” which Plaintiff defines as  
 17 the minimum standards set by third-party certification groups and which Plaintiff alleges  
 18 Defendant does not meet. Plaintiff’s complaint supports this allegation by reference to survey data  
 19 showing that “76 percent of consumers shopping at conventional grocery stores, and 87 percent of  
 20 consumers at premium/natural grocery stores, including consumers of dairy products, say they are  
 21 concerned about the welfare of animals raised for food.” ECF No. 1 ¶ 20 (citing Bob Meadow &  
 22 Meryl O’Bryan, Lake Research Partners, *Results from a Survey of American Consumers*, 2 (Feb.  
 23 1, 2019), [https://www.aspc.org/sites/default/files/aspc-2018\\_animal\\_welfare\\_labelling\\_and](https://www.aspc.org/sites/default/files/aspc-2018_animal_welfare_labelling_and_consumer_concern_survey.pdf)  
 24 [consumer\\_concern\\_survey.pdf](https://www.aspc.org/sites/default/files/aspc-2018_animal_welfare_labelling_and_consumer_concern_survey.pdf)). Plaintiff further cites survey data that suggests “low acceptance  
 25 of any cow-calf management system involving early separation” and that consumers consider “that  
 26 early separation was a breach of [the] standard of care owed to both cows and calves.” ECF No. 1  
 27 ¶ 31 (quoting Lara V. Sirovica et al., *Public Attitude Toward and Perceptions of Dairy Cattle*  
 28 *Welfare in Cow-Calf Management Systems Differing in Type of Social and Maternal Contact*, 105

1 J. of Dairy Sci. 3248, 3248, 3265 (2022), <https://doi.org/10.3168/jds.2021-21344>). Plaintiff also  
2 alleges that survey data shows consumers are willing “to pay the same or more for milk from cows  
3 who were not separated from their calves prematurely,” *id.* ¶ 31 (citing Sirovica, *supra*, at 3258-  
4 65), and that survey participants characterized “premature maternal separation as ‘unnatural,’  
5 ‘unacceptable,’ ‘inhumane,’ and ‘cruel,’” *id.* (citing Sirovica, *supra*, at 3261-63).

6 In evaluating these claims, the Court takes guidance from *Sultanis v. Champion Petfoods*  
7 *USA Inc.*, No. 21-cv-00162-EMC, 2021 WL 3373934 (N.D. Cal. Aug. 3, 2021). There, the  
8 defendant’s chicken products used labels featuring “chicken icons with the descriptor ‘free-run  
9 chicken,’ and depicted chickens outdoors on grass.” *Id.* at \*1. The defendant’s website similarly  
10 “state[d] that[,] ‘[r]aised under the highest standards for animal care and food safety by people we  
11 know and trust, on family-run American farms, our free-run poultry and cage-free eggs are  
12 nourishing, natural, and antibiotic free.” *Id.* The plaintiff alleged that, based on these statements,  
13 she and other reasonable consumers “expected the poultry Products were made with chickens  
14 ‘raised in better, more humane conditions than typical chickens grown for meat,’ and that ‘have  
15 access to the outdoors,’” but that, in reality, defendant’s poultry products were “made from  
16 ‘factory-farmed birds raised under standard industrial conditions—confined in crowded barns  
17 without outdoor access.”” *Id.* (quoting complaint). She contended that she and putative class  
18 members were harmed by purchasing defendant’s poultry products under false pretenses and  
19 paying more for them than they otherwise would have. *Id.* The *Sultanis* court found that the  
20 plaintiff had plausibly alleged that the defendant’s statements were misleading because “[t]he term  
21 ‘free-run,’ on its own, could reasonably be read to imply that the chickens used to make the  
22 Products can freely run outside, especially because the Products’ label also depicts chicken  
23 running freely on a spacious, grassy, and outdoor field without any disclaimer that those are not  
24 the chickens used to make the Products.” *Id.* at \*9.

25 So here, the Court concludes that Plaintiff has plausibly alleged that a reasonable consumer  
26 could find Defendant’s claim about its “commitment to the highest . . . animal care practices” is  
27 misleading because consumers could plausibly expect that such practices would not include the  
28 early separation of mother and calf. Defendant’s motion to dismiss is therefore denied as to that

1 statement. For similar reasons, the Court denies Defendant’s motion to dismiss as to the phrase  
2 “Pasture-Raised Goodness[:] Organic Valley’s commitment to *high standards of animal care go*  
3 [sic] *above and beyond* organic standards.” While the Court does not find it plausible that a  
4 reasonable consumer would interpret “high standards of animal care [that] go above and beyond”  
5 to refer to the minimum standards for humane treatment of dairy cows set by certain third-party  
6 certification groups, *cf. Sultanis*, 2021 WL 3373934, at \*9 (finding it implausible that consumers  
7 would be aware of Canadian trade organizations’ definition of a phrase), the statement about “high  
8 standards of animal care” potentially runs afoul of consumer expectations regarding the early  
9 separation of calves from their mothers.

10 However, the Court will grant Defendant’s motion to dismiss as to the statement “*Humane*  
11 *Animal Practices*[:] Our organic animal care focuses on holistic health practices, including daily  
12 doses of sunshine, fresh air, and pasture.” Plaintiff challenges only the phrase “Humane Animal  
13 Practices,” alleging that a reasonable consumer would understand this language to mean that  
14 Defendant’s member farms do not separate cows and calves shortly after birth or house calves  
15 individually – practices that do not meet the standards for humane treatment of dairy cows set by  
16 certain certification groups. Plaintiff alleges that, because Defendant does separate calves from  
17 cows shortly after birth, Defendant’s statement that the product is produced using “Humane  
18 Animal Practices” is misleading. But Plaintiff does not plausibly allege that a reasonable  
19 consumer would interpret “Humane Animal Practices” independently of the text that immediately  
20 follows it, which describes these practices as “organic animal care focus[ing] on holistic health  
21 practices, including daily doses of sunshine, fresh air, and pasture.” Reading the statement in  
22 context, a reasonable consumer is likely to interpret the text that follows as an explanation of  
23 Defendant’s commitment to “Humane Animal Practices.”

24 The Court will similarly grant Defendant’s motion to dismiss as to the statement “We Hold  
25 Ourselves to the Highest Standards,” which is followed by a list of five standards: “57 Quality  
26 Checks,” “Always Organic and Non-GMO,” “Humane Animal Practices,” “The Pasture-Raised  
27 Difference,” and “Keeping Chemicals Out of Your Food.” Each standard is then followed by  
28 further description of how Defendant meets that standard. Plaintiff does not plausibly allege that a

1 reasonable consumer is likely to interpret “We Hold Ourselves to the Highest Standards”  
 2 independently of the list of standards that follows that title. Rather, a reasonable consumer is  
 3 likely to read the statement in context and interpret the list of standards that follows the title as the  
 4 “Highest Standards” to which the title refers.

5 **C. Section 597(b) Violation**

6 Defendant argues that Plaintiff’s UCL claim based on violation of Penal Code § 597(b)  
 7 must be dismissed. The UCL “prohibits any unfair competition, which means ‘any unlawful,  
 8 unfair or fraudulent business act or practice.’” *In re Pomona Valley Med. Grp.*, 476 F.3d 665, 674  
 9 (9th Cir. 2007) (quoting Cal. Bus. & Prof. Code § 17200, *et seq.*). The UCL “borrows violations  
 10 of other laws and treats them as unlawful practices that the unfair competition law makes  
 11 independently actionable.” *Davis v. HSBC Bank Nev., N.A.*, 691 F.3d 1152, 1168 (9th Cir. 2012)  
 12 (quoting *Cel-Tech Comms., Inc. v. L.A. Cellular Tel. Co.*, 20 Cal. 4th 163, 180 (1999)).

13 Plaintiff alleges that the animal husbandry techniques practiced by Defendant’s member  
 14 farms violate Section 597(b), such that Defendant engages in unlawful business practices in  
 15 violation of the UCL. “[T]o state a claim under the unlawful prong of the UCL, a plaintiff must  
 16 sufficiently plead a predicate violation.” *MacDonald v. Ford Motor Co.*, 37 F. Supp. 3d 1087,  
 17 1097 (N.D. Cal. 2014). Penal Code § 597(b) reads, in relevant part:

18 Every person who . . . tortures, torments, deprives of necessary  
 19 sustenance, drink, or shelter . . . or causes or procures any animal to  
 20 be so . . . tortured, tormented, deprived of necessary sustenance,  
 21 drink, or shelter . . . ; and whoever, having the charge or custody of  
 22 any animal . . . subjects any animal to needless suffering, or inflicts  
 unnecessary cruelty upon the animal, or in any manner abuses the  
 animal, or fails to provide the animal with proper food, drink, or  
 shelter or protection from the weather . . . is, for each offense, guilty  
 of a crime.

23 Cal. Penal Code § 597(b). Section 597(b) imposes criminal liability for grossly negligent conduct  
 24 that recklessly exposes a cared-for animal to a high risk of death or great bodily injury. *People v.*  
 25 *Riazati*, 195 Cal. App. 4th 514, 531-32 (2011).

26 The complaint does not allege that Defendant was grossly negligent in its animal  
 27 husbandry practices or that such practices placed cows at high risk of death or great bodily injury.  
 28 Plaintiff alleges that Defendant violates Section 597(b) by separating cows and their calves after

1 birth and “prior to natural weaning,” housing calves individually, and – because studies find that  
 2 calves raised in “insufficient social environments” consume less milk – depriving such calves of  
 3 adequate sustenance. ECF No. 1 ¶ 86. Plaintiffs do allege that separating cows and calves after  
 4 birth places the animals under stress, which may increase susceptibility to illness, while housing  
 5 calves in isolation is associated with various behavioral and developmental issues. *Id.* ¶¶ 38-43,  
 6 51, 54-56. But Plaintiff pleads no facts to suggest that any of these practices place the cows at a  
 7 high risk of either death or great bodily injury.

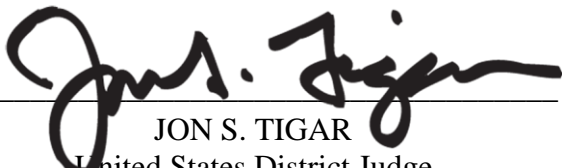
8 Plaintiff suggests that, because the UCL itself imposes strict liability, she should not be  
 9 “required to plead *mens rea* as if this were a criminal proceeding.” ECF No. 21 at 31. But  
 10 Plaintiff cites no authority to suggest that a plaintiff pleading a violation of the penal code as a  
 11 predicate offense for a UCL claim is exempt from pleading certain elements of the predicate  
 12 offense, and this Court is not aware of any. Accordingly, the Court finds that Plaintiff fails to  
 13 sufficiently plead the elements of Section 597(b), as required to establish a predicate violation for  
 14 the purposes of the UCL. This claim is dismissed with leave to amend.

### 15 CONCLUSION

16 The Court grants in part and denies in part Defendant’s motion to dismiss. The Court  
 17 grants leave to amend Plaintiff’s CLRA and UCL claims based on the labeling statements  
 18 identified above. Plaintiff’s UCL claim based on violation of Penal Code § 597(b) is dismissed  
 19 with leave to amend. Leave is granted solely to cure the deficiencies identified above. Any  
 20 amended complaint shall be filed within 28 days of this order.

21 **IT IS SO ORDERED.**

22 Dated: May 19, 2023

23   
 24 \_\_\_\_\_  
 25 JON S. TIGAR  
 26 United States District Judge  
 27  
 28