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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

YESENIA RUIZ and FERNANDO DORANTES, on behalf of themselves and all others similarly situated,  <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> DARIGOLD, INC./NORTHWEST DAIRY ASSOCIATION, <i>et al.</i> ,  <p style="text-align: center;">Defendants.</p>	}
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Cause No. C14-1283RSL

ORDER GRANTING DEFENDANTS'  
MOTION TO DISMISS

This matter comes before the Court on “Defendants Darigold, Inc. and Northwest Dairy Association’s Notice of Motion and Motion to Dismiss” (Dkt. # 21) and defendants’ “Request for Judicial Notice in Support of Their Motion to Dismiss” (Dkt. # 21-2). Plaintiffs allege that defendant Darigold, a marketing and dairy processing entity owned by the over 500 farmers who make up defendant Northwest Dairy Association, misrepresented the conditions under which its products were produced and that plaintiffs relied on false assurances of ethical treatment for cows and workers when they chose to purchase Darigold products. Plaintiffs have alleged eleven causes of action under California, Oregon, and Washington law and seek reimbursement for all monies paid for such products, plus exemplary damages and injunctive relief.

ORDER GRANTING DEFENDANTS'  
MOTION TO DISMISS

1 In the context of a motion to dismiss, the Court's review is generally limited to the  
2 contents of the complaint. Campanelli v. Bockrath, 100 F.3d 1476, 1479 (9th Cir. 1996).  
3 Nevertheless, Ninth Circuit authority allows the Court to consider documents referenced  
4 extensively in the complaint, documents that form the basis of plaintiff's claim, and matters of  
5 judicial notice when determining whether the allegations of the complaint state a claim upon  
6 which relief can be granted under Fed. R. Civ. P. 12(b)(6). United States v. Ritchie, 342 F.3d  
7 903, 908-09 (9th Cir. 2003). Because the 2010 Corporate Social Responsibility ("CSR") Report  
8 was attached to plaintiffs' complaint and forms the basis of their claims, that document will be  
9 considered in determining whether plaintiffs have stated a viable claim. Defendants have not,  
10 however, shown that a report issued two years after the original CSR is an integral part of  
11 plaintiffs' complaint or is the type of document that is judicially noticed.<sup>1</sup> While the June 13,  
12 2011, order in Martinez v. Ruby Ridge Dairy, LLC, Civ. No. 09-2-50913-4 (Franklin County  
13 Sup. Ct.), can be judicially noticed, the Court finds that it is only marginally relevant to the  
14 issues presented and that any probative value in the context of this motion is outweighed by the  
15 risk of waste and delay involved in debating the merits of the Ruby Ridge claims. The Court  
16 declines to convert defendants' motion into a motion for summary judgment and has therefore  
17 not considered matters other than the allegations of the complaint and the 2010 CSR.

18 The question for the Court on a motion to dismiss is whether the facts alleged in  
19 the complaint, taken as true, sufficiently state a claim for relief that is "plausible" on its face.  
20 Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007).

21 A claim is facially plausible when the plaintiff pleads factual content that allows  
22 the court to draw the reasonable inference that the defendant is liable for the  
23 misconduct alleged. Plausibility requires pleading facts, as opposed to conclusory  
24 allegations or the formulaic recitation of elements of a cause of action, and must

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25 <sup>1</sup> Pursuant to Fed. R. Ev. 201, the Court may take judicial notice of facts that are "not subject to  
26 reasonable dispute because it: (1) is generally known within the trial court's territorial jurisdiction; or (2) can be  
accurately and readily determined from sources whose accuracy cannot reasonably be questioned."

1 rise above the mere conceivability or possibility of unlawful conduct that entitles  
2 the pleader to relief. Factual allegations must be enough to raise a right to relief  
3 above the speculative level. Where a complaint pleads facts that are merely  
4 consistent with a defendant's liability, it stops short of the line between possibility  
5 and plausibility of entitlement to relief. Nor is it enough that the complaint is  
6 factually neutral; rather, it must be factually suggestive.

7 Somers v. Apple, Inc., 729 F.3d 953, 959-60 (9th Cir. 2013) (internal quotation marks and  
8 citations omitted). To the extent plaintiffs' claims rely on conclusory statements, they are not  
9 entitled to the presumption of truth and will be ignored when determining whether a claim is  
10 plausible. Chavez v. U.S., 683 F.3d 1102, 1108 (9th Cir. 2012). If, after discounting conclusory  
11 statements and consulting judicial experience and common sense, the complaint fails to state a  
12 cognizable legal theory or fails to provide sufficient facts to give rise to a plausible claim for  
13 relief, dismissal is appropriate. Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009); Hartmann v.  
14 Cal. Dep't of Corr. and Rehab., 707 F.3d 1114, 1122 (9th Cir. 2013).

15 Having reviewed the complaint, the 2010 CSR Report, and the submissions by the  
16 parties, the Court finds as follows:

### 17 **BACKGROUND**

18 Darigold's 2010 Corporate Social Responsibility Report: Nourishing Our Future  
19 was an assessment of the company's "current performance in the economic, environmental, and  
20 social areas that matter most to our stakeholders and to us as an organization." 2010 CSR (Dkt.  
21 # 1-2) at 2. The report addresses such disparate topics as Darigold's member-owned structure  
22 and history, economic performance, energy and water consumption, food safety, animal well-  
23 being, community impacts, and labor practices. The motive for generating the report was not  
24 wholly altruistic: Darigold recognized that its customers and animal rights groups were  
25 interested in how its milk was produced, and it hoped to stave off regulatory and media actions  
26 by highlighting the company's social consciousness. See 2010 CSR (Dkt. # 1-2) at 14-15. The  
report covers data from the calendar year 2009 (unless otherwise noted), and contains a number

1 of self-congratulatory statements such as “Northwest dairy farmers are among the best in the  
2 world” and Darigold “is in the business of supplying products that contribute significantly to  
3 consumers’ nutrition and health.” 2010 CSR (Dkt. # 1-2) at 27 and 49. The report also calls out  
4 areas and opportunities for improvement, such as the need to establish a comprehensive animal  
5 well-being assessment tool for farmers and to implement a comprehensive greenhouse gas  
6 management strategy. 2010 CSR (Dkt. # 1-2) at 28 and 34. In closing, Darigold noted:

7       In general, our performance reflects steady, and sometimes exceptional  
8       improvements in recent years. Compared to our competitors or to our own  
9       historical benchmarks, we can all feel proud that we are performing reasonably  
10      well in most areas. We are acutely aware, however, that we are not yet up to the  
11      performance standards of the most advanced companies in the world today with  
12      regard to sustainability or CSR. Additionally, we are behind where we intend to  
13      be in several important areas for us. Now that we have formalized our  
14      understanding of our current baseline performance, our next step will be to  
15      establish specific targets for improvement and then to drive toward achieving  
16      them.

17 2010 CSR (Dkt. # 1-2) at 58.

18       Plaintiffs Yesenia Ruiz and Fernando Dorantes read the 2010 CSR at some point  
19      after it was first published and interpreted the report as a statement “that the company’s member  
20      dairies treated their workers and cows well” and/or that Darigold “treats its workers and cows  
21      with respect and in compliance with the law.” Complaint (Dkt. # 1) at ¶¶ 10-11. Plaintiffs  
22      allege that they relied on those statements when choosing to purchase (or, for Ms. Ruiz, to  
23      continue to purchase) Darigold products. Id. In early 2014, plaintiffs learned that workers at  
24      one of Darigold’s member dairies had sued their employer for violations of Washington’s wage  
25      and labor laws. Id. Ms. Ruiz also alleges that she discovered that unspecified “questions have  
26      been raised about the treatment of workers and animals at Darigold member facilities.”  
27      Complaint (Dkt. # 1) at ¶ 10. Both plaintiffs stopped buying Darigold products and allege that  
28      they would not have purchased them had Darigold been honest about the conditions in which its

1 products were produced. Complaint (Dkt. # 1) at ¶¶ 10-11.<sup>2</sup> Plaintiffs filed this action in May  
2 2014 alleging the following causes of action:

- 3 (1) Violation of California’s Consumer Legal Remedies Act;
- 4 (2) Violation of California’s Unfair Competition Law;
- 5 (3) Fraud by Concealment under California law;
- 6 (4) Unjust Enrichment under California law;
- 7 (5) Violation of California’s False Advertising Law;
- 8 (6) Violation of Washington’s Consumer Protection Act;
- 9 (7) Violation of Oregon’s Unlawful Trade Practices Act;
- 10 (8) Fraudulent Concealment under Washington law;
- 11 (9) Unjust Enrichment under Washington law;
- 12 (10) Fraudulent Concealment under Oregon law; and
- 13 (11) Unjust Enrichment under Oregon law.

## 14 DISCUSSION

### 15 A. California Consumer Protection Laws

16 The parties agree that California’s Consumer Legal Remedies Act (“CLRA”),  
17 Unfair Competition Law (“UCL”), and False Advertising Law (“FAL”) prohibit promotional  
18 materials that misrepresent or omit facts in a way that is likely to mislead or deceive a reasonable  
19 consumer. Motion (Dkt. # 21) at 9; Opposition (Dkt. # 29) at 11. The gist of plaintiffs’  
20 complaint is that the 2010 CSR misled consumers into believing that (a) all Darigold employees  
21 and all workers at the 500+ member dairies were treated well, with respect, and in full  
22 compliance with the law and (b) every cow that contributed milk to Darigold for processing was

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24 <sup>2</sup> The complaint also alleges that racist comments, threats toward workers, and the milking of  
25 sick or injured cows occurred at one or more of Darigold’s member dairies. Complaint (Dkt. # 1) at  
26 ¶¶ 12-13. It is not clear when these events took place, and there is no indication that they had any  
impact on plaintiffs’ actions or reactions in this case.

1 healthy. A fair reading of the 2010 CSR would not support such beliefs, however, and a  
2 reasonable consumer reading the report would not be misled in the way plaintiffs allege.

3           As a general matter, the 2010 CSR presents a baseline assessment of Darigold's  
4 operations on a number of parameters, noting areas of success and areas where improvement is  
5 needed. The overall impression left by the report is that Darigold is fairly happy with its  
6 performance when compared to other dairy operations in the United States and its own historical  
7 practices, but acknowledges that it can do better on almost every measure. In order to construe  
8 the 2010 CSR as a guarantee of perfection in the areas of worker rights and animal health,  
9 plaintiffs ignore the vast majority of the report, its purpose, and its structure in order to focus on  
10 a handful of sentences or, in some cases, phrases. Such an interpretive practice is, itself,  
11 unreasonable. While there may be one or two statements in the 60-page report in which  
12 Darigold expresses satisfaction with its performance and fails to explicitly incorporate by  
13 reference the caveats and problems mentioned elsewhere, a reasonable consumer would not be  
14 deceived or misled into believing that Darigold or its member farms had a perfect track record  
15 on worker rights or animal health.

16           Even if the Court considers the ten sentences or phrases on which plaintiffs' claims  
17 of misrepresentation and omission rely, when read in context they reflect nuanced assessments  
18 of the current situation, are aspirational statements, or have not been shown to be false in any  
19 material respect. The first four statements with which plaintiffs take issue are on pages 14-15 of  
20 the 2010 CSR. Complaint (Dkt. # 1) at ¶ 18. The first statement is actually a sentence fragment:  
21 "Adopting proactive measures that protect and enhance animal well-being and sustainable  
22 farming, and that highlight the world-class husbandry of our NDA producers." 2010 CSR (Dkt.  
23 # 1-2) at 15. This phrase is included under the heading "Darigold Initiatives and Opportunities."  
24 It is clear from the context that Darigold is identifying actions to be taken in an effort to address  
25 challenges arising from negative publicity and/or consumer demands. The statement is forward-  
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1 looking and cannot be reasonably interpreted as a promise that Darigold already had in place  
2 measures to protect and enhance animal well-being or that such measures had been (or would be)  
3 100% effective. The only potential statement regarding an existing fact is that the NDA farmers  
4 utilize world-class husbandry techniques. Assuming a term like “world-class” is capable of  
5 being proven or disproven, plaintiffs have not alleged any facts suggesting that Darigold’s  
6 farmers fall below that standard or have otherwise been deficient in animal husbandry (generally  
7 defined as the care and management of domesticated animals to develop genetic qualities and  
8 behaviors that are advantageous). Plaintiffs have not adequately alleged a misrepresentation.

9           The next two statements on which plaintiffs rely are “Our farmers’ dedication to  
10 providing high quality milk begins with world-class animal care. Our producers care for their  
11 herds by providing a nutritious diet, good medical care and healthy living conditions.” 2010  
12 CSR (Dkt. # 1-2) at 14. Plaintiffs do not challenge the assertion that the NDA farmers have as  
13 their goal the provision of high quality milk. Rather, they provide pictures of one or more cows  
14 with raw spots on their utters and a picture of a cow with blood covering its leg to show that the  
15 NDA producers do not provide “world-class animal care” and/or “healthy living conditions.”  
16 There is no information regarding when those pictures were taken, the cause of the conditions  
17 shown, or any treatments provided. Cows that are given a nutritious diet and healthy living  
18 conditions may nevertheless suffer injury or illness. If that were not the case, the mention of  
19 medical care – good or otherwise – would be unnecessary. To the extent plaintiffs interpreted  
20 Darigold’s statement as a promise that its members’ cows were uniformly and perpetually  
21 healthy, such an interpretation was unreasonable.<sup>3</sup>

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23           <sup>3</sup> The other statements regarding the level of care given to the animals are even less likely to  
24 deceive or mislead a reasonable consumer. Plaintiffs take issue with statements such as “the  
25 performance level of NDA farmers are excellent” and that they are “currently among the most  
26 responsible in the nation with regard to animal well-being.” 2010 CSR (Dkt. # 1-2) at 28. The  
surrounding paragraphs reveal that this information was gleaned from survey responses that had been

1           The fourth statement to which plaintiffs object is that Darigold follows “a rigorous  
2 quality assurance program to ensure food safety and the highest quality products for our  
3 customer.” 2010 CSR (Dkt. # 1-2) at 14. Plaintiffs do not allege any facts or provide any  
4 evidence suggesting that Darigold does not have a quality assurance program or that its products  
5 are unsafe or subpar.<sup>4</sup>

6           Plaintiffs also identify three alleged misstatements regarding the working  
7 environment at Darigold and/or its member farms. In the section on environmental stewardship,  
8 Darigold states “Clean water is essential for drinking” (2010 CSR (Dkt. # 1-2) at 30)), which  
9 plaintiffs interpret as “strongly implying that Darigold and its members provide dairy workers  
10 with clean drinking water” (Complaint (Dkt. # 1) at ¶ 19). Such an interpretation is patently  
11 unreasonable given the context. The sentence, in its entirety, states, “Clean water is essential for  
12 drinking, for aquatic animal habitat, and for recreational and industrial use.” The remainder of  
13 the paragraph explains what Darigold and its member farms are doing to keep wastes out of  
14 waterways, and the broader section is dedicated to stewardship of the natural resources  
15 surrounding member farms and Darigold’s processing facilities. The section has nothing to do  
16 with working conditions on the member farms or the provision of services to employees: if  
17 plaintiffs interpreted it that way, they were simply mistaken.

18 \_\_\_\_\_  
19 submitted by only 40% of the NDA farms. Thus, while 40% of the farmers reported very good things  
20 about the state of their herds, 60% of the farmers failed to respond or provide any information regarding  
21 their animals’ well-being. In such circumstances, it would be unreasonable to interpret the summary of  
22 responses as an assurance that 100% of the cows contributing milk to Darigold for processing were  
23 healthy. A fair reading of the section also shows that, although NDA farmers compared favorably with  
24 their peers nationwide, they were not perfect. The report acknowledges that improvements could be  
25 made and anticipates a second round of assessments using tools that Darigold was then developing to  
26 ensure that its farmers continued to make progress in the area of animal well-being.

24           <sup>4</sup> Nor have plaintiffs shown that the statement “Food safety is of paramount importance to  
25 Darigold” is a misrepresentation or otherwise likely to deceive a reasonable consumer. 2010 CSR (Dkt.  
26 # 1-2) at 38.

1 In a section of the report about “Caring for Our Employees,” plaintiffs point to a  
2 subtitle stating “Equal Opportunity and Non-Discrimination” and a statement that “Our  
3 employment policies and practices demonstrate our commitment to fair treatment of all  
4 employees wherever we operate. At a minimum, we comply with local, state and federal laws,  
5 but our policies cultivate a higher standard.” 2010 CSR (Dkt. # 1-2) at 54. Plaintiffs assert that  
6 these statements are false because workers at a member farm have filed a lawsuit alleging wage  
7 and labor law violations. This section, however, relates to employees of Darigold – those  
8 individuals who process milk and generate value-added products at Darigold’s plants – not to the  
9 employees of the 500+ dairies that are members of NDA. As stated elsewhere in the report, the  
10 member farms are owners, not employees, of Darigold. There is no indication that Darigold  
11 hires the farm workers, controls the conditions of their employment, or otherwise considers them  
12 employees. The various topics discussed and information provided in the “Caring for Our  
13 Employees” section, such as safety assessments and training at Darigold’s processing plants, the  
14 benefits packages available to its employees, Darigold’s outreach to the eleven communities in  
15 which its plants are located, the number of employees, and the complaint and safety data, all  
16 revolve around Darigold’s experiences as an employer and have nothing to do with the working  
17 conditions on the member farms. Plaintiffs could not reasonably have interpreted this section as  
18 relating to the farmer owners or their employees. Nor could Darigold’s statements be reasonably  
19 construed as a representation that each and every employee, much less farm worker, is treated in  
20 a non-discriminatory, respectful manner, especially in light of its disclosures regarding prior  
21 complaints against the company.<sup>5</sup> The fact that employees at Ruby Ridge filed suit alleging  
22 wage and labor law violations does not give rise to an inference of misrepresentation or an

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24 <sup>5</sup> The section specifically acknowledges that Darigold has been accused of race and disability  
25 discrimination on four occasions since 2007. In light of this acknowledgment, plaintiffs could not have  
26 reasonably understood the section as a promise that Darigold employees uniformly experience equal  
opportunity and a non-discriminatory environment.

1 actionable omission.

2           Plaintiffs have failed to identify a misrepresentation or omission of fact that is  
3 likely to deceive a reasonable consumer. Their CLRA, UCL, and FAL claims therefore fail as a  
4 matter of law.

5 **B. Fraudulent Concealment Claims**

6           Plaintiffs allege that, having decided to publish information regarding its  
7 operations in the 2010 CSR, Darigold became obligated to disclose all negative information so  
8 as “not to misrepresent the nature of its operations.” Complaint (Dkt. # 1) at ¶¶ 59 and 89. In  
9 particular, plaintiffs allege that defendants should have disclosed the Ruby Ridge litigation as  
10 well as any and all complaints regarding the working conditions on its member farms and/or the  
11 well-being of the animals. A failure to disclose a material fact is fraudulent only if there is a  
12 duty to disclose, however. See Stieneke v. Russi, 145 Wn. App. 544, 560 (2008). As discussed  
13 above, the 2010 CSR did not convey the impression, much less state outright, that all animals  
14 and workers on the member farms were happy and/or healthy or that there were no complaints  
15 regarding the conditions on any of the 500+ member farms. A description of each and every  
16 complaint levied against a member farm or a report of every illness or injury suffered by the  
17 cows was therefore not necessary to correct a representation made by defendants. A reasonable  
18 consumer reading the report would not expect defendants to catalogue every complaint received  
19 or problem encountered: such a litany would be out of context given the high-level nature of the  
20 report and the generalized statements regarding both successes and deficiencies. Having failed  
21 to identify any other source of the supposed duty to disclose, plaintiffs’ fraudulent concealment  
22 claims fail as a matter of law.

23 **C. Unjust Enrichment Claims**

24           The Court declines to decide (1) whether a seller is unjustly enriched when it  
25 accepts payment for a product that does not have all the characteristics for which the purchaser  
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1 bargained or (2) whether an independent cause of action for unjust enrichment/restitution exists  
2 under California law. In the circumstances presented here, the unjust enrichment claims fail as a  
3 matter of law even if both questions are answered in plaintiffs' favor. A reasonable consumer  
4 would not have interpreted the 2010 CSR as a promise that there were no problems at any of the  
5 500+ dairies that make up the NDA or that Darigold's products were generated by only healthy,  
6 happy, respected workers and cows. The Court finds that, as a matter of law, plaintiffs' payment  
7 for the milk products consumed and Darigold's retention of that money were not unjust.

8 **D. Washington Consumer Protection Act ("CPA") Claim**

9 Because plaintiffs have failed to allege a misrepresentation or omission of material  
10 fact, they cannot satisfy the first element of a CPA claim. Absent an unfair or deceptive act or  
11 practice, the CPA claim fails as a matter of law.

12 **E. Oregon Unlawful Trade Practices Act ("UTPA") Claim**

13 Plaintiffs allege that defendants violated the UTPA by "us[ing] deceptive  
14 representations or designations of geographic origin in connection with real estate, goods or  
15 services" (O.R.S. § 646.608(1)(d)), "represent[ing] that real estate, goods or services have  
16 sponsorship, approval, characteristics, ingredients, uses, benefits, quantities or qualities that the  
17 real estate, goods or services do not have . . ." (O.R.S. § 646.608(1)(e)), "represent[ing] that real  
18 estate, goods or services are of a particular standard, quality, or grade . . . if the real estate, goods  
19 or services are of another" (O.R.S. § 646.608(1)(g)), "fail[ing] to disclose any known material  
20 defect or material nonconformity" (O.R.S. § 646.608(1)(t)), and "engag[ing] in any other unfair  
21 or deceptive conduct in trade or commerce" (O.R.S. § 646.608(1)(u)). Plaintiffs have not  
22 alleged any representations regarding the geographic origins of Darigold's products, much less  
23 that such representations are false. Their claim under O.R.S. § 646.608(1)(d) therefore fails. As  
24 for the other alleged violations of UTPA, even if the Court assumes that statements regarding  
25 conditions at the member dairies relate to the characteristics or quality of the milk products sold  
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1 by Darigold, plaintiffs have failed to allege a misrepresentation or omission regarding those  
2 conditions, characteristics, or qualities and have not alleged unfair or deceptive conduct. The  
3 UTPA claim fails as a matter of law.

#### 4 **F. Leave to Amend**

5           When a complaint is dismissed for failure to state a claim under Rule 12(b)(6),  
6 leave to amend is generally appropriate unless it is clear that plaintiffs will be unable to allege  
7 any facts, consistent with the original complaint, that would make the claim plausible. See  
8 Johnson v. Lucent Tech., Inc., 653 F.3d 1000, 1012 (9th Cir. 2011). Although plaintiffs request  
9 an opportunity to amend if their claims are dismissed, they do not identify any additional facts  
10 that could be alleged to overcome the fact that the 2010 CSR cannot reasonably be read as a  
11 representation that all workers and animals involved in the production of Darigold's products are  
12 treated well, with respect, and in compliance with all laws. Absent some indication of what  
13 additional facts plaintiffs might plead to overcome this hurdle, it is very difficult to determine  
14 whether an amended pleading would fare any better than the current complaint. The Court is  
15 therefore loathe to grant leave to amend outright. Instead, plaintiffs will be given thirty days in  
16 which to file a motion for leave to amend that is supported by a proposed amended pleading. If  
17 a motion for leave to amend is not filed in the time provided, judgment will be entered in favor  
18 of defendants and against plaintiffs.

#### 19 **CONCLUSION**

20           For all of the foregoing reasons, defendants' motion to dismiss (Dkt. # 21) is  
21 GRANTED. If plaintiffs believe they can, consistent with their Rule 11 obligations, amend the  
22 complaint to remedy the pleading and legal deficiencies identified above, they may file a motion  
23 to amend within thirty days of this Order and attach a proposed pleading for the Court's  
24 consideration.

1 Dated this 31st day of October, 2014.

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3 Robert S. Lasnik  
4 United States District Judge  
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