

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

VOX Network Solutions, Inc. v. Gage Technologies, Inc.

No. 22-cv-09135-AMO (N.D. Cal. Mar. 27, 2025) · No. 22-cv-09135-AMO · Decided March 27, 2025

SUMMARY

The United States District Court for the Northern District of California grants in part and denies in part defendants’ motion to dismiss Vox Network Solutions’ first amended complaint and denies the motion to strike. The court dismisses Vox’s California Unfair Competition Law claims with leave to amend and dismisses its aiding-and-abetting claims as insufficiently pleaded, while allowing the fraudulent concealment claim to proceed. The court also addresses CUTSA supersession, reliance, the economic loss rule, and requested disgorgement.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Araceli Martinez-Olguin
JURISDICTION	United States District Court for the Northern District of California
DECIDED	March 27, 2025
DOCKET	22-cv-09135-AMO
DISPOSITION	other
PROCEDURAL POSTURE	Defendants moved under Federal Rule of Civil Procedure 12(b)(6) to dismiss claims in Vox's first amended complaint and moved under Rule 12(f) to strike portions of Vox's prayer for relief.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court accepts factual allegations as true and construes the pleadings in the light most favorable to the nonmoving party, but requires sufficient factual allegations to state a facially plausible claim. A Rule 12(f) motion may strike redundant, immaterial, impertinent, or scandalous matter, but does not authorize striking claims for damages as legally unavailable.
PRECEDENTIAL VALUE	unpublished district court order; persuasive authority only

TOPICS

- motions to dismiss
- pleadings
- trade secrets
- fraud
- commercial litigation

PRACTICE AREAS

civil procedure

commercial litigation

intellectual property

torts

remedies

QUESTIONS PRESENTED

1. Whether Federal Rule of Civil Procedure 12(g)(2) barred defendants from raising arguments that were omitted from their first motion to dismiss.
2. Whether CUTSA superseded Vox's UCL and fraudulent concealment claims.
3. Whether Vox adequately pleaded UCL claims under the fraudulent and unfair prongs.
4. Whether Vox adequately pleaded aiding and abetting breach of fiduciary duty and aiding and abetting breach of the duty of loyalty.
5. Whether Vox adequately pleaded reliance for fraudulent concealment and whether the economic loss rule barred that claim.
6. Whether the court could strike Vox's request for profits and other benefits under Rule 12(f).

HOLDINGS

1. Rule 12(g)(2) barred defendants from challenging the fraudulent concealment claim on an economic-loss-rule theory because that defense was available but omitted from the prior motion and the claim survived without amendment; Rule 12(g)(2) did not bar arguments directed at claims Vox amended.
2. CUTSA did not supersede Vox's UCL and fraudulent concealment claims because those claims were based in part on conduct unrelated to trade-secret misappropriation, even though some allegations implicated confidential information.
3. A business competitor does not state a UCL claim under the fraudulent prong based solely on alleged deception directed at the competitor or its client; the plaintiff must allege that members of the public are likely to be deceived.
4. A competitor asserting an unfair-prong UCL claim must identify a relevant geographic and product market, allege harm to competition rather than merely injury to itself, and identify an unusual aspect of the conduct that implicates the policy or spirit of antitrust law.
5. Aiding-and-abetting claims require facts showing that the defendant knew of the underlying breach and provided substantial assistance or encouragement, acted with intent to facilitate the tort, or independently breached a duty while substantially assisting the tortious result; conclusory recitations of those elements are insufficient.
6. Vox adequately pleaded reliance by alleging concrete actions it would have taken had it known of the concealed sales opportunity, including terminating or monitoring the employees, preserving relevant devices and information, assigning personnel, and coordinating with Avaya.
7. The economic loss rule did not bar Vox's fraudulent concealment claim, both because defendants could not raise the omitted argument in the successive motion and because the California Supreme Court held that fraudulent concealment claims are exempt from the rule.

8. Rule 12(f) did not authorize striking Vox's request for profits and other benefits because a claim for damages may not be stricken on the ground that the damages are legally unavailable; such challenges should be brought under Rule 12(b)(6) or Rule 56.

KEY QUOTATIONS

“A business practice is fraudulent under the UCL if members of the public are likely to be deceived.” (at 7)

“Injury to a competitor is not equivalent to injury to competition; only the latter is the proper focus of antitrust laws.” (at 8)

“Rule 12(f) does not authorize district courts to strike claims for damages on the ground that such claims are precluded as a matter of law.” (at 12)

FACTUAL BACKGROUND

Vox provided consulting and network-support services and employed McGreevey and Frazier, who signed confidentiality agreements. The employees allegedly used relationships with Consumer Cellular and Avaya, as well as Vox resources and confidential information, to facilitate Consumer Cellular's transfer of business from Vox to Gage after both employees joined Gage. Vox alleged that the employees concealed the opportunity and failed to follow Vox procedures for documenting and supporting the proposed transition.

PROCEDURAL HISTORY

Vox sued Gage Technologies and former employees Kristopher McGreevey and Kevin Frazier concerning the alleged diversion of a client. The court previously dismissed several claims with leave to amend, while allowing other claims to proceed. After Vox filed its first amended complaint, defendants again moved to dismiss and also moved to strike requests for relief. The court granted dismissal with leave to amend as to the UCL and aiding-and-abetting claims, denied dismissal of the breach of fiduciary duty, breach of duty of loyalty, and fraudulent concealment claims, and denied the motion to strike.

DISPOSITION

other

CASES CITED

- Godecke v. Kinetic Concepts, Inc., 937 F.3d 1201, 1208 (9th Cir. 2019)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)
- Manzarek v. St. Paul Fire & Marine Ins. Co., 519 F.3d 1025, 1031 (9th Cir. 2008)
- Levitt v. Yelp! Inc., 765 F.3d 1123, 1135 (9th Cir. 2014)
- Hinds Invs., L.P. v. Angioli, 654 F.3d 846, 850 (9th Cir. 2011)
- K.C. Multimedia, Inc. v. Bank of Am. Tech. & Operations, Inc., 171 Cal. App. 4th 939, 958 (2009)
- Arthur J., 409 F. Supp. 3d at 1175

- Henry Schein, Inc. v. Cook, No. 16-CV-03166-JST, 2017 WL 783617, at *3 (N.D. Cal. Mar. 1, 2017)
- Davis v. HSBC Bank Nevada, N.A., 691 F.3d 1152, 1169 (9th Cir. 2012)
- Travelers Prop. Cas. Co. of Am. v. Centex Homes, No. 11-3638-SC, 2013 WL 4528956, at *5 (N.D. Cal. Aug. 26, 2013)
- Watson Labs., Inc. v. Rhone-Poulenc Rorer, Inc., 178 F. Supp. 2d 1099, 1121 (C.D. Cal. 2001)
- Med. Instrument Dev. Lab'ys v. Alcon Lab'ys, No. C-05-1138-MJJ, 2005 WL 1926673, at *5 (N.D. Cal. Aug. 10, 2005)
- Payroll Res. Grp. v. HealthEquity, Inc., No. 23-CV-02794-TSH, 2024 WL 1744089, at *6 (N.D. Cal. Apr. 23, 2024)
- Nat'l Rural Telecommunications Co-Op v. DIRECTV, Inc., 319 F. Supp. 2d 1059, 1078 (C.D. Cal. 2003)
- Cel-Tech Commc'ns, Inc. v. Los Angeles Cellular Tel. Co., 20 Cal. 4th 163, 186-87 (1999)
- Facebook, Inc. v. BrandTotal Ltd., No. 20-CV-7182-JCS, 2021 WL 2354751, at *15 (N.D. Cal. June 9, 2021)
- Hicks v. PGA Tour, Inc., 897 F.3d 1109, 1120-21 (9th Cir. 2018)
- CVS Pharmacy, Inc., 982 F.3d 1204, 1214-15 (9th Cir. 2020)
- Blantz v. Cal. Dep't of Corr. & Rehab., Div. of Corr. Health Care Servs., 727 F.3d 917, 927 (9th Cir. 2013)
- Soo Park v. Thompson, 851 F.3d 910, 928 (9th Cir. 2017)
- Arista Records LLC v. Doe, 604 F.3d 110, 120 (2d Cir. 2010)
- Casey v. U.S. Bank Nat'l Ass'n, 127 Cal. App. 4th 1138, 1144 (2005)
- Gerard v. Ross, 204 Cal. App. 3d 968, 983 (1988)
- Austin B. v. Escondido Union Sch. Dist., 149 Cal. App. 4th 860, 879 (2007)
- Jones v. ConocoPhillips Co., 198 Cal. App. 4th 1187, 1198 (2011)
- In re Yahoo! Inc. Customer Data Sec. Breach Litig., 313 F. Supp. 3d 1113, 1134 (N.D. Cal. 2018)
- Robinson Helicopter Co. v. Dana Corp., 34 Cal. 4th 979, 988 (2004)
- JMP Sec. LLP v. Altair Nanotechnologies Inc., 880 F. Supp. 2d 1029, 1042-43 (N.D. Cal. 2012)
- Stewart v. Electrolux Home Prods., Inc., 304 F. Supp. 3d 894, 904-05 (E.D. Cal. 2018)
- Rattagan v. Uber Techs., Inc., 17 Cal. 5th 1, 38 (2024)
- Whittlestone, Inc. v. Handi-Craft Co., 618 F.3d 970, 974-75 (9th Cir. 2010)
- Davis v. Hollywood & Ivar, LLC, No. 221-CV-01235-VAP-JPRX, 2021 WL
- Yu v. Design Learned, Inc., No. 15-CV-05345-LB, 2016 WL 3541046, at *7 (N.D. Cal. June 29, 2016)
- Thomas-Byass v. Michael Kors Stores (California), Inc., No. ED-CV-15369-JGB-KKX, 2015 WL 13756100, at *3 (C.D. Cal. Sept. 16, 2015)

OPINION

VOX Network Solutions, Inc. v. Gage Technologies, Inc.

PER CURIAM.

1 2 3

4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 Case No. 22-cv-09135-AMO

7 VOX NETWORK SOLUTIONS, INC.,

Plaintiff,

8 ORDER GRANTING IN PART AND

v. DENYING IN PART MOTION TO

9 DISMISS FIRST AMENDED

10 GAGE TECHNOLOGIES, INC., et al., C MO OM TIP OL NA I TN OT SA TN RD IK D EE
NYING Defendants. 11 Re: Dkt. No. 43 12 13 Plaintiff Vox Network Solutions, Inc. (“Vox”) initiated this lawsuit against one of its 14 business competitors and two of its former employees for allegedly poaching a client. Before the 15 Court is Defendants’ motion to dismiss and motion to strike Vox’s first amended complaint 16 (“FAC”) and motion to strike requests for relief. ECF 43. The matter is fully briefed and suitable 17 for decision without oral argument. See Civil L.R. 7-6. Having read the parties’ papers and 18 carefully considered their arguments and the relevant legal authority, the Court hereby GRANTS 19 IN PART AND DENIES IN PART the motion to dismiss and DENIES the motion to strike.

20 I. BACKGROUND1

21 Vox and Defendant Gage Technologies, Inc. (“Gage”) are companies that provide 22 consulting and network support services. FAC (ECF 41) ¶¶ 2, 4. In late 2017, Vox hired 23 Defendant Kristopher McGreevey as a Regional Sales Director for the Pacific Northwest, and 24 Defendant Kevin Frazier as a Senior Account Executive. FAC ¶¶ 21, 26. As conditions of their 25 employment, Frazier and McGreevey (together, “Individual Defendants”) signed Employee 26 27 1 The Court accepts Vox’s allegations in the complaint as true and construes the pleadings in the 1 Confidentiality Agreements which obligated them to keep certain information confidential and not 2 to share confidential information with any competitor. FAC ¶ 23. 3 Prior to joining Vox, the Individual Defendants developed a relationship with a cell phone 4 company, Consumer Cellular, Inc. (“Consumer Cellular”) and a software vendor, Avaya, Inc. 5 (“Avaya”). FAC ¶ 29. Most of Avaya’s products are sold through business partners, whose 6 employees must obtain certifications to sell, install, and provide support for Avaya’s products. 7 FAC ¶ 30. Consumer Cellular became an important client for Vox and purchased Avaya products 8 and support through Vox. FAC ¶ 29. In August and September of 2021, Frazier scheduled and 9 attended a Vox-funded fishing and golfing trip with Consumer Cellular, where he 10 “proposition[ed]” Consumer Cellular to transfer to Gage. FAC ¶ 33. In October of the same year, 11 McGreevey and Frazier “engaged Avaya for a quote regarding the cost of transitioning Consumer 12 Cellular to a subscription-based licensing agreement” FAC ¶ 35. The Individual Defendants 13 did not follow Vox-mandated procedures as they failed to open an engineering ticket or enter the 14 sales opportunity on Vox’s software system. FAC ¶ 26. 15 Around the same time, McGreevey moved to Texas, where Gage is headquartered. 16 FAC ¶ 34. Consumer Cellular and Frazier emailed about transitioning Consumer Cellular to a 17 subscription-based Avaya license and about obtaining a temporary

product license while Frazier 18 worked out a quote, which – in violation of Vox’s procedure – he did not record. FAC ¶ 35. In 19 October of 2021, McGreevey and Frazier resigned from Vox and joined Gage. FAC ¶¶ 21-22. 20 McGreevey left Vox on the same day Avaya approved the temporary license for Consumer 21 Cellular, and Frazier resigned thirty-three minutes before delivering the temporary licenses to 22 Consumer Cellular. FAC ¶¶ 41, 43. McGreevey is currently Gage’s President and CEO and 23 Frazier is Gage’s Executive Vice President and CRO. FAC ¶¶ 21-22. In a November 2021 email 24 exchange with Vox, Consumer Cellular confirmed that it was migrating its account to Gage under 25 the subscription-based license Frazier had generated. FAC ¶ 49. 26 Two days after Frazier resigned, Vox learned for the first time that Consumer Cellular 27 intended to migrate to a subscription-based model with Avaya. FAC ¶ 45. Vox conducted a 1 communications regarding Consumer Cellular’s planned migration to a subscription-based model. 2 FAC ¶ 46. Consumer Cellular informed Vox that it planned to move its account to Gage 3 beginning in January 2022. FAC ¶ 51. 4 On December 28, 2022, Vox filed a complaint for damages against Gage, McGreevey, and 5 Frazier for (1) violation of the California Uniform Trade Secrets Act (“CUTSA”), Cal. Civ. Code 6 § 3426 et seq.; (2) violation of California’s Unfair Competition Law (“UCL”), Cal. Bus. and Prof. 7 Code § 17200; (3) breach of fiduciary duty; (4) breach of duty of loyalty; (5) fraudulent 8 concealment; (6) aiding and abetting breach of fiduciary duty; (7) civil conspiracy; (8) tortious 9 interference with contract; and (9) tortious interference with prospective economic advantage. 10 ECF 1. On February 28, 2023, Defendants filed a motion to dismiss all of Vox’s claims for failure 11 to state a claim. ECF 16. On March 25, 2024, the Court denied Defendants’ motions to dismiss 12 the breach of fiduciary claim as to McGreevey and the breach of loyalty claim. ECF 36. The 13 Court granted in part and denied in part the motion to dismiss the UCL claim. Id. The Court 14 granted the motion to dismiss with leave to amend the trade secret misappropriation claim, the 15 breach of fiduciary duty claim as to Frazier, aiding and abetting the breach of fiduciary duty, 16 fraudulent concealment, conspiracy, tortious interference with a contract, and tortious interference 17 with a prospective economic advantage. Id. 18 Vox filed the FAC on April 25, 2024, alleging UCL claims against all Defendants; a 19 breach of fiduciary duty claim against McGreevey; a breach of duty of loyalty claim against 20 McGreevey and Frazier; a fraudulent concealment claims against McGreevey and Frazier; aiding 21 and abetting breach of fiduciary duty claims against Gage and Frazier; and an aiding and abetting 22 breach of duty of loyalty claim against Gage.² ECF 41. Defendants again moved to dismiss for 23 failure to state a claim, and also moved to strike Vox’s requests for relief. ECF 43.

24 II. DISCUSSION

25 Because resolution of Defendants’ Motion to Dismiss determines whether the Court need 26 27
2 The parties stipulated to allow Vox to add two new claims in the FAC: an aiding and abetting 1 reach Defendants’ Motion to Strike, the Court first considers the Motion to Dismiss. 2 A. Motion to Dismiss 3 Defendants move to dismiss the FAC, arguing the following deficiencies in Vox’s

claims; 4 Vox's UCL and fraudulent concealment claims are preempted by CUTSA; Vox has failed to state 5 a UCL claim under either the "fraudulent" or "unfair" prong; Vox has failed to plead entitlement 6 to relief under the UCL; Vox has failed to plead entitlement to unjust enrichment; Vox has failed 7 to adequately plead facts in support of its fraudulent concealment claim to show reliance, and that 8 the claim is barred by the economic loss rule; and that Vox has failed to adequately plead damages 9 caused by the breaches of duty. Before considering Defendants' various arguments, the Court first 10 takes up Vox's contention that Federal Rule of Civil Procedure 12(g)(2) prohibits Defendants 11 from raising arguments not made in Defendants' motion to dismiss Vox's original complaint.

12 Rule 12(g) generally prohibits a party from making another motion under Rule 12 that "rais[es]
a

13 defense or objection that was available to the party but omitted from its earlier motion." Fed. R.
14 Civ. P. 12(g)(2). Vox is correct that Defendants cannot now challenge claims that survived 15 Defendants' motion to dismiss Vox's original complaint and that Vox did not amend, and for that
16 reason, Defendants cannot challenge Vox's fraudulent concealment claim by arguing it is barred
17 by the economic loss rule. However, because Defendants' other arguments are directed at
claims 18 that Vox amended, Vox's invocation of Rule 12(g) as to those arguments is misplaced.
The Court, 19 thus, takes up Defendants' arguments for dismissal in turn. 20 1. Legal Standard 21
Federal Rule of Civil Procedure 12(b)(6) provides that a complaint may be dismissed for 22
failure to state a claim for which relief may be granted. Rule 12(b)(6) requires dismissal when a 23
complaint lacks either a "cognizable legal theory" or "sufficient facts alleged" under such a 24
theory. *Godecke v. Kinetic Concepts, Inc.*, 937 F.3d 1201, 1208 (9th Cir. 2019) (citation omitted).
25 Whether a complaint contains sufficient factual allegations depends on whether it pleads
enough 26 facts to "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S.
662, 678 27 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is
plausible 1 that the defendant is liable for the misconduct alleged." *Id.* at 678. 2 When evaluating a
motion to dismiss, the court "accept[s] factual allegations in the 3 complaint as true and
construe[s] the pleadings in the light most favorable to the nonmoving 4 party." *Manzarek v. St.*
Paul Fire & Marine Ins. Co., 519 F.3d 1025, 1031 (9th Cir. 2008). 5 However, "allegations in a
complaint . . . may not simply recite the elements of a cause of action 6 [and] must contain
sufficient allegations of underlying facts to give fair notice and to enable the 7 opposing party to
defend itself effectively." *Levitt v. Yelp! Inc.*, 765 F.3d 1123, 1135 (9th Cir. 8 2014) (citations
omitted). The Court may dismiss a claim "where there is either a lack of a 9 cognizable legal
theory or the absence of sufficient facts alleged under a cognizable legal claim." 10 *Hinds Invs.,*
L.P. v. Angioli, 654 F.3d 846, 850 (9th Cir. 2011). 11 2. CUTSA Preemption or "Supersession" 12
Defendants argue Vox's UCL and fraudulent concealment claims are preempted by 13 CUTSA to
the extent they are predicated on misuse of confidential information. CUTSA 14 "preempts
common law claims that are 'based on the same nucleus of facts as the 15 misappropriation of

trade secrets claim for relief.’ ” *K.C. Multimedia, Inc. v. Bank of Am. Tech. & 16 Operations, Inc.*, 171 Cal. App. 4th 939, 958 (2009) (citation omitted). The Court previously 17 found that where Vox’s claims rely on conduct that implicates trade secret misappropriation, those 18 claims are superseded by CUTSA. See ECF 36 at 8-9. While the FAC omits many of the trade 19 secret allegations from the original complaint, several of Vox’s claims continue to be predicated in 20 part on trade secret misappropriation. See, e.g., FAC ¶ 54 (alleging Defendants engaged in 21 unlawful, unfair, and fraudulent business acts which “include, but are not limited to, 22 misappropriating Vox’s confidential and proprietary information”); FAC ¶ 71 (alleging 23 Defendants intended to deceive Vox when using “Confidential Information to cultivate and 24 preserve Vox’s existing relationship with its client, Consumer”). However, Vox’s UCL and 25 fraudulent concealment claims are also based on conduct that does not implicate trade secret 26 misappropriation, such as Defendants’ development of a subscription plan for Consumer Cellular 27 (FAC ¶ 55); use of Vox resources, including funds for a fishing trip (*id.*); and the Individual 1 preempted by CUTSA. See, e.g., *Arthur J.*, 409 F. Supp. 3d at 1175 (finding no CUTSA 2 preemption of claims based on conduct unrelated to trade secret misappropriation); *Henry Schein, 3 Inc. v. Cook*, No. 16-CV-03166-JST, 2017 WL 783617, at *3 (N.D. Cal. Mar. 1, 2017) (finding no 4 preemption where plaintiff “did not necessarily rely on HSI’s trade secrets when she solicited 5 customers to move their business to [another company]”). Therefore, CUTSA does not supersede 6 Vox’s UCL and fraudulent concealment claims. 7 3. Unfair Competition Law 8 Defendants move to dismiss Count 1, Vox’s UCL claim against all defendants as 9 insufficiently pleaded. California’s UCL “provides a cause of action for business practices that 10 are (1) unlawful, (2) unfair, or (3) fraudulent.” *Backhaus v. Apple, Inc.*, 74 F. Supp. 3d 1033, 1050 11 (N.D. Cal. 2014) (citing Cal. Bus. & Prof. Code 17200); see *Kwikset Corp. v. Super. Ct.*, 51 Cal. 12 4th 310, 320 (2011). Finding that Vox failed to state a CUTSA claim, the Court previously 13 dismissed Vox’s UCL claim as premised on the unlawful prong. ECF 36 at 10. The FAC only 14 alleges claims under the “fraudulent” and “unfair” prongs. Defendants argue neither is adequately 15 pleaded. 16 a. “Fraudulent” Prong 17 Defendants argue Vox’s claim under the “fraudulent” prong fails because it alleges 18 personal, rather than public, deception. ECF 43 at 13-14. “A business practice is fraudulent under 19 the UCL if members of the public are likely to be deceived.” *Davis v. HSBC Bank Nevada, N.A.*, 20 691 F.3d 1152, 1169 (9th Cir. 2012). “Though many courts have described the scope of business 21 activities prohibited by § 17200 in sweeping terms, there is no case authority that ‘fraudulent’ 22 business acts are separately actionable by business competitors absent a showing that the public, 23 rather than merely the plaintiff, is likely to be deceived.” *Travelers Prop. Cas. Co. of Am. v. 24 Centex Homes*, No. 11-3638-SC, 2013 WL 4528956, at *5 (N.D. Cal. Aug. 26, 2013) (quoting 25 *Watson Labs., Inc. v. Rhone-Poulenc Rorer, Inc.*, 178 F. Supp. 2d 1099, 1121 (C.D. Cal. 2001)) 26 (internal quotations omitted). 27 Vox has not alleged that members of the public are likely to be deceived. It argues that its 1 conduct was likely to deceive Vox’s clients/consumers.” ECF 44 at 24. However, as Vox and 2 Consumer Cellular are

not themselves “member[s] of the public or [] consumer[s] entitled to” 3 protection under section 17200, any harm to them is not sufficient absent a showing of harm to the 4 public. *Med. Instrument Dev. Lab’ys v. Alcon Lab’ys*, No. C-05-1138-MJJ, 2005 WL 1926673, at 5 *5 (N.D. Cal. Aug. 10, 2005); see also *Payroll Res. Grp. v. HealthEquity, Inc.*, No. 23-CV-02794- 6 TSH, 2024 WL 1744089, at *6 (N.D. Cal. Apr. 23, 2024) (collecting cases and finding plaintiff 7 did not state a claim for fraudulent business practices under the UCL where plaintiff was a 8 company and thus “not a member of the public, and cannot pursue a claim under the fraud prong 9 of the UCL based solely on alleged representations Defendant made to the company”). Indeed, 10 Vox does not allege members of the public are aware of Defendants’ conduct, much less harmed 11 by it. See *Payroll Res. Grp.*, 2024 WL 1744089, at *6 (“Plaintiff does not even allege that 12 members of the public are aware of [defendant]’s alleged misrepresentations.”); see also *Nat’l 13 Rural Telecommunications Co-Op v. DIRECTV, Inc.*, 319 F. Supp. 2d 1059, 1078 (C.D. Cal. 14 2003) (finding claim under “fraudulent” prong failed as a matter of law where plaintiffs made no 15 showing that the public was impacted at all by defendant’s alleged conduct). The Court thus finds 16 Vox has not stated a claim under the “fraudulent” prong. 17 b. “Unfair” Prong 18 Defendants argue Vox’s claim under the “unfair” prong fails because it seeks to apply the 19 wrong legal standard and, even under the correct standard, its allegations are insufficient to state a 20 claim. ECF 43 at 14. Under the “competitor” standard, “a plaintiff who claims to have suffered 21 injury from a direct competitor’s ‘unfair’ act or practice [must show] conduct that threatens an 22 incipient violation of an antitrust law, or violates the policy or spirit of one of those laws because 23 its effects are comparable to or the same as a violation of the law, or otherwise significantly 24 threatens or harms competition.” *Cel-Tech Commc’ns, Inc. v. Los Angeles Cellular Tel. Co.*, 20 25 Cal. 4th 163, 187 (1999). Under the “consumer” standard, other circumstances may support an 26 “unfair” UCL claim brought by consumers, such as when a practice is “immoral, unethical, 27 oppressive, unscrupulous or substantially injurious to consumers,” or when “the practice’s impact 1 v. *CVS Pharmacy, Inc.*, 982 F.3d 1204, 1214-15 (9th Cir. 2020). Vox alleges that Gage, “a direct 2 business competitor of Vox, engineered and carried out a covert, interstate scheme which resulted 3 in the calculated theft of an important client of Vox.” FAC ¶ 1. The Court thus finds the 4 “competitor” standard applies. 5 To state a competitor claim under the UCL, Vox must identify a market that includes both 6 a geographic market and a product market. *Facebook, Inc. v. BrandTotal Ltd.*, No. 20-CV-7182- 7 JCS, 2021 WL 2354751, at *15 (N.D. Cal. June 9, 2021) (quoting *Hicks v. PGA Tour, Inc.*, 897 8 F.3d 1109, 1120-21 (9th Cir. 2018)). A product market “must encompass the product at issue as 9 well as all economic substitutes for the product.” *Id.* Vox must also allege harm to competition, 10 not just harm to itself. “Injury to a competitor is not equivalent to injury to competition; only the 11 latter is the proper focus of antitrust laws.” *Cel-Tech*, 20 Cal. 4th at 186. Vox must also show 12 there is an “unusual aspect” of Defendants’ conduct. *Id.* “Courts have dismissed competitors’ 13 claims under this prong of the statute where the plaintiffs fail to identify ‘any unusual aspect of the 14 alleged conduct that would make that

conduct something that violates the policy and spirit of the 15 antitrust laws without violating the actual laws themselves.’ ” Id. (collecting cases). 16 Vox alleges Defendants’ conduct was unfair because “the substantial harm suffered by 17 Vox outweighs any justification that Defendants may have for engaging in those practices.” FAC 18 ¶ 56. This conclusory allegation does not suffice to state a claim under the applicable standard. 19 Vox has neither identified a market nor alleged an “unusual aspect” of Defendants’ conduct. 20 Instead, Vox argues in its opposition that “the FAC sets forth specific facts concerning 21 Defendants’ quid pro quo agreement” which “easily falls within the broad definition of an ‘unfair’ 22 business practice under the UCL.” ECF 44 at 23. Vox notes that the “purpose of the UCL” is 23 “focused on the nature of the defendant’s conduct rather than on the damage caused,” ECF 44 at 24 23, but does not attempt to meet the competitor test or otherwise explain why it should not have 25 to. As such, the Court finds it has not stated a claim under the “unfair” prong. 26 Because the Court finds Vox has not stated a claim under either of the two UCL prongs, it 27 1 GRANTS Defendants’ motion to dismiss Vox’s UCL claim with leave to amend.³ 2 4. Aiding and Abetting Breach of Fiduciary Duty and Aiding and Abetting Breach of Duty of Loyalty 3 Defendants raise the same two arguments in moving to dismiss Count Five, Vox’s claim 4 that Frazier and Gage aided and abetted McGreevey’s breach of fiduciary duty, and Count Six, 5 Vox’s claim that Gage aided and abetted McGreevey’s breach of duty of loyalty: the 6 impermissible nature of their allegations made on “information and belief;” and that the FAC 7 merely recycles the same conclusory allegations the Court previously deemed insufficient to 8 support an aiding and abetting claim. The Court considers each in turn. 9 First, Defendants argue Vox’s allegations made on “information and belief” are not 10 allowed by Federal Rule of Civil Procedure 11. ECF 43 at 23. While “[a] complaint will not 11 survive a motion to dismiss if it tenders naked assertions devoid of further factual enhancement,” 12 *Blantz v. Cal. Dep’t of Corr. & Rehab., Div. of Corr. Health Care Servs.*, 727 F.3d 917, 927 (9th 13 Cir. 2013) (holding that allegations made on information and belief, in the absence of facts to 14 provide context, were insufficient to avoid dismissal), the Ninth Circuit has clarified that the 15 *Iqbal/Twombly* plausibility standard permits allegations on information and belief where: (1) “the 16 facts are peculiarly within the possession and control of the defendants”; or (2) “the belief is based 17 on factual information that makes the inference or culpability plausible,” *Soo Park v. Thompson*, 18 851 F.3d 910, 928 (9th Cir. 2017) (citing *Arista Records LLC v. Doe*, 604 F.3d 110, 120 (2d Cir. 19 2010)). Here, the facts alleged are “within the possession and control of the defendants,” and Vox 20 names the individuals who were involved, describes beyond “naked assertions” the challenged 21 conduct (such as the “propositioning” of Consumer Cellular on the fishing and golf trip and the 22 scrubbing of emails from Individual Defendants’ Vox-issued computers), and provides estimations 23 of the timing and location of the conduct (such as the September 2021 trip in Oregon). 24 Accordingly, its allegations on information and belief are permissible, and the Court proceeds to 25 consider the sufficiency of the allegations. 26 27 3 The Court therefore does not address Defendants’ argument that Vox’s UCL claim 1 Under California law, “ ‘[l]iability may

. . . be imposed on one who aids and abets the 2 commission of an intentional tort if the person (a) knows the other's conduct constitutes a breach 3 of duty and gives substantial assistance or encouragement to the other to so act or (b) gives 4 substantial assistance to the other in accomplishing a tortious result and the person's own conduct, 5 separately considered, constitutes a breach of duty to the third person.' " Casey v. U.S. Bank Nat. 6 Assn., 127 Cal. App. 4th 1138, 1144 (2005). A defendant alleged to have aided and abetted a 7 breach of duty must have "acted with the intent of facilitating the commission of that tort." 8 Gerard v. Ross, 204 Cal. App. 3d 968, 983 (1988). Mere knowledge that a breach is being 9 committed and the failure to prevent it does not constitute the giving of substantial assistance or 10 encouragement. Austin B. v. Escondido Union Sch. Dist., 149 Cal. App. 4th 860, 879 (2007). 11 Here, Vox's aiding and abetting breach of fiduciary duty claims against Frazier and Gage 12 fail because, like the aiding and abetting claim against Gage in the original complaint, they are not 13 sufficiently supported by facts. The Court previously dismissed the aiding and abetting breach of 14 fiduciary duty claim against Gage because Vox's allegations in the complaint were "entirely 15 conclusory" and Vox did not provide any factual allegations regarding Gage's actions other than 16 its hiring of Frazier and McGreevey. ECF 36 at 13. Vox alleges Gage knew McGreevey and 17 Frazier were employees of Vox and therefore owed a duty of loyalty to Vox. FAC ¶ 85. Vox 18 further alleges that Gage had actual knowledge of the duty and provided substantial assistance 19 and/or encouragement to the Individual Defendants to breach that duty, with the intention of 20 breaching that duty. FAC ¶ 86. Vox alleges Gage compensated the Individual Defendants with 21 leadership roles and lucrative salaries in order to breach the duty of loyalty. FAC ¶ 87. Absent 22 specific facts about the assistance or encouragement Gage provided Individual Defendants, this 23 claim is insufficiently pleaded. The aiding and abetting breach of fiduciary duty claim against 24 Frazier is just as conclusory as the allegations against Gage, as Vox merely alleges that Frazier 25 "provided substantial assistance and/or encouragement with the intention of facilitating 26 McGreevey's breach of those fiduciary duties." FAC ¶ 79. These conclusory recitations of the 27 requirement, without any facts to describe the assistance or encouragement that was provided, are

5. Fraudulent Concealment

1 Defendants move to dismiss Count Four, Vox's fraudulent concealment claim against 2 McGreevey and Frazier. Defendants argue Vox has failed to allege the fourth element necessary 3 to state a claim for fraudulent concealment, reliance – that Vox would not have acted as it did had 4 it known of the concealed fact. Defendants additionally argue that this claim is barred by the 5 economic loss rule. The Court examines each argument in turn. 6 a. Reliance 7 The Court previously found Vox adequately alleged concealment of the existence of a 8 sales opportunity with Consumer Cellular, but dismissed the claim with leave to amend because 9 Vox failed to adequately plead how it would have acted differently had it known of the concealed 10 fact. ECF 36 at 15. "[T]he elements of a cause of action for fraud based on concealment are: 11 '(1) the defendant must have concealed or suppressed a material fact, (2) the defendant must have 12 been

under a duty to disclose the fact to the plaintiff, (3) the defendant must have intentionally 13 concealed or suppressed the fact with the intent to defraud the plaintiff, (4) the plaintiff must have 14 been unaware of the fact and would not have acted as he did if he had known of the concealed or 15 suppressed fact, and (5) as a result of the concealment or suppression of the fact, the plaintiff must 16 have sustained damage.’ ” Jones v. ConocoPhillips Co., 198 Cal. App. 4th 1187, 1198 (2011) 17 (citation omitted). 18 In the FAC, Vox alleges that had it known of the concealed fact, Vox would have “taken 19 all reasonable efforts to prevent and/or mitigate against the loss of client accounts handled by 20 McGreevey and Frazier,” including by immediately terminating them, retrieving their Vox-owned 21 laptops, and saving information stored on those laptops and on their Vox-registered email 22 accounts. FAC ¶ 73. Vox further alleges that had an engineering ticket been opened pursuant to 23 the company-mandated procedure, and had Individual Defendants documented the sales 24 opportunity in the designated company software, Vox would have assigned additional personnel 25 per its standard procedure to “shepherd and support Consumer Cellular’s transition to a 26 subscription-based licensing agreement months earlier.” FAC ¶ 73. Moreover, Vox alleges it 27 would have collaborated with Avaya to register Consumer Cellular’s transition and obtain special 1 pricing. FAC ¶ 73. Because of Individual Defendants’ concealment, Vox could not implement 2 the procedures until after the deal between Consumer Cellular had already moved its business 3 from Vox to Gage. FAC ¶ 73. The Court finds these allegations are sufficient allegations of 4 reliance. Vox’s allegations are concrete steps, in contrast to its prior statement in the original 5 complaint that it “would have pursued all reasonable remedies available to it” had it known of 6 Individual Defendants’ conduct earlier. Compl. (ECF 1) ¶ 88. 7 Defendants argue that Vox’s allegations that it would have fired Individual Defendants and 8 preserved their electronic devices are irrelevant because Vox failed to explain how those measures 9 would have prevented Consumer from moving its business to Gage. ECF 47 at 13. Defendants 10 further argue that Vox’s allegation that it would have “assigned new personnel to liaison with 11 Consumer and Avaya to shepherd and support Consumer’s transition to a subscription-based 12 licensing agreement” is insufficient because Vox did not do those things for several weeks after 13 learning of Defendants’ conduct. Id. However, it is not necessary for Vox to have eventually 14 taken the stated actions, or for the actions to have been ultimately successful in remedying the 15 alleged harm caused by Individual Defendants’ conduct. “[C]ontrary to Defendants’ suggestion, 16 the actions that [Vox] took after the fact do not conclusively determine what actions they would 17 have taken if they had been alerted before the fact.” See In re Yahoo! Inc. Customer Data Sec. 18 Breach Litig., 313 F. Supp. 3d 1113, 1134 (N.D. Cal. 2018) (finding plaintiffs plausibly alleged 19 reliance and noting that “plaintiffs can consistently plead that they took minimal or no action after 20 learning of [defendants’ conduct] but that they ‘would have taken measures to protect themselves’ 21 if they had been informed beforehand”). Defendants’ efforts to undermine the legitimacy of 22 Vox’s alleged actions are unpersuasive, and the Court thus finds Vox sufficiently pleads reliance. 23 b. Economic Loss Rule 24 Defendants’ argument

that Vox's fraudulent concealment claim is barred by the economic loss rule, ECF 43 at 21, was not asserted in their first motion to dismiss, and thus cannot be raised now. See Fed. R. Civ. P. 12(g). Even if it could be raised at this point, it would not succeed. 27 "The economic loss rule requires a purchaser to recover in contract for purely economic loss due to a contractual promise." *Robinson Helicopter Co. v. Dana Corp.*, 34 Cal. 4th 979, 988 (2004). The rule "serves to prevent every breach of a contract from giving rise to tort liability," *JMP Sec. LLP v. Altair Nanotechnologies Inc.*, 880 F. Supp. 2d 1029, 1042-43 (N.D. Cal. 2012) (quoting 4 *Robinson*, 34 Cal. 4th at 988), and has been applied to fraudulent concealment claims, see *Stewart v. Electrolux Home Prods., Inc.*, 304 F. Supp. 3d 894, 904-05 (E.D. Cal. 2018). 6 However, on August 22, 2024 – after briefing on this motion closed – the California 7 Supreme Court held that claims for fraudulent concealment, as opposed to affirmative deception, 8 are exempted from the economic loss rule. *Rattagan v. Uber Techs., Inc.*, 17 Cal. 5th 1, 38 9 (2024). The California Supreme Court reasoned that "the economic loss rule does not apply to 10 limit recovery for intentional tort claims like fraud," and "only applies to bar tort recovery for 11 negligently inflicted economic losses unaccompanied by physical or property damage" *Id.* 12 Thus, Vox's fraudulent concealment claim is not barred by the economic loss rule. Accordingly, 13 the Court DENIES Defendants' motion to dismiss Vox's fraudulent concealment claim. 14 B. Motion to Strike 15 Defendants move to strike Vox's prayer for relief in the form of "all profits and other 16 benefits obtained by Defendants as a result of their misconduct." FAC at 23. Defendants argue 17 Vox fails to allege any profits or basis for disgorgement within the scope of Vox's claims. ECF 18 43 at 24-25. Rule 12(f) of the Federal Rules of Civil Procedure states that a district court "may 19 strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or 20 scandalous matter." Fed. R. Civ. P. 12. However, the Ninth Circuit has held that "Rule 12(f) does 21 not authorize district courts to strike claims for damages on the ground that such claims are 22 precluded as a matter of law." *Whittlestone, Inc. v. Handi-Craft Co.*, 618 F.3d 970, 974-75 (9th 23 Cir. 2010). Such challenges should be brought under Rule 12(b)(6) or Rule 56, not a Rule 12(f) 24 motion. See *id.* at 974 (concluding that a Rule 12(f) motion to strike claim for lost profits and 25 consequential damages was "really an [improper] attempt to have certain portions of [plaintiff's] 26 complaint dismissed or to obtain summary judgment against [plaintiff] as to those portions of the 27 suit"); see also *Davis v. Hollywood & Ivar, LLC*, No. 221-CV-01235-VAPJPRX, 2021 WL 1 motion to strike attorney's fees and costs."); *Yu v. Design Learned, Inc.*, No. 15-CV-05345-LB, 2016 WL 3541046, at *7 (N.D. Cal. June 29, 2016) (same). "A claim for relief, regardless of 3 form, is not immaterial to a plaintiff's complaint because 'whether these damages are recoverable 4 || relates directly to the plaintiff's underlying claim for relief,' " and "[f]or the same reasons, a claim 5 for relief is not impertinent because whether these damages are recoverable pertains directly to the 6 || harm being alleged." *Thomas-Byass v. Michael Kors Stores (California), Inc.*, No. ED-CV- 7 15369-JGB-KKX, 2015 WL 13756100, at *3 (C.D. Cal. Sept. 16, 2015). Given this authority, 8 striking the relief sought by Vox would be inappropriate. The Court

thus DENIES Defendants' 9 || motion to strike Vox's prayer for relief.

10 || 11. CONCLUSION

11 For the foregoing reasons, the Court DENIES Defendants' motion to dismiss Vox's breach 12 ||
of fiduciary duty claim, breach of duty of loyalty claims, and its fraudulent concealment claim. 5
13 || The Court GRANTS with leave to amend Defendants' motion to dismiss Vox's UCL claim
and 14 || its aiding and abetting claims. The Court DENIES Defendants' motion to strike. Any
amended 3 15 complaint must be filed within 21 days of the date of this Order. No additional
parties or claims a 16 || may be added without leave of Court or stipulation of Defendants. 18 IT IS
SO ORDERED. 19 Dated: March 27, 2025 20 Mod rf / □ 21 wh

ARACELI MARTINEZ-OLGUIN

22 United States District Judge 23 24 25 26 27 28