

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Haney, Inc. v. Axium Bioresearch

No. 3:23-cv-01990-RBM-JLB (S.D. Cal. Sept. 25, 2025) · No. 3:23-cv-01990-RBM-JLB · Decided September
25, 2025

OPINION

Haney, Inc. v. Axium Bioresearch

PER CURIAM.

1 2 3 4 5

6 UNITED STATES DISTRICT COURT

7 SOUTHERN DISTRICT OF CALIFORNIA

8 9 HANEY, INC., an Idaho corporation, Case No.: 3:23-cv-01990-RBM-JLB doing business
under the assumed name 10 UTEST, ORDER: 11 Plaintiff,

(1) GRANTING IN PART AND

12

v. DENYING IN PART DEFENDANTS’

13 MOTION TO DISMISS

AXIUM BIORESEARCH, a California

PLAINTIFF’S FIRST AMENDED

14 corporation, doing business as DrugExam;

COMPLAINT PURSUANT TO RULE

and SERGIUS ALBERT SALVATORE,

15 12(B)(1) AND 12(B)(6); AND

an individual, 16 Defendants. (2) DENYING DEFENDANTS’

17 MOTION TO STRIKE PURSUANT

TO RULE 12(F)

18 19 [Doc. 18] 20 21 Pending before the Court is Defendants Axium BioResearch (“Defendant
Axium”) 22 and Serguis Salvatore’s (“Defendant Salvatore”) (collectively, “Defendants”) Motion
to 23 Dismiss Plaintiff Haney, Inc.’s First Amended Complaint Pursuant to Fed. R. Civ. P. 24
12(b)(1) and 12(b)(6) and Motion to Strike Pursuant to Fed. R. Civ. P. 12(f) (“Motion”). 25 (Doc.
18.) Plaintiff Haney, Inc. (“Haney”) filed an Opposition to the Motion 26 (“Opposition”) (Doc.
19), and Defendants filed a Reply (“Reply”) (Doc. 20). 27 28 1 Pursuant to Civil Local Rule 7.1,
the Court finds the instant matter suitable for 2 determination on the papers and without oral
argument. For the reasons set forth below, 3 the Motion is GRANTED IN PART and DENIED IN
PART.

4 I. BACKGROUND1

5 Plaintiff brings the instant action against Defendants for false advertising and unfair 6 business practices. Defendants previously filed a motion to dismiss Plaintiff’s initial 7 complaint, which was granted on August 1, 2024 for lack of Article III standing with leave 8 to amend. (Doc. 14 at 4.)² Plaintiff filed the First Amended Complaint (“FAC”) on August 9 21, 2024. (Doc. 15 [“FAC”].) On August 29, 2024, this action was transferred to the 10 undersigned. (Doc. 16.) In the instant Motion, Defendants seek to dismiss the FAC, 11 arguing primarily that Plaintiff has not suffered an injury sufficient to grant it Article III 12 standing and that the FAC fails to state a claim under Rule 12(b)(6). (Doc. 18.) 13 In the FAC, Plaintiff asserts five causes of action for: (1) violation of California’s 14 Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, et seq. (“UCL”) (FAC ¶¶ 67– 15 80); (2) violation of California’s False Advertising Law, Cal. Bus. & Prof. Code §§ 17500, 16 et seq. (“FAL”) (id. ¶¶ 81–90); (3) violation of Idaho’s Consumer Protection Act, Idaho 17 Code §§ 48-601, et seq. (“ICPA”) (id. ¶¶ 91–99); (4) violation of the Lanham Act, 15 18 U.S.C. § 1125(a) et seq. (“Lanham Act”) (id. ¶¶ 100–108); and (5) intentional interference 19 with a prospective economic advantage (“IIPEA”) (id. ¶¶ 109–116). 20 A. The Parties 21 Advin Biotech, Inc (“Advin”), who is not a party to this action, is a San Diego-based 22 developer and manufacturer of multi-level strip drug testing kits for private at-home use. 23 (Id. ¶ 31.) Advin distributes its drug testing kits to resellers, who then repackage the kits 24 25 1 The factual summary in this section reflects Plaintiff’s allegations, not conclusions of fact 26 or law by this Court. Well-pleaded factual allegations are accepted as true for purposes of 27 this Motion. See *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). 28 2 1 under their own private labels for resale to the general public. (Id. ¶ 33.) 2 Plaintiff, an Idaho corporation doing business as “UTEST,” is a reseller of Advin’s 3 drug testing kits that operates its business through its company website and various other 4 online retailers such as Amazon.com and Walmart.com. (Id. ¶ 22.) 5 Defendant Axium, a California corporation doing business as “DrugExam,” is also 6 a reseller of Advin’s drug testing kits. (Id. ¶¶ 23–24.) Plaintiff and Defendant Axium both 7 purchase the same or similar drug testing kits from the same manufacturer, Advin, and 8 resell such kits to the general public through Amazon and Walmart’s websites. (Id. ¶ 23.) 9 Defendant Salvatore is the sole founder of Defendant Axium. (Id. ¶ 25.) He is also 10 Defendant Axium’s Chief Executive Officer (“CEO”), Secretary, Chief Financial Officer 11 (“CFO”), and sole Director. (Id.) Defendant Salvatore previously worked for Advin until 12 September 2020. (Id. ¶ 41.)

13 B. Advin’s Drug Testing Kits and Package Insert

14 Since 2013, Advin has obtained 510(k) clearances from the United States Food and 15 Drug Administration (“FDA”) for 14 different drug testing kits. (Id. ¶ 31.) Its drug testing 16 kits are 100% “Made in USA” (id. ¶ 31) and include “a cassette and cap, reactive strip, foil 17 pouch, and two separate stickers” (id. ¶ 33). Advin’s drug testing kits also include a 18 comprehensive written package insert which describes its research and preliminary 19 analytical test results (the “Package Insert”). (Id. ¶¶ 31, 42.) 20 To develop its drug testing kits, Advin

allegedly invested substantial time and 21 financial resources “in conducting research aimed at creating” the Package Insert. (Id.) 22 C. Requirements for the Manufacturing and Sale of Medical Devices 23 There are certain requirements resellers must meet to use Advin’s FDA accreditation 24 and the Package Insert. (See id. ¶¶ 34, 42.) To use Advin’s accreditation, distributors who 25 purchase Advin’s drug testing kits for resale to the general public, can obtain a Clinical 26 Laboratory Improvement Amendments (“CLIA”) certification. (Id. ¶ 34.) This 27 certification is overseen by the FDA and ensures the quality of laboratory test assembling 28 in the United States. (Id.) “Under CLIA regulations, clinical laboratories [i.e. Advin 1 Biotech’s resellers/distributors, to wit, Defendant Axiom] must apply for and receive both 2 a state registration or license, and a federal CLIA certificate, before being permitted to 3 accept samples for assembling purposes (i.e. resale).” (Id.) A CLIA certification also 4 allows distributors “to replicate and utilize Advin’s documented analytical test results, as 5 presented in the Package Insert, for the marketing and sale of their . . . private label drug 6 test kits to the general public.” (Id. ¶ 42.) 7 Additionally, Plaintiff alleges that California state law requires manufacturers to 8 obtain a Medical Device Manufacturing License issued by the California Department of 9 Health Services, Food and Drug Branch (“FDB”) before they can lawfully manufacture 10 medical devices. (Id. ¶¶ 9, 35.) 11 D. Defendant Axiom’s Drug Testing Kits 12 Defendant Salvatore incorporated Defendant Axiom on June 20, 2016, while he was 13 still employed at Advin. (Id. ¶ 37; see Doc. 18-6, Ex. D at 2.) Plaintiff alleges that, upon 14 information and belief, from June 2018 to September 8, 2022, Defendants manufactured, 15 marketed, and sold their “DrugExam” drug testing kits to the public without a Medical 16 Device Manufacturing License from the FDB, as required under California law and FDA 17 regulations. (Id. ¶¶ 12, 36.) Plaintiff further alleges that from June 2018 to the present 18 day, Defendants have purchased “knockoff” component parts similar to those used in 19 Advin’s drug testing kits, including test cassettes and cap, reactive strip, foil pouch, and 20 two separate stickers, from manufacturers in India and China that are not FDA approved 21 or made in the United States. (Id. ¶ 38.) Defendants allegedly ordered, and continue to 22 order, test cassettes and caps from Tonisha Electronic, based in New Delhi, India similar 23 to those used in Advin’s drug testing kits. (Id. ¶ 53; see id. ¶ 54 (comparison of Advin’s 24 and Defendant Axiom’s test cassette and cap).) Defendants also allegedly ordered, and 25 continue to order, similar reactive strips, foil pouches, and stickers from manufacturers 26 based in China. (Id. ¶¶ 56–60 (comparison of Advin’s and Defendant Axiom’s reactive 27 strips, foil pouches, and stickers).) 28 1 From 2018 to the present day, Defendants allegedly used such components, that are 2 not approved by the FDA or manufactured in the United States, to create and sell their own 3 “DrugExam” drug testing kits. (Id. ¶ 38.) Yet, Defendants “unlawfully market[ed] their 4 drug test[ing] kits for sale” to the “unsuspecting general public” as being FDA approved, 5 and “Made in the USA.” (Id. ¶ 40.) 6 When Defendant Salvatore left his employment at Advin in September 2020, 7 Defendant Axiom allegedly “transitioned to becoming a distributor-reseller of [Advin] 8 drug testing kits with the intent to purchase and resell drug testing kits to the general public 9

under [its] private label ‘DrugExam.’” (Id. ¶ 41.) On or about September 20, 2020, Advin 10 requested and received a CLIA certification from the FDA on behalf of Defendant Axium 11 for Defendant Axium to become a reseller of its drug testing kits and use its FDA 12 accreditation. (Id. ¶ 42.) The CLIA certification allowed Defendant Axium to “portray[] 13 itself as a distributor-reseller of” Advin’s FDA drug testing kits. (Id. ¶¶ 44, 47.) It also 14 allowed Defendants to replicate and use the Package Insert for the marketing and sale of 15 their “DrugExam” private label drug testing kits to the general public. (Id.) 16 Plaintiff alleges that “[i]n an attempt to deceitfully portray [FDA] approval and 17 ‘Made in USA’ origin for its drug testing kits, Defendant Salvatore strategically procured 18 a limited quantity of drug testing kits on behalf of Defendant Axium from [Advin].” (Id. 19 ¶ 50.) “However, this was nothing more than a fraudulent ruse, as Defendants 20 clandestinely procured similar component parts as that of [Advin’s] drug test[ing] kits from 21 manufacturers in India and China at a cheaper price, without ever [having] to conduct any 22 legally required analytical testing, thus unlawfully profiting.” (Id. ¶ 47.) 23 Although “Defendants’ subject drug test[ing] kits were deceitfully comprised of 24 components sourced from [foreign manufacturers], in stark contrast to [Advin’s] genuine 25 products” (id. ¶ 45), Defendants still continued to advertise on Amazon and Walmart’s 26 websites that their drug testing kits are “ (1) U.S. FDA approved, and (2) made in the 27 United States.” (Id. ¶¶ 44, 50–51.) 28 1 E. Unity of Interest 2 On information and belief, Plaintiff alleges that from June 20, 2016 through

3 November 2, 2019, Defendant Salvatore unlawfully operated Defendant Axium without 4 appointing any corporate officers, corporate directors, or a registered agent for service of 5 process. (Id. ¶ 26.) Defendant Salvatore allegedly never issued any common stock in 6 Defendant Axium, never conducted a meeting of its board of directors, did not hold a 7 shareholder meeting, and did not issue any corporate bylaws during the three-year time 8 period or anytime thereafter. (Id.) Plaintiff further alleges that Defendant Salvatore never 9 procured a business license in San Diego County and never filed a Statement of 10 Information on behalf of Defendant Axium as required by the California Secretary of State. 11 (Id. ¶ 27.) Plaintiff adds that during the relevant time period, Defendant Salvatore 12 conducted business as “Axium Bioresearch, Inc.,” although no such corporation exists. 13 (Id.) Moreover, Defendant Axium allegedly had no employees other than Defendant 14 Salvatore who paid himself and his wife, Diana Motina, as independent contractors. (Id.) 15 Plaintiff alleges, upon information and belief, that Defendant Salvatore used Defendant 16 Axium to pay for personal expenditures, including his wife’s, unrelated to any business 17 operation. (Id.)

18 II. LEGAL STANDARD

19 A. Federal Rule of Civil Procedure 12(b)(1) 20 Federal Rule of Civil Procedure (“Rule”) 12(b) (1) permits challenges to a court’s 21 subject matter jurisdiction and includes a challenge for lack of Article III standing. See 22 *Chandler v. State Farm Mut. Auto. Inc. Co.*, 598 F.3d 1115, 1122 (9th Cir. 2010). Article 23 III, Section 2 the United States Constitution requires that a plaintiff

have standing to bring 24 a claim. See *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). “[T]he ‘irreducible 25 constitutional minimum of [Article III] standing’” requires that “[t]he plaintiff must have 26 (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the 27 defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016), as revised (May 24, 2016) (citing *Lujan*, 504 U.S. 1 at 560). To have standing to seek injunctive relief under Article III, a plaintiff must 2 “demonstrate a real and immediate threat of repeated injury in the future.” *Chapman v.*

3 *Pier 1 Imports (U.S.) Inc.*, 631 F.3d 939, 946 (9th Cir. 2011) (cleaned up). “At the pleading 4 stage, general factual allegations of injury resulting from the defendant’s conduct may 5 suffice, for on a motion to dismiss we ‘presum[e] that general allegations embrace those 6 specific facts that are necessary to support the claim.” *Lujan*, 504 U.S. at 561. 7 B. Federal Rule of Civil Procedure 12(b)(6) 8 Under Rule 12(b)(6), an action may be dismissed for failure to allege “enough facts 9 to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 10 544, 570 (2007). “A claim has facial plausibility when the plaintiff pleads factual content 11 that allows the court to draw the reasonable inference that the defendant is liable for the 12 misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 13 U.S. at 556). “The plausibility standard is not akin to a ‘probability requirement,’ but it 14 asks for more than a sheer possibility that a defendant acted unlawfully.” *Id.* (citing 15 *Twombly*, 550 U.S. at 556–57). For purposes of ruling on a Rule 12(b)(6) motion, the court 16 “accept[s] factual allegations in the complaint as true and construe[s] the pleadings in the 17 light most favorable to the nonmoving party.” *Manzarek v. St. Paul Fire & Marine Ins. 18 Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). 19 However, the Court is “not bound to accept as true a legal conclusion couched as a 20 factual allegation.” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555). Nor is the 21 Court “required to accept as true allegations that contradict exhibits attached to the 22 Complaint or matters properly subject to judicial notice, or allegations that are merely 23 conclusory, unwarranted deductions of fact, or unreasonable inferences.” *Daniels-Hall v. 24 Nat’l Educ. Ass’n*, 629 F.3d 992, 998 (9th Cir. 2010). “In sum, for a complaint to survive 25 a motion to dismiss, the non-conclusory factual content, and reasonable inferences from 26 that content, must be plausibly suggestive of a claim entitling the plaintiff to relief.” *Moss 27 v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009) (internal quotation marks omitted). 28 1 When a Rule 12(b)(6) motion is granted, “a district court should grant leave to amend 2 even if no request to amend the pleading was made, unless it determines that the pleading 3 could not possibly be cured by the allegation of other facts.” *Cook, Perkiss & Liehe v. N. 4 Cal. Collection Serv.*, 911 F.2d 242, 247 (9th Cir. 1990) (citations omitted). 5 C. Federal Rule of Civil Procedure 9(b)

6 Rule 9(b) requires a plaintiff alleging fraud claims to “state with particularity the 7 circumstances constituting fraud or mistake.” This includes the “who, what, when, where, 8 and how” of the fraudulent activity. *United States ex rel Cafasso v. Gen. Dynamics C4 9 Sys., Inc.*, 637 F.3d 1047, 1055 (9th Cir. 2011). “Rule 9(b) applies when (1) a complaint 10 specifically

alleges fraud as an essential element of a claim, (2) when the claim ‘sounds in fraud’ by alleging that the defendant engaged in fraudulent conduct, but the claim itself does not contain fraud as an essential element, and (3) to any allegations of fraudulent conduct, even when none of the claims in the complaint ‘sound in fraud.’” *Davis v. Chase Bank U.S.A., N.A.*, 650 F. Supp. 2d 1073, 1089–1090 (C.D. Cal. 2009) (citing *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d, 1097, 1102–06). The Ninth Circuit and several district courts have applied Rule 9(b) to false advertising and consumer protection claims grounded in fraud. See *Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1125–27 (9th Cir. 2009) (applying Rule 9(b) to claim for false advertising under the UCL); *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1102–04 (9th Cir. 2003) (applying Rule 9(b) to claim for false advertising under the FAL); *Julian Bakery, Inc. v. Healthsource Int’l, Inc.*, Case No.: 16cv2594-JAH (KSC), 2018 WL 1524499, at 22 *4–5 (S.D. Cal. Mar. 28, 2018) (citing cases applying Rule 9(b) to claims under the UCL and FAL). While the Ninth Circuit has not determined that Rule 9(b) applies to all Lanham Act claims, district courts have also applied Rule 9(b) to Lanham Act false advertising claims grounded in fraud. See, e.g., *EcoDisc Tech. AG v. DVD Format/Logo Licensing Corp.*, 711 F. Supp. 2d 1074, 1085 (C.D. Cal. 2010) (applying Rule 9(b) to a false advertising claim under Lanham Act).

1 III. REQUEST FOR JUDICIAL NOTICE

2 In support of their Motion, Defendants filed a Request for Judicial Notice (“RJN”). 3 (Doc. 18-1.) Defendants request that the Court judicially notice five exhibits attached to 4 the Declaration of James H. Turken (Doc. 18-2 [“Turken Decl.”]) including: (1) several 5 documents filed in San Diego Superior Court as part of a related court proceeding involving 6 the Parties (Doc. 18-3 [“Ex. A”]; Doc. 18-4 [“Ex. B”]; Doc. 18-7 [“Ex. E”]); (2) a copy of 7 Defendants’ CLIA certifications from the FDA website (Doc. 18-5 [“Ex. C”]); and (3) 8 Defendant Axium’s articles of incorporation filed on June 20, 2016 (Doc. 18-6 [“Ex. D”]). 9 Plaintiff does not challenge the RJN. (See generally Doc. 19.) 10 A court generally cannot consider materials outside the pleadings on a motion to 11 dismiss for failure to state a claim. Fed. R. Civ. P. 12(d). A court may take judicial notice 12 of “matters of public record without converting a motion to dismiss into a motion for 13 summary judgment.” *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001) 14 (internal citations omitted). Moreover, under Federal Rule of Evidence 201(b), a court 15 may take judicial notice of facts that are not subject to reasonable dispute because they are 16 (1) “generally known within the trial court’s territorial jurisdiction; or (2) can be accurately 17 and readily determined from sources whose accuracy cannot reasonably be questioned.” 18 Fed. R. Evid. 201(b). Finally, under the incorporation by reference doctrine, courts may 19 “take into account documents whose contents are alleged in a complaint and whose 20 authenticity no party questions, but which are not physically attached to the [plaintiff’s] 21 pleading.” *Davis v. HSBC Bank Nevada, N.A.*, 691 F.3d 1152, 1160 (9th Cir. 2012) 22 (cleaned up). 23 Applying these principles, the Court takes judicial notice of all five exhibits. 24 Exhibits A, B, and E are the

complaint, the second amended complaint, and a request for 25 dismissal filed by Plaintiff in a prior related action before the San Diego Superior Court, 26 respectively. Defendants argue that the Court should take judicial notice of such filings 27 because the “Superior Court Action and the present action arise out of the same or 28 substantially identical transactions and happenings, involve the same parties, and call for 1 determination of substantially identical questions of law.” (Doc. 18-1 at 3.) In doing so, 2 Defendants appear to recite the elements of preclusion (Doc. 18 at 6, 8 n.1), but do not raise 3 such arguments in the Motion. (Id. at 10–12.) Although Defendants reference the state 4 court proceedings in their factual background (see id. at 10–11), the state court filings are 5 neither helpful to, nor relevant in, resolving the instant Motion.³ Nonetheless, the Court 6 “may take judicial notice of the existence of unrelated court documents, although it will 7 not take judicial notice of such documents for the truth of the matter asserted therein.” In 8 *re Bare Escentuals, Inc. Sec. Litig.*, 745 F. Supp. 2d 1052, 1067 (N.D. Cal. 2010); see 9 *Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006) (“[Courts] 10 may take judicial notice of court filings and other matters of public record [as they] are 11 readily verifiable and, therefore, the proper subject of judicial notice.”) (cleaned up). 12 Exhibit C is a copy of Defendants’ CLIA certification from the FDA website 13 concerning several drug screening tests. “Information on government agency websites has 14 often been treated as properly subject to judicial notice.” *Molina v. Wash. Mut. Bank*, No. 15 09-CV-00894-IEG (AJB), 2010 WL 431439, at *3 (S.D. Cal. Jan. 29, 2010). In this case, 16 Plaintiff references Defendant Axiom’s CLIA certification in the FAC and does not 17 otherwise dispute its accuracy. (See FAC ¶ 42.) As such, the Court finds “[i]t is 18 appropriate to take judicial notice of this information, as it was made publicly available by 19 [a] government [entity], and neither party disputes the authenticity of the web site[] or the 20 21 22 3 Relatedly, Defendants claim that Plaintiff failed to file a Notice of Related Case as to the 23 state court action in violation of this District’s Civil Local Rule 40.1(f). (Doc. 18 at 6; Doc. 20 at 3 n.1.) Defendants, however, do not state the relief sought or otherwise substantiate 24 this claim. Local Rule 40.1(f) requires counsel for either party to file a notice when an 25 action on file or about to be filed “is related to another pending action or proceeding on file in this or any other federal or state court” S.D. Cal. Civ. 40.1(f) (emphasis added). 26 Pursuant to this Local Rule, Defendants filed a Notice of Related Case on November 28, 27 2023 (Doc. 6), to which Plaintiff filed an Opposition on December 5, 2023 (Doc. 9). The Court therefore finds Defendants’ arguments concerning the state court action are not 28 1 accuracy of the information displayed therein.” *Daniels–Hall v. Nat’l Educ. Ass’n*, 629 2 F.3d 992, 998–99 (9th Cir. 2010); see *Eidson v. Medtronic, Inc.*, 981 F. Supp. 2d 868, 878– 3 79 (N.D. Cal. 2013) (collecting cases supporting the propriety of taking judicial notice of 4 information on government agency websites including the FDA’s premarket approval 5 database). However, to the extent Defendants seek to judicially notice any facts that are 6 subject to reasonable dispute and are inconsistent with the FAC, the Court must rely on the 7 facts as alleged. See *United States v. Corinthian Colleges*, 655 F.3d 984, 999 (9th Cir. 8 2011) (“Pursuant to Federal Rule of Evidence

201, [courts] may also take judicial notice 9 of ‘matters of public record,’ . . . but not of facts that may be ‘subject to reasonable dispute.’ 10 . . . More specifically, [courts] may not, on the basis of evidence outside of the Complaint, 11 take judicial notice of facts favorable to Defendants that could reasonably be disputed.”) 12 (quoting *Lee v. City of Los Angeles*, 250 F.3d 668, 689–90 (9th Cir. 2001)). 13 Exhibit D is a copy of Defendant Axium’s articles of incorporation. District courts 14 routinely take judicial notice of articles of incorporation because they are public records. 15 See e.g., *Rhodes v. Sutter Health*, No. CIV. 2:12-0013 WBS DAD, 2012 WL 662462, at 16 *3 (E.D. Cal. Feb. 28, 2012) (taking judicial notice of the articles of incorporation of 17 California corporations because they are filed with the Secretary of the State of California); 18 *Ostrander v. St. Columba Sch.*, Case No.: 3:21-cv-00175-W-LL, 2021 WL 3054877, at *2 19 (S.D. Cal. July 20, 2021) (same). 20 Accordingly, the Court GRANTS Defendants’ RJN as to all five exhibits.

21 IV. DISCUSSION

22 Defendants seek to dismiss the FAC on the following grounds: (1) lack of subject 23 matter jurisdiction under Rule 12(b)(1), arguing that Plaintiff has not established an injury- 24 in-fact; (2) Plaintiff is not the real party in interest under Rule 17(a); and (3) failure to state 25 a claim under Rule 12(b)(6), including under the heightened pleading standard of Rule 9(b) 26 for claims sounding in fraud. (See Doc. 18 at 9–20.) Defendants further seek to strike 27 Plaintiff’s request for punitive damages under Rule 12(f). (Id. at 20–21.) 28 1 The Court is required to address jurisdictional issues, such as Article III standing, 2 before proceeding to the merits. See *Alabama Legis. Black Caucus v. Alabama*, 575 U.S. 3 254, 270 (2015); *Safari Club Int’l v. Rudolph*, 862 F.3d 1113, 1117 n.1 (9th Cir. 2017). 4 Because Defendants’ arguments under Rule 12(b)(1) and Rule 17 center on whether 5 Plaintiff has standing to assert its claims, particularly as to whether it suffered an injury- 6 in-fact or brings claims on behalf of third parties, the Court addresses those arguments first. 7 A. Article III Standing 8 The Court previously dismissed Plaintiff’s initial complaint for failure to adequately 9 allege Article III standing. (Doc. 14.) In the instant Motion, Defendants argue that the 10 FAC suffers the same fatal flaws. (Doc. 18 at 15–17.) Specifically, Defendants argue the 11 Court lacks subject matter jurisdiction over this action because Plaintiff “fails to 12 demonstrate how Plaintiff has suffered an injury in fact because its competitor did end up 13 competing with it in the market.” (Id. at 16 (emphasis added).) Defendants reason that 14 “Plaintiff’s entire [FAC] centers on allegations related to . . . non-parties, either rooted in 15 allegations about non-party [Advin’s] relationship with Axium and Salvatore . . . or about 16 prospective consumers.” (Id. at 9.) Plaintiff responds that the FAC sufficiently pleads: 17 “(1) it suffered an ‘injury-in-fact’ from Defendants’ false advertising; (2) the injury was 18 traceable to Defendants’ unlawful business practices; and (3) the injury will be redressed 19 by a favorable decision awarding monetary damages.” (Doc. 19 at 6.) 20 “To establish injury in fact, a plaintiff must show that he or she suffered ‘an invasion 21 of a legally protected interest’ that is ‘concrete and particularized’ and ‘actual or imminent, 22 not conjectural or hypothetical.’” *Spokeo*, 578 U.S. at 339 (quoting *Lujan*, 504 U.S. at 23 560). “At the pleading stage, general factual allegations

of injury resulting from the defendant's conduct may suffice." Lujan, 504 U.S. at 561. Still, "each element must be supported . . . with the manner and degree of evidence required at the successive stages of litigation." Id. In a false advertising suit, "a plaintiff establishes Article III injury if some consumers who bought the defendant's product under a mistaken belief fostered by the defendant would have otherwise bought the plaintiff's product." *TrafficSchool.com, Inc. v. Edriver Inc.*, 653 F.3d 820, 825 (9th Cir. 2011) (cleaned up). A plaintiff may allege a competitive injury for purposes of Article III standing "(1) by using lost sales data, that is 'actual market experience and probable market behavior,' or (2) 'by creating a chain of inferences showing how defendant's false advertising could harm plaintiff's business.'" *Allbirds, Inc. v. Giesswein Walkwaren AG*, Case No. 19-cv-05638-BLF, 2020 WL 6826487, at *4 (N.D. Cal. June 4, 2020) (quoting *TrafficSchool.com*, 653 F.3d at 825). "In a lawsuit brought by a plaintiff against a competitor, claims that permit an inference of impending loss of profits due to the competitor's wrongful actions suffice to establish an injury in fact." *NJOY, LLC v. Imiracle (HK) Ltd.*, 760 F. Supp. 3d 1084, 1102 (S.D. Cal. 2024) (citing *Ass'n of Data Processing Servs. Orgs., Inc. v. Camp*, 397 U.S. 150, 152–53, (1970) (holding "[t]here can be no doubt" that plaintiffs "in a competitor's suit" satisfied injury in fact requirement where they alleged "some future loss of profits")). To do so, a plaintiff must provide at least two "links" in "a chain of inferences to show how that [the defendant's] false advertising could harm [the plaintiff's] business." *Allbirds*, 2020 WL 6826487, at *4. Here, Plaintiff alleges that Defendants' allegedly false advertising deprived it of "rightful business opportunities and revenue" and that Plaintiff "suffered a significant loss of sales and market share, damaging its reputation and standing in the industry." (FAC 19 ¶ 63.) Plaintiff's alleged harm constitutes cognizable competitive injuries. See, e.g., *Dickinson v. Ryan Seacrest Enter., Inc.*, No. CV-18-2544- GW(JPRX), 2019 WL 3035090, 21 at *7 (C.D. Cal. Mar. 26, 2019), *aff'd*, 839 F. App'x 110 (9th Cir. 2020) (finding Article III standing established in false advertising and endorsement suit where the plaintiff alleged injury to reputation and loss of goodwill); *Levitt v. Yelp! Inc.*, No. C 10-1321 MHP, 2011 WL 13153230, at *5 (N.D. Cal. Mar. 22, 2011) (finding allegations of harm to reputation and loss of business sufficient to confer Article III standing). Because the FAC does not provide "actual market experience and probable market behavior," Plaintiff must establish a chain of inferences showing that Defendants' allegedly false advertising caused its competitive injuries. See *TrafficSchool.com*, 653 F.3d at 825. As the first link in this chain of inference, Plaintiff alleges, and Defendants do not dispute, that both companies are direct competitors because they resell "the same or similar drug testing kits from the same manufacturer," Advin, through the same websites for the same revenue. (FAC ¶ 23.) As the second link, Plaintiff claims that Defendants' allegedly false advertising of their drug test kits as "FDA Approved" and "Made in the USA" "was and is likely to influence relevant consumers' purchasing decisions." (Id. ¶¶ 63, 85.) Indeed, "if a product has been approved [by the FDA], consumers may take some assurance that it has been properly tested and meets the agency's

minimum quality standards. This makes an FDA- 10 approved product a more attractive product, whether at the wholesale, retail, or end user 11 level.” JHP Pharms., LLC v. Hospira, Inc., 52 F. Supp. 3d 992, 1000 (C.D. Cal. 2014) 12 (analyzing a claim under the Lanham Act). 13 Plaintiff further claims that Defendants’ drug testing kits are not FDA approved in 14 violation of California’s Sherman Law and several other state regulations, which “created 15 an unfair sales advantage for [D]efendants, misleading consumers into purchasing their 16 inferior, counterfeit products over [P]laintiff’s legitimate offerings.” (FAC ¶ 63; see id. 17 ¶ 11.) Indeed, “when a competitor gains an unfair advantage by sidestepping regulatory 18 obligations, it is entirely plausible for a court to conclude that economic harm exists for 19 entities competing in the same market while adhering to the rules.” NJOY, LLC, 760 F.

20 Supp. 3d at 1103.

21 As the final link, Plaintiff claims that Defendants created their own drug testing kits 22 with less expensive components from foreign manufacturers and were thereby able to 23 assemble and sell its kits “at a significantly lower price than Plaintiff, who purchased drug 24 test kits for resale from Advin.” (FAC ¶¶ 63, 65.) Such allegations further support an 25 inference that consumers chose Defendants’ products over Plaintiff’s as a result of its 26 allegedly false advertising. See Vampire Fam. Brands, LLC v. MPL Brands, Inc., No. CV 27 20-9482-DMG (ASX), 2021 WL 4134841, at *7 (C.D. Cal. Aug. 6, 2021) (holding a 28 “‘chain of inferences showing how defendant’s false advertising could harm plaintiff’s 1 business’ that is sufficiently imminent to satisfy Article III standing” was established where 2 defendant competitor made a lower-cost product and paid less in taxes than other 3 competitors by marketing and selling “cocktails” made with agave wine instead of distilled 4 spirits) (quoting TrafficSchool.com, 653 F.3d at 825). 5 Based on the facts alleged, the Court finds it reasonable to infer that the challenged 6 advertisements may divert sales from Plaintiff to Defendants. Plaintiff has therefore 7 sufficiently established an injury-in-fact for purposes of Article III standing. For the same 8 reasons, Defendants’ alleged conduct is “fairly traceable” to Plaintiff’s alleged competitive 9 injuries. See Scilex Pharms. Inc. v. Sanofi-Aventis U.S. LLC, No. 21-CV-01280-JST, 2021 10 WL 11593043, at *4 (N.D. Cal. Aug. 16, 2021) (finding the “fairly traceable” requirement 11 for Article III standing was satisfied where plaintiff alleged a causal link between the 12 allegedly false advertising and its lost profits even if the advertisements were not the only 13 reason for its reduced sales); see also Washington Env’t Council v. Bellon, 732 F.3d 1131, 14 1146 (9th Cir. 2013) (noting the “fairly traceable and redressability components for 15 standing overlap and are two facets of a single causation requirement”) (cleaned up). 16 Accordingly, Plaintiff has established Article III standing and the Motion to Dismiss 17 under Rule 12(b)(1) is DENIED. 18 B. Real Party in Interest 19 Defendants argue that Plaintiff is not the real party in interest to this action, as 20 required under Rule 17, because the “FAC is entirely centered on allegations that Axiom 21 is misusing the drug testing kits of non-party Advin.” (Doc. 18 at 18.)⁴ Defendants appear 22 to object to Plaintiff’s ability to bring this suit as part of their standing challenge. 23 24

25 4 Defendants also argue that “Plaintiff is not the only improper party in this action [because] Defendant Axium [was] erroneously sued as ‘Axium Bioreseach, doing business as 26 DrugExam,’ even though [Defendant] Axium does not do business as DrugExam.” (Doc. 27 18 at 9 n.2 (citing Doc. 18-8 [“Salvatore Decl.”] ¶ 5); see Doc. 20 at 3, 9.) However, Defendants do not state the relief sought, do not identify who the “correctly named 28

1 Rule 17(a) requires that all actions “be prosecuted in the name of the real party in 2 interest.” However, “Rule 17(a) does not give [a party] standing; ‘real party in interest’ is 3 very different from standing.” See *Kent v. N. Cal. Reg’l Office of Am. Friends Serv.* 4 Comm., 497 F.2d 1325, 1329 (9th Cir. 1974). While Rule 17 does not define “real party in 5 interest,” the Ninth Circuit has held that the real party in interest is the party with the right 6 to enforce a claim under the applicable substantive law. *U-Haul Int’l, Inc. v. Jartran, Inc.*, 7 793 F.2d 1034, 1038 (9th Cir. 1986); see *Allstate Ins. Co. v. Hughes*, 358 F.3d 1089, 1093– 8 94 (9th Cir. 2004) (“Whether [the plaintiff] is the real party in interest under [Rule] 17(a) 9 in this federal diversity suit is dependent upon whether [the plaintiff] is a proper party to 10 maintain this action under applicable state law.”). Indeed, “[Rule] 17 governs only the 11 right of [a plaintiff] to bring the suit.” *Id.* 12 Here, beyond stating that “[n]one of the factual allegations relate whatsoever to 13 Plaintiff’s right to sue under substantive law” (Doc. 18 at 18), Defendants neglect to 14 substantiate their contentions. Defendants do not identify the applicable standard for 15 determining Plaintiff’s right to sue, do not attempt to apply such a standard, and do not 16 otherwise provide any legal support for their argument. Defendants also invoke Rule 17 17 but do not state the relief requested. 18 Accordingly, Defendants’ Motion is DENIED on 18 this basis. 19 C. Failure to State a Claim 20 Based on the same allegedly false advertisements, Plaintiff alleges that Defendants 21 engaged in: (1) unfair competition, including unlawful, unfair, and fraudulent business 22 practices, in violation of the UCL (FAC ¶¶ 72–74); (2) false advertising in violation of the 23 FAL (*id.* ¶¶ 83–85); (3) unfair competition in violation of the ICPA (*id.* ¶¶ 97–99); (4) false 24 25 26 5 The Court notes that it “may not dismiss an action for failure to prosecute in the name of 27 the real party in interest until, after an objection, a reasonable time has been allowed for the real party in interest to ratify, join, or be substituted into the action.” Fed. R. Civ. P. 28 1 advertising in violation of the Lanham Act (*id.* ¶¶ 100–108); and (5) intentional 2 interference with a prospective economic advantage (*id.* ¶¶ 109–116). 3 Defendants argue that Plaintiff’s claims are “intertwined with one another” and fail 4 to meet the minimum pleading standards. (Doc. 18 at 23, 25.) Specifically, Defendants 5 seek to dismiss the UCL, FAL, ICPA, and Lanham Act claims because: (1) Defendant 6 Axium had obtained a CLIA certification from the FDA which Defendants claim makes 7 their drug testing kits “FDA approved” (Doc. 18 at 23–24); and (2) Plaintiff’s false 8 advertising allegations based on Defendants’ use of the Package Insert do not meet Rule 9 9(b)’s heightened pleading standard (*id.* at 23–25). Defendants also argue that Plaintiff’s 10 intentional interference with prospective economic advantage claim fails because Plaintiff 11 does not identify any economic benefits it was likely to receive. (*Id.* at 18–20.) Finally, 12 Defendants

argue that Plaintiff fails to state a claim against Defendant Salvatore based on the alter ego doctrine. (Id. at 18–20.) Because Plaintiff’s claims rely on the same allegedly false statements, the Court finds Plaintiff’s claims are similarly grounded in fraud and therefore applies Rule 9(b) to determine the legal sufficiency of the FAC. (See *supra* II.C.) The Court first addresses Plaintiff’s false advertising claims before turning to the remaining claims. 1. FAL and Lanham Act (Second and Fourth Causes of Action)

Section 43(a) of the Lanham Act is designed “to protect persons engaged in . . . commerce against unfair competition,” making “actionable the deceptive and misleading use of marks.” 15 U.S.C. § 1125(a). The FAL similarly prohibits “untrue or misleading” advertising “which is known, or which by the exercise of reasonable care, would be known to be untrue or misleading.” Cal. Bus. & Prof. Code § 17500. Claims pursuant to the FAL are subject to the heightened pleading requirements of Rule 9(b). See *Yumul v. Smart Balance, Inc.*, 733 F. Supp. 2d 1117, 1123 (C.D. Cal. 2010) (citation omitted) (noting a complaint must plead “‘the who, what, when, where, and how’ of the misconduct charged” under the FAL); *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1103–104 (9th Cir. 2003). Because Plaintiff’s FAL and Lanham Act claims are premised on the same allegedly false statements, the Court evaluates the sufficiency of such false advertising claims collectively. See *Allergan USA, Inc. v. Prescribers Choice, Inc.*, 364 F. Supp. 3d 1089, 4 1108 (C.D. Cal. 2019) (“Claims under the FAL are substantially congruent to those under the Lanham Act.”). To state a false advertising claim under § 43(a) of the Lanham Act, Plaintiff must allege: (1) the defendant made a false statement either about the plaintiff’s or its own product; (2) the statement was made in commercial advertisement or promotion; (3) the statement actually deceived or had the tendency to deceive a substantial segment of its audience; (4) the deception is material; (5) the defendant caused its false statement to enter interstate commerce; and (6) the plaintiff has been or is likely to be injured as a result of the false statement, either by direct diversion of sales from itself to the defendant, or by a lessening of goodwill associated with the plaintiff’s product. *Newcal Indus., Inc. v. Ikon Office Sol.*, 513 F.3d 1038, 1052 (9th Cir. 2008) (quoting *Jarrow Formulas, Inc. v. Nutrition Now, Inc.*, 304 F.3d 829 (9th Cir. 2002)). Defendants argue that Plaintiff has failed to establish the first, second, and fifth elements of its Lanham Act claim. (Doc. 18 at 23–25 (arguing the FAL claim does not identify Plaintiff’s “purported harm”).) Defendants also argue that Plaintiff does not “identify any false statement, let alone when, where, how and what was false about it, or to whom it was made.” (Id. at 24.)⁶ In its Opposition, Plaintiff asserts that the FAC alleges Defendants made three false statements on Amazon’s website “that its drug test kits were[.]” Defendants also claim the FAC “raises fair notice concerns” because the title of Plaintiff’s claim states a cause of action under § 43(a)(1)(A) and “does not clearly state if Plaintiff is asserting a ‘false association’ claim . . . or a ‘false advertising’ claim.” (Doc. 18 at 23.) However, Plaintiff expressly recites the elements of a false advertising cause of action (see FAC ¶¶ 101–103, 106), relies on three primary advertisements, and explains why the

advertisements are allegedly false and misleading. Thus, Defendants have “ample notice 27 of the particular misconduct so that they can defend against the charge.” *In re Easysaver Rewards Litig.*, 737 F. Supp. 2d 1159, 1176 (S.D. Cal. 2010) (quoting *Kearns v. Ford* 28 1 (I) approved by the [FDA], (II) ‘Made in the USA’ and (III) have a 99% success rate in the 2 Product Insert.” (Doc. 19 at 24.) 3 As the Parties only dispute the first, second, and fifth elements of the Lanham Act 4 claim, the Court addresses only the disputed elements for each of the three alleged 5 statements. For the reasons discussed below, the Court finds that Plaintiff has stated a false 6 advertising claim based on Defendants’ alleged statements that their drug testing kits are 7 “FDA approved” and “Made in the USA.” However, Defendants’ alleged use of, and 8 statements contained in, the Package Insert do not support a false advertising claim under 9 the FAL and Lanham Act. 10 a. Falsity 11 Plaintiff alleges that Defendants’ advertisements made false statements about its 12 drug testing kits being “FDA approved” and “Made in the USA.” (FAC ¶ 20.) Defendants 13 seemingly challenge the first element of Plaintiff’s false advertising claim, arguing that 14 Defendant Axium does possess FDA approval for its products. (Doc. 18 at 24; see also *id.* 15 at 23 (asserting the same argument against UCL claim).) 16 “To demonstrate falsity within the meaning of the Lanham Act, a plaintiff may show 17 that the statement was literally false, either on its face or by necessary implication, or that 18 the statement was literally true but likely to mislead or confuse consumers.” *Southland*, 19 108 F.3d at 1139. “[A]t the pleading stage the plaintiff need only allege specific misleading 20 statements and explain why they are misleading in accordance with Rule 9(b).” *Clorox 21 Co. v. Reckitt Benckiser Grp. PLC*, 398 F. Supp. 3d 623, 636 (N.D. Cal. 2019). The Ninth 22 Circuit has noted that “a Lanham Act claim could be pursued for injuries suffered by a 23 competitor as a result of a false assertion that [FDA] approval had been granted” where “it 24 was clear that an affirmative statement of approval by the FDA was required before a given 25 product could be marketed and that no such FDA approval had been granted.” 26 *PhotoMedex, Inc. v. Irwin*, 601 F.3d 919, 924–25 (9th Cir. 2010). 27 In this case, the Lanham Act claim is premised on Defendants’ affirmative 28 statements that its drug testing kits are “FDA approved.” (FAC ¶¶ 1, 3.) Plaintiff claims 1 drug testing kits are medical devices that require FDA approval. (*Id.* ¶¶ 11). See 2 *PhotoMedex*, 601 F.3d at 924–25. Relying on its CLIA certification, Defendants argue 3 that its “products are approved by the FDA and made in the United States.” (Doc. 20 at 8 4 (citing Doc. 18-1, Ex. C).) 5 Plaintiff acknowledges that Defendant Axium received its CLIA certification on

6 September 20, 2020. (FAC ¶ 42.) Plaintiff also alleges that Advin obtained 501(k)

7 clearances from the FDA for 14 drug testing kits (*id.* ¶ 31) and that a CLIA certification 8 allows re-sellers to use Advin’s accreditation to manufacture, market, and sell Advin’s drug 9 testing kits (*id.* ¶¶ 34, 42, 45). Instead of re-selling Advin’s drug testing kits, however, 10 Plaintiff claims that Defendant Axium manufactured and sold its own kits using 11 components sourced from unregistered, third-party manufacturers located in China and 12 India that were not tested or approved by the FDA. (*Id.* ¶¶ 2, 38–39, 45, 51.) Specifically, 13 Plaintiff alleges that Defendants

obtained reactive strips from a Chinese-based 14 manufacturer and “test cassettes and caps from Tonisha Electronic, based in New Delhi, 15 India.” (Id. ¶¶ 55–56.) The FAC also contains photos showing the differences between 16 Advin’s components and those used by Defendant Axiom. (Id.) 17 At the pleading stage, the Court finds these allegations sufficient to satisfy the first 18 element of its Lanham Act claim. Although Advin’s drug testing kits received FDA 19 approval, and the CLIA certification allows Defendant Axiom to manufacture and sell 20 Advin’s kits, Plaintiff plausibly alleges that Defendant Axiom’s drug testing kits are 21 created with parts that were not produced by an FDA-approved or domestic manufacturer. 22 Viewing these facts in the light most favorable to Plaintiff, the Court finds Plaintiff pleads 23 sufficient facts to support that Defendants made false statements about the FDA approval 24 status and domestic manufacturing of its drug testing kits. See *PhotoMedex*, 601 F.3d at 25 924–25; see also *Williams v. Gerber Prods. Co.*, 552 F.3d 934, 938 (9th Cir. 2008) 26 (reversing dismissal of UCL claims based on allegedly deceptive product packaging as 27 inappropriately decided on a motion to dismiss). 28 1 b. Commercial Advertisement 2 Defendants argue that Plaintiff fails to explain how the Package Insert “could 3 constitute a false statement to a prospective consumer when it is, by definition, inside the 4 packaging.” (Doc. 18 at 23, 25.) 5 To constitute commercial advertising or promotion under the Lanham Act, a 6 representation must be, among other things, “for the purpose of influencing consumers to 7 buy defendant’s goods or services, and . . . sufficiently disseminated to the relevant 8 purchasing public.” *Ariix, LLC v. NutriSearch Corp.*, 985 F.3d 1107, 1115 (9th Cir. 2021) 9 (citing *Coastal Abstract Serv., Inc. v. First Am. Title Ins. Co.*, 173 F.3d 725, 735 (9th Cir. 10 1999)). A false advertising claim must be “likely to influence the purchasing decision” of 11 consumers. *Southland*, 108 F.3d at 1139. Indeed, Plaintiff “has the burden of pleading at 12 least some facts tending to show that the alleged implied message is actually transmitted 13 to the consumer.” *JHP Pharms.*, 52 F. Supp. 3d at 1005 (citing *William H. Morris Co. v. 14 Grp. W, Inc.*, 66 F.3d 255, 258 (9th Cir.1995)). 15 Here, Plaintiff alleges Defendant Axiom’s drug testing kits include the Package 16 Insert containing information about Advin’s preliminary analytical findings concerning its 17 own drug testing kits. (FAC ¶¶ 2, 31.) In its Opposition, Plaintiff claims that Defendants 18 falsely stated their drug testing kits “have a 99% success rate in the Product Insert.” (Doc. 19 19 at 24.) However, as Plaintiff did not include this statement as a factual allegation in the 20 FAC, the Court does not consider it in determining the sufficiency of Plaintiff’s pleading. 21 See *Marron v. Saha*, Case No.: 19cv1344-BAS (MSB), 2020 WL 2467062, at *3 (S.D. 22 Cal. May 13, 2020) (“Under [Rule] 7(a), a plaintiff’s opposition to a motion to dismiss 23 does not constitute pleadings, and thus ‘new’ allegations raised in a plaintiff’s opposition 24 to a motion to dismiss are not considered when resolving a motion to dismiss.”) (citing 25 *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 1014 (9th Cir. 2018)). 26 Moreover, Plaintiff claims that Defendant Axiom’s use of the Package Insert “falsely 27 impl[ies] its applicability and validity to” their drug testing kits because Defendants “failed 28 to conduct any form of [the stated] analytical testing for the component parts.” (FAC ¶ 46.) 1 But as

Defendants note, the facts alleged do not support that the Package Insert, or any 2 information conveyed therein, is actually conveyed to consumers for the purpose of 3 influencing their purchasing decisions. See *Ariix, LLC*, 985 F.3d at 1115. Because 4 consumers only have access to the Package Insert after they have purchased Defendant 5 Axiom’s drug testing kits, the allegedly false statements in the Package Insert do not 6 constitute “commercial advertisement about [Defendants’] own . . . product.” *BHRS Grp., 7 LLC v. Brio Water Tech., Inc.*, 553 F. Supp. 3d 793, 799 (C.D. Cal. 2021) (citation omitted); 8 see *JHP Pharms.*, 52 F. Supp. 3d at 1003 (“Thus, to succeed on its claims [a plaintiff] must 9 allege facts tending to show that the message ‘our product is FDA-approved’ was actually 10 conveyed to consumers . . .”). Accordingly, Defendant Axiom’s alleged statements in the 11 Package Insert do not support a false advertising claim under the Lanham Act. 12 Unlike Plaintiff’s allegations concerning the Package Insert, Plaintiff asserts that 13 Defendants’ statements that its drug testing kits are “FDA approved” and “Made in the 14 USA” were made on Amazon and Walmart’s websites. (FAC ¶¶ 3, 20.) Such statements 15 were therefore made in commercial advertisement or promotion. See *United States v. 16 Sutcliffe*, 505 F.3d 944, 952-53 (9th Cir. 2007) (“[T]he Internet is an instrumentality and 17 channel of interstate commerce.”) (cleaned up). Thus, Plaintiff’s allegations concerning 18 such statements sufficiently satisfy the second element of its Lanham Act claim. 19 c. Injury 20 Defendants argue that Plaintiff “vaguely reference[s] ‘Defendants’ actions” or 21 conduct without identifying the purported harm to Plaintiff that gives rise to the causes of 22 action.” (Doc. 18 at 25.) Although Defendants assert this argument against Plaintiff’s 23 claims under the FAL and the ICPA, the Court addresses it as part of its current analysis. 24 See *Allergan*, 364 F. Supp. 3d at 1108 (“Claims under the FAL are substantially congruent 25 to those under the Lanham Act.”). 26 Under the Lanham Act, a plaintiff must “plead (and ultimately prove) an injury to a 27 commercial interest in sales or business reputation proximately caused by the defendant’s 28 misrepresentations.” *Openwave Messaging, Inc. v. Open-Xchange, Inc.*, No. 16-cv-00253- 1 WHO, 2016 WL 6393503, at *4 (N.D. Cal. Oct. 28, 2016) (citing *Lexmark Int’l, Inc. v. 2 Static Control Components, Inc.*, 572 U.S. 118, 134 (2014)). Lost sales for the plaintiff 3 because of the defendant’s false advertising is the “paradigmatic direct injury from false 4 advertising.” *Id.* at *5 (quoting *Lexmark Int’l*, 572 U.S. at 134). 5 The Court finds that Plaintiff has adequately alleged injury caused by Defendants’ 6 allegedly false advertising. Plaintiff alleges that as a result of the advertisements, it has 7 suffered a significant loss of sales and market share that it would have otherwise earned. 8 (FAC ¶ 63.) Plaintiff also claims that the advertisements have damaged its reputation and 9 standing in the industry. (*Id.*) Such allegations are sufficient to plead damages. See 10 *Openwave Messaging, Inc.*, 2016 WL 6393503, at *5, (allegations that defendant’s false 11 advertisement caused “potential customers to mistakenly turn to [defendant] when seeking 12 [plaintiff’s] products and services, and the sales or inquiries of [defendant’s] products 13 resulting from this false advertising should rightly have gone to [plaintiff]” were sufficient 14 to establish proximate cause and injury for the purposes of a motion to dismiss); *Luxul 15 Tech., Inc. v. Nectarlux, LLC*, 78 F.

Supp. 3d 1156, 1169 (N.D. Cal. 2015) (allegations that 16 defendant’s “misrepresentations regarding the source of LED tube lamps resulted in harm 17 to distinctiveness of Plaintiff’s product, brand, good, and reputation,” and the “likelihood 18 of commercial injury based on Defendants’ misbranding of Luxul products” was sufficient 19 to show injury). Thus, Plaintiff has satisfied the fifth element of its Lanham Act claim. 20 d. Conclusion 21 Based on the foregoing reasons, the Court finds that Plaintiff has sufficiently stated 22 a false advertising claim under the Lanham Act and the FAL based on Defendants’ alleged 23 statements about their drug testing kits being “FDA approved” and “Made in the USA.” 24 Accordingly, the Motion is DENIED as to the Second and Fourth Causes of Action. 25 However, Plaintiff failed to plead that the alleged statements in the Package Insert 26 constituted commercial advertising to state a false advertising claim. To the extent the 27 Second and Fourth Causes of Action are premised on the alleged statements in the Package 28 Insert, the Motion is therefore GRANTED. 1 2. Consumer Protection Claims 2 a. UCL (First Cause of Action) 3 Plaintiff alleges that Defendants’ allegedly false advertisements violate the FAL and 4 thus constitute an unlawful business practice under the UCL. (FAC ¶ 73.) Plaintiff also 5 alleges that Defendants violate California’s Sherman Law by manufacturing and selling 6 drug testing kits that have not been approved by the California Department of Health 7 Services or the FDA and therefore such sales are actionable under the UCL as an unlawful 8 business practice. (Id. ¶ 71.) Defendants seek to dismiss Plaintiff’s UCL claim, arguing 9 that Plaintiff does not “even state ‘threadbare recitals of the elements of the cause of 10 action.’” (Doc. 18 at 22–23 (quoting *Iqbal*, 556 U.S. at 678).) 11 “The UCL prohibits ‘any unlawful, unfair or fraudulent business act or practice.’” 12 *Hodsdon v. Mars, Inc.*, 891 F.3d 857, 865 (9th Cir. 2018) (quoting Cal. Bus. & Prof. Code 13 § 17200). An “unlawful” practice under the UCL is “anything that can properly be called 14 a business practice and that at the same time is forbidden by law.” *Cel-Tech Comms., Inc. 15 v. Los Angeles Cellular Tel. Co.*, 20 Cal. 4th 163, 180 (1999) (cleaned up). Thus, “to state 16 a claim under the unlawful prong of the UCL, a plaintiff must sufficiently plead a predicate 17 violation.” *MacDonald v. Ford Motor Co.*, 37 F. Supp. 3d. 1087, 1097 (N.D. Cal. 2014). 18 The “unfair” prong of the UCL “prohibit[s] not only advertising which is false, but also 19 advertising which[,] although is true, is either actually misleading or which has a capacity, 20 likelihood or tendency to deceive or confuse the public.” *Brady v. Bayer Corp.*, 26 Cal.

21 App. 5th 1156, 1173 (2018) (citation omitted).

22 Alleged violations of the Lanham Act and the FAL can serve as a predicate basis for 23 a claim of unlawful and unfair practices under the UCL. *Lona’s Lil Eats, LLC v. 24 DoorDash, Inc.*, Case No. 20-cv-06703-TSH, 2021 WL 151978, at *13 (N.D. Cal. Jan. 18, 25 2021); see *Kasky v. Nike, Inc.*, 27 Cal. 4th 939, 950 (2002) (“[A]ny violation of the false 26 advertising law necessarily violates the UCL.”) (cleaned up). Moreover, a violation of the 27 FAL generally is also a violation of the “fraudulent” prong of the UCL. *Hadley v. Kellogg 28 Sales Co.*, 243 F. Supp. 3d 1074, 1089 (N.D. Cal. 2017). California’s Sherman Law can 1 also serve as a predicate for an unlawful

practice claim under the UCL. *Allergan USA, Inc. 2 v. Prescribers Choice, Inc.*, 364 F. Supp. 3d 1089, 1104 (C.D. Cal. 2019) (citing *Farm 3 Raised Salmon Cases*, 42 Cal. 4th 1077, 1091 n.13 (2008)). 4 Here, Plaintiff alleges that Defendants are violating the FAL by falsely advertising 5 its drug testing kits as “FDA approved” and “Made in the USA.” (FAC ¶ 73.) Because 6 Plaintiff has stated claims for false advertising under the Lanham Act and the FAL (see 7 *supra* IV.C.1), it has also stated a UCL claim under all three prongs. 8 Additionally, Plaintiff also plausibly alleges that Defendants are violating 9 California’s Sherman Law and other California regulations by failing to satisfy medical 10 device-approval requirements and falsely advertising their drug testing kits. (FAC ¶¶ 11, 11 71.) The Sherman Law provides that “[n]o person shall sell, deliver, or give away any new 12 . . . device” that has not been approved by the California Department of Health Services or 13 the FDA. Cal. Health & Safety Code § 111550(a)–(b). As previously discussed, Plaintiff 14 has sufficiently alleged that Defendant Axium is selling its own drug testing kits with 15 components that are not approved by either agency. (See *supra* IV.C.1.a.) The Court 16 therefore finds that, at the pleading stage, Plaintiff has pled sufficient facts to show 17 Defendants engaged in “an act or practice, committed pursuant to business activity, that is 18 at the same time forbidden by law.” *Bernardino v. Planned Parenthood Fed. of Am.*, 115 19 Cal. App. 4th 322, 351 (2004). 20 Defendants raise the same arguments as they did for Plaintiff’s false advertisement 21 claims, including that: (1) Defendant Axium received a CLIA certification from the FDA 22 to sell its drug testing kits; and (2) the unlawful claim is predicated on alleged violations 23 of the Sherman Law based on Defendant Axium’s use of the Package Insert but Plaintiff 24 fails to explain “how that could constitute a false statement to a prospective consumer when 25 26 27 28 1 it is, by definition, inside the packaging.” (*Id.* at 23.) However, Defendants’ arguments 2 are unpersuasive for the reasons previously stated. (See *supra* IV.C.1.a.) 7 3 The Motion is therefore DENIED as to the UCL claim. 4 b. Idaho Consumer Protection Act (Third Cause of Action) 5 The ICPA protects both consumers and businesses against unfair methods of 6 competition and unfair or deceptive acts and practices in the conduct of trade or commerce. 7 Idaho Code § 48-603. Like Plaintiff’s consumer protection claims under California law, 8 “[a]n act or practice is unfair if it is shown to possess a tendency or capacity to deceive 9 consumers.” *Roost Project, LLC v. Andersen Constr. Co.*, 437 F. Supp. 3d 808, 827 (D.

10 Idaho 2020) (quoting *Kidwell v. Master Distributions, Inc.*, 101 Idaho 447, 453 (1980)); see 11 *Brady v. Bayer Corp.*, 26 Cal. App. 5th 1156, 1173 (2018) (noting that the UCL prohibits 12 advertising that “is either actually misleading or which has a capacity, likelihood or 13 tendency to deceive or confuse the public.”). 14 Defendants argue the ICPA claim fails because Plaintiff “vaguely reference[s] 15 ‘Defendants’ actions’ or conduct without identifying the purported harm to Plaintiff that 16 gives rise to” an ICPA claim. (Doc. 18 at 24.) However, for the reasons previously 17 discussed (see *supra* IV.C.1.c), Plaintiff has sufficiently alleged that its harm was caused 18 by Defendants’ allegedly false advertising to consumers. See *Kidwell*, 101 Idaho at 454 19 (“Actual damage to the public need not be shown to establish a trade practice as unfair or 20

deceptive if it is shown that the practice possesses a tendency or capacity to deceive.”); In 21 22
23 7 Defendants’ argument concerning the Package Insert is inapplicable to Plaintiff’s UCL claim
based on violations of the Sherman Law because this claim does not require 24 allegations of
fraud or deception. See *Brinkerhoff v. L’Oreal USA, Inc.*, 417 F. Supp. 3d 25 1308, 1314 (S.D.
Cal. 2019) (“Plaintiff need not plead reliance because neither the alleged FDCA violation nor the
alleged Sherman Law violation requires allegations of fraud or 26 deception.”); *Allergan USA Inc.
v. Imprimis Pharms., Inc.*, Case No. SA CV 17-1551-DOC 27 (JDEx), 2017 WL 10526121, at *12
(C.D. Cal. Nov. 14, 2017) (finding defendant’s “actual reliance” argument was irrelevant to the
unlawful business practices claim under the UCL 28 1 re *W. Acceptance Corp., Inc.*, 788 P.2d 214,
216 (Idaho 1990) (holding the ICPA must be 2 “liberally construed to effect the legislative intent
to deter deceptive or unfair trade 3 practices and to provide relief for consumers exposed to
proscribed practices.”). 4 Further, Defendants summarily argue that Plaintiff’s ICPA claim fails
because it is 5 untimely under Idaho law. (Doc. 18 at 24.). Section 48-619 of the ICPA provides
that “no 6 private action may be brought under this act more than two (2) years after the cause of 7
action accrues.” In their Motion, Defendants do not provide further explanation or 8 argument to
support that Plaintiff’s claim under the ICPA is rendered untimely. As 9 Defendants failed to
develop their argument, the Court considers it waived. See *Khademi 10 v. South Orange Cnty.
Cmty. College Dist.*, 194 F. Supp. 2d 1011, 1027 (C.D. Cal. 2002) 11 (“A judge is . . . neither
required to hunt down arguments [the parties] keep camouflaged, 12 nor required to address
perfunctory and undeveloped arguments . . . [T]o the extent that 13 [Defendants] failed to develop
any additional argument or provide any legal support for 14 them, [it] has waived them.”). 15
Accordingly, the Motion is DENIED as to the Third Cause of Action. 16 3. IIPEA (Fifth Cause of
Action) 17 Defendants argue that Plaintiff’s intentional interference with prospective economic 18
advantage claim fails because Plaintiff does not identify any economic benefits it was likely 19 to
receive. (Doc. 18 at 18–20.) The Court agrees. 20 To allege a claim for intentional interference
with prospective economic advantage, 21 a plaintiff must allege: “(1) an economic relationship
between the plaintiff and some third 22 party, with the probability of future economic benefit to
the plaintiff; (2) the defendant’s 23 knowledge of the relationship; (3) intentional [wrongful] acts
on the part of the defendant 24 designed to disrupt the relationship; (4) actual disruption of the
relationship; and (5) 25 economic harm to the plaintiff proximately caused by the acts of the
defendant.” 26 *Sybersound Records, Inc. v. UAV Corp.*, 517 F.3d 1137, 1151 (9th Cir. 2008). 27
As to the first element, a plaintiff must allege “a ‘particular relationship or 28 opportunity with
which the defendant’s conduct is alleged to have interfered’ rather than 1 vague allegations
regarding a relationship with an ‘as yet unidentified’ customer.” *Soil 2 Retention Prods., Inc. v.
Brentwood Indus., Inc.*, 521 F. Supp. 3d 929, 961 (S.D. Cal. 2021) 3 (quoting *Weintraub Fin.
Servs., Inc. v. Boeing Co.*, Case No. CV 20-3484-MWF (GJSx), 4 2020 WL 6162801, at *8 (C.D.
Cal. Aug. 7, 2020)). To allege an economic relationship, 5 “it must be reasonably probable the
prospective economic advantage would have been 6 realized but for defendant’s interference.” *Id.*

(quoting *Song v. Drenberg*, No. 18-CV- 7 06283-LHK, 2019 WL 1998944, at *7–8 (N.D. Cal. May 6, 2019)). 8 In its Opposition, Plaintiff contends that it has adequately pled “a colorable 9 economic relationship” with “all customers who purchase drug test kits on Amazon.com, 10 and was likely to enter into actual relationships with a certain percentage of such potential 11 customers.” (Doc. 19 at 18.) However, such ““a hope of future transactions’ is insufficient 12 to support a claim of tortious interference.” *Soil Retention Prods., Inc.*, 521 F. Supp. 3d at 13 961 (quoting *Brown v. Allstate Ins. Co.*, 17 F. Supp. 2d 1134, 1140 (S.D. Cal. 1998). 14 “Plaintiff must establish an actual economic relationship or a protected expectancy with a 15 third person, not merely a hope of future transactions.” *Brown*, 17 F. Supp. 2d at 1140. 16 For example, the court in *Song* dismissed an IIPEA claim where the plaintiff “merely 17 allege[d] interference with possible business contracts,” and failed “to name a single entity 18 or person” or point to any particular opportunity that was disrupted by the defendant’s 19 alleged conduct. 2019 WL 1998944, at *8. Instead, the court noted that the complaint 20 only made “sweeping generalizations lacking any detail about the loss of prospective 21 business opportunities.” *Id.* at *7. 22 In this case, Plaintiff generally alleges that it had economic relationships with third 23 party customers and “a reasonable expectancy of profit to be derived as a result of its” drug 24 testing kit sales via Amazon and Walmart’s websites. (FAC ¶¶ 110, 112.) But Plaintiff 25 does not allege any facts to support that there was a reasonable probability that any 26 purchasers of drug testing kits on the Amazon website would purchase Plaintiff’s drug 27 testing kits but for Defendants’ alleged interference. The Court therefore finds that 28 Plaintiff fails to plausibly allege a “particular relationship or opportunity with which 1 [Defendants’] conduct is alleged to have interfered.” See *Soil Retention Prods., Inc.*, 521 2 F. Supp. 3d at 961. Accordingly, Plaintiff’s Fifth Cause of Action for IIPEA is 3 DISMISSED with leave to amend. 4 4. Alter Ego 5 Plaintiff brings all five causes of action against both Defendant Axiom and 6 Defendant Salvatore. (See FAC ¶¶ 67–116.) Defendants argue that Plaintiff fails to state 7 a claim against Defendant Salvatore because its alter ego claims “fail to meet the minimum 8 pleading standards to establish [Defendant] Salvatore is the alter ego of [Defendant] 9 Axiom, and vice versa.” (Doc. 18 at 18–19.) 10 Courts ““apply the law of the forum state in determining whether a corporation is an 11 alter ego’ of an individual.” *SEC v. Hickey*, 322 F.3d 1123, 1128 (9th Cir. 2003) (quoting 12 *Towe Antique Ford Found. v. IRS*, 999 F.2d 1387, 1391 (9th Cir. 1993)). Alter ego liability 13 allows a plaintiff to “pierce the corporate veil” and hold a corporate actor or parent 14 corporation liable for conduct of the corporation or subsidiary. *Stark v. Coker*, 129 P.2d 15 390, 394 (Cal. 1942). Disregarding the corporate form, however, is an “extreme remedy, 16 sparingly used.” *Sonora Diamond Corp. v. Superior Ct.*, 83 Cal. App. 4th 523, 539 (2000). 17 To state a plausible claim of alter ego liability against Defendant Salvatore, Plaintiff 18 “must make out a prima facie case (1) that there is such unity of interest and ownership 19 that the separate personalities [of the two entities] no longer exist and (2) that failure to 20 disregard [their separate identities] would result in fraud or injustice.” *Ranza v. Nike, Inc.*, 21 793 F.3d 1059, 1072 (9th Cir. 2015) (citation omitted). Factors

used to support the first 22 element, unity of interest, include: 23 [C]ommingling of funds, failure to maintain minutes or adequate corporate records, identification of the equitable owners with the domination and control 24 of the two entities, the use of the same office or business locations, the 25 identical equitable ownership of the two entities, the use of a corporation as a mere shell, instrumentality or conduit for a single venture or the business of 26 an individual, and the failure to adequately capitalize a corporation. 27 28 1 *Pac. Mar. Freight, Inc. v. Foster*, No. 10–cv–0578–BTM–BLM, 2010 WL 3339432, at *6 2 (S.D. Cal. Aug. 24, 2010) (citing *Associated Vendors, Inc. v. Oakland Meat Co.*, 210 Cal.

3 App. 2d 825, 838–40 (1962)). “The identification of the elements of alter-ego liability plus 4 two or three factors has been held sufficient to defeat a 12(b)(6) motion to dismiss.” *Id.* 5 (citing *Federal Reserve Bank of San Francisco v. HK Sys.*, No. C–95–1190, 1997 WL 6 227955, at *6 (N.D. Cal. Apr. 24, 1997)). Under Ninth Circuit precedent, “[t]otal 7 ownership and shared management personnel are alone insufficient to establish the 8 requisite level of control” to satisfy the alter-ego test. *Ranza*, 793 F.3d at 1073; see also 9 *Katzir’s Floor & Home Design, Inc. v. M-MLS.com*, 394 F.3d 1143, 1149 (9th Cir. 2004) 10 (“[T]he mere fact of sole ownership and control does not eviscerate the separate corporate 11 identity that is the foundation of corporate law.”). 12 Here, Plaintiff alleges that Defendant Salvatore is the sole founder of Defendant 13 Axium and operated the company from June 20, 2016 through November 2, 2019 without 14 appointing any other corporate officers, directors, a board of directors, or a registered agent 15 for service of process. (FAC ¶ 26.) Plaintiff also alleges that Defendant Axium never 16 issued any common stock, never held any shareholder or board meetings, and did not file 17 a yearly Statement of Information with the California Secretary of State. (FAC ¶¶ 26–27.) 18 According to Plaintiff, Defendant Salvatore and his wife, Diana Motina, were Defendant 19 Axium’s only employees and were paid as independent contractors. (*Id.* ¶ 27.) Plaintiff 20 adds that, on information and belief, “Defendant Salvatore used Defendant Axium to pay 21 for personal expenditures, including his wife’s, that had nothing to do with any business 22 operation.” (*Id.*) Based on these allegations, Plaintiff has at a minimum pled a disregard 23 for corporate formalities and commingling of funds. The Court finds this is sufficient to 24 allege a unity of interest. See *Pac. Mar. Freight, Inc.*, 2010 WL 3339432, at *7 (“Sole 25 ownership alone is often enough to defeat a motion to dismiss, and when taken with the 26 commingling of funds, [the plaintiff] has sufficiently pled a unity of interest between [the 27 individual defendant] and [the corporate defendant]”). 28 1 As to the second element, Plaintiff must also allege that an inequitable would result 2 in the recognition of the corporate form. See *Ranza*, 793 F.3d at 1073. “Inequitable results 3 flowing from the recognition of the corporate form include the frustration of a meritorious 4 claim, perpetuation of a fraud, and the fraudulent avoidance of personal liability.” *Pac. 5 Mar. Freight, Inc.*, 2010 WL 3339432, at *7. Here, Plaintiff alleges that “adherence of the 6 fiction of a separate existence of Defendant Axium business entity and Defendant Salvatore 7 would permit an abuse of the corporate privilege, and would sanction and promote 8 injustice.” (FAC ¶ 28.) Defendants argue

that “Plaintiff’s allegations to support its alter ego theory are conclusory and recitations of the law, and therefore, Plaintiff’s FAC fails to state a claim upon which relief could be granted.” (Doc. 18 at 19.) However, the Court finds alter ego liability is not applicable or necessary in this case because Plaintiff sufficiently pleads that Defendant Salvatore himself committed tortious acts that would expose him to personal liability as a corporate director. “A corporate ‘officer or director is, in general, personally liable for all torts which he authorizes or directs or in which he participates, notwithstanding that he acted as an agent of the corporation and not on his own behalf.” *Transgo, Inc. v. Ajac Transmission Parts Corp.*, 768 F.2d 1001, 1021 (9th Cir. 1985). In this case, all five of Plaintiff’s claims are based on alleged actions taken by Defendant Salvatore who is Defendant Axium’s CEO, CFO, and sole director. (See FAC ¶¶ 25, 37.) As Defendant Salvatore is the sole actor of Defendant Axium, Plaintiff sufficiently alleges he was a participant in all alleged tortious conduct. As a result, Defendant Salvatore “will not be able to ‘hide behind [Defendant Axium’s] corporate form’ for [his] own alleged tortious actions.” *A-Tek Mech., Inc. v. KHW Servs., Inc.*, Case No.: 3:21-cv-01974-H-WVG, 2022 WL 3044815, at *11 (S.D. Cal. Aug. 2, 2022), on reconsideration in part, No. 3:21-CV-01974-H-DDL, 2022 WL 18635745 (S.D. Cal. Oct. 13, 2022) (quoting *Hawes v. Kabani & Co., Inc.*, 182 F.

26 Supp. 3d 1134, 1144 (W.D. Wash. 2016)); see *Coastal Abstract Serv., Inc. v. 1st Am. Title Ins. Co.*, 173 F.3d 725, 734 (9th Cir. 1999) (finding a jury could find the corporate defendant’s officer liable for an actionable statement under the Lanham Act). 1 Accordingly, Plaintiff’s claims may be asserted against Defendant Salvatore directly 2 and Defendant Salvatore may be held personally liable for such claims without the need to 3 show alter ego liability. The Motion is therefore DENIED as to the claims against 4 Defendant Salvatore in his individual capacity. 5 D. Rule 12(f) 6 Plaintiff seeks punitive damages, in an amount to be proven at trial, for Defendants’ 7 alleged intentional interference with a prospective economic advantage. (FAC ¶¶ 114, 8 116.) Defendants move to strike Plaintiff’s request for punitive damages from the FAC. 9 (Doc. 18 at 25–26.) Defendants argue that Plaintiff fails to state a claim which could 10 support its punitive damages request and does not “plead facts showing acts that plausibly 11 show oppression, fraud or malice” as required under California law. (Id.) 12 As an initial matter, “Rule 12(f) does not authorize district courts to strike claims for 13 damages on the ground that such claims are precluded as a matter of law.” *Whittlestone, Inc. v. Handi-Craft Co.*, 618 F.3d 970, 974 (9th Cir. 2010). Under Rule 12(f), the Court 15 “may strike from a pleading an insufficient defense or any redundant, immaterial, 16 impertinent, or scandalous matter.” The function of a motion to strike pursuant to Rule 17 12(f) is “to avoid the expenditure of time and money that must arise from litigating spurious 18 issues by dispensing with those issues prior to trial.” *Whittlestone, Inc.*, 618 F.3d at 973 19 (quoting *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir.1993)). “Motions to strike 20 are generally viewed with disfavor and will usually be denied unless the allegations in the 21 pleading have no possible relation to the controversy and may

cause prejudice to one of the parties.” *Sliger v. Prospect Mortg., LLC*, 789 F. Supp. 2d 1212, 1216 (E.D. Cal. 2011). In the Motion, Defendants argue that Plaintiff’s allegations are insufficient to state an IIPEA claim but do not identify any prejudice they would suffer if the request for punitive damages remains or explain how striking Plaintiff’s request would streamline the case. (Doc. 18 at 25–26.) Thus, Defendants’ request to strike under Rule 12(f) constitutes “an attempt to have certain portions of [the FAC] dismissed or to obtain summary judgment 1 against [Plaintiff] as to those portions of the suit—actions better suited for a Rule 12(b)(6) 2 motion or a Rule 56 motion, not a Rule 12(f) motion.” *Whittlestone, Inc.*, 618 F.3d at 973. 3 Defendants also argue that Plaintiff’s allegations are insufficient under California 4 Civil Code § 3294 to give rise to punitive damages. (Doc. 18 at 25–26.) However, “the 5 Federal Rules of Civil Procedure govern the punitive damages claim procedurally with 6 respect to the adequacy of the pleadings.” *Terpin v. AT and T Mobility LLC*, 118 F.4th 7 1102, 1112 (9th Cir. 2024); see *Clark v. Allstate Ins. Co.*, 106 F. Supp. 2d 1016, 1018 (S.D.

8 Cal. 2010) (“It is well-established that federal courts sitting in diversity must apply state 9 substantive law and federal procedural rules.”) (emphasis in original). Indeed, “California 10 Civil Code section 3294 is a state procedural rule not implicated in federal court.” *Waryck 11 v. Thor Motor Coach, Inc.*, No. 22-CV-1096-L-KSC, 2023 WL 4166098, at *2 (S.D. Cal.

12 June 23, 2023) (quoting *Strojniak v. Braemar P’ship*, No. 19-CV-01446-BAS-AHG, 2020 13 WL 3250184, at *3 (S.D. Cal. June 16, 2020) (cleaned up). Under Rule 9(b), the applicable 14 federal pleading standard, “a plaintiff may include a short and plain prayer for punitive 15 damages that relies entirely on unsupported and conclusory averments of malice or 16 fraudulent intent.” *Clark*, 106 F. Supp. 2d at 1018; Fed. R. Civ. P. 9(b) (“Malice, intent, 17 knowledge, and other conditions of a person’s mind may be alleged generally.”). 18 Although the Court dismissed Plaintiff’s IIPEA claim with leave to amend (see 19 .IV.C.2.c.), Plaintiff clearly requests punitive damages and has sufficiently alleged that 20 Defendants acted with “malice, oppression, fraud, or reckless disregard.” (FAC ¶ 114.) 21 Accordingly, Defendants’ Rule 12(f) Motion to Strike is DENIED.

22 V. CONCLUSION

23 Based on the foregoing, Defendants’ Motion (Doc. 18) is GRANTED in part and 24 DENIED in part. Specifically: 25 1. The Court DENIES Defendants’ Motion Pursuant to Rule 12(b)(1). 26 2. The Court DENIES Defendants’ Motion under Rule 17(a) for failure to prosecute 27 in the name of the real party in interest. 28 3. The Court DENIES Defendants’ Motion as to the UCL claim (First Cause of 2 Action). 3 4. The Court DENIES Defendants’ Motion as to the FAL claim concerning 4 Defendants’ alleged statements that its drug testing kits are “FDA approved” and 5 “Made in the USA” (Second Cause of Action). 6 5. The Court GRANTS Defendants’ Motion as to the FAL claim concerning 7 Defendants’ alleged use of the Package Insert (Second Cause of Action). 8 6. The Court DENIES Defendants’ Motion as to the ICPA claim (Third Cause of 9 Action. 10 7. The Court DENIES Defendants’ Motion as to the Lanham Act claim concerning 11

Defendants' alleged statements that its drug testing kits are "FDA approved" and "Made in the USA" (Fourth Cause of Action). 8. The Court GRANTS Defendants' Motion as to the Lanham Act claim concerning Defendants' alleged use of the Package Insert (Fourth Cause of Action). 9. The Court GRANTS Defendants' Motion as to the ITPEA claim (Fifth Cause of Action). This claim is DISMISSED with leave to amend. 10. The Court DENIES Defendants' Motion to Strike Pursuant to Rule 12(f). Plaintiff may file an amended complaint on or before October 17, 2025 solely to correct the deficiencies identified above.* If Plaintiff does not amend and proceeds only on the remaining claims, Defendants must file an Answer on or before October 31, 2025. IT IS SO ORDERED. DATE: September 25, 2025 Zak smu, Mitten >

HON. RUTH BERMUGDEZ'MONTENEGRO

UNITED STATES DISTRICT JUDGE

* If Plaintiff amends, as permitted, and Defendants move to dismiss again rather than filing an Answer, the Parties must contact the assigned Magistrate Judge to proceed with an Early Neutral Evaluation, Case Management Conference, and discovery.