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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

PETCONNECT RESCUE, INC., a Maryland corporation; LUCKY PUP DOG RESCUE.COM, a California Corporation; and SARAH GONZALEZ, an individual,

Plaintiffs,

v.

DAVID SALINAS, an individual; VERONICA SALINAS, an individual; RICHARD ROBLES PENA, an individual; VIRGO CASTRO ZUSA, an individual; THE PUPPY STORE, LLC, a Wyoming limited liability company; YELLOW STORE ENTERPRISES, LLC, a Wyoming limited liability company; SOCAL PUPPY ADOPTIONS, INC., a California corporation; PET CONNECT RESCUE, INC., a Missouri corporation; ALYSIA ROTHMAN, an individual; RAY ROTHMAN, an individual; JASE DEMETRIUS SHAMORE, an individual; RYAN LORENZ, an individual; TREVOR DUGGAN, an individual; CRITTERS AND PETS/FURRY AND FEATHER, LLC, a California limited liability company; RICKIE GALLARDO, an individual; 360 CLEAN N GO, LLC, a

Case No.: 20-cv-00527-H-KSC

ORDER:

(1) DENYING MOTIONS TO DISMISS BY DEFENDANTS RICKIE GALLARDO, 360 CLEAN N GO, LLC, RYAN LORENZ, LIFE7, LLC, DAVID SALINAS, VERONICA SALINAS, RICHARD ROBLES PENA, THE PUPPY STORE, LLC, YELLOW STORE ENTERPRISES, LLC, SOCAL PUPPY ADOPTIONS, INC., PET CONNECT RESCUE, INC., ALYSIA ROTHMAN, RAY ROTHMAN, VIRGO CASTRO ZUSA, NATIONAL CITY PUPPY, LLC, FANCY PUPPY, LLC, AND THE PUPPY STORE, LAS VEGAS, LLC; AND

(2) DENYING DEFENDANTS' MOTION TO STRIKE

[Doc. Nos. 27, 31, 33.]

1 California limited liability company;
2 NATIONAL CITY PUPPY, LLC, a
3 California limited liability company;
4 BROADWAY PUPPIES, a business entity
5 of form unknown; PUPS & PETS, a
6 business entity of form unknown; HELLO
7 PUPPIES, a business entity of form
8 unknown; THE FANCY PUPPY, LLC, a
9 California limited liability company; THE
10 PUPPY STORE LAS VEGAS, LLC, a
11 Nevada limited liability company; LIFE7,
12 LLC, a California limited liability
13 company; VILLAGGIO FAMILY PETS,
14 a business entity of form unknown;
15 TOWN PUPPIES, a business entity of
16 form unknown; TEMECULA PUPPIES, a
17 business entity of form unknown;
18 PUPPIES 4 LESS, a business entity of
19 form unknown; CINDY LEE
20 DUHAMELL, an individual; JOSH
21 ANGUINO, an individual; JASON
22 HUIHAMMELL, an individual; and DOES
23 1-10,

Defendants.

18 On April 6, 2020, Plaintiffs PetConnect Rescue, Inc., Lucky Pup Dog Rescue.com,
19 and Sarah Gonzalez (collectively, “Plaintiffs”) filed an amended complaint against
20 Defendants David Salinas, Veronica Salinas, Richard Robles Pena, Virgo Castro Zusa, The
21 Puppy Store, LLC, Yellow Store Enterprises, LLC, SoCal Puppy Adoptions, Inc., Pet
22 Connect Rescue, Inc., Alysia Rothman, Ray Rothman, Jase Demetrius Shamore, Ryan
23 Lorenz, Trevor Duggan, Critters and Pets/Furry and Feather, LLC, Rickie Gallardo, 360
24 Clean N Go, LLC, National City Puppy, LLC, Pups & Pets, Hello Puppies, The Fancy
25 Puppy, LLC, The Puppy Store Las Vegas, LLC, Life7, LLC, Villagio Family Pets, Town
26 Puppies, Temecula Puppies, Puppies 4 Less, Cindy Lee Duhamell, and Jason Huihammel.
27 (Doc. No. 16.)

28 On April 27, 2020, Defendants Rickie Gallardo and 360 Clean N Go, LLC

1 (“Gallardo Defendants”), filed a motion to dismiss the amended complaint with respect to
2 the Gallardo Defendants, as well as a motion to strike sections of the amended complaint.
3 (Doc. No. 27.) On May 11, 2020, Defendants Ryan Lorenz and Life7, LLC (“Lorenz
4 Defendants”), filed a motion for joinder in the Gallardo Defendants’ motion to dismiss and
5 motion to strike.¹ (Doc. No. 31.) On May 17, 2020, Defendants David Salinas, Veronica
6 Salinas, Richard Robles Pena, The Puppy Store, LLC, Yellow Store Enterprises, LLC,
7 SoCal Puppy Adoptions, Inc., Pet Connect Rescue, Inc., Alysia Rothman, Ray Rothman,
8 Virgo Castro Zusa, National City Puppy, LLC, Fancy Puppy, LLC, and The Puppy Store,
9 Las Vegas, LLC, filed a motion for joinder in the Gallardo Defendants’ motion to dismiss
10 and motion to strike. (Doc. No. 33.) On May 18, 2020, Plaintiffs filed their opposition to
11 Defendants’ motions to dismiss and motions to strike.² (Doc. Nos. 34, 35.) On May 26,
12 2020 Defendants Gallardo and 360 Clean N Go filed their reply. (Doc. No. 45.)

13 On June 1, 2020, the Court held a hearing on Defendants’ motions to dismiss and
14 strike. (Doc. No. 37.) Bryan Pease and John Maher appeared for Plaintiffs. George R.
15 Najjar appeared for Defendants Rickie Gallardo, 360 Clean N Go, LLC, David Salinas,
16 Veronica Salinas, Richard Robles Pena, The Puppy Store, LLC, Yellow Store Enterprises,
17 LLC, SoCal Puppy Adoptions, Inc., Pet Connect Rescue, Inc., Alysia Rothman, Ray
18 Rothman, Virgo Castro Zusa, National City Puppy, LLC, Fancy Puppy, LLC, and The
19 Puppy Store, Las Vegas, LLC. Michael Long appeared for Defendants Ryan Lorenz,
20 Life7, LLC, Jase Demetrius Shamore, and Critters and Pets/Furry and Feather, LLC. For
21

22 ¹ Defendants Ryan Lorenz and Life7, LLC also state that they join in the motion to dismiss filed by
23 Defendants Jase Demetrius Shamore and Critters and Pets/Furry and Feather, LLC. (Doc. No. 31 at 2.)
24 The motion to dismiss by Defendants Shamore and Critters and Pets/Furry and Feather, LLC is set for a
later hearing on June 29, 2020. (Doc. No. 46.)

25 ² Plaintiffs also attached seven declarations to their opposition to Defendants’ motions to dismiss.
26 (Doc. Nos. 34-1–34-7.) The Court declines to consider this extrinsic evidence at this time. On a motion
27 to dismiss, the Court considers only the sufficiency of the allegations in the complaint. See Conservation
28 Force v. Salazar, 646 F.3d 1240, 1241 (9th Cir. 2011); see also Coto Settlement v. Eisenberg, 593 F.3d
1031, 1038 (9th Cir. 2010) (besides pleadings, court may only consider materials incorporated into the
complaint or matters of public record on a motion to dismiss); Fed. R. Civ. P. 12(d) (a court may only
consider matters outside the pleadings if the court converts the motion to a motion for summary judgment).

1 the following reasons, the Court denies Defendants’ motions to dismiss and motions to
2 strike.

3 **Background**

4 Plaintiffs are two animal rescue organizations and an individual consumer alleging
5 that Defendants fraudulently represent the dogs that Defendants sell as rescued animals.
6 Defendants Alysia Rothman and Ray Rothman operate Defendant Pet Connect Rescue,
7 Inc., an entity based in Missouri (“Rothman Defendants”). (Doc. No. 16 ¶¶ 4–5, 56–60.)
8 Plaintiffs allege that the Rothman Defendants broker the sale of dogs bred for profit from
9 “puppy mills” in the Midwest to pet stores in California. (Id.) According to Plaintiffs, the
10 Rothman Defendants misrepresent these dogs as “rescues” to circumvent California law
11 prohibiting the sale of non-rescue dogs in pet stores. (Id.) Plaintiffs also claim that
12 Defendants created SoCal Puppy Adoptions, Inc. as a second entity meant to broker the
13 sale of dogs bred for profit. (Id. ¶ 58.)

14 The other Defendants in this action own or operate pet stores in southern California.
15 Plaintiffs allege that the pet store Defendants procure dogs from the Rothman Defendants
16 to sell in their stores, misrepresent the dogs as rescues, and reinforce this misrepresentation
17 by using the names of the organizational Plaintiffs. (Doc. No. 16.) Defendants David
18 Salinas, Veronica Salinas, Virgo Castro Zusa, The Puppy Store, LLC, Yellow Store
19 Enterprises, LLC, National City Puppy, LLC, Fancy Puppy, LLC, and The Puppy Store,
20 Las Vegas, LLC (“Salinas Defendants”), operate pet stores in California and other states.
21 (Id. ¶¶ 7, 47–50.) Defendant Richard Robles Pena is the general manager for the pet stores
22 operated by the Salinas Defendants, and he is responsible for obtaining dogs for the Salinas
23 Defendants’ stores. (Id. ¶ 49.) Defendants Rickie Gallardo and 360 Clean N Go, LLC own
24 and operate the pet store Puppy World (“Gallardo Defendants”). (Id. ¶ 52.) Defendant
25 Ryan Lorenz owns and operates Defendant Life7, LLC, doing business as Town Puppies³

26
27 ³ Plaintiffs allege that Defendant Jase Demetrius Shamore is also an owner of the pet store Town
28 Puppies (Doc. No. 16 ¶ 53), though Defendant Shamore has denied ownership of that store in a separate
filing. (Doc. No. 29 at 4.)

1 (“Lorenz Defendants”). (Id. ¶ 53; Doc. No. 31.)

2 On April 6, 2020, Plaintiffs filed an amended complaint alleging trademark
3 infringement and dilution under the Lanham Act, unfair business practices under
4 California’s Unfair Competition Law (“UCL”), violations of California’s Consumer Legal
5 Remedies Act (“CLRA”), fraud, and accounting. (Doc. No. 16.) On April 27, 2020, the
6 Gallardo Defendants filed a motion to dismiss the amended complaint with respect to the
7 Gallardo Defendants, as well as a motion to strike sections of the amended complaint.
8 (Doc. No. 27.) On May 11, 2020, the Lorenz Defendants filed a motion for joinder in the
9 Gallardo Defendants’ motions to dismiss and strike (Doc. No. 31.) And on May 17, 2020,
10 the Rothman Defendants and Salinas Defendants filed a motion for joinder in the Gallardo
11 Defendants’ motions to dismiss and strike. (Doc. No. 33.)

12 Discussion

13 **I. Legal Standard**

14 A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests the legal
15 sufficiency of the pleadings and allows a court to dismiss a complaint if the plaintiff has
16 failed to state a claim upon which relief can be granted. See Conservation Force v. Salazar,
17 646 F.3d 1240, 1241 (9th Cir. 2011). The Federal Rule of Civil Procedure 8(a)(2)’s
18 plausibility standard governs Plaintiff’s claims. The Supreme Court explains:

19 Under Federal Rule of Civil Procedure 8(a)(2), a pleading must contain a short
20 and plain statement of the claim showing that the pleader is entitled to relief.
21 As the Court held in [Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007)],
22 the pleading standard Rule 8 announces does not require detailed factual
23 allegations, but it demands more than an unadorned, the-defendant-
unlawfully-harmed-me accusation. A pleading that offers labels and
conclusions or a formulaic recitation of the elements of a cause of action will
not do. Nor does a complaint suffice if it tenders naked assertions devoid of
further factual enhancement.

24 Ashcroft v. Iqbal, 556 U.S. 662, 677–78 (2009) (citations, quotation marks, and brackets
25 omitted).

26 In reviewing a Rule 12(b)(6) motion to dismiss, “[a] claim has facial plausibility
27 when the plaintiff pleads factual content that allows the court to draw the reasonable
28 inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S. at 678.

1 “Factual allegations must be enough to raise a right to relief above the speculative level.”
2 Twombly, 550 U.S. at 555 (citation omitted). In addition, a court need not accept legal
3 conclusions as true. Iqbal, 556 U.S. at 678. Further, it is improper for a court to assume
4 that the plaintiff “can prove facts which it has not alleged or that the defendants have
5 violated the . . . laws in ways that have not been alleged.” Assoc. Gen. Contractors of Cal.,
6 Inc. v. Cal. State Council of Carpenters, 459 U.S. 519, 526 (1983). Finally, a court may
7 consider documents incorporated into the complaint by reference and items that are proper
8 subjects of judicial notice. See Coto Settlement v. Eisenberg, 593 F.3d 1031, 1038 (9th
9 Cir. 2010).

10 If the court dismisses a complaint for failure to state a claim, it must then determine
11 whether to grant leave to amend. See Doe v. United States, 58 F.3d 494, 497 (9th Cir.
12 1995). “A district court may deny a plaintiff leave to amend if it determines that allegation
13 of other facts consistent with the challenged pleading could not possibly cure the
14 deficiency, or if the plaintiff had several opportunities to amend its complaint and
15 repeatedly failed to cure deficiencies.” Telesaurus VPC, LLC v. Power, 623 F.3d 998,
16 1003 (9th Cir. 2010) (internal quotation marks and citations omitted).

17 **II. Analysis**

18 The Lorenz Defendants argue that Plaintiffs lack standing to raise a claim for
19 trademark infringement. (Doc. No. 31 at 3–4.) Additionally, the Gallardo Defendants,
20 Lorenz Defendants, Rothman Defendants, and Salinas Defendants assert that Plaintiffs fail
21 to state a claim for trademark infringement, arguing that the “PetConnect Rescue” mark is
22 not a protectable mark.⁴ (Doc. Nos. 27-1 at 5–6; 31 at 2; 33 at 2–3.) Finally, the Gallardo
23 Defendants and Lorenz Defendants contend that Plaintiffs fail to allege facts sufficient to
24 state a UCL violation, that Plaintiffs fail to allege facts with respect to them, and that the
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27 ⁴ Defendants’ motions to dismiss do not address the protectability of Plaintiff Lucky Pup Dog
28 Rescue.com’s mark under Plaintiffs’ third cause of action for trademark infringement. (Doc. Nos. 27, 31,
33.)

1 Court should decline supplemental jurisdiction over Plaintiffs’ UCL claim. (Doc. Nos. 27-
2 1 at 4–6; 31 at 2–3.)

3 **A. Plaintiff PetConnect Rescue’s Standing to Allege Violations of the Lanham**
4 **Act**

5 According to the Lorenz Defendants, Plaintiff PetConnect Rescue⁵ lacks standing to
6 raise a trademark claim because Plaintiff PetConnect Rescue does not allege an injury in
7 fact and does not fall within the Lanham Act’s “zone of interests.”⁶ (Doc. No. 31 at 3–4.)
8 The Court disagrees.

9 First, Plaintiff PetConnect Rescue has alleged a cognizable injury in fact. See Lujan
10 v. Defs. of Wildlife, 504 U.S. 555, 560 (1992). Plaintiffs have alleged that Defendants’
11 use of an infringing mark has harmed Plaintiff PetConnect Rescue’s reputation and caused
12 consumer confusion, diverting Plaintiffs’ resources towards correcting the confusion.
13 (Doc. No. 16 ¶¶ 72, 117.) An “organization has direct standing to sue when it establishes
14 that the defendant’s behavior has frustrated its mission and caused it to divert resources in
15 response to that frustration of purpose.” E. Bay Sanctuary Covenant v. Trump, 950 F.3d
16 1242, 1265 (9th Cir. 2020) (citing Fair Hous. of Marin v. Combs, 285 F.3d 899, 905 (9th
17 Cir. 2002)); see also Havens Realty Corp. v. Coleman, 455 U.S. 363, 379 (1982). Though
18 the Lorenz Defendants argue that fielding calls and social media inquiries are not
19 sufficiently serious to constitute injury, such incidents occupy time that staff would
20 otherwise dedicate to their organization’s ordinary activities, causing economic injury.
21 See, e.g., Fair Hous. of Marin v. Combs, 285 F.3d 899, 905 (9th Cir. 2002).

22
23 ⁵ Though the Lorenz Defendants’ motion refers to “Plaintiffs,” generally, the Lorenz Defendants
24 move to dismiss the Lanham Act causes of action claimed solely by Plaintiff PetConnect Rescue. (See
25 Doc. Nos. 16, 31.)

26 ⁶ The Lorenz Defendants also argue that Plaintiffs “lack standing because in part there is no factual
27 basis to assert it has either a trademark claim that is being violated, or confusion of its name with any other
28 “Pet Connect Rescue” organization” (Doc. No. 31 at 3.) The Lorenz Defendants’ argument presents
a challenge to the merits of Plaintiffs’ claim, not to Plaintiffs’ standing. As this order explains, Plaintiffs’
trademark claims are more appropriate for resolution on summary judgment.

1 Second, Plaintiff PetConnect Rescue falls within the Lanham Act’s zone of interests
2 and can properly raise a trademark infringement claim. The “zone of interests” test is a
3 question of statute, not of standing. As the Supreme Court explains, “in *Lexmark*, we said
4 that the label ‘prudential standing’ was misleading, for the [zone of interests] requirement
5 . . . is in reality tied to a particular statute. The question is whether the statute grants the
6 plaintiff the cause of action that he asserts.” Bank of Am. Corp. v. City of Miami, Fla.,
7 137 S. Ct. 1296, 1302–03 (2017) (citing Lexmark Int’l, Inc. v. Static Control Components,
8 Inc., 572 U.S. 118, 127 (2014)). Thus a “statute ordinarily provides a cause of action ‘only
9 to plaintiffs whose interests fall within the zone of interests protected by the law invoked.’”
10 Id.

11 In this case, Plaintiff PetConnect Rescue raises a claim within the Lanham Act’s
12 zone of interests. The Lanham Act was enacted to prohibit the deceptive and misleading
13 use of marks “to protect persons engaged in . . . commerce against unfair competition.” 15
14 U.S.C. § 1127. The Lorenz Defendants argue that Plaintiffs fall outside the ambit of the
15 Lanham Act because they are not engaged in commerce. But the Lanham Act defines
16 “commerce” to broadly encompass “all commerce which may lawfully be regulated by
17 Congress.” Id.; see also Playboy Enterprises, Inc. v. Netscape Commc’ns Corp., 354 F.3d
18 1020, 1024 n.11 (9th Cir. 2004). Thus, the Lanham Act’s protections extend to non-profit
19 organizations’ use of marks, even when the marks do not accompany a sale. Bosley Med.
20 Inst., Inc. v. Kremer, 403 F.3d 672, 679 (9th Cir. 2005) (citing with approval United We
21 Stand America v. United We Stand, America New York, 128 F.3d 86, 92–93 (2d Cir. 1997)
22 and its holding that “use in commerce” denotes “Congress’s authority under the Commerce
23 Clause rather than an intent to limit the Act's application to profitmaking activity,” 128
24 F.3d 86, 92–93 (2d Cir. 1997)); accord Planetary Motion, Inc. v. Techsplosion, Inc., 261
25 F.3d 1188, 1194 (11th Cir. 2001) (“Darrah’s wide distribution of the Coolmail software
26 over the Internet, even absent any sales thereof, was sufficient to establish ownership rights
27 in the ‘CoolMail’ mark.”). Here, Plaintiff PetConnect Rescue clearly uses their mark to
28 accompany the services it provides. Thus, Plaintiff PetConnect Rescue’s trademark claims

1 fall within the Lanham Act’s zone of interests, and Plaintiff can properly raise its trademark
2 claims here.

3 **B. Lanham Act, 15 U.S.C. § 1125**

4 The Gallardo, Lorenz, Rothman, and Salinas Defendants argue that Plaintiff
5 PetConnect Rescue’s trademark claims should be dismissed because “PetConnect Rescue”
6 is a generic mark that lacks any secondary meaning. (Doc. Nos. 27-1 at 5–6; 31 at 2; 33 at
7 2–3.) Plaintiff argues that “PetConnect Rescue” is suggestive and that the mark has
8 acquired secondary meaning through its long history of use. (Doc. No. 34 at 15–16.) The
9 Court declines to dismiss Plaintiff PetConnect Rescue’s trademark infringement claims at
10 this time.

11 The Lanham Act, 15 U.S.C. § 1051 *et seq.*, “creates a comprehensive framework for
12 regulating the use of trademarks and protecting them against infringement, dilution, and
13 unfair competition.” Gordon v. Drape Creative, Inc., 909 F.3d 257, 263 (9th Cir. 2018)
14 (quoting Fortune Dynamic, Inc. v. Victoria’s Secret Stores Brand Mgmt., Inc., 618 F.3d
15 1025, 1030 (9th Cir. 2010)). To show trademark infringement, Plaintiff must prove: (1)
16 that they have “a valid, protectable trademark” and (2) the “defendant’s use of the mark is
17 likely to cause confusion.” *Id.* (quoting S. Cal. Darts Ass’n v. Zaffina, 762 F.3d 921, 929
18 (9th Cir. 2014)).

19 A party possesses a valid and protectable mark if the mark is distinctive. Two Pesos,
20 Inc. v. Taco Cabana, Inc., 505 U.S. 763, 768 (1992); Zobmondo Entm’t, LLC v. Falls
21 Media, LLC, 602 F.3d 1108, 1113 (9th Cir. 2010). Distinctiveness measures “the primary
22 significance of the mark to the purchasing public” using “standards of meaning not our
23 own,” but “prevalent among prospective purchasers of the article.” Zobmondo Entm’t,
24 602 F.3d at 1113. There are five traditional categories of distinctiveness: “(1) generic, (2)
25 descriptive, (3) suggestive, (4) arbitrary, or (5) fanciful.” *Id.* (citing Two Pesos, Inc. v.
26 Taco Cabana, Inc., 505 U.S. 763, 768 (1992)). Suggestive, arbitrary, or fanciful marks are
27 automatically protectable. S. California Darts Ass’n v. Zaffina, 762 F.3d 921, 929 (9th
28 Cir. 2014). Descriptive marks are protectable if they acquire a secondary meaning by

1 becoming distinctive “as used or in connection with the applicant’s goods in commerce.”
2 Id. To determine whether a mark is descriptive or suggestive, courts in the Ninth Circuit
3 apply either the “imagination test” or the “competitors’ needs test.” Zobmondo Entm’t,
4 602 F.3d at 1115. The imagination test asks whether “imagination or mental leap is
5 required in order to reach a conclusion as to the nature of the product being referenced.”
6 Id. (quoting Rudolph Int’l, Inc. v. Realys, Inc., 482 F.3d 1195, 1198 (9th Cir.2007)). The
7 competitors’ needs test asks whether the mark “is actually needed by competitors to
8 identify their goods and services.” Id. at 1117 (internal citation and quotation marks
9 omitted).

10 Whether “PetConnect Rescue” is a protectable trademark is a matter more suited for
11 resolution on summary judgment. “PetConnect Rescue” is a descriptive mark. The
12 organization connects rescued animals with individuals or families willing to adopt the
13 rescued animals as pets. Thus, the mark “describes the qualities or characteristics of a good
14 or service.” Park ‘N Fly, Inc. v. Dollar Park and Fly, Inc., 469 U.S. 189, 194 (1985).
15 Nonetheless, even “descriptive marks may acquire the distinctiveness which will allow
16 them to be protected” if they gain secondary meaning through their usage. Two Pesos, 505
17 U.S. at 769; see also S. California Darts Ass’n v. Zaffina, 762 F.3d at 929. To determine
18 whether Plaintiff’s mark has gained secondary meaning through use, however, the Court
19 must discern whether the mark has gained an association in the minds of consumers. Two
20 Pesos, 505 U.S. at 770. Accordingly, this matter is more appropriate for summary
21 judgment when the evidentiary record is further developed.

22 **C. Unfair Competition Law, Cal. Bus. & Prof. Code § 17200**

23 The Gallardo Defendants and Lorenz Defendants argue that Plaintiffs fail to allege
24 facts sufficient to state a UCL violation, that Plaintiffs fail to allege facts with respect to
25 the Gallardo and Lorenz Defendants, and that the Court should decline supplemental
26 jurisdiction over the UCL claim. (Doc. Nos. 27-1 at 4–6; 31 at 2–3). The Court disagrees.

27 Under Federal Rule of Civil Procedure 9(b), a party alleging fraud “must state with
28 particularity the circumstances constituting fraud or mistake.” Fed. R. Civ. P. 9(b). “Rule

1 9(b)'s heightened pleading standards apply to claims for violations of the CLRA and
2 UCL." Kearns v. Ford Motor Co., 567 F.3d 1120, 1125 (9th Cir. 2009). To meet Rule
3 9(b)'s heightened pleading standards, the allegations "must be specific enough to give
4 defendants notice of the particular misconduct which is alleged to constitute the fraud
5 charged." Becerra v. Dr Pepper/Seven Up, Inc., 945 F.3d 1225, 1228 (9th Cir. 2019)
6 (quoting Swartz v. KPMG LLP, 476 F.3d 756, 764 (9th Cir. 2007)). In other words, a
7 plaintiff "must set forth more than the neutral facts necessary to identify the transaction.
8 The plaintiff must set forth what is false or misleading about a statement, and why it is
9 false." Vess v. Ciba-Geigy Corp. USA, 317 F.3d 1097, 1106 (9th Cir. 2003) (internal
10 citation omitted).

11 Here, Plaintiffs allege sufficient facts to state a UCL claim. California's Unfair
12 Competition Law ("UCL") prohibits "any unlawful, unfair or fraudulent business act or
13 practice" and any "unfair, deceptive, untrue, or misleading advertising" Cal. Bus. &
14 Prof. Code § 17200. Its coverage is "sweeping, embracing anything that can properly be
15 called a business practice and that at the same time is forbidden by law." Cel-Tech
16 Commc'ns, Inc. v. Los Angeles Cellular Tel. Co., 973 P.2d 527, 539 (Cal. 1999) (internal
17 citations and quotation marks omitted). By prohibiting unlawful practices, the UCL
18 "borrows violations of other laws and treats them as unlawful practices that the unfair
19 competition law makes independently actionable." De La Torre v. CashCall, Inc., 422 P.3d
20 1004, 1012 (Cal. 2018) (internal citations and quotation marks omitted).

21 Here, Plaintiffs allege that Defendants have committed unlawful business practices
22 by violating California law prohibiting the sale of dogs bred for profit. In California,

23 A pet store operator shall not sell a live dog, cat, or rabbit in a pet store unless
24 the dog, cat, or rabbit was obtained from a public animal control agency or
25 shelter, society for the prevention of cruelty to animals shelter, humane
26 society shelter, or rescue group that is in a cooperative agreement with at least
27 one private or public shelter pursuant to Section 31108, 31752, or 31753 of
the Food and Agricultural Code.

28 Cal. Health & Safety Code § 122354.5(a). The statute further defines a "rescue group" as

1 “an organization that is tax exempt under Section 501(c)(3) of the Internal Revenue Code,
2 and that does not obtain animals from breeders or brokers for compensation.” Id.
3 § 122354.5(f). Plaintiffs argue that Defendants violate Health & Safety Code
4 § 122354.5(a) by selling dogs that have been obtained from breeders and brokers for
5 compensation. Thus, Plaintiffs have alleged that Defendants violate the UCL by selling
6 dogs bred for profit, misrepresenting those dogs as “rescues,” and facilitating the
7 misrepresentation by using the names of the organizational Plaintiffs. Plaintiffs’
8 allegations offer enough specificity to state a claim and place Defendants on notice.

9 Defendants also argue that the Court should decline to exercise supplemental
10 jurisdiction over Plaintiffs’ UCL claim. (Doc. No. 27-1 at 7–8; 31 at 2–3.) The exercise
11 of supplemental jurisdiction is a matter for the court’s discretion. 28 U.S.C. § 1367(c); San
12 Pedro Hotel Co. v. City of Los Angeles, 159 F.3d 470, 478 (9th Cir. 1998). A district court
13 may decline to exercise supplemental jurisdiction if: (1) the claim raises a novel or complex
14 issue of state law, (2) the state law claims substantially predominate over the federal claims,
15 (3) the court has dismissed the claims over which it has original jurisdiction, or (4) in
16 exceptional circumstances. 28 U.S.C. § 1367(c). None of these factors counsel in favor
17 of declining supplemental jurisdiction. Plaintiffs’ UCL claims do not raise complex
18 questions of state law. Id. § 1367(c)(1). Rather, the UCL claims simply ask whether
19 Defendants properly characterized the dogs it sold as “rescues.” Nor do Plaintiffs’ UCL
20 claims predominate over the Lanham Act claims, since each set of claims poses discrete
21 legal questions. The UCL claims, for example, do not address the strength or validity of
22 Plaintiffs’ marks, the primary issue underlying Plaintiffs’ Lanham Act claims.
23 Additionally, the Court has declined to dismiss the Lanham Act claims at this time, and the
24 existence of related proceedings in state court do not constitute “exceptional
25 circumstances” justifying the denial of supplemental jurisdiction. Id. § 1367(c)(3)–(4).
26 Accordingly, the Court declines to dismiss Plaintiffs’ UCL claims.

27 ///

28 ///

1 **D. Plaintiffs’ Factual Allegations Against Specific Defendants**

2 The Gallardo Defendants and Lorenz Defendants also argue that Plaintiffs fail to
3 state claims under either the Lanham Act or UCL because Plaintiffs fail to allege facts
4 specific to the Gallardo or Lorenz Defendants. (Doc. No. 27-1 at 5–7; 31 at 2–3.) The
5 Court disagrees.

6 Plaintiffs allege that the Rothman Defendants operate Pet Connect Rescue, Inc., an
7 entity based in Missouri that claims to provide rescues but instead brokers the sale of dogs
8 from “commercial breeders” in Missouri and Iowa to pet stores in California. (Doc. No.
9 16 ¶¶ 1, 4–5, 9–10, 57–61.) Plaintiffs then state that the Gallardo and Lorenz Defendants
10 own or operate pet stores in southern California and that “the puppies sold in each of the
11 stores are all supplied by the ROTHMANS from puppy mills in the Midwest” (Id. ¶¶
12 52–53, 56.) Additionally, Plaintiffs claim that “[a]ll Defendants are aware of and
13 participants [sic] in this illegal puppy laundering scheme,” that “consumers purchasing sick
14 puppies from . . . stores owned by Defendants often end up calling the real PETCONNECT
15 RESCUE, INC. to ask about the source of the puppies,” and that “[i]n many cases,
16 employees at stores owned by Defendants have even directly given out the real
17 PETCONNECT RESCUE, INC.’s phone number and website to consumers who ask where
18 the puppies came from, when in fact the puppies came from the ROTHMAN’s fake PET
19 CONNECT RESCUE, INC.” (Id. ¶ 59–61.) Consequently, Plaintiffs have alleged facts
20 specific enough to put the Gallardo and Lorenz Defendants on notice of the Lanham Act
21 and UCL claims asserted against them. Thus, the Court declines to dismiss Plaintiffs’
22 claims against the Gallardo Defendants and Lorenz Defendants.

23 **E. Defendants’ Motion to Strike**

24 Defendants move to strike thirty-four lines, phrases, or paragraphs from the amended
25 complaint. (Doc. No. 27-3 at 5.) Most of the sections Defendants move to strike involve
26 the phrase “puppy mills,” which Defendants claim to be redundant, immaterial,
27 impertinent, and scandalous. (Doc. No. 27-2 at 3–4.) Defendants also seek to strike as
28 immaterial allegations relating to the ongoing COVID-19 pandemic, allegations that

1 Defendants aim to “induce impulse buys,” allegations that Defendants operate “fake” or
2 “con” entities, allegations referencing a state court injunction against a non-party pet store,
3 and allegations referencing an Iowa Attorney General investigation concluding that
4 fraudulent animal rescue organizations transferred dogs to California and other states. (Id.
5 at 4–5.) Finally, Defendants move to strike sections of Plaintiffs’ UCL allegations stating
6 that “Defendants are routinely engaged in committing felony fraud in violation of Penal
7 Code § 484,” allegations that Defendants violate U.S. Department of Agriculture
8 regulations requiring USDA-licensed breeders to keep truthful records on all dogs in their
9 possession and to keep a “Record of Acquisition of Dogs and Cats” on hand. (Id.)

10 A motion to strike under Federal Rule of Civil Procedure 12(f) is a request for the
11 Court to “strike from a pleading an insufficient defense or any redundant, immaterial,
12 impertinent, or scandalous matter.” Fed. R. Civ. Pro. 12(f). The function of Rule 12(f) is
13 to “avoid the expenditure of time and money that must arise from litigating spurious issues
14 by dispensing with those issues prior to trial” Whittlestone, Inc. v. Handi-Craft Co.,
15 618 F.3d 970, 973 (9th Cir. 2010) (internal citation and quotation marks omitted). Motions
16 to strike pleadings under Rule 12(f) are generally disfavored. 5C Charles Alan Wright &
17 Arthur R. Miller, Fed. Prac. & Proc. Civ. § 1382 (3d ed. 2020); Benham v. Am. Servicing
18 Co., No. C 09-01099 JSW, 2009 WL 4456386, at *8 (N.D. Cal. Nov. 30, 2009). The
19 decision to strike under Rule 12(f) is a matter for the Court’s discretion. Whittlestone, 618
20 F.3d at 973.

21 The Court, exercising its discretion, denies Defendants’ motions to strike. Plaintiffs’
22 use of the phrase “puppy mill,” and the allegations that Defendants operate “fake” entities
23 that “induce” purchases, reflect Plaintiffs’ allegations of fraud and misrepresentation. To
24 the extent Defendants dispute Plaintiffs’ claims or interpretation of law, those are issues
25 appropriately resolved on the merits and not under a Rule 12(f) motion to strike. Further,
26 Plaintiffs’ references to other state court actions or actions by the Iowa Attorney General
27 are pertinent to Plaintiffs’ allegations linking Defendants to the entities in the Midwest
28 allegedly shut down for fraudulently selling dogs bred for profit. Finally, Plaintiffs’

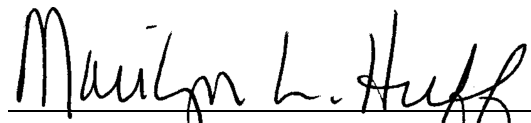
1 allegations that Defendants violate the California penal code or USDA regulations are not
2 immaterial because Plaintiffs allege a violation of the UCL, and the UCL borrows all
3 violations of other laws, “be it civil or criminal, federal, state, or municipal, statutory,
4 regulatory, or court-made.” Saunders v. Superior Court, 33 Cal. Rptr. 2d 438, 441 (Cal.
5 Ct. App. 1994). Thus, the Court declines to strike the challenged portions of the amended
6 complaint.⁷

7 **Conclusion**

8 For the foregoing reasons, the Court denies Defendants’ motions to dismiss and
9 motions to strike sections of the amended complaint. Defendants must file answers to
10 Plaintiffs’ amended complaint on or before **July 1, 2020**.

11 **IT IS SO ORDERED.**

12 DATED: June 1, 2020

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15 MARILYN L. HUFF, District Judge
16 UNITED STATES DISTRICT COURT
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26 ⁷ The Court’s decision not to strike allegations from the complaint does not mean that the allegations
27 will constitute admissible evidence at trial under the Federal Rules of Evidence. See Fed. R. Evid. 403.
28 Nor does this mean these allegations necessarily support discoverable evidence. See Fed. R. Civ. P.
26(b)(1) (litigants may obtain nonprivileged evidence only if it is “relevant to the claim or defense of any
party”); Survivor Media, Inc. v. Survivor Prods., 406 F.3d 625, 635 (9th Cir. 2005) (parties may only
obtain in discovery information “reasonably calculated to lead to the discovery of admissible evidence”).