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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – UNLIMITED CIVIL

[redacted], an individual; on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

MELISSA BACELAR, an individual; WAGMOR PETS, a California non-profit corporation; WYLDER'S HOLISTIC PET CENTER, INC. *dba* THE WAGMOR, a Delaware corporation; and Does 1 through 10, inclusive,

Defendants.

Case No.: 22STCV20771

PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANTS' DEMURRER TO FIRST AMENDED CLASS COMPLAINT

DATE: May 1, 2023
TIME: 10:30 a.m.
DEPT: 1, Spring Street Courthouse
JUDGE: Hon. Stuart M. Rice

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I. INTRODUCTION

[redacted] (together "Plaintiffs") bring this putative class action on behalf of themselves and all other similarly situated persons within the state of California against defendants Melissa Bacelar ("Bacelar"); Wagmor Pets, a California Non-Profit Corporation ("Wagmor Pets Non-Profit"); and Wylder's Holistic Pet Center, Inc. d/b/a the Wagmor ("The Wagmor") (together "Defendants") to challenge the business practices of Defendants of advertising and sale of dogs in violation of California law. As alleged in the First Amended Complaint ("FAC"), filed on December 29, 2022, these actions violate: (1) California's Unfair Competition Law, Bus. & Prof. Code § 17200, *et seq*. ("UCL"); (2) California's False Advertising Law, Bus. & Prof. Code § 17500, *et seq.* ("FAL"); (3) California's Consumer Legal Remedies Act, Cal. Civ. Code § 1750, *et seq*. ("CLRA"); and constitute (4) Intentional Misrepresentation and Fraud; (5) Negligent Misrepresentation, and (6) Unjust Enrichment.

In its Demurrer, Defendants contend these six causes of action each fail because Plaintiffs do not state facts sufficient to constitute a cause of action and because they are uncertain. Not so. First, Defendants incorrectly argue that Plaintiff Jackson lacks standing, despite the well-plead allegations to the contrary in the FAC demonstrating that she and the other two named Plaintiffs have properly pleaded injury in fact in several ways. In particular, Plaintiffs each adopted what they thought was a rescue dog that was later found out to have been obtained in exchange for a monetary payment. Second, Defendants suggest that a heightened pleading standard is required for Plaintiffs' fraud-based claims and that Plaintiffs fail to meet that burden. However, Plaintiffs properly allege sufficient facts to meet the applicable notice pleading standard and adequately put Defendants on fair notice of the asserted claims. Third, Defendants rely on irrelevant sections of the Health and Safety Code (which Defendants refer to in the demurrer as the "Pet Store Animal Act" or "PSA") to argue that Plaintiffs have not properly pled a violation of Health and Safety § 122354.5. Defendant is incorrect because it is patent that Plaintiffs have pled a violation of that code (along with Section 53.73 to Article 3, Chapter 5 of the Los Angeles Municipal Code). Fourth, Defendants fail to construe the FAC as pled by taking the position that Plaintiffs have somehow not pled that Defendants operate a "pet store,"

despite a plethora of allegations to the contrary, which must be taken as true at the pleading stage. Lastly, Defendants continuously attempt to insert their own version of events[1] into the demurrer by pointing to improper extrinsic evidence and additional evidence (which are largely unsupported and wrong) that should not be considered by the Court in a motion designed to test the pleadings.[2] As a result, Defendants' demurrer should be denied in its entirety. Should the Court find the FAC is insufficiently pled, in whole or in part, Plaintiffs respectfully request leave to amend.

II. RELEVANT FACTUAL BACKGROUND

a. California's Ban on Commercially Bred Dogs, Cats and Rabbits

On April 20, 2016, Los Angeles County began prohibiting the sale of "commercially bred dogs, cats and rabbits in pet stores, retail businesses or other commercial establishments." *See* FAC, ¶ 1 citing Section 53.73 to Article 3, Chapter 5 of the Los Angeles Municipal Code. By January 1, 2019, the State of California followed suit, and became the first state in the nation to ban pet stores (and other for-profit entities) from selling commercially bred dogs, cats and rabbits with the enactment of Health and Safety Code § 122354. *Id*. ¶ 2. As alleged in the FAC, Health and Safety Code § 122354.5 only permits a retailer to provide space for the display of dogs, cats or rabbits for adoption if the animals are displayed by a public animal control agency, shelter or animal rescue group. *See id*. ¶¶ 2, 38. A rescue group providing these types of animals for adoption must have tax-exempt status under § 501(c)(3) of the Internal Revenue Code and it must not have obtained animals in exchange for payment from any person. *Id*. ¶¶ 2, 36. By 2020, however, it became clear to legislatures that unscrupulous individuals were continuing to run pet stores and were selling animals marketed as shelter animals when such animals were obtained from other sources. *Id*. ¶ 3. These individuals were obtaining puppies from sham rescue groups, which registered for nonprofit status with the Internal Revenue Service ("IRS") but in fact functioned as puppy brokers that paid compensation to third parties in exchange for puppies. *Id*. To further curtail such illegal conduct, and to protect the consuming public and their animals, in January of 2021, California expanded Health and Safety Code § 122354.5 to add the additional requirements that dogs, cats and rabbits displayed

[1] Defendants continue to erroneously accuse Plaintiffs of operating a website relating to exposing Defendants' business operations (*see* Defs' Mtn., pp. 8), which has absolutely no relevance to the instant demurrer and should not be considered by the Court.

[2] Plaintiffs object to Defendants' Request for Judicial Notice via a separate filing submitted herewith.

for adoption shall: (1) be sterilized and (2) have an adoption fee that does not exceed $500. FAC ¶¶ 4-5. Additionally, entities placing these pets up for adoption are expressly prohibited from receiving *any* compensation to display adoptable animals. *Id*.

b. Defendants' Violations of Health and Safety Code § 122354

Since (and prior to) the enactment of Health and Safety Code § 122354.5, Defendants have continuously sold unsterilized puppies and charged fees that on average amount to $850.00, with prices reaching upwards of $2,000.00 *per dog*. FAC ¶ 6; *see also*, fn 1. Defendants pull at the heart strings of their followers on Instagram by promoting dogs (mostly puppies) allegedly "found" in deplorable conditions on the Instagram page "Wagmor Pets." *Id*. ¶¶ 12, 45. In an attempt to further confuse and deceive the public, as well as circumvent California law, in 2019, Bacelar created Wagmor Pets Non-Profit and registered it for 501(c)(3) exempt status with the IRS. *Id*. ¶ 7. Wagmor Pets Non-Profit is not an actual rescue, but instead functions as a puppy broker that pays compensation in exchange for puppies. *Id*. ¶ 10; **Exhibit 1** attached thereto. Indeed, to be considered an "animal rescue group" under Health and Safety Code § 122354.5, Defendants are not permitted to obtain dogs in exchange for payment. FAC ¶¶ 9, 36. Bacelar also uses Wagmor Pets Non-Profit to display dogs at The Wagmor, a pet store owned by Bacelar. *Id*. ¶¶ 6, 12, 26; *see also*, *Id*. ¶ 37. As a result of this orchestrated scheme, Defendants intentionally misrepresent the origin of the dogs by representing to consumers that the dogs were rescues, when in fact, Defendants often obtained the dogs in exchange for payment in violation of California law. *Id*. ¶¶ 10, 12, 14, 49-50, 53, 113(l), 147. Defendants also made misrepresentations concerning the health status of the dogs and sold them for an illegal fee. *See, e.g., id.* ¶¶ 52-57.

c. Factual Allegations Applicable to the Named Plaintiffs

Plaintiffs are each, at the time of their purchase and the filing of the FAC, California residents who purchased unsterilized puppies during 2022 from Defendants represented as bona fide rescue animals, and who each paid in excess of $500 in fees to Defendants, after the State of California's ban went into effect limiting adoption fees to $500 and who have suffered monetary harm, as their puppies battle serious medical conditions, and, in the case of Plaintiffs Jackson and Alfano, have died due to Defendants' conduct. FAC ¶¶ 55, 58-77, 78-97. Before purchasing their respective puppies,

each of the Plaintiffs were assured by Defendants that: (1) the puppies were rescue puppies [*Id*. ¶¶ 60, 78, 82, 97]; (2) that the puppies had seen a licensed veterinarian for a wellness exam [*Id*. ¶¶ 54-56]; (3) that the puppies were healthy [*Id*. ¶¶ 56, 60, 113(r), 163(b), 179, 195]; and (4) that the puppies received at least their first round of vaccinations [*Id*. ¶ 56, 63]. Defendants provided false information to Plaintiffs regarding the puppies they purchased. *Id*. ¶¶ 56-57, 77, 97. Shortly after coming home, Plaintiffs' puppies demonstrated serious illnesses that were concealed at the time of adoption. *Id*. Plaintiffs also found out that the representations concerning the puppies' origin and health status, were false as the dogs were obtained in exchange for payment rather than being "rescues." *Id*.

[redacted] followed The Wagmor Pets Non-Profit on Instagram because they were interested in adopting a rescue dog. *Id*. ¶ 58. During the adoption process, The Wagmor Pets Non-Profit represented that they had "found the litter in a ditch in Bakersfield," and that their puppy was perfectly healthy. *Id*. ¶ 60. Based on these representations, [redacted] agreed to "adopt" their puppy "Heron," and paid an $850 adoption fee (plus a $15 tip). *Id*. at **Exhibits 4-5**. On May 10, 2022, [redacted] received the PCR results for "Heron" now named "Kali," which indicated the dog tested positive for distemper (which is a fatal diagnosis for most dogs). *Id*. ¶¶ 16, 65; and **Exhibits 4-5** attached thereto. Upon receiving this news, Plaintiff Alfano and Plaintiff Jackson later found out that Defendants were aware of the condition of "Heron" and the rest of the litter prior to the adoption. FAC ¶¶ 65-77. Had [redacted] known the truth about Defendants' pet adoption services and the health condition of puppy they purchased (for an illegal fee), they would have chosen to support another organization or shelter directly. *Id*. ¶ 77; and **Exhibits 4-5** attached thereto.

[redacted] had a similar experience. Sometime around April of 2022, [redacted] came across a photo of a puppy name "Wilma" on Defendants' Instagram. *Id*. ¶ 78. It was very important to [redacted] that she adopt a "rescue" dog. *Id*. [redacted] went online and filled out the adoption application on or about April 18, 2022. *Id*. ¶ 80. The Wagmor Pets Non-Profit then indicated they needed to collect an $850.00 adoption fee within 24 hours if [redacted] wished to secure the adoption of "Wilma." *Id*. The Wagmor Pets Non-Profit told Plaintiff Moore that this adoption fee specifically helped to cover shots, spaying, and other costs incurred for the time that the

dogs spent in their care. *Id*. ¶¶ 80-82. [redacted] reasonably believed and relied on these statements. *Id*. Just two days later, on April 20, 2022, [redacted] was contacted by The Wagmor Pets Non-Profit claiming that she needed to come pickup "Wilma" right away at one of The Wagmor's physical stores. *Id*. ¶ 83. Unsure of what else to do, [redacted] went to The Wagmor store in Studio City and picked up "Wilma." *Id*. ¶ 84. Following numerous veterinarian visits, Plaintiff Moore called The Wagmor Pets Non-Profit to inform them that "Wilma" had tested positive for distemper. *Id*. ¶¶ 84-89. [redacted] then contacted the woman that had adopted "Wilma's" brother (i*d*. ¶ 89-95) and was informed that "Wilma's" brother had been having similar medical issues. *Id*. ¶ 89. The Wagmor Pets Non-Profit concealed this information from Plaintiff Moore and lied about the conditions of other puppies from the litter. *Id*. Had Plaintiff Moore known the truth about Defendants' business practices (including that Defendants were placing dogs up for adoption with illegal fees) she would have adopted directly from a shelter so that there was certainty that the dog was truly a rescue, was sterilized, and to ensure the money paid went to saving other dogs, not to the owner of an entity for profit. *Id*. ¶ 97.

III. LEGAL STANDARD ON DEMURRER

"A demurrer tests the sufficiency of a complaint as a matter of law." *See City of Chula Vista v. County of San Diego*, 23 Cal. App. 4th 1713, 1718 (1994). In considering a demurrer, the "court gives the complaint a reasonable interpretation, and treats the demurrer as admitting all material facts properly pleaded." *See Blank v. Kirwan*, 39 Cal. 3d 311, 318 (1985); *Buckaloo v. Johnson*, 14 Cal. 3d 815, 828 (1975). "A demurrer is simply not the appropriate procedure for determining the truth of disputed facts." *Unruh-Haxton v. Regents of Univ. of Cal*., 162 Cal. App. 4th 343, 365 (2008). It is error for a trial court to sustain a demurrer when the plaintiff has stated a cause of action under any possible legal theory. *See Barquis v. Merchants Collection Assn.*, 7 Cal. 3d 94, 103 (1972). "It is an abuse of discretion to sustain a demurrer without leave to amend if the plaintiff shows there is a reasonable possibility any defect identified by the defendant can be cured by amendment." *Blank v. Kirwan*, 39 Cal. 3d at 318. Moreover, "[a] demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures." *Khoury v. Maly's of Cal., Inc*., 14 Cal. App. 4th 612, 616 (1993). When a

demurrer is made upon the ground of uncertainty, it must distinctly specify how or why the pleading is uncertain, and where such uncertainty appears (by reference to page and line numbers on the complaint). *See Fenton v. Groveland Comm. Services Dist.,* 135 Cal. App. 3d 797, 809 (1992).

IV. PLAINTIFFS ALLEGE AN INJURY IN FACT AND HAVE STANDING

Defendants' position regarding standing ignores the allegations in the FAC. Plaintiffs have sufficiently pled that they each suffered monetary harm as a result of Defendants' unfair and unlawful conduct, and that they relied on Defendants' misrepresentations concerning its adoption services. A plaintiff has standing to bring a claim under the UCL, CLRA, or FAL if: (1) she has "suffered" economic injury" or "damage," and (2) this injury or damage "was the result of, i.e., caused by," the unfair business practice, false advertising or the CLRA violation. *Kwikset Corp. v. Superior Court,* 51 Cal. 4th 310, 322 (2015) (italics omitted); *see also, Veera v. Banana Republic, LLC,* 6 Cal.App.5th 907, 916 (2016) (noting standing under the CLRA, UCL, and FAL are essentially the same). To prove the second element of causation, the plaintiff must show that she "actual[ly] reli[ed]" on the "allegedly deceptive or misleading statements" and that it "was an immediate cause" of her injury. *Kwikset*, 51 Cal. 4th at 326-327. A statement may be "fraudulent" to a "reasonable consumer" without "individualized proof of deception, reliance, and injury," and as a result, the showing of actual reliance necessary to establish standing. *In re Tobacco II Cases,* 46 Cal. 4th 298, 320 (2009).

Proof of lost money or property (economic injury) may be shown in numerous ways. "A plaintiff may: (1) surrender in a transaction more, or acquire in a transaction less, than he or she otherwise would have; (2) have a present or future property interest diminished; (3) be deprived of money or property to which he or she has a cognizable claim; or (4) be required to enter into a transaction, costing money or property, that would otherwise have been unnecessary." *See Kwikset Corp.,* 51 Cal.4th 310 at 323. Here, all four types of these economic harms are present. *First,* as a result of relying on Defendants' misrepresentations concerning the nature of their adoption services and the dogs they sell, Plaintiffs entered into transactions to adopt a puppy, which cost far more than the State of California's mandated cap of $500. FAC, ¶ 81; *see also*, **Exhibits 3-5** attached thereto. *Second*, each Plaintiffs' ownership (or property interest) in their puppy was diminished because they thought they were purchasing a healthy puppy from a rescue organization, when in fact, the puppies

had distemper and the puppies were actually not rescue dogs. *See* FAC ¶¶ 16, 18, 56, 60, 65, 86 179. *Third*, Plaintiffs were deprived of money or property to which they had a cognizable claim. Had Plaintiffs known that they would have been duped into purchasing a sick puppy (for an illegal fee) that was not in fact a rescued animal, they would not have purchased the dog from Defendants. *Id.* ¶¶ 77, 97. Thus, Plaintiffs were deprived of the money they paid Defendant for the property to which they had a cognizable claim. *Fourth*, by representing and advertising that Defendants operated a true non-profit selling rescued dogs that were in good health, Plaintiffs were duped into entering a transaction costing money that would otherwise have been unnecessary had Plaintiffs known the true nature of Defendants' business dealings and the origins of the puppies. *Id.*[3]

Defendant specifically challenges the standing of [redacted], who along with her boyfriend, [redacted] jointly purchased a puppy from Defendants for an illegal fee. FAC, ¶ 56. Defendant argues that [redacted] does not allege *she* adopted a dog. That is not so. Both [redacted] adopted the dog together. *See, e.g.*, **Exhibits 4-5**. Further, Defendants' contention that since the exact source of the adoption fee (whether it was paid all or in-part from either [redacted]) was not disclosed in the FAC does not mean that these Plaintiffs lack standing. Defs' Mtn., pp. 8. Indeed, it was [redacted] who took the puppy to the vet where it was diagnosed with distemper and ultimately euthanized, so Plaintiff Jackson obviously incurred costs for treatment stemming from the purchase of the puppy. FAC, ¶ 73. The puppy was also expressly purchased to be used as [redacted] Emotional Support Animal ("ESA"). *Id.* ¶ 58. Thus, the joint ownership of the puppy is at least reasonably inferred and thus sufficiently pled. Therefore, Plaintiffs have each sufficiently pled standing.[4]

V. A DEMURRER IS NOT APPROPRIATE WHERE THE FACTS, TREATED AS TRUE, ARE SUFFICIENT TO CONSTITUTE A CAUSE OF ACTION

The question raised by a demurrer is simply whether a complaint alleges sufficient facts to state a cause of action; it is not concerned with whether plaintiffs have evidence to support their

[3] *Archer v. United Rentals, Inc.*, relied on by Defendants, is distinguishable because that case examined standing in the context of an invasion of privacy that was not linked to an economic harm, unlike the clear economic harm here from the purchase. 195 Cal. App. 4th 807, 808 (2011).

[4] If needed, Plaintiff Jackson could easily amend the FAC to include additional facts concerning the specific apportionment of the adoption fee as well as the medical bills.

allegations. *Gervase v. Super. Ct*., 31 Cal. App. 4th 1218, 1224 (1991). "[T]he complaint need only allege facts sufficient to state a cause of action; each evidentiary fact that might eventually form part of plaintiff's proof need not be alleged." *C.A. v. William S. Hart Union High Sch. Dist.*, 53 Cal. 4th 861, 872 (2012). "[A]ll material facts pleaded in the complaint and those that arise by reasonable implication, but not conclusions of fact or law, are deemed admitted by the demurring party. The complaint must be construed liberally by drawing reasonable inferences from the facts pleaded." *Rodas v. Spiegel*, 87 Cal. App. 4th 513, 517 (2001) (citations omitted). A pleading is adequate so long as it contains enough facts to apprise the defendant of the factual basis for the plaintiff's claim. *McKell v. Washington Mut., Inc.,* 142 Cal. App. 4th 1457, 1469-70 (2006). Here, Defendants' contention that Plaintiffs fail to allege enough facts to support each of their causes of action is without merit. Rather than taking all well-pled factual allegations as true (which Defendant must do on demurrer), Defendants improperly assert their own version of events and attempt to introduce extrinsic evidence and factual allegations, which is not improper. Despite Defendants' attempt to re-frame Plaintiffs' allegations, the FAC expressly alleges the ways in which Plaintiffs were damaged, including suffering monetary harm as a result of entering into a transaction with Defendants that they otherwise would not have entered into had they known the true nature of Defendants' business dealings. *See, e.g*., FAC, ¶¶ 14, 77, 97,116, 143.

a. Plaintiff's Allegations are Pled with Adequate Specificity

Plaintiffs have pled facts with sufficient specificity to give proper notice to the Defendants of the Defendants' misrepresentations. Claims under the UCL, FAL and CLRA which are based on a misrepresentation, to the extent they allege fraud, are sufficient where they allege the "how, when, where, to whom, and by what means" the misrepresentations were *made. Morgan v. AT&T Wireless Servs. Inc*., 177 Cal.App.4th 1235, 1264 (2009). There are "certain exceptions which mitigate the rigor of the rule requiring specific pleading of fraud." *Committee On Children's Television, Inc. v. General Foods Corp*., 35 Cal.3d 197, 217 (1983). For example, where a fraud claim is based on numerous misrepresentations, such as an advertising campaign (or course of conduct), plaintiffs need not allege the specific advertisements the individual plaintiffs relied upon; it is sufficient for the plaintiff to provide a representative selection of the advertisements or other statements to indicate the

language upon which the implied misrepresentations are based. *Id*. at p. 218. It is generally accepted that claims under the UCL and CLRA must only be stated with "reasonable particularity," which is a more lenient pleading standard than the specificity standard applied to common law fraud claims. *Gutierrez v. Carmax Auto Superstores Cal*., 19 Cal. App. 5th 1234, 1261 (2018).

Defendants' advertisements and misrepresentations regarding: (1) the purported 501(c)(3) exempt status of Wagmor Pets Non-Profit [FAC ¶¶ 7, 50; and fn. 2, 5]; (2) the origin of its dogs as being bone fide "rescues" [FAC ¶¶ 14, 44, 49-50, 55-56, 78; *see also*, **Exhibit 2** attached thereto]; (3) the adoption fees associated with the dogs [*see id*. ¶¶ 13-14, 49-50]; (4) that the "dogs are seen by a vet and receive a wellness exam" [*id*. ¶¶ 55-56]; and (5) that the dogs for adoption are in "good health" [*id*. ¶¶ 55-56, 60, 139, 179, 195,]; are so widespread and numerous to the point where it is common knowledge amongst prospective dog-purchasers. Indeed, Defendants openly advertised on their website and social media pages (*see id*. ¶ 45) false narratives of dogs rescued in deplorable conditions (and being placed for adoption for fees well over $500), when in fact, such animals were obtained in exchange for payment and were not in fact "rescued" (*see, e.g*., *id*. ¶ 10-12, 53; and **Exhibits 1-2** attached thereto). Plaintiffs further allege that, before purchasing their respective puppies in 2022, each of the Plaintiffs were assured by Defendants that the puppies were rescue puppies (which tracked the representations made by Defendants online that induced Plaintiffs into contacting Defendants for adoption), had seen a veterinarian for a wellness exam, were healthy, and received at least their first round of vaccinations. *Id*. ¶ 56. Moreover, Defendants materially provided false information regarding the puppies to be purchased, including failing to disclose that the puppies were being sold for an illegal adoption fee. FAC ¶¶ 23, 56.

Defendants' argument that Plaintiffs' claims are "vague" is simply not true, especially when Defendants on the one hand complain that the FAC is too lengthily but then on the other hand complain that it is vague. *See* Defs' Mtn., pp. 8, 10, 18. Additionally, Defendants' position that Plaintiffs' have not pled with particularity the misrepresentations made by Bacelar is also incorrect. Plaintiffs allege with great detail Bacelar's involvement with orchestrating a scheme, along with the other two Defendants, to induce innocent consumers simply looking to adopt a rescue dog, into paying

an illegal adoption fee (that is retained by Defendants) for a dog that was actually purchased for re-sale and that has not received proper medical treatment.[5] FAC, ¶¶ 10-12, 28-33, 40-55.

b. Plaintiffs State a Claim for Relief Under the UCL

The UCL prohibits unfair competition, defined as "any unlawful, unfair or fraudulent business act or practice." Bus. & Prof. Code § 17200; s*ee also, Schwartz v. Provident Life & Accident Ins. Co.*, 216 Cal. App. 4th 607, 611 (2013). The UCL confines standing to those injured by a defendant's business practices. *Kwikset Corp.*, 51 Cal.4th at 320-21. An individual who has suffered lost money or property and has suffered an injury in fact may prosecute a UCL claim. Bus. & Prof. Code § 17204. In sum, proof of lost money or property satisfies injury in fact under the UCL. *Id.* at 325 & fn. 8. Here, Defendant's Demurrer appears to attack Plaintiffs' UCL claim on three grounds: (1) failure to plead a violation of the Health & Safety Code, which serves as a predicate violation of the "unlawful" prong; (2) failure to plead injury in fact and causation; and (3) failure to allege a business practice. Defs' Mtn., pp. 17-18. Because Defendants here did not file a motion to strike, to prevail on their demurrer as to the UCL claim, they must win on all three prongs asserted under that cause of action because a general demurrer may not be sustained as to a portion of a cause of action. *See Daniels v. Select Portfolio Servicing, Inc*., 246 Cal. App. 4th 1150, 1167 (2016); *Franklin v. The Monadnock Co*., 151 Cal. App. 4th 252, 257 (2007).

1. Plaintiffs properly pled a violation of § 122354.5 of the Health and Safety Code

The "unlawful" prong of the UCL "borrows" violations of other laws and makes them independently actionable as unfair competitive practices. *See Cel-Tech Communications, Inc. v Los Angeles Cellular Tel. Co,* 20 Cal.4th 163, 180 (1990). Defendants continuously cite to irrelevant sections of the Health and Safety Code in order to support Defendants' erroneous argument that Plaintiffs have not plausibly alleged a predicate violation of Health & Safety Code § 122354.5.[6] What

[5] Defendants' reliance on *Quigley v. Garden Valley Fire Prot. Dist.,* is misplaced as that case examined whether an affirmative defense was properly asserted. 7 Cal. 5th 798, 802 (2019). The same is true for *Lazar v. Superior Court*, which examined the pleading standard for a fraud claim against a corporate employer, which is higher than the applicable standard to the statutory claims here. *See* 12 Cal. 4th 631, 645 (1996).

[6] Health & Safety Code § 122354.5 has no private right of action. As a result, Plaintiffs allege violations of that code as one of *several* predicate violations of the "unlawful" prong of the UCL. *See Blakemore v. Superior Court*, 129 Cal. App. 4th 36, 52 n.17 (2005) ("[P]rivate right of action under the predicate statute is not necessary . . to state a UCL violation based on that statute."); *see also*, FAC, ¶ 122-125 (noting that violations of the CLRA and FAL also serve as predicate violations).

Defendants have failed to recognize in their demurrer is that the Health & Safety Code was amended in 2019, and new sections were added with the controlling language applicable to the claims in the FAC being outlined in § 122354.5 (and *not* Health and Safety Code § 122045-122110 or § 122350 as Defendant suggests). *See* Defs' Mtn., pp. 12, 16-17. Defendants cannot rewrite the pleadings. *See, e.g Fin. Corp. of Am. v. Wilburn,* 189 Cal. App. 3d 764, 778 (1987) (noting on a demurrer a court must take the plaintiff's allegations "as true for purposes of demurrer, and disregard defendant's contention" to the contrary). Nowhere do Plaintiffs allege in the FAC violations of Health and Safety Code § 122045-122110 or § 122350. What Plaintiffs *do plausibly allege* are violations of Health & Safety Code § 122354.5 due to Defendants' conduct of "violating California law prohibiting the sale of dogs bred for profit." *See PetConnect Rescue, Inc. v. Salinas*, No. 20-cv-00527-H-KSC, 2020 U.S. Dist. LEXIS 95540, at *15 (S.D. Cal. June 1, 2020) citing Cal. Health & Safety Code § 122354.5(a) ("Plaintiffs argue that Defendants violate Health & Safety Code § 122354.5(a) by selling dogs that have been obtained from breeders and brokers for compensation. Thus, Plaintiffs have alleged that Defendants violate the UCL by selling dogs bred for profit, misrepresenting those dogs as 'rescues' . . . Plaintiffs' allegations offer enough specificity to state a claim and place Defendants on notice.").

Health & Safety Code § 122354.5 mandates that animals placed for adoption at a pet store shall be both sterilized and the adoption fee shall not exceed $500.00. FAC, ¶¶ 4, 34, 38, 39. It further requires that a pet store shall not provide space for the display of dogs available for adoption unless the animals are displayed by either a public animal agency or shelter, or animal rescue group. *Id.* ¶ 35. A "rescue group" by definition cannot obtain money in exchange for payment or compensation from any person that breeds or brokers animals. *Id*. ¶¶ 36, 53. Plaintiffs properly allege violations of Health and Safety Code § 122354.5 in alleging Defendants: (1) sold "unsterilized puppies and charged fees that on average amount to $850.00, with prices reaching upwards of $2,000.00 *per dog*" [FAC, ¶¶ 6, 13, 23, 49, 50, 80-81, 113(f), 115, 167; *see also*, **Exhibits 3-5** attached thereto]; (2) operate a "pet store" [*id*. ¶¶ 5-7, 12-13, 19, 26, 28] and display dogs for sale [*id*. ¶ 59]; (3) sell dogs that are not from legitimate rescue organizations and shelters, including by purchase dogs for resale to the public [*see, e.g.,* FAC ¶¶ 9-10, 13, 59; and **Exhibits 1-2** attached thereto]; (4) are paid (and retain)

compensation for displaying adoptable dogs [FAC ¶¶ 48-49, 51].; and that (5) explicitly advertise such illegal dog sales on their website displaying dogs for sale for more than $500.00 (*id*. ¶ 13).

It is abundantly clear that California pet store operators are prohibited from adopting out, selling, or offering for sale any dogs unless the animal was obtained from a public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group. *See* Cal. Health & Safety Code § 122354.5(a). Despite Defendants' argument that Plaintiffs have not alleged that Defendants sold the dogs through a pet store (which Plaintiffs allege they have), Plaintiffs allege facts giving rise to such definition applying to Defendants. Indeed, Plaintiffs allege Defendants are selling dogs in a retail business and other commercial establishment, both of which are specifically included in the language of the code (FAC ¶ 26). *See* Health & Safety Code § 122354.5(e)(1). The Code defines "pet store" as "a retail establishment open to the public selling or offering for sale animals," and "pet store operator" as an individual or legal entity that "owns or operates a pet store, or both." *Id.* § 122350(h)-(j). Defendants' conduct brings it within the preview of these definitions–regardless of the Wagmor Pets Non-Profit's purported 501(c) status.

Defendants incorrectly suggest that because Plaintiffs were offered dogs for sale by Defendants online (yet picked up at a physical store location in California), that somehow Defendants are not subject to the Health & Safety Code. Defs' Mtn., pp. 13, 17. Notably, nowhere in the code is such an exemption stated. It would be contrary to the goals of the code in the first place, which is to regulate the sale of dogs to prevent puppy mills and other forms of mass breading. Defendants also conveniently ignore the language in Section 53.73 to Article 3 Chapter 5 of the Los Angeles Municipal Code, which states "it is presently unlawful for any person to sell any live dog, cat or rabbit in any pet store, retail business or other commercial establishment." Since Defendants do not contest that the violations Section 53.73 to Article 3, Chapter 5 of the Los Angeles Municipal Code are properly pled–that alone can form the basis of a UCL claim under the "unlawful" prong.

2. Plaintiffs' lost money and property as a result of Defendants' business practices

First, as to the standing issue, as noted above, each Plaintiff has suffered and injury-in fact as a result of Defendants' challenged conduct. Defendants' continued assertion that Plaintiff Jackson does not have standing is contrary to the allegations in the FAC. Also, Plaintiff Moore expressly

alleges it was very important that she adopt a "rescue" dog, as she has only ever owned rescue dogs and was vehemently opposed to obtaining a dog from an entity that operates for profit. FAC, ¶ 78. Plaintiff Moore further alleges that had she known the truth about Defendants' business dealings (including that Defendants were placing dogs up for adoption with illegal fees) she would have adopted directly from a shelter so that there was certainty that the dog was truly a rescue, was sterilized, and to ensure the money paid went to saving other dogs, not to the owner of an entity for profit. *Id*. ¶ 97. Defendants' attempt to construe the allegations to the contrary by asserting (without any citation to the actual allegations in the FAC) that Plaintiff Moore was not harmed because she would have still entered into the transaction is baseless.

Defendants' assertion that paying money in exchange for a dog is not a "business practice," that too is befuddling. Any business act or practice that is unlawful, in the sense that it violates a specific statute, may be enjoined under the unfair competition law. *Comm. on Children's Television, Inc. v. Gen. Foods Corp.*, 35 Cal. 3d 197, 209–210 (1983)*, superseded by statute on other grounds as stated in Gartin v. S&M NuTec LLC*, 2007 U.S. Dist. LEXIS 38050 (C.D. Cal.). Thus, the challenged conduct is easily a business practice under the UCL, as Plaintiffs allege that the illegal sale of dogs obtained for payment for a fee over $500 violates Health & Safety Code § 122354.5 (as well as the CLRA and FAL). Defendants' position that there is a difference between the "sale" and "adoption" of a dog is not so in the context of the UCL. Defendants offer zero authority for the position that denotations–which were really a payment for the dog disguised under the misnomer of a denotation–are not lost money for standing purposes. "Nonetheless, '[w]hether any particular conduct is a business practice within the meaning of section 17200 is a question of fact dependent on the circumstances of each case.'" *Isuzu Motors Ltd. v. Consumers Union of U.S., Inc*., 12 F. Supp. 2d 1035, 1048 (C.D. Cal. 1998), quoting *People v. E.W.A.P., Inc.,* 106 Cal. App. 3d 315, 322 (1980).

c. Plaintiffs Properly Pled the FAL Cause of Action

The FAL bars any advertising "which is untrue or misleading." Bus. & Prof. Code, § 17500. The FAL makes it unlawful for any person or corporation "to induce the public to enter into any obligation relating" to a service, product or property "or anything of any nature whatsoever" by means of advertising that is "untrue or misleading, and which is known, or which by the exercise of

reasonable care should be known, to be untrue or misleading" Bus. & Prof. Code, § 17500. A person commits false advertising when they make a false or misleading statement in connection with a service, product or the sale of a such service/product/property, and know or should know that the statement is false or misleading. Bus. & Prof. Code, § 17500. Defendants take the erroneous position that the FAL claim is based on violations of the Health and Safety Code. Defs' Mtn., pp. 17. The FAL, although it also serves as a predicate violation of the UCL unlawful prong, is an *independent* cause of action from the Health and Safety Code violations. Further, Plaintiffs have standing to bring this claim, as discussed above, for they each lost money as a result of entering into a transaction based on Defendants' misrepresentations. FAC, ¶¶ 139-147.

d. Plaintiffs' CLRA Claim is Properly Pled

The CLRA provides relief to consumers injured by certain deceptive practices in the sale or lease of goods "primarily for personal, family or household purposes" or for services "for other than a commercial or business use." *See* Cal. Civ. Code §§1761(a)-(e); Civ. Code § 1770(a). Once again, Defendants broadly argue that this claim fails because it is based on violations of the PSAC. Defs' Mtn., pp. 17. That argument is without merit. The CLRA does not require a predicate violation of another law to be actionable. Rather, there are 28 enumerated circumstances that dictate what type of conduct is considered unlawful. *See* Cal. Civ. Code § 1770. Plaintiffs properly allege that Defendants violated Cal. Civ. Code § 1770(a)(5), (7), (9), (14). *See* FAC, ¶¶ 163-167. Thus, the CLRA claim may proceed irrespective of the Healthy and Safety Code violation. Plaintiffs also properly allege that they are consumers who paid Defendants in exchange for its pet adoption services and who each purchased a dog for personal, family or household purposes. FAC, ¶¶ 16-18, 56, 158-159. Defendants' argument that the pet adoptions do not fall under the CLRA is unsupported by case law. Defendants' suggestion that the purchases at issue are not "commercial transactions" is tenuous at best, as the CLRA clearly only covers consumer transactions, which Plaintiffs too have properly alleged. FAC, ¶¶ 157-160, 162. Lastly, Plaintiffs have standing under the CLRA, as discussed above. Defendants' citation to *Meyer v. Sprint Spectrum L.P.*, is misplaced because that case examined standing in the context of an unconscionable contract term where damages were not pled. *See* 45 Cal. 4th 634, 640 (2009). That is not the case here were each Plaintiff suffered an economic harm. FAC ¶¶ 16-18, 77, 97.

e. Negligent Misrepresentation and Intentional Misrepresentation are Properly Pled

In California, fraud must be pled specifically; general and conclusory allegations do not suffice. *See Stansfield v. Starkey*, 220 Cal. App. 3d 59, 74 (1990). Importantly, Defendants do not challenge any of the substantive elements of these causes of action (which are properly pled; *see* FAC, ¶¶ 179-192, 195-212). Instead, Defendants argue (in addition to standing, which is discussed above), simply that the allegations of fraud are too vague, including the claims relating to the adoption fees going to medical costs. Defs' Mtn., pp. 18. That is incorrect. Plaintiffs allege in great detail how (FAC, ¶¶ 47-59, 78, 10-14, 81-82, 89, 94), when (*id.* ¶¶ 56-60, 78-84), by whom (*id*.) and by what means (*id*.) the representations were made, including that Plaintiff Moore was told the "adoption fee" was going to animal care (*id.* ¶ 82). Therefore, these two common law claims are properly pled.

f. Plaintiffs' Unjust Enrichment Claim May Proceed

California courts recognize that "[r]egardless of the labels attached by the pleader to any alleged cause of action, the court examines the factual allegations of the complaint, to determine whether they state a cause of action on any available legal theory," *Kamen v. Lindly*, 94 Cal. App. 4th 197, 201 (2001), and as a result have reached claims labeled as unjust enrichment, *see Pretscher-Johnson v. Aurora Bank FSB*, 2015 WL 9455465, n.10 at *7 (Cal. Ct. App. Dec. 23, 2015). Thus, "[w]hen a plaintiff alleges unjust enrichment, a court may 'construe the cause of action as a quasi-contract claim seeking restitution.'" *Astiana v. Hain Celestial Grp., Inc*., 783 F.3d 753, 762 (9th Cir. 2015) (quotation omitted). Here, Plaintiffs properly pled a claim for unjust enrichment and the Court may construe this claim as requesting an equitable remedy of restitution. *McBride v. Boughton*, 123 Cal. App. 4th 379, 388 (2004).[7] Thus, it would be improper to dismiss this claim at the pleading stage.

VI. CONCLUSION

In sum, the Court should overrule Defendant's Demurrer. Should the Court find the FAC is insufficiently pled, in whole or in part, Plaintiffs respectfully request leave to amend.

[7] *De Havilland v. FX Networks, LLC*, found that plaintiff's unjust enrichment claim could not proceed because a related claim, for false light, was found to fail, which is not the case here where Plaintiffs have shown they are entitled to restitution. *See* 21 Cal. App. 5th 845, 870 (2018). The same is true for Defendants' reliance on *Bank of N.Y. Mellon v. Citibank, N.A*., 8 Cal. App. 5th 935 (2017) *and City of Oakland v. Oakland Raiders*, 83 Cal. App. 5th 458 (2022).

Respectfully submitted,

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