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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

IXCHEL PHARMA, LLC,

Plaintiff-Appellant,

v.

BIOGEN, INC.,

Defendant-Appellee.

No. 18-15258

D.C. No.

2:17-cv-00715-WBS-EFB

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
William B. Shubb, District Judge, Presiding

Argued and Submitted May 15, 2019  
Submission Withdrawn July 16, 2019  
Resubmitted September 16, 2020  
San Francisco, California

Before: WALLACE, IKUTA, and CHRISTEN, Circuit Judges.

Ixchel Pharma, LLC, appeals the district court's dismissal of its claims against Biogen, Inc. for (1) tortious interference with contractual relations, (2) intentional and negligent interference with prospective economic advantage, and

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

(3) violation of California’s Unfair Competition Law (UCL). We have jurisdiction under 28 U.S.C. § 1291.<sup>1</sup> We affirm.

Given the California Supreme Court’s answer to our certified questions, the district court correctly held that for Ixchel to state a claim against Biogen for tortious interference with contractual relations, it was required to allege that Biogen engaged in an independently wrongful act. *Ixchel Pharma, LLC v. Biogen, Inc.*, No. S256927, 2020 WL 4432623, at \*5, 9 (Cal. August 3, 2020).

Ixchel argued that section 2.13 of Biogen’s contract with Forward violated section 16600 of the California Business and Professions Code and thus constituted an independently wrongful act. The district court did not err in rejecting this argument. The district court correctly analyzed section 2.13 of the contract under a rule of reason to determine its validity, and concluded that section 2.13 was not an unreasonable restraint of competition and therefore did not violate section 16600. *See Ixchel Pharma*, 2020 WL 4432623, at \*18. Ixchel did not argue on appeal that the district court erred in reaching this conclusion.

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<sup>1</sup> We previously rejected Biogen’s argument that we lack jurisdiction under Article III of the U.S. Constitution to consider Ixchel’s claim. *See Ixchel Pharma, LLC v. Biogen, Inc.*, 930 F.3d 1031, 1035 n.5 (9th Cir. 2019), *certified question answered*, 9 Cal. 5th 1130 (2020).

Given the district court's holding that section 2.13 did not violate section 16600, Ixchel did not plead an independently wrongful act. Thus, the district court did not err in holding that Ixchel failed to state a claim for tortious interference with contractual relations, intentional and negligent interference with prospective economic advantage, or a violation of the UCL.

**AFFIRMED.**