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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; SCDR, Inc. d/b/a Second Chance Dog Rescue, 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 a/k/a MARCO ANTONIO GARCIA, an individual; BRIAN MOHRFELD, an individual; SELECT PUPPIES, INC., an Iowa corporation; RED ROCK ENTERPRISES OF UTAH, INC., a Utah corporation; THE PUPPY STORE, LLC, a Wyoming limited liability company; YELLOW STORE ENTERPRISES, LLC, a Wyoming limited liability company; NATIONAL CITY PUPPY, LLC, a California limited liability company; SOCAL PUPPY ADOPTIONS, INC., a

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

ORDER DENYING MOTION TO DISMISS AND CHALLENGE TO STANDING BY DEFENDANTS BRIAN MOHRFELD AND SELECT PUPPIES, INC.

[Doc. Nos. 137.]

1 California corporation; PET CONNECT
2 RESCUE, INC., a Missouri corporation;
3 ALYSIA ROTHMAN, an individual;
4 RAY ROTHMAN, an individual; THE
5 FANCY PUPPY, LLC, a California
6 limited liability company; THE PUPPY
7 STORE LAS VEGAS, LLC, a Nevada
8 limited liability company; PUPPIES 4
9 LESS, a business entity of form unknown;
10 ANITA CHAVIRA, an individual; JOHN
11 DUHAMMEL, an individual; JASON
12 DUHAMMEL, a/k/a JASON
13 HUIHAMMEL, an individual; and DOES
14 1-10,

Defendants.

15 Before the Court is a motion to dismiss filed by Defendants Brian Mohrfeld and
16 Select Puppies, Inc. (“Select”) (collectively, the “Moving Defendants”). (Doc. No. 137.)
17 This is the fourth motion to dismiss that the Court has considered in this matter and the
18 first since Plaintiffs filed their Second Amended Complaint (“SAC”).¹ Plaintiffs added
19 one plaintiff, SCDR, Inc., d/b/a Second Chance Dog Rescue (“SCDR”), and four
20 defendants, including the Moving Defendants, to the case through their SAC. (Doc. No.
21 93.) Plaintiffs allege trademark infringement and dilution under the Lanham Act and
22 California common law, false advertising in violation of the Lanham Act, unfair business
23 practices under California’s Unfair Competition Law, violations of California’s Consumer
24 Legal Remedies Act, fraudulent deceit, and a claim for an accounting.

25 The Moving Defendants filed their motion to dismiss on September 17, 2021. (Doc.
26 No. 137.) Plaintiffs filed their response in opposition on October 25, 2021. (Doc. No.
27 144.) Moving Defendants filed their reply on October 28, 2021. (Doc. No. 145.) The

28 ¹ Although the SAC was filed on December 30, 2020, Plaintiffs represent that they “were only recently
able to locate and serve” the Moving Defendants “at their newly discovered address[.]” (Doc. No. 144
at 2.)

1 Court held a hearing on the motion on November 8, 2021. Mr. Patrick J. Stark appeared
2 on behalf of the Moving Defendants, Mr. Bryan W. Pease appeared on behalf of the
3 Plaintiffs, and Mr. George R. Najjar appeared on behalf of the remaining Defendants.
4 Upon consideration of the parties’ arguments, the Court denies the motion for the following
5 reasons.

6 **Background**

7 Plaintiffs are animal rescue organizations and an individual consumer alleging that
8 the Defendants import non-rescue dogs into California and sell these dogs under the
9 fraudulent misrepresentation that the dogs are rescued animals. (SAC ¶¶ 1-2.) Plaintiffs
10 Petconnect Rescue, Inc. (“Petconnect”), Lucky Dog Rescue.com (“Lucky Dog”), and
11 SCDR (collectively, the “Organizational Plaintiffs”) allege that the Defendants adopted or
12 used their names and marks to disguise the sale of non-rescue dogs and to bolster their
13 reputations. (Id. ¶¶ 1-3, 98-116.) Plaintiff Sarah Gonzalez alleges that she was defrauded
14 into purchasing a non-rescue dog from the Defendants. (Id. ¶¶ 147-50.)

15 Defendants Alysia Rothman and Ray Rothman operate Defendant Pet Connect
16 Rescue, Inc., an entity based in Missouri (collectively, the “Rothman Defendants”). (Id.
17 ¶¶ 22-24.) Plaintiffs allege that the Rothman Defendants broker the sale of dogs bred for
18 profit from “puppy mills” in the Midwest to pet stores in southern California. (Id. ¶¶ 1-5.)
19 Plaintiffs claim that these pet stores resell these dogs under the “Pet Connect Rescue” label
20 in order to mislead customers into believing that they are purchasing a rescue dog.
21 Gonzalez alleges that she is one of these misled customers. (Id. ¶¶ 147, 149.) She
22 purchased a dog labeled as a “Pet Connect Rescue” on December 15, 2019. (Id.) Gonzalez
23 was “specifically seeking out a rescue puppy” and did not intend to purchase from a “puppy
24 mill[] or mass breeding operation[.]” (Id. ¶ 148.)

25 Plaintiffs further allege that the Moving Defendants “knowingly and willfully act[]
26 as accomplices to all other Defendants to evade various laws and defraud consumers into
27 believing they are ‘adopting’ a ‘rescue’ animal[.]” (Id. ¶¶ 16, 135.) Plaintiffs claim that
28 Select is “one of the largest brokers of puppy mill puppies in the United States” and that

1 Mohrfeld is its owner and operator. (Id. ¶¶ 5, 16.) Defendant Ray Rothman is a manager
2 for Select. (Id. ¶ 5.) According to the Plaintiffs, on May 19, 2020, “volunteer activists
3 documented a delivery truck with an Iowa license plate dropping off puppies at Pups &
4 Pets in Santee.² The license plate traced back directly to [Select].” (Id. ¶ 46.) Plaintiffs
5 represent that the Rothman Defendants stated in declarations that “puppies labeled ‘Pet
6 Connect Rescue’ were delivered to stores in a truck owned by [Select].” (Id.) Notably,
7 the Rothman Defendants also stated that the truck was only used for transportation and that
8 the transported dogs were rescues. (Id.) Plaintiffs allege that the Moving Defendants and
9 the Rothman Defendants are engaging “in the exact same scheme in Chicago” in violation
10 of a city ordinance that is equivalent to California’s ban. (Id. ¶ 49.)

11 After the “Pet Connect Rescue” name came under scrutiny, several of the
12 Defendants allegedly created Defendant SoCal Puppy Adoptions, Inc. (“SoCal Puppy”) as
13 “another pass-through entity to launder puppy mill puppies fraudulently labeled as
14 rescues.” (Id. ¶ 98.) Plaintiffs allege that SoCal Puppy operates a website that has “similar
15 stock art and the same generic language” as the “fake” Pet Connect Rescue, Inc. website
16 operated by the Rothman Defendants. (Id. ¶ 99.) The SoCal Puppy website purportedly
17 claims, “[w]e support our local shelters with donations.” (Id.) SoCal Puppy has listed
18 Lucky Pup and SCDR as organizations that it supports. (Id.) Lucky Pup and SCDR allege
19 that SoCal Puppy used their names and marks without permission and to their detriment.
20 (Id. ¶¶ 100-106.)

21 Discussion

22 **I. Legal Standard**

23 A motion to dismiss under Fed. R. Civ. P. 12(b)(6) tests the legal sufficiency of the
24 pleadings and allows a court to dismiss a complaint if the plaintiff has failed to state a claim
25 upon which relief can be granted. Conservation Force v. Salazar, 646 F.3d 1240, 1241-42
26

27
28 ² Pups & Pets is allegedly a pet store in Santee, California that sells non-rescue dogs under the “Pet
Connect Rescue” label. (SAC ¶ 37.)

1 (9th Cir. 2011). In reviewing a Rule 12(b)(6) motion to dismiss, “[a] claim has facial
2 plausibility when the plaintiff pleads factual content that allows the court to draw the
3 reasonable inference that the defendant is liable for the misconduct alleged.” Ashcroft v.
4 Iqbal, 556 U.S. 662, 678 (2009). The plaintiff must allege “more than an unadorned, the-
5 defendant-unlawfully-harmed-me accusation.” Id. “Factual allegations must be enough to
6 raise a right to relief above the speculative level.” Bell Atlantic Corp. v. Twombly, 550
7 U.S. 544, 555 (2007) (citation omitted). Still, “[d]ismissal under Rule 12(b)(6) is
8 appropriate only where the complaint lacks a cognizable legal theory or sufficient facts to
9 support a cognizable legal theory.” Mendondo v. Centinela Hosp. Med. Ctr., 521 F.3d
10 1097, 1104 (9th Cir. 2008).

11 In reviewing the plausibility of a complaint on a motion to dismiss, courts “accept
12 factual allegations in the complaint as true and construe the pleadings in the light most
13 favorable to the nonmoving party.” Manzarek v. St. Paul Fire & Marine Ins. Co., 519 F.3d
14 1025, 1031 (9th Cir. 2008). But courts are not “required to accept as true allegations that
15 are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.” In re
16 Gilead Scis. Secs. Litig., 536 F.3d 1049, 1055 (9th Cir. 2008).

17 **II. Analysis**

18 The Moving Defendants argue that Plaintiffs fail to allege sufficient facts to bring
19 their state and federal claims specifically against the Moving Defendants and that the
20 Organizational Plaintiffs lack standing to bring a claim under California’s Unfair
21 Competition Law. (Doc. No. 137 at 5-17.)

22 **A. Lanham Act Claims**

23 Plaintiff Petconnect alleges violations of Sections 32 and 43(a) of the Lanham Act
24 and the violation of the Lanham Act through trademark and/or service mark dilution against
25 all Defendants. (SAC ¶¶ 50-96.) Plaintiffs Lucky Pup and SCDR allege a violation of
26 Section 43(a) of the Lanham Act against all Defendants. (Id. ¶¶ 97-121.) All Plaintiffs
27 allege false advertising in violation of Section 43(a) of the Lanham Act against all
28 Defendants. (Id. ¶¶ 183-88.) The Moving Defendants seeks dismissal of each of these

1 claims on the basis that the Plaintiffs fail to allege facts sufficient to state a claim specific
2 to the Moving Defendants. (Doc. No. 137 at 5-9, 16-17.)

3 The Lanham Act, 15 U.S.C. § 1051 et seq., “creates a comprehensive framework for
4 regulating the use of trademarks and protecting them against infringement, dilution, and
5 unfair competition.” Gordon v. Drape Creative, Inc., 909 F.3d 257, 263 (9th Cir. 2018)
6 (quoting Fortune Dynamic, Inc. v. Victoria’s Secret Stores Brand Mgmt., Inc., 618 F.3d
7 1025, 1030 (9th Cir. 2010)). To show trademark infringement, Plaintiffs must prove: (1)
8 that they have “a valid, protectable trademark” and (2) the “defendant’s use of the mark is
9 likely to cause confusion.” Gordon, 909 F.3d at 263 (quoting S. Cal. Darts Ass’n v.
10 Zaffina, 762 F.3d 921, 929 (9th Cir. 2014)).

11 Plaintiffs’ Lanham Act claims stem from the alleged use of the Organizational
12 Plaintiffs’ trademarks by the Defendants without authorization:

- 13 **i. Count One of the SAC:** Defendants allegedly violated Section 32
14 of the Lanham Act, 15 U.S.C. § 1114, by “us[ing] in commerce
15 [Petconnect’s trademark] . . . in connection with the sale, offering
16 for sale, distribution . . . of any goods or services . . . in connection
17 with which such use is likely to cause confusion, or to cause mistake,
18 or to deceive[.]”
- 18 **ii. Counts Two, Four, and Ten of the SAC:** Defendants allegedly
19 violated Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), by
20 “us[ing] in commerce any word, term, name, symbol . . . or any false
21 designation of origin, false, or misleading description of fact, or
22 false or misleading representation of fact, which (A) is likely to
23 cause confusion, or to cause mistake, or to deceive as to . . . the
24 origin, sponsorship, or approval of his or her goods, services, or
25 commercial activities by another person, or (B) in commercial
26 advertising or promotion, misrepresents the nature, characteristics,
27 qualities, or geographic origin of his or her or another person’s
28 goods, services, or commercial activities[.]”
- iii. Count Three of the SAC:** Defendants allegedly violated Section
43(c) of the Lanham Act, 15 U.S.C. § 1125(c), by “commenc[ing]
use of [Petconnect’s mark] in commerce that is likely to cause
dilution by blurring or dilution by tarnishment of [Petconnect’s]
famous mark.”

1 The Moving Defendants argue that Plaintiffs’ allegations are insufficient to state the
2 Lanham Act claims against them. They argue that Plaintiffs “fail to allege that Mohrfeld
3 or Select were using [Petconnect’s] Trademark.” (Doc. No. 137 at 6.) And that “[w]ithout
4 any actual allegations toward Mohrfeld and Select, these Moving Defendants are unable to
5 be fairly apprised” of the claims being made against them. (Id. at 7.) Moving Defendants
6 assert that the SAC is devoid of any allegations that they owned a pet store in California,
7 sold dogs in California, or created “Pet Connect Rescue, Inc.” (Id. at 8.) They also
8 downplay Plaintiffs’ allegations that dogs labeled as “Pet Connect Rescue” dogs were
9 transported in a truck owned by Select. (SAC ¶ 46.) Moving Defendants consider
10 Plaintiffs to “simply allege[] the use of a truck,” and not the use of Petconnect’s trademark.
11 (Doc. No. 137 at 6.)

12 On a motion to dismiss, the Court is required to accept Plaintiffs’ factual allegations
13 as true. Plaintiffs detail a relationship between Defendant Ray Rothman, a purported
14 creator of the “fake” Pet Connect Rescue, Inc., and the Moving Defendants. (SAC ¶¶ 3-
15 5.) Ray Rothman is a manger for Select. (Id. ¶ 5.) Ray and Alysia Rothman purportedly
16 created Pet Connect Rescue, Inc. (Id. ¶ 22.) Select is “one of the largest brokers of puppy
17 mill puppies in the United States.” (Id.) The Rothman Defendants stated that dogs labeled
18 with “Pet Connect Rescue” were delivered to pet stores in a truck owned by Select. (Id. ¶
19 46.) A Select truck was observed delivering to a pet store in California owned by
20 Defendants David and Veronica Salinas (the “Salinas Defendants”). (Id. ¶¶ 37, 46.) This
21 store sells dogs from “puppy mills” that are fraudulently labeled as rescue dogs. (Id. ¶ 37.)
22 The Salinas Defendants allegedly created Defendant SoCal Puppy after the “Pet Connect
23 Rescue” came under scrutiny. (Id. ¶¶ 21, 98.) The website for SoCal Puppy mimics the
24 “fake” Pet Connect Rescue, Inc.’s website. (Id. ¶ 99.) The SoCal Puppy website either
25 currently or formerly listed Plaintiffs Lucky Pup and SCDR in order to create a false
26 endorsement or association. (Id. ¶¶ 99-116.)

27 These alleged commercial activities are sufficient to plead Plaintiffs’ theory of
28 infringement, i.e., that Defendants are breeding non-rescue dogs outside of California,

1 importing those dogs to California, and using the Organizational Plaintiffs' marks to
2 fraudulently sell those dogs as rescues. Plaintiffs are not required to plead that the Moving
3 Defendants sold mislabeled dogs in California or created "Pet Connect Rescue, Inc." to
4 state claims for trademark infringement and false advertising. Plaintiffs allege that the
5 Moving Defendants used the marks in their commercial activities in violation of the
6 Lanham Act and pled facts that support that contention. The Moving Defendants are on
7 notice that Plaintiffs allege they participated in this scheme by supplying and transporting
8 non-rescue dogs that are mislabeled and resold under misrepresentations that infringe on
9 Plaintiffs' marks. Thus, Plaintiffs have alleged sufficient facts to state claims under the
10 Lanham Act. The Moving Defendants' arguments are better suited for a motion for
11 summary judgment when the record is more fully developed.

12 **B. State Law Claims**

13 **a. Moving Defendants' Standing Challenge**

14 The Moving Defendants argue that the Organizational Plaintiffs do not have
15 standing to bring a claim under California's Unfair Competition Law ("UCL") because
16 they have failed to show a sufficient diversion of resources. Plaintiffs carry the burden of
17 establishing Article III standing by "demonstrating that (1) they have suffered an injury-
18 in-fact, meaning an injury that it is "concrete and particularized" and "actual and
19 imminent," (2) the alleged injury is "fairly traceable" to the defendants' conduct, and (3) it
20 is "more than speculative" that the injury is judicially redressable. E. Bay Sanctuary
21 Covenant v. Trump, 950 F.3d 1242, 1265 (9th Cir. 2020) (citing Lujan v. Defenders of
22 Wildlife, 504 U.S. 555, 560-61 (1992)). An organization may demonstrate that it has direct
23 standing to sue by "establish[ing] that the defendant's behavior has frustrated its mission
24 and caused it to divert resources in response to that frustration of purpose." E. Bay
25 Sanctuary Covenant, 950 F.3d at 1265 (citing Fair Hous. of Marin v. Combs, 285 F.3d 899,
26 905 (9th Cir. 2002)); see also Havens Realty Corp. v. Coleman, 455 U.S. 363, 379 (1982).

27 On two prior occasions, this Court concluded that the Organizational Plaintiffs had
28 standing to bring their claims for trademark infringement. (Doc. No. 48 at 7; Doc. No. 54

1 at 6-7.) The Court held that the Organizational Plaintiffs sufficiently alleged that they had
2 diverted resources to correcting consumer confusion regarding the origin of dogs labeled
3 “Pet Connect Rescue.” Plaintiffs claimed that they “divert[ed] their limited organizational
4 resources, including staff time, to responding to members of the public who were deceived
5 by Defendants, and each of them, into believing puppies sold by Defendants are ‘rescue
6 puppies’ from ‘Pet Connect Rescue.’” (SAC ¶ 126.) Defendants allegedly referred
7 customers to Plaintiff Petconnect’s website and phone number. (Id. ¶ 72.) The
8 Organizational Plaintiffs incurred economic injury when they fielded inquiries from the
9 public as the organizations’ staff would otherwise be dedicated to the organizations’
10 ordinary activities. See, e.g., Fair Hous. of Marin., 285 F.3d at 905.

11 Moving Defendants argue that this Court should now reach a different conclusion as
12 to Plaintiffs’ standing because of the Ninth Circuit’s recent opinion in Friends of the Earth
13 v. Organic Consumer Ass’n, 992 F.3d 939 (9th Cir. 2021). In Friends of the Earth, the
14 appellate panel affirmed a district court’s holding that the organizational plaintiffs lacked
15 standing because, even after discovery, they were unable to demonstrate a diversion of
16 resources. The organizational plaintiffs only produced a sliver of contradictory and
17 uncorroborated evidence supporting diversion of resources. Id. at 943-45. Unlike the
18 plaintiffs in Friends of the Earth, the Organizational Plaintiffs have met their burden to
19 sufficiently allege the diversion of resources for standing at this stage of litigation. The
20 Moving Defendants’ arguments are better suited for a motion for summary judgment when
21 the record is more fully developed.

22 **b. Moving Defendants’ Rule 12(b)(6) Challenges**

23 The Moving Defendants argue that Plaintiffs do not allege facts sufficient to state
24 claims under the UCL, under the Consumer Legal Remedies Act (“CLRA”), for fraudulent
25 deceit, and for trademark infringement and unfair competition under California common
26 law. (Doc. No. 137 at 9-16.) The Court disagrees.

27 Some of Plaintiffs’ state law claims sound in fraud. Under Fed. R. Civ. P. 9(b),
28 claims sounding in fraud are subject to heightened pleading requirements. “In alleging

1 fraud or mistake, a party must state with particularity the circumstances constituting fraud
2 or mistake. Malice, intent, knowledge, and other conditions of a person’s mind may be
3 alleged generally.” Fed. R. Civ. P. 9(b). Averments of fraud must be accompanied by “the
4 who, what, when, where, and how” of the misconduct charged. Vess v. Ciba-Geigy Corp.
5 USA, 317 F.3d 1097, 1106 (9th Cir. 2003). The allegations “must be specific enough to
6 give defendants notice of the particular misconduct which is alleged to constitute the fraud
7 charged.” Swartz v. KPMG LLP, 476 F.3d 756, 764 (9th Cir. 2007). But, where several
8 defendants are sued in connection with an alleged fraudulent scheme, “there is no absolute
9 requirement that . . . the complaint must identify false statements made by each and every
10 defendant.” Id. Further, “Rule 9(b)’s particularity requirement applies to state-law causes
11 of action.” Vess, 317 F.3d at 1103. This includes claims for violations of the CLRA and
12 UCL. Kearns v. Ford Motor Co., 567 F.3d 1120, 1125 (9th Cir. 2009).

13 **i. Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, et seq.**

14 California’s UCL prohibits “any unlawful, unfair or fraudulent business act or
15 practice” and any “unfair, deceptive, untrue, or misleading advertising” Cal. Bus. &
16 Prof. Code § 17200. Its coverage is “sweeping, embracing anything that can properly be
17 called a business practice and that at the same time is forbidden by law.” Cel-Tech
18 Commc’ns, Inc. v. Los Angeles Cellular Tel. Co., 973 P.2d 527, 539 (Cal. 1999) (internal
19 citations and quotation marks omitted). By prohibiting unlawful practices, the UCL
20 “borrows violations of other laws and treats them as unlawful practices that the unfair
21 competition law makes independently actionable.” De La Torre v. CashCall, Inc., 422 P.3d
22 1004, 1012 (Cal. 2018) (internal citations and quotation marks omitted).

23 Plaintiffs allege sufficient facts to state a UCL claim. Plaintiffs allege that
24 Defendants committed unlawful business practices by violating California law prohibiting
25 the sale of dogs unless the dogs are obtained from an animal shelter, rescue group, or animal
26 control agency. Cal. Health & Safety Code § 122354.5(a). A qualifying rescue group
27 cannot “breed animals [or] obtain animals in exchange for payment or compensation from
28 any person that breeds or brokers animals.” Id. § 122354.5(e). Plaintiffs allege that

1 Defendants violate these provisions by selling non-rescue dogs for compensation. The
2 Moving Defendants argue that Plaintiffs failed to allege facts establishing (i) that the
3 Moving Defendants own or operate pet stores in California and (ii) that the Moving
4 Defendants were involved in the sale of a non-rescue dog to Plaintiff Gonzalez. (Doc. No.
5 137 at 9-10, 12-13.) But Plaintiffs allegations are sufficient. Plaintiffs allege that the
6 Moving Defendants violated the UCL by brokering non-rescue dogs and transporting non-
7 rescue dogs labeled as “Pet Connect Rescue” dogs to California pet stores for sale. (SAC
8 ¶¶ 5, 46.) Further, Plaintiffs allege that the Moving Defendants employ Defendant Ray
9 Rothman, the individual that created the fake “Pet Connect Rescue.” (*Id.* ¶¶ 5, 22.)
10 Plaintiff Gonzalez alleges that she purchased a non-rescue dog labeled as “Pet Connect
11 Rescue” from a California pet store. (*Id.* ¶ 147.) Plaintiffs’ allegations that the Moving
12 Defendants participated in an unlawful fraudulent scheme are sufficiently clear and specific
13 to place the Moving Defendants on notice. Accordingly, the Court declines to dismiss
14 Plaintiffs’ UCL claims. The Moving Defendants’ arguments are better suited for a motion
15 for summary judgment when the record is more fully developed.

16 **ii. Consumer Legal Remedies Act, Cal. Civ. Code § 1750, et seq., and**
17 **Fraudulent Deceit**

18 Plaintiff Gonzalez alleges sufficient facts to state claims for fraudulent deceit and
19 violations of the CLRA. To demonstrate that a party committed fraud, a plaintiff must
20 show: “(a) misrepresentation (false representation, concealment, or nondisclosure); (b)
21 knowledge of falsity (or ‘scienter’); (c) intent to defraud, i.e., to induce reliance; (d)
22 justifiable reliance; and (e) resulting damage.” *Lazar v. Superior Court*, 909 P.2d 981, 984
23 (Cal. 1996). California’s CLRA prohibits “unfair or deceptive acts or practices[,]”
24 including “(1) [p]assing off goods or services as those of another[;] (2) [m]isrepresenting
25 the source, sponsorship, approval, or certification of goods or services[;] (3)
26 [m]isrepresenting the affiliation, connection, or association with, or certification by,
27 another[;] . . . (5) [r]epresenting that goods . . . have sponsorship [or] approval . . . they do
28 not have . . .” Cal. Civ. Code § 1770.

1 Plaintiffs allege that the Moving Defendants have brokered non-rescue dogs and
2 transported non-rescue dogs labeled as “Pet Connect Rescue” to a California pet store.
3 (SAC ¶¶ 5, 46.) Plaintiffs also allege that the Moving Defendants employ Defendant Ray
4 Rothman, the individual who purportedly created the fake “Pet Connect Rescue” label and
5 entity. (Id. ¶¶ 5, 22.) Gonzalez purchased a dog labeled “Pet Connect Rescue” from a
6 California pet store on December 15, 2019 for \$2,007.27. (Id. ¶ 147.) The dog came with
7 paperwork stating its source was “Pet Connect Rescue, Inc.” (Id. ¶ 149.) Gonzalez
8 intended to purchase a rescue dog and would not have made this purchase if she knew the
9 dog came from a non-rescue source. (Id. ¶ 148.) She relied on Defendants’ representations
10 and believed she was purchasing a “rescue puppy.” (Id. ¶¶ 164-67.) Gonzalez claims to
11 have incurred thousands of dollars in veterinary bills due to illness caused by the poor
12 conditions in which her dog was bred, transported, and stored prior to sale. (Id. ¶ 167.)

13 Moving Defendants argue that these allegations are insufficient to state a claim
14 against them for fraudulent deceit and violation of the CLRA. Once again, Moving
15 Defendants point to Plaintiffs’ failure to allege that they owned or operated a pet store in
16 California. (Doc. No. 137 at 13.) They also argue that Plaintiffs make no allegations of
17 when, where, or what the Moving Defendants represented specifically to Gonzalez. (Id. at
18 14.) Moving Defendants argue that they are “entitled to know what representations they
19 allegedly made specifically to Plaintiff Gonzalez.” (Id.)

20 The Court disagrees. Where several defendants are sued in connection with an
21 alleged fraudulent scheme, “there is no absolute requirement that . . . the complaint must
22 identify false statements made by each and every defendant.” Swartz, 476 F.3d at 764
23 (emphasis omitted). Plaintiffs allege sufficient facts to state a claim that the Moving
24 Defendants engaged in a fraudulent scheme to sell non-rescue dogs as rescue dogs under
25 the “Pet Connect Rescue” name. Plaintiffs alleged specific activities by the Moving
26 Defendants concerning dogs labeled “Pet Connect Rescue” and that Gonzalez purchased a
27 dog labeled as “Pet Connect Rescue.” These factual allegations are sufficient to put the
28 Moving Defendants on notice of the fraudulent deceit and CLRA claims against them.

1 **iii. Accounting**

2 The Organizational Plaintiffs bring a common law claim for an accounting against
3 the Defendants. The Moving Defendants argue that the Organizational Plaintiffs fail to
4 adequately allege the necessary elements for an accounting and that the SAC lacks
5 sufficient allegations to state the underlying state and federal claims. (Doc. No. 137 at 15.)

6 A right to an accounting is derivative; it must be based on other claims. Janis v. Cal.
7 State Lottery Com., 68 Cal. App. 4th 824, 833 (Cal. Ct. App. 1998). As stated elsewhere
8 in this Order, Organizational Plaintiffs adequately pled the underlying state and federal
9 claims at the motion to dismiss stage. The Court will not dismiss Organizational Plaintiffs’
10 claim for an accounting, but reserves the right at summary judgment to deny the claim if
11 the facts and law so justify.

12 **iv. Trademark Infringement and Unfair Competition**

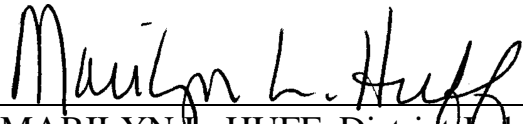
13 Organizational Plaintiffs bring common law claims for trademark infringement and
14 unfair competition against all Defendants. The Moving Defendants seek to dismiss these
15 claims on the same basis that they sought to dismiss Plaintiffs’ Lanham Act claims, most
16 notably, that the Plaintiffs did not allege that the Moving Defendants used the trademarks.
17 (Doc. No. 137 at 16.) As explained elsewhere in this Order, Plaintiffs pled sufficient facts
18 to state claims for trademark infringement and unfair competition under the Lanham Act
19 against the Moving Defendants. As a result, the Court declines to dismiss Plaintiffs’
20 analogous common law claims. See Grey v. Campbell Soup Co., 650 F. Supp. 1166 (C.D.
21 Cal. 1986) (“The test for infringement of a federally registered mark under [under Section
22 32 of the Lanham Act], infringement of a common law trademark, unfair competition under
23 [Section 43(a) of the Lanham Act], and common law unfair competition involving
24 trademarks are the same[.]”)

1 **Conclusion**

2 For the foregoing reasons, the Court denies the Moving Defendants' motion to
3 dismiss. The Moving Defendants must file their answers to Plaintiffs' second amended
4 complaint on or before **December 8, 2021**.

5 **IT IS SO ORDERED.**

6 DATED: November 8, 2021

7 
8 MARILYN L. HUFF, District Judge
9 UNITED STATES DISTRICT COURT

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