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7 UNITED STATES DISTRICT COURT  
8 SOUTHERN DISTRICT OF CALIFORNIA  
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10 JAMIE ZELLER, and ANGELICA  
11 ALPERT,

12 Individually, and on Behalf of All Others  
13 Similarly Situated,

14 Plaintiffs,

15 v.

16 OPTAVIA, LLC and MEDIFAST, INC.,

17 Defendants.

Case No.: 22-cv-434-DMS-MSB

**ORDER GRANTING DEFENDANT  
MEDIFAST, INC.'S AMENDED  
MOTION TO DISMISS**

18 This case comes before the Court on Defendant Medifast, Inc.'s ("Defendant" or  
19 "Medifast") motion to dismiss Plaintiffs Jamie Zeller's and Angelica Alpert's ("Plaintiffs")  
20 claims for violation of a number of California consumer protection laws and related  
21 common law claims. Defendant moves to dismiss Plaintiffs' claims under Federal Rule of  
22 Civil Procedure 12(b)(2) on grounds that Plaintiffs lack personal jurisdiction over  
23 Medifast. The motion is fully briefed and submitted. For the reasons stated below, the  
24 Court **GRANTS** Defendant's motion.

25 **I.**

26 **BACKGROUND**

27 The Optavia Premier Program ("Optavia Premier" or "Premier Program") is an auto-  
28 ship program for Optavia meal plan products. Participants can enroll in the Premier

1 Program either directly online through Optavia’s website or over the phone through an  
2 Optavia representative (“Optavia coach”). Optavia customers who are enrolled in the  
3 Premier Program are charged for monthly recurring shipments, but do not pay extra to join  
4 the program. Plaintiffs claim they were auto-enrolled in the Premier Program without their  
5 knowledge or consent. (ECF No. 10 at 16-17.)

6 On April 1, 2022, Plaintiffs filed a Complaint against Defendants Optavia LLC and  
7 Medifast, Inc. (“Defendants”) in a putative class action. Plaintiffs allege Defendants  
8 violated the California Automatic Renewal Law, Unfair Competition Law, Consumer  
9 Legal Remedies Act, and California Weight Loss Contract Law. Plaintiffs also claim  
10 Defendants committed fraud and were unjustly enriched. On May 16, 2022, Plaintiffs filed  
11 an amended complaint against both Defendants (“First Amended Complaint” or “FAC”).  
12 On July 1, 2022, Defendant Medifast filed a Motion to Dismiss Plaintiff’s Complaint, and  
13 subsequently filed an Amended Motion to Dismiss on July 11, 2022, based on lack of  
14 personal jurisdiction. The case was initially assigned to Judge Moskowitz and later  
15 transferred to the undersigned judge.

16 Plaintiffs bring six putative class action claims against Defendants. First, Plaintiffs  
17 claim that Defendants charged consumers for automatically renewing weight loss products  
18 without obtaining explicit consent for the ongoing shipments and in violation of pre-  
19 purchase and post-purchase disclosure requirements under the California Automatic  
20 Renewal Law, which is part of California’s False Advertising Law. (ECF No. 1 at 2.)  
21 Second and third, Plaintiffs claim that Defendants’ practices constitute “unfair  
22 competition” and “unlawful, unfair, and deceptive conduct” in violation of the Unfair  
23 Competition Law and an “unfair or deceptive act[] or practice[] undertaken . . . in a  
24 transaction intended to result or which results in the sale or lease of goods or services to  
25 any consumer” under the Consumer Legal Remedies Act (ECF No. 1 at 22-24.) Fourth,  
26 Plaintiffs argue their subscriptions with Optavia constitute a “weight loss contract,” which  
27 did not contain required pre- and post-purchase disclosures and were unlawful, willful, or  
28 fraudulent under California’s Weight Loss Contract Law. (ECF No. 1 at 25-26.) Fifth,

1 Plaintiffs claim Defendants knowingly and intentionally committed fraud by making  
2 “misleading statements and/or omissions in the marketing and billing of its monthly  
3 subscriptions” and made these statements “maliciously, oppressively, deliberately, with  
4 intent to defraud, and in reckless disregard of Plaintiff’s rights and well-being.” (ECF No.  
5 1 at 27-28.) Sixth, Plaintiffs claim Defendants received “a direct and unjust benefit” at  
6 Plaintiffs’ expense and as a result of Defendants’ wrongful conduct. (ECF No. 28.)

7 Plaintiffs request various forms of relief including but not limited to certification of  
8 their claims as a putative class action, injunctive relief, equitable relief, and compensatory  
9 and punitive damages. (ECF No. 29.) In response, Defendant filed the present motion.

## 10 II.

### 11 LEGAL STANDARD

12 On a motion to dismiss, the plaintiff bears the burden “to establish the district court’s  
13 personal jurisdiction over the defendant.” *Harris Rutsky & Co. Ins. Servs., Inc. v. Bell &*  
14 *Clements Ltd.*, 328 F.3d 1122, 1128-29 (9th Cir. 2003). “Where, as here, the defendant’s  
15 motion is based on written materials rather than an evidentiary hearing, the plaintiff need  
16 only make a prima facie showing of jurisdictional facts to withstand the motion to dismiss.”  
17 *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1223 (9th Cir. 2011) (citing  
18 *Brayton Purcell LLP v. Recordon & Recordon*, 606 F.3d 1124, 1127 (9th Cir. 2010)).  
19 Because “California’s long-arm statute allows courts to exercise personal jurisdiction over  
20 defendants to the extent permitted by the Due Process Clause of the United States  
21 Constitution[,]” this Court ““need only determine whether personal jurisdiction in this case  
22 would meet the requirements of due process.”” *Id.* at 1129 (citations omitted). “For a court  
23 to exercise personal jurisdiction over a nonresident defendant consistent with due process,  
24 that defendant must have ‘certain minimum contacts’ with the relevant forum ‘such that  
25 the maintenance of the suit does not offend traditional notions of fair play and substantial  
26 justice.’” *CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d 1066, 1073-74 (9th Cir.  
27 2011) (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 216 (1945)) (quotations  
28 omitted).

1 “In resolving a Rule 12(b)(2) motion, the court may consider evidence outside the  
2 pleadings, including affidavits and other materials submitted on the motion.” *Lindora,*  
3 *LLC v. Isagenix Int’l, LLC*, 198 F. Supp. 3d 1127, 1135 (S.D. Cal. 2016) (citing *Daimler*  
4 *AG v. Bauman*, 571 U.S. —, 134 S.Ct. 746, 752, 187 L.Ed.2d 624 (2014)). A plaintiff  
5 cannot “simply rest on the bare allegations of the complaint, but uncontroverted allegations  
6 in the complaint must be taken as true.” *Id.* at 1136 (citing *Mavrix Photo*, 647 F.3d at 1223  
7 (quotation omitted)). The Ninth Circuit has established a three-prong test for determining  
8 whether a party is subject to specific personal jurisdiction:

9 “(1) The non-resident defendant must purposefully direct his activities or  
10 consummate some transaction with the forum or resident thereof; or perform  
11 some act by which he purposefully avails himself of the privilege of  
12 conducting activities in the forum, thereby invoking the benefits and  
13 protections of its laws;

14 (2) the claim must be one which arises out of or relates to the defendant’s  
15 forum-related activities; and

16 (3) the exercise of jurisdiction must comport with fair play and substantial  
17 justice, i.e., it must be reasonable.”

18 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004) (quoting  
19 *Lake v. Lake*, 817 F.2d 1416, 1421 (9th Cir. 1987)). For the reasons set forth below,  
20 Plaintiffs have failed to establish specific jurisdiction over Medifast.

### 21 III.

### 22 DISCUSSION

23 Defendant argues that the Court lacks both general and specific personal jurisdiction  
24 over Medifast. In this case, Plaintiffs do not challenge, and therefore the Court will not  
25 address, Defendant’s argument that the Court lacks general jurisdiction over Defendant.  
26 The key question is whether the allegations in Plaintiffs’ FAC and the evidence submitted  
27 by Plaintiffs in opposition to Defendant’s motion establish specific personal jurisdiction  
28 over Medifast. Defendant argues that Plaintiffs focus solely on the first prong of the Ninth  
Circuit’s test, and even then, a single conclusory allegation in the FAC that Defendant

1 “purposefully marketed and sold Optavia products to consumers in California, including  
2 Plaintiffs” is not sufficient to establish personal jurisdiction. (ECF No. 27 at 2, ¶ 10.)  
3 Defendant further argues that Plaintiffs fail to present any evidence that Medifast had any  
4 presence in California or that it took any action in California.

5 As an initial matter, Defendant argues Plaintiffs inappropriately resort to “group  
6 pleading” in their FAC by lumping Defendants Medifast and Optavia together, and alleging  
7 in conclusory terms that “the Court has personal jurisdiction over Defendants because  
8 Defendants purposefully marketed and sold Optavia products to consumers in California,  
9 including Plaintiffs.” (ECF No. 27 at 2, 10.) Plaintiffs claim their allegation against  
10 Medifast is “classic purposeful availment” and reject the notion that the FAC constitutes  
11 improper group pleading. To satisfy Federal Rule of Civil Procedure 8, a complaint must  
12 contain enough details to give a defendant fair notice of its alleged role in the case. *See*  
13 *S.W. by & through Wright v. Lincoln Mil. Prop. 1 Mgmt., Inc.*, No. 21-CV-00493-H-MDD,  
14 2021 WL 1579046, at \*3 (S.D. Cal. Apr. 22, 2021). If fair notice exists, group pleading  
15 itself is not fatal to a complaint. *Id.* However, “mere ‘bare bones’ assertions of minimum  
16 contacts with the forum or legal conclusions unsupported by specific factual allegations  
17 will not satisfy a plaintiff’s pleading burden.” *Swartz v. KPMG LLP*, 476 F.3d 756, 766  
18 (9th Cir. 2007) (citing *Alperin v. Vatican Bank*, 410 F.3d 532, 539 n. 1 (9th Cir.2005);  
19 *Butcher’s Union Local No. 498, United Food and Commercial Workers v. SDC Inv., Inc.*,  
20 788 F.2d 535, 540 (9th Cir.1986)).

21 Here, the FAC clearly describes Plaintiffs’ interactions with Optavia coaches to  
22 establish specific personal jurisdiction over Optavia, but the allegations do not make clear  
23 Medifast’s role, if any, in the transactions at issue. Plaintiffs do not argue an agency or  
24 alter ego approach to jurisdiction over Medifast. Rather, Plaintiffs argue that “Medifast  
25 itself is directly responsible for marketing and selling the accused products to Plaintiffs and  
26 other Californians[.]” (ECF No. 22 at 1; ECF No. 10 at ¶ 10), and is therefore subject to  
27 jurisdiction in this forum.  
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1 Plaintiffs carry the burden to demonstrate personal jurisdiction over Defendant. *See*  
2 *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1154 (9th Cir. 2006) (citing *Harris Rutsky &*  
3 *Co. Ins. Servs., Inc. v. Bell & Clements Ltd.*, 328 F.3d 1122, 1128–29 (9th Cir.2003)).  
4 Plaintiffs have not met that burden. While the FAC makes clear the ways in which  
5 Plaintiffs interacted with Optavia, it is silent with respect to Medifast’s involvement.  
6 Absent allegations regarding Medifast’s conduct with Plaintiffs, Medifast’s role in causing  
7 the harm Plaintiffs allege is unclear.

8 Under the Ninth’s Circuit’s three-prong test, Plaintiffs must first show that the  
9 defendant “perform[ed] some act by which he purposefully avails himself of the privilege  
10 of conducting activities in the forum.” *Schwarzenegger v. Fred Martin Motor Co.*, 374  
11 F.3d 797, 802 (9th Cir. 2004) (quoting *Lake v. Lake*, 817 F.2d 1416, 1421 (9th Cir. 1987)).  
12 Plaintiffs argue their allegation that both Defendants Optavia and Medifast “purposefully  
13 marketed and sold Optavia products to consumers in California, including Plaintiffs” is  
14 sufficient to establish purposeful availment. (ECF No. 22 at 2.) Medifast correctly argues  
15 that the allegation is conclusory and lacks factual support.

16 In addition, Defendant argues that Plaintiffs’ allegations do not satisfy the second  
17 prong of the Ninth Circuit’s test, *i.e.*, that their claims arise from Medifast’s purported  
18 marketing and selling of Optavia products to consumers in California. The Court agrees.  
19 To satisfy purposeful availment, a plaintiff typically must show evidence of the defendant’s  
20 actions in a forum, such as executing or performing a contract there. *See Schwarzenegger*,  
21 374 F.3d at 802 (stating the second prong requires that the claim “arises out of or relates to  
22 the defendant’s forum-related activities.”). Plaintiffs neither point to any factual  
23 allegations to illustrate Medifast’s activity in California nor set forth an agency or alter ego  
24 theory to support their jurisdictional conclusion. Further, the claims at issue principally  
25 concern purported violations of consumer protection laws, but Plaintiffs fail to include any  
26 facts regarding Medifast’s individual role in violating those laws. Defendant notes that in  
27 the 16-page “Facts” section of the FAC, wherein Plaintiffs set out the activities giving rise  
28 to their alleged claims, Medifast is not once mentioned. Thus, the FAC fails to allege facts

1 giving rise to personal jurisdiction over Medifast as there are no allegations that suggest  
2 Plaintiffs' claims "arise out of or relate to" Medifast's contacts in California.

3 Furthermore, Plaintiffs' extra-pleading materials do not establish specific personal  
4 jurisdiction over Medifast. To support a prima facie showing of jurisdictional facts,  
5 Plaintiffs provided a copy of Medifast's 2021 10-K, an excerpt of a Medifast Q4 2021  
6 Investor Presentation, and copies of public LinkedIn profiles for persons who list past or  
7 current positions at "Medifast, Inc." (ECF No. 22-4, Ex. 1-3.)<sup>1</sup> Plaintiffs contend that these  
8 extra-pleading materials support their allegation that Medifast is directly responsible for  
9 marketing and selling the accused products to Plaintiffs and other Californians. (ECF No.  
10 22 at 1.)

11 Plaintiffs point out that Medifast's 10-K opens by stating: "Medifast, Inc.  
12 ('Medifast,' the 'Company,' 'we' or 'us') is the global company behind one of the fastest-  
13 growing health and wellness communities, OPTAVIA ...." (ECF No. 22, Ex. 1 at 4.)  
14 Plaintiffs also argue that Medifast's 10-K touts "OPTIVIA-branded nutritional products  
15 we [Medifast] market[,]" (*id.*, Ex. 1 at 8), and describes "our [Medifast's] OPTAVIA  
16 Premier service[,]" which is the accused autorenewal program at issue. Further, in support  
17 of their argument that Medifast is doing business in California, Plaintiffs note that the 10-  
18 K references the "California Consumer Privacy Act" among other federal and state laws as  
19 potentially having a "significant[] affect [on] our [Medifast's] business." (*Id.*, Ex. 1 at 21).  
20 Finally, Plaintiffs argue Medifast's Investor Presentations (Exhibit 3) evidence  
21 Defendant's "role in marketing and selling the accused products" through references  
22 therein to "subscription[s]," "coaches", "shipping[.]" (ECF No. 22 at 5.)

23 Defendant points out that the filing of consolidated Form 10-Ks by parent companies  
24 which include their subsidiaries' activities is a "common" and "standard business practice."  
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27 <sup>1</sup> Defendant objects to Plaintiffs' Exhibit 3 (LinkedIn profiles) as unauthenticated and  
28 inadmissible hearsay. The objections are sustained and Exhibit 3 is not considered on the  
present motion.



1 (ECF No. 27 at 8 (citing cases).) Defendant argues that such 10-K filings are financial  
2 reports that are intended to provide a comprehensive summary of the *financial performance*  
3 of a parent and its subsidiary companies. Accordingly, Defendant argues the 10-K filing  
4 at issue is “not intended to, and do[es] not, establish that Medifast—as opposed to one of  
5 its subsidiaries—conducted a certain activity.” (ECF No. 27 at 7.) In support, Defendant  
6 cites *J.L.B. Equities, Inc. v. Ocwen Financial Corp.*, 131 F. Supp. 2d 544, 550 (S.D.N.Y.  
7 2001) (stating “consolidated financial reporting is typical in a parent-subsidiary  
8 relationship,” and holding the fact that parent company has consolidated its annual report  
9 with its subsidiary was insufficient to confer personal jurisdiction on the parent). The Court  
10 agrees with the reasoning of *J.L.B. Equities*. The 10-K filing at issue references  
11 consolidated activities, but does not establish that Medifast—as opposed to Optavia—  
12 transacted in California, let alone with Plaintiffs. *See also Sonora Diamond Corp. V.*  
13 *Super. Ct.*, 83 Cal. App. 4th 523, 533 (2000) (stating “consolidated reporting is standard  
14 business practice and will not support jurisdiction in the absence of evidence establishing  
15 an agency relationship.”).

16 The Investor Presentations fare no better. They too reference business activities of  
17 parent and subsidiary, but they do not show that Medifast itself engaged in any particular  
18 activity in California. *See Bauman v. DaimlerChrysler AG*, 2005 WL 3157472, \*6 (N.D.  
19 Cal. 2005) (holding that a corporate brochure, which included a letter from the chairman  
20 of its parent company stating that the brochure highlights “our North American activities,”  
21 did not establish minimum contacts with California of parent company as the brochure  
22 reflected consolidated activities in California). So it is here.<sup>2</sup>

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26 <sup>2</sup> While Medifast states it “has no involvement with any of the actions that form the basis  
27 of Plaintiffs’ claims[.]” (ECF No. 27 at 6 n. 2), the Court declines to further address the  
28 third prong (whether exercising jurisdiction over Medifast would be reasonable) because  
Plaintiffs have failed to meet their burden on the first two prongs of the test set out in  
*Schwarzenegger*, 374 F.3d at 802.




1 **III.**  
2 **CONCLUSION**

3 For these reasons, Defendant’s Motion to Dismiss is **GRANTED**. Plaintiffs may  
4 file an amended complaint addressing the foregoing deficiencies within 21 days of the  
5 filing of this Order.

6 **IT IS SO ORDERED.**

7 Dated: December 22, 2022

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10 Hon. Dana M. Sabraw, Chief Judge  
11 United States District Court  
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