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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 GovernmentGPT Incorporated,

10 Plaintiff,

11 v.

12 Axon Enterprise Incorporated, et al.,

13 Defendants.  
14

No. CV-24-01869-PHX-SMB

**ORDER**

15 Before the Court are Microsoft Corporation (“Microsoft”), Axon Enterprise Inc.  
16 (“Axon”), and Safariland LLC’s (“Safariland”) separate Motions to Dismiss (Doc. 90; Doc.  
17 106; Doc. 110; Doc. 111) Plaintiff GovernmentGPT Inc.’s (“GovGPT”) First Amended  
18 Complaint (“FAC”) (Doc. 74). The briefing is complete, and the Motions are ripe. Having  
19 reviewed the briefing and the relevant case law, the Court will grant Axon’s Motion, grant  
20 Microsoft’s Motion, and grant Safariland’s Motion to Dismiss for Lack of Personal  
21 Jurisdiction (Doc. 110) but deny Safariland’s Motion to Dismiss for Failure to State a  
22 Claim (Doc. 111) as moot.

23 **I. BACKGROUND**

24 Despite the FAC clocking in at just under one-hundred and ten pages, the  
25 background of this case is rather straightforward. In capsule form, this action arises from  
26 a series of alleged illegal acquisitions and anticompetitive agreements occurring between  
27 the named Defendants. (*See* Doc. 74.) Now, before describing the background of those  
28 claims, the Court will briefly discuss the procedural history of this case.

1           **A. Procedural History**

2           GovGPT and a group of now-excised Plaintiffs filed their Initial Complaint on July  
3 29, 2024. (Doc. 1.) They concurrently filed a Motion for Preliminary Injunction titled:  
4 “Emergency Motion for Immediate Order to Prohibit use of Axon Body 4 Cameras at  
5 Political Events,” citing the potential danger Quetcel “chips” housed in the Axon Body 4  
6 (the “AB4”). (Doc. 2 at 2.) Shortly after the filings, this Court set a telephonic status  
7 conference to discuss the Motion (Doc. 23). At that conference, the Court announced that  
8 it would forego a hearing and take the Motion under advisement. (Doc. 51.)

9           While the Court was considering the request for a preliminary injunction, Axon and  
10 Microsoft filed Motions to Dismiss the Initial Complaint. (Doc. 66; Doc. 67; Doc. 68.)  
11 Shortly thereafter, the Court denied GovGPT’s Motion for Preliminary Injunction (Doc.  
12 2), finding that the Motion, the supporting memoranda, and the initial Complaint failed to  
13 support ordering the requested relief. (*See* Doc. 71.) In that Order, the Court scrutinized  
14 GovGPT’s allegations about the Quetcel “chips,” finding them to be unsubstantiated. (*See*  
15 *id.*) There, the Court also ordered GovGPT and former Plaintiff Raj Abhyanker to appear  
16 for a hearing in which they needed to (1) justify the filing of the “emergency motion”  
17 absent any actual testing of the AB4 and (2) to support the repeated allegations that a  
18 hackable Quetcel “chip” is used in the AB4. (*Id.* at 11.)

19           At the hearing, the Court asked Mr. Abhyanker whether he had tested or specifically  
20 identified the presence of a Quetcel “chip” in the AB4 that was susceptible to hacking by  
21 the Chinese Communist Party. (Doc. 105 at 25–26.) Mr. Abhyanker responded, stating:

22           They are unidentified chips, not all of them are identified. Some of them are  
23 from Qualcomm, some are not identified, but there is an ESMT chip which  
24 has a label on that directly. If you look that up, directly up right now, it is a  
25 chip that’s made in the People’s Republic of China and Taiwan. And so it’s  
26 not true to say they’re all Quetcel chips. There is a whole bunch of other  
27 smaller chips underneath there—

28           . . . .

          Well, an integrated circuit board is what I called a chip, an integrated circuit  
board having chips thereon. I should have called it a module,

          . . . .

Taiwan is the People’s Republic of China, isn’t it?

1 (*Id.* at 26, 30.) These statements, among others, led the Court to find that the Quectel chip  
2 allegations and Emergency Motion were brought in bad faith. (*Id.* at 31–32.)  
3 Consequently, the Court sanctioned Mr. Abhyanker. (*Id.*)

4 Then, on September 22, 2024, GovGPT filed its FAC, which added Safariland as a  
5 Defendant and regurgitated many of the allegations in the Initial Complaint. (Doc. 74.)  
6 Safariland has filed two Motions to Dismiss the FAC, one for lack of personal jurisdiction  
7 and the other for failure to state a claim. (Doc. 110; Doc. 111.) Axon and Microsoft also  
8 filed new Motions to Dismiss for failure to state claim. (Doc. 106; Doc. 90.)

9 On December 20, 2024, GovGPT gave notice to the Court and Defendants of its  
10 intent to “Seek Motion before the Judicial Panel on Multidistrict Litigation to Consolidate  
11 and Transfer the Cases to One District,” (Doc. 123; Doc. 124), and sought a stay pending  
12 a panel decision (Doc. 144). The Court denied issuing a stay. (Doc. 144.) Defendants  
13 have opposed consolidating the case and have requested expedited consideration of the  
14 pending Motions to Dismiss. (Doc. 127; Doc. 131.) This Order follows Defendants’  
15 request. (Doc. 144.)

## 16 **B. The FAC**

### 17 1. The Parties

18 GovGPT is a Delaware corporation with its principal place of business in California.  
19 (Doc. 74 ¶ 4.) It is an early-stage startup that develops and markets artificial intelligence  
20 technologies, such as 360-degree body camera vests. (Doc. 74 ¶ 4.) The company also  
21 offers a digital evidence management system (“DEMS”), hostable on “AWS, Microsoft,  
22 Google Cloud, private storage, or other vendors.” (*Id.* ¶ 25.) It seeks to compete with  
23 Axon in the market for body-worn cameras (“BWCs”) and DEMS. (*See generally id.*)  
24 Although, GovGPT does not operate in the “Public Safety Video Integration and  
25 Management Platforms,” market but intends to compete directly with Axon at some  
26 undesignated future time. (*Id.* ¶ 25 n.2.)

27 Defendants in this case include Axon, Microsoft, and Safariland. Axon is a publicly  
28 traded Delaware Corporation with its principal place of business in Arizona. (*Id.* ¶ 5.)

1 Axon designs, manufactures, and sells, among other things, BWCs and DEMS. (*Id.*) The  
2 FAC claims that Axon supplies over 94% of American law enforcement agencies. (*Id.* ¶  
3 2.) Axon’s DEMS, Evidence.com, is an integrated software product that works in  
4 conjunction with Axon’s BWCs, including the AB4. (*Id.* ¶¶ 2, 109, 175.) Microsoft is a  
5 publicly traded technology company incorporated in Washington and maintains  
6 datacenters in El Mirage and Goodyear, Arizona. (*Id.* ¶ 6.) The FAC alleges that Axon  
7 exclusively uses Microsoft’s cloud platform, Microsoft Azure, to store footage uploaded  
8 to Axon’s Evidence.com platform. (Doc. 13 ¶ 5; Doc. 74 ¶ 41.) Safariland is a  
9 Delaware-organized limited liability company headquartered in Florida. (Doc. 74 ¶ 7.)  
10 The antitrust violations asserted against it in this case center around the 2018 sale to Axon  
11 of former Safariland subsidiary, VieVu, LLC (“VieVu”). (*Id.* ¶ 27.)

## 12 2. The Claims

13 GovGPT asserts the following claims for relief: (1) false advertising under the  
14 Lanham Act; (2) violation of Section 7 of the Clayton Act; (3) conspiracy to restrain trade  
15 in violation of Section 1 of the Sherman Act; (4) monopolization in violation of Section 2  
16 of the Sherman Act; (5) attempted monopolization in violation of Section 2 of the Sherman  
17 Act; (6) conspiracy to monopolize in violation of Section 2 of the Sherman Act; and (7)  
18 violation of California Unfair Competition Law (the “UCL”). (*See* Doc. 74.)

19 For the Lanham Act and UCL claims, GovGPT alleges that Axon makes several  
20 false or misleading statements on its “Responsibility” and “Principles” webpages. (*See id.*  
21 ¶¶ 152–191, 310–317.) Regarding the antitrust claims, GovGPT alleges that Axon violated  
22 the Clayton and Sherman Acts when it acquired Fusus, a real-time crime center (“RTCC”)  
23 company. (*See* Doc. 74 ¶¶ 200–205, 267–283.) Similarly, GovGPT alleges that both Axon  
24 and Safariland violated the Clayton and Sherman Acts when Safariland sold VieVu to  
25 Axon. (*See id.* ¶¶ 192–266, 284–309.) Additionally, GovGPT alleges that Axon and  
26 Microsoft violated the Sherman Act by entering an anticompetitive cloud services  
27 agreement in 2018. (*See id.* ¶¶ 231–248, 284–309.) Axon’s alleged violations are also  
28 based on the acquisitions and agreements having created a self-contained BWC and DEMS

1 ecosystem that prevents competitors from meaningfully participating the market. (*See*  
2 *generally id.*)

3 The FAC also asserts many of the same claims regarding the Quectel “chips” but  
4 now labels them “modules” and “components.” (*See, e.g., id.* ¶¶ 53–55, 58, 61, 154–157,  
5 213.) These claims echo the same concerns about the Chinese Community Party being  
6 able to exploit the Quectel “components” or “modules” to compromise national security.  
7 (*See, e.g., id.* ¶¶ 154–157, 164, 167, 213, 265, 311.) Like the Initial Complaint, the FAC  
8 does not allege that GovGPT has tested the “components” or “modules.” (*See id.*) Instead,  
9 GovGPT generally alleges that several congresspersons and persons testifying before  
10 Congress have noted the danger of Quectel IoT Modules (*See id.* ¶¶ 78–79), and that  
11 GovGPT “warned” Axon about the danger of Quectel chips. (*Id.* ¶ 85.)

## 12 **II. LEGAL STANDARD**

### 13 **A. Rule 12(b)(2)**

14 Personal jurisdiction refers to the power that a court has over the parties. This  
15 jurisdiction is proper when it is provided for by law and the exercise of jurisdiction  
16 comports with due process. *Walden v. Fiore*, 571 U.S. 277, 283 (2014). “Federal courts  
17 ordinarily follow state law in determining the bounds of their jurisdiction over persons.”  
18 *Daimler AG v. Bauman*, 571 U.S. 117, 125 (2014). Arizona has authorized its courts to  
19 exercise jurisdiction over persons “to the maximum extent permitted by . . . the United  
20 States Constitution.” Ariz. R. Civ. P. 4.2(a).

21 Due process requires that a defendant have at least “minimum contacts” with the  
22 forum state so that “maintenance of the suit does not offend traditional notions of fair play  
23 and substantial justice.” *Int’l Shoe Co. v. Wash.*, 326 U.S. 310, 316 (1945) (internal  
24 quotations omitted). “[T]he defendant’s conduct and connection with the forum State  
25 [must be] such that he should reasonably anticipate being haled into court there.”  
26 *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980). When analyzing  
27 sufficient minimum contacts, courts distinguish between general jurisdiction and specific  
28 jurisdiction. General jurisdiction exists when the defendant has “continuous and

1 systematic” contacts with the forum state, whereas specific jurisdiction exists when the  
2 controversy arises from or is related to the defendant’s contact with the forum state. *See*  
3 *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414–16 (1984). The  
4 court “employ[s] a three-part test to assess whether a defendant has sufficient contacts with  
5 the forum state” to establish specific personal jurisdiction:

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

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

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

11  
12 *Picot v. Weston*, 780 F.3d 1206, 1211 (9th Cir. 2015). “The plaintiff bears the burden of  
13 satisfying the first two prongs of the test.” *Schwarzenegger v. Fred Martin Motor Co.*, 374  
14 F.3d 797, 802 (9th Cir. 2004). If the plaintiff satisfies the first two prongs, “the burden  
15 then shifts to the defendant to ‘present a compelling case’ that the exercise of jurisdiction  
16 would not be reasonable.” *Id.* (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462,  
17 477 (1985)).

### 18 **B. Rule 12(b)(6)**

19 To survive a Rule 12(b)(6) motion for failure to state a claim, a complaint must meet  
20 the requirements of Rule 8(a)(2). Rule 8(a)(2) requires a “short and plain statement of the  
21 claim showing that the pleader is entitled to relief,” so that the defendant has “fair notice  
22 of what the . . . claim is and the grounds upon which it rests.” *Bell Atl. Corp. v. Twombly*,  
23 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). This exists  
24 if the pleader sets forth “factual content that allows the court to draw the reasonable  
25 inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556  
26 U.S. 662, 678 (2009). “Threadbare recitals of the elements of a cause of action, supported  
27 by mere conclusory statements, do not suffice.” *Id.*

28 Dismissal under Rule 12(b)(6) “can be based on the lack of a cognizable legal theory

1 or the absence of sufficient facts alleged under a cognizable legal theory.” *Balistreri v.*  
2 *Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988). A complaint that sets forth a  
3 cognizable legal theory will survive a motion to dismiss if it contains sufficient factual  
4 matter, which, if accepted as true, states a claim to relief that is “plausible on its face.”  
5 *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). Plausibility does not equal  
6 “probability,” but requires “more than a sheer possibility that a defendant has acted  
7 unlawfully.” *Id.* “Where a complaint pleads facts that are ‘merely consistent with’ a  
8 defendant’s liability, it ‘stops short of the line between possibility and plausibility.’” *Id.*  
9 (quoting *Twombly*, 550 U.S. at 557).

10 In ruling on a Rule 12(b)(6) motion to dismiss, the well-pled factual allegations are  
11 taken as true and construed in the light most favorable to the nonmoving party. *Cousins v.*  
12 *Lockyer*, 568 F.3d 1063, 1067 (9th Cir. 2009). However, legal conclusions couched as  
13 factual allegations are not given a presumption of truthfulness, and “conclusory allegations  
14 of law and unwarranted inferences are not sufficient to defeat a motion to dismiss.” *Pareto*  
15 *v. FDIC*, 139 F.3d 696, 699 (9th Cir. 1998). A court ordinarily may not consider evidence  
16 outside the pleadings in ruling on a Rule 12(b)(6) motion to dismiss. *See United States v.*  
17 *Ritchie*, 342 F.3d 903, 907 (9th Cir. 2003). “A court may, however, consider  
18 materials—documents attached to the complaint, documents incorporated by reference in  
19 the complaint, or matters of judicial notice—without converting the motion to dismiss into  
20 a motion for summary judgment.” *Id.* at 908.

### 21 **C. Rule 9(b)**

22 Claims sounding in fraud or mistake are subject to the heightened pleading  
23 requirements of Federal Rule of Civil Procedure 9(b), which requires that a plaintiff  
24 alleging fraud “must state with particularity the circumstances constituting fraud.” Fed. R.  
25 Civ. P. 9(b); *see also Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1124 (9th Cir. 2009). To  
26 satisfy Rule 9(b), the allegations must be “specific enough to give defendants notice of the  
27 particular misconduct which is alleged to constitute the fraud charged so that they can  
28 defend against the charge and not just deny that they have done anything wrong.” *Semegen*

1 v. *Weidner*, 780 F.2d 727, 731 (9th Cir. 1985). Thus, claims sounding in fraud must allege  
2 “an account of the ‘time, place, and specific content of the false representations as well as  
3 the identities of the parties to the misrepresentations.’” *Swartz v. KPMG LLP*, 476 F.3d  
4 756, 764 (9th Cir.2007) (per curiam). The plaintiff must set forth “what is false or  
5 misleading about a statement, and why it is false.” *In re Glenfed, Inc. Sec. Litig.*, 42 F.3d  
6 1541, 1548 (9th Cir. 1994) (en banc), *superseded by statute on other grounds as stated in*  
7 *Ronconi v. Larkin*, 253 F.3d 423, 429 n. 6 (9th Cir.2001).

### 8 **III. DISCUSSION**

#### 9 **A. Judicial Notice**

10 In ruling on a motion to dismiss, the Court may consider “matters of judicial notice,”  
11 *see United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003), including information that  
12 is “generally known within the trial court’s territorial jurisdiction; or can be accurately and  
13 readily determined from sources whose accuracy cannot reasonably be questioned,” Fed.  
14 R. Evid. 201(b); *but see Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 999 (9th Cir.  
15 2018) (“[A] court cannot take judicial notice of disputed facts contained in . . . public  
16 records.”). Importantly, considering matters of judicial notice does not transmute a motion  
17 to dismiss into one for summary judgment. *See Ritchie*, 342 F.3d at 908. Moreover, a  
18 court should not accept as true “allegations that contradict matters properly subject to  
19 judicial notice,” nor “allegations that are merely conclusory, unwarranted deductions of  
20 fact, or unreasonable inferences.” *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th  
21 Cir. 2008) (citation omitted). Proper subjects of judicial notice include judgments and  
22 other court documents. *See, e.g., United States v. Black*, 482 F.3d 1035, 1041 (9th Cir.  
23 2007); *see also Khoja*, 899 F.3d at 999 (“Just because the document itself is susceptible to  
24 judicial notice does not mean that every assertion of fact within that document is judicially  
25 noticeable for its truth.”).

26 GovGPT asks the Court to take judicial notice of an opinion issued in a case  
27 involving Axon’s acquisition of VieVu in the District Court of New Jersey. (Doc. 145.)  
28 Since the time of the request, the case has been made available on Westlaw. *See In re Axon*

1 *Viewu Antitrust Litig.*, No. 23-7182 (RK) (RLS), 2025 WL 366751, at \*1 (D.N.J. Jan. 31,  
2 2025). Seeing no objection, the Court will grant GovGPT’s Motion (Doc. 145) and take  
3 judicial notice of the opinion.

4 **B. Safariland’s Motions to Dismiss (Doc. 110; Doc. 111)**

5 In its first Motion to Dismiss, Safariland offers two arguments for why this Court  
6 lacks personal jurisdiction over it: (1) Section 12 of the Clayton Act does not apply to  
7 limited liability companies (“LLCs”), like Safariland; and (2) Safariland lacks sufficient  
8 minimum contacts with Arizona. (Doc. 110 at 6.) Unsurprisingly, GovGPT disagrees.  
9 (*See generally* Doc. 117.)

10 1. Section 12 of the Clayton Act

11 Section 12 provides:

12 Any suit, action, or proceeding under the antitrust laws against a corporation  
13 may be brought not only in the judicial district whereof it is an inhabitant,  
14 but also in any district wherein it may be found or transacts business; and all  
process in such cases may be served in the district of which it is an inhabitant,  
or wherever it may be found.

15 15 U.S.C. § 22. With respect to corporations, the Ninth Circuit has held that “the  
16 worldwide service provision of [Section] 12 justifies [the] conclusion that personal  
17 jurisdiction may be established in any district, given the existence of sufficient national  
18 contacts.” *Go-Video, Inc. v. Akai Elec. Co.*, 885 F.2d 1406, 1415 (9th Cir. 1989). Here,  
19 as with other cases, the parties’ fervently dispute whether Section 12 applies to LLCs. By  
20 its plain terms, the statute governs service upon “corporations.” *See* 15 U.S.C. § 22.

21 Faced with whether Section 12 applied to a “voluntary association,” one district  
22 court reasoned:

23 “Persons,” as defined in the Clayton Act, are “deemed to include  
24 corporations and associations”; yet section 12 of the same act, which  
25 authorizes extraterritorial service, specifies only “corporation.” This  
specificity necessarily excludes individuals and voluntary associations from  
those amenable to extraterritorial service.

26 *McManus v. Tato*, 184 F. Supp. 958, 959 (S.D.N.Y. 1959) (cleaned up). Safariland  
27 contends that this reasoning also applies to LLCs because Congress has not extended  
28 Section 12 to unincorporated entities. (Doc. 110 at 7.) The Court agrees.

1           As Safariland points out, time and again courts have cabined Section 12’s  
2 applicability to corporations. *See Cal. Clippers, Inc. v. U.S. Soccer Football Ass’n*, 314 F.  
3 Supp. 1057, 1061 (N.D. Cal. 1970) (“NASL is, however, an unincorporated association,  
4 not a corporation, so Clayton Act § 12 is [sic] inapplicable by its own terms to provide for  
5 services of process against NASL in this action.”); *S.F. Comprehensive Tours, LLC v.*  
6 *Tripadvisor, LLC*, No. 2:20-CV-02117-GMN-DJA, 2021 WL 4394253, at \* 5 (D. Nev.  
7 Sep. 24 2021) (holding that Section 12 did not apply to defendant because it is an LLC);  
8 *Shat Acres Highland Cattle, LLC, v. Am. Highland Cattle Ass’n*, No. 21-CV-1348-WJM-  
9 SKC, 2023 WL 7089906, at \*3 & n.3 (D. Colo. Oct. 26, 2023) (“Section [12], by its terms,  
10 only applies to corporations.”); *In re Chicken Antitrust Litig.*, 407 F. Supp. 1285, 1299 (D.  
11 Ga. 1975) (holding that Section 12’s “transacting business” test was inapplicable to a  
12 partnership); *Kingsepp v. Wesleyan Univ.*, 763 F. Supp. 22, 25 (S.D.N.Y 1991) (collecting  
13 cases) (“Given the narrow construction of the term ‘corporation’ in section 12 and the  
14 reluctance of courts to extend nationwide service of process under section 12 to  
15 non-corporate defendants, it would be inappropriate to extend section 12 to encompass a  
16 trust . . .”).

17           In response, GovGPT contends that the Supreme Court has recognized LLCs,  
18 among other entities, may fall with Section 12’s ambit when they act in concert with  
19 corporations to suppress competition. (Doc. 117 at 5 (citing *Keeton v. Hustler Magazine,*  
20 *Inc.*, 465 U.S. 770 (1984)).) In the same breath, however, GovGPT admits that its offered  
21 authority is “not directly related to Section 12.” (*Id.*) Indeed, *Keeton* dealt with the  
22 application of one state’s long arm state and the traditional minimum contacts analysis to  
23 assert jurisdiction in a libel action. 465 U.S. at 770. Despite offering no apposite authority,  
24 GovGPT posits that the Court ought to extend its jurisdiction based on “the functional  
25 involvement of entities in relevant conduct affecting the forum state.” (Doc. 117 at 5.)  
26 This approach not only comes before the Court without support, but also contravenes the  
27 wealth of well-reasoned, persuasive case law offered by Safariland. Therefore, the Court  
28 rejects GovGPT’s arguments.

1           Based upon the statute’s plain language, and the supporting persuasive case law,  
2 there is no question that Section 12 does not apply to Safariland. As an LLC, and not a  
3 corporation, it is not subject to the jurisdictional hook that 15 U.S.C. § 22 provides.  
4 Therefore, whether the Court has personal jurisdiction over Safariland must be determined  
5 through a traditional minimum contacts analysis.

6                           2. Minimum Contacts

7           Safariland argues that this Court lacks personal jurisdiction over it because (1) it  
8 does not have continuous or systematic contacts with Arizona; and (2) it does not  
9 purposefully direct activities at Arizona residents such that litigation would arise out of  
10 those activities. (Doc. 110 at 8–11.) To support this argument, Safariland points out that  
11 it owns no property in Arizona, employs one remote employee in the state, and its sales in  
12 the state are not related to BWCs or DEMS. (Doc. 110 at 9–10.) In response, GovGPT  
13 contends that Safariland’s sale of VieVu to Axon in 2018, coupled with extensive  
14 non-compete agreements, satisfies minimum contacts such that the Court has jurisdiction  
15 over Safariland. (Doc. 117 at 5–8.)

16           The traditional minimum contacts analysis requires the Court to determine whether  
17 it has “general” or “specific” personal jurisdiction over Safariland. *See Bristol-Myers*  
18 *Squibb Co. v. Super. Ct. of Cal.*, 582 U.S. 255, 262 (2017). General jurisdiction exists over  
19 entities where its forum state “affiliations” are “so continuous and systematic as to render  
20 [it] essentially at home.” *Daimler*, 571 U.S. at 139. Generally, an entity is “at home” in  
21 its place of organization and its principal place of business. *Id.* at 134. Safariland is an  
22 LLC organized in Delaware and headquartered in Florida. (Doc. 74 ¶ 7; Doc. 110 at 9.)  
23 Therefore, under the traditional “at home” view, the Court would not have general  
24 jurisdiction over Safariland. *See Daimler*, 571 U.S. at 139. Safariland further posits that  
25 the Court lacks general jurisdiction over it because it owns no real property in Arizona,  
26 employs a single remote employee in the state, and does not sell BWCs or DEMS in  
27 Arizona. (*See* Doc. 110 at 9; Doc. 110-1 at 2 ¶¶ 6–9.) GovGPT seemingly does not attempt  
28 to rebut this argument. At bottom, Court agrees that Safariland’s limited contacts with

1 Arizona precludes finding that the Court possesses general personal jurisdiction over the  
2 company.

3 Specific jurisdiction exists when an out-of-state defendant (1) purposefully directs  
4 his activities at residents of the forum state, or purposefully avails himself of the privilege  
5 of conducting activities in the forum; (2) the asserted claim must be one arising out of the  
6 defendant's forum related activities; and (3) exercising jurisdiction must be reasonable.  
7 *Picot*, 780 F.3d at 1211. GovGPT "bears the burden of satisfying the first two prongs of  
8 the test." *See Schwarzenegger*, 374 F.3d at 802.

9 Regarding prong one and two, GovGPT asserts that Safariland's intentional act was  
10 selling VieVu to Axon and executing the related non-compete agreements. (Doc. 117  
11 at 5–6.) According to GovGPT, Safariland knew that selling VieVu to Axon would "have  
12 substantial effects in Arizona." (*Id.* at 6.) Further, GovGPT contends that the Court "must  
13 look beyond" Safariland's incorporation and headquarters, and instead consider that  
14 Safariland holds a vested financial interest in Axon's Arizona-based monopoly through  
15 stock arrangements and Axon's monopolistic pricing. (Doc. 117 at 6–7.)

16 GovGPT's muddled allegations and argument misunderstand what "purposeful  
17 direction" requires. To show that Safariland purposefully directed its acts at Arizona,  
18 GovGPT must show that Safariland has "(1) committed an intentional act, (2) expressly  
19 aimed at the forum state, (3) causing harm that the defendant knows is likely to be suffered  
20 in the forum state." *Wash. Shoe Co. v. A-Z Sporting Goods, Inc.*, 704 F.3d 668, 673 (9th  
21 Cir. 2012). The only relevant intentional act that GovGPT contends Safariland directed at  
22 Arizona was enter a contract to sell VieVu to Axon. However, "a contract alone does not  
23 automatically establish minimum contacts in the plaintiff's home forum." *Boschetto v.*  
24 *Hansing*, 539 F.3d 1011, 1017 (9th Cir. 2008). Rather, there must be "actions by the  
25 defendant himself that create a 'substantial connection' with the forum State." *Burger*  
26 *King*, 471 U.S. at 475 (quoting *McGee v. Int'l Life Ins.*, 355 U.S. 220, 223 (1957)). Further  
27 attenuating Safariland's alleged contacts to Arizona is the argument that the sale of VieVu  
28 in 2018 was governed by Delaware law without reference to Arizona or its laws. (*See* Doc.

1 110 at 11.) To be sure, as Safariland contends, that transaction involved Safariland,  
2 Delaware-organized LLC headquartered in Florida, selling VieVu, a  
3 Washington-organized LLC headquartered in Washington, to Axon, a Delaware-organized  
4 corporation headquartered in Arizona. (*Id.*) Thus, to some degree, Arizona is implicated  
5 in the sale of VieVu. However, given the specific facts of this case show that the sale was  
6 not purposefully directed at the forum state, nor did Safariland avail itself of Arizona law  
7 to affect the transaction. (*See id.*)

8 The remainder of GovGPT’s argument is seemingly directed at the fallout from the  
9 sale of VieVu to Axon. (*See, e.g.*, Doc. 117 at 6 ¶ 13.) Whether the sale VieVu impacted  
10 “Arizona’s law enforcement agencies and GovGPT” is not the standard. Rather, GovGPT  
11 must show that Safariland undertook an “external manifestation of [will]” to direct actions  
12 at Arizona without relying on such act’s “results, even the most direct, immediate, and  
13 intended.” *Morill v. Scott Fin. Corp.*, 873 F.3d 1136, 1142 (9th Cir. 2017). To affect the  
14 forum state is not always enough, there must be a showing of an intentional act expressly  
15 aimed at it. *Washington Shoe*, 704 F.3d at 673. As Safariland puts it, GovGPT must show  
16 more than the alleged effects that the sale of VieVu had on the location of the ultimate  
17 purchaser—Axon. (Doc. 12 at 5); *see also Helicopteros Nacionales de Colombia*, 466  
18 U.S. at 417 (“[The] unilateral activity of another party or a third person is not an appropriate  
19 consideration when determining whether a defendant has sufficient contacts with a forum  
20 State to justify an assertion of jurisdiction.”).

21 Therefore, the Court finds that GovGPT has failed to carry its burden to show that  
22 Safariland (1) purposefully directs its activities at Arizona; and (2) that the asserted claim  
23 arose from Safariland’s forum related activities. *See Picot*, 780 F.3d at 1211. As a result,  
24 Safariland lacks the minimum contacts required for this Court to have personal jurisdiction  
25 over it.<sup>1</sup> Therefore, the Court will grant Safariland’s Motion to Dismiss (Doc. 110) and

26 <sup>1</sup> The FAC alleges that Safariland’s contacts arise from substantial business in this district,  
27 including the sale of BWCs. (Doc. 74 ¶ 22.) In response, Safariland provided an affidavit  
28 from its Vice President of Legal and Compliance, who averred that Safariland does not  
make sales for BWCs or DEMS in Arizona, casting doubt on the plausibility of GovGPT’s  
allegation. (Doc. 110-1 at 2 ¶ 9.) GovGPT does not engage with its own allegation or the  
affidavit in its Response, and instead directs its argument at Safariland’s sale of VieVu to

1 dismiss it from this case with prejudice. With this dismissal, Safariland’s other Motion to  
2 Dismiss (Doc. 111) is now moot. Therefore, the Court will deny that Motion (Doc. 111).

3 **C. Microsoft’s Motion to Dismiss (Doc. 90)**

4 Microsoft argues that GovGPT’s FAC must be dismissed because: (1) the claims  
5 are time barred; (2) GovGPT has not pleaded an antitrust injury and therefore lacks  
6 standing; and (3) the FAC does not plausibly allege an unlawful agreement.<sup>2</sup> (Doc. 90  
7 at 6–7.) For the reasons set forth, the Court agrees with Microsoft.

8 1. The Statute of Limitations and Antitrust Standing

9 Under federal antitrust laws, an action must be commenced within four years after  
10 the cause of action accrues. *See Zenith Radio Corp. v. Hazeltine Rsch., Inc.*, 401 U.S. 321,  
11 338 (1971); *see also In re Animation Workers Antitrust Litig.*, 87 F. Supp. 3d 1195, 1211  
12 (N.D. Cal. 2015) (dismissing antitrust claims as time barred). “A cause of action in  
13 antitrust accrues each time a plaintiff is injured by an act of the defendant and the statute  
14 of limitations runs from the commission of the act.” *See Pace Indus., Inc. v. Three Phx.*  
15 *Co.*, 813 F.2d 234, 237 (9th Cir. 1987) (citation omitted). A plaintiff may plead that a  
16 defendant’s acts constitute a continuing violation, in which case allegations of “an overt  
17 act by the defendant is required to restart the statute of limitations and the statute runs from  
18 the last overt act.” *Id.*; *see also Klehr v. A.O. Smith Corp.*, 521 U.S. 179, 189 (1997).

19 Here, GovGPT alleges that Microsoft injured it by entering into an unlawful  
20 agreement with Axon in 2018, which was then extended in 2022 (the “2022 Extension”).  
21 (Doc. 74 ¶¶ 26–27, 40, 44, 208–212.) Because GovGPT’s claims accrued when Microsoft  
22 and Axon executed the 2018 agreement, the inquiry becomes whether the 2022 Extension  
23 was a continuing violation. *See Pace Industries*, 813 F.2d at 237.

24 Courts in the Ninth Circuit have explained that pleading a continuing violation

25 Axon. (*See* Doc. 117.) The Court, therefore, finds that GovGPT has conceded the  
26 allegation regarding Safariland’s sale of BWCs in Arizona. *See Morgan v. Kalaco*  
27 *Scientific, Inc.*, No. CV-07-0786-PHX-SRB, 2008 WL 11449239, at \*2 (D. Ariz. Mar. 5,  
2008) (“Generally, where a party fails to respond to a non-frivolous legal argument raised  
by opposing counsel in a dispositive motion, that argument is deemed conceded.”).

28 <sup>2</sup> Microsoft also moves to dismiss Plaintiff’s Clayton Act claim. Plaintiff states that it has  
not alleged such a claim against Microsoft. (Doc. 94 at 10.) Therefore, the Court will not  
address the parties’ arguments on the Clayton Act claim.

1 requires more than “bald assertion[s]” that a defendant adhered to, enforced, and reaffirmed  
2 the alleged anticompetitive agreements. *See, e.g., Garrison v. Oracle Corp.*, 159 F. Supp.  
3 3d 1044, 1070–71 (N.D. Cal. 2016); *Ryan v. Microsoft Corp.*, 147 F. Supp. 3d 868, 884  
4 (N.D. Cal. 2015) (finding allegations that defendant had non-solicitation agreements it  
5 “maintained and renewed” to be “insufficient to qualify for the continuing violation  
6 doctrine”). For a continuing violation to restart the limitations period, GovGPT must plead  
7 an overt act that (1) “[is] a new and independent act that is not merely a reaffirmation of a  
8 previous act”; and (2) “[the overt act] must inflict [a] new and accumulating injury on the  
9 plaintiff.” *See Pace Indus.*, 813 F.2d at 238.

10 GovGPT’s allegations regarding the 2022 Extension are inconsistent and difficult  
11 to follow. For example, it alleges that the 2022 Extension “grant[ed] Microsoft continued  
12 exclusive access to the extensive law enforcement data.” (Doc. 74 ¶ 208.) And “[t]hrough  
13 the 2022 extension, Microsoft maintained exclusive control over Axon’s body camera  
14 data,” (Doc. 74 ¶ 209), which “enabled Microsoft to monopolize AI development . . . by  
15 providing it with unparalleled access to data that competitors could not obtain, (*Id.* ¶ 210).  
16 Then, however, GovGPT seemingly asserts that only after the 2022 Extension did the  
17 agreement require Axon’s Evidence.com platform “to work exclusively with Microsoft  
18 Azure.” (*Id.* ¶ 41.) In his Response to the Motion, GovGPT explains that the 2022  
19 Extension “included new terms granting Microsoft *ongoing* exclusive access to Axon’s  
20 body camera data and related AI technologies.” (Doc. 94 at 3 (emphasis added).); *cf.*  
21 *Samsung Elecs. Co. v. Panasonic Corp.*, 747 F.3d 1199, 1204 (9th Cir. 2014) (expanding  
22 a license agreement in 2006 to include products not covered by the previous 2003 license  
23 agreement was an overt act because the “2003 license did not contemplate future  
24 expansion”).

25 On one hand, GovGPT seems to allege that Microsoft and Axon extended,  
26 maintained, and reinforced its existing agreement, which would not amount to an overt act.  
27 *See Pace Industries*, 813 F.2d at 238. On the other, GovGPT’s allegations suggest that the  
28 2022 Extension added “exclusivity” terms that were not part of the 2018 cloud storage

1 contract, including a term that “requires [Axon’s] Evidence.com platform to work  
2 exclusively with Microsoft Azure.” (Doc. 74 ¶ 41; *see also id.* ¶¶ 40, 42, 44.) However,  
3 GovGPT has not expressly pleaded what terms in the 2022 Extension are “new” to satisfy  
4 the continuing violation requirement of a new and independent act that inflicts a new and  
5 accumulating injury. *See Ryan* 147 F. Supp. 3d at 884 (“[W]here the defendant entered  
6 into an allegedly unlawful contract prior to the limitations period, the defendant still must  
7 take an unlawful new and independent act that is not merely a reaffirmation of a previous  
8 act during the limitations period.” (quotation marks omitted)). And, reading the allegations  
9 in the light most favorable to GovGPT, the Court cannot determine what aspect of any  
10 cognizable “new” allegations materially changed the agreement such that the 2022  
11 Extension was an overt act by Microsoft. *See id.*

12 GovGPT does draw the Court’s attention to the following allegation, which it  
13 believes shows an overt act:

14 Microsoft has been known to offer better pricing and incentives, like cloud  
15 credits, to entice companies to move more data to Azure. Microsoft’s  
16 preferential pricing strategy, such as offering \$500 million in Azure credits  
17 exclusively to OpenAI, gives preferential pricing or better terms to select  
18 partners. Upon information and belief, this preferential pricing was extended  
19 to Axon.

20 (Doc. 74 ¶ 40; Doc. 94 at 3–4.) According to GovGPT, Microsoft’s pricing strategy  
21 “reinforced the barriers to entry for competitors,” and has ostensibly cost GovGPT  
22 opportunities and profit. (Doc. 94 at 4.) Even assuming that this allegation is true, it has  
23 nothing to do with the 2022 Extension that GovGPT so fervently believes reset the statute  
24 of limitations. And, as Microsoft has pointed out, offering discounts or incentives  
25 generally cannot support a separate antitrust claim. (Doc. 90 at 18 (citing *Brooke Grp. Ltd.*  
26 *v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 223–24 (1993) (analyzing a  
27 predatory pricing claim under § 2 of the Sherman Act requires showing “prices complained  
28 of are below an appropriate measure of its rival’s costs . . . . [And] demonstrat[ing] that the  
competitor had a reasonable prospect . . . of recouping its investment in below-cost  
prices”). As it stands, Plaintiff has done no more than allege that Microsoft uses an  
effective pricing model to entice businesses to use its Azure cloud service rather than

1 competing services. Thus, GovGPT has failed to plead an overt act. *See, e.g., Garrison,*  
2 159 F. Supp. 3d at 1070–71; *Ryan*, 147 F. Supp. 3d at 884.

3 Even if GovGPT had pleaded a new and individual act, the FAC fails to allege that  
4 such an act caused a cognizable antitrust injury. Antitrust laws were designed to redress  
5 injuries suffered by plaintiffs “injur[ed] in the market where competition is being  
6 restrained.” *Am. Ad Mgmt., Inc. v. Gen. Tele. Co. of Cal.*, 190 F.3d 1051, 1057 (9th Cir.  
7 1999) (“As a broker for the advertisements whose prices are allegedly restrained, [plaintiff]  
8 is a participant in the relevant market and it has suffered an injury in that market, the loss  
9 of commissions on advertisement purchases.”).<sup>3</sup> In other words, the injured party “must  
10 be a participant in the *same* market as the alleged malefactors.” *In re Dynamic Access*  
11 *Memory (DRAM) Antitrust Litig. (“DRAM II”)*, 536 F. Supp. 2d 1129, 1137 (N.D. Cal.  
12 2008) (internal quotation marks omitted).

13 Here, GovGPT alleges that the relevant market is “body-worn cameras, digital  
14 evidence management systems, and public safety video integration and management  
15 platforms.” (Doc. 74 ¶¶ 125–28.) Somewhat troubling, however, is GovGPT’s contention  
16 that it “intends to enter and compete in the digital evidence management market,” (Doc. 94  
17 at 10), which calls into question the veracity of its market allegations, (*see* Doc. 74  
18 ¶¶ 125–128.) If GovGPT has not entered the market, claims that it was injured in such  
19 market are merely speculative, which does not suffice to show injury for an antitrust claim  
20 or standing purposes. *See DRAM II*, 536 F. Supp. 2d at 1137; *Clapper v. Amnesty Int’l*  
21 *USA*, 568 U.S. 398, 414 (2013) (finding that a “speculative chain of possibilities” cannot  
22 establish an actual or imminent injury in fact); *see also City of Oakland v. Oakland Raiders*,  
23 20 F.4th 441, 458 (9th Cir. 2021) (“The harm may not be derivative and indirect or  
24 secondary, consequential, or remote.” (quotation marks omitted)). That concern aside,  
25 conspicuously absent from the FAC are any allegations of the market in which Microsoft  
26 competes. (*See generally id.*) Thus, on its face, the FAC does not set forth any allegation

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27 <sup>3</sup> An antitrust injury has four requirements: (1) unlawful conduct, (2) causing an injury to  
28 the plaintiff, (3) that flows from that which makes the conduct unlawful, and (4) that is of  
the type that antitrust laws were intended to prevent. *Id.* at 1055–57.

1 that GovGPT and Microsoft compete in the same market.

2 GovGPT contends that it need not show that it participates in the “same” market if  
3 its injury was a direct result of the anticompetitive conduct. (Doc. 94 at 9.) Supporting  
4 this argument is a passing reference to *Blue Shield of Virginia v. McCready*, 457 U.S. 465,  
5 484 (1982) (“Although [plaintiff] was not a competitor of the conspirators, the injury she  
6 suffered was inextricably intertwined with the injury the conspirators sought to inflict on  
7 psychologists and the psychotherapy market.”). In *McCready*, the Supreme Court held  
8 that, under § 4 of the Clayton Act, the defendant’s act of selectively refusing to reimburse  
9 the plaintiff under an employer health plan brought defendant within the relevant market  
10 for antitrust injury purposes. 457 U.S. at 450–51. Here, GovGPT has not alleged that it  
11 had a previous relationship with Microsoft such that the company’s denial of service would  
12 bring it within the alleged markets. (*See generally* Doc. 74.)

13 At bottom, GovGPT has not alleged that Microsoft engaged in a “new and  
14 independent act,” or that such act caused a cognizable antitrust injury to GovGPT. *Pace*  
15 *Indus.*, 813 F.2d at 238; *Am. Ad Mgmt.*, 190 F.3d at 1057. Thus, based on the allegations  
16 in the FAC, the statute of limitations bars GovGPT’s claims, and GovGPT has failed to  
17 allege an antitrust injury that would confer standing.

18 GovGPT also asserts that the statute of limitations was tolled under 15 U.S.C.  
19 § 16(i) because the Federal Trade Commission (“FTC”) filed a complaint against Axon for  
20 its acquisition of VieVu, LLC from Defendant Safariland. (Doc. 74 ¶¶ 134–141.) To toll  
21 the statute of limitations under § 16(i), a plaintiff must show that the current suit is “based  
22 in whole or in part on any matter complained of in [a government antitrust] proceeding.”  
23 Further, a plaintiff must show a “real relation” between the private and public causes of  
24 action. *Leh v. Gen. Petrol. Corp.*, 382 U.S. 54, 59 (1965); *Chipanno v. Champion Int’l*  
25 *Corp.*, 702 F.2d 827, 831–32 (9th Cir. 1983). To determine whether a plaintiff has met its  
26 burden, courts consider the following: (1) the “substantial identity of the parties”; (2)  
27 whether the plaintiff has alleged “a conspiracy that included the objectives, means, time  
28 span, and geographic scope of the conspiracy alleged in the government suit”; and (3)

1 whether “evidence adduced in the trial of the government suit would be of practical  
2 assistance to plaintiff.” *Garrison*, 159 F. Supp. at 1067–68 (cleaned up).

3 Microsoft contends that the statute cannot toll GovGPT’s claims against it because  
4 the FTC complaint against Axon did not “have anything to do with Microsoft.” (Doc. 90  
5 at 14.) GovGPT contends that Microsoft’s argument is “without merit” because the FTC  
6 complaint is directly relevant to “Microsoft’s role as an enabler of Axon’s monopolistic  
7 practices.” (Doc. 94 at 4.) GovGPT’s argument completely ignores § 16(i)’s requirements.  
8 The FTC complaint does not name, involve, or implicate Microsoft. (*See generally* Doc.  
9 95.) The complaint concerns Axon’s acquisition of a competitor, not its use of Microsoft’s  
10 cloud service as a repository for its Evidence.com footage. (*See id.*) GovGPT even admits  
11 that Microsoft is not a direct party to the FTC’s action, but nevertheless constructs an  
12 unsupported narrative about how the FTC complaint “addresses barriers to competition,  
13 including switching costs and data migration challenges,” which is “relevant to cloud  
14 hosting services.” (Doc. 94 at 5.) Section 16(i) requires a party to show a “real relation”  
15 and not a conspiracy theory that rests on a series of dubious, conclusory accusations.  
16 Therefore, GovGPT’s argument is without merit, and the Court finds that 15 U.S.C. § 16(i)  
17 does not toll the statute of limitations on its claims against Microsoft thus its claims are  
18 time barred.

19 1. The Unlawful Agreement

20 Although GovGPT lacks standing and its claims are barred, the Court will afford  
21 some discussion regarding the unlawful agreement allegations. Microsoft argues that  
22 GovGPT’s FAC is replete with conclusory allegations regarding the agreement, but that no  
23 allegation suggests that the companies did anything more than enter an arms-length,  
24 vertical supply agreement. (Doc. 90 at 15.) In response, GovGPT contends that the FAC  
25 sets forth allegations showing that Microsoft and Axon entered a strategic partnership  
26 designed to foreclose competing firms from providing DEMS to law enforcement agencies.  
27 (Doc. 94 at 6.)

28 To plausibly allege a claim under § 1 or § 2 of the Sherman Act, a plaintiff must

1 allege that defendant engaged in anti-competitive conduct and harm flowed from that  
2 conduct. *Brantley v. NBC Universal, Inc.*, 675 F.3d 1192, 1197 (9th Cir. 2012) (Section  
3 1); *Aerotec Int'l, Inc v. Honeywell Int'l, Inc.*, 4 F. Supp. 3d 1123, 1137 (D. Ariz. 2014),  
4 *aff'd*, 836 F.3d 1171 (9th Cir. 2016) (Section 2). For a § 2 claim, a plaintiff must allege a  
5 “specific intent to monopolize.” *See Paladin Assocs., Inc. v. Mont. Power Co.*, 328 F.3d  
6 1145, 1158 (9th Cir. 2003). Consistent with Rule 12’s pleading requirements, it is not  
7 enough to merely allege that parties merely entered an unlawful agreement. *See Twombly*,  
8 550 U.S. at 551; *cf. Freeman v. San Diego Ass’n of Realtors*, 322 F.3d 1133, 1155 (9th Cir.  
9 2003) (explaining “[a]bsent additional evidence that the [agreement’s] restrictive  
10 provisions were adopted for improper reasons,” an agreement alone cannot “support a  
11 conspiracy to monopolize claim”).

12 A plaintiff alleges an anticompetitive agreement when it plausibly asserts “a  
13 ‘conscious commitment to a common scheme designed to achieve an unlawful objective.’”  
14 *Toscano v. Pro Golfers Ass’n*, 258 F.3d 978, 983 (9th Cir. 2001) (quoting *Monsanto Co.*  
15 *v. Spray-Rite Serv. Corp.*, 465 U.S. 752, 764 (1984)). But a scheme will not be inferred  
16 “when factual allegations just as easily suggest rational, legal business behavior.”  
17 *Name.Space, Inc. v. Internet Corp. for Assigned Names & Numbers*, 795 F.3d 1124, 1130  
18 (9th Cir. 2015). Therefore, courts have required plaintiffs to plead more than “ultimate  
19 facts,” which means that allegations cannot simply label a defendant’s actions a  
20 “conspiracy” or assert unsupported legal conclusions. *Kendall v. Visa U.S.A., Inc.*, 518  
21 F.3d 1042, 1047–48 (9th Cir. 2008). Instead, a plaintiff must plead “evidentiary facts” that  
22 plausibly allege “(1) a contract, combination or conspiracy among two or more persons or  
23 distinct business entities; (2) by which the persons or entities intended to harm or restrain  
24 trade or commerce among the several states, or with foreign nations; (3) which actually  
25 injures competition.” *Id.*; *Twombly*, 550 U.S. at 556–57.

26 Here, GovGPT pleaded no more than ultimate facts and legal conclusions to support  
27 its Section 1 and Section 2 claims. It describes Microsoft and Axon’s agreement as a  
28 “strategic partnership” and an “exclusive agreement” that created barriers for competing

1 firms in the digital evidence management market. (Doc. 94 ¶ 11; Doc. 74 ¶¶ 117, 288).  
2 Those allegations, however, lack supporting evidentiary allegations that elucidate how the  
3 agreement amounts to more than a supply contract for cloud services.<sup>4</sup> *See Matsushita*  
4 *Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 588 (1986) (“[C]onduct that is as  
5 consistent with permissible competition as with illegal conspiracy does not, without more,  
6 support even an inference of conspiracy.”); *Leegin Creative Leather Prods. v. PSKS, Inc.*,  
7 551 U.S. 877, 889–92 (2007) (recognizing that vertical agreements often have  
8 procompetitive justification and thus do not commonly give rise to Sherman Act  
9 violations). Moreover, GovGPT’s Section 2 claim predicated on conspiracy to monopolize  
10 theory otherwise fails because it is premised upon a “dual monopoly” theory, upon which  
11 a Section 2 claim cannot be based. *See Standfacts Credit Serv’s Inc. v. Experian Info. Sol.,*  
12 *Inc.*, 405 F. Supp. 2d 1141, 1152–53 (C.D. Cal. 2005) (“[A]n allegation of conspiracy to  
13 create a shared monopoly does not plead a claim of conspiracy under section 2.”); (Doc.  
14 74 ¶ 292 (“[T]he collaboration between Microsoft and Axon established a dual  
15 monopoly.”).)

16 GovGPT has failed to state a claim for relief against Microsoft under the Sherman  
17 Act. Therefore, the Court will dismiss Microsoft, and the Counts asserted against it,  
18 without prejudice.

#### 19 **D. Axon’s Motion to Dismiss (Doc. 106)**

20 Axon moves to dismiss the entirety of the FAC, arguing lack of standing, issues  
21 with conflicting, insufficient factual allegations, untenable legal theories, and outright false  
22 assertions regarding the danger of its AB4. (Doc. 105 at 8–9.) GovGPT maintains that its  
23 FAC plausibly states a claim for relief under each of its asserted legal theories. (*See* Doc.

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24  
25 <sup>4</sup> *Twombly* is instructive here. There, the Supreme Court held that the defendant telephone  
26 companies “have entered into a contract, combination or conspiracy to prevent competitive  
27 entry in their respective local telephone and/or high speed internet services markets and  
28 have agreed not to compete with one another and otherwise allocated customers and  
markets to one another” insufficient because no evidentiary facts were pleaded which could  
prove the conspiracy. 550 U.S. at 551. The Court is faced with a complaint, as Plaintiff  
alleges that Microsoft and Axon entered an illegal, exclusive agreement that injured it and  
competitors. Alas, no evidentiary facts about these allegations, and thus, the claims are  
insufficient.

1 121.)

2 1. Count I—Lanham Act

3 a. *Standing*

4 When a claim is brought under a federal statute, courts must make sure the plaintiff  
5 comes within the “zone of interests” protected by that statute. *See Bennett v. Spear*, 520  
6 U.S. 154, 162 (1997) (internal citations omitted). “To come within the zone of interests in  
7 a suit for false advertising under [the Lanham Act] a plaintiff must allege an injury to a  
8 commercial interest in reputation or sales.” *Lexmark Int’l, Inc. v. Static Control*  
9 *Components, Inc.*, 572 U.S. 118, 131–32 (2014). A statutory cause of action is presumed  
10 to be limited to plaintiffs whose injuries are “proximately caused by violations of the  
11 statute.” *Id.* at 132. A plaintiff suing under the Lanham Act for false advertising  
12 “ordinarily must show economic or reputational injury flowing directly from the deception  
13 wrought by the defendant’s advertising; and that that occurs when deception of consumers  
14 causes them to withhold trade from the plaintiff.” *Id.* at 133. “That showing is generally  
15 not made when the deception produces injuries to a fellow commercial actor that in turn  
16 affect the plaintiff.” *Id.* at 133–34. When a plaintiff and a defendant are direct competitors  
17 there is a presumption of harm, although they do not have to be direct competitors for the  
18 plaintiff to be injured. *See TrafficSchool.com, Inc. v. Edriver Inc.*, 653 F.3d 820, 827 (9th  
19 Cir. 2011); *ThermoLife Int’l LLC v. Am. Fitness Wholesalers LLC*,  
20 No. CV-18-04189-PHX-JAT, 2019 WL 3840988, at \*6 (D. Ariz. Aug. 15, 2019) (citing  
21 *Lexmark*, 572 U.S. at 120–21).

22 Axon argues that that GovGPT’s claims do not fall within the zone of interest  
23 because the FAC does no more than allege vague and conclusory injuries to reputation and  
24 sales. (Doc. 106 at 12.) Additionally, Axon argues that GovGPT failed to plead that its  
25 economic or reputational injury flows directly from Axon’s alleged deceptive advertising.  
26 (*Id.*) In response, GovGPT contends that it has sufficiently pleaded a commercial injury  
27 directly caused by Axon’s deceptive statements. (Doc. 121 at 12.) Specifically, GovGPT  
28 maintains that it “allege[d] a causal connection between misleading statements and lost

1 sales.” (*Id.*)

2 GovGPT alleges that it seeks to compete with Axon in the BWC and DEMS market.  
3 (*See* Doc. 74 ¶¶ 23, 85.) The extent to which GovGPT has engaged in such competition is  
4 not alleged. (*See generally id.*; *id.* ¶ 133 (describing GovGPT as a “potential entrant[.]” of  
5 the alleged cluster market of BWCs and DEMS), ¶ 25 n.2 (GovGPT announces that it  
6 currently does not operate in the RTCC market).) GovGPT does plead that Axon’s  
7 behavior injured GovGPT through “reduced opportunities to compete for business” due to  
8 Axon’s failure to disclose risks associated with Quectel modules. (*See id.* ¶ 180.)  
9 Additionally, GovGPT contends that because of Axon’s “material omission, competitors  
10 like GovGPT have suffered commercial harm, including lost sales and diminished market  
11 value.” (Doc. 74 ¶¶ 180, 184.)

12 Based on the FAC, GovGPT’s current market position is unclear. GovGPT alleges  
13 it has developed products to “compete” with Axon in the alleged markets but uses language  
14 like “GovGPT and other potential entrants” and “potential entrants like GovGPT” when  
15 making allegations of harm. (*See, e.g., id.* ¶¶ 88, 133.) In other places, GovGPT’s  
16 allegations of harm paint GovGPT as an active competitor: “Microsoft and  
17 Axon . . . significantly harm[ed] competition . . . including GovGPT.” (*Id.* ¶ 292; *see also*  
18 *id.* ¶¶ 163, 177, 202.) Without clearly describing its own attempts to compete, GovGPT  
19 goes on to allege lost sales due to Axon’s failure to disclose the presence of Quectel  
20 modules. (*See id.*)<sup>5</sup> GovGPT’s allegations of harm to its supposed sales are anything but  
21 clear. (*See, e.g., id.* ¶¶ 166–167, 182–184.) Therefore, the Court finds that the FAC does  
22 not sufficiently allege an injury to its sales based on Axon’s alleged false advertising under  
23 the Lanham Act. *See TrafficSchool.com*, 653 F.3d at 827.

24 The link between GovGPT’s purported lost sales and Axon’s failure to disclose the  
25 Quectel module is tenuous. To show proximate cause, false advertising must drive  
26 customers away from GovGPT’s product. *See Lexmark*, 572 U.S. at 133. Here, GovGPT

27 <sup>5</sup> GovGPT tries to explain away the absence of its allegations relates to sales in its  
28 Response, the Court “[will] not consider new allegations plaintiffs try to ‘sneak’ into their  
responses.” *See Sobh v. Phx. Graphix. Inc.*, No. CV-18-04073-PHX-DWL, 2019 WL  
3973697, at \*6 (D. Ariz. Aug. 22, 2019).

1 alleges that Axon’s corporate value and responsibility statements promoting transparency  
2 and equitable business practices are false and that the statements themselves impacted  
3 GovGPT’s sales. (See Doc. 74 ¶¶ 166, 184.) Further, GovGPT alleges that if customers  
4 were “informed about the [Quectel] security risks, it is likely they would have reconsidered  
5 purchasing Axon’s products or chosen alternative vendors.” (Id. ¶ 182.) Accepting these  
6 allegations as true still does not ameliorate the lack of claims that the omission of the  
7 presence Quectel modules or components resulted in customers shying away from  
8 GovGPT’s DragonFly or Hiago to instead buy the AB4 and an Evidence.com subscription.  
9 (Id. ¶¶ 182–183; but see id. ¶ 184 (“[C]ompetitors like GovGPT have suffered commercial  
10 harm, including lost sales.”).) To be sure, hypothetical plaintiffs need not provide  
11 definitive proof that a defendant’s advertisements caused plaintiffs to lose sales,  
12 *TrafficSchool.com*, 653 F.3d at 827, but those plaintiffs must otherwise put forth sufficient  
13 facts to show a plausible inference of economic or reputational injury wrought by the  
14 deceptive marketing, *Lexmark Int’l*, 572 U.S. at 133. GovGPT must allege with greater  
15 specificity how Axon’s deceptive marketing resulted in customers not purchasing  
16 GovGPT’s comparable products. It is not enough to allege that customers *may* have chosen  
17 Axon over other unnamed competitors or GovGPT. Cf. *ThermoLife Int’l LLC v. BPI Sports*  
18 *LLC*, No. CV-20-02091-PHX-SPL, 2021 WL 661981, at \*5 (D. Ariz. Feb. 19, 2021), *aff’d*,  
19 No. 21-15339, 2022 WL 612669 (9th Cir. Mar. 2, 2022). In the absence of such allegations,  
20 GovGPT has not alleged that its purported injury was proximately caused by Axon’s  
21 allegedly false statements. See *Lexmark*, 572 U.S. at 133.

22 Because GovGPT has failed to establish standing, its Lanham Act claim must be  
23 dismissed. That notwithstanding, the Court will otherwise provide an analysis on why the  
24 claim fails on the merits.

25 ///

26 *b. False Advertising*

27 Count I is premised on 15 U.S.C. § 1125(a)(1)(B), which provides in pertinent part:

28 (1) Any person who, on or in connection with any goods or services, or any  
container for goods, uses in commerce any word, term, name, symbol, or

1 device, or any combination thereof, or any false designation of origin, false  
2 or misleading description of fact, or false or misleading representation of fact  
3 which . . . (B) in commercial advertising or promotion, misrepresents the  
4 nature, characteristics, qualities, or geographic origin of his or her or another  
5 person's goods, services, or commercial activities, shall be liable in a civil  
6 action by any person who believes that he or she is or is likely to be damaged  
7 by such act.

8 The elements of a Lanham Act false advertising claim include:

9 (1) a false statement of fact by the defendant in a commercial advertisement  
10 about its own or another's product; (2) the statement actually deceived or has  
11 the tendency to deceive a substantial segment of its audience; (3) the  
12 deception is material, in that it is likely to influence the purchasing decision;  
13 (4) the defendant caused its false statement to enter interstate commerce; and  
14 (5) the plaintiff has been or is likely to be injured as a result of the false  
15 statement, either by direct diversion of sales from itself to defendant or by a  
16 lessening of the goodwill associated with its products.

17 *Southland Sod Farms v. Stover Seed Co.*, 108 F.3d 1134, 1139 (9th Cir. 1997). Further,  
18 the Lanham act requires allegedly false statements to pertain to a product. *Jack Russel*  
19 *Terrier Network of N. Cal. v. Am. Kennel Club*, 407 F.3d 1027, 1037 (9th Cir. 2005).

20 Axon first argues that Count I fails to allege a plausible violation of the Lanham Act  
21 because it is premised on unfounded claims that the AB4 house hackable Quectel modules.  
22 (Doc. 106 at 9.) Beyond that, Axon asserts that most of GovGPT's claims fail as a matter  
23 of law as they do not pertain to a product, or are, at most, inactionable puffery. (*Id.* at  
24 9–10.) Finally, Axon argues that the single statement that references a product fails  
25 because GovGPT admits it is true. (*Id.* at 11.)

26 GovGPT responds by asserting that certain alleged false statements are in fact  
27 directed at Axon's products, including the AB4. (Doc. 121 at 5.) Moreover, the statement  
28 about Evidence.com's export potential has plausible falsity and is misleading. (*Id.* at 10.)  
And, unsurprisingly, GovGPT claims that the statements are not mere puffery. (*See id.*)

GovGPT alleges that the following five statements are false:

1. WINNING RIGHT: We maintain transparency and operate equitably.
2. We're Transparent.
3. We also allow for bulk exports of your evidence data out of Evidence.com in case you want to try another system.

- 1 4. We will win and retain your business by providing great products and an  
2 awesome user experience, not by restricting your ability to leave.
- 3 5. We use data to drive ideas and constantly put ethical rigor behind how we  
4 design.

5 (Doc. 74 ¶ 159). The related allegations in the FAC argue that the statements are directed  
6 at the AB4 as well as Axon’s failure to disclose the presence of Quectel components to law  
7 enforcement agencies. (*See id.* ¶¶ 154–155.) The claims are further based on the  
8 codependency of the AB4 and Evidence.com, meaning law enforcement agencies are  
9 unable to try another DEMS without rendering their AB4’s inoperable. (*Id.* ¶¶ 173–174.)

10 *a. Statements 1, 2, 4, and 5*

11 The FAC makes clear that these statements are cabined to the “responsibility” and  
12 “principles” web pages on Axon’s website. (Doc. 74 ¶ 159, nn.82–83.) Facially,  
13 statements 1, 2, 4, and 5 do not reference any product. (Doc. 74 ¶¶ 161, 168–170, 175–177,  
14 178, 181–183.) Nevertheless, GovGPT maintains that these statements tie into the AB4’s  
15 marketing, and the failure of Axon to disclose the Quectel components somehow render  
16 statements of transparency and ethical business practice false. (Doc. 121 at 5–10.) The  
17 location on Axon’s website and the plain language of these statements are enough to  
18 dispense with GovGPT’s claims. Indeed, while both transparency and ethical practices are  
19 positive tenets for business, the statements simply do not refer to a product as required by  
20 the Lanham Act.<sup>6</sup> *Jack Russel*, 407 F.3d at 1037.

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21 <sup>6</sup> Even if Statements 1, 2, and 5 implicated the AB4, the allegations and supporting  
22 argument are predicated on claims nearly identical to those the Court previously found to  
23 be implausible, unsubstantiated, and brought in bad faith. (*See* Doc. 71; Doc. 105 at 31;  
24 Doc. 24-2 ¶ 23.) Truly, the only difference is that GovGPT has altered its diction, pleading  
25 that the Quectel “chips” are now “components” or “modules.” (Doc. 71; Doc. 121 at 5, 7,  
26 10.) When the Court denied GovGPT’s request for preliminary injunction (Doc. 71), it  
27 considered affidavits containing uncontroverted attestations that “[t]he [Quectel] module  
28 cannot be remotely accessed.” (Doc. 24-2 ¶ 23.) This information is important because  
GovGPT’s false advertising allegations are, in large part, predicated on a theory that the  
Chinese Communist Party use Quectel modules as “gateways to espionage” through  
over-the-air (“OTA”) updates. (Doc. 74 ¶¶ 72–73.) To be clear, the Court will not vitiate  
its obligation to read well-plead allegations as true, and will not consider Axon’s affidavit  
as conclusive evidence that defeats the FAC. However, the Court is skeptical that these  
allegations are plausible after having closely scrutinized them throughout the life of this  
case. (*See, e.g.*, Doc. 105 at 23, 25, 31.)

1 GovGPT claims that statement 4 “is misleading because it implies that Axon does  
2 not restrict the ability to leave its platform, when in fact, Axon body cameras only work  
3 with Evidence.com subscriptions.” (Doc. 74 ¶ 175.) The statement itself does not  
4 reference the AB4, Evidence.com, or the alleged codependency. And even assuming the  
5 statement did reference either product, GovGPT does not sufficiently allege that the  
6 statement led to an injury. (*See id.* ¶¶ 25, 175–177.) More specifically, GovGPT does not  
7 allege that the statement caused potential customers to purchase Axon’s AB4 and an  
8 Evidence.com subscription instead of GovGPT’s “Hiago” product. (*See id.* ¶¶ 25,  
9 175–177.)

10 If a statement claimed to be false constitutes mere “puffery,” then they are not  
11 actionable under the Lanham Act. *See Cook, Perkiss, and Liehe, Inc. v. N. Cal. Collection*  
12 *Serv. Inc.*, 911 F.2d 242, 246 (9th Cir. 1990); *see also Newcal Indus., Inc. v. Ikon Office*  
13 *Sol.*, 513 F.3d 1038, 1053 (9th Cir. 2008) (“[T]he determination of whether an alleged  
14 misrepresentation is a statement of fact or is instead mere puffery is a legal question that  
15 may be resolved on a Rule 12(b)(6) motion.”). Puffery “is exaggerated advertising,  
16 blustering, and boasting upon which no reasonable buyer would rely.” *Southland Sod*  
17 *Farms*, 108 F.3d at 1145; *cf. Cook*, 911 F.2d at 246 (explaining that an actionable false  
18 advertising claim involve “specific or absolute characteristics of a product”).

19 Axon contends that the challenged statements simply elucidate Axon’s company  
20 principles and values, rather than describe specific characteristics of a product that a  
21 customer can evaluate. (Doc. 106 at 11.) In response, GovGPT suggest that the statements  
22 are objectively measurable, capable of verification, contrary to Axon’s business practices,  
23 and explicitly tied to Axon’s claims of “ethical rigor” to its design practices. (Doc. 121  
24 at 4–9.)

25 The Ninth Circuit has held that generally describing the “high priority” that  
26 defendant placed on product development “d[id] not state an actionable fraud or negligent  
27 misrepresentation claim” because such claims were “generalized, vague and unspecific  
28 assertions” that constituted mere puffery. *Glen Holly Enter., Inc. v. Tektronix, Inc.*, 352

1 F.3d 367, 379 (9th Cir. 2003). Similarly, this Court has resounded the common holding  
2 that claims of “innovative” designs or “proprietary ingredients” are “not specific, concrete,  
3 not measurable, and therefore puffery.” *Soilworks, LLC v. Midwest Indus. Supply, Inc.*,  
4 575 F. Supp. 2d 1118, 1133 (D. Ariz. 2008) (citing *Rosenthal Collins Grp., LLC v. Trading*  
5 *Techs. Int’l, Inc.*, No. 05 C 4088, 2005 WL 3557947, at \*10 (N.D. Ill. Dec. 26, 2005);  
6 *Oestricher v. Alienware Corp.*, 544 F. Supp. 2d 964, 973 (N.D. Cal. 2008)); *see also*  
7 *Summit Tech., Inc. v. High-Line Med. Instr., Co.*, 933 F. Supp. 918, 931 (C.D. Cal. 1996)  
8 (“The Court agrees that [defendant’s] statement that the used Excimer lasers are ‘perfectly  
9 reliable’ is mere puffery, not actionable under the Lanham Act.”). Finally, statements  
10 about “ensur[ing] transparent regulatory compliance” have been deemed non-actionable  
11 puffery. *In re Lottery.com, Inc. Sec. Litig.*, 715 F. Supp. 3d 506, 550 (S.D.N.Y. 2024).

12 Statements 1, 2, 4, and 5 are quintessential puffery. General, unspecified claims  
13 about transparency, operation and design, as well as ethical standards have frequently been  
14 regarded as inactionable under the Lanham Act. *See id*; *Strougo v. Barclays PLC*, 105 F.  
15 Supp. 3d 330, 344 (S.D.N.Y. 2015) (explaining “statements about reputation, integrity, and  
16 compliance with ethical norms” are non-actionable puffery); *Glen Holly Ent.*, 352 F.3d  
17 at 379; *Soilworks*, 575 F. Supp. 2d at 1133. GovGPT’s Response does not address any of  
18 these cases, let alone set forth a discernable, legally-supported theory as to why these  
19 statements are not puffery. (*See* Doc. 121.) Therefore, the Court finds that, even had these  
20 statements referenced a product, they would at most be non-actionable puffery. At bottom,  
21 statements 1, 2, 4, and 5 do not make any specific claim about a complained about Axon  
22 product, and thus fall outside the scope of a Lanham Act false advertising claim.

23 *b. Statement 3*

24 Statement 3 references Axon’s Evidence.com platform, which GovGPT claims is  
25 “misleading” because there are “practical limitations on data export,” making the process  
26 potentially “cumbersome, incomplete, or technically challenging.” (Doc. 74 ¶¶ 59, 173.)  
27 Axon contends that customers in the DEMS market would likely be aware that “bulk  
28 export” of large data repositories would be cumbersome and technically challenging. (Doc.

1 106 at 11.) Moreover, Axon argues that the FAC fails to allege any customers were or  
2 would likely be deceived by statement 3 and GovGPT essentially admits that bulk export  
3 is possible and therefore not false. (*Id.*); *see also Southland Sod Farms*, 108 F.3d at 1139  
4 (an actionable false advertising statement must be factually untrue). In response, GovGPT  
5 argues that “while technically true,” the statement entices customers to use Evidence.com  
6 without realizing the financial barriers associated with trying another DEMS. (Doc. 121  
7 at 10–11.)

8 By its own admission, GovGPT concedes that statement 3 is true. (Doc. 121 at 9;  
9 Doc. 74 ¶¶ 59, 173.) When an advertisement is not “literally false,” a plaintiff may still  
10 obtain relief under the Lanham Act if it can show that “the advertisement has misled,  
11 confused, or deceived the consuming public.” *See Southland Sod Farms*, 108 F.3d at 1140.  
12 The FAC maintains that “Axon creates an illusion of freedom” that “prevents competitors  
13 from attracting customers who believe they have the flexibility to switch [DEMS]” and  
14 thus “customers are deceived into believing they have options when they do not.” (*Id.*  
15 ¶¶ 173–174.) GovGPT’s allegations are confusing in light of its admission that the  
16 statement is literally true. (Doc. 121.) Indeed, customers can leave Axon’s DEMS with  
17 their data in tow. Bulk export may be difficult on any number of DEMS platforms, not just  
18 Evidence.com. Moreover, the statement itself does not promise a seamless transition, it  
19 simply maintains that Axon offers customers the ability to bulk export its data if it wishes  
20 to try another service. And, contrary to GovGPT’s allegations, the statement does not  
21 promise that law enforcement agencies AB4’s would work with another DEMS platform.  
22 (*See* Doc. 74 ¶ 174.) GovGPT has failed to sufficiently plead that statement 3 is either  
23 false or misleading to sustain a Lanham Act claim.

24 Thus, GovGPT has failed to state a claim for relief under the Lanham Act and the  
25 Court will dismiss Count I without prejudice.

## 26 2. Count VII—UCL

27 GovGPT claims that Axon violated the UCL by failing to disclose that the AB4  
28 contains Quectel modules. (Doc. 74 ¶¶ 310–317.) Axon argues that GovGPT failed to

1 allege a sufficient violation of any of the UCL prongs. (Doc. 106 at 13 (citing Cal. Bus. &  
2 Prof. Code § 17200 *et seq.*.) In response, GovGPT contends that the FAC demonstrates  
3 Axon’s failure to disclose the Quectel modules created an uneven playing field by  
4 misleading customers. (Doc. 121 at 15.) According to GovGPT, Axon’s failure to disclose  
5 has “unfairly lock[ed] customers into its ecosystem through deceptive practices.” (*Id.*)

6 The UCL prohibits “any unlawful, unfair or fraudulent business act or practice and  
7 unfair deceptive, untrue or misleading advertising.” Cal. Bus. & Prof. Code § 17200. “An  
8 act can be alleged to violate any or all of the three prongs of the UCL—unlawful, unfair,  
9 or fraudulent.” *Berryman v. Merit Prop. Mgmt., Inc.*, 62 Cal. Rptr. 3d 177, 186 (Cal. Ct.  
10 App. 2007). The Court will discuss each prong in turn.

11 To allege that conduct is “unlawful,” a plaintiff must allege a violation of a different  
12 statute. *See Stearns v. Select Comfort Retain Corp.*, 763 F. Supp. 2d 1128, 1150 (N.D. Cal.  
13 2010) (“[T]he UCL borrows violations of other laws and treats them as unlawful practices  
14 that the unfair competition law makes independently actionable.” (quotation marks  
15 omitted)). GovGPT alleges that Axon’s conduct violated the Lanham Act and California’s  
16 Consumer Legal Remedies Act (“CLRA”). (Doc. 74 ¶ 312.) GovGPT’s UCL claim based  
17 on violation of the Lanham Act fails because it has failed to establish standing or plead a  
18 valid Lanham Act claim. Moreover, GovGPT does not provide any more than a passing  
19 reference to the CLRA in its FAC, leaving any claim of violation threadbare and  
20 conclusory. It has therefore failed to plead the necessary facts to show Axon’s omission  
21 was “unlawful” under the UCL.

22 Under the UCL, the factors that define unfairness are: “(1) the consumer injury must  
23 be substantial; (2) the injury must not be outweighed by any countervailing benefits to  
24 consumers or competition; and (3) it must be an injury that consumers themselves could  
25 not reasonably have avoided. *Camacho v. Automobile Club of S. Cal.*, 48 Cal. Rptr. 3d  
26 770, 776 (Cal. Ct. App. 2006). GovGPT alleges that Axon’s failure to disclose the Quectel  
27 modules “reduces competition because it conceals a material fact that [AB4s] could be  
28 compromised by foreign interference, hurting public safety.” (Doc. 74 ¶ 313.) This

1 allegation is deficient for a few reasons. First, GovGPT largely ignores the UCL  
2 requirements of pleading a substantial consumer injury and instead merely concludes that  
3 Axon’s failure to disclose reduced competition. (*See* Doc. 74 ¶ 313.) Second, GovGPT’s  
4 allegations of hacking and espionage related to the Quectel modules are preposterous. (*See*  
5 Doc. 71; Doc. 105 at 31.) Therefore, GovGPT has not stated a claim under the unfair  
6 business practice prong.

7 Finally, to allege conduct is a “fraudulent” business practice likely to deceive the  
8 public, a plaintiff must satisfy the heightened standard of Federal Rule of Civil Procedure  
9 9(b). *See Backhaut v. Apple, Inc.*, 74 F. Supp. 3d 1033, 1051 (N.D. Cal. 2014). Rule 9(b)  
10 requires a plaintiff alleging fraud “state with particularity the circumstances constituting  
11 fraud.” Fed. R. Civ. P. 9(b); *see also Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1124 (9th  
12 Cir. 2009). Additionally, plaintiffs asserting a theory of fraud predicated on false  
13 advertising and misrepresentation must “demonstrate actual reliance on the allegedly  
14 deceptive or misleading statements.” *Kwikset Corp. v. Superior Court*, 246 P.3d 877, 888  
15 (Cal. 2011) (cleaned up). GovGPT’s fraud allegations maintain that Axon’s omissions of  
16 the Quectel security risks “was likely to deceive and mislead customers who reasonably  
17 relied on Axon’s representations.” (Doc. 74 ¶ 314.) Noticeable absent is demonstrable  
18 reliance or particularized allegations regarding Axon’s fraudulent acts. As a result,  
19 GovGPT has failed to state a UCL claim under the fraudulent business practices prong.

20 Because GovGPT has failed to state a claim under any of the three UCL prongs, the  
21 Court will dismiss the claim.

### 22 3. Counts II–VI—The Antitrust Claims

23 “Section 7 of the Clayton Act generally prohibits business acquisitions whose effect  
24 may be to substantially lessen competition, or tend to create a monopoly in a relevant  
25 market.” *DeHoog v. Anheuser-Bush InBev*, 899 F.3d 758, 762 (9th Cir. 2018). To  
26 plausibly allege a claim under Section 1 or Section 2 of the Sherman Act, a plaintiff must  
27 allege that defendant engaged in anti-competitive conduct and harm flowed from that  
28 conduct. *Brantley*, 675 F.3d at 1197 (Section 1); *Aerotec*, 4 F. Supp. 3d at 1137 (Section

1 2). “The purpose of the Act is not to protect businesses from the working of the market; it  
2 is to protect the public from the failure of the market.” *Spectrum Sports, Inc. v. McQuillan*,  
3 506 U.S. 447, 458, (1993). Here, GovGPT offers three theories to show how Axon violated  
4 the Clayton Act: (1) the 2018 agreement with Microsoft; (2) the 2024 acquisition of Fusus;  
5 and (3) the 2018 acquisition of VieVu. (See Doc. 74 ¶¶ 192, 200, 208.) Similarly, GovGPT  
6 relies on the acquisitions, the Microsoft agreement, and the Quectel allegations to  
7 substantiate its Sherman Act claims. (See Doc. 74 ¶¶ 192–309.)

8 *a. The Microsoft Agreement*

9 The Court is unsure why GovGPT brought a Section 7 Clayton Act claim against  
10 Axon predicated on the 2018 Microsoft agreement, as the Act governs the acquisition by  
11 one corporation of the stock of another, not cloud computing contracts. See 15 U.S.C. § 18.  
12 GovGPT’s Response does not clarify its position on the matter. (See Doc. 121.) Thus,  
13 GovGPT’s Clayton Act claim must be dismissed with prejudice to the extent that it is  
14 premised on the 2018 Microsoft contract or 2022 extension.

15 The Sherman Act claims predicated on the Microsoft agreements will be dismissed  
16 for the reasons the Court stated in the portion of this Order dismissing the claims against  
17 Microsoft. Namely, the statute of limitations has run, and GovGPT has not sufficiently  
18 pleaded an overt act to toll the statute. See, e.g., *Garrison*, 159 F. Supp. 3d at 1070–71;  
19 *Ryan*, 147 F. Supp. 3d at 884.

20 *b. Standing to Challenge Fusus Acquisition*

21 Axon argues that GovGPT lacks standing to challenge the 2024 acquisition of Fusus  
22 because GovGPT does not compete in the Public Safety Video Integration and  
23 Management Platforms’ (“real-time crime centers” or “RTCC”) market. (See Doc. 74 ¶ 25  
24 n.2 (GovGPT does not operate in the [RTCC] market today. However, it has plans to.”)  
25 In response, GovGPT contends that its products inherently compete with offerings in the  
26 RTCC markets, and therefore, it has standing. (See Doc. 121 at 18.) Interestingly, in its  
27 Response to Safariland’s Motion to Dismiss (Doc. 110), GovGPT claims that it is a “new  
28 entrant into the BWC, DEMS, and now [RTCC] markets.” (Doc. 117 at 2.)



1 *Cal. State Council of Carpenters*, 459 U.S. 519, 530–535 (1983). Those factors include:  
2 (1) The nature of the plaintiff’s alleged injury; that is, whether it was the type the antitrust  
3 laws were intended to forestall; (2) The directness of the injury, i.e., causation; (3) The  
4 speculative measure of the harm; (4) The risk of duplicative recovery; and (5) The  
5 complexity in apportioning damages. *See Amarel v. Connell*, 102 F.3d 1494, 1507 (9th  
6 Cir. 1996) (citing *Associated General Contractors*, 459 U.S. at 535). These factors must  
7 be balanced, i.e., “[n]o single factor is decisive,” but great weight is given to the nature of  
8 the plaintiff’s alleged injury. *R.C. Dick Geothermal Corp. v. Thermogenics, Inc.*, 890 F.2d  
9 139, 146 (9th Cir. 1989); *Amarel*, 102 F.3d 1507. But an injury is necessary. *See Oakland*  
10 *Raiders*, 20 F.4th at 456 (“[T]he first factor—antitrust injury—is mandatory.”).

11 “Antitrust injury is defined not merely as an injury caused by an antitrust violation,  
12 but more restrictively as ‘injury of the type of the antitrust laws were intended to prevent  
13 and that flows from that which makes [defendant’s] acts unlawful.’” *Glen Holly Ent.*, 352  
14 F.3d at 371 (quoting *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 489  
15 (1977)). Antitrust laws protect against anticompetitive conduct, not competition in the  
16 marketplace. *United States v. Topco Assoc., Inc.*, 405 U.S. 596, 608 (1972). Antitrust  
17 injury has four requirements: “(1) unlawful conduct, (2) causing an injury to the plaintiff,  
18 (3) that flows from that which makes the conduct unlawful, and (4) that is of the type the  
19 antitrust laws were intended to prevent.” *Am. Ad Mgmt., Inc. v. Gen. Tel. Co. of Cal.*, 190  
20 F.3d 1051, 1054–55 (9th Cir. 1999). As stated by the Supreme Court:

21 Antitrust laws in general, and the Sherman Act in particular, are the Magna  
22 Carta of free enterprise. They are as important to the preservation of  
23 economic freedom and our free-enterprise systems as the Bill of Rights is to  
the protection of our fundamental personal freedoms.

24 *Topco*, 405 U.S. at 608. “One form of antitrust injury is “[c]oercive activity that prevents  
25 its victims from making free choices between market alternatives.” *Glen Holly Ent.*, 352  
26 F.3d at 374 (citing *Amarel*, 102 F.3d at 1509). However, “[antitrust] injury, although  
27 causally related to an antitrust violation, nevertheless will not qualify as ‘antitrust injury’  
28 unless it is attributable to an anti-competitive practice under scrutiny.” *Atl. Richfield Co.*

1 *v. USA Petroleum Co.*, 495 U.S. 328, 334 (1990). This is because “[i]t is inimical to [the  
2 antitrust] laws to award damages’ for losses stemming from continued competition.”  
3 *Cargill, Inc. v. Monfort of Colo., Inc.*, 479 U.S. 104, 109–110 (1986).

4 With respect to the Clayton Act, GovGPT resounds Section 7’s requirements before  
5 it was injured due to “[t]he effect of th[e] [VieVu] acquisition” having substantially  
6 lessened competition thereby creating a monopoly in the Markets. (Doc. 74 ¶ 194.)  
7 Thereafter, GovGPT declares that “[h]igh barriers to entry and expansion have made it  
8 infeasible for a competitor like GovGPT to enter the Markets.” (*Id.* ¶ 198.) Reading past  
9 the conclusory nature of these allegations, and taken as true, the claimed harm is a common  
10 injury to competition that the antitrust laws were intended to forestall. *See Cargill*, 479  
11 U.S. at 113 (explaining that a private plaintiff must show an injury “of the type the antitrust  
12 laws were designed to prevent”). However, the sufficiency of GovGPT’s injury is  
13 maligned by its position as a competitor and its non sequitur allegations.

14 Reduced competition and quality, as well as higher prices, are prime types of  
15 consumer injuries that the antitrust laws aim to prevent. *See Brunswick Corp.*, 429 U.S.  
16 at 489. However, GovGPT, as a competitor, would primarily seek to gain from these  
17 consequences. *See Am. Ad Management.*, 190 F.3d at 1056 (“There can be no antitrust  
18 injury if the plaintiff stands to gain from the alleged unlawful conduct.”); *Sprint Nextel*  
19 *Corp. v. AT&T Inc.*, 821 F. Supp. 2d 308, 319 (D.D.C. 2011) (“[While] harm to consumers  
20 by way of increased prices is the type of injury the antitrust laws were designed to  
21 prevent, . . . it is not an injury-in-fact that competitors suffer.”). Courts have recognized  
22 that reduced competition and the ability to charge higher prices would, in most  
23 circumstances, benefit competitors. *See Matsushita*, 475 U.S. at 583 (“[R]estraints that  
24 have the effect of either raising market price or limiting output . . . actually benefit  
25 competitors by making supracompetitive pricing more attractive.”); *Novation Ventures,*  
26 *LLC v. J.G. Wentworth Co., LLC*, 156 F. Supp. 3d 1094, 1101 (C.D. Cal. 2015) (“If the  
27 merger has benefitted Defendants by reducing the number of competitors in the  
28 market . . . then it has similarly benefitted the other participants in that market by reducing

1 competition for them.”). Although, the Ninth Circuit has found that a competitor who may  
2 gain from a defendant’s alleged anticompetitive conduct is not completely precluded from  
3 showing an antitrust injury. *Cf. Ellis v. Salt River Proj. Improvement and Power Dist.*, 24  
4 F.4th 1262, 1274–75 (9th Cir. 2022). Although, the Ninth Circuit’s finding does not  
5 change the fact that the plaintiff must plead a cognizable injury, it may not, as GovGPT  
6 has done here, cobble together a mix of consumer, competitor, and conspiracy-based injury  
7 allegations related to an acquisition, and hope that the Court pieces the puzzle together. *See*  
8 *Atl. Richfield*, 495 U.S. at 334.

9 GovGPT’s allegations of high barriers to market entry are similarly insufficient.  
10 (Doc. 74 ¶ 198.) Aside from declaring that Axon’s anticompetitive conduct made it  
11 “infeasible for a competitor” to enter the market, GovGPT provides no factual  
12 enhancement to demonstrate that it has been foreclosed or impeded from the opportunity  
13 of competing in the relevant product market because of the VieVu acquisition. (*See*  
14 *generally id.*); *cf. Novation Ventures*, 156 F. Supp. 3d at 1102. Again, the law requires  
15 GovGPT to demonstrate that it has suffered an injury the antitrust laws were designed to  
16 prevent, which requires more than regurgitating the elements in myriad allegations. (*See*  
17 Doc. 74 ¶¶ 198, 205.)

18 GovGPT also alleges that the acquisition restrained trade because “conceal[ed]  
19 critical information about the security vulnerabilities . . . [of] Quectel modules, and thereby  
20 misleading [customers] into buying Axon products.” (*Id.* ¶ 213); *Glen Holly Ent.*, 352 F.3d  
21 at 374 (explaining that antitrust injury may result from “[c]oercive activity that prevents its  
22 victims from making free choices between market alternatives.”) According to GovGPT,  
23 but for Axon’s deception, law enforcement agencies would have bought from competing  
24 firms, and this failure to disclose “has distorted the competitive landscape . . . at the expense  
25 of competitors like Plaintiff.” (*Id.*) This allegation, however, does not stand up to even  
26 modest scrutiny. First, the procedural history of this case casts some doubt on the  
27 plausibility of GovGPT’s allegations regarding the Quectel “chips,” “components,” or  
28 “modules.” (*See* Doc. 71; Doc. 105.) Second, GovGPT’s FAC is unclear as to whether it

1 is even a competitor. (*See* Doc. 74 ¶¶ 88, 133, 163, 177, 202.) Third, GovGPT alleges no  
2 more than bald conclusions that the presence of the Quetel parts *actually* led to it losing  
3 business. (*See id.* ¶ 213.) And fourth, the link between the acquisition of VieVu, the  
4 Quetel parts, and GovGPT’s alleged injury is tenuous and nearly incomprehensible. (*See*  
5 *id.*) In other words, the FAC not only fails to allege an antitrust injury for a Section 7  
6 claim, but also fails to comply with the fundamental requirement of Rule 8: “a short and  
7 plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P.  
8 8(a)(2). The facts alleged concerning the Quetel parts do little to enhance GovGPT’s  
9 generalized allegations of “substantially lessened competition” and “monopolization.”

10 Interestingly included in the Section 7 allegations is the following: “Plaintiff have  
11 [sic] been injured and have [sic] paid artificially inflated prices for the Products.” (Doc.  
12 74 ¶¶ 228, 233, 253, 261.) The same or similar allegations of injury are present in Counts  
13 III and VI as well. The FAC is having an identity crisis, as it has failed to the draw the line  
14 between consumer-based injury and competitor-based injury. GovGPT’s has not pleaded  
15 an antitrust injury that would confer standing upon it for a Section 7 Clayton Act claim.

16 GovGPT similarly fails to plead an antitrust injury for its Sherman Act claims. In  
17 Count III, which alleges a conspiracy to restrain trade, GovGPT contends that Axon entered  
18 into several agreements with Safariland and Microsoft that have reduced competition in  
19 violation of Section 1. (Doc. 74 ¶ 233.) GovGPT does not plead specific allegations  
20 regarding the conspiracy to restrain trade as it relates to the VieVu Acquisition. (*See id.*)  
21 Instead, this section is largely directed at Axon and Microsoft’s agreements and hosting of  
22 bodycam footage. (*See id.* ¶¶ 231–248.) The Court has previously explained that the  
23 statute of limitations bars GovGPT’s antitrust claims based on the 2018 Microsoft  
24 agreement. Additionally, as alleged, it is unclear how the agreements with Safariland  
25 establish an injury, as the non-compete provisions have been rescinded. (*Id.* ¶¶ 134, 233.)

26 To the extent that the injury is premised on the Quetel modules, GovGPT’s claim  
27 is no more successful. As explained, those allegations lack plausibility and factual  
28 enhancement, making them at most, an attempt to further support an already rejected

1 conspiracy theory about the AB4. Unfortunately, the allegations in Count III, like most of  
2 the FAC, is rife with ultimate, conclusory facts about GovGPT’s alleged injuries. (*See*,  
3 *e.g., id.* ¶ 238 (“Defendants’ conduct has caused Plaintiff to suffer damages in the form of  
4 injuries to their business or property.”))

5 Count IV, which alleges monopolization of the BWC and DEMS markets, GovGPT  
6 contends that the VieVu acquisition has resulted in “substantial anticompetitive effects”  
7 such as higher prices in the product markets and injured competition. (Doc. 74 ¶ 253.)  
8 GovGPT goes on to allege that Axon’s conduct has caused it to suffer injuries to its  
9 business and property due to the acquisition and because of “Axon’s deliberate  
10 concealment of the security risks associated with the Quectel Modules . . . mislead  
11 [consumers] into adopting Axon’s technology.” (*Id.* ¶ 265.) Like the preceding Counts,  
12 the FAC lacks any factual enhancement to show how the VieVu Acquisition resulted in  
13 injurious conduct that has or will injure GovGPT. (*See id.*) Instead, GovGPT peddles its  
14 conspiracy theory about the potential danger of Quectel modules and Axon’s deceptive  
15 sales practices. (*Id.*)

16 Similarly, Count VI, which alleges conspiracy to monopolize, does not set forth how  
17 Axon’s illegal conduct related to the VieVu Acquisition injured GovGPT as a competitor.<sup>7</sup>  
18 (*See id.* ¶¶ 284–309.) Even if GovGPT successfully established standing for this claim, it  
19 would otherwise fail because it is premised upon a “dual monopoly” theory, upon which a  
20 Section 2 claim cannot be based. *See Standfacts Credit Serv’s Inc. v. Experian Info. Sol.,*  
21 *Inc.*, 405 F. Supp. 2d 1141, 1152–53 (C.D. Cal. 2005) (“[A]n allegation of conspiracy to  
22 create a shared monopoly does not plead a claim of conspiracy under section 2.”); (Doc.  
23 74 ¶ 292 (“[T]he collaboration between Microsoft and Axon established a dual  
24 monopoly.”).)

25 Earlier, the Court afforded GovGPT Lanham Act claim some analysis after finding  
26 that it lacked standing to bring it. The same benefit will not be afforded to GovGPT

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27 <sup>7</sup> In Count VI, GovGPT contends that competitors are unable to compete in part because  
28 Axon will not provide competitors with footage from its Evidence.com repository. (*Id.*  
¶ 288.) Or in other words, GovGPT’s claim is partly based on its issue with the fact that,  
without a court order, it cannot utilize Axon’s work for its own gain. (*See id.*)

1 regarding its antitrust claims, as the FAC and its Response to Axon’s Motion are near  
2 indecipherable regarding these claims. GovGPT has consistently misrepresented and  
3 attempted to rewrite the allegations in its FAC and the precedent upon which it relies. (*See*,  
4 *e.g.*, Doc. 121 at 22 (citing *In re Lithium Ion Batteries Antitrust Litigation*,  
5 No.:13-MD-2420 YGR, 2024 WL 309192, at \*1 (N.D. Cal. Jan. 21, 2014)).)

6 On its face, the FAC is confusing, inconsistent, and as a result, fails to properly  
7 plead antitrust injury. Similarly, the FAC fails to state a claim for relief under the Lanham  
8 Act or the UCL. Consequently, the entire FAC will be dismissed without prejudice as to  
9 Axon.

#### 10 **IV. LEAVE TO AMEND**

11 Federal Rule of Civil Procedure 15(a) requires that leave to amend be “freely give[n]  
12 when justice so requires.” Leave to amend should not be denied unless “the proposed  
13 amendment either lacks merit or would not serve any purpose because to grant it would be  
14 futile in saving the plaintiff’s suit.” *Universal Mortg. Co. v. Prudential Ins. Co.*, 799 F.2d  
15 458, 459 (9th Cir. 1986). Therefore, “a district court should grant leave to amend even if  
16 no request to amend the pleading was made, unless it determines that the pleading could  
17 not possibly be cured by the allegation of other facts.” *Lopez v. Smith*, 203 F.3d 1122,  
18 1127 (9th Cir. 2000) (cleaned up).

19 Here, GovGPT filed an Initial Complaint, a Proposed Amended Complaint (Doc.  
20 69) which it later withdrew, and now the FAC (Doc. 74). Each iteration of the Complaint  
21 in this case has asserted similar claims, including those claims regarding the potential  
22 danger of Quectel “chips,” “components,” or “modules.” (*See* Doc. 1; Doc. 69; Doc. 74.)  
23 Axon contends that the FAC ought to be dismissed with prejudice because GovGPT has  
24 had ample opportunities to cure its deficient allegations and has failed to do so. (Doc. 106  
25 at 32 (citing *McHenry v. Renne*, 84 F.3d 1172 (9th Cir. 1996)).)

26 The Court agrees that GovGPT’s FAC fails to state a claim, but it does not believe  
27 that all claims in this case should be dismissed with prejudice at this time. Although the  
28 Court can say with certainty that GovGPT has not buried a cognizable claim somewhere

1 in his 110-page FAC. Indeed, the FAC is so long, dense, and inconsistent that GovGPT's  
2 claims often collapse in on themselves. That notwithstanding, the Court will allow  
3 GovGPT an additional attempt at amendment. However, the Court warns GovGPT that its  
4 Second Amended Complaint must comply with Rule 8(a). The Court will not pronounce  
5 a hard-and-fast page limit, but the Court notes that 110-pages is excessive in a case wherein  
6 a great deal of the alleged facts more to do with supporting a conspiracy theory than  
7 substantiating Lanham Act or antitrust claims. It is not lost on the Court that the very  
8 nature of antitrust actions typically begets a detailed complaint. However, pleadings in  
9 such cases ought to (1) avoid alleging a horde of irrelevant, conspiratorial facts; and (2)  
10 comport with the requirements that pleadings in federal court be "short and plain." *See*  
11 *Fed. R. Civ. P. (8)(a)(2)*. Failure to comply with this directive will result in the dismissal  
12 of GovGPT's amended pleading. If GovGPT wishes to have another bite at the apple, it  
13 will file a Second Amended Complaint within thirty (30) days of the date of this Order.

14 **V. CONCLUSION**

15 Accordingly,

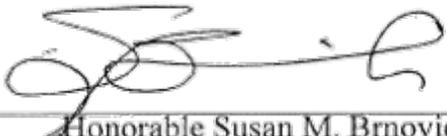
16 **IT IS HEREBY ORDERED granting** Safariland's Motion to Dismiss for Lack of  
17 Personal Jurisdiction (Doc. 110) and **denying as moot** Safariland's Motion to Dismiss for  
18 Failure to State a Claim (Doc. 111). Because the Court cannot exercise jurisdiction over  
19 Safariland, it will be dismissed from this case with prejudice.

20 **IT IS FURTHER ORDERED granting** Microsoft's Motion to Dismiss (Doc. 90)  
21 and dismissing Microsoft from this case without prejudice.

22 **IT IS FURTHER ORDERED granting** Axon's Motion to Dismiss (Doc. 106) and  
23 dismissing Axon from this case without prejudice.

24 **IT IS FURTHER ORDERED instructing** GovGPT that if it wishes to file a  
25 Second Amended Complaint, it must do so within thirty (30) days of the date of this Order.

26 Dated this 7th day of March, 2025.

27  
28   
Honorable Susan M. Brnovich  
United States District Judge