IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

CIRCLE CLICK MEDIA LLC, METRO TALENT, LLC, CTNY INSURANCE GROUP LLC, on behalf of themselves and all others similarly situated, Plaintiffs, v. REGUS MANAGEMENT GROUP LLC, REGUS BUSINESS CENTRE LLC, REGUS PLC, HQ GLOBAL WORKPLACES LLC, and DOES 1 through 50, Defendants.	Case No. 12-04000 SC ORDER RE: (1) REGUS PLC'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION AND (2) DEFENDANTS' MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

I. INTRODUCTION

Plaintiffs Circle Click Media LLC ("Circle Click"), Metro Talent, LLC ("Metro Talent"), and CTNY Insurance Group LLC ("CTNY") (collectively, "Plaintiffs") bring this putative class action against Regus Management Group LLC ("RMG"), Regus Business Centre LLC ("RBC"), Regus plc, and HQ Global Workplaces LLC ("HQ Global") (collectively "Defendants"). ECF No. 24 (First Amended Complaint ("FAC")). Now before the Court is: (1) Regus plc's motion to dismiss for lack of personal jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1); and (2) Defendants' motion to dismiss for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6). ECF Nos. 29 ("12(b)(1) MTD"); 31 ("12(b)(6)

MTD"). The motions are fully briefed[1] and appropriate for resolution without oral argument. For the reasons set forth below, Regus plc's 12(b)(1) motion is DENIED WITHOUT PREJUDICE pending jurisdictional discovery by Plaintiffs. Further, Defendants' 12(b)(6) motion is GRANTED in part and DENIED in part.

II. BACKGROUND

The following facts are taken from Plaintiffs' FAC. Defendants are in the business of leasing commercial office space throughout California and New York. FAC ¶ 1. Defendant Regus plc is a foreign public limited company incorporated and registered in Jersey, Channel Islands, and is the parent company of Defendants RMG, RBC, and HQ Global. Id. ¶¶ 1, 14. Plaintiffs allege that all four defendants are alter egos of each other and generally do not distinguish between them in the FAC. See id. ¶¶ 1, 21

In 2011, Plaintiffs entered into identical office agreements with Defendants (collectively, the "Office Agreement(s)") for commercial office space in California and New York. Id. ¶¶ 43, 52, 65. Plaintiffs allege they were assessed charges by Defendants over the monthly payments indicated by their agreements. Id. ¶ 71. For example, Plaintiffs allege that Defendants routinely assessed Circle Click for charges relating to kitchen amenities, various telecommunication services, "business continuity service," taxes, and penalties -- fees which were not disclosed in the Office Agreement or the fine print and which bore no reasonable

[1] ECF Nos. 39 ("Opp'n to 12(b)(6) MTD"); 40 ("Opp'n to 12(b)(1) MTD"), 44 ("Reply ISO 12(b)(1) MTD"), 45 ("Reply ISO 12(b)(6) MTD"). The Court reminds Plaintiffs that Civil Local Rule 7-4 requires parties to include a table of contents and a table of authorities in all briefs exceeding ten pages.

relationship to the services purportedly rendered by Defendants. Id. ¶ 48.

Plaintiffs allege that, in light of Defendants' billing practices, its advertising is false and misleading. See id. ¶ 73. Plaintiffs specifically point to advertisements posted to Defendants' website from 2003 through 2012. These advertisements represented that customers "could save up to 78 % [sic] compared to traditional office costs," that Defendants' one-page contract "takes just 10 minutes to complete," and that Defendants' services were "[s]imple, easy[,] and flexible." Id. ¶¶ 23-31. Plaintiffs also point to a broadcast commercial by Defendants, wherein an actress states:

> I don't have a lease so I don't have to budget for stuff like phones, IT guys, and artwork for the lobby. Instead, I pay one low monthly rate that gives me a beautiful lobby that impresses my clients, a friendly receptionist, a fully furnished office, a place to meet, and a place to brainstorm with my fellow new way workers. We wonder why more people don't realize that the new way to work is the best way to work.

Id. ¶ 31.

Plaintiffs filed the instant action in state court in May 2012 and Defendants subsequently removed. ECF No. 1. In their FAC, which was filed after removal, Plaintiffs seek to represent a class of all persons who paid for Defendants' office space in California and New York and were assessed charges by Defendants over the monthly payments indicated in the Office Agreement or any similar agreement. FAC ¶ 71. Plaintiffs assert six counts on behalf of the California class, which is represented by Circle Click and Metro Talent: (1) violation of California Business and Professions Code section 17200 (the California Unfair Competition Law ("UCL"));

(2) violation of California Business and Professions Code section 17500 (the California False Advertising Law ("FAL"); (3) "concealment/suppression"; (4) & (5) negligent and intentional misrepresentation; and (6) unjust enrichment. Plaintiffs also assert the following claims on behalf of the New York class, which is represented by CTNY: (7) & (8) violation of New York State General Business Law ("NYSGBL") sections 349 and 350; and (9) unjust enrichment. Plaintiffs seek restitution of wrongfully obtained revenues, injunctive relief, and special and general damages, among other things.

III. DISCUSSION

A. Regus plc's 12(b)(1) Motion

Regus plc argues that it should be dismissed from this suit because it is a foreign entity that operates outside of California. 12(b)(1) MTD at 4. Plaintiffs respond that the exercise of specific jurisdiction is proper due to Regus plc's false advertising in California and that the other Defendants' contacts with California can be imputed to Regus plc under an agency and alter ego analysis. Opp'n to 12(b)(1) MTD at 9-15. Plaintiffs also argue that, if the Court finds that Plaintiffs have failed to make a sufficient showing on these claims, it should grant Plaintiffs an opportunity to take jurisdictional discovery. Id. at 16.

i. Legal Standard

Plaintiffs bear the burden of showing that the Court has personal jurisdiction over Regus plc. See Pebble Beach Co. v. Caddy, 453 F.3d 1151, 1154 (9th Cir. 2006). "[T]his demonstration

requires that the plaintiff make only a prima facie showing of jurisdictional facts to withstand the motion to dismiss." Id. (quotations omitted). "[T]he court resolves all disputed facts in favor of the plaintiff . . . ." Id. (quotations omitted). "The plaintiff cannot simply rest on the bare allegations of its complaint, but uncontroverted allegations in the complaint must be taken as true." Mavrix Photo, Inc. v. Brand Techs., Inc., 647 F.3d 1218, 1223 (9th Cir. 2011) (quotations omitted). Since California's long-arm statute is coextensive with federal due process requirements, Cal. Civ. Proc. Code § 410.10, the personal jurisdiction analysis under state and federal law are the same.

ii. Specific Jurisdiction

The Ninth Circuit has established a three-prong analysis for assessing claims of specific jurisdiction:

> (1) The non-resident defendant must purposefully direct his activities or consummate some transaction with the forum or resident thereof; or perform 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;
>
> (2) the claim must be one which arises out of or relates to the defendant's forum-related activities; and
>
> (3) the exercise of jurisdiction must comport with fair play and substantial justice, i.e. it must be reasonable.

Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797, 802 (9th Cir. 2004). The plaintiff bears the burden of satisfying the first two prongs and, if it does, the burden then shifts to the defendant to show why the exercise of personal jurisdiction would be unreasonable. Id.

As to the first prong, the parties agree that the Court should

apply the purposeful direction analysis enunciated by the Supreme Court in Calder v. Jones, 465 U.S. 783 (1984). 12(b)(1) MTD at 7, Opp'n to 12(b)(1) MTD at 10. "To satisfy this test the defendant must have (1) committed an intentional act, which was (2) expressly aimed at the forum state, and (3) caused harm, the brunt of which is suffered and which the defendant knows is likely to be suffered in the forum state." Pebble Beach, 453 F.3d at 1156 (citing Calder, 465 U.S. at 783).

Plaintiffs argue that the "expressly aimed" condition is met here because of Defendants' website, regus.com. Opp'n to 12(b)(1) MTD at 10. The Ninth Circuit has held that there is no personal jurisdiction where "a website advertiser [does] nothing other than register a domain name and post an essentially passive website." Pebble Beach, 453 F.3d at 1157 (quotations omitted). On the other hand, personal jurisdiction may be appropriate where the defendant operates an interactive website, depending on the "level of interactivity and commercial nature of the exchange of information that occurs on the Web site." Cybersell, Inc. v. Cybersell, Inc., 130 F.3d 414, 418 (9th Cir. 1997).

Plaintiffs contend that regus.com is highly interactive and designed to target California consumers. Opp'n to 12(b)(1) MTD at 10. They point out that the website includes sub-domain directories for thirty-six California cities and counties. Id. at 10-11. Defendants counter that the interactive features on the website interface with RMG, not Regus plc. 12(b)(1) MTD at 8. Defendants rely on the declaration of Tim Regan, the company secretary for Regus plc., who declares: "Communications and business that are completed on the www.regus.com website by

California customers occur with [RMG]. The interactive features on this website and the contact information on this website direct the California customer to [RMG]." ECF No. 30 ("Regan Decl.") ¶ 18. Since the Regan Declaration controverts the FAC, the Court must look past its bare allegations of purposeful direction.[2] Thus, the regus.com website cannot support a finding of purposeful direction or the exercise of personal jurisdiction.

Neither can the "unsolicited email" produced by Plaintiffs. ECF No. 41 ("Ward Decl.") Ex. B. The email is a general advertisement from "Regus@regus-woldwide.com" which was sent to "award@circleclick.com" on May 25, 2012. Id. The signature line of the email refers to Regus plc and its registered office in the Channel Islands. Id. This general advertisement, which makes no reference to California, does not demonstrate that Regus plc expressly aimed its activities at California. Further, Plaintiffs'

[2] Plaintiffs object to the Regan Declaration on a number of grounds. First, they argue that Mr. Regan lacks the requisite personal knowledge and that his declaration is based on hearsay. Opp'n to 12(b)(1) MTD at 5. Plaintiffs point to the first paragraph of the declaration, in which Mr. Regan states: "The following facts are based upon my personal knowledge or are based upon information received from persons upon whom I rely in the normal course of business and/or the business records of Regus plc." Id. (quoting Regan Decl. ¶ 1). Contrary to Plaintiffs' contention, Mr. Regan does not lack the requisite personal knowledge merely because he may have reached an understanding about some of Regus plc's operations based on his review of business records or information gathered from staff. See Great Am. Assur. Co. v. Liberty Surplus Ins. Corp., 669 F. Supp. 2d 1084, 1089 (N.D. Cal. 2009) ("Personal knowledge includes opinions and inferences grounded in observations and experience."). Further, Mr. Regan's declaration is not hearsay because it is based on Mr. Regan's own understanding and observations and contains no out-of-court statements. Plaintiffs also object to Mr. Regan's statements concerning regus.com on the ground that they are vague and ambiguous and constitute inadmissible legal conclusions because they interpret the legal significance of online interaction through the Regus website. Opp'n to 12(b)(1) MTD at 8. This argument is unavailing. The paragraphs targeted by Plaintiffs contain straightforward statements of fact, not legal conclusions.

injuries could not be related to this email since it was sent after Plaintiffs filed the instant action.

Accordingly, the Court finds that Plaintiffs have failed to meet their burden of showing that the exercise of specific jurisdiction would be appropriate.

iii. Agency and Alter Ego Analysis

Generally, the existence of a parent-subsidiary relationship "is not sufficient to establish personal jurisdiction over the parent on the basis of the subsidiaries' minimum contacts with the forum." Doe v. Unocal Corp., 248 F.3d 915, 925 (9th Cir. 2001). However, "if the parent and subsidiary are not really separate entities [i.e., alter egos], or one acts as an agent of the other, the local subsidiary's contacts with the forum may be imputed to the foreign parent corporation." Id. at 926 (quotations omitted).

To satisfy the alter ego exception to the general rule, "the plaintiff must make out a prima facie case (1) that there is such unity of interest and ownership that the separate personalities [of the two entities] no longer exist and (2) that failure to disregard [their separate identities] would result in fraud or injustice." Id. (quotations omitted). The agency exception applies where "the subsidiary functions as the parent corporation's representative in that it performs services that are sufficiently important to the foreign corporation that if it did not have a representative to perform them, the corporation's own officials would undertake to perform substantially similar services." Id. at 928 (quotations omitted).

The Court finds that Plaintiffs have proffered insufficient facts to support the application of either exception here.

Plaintiffs argue that the exceptions apply because Regus plc, RMG, and RBC share a website, trademark, and logo. See Opp'n to 12(b)(1) MTD at 14-15. However, they cite no authority which would suggest that those facts are sufficient to attribute RMG and RBC contacts to Regus plc. Plaintiffs also baldly assert that Regus plc uses the other Defendants as marketing conduits; however, it offers no other facts concerning the connection between these different entities. It is unclear how much control Regus plc exerts over the other Defendants or whether they share revenues, customers, or staff. In short, Plaintiffs have yet to come forward with any evidence concerning the functional relationship between Defendants.

Accordingly, the Court declines to impute RMG and RBC's contacts with California to Regus plc at this time.

iv. Jurisdictional Discovery

The district court has discretion to allow a plaintiff to conduct jurisdictional discovery. Wells Fargo & Co. v. Wells Fargo Exp. Co., 556 F.2d 406, 430 n.24 (9th Cir. 1977). Requests for such discovery should ordinarily be granted "where pertinent facts bearing on the question of jurisdiction are controverted . . . or where a more satisfactory showing of the facts is necessary." Id. (quotations omitted). However, a district court need not permit discovery "[w]here a plaintiff's claim of personal jurisdiction appears to be both attenuated and based on bare allegations in the face of specific denials made by the defendants . . . ." Pebble Beach, 453 F.3d at 1160 (quotations omitted). The Court finds that jurisdictional discovery is appropriate here. Defendants argue that Plaintiffs have failed to substantiate their agency and alter

ego theories, but they have not denied Plaintiffs' allegations. See Reply ISO 12(b)(1) MTD. Accordingly, discovery may uncover additional evidence pertinent to the assessment of personal jurisdiction.

For the foregoing reasons, the Court DENIES Regus Plc's motion to dismiss for lack of personal jurisdiction WITHOUT PREJUDICE and GRANTS Plaintiffs leave to conduct jurisdictional discovery to collect evidence relevant to their alter ego and agency theories of personal jurisdiction. After discovery has been completed, Regus plc may again move to dismiss for lack of personal jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1).

B. Defendants' Rule 12(b)(6) Motion

i. Legal Standard

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) "tests the legal sufficiency of a claim." Navarro v. Block, 250 F.3d 729, 732 (9th Cir. 2001). "Dismissal can be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1988). "When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." Ashcroft v. Iqbal, 556 U.S. 662, 664 (2009). However, "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Id. at 663. (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)). The allegations made in a

complaint must be both "sufficiently detailed to give fair notice to the opposing party of the nature of the claim so that the party may effectively defend against it" and "sufficiently plausible" such that "it is not unfair to require the opposing party to be subjected to the expense of discovery." Starr v. Baca, 633 F.3d 1191, 1204 (9th Cir. 2011).

ii. Group Pleading

Defendants first argue that RBC, Regus plc, and HQ Global should be dismissed from the case since Plaintiffs fail to allege any facts indicating that they had any involvement in the matters that form the basis of Plaintiffs' claims. 12(b)(6) MTD at 7. Relying on Swartz v. KPMG LLP, 476 F.3d 756 (9th Cir. 2007), Defendants contend that Plaintiffs have engaged in impermissible group pleading. Id. In Swartz, the Ninth Circuit held that "[i]n the context of a fraud suit involving multiple defendants, a plaintiff must, at a minimum, 'identif[y] the role of [each] defendant[] in the alleged fraudulent scheme.'" 476 F.3d at 765 (quotations omitted) (alterations in the original). Defendants argue that, although the FAC names four distinct defendants, it makes no effort to articulate each defendant's role in the supposed fraud, misrepresentations, or concealment. 12(b)(6) MTD at 7.

The Court is not persuaded. As an initial matter, the prohibition against group pleading only applies in cases of fraud, see Swartz 476 F.3d at 765, and, in this case, only a fraction of Plaintiffs' claims sound in fraud. Defendants argue that Federal Rule of Civil Procedure 8 also bars Plaintiffs' claims, since it requires Plaintiffs to set forth which claims are alleged against which defendants. Reply ISO 12(b)(6) MTD at 3. However, Rule 8

pleading standards do not prevent a plaintiff from "pleading facts alleged upon information and belief where the facts are peculiarly within the possession and control of the defendant . . . ." Arista Records, LLC v. Doe 3, 604 F.3d 110, 120 (2d Cir. 2010) (quotations omitted). Such is the case here. Plaintiffs have pled, upon information and belief, that Defendants are alter egos of each other. FAC ¶ 21. As information concerning Defendants' corporate relationships is in the sole possession of Defendants, Plaintiffs are entitled to discovery on the matter. This same reasoning applies to Plaintiffs' fraud claims. See Moore v. Kayport Package Exp., Inc., 885 F.2d 531, 540 (9th Cir. 1989) ("Instances of corporate fraud may also make it difficult to attribute particular fraudulent conduct to each defendant as an individual.").

Defendants argue that Plaintiffs have failed to plead sufficient facts to support their alter ego allegations. Reply at 4. The Court disagrees. Plaintiffs allege that "[Defendants] make[] no distinction between entities when using the Regus logo in connection with marketing," that "[Defendants] describe[] [their] own operations to actual tenants as if such operations are conducted by a single entity," and that "[Defendants] represent[] to [their] investors [that they are] a unified entity," among other things. FAC ¶ 21. Defendants appear to ignore these allegations altogether. In sum, the Court finds plausible Plaintiffs' allegation that Regus Management Group LLC, Regus Business Centre LLC, Regus plc, and HQ Global are alter egos of one another.

iii. Count I: UCL Claims for Unlawful, Unfair, and Fraudulent Business Practices

Plaintiffs' first claim for relief is brought under the

California UCL, which prohibits business practices that are (1) unlawful, (2) unfair, or (3) fraudulent. Cal. Bus. Prof. Code § 17200. Plaintiffs allege violations of all three prongs of the UCL. With respect to the unlawful prong, Plaintiffs allege predicate violations of sections 1950.8, 1671(b), 1572, 1709, and 1710 of the California Civil Code. FAC ¶¶ 85-87. As to the unfairness prong of the UCL, Plaintiffs target Defendants' alleged practice of "assessing charges above the monthly payment indicated in the Office Agreement." Id. ¶ 84. Finally, with respect to fraud, Plaintiffs allege that "Defendants' . . . failure to clearly and conspicuously disclose [their] scheme, practice, and intent to assess additional undisclosed fees deceives consumers, customers, and/or the public."[3] Id. ¶ 89. Defendants move to dismiss Plaintiffs' claims under all three prongs of the UCL.

Unlawful Practices. Defendants argue that Plaintiffs cannot state a claim for unlawful practices under the UCL because they have not alleged facts establishing predicate violations of the borrowed statutes, California Civil Code sections 1950.8, 1671(b), 1572, 1709, and 1710. 12(b)(6) MTD at 17-19.

Civil Code section 1950.8 "applies only to commercial leases and nonresidential tenancies of real property" and makes it unlawful to require payment "as a condition of initiating, continuing, or renewing a lease or rental agreement, unless the amount of payment is stated in the written lease or rental agreement." Cal. Civ. Code § 1950.8(a)-(b). Plaintiffs allege

[3] Plaintiffs also allege that Defendants are liable for fraud under the UCL because they engaged in false advertising. FAC ¶ 88. This UCL claim is identical to Plaintiffs' FAL claim. Compare id. ¶ 88 with id. ¶ 92. Accordingly, it is addressed in Section III.B.iv infra.

that Defendants violated section 1950.8 by "requir[ing] the payment of monies as a condition of continuing the lease without providing for the amounts of said monies in the Office Agreement or Fine Print[.]" FAC ¶ 85. Defendants argue that section 1950.8 is inapplicable here because the Office Agreement executed by Plaintiffs is not a lease. 12(b)(6) MTD at 17-18. The Office Agreement provides:

> This agreement is the commercial equivalent of an agreement for accommodation(s) in a hotel. The whole of the Center remains in Regus' possession and control. THE CLIENT ACCEPTS THAT THIS AGREEMENT CREATES NO TENANCY INTEREST, LEASEHOLD ESTATE, OR OTHER REAL PROPERTY INTEREST IN THE CLENT'S FAVOUR WITH RESPECT TO THE ACCOMODATIONS.

ECF No. 34 Ex. B ("Office Agreement") § 1.1. Plaintiffs respond that the Office Agreement shares all the characteristics of a lease since it "grants Plaintiffs the right to enter and possess the designated premises for a fixed consideration (one monthly fee) and period of time (duration of months)." Opp'n to 12(b)(6) MTD at 21. The Court may not accept Plaintiffs' argument without ignoring the express terms of the Office Agreement. Contrary to Plaintiffs' contention, the Office Agreement did not grant them the right to possess the premises. In fact, it expressly states the property "remains in Regus' possession and control[.]" Office Agreement § 1.1. Moreover, the Office Agreement expressly provides that it "CREATES NO TENANCY INTERST." Id. Accordingly, Plaintiffs' UCL claim is DISMISSED WITH PREJUDICE as it pertains to California Civil Code section 1950.8.

Section 1671(b) states: "[A] provision in a contract liquidating the damages for the breach of the contract is valid unless the party seeking to invalidate the provision establishes

that the provision was unreasonable under the circumstances existing at the time the contract was made." Cal. Civ. Code § 1671(b). Plaintiffs allege that Defendants violated section 1671(b) by "charging penalties based on a percentage of the entire alleged unpaid principal balance, plus a fixed fee" since such penalties "do[] not bear a reasonable nexus to the amount of damages suffered by Regus." FAC ¶ 86. Defendants argue that Plaintiffs lack standing to bring this claim since they have not alleged that they paid such a penalty or the amount of the penalty. 12(b)(6) MTD at 18. Defendants misconstrue the FAC. While the pleading could be clearer, Plaintiffs appear to be referring to the penalty allegedly assessed against Circle Click which amounted to "$25 plus 5% of the amount due on the overdue balances under $1,000 or $50 plus 5% of the amount due on the overdue balances of $1000 or greater." FAC ¶ 48(l). Moreover, Plaintiffs allege that they paid the penalty. Id. ¶ 51 ("Regus'[s] charges have caused Plaintiff Circle Click to suffer harm in the amount of the unfair and unreasonable fees paid by Circle Click to Regus."). Accordingly, Plaintiffs' UCL unlawfulness claim remains undisturbed as to the alleged predicate violation of section 1671(b).

Plaintiffs claim that Defendants violated Civil Code sections 1572, 1709, and 1710 by routinely assessing charges not adequately disclosed or indicated in the Office Agreement. Id. ¶ 87. Sections 1572 and 1710 define the terms "actual fraud" and "deceit," respectively, and section 1709 provides: "One who willfully deceives another with intent to induce him to alter his position to his injury or risk, is liable for any damage which he thereby suffers." These claims fail for the same reasons as

Plaintiffs' claims for "concealment/suppression" and negligent and intentional misrepresentation. See Section III.B.v infra. Accordingly, Plaintiffs UCL unlawfulness claim is DISMISSED with leave to amend to the extent that it is predicated on violations of Civil Code sections 1572, 1709, 1710.

Unfair Practices. California courts have enunciated multiple standards for evaluating a claim for unfair practices under the UCL. In this case, the parties point to the tests set forth in Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co., 20 Cal. 4th 163 (1999) and Camacho v. Automobile Club of Southern California, 142 Cal. App. 4th 1394, 1401 (2006). Under the Cel-Tech standard, an unfair business practice is "conduct that threatens an incipient violation of an antitrust law, or violates the policy or spirit of one of those laws because its effects are comparable to or the same as a violation of the law, or otherwise significantly threatens or harms competition." 20 Cal. 4th at 187. Under the Camacho standard, a plaintiff may establish unfairness by showing that the consumer injury (1) is substantial; (2) not outweighed by any countervailing benefits to consumers or competition; and (3) is one that consumers themselves could not reasonably have avoided. 142 Cal. App. 4th at 1403.

Plaintiffs have failed to meet either standard. With respect to the Cel-Tech standard, Plaintiffs have not attempted to identify any law or public policy which might be offended by Defendants' alleged conduct. As to the Camacho standard, Plaintiffs assert that Defendants' "systematic practice of non-disclosure" does not serve any legitimate business purpose of utility. Opp'n to 12(b)(6) MTD at 23. However, they have not explained why their

alleged injury is substantial or why they could not have avoided the injury themselves. As set forth in Section III.B.v infra, it appears that the fees about which Plaintiffs complain were in fact disclosed in the Office Agreement and other documentation provided by Defendants.

Accordingly, Plaintiffs' claim for unfair business practices under the UCL is DISMISSED with leave to amend.

Fraudulent Practices. Plaintiffs' claim for fraudulent practices under the UCL fails for the same reasons as their claims for "concealment/suppression" and intentional and negligent misrepresentation: the Office Agreement disclosed the fees that Defendants allegedly concealed. See Section III.B.v, infra. As Plaintiffs point out, "[u]nlike a common law fraud claim, a UCL fraud claim requires no proof that the plaintiff was actually deceived. Instead, the plaintiff must produce evidence showing a likelihood of confounding an appreciable number of reasonably prudent purchasers exercising ordinary care." Clemens v. DaimlerChrysler Corp., 534 F.3d 1017, 1025-26 (9th Cir. 2008) (quotations and internal citations omitted). However, Plaintiffs have failed to explain how Defendants' practices were likely to deceive reasonably prudent purchasers when Defendants disclosed that they would charge the additional fees which are the focus of Plaintiffs' action. Accordingly, Plaintiffs' UCL claim for fraudulent practices is DISMISSED with leave to amend.

iv. Counts I & II: UCL and FAL Claims for False Advertising

Plaintiffs allege that Defendants engaged in false advertising in violation of the UCL and FAL through "advertising displayed on

the Regus Website, www.craigslist.com, representations of 'furnished' offices, and representations of 'simple one page' lease agreements, which fail to mention the amounts of additional charges that will be assessed by Regus." FAC ¶ 92; see also id. ¶ 88. The UCL prohibits "unfair, deceptive, untrue or misleading advertising," Cal. Bus. & Prof. Code § 17200, and the FAL makes it unlawful to induce the public to enter into any obligation through the dissemination of "untrue or misleading" statements. Cal. Bus. & Prof. Code § 17500.

Defendants move to dismiss Plaintiffs' false advertising claims on at least two grounds: (1) Plaintiffs have pled insufficient facts to establish that they have standing; and (2) Plaintiffs' claims lack the required particularity. 12(b)(1) MTD at 9, 12. Both arguments have merit.

With respect to standing, a private person may only bring an action under the UCL and FAL if he or she has "suffered injury in fact and has lost money or property as a result of the unfair competition." Cal. Bus. & Prof. Code § 17204. The California Supreme Court has interpreted section 17204 to "impose[] an actual reliance requirement on plaintiffs prosecuting a private enforcement action under the UCL[] . . . ." In re Tobacco II Cases, 46 Cal. 4th 298, 326 (2009). Defendants contend that Plaintiffs lack standing because they do not allege that they saw or relied upon the allegedly false and misleading advertising. 12(b)(1) MTD at 9. Plaintiffs respond that, under Tobacco II, such allegations are unnecessary to establish actual reliance. Opp'n to 12(b)(6) MTD at 8.

Tobacco II involved false advertising claims against tobacco companies. 46 Cal. 4th at 306. Addressing the tobacco company's contention that the plaintiffs lacked standing under the UCL because they had not relied on the tobacco companies' advertisements, the California Supreme Court stated:

> [W]hile a plaintiff must allege that the defendant's misrepresentations were an immediate cause of the injury-causing conduct, the plaintiff is not required to allege that those misrepresentations were the sole or even the decisive cause of the injury-producing conduct. Furthermore, where, as here, a plaintiff alleges exposure to a long-term advertising campaign, the plaintiff is not required to plead with an unrealistic degree of specificity that the plaintiff relied on particular advertisements or statements. Finally, an allegation of reliance is not defeated merely because there was alternative information available to the consumer-plaintiff.

Id. at 328. Thus, Tobacco II did not eliminate the requirement that a plaintiff must show reliance to establish standing under the UCL. It merely held that a Plaintiff need not demonstrate individualized reliance on specific representations where Defendants have engaged in a long-term advertising campaign. In this case, Plaintiffs have failed to allege any reliance whatsoever. It is unclear whether they saw any of the advertisements described in the FAC or received similar information from any other advertising. In the absence of any allegations concerning reliance, the Court cannot conclude that Plaintiffs' decision to use Defendants' services was influenced or reinforced by Defendants' advertising. Accordingly, Plaintiffs have failed to allege sufficient facts to establish standing.

Defendants also argue that the FAC fails to explain why the targeted advertisements were misrepresentations. 12(b)(6) at MTD at 14. Again, Defendants are correct. Among other things, the

targeted advertisements make the following claims: "[s]ave money"; "[f]lexibility for your business"; "get down to business instantly"; "match our office rental options to your business needs"; "our solutions are designed to fit within your budget"; "[s]imple, easy and flexible"; "fully-furnished"; "all-inclusive"; and "one monthly fee"; and "one low monthly rate." FAC ¶¶ 25-31. None of these advertising claims represent that Defendants will refrain from charging customers additional fees, so it is unclear how they relate to Plaintiffs' action. The FAC does nothing to clarify the matter. Further, many of Defendants' advertising claims amount to non-actionable puffery since they are vague and highly subjective. See Haskell v. Time, Inc., 857 F. Supp. 1392, 1399 (E.D. Cal. 1994).

Plaintiffs argue that, taken together, Defendants' advertisements deceived them into believing that "[Defendants'] 'fully furnished' and 'all-inclusive offices' have 'one monthly fee.'" Opp'n to 12(b)(6) MTD. However, the only advertisement identified in the FAC that mentions "one monthly fee" was posted in 2004, about seven years before Plaintiffs executed their Office Agreements. FAC ¶ 26. Defendants' business practices may have changed since that time. In fact, the more recent advertisements targeted in the FAC refer to a "single monthly invoice," which could include multiple fees. Id. ¶ 31. Further, it is not altogether clear from the 2004 advertisement that the additional services targeted in the FAC would be included in one monthly fee. The advertisement states: "With Regus executive suites you get a complete, professional executive office environment included in one monthly []fee. You'll also get professional receptionists, state-

of-the-art telecom and IT services, kitchen areas and cyber cafés." Id. ¶ 31.

Accordingly, Plaintiffs' false advertising claims under the UCL and FAL are DISMISSED with leave to amend. Plaintiffs' amended complaint should do more than merely list advertisements that Defendants have broadcast in the last decade. It should explain how Plaintiffs relied on the advertisements and why the advertisements are false and misleading.

v. Courts III-V: Concealment/Suppression and Negligent and Intentional Misrepresentation

The gravamen of Plaintiffs' claims for "concealment/suppression" (Count III), negligent misrepresentation (Count IV), and intentional misrepresentation (Count V) is that Defendants failed to disclose or failed to adequately disclose various fees assessed against Plaintiffs. With respect to Plaintiffs' concealment/suppression claim, Plaintiffs allege that Defendants actively concealed the amounts of additional fees "by not stating the amounts in the Office Agreement or Fine Print, by using extremely small font, and by failing to provide adequate disclosures that are clear and conspicuous." FAC ¶ 30. Likewise, in their misrepresentation claims, Plaintiffs allege that Defendants falsely represented that Plaintiffs' total monthly payments would be the amounts stated in the Office Agreement. Id. ¶¶ 106, 107, 113.

Defendants argue that they disclosed that additional fees would be charged, pointing out that the Office Agreement, which is referenced in but not attached to the FAC, represents that the stated monthly office fees "exclud[e] tax and exclud[e] services."

12(b)(1) MTD at 15. Defendants also point to various disclosures in the "Terms and Conditions," which are incorporated by reference into the Office Agreement. See id. at 4. Plaintiffs do not seriously respond to this argument, except to suggest that Defendants' disclosures were not conspicuous enough because they were made in five-point font or in the fine print. See Opp'n to 12(b)(6) MTD at 17. However, Plaintiffs cite no authority suggesting what size font Defendants were required to use or that a disclosure in an agreement must be conspicuous to be effective.

Under California law, "[t]he adequacy of a disclaimer in the context of an action for fraud is judged by reference to the plaintiff's knowledge and experience[.]" Broberg v. Guardian Life Ins. Co. of Am., 171 Cal. App. 4th 912, 921 (2009). Recovery is generally denied where the plaintiff's reliance on the defendant's misrepresentation is "manifestly unreasonable" in light of the plaintiff's intelligence and information. Id. Where the parties negotiate a contract at arm's length, "it is not reasonable to fail to read a contract before signing it." Davis v. HSBC Bank Nevada, N.A., 691 F.3d 1152, 1163 (9th Cir. 2012). Based on the FAC, that appears to be the case here.

Accordingly, the Court GRANTS Defendants' motion to dismiss with respect to Counts III, IV, and V, and GRANTS Plaintiffs leave to amend those claims. Plaintiffs' amended complaint should specifically allege what was not disclosed in the agreements they signed with Defendants and/or what Defendants misrepresented to them about their monthly fees and why it was reasonable for Plaintiffs to rely on those misrepresentations despite the language of the agreements.

vi. Counts VII & VIII: NYSGBL Sections 349 and 350

Defendants argue that CTNY lacks standing to bring causes of action under NYSGBL sections 349 and 350 because Plaintiffs have not alleged a consumer-oriented harm. Sections 349 and 350 declare unlawful "deceptive acts or practices" and "false advertising" in the conduct of "any business, trade or commerce." N.Y. Gen. Bus. Law §§ 349(a), 350. Section 349 authorizes suits by the attorney general, but also provides that "any person" who has been injured by actions prohibited by the law may bring an action "in his own name to enjoin such unlawful act" or "to recover his actual damages or fifty dollars, whichever is greater." Id. § 349(b), (h).

Section 349 "was intended to empower consumers; to even the playing field in their disputes with better funded and superiorly situated fraudulent businesses. It was not intended to supplant an action to recover damages for breach of contract between parties to an arm's length contract." Teller v. Bill Hayes, Ltd., 630 N.Y.S.2d 769, 774 (N.Y. Sup. Ct. 1995). Thus, as a threshold matter, a plaintiff bringing a claim under section 349 must charge the defendant with conduct that is consumer-oriented. Oswego Laborers' Local 214 Pension Fund v. Marine Midland Bank, N.A., 85 N.Y.2d 20, 25 (N.Y. 1995). Likewise, section 350 only pertains to advertising which is consumer-oriented. Verizon Directories Corp. v. Yellow Book USA, Inc., 309 F. Supp. 2d 401, 405 (E.D.N.Y. 2004).

To establish that the defendant's conduct is consumer-oriented, the plaintiff "must demonstrate that the acts or practices have a broader impact on consumers at large. Private contract disputes, unique to the parties, for example, would not fall within the ambit of the statute." Oswego, 85 N.Y.2d at 25.

Further, to avoid "the potential for a tidal wave of litigation against businesses that was not intended by the Legislature," New York courts have adopted an objective definition of deceptive acts and practices, which limits actionable conduct to that which is "likely to mislead a reasonable consumer acting reasonably under the circumstances." Id. at 26.

A review of the case law in this area further illuminates the standard for finding consumer-oriented conduct. In Oswego, the court found consumer-oriented conduct where a pension fund opened a savings account with a bank that was acting as the fund's investment advisor on the ground that the bank "dealt with plaintiffs' representative as any customer entering the bank to open a savings account, furnishing the Funds with standard documents presented customers upon the opening of accounts." 85 N.Y.2d at 26-27. Consumer-oriented conduct was also found in New York v. Feldman, 210 F. Supp. 2d 294 (S.D.N.Y. 2002), where the state of New York alleged that the defendant engaged in a scheme to manipulate public stamp auctions. The court reasoned that the parties injured by the alleged scheme "included, among others, unsophisticated individual sellers, such as the elderly and one-time participants." Feldman, 210 F. Supp. 2d at 301. In contrast, no consumer-oriented conduct was found in Cruz v. NYNEX Information Resources, 263 A.D.2d 285 (N.Y. Sup. Ct.), where a group of businesses filed suit in connection with advertisements they had placed in the Yellow Pages. The court reasoned that although the transactions at issue were "modest in value," "repeated regularly with numerous parties," and "involve[d] parties with a large disparity in economic power and sophistication," plaintiffs had

failed to show how the alleged misconduct might either directly or potentially affect consumers since "advertisement space in the Yellow Pages is, by definition, a commodity available to businesses only . . . ." Cruz, 263 A.D.2d at 291.

The Court finds that this case is more like Cruz than Oswego or Feldman. While CTNY was treated like a consumer in that it was presented with a standardized contract, Plaintiffs have made no showing that Defendants' alleged misconduct has the potential to affect consumers at large. All three Plaintiffs are businesses and their claims relate to Defendants' practices in marketing and managing commercial office space, a commodity which is only available to businesses. Plaintiffs argue that "Defendants' practices are sufficiently consumer-oriented because they affect all consumers of office space in New York, be they entrepreneurs or individuals seeking to lease a single office or start a company, or a small business leasing multiple office spaces." Opp'n to 12(b)(6) MTD at 14. However, all of the parties listed by Plaintiffs would only be interested in commercial office space for business purposes. As such, Plaintiffs cannot credibly contend that their suit will benefit New York consumers.

Accordingly, Plaintiffs' claims under NYSGBL Sections 349 and 350 are DISMISSED WITH PREJUDICE.

vii. Counts VI & IX: Unjust Enrichment

Plaintiffs bring two claims for unjust enrichment, one under California law (Count VI) and the other under New York law (Count IX). The two claims are practically identical. In both, Plaintiffs allege that Defendants were unjustly enriched as a result of their wrongful conduct and that it would be against

equity and good conscience to permit Defendants to retain the ill-gotten benefits. FAC ¶¶ 122-23, 141-42. Defendants move to dismiss both claims.

As to Count VI, Defendants argue that recent authority suggests that unjust enrichment is not an independent cause of action under California law. MTD at 20-21 (citing Williamson v. Reinalt-Thomas Corp., 11-CV-03548-LHK, 2012 WL 1438812 (N.D. Cal. Apr. 25, 2012). However, not all courts agree on this issue. Having reviewed numerous discussions, this Court is persuaded by, and adopts the reasoning of, the cases which hold that claims for restitution or unjust enrichment may survive the pleading stage when pled as an alternative avenue of relief, though the claims, as alternatives, may not afford relief if other claims do. E.g., Vicuna v. Alexia Foods, Inc., C 11-6119 PJH, 2012 WL 1497507, at *3 (N.D. Cal. Apr. 27, 2012); Larsen v. Trader Joe's Co., C 11-05188 SI, 2012 WL 5458396, at *7 (N.D. Cal. June 14, 2012). Accordingly, Count VI is DISMISSED with leave to amend. Plaintiffs may amend their complaint to plead this claim in the alternative.

With respect to Count IX, Defendants argue that Plaintiffs cannot recover on a theory of unjust enrichment under New York law because the parties executed an agreement governing the subject matter of the dispute. MTD at 21. Under New York law, as under California law, "[t]he theory of unjust enrichment lies as a quasi-contract claim." Goldman v. Metro. Life Ins. Co., 5 N.Y.3d 561, 572 (N.Y. 2005). Some New York courts have reasoned that, because unjust enrichment creates an obligation in the absence of an agreement, a claim for unjust enrichment cannot be sustained if a valid contract governs the relevant subject matter. Id. Other

courts have held that New York law permits alternative pleading of breach of contract and unjust enrichment claims. See Vertex Constr. Corp. v. T.F.J. Fitness L.L.C., 0-CV-683 (CBA) (ALC), 2011 U.S. Dist. LEXIS 135453, 11, 2011 WL 5884209, at *11 (E.D.N.Y. Nov. 23, 2011). Defendants' argument fails under both lines of cases. Under Goldman, claims for unjust enrichment may only be dismissed where the subject matter of the dispute is clearly governed by contract. As discussed in Section III.B.v supra, the scope of the Office Agreements at issue here remains unclear and is subject to dispute. Likewise, under Vertex, motions to dismiss claims for unjust enrichment are disfavored "because it is difficult to determine the validity or scope of the contract at the pleading stage." 2011 WL 5884209, at *11 (quotations omitted). Accordingly, Defendants' motion to dismiss Count IX is DENIED.

IV. CONCLUSION

For the foregoing reasons, Defendant Regus plc's Rule 12(b)(1) motion to dismiss for lack of personal jurisdiction is DENIED WITHOUT PREJUDICE. The Court GRANTS Plaintiffs Circle Click Media LLC, Metro Talent, LLC, and CTNY Insurance Group LLC leave to conduct jurisdictional discovery. Once that discovery is complete, Regus plc may again move to dismiss pursuant to Rule 12(b)(1). The Court also GRANTS in part and DENIES in part Defendants Regus Management Group LLC, Regus Business Centre LLC, Regus plc, and HQ Global Workplaces LLC's 12(b)(6) motion to dismiss for failure to state a claim.

- Count I is DISMISSED WITH PREJUDICE to the extent that it is predicated on a violation of California Civil Code section 1950.8.
- Count I remains undisturbed to the extent that it is predicated on a violation of California Civil Code section 1671(b).
- Count I is DISMISSED with leave to amend to the extent that it is predicated on California Civil Code sections 1572, 1709, and 1710, and Defendants' allegedly unfair and fraudulent business practices.
- Counts I and II are DISMISSED with leave to amend to the extent that they are predicated on Defendants' allegedly false and misleading advertising.
- Counts III through VI are DISMISSED with leave to amend.
- Counts VII and VIII are DISMISSED WITH PREJUDICE.
- Count IX shall remain undisturbed.

Plaintiffs shall file an amended complaint within thirty (30) days of the signature date of this Order. Failure to do so may result in the dismissal with prejudice of the claims which the Court has granted Plaintiffs leave to amend.

IT IS SO ORDERED.

Dated: January 3, 2013

UNITED STATES DISTRICT JUDGE