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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ALTEC INDUSTRIES, INC.,

No. C -13-03505(EDL)

Plaintiff,

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT'S
MOTION FOR LEAVE TO AMEND ITS
COUNTERCLAIMS**

v.

EDWARD WALKER, et al.,

Defendant.

This breach of contract and trade secrets case involves a dispute between Plaintiff Altec Industries and Defendant Edward Walker, an engineer and inventor, along with his co-defendant business partner and business entity, over the ownership of certain inventions that Walker designed. Plaintiff, whose business involves providing vehicles to PG&E, was interested in the inventions, which provide auxiliary power to a vehicle without running the engine. Plaintiff offered Defendant Walker part-time employment and Walker signed a Confidentiality Agreement. According to Plaintiff, this agreement gives it the rights to the two inventions. Defendants disagree. Now before the Court is Defendants' Motion for Leave to Amend their Counterclaim against Plaintiff. Although the Court is skeptical of Defendants' ultimate likelihood of prevailing on these counterclaims, it grants the motion for leave to amend to assert the proposed counterclaims, except for those sounding in fraud, as long as Defendants make the further amendments discussed herein.

I. Background

In late 2010, Defendant Walker presented the concepts for his inventions in two PowerPoint presentations to Plaintiff. First Amended Counterclaim ("FACC") ¶ 23-24. He delivered a

1 prototype in January of 2011. Id. ¶ 27. In May of 2011, David Payne, Plaintiff’s Operations
2 Manager, offered Walker a part-time temporary position with Plaintiff to develop new products and
3 product extensions with a Green Fleet Engineering Project Team. Id. ¶ 34. The offer was
4 conditioned on a Confidentiality Agreement, which Walker signed. Id. ¶ 35. In December 2012,
5 Mr. Payne told Walker that he had arranged for a permanent part-time position, which Walker
6 applied for and obtained. Id. ¶ 40. In January of 2013, Walker met with Mr. Payne to show him a
7 demonstration of the Prodigy System, one of Walker’s inventions. Mr. Payne asked if this was the
8 same system and set of recommendations that Walker had presented in December of 2010, which
9 Walker affirmed, and Payne said it could only be successful outside of Plaintiff and recommended
10 that Walker resign, which he did, assuming he was leaving on good terms. Id. ¶ 42. After he
11 resigned, Walker and Defendant Mariani, on behalf of Defendant IRT, made a presentation to
12 Plaintiff and offered to partner with Plaintiff as a master distributor. Plaintiff’s employees did not
13 immediately respond, and Defendants contacted PG&E and offered to show its representatives the
14 prototype. At the meeting, Defendants offered to build PG&E a new truck or retrofit an old one to
15 let PG&E test the system. PG&E preferred to test the system on two trucks that they had on an
16 upcoming order from Plaintiff, and asked Defendants to go back and work out the details with
17 Plaintiff. Id. ¶ 43. Defendants allege that “as things continued to develop with the project, Altec
18 asserted that Hyperdrive and Prodigy belonged to Altec and not Walker or IRT. Counterclaimants
19 strongly disagree with this assertion and maintain that they, instead, own the subject systems.” Id. ¶
20 44.

21 On November 11, 2013, Defendants filed counterclaims alleging, generally, that Plaintiff
22 filed suit against Defendants in order to intimidate Defendants and interfere with Defendants’ use,
23 marketing, and sale of the inventions at issue. Docket No. 18. (Defendants had previously filed
24 what were improperly termed cross-claims, Docket No. 12. When Plaintiff filed a First Amended
25 Complaint, Defendants took the opportunity to rename their cross-claims properly as counterclaims.)
26 On December 2, 2013, Plaintiff filed a Special Motion to Strike the Counterclaims under California
27 Code of Civil Procedure section 425.16 (the California anti-SLAPP statute), as well as a Motion to
28 Dismiss the Counterclaims under Federal Rule of Civil Procedure 12(b)(6). Docket Nos. 23, 24.

1 Defendants filed a notice of voluntary dismissal, without prejudice, of their counterclaims on
2 December 13, 2013. Docket No. 27. Defendants did not oppose either of Plaintiff's motions.
3 Plaintiff withdrew its Motion to Dismiss on December 23, 2013, and on the same day filed a Motion
4 for Attorney Fees pursuant to the anti-SLAPP law. Docket Nos. 28, 30.

5 According to Plaintiff, it is the prevailing party on the anti-SLAPP motion and is therefore
6 entitled to attorneys' fees and costs for that motion (the statute provides for mandatory fees for the
7 prevailing party). Defendants, presumably believing that the withdrawal of their counterclaims
8 meant that both Plaintiff's motions were moot, did not oppose the anti-SLAPP motion, but filed an
9 opposition to Plaintiff's motion for attorneys' fees, arguing that federal courts in the Ninth Circuit do
10 not award attorneys' fees for the first special motion to strike and that such an award would violate
11 Federal Rule of Civil Procedure 15, allowing the liberal amendment of pleadings. The Court heard
12 those motions on January 28, 2014, and advised the parties that, following other courts in this
13 District, it would defer ruling on the motions to strike and for attorneys' fees until the case had
14 progressed further.

15 On January 13, 2014, Defendants filed a motion for leave to file amended counterclaims. A
16 redline of the current counterclaims and the proposed amendments appears as Exhibit B to the
17 declaration supporting the motion. Motion for Leave to Amend Ex. B. There are six counterclaims
18 in the proposed amendment: 1) violations of Cal. Business & Professions code § 17200; 2)
19 intentional interference with prospective economic advantage; 3) fraudulent inducement; 4)
20 misappropriation of trade secrets; 5) common law unfair competition; and 6) declaratory relief. The
21 declaratory relief counterclaim is the only additional counterclaim.

22

23 **II. Legal Standard**

24

25 Defendants seek leave to file their proposed counterclaims pursuant to Federal Rule of Civil
26 Procedure 15(a)(2), which calls for courts to freely grant leave to amend when justice requires. Fed.
27 R. Civ. P. 15(a)(2). Four factors are commonly used to determine the propriety of a motion for leave
28 to amend: bad faith, undue delay, prejudice to the opposing party, and futility of amendment.

1 Foman v. Davis, 371 U.S. 178, 182 (1962); Ditto v. McCurdy, 510 F.3d 1070, 1079 (9th Cir. 2007).
2 The Court notes, however, that these four factors are not necessarily equal, and that “it is the
3 consideration of prejudice to the opposing party that carries the greatest weight.” Eminence Capital,
4 LLC v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003). As Judge Illston noted in Advanced
5 Micro Devices, Inc. v. Samsung Elecs. Co., because prejudice carries the greatest weight, “[f]utility
6 alone might not be sufficient to bar [the defendant] from amending its pleadings.” No. 08-986, 2009
7 WL 1396256 at *2 (N.D. Cal. May 18, 2009) (Illston, J.).

8 Here, Plaintiff opposes amendment based on futility. Leave to amend is properly denied
9 where the proposed amendment would be futile. See Carrico v. City & Cnty of San Francisco, 656
10 F.3d 1002, 1008 (9th Cir. 2011) (futile to allow leave to amend where the plaintiff could not
11 establish standing). A court may evaluate the futility of a proposed amended pleading under the
12 same standard as it evaluates pleadings under Federal Rule of Civil Procedure 12(b)(6). See
13 Stonebrae, L.P. v. Toll Bros., Inc., No. 08-221, 2010 WL 114010, at *1 (N.D. Cal. Jan. 7, 2010).
14 Pursuant to Rule 12(b)(6), a Court must construe all allegations in the light most favorable to the
15 nonmoving party, but need not accept as true conclusory allegations, legal characterizations, or
16 unreasonable inferences alleged in the pleadings. See Sprewell v. Golden State Warriors, 266 F.3d
17 979, 988 (9th Cir. 2001). Plaintiff cites Netbula v. Distinct Corp., 212 F.R.D. 534, 539 (N.D. Cal.
18 2003) for the proposition that unless there is no set of facts which can be proved under the
19 amendment which would constitute a valid claim or defense, leave to amend should be granted. 212
20 F.R.D. at 538-39. However, as the Stonebrae court noted, that proposition pre-dates the Supreme
21 Court’s decisions in Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007) and Iqbal v. Ashcroft, 556
22 U.S. 662 (2009), which effectively repudiated the “no set of facts” language from Conley v. Gibson,
23 355 U.S. 41, 46 (1957). See 2010 WL 114010, at *1; Advanced Micro Devices, Inc. v. Samsung
24 Elecs. Co., No. 08-986, 2009 WL 1396256 at *2 n.2 (N.D. Cal. May 18, 2009).

25
26 **III. Discussion**

27
28 The six counterclaims arise out of an alleged scheme by Plaintiff to fraudulently induce

1 Defendant Walker to accept employment with Plaintiff and sign a Confidentiality Agreement
2 assigning Plaintiff rights to the inventions he developed before he began his employment. The new
3 proposed counterclaims remove references to the lawsuit that appeared in the earlier counterclaims
4 and add a request for a declaration that Defendants are the owners of the two inventions. The
5 counterclaims focus on Plaintiff's alleged failure to provide a disclosure required by Labor Code
6 section 2870 in the Confidentiality Agreement that Defendant Walker signed. Ex. B. ¶ 57.

7 California Labor Code section 2870 states:

8
9 (a) Any provision in an employment agreement which provides that an employee shall
10 assign, or offer to assign, any of his or her rights in an invention to his or her employer shall
11 not apply to an invention that the employee developed entirely on his or her own time
12 without using the employer's equipment, supplies, facilities, or trade secret information
13 except for those inventions that either:

14 (1) Relate at the time of conception or reduction to practice of the invention to the
15 employer's business, or actual or demonstrably anticipated research or development
16 of the employer; or

17 (2) Result from any work performed by the employee for the employer.

18 Cal. Labor Code § 2870.

19 California Labor Code section 2872 states:

20 If an employment agreement entered into after January 1, 1980, contains a provision
21 requiring the employee to assign or offer to assign any of his or her rights in any invention to
22 his or her employer, the employer must also, at the time the agreement is made, provide a
23 written notification to the employee that the agreement does not apply to an invention which
24 qualifies fully under the provisions of Section 2870. In any suit or action arising thereunder,
25 the burden of proof shall be on the employee claiming the benefits of its provisions.

26 Cal. Labor Code § 2872.

27 The Confidentiality Agreement is Exhibit A to Plaintiff's Complaint, and also appears in its
28 opposition brief:

I hereby agree for myself, my heirs and representatives, to assign, transfer, and set-over, and I do hereby assign, transfer and set-over to Altec, its successors and assigns. All of my rights, title and interest in and to any and all creations which are or may become legally protectable or recognized as forms of property, including all designs, ideas, inventions, improvements . . . which I, either solely or jointly with others, have conceived, made or suggested, or may hereafter conceive, make or suggest, during my employment with Altec or its successors and the next six (60 month period following the termination of such employment, which in any way relate, directly or indirectly, to Altec's business, procedural, technical, or commercial needs, problems, developments or projects or to its production, research or experimental developments and projects of every name and nature under consideration and/or being carried on by or for Altec prior to the termination of my employment.

1 Opp. at 10 n.5 (emphasis added). The Confidentiality Agreement requires Defendant Walker to
2 assign to Plaintiff those inventions that he conceived or made during his employment and that
3 related to Plaintiff’s business. Plaintiff argues that this provision complies fully with California
4 Labor Code section 2780, because the inventions at issue relate to Plaintiff’s business or anticipated
5 research and development. However, it is undisputed that Plaintiff did not make the section 2872
6 disclosure, which is mandatory.

7 Plaintiff argues generally that while the proposed amended counterclaims remove specific
8 references to its lawsuit and other protected activity, they retain veiled references to protected
9 activity and do not contain sufficient allegations to state cognizable claims. Plaintiff also argues that
10 Defendants have not put forward any alternative basis for the theories that underpin their earlier
11 argument (that the lawsuit and cease and desist letter were a scheme to prevent Defendants from
12 proceeding with work developing the inventions at issue). The Court will discuss the individual
13 counterclaims in turn.

14
15 **A. First Amended Counterclaim: Cal. Business & Professions Code § 17200 (¶¶ 45-**
16 **49).**

17
18 California’s Unfair Competition Law (“UCL”), codified at Business and Professions Code
19 section 17200, proscribes unlawful, unfair, and fraudulent business practices. Cal. Bus. & Prof.
20 Code § 17200. This counterclaim contends that Plaintiff failed to make proper disclosures under the
21 Labor Code when it requested that Defendant Walker execute the Confidentiality Agreement. The
22 amended first counterclaim eliminates two paragraphs referencing the cease and desist letter and the
23 lawsuit. The only other change is the addition of the failure to disclose to Defendant Walker that the
24 intent of Plaintiff’s offer of employment, in addition to the execution of the Confidentiality
25 Agreement, was to make the two inventions its own. The rest of the counterclaim is unchanged and
26 alleges that the “unlawful, unfair, and deceptive business practices” comprised Plaintiff’s failure to
27 make the proper disclosures under the Labor Code, Plaintiff’s encouragement of Defendant Walker
28 to resign his part-time employment and pursue becoming a supplier to Plaintiff, and Plaintiff’s

1 failure to disclose to Defendant Walker that Plaintiff's employment of him was designed to obtain
2 his trade secrets and inventions. Defendants allege that they have suffered injury as a result of such
3 conduct and that Plaintiff was unjustly enriched.

4 Plaintiff argues that Defendants have failed to allege sufficient facts identifying the
5 concealment of any material fact by Plaintiff in hiring Walker or having him sign the Confidentiality
6 Agreement. It further argues that there was nothing unlawful in the assignment clause of the
7 Agreement, which required Walker to assign to Plaintiff those inventions made during his period of
8 employment that related to its business or anticipated research and development, and that any act
9 that the California Legislature deems to be lawful may not form the basis for a section 17200 action.
10 See Cel-Tech Commc'n Inc. v. L.A. Cellular Tel. Co., 20 Cal. 4th 163, 183 (1999); Blank v.
11 Kirwan, 39 Cal. 3d 311, 329 (1985) (compliance with underlying law is a complete defense to a
12 section 17200 unlawful or unfair claim). However, as discussed below regarding the Third
13 Counterclaim, it is undisputed that Plaintiff failed to include a section 2872 disclosure in the
14 Confidentiality Agreement, in violation of the statute. Although the Court doubts that discovery will
15 show that the omission of this mandatory formality was material, Defendants' counterclaim is not
16 futile on its face.

17
18 **B. Second Amended Counterclaim: Intentional Interference with Prospective**
19 **Economic Advantage (¶¶ 50-55).**

20
21 A claim for intentional interference with prospective economic advantage requires: 1) an
22 economic relationship between the plaintiff and another, containing a probable future economic
23 benefit or advantage to the plaintiff; 2) defendant's knowledge of the existence of that relationship;
24 3) defendant's intentional conduct designed to interfere with or disrupt that relationship; 4) an actual
25 disruption; and 5) damage to the plaintiff as a result. Marin Tug & Barge, Inc. v. Westport
26 Petroleum, Inc., 271 F.3d 825, 830-31 n.8 (9th Cir. 2001).

27 Defendants allege that they have existing and prospective relationships with customers who
28 would consider using their products and that Plaintiff has knowledge of some of these relationships.

1 Ex. B. ¶ 51. Defendants claim that Plaintiff has sought to interrupt these relationships through its
2 “assertion by Altec of ownership of the subject systems,” as opposed to “the maintenance of this
3 lawsuit,” as stated in the first counterclaim Ex. B ¶ 52. Defendants allege that Plaintiff’s conduct
4 has no lawful competitive purpose but rather was designed specifically to injure Defendants, that the
5 conduct was malicious and fraudulent, and that Defendants have suffered injury as a direct result.
6 Id. ¶ 52-55.

7 Plaintiff argues that this proposed amendment fails to specify any conduct that constitutes
8 such interference. The phrase “assertion of ownership,” Plaintiff contends, is cryptic and vague, and
9 not connected to anything apart from the privileged litigation conduct that was the subject of the
10 previous counterclaim. Further, Plaintiff argues, there is no allegation of any actual economic
11 relationship between Defendants and another party or of Plaintiff’s knowledge or interference. The
12 vague allegations of what might have been are insufficient. See Youst v. Longo, 43 Cal. 3d 64, 71
13 (1987) (“Although varying language has been used to express this threshold requirement, the cases
14 generally agree that it must be reasonably probable that the prospective economic advantage would
15 have been realized but for defendant’s interference.”); Pardi v. Kaiser Found. Hosp., 389 F.3d 840,
16 852-53 (9th Cir. 2004) (first element of the claim not satisfied when there was a “speculative
17 expectation that a potentially beneficial relationship [would] arise”).

18 Defendants, in their reply brief, state that they had a potential business relationship with
19 Pacific Gas & Electric (“PG&E”), and that the amended counterclaim described that relationship.
20 Ex. B. ¶¶ 9, 43. However, Defendants do not mention PG&E in the proposed Second Counterclaim
21 for Relief. Defendants argue that they made a presentation to PG&E, which was interested in
22 Defendants’ inventions, and PG&E asked Defendants to work out a deal with Plaintiff because
23 PG&E preferred to have the inventions incorporated into trucks that it had already ordered from
24 Plaintiff. This was not possible because of Plaintiff’s claim of ownership over the inventions. Reply
25 at 4. The description in the reply of Plaintiff’s acts is more fulsome than anything in the proposed
26 amended counterclaim, which describes the meeting with PG&E and then states only “as things
27 continued to develop with the project, Altec asserted that Hyperdrive and Prodigy belonged to Altec
28 and not Walker or IRT.” FACC ¶ 43. There is no detail as to how exactly Plaintiff made that

1 assertion – apart from the admittedly protected litigation conduct, which has been stricken from the
2 counterclaim – or how it interfered with the PG&E order.

3 Although the proposed counterclaim does not, as it stands, include enough detail to make out
4 a claim for intentional interference with a prospective economic advantage, from Defendants’ reply
5 brief it appears there may be more detail to include. Given Rule 15’s guidance to grant leave to
6 amend freely and the lack of prejudice or undue delay, the Court will grant leave to amend this
7 counterclaim, with the caution to Defendants that more detail is needed on exactly how Plaintiff
8 “asserted its ownership” in the inventions apart from its protected litigation conduct if Defendants
9 continue to pursue this claim.

10
11 **C. Third Amended Counterclaim: Fraud and Rescission (¶¶ 56-64).**

12
13 This counterclaim is unchanged from the previous pleading. Defendants allege that Plaintiff
14 fraudulently induced Defendant Walker to enter into the Confidentiality Agreement by concealing
15 material information, including the California Labor Code requirement discussed above, and the fact
16 that the Confidentiality Agreement would be used to acquire Defendant Walker’s inventions. Ex. B.
17 ¶ 57. Defendants allege that had Walker known these material facts he would not have signed the
18 agreement, that Plaintiff had a duty to disclose these facts, that his reliance was reasonable, that he
19 suffered injury because of Defendant’s fraud, and that Plaintiff’s conduct was malicious, oppressive,
20 and fraudulent.

21 A claim for fraudulent inducement requires: a) misrepresentation; b) knowledge of its falsity;
22 c) intent to induce reliance; d) justifiable reliance; and e) damage. Lazar v. Super Ct., 12 Cal. 4th
23 631, 638 (1996). Plaintiff argues that Defendants cannot base their fraud claim on a purported
24 failure to comply with California Labor Code section 2872, which, as noted above, provides that
25 where an employment agreement includes a requirement that the employee assign his rights in an
26 invention to the employer, the employer must provide a written notification that the agreement does
27 not apply to inventions whose assignment is barred by Labor Code section 2870.

28 The Confidentiality Agreement requires Defendant Walker to assign to Plaintiff those

1 inventions that he conceived or made during his employment and that related to Plaintiff's business.
2 Opp. at 10 n.5. Plaintiff argues that this provision complies fully with California Labor Code
3 section 2780, because the inventions at issue relate to Plaintiff's business or anticipated research and
4 development. Opp. at 10-11.

5 The assignment provision does appear to comply with section 2780, since it is undisputed
6 that the inventions at issue relate to Plaintiff's business and R&D. Although Plaintiff did not
7 provide the required section 2872 notice, that failure does not give rise to fraudulent concealment or
8 fraudulent inducement. This fraud claim must meet the heightened pleading requirement of Federal
9 Rule of Civil Procedure 9(b), which requires greater particularity as to the details and intent of the
10 alleged wrongdoer. Defendants allege that Plaintiff had a duty to disclose the missing section 2872
11 language and the fact that Defendants planned to acquire Walker's intellectual property, and that
12 Plaintiff knowingly and actively withheld the information from him with the intent to fraudulently
13 induce him into signing the Confidentiality Agreement. There is no support for Defendants'
14 allegation that the inclusion or omission of the statutory language was intentional at all, since the
15 actual assignment clause seems benign and within the bounds of section 2870. There is no
16 allegation that Defendant Walker was misled about the effect of the assignment clause or any of the
17 other content of the Confidentiality Agreement. Further, it is unclear how any damages arise from
18 the alleged fraud. The Court denies Defendants' motion for leave to amend this counterclaim. It
19 does not meet Federal Rule of Civil Procedure 9(b)'s heightened pleading requirement, and there is
20 no connection alleged between Plaintiff's omission of required statutory language and its alleged
21 intent to defraud Defendants.

22
23 **D. Fourth Amended Counterclaim: Misappropriation of Trade Secrets, Cal. Civil**
24 **Code § 3426 (¶¶ 65-69).**

25
26 A claim for trade secret misappropriation requires that: 1) plaintiff own a trade
27 secret; 2) defendant acquired, disclosed, or used the plaintiff's trade secret through improper means;
28 and 3) plaintiff was damaged by defendant's actions. Cytodyn, Inc. v. Amerimmune Pharm., Inc.,

1 160 Cal. App. 4th 288, 296-97 (2008). Plaintiff argues that Defendants have failed to allege any
2 actual misappropriation of any alleged trade secrets that belong to Defendants. Defendants allege
3 that Defendant Walker made two presentations of the inventions to Plaintiff prior to executing the
4 Confidentiality Agreement and state that they believe Plaintiff is now building a similar system
5 using Defendants' information. Reply at 5.

6 As with the second proposed amended counterclaim, detail included in Defendants' reply
7 brief shows that the counterclaim may not be futile on its face if it is further amended, and the Court
8 will grant Defendants' motion for leave to amend. However, the Court once again cautions
9 Defendants to add significant detail unrelated to Plaintiff's protected litigation conduct to support
10 their counterclaim if they continue to pursue it.

11
12 **E. Fifth Amended Counterclaim: Common Law Unfair Competition (§§ 70-73).**

13
14 Common law unfair competition is usually invoked to protect something of value not
15 covered by other areas of law, such as patent or copyright law or trade secret law. In California,
16 there are four elements: 1) the plaintiff invested substantial time, skill, or money in developing the
17 property; 2) the defendant appropriated and used the property at little or no cost; 3) the plaintiff did
18 not authorize or consent to the property's appropriation and use; and 4) the plaintiff was injured by
19 the appropriation and use. See City Solutions, Inc. v. Clear Channel Commc'n, Inc., 365 F.3d 835,
20 842 (9th Cir. 2004).

21 Plaintiff argues that Defendants have failed to allege facts demonstrating any
22 misappropriation of their work, and notes that they cannot rely on Plaintiff's litigation activity to do
23 so. Defendants argue that Plaintiff wrongfully induced Defendant Walker to accept a job offer and
24 presented him with a legally insufficient confidentiality agreement in order to unlawfully appropriate
25 the property that he worked hard to develop, which has enabled Plaintiff to unfairly compete and
26 develop its own similar system. Reply at 6. As noted above in regard to the second and fourth
27 proposed counterclaims, Defendants have included some details in their Reply brief that show that
28 the counterclaim may not be futile on its face if further amended, and the Court grants leave to

1 amend the fifth counterclaim.
2

3 **F. Sixth Amended Counterclaim: Declaratory Relief (¶¶ 74-77).**
4

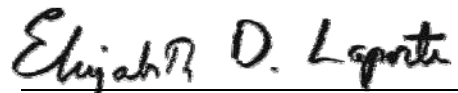
5 Defendants have added a sixth counterclaim for a declaration that they own the subject
6 inventions. Ex. B ¶¶ 74-77. Plaintiff states that it does not oppose Defendants' filing an amended
7 counterclaim alleging only the claim for declaratory relief, as long as that claim does not rely on
8 Plaintiff's protected litigation activity. Opp. at 3 n.1. The Court grants the motion for leave to
9 amend as to the sixth counterclaim.
10

11 **IV. Conclusion**
12

13 As the Court stated at the hearing, it is skeptical of the ultimate success of Defendants'
14 counterclaims, but given Rule 15's instruction to grant leave to amend freely and the lack of
15 prejudice to Plaintiff, the Court grants Defendants' motion for leave to amend its first and sixth
16 counterclaims as proposed. The Court grants the motion for leave to amend Defendants' second,
17 fourth, and fifth counterclaims if Defendants add further detail as the Court has noted above. The
18 Court denies Defendants' motion for leave to amend its third counterclaim for fraud.
19
20

21 **IT IS SO ORDERED.**

22 Dated: March 6, 2014
23

24 
25 ELIZABETH D. LAPORTE
26 United States Chief Magistrate Judge
27
28