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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
6 SAN JOSE DIVISION
7

8 NEO4J, INC., et al.,

9 Plaintiffs,

10 v.

11 PURETHINK, LLC, et al.,

12 Defendants.

Case No. [5:18-cv-07182-EJD](#)

**ORDER GRANTING IN PART
PLAINTIFFS' MOTION FOR
JUDGMENT ON THE PLEADINGS**

Re: Dkt. No. 132

13 This action involves disputes relating to Defendants PureThink LLC's, iGov Inc.'s, and
14 John Mark Suhy's (collectively, "Defendants") use of graph database management software
15 belonging to Plaintiffs Neo4j, Inc. ("Neo4j USA") and Neo4j Sweden AB ("Neo4j Sweden,"
16 collectively with Neo4j USA, "Plaintiffs"). Plaintiffs assert various claims arising out of
17 Defendants' continued use of the Neo4j mark after Defendants' license expired, while Defendants
18 assert counterclaims for interference with prospective economic advantage and declaratory relief.

19 Presently before the Court is Plaintiffs' motion for judgment on the pleadings ("Motion")
20 to dismiss Defendants' First, Fifth, and Sixth Counterclaims, as well as Defendants' First and
21 Second Affirmative Defenses. ECF No. 132. On January 4, 2022, the Court took the Motion
22 under submission without oral argument pursuant to Civil L.R. 7-1(b). ECF No. 139. Having
23 considered all briefs filed in support of and opposition to the Motion, the Court GRANTS IN
24 PART Plaintiffs' Motion.

25 **I. FACTUAL BACKGROUND**

26 The Court has previously set forth the facts at length on multiple occasions (*see* ECF Nos.
27 70, 85, 118) and, accordingly, will summarize here only the facts pertinent to this Order.

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1 **A. Plaintiffs and NEO4J Software**

2 Plaintiff Neo4j USA is a Delaware corporation in San Mateo, California, specializing in
3 graph database management systems. Third Amended Complaint (“TAC”) ¶ 2, ECF No. 90.
4 Plaintiff Neo4j Sweden is a wholly owned subsidiary of Neo4j USA and owns all copyrights
5 relating to the widely used Neo4j graph database platform, including the source code. *Id.* ¶ 4.

6 Plaintiffs have historically offered a free and open-source version of their Neo4j software
7 called NEO4J Community Edition (“NEO4J CE”), subject to the GNU General Public License
8 (“GPL”). *Id.* ¶ 24. For commercial users, Plaintiffs offered a paid-for version of Neo4j called
9 NEO4J Enterprise Edition (“NEO4J EE”), which, compared to the free NEO4J CE version,
10 contains significant additional functionality and provides support for advanced commercial
11 operations. *Id.* The NEO4J EE software was historically offered under both a paid-for
12 commercial license and the free GNU Affero General Public License (“AGPL”), but as of
13 November 2018, NEO4J EE is only offered under the commercial license. *Id.* ¶¶ 25, 27.

14 **B. Defendants’ Partner Agreement with Plaintiffs**

15 On September 30, 2014, Neo4j USA entered into a NEO4J Solution Partner Agreement
16 (“Partner Agreement”)—then under its prior name, “Neo Technology, Inc”—with Defendant
17 PureThink LLC (“PureThink”). *Id.* ¶ 2; Second Amended Counterclaim (“SACC”) ¶ 15.

18 Under the Partner Agreement, Defendant PureThink would provide support to end-users of
19 NEO4J EE software in exchange for annual partner program fees and shared revenue. SACC ¶
20 12; TAC ¶ 29. PureThink also received a non-exclusive and non-transferable limited license to
21 use the Neo4j marks “solely to market and promote” the Neo4J commercial products. SACC, Ex.
22 B, NEO4J Solution Partner Agreement (“SPA”) § 4.1. The Partner Agreement also provided:

23 During the term of this Agreement and up until thirty-six (36) months after the
24 termination or expiration of this Agreement, Partner may not develop, market,
25 distribute or offer any services related to any Neo Technology Community Edition
26 Products, derivative works of such products, or any Partner software code made to
work with Neo Technology Community Edition Products (including, without
limitation, hosting services, training, technical support, configuration and
customization services, etc.).

27 SPA § 4.3.2. Under this Partner Agreement, Defendant PureThink procured NEO4J EE

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1 subscriptions for the Maryland Procurement Office, Sandia National Laboratories, and the FBI
2 with Neo4j USA's approval. SACC ¶ 18.

3 During this period, PureThink also worked on a "Neo4j Government Package," based on
4 open-source Neo4j software and designed for government clients. SACC ¶¶ 16-17. PureThink
5 called this new software package "Neo4j Government Edition" or "Neo4j Enterprise Government
6 Edition." *Id.* PureThink pitched Neo4j Government Edition with "consulting services" to the
7 Internal Revenue Service ("IRS") "completely outside the Partner Agreement." *Id.* ¶ 20.

8 On May 30, 2017, Neo4J USA notified Defendants PureThink and Suhy that they had
9 breached the Partner Agreement by performing services using Neo4j open-source software and
10 creating a consulting business around those open-source software products. ECF No. 98-1, Ex. 9.
11 Per the Partner Agreement, the Agreement would be terminated if Defendants did not cure the
12 breach within 30 days. SPA § 7.2. On July 11, 2017, Neo4j USA notified Defendants that the
13 Partner Agreement was terminated. TAC ¶ 35.

14 **C. Plaintiffs' Communications with Defendants' Customers**

15 Defendants allege that, after Neo4j USA terminated the Partner Agreement with
16 PureThink, Neo4j USA also contacted and informed eighteen (18) of PureThink's potential
17 customers that "PureThink was terminated as a solution partner and could not support open source
18 versions of Neo4j for a period of 36 months following termination." SACC ¶ 27. The SACC
19 specifically references and appends Neo4j USA's communication to the IRS that the PureThink's
20 Partner Agreement was terminated and PureThink was no longer authorized to procure a Neo4j
21 subscription on behalf of the IRS or to provide consulting services and support on open source
22 Neo4j products. SACC, Ex. D.

23 Defendants allege that Neo4j USA's actions were "intended to and did disrupt the
24 economic relationship" between Defendants and their potential business opportunities, and that
25 their relationship with those customers were "actually and totally disrupted by NEO4J USA's
26 wrongful interference." SACC ¶¶ 28, 31.

1 **II. PROCEDURAL HISTORY**

2 Although this action has an extensive and bifurcated procedural history, the present Motion
3 is only concerned with the counterclaims asserted in Defendant’s SACC (ECF No. 72) and the
4 affirmative defenses in Defendant’s Answer to Plaintiffs’ TAC (ECF No. 91). Accordingly, the
5 Court here only recounts the procedural history relevant to this Motion.

6 On November 28, 2018, Plaintiffs brought this suit against Defendants for, *inter alia*,
7 violations of the Lanham Act and California’s Unfair Competition Law, based on Defendants’
8 alleged infringement of Neo4j USA’s federally registered Neo4j mark. ECF No. 1. Plaintiffs
9 have since amended their Complaint significantly, culminating in the Third Amended Complaint,
10 filed September 28, 2020. ECF No. 90.

11 On January 9, 2019, Defendants filed their initial countercomplaint, asserting—most
12 relevant for this Motion—counterclaims for intentional interference with prospective economic
13 advantage (“IIPEA”) and declaratory relief that certain restrictions in the Partner Agreement are
14 void under California Business & Professions Code § 16600 and the AGPL. ECF No. 22.
15 Defendants’ countercomplaint has also undergone significant amendments, resulting in the current
16 Second Amended Counterclaim. ECF No. 72. In addition to their counterclaims, Defendants
17 have also asserted affirmative defenses that are substantially identical to their declaratory relief
18 counterclaims—*i.e.*, the restrictions are void under § 16600 and the AGPL. ECF No. 91, at 14-16.

19 On September 3, 2021, Plaintiffs filed the instant Motion for judgment on the pleadings
20 pursuant to Federal Rule of Civil Procedure 12(c), specifically as to Defendants’ First, Fifth, and
21 Sixth counterclaims and Defendants’ First, Second, and Sixth affirmative defenses. ECF No. 132.
22 After the Motion was fully briefed and taken under submission without oral argument, Defendants
23 stipulated to dismiss its Sixth Affirmative Defense, consistent with a subsequently issued Ninth
24 Circuit memorandum disposition in this case. ECF No. 146 ¶ 2; *see also* ECF No. 141.

25 **III. LEGAL STANDARD**

26 Federal Rule of Civil Procedure 12(c) provides that “[a]fter the pleadings are closed—but
27 early enough not to delay trial—a party may move for judgment on the pleadings.” A Rule 12(c)

1 motion challenges the legal sufficiency of the opposing party’s pleadings. Judgment on the
2 pleadings is appropriate when, even if all material facts in the pleadings are true, the moving party
3 is entitled to judgment as a matter of law. *Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009).

4 On a motion for judgment on the pleadings, “all material allegations in the complaint are
5 accepted as true and construed in the light most favorable to the non-moving party.” *Turner v.*
6 *Cook*, 362 F.3d 1219, 1225 (9th Cir. 2004). “A motion for judgment on the pleadings may be
7 granted if, after assessing the complaint and matters for which judicial notice is proper, it appears
8 ‘beyond doubt that the [non-moving party] cannot prove any facts that would support his claim for
9 relief.’” *Williams v. Nichols Demos, Inc.*, 2018 WL 3046507, at *3 (N.D. Cal. June 20, 2018)
10 (citing *Morgan v. County of Yolo*, 436 F. Supp. 2d 1152, 1155 (E.D. Cal. 2006)). In other words,
11 the standard for a Rule 12(c) motion is essentially the same as that for a Rule 12(b)(6) motion.
12 *Chavez v. United States*, 683 F.3d 1102, 1108 (9th Cir. 2012).

13 Rule 12(c) may be used to challenge individual causes of action, as well as affirmative
14 defenses. *See Strigliabotti v. Franklin Res., Inc.*, 398 F. Supp. 2d 1094, 1097 (N.D. Cal. 2005);
15 *Spears v. First Am. eAppraiseIt*, 2013 WL 1748284, at *6 (N.D. Cal. Apr. 23, 2013) (noting that
16 affirmative defenses are evaluated for sufficiency under the same “plausibility” standard,
17 regardless of whether challenged under a Rule 12(c) or Rule 12(f) motion); *F.T.C. v. Meta*
18 *Platforms Inc.*, 2022 WL 16637996, at *1 (N.D. Cal. Nov. 2, 2022) (“In this district, defendants
19 provide ‘fair notice’ of an affirmative defense by meeting the *Twombly/Iqbal* pleading standard.”).

20 Although Rule 12(c) makes no mention of leave to amend, “courts have discretion both to
21 grant a Rule 12(c) motion with leave to amend . . . and to simply grant dismissal of the action
22 instead of entry of judgment.” *Mitchell v. Corelogic, Inc.*, 2019 WL 7172978, at *4 (C.D. Cal.
23 Nov. 20, 2019) (citing *Carmen v. S.F. Unified Sch. Dist.*, 982 F. Supp. 1396, 1401 (N.D. Cal.
24 1997)). Leave to amend should be freely granted absent “undue delay, bad faith or dilatory motive
25 on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed,
26 undue prejudice to the opposing party by virtue of allowance of the amendment [or] futility of
27 amendment.” *Foman v. Davis*, 371 U.S. 178, 182 (1962).

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1 **IV. DISCUSSION**

2 **A. First Counterclaim: Interference with Prospective Economic Advantage**

3 Plaintiffs first move for judgment on Defendants' First Counterclaim for Intentional
4 Interference with Prospective Economic Advantage ("IIPEA").

5 To prevail on this claim under California law, Defendants must allege five elements: "(1)
6 the existence, between the [Defendants] and some third party, of an economic relationship that
7 contains the probability of future economic benefit to the plaintiff; (2) the [Plaintiffs'] knowledge
8 of the relationship; (3) intentionally wrongful acts designed to disrupt the relationship; (4) actual
9 disruption of the relationship; and (5) economic harm proximately caused by the [Plaintiffs']
10 action." *Roy Allan Slurry Seal, Inc. v. Am. Asphalt S., Inc.*, 2 Cal. 5th 505, 512 (2017) (citing
11 *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1153 (2003)). With respect to the
12 third factor, the intentionally wrongful acts must be "wrongful by some legal measure other than
13 the fact of interference itself." *Della Penna v. Toyota Motor Sales, U.S.A., Inc.*, 11 Cal. 4th 376,
14 393 (1995).

15 Here, Plaintiffs argue that Defendants have failed to allege that (1) Plaintiffs committed a
16 wrongful act independent from the interference itself and (2) Plaintiffs' actions—wrongful or
17 otherwise—proximately caused the disruption of an actual business relationship. Mot. 7-11. The
18 Court addresses both arguments in turn.

19 **1. Independent Wrongful Act**

20 Defendants allege that Section 4.3.2 is void under California Business & Professions Code
21 § 16600 and, therefore, Plaintiffs' communications to Defendants' clients regarding Section 4.3.2
22 were independently wrongful actions. SACC ¶ 29.

23 California Business & Professions Code § 16600 broadly provides that, with limited
24 exceptions, "every contract by which anyone is restrained from engaging in a lawful profession,
25 trade, or business of any kind is to that extent void." Cal. Bus. & Prof. Code § 16600. Section
26 4.3.2 of the Partner Agreement states:

27 During the term of this Agreement and up until thirty-six (36) months after the
28 termination or expiration of this Agreement, Partner may not develop, market,

1 distribute or offer any services related to any Neo Technology Community Edition
 2 Products, derivative works of such products, or any Partner software code made to
 3 work with Neo Technology Community Edition Products (including, without
 4 limitation, hosting services, training, technical support, configuration and
 5 customization services, etc.).

6 SPA § 4.3.2; *see also* SACC ¶¶ 55.

7 However, the state high court has recently clarified that contracts restraining a *business*
 8 from engaging in lawful trade or business with another business is not *per se* invalid under §
 9 16600. *Ixchel Pharma, LLC v. Biogen, Inc.*, 9 Cal. 5th 1130, 1162 (2020). In *Ixchel*, the Ninth
 10 Circuit certified a question regarding § 16600 to the California Supreme Court, which was
 11 rephrased as, “What is the proper standard to determine whether section 16600 voids a contract by
 12 which a business is restrained from engaging in a lawful trade or business with another business?”
 13 *Id.* at 1140. To answer this question, Justice Liu conducted a searching inquiry, delving into the
 14 statutory text, legislative history, a broad survey of California high court precedent, harmonization
 15 within the broader statutory context, and public policy competition concerns. *Id.* at 1148–62. As
 16 relevant here, the California Supreme Court held that (1) § 16600 applies to business contracts, *id.*
 17 at 1149, and (2) the “rule of reason applies to determine the validity of a contractual provision by
 18 which a business is restrained from engaging in a lawful trade or business with another business,”
 19 as distinguished from employment contracts. *Id.* at 1162. The referenced “rule of reason” inquiry
 20 is the same analysis used to assess antitrust violations under the Cartwright Act, *i.e.*, whether the
 21 restraint “harms competition more than it helps [in consideration of] the facts peculiar to the
 22 business in which the restraint is applied, the nature of the restraint and its effects, and the history
 23 of the restraint and the reasons for its adoption.” *Id.* at 1150 (internal quotation marks omitted).

24 Here, the SACC pleads itself into *Ixchel*’s scope by alleging that the Partner Agreement
 25 was between two businesses: PureThink and Neo4j USA. SACC ¶ 15. Accordingly, Defendants
 26 must allege sufficient facts that would support the unlawfulness of the Partner Agreement
 27 restrictions under *Ixchel*, that is, the restrictions harm competition more than they help. *Ixchel*, 9
 28 Cal. 5th at 1150. Presently, Defendants’ allegations fail to meet this threshold as they are largely
 29 conclusory, *e.g.*, “these restrictions are invalid under California Business and Professions Code §

1 16600” (SACC ¶ 13), “NEO4J USA’s interference was an independent wrongful act as it violated
2 California Business and Professions Code § 16600” (SACC ¶ 29). Indeed, Defendants themselves
3 appear to concede this point in their Opposition. Opp. 6 (“[I]t is unclear if claims by entities must
4 now allege the restriction violates the rule of reason. If such an element must be plead, Purethink
5 should be permitted to do so.”).

6 Defendants’ efforts to distance the Partner Agreement from *Ixchel*’s holding are not
7 persuasive. They argue that, because Plaintiffs have claimed that Defendant PureThink is an alter
8 ego of individual Defendant John Mark Suhy, the Partner Agreement is essentially one between a
9 business entity and an individual. Opp. 6. Defendants also advance the argument that Defendant
10 Suhy is actually Plaintiffs’ employee, because he performed work within Plaintiffs’ course of
11 business and was controlled by Plaintiffs. *Id.* Not only are these newly proposed theories
12 unsupported by any factual allegations in the SACC, but they also conflict with the affirmative
13 allegations asserted by Defendants themselves. *See* SACC ¶¶ 13–20 (stating that the Partner
14 Agreement was between PureThink and Neo4j USA and describing the parties’ arms-length
15 business negotiations).

16 Because the § 16600 violation is the only independent wrongful act asserted in support of
17 Defendants’ First Counterclaim, *see* SACC ¶ 29, Defendants have failed to state a claim for
18 IIPEA. However, the Court finds that permitting Defendants leave to amend would not be futile,
19 as this deficiency can conceivably be cured by pleading additional facts that supports the
20 unreasonableness of Section 4.3.2. of the Partner Agreement. Indeed, Defendants have not yet had
21 an opportunity to conform their pleadings to the California Supreme Court’s recent decision,
22 because *Ixchel* was issued two months after Defendants filed their SACC. ECF No. 72.

23 However, in addition to the failure to plead an independently wrongful act, the Court also
24 notes that the SACC contains additional pleading deficiencies that may defeat their IIPEA claim.

25 2. Actual Disruption and Causation

26 Plaintiffs also move to dismiss Defendants’ IIPEA claim for failure to allege actual
27 disruption that was caused by Neo4j USA’s conduct. Mot. 9-10. Although it is not clear if

1 Plaintiffs are attacking the “actual disruption” or the “proximate causation” IIPEA elements, the
2 Court finds that the SACC is insufficient as to both.

3 First, the SACC’s allegations of “actual disruption” are wholly conclusory. The only
4 allegations that could support this requirement are (1) Plaintiffs “intended to and did disrupt the
5 economic relationship” and (2) Defendants’ economic relationship “was actually and totally
6 disrupted by [Plaintiffs’] wrongful interference.” SACC ¶¶ 28, 31; *see also* Opp. 7-8 (citing the
7 same). These barebone statements are near verbatim recitals of the “actual disruption” legal
8 requirement and are not supported by any further factual allegations. For example, Defendants do
9 not allege that the IRS terminated or insisted on modifying its contract with Defendants. SACC ¶¶
10 20–21. The only apparent consequence resulting from Plaintiffs’ alleged interference is a single
11 “initial” question from the IRS asking if Defendants’ services would be stopped, far short of the
12 conclusory actual and total disruption alleged in the SACC. SACC, Ex. D (“One question I have
13 for this existing contract is if services are stopped due to what Neo4j states below regarding
14 Purethink’s inability to provide open-source version support in the below? Now this is me asking
15 from an initial statement. . . .”).

16 Second, Defendants must not only establish that Plaintiffs actually disrupted their
17 economic relationship, but they must also show that such disruption was the result of Plaintiffs’
18 communications with those third parties. *See Korea Supply*, 29 Cal. 4th at 1153. Because the
19 Court finds that Defendants have not alleged any non-conclusory “actual disruption” of their
20 economic relationships, they are also unable to meet the “proximate causation” requirement.
21 Paragraphs 28 and 31 of the SACC are again insufficient to satisfy this element, as Defendants
22 have provided no basis for the Court to even infer that the supposed disruption was caused by
23 Plaintiffs.¹ Similar barebones allegations were rejected by the Ninth Circuit in *Sybersound*
24 *Records* and this district in *Silicon Knights. Sybersound Recs., Inc. v. UAV Corp.*, 517 F.3d 1137,
25

26 ¹ The Court notes that Exhibit D to the SACC could suggest that Plaintiffs’ communication to the
27 IRS was the proximate cause of the IRS’s request for further clarification from Defendants.
28 However, as noted in the preceding paragraph, the IRS’s question does not evidence an “actual
disruption” to the economic relationship.

1 1151 (9th Cir. 2008) (“[Plaintiff] merely states in a conclusory manner that it ‘has been harmed
 2 because its ongoing business and economic relationships with Customers have been disrupted.’
 3 [Plaintiff] does not allege, for example, that it lost a contract nor that a negotiation with a
 4 Customer failed.”); *Silicon Knights, Inc. v. Crystal Dynamics, Inc.*, 983 F. Supp. 1303, 1312 (N.D.
 5 Cal. 1997) (“[A]llegations that Defendants’ undisclosed statements caused potential customers not
 6 to buy [Plaintiff’s] video game software assert[] the type of speculative economic relationship
 7 disapproved of in [*Westside*].”) (citing *Westside Ctr. Assocs. v. Safeway Stores 23, Inc.*, 42 Cal.
 8 App. 4th 507, 522 (1996)).

9 In sum, Defendants have failed to plead either required elements of “actual disruption” and
 10 “proximate causation,” which are two independent bases to dismiss Defendants’ First
 11 Counterclaim. However, as with the other IIPEA deficiency, the Court does not find that
 12 amendment would be futile. The deficiencies identified could conceivably be remedied with
 13 additional factual allegations regarding disruption Defendants experienced.

14 Accordingly, Plaintiffs’ Motion is GRANTED as to Defendants’ First Counterclaim,
 15 which is DISMISSED with LEAVE TO AMEND.

16 **B. Declaratory Relief Counterclaims**

17 Plaintiffs also move to dismiss Defendants’ Fifth and Sixth Counterclaims requesting
 18 declaratory relief. Plaintiffs’ Motion seeks dismissal of these counterclaims on mootness and
 19 inadequate pleading grounds.

20 The Declaratory Judgment Act provides, in relevant part, “In a case of actual controversy
 21 within its jurisdiction . . . any court of the United States, upon the filing of an appropriate
 22 pleading, may declare the rights and other legal relations of any interested party seeking such
 23 declaration. . . .” 28 U.S.C. § 2201(a). To determine whether a “case of actual controversy”
 24 exists, courts must evaluate “whether the facts alleged, under all the circumstances, show that
 25 there is a substantial controversy, between parties having adverse legal interests, of sufficient
 26 immediacy and reality to warrant the issuance of a declaratory judgment.” *Maryland Cas. Co. v.*
 27 *Pac. Coal & Oil Co.*, 312 U.S. 270, 273 (1941). The party seeking a declaratory judgment has the

1 burden of establishing the existence of an actual case or controversy. *Cardinal Chem. Co. v.*
2 *Morton Int'l, Inc.*, 508 U.S. 83, 95 (1993). The primary purpose of the Act is to “avoid accrual of
3 avoidable damages to one not certain of his rights and to afford him an early adjudication without
4 waiting until his adversary should see fit to begin suit, after damage had accrued.” *Cunningham*
5 *Bros. v. Bail*, 407 F.2d 1165, 1167–68 (7th Cir. 1969).

6 Defendants’ counterclaims here seek declarations that certain Partner Agreement
7 restrictions are void. Specifically, the Fifth Counterclaim seeks a “declaration that § 4.3.2. of the
8 Partner Agreement is void under California Business and Professions Code § 16600,” and their
9 Sixth Counterclaim requests a “declaration that §§ 4.3.1 and 4.3.2 of the Partner Agreement are
10 void under the AGPL as the restriction violate [sic] the terms of the AGPL.” SACC ¶¶ 57, 61.

11 The Court finds that Defendants have not established the existence of an actual case or
12 controversy with respect to the referenced Partner Agreement restrictions and, therefore, does not
13 reach Plaintiffs’ arguments to dismiss these counterclaims on the merits. It is undisputed that the
14 Partner Agreement was terminated on July 11, 2017, and that the restrictions in § 4.3.2 expired
15 thirty-six months later on July 11, 2020. Mot. 12-13; Opp. 7-10; *see also* ECF No. 100, at 17
16 (Defendants’ acknowledging the same in separate briefing). Furthermore, Plaintiffs are not
17 seeking to enforce either of the restrictions implicated by Defendants’ declaratory relief claims.
18 *Cf.* SACC ¶ 13 (noting that Plaintiffs had removed and “waiv[ed] a breach of contract claim based
19 on [§ 4.3.2]” in their First Amended Complaint); *see also* Mot. 12-13 (same). Accordingly,
20 Defendants are not currently bound by or at risk of incurring damages on either expired restriction.

21 The Ninth Circuit has stated, in no uncertain terms, that “[t]here is no basis for awarding
22 declaratory relief on an expired agreement.” *S. California Painters & Allied Trades, Dist. Council*
23 *No. 36 v. Rodin & Co.*, 558 F.3d 1028, 1035 (9th Cir. 2009). District courts have also consistently
24 denied declaratory relief where the disputed contract terms had expired and the opposing party
25 was not seeking to enforce the expired terms. *See Imtiaz Khan v. K2 Pure Sols., LP*, 2013 WL
26 4734006, at *4 (N.D. Cal. Sept. 3, 2013) (finding lack of actual controversy where disputed non-
27 compete agreements had already expired); *Smith v. Bioworks, Inc.*, 2007 WL 273948, at *6 (E.D.

1 Cal. Jan. 29, 2007) (“Because the non-compete clause expired well before this issue came before
 2 the court, and because there is no evidence to indicate that plaintiff faces any further liability
 3 under this clause, plaintiff’s claims for declaratory relief . . . are MOOT.”); *Gutierrez v. Martin*
 4 *Eng’g*, 2007 WL 9702235, at *1 (S.D. Fla. Mar. 16, 2007) (“The challenged non-compete
 5 provisions expired by their terms in December, 2006, rendering [plaintiff’s] request for declaratory
 6 relief on the validity of these clauses moot.”). These holdings are consistent with the Declaratory
 7 Judgment Act’s forward-looking purpose of avoiding “accrual of avoidable damages,” as damages
 8 typically would not continue to accrue on expired contracts. *See Morcote v. Oracle Corp.*, 2005
 9 WL 3157512, at *5 (N.D. Cal. Nov. 23, 2005) (finding no “actual controversy where there is no
 10 possibility that any further damages can accrue under the [contract] in light of the fact that it has
 11 expired”). Defendants’ sole case cited in support of their declaratory relief—*Applied Materials,*
 12 *Inc. v. Advanced Micro-Fabrication Equip. (Shanghai) Co.*, 630 F. Supp. 2d 1084 (N.D. Cal.
 13 2009)—is distinguishable, because that decision involved a motion for summary judgment that did
 14 not implicate any justiciability or mootness issues, which are the bases for Plaintiffs’ Motion and
 15 the Court’s opinion here.

16 Defendants have not represented that they are accruing further damages or that they are at
 17 risk of violating the now-expired Partner Agreement restrictions. They also have not identified
 18 any risk of future injury or adverse effects that a declaratory judgment may remedy. *See* Opp. 9.
 19 Defendants only argues that, “[w]ith an adjudication [sic] of the [restrictions’] unlawfulness,
 20 Purethink may revive its relationships long tarnished with NEO4J’s clearly shown enforcement
 21 efforts.”² Opp. 9. This point is inapposite because it only purports to establish the *redressability*
 22 of declaratory relief—Plaintiffs’ Motion, however, asserts that the dispute is moot, not that a
 23 favorable decision will provide inadequate remedy.³ Second, even regarding the possible redress
 24

25 ² Notably, Defendants do not argue that Plaintiffs’ withdrawal of their contract claims falls under
 26 the “voluntary cessation” exception to mootness. *See, e.g., Friends of the Earth, Inc. v. Laidlaw*
 27 *Env’t Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000). To the contrary, Defendants appear to take the
 28 position that Plaintiffs’ withdrawal of those claims constitute waiver. SACC ¶ 13.

³ Indeed, a lack of redressability would be a separate basis to dismiss Defendants’ declaratory
 relief for lack of standing. *See Mayfield v. United States*, 599 F.3d 964, 971 (9th Cir. 2010) (“To

1 mentioned in Defendants’ Opposition, the Ninth Circuit has disapproved of granting declaratory
 2 judgment where, as here, the primary redress would be to improve a plaintiff’s position in future
 3 dealings with third parties. *See S. California Painters*, 558 F.3d at 1035 (“[Plaintiff] stated,
 4 however, that . . . it could use such a judgment in its dealings with other contractors and it would
 5 strengthen [plaintiff’s] position in future dealings. . . . This sort of declaratory relief would
 6 constitute an advisory opinion and does not evidence a live dispute between the parties in this
 7 case.”). Accordingly, Defendants’ argument that they may use the requested declaratory judgment
 8 to “revive its relationships long tarnished” is insufficient to support the existence of a live
 9 controversy for justiciability purposes.

10 Because the Partner Agreement restrictions at issue are no longer in effect and Plaintiffs
 11 have withdrawn their efforts to enforce those restrictions, Defendants’ counterclaims for
 12 declaratory relief are moot. Furthermore, amendment would be futile, as it is undisputed that the
 13 contested restrictions have expired. Plaintiffs’ Motion as to Defendants’ Fifth and Sixth
 14 Counterclaims are GRANTED WITHOUT LEAVE TO AMEND.

15 C. Affirmative Defenses

16 Finally, Plaintiffs seek to dismiss Defendants’ First and Second Affirmative Defenses to
 17 the Third Amended Complaint. The affirmative defenses assert the same general theories as
 18 Defendants’ Fifth and Sixth Counterclaims, *i.e.*, that Sections 4.3.1 and 4.3.2 of the Partner
 19 Agreement are void pursuant to the AGPL and California Business & Professions Code § 16600,
 20 respectively. ECF No. 91, at 14–16. Plaintiffs likewise move to dismiss these affirmative
 21 defenses on the same bases as they did Defendants’ counterclaims.

22 Although Plaintiffs challenge these affirmative defenses as a Rule 12(c) motion for
 23 judgment on the pleadings, the Motion appear to request that these affirmative defenses, in effect,
 24 be stricken as per Rule 12(f). *See* Fed. R. Civ. P. 12(f) (“The court may strike from a pleading an
 25

26 establish standing, a plaintiff must also show that a favorable decision will likely redress his
 27 injury.”); *cf. Gen. Elec. Co. by Levit v. Cathcart*, 980 F.2d 927, 934 (3d Cir. 1992) (denying
 28 review because the court could only grant “equitable relief with respect to the expired terms by
 doing the impossible: enjoining the directors from serving expired terms”).

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1 insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.”). Courts
 2 often apply the same plausibility pleading standard to affirmative defenses, regardless of whether
 3 they are challenged under either Rule 12(c) or 12(f). *See Spears*, 2013 WL 1748284, at *6. Under
 4 Rule 12(f), an immaterial matter is “that which has no essential or important relationship to the
 5 claim for relief or the defenses being pleaded,” and an impertinent matter “consists of statements
 6 that do not pertain, and are not necessary, to the issues in question.” *Fantasy, Inc. v. Fogerty*, 984
 7 F.2d 1524, 1527 (9th Cir. 1993), *rev’d on other grounds*, 510 U.S. 517 (1994) (quoting 5 Charles
 8 A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1382, at 706–07 (1990)). If the
 9 court strikes a defense, “leave to amend should be freely given so long as there is no prejudice to
 10 the moving party.” *G & G Closed Cir. Events, LLC v. Nguyen*, 2010 WL 3749284, at *2 (N.D.
 11 Cal. Sept. 23, 2010) (citing *Wyshak v. City Nat. Bank*, 607 F.2d 824, 826–27 (9th Cir. 1979)).

12 Here, Defendants’ First Affirmative Defense pleads, in relevant part, that “[t]he restriction
 13 under Section 4.3.2 cannot be enforced against Defendants as the restriction is void under
 14 California Business and Professions Code § 16600.” ECF No. 91, at 14. However, as discussed
 15 above, Plaintiffs do not attempt to enforce Section 4.3.2 of the Partner Agreement in the TAC.
 16 The TAC only cites once to Section 4.3.2—and Defendants’ breach thereof—as the basis for
 17 Plaintiffs’ decision to terminate the Partner Agreement in 2017, not as the basis of any current
 18 claims in the TAC. TAC ¶ 138; *see also* SACC ¶ 13. Although Plaintiffs are asserting a breach of
 19 contract claim, their claim only seeks to recover for breaches of Sections 3.1, 4.1 and 7.3—not
 20 Section 4.3.2—of the Partner Agreement. TAC ¶ 143. Accordingly, even if the affirmative
 21 defense’s conclusory allegation is accepted as true and Section 4.3.2 is void, it would bear “no
 22 essential or important relationship to the claim[s] for relief,” nor would it “pertain, and [be]
 23 necessary, to the issues in question.” *Fantasy*, 984 F.2d at 1527.

24 The Second Affirmative Defense fares much the same as the First. Defendants assert that
 25 “[t]he restrictions in Paragraphs [*sic*] 4.3.1 and 4.3.2 violate the GNU AFFERO GENERAL
 26 PUBLIC LICENSED VERSION 3 for Neo4J enterprise software.” ECF No. 91, at 15. Here as
 27 well, the TAC does not reflect any attempt to enforce either of the two restrictions asserted in the

1 Second Affirmative Defense. In fact, Plaintiffs are not attempting to enforce *any* provision from
2 Section 4.3 of the Partner Agreement titled “Restrictions.” SPA § 4.3; *see generally* TAC ¶¶ 134-
3 147. Defendants’ Second Affirmative Defense, as a result, is also subject to be stricken as an
4 immaterial or impertinent defense.

5 Defendants argue that, because the TAC references and alleges a breach of Section 4.3.2 at
6 paragraph 138, they are entitled to raise the “illegality of the contract in the answer as an
7 affirmative defense,” citing to Federal Rule of Civil Procedure 8(c)(1). Opp. 9. However, the
8 referenced TAC allegation only cites Section 4.3.2 as a basis for Plaintiffs’ decision in 2017 to
9 terminate the Partner Agreement—the TAC does not seek to recover damages for an alleged
10 breach of that Section. TAC ¶ 143. Nor would the illegality of one provision necessarily result in
11 the illegality of the entire contract. Defendants’ affirmative defenses, as pled, do not purport to
12 render the entire Partner Agreement void and do not contain any facts to support such a theory.⁴
13 Under any interpretation, Defendants’ cursory arguments do not establish how the “illegality” of
14 Sections 4.3.1 and 4.3.2 would result in any kind of defense to the claims in the TAC.

15 Because Plaintiffs are not suing Defendants on any of the restrictions that are the focus of
16 the First and Second Affirmative Defenses, the Court finds those defenses to be immaterial and
17 impertinent per Rule 12(f). The Court will GRANT Plaintiffs’ Motion as to those affirmative
18 defenses. The Court also finds that further amendment would be futile, because no amount of
19 additional pleading from Defendants can change the fact that none of the TAC’s claims turn on the
20 validity of Sections 4.3.1 or 4.3.2. *See Miller v. Rykoff-Sexton, Inc.*, 845 F.2d 209, 214 (9th Cir.
21 1988) (“[A] proposed amendment is futile only if no set of facts can be proved under the
22 amendment to the pleadings that would constitute a valid and sufficient claim or defense.”).

23 Accordingly, Defendants’ First and Second Affirmative Defenses are STRICKEN
24 WITHOUT LEAVE TO AMEND.

25 _____
26 ⁴ In any event, the Partner Agreement appears to contain a severability clause. SPA § 10.6 (“If
27 any term or provision of this Agreement is found to be invalid under any applicable statute or rule
28 of law then, that provision notwithstanding, this Agreement will remain in full force and effect and
such provision will be deemed omitted. . . .”).

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V. CONCLUSION

Based on the foregoing, the Court GRANTS IN PART Plaintiffs' Motion, as follows:

1. Defendants' First Counterclaim for Intentional Interference with Prospective Economic Advantage is DISMISSED WITH LEAVE TO AMEND;
2. Defendants' Fifth and Sixth Counterclaim for Declaratory Relief are DISMISSED WITHOUT LEAVE TO AMEND; and
3. Defendants' First and Second Affirmative Defenses are DISMISSED WITHOUT LEAVE TO AMEND.

Defendants shall file any amended pleadings within 21 days of this Order.

IT IS SO ORDERED.

Dated: January 6, 2023



EDWARD J. DAVILA
United States District Judge