Price et al v. Synapse Group, Inc. et al Doc. 21

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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 SHANNON DALE PRICE and CHERYL EDGEMON, individually and on behalf of all others similarly situated,
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13 Plaintiffs,
14 v.
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16 SYNAPSE GROUP, INC., a Delaware corporation; SYNAPSECONNECT, INC., a Delaware corporation; TIME INC., a Delaware corporation; and DOES 1–50, inclusive,
17
18
19 Defendants.
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Case No. 16-cv-01524-BAS-BLM

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO DISMISS

21
22 Plaintiffs Shannon Price and Cheryl Edgemon bring this putative class action
23 against Defendants Synapse Group, Inc., SynapseConnect, Inc., and Time, Inc.,
24 alleging that Defendants' enrollment of consumers in automatic subscription renewal
25 programs violates various California consumer protection laws. Defendants now
26 move to dismiss the operative Second Amended Complaint for failure to state a claim.
27 For the following reasons, the Court GRANTS IN PART and DENIES IN PART
28 Defendants' motion to dismiss. (ECF No. 17.)

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BACKGROUND

This case involves the sometimes fine line between a company's legitimate efforts to incentivize consumer behavior and the use of deceptive tactics to defraud the buying public. Plaintiffs Price and Edgemon are individual consumers who purchased magazine subscriptions from Defendants Synapse Group, Inc. ("Synapse") and SynapseConnect, Inc. ("SynapseConnect")—corporations whose primary business is marketing magazine subscriptions. (ECF No. 13, Second Amended Complaint ("SAC") ¶¶ 2, 3.) Plaintiffs also name as a defendant the prominent mass media company Time, Inc., who is Synapse's parent corporation. (Id. ¶¶ 4, 5.)

Plaintiffs allege that after they completed an online retail purchase and follow-up survey, Defendants presented them with an online "reward" offer to receive annual magazine subscriptions at a discounted rate of $2.00 per subscription. (Id. ¶ 28.) Under the terms of the offer, Plaintiffs could select up to five magazine titles. Plaintiff Price selected two magazine titles and paid $4.00 with his credit card; Plaintiff Edgemon selected four magazine titles and paid $8.00 with her credit card. (Id.)

Plaintiffs allege that when they selected and paid for the discounted magazine subscriptions, they were unaware that Defendants enrolled them in an "automatic renewal" program under which the subscriptions would renew each year at much higher rates unless Plaintiffs chose to cancel. (Id. ¶¶ 29, 35.) Although the order page from which Plaintiffs made their purchases included information regarding automatic renewal, Plaintiffs assert that the manner in which this information was presented was insufficient to put them on notice. (Id. ¶¶ 30–33.) As a result, Plaintiffs allege that Defendants charged their credit cards for renewed subscriptions—approximately $71.00 in the case of Plaintiff Price and $190.00 in the case of Plaintiff Edgemon—without their knowing consent. Plaintiffs state that if they had known Defendants were going to enroll them in automatic renewal programs, they would not have ordered the magazines in the first place. (Id. ¶¶ 34, 36.)

According to Plaintiffs, the terms of the automatic renewal offer are contained

in the middle of a ten-sentence paragraph located at the end of the order page. (Id. ¶¶ 30–32.) This "disclosure" paragraph appears below sections of the order page where consumers select magazine titles and enter their credit card information, and immediately above a red "Complete" button consumers must click to complete their order. The paragraph reads as follows:[1]

> **Important Reward Details**
>
> **Automatic Renewal Authorization**: Enjoy your favorites with the first year already paid for by TownWizard. The credit/debit card you provide will be charged just $2 each for processing. This title is just $2 for the entire first year except where indicated and no processing applies. After the first term, all selections will continue. Each year, you'll receive a reminder notice specifying price plus processing (and any applicable sales tax) and billing terms for the next term of issues and you authorize the account you provide to be charged the rate on the notice for the next term of issues unless you choose to cancel: 1-800-429-2550. If a magazine becomes unavailable it may be replaced by another with the same renewal features. Allow 4-10 weeks for delivery. The name, address, and account information you provide will be used by MagazineOutlet to process and fulfill your selections. Please print a copy of this page for your records. For individual use only, not for resale. Enjoy!

(SAC, Exh. 17 (ECF No. 13-17 at 11)).

Plaintiffs allege that the format, content, placement, and text size of this disclosure violate California's Automatic Purchase Renewals Statute ("Automatic Renewal Law" or "ARL"), Cal. Bus. & Prof. Code §§ 17600–17606. The ARL requires businesses to satisfy three main conditions when making automatic renewal offers to consumers in California: (1) present the terms of the automatic renewal offer in a clear and conspicuous manner, (2) obtain consumers' affirmative consent to the renewal offer before charging them, and (3) provide to consumers an acknowledgement that includes the terms of the renewal program and information on how to cancel, and that is capable of being retained. See Cal. Bus. & Prof. Code §§ 17601(a)(1)-(3). Plaintiffs allege that Defendants violated each of these provisions of

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[1] In presenting the "disclosure" paragraph here, the Court uses a larger size text than the size used on the online order page on which the paragraph allegedly appears. A copy of that order page is attached to this Order as Appendix 1. Plaintiffs submitted the order page as part of Exhibit 17 to their SAC. (See ECF No. 13-17 at 11.)

the ARL in the course of offering discounted magazine subscriptions to Plaintiffs. (SAC ¶ 33.)

Plaintiffs do not, however, bring a standalone cause of action under the ARL. Instead, they cite Defendants' alleged violations of the ARL as a predicate for other claims. Specifically, Plaintiffs assert claims under (1) California's False Advertising Law ("FAL"), Cal. Bus. & Prof. Code §§ 17500–17509, (2) California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200–17210, (3) California's Consumer Legal Remedies Act ("CLRA"), Cal. Civ. Code § 1770, and for (4) conversion and (5) unjust enrichment. Plaintiffs bring the suit on behalf of a class of California consumers who were enrolled in an automatic renewal program by Defendants in connection with a magazine subscription selection offered by Defendants. (Id. ¶ 39.) Plaintiffs seek restitution, injunctive relief, damages, and fees and costs.

Plaintiffs originally filed suit in the Superior Court of California, County of San Diego. Defendants removed the case to this Court under the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d)(2), and the general removal statute, 28 U.S.C. § 1441(b), after which Plaintiffs filed a First Amended Complaint ("FAC"). (ECF Nos. 1, 11.) Defendants responded to the FAC by bringing a motion to dismiss for failure to state a claim. (ECF No. 12.) Thereafter, Plaintiffs filed the operative Second Amended Complaint. (ECF No. 13.) Defendants now move to dismiss the SAC under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim. (ECF No. 17.) Plaintiffs oppose. (ECF No. 18.)

LEGAL STANDARD

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests the legal sufficiency of the claims stated in the complaint. See Conservation Force v. Salazar, 646 F.3d 1240, 1241–42 (9th Cir. 2011). A complaint may be dismissed under Rule 12(b)(6) "only when it fails to state a cognizable legal theory or fails to allege sufficient factual support for its legal theories." Caltex Plastics, Inc. v.

Lockheed Martin Corp., 824 F.3d 1156, 1159 (9th Cir. 2016).

To survive a motion to dismiss, a complaint must contain facts sufficient to "state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Twombly, 550 U.S. at 556). The plausibility standard does not require a showing of "probability," "but it asks for more than a sheer possibility that a defendant has acted unlawfully." Id. Where a complaint contains allegations that are "merely consistent with" a defendant's liability, it stops short of the line between possible liability and plausible entitlement to relief. Id. (citing Twombly, 550 U.S. at 557).

In deciding a motion to dismiss, the court must accept as true all factual allegations in the complaint and draw reasonable inferences from those allegations in the light most favorable to the plaintiff. See Skilstaf, Inc. v. CVS Caremark Corp., 669 F.3d 1005, 1014 (9th Cir. 2012). However, the court need not assume the truth of legal conclusions, unwarranted deductions of fact, or inferences that are unreasonable in light of the facts alleged. See Fayer v. Vaughn, 649 F.3d 1061, 1064 (9th Cir. 2011) (per curiam) (citations omitted); In re Gilead Scis. Sec. Litig., 536 F.3d 1049, 1055 (9th Cir. 2008) (citation omitted). Ruling on a Rule 12(b)(6) motion is "a context-specific task" that requires the court "to draw on its judicial experience and common sense." Iqbal, 556 U.S. at 682.[2]

DISCUSSION

Defendants move to dismiss Plaintiffs' claims on grounds that: (1) Plaintiffs

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[2] Defendants assert in a footnote that Plaintiffs' claims sound in fraud and are thus subject to the heightened pleading standard of Federal Rule of Civil Procedure 9(b). Rule 9(b) requires a plaintiff to "state with particularity" the circumstances constituting the fraud. Fed. R. Civ. P. 9(b). Defendants, however, do not move for dismissal on grounds that Plaintiffs fail to satisfy Rule 9(b), or suggest that the outcome of the motion to dismiss would be different if the "particularity" requirement is applied. Accordingly, the Court does not consider whether Rule 9(b) presents a separate ground for dismissal.

lack statutory standing to assert claims under the FAL, UCL, and CLRA; (2) Plaintiffs fail to sufficiently allege any violation of the ARL on which to base the asserted statutory and common law claims; (3) Plaintiffs' CLRA, conversion, and unjust enrichment claims are premised on invalid legal theories or insufficient facts; (4) Plaintiffs fail to state a claim against Defendant Time, Inc. under an agency or alter ego theory; and (5) Plaintiffs lack Article III standing for injunctive relief. Before addressing each of these arguments in turn, the Court first resolves Defendants' request for judicial notice.

A. Request for Judicial Notice

Defendants request the Court take judicial notice of three postcard mailers, purportedly mailed to Plaintiffs, that contain information regarding Plaintiffs' enrollment in automatic renewal programs. (ECF No. 17-3 (Peacock Decl.), Exhs. A-C.) The mailers include, among other things, price information for the renewed subscriptions and instructions on how to cancel the subscriptions. Defendants assert these mailers are the "reminder notices" mentioned in paragraph 32 of the SAC, and thus are properly considered by the Court under the incorporation by reference doctrine. (ECF No. 17-2.)

On a motion to dismiss, a court's review is generally limited to facts alleged on the face of the complaint and to exhibits attached to the complaint. Swartz v. KPMG LLP, 476 F.3d 756, 763 (9th Cir. 2007); Tyler v. Cuomo, 236 F.3d 1124, 1131 (9th Cir. 2000). Under the "incorporation by reference" doctrine, however, a court may take into account documents that are not attached to the complaint, and whose authenticity no party questions, so long as the complaint refers extensively to the documents, or the documents are "central" to the complaint. Ecological Rights Foundation v. Pacific Gas & Elec. Co., 713 F.3d 502, 511 (9th Cir. 2013); United States v. Ritchie, 342 F.3d 903, 908 (9th Cir. 2003). "Whether a document is 'central' to a complaint turns on whether the complaint 'necessarily relies' on that document." Ecological Rights, 713 F.3d at 511 (citing Daniels–*Hall v. Nat'l Educ. Ass'n*, 629

F.3d 992, 998 (9th Cir. 2010)).

Defendants argue that Plaintiffs' reference to a "reminder notice" in paragraph 32 of the SAC is sufficient to allow the Court to take the postcard mailers into account under the incorporation by reference doctrine. The Court disagrees. Plaintiffs' single mention of the reminder notice—which occurs in the context of allegations that do not otherwise concern the reminder notice—is far from the "extensive" reference contemplated by the incorporation by reference doctrine. As the Ninth Circuit has explained, "the mere mention of the existence of a document is insufficient to incorporate the contents of a document." Coto Settlement v. Eisenberg, 593 F.3d 1031, 1038 (9th Cir. 2010). Furthermore, although the postcard mailers are potentially relevant to the case, Defendants fall far short of demonstrating that the mailers are "central" to Plaintiffs' claims. For example, there is no indication that Plaintiffs' ability to state a claim "necessarily relies" on the existence or contents of the postcard mailers. See Ecological Rights, 713 F.3d at 511 (citing Daniels–Hall, 629 F.3d at 998); see also Faulkner v. Beer, 463 F.3d 130, 134 (2d Cir. 2006) (explaining that even if a document not attached to the complaint is integral to the complaint, it "must also be clear that there exist no material disputed issues of fact regarding the relevance of the document" before the document is used as a basis for dismissal). For these reasons, the Court finds that incorporating the postcard mailers by reference is inappropriate. Accordingly, Defendants' request for judicial notice is denied, and the Court will not consider the mailers for purposes of ruling on the motion to dismiss.

B. Statutory Standing under the FAL, UCL, and CLRA

Defendants argue that Plaintiffs lack standing to bring claims under California's FAL, UCL, and CLRA because Plaintiffs fail to sufficiently allege injury and reliance under those statutes. (ECF No. 17, Motion to Dismiss ("MTD"), 9:12–13:4.)

The FAL, UCL, and CLRA are the core of California's consumer protection

regime. The FAL prohibits businesses from disseminating advertising "which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading." Cal. Bus. & Prof. Code § 17500. The UCL protects consumers and competitors against "any unlawful, unfair or fraudulent business act or practice." Cal. Bus. & Prof. Code § 17200. The CLRA outlaws "unfair methods of competition and unfair or deceptive acts or practices" undertaken in the course of consumer transactions. Cal. Civ. Code § 1770.

Standing under these statutes requires a plaintiff to demonstrate both injury and reliance. Under the FAL and UCL, the injury complained of must be an "economic injury"—i.e., injury in the form of "lost money or property." Hinojos v. *Kohl's Corp.*, 718 F.3d 1098, 1104 (9th Cir. 2013) (quoting Kwikset Corp. v. Superior Court, 246 P.3d 877, 885 (Cal. 2011)). Under the CLRA, the injury may be based on "any damage" resulting from an unlawful or deceptive business practice. Cal. Civ. Code § 1770. To plead reliance under these statutes, a consumer must allege she would not have purchased the product, or paid as much for the product, absent the defendant's misrepresentations or omissions. Reid v. Johnson & Johnson, 780 F.3d 952, 958 (9th Cir. 2015).

Here, the Court finds Plaintiffs have alleged both injury and reliance sufficient to establish standing under the FAL, UCL, and CLRA. With respect to injury, Plaintiffs Price and Edgemon allege that Defendants' fraudulent conduct resulted in charges of $71 and $190 to their credit cards, respectively. These allegations state a loss of money or property sufficient to satisfy economic injury under the FAL and UCL, and by extension the "any damage" requirement of the CLRA. Defendants contend that a credit card charge cannot constitute economic injury absent allegations that Plaintiffs actually paid the charge, but that argument is unconvincing. Economic injury under the FAL and UCL may be shown in "innumerable ways," Kwikset, 246 P.3d at 885, and in a modern economy in which credit card transactions are a ubiquitous feature, deprivation of a consumer's credit line is surely among the most

common. Defendants cite no authority for their "cash only" theory of economic injury.

Defendants also argue that Plaintiffs fail to plead economic injury because Plaintiffs authorized the charges they now cite as the source of injury. As evidence of Plaintiffs' authorization, Defendants point to the fact that the automatic renewal terms were disclosed on the order page on which Plaintiffs entered their credit card information and completed their order.

This argument is unavailing and overlooks the very gravamen of Plaintiffs' claims. Plaintiffs do not argue the charges were unauthorized in the sense of being carried out without Plaintiffs having entered their credit card information. Rather, Plaintiffs argue the charges were unauthorized in the sense that Defendants charged their credit cards without presenting the automatic renewal terms in a clear and conspicuous manner beforehand. Thus, because Plaintiffs allege that the credit card charges stem from Defendants' deceptive conduct, those charges constitute economic injury cognizable under the FAL, UCL, and CLRA.

Plaintiffs' allegations of reliance are also sufficient. To establish reliance under the FAL, UCL, and CLRA, a plaintiff must show that the misrepresentation or omission was "an immediate cause of the injury-producing conduct." Daniel v. Ford Motor Co., 806 F.3d 1217, 1225 (9th Cir. 2015); see also Kwikset, 246 P.3d at 887–88. A plaintiff can satisfy this requirement by alleging she would not have purchased the product, or paid as much for the product, absent the misrepresentation or omission. Hinojos, 718 F.3d at 1104–05.

Plaintiffs meet the reliance requirement here. The SAC alleges that because Defendants failed to present automatic renewal terms in a clear and conspicuous manner, Plaintiffs did not know they were enrolling in automatic renewal programs when they made their initial purchases. (SAC ¶¶ 29–33, 35.) Plaintiffs further allege that if they had known that Defendants were going to enroll them in automatic subscription programs, they would not have ordered magazines in the first place. (Id.

¶¶ 34, 36.) These allegations—which emphasize the role of Defendants' alleged misconduct in causing Plaintiffs' injury—suffice to plead reliance. See Reid, 780 F.3d at 958 (finding that plaintiff satisfied the reliance requirement under the FAL, UCL, and CLRA where he alleged he would not have paid as much for the product at issue, if anything, if he had not been misled by defendant's misrepresentations); see also Daniel, 806 F.3d at 1225 ("To prove reliance on an omission, a plaintiff must show that the defendant's nondisclosure was an immediate cause of the plaintiff's injury-producing conduct. A plaintiff need not prove that the omission was the only cause or even the predominant cause, only that is was a substantial factor in his decision.").

C. Sufficiency of Plaintiffs' ARL Allegations

Plaintiffs' claims under the FAL, UCL, CLRA, and for unjust enrichment and conversion are all premised on Defendants' alleged violations of the Automatic Renewal Law. Defendants argue that Plaintiffs do not sufficiently allege a violation of the ARL, and therefore, all of the claims to which the alleged ARL violations give rise must be dismissed.

1. Allegations under Cal. Bus. & Prof. Code § 17602(a)

The purpose of the ARL is to protect consumers from unwittingly consenting to automatic renewals of subscription orders. See Cal. Bus. & Prof. Code § 17600. To advance this purpose, the statute makes it unlawful for any business making an automatic renewal offer to consumers in California to do any of the following:

> (1) Fail to present automatic renewal offer terms in a clear and conspicuous manner before the subscription agreement is fulfilled, and in visual proximity to the request for consent to the offer. Cal. Bus. & Prof. Code § 17602(a)(1).
>
> (2) Charge the consumer's credit, debit, or third-party payment account without first obtaining the consumer's affirmative consent to the agreement containing the automatic renewal offer terms. Cal. Bus. & Prof. Code § 17602(a)(2).
>
> (3) Fail to provide an acknowledgement that includes the automatic

> renewal offer terms, cancellation policy, and information regarding how to cancel in a manner that is capable of being retained by the consumer. Cal. Bus. & Prof. Code § 17602(a)(3).

Under the ARL, the "automatic renewal offer terms" that must be disclosed in a clear and conspicuous manner include "[t]he recurring charges that will be charged to the consumer's credit or debit card or payment account with a third party as part of the automatic renewal plan." Cal. Bus. & Prof. Code § 17601(b)(3). "Clear and conspicuous" means "in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols or other marks, in a manner that clearly calls attention to the language." Cal. Bus. & Prof. Code § 17601(c).

Here, Defendants argue that Plaintiffs (1) fail to allege facts suggesting the automatic renewal offer terms were not presented in a clear and conspicuous manner; (2) fail to sufficiently allege they did not receive the required acknowledgement; and (3) fail to allege that Defendants' purported violation of the ARL was intentional. (MTD, 13:10–18:13.) Defendants also argue that even if Plaintiff Price's allegations are sufficient, Plaintiff Edgemon fails to allege sufficient facts to state a claim and must be dismissed. (Id., 13:16–25.) Finally, Defendants argue that Plaintiffs fail to allege facts to support their alternative theory of liability that Defendants violated the ARL by failing to notify Plaintiffs of a material change to the renewal offer. (Id., 16:7–23.) With the exception of Defendants' motion to dismiss Plaintiffs' alternative theory, the Court finds Defendants' arguments unpersuasive.

Defendants' first argument—that Plaintiffs do not sufficiently allege a failure to present the automatic renewal terms in a clear and conspicuous manner—does not withstand the Court's obligation to accept well-pleaded factual allegations as true and draw all reasonable inferences in Plaintiffs' favor. Plaintiffs attach to the SAC a copy of the order page containing the automatic renewal offer terms, and allege that the font size, format, and placement of the terms violate the ARL's clear and conspicuous

requirement. (SAC, Exh. 17.)[3] Specifically, Plaintiffs point out that the renewal terms are in "small font" located below the space where consumers enter their credit card information (SAC ¶ 32); that the terms themselves are in the middle of a paragraph in "tiny print" that contains other information unrelated to automatic renewal (Id. ¶¶ 30, 32); and that the small text of the terms are placed near a "large red button" labeled "Complete" (Id. ¶ 32). Additionally, the renewal offer terms do not specify the amount of recurring charges to be charged, or that the renewal rate may change. These allegations are sufficient to state a violation of the ARL's clear and conspicuous requirement. Read in the light most favorable to Plaintiffs, the SAC plausibly alleges that Defendants failed to present the text "in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text . . . in a manner that clearly calls attention to the language." Cal. Bus. & Prof. Code § 17601(c). Thus, the motion to dismiss the SAC on this ground is denied.

Defendants next argue that Plaintiffs fail to plead facts plausibly suggesting they did not receive an ARL-compliant acknowledgement because the order page that contains the automatic renewal terms could have been printed and retained by Plaintiffs. This argument is unavailing. To comply with the ARL, an acknowledgment must clearly and conspicuously disclose the automatic renewal offer terms, including the recurring charges to be charged to the consumer, and must be presented in a manner that is capable of being retained by the consumer. Cal. Bus. & Prof. Code § 17602(a)(3); see also id. § 17601(b). The order page may have been

[3] On a motion to dismiss for failure to state a claim, the court "may consider facts contained in documents attached to the complaint." *Nat'l Ass'n for* Advancement of Psychoanalysis v. California Bd. of Psychology, 228 F.3d 1043, 1049 (9th Cir. 2000) (citing Roth v. Garcia Marquez, 942 F.2d 617, 625 n.1 (9th Cir. 1991) ("If a complaint is accompanied by attached documents, the court is not limited by the allegations contained in the complaint. These documents are part of the complaint and may be considered in determining whether the plaintiff can prove any set of facts in support of the claim."). Accordingly, the Court properly considers the online order page attached as Exhibit 17 to the SAC.

capable of being retained, but the crux of Plaintiffs' allegations is that the acknowledgement was otherwise insufficient in both form and substance. Plaintiffs allege that the disclosure paragraph on the order page is not presented in a clear and conspicuous manner, and they present a copy of the page showing that the renewal terms do not specify the recurring charges as required. (ECF No. 13-17 at 11.) Thus, even if Plaintiffs had printed and retained the order page, doing so would not negate allegations that Defendants failed to present the renewal terms clearly and conspicuously, nor cure the alleged defects in the content of the terms themselves, such as failure to include the amount of recurring charges. Plaintiffs' claim that Defendants failed to provide an ARL-compliant acknowledgment cannot be defeated by reference to the very disclosures Plaintiffs allege violate the ARL. The motion to dismiss this portion of the SAC is denied.

Defendants next argue that Plaintiffs' claims fail because they do not allege an intentional violation of the ARL. However, there is no intent requirement to state a claim under the ARL. Defendants' only citation to support this assertion is Cal. Bus. & Prof. Code § 17604(b), which provides a good faith defense to liability. Cal. Bus. & Prof. Code § 17604(b) ("If a business complies with the provisions of this article in good faith, it shall not be subject to civil remedies."). But the availability of a good faith defense does not create a scienter requirement to state a claim. On a motion to dismiss, Defendants cannot defeat a claim by referencing an affirmative defense not clearly established by the complaint, and on which Defendants bear the burden to demonstrate. See Brownmark Films, LLC v. Comedy Partners, 682 F.3d 687, 690 (7th Cir. 2012) ("[A] plaintiff may state a claim even though there is a defense to that claim. The mere presence of a potential affirmative defense does not render the claim for relief invalid."). Thus, Defendants' motion to dismiss the SAC on this ground fails.

Finally, Defendants move to dismiss Plaintiff Edgemon from the suit, arguing that even if Plaintiff Price's allegations are sufficient, Edgemon's are too conclusory

to state a claim. The Court disagrees. Edgemon's allegations are virtually identical to Price's—she alleges the automatic renewal terms were not presented in a clear and conspicuous manner; she alleges the form and content of the renewal terms with reference to the same order page; she alleges she would not have ordered the magazine subscriptions if the renewal terms had been presented in a clear and conspicuous manner; and she alleges economic injury in the form of charges to her credit card. (SAC ¶¶ 30–32, 35, 36, 46, 56.) The only differences in the allegations are the number of magazine subscriptions initially ordered and the amount Defendants charged Plaintiffs' credit cards upon renewing the subscriptions. Variations in these facts do not undermine the sufficiency of Edgemon's allegations. Therefore, the Court finds that Edgemon's allegations are sufficient to state a plausible claim for relief. The motion to dismiss Edgemon's claims is denied.

2. Plaintiffs' Alternative Theory under Cal. Bus. & Prof. Code § 17602(c)

Defendants also move to dismiss Plaintiffs' alternative theory that Defendants violated § 17602(c) of the ARL, which requires businesses to provide consumers a clear and conspicuous notice of a "material change" in the terms of an automatic renewal offer previously accepted by the consumer. The Court agrees this claim should be dismissed. The allegations Plaintiffs proffer to support this theory of liability amount to little more than a recitation of the elements of the relevant claim, rather than factual content to support the claim. For example, the SAC does not allege the terms of the automatic renewal offer originally accepted by Plaintiffs, nor how the rate charged for the renewed subscriptions reflects a "material change" from the original terms. Absent such allegations, Plaintiffs cannot state a claim for relief based on § 17602(c). See Twombly, 550 U.S. at 555 (noting that stating a plausible claim for relief sufficient to survive dismissal under Rule 12(b)(6) requires more than a "formulaic recitation" of the elements of a claim).

D. CLRA Claims

Defendants next argue that even if Plaintiffs sufficiently allege a violation of the ARL, Plaintiffs' CLRA claims must nonetheless be dismissed because Plaintiffs fail to allege facts sufficient to state a violation of any of the four provisions on which those claims rest. (MTD, 18:18–20:16.) The Court agrees in part.

1. Claim under Cal. Civ. Code § 1770(a)(5)

Section 1770(a)(5) of the CLRA makes it unlawful to represent that goods or services have sponsorship, characteristics, or benefits that they do not have. Cal. Civ. Code § 1770(a)(5). The provision proscribes both fraudulent omissions and fraudulent affirmative misrepresentations. Herron v. Best Buy Co. Inc., 924 F. Supp. 2d 1161, 1169 (E.D. Cal. 2013). Defendants argue that Plaintiffs fail to allege any relevant facts to state a claim under this provision.

The Court disagrees. Here, Plaintiffs allege that Defendants advertised discounted magazine subscriptions without adequately disclosing the terms of the automatic renewal features attached to those subscriptions. Put another way, Plaintiffs allege that by not adequately disclosing the automatic renewal features tied to the subscriptions, Defendants represented that the subscriptions had a characteristic they did not have—namely, the absence of an automatic renewal feature. The Court finds these allegations sufficient to state a claim under § 1770(a)(5). Thus, Defendants motion to dismiss Plaintiffs' claim under § 1770(a)(5) is denied.

2. Claim under Cal. Civ. Code § 1770(a)(9)

Section 1770(a)(9) of the CLRA prohibits a business from "[a]dvertising goods or services with intent not to sell them as advertised." Cal. Civ. Code § 1770(a)(9). Defendants argue that Plaintiffs fail to state a claim under § 1770(a)(9) because there is no allegation that Defendants failed to provide the magazines Plaintiffs selected, or failed to honor a previously-advertised price for the renewed subscriptions.

Defendants' arguments are unavailing. Here, Plaintiffs allege that Defendants advertised magazine subscriptions at discounted rates with intent to sell subscriptions that automatically renewed at much higher rates. In other words, Defendants

advertised one type of magazine subscription with intent to sell a different type. These allegations are sufficient to state a claim under § 1770(a)(9). The fact that Defendants may have disclosed, on the order page, that the subscriptions came with automatic renewal features does not change the representation in the advertisement, which makes no mention of a price increase for automatic renewals. The advertisement itself simply invites consumers to take advantage of discounted magazine subscriptions. On these allegations, the Court finds Plaintiffs state a plausible claim that Defendants advertised the magazines "with intent not to sell them as advertised." Cal. Civ. Code § 1770(a)(9). Accordingly, Defendants' motion to dismiss Plaintiffs' claim under § 1770(a)(9) is denied.

3. Claim under Cal. Civ. Code § 1770(a)(13)

Section 1770(a)(13) of the CLRA prohibits "[m]aking false or misleading statements of fact concerning reasons for, existence of, or amounts of, price reductions." Cal. Civ. Code § 1770(a)(13). Defendants argue that Plaintiffs fail to state a claim under this provision because Plaintiffs allege no facts regarding a price reduction, or any false or misleading statements concerning a price reduction.

The Court agrees with Defendants. Defendants advertised the discounted rate of $2.00 per subscription as a "reward" for filling out an online survey. This statement was not false or misleading. Plaintiffs completed the survey and, as they acknowledge in the SAC, they were thereafter able to purchase initial subscriptions at the $2.00 rate. (SAC ¶ 28.) Plaintiffs argue that Defendants' representation of the $2.00 rate as a "reward" was misleading because the discount was intended to trick them into enrolling in automatic subscription programs. But such allegations go to the sufficiency of Defendants' disclosure of the renewal terms, rather than to the truth of the basis for the discount itself. Businesses routinely offer discounts as "rewards" for various actions taken by consumers, and the fact that such discounts are intended to entice future purchases does not render the premise of the discount false or misleading. To adopt the contrary view would render every "holiday sale" or "podcast

listener discount" susceptible to attack as a false or misleading statement concerning a price reduction. The CLRA does not prohibit such routine promotional efforts. Here, the Court finds Plaintiffs have not alleged facts suggesting Defendants' portrayal of the discount as a "reward" was false or misleading. Accordingly, Defendants' motion to dismiss Plaintiffs' claim under § 1770(a)(13) is granted.

4. Claim under Cal. Civ. Code § 1770(a)(17)

Section 1770(a)(17) of the CLRA makes it unlawful to represent that a consumer "will receive a rebate, discount, or other economic benefit, if the earning of the benefit is contingent on an event to occur subsequent to the consummation of the transaction." Cal. Civ. Code § 1770(a)(17). Defendants argue that Plaintiffs fail to state a claim under this provision because they have not alleged a future event on which the discounted rate was contingent. The Court agrees.

Plaintiffs' claim under § 1770(a)(17) rests on allegations that the discounted rate of $2.00 was contingent on Plaintiffs' enrollment in an automatic renewal program. These allegations, however, do not suggest that enrollment was an event that occurred "subsequent to the consummation of the transaction." Cal. Civ. Code § 1770(a)(17). In fact, enrollment in an automatic renewal program was part of the transaction itself—it occurred concurrent with Plaintiffs' initial purchases. Although Plaintiffs allege that Defendants' deceptive practices resulted in an unexpected charge upon renewal of their subscriptions, Plaintiffs cannot allege that the initial discount was contingent on them being charged at the higher renewal rate the following year. Plaintiffs paid the $2.00 rate for their initial subscriptions, and they would have enjoyed that rate even if they cancelled the automatic renewal feature after their initial purchases. Thus, Plaintiffs have not alleged a subsequent event on which the initial discount was contingent. Accordingly, Defendants' motion to dismiss Plaintiffs' claim under § 1770(a)(17) is granted.

E. Conversion

The Court turns now to Defendants' motion to dismiss Plaintiffs' claim for

conversion. Defendants argue the conversion claim must be dismissed because Plaintiffs fail to allege a special relationship between the parties. (MTD, 20:17–21:11.) Plaintiffs respond that allegations of a special relationship are not required to state a conversion claim, and that the SAC contains sufficient facts to state a plausible claim for relief. (Opp'n, 14.)

"Conversion is the wrongful exercise of dominion over the property of another." Lee v. Hanley, 354 P.3d 334, 344 (Cal. 2015) (quoting Welco Elecs., Inc. v. Mora, 166 Cal. Rptr. 3d 877, 881 (Ct. App. 2014)). To state a claim for conversion, a plaintiff must allege: (1) ownership or right to possession of the property, (2) wrongful disposition of the property right, and (3) damages. Welco, 166 Cal. Rptr. 3d at 881 (citation omitted). Money may constitute property for purposes of a conversion claim if the claim involves a specific, identifiable sum. Id. at 882. Credit card, debit card, and third-party payment account information may also be the subject of conversion. Id. at 885.

Here, Plaintiffs allege a property right in their credit card accounts, wrongful disposition of money from the available credit lines on those accounts, and damages in the form of charges to their credit cards. (SAC ¶¶ 29, 33–36, 69.) Plaintiffs further allege that the amount of money wrongfully taken is capable of identification. (Id. ¶ 70.) These allegations are sufficient to state a conversion claim. See In re Easysaver Rewards Litig., 737 F. Supp. 2d 1159, 1180 (S.D. Cal. 2010) (finding plaintiffs stated a conversion claim based on the misuse of their credit card, debit card, and PayPal account information and the resulting charges); Welco, 166 Cal. Rptr. 3d at 882–87 (determining that plaintiff sufficiently pleaded conversion where defendant misappropriated plaintiff's credit card and wrongfully transferred money from the plaintiff's available credit line).

Defendants' sole argument for dismissing the conversion claim is that Plaintiffs were required to plead facts demonstrating a special relationship between the parties and failed to do so. Citing Williamson v. Reinalt-Thomas Corp., No. 5:11–

CV–03548–LHK, 2012 WL 1438812 (N.D. Cal. Apr. 25, 2012), Defendants maintain that whenever money is the subject of a conversion claim, the complaint must include allegations of a special relationship. The Court finds Defendants' reading of Williamson unpersuasive.

In Williamson, the plaintiff brought a conversion claim based on allegations that defendants charged his credit card a $5.00 fee without his knowledge. The plaintiff had agreed to pay a previously quoted amount for tires and tire installation, but alleged he was not told, and did not realize until months later, that the quoted amount included a tire disposal fee. Id. at *1–2. Judge Lucy Koh dismissed the conversion claim, noting that California cases involving conversion of money "typically" involve the misappropriation of funds held for the benefit of others, and finding that plaintiff had not alleged "a special relationship between the parties" such that defendants violated a duty with regard to plaintiff's funds. Id. at *4–5.

Judge Koh's holding, however, was not as far-reaching as Plaintiffs suggest. Although Judge Koh found it relevant the plaintiff had not alleged a special relationship between the parties, she did not explicitly elevate the existence of such a relationship to a required element of a conversion claim. Instead, Judge Koh noted the general rule, and found that on the facts before her the plaintiff failed to state a claim. This Court declines to extend the Williamson court's description of a "typical" case for conversion of money into a required element of what every such claim must allege. And even if Williamson stood for the proposition Defendants advance here, this Court would find that decision unpersuasive and, in any event, would not be bound by it. See Camreta v. Greene, 563 U.S. 692, 709 n.7 (2011) ("A decision of a federal district court judge is not binding precedent in either a different judicial district, the same judicial district, or even upon the same judge in a different case.") (citation omitted). Defendants' motion to dismiss the conversion claim is denied.

F. Unjust Enrichment

Defendants move to dismiss Plaintiffs' unjust enrichment claim on grounds

that California does not recognize unjust enrichment as an independent cause of action. (MTD, 21:12–22.) Working from the assumption that Plaintiffs fail to state a claim under the FAL, UCL, and CLRA, Defendants argue there is no predicate claim on which to base the unjust enrichment claim, and therefore, the unjust enrichment claim must be dismissed.

As an initial matter, Defendants are correct that there is no independent cause of action in California for unjust enrichment. Durell v. Sharp Healthcare, 108 Cal. Rptr. 3d 682, 699 (Ct. App. 2010) (citations omitted). But "unjust enrichment is synonymous with restitution," Id., and "[c]ommon law principles of restitution require a party to return a benefit when the retention of such benefit would unjustly enrich the recipient," Munoz v. MacMillan, 124 Cal. Rptr. 3d 664, 675 (Ct. App. 2011). On this basis, the Ninth Circuit has explained that "[w]hen a plaintiff alleges a claim of unjust enrichment, a court 'may construe the cause of action as a quasi-contract claim seeking restitution.'" Astiana v. Hain Celestial Grp., Inc., 783 F.3d 753, 762 (9th Cir. 2015) (quoting Rutherford Holdings, LLC v. Plaza Del Rey, 166 Cal. Rptr. 3d 864, 872 (Ct. App. 2014)). A plaintiff may seek restitution on a quasi-contract theory "where the defendant obtained a benefit from the plaintiff by fraud, duress, conversion, or similar conduct." Durell, 108 Cal. Rptr. 3d at 699.

Here, Plaintiffs allege that Defendants misled them by failing to adequately disclose the automatic renewal terms of the magazine subscriptions ordered by Plaintiffs, and that Plaintiffs would not have purchased the subscriptions if Defendants had disclosed the terms in a clear and conspicuous manner. Plaintiffs also allege that because Defendants obtained funds from Plaintiffs based on an unlawful marketing scheme, Defendants' retention of those funds has resulted in their unjust enrichment. These allegations are sufficient to state a quasi-contract claim for restitution. See ESG Capital Partners, LP v. Stratos, 828 F.3d 1023, 1039 (9th Cir. 2016) (explaining that allegations of fraud resulting in the defendants' unjust enrichment sufficiently state a claim under quasi-contract); Azimpour v. Sears,

Roebuck & Co., No. 15-CV-2798 JLS (WVG), 2017 WL 1496255, at *10 (S.D. Cal. Apr. 26, 2017) (construing unjust enrichment claim as quasi-contract claim for restitution where plaintiff alleged that defendant's deceptive pricing and advertising practices induced plaintiff to purchase merchandise he otherwise would not have purchased). Accordingly, Defendants' motion to dismiss Plaintiffs' unjust enrichment claim is denied. The Court will construe Plaintiffs' unjust enrichment claim as a quasi-contract claim for restitution.

G. Whether Time is a Proper Defendant

The Court turns now to Defendants' argument that Time—the parent corporation of Synapse—is not a proper defendant and must be dismissed from the case. Specifically, Defendants contend that Plaintiffs have not sufficiently alleged that Time is liable under either an alter ego or agency theory. (MTD, 22:16–25:8.)

1. Alter Ego Liability

It is a fundamental principle of corporate law that a parent and its subsidiary are separate legal entities. See United States v. Bestfoods, 524 U.S. 51, 61 (1998). This principle of corporate separateness generally "insulates a parent corporation from liability created by its subsidiary, notwithstanding the parent's ownership of the subsidiary." Ranza v. Nike, Inc., 793 F.3d 1059, 1070 (9th Cir. 2015). However, when the corporate form is used to perpetrate a fraud or accomplish some other inequitable purpose, a court may disregard the corporate form, and impute the acts of a subsidiary to the parent, under the theory that the subsidiary is an "alter ego" of the parent. Sonora Diamond Corp. v. Superior Court, 99 Cal. Rptr. 2d 824, 836 (Ct. App. 2000). The alter ego doctrine prevents a parent corporation from escaping liability for wrongful acts committed by a subsidiary that is, in effect, a sham corporation. Id.; see *also Hennessey's Tavern, Inc. v. Am. Air Filter Co.*, 251 Cal. Rptr. 859, 862 (Ct. App. 1988) ("The purpose behind the alter ego doctrine is to prevent defendants who are the alter egos of a sham corporation from escaping personal liability for its debts.") (citation omitted).

A plaintiff seeking to invoke the alter ego doctrine must allege: (1) that there is such a unity of interest and ownership between a subsidiary and its parent corporation that the separate personalities of the two do not exist; and (2) that failure to disregard the corporate form would lead to an unjust result. See Sonora, 99 Cal. Rptr. 2d at 836. Conclusory allegations of alter ego status are insufficient. "Rather, a plaintiff must allege specific facts supporting both of the necessary elements." *Gerritsen v. Warner Bros. Entm't Inc.*, 116 F. Supp. 3d 1104, 1136 (C.D. Cal. 2015); see also Johnson v. Serenity Transp., Inc., 141 F. Supp. 3d 974, 984 (N.D. Cal. 2015). Because it involves an exception to basic principles of corporate law, "[a]lter ego is an extreme remedy, sparingly used." Highland Springs Conference & Training Ctr. v. City of Banning, 199 Cal. Rptr. 3d 226, 236 (Ct. App. 2016) (quoting Sonora, 99 Cal. Rptr. 2d at 836).

Under the first prong of the alter ego test, California courts consider several factors to determine whether there is a unity of interest and ownership between a parent and its subsidiary. These include: (1) the commingling of funds and other assets, (2) identical equitable ownership of the two entities, (3) use of the same offices and employees, (4) use of the subsidiary as a mere shell for the affairs of the parent, (5) failure to maintain adequate corporate records, (6) failure to adequately capitalize the subsidiary, and (7) the holding out by the parent that it is liable for the debts of the subsidiary. See Gerritsen, 116 F. Supp. 3d at 1137; see also Perfect 10, Inc. v. Giganews, Inc., No. CV 11-07098-AB (SHx), 2015 WL 12710753, at *2 (C.D. Cal. June 3, 2015). This list is not exhaustive, and no single factor controls. A court must examine all the circumstances to determine whether the complaint states a plausible claim for liability under an alter ego theory. VirtualMagic Asia, Inc. v. Fil-Cartoons, Inc., 121 Cal. Rptr. 2d 1, 13 (Ct. App. 2002).

Here, Plaintiffs make five allegations they believe indicate a unity of interest

and ownership between Time and Synapse:[4] (1) Synapse is a wholly-owned subsidiary of Time; (2) there is such a unity of interest between Time and Synapse that their corporate separateness has ceased; (3) Time so controls and conducts the affairs of Synapse as to render Synapse a mere instrumentality of Time; (4) Synapse plays an important role in generating revenue for Time; and (5) disregard of Synapse's corporate form is necessary to avoid an unjust result. (SAC ¶¶ 5, 15, 18, 38.) The Court finds these allegations do not plead a plausible claim for alter ego liability.

First, the fact that Synapse is a wholly-owned subsidiary of Time does not, in itself, indicate a unity of interest sufficient to state a claim under an alter ego theory. Gerritsen, 116 F. Supp. 3d at 1137 (finding that sole ownership by parent corporation of subsidiaries, standing alone, is insufficient to demonstrate alter ego relationship); NetApp, Inc. v. Nimble Storage, Inc., No. 5:13-CV-05058-LHK (HRL), 2015 WL 400251, at *6 (finding that a parent corporation's 100% control of a subsidiary through stock ownership "does not by itself make a subsidiary the alter ego of the parent") (quoting Harris Rusky & Co. Ins. Servs. v. Bell & Clements Ltd., 328 F.3d 1122, 1135 (9th Cir. 2003)). Synapse's status as a wholly-owned subsidiary of Time may raise the possibility of a unity of interest between the two, but it does not, of its own force, suffice to state an alter ego claim against Time.

Second, Plaintiffs' allegations regarding Synapse's important role in generating revenue for Time is bereft of factual content suggesting something beyond a typical parent-subsidiary relationship. That a parent corporation benefits financially from the operations of its subsidiary is a normal feature of corporate operations; it

[4] For ease of presentation, the Court uses "Synapse" in this section to refer collectively to both Synapse Group, Inc. and SynapseConnect, Inc. However, to be clear, the Court notes here that Plaintiffs allege there is a unity of interest and ownership between Time and both Synapse entities such that Time is liable under an alter ego theory. (The SAC alleges that SynapseConnect is a wholly-owned subsidiary of Synapse Group, and that Synapse Group is a wholly-owned subsidiary of Time.) The Court's use of the single label "Synapse" to refer collectively to both entities does not impact the analysis.

does not, without more, suggests abuse of the corporate form. See Sonora, 99 Cal. Rptr. 2d at 838 (recognizing that the relationship of a parent and subsidiary "contemplates a close financial connection" between the two "and a certain degree of direction and management exercised by the former over the latter").

Finally, Plaintiffs' remaining allegations are legal conclusions couched as factual allegations. For example, Plaintiffs allege "such a unity of interest" between Time and Synapse that corporate separateness has ceased, and that Time's control of Synapse has rendered the latter a "mere instrumentality" of the former. (SAC ¶ 5.) Such allegations, presented as they are without factual content, merely restate the elements of alter ego liability. This is insufficient to state a claim. Gerritsen, 116 F. Supp. 3d at 1136 ("Conclusory allegations of alter ego status are insufficient to state a claim. Rather, a plaintiff must allege specific facts supporting both of the necessary elements."); see also Twombly, 550 U.S. at 555 (explaining that stating a plausible claim for relief requires more than "labels and conclusions" or "a formulaic recitation of the elements of a cause of action").

In their opposition, Plaintiffs emphasize they do not have the "range of evidentiary proof" at this stage of the litigation to establish Time's liability under an alter ego theory, and they urge the Court to allow them to proceed to discovery on the issue. (Opp'n, 16.) Plaintiffs' premise is misplaced. The deficiency in Plaintiffs' SAC is not a lack of proof, but rather a lack of factual allegations to state a claim. Where, as here, Plaintiffs have not alleged sufficient factual matter to state a plausible claim for relief, they are "not entitled to discovery, cabined or otherwise." Iqbal, 556 U.S. at 686. Accordingly, Plaintiffs' claim against Time under an alter ego theory is dismissed.[5]

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[5] Because Plaintiffs have not sufficiently alleged a unity of interest between Time and Synapse under the first prong of the alter ego test, the Court does not address whether Plaintiffs satisfy the second, "inequitable result" prong of the test.

2. Agency Liability

Plaintiffs also allege Time is liable under an agency theory. Under an agency theory, a parent corporation may be held liable for the acts of a subsidiary when the parent's control is so "pervasive and continual" as to render the subsidiary nothing more than an "instrumentality of the parent." Sonora, 99 Cal. Rptr. 2d at 838; see also Pantoja v. Countrywide Home Loans, Inc., 640 F. Supp. 2d 1177, 1192 (N.D. Cal. 2009). The parent's general executive control over the subsidiary is not enough; rather, there must be a degree of oversight and policy control well beyond that found in the typical parent-subsidiary relationship. Sonora, 99 Cal. Rptr. 2d at 838–39; see also Van Maanen v. Youth With a Mission–Bishop, 852 F. Supp. 2d 1232, 1249 (E.D. Cal. 2012) ("The control exercised in a typical parent-subsidiary relationship is insufficient to create an agency relationship."). "As a practical matter, the parent must be shown to have moved beyond the establishment of general policy and direction for the subsidiary and in effect taken over performance of the subsidiary's day-to-day operations in carrying out that policy." Sonora, 99 Cal. Rptr. 2d at 839; see also whiteCryption Corp. v. Arxan Techs., Inc., No. 15–cv–00754–WHO, 2015 WL 3799585, at *2 (N.D. Cal. June 18, 2015).

In support of their agency theory, Plaintiffs allege the same facts presented to support their alter ego argument, namely, that Synapse is a wholly-owned subsidiary of Time; that Synapse plays an important role in generating revenue for Time; and that Time so controls and conducts the affairs of Synapse as to render Synapse a mere instrumentality of Time. As was the case with respect to Plaintiffs' alter ego theory, the Court finds these allegations insufficient to state a claim for agency liability.

First, allegations that Synapse is a wholly-owned subsidiary of Time, and plays an important role in generating revenue for Time, suggest nothing more than a normal parent-subsidiary relationship. These allegations do not speak to a level of pervasive and continual control that suggests Synapse is nothing more than an instrumentality of Time. See Higley v. Cessna Aircraft Co., No. CV 10–3345–GHK (FMOx), 2010

1 WL 3184516, at *3 (C.D. Cal. July 21, 2010) (finding allegations that a parent
2 corporation exercised general supervisory control over its wholly-owned subsidiary
3 to be "entirely consistent with a legitimate relationship expected between a parent
4 and a wholly-owned subsidiary").

5 In addition, the allegation that Synapse "so controls and conducts the affairs of
6 Synapse as to render Synapse a mere instrumentality" of Time is a mere recitation of
7 the relevant legal standard. Plaintiffs have not pleaded factual allegations supporting
8 the level of operational control they assert—for example, they do not allege that Time
9 controls Synapse's day-to-day marketing efforts or directs the policy governing
10 Synapse's automatic renewal strategy. See Sonora, 99 Cal. Rptr. 2d at 839. Thus,
11 Plaintiffs have not pleaded sufficient factual content to support their claim against
12 Time under an agency theory, and cannot survive a motion to dismiss that claim. See
13 Iqbal, 556 U.S. at 679 ("While legal conclusions can provide the framework of a
14 complaint, they must be supported by factual allegations."); Starr v. Baca, 652 F.3d
15 1202, 1216 (9th Cir. 2011) (explaining that to survive a motion to dismiss, "the
16 factual allegations that are taken as true must plausibly suggest an entitlement to
17 relief") (emphasis added). Accordingly, Plaintiffs' claim against Time under an
18 agency theory is dismissed.

19 **H. Article III Standing for Injunctive Relief**

20 Plaintiffs seek injunctive relief under the FAL, UCL, and CLRA to enjoin
21 Defendants from making magazine subscription offers that do not comply with
22 California law. Defendants move to dismiss the claim for injunctive relief on grounds
23 that Plaintiffs lack Article III standing to seek such relief. (MTD, 25:9–20.) The Court
24 agrees with Defendants.

25 Article III, Section 2 of the United States Constitution limits the jurisdiction of
26 the federal courts to certain "Cases" and "Controversies." Clapper v. Amnesty Int'l
27 USA, 568 U.S. 398, 408 (2013). An essential element of the case-or-controversy
28 requirement is that the party invoking federal jurisdiction have standing to bring his

claim. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992). To establish standing, the injury upon which the lawsuit is based must be "concrete, particularized, and actual or imminent; fairly traceable to the challenged action; and redressable by a favorable ruling." Clapper, 568 U.S. at 409 (quoting Monsanto Co. v. Geertson Seed Farms, 561 U.S. 139, 149 (2010)).

"A plaintiff must demonstrate standing separately for each form of relief sought." Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc., 528 U.S. 167, 185 (2000). Where a plaintiff seeks injunctive relief to prevent future injury, the threat of future injury must be "certainly impending" to satisfy Article III. Clapper, 568 U.S. at 409 (quoting Whitmore v. Arkansas, 495 U.S. 149, 158 (1990)). Allegations of "possible" future injury, or an "objectively reasonable likelihood" of future injury, are insufficient. Clapper, 568 U.S. at 409–10.

Here, Plaintiffs effectively concede they cannot allege future injury that is certainly impending.[6] Instead, Plaintiffs argue that because they have standing for injunctive relief under California's FAL, UCL, and CLRA, they necessarily satisfy the Article III threshold. (Opp'n, 17:8–25.)

As an initial matter, the Court acknowledges the line of cases that support the argument Plaintiffs advance here. In Chester v. TJX Cos., Inc., No. 5:15-cv-01437-ODW (DTB), 2016 WL 4414768 (C.D. Cal. Aug. 18, 2016), the case on which Plaintiffs principally rely, the district court held that consumers who sought injunctive relief in federal court to enjoin violations of California's FAL had standing to do so even though they had not alleged a threat of future injury. The Chester court reasoned that to prohibit consumers from seeking injunctive relief under the FAL in

[6] In opposition, Plaintiffs do not support their claim for injunctive relief with allegations that future injury is certainly impending, even after Defendants argued this point as the basis for dismissal of the claim. Thus, the Court treats this argument as conceded. See *Hopkins v. Women's Div., General* Bd. of Global Ministries, 238 F. Supp. 2d 174, 178 (D.D.C. 2002) ("[W]hen a plaintiff files an opposition to a motion to dismiss addressing only certain arguments raised by the defendant, a court may treat those arguments that the plaintiff failed to address as conceded.").

federal court because of failure to allege a threat of future injury would deny the California Legislature a critical tool for protecting consumers against deceptive business practices. Id. at *8.

The view of the Chester court is not unanimous, and in the absence of controlling authority, district courts have split over whether the constitutional threshold for standing should be read more flexibly when a plaintiff alleging violation of California's consumer protection laws does not allege threat of future injury. Compare Henderson v. Gruma Corp., No. CV 10–04173 AHM (AJWx), 2011 WL 1362188, at *7–8 (C.D. Cal. Apr. 11, 2011) (finding that plaintiffs satisfied the requirements for Article III standing by satisfying the requirements for standing under the FAL, UCL, and CLRA, even though they did not allege a threat of future injury), with Delarosa v. Boiron, Inc., No. SACV 10–1569–JST (CWx), 2012 WL 8716658, at *3 (C.D. Cal. Dec. 28, 2012) (stating that "Article III trumps both California law and the Erie doctrine," and concluding that a plaintiff seeking injunctive relief under California's CLRA and UCL did not have standing for such relief in federal court where she could not allege a threat of future injury). This Court has noted in the past its view that the policy concerns animating California's consumer protection regime do not justify a looser reading of Article III's standing requirements. Lucas v. Breg, Inc., 212 F. Supp. 3d 950, 963–64 (S.D. Cal. 2016). The Court reaffirms that view today. Federal jurisdiction is the province of the Constitution and the Congress, not of the legislatures of the various states. Given a conflict between what California law permits and what Article III requires, it is Article III that must prevail. See Machlan v. Procter & Gamble Co., 77 F. Supp. 3d 954, 960 (N.D. Cal. 2015) ("[T]he scope of the Court's jurisdiction begins and ends with Article III, and it cannot hear a case that falls outside that scope just because that would better serve public policy."). Thus, because Plaintiffs do not allege a threat of future injury that is certainly impending, they cannot maintain the injunctive relief portion of their claims in federal court.

Plaintiffs argue that if the Court finds that Plaintiffs lack Article III standing to

seek injunctive relief, then the Court should remand the entire case to state court. (Opp'n, 17:26–18:10.) In support of this argument, Plaintiffs cite the remand statute, 28 U.S.C. § 1447(c), which provides "[i]f at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded."

The Court finds Plaintiffs' argument unpersuasive. The United States Supreme Court has construed 28 U.S.C. § 1447(c) to require remand of a case "only if subject matter-jurisdiction is lacking over the entire case, and not over just some of the plaintiff's claims." Lee v. Am. Nat. Ins. Co., 260 F.3d 997, 1006 (9th Cir. 2001) (emphasis added) (citing Schacht, 524 U.S. 381, 392 (1998)). Here, the Court has determined only that Plaintiffs lack standing to seek the injunctive relief portion of their FAL, UCL, and CLRA claims, not that Plaintiffs lack standing to bring the remainder of those claims. Thus, Plaintiffs are incorrect that the remand statute requires remand of this entire action to state court; original jurisdiction remains over the remainder of the statutory claims. Accordingly, the Court dismisses the portion of Plaintiffs' claims seeking injunctive relief and retains jurisdiction over Plaintiffs' claims for other forms of relief.[7] See Cabral v. Supple, LLC, No. EDCV-12-00085-MWF-OP, 2016 WL 1180143, at *3 (C.D. Cal. Mar. 24, 2016) (denying plaintiff's request for partial remand of the injunctive relief portions of her FAL, UCL, and CLRA claims where there was no doubt the district court had original jurisdiction

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[7] In a "Notice of Recent Authority" filed well after briefing closed on Defendants' motion to dismiss, Plaintiffs raise a new argument that the Court should grant a partial remand of the injunctive relief portion of the case, while maintaining jurisdiction over the rest of the case. This argument is not properly before the Court. See, e.g., Sater v. Chrysler Grp. LLC, No. EDCV 14-00700-VAP (DTBx), 2016 WL 3136196, at *2 n.1 (C.D. Cal. Mar. 4, 2016) (declining to consider argument raised for the first time in defendant's supplemental brief). And even if it was, the Court disagrees that the claim-splitting proposed by Plaintiffs is appropriate or permissible where, as here, the Court has original jurisdiction over the underlying claims. See United Steel, Paper & Forestry, *Rubber, Mfg., Energy, Allied Indus. & Serv. Workers Int'l Union v. Shell Oil Co.*, 602 F.3d 1087, 1091 (9th Cir. 2010) (noting the general principle that a putative class action once properly removed to federal court, stays removed); Cabral v. Supple, LLC, No. EDCV-12-00085-MWF-OP, 2016 WL 1180143, at *3 (C.D. Cal. Mar. 24, 2016) (denying plaintiff's request for partial remand of the injunctive relief portions of her FAL, UCL, and CLRA claims where there was no doubt the district court had original jurisdiction over the remainder of those claims).

over the remainder of those claims).

I. Leave to Amend

When a district court determines that the complaint, or portions of the complaint, should be dismissed, it must then decide whether to grant leave to amend. Under Federal Rule of Civil Procedure 15(a), leave to amend should be freely given "when justice so requires," bearing in mind "the underlying purpose of Rule 15 to facilitate decisions on the merits, rather than on the pleadings or technicalities." Lopez v. Smith, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc) (alterations omitted). Under this generous standard, a district court dismissing a complaint for failure to state a claim should grant leave to amend "even if no request to amend the pleading was made." Id. at 1130. However, leave to amend may be denied where a plaintiff has failed to cure deficiencies in the pleading after previous amendment, or where allowing amendment would prejudice the opposing party, cause undue delay, or be futile. *Leadsinger, Inc. v. BMG Music Publ'g*, 512 F.3d 522, 532 (9th Cir. 2008).

Here, the Court will deny leave to amend the dismissed claims. Plaintiffs' claims for violation of §§ 1770(a)(13) and (a)(17) of the CLRA cannot be cured by amendment because the facts alleged effectively defeat those claims. According to the SAC, Plaintiffs received the $2.00 discounted rate after completing the online survey, as advertised. This precludes a claim under Cal. Civ. Code § 1770(a)(13), which requires a false statement concerning the reason for a price reduction. Plaintiffs also received the discount at the time the transaction was completed, rather than the discount being contingent on a subsequent event. This precludes a claim under Cal. Civ. Code § 1770(a)(17), which requires the "rebate, discount, or other economic benefit" to be contingent on "an event to occur subsequent to the consummation of the transaction." Thus, the facts alleged foreclose Plaintiffs' claims under §§ 1770(a)(13) and (a)(17). Accordingly, the Court dismisses these claims without leave to amend. See Thomas v. Farley, 31 F.3d 557, 558–59 (7th Cir. 1994) ("[I]f a plaintiff['s] [allegations] show that he has no claim, then he is out of luck—he has

pleaded himself out of court.”).

With respect to Plaintiffs’ alter ego and agency claims, and claims for injunctive relief, those claims remain deficient despite Plaintiffs’ previous opportunity to cure deficiencies in the pleading. Plaintiffs previously amended their complaint in response to Defendants’ motion to dismiss the First Amended Complaint, yet still failed to allege facts in the SAC sufficient to state a claim against Time, and for injunctive relief. This failure to address deficiencies in the pleading despite clear notice of Defendants’ grounds for dismissal justifies denial of leave to amend. See Ascon Props., Inc. v. Mobil Oil Co., 866 F.2d 1149, 1160 (9th Cir. 1989) (“The district court’s discretion to deny leave to amend is particularly broad where plaintiff has previously amended the complaint.”). Accordingly, Plaintiffs’ claims against Time under an alter ego or agency theory, and for injunctive relief under the FAL, UCL, and CLRA, are dismissed without leave to amend.

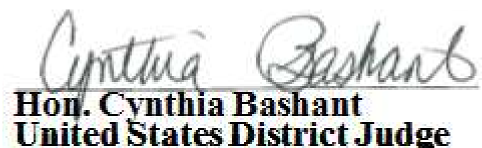
CONCLUSION

For the foregoing reasons, the Court **GRANTS IN PART** and **DENIES IN PART** Defendants’ motion to dismiss. Plaintiffs’ claims under the FAL, UCL, and CLRA (Cal. Civ. Code §§ 1770(a)(5) and (a)(9)), and for conversion and unjust enrichment, will proceed. Plaintiffs’ claims under Cal. Civ. Code §§ 1770(a)(13) and (a)(17), against Defendant Time under an alter ego or agency theory, and for injunctive relief under the FAL, UCL, and CLRA, are dismissed without leave to amend.

Defendant Time is dismissed from this action with prejudice. Defendants Synapse and SynapseConnect must file an answer to the Second Amended Complaint no later than **August 4, 2017**.

IT IS SO ORDERED.

DATED: July 24, 2017



APPENDIX 1

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My Delivery Information

Jane Smith
123 Main Street
Stamford, CT 06905
jsmith@samplemail.com

My Reward Selections

My P&H or rate and the number of issues I'll receive

Magazine	P&H/Rate	Issues

Just $2 is required to cover your rate or processing for your entire first year.

Edit Selections

P&H / Rate

Your Reward Selection is complete

Just $2 covers the rate or processing of the entire first year.

Secure Transaction:

○ Visa ○ AMEX ○ MasterCard ○ Discover

Account #

Expiration Date

MM YYYY

To verify your qualification, please enter the word below.

blue

Important Reward Details

Automatic Renewal Authorization: Enjoy your favorites with the first year already paid for by TownWizard. The credit/debit card you provide will be charged just $2 each for processing. * This title is just $2 for the entire first year except where indicated and no processing applies. After the first term, all selections will continue. Each year, you'll receive a reminder notice specifying price plus processing (and any applicable sales tax) and billing terms for the next term of issues and you authorize the account you provide to be charged the rate on the notice for the next term of issues unless you choose to cancel: 1-800-429-2550. If a magazine becomes unavailable it may be replaced by another with the same renewal features. Allow 4-10 weeks for delivery. The name, address, and account information you provide will be used by MagazineOutlet to process and fulfill your selections. Please print a copy of this page for your records. For individual use only, not for resale. Enjoy!

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Appendix 1
16-cv-1524-BAS-BLM