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9 UNITED STATES DISTRICT COURT  
10 SOUTHERN DISTRICT OF CALIFORNIA  
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12 STRATEGIC OPERATIONS, INC.,  
13 Plaintiff,  
14 v.  
15 BREK K. JOSEPH, an individual;  
16 KASEY EROKHIN, an individual;  
17 KBZ FX, an unknown business entity; and  
18 KBZ FX, INC., a California corporation,  
19 Defendants.

Case No.: 17-CV-1539 JLS (WVG)

**ORDER GRANTING IN PART AND  
DENYING IN PART MOTION TO  
DISMISS**

(ECF No. 17)

20 Presently before the Court is Defendants Brea K. Joseph and KBZ FX, Inc.'s (the  
21 "Movants") Motion to Dismiss the Amended Complaint for Failure to State a Claim Under  
22 Fed. R. Civ. P. 12(b)(6) ("Mot.," ECF No. 17). Also before the Court is Plaintiff Strategic  
23 Operations, Inc.'s ("StOps") Response in Opposition to ("Opp'n," ECF No. 19) and the  
24 Movants' Reply in Support of ("Reply," ECF No. 21) the Motion. The Court vacated the  
25 hearing and took the Motion under submission without oral argument pursuant to Civil  
26 Local Rule 7.1(d)(1). See ECF No. 20. Having considered the Movants' and Plaintiff's  
27 arguments and the law, the Court **GRANTS IN PART AND DENIES IN PART** the  
28 Movants' Motion as follows.

## BACKGROUND<sup>1</sup>

1  
2 Plaintiff is the exclusive licensee of United States Patent Nos. 8,840,403 (the “403  
3 Patent”), 9,336,693 (the “693 Patent”), and 9,916,774 (the “774 Patent”) (together, “the  
4 Patents-in-Suit”). FAC ¶ 18. The Patents-in-Suit “pertain to devices and methods for  
5 simulating realistic-looking, dynamic injuries that a person may receive during a traumatic  
6 event.” *Id.* ¶ 19. For example, the devices claimed in the Patents-in-Suit “can be worn by  
7 ‘role players’ during a simulated traumatic event to mimic a plurality of different combat-  
8 related bleeding wounds and internal injuries and allow first responders to perform medical  
9 treatment on the same.” *Id.*

10 Mses. Joseph and Erokhin were previously employed by Plaintiff as injury  
11 simulation makeup artists. *Id.* ¶ 20. During their employment, Mses. Joseph and Erokhin  
12 were exposed to role players wearing and using the “Cut Suit,” which is one of Plaintiff’s  
13 human-worn trauma and medical training products. *Id.* ¶¶ 20–21. The “Cut Suit” embodies  
14 or uses one or more inventions claimed in the Patents-in-Suit. *Id.* ¶ 20. Plaintiff previously  
15 sued Mses. Joseph and Erokhin for breach of loyalty, interference with employment  
16 relationship, and violation of the Uniform Trade Secrets Act. *Id.* ¶ 23. As part of the  
17 settlement agreement in that case, Mses. “Joseph and Erokhin agreed to refrain from using  
18 Strategic Operations’ confidential and proprietary technology and trade secret information  
19 for any purpose.” *Id.* ¶ 23.

20 In June 2011, Mses. Joseph and Erokhin left StOps and formed KBZ FX, which is  
21 “a special effects medical training support system” providing “injury simulations.” *Id.*  
22 ¶ 25. One of KBZ FX’s products is a “trauma training kit” (the “TTK”), which is “a human  
23 body replica suit used to perform actual treatments on for medical training.” *Id.* ¶ 26.  
24 Plaintiff alleges that the TTK infringes the Patents-in-Suit. *See id.* ¶¶ 41, 52, 54. Plaintiff  
25 also alleges causes of action for breach of a nondisclosure agreement that Mses. Joseph  
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27 <sup>1</sup> The facts alleged in Plaintiff’s operative First Amended Complaint (“FAC,” ECF No. 16) are accepted as  
28 true for the purpose of this Motion. *See Vasquez v. Los Angeles Cnty.*, 487 F.3d 1246, 1249 (9th Cir. 2007)  
(holding that, in ruling on a motion to dismiss, the Court must “accept all material allegations of fact as true”).

1 and Erokhin each executed at the outset of their employment with StOps, *see id.* ¶¶ 59–66,  
2 and unfair competition in violation of California Business and Professions Code sections  
3 17200 *et seq.*, based on Defendants’ alleged patent infringement and use of StOps’  
4 confidential and proprietary technology and trade secret information. *See id.* ¶¶ 68–72.  
5 Finally, Plaintiff alleges “[o]n information and belief” that “KBZ FX, Inc. was formed as  
6 a direct result of the threat of this litigation, and is merely the alter-ego of Defendants  
7 Erokhin and Joseph.” *Id.* ¶ 8.

8 On July 28, 2017, StOps filed a Complaint against Defendants, alleging causes of  
9 action of patent infringement, breach of nondisclosure agreement, and unfair competition  
10 in violation of California Business and Professions Code section 17200 (“UCL”). *See*  
11 *generally* ECF No. 1. StOps filed a Waiver of Service of Summons as to the Movants on  
12 February 27, 2018.<sup>2</sup> *See* ECF No. 6. The Movants then moved to dismiss Plaintiff’s patent  
13 infringement cause of action and alter ego allegations pursuant to Federal Rule of Civil  
14 Procedure 12(b)(6) on April 30, 2018. *See generally* ECF No. 10.

15 On August 13, 2018, the Court granted the motion. *See generally* ECF No. 15. As  
16 for the patent infringement cause of action, the Court concluded that Plaintiff had not  
17 sufficiently alleged that the Movants had continued to make, use, sell, or offer for sale the  
18 TTK pursuant to 35 U.S.C. § 271(a) because the allegation was conclusory and had no  
19 factual support. *Id.* at 5–6. Regarding Plaintiff’s alter ego allegations, the Court similarly  
20 concluded that Plaintiff had not sufficiently pleaded either element of alter ego liability.  
21 *Id.* at 7–8. The Court granted Plaintiff leave to amend its complaint. *Id.* at 8.

22 Plaintiff filed its operative First Amended Complaint on September 12, 2018. *See*  
23 *generally* ECF No. 16. The instant Motion followed on September 26, 2018. *See generally*  
24 ECF No. 17.

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28 <sup>2</sup> To date, StOps has not filed anything indicating that Ms. Erokhin or KBZ FX has been served.

## LEGAL STANDARD

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2 Federal Rule of Civil Procedure 12(b)(6) permits a party to raise by motion the  
3 defense that the complaint “fail[s] to state a claim upon which relief can be granted,”  
4 generally referred to as a motion to dismiss. The Court evaluates whether a complaint  
5 states a cognizable legal theory and sufficient facts in light of Federal Rule of Civil  
6 Procedure 8(a), which requires a “short and plain statement of the claim showing that the  
7 pleader is entitled to relief.” Although Rule 8 “does not require ‘detailed factual  
8 allegations,’ . . . it [does] demand more than an unadorned, the-defendant-unlawfully-  
9 harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl.*  
10 *Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). In other words, “a plaintiff’s obligation to  
11 provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and  
12 conclusions, and a formulaic recitation of the elements of a cause of action will not do.”  
13 *Twombly*, 550 U.S. at 555 (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). A  
14 complaint will not suffice “if it tenders ‘naked assertion[s]’ devoid of ‘further factual  
15 enhancement.’” *Iqbal*, 556 U.S. at 677 (citing *Twombly*, 550 U.S. at 557).

16 To survive a motion to dismiss, “a complaint must contain sufficient factual matter,  
17 accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.* (quoting  
18 *Twombly*, 550 U.S. at 570); *see also* Fed. R. Civ. P. 12(b)(6). A claim is facially plausible  
19 when the facts pled “allow the court to draw the reasonable inference that the defendant is  
20 liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 677 (citing *Twombly*, 550 U.S. at  
21 556). That is not to say that the claim must be probable, but there must be “more than a  
22 sheer possibility that a defendant has acted unlawfully.” *Id.* Facts “‘merely consistent  
23 with’ a defendant’s liability” fall short of a plausible entitlement to relief. *Id.* (quoting  
24 *Twombly*, 550 U.S. at 557). Further, the Court need not accept as true “legal conclusions”  
25 contained in the complaint. *Id.* This review requires context-specific analysis involving  
26 the Court’s “judicial experience and common sense.” *Id.* at 678 (citation omitted).  
27 “[W]here the well-pleaded facts do not permit the court to infer more than the mere

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1 possibility of misconduct, the complaint has alleged—but it has not ‘show[n]’—‘that the  
2 pleader is entitled to relief.’” *Id.*

3 In patent cases, purely procedural issues of law are governed by the law of the  
4 regional circuit. *K-Tech Telecomms., Inc. v. Time Warner Cable, Inc.*, 714 F.3d 1277, 1282  
5 (Fed. Cir. 2013). “A motion to dismiss for failure to state a claim upon which relief can be  
6 granted is a purely procedural questions not pertaining to patent law.” *McZeal v. Sprint*  
7 *Nextel Corp.*, 501 F.3d 1354, 1355–56 (Fed. Cir. 2007). In the Ninth Circuit, to be entitled  
8 to the presumption of truth, a complaint’s allegations “must contain sufficient allegations  
9 of underlying facts to give fair notice and to enable the opposing party to defend itself  
10 effectively.” *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011), *cert. denied* 132 S. Ct.  
11 2101 (2012). The Court will grant leave to amend unless it determines that no modified  
12 contention “consistent with the challenged pleading . . . [will] cure the deficiency.” *DeSoto*  
13 *v. Yellow Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992) (quoting *Schriber Distrib.*  
14 *Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986)).

## 15 ANALYSIS

### 16 I. Patent Infringement

17 StOps claims that the TTK infringes the Patents-in-Suit. *See* FAC ¶¶ 40–57.  
18 Specifically, “[t]he TTK embodies and uses inventions claimed in the ’403 Patent and  
19 meets each and every element of at least one claim of the ’403 Patent, either literally or  
20 equivalently,” by, “[f]or example, . . . includ[ing] a raiment and vest for covering the torso  
21 of a person” with “an outer surface with a color and a texture comparable to human skin”  
22 and “[m]ounted on the outer surface . . . an orifice that is in fluid communication with a  
23 fluid reservoir, thus allowing the person wearing the TTK to selectively expel a blood-like  
24 fluid from the reservoir and through the orifice to simulate a bleeding wound or injury.”  
25 *Id.* ¶ 41. “The vest includes an artificial rib cage that is positioned against the inner surface  
26 of the raiment to simulate a skeletal structure and prosthetic internal human organs that are  
27 removable from the TTK and replaceable with other prosthetic internal human organs.” *Id.*  
28 The TTK also “embodies and uses inventions claimed in the ’693 Patent, and meets each

1 and every element of at least one claim of the '693 Patent, either literally or equivalently,"  
2 by "includ[ing] a raiment to cover a person's torso and . . . covered with an outer surface  
3 with at least one orifice through which blood-like fluid is dispensed from a fluid reservoir  
4 to simulate a trauma event, and a vest underneath the raiment." *Id.* ¶ 52. Finally, "[t]he  
5 TTK embodies and uses inventions claimed in the '774 Patent and meets each and every  
6 element of at least one claim of the '774 Patent, either literally or equivalently," by  
7 "includ[ing] a raiment to cover a person's torso and . . . covered with an outer surface with  
8 at least one orifice through which blood-like fluid is dispensed from a fluid reservoir to  
9 simulate a trauma event, and a vest underneath the raiment and one or more wound  
10 simulators on the outer surface." *Id.* ¶ 54. StOps attaches several exhibits to the First  
11 Amended Complaint purporting to depict the TTK, including a printout from KBZ FX's  
12 website, *see* FAC Ex. 4, and photos posted to KBZ FX, Inc.'s Picbear page, *see* FAC Ex.  
13 5, and KBZ FX's and/or Ms. Brea's Instagram accounts. *See* FAC Exs. 6–9.

14 The Movants argue that the exhibits to the First Amended Complaint fail to provide  
15 any factual basis for infringement of the Patents-in-Suit. *See* Mot. at 3–6. According to  
16 the Movants, the photos establish that they have not made a product embodying the  
17 inventions claimed in the Patents-in-Suit because none of the photos depicts a product  
18 having a blood-like fluid reservoir or any cavity for containing artificial human organs as  
19 required by the Patents-in-Suit. *See id.* StOps, on the other hand, argues that its exhibits  
20 clearly depict that the Movants are manufacturing and selling a product that infringes the  
21 Patents-in-Suit. *See* Opp'n at 4–11.<sup>3</sup>

22 An act of direct patent infringement occurs when an entity "without authority makes,  
23 uses, offers to sell, or sells any patented invention, within the United States or imports into  
24 the United States any patented invention during the term of the patent." 35 U.S.C. § 271(a).

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27 <sup>3</sup> To the extent StOps relies on Instagram images and/or text not contained in the exhibits to its First  
28 Amended Complaint, *see* Opp'n at 7, the Court declines to consider them for purposes of this Motion.  
*See* ECF No. 15 at 5 (citing *Lee v. City of L.A.*, 250 F.3d 668, 688 (9th Cir. 2001) ("As a general rule, 'a  
district court may not consider any material beyond the pleadings in ruling on a Rule 12(b)(6) motion.'")).



1 Here, StOps alleges that Defendants have made and sold a product, the TTK, that infringes  
2 the Patents-in-Suit. *See* FAC ¶¶ 40–57. The Court previously determined that the print-  
3 out from KBZ FX’s website, now Exhibit 4 to the First Amended Complaint, was not an  
4 offer for sale. *See* ECF No. 15 at 6. StOps now attaches additional exhibits, however,  
5 purporting to show that Defendants have made and rented and/or leased the TTK to  
6 agencies for military training. *See* FAC Exs. 5–9; *see also* FAC ¶¶ 25–35.

7 The Court concludes that StOps has sufficiently alleged a cause of action for  
8 infringement of the Patents-in-Suit. It is clear from the photos that the Defendants have  
9 “ma[d]e” the TTK. StOps is correct that “[Section] 271 prohibits the making and using a  
10 patent invention – even if not sold.” Opp’n at 4 n.1; *see also* *Neff Instrument Corp. v. Cohu*  
11 *Elects., Inc.*, 269 F.2d 668, 673 (9th Cir. 1959) (“The mere manufacture of a patented  
12 article, without sale, is sufficient to create an infringement.”) (citing *Becton Dickinson &*  
13 *Co. v. R. P. Scherer Corp.*, 211 F.2d 835, 842 (6th Cir. 1954); *Carter Crume Co. v. Am.*  
14 *Sales Book Co.*, 124 F. 903 (C.C.W.D.N.Y.), *cert. denied*, 190 U.S. 560 (1903)).

15 Further, the Court is not prepared to conclude at this stage, as the Movants urge, that  
16 the TTK as depicted in Exhibits 4 through 9 to the First Amended Complaint does not have  
17 a blood-like fluid reservoir or any cavity for containing artificial internal human organs, as  
18 required by the Patents-in-Suit. *See* Mot. at 1–2, 4–6. For purposes of this Motion, the  
19 Court must accept as true all of StOps’ well-pleaded allegations and draw all reasonable  
20 inferences in its favor. *See Daniels-Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 998 (9th Cir.  
21 2010). Exhibit 4 clearly touts that the TTK’s “exit wound attachments come equipped with  
22 bleeding capabilities.” FAC Ex. 4 at 58.<sup>4</sup> The Court therefore may infer that the TTK has  
23 a blood-like fluid reservoir. The website also advertises that the TTK is or may be equipped  
24 with multiple “organs,” including a “simulated esophagus”; “3 liver attachments” and “3  
25 stomach attachments,” both of which “simulate healthy, diseased, and shrapnel functions  
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28 <sup>4</sup> Pin citations to pages without independent pagination refer to the CM/ECF page numbers electronically stamped at the top of each page.

1 [that] comes with bleed capabilities”; and an “intestinal tract [that] comes with attachment  
2 piece to allow for pig intestines to be used for realistic eviscerated bowel simulation.” *Id.*  
3 at 58–59. The Court therefore may also infer that the TTK has a cavity for containing  
4 artificial human organs. Consequently, the Court concludes that StOps’ allegations are  
5 sufficient to state a claim for infringement of the Patents-in-Suit and **DENIES** the  
6 Movants’ Motion as to StOps’ first cause of action.

## 7 **II. Breach of Nondisclosure Agreement**

8 StOps alleges on information and belief that Mses. Joseph and Erokhin breached a  
9 nondisclosure agreement signed at the outset of their employment with StOps by “us[ing]  
10 StOps’ confidential and proprietary technology and trade secret information when  
11 developing the TTK.” FAC ¶ 60. The Movants contend that this cause of action must be  
12 dismissed “because StOps is required to specify the factual basis for its claims” and  
13 therefore “may not plead such allegations based on information and belief.” Mot. at 6–7  
14 (citing *Vivendi SA v. T-Mobile USA Inc.*, 586 F.3d 689, 694 (9th Cir. 2009); *Simonyan v.*  
15 *Ally Fin. Inc.*, No. CV 12–8495–JFW (FMOx), 2013 WL 45453, at \*2 (C.D. Cal. Jan. 3,  
16 2013); *Solis v. City of Fresno*, No. 1:11-CV-00053 AWI GSA, 2012 WL 868681, at \*8  
17 (E.D. Cal. Mar. 13, 2012); *United States v. Ctr. for Diagnostic Imaging, Inc.*, 787 F. Supp.  
18 2d 1213, 1221 (W.D. Wash. 2011)). Plaintiff counters that “[a]ny allegations made on  
19 information and belief is adequately supported by facts directly pleaded, including . . . the  
20 existence of the nondisclosure agreement, the use of StOps’ confidential information by  
21 Joseph and Erokhin, StOps’ lack of consent . . . , StOps’ compliance with its obligations  
22 under the Non[ ]Disclosure agreement, etc.” Opp’n at 11 (citing FAC). These allegations  
23 “provide more than a sufficient factual basis for the causes of action in the complaint.” *Id.*  
24 at 12.

25 The Court agrees with the Movants that StOps has failed sufficiently to plead a cause  
26 of action for breach of the nondisclosure agreement. StOps has failed to specify what  
27 confidential information the Movants used in developing the TTK. It therefore appears  
28 from the face of the First Amended Complaint that StOps is alleging that the Movants used



1 the “valuable knowledge and insight into the features and components of the Cut Suit and  
2 how those components operate to simulate a traumatic injury or wound” in developing the  
3 TTK. *See* FAC ¶ 22. The problem here is that the nondisclosure agreement excludes from  
4 its definition of confidential information “information that is . . . publicly known at the  
5 time of disclosure or subsequently becomes publicly known through no fault of the  
6 Receiving Party.” *See* FAC Ex. 10 & 11 ¶ 2. The Patents-in-Suit are dated September 23,  
7 2014, *see* FAC Ex. 1; May 10, 2016, *see* FAC Ex. 2; and March 13, 2018. *See* FAC Ex. 3.  
8 Consequently, any information contained in the Patents-in-Suit is not confidential  
9 information for purposes of the nondisclosure agreement. “Because Plaintiff fails to allege  
10 that [the Movants] used any confidential information beyond what the . . . Patent[s-in-Suit]  
11 . . . disclosed to the public, its claim for breach of [the nondisclosure agreement] fails.”  
12 *See Metricolor LLC v. L’Oreal S.A.*, No. CV 18-364-R, 2018 WL 5099496, at \*5 (C.D.  
13 Cal. Aug. 15, 2018).

14 The Court therefore **GRANTS** the Movants’ Motion as to StOps’ second cause of  
15 action for breach of the nondisclosure agreement. Because StOps has not previously been  
16 granted leave to amend this cause of action and because StOps could conceivably allege  
17 that Defendants used confidential information as defined by the nondisclosure agreement  
18 in creating the TTK, the Court **GRANTS** StOps leave to amend.

### 19 **III. Violation of California Business and Professions Code § 17200**

20 StOps claims that “Defendant[s’] unauthorized use and/or sale of a product that  
21 embodies the inventions claimed in the ’403 Patent is unfair and offends public policy,”  
22 FAC ¶ 68, and that Mses. “Joseph and Erokhin’s unauthorized use of StOps’ confidential  
23 and proprietary technology and trade secret information to make a product that embodies  
24 the inventions claimed in the ’403 Patent or otherwise cause harm to StOps for their own  
25 benefit is unfair and offends public policy.” *Id.* ¶ 69. The Movants contend that this claim  
26 must be dismissed because it is “founded on the same defective basis that fails to support  
27 the infringement [and breach of the nondisclosure agreement] claims.” *See* Mot. at 6; *see*  
28 *also id.* at 7–8.

1 It is true that “[a] UCL claim must be dismissed if the plaintiff has not stated a claim  
2 for the predicate acts upon which he bases the claim.” *Pellerin v. Honeywell Int’l, Inc.*,  
3 877 F. Supp. 2d 983, 992 (S.D. Cal. 2012). Here, the Court determined that StOps has  
4 failed to state a claim for breach of the nondisclosure agreement. Accordingly, the Court  
5 **GRANTS IN PART** the Movants’ Motion and **DISMISSES** StOps’ third cause of action  
6 for unfair competition in violation of the UCL to the extent that that cause of action is  
7 predicated on Mses. Joseph and Erokhin’s alleged breach of the nondisclosure agreement.  
8 Because the Court granted StOps leave to amend its second cause of action, it also  
9 **GRANTS** StOps leave to amend its third cause of action. The Court also, however,  
10 concluded that StOps had stated a claim for patent infringement. The Court therefore  
11 **DENIES** the Movants’ Motion as to StOps’ third cause of action for unfair competition in  
12 violation of the UCL to the extent that that cause of action is predicated on Defendants’  
13 infringement of the Patents-in-Suit.<sup>5</sup>

#### 14 **IV. Alter Ego Allegations**

15 StOps alleges that, “[o]n information and belief, KBZ FX, Inc. was formed as a  
16 direct result of the threat of this litigation, and is merely the alter-ego of Defendants  
17 Erokhin and Joseph.” FAC ¶ 8. The Movants seek dismissal of these allegations because  
18 they are not pled with particularity. *See* Mot. at 8. StOps counters that “[t]here is no  
19 specific cause of action alleging Alter Ego, nor is there a specific prayer for relief  
20 requesting a finding of Alter-Ego at this time.” Opp’n at 12. Accordingly, “StOps . . . will  
21 seek to prove this fact through discovery and at trial.” *Id.*

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24 <sup>5</sup> The Court notes that a UCL claim premised solely on infringement of a patent is generally preempted  
25 by the Patent Act. *See, e.g., Deckers Outdoor Corp. v. Fortune Dynamic, Inc.*, No. CV 15-769 PSG  
26 (SSX), 2015 WL 12731929, at \*8 (C.D. Cal. May 8, 2015) (“[T]he alleged unfair conduct is simply  
27 Defendants’ unauthorized manufacture, distribution, or sale of goods that infringe on Plaintiff’s patent.  
28 This theory of wrongful conduct is not ‘qualitatively different’ than a claim for patent infringement based  
on that conduct; therefore, the unfair competition claims premised on this theory are preempted by the  
Patent Act.”). Because Movants did not request dismissal of StOps’ third cause of action on this ground,  
the Court does not address the preemption issue here.

1 StOps is correct that the proper vehicle for the Movants' challenge is not a motion  
2 under Rule 12(b)(6); rather, the Movants' request is more properly construed as a motion  
3 to strike pursuant to Federal Rule of Civil Procedure 12(f). Pursuant to Rule 12(f), "[t]he  
4 court may strike from a pleading an insufficient defense or any redundant, immaterial,  
5 impertinent, or scandalous matter." As indicated in the Court's prior Order, *see* ECF No.  
6 15 at 7, "[c]onclusory allegations of 'alter ego' status are insufficient to state a claim."  
7 *Neilson v. Union Bank of Cal., N.A.*, 290 F. Supp. 2d 1101, 1116 (C.D. Cal. 2003). "Rather,  
8 a plaintiff must allege specifically both the elements of alter ego liability, as well as facts  
9 supporting each." *Id.* These elements are: "(1) such a unity of interest and ownership  
10 exists that the personalities of the corporation and individual are no longer separate, and  
11 (2) an inequitable result will follow if the acts are treated as those of the corporation alone."  
12 *RRX Indus., Inc. v. Lab-Con, Inc.*, 772 F.2d 543, 545–46 (9th Cir. 1985). In analyzing the  
13 doctrine, courts consider factors such as:

14 commingling of funds and other assets of the two entities, the  
15 holding out by one entity that it is liable for the debts of the other,  
16 identical equitable ownership in the two entities, use of the same  
17 offices and employees, and use of one as a mere shell or conduit  
for the affairs of the other.

18 *Sonora Diamond Corp. v. Super. Ct.*, 83 Cal. App. 4th 523, 538–39 (2000) (internal  
19 quotation marks omitted).

20 As before, the Court concludes that StOps' alter-ego allegations are conclusory and  
21 therefore are insufficient to plead alter ego liability. Because "the allegations in  
22 paragraph[ 8] cannot establish alter ego liability and therefore have no bearing on any issue  
23 involved in this litigation[,] . . . [t]he Court **GRANTS** [the Movants'] motion" and  
24 **STRIKES** the alter-ego allegations in paragraph 8 of the First Amended Complaint. *See*  
25 *Lovesy v. Armed Forces Ben. Ass'n*, No. C 07-2745 SBA, 2008 WL 696991, at \*5 (N.D.  
26 Cal. Mar. 13, 2008) (citing Fed. R. Civ. P. 12(f); *Colaprico v. Sun Microsystems, Inc.*, 758 F.  
27 Supp. 1335, 1339 (N.D. Cal. 1991)) (emphasis added).

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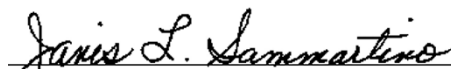
**CONCLUSION**

For the foregoing reasons, the Court **GRANTS IN PART AND DENIES IN PART** the Movants’ Motion to Dismiss. Specifically, the Court **DISMISSES WITHOUT PREJUDICE** StOps’ second cause of action for breach of the nondisclosure agreement and third cause of action for unfair competition in violation of California Business and Professions Code section 17200 to the extent it is predicated on Ms. Joseph’s breach of the nondisclosure agreement. The Court also **STRIKES** StOps’ alter-ego allegations from paragraph 8 of the First Amended Complaint. The Movants’ Motion is otherwise **DENIED**. StOps **MAY FILE** a second amended complaint on or before twenty-one (21) days of the electronic docketing of this Order. *Should StOps choose not to file an amended complaint, this case will proceed on the remaining allegations.*

Because StOps has not filed any document with the Court indicating that it has served Defendants Kasey Erokhin or KBZ FX, StOps **SHALL FILE** proof of service against Ms. Erokhin and KBZ FX on or before twenty-one (21) days of the electronic docketing of this Order. *Failure to do so may result in dismissal without prejudice of StOps’ causes of action against Ms. Erokhin and KBZ FX pursuant to Federal Rule of Civil Procedure 4(m).*

**IT IS SO ORDERED.**

Dated: May 7, 2019

  
Hon. Janis L. Sammartino  
United States District Judge