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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

YOUNGEVITY INT’L, INC.,  
  
Plaintiff,  
  
v.  
  
INNOV8TIVE NUTRITION, INC., et al,  
  
Defendants.

Case No.: 22cv721-LL-WVG  
  
**ORDER GRANTING  
MOTION TO DISMISS**  
  
**[ECF No. 8]**

This matter is before the Court on the Motion of Defendants Innov8tive Nutrition, Inc. (“Innov8tive”), LaCore Nutraceuticals, Inc. (“LCN”), LaCore Enterprises, LLC (“LCE”), and LaCore Labs, Inc. (“LCL”), to dismiss the complaint of Plaintiff Youngevity International, Inc. (“Youngevity”) for lack of jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(2).<sup>1</sup> ECF No. 8. The Court finds this matter suitable for determination on

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<sup>1</sup> Plaintiff does not present arguments supporting the exercise of personal jurisdiction over Defendants LCN or LCL and does not object to their dismissal without prejudice on 12(b)(2). *See* ECF No. 9 at 7. Accordingly, LaCore Nutraceuticals, Inc. and LaCore Labs, Inc. are **DISMISSED WITHOUT PREJUDICE** for lack of personal jurisdiction. The Court’s Order therefore addresses arguments pertaining to the remaining defendants, Innov8tive and LCE (together, the “Defendants”).

1 the papers and without oral argument pursuant to Federal Rule of Civil Procedure 78(b)  
2 and Civil Local Rule 7.1.d.1. Upon review of the parties' submissions and the applicable  
3 law, the Court **GRANTS** the Motion to Dismiss for the reasons stated below.

#### 4 **I. BACKGROUND**

5 Plaintiff Youngevity brought this action on May 19, 2022, asserting claims under  
6 the Lanham Act, 15 U.S.C. § 1125, for false or misleading advertising, and for false  
7 advertising and unlawful conduct under section 17200 of the California Business &  
8 Professions Code ("UCL"). ECF No. 1 ¶¶ 46-180. Defendants filed the instant Motion to  
9 Dismiss Plaintiff's complaint in its entirety for lack of personal jurisdiction under Rule  
10 12(b)(2) of the Federal Rules of Civil Procedure. ECF No. 8. The Motion to Dismiss has  
11 been fully briefed. *See* ECF Nos. 8-10.

12 Plaintiff Youngevity is a network marketing company that operates under the laws  
13 of Delaware and has its principal place of business in Chula Vista, California. ECF No. 1  
14 ¶ 2. Plaintiff develops and distributes dietary supplement products via "independent, direct-  
15 sellers known as 'distributors'" who market its products through "websites, media, trade  
16 shows, lectures, community events, local shops, and home meetings" and sell its products  
17 through "peer-to-peer relationships, e-commerce, and social media marketing." *Id.* ¶¶ 3-5.  
18 Plaintiff specializes in selling "high-quality dietary supplement products which consumers  
19 can ingest in liquid, powder, or capsule form." *Id.* ¶ 4.

20 Defendants Innov8tive, along with LCE, LCN, and LCL, are businesses based in the  
21 state of Texas. ECF No. 1. ¶¶ 7-12. Innov8tive's principal place of business is in Melissa,  
22 Texas. *Id.* ¶ 7. Plaintiff alleges that LCE purports to be a sales development and investment  
23 agency, that LCN purports to be a contract manufacturer of dietary supplements, sports  
24 nutrition, and personal care products, that LCL purports to be a full-service independent  
25 testing laboratory, that LCE is the parent company of both LCN and LCL (collectively, the  
26 "LaCore Entities"), and that Innov8tive is a network marketing company. *Id.* ¶¶ 7-12, 14.  
27 In particular, Plaintiff alleges that the LaCore Entities manufacture, package and distribute  
28 certain patch products marketed by Innov8tive that are "purported to provide consumers

1 with vitamins, minerals, and/or nutrients through a patch placed on the skin” based on the  
2 premise that “consumers would absorb transdermally the dietary ingredients directly  
3 through the skin.” *Id.* ¶¶ 21-22, 31. Youngevity and Innov8tive are “direct competitors in  
4 that they both sell products advertised to contain vitamins and nutrients to consumers  
5 through independent distributors” and “therefore compete for the same target  
6 consumers[.]” *Id.* ¶ 33.

7 Plaintiff alleges two misrepresentations in Innov8tive’s advertisements. First, it  
8 alleges that Innov8tive’s claims that its patch products facilitate absorption of dietary  
9 ingredients through the topical patches applied to the skin are false. ECF No. 1 ¶¶ 51-53.  
10 Second, Plaintiff alleges that the claims made by Innov8tive’s product labels, which  
11 purport to show the amounts of vitamins, minerals, nutrients, and percent daily values of  
12 each ingredient, are false. *Id.* ¶¶ 56-57. Plaintiff contends that, as a result of Innov8tive’s  
13 misrepresentations and because Innov8tive markets its products directly to Youngevity  
14 distributors and customers, Plaintiff has lost distributors and customers to Innov8tive. *Id.*  
15 ¶¶ 33, 48, 49. Plaintiff further alleges that Defendants’ practices deceive consumers  
16 [*id.* ¶ 138], have caused economic injury to Plaintiff [*id.* ¶ 139], and violate California law  
17 [*id.* ¶ 154]. Plaintiff seeks injunctive relief enjoining Defendants from making the alleged  
18 false claims, selling the patch products or any other topical products intended for  
19 transdermal administration of dietary supplements; exemplary or punitive damages;  
20 disgorgement of Defendants’ profits earned as a result of the sale of the patch products;  
21 and costs and attorney fees related to this suit. *Id.* ¶¶ A-J.

## 22 II. LEGAL STANDARD

23 Under Federal Rule of Civil Procedure 12(b)(2), a party may move to dismiss a  
24 complaint for lack of personal jurisdiction. Fed. R. Civ. P. 12(b)(2). “Where a defendant  
25 moves to dismiss a complaint for lack of personal jurisdiction, the plaintiff bears the burden  
26 of demonstrating that jurisdiction is appropriate.” *Schwarzenegger v. Fred Martin Motor*  
27 *Co.*, 374 F.3d 797, 800 (9th Cir. 2004) (citing *Sher v. Johnson*, 911 F.2d 1357, 1361 (9th  
28 Cir. 1990)). If the Rule 12(b)(2) motion “is based on written materials rather than an

1 evidentiary hearing, the plaintiff need only make a prima facie showing of jurisdictional  
2 facts to withstand the motion to dismiss.” *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647  
3 F.3d 1218, 1223 (9th Cir. 2011) (citing *Brayton Purcell LLP v. Recordon & Recordon*, 606  
4 F.3d 1124, 1127 (9th Cir. 2010)). While uncontroverted allegations in the complaint are  
5 taken as true, the court “cannot ‘assume the truth of allegations which are contradicted by  
6 affidavit.’” *LNS Enters. LLC v. Cont’l Motors, Inc.*, 22 F.4th 852, 858 (9th Cir. 2022)  
7 (quoting *Data Disc., Inc. v. Sys. Tech. Assocs., Inc.*, 557 F.2d 1280, 1284 (9th Cir. 1977)).  
8 Where both sides submit affidavits, conflicts over the statements contained in affidavits are  
9 resolved in the plaintiff’s favor. *Id.* (quoting *Boschetto v. Hansing*, 539 F.3d 1011, 1015  
10 (9th Cir. 2008)). “Additionally, any evidentiary materials submitted on the motion ‘are  
11 construed in the light most favorable to the plaintiff[s] and all doubts are resolved in [their]  
12 favor.’” *Ochoa v. J.B. Martin & Sons Farms*, 287 F.3d 1182, 1187 (9th Cir. 2002) (quoting  
13 *Metro Life Ins. Co. v. Neaves*, 912 F.2d 1062, 1064 n.1 (9th Cir. 1990)).

### 14 III. DISCUSSION

15 “Declarations and affidavits are functional equivalents” in the context of a motion  
16 to dismiss. *LNS Enters. LLC*, 22 F.4th at 858. Defendants’ arguments are supported by two  
17 separate declarations by Jenifer Lynn Grace, the Corporate Secretary of Innov8tive,  
18 Manager of LCE, and the Corporate Secretary for the LaCore Entities. ECF Nos. 8-2, 10-  
19 1. Plaintiff’s arguments are supported by the Declarations of Neil Spingarn, Lab Director  
20 for Eurofins SFA SN Special Analysis West [ECF No. 9-1] and Steve Wallach, CEO of  
21 Youngevity [ECF No. 9-2], as well as other exhibits [ECF No. 9-3]. Accordingly, and  
22 because only written materials are before the Court, the Court assesses whether Plaintiff’s  
23 filings demonstrate facts that support a finding of jurisdiction rather than “resolving the  
24 factual disputes.” *See Data Disc, Inc.*, 557 F.2d at 1285 (internal quotation omitted). While  
25 plaintiff need only make a prima facie showing of personal jurisdiction to overcome a  
26 12(b)(2) motion to dismiss, “mere ‘bare bones’ assertions of minimum contacts with the  
27 forum or legal conclusions unsupported by specific factual allegations will not satisfy a  
28

1 plaintiff's pleading burden." *Swartz v. KPMG LLP*, 476 F.3d 756, 766 (9th Cir. 2007) (per  
2 curiam) (citations omitted).

3 **A. Personal Jurisdiction in this Case is Governed by Constitutional**  
4 **Minimums of Due Process**

5 In this case, subject matter jurisdiction is predicated upon both a federal question  
6 and diversity of citizenship. Where subject matter jurisdiction is based on a federal  
7 question, "a court may exercise specific [personal] jurisdiction over a defendant if a rule  
8 or statute authorizes it to do so and the exercise of jurisdiction comports with the  
9 constitutional requirements of due process." *Fiore v. Walden*, 657 F.3d 838, 845 (9th Cir.  
10 2011) (citing *Myers v. Bennett Law Offices*, 238 F.3d 1068, 1072 (9th Cir. 2001)). If,  
11 however, "there is no applicable federal statute governing personal jurisdiction, the district  
12 court applies the law of the state in which the district sits." *Dole Food Co. v. Watts*, 303  
13 F.3d 1104, 1110 (9th Cir. 2002) (citing *Panavision Int'l, L.P. v. Toeppen*, 141 F.3d 1316,  
14 1320 (9th Cir. 1998)); *see also* Fed. R. Civ. P. 4(k)(1)(A). Where subject matter jurisdiction  
15 is based on diversity of citizenship, the court "applies the personal jurisdiction rules of the  
16 forum state provided the exercise of jurisdiction comports with due process." *Scott v.*  
17 *Breeland*, 792 F.2d 925, 927 (9th Cir. 1986) (citing *Haisten v. Grass Valley Med.*  
18 *Reimbursement Fund, Ltd.*, 784 F.2d 1392, 1396 (9th Cir. 1986)).

19 The Lanham Act does not contain any provision addressing personal jurisdiction.  
20 Furthermore, because California's personal jurisdiction rules are coextensive with federal  
21 due process requirements, "the jurisdictional analyses under [California] state law and  
22 federal due process are the same." *Dole Food Co.*, 303 F.3d at 1110 (quoting *Panavision*,  
23 141 F.3d at 1320); *see also* Cal. Code. Civ. Proc. § 410.10. As such, the Court's analysis  
24 of personal jurisdiction is focused on federal due process.

25 **B. General Due Process Requirements for Personal Jurisdiction**

26 Due process requires that a non-resident defendant has sufficient minimum contacts  
27 with the forum "such that the maintenance of the suit does not offend 'traditional notions  
28 of fair play and substantial justice.'" *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316

1 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)). Personal jurisdiction takes  
2 two forms: general and specific. *Picot v. Weston*, 780 F.3d 1206, 1211 (9th Cir. 2015)  
3 (citing *Boschetto*, 539 F.3d at 1016). “Unless a defendant’s contacts with a forum are so  
4 substantial, continuous, and systematic that the defendant can be deemed to be ‘present’ in  
5 that forum for all purposes, a forum may exercise only ‘specific jurisdiction – that is,  
6 jurisdiction based on the relationship between the defendant’s forum contacts and the  
7 plaintiff’s claim.” *Yahoo! Inc. v. La Ligue Contre Le Racisme*, 433 F.3d 1199, 1205 (9th  
8 Cir. 2006) (en banc).

9 Plaintiff does not argue that Defendants’ contacts with California are so substantial,  
10 continuous, and systematic that they can be subjected to general jurisdiction by this Court.  
11 Instead, Plaintiff argues that specific jurisdiction is proper. Therefore, the Court turns to  
12 the parties’ arguments surrounding the exercise of specific personal jurisdiction over  
13 Defendants.

### 14 C. Imputed Personal Jurisdiction

15 Plaintiff alleges that, as a subsidiary of LCE, Innov8tive’s contacts with the forum  
16 can be imputed to LCE for the purposes of evaluating personal jurisdiction because LCE  
17 is the alter ego and principal of Innov8tive, or because Innov8tive is the agent of LCE. ECF  
18 No. 9 at 23-27. Generally, “a parent-subsidiary relation-ship alone is insufficient to  
19 attribute the contacts of the subsidiary to the parents for jurisdictional purposes.” *Harris*  
20 *Rutsky & Co. Ins. Servs. v. Bell & Clements Ltd.*, 328 F.3d 1122, 1134 (9th Cir. 2003)  
21 (internal citations omitted). However, when two affiliated companies—typically, in a  
22 parent and subsidiary relationship—are not really separate entities, one company’s forum  
23 contacts can be imputed to the other company. *See Ranza v. Nike*, 793 F.3d 1059, 1071-72  
24 (9th Cir. 2015) (holding that the alter ego test may be used to extend personal direction  
25 between two companies regardless of which is the parent or subsidiary). “To satisfy the  
26 alter ego test, a plaintiff must make out a prima facie case (1) that there is such a unity of  
27 interest and ownership that the separate personalities of the two entities no longer exist and  
28 (2) that failure to disregard their separate identities would result in fraud or injustice.” *Id.*

1 at 1073 (internal citation and quotation omitted). Furthermore, while the United States  
2 Supreme Court and the Ninth Circuit Court of Appeals have not set out a standard for  
3 finding that an agency relationship between two entities would sustain the exercise of  
4 specific jurisdiction, the Ninth Circuit has opined that, at minimum, a finding of an agency  
5 relationship would require that the principal “must have the right to substantially control”  
6 the agent’s activities. *Williams v. Yamaha Motor Co.*, 851 F.3d 1015, 1024-25 (9th Cir.  
7 2017) (citing *Doe v. Unocal Corp.*, 248 F.3d 915, 926 (9th Cir. 2001) (per curiam); *Murphy*  
8 *v. DirecTV, Inc.*, 724 F.3d 1218, 1232 (9th Cir. 2013)).

9       The first prong of the alter ego test requires a showing that one entity controls the  
10 other “to such a degree as to render the latter the mere instrumentality of the former.”  
11 *Unocal*, 248 F.3d at 926 (internal quotation and citation omitted). “Total ownership and  
12 shared management personnel are alone insufficient to establish the requisite level of  
13 control” to establish an alter ego relationship. *Ranza*, 793 F.3d at 1073 (citing *Harris*  
14 *Rutsky*, 328 F.3d at 1135). A parent company may be involved in financing and  
15 macromanagement of a subsidiary without creating an alter ego relationship if the evidence  
16 does not demonstrate that the parent company “directs [the subsidiary’s] routine day-to-  
17 day operations, and nothing suggests the entities failed to observe their separate corporate  
18 formalities.” *Id.* at 1074-75. This is true even where “the parent company guaranteed loans  
19 for the subsidiary, reviewed and approved major decisions, placed several of its directors  
20 on the subsidiary’s board, and was closely involved in the subsidiary’s pricing decisions.”  
21 *Unocal*, 248 F.3d at 928 (citing *Kramer Motors, Inc. v. British Leyland, Ltd.*, 628 F.2d  
22 1175, 1177 (9th Cir. 1980)). Under California law, the Court may also consider other  
23 pertinent factors such as: commingling of funds and other assets; failure to maintain  
24 minutes or adequate corporate records, and the confusion of the records between two  
25 entities; identical equitable interest in both entities; shared directors and officers of the  
26 entities; the use of the same office or business location; employment of the same employees  
27 and/or attorney; failure to adequately capitalize an entity or the total absence of corporate  
28 assets and undercapitalization of an entity; and the use of a corporation as a mere shell,

1 instrumentality, or conduit for a single venture or the business of an individual or another  
2 corporation. *See Assoc. Vendors, Inc. v. Oakland Meat Co.*, 26 Cal. Rptr. 806, 814-15 (Cal.  
3 App. 1962) (enumerating a non-exclusive list of potential factors).

4 As mentioned above, though disputed by Defendants' affidavits, the Court's analysis  
5 focuses on Plaintiff's allegations regarding the alter ego test. *See Data Disc, Inc.*, 557 F.2d  
6 at 1285. Plaintiff alleges that LCE "through its ecosystem of companies effectively  
7 operates all facets of Innov8tive" and that LCE "has the authority to substantially control  
8 Innov8tive's commercial activities." ECF No. 9 at 26. Plaintiff alleges that "[i]n practice,  
9 Innov8tive appears to be nothing more than a shell operated by LaCore Enterprises, its  
10 director, CFO, and secretary." *Id.* In support of those claims, Plaintiff alleges that LCE  
11 owns between fifty and sixty percent of Innov8tive, that both companies operate out of the  
12 same office in Texas, both companies employ the same lawyer and law firm, that Terry  
13 LaCore is both the sole director and governing person of LCE as well as the sole director  
14 of Innov8tive, that Jenifer Grace is the Corporate secretary for both Innov8tive and LCE,  
15 and that the CFO of LCE has signed documents submitted to the Texas Secretary of State  
16 on behalf of Innov8tive. ECF No. 9 at 25-26. Plaintiff also alleges that LCE controls  
17 Innov8tive because Innov8tive has only one employee and because LCE provides certain  
18 management, consulting, accounting, and administrative services, pursuant to an  
19 agreement between the companies, which effectively means that LCE controls the day-to-  
20 day operations of Innov8tive and controls and directs its activities. *Id.* at 26. While Plaintiff  
21 addresses several factors relevant to the Court's alter ego analysis, its allegations,  
22 particularly those regarding the level of control that LCE exerts over Innov8tive, are too  
23 vague and conclusory to establish alter ego jurisdiction. Plaintiff merely asserts that there  
24 is a service agreement between LCE and Innov8tive which includes services which may  
25 be construed as day-to-day operations, and that Innov8tive has one employee. Such  
26 allegations do not show how LCE exercises actual control or direction of Innov8tive and  
27 fall short of the required showing of control "to such a degree as to render the latter the  
28 mere instrumentality of the former." *Ranza*, 793 F.3d at 1073. Likewise, shared office



1 space, shared officers, and partial ownership, without more, do not support a finding that  
2 there is unity of interest between LCE and Innov8tive. Moreover, Plaintiff has not alleged  
3 that Innov8tive and LCE have failed to observe their respective corporate formalities, and  
4 existence of a services agreement between the two companies suggests maintenance rather  
5 than erosion of such formalities. With the allegations currently before the Court, the weight  
6 of the evidence indicates that LCE and Innov8tive are not in an alter ego relationship.  
7 Because the first prong of the alter ego test has not been satisfied, the Court does not take  
8 up the “fraud or injustice” prong of Plaintiff’s argument. *Ranza*, 793 F.3d at 1075 n.9  
9 (citing *Unocal*, 248 F.3d at 928). Likewise, Plaintiff’s argument that agency liability  
10 supports imputed personal jurisdiction fails because there has not been a showing that LCE  
11 substantially controls Innov8tive. *Williams*, 851 F.3d at 1024-25. Accordingly, the Court  
12 analyzes personal jurisdiction separately for Innov8tive and LCE.

#### 13 **D. Specific Personal Jurisdiction**

14 Generally, for the Court to exercise specific jurisdiction over a defendant, “the  
15 defendant’s suit-related conduct must create a substantial connection with the forum State.”  
16 *Walden v. Fiore*, 571 U.S. 277, 284 (2014). The Ninth Circuit applies a three-prong test to  
17 analyze specific personal jurisdiction: (1) a defendant must purposefully avail itself of the  
18 privilege of conducting activities in the forum or purposefully direct its activities toward  
19 the forum; (2) the claim must arise out of the defendant’s forum-related activities; and (3)  
20 the exercise of jurisdiction must be reasonable. *See Schwarzenegger*, 374 F.3d at 802.  
21 Courts analyze the first prong under purposeful availment for cases sounding in contract,  
22 and under purposeful direction for cases sounding in tort. *Id.* (citations omitted). If a  
23 plaintiff meets its burden to satisfy the first two prongs of the test, the burden shifts to the  
24 defendant to “‘present a compelling case’ that exercise of jurisdiction would not be  
25 reasonable.” *Id.* (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476-78 (1985)).  
26 When a court looks to exercise specific jurisdiction over a defendant, the relevant time  
27 period for assessing potentially jurisdiction-conferring contact is “when the events that  
28 gave rise to the suit occurred.” *Steel v. United States*, 813 F.2d 1545, 1549 (9th Cir. 1987).

## 1                   **1. Purposeful Availment or Direction**

2           The first of prong of the Ninth Circuit’s specific jurisdiction test requires a plaintiff  
3 to establish that a defendant either purposefully availed itself of the privilege of conducting  
4 activities in the forum state or purposefully directed its activities toward the forum state.  
5 *Schwarzenegger*, 374 F.3d at 802. The Court analyzes contract claims under purposeful  
6 availment, and tort claims under purposeful direction. *See id.* Trademark and false  
7 advertising claims are akin to tort claims and are therefore analyzed under purposeful  
8 direction. *See Panavision Int’l*, 141 F.3d at 1320-21 (applying purposeful direction analysis  
9 to federal and state trademark claims).

10           The effects test set out in *Calder v. Jones*, 465 U.S. 783 (1984) governs the Court’s  
11 purposeful direction analysis. *Burri Law PA v. Skurla*, 35 F.4th 1207, 1213 (9th Cir. 2022).  
12 Under the *Calder* effects test, a plaintiff must show that a defendant (1) committed an  
13 intentional act, (2) expressly aimed at the forum state, that (3) causes harm the defendant  
14 knew was likely to be suffered in the forum state in order to show that a defendant  
15 purposefully directed its activities to that state. *Id.* (citing *Axiom Foods, Inc. v. Acerchem,*  
16 *Int’l, Inc.*, 874 F.3d 1064, 1069 (9th Cir. 2017); *Dole Food Co.*, 303 F.3d at 1111; *Calder*,  
17 465 U.S. at 788-89.). It is not enough to show a defendant committed an intentional act  
18 with foreseeable effects in the forum state. While all three requirements of the *Calder*  
19 effects test must be met, the determinative question is whether the conduct in question was  
20 expressly aimed at the forum state. *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1156 (9th  
21 Cir. 2006). Each is examined in turn below.

### 22                   **a. Intentional Act**

23           “In the context of the *Calder* test, an intentional act is ‘an external manifestation of  
24 the actor’s intent to perform an actual, physical act in the real world, not including any of  
25 its actual or intended results.’” *Lindora, LLC v. Isagenix Int’l, LLC*, 198 F. Supp. 3d 1127,  
26 1139 (S.D. Cal. 2016) (quoting *Washington Shoe Co. v. A-Z Sporting Goods, Inc.*, 704 F.3d  
27 668, 674 (9th Cir. 2012)). This prong “focuses on whether an act was performed, not  
28 whether the act produced a particular result.” *Id.*

1 Plaintiff alleges that Innov8tive sells its products through promoters, controls where  
2 its promoters sell products, controls promoters' use of marketing materials, and that  
3 Innov8tive has sold and shipped its products into California, where it has promoters, and  
4 where it has promoted and attended events. ECF No. 9 at 9. Because Innov8tive acted  
5 intentionally in developing and selling its products to promoters in California, the Court  
6 finds that Plaintiff has sufficiently alleged that Innov8tive committed an intentional act.

7 With respect to LCE, Plaintiff makes general allegations that "Defendants"—  
8 referring to Innov8tive and the LaCore Entities—"market and sell products to California  
9 consumers" including the patch products at issue in this action. ECF No. 1 ¶¶ 20-21.  
10 Further, that "the LaCore Entities are aware that Innov8tive markets and sells its products  
11 to consumers in California, and the LaCore Entities distribute the patch products to  
12 consumers in California." *Id.* ¶ 24. Plaintiff's allegations lump together either all  
13 Defendants as a whole—in the case of the first set of general allegations—or the LaCore  
14 Entities as a whole—in the case of the second set of general allegations—in a way that is  
15 inappropriate to assess personal jurisdiction. *See Calder*, 465 U.S. at 790 ("Each  
16 defendant's contacts with the forum State must be assessed individually."). The two sets  
17 of allegations, taken together, appear to acknowledge that Innov8tive markets and sells the  
18 patch products, and the LaCore Entities distribute the patch products, rather than all of the  
19 named Defendants taking part in the marketing and selling of products as suggested by the  
20 first set of allegations. Assuming, without deciding, that the second set of allegations can  
21 be understood to be specific to LCE, the Court finds that Plaintiff has sufficiently alleged  
22 that LCE committed an intentional act by distributing patch products.

### 23 **b. Express Aiming**

24 The precise form of a court's express aiming analysis "varies from case to case and  
25 'depends, to a significant degree, on the specific type of tort or other wrongful conduct at  
26 issue.'" *Picot*, 780 F.3d at 1214 (quoting *Schwarzenegger*, 374 F.3d at 807). However,  
27 express aiming generally requires a showing of "'something more' than 'a foreign act with  
28 foreseeable effects in the forum state.'" *Pakootas v. Teck Cominco Metals, Ltd.*, 905 F.3d

1 565, 577 (9th Cir. 2018) (quoting *Bancroft & Masters, Inc. v. Augusta Nat'l Inc.*, 223 F.3d  
2 1082, 1087 (9th Cir. 2000)). Furthermore, the “[T]he mere fact that [a defendant’s] conduct  
3 affected plaintiffs with connections to the forum State does not suffice to authorize  
4 jurisdiction.” *Walden*, 571 U.S. at 291. This is true even when a defendant targets a plaintiff  
5 with strong connections to the forum state and there would be foreseeable harm suffered  
6 by the plaintiff in that forum. *See Axiom Foods, Inc.*, 874 F.3d at 1069-70 (citing *Walden*,  
7 571 U.S. at 289). The proper analysis of express aiming, therefore, looks to whether a  
8 defendant’s own contacts with the forum are jurisdictionally sufficient. *See Picot*, 780 F.3d  
9 at 1214.

10 In this case, Plaintiff alleges false advertising and mislabeling, so the Court examines  
11 whether Innov8tive or LCE expressly aimed its false advertising or mislabeling of  
12 Innov8tive’s patch products at California. *Picot*, 780 F.3d at 1214. Plaintiff has not alleged  
13 that Defendants engaged in false advertising or marketing of the patch products prior to the  
14 issuance of a press release by Innov8tive announcing the launch in early 2020.  
15 Accordingly, the Court’s assessment of express aiming, and Defendants’ contacts and suit-  
16 related conduct, are limited to Defendants’ actions subsequent to the launch of the patch  
17 products on March 19, 2020. *Steel*, 813 F.2d 1549.

18 Plaintiff alleges that the express aiming requirement is met because Innov8tive took  
19 substantial, consistent, and repeated actions to target the California market. ECF No. 9 at  
20 12. Plaintiff makes several distinct arguments that Innov8tive expressly aimed its conduct  
21 at California: (1) that Innov8tive was registered to do business and maintained a registered  
22 agent in California until January 2021 [*id.*]; (2) that Innov8tive promoted, attended, and  
23 organized Innov8tive marketing meetings in California to sell products and solicit business  
24 in California [*id.* at 12]; (3) that Innov8tive targeted Youngevity through comparative  
25 advertising and targeting of its affiliates with foreseeable effects against Youngevity,  
26 which it knew to be in California [*id.* at 9, 13]; (4) that Innov8tive created websites for its  
27 California promoters to market, sell, and ship products into California [*id.* at 14]; (5) that  
28 Innov8tive directed its commercial activities toward California as evidenced by six percent

1 of its sales [*id.* at 13]; and (6) that Innov8tive entered into a business agreement with  
2 Zazzle—a California company—and encouraged its promoters to purchase marketing tools  
3 from Zazzle [*id.* at 14].

4 Plaintiff’s well-pleaded allegations and evidence establish an attenuated connection  
5 between Defendants and California at most, even when construed in Plaintiff’s favor,  
6 because they fail to show that Defendants performed any suit-related actions directed at  
7 California. *See Walden*, 571 U.S. at 286 (“Due process requires that a defendant be haled  
8 into court in a forum State based on his own affiliation with the State, not based on the  
9 ‘random, fortuitous, or attenuated contacts he makes by interacting with other persons  
10 affiliated with the State.’” (quoting *Burger King*, 471 U.S. at 475)). Plaintiff does not allege  
11 that Innov8tive itself falsely advertised or mislabeled its patch products in a way that was  
12 directed at California. Plaintiff’s allegations that Innov8tive was registered to do business  
13 and had a registered agent in California until 2021 are unsupported as to how those  
14 circumstances are connected to its claims; its evidence that Innov8tive promoted, attended,  
15 and organized events in California are likewise outside the relevant time period and  
16 unrelated to the patch products in question—and therefore, unrelated to the claims at stake  
17 in this case—; its assertions that Innov8tive creates websites for its promoters is similarly  
18 unsupported by any more specific allegations, nor is there any evidence that such websites  
19 are expressly aimed at California; and it is unclear, because Plaintiff makes no more  
20 specific allegations, how Defendant’s disputed relationship with Zazzle and the availability  
21 of Innov8tive branded marketing materials through Zazzle, shows that Innov8tive  
22 expressly aimed its advertising and labeling of patch products at California. Plaintiff  
23 alleges that its evidence shows that Innov8tive “direct[ed] promoters to purchase Zazzle  
24 marketing tools,” [ECF No. 9-2 ¶ 21], but its supporting exhibit simply shows a page on  
25 Innov8tive’s website that states “Print on Demand Marketing items are available through  
26 Zazzle. You can customize most items with your promoter information to kickstart your  
27 business” [ECF No. 9-3 at 111]. Nothing indicates that promoters were directed to purchase  
28 materials from Zazzle, that any of the materials available through Zazzle were directed at

1 California, or that the decisions of independent Innov8tive promoters—who are  
2 Innov8tive’s customers and third parties to this suit—to purchase merchandise from Zazzle  
3 would show that Innov8tive expressly aimed its conduct at California.

4 As for the sales of Innov8tive patch products in California, the Court is similarly  
5 guided by the nature of Plaintiff’s claims in this case. According to Plaintiff’s allegations,  
6 Innov8tive is a network marketing company that sells products through independent  
7 distributors, known as promoters, that promote products through peer relationships, social  
8 media, and in-person meetings. ECF No. 9 at 8. Any individual can become an Innov8tive  
9 promoter by enrolling on its website, paying a membership fee of \$49.95, and agreeing to  
10 be bound by Innov8tive’s Statement of Policies and Procedures. *Id.* at 8-9. California  
11 residents have registered as Innov8tive promoters [*id.* at 9], and at least one Innov8tive  
12 promoter actively markets and sells Innov8tive patch products in California [ECF No. 9-2  
13 ¶ 13]. Approximately six percent of Innov8tive’s total sales are to customers in California.  
14 ECF No. 8-2 ¶ 4; 9 at 13. Nothing in Innov8tive’s Statement of Policies & Procedures (the  
15 “SPP”) directs its promoters to market or sell its products in California, restricts where  
16 promoters may sell their products within the United States, or dictates which products  
17 promoters must sell. *See* ECF No. 9-3 at 18-59 (“Exhibit E”). In other words, California  
18 residents may purchase and market any of Innov8tive’s products in any forum.  
19 Furthermore, promoters are free to choose which of Innov8tive’s products they purchase,  
20 market, and sell. Based on Plaintiff’s allegations and evidence, it would be equally  
21 plausible that a resident in any other forum state could register to become a promoter and  
22 market Innov8tive’s patch products exclusively toward California. The fact of any  
23 promoter’s residency implies nothing about where or which of Innov8tive’s products they  
24 market and sell. Even Plaintiff’s evidence that a single Innov8tive promoter made  
25 Facebook posts promoting Innov8tive products that are tagged “in California” [*see id.* at  
26 63-65 (“Exhibit G”)] does not establish that the posts were directed at California because  
27 nothing suggests that those posts were directed specifically at California or people in  
28 California, as opposed to anyone in the United States with internet access. Nor are there

1 allegations or evidence showing that a post being tagged “in California” indicates that the  
2 person posting the content was physically present in California at the time. More  
3 importantly, that evidence says nothing about whether Innov8tive itself expressly aimed  
4 its false advertising or mislabeling of the patch products at California, only that an  
5 independent promoter made posts tagged “in California.” In the same vein, actual sales of  
6 the product in California say nothing about whether Innov8tive itself expressly aimed its  
7 conduct at California because Plaintiff has not alleged that those sales were a result of  
8 Innov8tive’s own actions rather than those of its independent promoters. Plaintiff’s reliance  
9 on the privacy disclaimers on Innov8tive’s and LCE’s websites directed at California  
10 consumers is also misplaced; as they evidence nothing more than the maintenance of  
11 Defendants’ passive websites, and the existence of the California Consumer Privacy Act  
12 of 2018, which requires specific practices applicable only to California consumers. *See*  
13 *Pebble Beach*, 453 F.3d at 1157 (finding that there is no personal jurisdiction if the owner  
14 of a passive website does nothing else to encourage residents of a forum state to visit the  
15 site). The Court’s jurisdiction cannot be premised solely on the unilateral activity of the  
16 plaintiff or of third parties connecting the defendant to a forum. *Walden*, 571 U.S. at 285  
17 (citing *Int’l Shoe*, 326 U.S. at 319). Accordingly, Plaintiff has not sufficiently alleged that  
18 Innov8tive expressly aimed its suit-related conduct at California.

19       Though the Court addressed Plaintiff’s allegations regarding the California privacy  
20 disclaimer on LCE’s website above, it also separately examines Plaintiff’s allegations that  
21 LCE expressly aimed its conduct at California. Plaintiff argues that LCE purposefully  
22 directed its activities at California because it hired Vanessa Hunter, a California resident,  
23 as a consultant who attended and promoted Innov8tive products at various events in  
24 California, and because Ann Erlandsson, LCE’s chief financial officer, is a California  
25 resident who has executed documents submitted to the Texas Secretary of State on behalf  
26 of both LCE and Innov8tive. ECF No. 9 at 15-16. Plaintiff’s evidence that Hunter is  
27 involved with LCE is an undated testimonial statement by Heidi Whitehair, who is listed  
28 as the CEO of Innov8tive Nutrition on Hunter’s website, stating that Whitehair has “been

1 working with Vanessa Hunter since August 2017” and that she has consulted with  
2 Innov8tive. ECF No. 9-3 at 81. This statement does not show express aiming by LCE  
3 because it does not show that Hunter was involved with LCE, that Hunter was involved  
4 with LCE or Innov8tive in the time period relevant to the Court’s jurisdictional analysis,  
5 or that LCE expressly aimed its conduct—related to the claims in this case—at California.  
6 Likewise, the listing of Vanessa Hunter as a contact for LCE by zoominfo, a third-party  
7 service, does not speak to whether LCE expressly aimed its false marketing or mislabeling  
8 of patch products at California. Similarly, the presence of LCE’s chief financial officer in  
9 California and the submission of documents to the Texas Secretary of State by that officer  
10 say nothing about whether LCE expressly aimed its conduct at California.

11 Without meeting its burden to show that Defendants’ conduct was expressly aimed  
12 at California, Plaintiff cannot establish that Defendants purposefully directed their  
13 activities at California. *See Pebble Beach*, 453 F.3d at 1158, 1160. Because Plaintiff has  
14 failed to establish that any Defendant purposefully directed their activities at California,  
15 this Court may not exercise personal jurisdiction over any of the Defendants in this case.  
16 *See Schwarzenegger*, 374 F.3d at 802 (“If the plaintiff fails to satisfy either of these prongs,  
17 personal jurisdiction is not established in the forum state”). Accordingly, the Court declines  
18 to analyze the remaining prong of the *Calder* test, or to expand on its analysis of whether  
19 Innov8tive or LCE’s alleged contacts with California stem from their relationships with  
20 this litigation and with California itself, rather than with the Plaintiff or third parties. The  
21 Court finds that Plaintiff has failed to make a prima facie showing of personal jurisdiction  
22 for any Defendant because it has only made bare bones assertions of jurisdictional contacts  
23 with the forum, unsupported by specific factual allegations. *Swartz*, 476 F.3d at 766.

#### 24 **E. Jurisdictional Discovery**

25 Although “[a] court may permit discovery to aid in determining whether it has in  
26 personam jurisdiction[,]” the court’s broad discretion “will not be reversed except upon the  
27 clearest showing that denial of discovery results in actual and substantial prejudice to the  
28 complaining litigant.” *Data Disc Inc.*, 557 F.2d at 1285 n.1 (internal quotation omitted).



1 Furthermore, “where a plaintiff’s claim of personal jurisdiction appears to be both  
2 attenuated and based on bare allegations in the face of specific denials made by the  
3 defendants, the Court need not permit even limited discovery.” *Pebble Beach*, 453 F.2d at  
4 1160 (internal citation and quotation omitted). A court need not grant discovery based on  
5 “purely speculative allegations of attenuated jurisdictional contacts.” *Getz v. Boeing Co.*,  
6 654 F.3d 852, 860 (9th Cir. 2011).

7 In this case, the Court finds that the discovery Plaintiff seeks to support its arguments  
8 on alter ego or agency theories of jurisdiction would not change the jurisdictional analysis  
9 because it has not shown that either Innov8tive or LCE has sufficient jurisdictional contacts  
10 with California. As discussed above, Plaintiff’s claim of personal jurisdiction appears to  
11 be based on bare allegations, and Defendants make specific denials of its allegations as the  
12 noted by the Court. Plaintiff’s request for jurisdictional discovery would not alter the  
13 Court’s analysis. Therefore, the Court declines to exercise its discretion to permit  
14 jurisdictional discovery.

#### 15 **F. Leave to Amend**

16 Although requests for leave to amend are generally granted with “extreme  
17 liberality,” the Court considers the factors laid out in *Foman v. Davis*, 371 U.S. 178, 182  
18 (1962) when considering whether to grant leave to amend: undue delay, bad faith or  
19 dilatory motive, repeated failure to cure deficiencies by amendments previously allowed,  
20 undue prejudice to the opposing party, and futility. *See Brown v. Stored Value Cards, Inc.*,  
21 953 F.3d 567, 574 (9th Cir. 2020). “Of the *Foman* factors, prejudice to the opposing party  
22 carries the most weight.” *Id.* (citing *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048,  
23 1052 (9th Cir. 2003)). Additionally, the Court has discretion to dismiss a complaint without  
24 leave to amend where it grants a Rule 12(b)(2) motion to dismiss for lack of personal  
25 jurisdiction. *See Chirila v. Conforte*, 47 F. App’x 838, 843 (9th Cir. 2002).

26 Plaintiff requests leave to amend its complaint on the basis that it intends to “add the  
27 jurisdictional allegations,” saying nothing more. ECF No. 9 at 31. Defendants respond that,  
28 “[e]ven considering the arguments Plaintiff made for the first time in its Opposition, and

1 inadmissible evidence, leave to amend would be futile.” ECF No. 10 at 10. Firstly, Plaintiff  
2 “should have known that the lack of personal jurisdiction issue could be raised at a later  
3 point in the proceedings and should have known that [it] needed to state adequate facts in  
4 the complaint to support [its] contention, based on the effects test, that there was personal  
5 jurisdiction.” *Chirila*, 47 F. App’x at 843. Secondly, the Court reviewed Plaintiff’s  
6 complaint, as well as the jurisdictional allegations and evidence submitted in opposition to  
7 the Motion to Dismiss, under a particularly lenient standard. *See Ochoa*, 287 F.3d at 1187;  
8 *Data Disc Inc.*, 557 F.2d at 1285. Plaintiff has had the opportunity to present additional  
9 jurisdictional allegations, and the Court has reviewed those allegations, resolving all factual  
10 disputes in its favor. Despite that, Plaintiff failed to make out a prima facie case for personal  
11 jurisdiction over any Defendant, and requests an additional opportunity to bolster its  
12 allegations.

13 The Court finds that, based on Plaintiff’s opposition and evidence already  
14 considered, further leave to amend is unwarranted because it would be futile. *Gompper v.*  
15 *VISX, Inc.*, 298 F.3d 893, 898 (9th Cir. 2002) (affirming denial of leave to amend where  
16 the district court “carefully considered and incorporated into its analysis any facts offered  
17 by plaintiffs, even those beyond the complaint.”). Plaintiff has given no indication that it  
18 could amend its pleading to add additional facts establishing personal jurisdiction over any  
19 Defendant. *See Evans v. Peterson*, 141 F. App’x 540, 542 (9th Cir. 2005) (affirming denial  
20 of leave to amend for lack of jurisdiction where Plaintiff’s arguments beyond the complaint  
21 revealed that amendment would be futile). Furthermore, because Plaintiff has had an  
22 opportunity to adduce additional jurisdictional evidence and allegations and has failed to  
23 make a prima facie case, the Court finds that granting Plaintiff leave to amend its complaint  
24 to cure its jurisdictional allegations would impose undue prejudice on Defendants.

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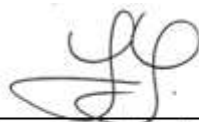
**IV. CONCLUSION**

In accordance with the above, the Court **ORDERS** as follows:

1. The Motion to Dismiss filed by Defendants Innov8tive, LaCore Enterprises, LaCore Nutraceuticals, and LaCore Labs [ECF No. 8] is **GRANTED**.
2. Plaintiff’s request for jurisdictional discovery is **DENIED**.
3. Plaintiff’s request for leave to amend its complaint is **DENIED**.
4. Plaintiff’s complaint is **DISMISSED**.<sup>2</sup>
5. The Clerk of Court is directed to close this case.

**IT IS SO ORDERED.**

Dated: March 22, 2023



\_\_\_\_\_  
Honorable Linda Lopez  
United States District Judge

<sup>2</sup> Dismissal under Rule 12(b)(2) is **without prejudice as to the merits of the case**. However, Plaintiff’s complaint is dismissed **with prejudice to the extent that, for the purposes of this action, this Court does not have personal jurisdiction** over Defendants Innov8tive, LaCore Enterprises, LaCore Nutraceuticals, and LaCore Labs.