IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

AVERON US, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 1:22-cv-01341-TMH
	)	
AT&T CORP.,	)	
AT&T SERVICES, INC., and	)	
ZENKEY LLC,	)	
	)	
Defendants.		

MEMORANDUM OPINION

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February 29, 2024
Wilmington, DE

HUGHES, UNITED STATES CIRCUIT JUDGE, SITTING BY DESIGNATION:

Plaintiff Averon US, Inc. filed this action against Defendants AT&T Corp., AT&T Services, Inc., and ZenKey LLC, alleging misappropriation of trade secrets, fraud, breach of contract, unfair competition, and intentional interference with prospective economic relations. D.I. 18 at 1. Presently before the Court is Defendants' motion to dismiss Plaintiff's First Amended Complaint pursuant to Federal Rule of Civil Procedure 12. D.I. 22. For the reasons set forth below, this motion is GRANTED-IN-PART and DENIED-IN-PART.

I. BACKGROUND

A. Factual Background

This case arises out of the collapse of a multi-year business relationship between Plaintiff Averon US, Inc. (Averon) and Defendants AT&T Corp. and AT&T Services, Inc. (collectively, AT&T). The First Amended Complaint, D.I. 18, alleges the following facts.

Averon is a San Francisco-based start-up company that developed a software product that works with a user's cell phone to auto-authenticate the user's identity when logging on to third-party websites. D.I. 18 ¶ 1, 10. This software eliminated the need for entering passwords or for sending separate authentication texts to the user's mobile phone, commonly known as two-factor authentication. *Id.* ¶ 10. Averon calls this product the "MagicLogin" software. *Id.* ¶ 15. The technology uses cell phone carriers' cellular-based signaling for authentication. *Id.* ¶ 13. However, because Averon's technology relied on this cellular-based signaling, users could not be

authenticated by MagicLogin when a mobile device user was connected to Wi-Fi. *Id.* ¶¶ 13, 14. In late 2017, realizing that MagicLogin's incompatibility with Wi-Fi could hinder the market uptake of the product, Averon designed a solution to the issue. *Id.* ¶ 15. Averon called the solution the "Wi-Fi Auto-Detect" capability. *Id.* The Wi-Fi Auto-Detect capability involves the manipulation and sequencing of "cellular-based packet headers" and ensures that the MagicLogin auto-authentication works even when the cell phone is connected to Wi-Fi. *Id.* Averon incorporated this Wi-Fi Auto-Detect feature into its MagicLogin software. *Id.* While MagicLogin is patented, Averon chose to protect the Wi-Fi Auto-Detect feature as a trade secret. *Id.* ¶ 16.

For Averon's product to work, it needed wireless carriers, like AT&T, to supply Averon with customer cellular signaling data. *Id.* ¶ 30. Prior to sharing details of its proprietary software with AT&T, Averon entered into nondisclosure agreements with AT&T. *Id.* ¶ 21. In 2016, Averon's predecessor corporation, Cloudwear, Inc., entered into a mutual nondisclosure agreement (the 2016 Cloudwear-AT&T NDA). *Id.* ¶ 23. The 2016 Cloudwear-AT&T NDA restricted the parties' disclosure and use of confidential information, including trade secrets. *Id.* ¶¶ 22–24. Cloudwear changed its name to Averon in 2017, and the parties—AT&T and the newly formed Averon—subsequently entered into a new NDA in November 2017 (the 2017 Averon-AT&T NDA). *Id.* ¶¶ 24–25. Averon alleges that the purpose of the 2017 Averon-AT&T NDA was to ensure that Cloudwear's interest and obligations in the 2016 Cloudwear-AT&T NDA would extend to Averon. *Id.* ¶ 25.

In February 2018, Averon and AT&T entered into a Wholesale Unified Master Agreement (the 2018 Averon-AT&T UMA or UMA), which concerned AT&T's supply of cellular signaling services and data to Averon. *Id.* ¶¶ 27–28. The 2018 Averon-AT&T UMA also restricted the parties' disclosure and use of confidential information, stating that confidential information will not be disclosed "for a period of 3 years following its disclosure to the other party (except in the case of software, for which the period is indefinite)." *Id.* ¶ 29. Averon then contracted with AT&T to use AT&T's Identify Verification services, which includes AT&T's Mobile Identity Toolkit (MIT), and AT&T's Diversified Group (DG) services in April 2018. *Id.* ¶ 30. "Averon paid over one million dollars to AT&T under the MIT and DG contracts for the right to use the cellular signaling data." *Id.* ¶ 31.

The complaint alleges that after entering into the UMA, Averon and AT&T engaged in several conversations and meetings where Averon disclosed the details of its Wi-Fi Auto-Detect trade secret to AT&T representatives. *Id.* ¶¶ 33–34. At AT&T's request, Averon also shared its customer lists, price lists, and strategy to market. *Id.* ¶ 34. With AT&T's introduction, Averon then began talks with Verizon and T-Mobile to set up similar signaling service agreements with those companies. *Id.* ¶¶ 35–43.

In July 2018, Averon representatives met with AT&T representatives, where Averon provided a PowerPoint presentation that once again disclosed Averon's trade secret Wi-Fi Auto-Detect capabilities. *Id.* ¶ 44. In November 2018, Averon's CEO met with AT&T's CEO at a conference for executives in California. *Id.* ¶¶ 45–46. The two CEOs discussed Averon's technology, the fact that Averon was in discussions with

DirectTV (an AT&T entity), and the AT&T CEO's interest in the technology. *Id.* In December 2018, there was another meeting between Averon and AT&T executives that involved disclosure of Averon's trade secret Wi-Fi solution. *Id.* ¶ 49. This meeting also included technical personnel from AT&T. *Id.* Later that month, in an email chain between Averon and AT&T, Averon again disclosed the unique features of the MagicLogin technology. *Id.* ¶ 51. This email chain contained a statement by Averon, reminding AT&T that AT&T was obligated to treat this information as confidential under "our AT&T NDA." *Id.* at 84.

On February 1, 2019, AT&T unilaterally canceled the UMA and the associated MIT and DG signaling agreements, giving 60-days notice. *Id.*¶ 56. When Averon's CEO traveled to AT&T headquarters in search of an explanation for the cancellation, AT&T representatives told him that "AT&T was no longer interested in working with Averon, was going in a different direction, and was stopping its header enrichment program." *Id.* ¶ 60.[1]

Averon's First Amended Complaint also alleges a number of facts about ZenKey, a joint venture between AT&T, Verizon, and T-Mobile that had the purpose of developing an identity-verification solution that used mobile cell network signaling for authentication, similar to Averon. *Id.* ¶¶ 58, 64. ZenKey hired Mr. Greg Hill, AT&T's former Vice President of Marketing Management, as its Chief Commercial

[1] The "header enrichment program" at A&T was the source of the "cellular-based packet headers," also referred to as "cellular signaling data" that Averon's Wi-Fi solution required to function properly. *See* D.I. 18, ¶¶ 15, 31.

Officer. *Id.* ¶ 69. Mr. Hill was one of Averon's "main points of contact" at AT&T and Averon states that it disclosed the MagicLogin trade secret information to him a number of times. *Id.* "The ZenKey app officially launched on September 17, 2020." *Id.* ¶ 71. Averon alleges that, based on a series of tests that it ran on the ZenKey app in "late summer of 2021," it determined that ZenKey misappropriated and used Averon's trade secrets in the ZenKey technology. *Id.* ¶ 72. Averon also alleges that ZenKey made a number of fraudulent or misleading marketing statements, including a LinkedIn post where an AT&T executive described ZenKey as "next-gen innovation at its finest." *Id.* ¶ 75.

B. Procedural History

Averon filed this action on October 11, 2022. D.I. 2. On January 5, 2023, Averon filed the currently operative First Amended Complaint. D.I. 18. In the complaint, Averon has asserted claims under federal and California state trade secret misappropriation law (Counts I and II), common law fraud and misrepresentation (Count III), breach of contract (Counts IV and V), unfair competition (Counts VI and VII), and intentional interference with prospective economic relations (Counts VIII and IX). D.I. 18 ¶¶ 84–172. In lieu of filing an answer, Defendants AT&T Corp. and AT&T Services, Inc. filed this motion to dismiss on February 21, 2023, alleging that all of Averon's claims failed to state a claim, and that others were also barred by the economic loss doctrine or the California Uniform Trade Secret Act, or both. D.I. 22.

The motion was fully briefed on April 21, 2023. D.I. 32. ZenKey did not join the motion to dismiss or file a separate motion.

II. LEGAL STANDARDS

A. Motion to Dismiss

A dismissal under Federal Rule of Civil Procedure 12(b)(6) is only proper when, accepting the well-pleaded allegations in the complaint as true and viewing them in the light most favorable to the complainant, the Court concludes that those allegations "could not raise a claim of entitlement to relief." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 558 (2007). "To prevent dismissal, all civil complaints must . . . set out 'sufficient factual matter' to show that the claim is facially plausible." *Fowler v. UPMC Shadyside*, 578 F.3d 203, 210 (3d Cir. 2009) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 677 (2009)). Further, the Court is not obligated to accept "bald assertions" or "unsupported conclusions and unwarranted inferences." *Morse v. Lower Merion Sch. Dist.*, 132 F.3d 902, 906 (3d Cir. 1997); *Schuylkill Energy Res., Inc. v. Pa. Power & Light Co.*, 113 F.3d 405, 417 (3d Cir. 1997).

B. Defend Trade Secrets Act

Under the federal Defend Trade Secrets Act (DTSA), "[a]n owner of a trade secret that is misappropriated may bring a civil action under this subsection if the trade secret is related to a product or service used in, or intended for use in, interstate or foreign commerce." 18 U.S.C. § 1836(b)(1). Misappropriation within the meaning of the DTSA requires that the trade secret was acquired or disclosed using "improper means." 18 U.S.C. § 1839(5). "Improper means" is further defined as including "theft,

bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means" but excluding "reverse engineering, independent derivation, or any other lawful means of acquisition." *Id.* at § 1839(6).

C. California Uniform Trade Secrets Act

The California Uniform Trade Secrets Act (CUTSA) similarly protects against the misappropriation of trade secrets. *See* Cal. Civ. Code § 3426 *et seq.* A successful claim under the CUTSA must have three core elements: "(1) the plaintiff owned a trade secret, (2) the defendant acquired, disclosed, or used the plaintiff's trade secret through improper means, and (3) the defendant's actions damaged the plaintiff." *Mosiman v. Madison Cos., LLC*, 2019 WL 203126, at *4 (D. Del. Jan. 15, 2019) (quoting *Mintz v. Mark Bartelstein & Assocs. Inc.*, 906 F. Supp. 2d 1017, 1038 (C.D. Cal. 2012)). "Improper means" is defined as including "theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means," but excluding "[r]everse engineering or independent derivation alone." Cal. Civ. Code § 3426.1(a).

A claim brought under CUTSA can bar other civil remedies that are based on the same underlying trade secret misappropriation, including claims under the California Unfair Competition Law (CUCL). *See K.C. Multimedia, Inc. v. Bank of Am. Tech. & Operations, Inc.*, 171 Cal. App. 4th 939, 954, 958 (2009) (explaining that CUTSA "preempts alternative civil remedies based on trade secret misappropriation" when the common law claims are based on the same nucleus of facts); *see also Dig.*

Envoy, Inc. v. Google, Inc., 370 F. Supp. 2d 1025 (N.D. Cal. 2005) (CUTSA preempts CUCL claims).

D. Contract Interpretation

This case involves a question of contract interpretation for agreements governed by New York law. Under New York law, initial contract interpretation is a matter of law, and while "the Court may resolve issues of contract interpretation [on a motion to dismiss] when the contract is properly before the Court," the Court "must resolve all ambiguities in the contract in Plaintiffs' favor." *Serdarevic v. Centex Homes, LLC*, 760 F. Supp. 2d 322, 328 (S.D.N.Y. 2010). But "when the language of a contract is ambiguous, its construction presents a question of fact, which of course precludes summary dismissal." *In re Energy Future Holdings Corp.*, 2017 WL 1170830, at *3 (D. Del. Mar. 28, 2017) (applying New York contract law) (cleaned up). A contract term "is ambiguous when it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognizant of the customs, practices, usages and terminology as generally understood in the particular trade or business." *Id.* at *4 (quoting *Prior v. Innovative Commc'ns Corp.*, 207 F. App'x 158, 163 (3d Cir. 2006) (interpreting New York law)).

E. Fraud and Rule 9 Heightened Pleading Standard

Common law fraud requires a plaintiff to prove five elements: "(1) a misrepresentation, (2) knowledge of falsity, (3) intent to induce reliance, (4) justifiable

reliance, and (5) resulting damage." *Averbach v. Vnescheconombank*, 280 F. Supp. 2d 945, 957 (N.D. Cal. 2003).[2]

While Rule 8 of the Federal Rules of Civil Procedure merely requires "a short and plain statement of the claim showing that the pleader is entitled to relief" for general pleading, the standard is higher under Rule 9 for allegations of fraud. *See* Fed. R. Civ. P. 9(b) ("In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally."). To satisfy this pleading standard, "a plaintiff alleging fraud must state the circumstances of the alleged fraud with sufficient particularity to place the defendant on notice of the precise misconduct with which it is charged." *Frederico v. Home Depot*, 507 F.3d 188, 200 (3d Cir. 2007) (cleaned up). "[T]he complaint must describe the time, place, and contents of the false representations or omissions, as well as the identity of the person making the statement and the basis for the statement's falsity." *City of Warren Police & Fire Ret. Sys. v. Prudential Fin., Inc.*, 70 F.4th 668, 680 (3d Cir. 2023). In other words, "[a] plaintiff alleging fraud must therefore support its

[2] As AT&T points out in its motion to dismiss, Averon does not clearly identify the controlling jurisdiction for its common law causes of action. *See* D.I. 18 ¶ 5; D.I. 23 at 5. The parties appear to disagree as to which law might apply, but agree that, for the purposes of addressing the motion to dismiss, the Court need not engage in a conflict-of-laws analysis because the applicable law in those jurisdictions would be the same. D.I. 23 ¶ 5; D.I. 30 at 8 n.1. Because this Court agrees that the common law elements of fraud are the same across all suggested jurisdictions (California, New York, and Texas), a conflict-of-law analysis is unnecessary. *See Peloton Interactive, Inc. v. ICON Health & Fitness, Inc.*, No. 20-cv-662-RGA, 2021 WL 2188219, at *2–3 (D. Del. May 28, 2021) (declining to conduct a choice-of-law analysis where the outcome would be the same in all jurisdictions); *see also Averbach*, 280 F.Supp. 2d at 957 (California); *Allstate Ins. Co. v. Receivable Fin. Co.*, 501 F.3d 398, 406 (5th Cir. 2007) (Texas); *Pension Comm. of Univ. of Montreal Pension Plan v. Banc of Am. Sec., LLC*, 592 F. Supp. 2d 608, 623 (S.D.N.Y. 2009) (New York).

allegations 'with all of the essential factual background that would accompany the first paragraph of any newspaper story—that is, the who, what, when, where and how of the events at issue.'" *U.S. ex rel. Moore & Co., P.A. v. Majestic Blue Fisheries, LLC*, 812 F.3d 294, 307 (3d Cir. 2016) (quoting *In re Rockefeller Ctr. Props., Inc. Sec. Litig.*, 311 F.3d 198, 217 (3d Cir. 2002)).

F. Economic Loss Doctrine

The economic loss doctrine "precludes tort claims for purely economic damages that are recoverable under contract." *See Virgin Scent, Inc. v. BT Supplies West, Inc.*, 615 F. Supp. 3d 1118, 1136 (C.D. Cal. 2022). "Broadly speaking, the economic loss doctrine is designed to maintain a distinction between damage remedies for breach of contract and for tort. The term 'economic loss' refers to damages that are solely monetary, as opposed to damages involving physical harm to person or property. The economic loss doctrine provides that certain economic losses are properly remediable only in contract." *Id.* (quoting *Giles v. Gen. Motors Acceptance Corp.*, 494 F.3d 865, 873 (9th Cir. 2007)).

G. Rule 8 Inconsistent Pleading

Federal Rule of Civil Procedure 8 allows parties to set forth claims in the alternative. Rule 8(d)(2) states that "[a] party may set out 2 or more statements of a claim or defense alternatively or hypothetically, either in a single count or defense or in separate ones." In the case where "a party makes alternative statements, the pleading is sufficient if any one of them is sufficient." Rule 8(d)(3) also states that "[a] party may state as many separate claims or defenses as it has, regardless of

consistency." Nevertheless, the Rule 8 inconsistent pleadings rule is still subject to the obligations set forth in Rule 11. *See* Fed. R. Civ. P. 8(f) advisory committee's note to 2007 amendment (deleting internal reference to Rule 11 and stating that "Rule 11 applies by its own terms. The force and application of Rule 11 are not diminished by the deletion."). Among other things, Rule 11 requires that the signer of a pleading certify that "to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances . . . the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery." Fed. R. Civ. P. 11(b). In instances where the plaintiff has actual knowledge of the truthfulness of a fact, pleading a theory that is inconsistent with this fact does not comport with the Rule 11 requirements. *See, e.g.*, *Great Lakes Higher Educ. Corp. v. Austin Bank of Chicago*, 837 F. Supp. 892, 894–95 (N.D. Ill. 1993) (holding that "a pleader may only assert contradictory statements of fact when the pleader legitimately is in doubt about the fact in question," and further that pleading "two mutually exclusive possibilities" is "an inappropriate application of the alternative pleadings rule" when "it is clearly within [plaintiffs'] own knowledge which one of them" is true); *Swan Glob. Invs., LLC v. Young,* No. 18-cv-03124-CMA-NRN, 2020 WL 897654, at *4 (D. Colo. Feb. 25, 2020) ("Rule 8(d)(3)'s 'alternative pleadings rule' does not cover inconsistent assertions of fact when the pleader holds the knowledge of which of the inconsistent facts is the true one." (citing *Mrla v. Fed. Nat'l Mortg. Ass'n*, No. 15-cv-13370, 2016 WL 3924112, at *4 (E.D. Mich. July 21, 2016))).

H. California Unfair Competition Law

The CUCL prohibits, among other things, "unfair, deceptive, untrue or misleading advertising." Cal. Bus. & Prof. Code § 17200.[3] "Advertising" is construed broadly under the CUCL and can include "virtually any statements made in connection with the sale of goods or services, including statements and pictures of labels." *Algarin v. Maybelline, LLC*, 300 F.R.D. 444, 452 (S.D. Cal. 2014) (citing *Williams v. Gerber Prods. Co.*, 552 F.3d 934, 939 (9th Cir. 2008)). "In order to obtain a remedy for deceptive advertising, a UCL plaintiff need only establish that members of the public were likely to be deceived by the advertising." *In re Vioxx Class Cases*, 103 Cal. Rptr. 3d 83, 95 (2009). Additionally, "[a]dvertising that amounts to 'mere' puffery is not actionable because no reasonable consumer relies on puffery." *Haskell v. Time, Inc.*, 857 F. Supp. 1392, 1399 (E.D. Cal. 1994). "Whether the alleged misrepresentations amount to mere puffery may be determined on a motion to dismiss." *Id.* "Similarly, if the alleged misrepresentation, in context, is such that no reasonable consumer could be misled, then the allegation may also be dismissed as a matter of law." *Id.*

The CUCL also prohibits unlawful and unfair business practices. The "unlawful" prong of the CUCL is broad—"borrow[ing] violations of other laws" and

[3] Averon also does not clearly articulate which state's unfair competition and deceptive advertising laws it is invoking in the complaint, but the parties appear in agreement during briefing that this claim relates to California law. *See* D.I. 23 at 16; D.I. 30 at 13–14. Accordingly, the Court will proceed with its analysis on this issue using California law.

"mak[ing them] independently actionable." *Cel-Tech Commc'ns, Inc. v. Los Angeles Cellular Tel. Co.*, 20 Cal. 4th 163, 180 (1999) (internal quotations omitted).

The "unfair" prong of the CUCL allows the unfair competition law to reach practices that may not be specifically proscribed by law. *Cel-Tech*, 20 Cal. 4th at 180. "When a plaintiff who claims to have suffered injury from a direct competitor's 'unfair' act or practice invokes [the CUCL], the word 'unfair' in that section means conduct that threatens an incipient violation of an antitrust law, or violates the policy or spirit of one of those laws because its effects are comparable to or the same as a violation of the law, or *otherwise significantly threatens or harms competition*." *Id.* at 187 (emphasis added); *see also Epic Games, Inc. v. Apple Inc.*, 559 F. Supp. 3d 898, 1052 (N.D. Cal. 2021).

I. Intentional Interference with Prospective Economic Relations

The common law tort of intentional interference with prospective economic relations—again applying California law—requires a plaintiff to prove the following elements: "(1) an economic relationship between the plaintiff and some third party, with the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) intentional acts on the part of the defendant designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm to the plaintiff proximately caused by the acts of the defendant." *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1153 (Cal. 2003) (citations omitted). In addition to these elements, "a plaintiff seeking to recover damages for interference with prospective economic advantage must plead and prove

as part of its case-in-chief that the defendant's conduct was 'wrongful by some legal measure other than the fact of interference itself.'" *Id.* (citing *Della Penna v. Toyota Motor Sales, U.S.A., Inc.*, 11 Cal. 4th 376, 393 (Cal. 1995)). "Wrongful" within the context of this test means that the act was "proscribed by some constitutional, statutory, regulatory, common law, or other determinable legal standard." *Id.* at 1159.

III. DISCUSSION

A. Count I: Federal Trade Secret Misappropriation

Count I of Averon's First Amended Complaint alleges that AT&T and ZenKey misappropriated Averon's trade secrets in violation of the federal DTSA. D.I. 18 ¶¶ 84–92. In its motion to dismiss, AT&T argues that Averon has failed to state a claim of trade secret misappropriation because it does not properly allege that the trade secrets were acquired or disclosed using "improper means," as required by the DTSA. D.I. 23 at 10.

Whether Averon has plausibly stated a claim for trade secret misappropriation necessarily turns on an issue of contract interpretation. If AT&T was under no duty of secrecy from either the 2017 NDA or the 2018 UMA, there can be no "improper means" within the meaning of the statute. *See* 18 U.S.C. § 1839(5)–(6). Thus, the issue is whether the 2017 NDA was intended to cover the full scope of collaboration between Averon and AT&T, such that it survived execution of the 2018 UMA and created an ongoing obligation of confidentiality for Averon's disclosures to AT&T.

AT&T argues that "Averon fails to plead facts sufficient to establish any 'improper means' because AT&T was under no obligation to protect the confidentiality of the alleged Auto-Detect capability that Averon promoted to AT&T and other carriers." D.I. 23 at 10. Regarding the 2017 NDA, AT&T argues that the NDA "protected only the confidentiality of information disclosed for the purpose of 'negotiations' of a later contract for the 'provision of products and/or services by AT&T to [Averon]'—*i.e.*, the UMA." *Id.* (alterations in original). Put differently, according to AT&T, the 2017 NDA only created a limited confidential negotiations period; after the UMA was fully negotiated and executed, there was no longer any ongoing confidentiality obligation for either party. *Id.* Thus, AT&T argues that because Averon disclosed its trade secrets regarding the MagicLogin software in 2018, *after* the execution of the UMA, AT&T had no duty to maintain the secrecy of that later-disclosed information under the 2017 NDA. *Id.* Regarding the 2018 UMA, AT&T also argues that "the UMA did not create an obligation for AT&T to protect the confidentiality of the alleged Auto-Detect capability." *Id.* at 10–11. For this argument, AT&T points to two paragraphs of the complaint where Averon admits that Averon's "trade secrets do not relate to the AT&T SIM-signaling services provided to Averon under the 2018 Averon-AT&T UMA." *Id.* at 11 (citing D.I. 18 ¶¶ 86, 95).

In its response briefing, Averon argues that "AT&T is incorrect that the UMA superseded the 2017 NDA." D.I. 30 at 7. According to Averon, the UMA is a "boilerplate wholesale services agreement" that only "narrowly applied" to "products and services AT&T provide[d] [Averon] **pursuant to this Agreement** . . . ." *Id.*

Averon claims that the UMA was narrowly focused on the provision of signaling services to Averon, which included access to AT&T's Identity Verification Services and AT&T's Diversified Group Services. *Id.* Averon also argues that, in contrast, "the 2017 NDA covered the full scope of collaboration between Averon and AT&T." *Id.* Averon's brief does not address AT&T's assertions that, due to Averon's admissions that the trade secrets are unrelated to the 2018 UMA, that agreement cannot be a source of "improper means" for trade secret misappropriation. *See* D.I. 30 at 7–8.

By its own terms, the 2017 NDA is governed by New York law. D.I. 18, Ex. C at 2. The agreement creates a confidentiality obligation between AT&T and Averon regarding disclosures related to the "Purpose" of the contract. *Id.* at 1. "Purpose" is defined at the beginning of the agreement, where it states: "WHEREAS, the parties desire to enter into negotiations and other communications regarding the possible provision of products and/or services by AT&T to Company [Averon] (the 'Purpose')." *Id.* As discussed above, AT&T has adopted the position that the "Purpose" of the 2017 NDA was limited to negotiations surrounding the later-executed UMA. *See* D.I. 32 at 1. Thus, in AT&T's eyes, the Purpose was complete and the NDA ceased to be in force as soon as the UMA was executed. *See id.* Averon argues that it has alleged sufficient facts to show that "Averon and AT&T's relationship extended far beyond the narrow provision of signaling services to Averon," which would mean that the 2017 NDA was still in force when Averon disclosed its trade secrets. D.I. 30 at 7 (citing D.I. 18 ¶¶ 32–53).

This Court finds that the plain language of the "Purpose" of the 2017 NDA is facially unclear. While AT&T's proposed construction might be reasonable, the contract's statement that its purpose is for "the possible provision of products and/or services by AT&T to [Averon]" is vague and does not elaborate on *what* products and/or services the NDA might cover. *See* D.I. 18, Ex. C at 1. The agreement's "Purpose" could just as easily be construed to cover a deeper, long-term collaboration between the two companies. Clearly, Averon's executives were operating under the belief that the 2017 NDA remained intact after the 2018 UMA was executed. *See* D.I. 18, Ex. G (Averon instructing AT&T to "[p]lease treat this information as confidential . . . under our AT&T NDA"). A broader interpretation is also supported by the fact that it refers to both "negotiations and *other communications*," again without defining those terms further. D.I. 18, Ex. C at 1 (emphasis added). Resolving any ambiguities in Averon's favor at this stage in the proceeding, Averon has pleaded sufficient facts to show that its disclosures to AT&T could reasonably be covered under the 2017 NDA. Accordingly, this agreement could form the basis of a duty of confidentiality that would constitute "improper means" for the purpose of trade secret misappropriation if Averon can prove that the agreement was breached by AT&T.

In sum, the Court finds that—accepting Averon's allegations as true and viewing those allegations in the light most favorable to it—Averon has sufficiently pleaded facts showing that its claim is facially plausible. Therefore, AT&T's motion to dismiss Count I is DENIED.

B. Count II: California Trade Secret Misappropriation

Averon also alleges that AT&T's actions constitute a violation of the CUTSA. D.I. 18 ¶¶ 93–100. Like the federal trade secret allegations, this issue also turns on whether Averon has successfully alleged "improper means" within the definition of the statute. Because the language defining "improper means" for the two statutes is nearly identical, so too is the legal analysis. *See* 18 U.S.C. § 1839(6); Cal. Civ. Code § 3426.1(a).

Based on the reasoning articulated in III.A., *supra*, the Court finds that—accepting Averon's allegations as true and viewing those allegations in the light most favorable to it—Averon has sufficiently pleaded facts showing that its claim is facially plausible. Therefore, AT&T's motion to dismiss Count II is DENIED.

C. Count III: Fraud and Misrepresentation

In Count III of the complaint, Averon alleges that AT&T's statements and actions surrounding cancelation of the UMA constitute fraud and misrepresentation. D.I. 18 ¶¶ 101–15. Averon alleges that, during the meeting between Averon and AT&T following AT&T's cancelation of the UMA, AT&T gave Averon three "Termination Reasons" for canceling the contract, which were (1) "that AT&T was no longer interested in working with Averon," (2) that AT&T "was going in a different direction," and (3) that AT&T "was stopping its header enrichment program." *Id.*

¶ 108. Averon also alleges that during the meeting, AT&T "concealed" from Averon the following facts:

(i) AT&T had formed ZenKey;

(ii) ZenKey's purpose was to offer cellular-based authentication signaling;

(iii) ZenKey was a direct competitor to Averon;

(iv) AT&T formed and operated ZenKey as a joint venture with Verizon and T-Mobile, two wireless carriers that AT&T had introduced to Averon as prospective partners or customers for Averon, with the introductions occurring during the 2018 Averon AT&T UMA, MIT, and DG contract periods;

(v) AT&T and/or ZenKey, via its joint venture relationship with AT&T, were in the process of contacting (or had contacted) prospective Averon customers that were disclosed to AT&T pursuant to confidential provisions in the 2018 Averon AT&T UMA and the 2017 Averon AT&T NDA; and

(vi) AT&T used Averon's confidential information, including its Wi-Fi solution trade secrets, to develop ZenKey.

Id. ¶ 109. Averon alleges "AT&T knew the Termination Reasons it offered to Averon, and AT&T's other concealments and omissions, were false because AT&T had already formed ZenKey to provide cellular-based authentication services in concert with Verizon and T-Mobile." *Id.* ¶ 110. The complaint goes on to state that "AT&T's misrepresentations, concealments and omissions were intentional and material, as AT&T knew terminating the cellular-based signaling contract would directly impact the viability of Averon's business model, lead to the loss of Averon's potential sales contracts, lead to the loss of Averon's investor base, and ultimately lead to the demise of Averon." *Id.* ¶ 111. Averon states that it "reasonably and justifiably relied on AT&T's misrepresentations, concealments and omissions when, after AT&T disclosed the Termination Reasons, Averon and its leadership team discussed the future of

Averon internally, including attempting to adapt Averon's technology in a new way without access to AT&T's signaling, and . . . retain[ing] employees after AT&T's termination." *Id.* ¶ 113. Averon further states that "AT&T's misrepresentations, concealments and omissions caused Averon harm. Averon was led to believe that AT&T was abandoning the cellular-based authentication market, which led to the demise of Averon because AT&T's cellular-based signaling was crucial to deploying Averon's authentication product." *Id.* ¶ 114. Averon closes its allegations for Count III by stating "[t]he lack of access to AT&T's signaling directly impacted the viability of Averon's business model, led to the loss of Averon's potential sales contracts, led to the loss of Averon's employees and investor base, and ultimately led to the demise of Averon." *Id.* ¶ 115.

In its motion to dismiss, AT&T offers three separate arguments for why dismissal of this claim is appropriate, including failure to state a claim, the economic loss doctrine, and preemption by the CUTSA. D.I. 23 at 5, 8, 11. The Court finds that AT&T's most persuasive argument for dismissal is Averon's failure to state a claim.

AT&T argues that Averon has failed to sufficiently plead that AT&T made any misrepresentations. D.I. 23 at 11. Regarding the Termination Reasons, AT&T alleges that Averon has failed to allege with specificity *what* in those three statements are false. *Id.* In its response to AT&T's motion to dismiss, Averon alleges that all three statements were false. D.I. 30 at 8. With respect to the first two Termination Reasons—"AT&T was no longer interested in working with Averon," and AT&T "was going in a different direction,"—this Court agrees with AT&T that there is nothing

in the complaint to support a finding that AT&T was untruthful in making these statements. D.I. 23 at 11. The mere fact that AT&T canceled its contract with Averon seems to necessitate finding that AT&T *was* truthful in its statements that it was no longer interested in working with Averon and that it was going in a different direction. Next, Averon has not sufficiently pleaded that AT&T continued providing "header enrichment services" to ZenKey, or anyone else, following cancelation of the contract. Averon disagrees, and argues that its complaint addresses the third Termination Reason when it states "ZenKey was and is a similarly-situated customer to Averon, who would utilize AT&T's Service or Service Components for cellular signaling," D.I. 18 ¶ 59, and further that AT&T led it to "believe that AT&T was abandoning the cellular-based authentication market," *id.* ¶ 114. Even assuming that these allegations are equivalent to Averon directly alleging that AT&T continued providing its header enrichment services to others, Averon has not pleaded additional facts to support this allegation of fraud such that it meets the particularity requirements of Rule 9(b).

Regarding the allegedly "concealed" information Averon cites in ¶ 114 of the complaint, D.I. 18, Averon has failed to plead any reason why AT&T would have a duty to disclose its formation of the ZenKey joint venture to Averon. Without such a duty to disclose, the omissions could not serve as the basis for a fraud claim. *See Huy Fong Foods, Inc. v. Underwood Ranches, LP*, 281 Cal. Rptr. 3d 757, 765 (Cal. App. 2d 2021) (requiring a duty to disclose for fraudulent concealment claims).

AT&T also argues that Averon's complaint fails to properly allege intent to induce reliance, justifiable reliance, and damages. D.I. 23 at 11–12. At bottom, all of these remaining challenges relate to causation between the alleged misrepresentations and the harm Averon ultimately suffered. AT&T points out that Averon's pleadings about reliance and damages are actually related to the termination of the contract itself and Averon's loss of AT&T's signaling services, not any purported misrepresentations or omissions that occurred during the post-cancelation meeting. *Id.* This Court agrees. Averon's complaint alleges that "*[t]he lack of access to AT&T's signaling* directly impacted the viability of Averon's business model, led to the loss of Averon's potential sales contracts, led to the loss of Averon's employees and investor base, and ultimately led to the demise of Averon." D.I. 18 ¶ 115 (emphasis added). This loss of signaling is separate from any misrepresentations about AT&T's signaling services, which is what Averon has alleged is fraudulent. In its response to the motion to dismiss, Averon again attempts to argue that AT&T's misrepresentations were the cause of Averon's demise, yet it continues to assert that the reason it chose to dissolve the company was because it had lost access to AT&T's signaling services and was unable to adapt the technology to work properly without access. D.I. 30 at 9–10. Even assuming that AT&T's statements were false, Averon has failed to plausibly allege that the post-cancellation statements made (or omitted) by AT&T caused the harm that Averon claims.

AT&T also alleges that Count III is barred by the economic loss doctrine and preemption under the CUTSA. D.I. 23 at 5, 9. The Court is not persuaded by these

arguments for dismissal. First, AT&T argues that "Averon's fraud claim is barred because the alleged harm is merely the economic loss from the asserted breach of the MIT and DG." *Id.* at 6. In response, Averon contends that it suffered additional harm beyond the scope of damages for contract because "AT&T's formation of ZenKey as a joint venture with Verizon and T-Mobile and its actions in leading Averon to believe it did not have a viable business model preempted Averon from developing a business around its technology." D.I. 30 at 19. Assuming for the sake of argument that Averon had properly stated a claim for fraud based on AT&T's representations and omissions from the post-cancelation meeting, dismissal under the economic loss doctrine would be improper. Averon's fraud claim alleges that the misrepresentations *themselves* caused Averon harm. Thus, the fraud harm would be distinct from the purely contractual harm related to loss of signaling services. AT&T also argues that the CUTSA preemption provisions should bar this fraud claim. While the Court finds that this is a closer call than the economic loss argument, the allegedly fraudulent acts—such as concealing the formation of ZenKey and contacting Averon's prospective customers—are distinct from pure trade secret misappropriation.

In sum, because the Court holds that Averon has failed to plead sufficient facts to survive a motion to dismiss for its fraud claim, AT&T's motion to dismiss Count III is GRANTED.

D. Count IV: Breach of Contract, 2018 Averon-AT&T UMA

In Count IV of the complaint, Averon alleges that "AT&T breached the 2018 Averon-AT&T UMA when it disclosed Averon's trade secrets to ZenKey without

authorization." D.I. 18 ¶ 121. As a second theory of breach for the 2018 UMA, Averon alleges that "AT&T also breached the 2018 Averon-AT&T UMA when AT&T canceled the UMA yet, unknown to Averon at the time of cancellation, continued to provide services to ZenKey, who was a similarly-situated customer under the 2018 Averon-AT&T UMA." *Id.* ¶ 123. AT&T challenges both theories of breach. D.I. 23 at 13. AT&T argues that Averon's first theory is "fatally inconsistent with Averon's misappropriation allegations, which expressly claim that the trades secrets have nothing to do with the UMA." *Id.* Second, AT&T asserts that Averon cannot and does not allege that AT&T provided header enrichment services to ZenKey. *Id.* at 14.

Regarding Averon's first theory of breach, Averon argues that its inconsistent statements are permissible under Rule 8(b). *See* Fed. R. Civ. P. 8(b) and discussion *supra*. AT&T argues that it is Averon—not AT&T—that knows its own trade secrets and their applicability to the UMA. D.I. 23 at 13. In its response briefing, Averon frames the issue as one of contract interpretation, rather than a pure factual issue, stating that "if Averon is correct that its trade secrets do not relate to the UMA (because of the narrow scope of the UMA, as detailed above), then Averon cannot have a claim for breach of the UMA over AT&T's disclosure of its trade secrets. But if the Court finds that Averon's trade secrets fall under the UMA, then AT&T would be in breach of the UMA over AT&T's disclosure of its trade secrets." D.I. 30 at 11. Averon's suggestion that it may properly plead breach of the UMA for disclosure of trade secrets because this Court could theoretically interpret the 2018 UMA to cover Averon's trade secrets—despite Averon specifically pleading facts stating that the

UMA is *not* related to those trade secrets, D.I. 18 ¶¶ 86, 95—is an unreasonable position in conflict with the Rule 8 and Rule 11 requirements set out above. D.I. 30 at 11; Fed. R. Civ. P. 8, 11. This Court declines to adopt an implausible interpretation of the UMA that neither party has suggested and would be completely incompatible with other facts alleged and sworn to be true in the complaint. Based on the pleadings and the parties' arguments, the 2018 UMA is a specific agreement that states the terms and conditions under which AT&T provided Averon with cellular signaling services (specifically, header enrichment information). *See* D.I. 18, Ex. D. Because there is no plausible interpretation of the 2018 UMA that would cover Averon's trade secrets—nor does Averon attempt to supply one—and because Averon admits the 2018 UMA does not cover the trade secrets under Averon's interpretation, Averon has failed to state a claim for this theory of breach.

Regarding Averon's second theory of breach, that AT&T breached the 2018 UMA when AT&T allegedly canceled the UMA but "continued to provide services to ZenKey, who was a similarly-situated customer under the [2018 UMA]," D.I. 18 ¶ 123, the Court also holds that Averon has failed to state a claim. The 2018 UMA has a provision stating that "AT&T may discontinue providing a Service upon 12 months' notice, or a Service Component upon 120 days' notice, but only where AT&T generally discontinues providing the Service or Service Component to similarly-situated customers." *Id.* ¶ 57 (emphasis removed). AT&T argues that Averon did not adequately allege it breached this provision because Averon did not allege any additional facts to show that AT&T provided ZenKey with header enrichment

services. D.I. 23 at 14. The Court is in agreement with AT&T that, beyond the bare allegation of that fact itself, there are no facts in the Complaint showing that AT&T provided ZenKey with header enrichment services after the cancelation of the Averon agreement; and further, there are no facts showing how this alleged breach of contract harmed Averon in any way. *See* D.I. 18 ¶¶ 116–24. For both theories of breach under the UMA, AT&T also alleges that the claims are time-barred based on a limitation in the contract, but because the Court determines that Averon has failed to state a claim on other grounds, it need not address the timeliness issues. *See* D.I. 23 at 13–14.

Accordingly, for the reasons set out above, AT&T's motion to dismiss Count IV is GRANTED.

E. Count V: Breach of Contract, 2017 Averon-AT&T NDA

Averon's Count V alleges that "AT&T breached the 2017 Averon-AT&T NDA when it disclosed Averon's trade secrets to ZenKey without authorization. D.I. 18 ¶ 129. AT&T argues that Averon's theory of breach is inadequately pleaded and time barred. Like Counts I and II for trade secret misappropriation, this claim turns on interpretation of the ambiguous "Purpose" of the 2017 NDA and whether the 2018 UMA extinguished the earlier agreement or whether AT&T had an ongoing obligation of confidentiality. *See* discussion *supra*, III.A., III.B. Taking the facts in the complaint as true, and based on the ambiguity of the scope of the 2017 NDA, which is a factual

question inappropriate for disposition at this stage of the proceedings, AT&T's motion to dismiss Count V is DENIED.

F. Count VI: Unfair Competition, Deceptive Advertising

In Count VI of the complaint, Averon alleges that Defendants (including both AT&T entities and ZenKey) "engaged in unfair competition by using deceptive, untrue, and misleading advertising" by "claiming ZenKey's technology was novel and innovative." D.I. 18 ¶¶ 132–39. In its motion to dismiss, AT&T argues that Count VI fails to state a claim for deceptive advertising, offering a number of different grounds for dismissal, including lack of statutory standing, failure to allege likelihood of confusion, and lack of actionability because the alleged statements constitute mere puffery. D.I. 23 at 16.

To support its allegations, Averon identifies four instances—a press release, two articles, and a video conference—where ZenKey touted the advantages of the ZenKey technology. D.I. 18 ¶¶ 134–37; Exs. I, J, K. In these publications, ZenKey allegedly stated that its technology was "[a] unique, network-based identity solution that relies on data derived from wireless carriers to verify users," "next-gen innovation at its finest," "a new solution that leverages the network and SIM card details to deliver authentication and identity verification features to web and mobile applications," and finally that ZenKey uses "the unique fraud preventions services of the wireless network," and that the ZenKey "solution is the only one of its kind in the U.S. market." D.I. 18 ¶¶ 134–37; Exs. I, J, K. Averon asserts that "Defendants made or caused these representations to be made to the public and industry, having

knowledge of Averon's trade secrets and other confidential information and knowledge that Averon was the innovator and owner of the novel technology" and further that "Averon lost money as a result of Defendants' unfair, deceptive, untrue, and misleading advertising." D.I. 18 ¶¶ 138–39.

As AT&T points out in its motion to dismiss, Averon has failed to allege *any* facts that could be construed as supporting the requisite likelihood of confusion element for a CUCL claim.[4] *See* D.I. 23 at 16. There is no mention of the reasonable consumer, or any other advertising recipient in the complaint. *See* D.I. 18 ¶¶ 132–39. In response to AT&T's motion to dismiss, Averon argues that likelihood of confusion is a question of fact, and thus, not suitable for adjudication at this stage in the proceeding. D.I. 30 at 14 (citing *Rojas v. Gen. Mills, Inc.*, No. 12-cv-05099-WHO, 2014 WL 1248017, at *3 (N.D. Cal. Mar. 26, 2014)). While Averon is correct that it would be inappropriate to evaluate and reject Averon's well-pleaded facts at this stage, that standard does not allow Averon to avoid dismissal in the complete absence of facts alleging likelihood of confusion. *See Abramson v. Marriott Ownership Resorts, Inc.*, 155 F. Supp. 3d 1056, 1066–67 (C.D. Cal. 2016) (dismissing CUCL claim for failure to adequately allege that reasonable members of the public are likely to be deceived).

[4] AT&T's motion to dismiss only addresses a single LinkedIn post made by an AT&T employee. *See* D.I. 23 at 16. Averon argues that AT&T improperly ignored the other three allegedly deceptive advertisements, stating that AT&T is liable as a joint tortfeasor for ZenKey's advertising. D.I. 30 at 15. In its reply brief, AT&T contests this assertion, stating that Averon has failed to allege joint tortfeasor liability in the complaint. D.I. 32 at 7. Despite these disagreements, AT&T's argument regarding Averon's failure to allege likelihood of confusion is applicable to all of the asserted advertisements, and the Court addresses the advertisements as a whole.

Specifically addressing the LinkedIn post made by an AT&T employee, AT&T also argues that the statement "next-gen innovation at its finest" is mere puffery that cannot be actionably under the CUCL. D.I. 23 at 16. The Court agrees. Other district courts have held that similarly vague assertions that a product is "original" or "classic" are non-actionable puffery. *See Rojas v. General Mills, Inc.*, 2014 WL 1248017, at *4 (N.D. Cal., 2014). The other advertisements that Averon alleges are deceptive might make a closer case, but the Court need not parse the exact language of the advertisements in light of Averon's failure to plead likelihood of confusion.

Because the Court holds that Averon has failed to plead sufficient facts to survive a motion to dismiss for its deceptive advertising claim, AT&T's motion to dismiss Count VI is GRANTED.

G. Count VII: Unfair Competition, Unfair and Unlawful Business Practices

Count VII of Averon's complaint alleges that all three Defendants engaged in both unfair and unlawful business practices. D.I. 18 ¶¶ 140–43. To support its unfair business practices allegation, Averon states that "AT&T and ZenKey engaged in unfair business practices after AT&T cancelled its signaling contracts with Averon on February 1, 2019. Specifically, AT&T, in a joint venture with Verizon and T-Mobile that accounted for approximately 98% of the wireless subscriber market, developed and implemented ZenKey using Averon's proprietary software technology and effectively locked Averon out of the marketplace." *Id.* ¶ 141. Averon also alleges that "AT&T and ZenKey also engaged in unlawful business practices. For example, those practices constitute trade secret misappropriation, breach of contract, and intentional

interference with prospective economic relationships, as alleged herein and incorporated herein by reference." *Id.* ¶ 142. Finally, Averon alleges that "Averon lost money as a result of AT&T and ZenKey's unfair and unlawful business practices." *Id.* ¶ 143.

AT&T argues in its motion to dismiss that the claim is preempted by the CUTSA or alternatively that dismissal is proper because Averon has failed to allege any unfair or unlawful conduct by AT&T. D.I. 23 at 9, 17–18. To the extent that Averon attempts to base its assertion of unlawful business practices on its CUTSA claim, the Court agrees with AT&T that this claim is preempted by the express preemption clause of the trade secret statute because these claims arise out of the same nexus of facts. *See K.C. Multimedia*, 171 Cal. App. 4th at 961–62. AT&T's second argument—that Averon has not pleaded any unlawful action—is entirely dependent on AT&T succeeding on its motion to dismiss for the two breach of contract claims and intentional interference with prospective economic relationships. D.I. 23 at 17. While AT&T has been successful on most of its attempts at dismissal, the breach of contract claim for the 2017 NDA survives. Accordingly, the breach of contract claim could still serve as the predicate "unlawful" act under the CUCL.

Further, the Court holds that dismissal of Averon's unfair competition claim is improper at this stage of the proceedings. AT&T alleges that CUTSA also preempts Averon's unfair competition claim because they arise out of the same set of facts. *Id.* at 9. However, contrary to AT&T's assertions, Averon's claim about unfair competition also encompasses its allegations about the collusive formation of ZenKey

by market players that make up 98% of the wireless subscriber market. *See* D.I. 18 ¶ 141. Reading the complaint in the light most favorable to Averon, there are sufficient facts to support an allegation that AT&T and ZenKey engaged in unfair practices that threaten to harm competition in violation of the statute. *See id.* ¶¶ 34, 52–53, 64–68, 71, 141 (alleging that ZenKey possessed overwhelming market control, ZenKey was developed and implemented using Averon's proprietary technology, and that Averon had shared its customer lists with AT&T and informed AT&T of imminent sales agreements). Whether the totality of Averon's allegations amounts to the level of being "unfair" is then a question of fact, which is proper for disposition at a later date.

In sum, AT&T's motion to dismiss Averon's Count VII is DENIED because Averon has properly stated a claim that it is plausibly entitled to relief.

H. Count VIII: Intentional Interference with Prospective Economic Relations, Potential Customers of Averon

In Count VIII of the complaint, Averon alleges that Defendants engaged in intentional interference with prospective economic relations when ZenKey formed partnerships with some of Averon's prospective customers, effectively destroying Averon's opportunity to pursue those relationships. D.I. 18 ¶¶ 144–55. In its motion to dismiss, AT&T offers three separate arguments for why dismissal of this claim is appropriate, including failure to state a claim, the economic loss doctrine, and

preemption by the CUTSA. D.I. 23 at 6, 9, 18. The Court finds that AT&T's most persuasive argument for dismissal is Averon's failure to state a claim.

In its response briefing, Averon argues that the allegedly "wrongful act" that supports this claim—presumably to avoid the above preemption arguments—is Averon's pleading that it "confidentially 'shared its customer lists with AT&T' on multiple written requests from AT&T." D.I. 30 at 16. The Court is not persuaded by this argument. Averon does not identify any "determinable standard" that AT&T violated by allegedly requesting and sharing Averon's customer list. *See Korea Supply*, 29 Cal. 4th at 1153. And to the extent Averon is relying on a contractual confidentiality provision or trade secret misappropriation to establish why AT&T's actions were wrong, then the economic loss doctrine or the CUTSA preemption clause would apply to bar the claim. *See Virgin Scent,* 615 F.Supp.3d at 1136; *K.C. Multimedia*, 171 Cal. App. 4th at 954, 958.

Accordingly, because the Court finds that Averon has not plausibly alleged intentional interference with economic relations, AT&T's motion to dismiss Count VIII is GRANTED.

I. Count IX: Intentional Interference with Prospective Economic Relations, Potential Agreement with Verizon

In Count IX of the complaint, Averon again alleges that Defendants intentionally interfered with Averon's prospective economic relations, this time for its potential agreement with Verizon. D.I. 18 ¶¶ 156–72. In its motion to dismiss, AT&T offers two separate arguments for why dismissal of this claim is appropriate,

including failure to state a claim and the economic loss doctrine. D.I. 23 at 1–2. The Court finds that AT&T's most persuasive argument for dismissal is Averon's failure to state a claim.

Like the previous count of intentional interference with prospective economic relations, Averon has failed to plead an independently wrongful act that violates a "determinable standard." Averon explains that the allegedly wrongful act that supports this claim is that "AT&T cancelled Averon's signaling contracts while at the same time developing ZenKey as a joint venture with Verizon and T-Mobile" and further that "AT&T knew this would 'directly impact the viability of Averon's business model and would lead to the demise of Averon.'" D.I. 30 at 16–17. However objectionable this behavior might be from the perspective of Averon, the complaint does not point to any "constitutional, statutory, regulatory, common law, or other determinable standard" that Defendants' behavior allegedly violates. *See Korea Supply*, 29 Cal. 4th at 1159. To the extent Averon is relying on a contractual duty, this claim would be preempted by the economic loss doctrine as well.

Accordingly, because the Court finds that Averon has not plausibly stated a claim for intentional interference with economic relations, AT&T's motion to dismiss Count IX is GRANTED.

IV. CONCLUSION

For the reasons stated above, AT&T's motion to dismiss as to Counts I, II, V and VII is DENIED. AT&T's motion to dismiss the remaining Counts III, IV, VI, VIII, and IX is GRANTED.