UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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Civil Action No. 1:17-cv-7389

CHAMPIONS LEAGUE, INC. AND CHAMPIONS LEAGUE PARTNERS, INC.,

Plaintiffs,

vs.

BIG3 BASKETBALL, LLC,

Defendant.

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MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT

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Defendant Big3 Basketball, LLC (hereafter "Big3") submits this Memorandum of Law in Support of its Motion to Dismiss Plaintiffs' Champions League, Inc. and Champions League Partners, Inc.'s (hereafter collectively "Plaintiffs" or "CBL") Complaint.

INTRODUCTION

This action is brought by Carl George, the so-called founder of a fictitious league whimsically (if not ironically) named the Champions League LLC. This self-proclaimed "basketball league" never played a single basketball game since its fanciful announcement in 2014, after "raising" $6.6 million from people Mr. George labeled as "investors."

During the past 22 months, Mr. George has reacted erratically when confronted by victims of his fraud when they realized the so-called league was in fact nothing more than a Ponzi scheme. Mr. George's solution has been to serially sue the competition and heap blame and litigation on them.

Along these lines, Mr. George previously brought a lawsuit in the Southern District of New York where he first blamed the weather and then his marketing company for canceling the inaugural game for the supposed "league" on January 12, 2016 and on April 10, 2016, respectively.[1] In this previous federal action which was dismissed by the Court, Mr. George alleged the marketing company conspired with the National Basketball Association ("NBA") former commissioner to sabotage the league.

In the instant action, Mr. George has conjured up new facts. Instead of the inaugural game taking place on January 12, 2016 or on April 10, 2016, as pled in his previous case, Mr. George now claims that the CBL did not even announce the commencement of its league

[1] In the previous action, Mr. George alleged that the CBL's inaugural game was originally scheduled to be on January 12, 2016 at the Chaifetz Arena in St. Louis but it was rescheduled for April 10, 2016 due to flooding in the Metropolitan St. Louis area.

until July 2017 and that the inaugural game was scheduled for **August 23, 2017**. According to the instant complaint, various unidentified "players" slated to play in the August 23, 2017 game could not play because of their contracts with the Big3 and the inaugural game was ultimately canceled due to the alleged threats of players and other misconduct by the Big3. On this basis, the Complaint by the CBL alleges claims against the Big3 for promissory estoppel, breach of contract, misappropriation of proprietary information, fraud/fraud in the inducement, unjust enrichment, and unfair competition and seeks "lost profits and other damages in an amount not less than $100 million." Complaint, ¶ 69.

As a basic premise of all of these claims, Plaintiffs allege that an agreement was reached with Jeff Kwatinetz on behalf of the Big3,[2] and Mr. George on behalf of the CBL, on a phone call in February 2017 and that this alleged agreement caused the CBL to take certain measures to its detriment. However, the allegations in the prior federal action fatally undermine Plaintiffs' instant claims, including the crucial elements of consideration for such an agreement, the CBL's justifiable reliance on the Big3's alleged misrepresentations, and any resulting damage to Plaintiffs.

Even if one were to assume the truth of the facts pled by Mr. George and ignore the conflicting federal complaints he filed, each of the causes of action alleged by Plaintiffs fail to state a valid claim and should be dismissed with prejudice, as explained below.

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[2] In stark contrast to the CBL, the Big3 is, in fact, a wildly successful professional basketball league which played a season with actual games, an actual championship, and an actual television contract.

PROCEDURAL BACKGROUND

Plaintiffs filed their complaint in New York Supreme Court on September 1, 2017. On September 27, 2017, Defendant Big3 Basketball, LLC filed a Notice of Removal, ECF No. 1. On October 4, 2017, Defendant Big3 Basketball, LLC filed an Amended Notice of Removal, ECF No. 4.

STATEMENT OF FACTS

According to the Complaint, Champions League Inc., and its subsidiary Champions League Basketball League, LLC, were created to operate a basketball league for retired players from the NBA. However, since its founding in 2014, no games have been played. The Complaint alleges that CBL, and an investment subsidiary Champions League Partners, Inc. ("CLP") have raised approximately $6 million in connection with Regulation D (Rule 506) funds from accredited investors and approximately $605,000 from over 1,700 unaccredited investors through SEC Regulation CF, more commonly known as "crowd-funding." Complaint, ¶¶ 5, 13-27.

The Complaint alleges that by mid-2016 over 140 players "were generally signed to substantially similar contracts" and the "contracts were not limited to a specific term and obligated players to report and play with their designated teams once the league provided notice of the commencement of the league and/or once the league scheduled a game involving such player's designated team."[3] Complaint, ¶¶ 30-33. The Complaint alleges that the CBL notified players of the commencement of its league in July 2017 and that CBL's inaugural game was scheduled for August 23, 2017. Complaint, ¶¶ 50-51.

[3] As an initial "red flag," if the Complaint is to be believed, the players in the so-called league had no knowledge of when the league would ever commence, were required to respond at the whim of league to play, and were essentially on active duty indefinitely.

The Complaint alleges that on or around December 2016 another basketball operation called the Big3 LLC started. Unlike the CBL which "focuses more on the traditional '5 on 5' basketball, where each team has five players on the court during playing time," the Big3 (as the name suggests) "focuses on what is commonly referred to as '3 on 3' basketball" where each team has three players on the Court at a time and where only half of the court is utilized. Complaint, ¶¶ 35-36.

The Complaint alleges that even though the CBL had apparently been in existence since 2014, that on or around February 2017 CBL desired to accommodate the schedule of Big3. Complaint, ¶¶ 40, 49. The Complaint alleges that the Big3 "held tryouts, draft [*sic*] and initial games" in "May and June of 2017." Complaint, ¶ 46. The Complaint alleges that "primarily in deference and in abidance with the CBL's agreement with the Big3, the CBL delayed its launch until the late summer 2017 so that the Big3 season would be largely completed." Complaint, ¶ 49.

The Complaint alleges that on or around February 16, 2017, there was a call between Jeff Kwatinetz, a co-founder of the Big3, and Carl George, founder of CBL, which the "main focus of the call would be to discuss and coordinate schedules so that players could participate in the both the Big3 as well as the CBL. Complaint, ¶ 40. The Complaint alleges that this call about scheduling led to an oral agreement between the parties. Complaint, ¶ 41. The Complaint refers to this phone call as the "February 2017 agreements" and one instance refers to it as the "February 2016 Agreements." Complaint, ¶ 81. Plaintiffs allege that the

parties discussed memorializing the agreement with attorneys in writing but that never took place.[4] Complaint, ¶ 41.

On its face, such an agreement would be completely illogical both for the Big3 to bind itself to terms with the CBL, which lacked the wherewithal to host an official basketball game since its founding in 2014, or for the CBL (if it were actually a functioning league) to postpone its league in charitable deference to the Big3. Regardless, assuming the facts as pled in the Complaint, Plaintiffs allege vague, ambiguous, and conflicting iterations of this so-called agreement.

In one instance, Plaintiffs allege that the oral agreement provided: "(a) BIG3 basketball activities would be limited to 3 on 3 basketball and that players' agreements would reflect that they could not play in any other 3 on 3 league; ***(b) both the BIG3 and CBL would allow players to participate in both leagues and that CBL would move its games to Tuesday, Wednesday and Thursday so that players could play in the long format Big3 on weekends and have time to recover;*** (c) in the case that there is a conflict with respect to any specific player, the BIG3 and CBL agreed to separately discuss on a case-by-case basis so that both the BIG3 and the CBL can help maximize player utilization and exposure." Complaint, ¶ 41 (emphasis added).

Then elsewhere, Plaintiffs allege different terms for the purported oral agreement, which they claim provided: "(a) BIG3 basketball activities would be limited to 3 on 3 basketball; (b) ***both the BIG3 and CBL would use their commercially reasonable best***

[4] In truth, the parties never had an "agreement" of any kind and the allegation in the Complaint is a total fabrication. As a matter of common sense, it defies logic that something like this would take place on a single phone call with no writing or e-mail to memorialize the conversation.

efforts to coordinate schedules to allow players to participate in both basketball activities; (c) in the case that there is a conflict with respect to any specific player, the BIG3 and CBL agreed to separately discuss on a case-by-case basis so that both the BIG3 and the CBL can help maximize player utilization and exposure, ***in accordance with the player's wishes."*** Complaint, ¶ 72 (emphasis added). Plaintiffs plead conflicting terms in the Complaint adding a "commercially reasonable best efforts" clause and a clause relating to effectuating the agreement "in accordance with the players wishes" in a later iteration. *See* Complaint, ¶ 71.

Moreover, the facts in the instant Complaint are contradicted by facts pled by the CBL in prior litigation before the Southern District of New York. In *Champions League, Inc. v. Larry Woodward and GS Advertising Corp* (S.D.N.Y. Case No. 16-2514) (the "Woodward Action"), the CBL alleged, quite differently, that its inaugural games were set for January 12, 2016 and on April 10, 2016, but that the defendant in that action, Larry Woodward through his company, "designed and executed a plan to sabotage Champion's inaugural event and usurp Champions and its assets." The Woodward Action was dismissed by the Court[5].

LEGAL STANDARD

Under Federal Rule of Civil Procedure 12(b)(6), a claim may be dismissed because of the plaintiff's "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). In order to survive a Rule 12(b)(6) motion, a plaintiff must comply with the

[5] While generally a court reviews the four-corners of a complaint when a party files a Rule 12(b)(6) motion, "a court need not feel constrained to accept as truth conflicting pleadings that make no sense, or that would render a claim incoherent, or that are contradicted either by statements in the complaint itself or by documents upon which its pleadings rely, or by facts of which the court may take judicial notice." *In re Livent, Inc. Noteholders Sec. Litig.*, 151 F. Supp. 2d 371, 405-06 (S.D.N.Y. 2001). Defendant has filed, concurrently herewith, a request for judicial notice regarding Plaintiff's contradictory allegations in their prior 2016 federal pleading.

pleading standard the Supreme Court articulated in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007) (articulating proper pleading standard under Federal Rule of Civil Procedure 8) and *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Under *Twombly*, a complaint should be dismissed where it does not contain sufficient allegations of fact to state a claim for relief that is "plausible on its face." *Twombly*, 550 U.S. at 570; *see also Fleurimond v. N.Y. Univ.*, 722 F.Supp.2d 352, 354 (E.D. N.Y. 2010).

Furthermore, this Court has held that Rule 9(b) of the Federal Rules of Civil Procedure requires that a fraud complaint set forth (1) precisely what statements were made in what documents or oral representations or what omissions were made; (2) the time and place of each such statement, and the person responsible for making it (or, in the case of omissions, not making it); (3) the content of such statements and the manner in which they misled the plaintiff; and (4) what the defendants obtained as a result of the fraud. *O & G Carriers, Inc. v. Smith*, 799 F. Supp. 1528, 1534 (S.D.N.Y. 1992); *see also Rombach v. Chang*, 355 F.3d 164, 170 (2nd Cir. 2004).

ARGUMENT

A. Plaintiffs Fail to State a Claim for Tortious Interference with Existing Contract.

Plaintiffs allege that they had "player contracts" with various unnamed basketball players. The Complaint, however, fails to identify a single basketball player who was prevented from playing in the CBL as result of conduct by the Defendant or otherwise. Based on its vague and inadequate allegations, Defendant is entirely bereft of notice as to whose contracts were allegedly interfered with.

Plaintiffs further allege that Defendant signed players to "highly restrictive contracts" that prohibited the unnamed basketball players from participating in Plaintiffs' basketball

games and which forced the basketball players to break their contracts with Plaintiffs. But Plaintiffs do not allege the terms of these allegedly "highly restrictive contracts."

Finally, Plaintiffs allege that Defendant "threatened" players if they played for Plaintiffs. But once again, Plaintiffs do not allege which basketball players were threatened or how they were threatened.

To sustain a claim for tortious interference with contract, there must have been a valid contract with a third party which the defendant intentionally induced the third party to breach, the third party must have breached its contract, and it must be demonstrated that the third party would not have breached its contract with plaintiff absent defendant's conduct. *White Plains Coat and Apron Co., Inc. v Cintas Corp.*, 8 NY3d 422, 426 (2007). Additionally, to sustain a claim for tortious interference with contract, certain basic information must be provided by the plaintiff.

In *AIM Int'l Trading, L.L.C. v. Valcucine S.p.A.*, No. 02 CIV. 1363 (PKL), 2003 WL 21203503 (S.D.N.Y. May 22, 2003), plaintiffs alleged tortious interference with certain contracts with unidentified product dealers. *Id.* at *5. The defendants contended that the claims involving the unnamed product dealers should be dismissed because the complaint failed to allege who these dealers were or what contracts were interfered with. *Id*. The court stated that the defendants' argument in this regard was "well taken" and further held that, to the extent that certain counts attempted to allege tortious interference with contracts between plaintiffs and unidentified product dealers, these counts were dismissed. *Id*.

Similarly here, Plaintiffs fail to allege who the unnamed basketball players were and what specific contracts were interfered with. Plaintiffs are required to allege at the very least the identity of the "third party" at issue with whom Plaintiffs claim they had a contract with

that was tortiously interfered with. Plaintiffs' failure to identify any such "player(s)" is fatal to their claim for tortious interference.

B. Plaintiffs Fail to State a Claim for Promissory Estoppel.

"'To establish a viable cause of action sounding in promissory estoppel, [the aggrieved party] must allege (1) a clear and unambiguous promise, (2) reasonable and foreseeable reliance by the party to whom the promise is made, and (3) an injury sustained in reliance on the promise []'. . . . Additionally, the injured party must demonstrate that it would be unconscionable to invoke the Statute of Frauds to bar such a claim." *Fleet Bank v. Pine Knoll Corp.*, 736 N.Y.S.2d 737, 742 (N.Y.A.D. 3d Dept., 2002) (quotations and citations omitted).

Notably, "[d]etrimental reliance is an indispensable element of a promissory estoppel claim [] and a failure to adequately plead that element requires dismissal." *Schroeder v. Pinterest Inc.*, 133 A.D.3d 12, 32 (N.Y. App. Div. 2015) (internal citations and citations omitted). Thus, in addition to pleading that reliance was reasonable and foreseeable, a plaintiff must have ***actually relied*** on the promise by taking, or refraining from taking, some action, which caused injury (i.e. relied on the promise to their detriment). *See Schroeder v. Pinterest Inc.*, 133 A.D.3d 12, 32 (N.Y. App. Div. 2015). A complaint must contain facts "showing that plaintiffs did something, or refrained from doing something, in reliance on [the alleged promise]." *See Schroeder v. Pinterest Inc.*, 133 A.D.3d 12, 32 (N.Y. App. Div. 2015). Moreover, a claim for promissory estoppel must "allege that plaintiff was injured 'by reason of' its reliance on [defendant's] promise." *Knight Securities L.P. v. Fiduciary Trust Co.*, 774 N.Y.S.2d 488, 490 (N.Y.A.D. 1 Dept., 2004)(citation omitted).

Here, as an initial matter, Plaintiffs cannot state a claim for promissory estoppel because Plaintiffs fail to allege that a clear and unambiguous promise was ever made. In fact, Plaintiffs themselves seem to be confused by the terms of the so-called oral agreement. Paragraph 41 and Paragraph 72 of the Complaint purport to state the terms of the so-called oral agreement, but in doing so, they conflict. In the first iteration, Plaintiffs refer to specific dates for when "players" could play in each league. In the second iteration, Plaintiffs state that the parties would use "commercially reasonable best efforts" in the event there were player conflicts between the leagues. *Compare* Complaint ¶ 41 *with* ¶ 72. Plaintiffs have failed to meet their burden of proving the existence of any promise by Big3, much less the terms of such a promise.

But even begrudgingly embracing the facts as pled, Plaintiffs still utterly fail to plead a cause of action for promissory estoppel. The purported agreement provides absolutely no guidance, direction, or any clear terms to govern corporate behavior amongst the leagues. What does "commercially reasonable best efforts" mean? Which players are at issue? (All? Some?) When and how do the leagues coordinate? What is a conflict? How long is this purported deal? When does the CBL intend to actually hold a game? Whatever it is that Plaintiffs are trying to plead in Paragraphs 41 and 72, it certainly is not a cognizable claim for promissory estoppel under New York Law. *See Kilgore v. Ocwen Loan Servicing, LLC*, 89 F. Supp. 3d 526, 534 (E.D.N.Y. 2015) ("'A promise that is too vague or too indefinite is not actionable under a theory of promissory estoppel.'" (citations omitted)); *Pan Am Corp. v. Delta Air Lines, Inc.*, 175 B.R. 438, 510 (S.D.N.Y. 1994) ("Under New York law, there can be no 'clear and unambiguous promise' where the promise is explicitly made conditional or contingent on some future event." (citation omitted)).

In addition to pleading vague and conflicting accounts of a phone conversation which purportedly resulted in an oral agreement, Plaintiffs also fail to plead the other necessary elements of a promissory estoppel claim including that reliance on the alleged agreement was reasonable and foreseeable or that Plaintiffs took or refrained from any actual action in reliance on the alleged promise.

Here, the Complaint fails to allege *how* Plaintiffs relied on any purported promise, and fails to detail what actions they took or refrained from taking in reliance on such promise, other than in broad conclusory and contradictory fashion. *See Schroeder v. Pinterest Inc.*, 133 A.D.3d 12, 32 (N.Y. App. Div. 2015). For example, Plaintiffs fail to allege that their conduct after the February 16, 2017 phone call in any way differed from how they conducted business prior to the purported "promise" being made, since no games were ever played and nothing changed with the status of the league since 2014. *See Knight Securities L.P. v. Fiduciary Trust Co.*, 774 N.Y.S.2d 488, 490 (N.Y.A.D. 1 Dept., 2004) (citation omitted) (plaintiff failed to plead facts as to what plaintiff did *after* [the promise was allegedly made] in reliance on [the] purported promise.").

Lastly, Plaintiffs fail to allege any injury sustained in reliance on the promise, much less plead its alleged injury with the requisite specificity that is required in bringing a claim for promissory estoppel. Although the Complaint vaguely asserts that certain players were prevented from playing due to alleged threats by the Big3, the Complaint fails to allege by name any specific player(s) who were prevented from playing. For the foregoing reasons, Plaintiffs' claim for promissory estoppel must fail.

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C. Plaintiffs Fail to State a Claim for Breach of Contract.

Plaintiffs fail to state a claim for breach of contract because, as noted above, Plaintiffs have failed to allege the most fundamental element of such a claim: the formation of a contract between Plaintiffs and Defendant. Plaintiffs do not allege the existence of a written contract. Rather, Plaintiffs have pled two alternative iterations of what they refer to as certain oral "February 2017 Agreements." But these purported oral agreements are not a valid and enforceable contract because they are void for vagueness and are violative of the Statute of Frauds requiring such agreements to be in writing.

The following elements must be pled on a breach of contract claim: (1) a valid and enforceable contract; (2) the plaintiff's performance of the contract; (3) breach by defendant; and (4) damages. The terms of a contract must also be sufficiently definite so that the parties' obligations are clear. *Bergin v. Century 21 Real Estate Corp.*, No. 98 CIV. 8075 (JGK), 2000 WL 223833, at *4 (S.D.N.Y. Feb. 25, 2000), *aff'd*, 234 F.3d 1261 (2d Cir. 2000). A contract is unenforceable for vagueness when its terms are too indefinite to allow a court to determine with reasonable certainty what each party has promised to do. *Id*. If the essential terms of an agreement cannot be determined with reasonable certainty, there is no contract. *Id*.

Here, the essential terms of the agreement cannot be determined with reasonable certainty. As an initial matter, the Plaintiffs plead two conflicting oral agreements that would impose different obligations between the parties, assuming one could even divine what "commercially reasonable best efforts" means. Additionally, assuming one could interpret which of the conflicting agreements control, the terms remain nonsensical in directing corporate conduct.

Certain of the alleged terms, such as Defendant's purported promise to "minimize disruption to Defendants' season" or to "largely avoid overlap with Defendants season" are not sufficiently specific to support a meeting of the minds. How was Defendant obligated to minimize disruption to Defendants' season? What does "largely avoid overlap" mean? Would it have been acceptable if some of the Plaintiffs' games were on the same days as Defendant's games? As all of this is highly unclear, the contract is void for vagueness.

Further, the "February 2017 Agreements," as alleged by Plaintiffs, would be an agreement in perpetuity which could not be performed within one year. Consideration of the Statute of Frauds as an affirmative defense is appropriate on a motion to dismiss, as such a motion is intended to weed out meritless claims, avoiding needless efforts on the parts of the parties and the Court and avoiding needless discovery. *Zeising v. Kelly*, 152 F. Supp. 2d 335, 343–44 (S.D.N.Y. 2001). This is consistent with the purpose of the Statute of Frauds, namely, to protect people from alleged contractual obligations not supported by written evidence. *Id*.

The Statute of Frauds states, "Every agreement, promise or undertaking is void, unless it or some note or memorandum thereof be in writing, and subscribed by the party to be charged therewith, or by his lawful agent, if such agreement, promise or undertaking ... [b]y its terms is not to be performed within one year from the making thereof...." *Darby Trading Inc. v. Shell Int'l Trading & Shipping Co.*, 568 F. Supp. 2d 329, 338 (S.D.N.Y. 2008).

In *Darby Trading Inc.*, the court had little difficulty determining that full performance on the contract could not have been completed within one year where the terms were not defined and clearly involved an on-going enterprise. *Id*. at 338. Similarly here, the various

iterations of the February 2017 Agreements were open-ended and not limited to a specific season or year; as such, on its face, such an agreement would purport to govern the long-term behavior of the parties. According to the Complaint, the CBL had the option to declare when its season would commence at any time, or any year. Further, the February 2017 Agreements purport to control the very corporate identity of the Big3 on a lasting basis in that it would always be a 3 on 3 league. *See also Borsack v. Chalk & Vermilion Fine Arts, Ltd.*, 974 F.Supp. 293, 298 n.3 (S.D.N.Y.1997) ("Where an alleged contract, as here, is indefinite as to duration and does not, by its terms, permit the defendant to discharge its performance obligations in less than one year, the statute requires a writing setting forth the essential terms of the agreement.").

Because Plaintiffs' breach of contract claim is violative of the Statute of Frauds, it is unenforceable and must be dismissed.

D. Plaintiffs Fail to State a Claim for Misappropriation of Proprietary Information.

In order to bring a claim for misappropriation of trade secrets, a plaintiff must plausibly allege "'(1) that it possessed a trade secret, and (2) that the defendants used that trade secret in breach of an agreement, confidential relationship or duty, or as the result of discovery by improper means.'" *PaySys International, Inc. v. Atos Se*, 2016 WL 7116132, at *7 (S.D.N.Y. 2016) (citations omitted); *DoubleClick Inc. v. Henderson*, 1997 WL 731413, at *3 (N.Y.Co.Ct.,1997); *Ferring B.V. v. Allergan, Inc.*, 4 F.Supp.3d 612, 627 (S.D.N.Y. 2014). The complaint must also "specify its trade secrets with sufficient specificity to inform the defendants of what they are alleged to have misappropriated." *PaySys International, Inc. v. Atos Se*, 2016 WL 7116132, at 8 (S.D.N.Y. 2016)

As explained below, Plaintiffs' claim for misappropriation of trade secrets fails because: (1) Plaintiffs do not identify with specificity what protectable trade secret is at issue; (2) Plaintiffs are not in possession of a trade secret; and (3) even if there was protectable information, Plaintiffs do not provide sufficient facts to plausibly allege that Defendant took any actions to misappropriate such information.

1. Plaintiffs fail to identify what trade secrets are at issue.

To support the threshold issue of the existence of a trade secret, a plaintiff must identify the trade secrets at issue with sufficient specificity to allow a defendant to counter the claim. *PaySys International, Inc. v. Atos Se*, 2016 WL 7116132, at *10 (S.D.N.Y. 2016). *See Alexander Interactive, Inc. v. Leisure Pro Ltd.*, 2014 WL 4651942, at *5 (S.D.N.Y. 2014) "To state a claim for misappropriation of trade secrets, a plaintiff must plead facts with sufficient particularity to provide defendants fair notice of what the claim is and the grounds upon which it rests . . . This requires, at minimum, that the plaintiff generally identify the trade secrets at issue." (internal quotation marks and citations omitted).

Here, Plaintiffs have failed to identify any specific trade secrets. The Complaint simply refers to the Plaintiffs' so-called league, which, to date, has never even played a basketball game, and its "strategies," "players," "business plans," and "structure." But these general references fail to provide a scintilla of detail to put Defendant on notice as to what is being deemed a trade secret. *See PaySys International, Inc. v. Atos Se*, 2016 WL 7116132, at *10 (S.D.N.Y. 2016) (citations omitted). Plaintiffs' failure to identify with specificity any protectable trade secret is fatal to this claim.

2. None of the information alleged by Plaintiffs constitute a trade secret.

"[A] trade secret 'must demonstrate novelty and originality to be protectable as a

property right under "[any] cause of action for [its] unauthorized use."' *Blank v. Pollack*, 916 F.Supp. 165, 174 (N.D.N.Y. 1996) (citations omitted). A trade secret is defined as "'any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it.'" *Ashland Management Inc. v. Janien*, 624 N.E.2d 1007, 1013 (N.Y. 1993) (citations omitted).

Courts consider the following six factors to be relevant in deciding whether particular information is a trade secret:

> "(1) the extent to which the information is known outside of [the] business; (2) the extent to which it is known by employees and others involved in [the] business; (3) the extent of measures taken by [the business] to guard the secrecy of the information; (4) the value of the information to [the business] and [its] competitors; (5) the amount of effort or money expended by [the business] in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others."

Id. (quoting Restatement (First) of Torts § 757 (1939), cmt. b); *Anacomp, Inc. v. Shell Knob Services, Inc.*, 1994 WL 9681, at *7 (S.D.N.Y. 1994). The most important factor is whether the information is secret. *See Lehman v. Dow Jones & Co., Inc.*, 783 F.2d 285, 298 (C.A.2 (N.Y.),1986); *Ashland Management Inc. v. Janien*, 624 N.E.2d 1007, 1013 (N.Y. 1993). To establish the existence of a trade secret, the plaintiff must demonstrate that "a substantial element of secrecy . . . exist[s]," such "that *except by use of improper means, there would be difficulty in acquiring the information*.'" *Q-Co Industries, Inc. v. Hoffman*, 625 F.Supp. 608, 617 (S.D.N.Y. 1985) (internal quotation marks omitted) (citations omitted) (emphasis added).

As noted above, Plaintiffs have failed to identify what exactly they allege is a trade secret here. If Plaintiffs are trying to allege that a three-on-three league is somehow a trade

secret, this is absurd. It is well known that basketball is one of the world's most popular and widely viewed sports. While frequently played with five players on each side, three-on-three, two-on-two, and one-on-one competitions are also common. Thus, the idea of a three-on-three league is not something novel or unique that Plaintiffs invented.

Furthermore, Plaintiffs' vague assertions about their "strategies," "players," "business plans," and "structure" are also not protectable trade secrets. Indeed, having a sports league with talented players who have retired from the NBA is not something the CBL invented or can protect. Under Plaintiffs' theory of trade secrets, they would own and control all the rights to "basketball" involving "retired players" in a "league" that has "a structure."

Moreover, much of the information about the CBL which Plaintiffs now attempt to allege are their trade secrets was actually made public when Plaintiffs were "crowdsourcing" to ostensibly comply with SEC regulations. *See* Complaint, ¶ 25. As such, none of this information is a protectable trade secret.

3. The Complaint fails to sufficiently allege that the Big3 engaged in acts constituting misappropriation.

To state a claim for trade secret misappropriation, Plaintiffs must allege sufficient facts to raise a plausible inference that Defendant misappropriated a trade secret. *See Geritrex Corp. v. Dermarite Industries*, LLC, 910 F.Supp. 955, 962 (S.D.N.Y. 1996).

Here, Plaintiffs fail to allege any specific facts regarding what actions Defendant took to misappropriate Plaintiffs' purported trade secrets. Plaintiffs' allegations are based on pure conjecture—allegations that "it appears" there are facts that could hypothetically support its allegation of misappropriation. *See* Complaint, ¶ 58. *Falconwood Corp. v. In-Touch*

Technologies, Ltd., 642 N.Y.S.2d 869, 870 (N.Y.A.D. 1 Dept.,1996) (conjecture about access is "certainly not proof that [a defendant] misappropriated it."

Because Plaintiffs have failed to sufficiently allege any of the requisite elements, their claim for misappropriation of trade secrets must fail.

E. Plaintiffs Fail to State a Claim for Fraud/Fraud in the Inducement.

Rule 9(b) requires that allegations of fraud or mistake "state with particularity the circumstances constituting fraud or mistake." Fed.R.Civ.P. 9(b). A complaint alleging fraud must set forth (1) precisely what statements were made in what documents or oral representations or what omissions were made; (2) the time and place of each such statement, and the person responsible for making it (or, in the case of omissions, not making it); (3) the content of such statements and the manner in which they misled the plaintiff; and (4) what the defendants obtained as a result of the fraud. *O & G Carriers, Inc. v. Smith*, 799 F. Supp. 1528, 1534 (S.D.N.Y. 1992).

To meet the stringent requirements of Rule 9(b), a plaintiff must not only give the who, what, and when with regard to an alleged false or misleading statement, but also must give particulars as to the respect in which plaintiff contends the statements were fraudulent. *Ressler v. Liz Claiborne, Inc.*, 75 F. Supp. 2d 43, 52 (E.D.N.Y. 1998), *aff'd sub nom. Fishbaum v. Liz Claiborne, Inc.*, 189 F.3d 460 (2d Cir. 1999). The purpose of these enhanced pleading requirements is to give a defendant fair notice of the claim against him, to protect a defendant's reputation from improvident charges of misconduct, and to limit strike suits. *Id*. The Second Circuit has instructed that these salutary purposes are to be rigorously enforced. *Id*.

For example, in *O & G Carriers*, 799 F. Supp. 1528, 1534 (S.D.N.Y. 1992), the court held that the plaintiff did not provide an adequate allegation of fraud. *Id*. The court specifically noted that the plaintiff failed to specify which defendant was responsible for which statement or omission. The court described this situation as leaving the defendants "entirely in the dark." *Id.* at 1535.

Defendant in this action is similarly "entirely in the dark." As discussed above, Plaintiffs fail to identify any of the player(s) they claim were improperly influenced by the Big3. Plaintiffs also provide conflicting accounts for what they claim took place during a single phone conversation which they allege constitutes an oral agreement. And they fail to explain the meaning of the alleged agreement's terms such as "commercially reasonable best efforts" or how the leagues would "coordinate schedules" or what it means to be "in accordance with the player's best wishes." For all the reasons previously discussed, Plaintiffs' conclusory and contradictory allegations fall woefully short of meeting the heightened pleading requirements for fraud.

F. Plaintiffs' Unjust Enrichment Claim Fails Because it is Duplicative of the Breach of Contract Claim.

Plaintiffs' unjust enrichment claim fails because it is duplicative of its breach of contract and tort claims. "[U]njust enrichment is not a catchall cause of action to be used when others fail." *Corsello v. Verizon New York, Inc.*, 967 N.E.2d 1177, 1185 (N.Y. 2012). "An unjust enrichment claim is not available where it simply duplicates, or replaces, a conventional contract or tort claim." *Id.* A cause of action alleging unjust enrichment is duplicative where it arises from the same set of facts and does not allege distinct and different damages. *See Town of Wallkill v. Rosenstein*, 837 N.Y.S.2d 212, 215 (N.Y.A.D. 2

Dept. 2007) (citations omitted); *Nyahsa Services, Inc. v. Recco Home Care Services, Inc.*, 36 N.Y.S.3d 270, 275–76 (N.Y.A.D. 3 Dept.,2016) (in affirming the dismissal of defendant's unjust enrichment claim, the court cited the fact that "the assertions raised in defendant's unjust enrichment claim echo those set forth in its breach of contract claim . . . and, therefore, such claim must be dismissed.").

Here, Plaintiffs' claim for unjust enrichment mirrors its breach of contract claim. As discussed above, since Plaintiffs' breach of contract claim is defective, its unjust enrichment claim must fail as well. *Thomas v. UBS AG*, 706 F.3d 846, 853 (7th Cir. 2013) (unjust enrichment dismissed as "redundant" of other claims, reasoning that "[n]o injustices are alleged other than those alleged elsewhere in the complaint.");

Further, "[t]he essence of unjust enrichment is that one party has received money or a benefit *at the expense of another*." *City of Syracuse v. R.A.C. Holding, Inc.*, 685 N.Y.S.2d 381, 382, (N.Y.A.D. 4 Dept.,1999) (emphasis added). To state a claim for unjust enrichment, the plaintiff must have directly conferred a specific benefit on the defendant. *See Prime Mover Capital Partners L.P. v. Elixir Gaming Techs., Inc.*, 898 F. Supp. 2d 673, 697 (S.D.N.Y. 2012), *aff'd*, 548 F. App'x 16 (2d Cir. 2013) (granting motion to dismiss unjust enrichment claim where only an indirect benefit was established, holding this to be "insufficient").

In the instant case, aside from their wholly conclusory allegations (*see, e.g.*, Complaint, ¶ 101 "gains and value to the Big 3 have been unjustly obtained and thus the Big3 has been unjustly enriched"), Plaintiffs have failed to plead any plausible facts to support their claim for unjust enrichment. Specifically, Plaintiffs fail to allege that the Big3's purported "widespread publicity" and the "value-added to Big3's business and

business prospect" was ***directly derived*** from any ***specific action*** taken by Plaintiffs and at Plaintiff's expense. *See Bilinski v. Keith Haring Foundation, Inc.*, 96 F.Supp.3d 35, 52 (S.D.N.Y. 2015) ("The benefit acquired by the defendant must be 'specific' and directly related to the loss suffered by the plaintiff." (citation omitted)); *id.* (court dismissed unjust enrichment claim where "Plaintiffs allege[d] . . .the value of [defendants'] [artwork] was increased by preventing others from selling [those] works[,]" reasoning that the "benefit acquired by [defendants]—the alleged increase in value of [the] [artwork] —is not a benefit flowing directly to the defendants at plaintiffs' expense[,] but is rather an indirect and hypothetical benefit.").

In sum, if Plaintiffs' other claims fail, Plaintiffs cannot salvage their complaint by alleging unjust enrichment, for the reasons stated above. If, however, the other theories survive, the unjust enrichment claim is duplicative. Either way, this claim fails.

G. Plaintiffs Fail to State a Claim for Unfair Competition.

"To state a claim for unfair competition, Plaintiffs must allege 'that the [D]efendants misappropriated the [P]laintiffs' labors, skills, expenditures, or good will and displayed some element of bad faith in doing so.'" *BanxCorp v. Costco Wholesale Corp.*, 723 F.Supp.2d 596, 617 (S.D.N.Y. 2010) (quoting *Abe's Rooms, Inc. v. Space Hunters, Inc.*, 833 N.Y.S.2d 138, 140 (N.Y.A.D. 2 Dept.,2007)). An unfair competition claim require a showing of the "bad faith misappropriation of a commercial advantage [] belong[ing] exclusively to [plaintiff]." *LoPresti v. Massachusetts Mut. Life Ins. Co.*, 820 N.Y.S.2d 275, 277 (N.Y.A.D. 2 Dept. 2006)(citations omitted).

Here, like its other claims, Plaintiffs' unfair competition claim is pled in conclusory fashion and asserts only that "BIG3's unlawful misappropriation of CBL's labor, skill, and

commercial advantage by exploiting proprietary information belonging to CBL was done in bad faith and allowed the BIG3 to take a windfall in revenue and publicity." Complaint, ¶ 103. For the reasons already stated, Plaintiffs have failed to establish a claim for misappropriation. Moreover, as pled, the Complaint does not support a finding of a "commercial advantage belonging only to plaintiffs," given that Plaintiffs' League is just one of many basketball leagues across the world, nor is there anything novel or unique about basketball. Further, the Complaint distinguishes the Big3 as a "3-on-3" league with different rules. Finally, as already discussed, it is entirely unclear from the Complaint what Plaintiffs mean by "structure," "business plan," or the identity of "players" subject to claims of unfair competition. For the foregoing reasons, Plaintiffs have failed to state a claim for unfair competition and this claim must fail as well.

CONCLUSION

For the foregoing reasons, Defendant Big3 respectfully requests the Court grant this motion in its entirety and dismiss the Complaint with prejudice.

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Respectfully submitted,

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