

Apollo Global Mgt., Inc v Cernich
2021 NY Slip Op 31741(U)
May 19, 2021
Supreme Court, New York County
Docket Number: 653234/2020
Judge: Andrew Borrok
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ANDREW BORROK **PART** **IAS MOTION 53EFM**

Justice

-----X

APOLLO GLOBAL MANAGEMENT, INC, APOLLO
MANAGEMENT, L.P., APOLLO ADVISORS VIII, L.P.,
APOLLO ADVISORS IX, L.P.,

Plaintiff,

- v -

STEPHEN CERNICH, HUAN TSENG,

Defendant.

-----X

INDEX NO. 653234/2020

MOTION DATE 09/21/2020

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31

were read on this motion to/for

DISMISS

Upon the foregoing documents, Stephen Cernich and Huan Tseng's (collectively, the **Defendants**) motion to dismiss is granted to the extent of limiting the plaintiffs' damages to the costs of developing its confidential information and investigative costs. The claim for unfair competition (fifth cause of action) is dismissed because the plaintiffs do not allege a confidential relationship or agreement to refrain from unfair competition and cannot otherwise ground a claim for lost profits.

The Relevant Facts and Circumstances

This action relates to the formation of Caldera, a new business that was clandestinely set up by certain former Apollo (hereinafter defined) employees while they were still at Apollo to compete with Apollo Global Management, Inc. (**Apollo**) and its affiliates, Apollo Management, L.P. (**Apollo Management**), Apollo Advisors VIII, L.P. (**Apollo VIII**), and Apollo Advisors IX, L.P.

(**Apollo IX**, together with Apollo, Apollo Management, Apollo VIII, and Apollo IX, the **Plaintiffs**) allegedly using certain confidential information of Apollo and the Defendants' active concealment of those employees' efforts and other participation in the scheme.

More specifically, Caldera was co-founded by Messrs. Siddiqui and Cernich with the assistance of Messrs. Dang and Tseng. Messrs. Siddiqui and Dang were former Apollo employees. The Defendants were former executives at Athene Holding, Ltd. (**Athene**), an alternative investment vehicle that Apollo formed for its clients (NYSCEF Doc. No. 16, ¶¶ 24-25). Mr. Cernich was a founder of Athene who resigned in June 2016 (*id.*, ¶ 24; NYSCEF Doc. No. 14 at 7). Mr. Tseng worked for Athene from October 2015 to September 2017 (NYSCEF Doc. No. 16, ¶ 25). Mr. Dang joined Apollo as an associate in 2011 and became a limited partner in Apollo VIII and Apollo IX in 2016 and 2018, respectively (NYSCEF Doc. No. 14 at 7). Mr. Siddiqui was a senior Apollo partner at the beginning of 2016 and a member of the Board of Directors of Athene (NYSCEF Doc. No. 2, ¶ 7).

In the summer and fall of 2016, Mr. Cernich worked with Messrs. Siddiqui and Dang to develop Caldera and compete with the Plaintiffs by soliciting Apollo investors and misappropriating confidential proprietary information of Athene and Apollo (including Apollo's confidential information regarding Athene's retail pricing, Apollo's research reports, and the Athene strategic plan for 2017 through 2021) (*id.*, ¶¶ 35-44). Mr. Cernich also actively concealed Messrs. Siddiqui and Dang's disloyal conduct by, among other things, sending emails on their behalf, scrubbing metadata from information sent to potential investors, and emailing Mr. Dang's fiancée rather than Mr. Dang's personal email address so as to avoid detection by Apollo (*id.*).

Given their roles at Athene, the Defendants were aware that Messrs. Siddiqui and Dang made fraudulent representations to Apollo regarding their annual compliance with Apollo's Code of Ethics to refrain from participating with outside business, among other things (*id.*, ¶¶ 45-48).

On March 13, 2017, Mr. Siddiqui provided his notice of resignation from Apollo and Athene, effective June 18, 2017 (*id.*, ¶ 8). Mr. Siddiqui was then bound by certain post-employment restrictive covenants, including a one year non-compete and non-solicitation of investors, and a continuing prohibition against the use and disclosure of Apollo's confidential information (*id.*). Following Mr. Siddiqui's resignation, the Defendants allegedly continued to assist Messrs. Siddiqui and Dang in Caldera's business activities throughout 2017 and 2018. For instance, Mr. Tseng scrubbed Mr. Dang's name from an electronic document at Mr. Dang's direction and secretly added Mr. Dang to external Caldera calls, among other things (*id.*, ¶¶ 68-78). In September 2017, a news article indicated that Messrs. Siddiqui and Cernich sought \$1 billion from investors to pursue deals in the life insurance industry (*id.*, ¶ 9). Although Apollo requested that Mr. Siddiqui provide information to ensure that he did not violate any restrictive covenants, he did not provide adequate information (*id.*).

On January 9, 2018, Apollo commenced arbitration against Mr. Siddiqui pursuant to the arbitration clause in his agreement with Apollo (the **First Arbitration**) (*id.*, ¶ 10). The First Arbitration did not include Caldera because Mr. Siddiqui represented that his new business did not exist at the time (*id.*). The First Arbitration was settled on February 21, 2018 pursuant to a Settlement Agreement and Mutual Release (the **Settlement Agreement**; NYSCEF Doc. No. 10), by and between Apollo, its subsidiaries, and Mr. Siddiqui, pursuant to which the parties agreed

that: (i) Mr. Siddiqui would forfeit approximately \$15 million in limited partnership interests based on his conduct, (ii) return or destroy all of Apollo's confidential information in his possession and be continuously bound by the restrictive covenant regarding Apollo's confidential information (*id.*, §§ 4, 7[d]), but (iii) would otherwise be free to compete with Apollo (*id.*, § 7[a]). Significantly, Apollo released Mr. Siddiqui from all known or unknown claims that arose on or before February 21, 2018:

Apollo releases Mr. Siddiqui and his affiliates, employers, and any company formed by Mr. Siddiqui (the "Siddiqui Released Parties") from all claims, complaints, demands, or causes of action relating to the Action and/or the Restrictive Covenants, whether known or unknown, liquidated or unliquidated, at law or in equity, that exist as of, or which have ever existed at any time up to and including, the Effective Date. The parties acknowledge and agree that the Siddiqui Released Parties are third-party beneficiaries of this release. The parties further acknowledge and agree that Apollo shall not take any action to encourage or support Athene Holding Ltd. or its subsidiaries or affiliates in asserting any claims covered by or relating to this release or related to facts alleged in the Action.

(the **Release**; *id.*, § 3[a]).

Subsequently, Apollo learned that Caldera had existed since 2017 and that it was attempting to acquire AEL, a company that Athene had allegedly targeted for a long time (*id.*, ¶ 13). When Apollo requested certain information, Mr. Siddiqui again refused to provide Apollo with any information concerning his use of its confidential information (*id.*). As a result, Apollo filed a second arbitration against Mr. Siddiqui on May 3, 2018 for his alleged use of Apollo's confidential information in breach of the Settlement Agreement (the **Second Arbitration**) (*id.*). During the Second Arbitration, Apollo's internal review of documents revealed that even before Mr. Siddiqui left Apollo, he had worked with Messrs. Dang and Cernich to form a new business

that was secretly competing with Apollo (*id.*, ¶ 14). Although Apollo questioned Mr. Dang about his potential wrongdoing, he denied any misconduct and resigned from Apollo on October 27, 2018 (*id.*).

On November 28, 2018, Apollo commenced a separate arbitration against Mr. Dang for numerous claims including fraud, breach of fiduciary duty, faithless servant, breach of contract, and aiding and abetting Mr. Siddiqui's breach of fiduciary duty (*id.*, ¶ 15). Apollo also asserted claims against Mr. Siddiqui and Caldera for aiding and abetting Mr. Dang's breach of fiduciary duty and for tortious interference with contract (*id.*). This arbitration proceeding was consolidated into the Second Arbitration (*id.*). After a seven-day hearing in February and March 2019, the Arbitrator issued his decision pursuant to a Final Arbitration Award on April 29, 2019 (the **Award**; NYSCEF Doc. No. 14).

The Award provided that any conduct by Mr. Siddiqui on or before February 21, 2018 was released pursuant to the Settlement Agreement because the Release covered both known and unknown claims (*id.* at 11). However, the Release did not apply to Mr. Dang because he did not fall within the definition of the "Siddiqui Released Parties" as an affiliate, commenting that Mr. Dang's argument would be stronger if the definition included "agents," which it does not (*id.* at 11-12). The Arbitrator determined that Mr. Siddiqui was liable for breach of contract in three respects: (1) failure to return or destroy Apollo's confidential information, (2) making a false attestation of compliance under the Settlement Agreement, and (3) solicitation of Mr. Dang while he was an Apollo employee to work on Caldera matters (*id.* at 12-13). However, the Arbitrator did not hold Mr. Siddiqui liable for breach of contract as to his use or disclosure of

Apollo's confidential information. Although the Arbitrator found that Mr. Siddiqui had worked on an Apollo bid for the public company, FGL, while assisting Caldera to acquire the same company in 2016, a Blackstone-controlled entity was ultimately the winning bidder (*id.* at 8). As to Mr. Siddiqui's conduct after the Release, the Arbitrator noted that there was no evidence of his alleged disclosure of Apollo's confidential information after February 21, 2018, that any such information was used in Caldera's 2018 bid for AEL, or that Mr. Siddiqui or Mr. Cernich relied on Apollo's information in any way (*id.* at 13). Thus, the Arbitrator did not award any damages for Mr. Siddiqui and Caldera's actions concerning the acquisition of AEL because he found there was "no evidence that Apollo was damaged by the existence of any bid by Caldera" and that AEL was not in fact a viable acquisition (*id.* at 10, 19).

Mr. Dang was found to be liable as a faithless fiduciary and for breach of contract, fraud, and aiding and abetting Mr. Siddiqui's breach of fiduciary duty (*id.* at 14-16). Apollo was awarded damages against Mr. Dang equal to \$1 million, or approximately 50% of his cash compensation while working with Mr. Siddiqui, and all of his limited partnership interests in the Apollo funds (*id.* at 19-20). Mr. Siddiqui and Caldera were held liable for \$75,000 in damages for aiding and abetting Mr. Dang's breach of fiduciary duty from February 22, 2018 onwards (*id.* at 20). Mr. Siddiqui was also liable for \$150,000 of punitive damages for continuing to involve Mr. Dang after the Settlement Agreement was signed (*id.*).

In addition, the Arbitrator granted Apollo injunctive relief by enjoining Mr. Dang, Mr. Siddiqui, and Caldera from using or disclosing any of Apollo's confidential information and requiring them to destroy any such information in their possession (*id.* at 18). The Arbitrator declined to

award attorneys' fees against Mr. Siddiqui and Caldera because there was no contractual basis to do so and because, in any event, Apollo did not prevail on all claims asserted against them (*id.* at 21). Apollo was also unsuccessful in recovering attorneys' fees or administrative arbitration fees against Mr. Dang. Although his limited partnership agreement allowed for the prevailing party to recover such fees, the Arbitrator determined that Mr. Dang was a latecomer to the arbitration and Apollo had only mixed success on the claims asserted against him (*id.* at 21).

The Plaintiffs commenced this action against the Defendants on July 20, 2020 alleging claims for: (1) aiding and abetting Mr. Dang's breach of fiduciary duty (first cause of action), (2) aiding and abetting Mr. Dang's fraud (second cause of action), (3) aiding and abetting Mr. Siddiqui's breach of fiduciary duty (third cause of action), (4) aiding and abetting Mr. Siddiqui's fraud (fourth cause of action), (5) unfair competition (fifth cause of action), and (6) unjust enrichment (sixth cause of action). The Defendants now move to dismiss.

Discussion

On a motion to dismiss, the pleadings are to be afforded a liberal construction and the facts as alleged in the complaint are accepted as true (*Leon v Martinez*, 84 NY2d 83, 87 [1994]). Under CPLR § 3211 (a)(1), the court may dismiss a cause of action where the documentary evidence conclusively establishes a defense to the claims as a matter of law (*id.*, 88). Dismissal under CPLR § 3211 (a)(7) requires the court to assess whether the proponent of the pleading has a cause of action and not whether he has stated one (*id.*).

A. Advisors IX Has the Requisite Capacity to Sue

As an initial matter, the branch of the Defendants' motion to dismiss the action against Apollo IX is denied. Although Apollo IX was not authorized to do business in New York at the outset of this action, this defect has since been cured (NYSCEF Doc. No. 24).

B. The Release Does Not Bar the Instant Claims Against the Defendants

The Defendants' argument that the Plaintiffs released all claims against them pursuant to the Release fails. The Release only applied to Mr. Siddiqui's "affiliates, employers, and any company formed by [him]" (NYSCEF Doc. No. 10, § 3[a]). The Defendants present no documentary evidence or allegations to demonstrate that they should be considered affiliates or third-party beneficiaries of Mr. Siddiqui. In addition, this argument was made to the Arbitrator by Mr. Dang and expressly rejected. As the Arbitrator explained, there was no evidence indicating that Apollo intended to release Mr. Dang, and the same can be said with respect to the Defendants (NYSCEF Doc. No. 14 at 11). In fact, as the Arbitrator noted, the Release could have included the word "agent," which would have made this argument stronger, but it did not (*id.*). As the express language of the Release did not incorporate Mr. Siddiqui's employees or agents as released parties, the Defendants are not covered by the Release.

C. Aiding and Abetting Mr. Dang's Breach of Fiduciary Duty as Against the Defendants (First Cause of Action) and Aiding and Abetting Mr. Siddiqui's Breach of Fiduciary Duty as Against Mr. Cernich (Third Cause of Action) May be Maintained

The Arbitrator expressly found that Mr. Dang was a faithless fiduciary, and thus wiped out his carried equity in the Apollo funds and made him return \$1 million – i.e., half of his roughly \$2 million cash compensation during the period that he worked with Mr. Siddiqui (*id.* at 14-16).

Any additional recovery against Mr. Siddiqui was limited based on the Settlement Agreement. Inasmuch as Mr. Siddiqui's conduct predated the Release, he was not required to surrender more of his equity. Instead, Mr. Siddiqui was held liable for punitive damages of \$150,000, which is approximately the sum that Apollo paid Mr. Dang after the Settlement Agreement was executed (*id.* at 20). The Defendants were not a party to the Arbitration and on the record before the court, there is no release as to their participation in any claims involving Mr. Siddiqui pursuant to which he forfeited \$15 million of equity – therefore the claims are not barred by any prior award. The claims against the Defendants for their role in Mr. Dang's misconduct are not barred either.

The complaint states a claim for aiding and abetting the breach of fiduciary duty by Messrs. Dang and Siddiqui. The elements of a claim for aiding and abetting a breach of fiduciary duty are: “(1) a breach by a fiduciary of obligations to another, (2) that the defendant knowingly induced or participated in the breach, and (3) that plaintiff suffered damage as a result of the breach” (*Schroeder v Pinterest Inc.*, 133 AD3d 12, 24-25 [1st Dept 2015]). One knowingly participates in the breach by providing substantial assistance to the primary violator as follows: “(1) a defendant affirmatively assists, helps conceal, or by virtue of failing to act when required to do so enables the fraud to proceed, and (2) the actions of the aider/abettor proximately caused the harm on which the primary liability is predicated” (*Stanfield Offshore Leveraged Assets, Ltd. v Metropolitan Life Ins. Co.*, 64 AD3d 472, 476 [1st Dept 2009]).

The Plaintiffs sufficiently plead a primary breach by alleging that Messrs. Siddiqui and Dang worked to advance Caldera's interests while they were employed by Apollo, and that Mr. Siddiqui continued to do so even after entering into the Settlement Agreement (NYSCEF Doc.

No. 2, ¶¶ 36-39, 44, 101, 111). The Plaintiffs also adequately allege that the Defendants had actual knowledge of these breaches given their understanding that Apollo employees were required to submit annual certifications of compliance with the Apollo Code of Ethics, and that Messrs. Siddiqui and Dang's work for Caldera was directly contrary to the interests of Apollo (*id.*, ¶¶ 35-78, 102). In addition, the detailed allegations set forth how the Defendants offered substantial assistance to Messrs. Siddiqui and Dang by, e.g., hiding their involvement from Caldera's investors and regulators to avoid exposing Mr. Dang's disloyalty after Mr. Siddiqui left Apollo (*id.*).

The Plaintiffs also assert that they suffered damages for: (1) the costs of developing the confidential information that was stolen, (2) the loss of expected profits if such confidential information had not been misappropriated and used by a competitor, (3) the cost of investigating Mr. Dang's wrongdoing, (5) Mr. Dang's salary received during his misconduct at Apollo, and (6) the salary Mr. Siddiqui was allowed to keep pursuant to the Settlement Agreement (NYSCEF Doc. No. 2, ¶¶ 104, 114).

The Plaintiffs' attempt to recover Messrs. Siddiqui and Dang's salary against those who aided and abetted him fails. Although the faithless servant doctrine mandates the forfeiture of all compensation where an employee is faithless in the performance of his services to a principal, disgorgement of a faithless servant's compensation does not constitute damages for a claim against an alleged aider and abettor (*Art Capital Group, LLC v Rose*, 149 AD3d 447, 449 [1st Dept 2017]). In other words, inasmuch as a plaintiff may obtain forfeiture of an employee's

compensation for a faithless servant or breach of fiduciary claim against the primary wrongdoer, this does not satisfy the damages element of an aiding and abetting claim.

With respect to damages for lost profits, the Arbitrator had previously determined that Apollo failed to prove that Caldera used its confidential information in a bid for AEL and there was “no evidence Apollo was damaged by the existence of any bid by Caldera” (NYSCEF Doc. No. 14 at 19). Thus, no damages were assessed as to any bid by Caldera against AEL during the Second Arbitration. As the Plaintiffs failed to establish such damages for Messrs. Siddiqui and Dang’s primary breach of fiduciary duty during the Arbitration, they cannot assert the same damages for the aiding and abetting claims here (*see Twin City Fire Ins. Co. v Arch Ins. Group, Inc.*, 2015 NY Slip Op 31586[U], *17-18 [Sup Ct NY County 2015], *affd* 143 AD3d 533 [1st Dept 2016] [failure to establish primary liability for breach of fiduciary duty due to lack of damages results in failure of the aiding and abetting breach of fiduciary duty claim]). Nor can the Plaintiffs recover lost profits related to their failed bid for FGL because the Arbitrator found that this bid was won by a separate Blackstone-controlled entity (NYSCEF Doc. No. 14 at 8).

Furthermore, Apollo cannot recover its prior attorneys’ fees against the Defendants because such an award must be authorized by the parties’ agreement, statute, or court rule (*Hooper Assoc., Ltd. v AGS Computers, Inc.*, 74 NY2d 487, 491 [1989]). Apollo fails to allege or otherwise argue in its opposition papers that any of these bases apply. However, the Plaintiffs may pursue damages for the cost of developing Apollo’s confidential information and the costs of investigation to the extent that such damages are a natural consequence of the wrongful act (*Steitz v Gifford*, 280 NY 15, 20 [1939]).

Accordingly, the branch of the Defendants' motion to dismiss the first and third causes of action for aiding and abetting breach of fiduciary is granted solely to the extent of limiting the Plaintiffs' damages to the costs of developing its confidential information and investigative costs.

D. Aiding and Abetting Mr. Dang's Fraud as Against the Defendants (Second Cause of Action) and Aiding and Abetting Mr. Siddiqui's Fraud as Against Mr. Cernich (Fourth Cause of Action) May be Maintained

A claim for aiding and abetting fraud must allege: (1) the existence of the underlying fraud, (2) actual knowledge, and (3) substantial assistance (*Oster v Kirschner*, 77 AD3d 51, 55 [1st Dept 2010]). Messrs. Dang and Siddiqui's underlying fraud is adequately pled. The Arbitrator determined that Mr. Dang committed a fraud on the Plaintiffs when he continued to certify that he was abiding by the Apollo Code of Ethics while working extensively for Caldera. The complaint also alleges that Messrs. Dang and Siddiqui made false representations pursuant to Apollo's Code of Ethics (NYSCEF Doc. No. 2, ¶ 116). The Defendants allegedly knew about these misrepresentations and concealed Messrs. Dang and Siddiqui's involvement in Caldera by removing metadata from Apollo documents circulated for Caldera's business, among other misconduct (*id.*, ¶¶ 35-78, 108). These allegations are sufficient to set forth actual knowledge and substantial assistance at this early stage of the proceedings (*see Oster*, 77 AD3d at 55 ["actual knowledge need only be pleaded generally"]). However, for the reasons set forth above, the Plaintiffs' damages for the aiding and abetting fraud claim are limited to the cost of developing Apollo's confidential information and investigative costs only.

The Plaintiffs' claim for aiding and abetting fraud is not duplicative of a claim for aiding and abetting breach of fiduciary duty where the primary violation underlying both claims are the

same, as is the case at hand (*see Sabourin v Chodos*, 69 Misc 3d 312, 328 [Sup Ct, NY County 2020] [defendant's involvement in fraudulent scheme formed basis of aiding and abetting breach of fiduciary duty claim]; *Senior Health Ins. Co. of Pa. v Lincoln Int'l LLC (In re Platinum-Beechwood Litig.)*, 426 F Supp 3d 14, 19 [SDNY 2019] [denying motion to dismiss aiding and abetting claims for fraud and breach of fiduciary duty after analyzing the two claims together]).

Accordingly, the branch of the Defendants' motion to dismiss the second and fourth causes of action for aiding and abetting fraud is granted solely to the extent of limiting the Plaintiffs' damages to the costs of developing its confidential information and investigative costs.

E. Unfair Competition Against Mr. Cernich is Dismissed (Fifth Cause of Action)

Unfair competition involves the “misappropriation and exploitation of confidential information in abuse of [the defendant's] relationship of trust with plaintiff and improper use of this information to solicit plaintiff's [clients] for [its] own behalf” (*Comprehensive Comm. Dev. Corp. v Lehach*, 223 AD2d 399, 399 [1st Dept 1996]). The Plaintiffs claim that after Mr. Cernich left Athene in 2016, he exploited Apollo's confidential information from the fall of 2016 onwards to solicit shared acquisition targets (NYSCEF Doc. No. 2, ¶¶ 44-48, 64-65, 78). However, the Plaintiffs fail to allege the “requisite elements of either a confidential relation between the parties or a valid agreement to refrain from the alleged unfair competition” (*V. Ponte & Sons v American Fibers Intl.*, 222 AD2d 271, 272 [1st Dept 1995]). Furthermore, the Plaintiffs fail to state a claim for damages because they cannot recover lost profits for the use of confidential information as discussed above. Accordingly, the branch of the Defendants' motion to dismiss the fifth cause of action for unfair competition is granted.

F. Unjust Enrichment Against Mr. Cernich (Sixth Cause of Action) May be Maintained

The elements of unjust enrichment are that: “(1) the other party was enriched, (2) at that party’s expense, and (3) that it is against equity and good conscience to permit the other party to retain what is sought to be recovered” (*Georgia Malone & Co., Inc. v Rieder*, 19 NY3d 511, 516 [2012]).

Inasmuch as the Plaintiffs allege that Mr. Cernich was unjustly enriched by his receipt of Apollo’s confidential information because he could avoid certain costs of developing Caldera with such information (NYSCEF Doc. No. 2, ¶ 124), a plaintiff cannot recover as damages for unjust enrichment the costs that a defendant may have avoided due to its unlawful activity (*see E.J. Brooks Co. v Cambridge Sec. Seals*, 31 NY3d 441, 456 [2018] [where a defendant saves, through its unlawful activities, costs and expenses that it otherwise would have expended, those avoided payments cannot be recovered as plaintiff’s damages in unjust enrichment]).

However, the Plaintiffs’ allegations that Mr. Cernich’s unauthorized use occurred at their expense, including but not limited to the cost of developing the confidential information that was wrongfully used (NYSCEF Doc. No. 2, ¶ 125), are sufficient to state a claim for damages based on unjust enrichment. The Plaintiffs also allege a sufficiently close relationship to Mr. Cernich to sustain this claim as he was aware that the improperly received information was Apollo’s (*contra Mandarin Trading Ltd. v Wildenstein*, 16 NY3d 173, 182 [2011] [dismissing unjust enrichment claim for lack of relationship between the parties or any awareness by defendant of plaintiff’s existence]). Contrary to the Defendants’ argument, the unjust enrichment claim is not duplicative as Apollo is permitted to plead unjust enrichment in the alternative at this early stage

of the proceedings. Accordingly, the branch of the Defendants' motion to dismiss the sixth cause of action for unjust enrichment is denied.

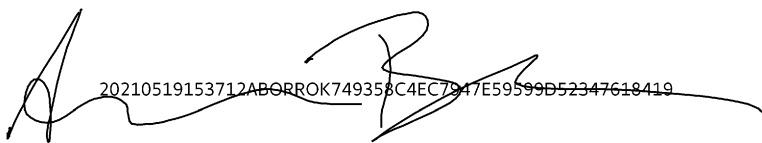
Finally, the Defendants' argument that any injunctive relief against them is prohibited by the injunctive relief against Caldera in the Award fails. Messrs. Cernich and Tseng were not parties to the Second Arbitration and are, thus, not bound by the Award in their individual capacity.

Accordingly, it is

ORDERED that the Defendants' motion to dismiss is granted to the extent of limiting the Plaintiffs' damages to the costs of developing its confidential information and investigative costs and dismissing the claim for unfair competition (fifth cause of action); and it is further

ORDERED that the Defendants shall file an answer within 20 days from the date of this decision and order; and it is further

ORDERED that the parties shall appear for a remote preliminary conference on June 15, 2021 at 12:30 pm.


20210519153712ABORROK749358C4EC7947E59599D52347618419

5/19/2021
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
			<input type="checkbox"/>	DENIED	<input type="checkbox"/>
				OTHER	<input type="checkbox"/>
				REFERENCE	<input type="checkbox"/>