

Sure, Inc. v Boost Ins. USA, Inc.
2022 NY Slip Op 31523(U)
May 10, 2022
Supreme Court, New York County
Docket Number: Index No. 652996/2021
Judge: Joel M. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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SURE, INC., Plaintiff, - v - BOOST INSURANCE USA, INC. and BOOST INSURANCE AGENCY, INC., Defendants.	INDEX NO. <u>652996/2021</u> MOTION DATE <u>N/A</u> MOTION SEQ. NO. <u>002</u> DECISION + ORDER ON MOTION
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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 12, 13, 14, 15, 16, 17, 18, 19, 20
 were read on this motion to DISMISS.

Plaintiff Sure, Inc. (Sure), an insurance technology (insurtech) company, alleges that one of its former directors, Alex Maffeo, misappropriated Sure’s confidential trade secrets and then used that information to start a competing business through Defendants Boost Insurance Agency USA, Inc. and Boost Insurance Agency, Inc. (together, Boost). Sure claims that Boost used Sure’s confidential information to unfairly compete against Sure and to “steal” Sure’s existing and prospective customers and business partners. Defendants move, pursuant to CPRL 3211 (a) (5) and (7), to dismiss the complaint, arguing that it is time-barred and insufficiently pled.

For the reasons set forth below, the motion is GRANTED to the extent of dismissing the second cause of action (misappropriation of skills and expenditures), third cause of action (unjust enrichment), fourth cause of action (unfair competition), fifth cause of action (tortious interference with prospective economic advantage), and sixth cause of action (tortious

interference with business relations), but is DENIED with respect to the first cause of action (misappropriation of confidential information) and seventh cause of action (aiding and abetting breach of fiduciary duty).

BACKGROUND

Sure is a Delaware corporation with a principal place of business in Santa Monica, California (NYSCEF Doc No. 15, complaint ¶ 8). Sure alleges that Wayne Slavin (Slavin) formed Sure in 2014 to sell instant, in-the-moment, direct-to-consumer insurance (*id.* ¶¶ 3, 14-15). According to Sure, under its original business model, it acted as an electronic insurance agent, allowing insurance companies to offer insurance and customers to purchase insurance through a mobile application powered by Sure’s groundbreaking backend software, technology, and electronic system of record (*id.* ¶¶ 16-22). The complaint alleges that Sure developed this backend infrastructure and technology through years of research, design, programming, and testing, and through millions of dollars of investment (*id.* ¶¶ 3-4, 16-22). In mid-2016, Sure developed proprietary application interfaces (APIs) built on its software and technology to allow non-insurance companies to offer insurance through their websites (*id.* ¶¶ 24-29). Sure alleges that the “innerworkings” of its backend system, its proprietary software, its model of providing instant insurance and related technological innovations are all confidential trade secrets (*id.* ¶¶ 4, 23).

According to the complaint, in mid-2016, Sure began fundraising for its Series A financing round (*id.* ¶ 30). In October 2016, Slavin shared a “pitch deck and other materials” with Maffeo, which “described Sure’s overall business model and strategy” and mentioned that Sure had developed an API platform (*id.*). At the time, Maffeo was a principal at IA Capital Group (IA Capital), which was considering investing in Sure’s Series A financing round (*id.*).

Sure closed its first financing round in January 2017, with IA Capital as its lead investor (*id.* ¶¶ 30-32). In connection with its investment, IA Capital obtained a seat on Sure's board of directors, and designated Maffeo as its board representative (*id.* ¶ 33). After Maffeo joined the board, Sure alleges that it provided him with confidential information on numerous occasions, including during board meetings (*id.* ¶¶ 33-40, 42-43, 51-59). In late January 2017, Maffeo told Slavin that he was working on a project within IA Capital called "Project Boost" (*id.* ¶ 34). Maffeo provided Slavin with a presentation of Boost's business model, indicating that Boost was going to assist insurtechs like Sure find underwriting capacity for their products (*id.*).

Sure further alleges that it continued to expand its business in 2017 and 2018, developing new partnerships with insurance carriers, creating APIs for new consumer markets, integrating its platform into its customers' systems, and, eventually, packaging and licensing its technology into a software as a service (SaaS) product sold to both its insurance and non-insurance clients (*id.* ¶¶ 36-64). According to Sure, it continually updated its board, including Maffeo, and provided it with confidential information (*id.*). Although Maffeo disclosed to Sure that he had founded Boost as a service provider for insurtechs like Sure, Sure understood that Maffeo would continue to protect Sure's confidential information (*id.* ¶¶ 34-35, 51). In 2018, Sure asked Maffeo to step down from the board (*id.* ¶¶ 46-55).

The complaint alleges that, in July 2019, Slavin began to see job postings for Boost indicating that Boost had developed a platform and software to offer insurance products to consumer companies (*id.* ¶¶ 67-68). In August 2019, Slavin visited Boost's website, and learned that Boost was no longer advertising services for insurtechs (*id.* ¶ 69). According to Sure, Boost's revamped website described a business and products that copied Sure's backend software system, products, and business model (*id.* ¶¶ 69-70). In particular, Boost's website

marketed an “API-Driven Insurance Platform,” just like Sure (*id.* ¶ 70). Boost’s website described an “API-driven policy admin system,” which would “packag[e] all the back-end components need to build, launch, and manage a program” (*id.*). The complaint further alleges that, in mid-2020, Boost “attempted to steal Sure’s current and prospective clients and insurance partners” (*id.* ¶ 71), citing two examples in which Sure ultimately won the business for which it competed though in one case it required “significant additional time and expense because of Boost’s interference” (*id.* ¶¶ 71-75).

The complaint alleges the following seven claims: (1) misappropriation of confidential information; (2) misappropriation of skills and expenditures; (3) unjust enrichment; (4) unfair competition; (5) tortious interference with prospective economic advantage; (6) tortious interference with business relations; and (7) aiding and abetting a breach of fiduciary duty (*id.* ¶¶ 76-86, 87-97, 98-105, 106-110, 111-117, 118-123, 124-128). In its prayer for relief, Sure seeks a permanent injunction, compensatory damages in an amount not less than \$500,000, punitive damages, and attorney’s fees and costs (*id.*).

DISCUSSION

A. Boost Has Not Shown that Sure’s Misappropriation-Based Claims Are Untimely

Boost contends that Sure’s misappropriation-based claims (that is, all except the fifth and sixth claims) are time-barred.

“On a motion to dismiss a cause of action pursuant to CPLR 3211 (a) (5) on the ground that it is barred by the statute of limitations, a defendant bears the initial burden of establishing, prima facie, that the time in which to sue has expired. In considering the motion a court must take the allegations in the complaint as true and resolve all inferences in favor of the plaintiff”

(*Norddeutsche Landesbank Girozentrale v Tilton*, 149 AD3d 152, 158 [1st Dept 2017], quoting *Benn v Benn*, 82 AD3d 548, 548 [1st Dept 2011]). If the defendant meets that

burden, then the burden shifts to the plaintiff “to aver evidentiary facts” establishing that the case falls within an exception to the statute of limitations (*Assad v City of New York*, 238 AD2d 456, 457 [2d Dept 1997], *lv dismissed* 91 NY2d 848 [1997] [internal quotation marks and citation omitted]).

A claim for misappropriation of trade secrets is subject to a three-year statute of limitations (CPLR 214 [4]; *see also CDx Labs., Inc. v Zila, Inc.*, 162 AD3d 970, 971 [2d Dept 2018]).

“Under New York law, when a trade secret misappropriation claim accrues depends on what the party alleged to have committed the misappropriation did with the information. If a party misappropriates and publicly discloses a trade secret, the claim accrues upon disclosure. If, however, the party keeps the secret confidential yet makes use of it to his own commercial advantage, each successive use constitutes a new actionable tort for purposes of the statute of limitations. This rule reflects the principle that once the information is no longer secret or confidential, there is no property to protect”

(*Bausch & Lomb Inc. v Alcon Labs., Inc.*, 64 F Supp 2d 233, 247 [WD NY 1999] [internal quotation marks and citations omitted]).

Sure alleges that it first learned of Boost’s misappropriation in July and August 2019, through job postings and descriptions on Boost’s website (NYSCEF Doc No. 15, complaint ¶¶ 67-70).

Boost asserts that Sure knew or should have known about Boost’s use of its purported trade secrets no later than January 2017, when Maffeo gave a presentation to Sure. However, the complaint does not clearly establish the date that Boost first used the trade secrets. Moreover, while both the January 2017 presentation and Boost’s website used words such as “infrastructure,” “API,” “launch,” and “program,” the court cannot conclude on this record, as a matter of law, that Sure knew or should have known about Boost’s misappropriation based upon

Maffeo's presentation in 2017 (NYSCEF Doc No. 16 at 18). In any event, Sure alleges that, in mid-2020, Boost used Sure's confidential information to purloin one of its insurance partners (NYSCEF Doc No. 15, complaint ¶¶ 71-75). Accepting these allegations as true, the Court cannot conclude at this early stage of the proceedings that Sure's misappropriation-based claims are untimely (*see CSFB Holt LLC v Collins Stewart Ltd.*, 2004 WL 1794499, *8, 2004 US Dist LEXIS 15774, *24 [SD NY, Aug. 10, 2004, No. 02 Civ. 3069 (LBS)] ["because HOLT's allegations are continuing in nature, and there does not appear to be an allegation of public disclosure on the face of the Amended Complaint, any use of HOLT's trade secrets within the three years preceding the filing of the instant action will satisfy the statute of limitations"]). Accordingly, Boost's motion to dismiss those claims based on the statute of limitations must be denied (*see Benn*, 82 AD3d at 548).

B. Sure Adequately Pleads Misappropriation of Confidential Information (First Claim)

On a motion to dismiss pursuant to CPLR 3211 (a) (7), the court must "accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (*Himmelstein, McConnell, Gribben, Donoghue & Joseph, LLP v Matthew Bender & Co., Inc.*, 37 NY3d 169, 175 [2021], *rearg denied* 37 NY3d 1020 [2021] [internal quotation marks and citation omitted]). "Dismissal of the complaint is warranted if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery" (*Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 142 [2017]).

The first claim seeks recovery for misappropriation of confidential information. A trade secret has been 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 Mgt. v Janien*, 82 NY2d 395, 407 [1993], quoting Restatement [Second] of Torts § 757, comment b; *see also Shroeder v Pinterest Inc.*, 133 AD3d 12, 27 [1st Dept 2015] ["To prevail on a claim for misappropriation of trade secrets, a plaintiff must demonstrate: '(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 a result of discovery by improper means'" [internal quotation marks and citation omitted]). In considering whether information is a trade secret, the court must consider the following factors:

"(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"

(*Ashland Mgt.*, 82 NY2d at 407 [internal quotation marks and citation omitted]). Whether information constitutes a trade secret is generally a question of fact (*see Ashland Mgt.*, 82 NY2d at 407; *see e.g. Schroeder*, 133 AD3d at 28 [denying motion to dismiss misappropriation of trade secret claim based on companies' confidential and proprietary technology and business plans]).

Here, affording the complaint a liberal construction (*see Leon v Martinez*, 84 NY2d 83, 87-88 [1994]), Sure adequately alleges a cause of action for misappropriation of confidential information and/or trade secrets. First, Sure sufficiently alleges that, while Maffeo was on Sure's board, he was given Sure's proprietary backend system and software, in addition to its customer lists, partner lists, business model, and business plan (NYSCEF Doc No. 15, complaint ¶¶ 33-40, 42-43, 51-59). Sure also alleges that its novel backend system, software, customer lists, partner lists, and business strategy and model were developed through considerable effort

and expense (*id.* ¶¶ 3-4, 16-22). Sure further alleges that it took steps to maintain confidentiality, including requiring third-parties to sign non-disclosure agreements, enacting employee policies and procedures, and using robust security and privacy measures on computer systems (NYSCEF Doc No. 15, complaint ¶ 23).

Second, Sure sufficiently alleges that Boost acquired the confidential information by improper means – namely, by Maffeo’s use of information provided to him in his capacity as a Sure board member (*see Bender Ins. Agency v Treiber Ins. Agency*, 283 AD2d 448, 450 [2d Dept 2001]; *Laro Maintenance Corp. v Culkin*, 267 AD2d 431, 433 [2d Dept 1999]). Where a breach of fiduciary duty is established, “third parties who have knowingly participated in the breach may be held accountable” (*Alpha Funding Group, Inc. v Aspen Funding LLC*, 76 Misc 3d 1126[A], 2007 NY Slip Op 52160[U], *6 [Sup Ct, Kings County 2007], quoting *Schneider Leasing Plus v Stallone*, 172 AD2d 739, 741 [2d Dept 1991], *appeal dismissed* 78 NY2d 1043 [1991], *rearg denied* 79 NY2d 823 [1991]). According to Sure’s allegations, Boost directly copied Sure’s backend software system, products, and business model (*id.* ¶¶ 69-70, 71-75). Sure alleges that Boost’s executive officers and the members of its board of directors – including Maffeo and Andy Lerner – were aware that Boost (via Maffeo) had wrongfully obtained Sure’s confidential information (*id.* ¶¶ 48, 55, 83).

Third, Sure alleges that Boost used its confidential information and/or trade secrets. After reviewing Boost’s website in August 2019, Slavin allegedly discovered that Boost had pivoted its business model to turn Boost into a “carbon copy” of Sure (*cf. Meer Enters., LLC v Kocak*, 173 AD3d 629, 630 [1st Dept 2019]), and attempted to steal one of its longstanding business partners using this information (NYSCEF Doc No. 15, complaint ¶¶ 69-70, 71-75). Taking Sure’s factual allegations to be true, Boost is not entitled to dismissal of the first claim.

C. Sure Fails to State Causes of Action for Tortious Interference (Fifth and Sixth Claims)

The fifth claim alleges that Sure had an existing business relationship with Markel; that Boost wrongfully used Sure's confidential information to interfere with Sure's prospective new contract with Markel; and that, as a result of Boost's interference, Markel decided not to enter into a new contract with Sure (NYSCEF Doc No. 15, complaint ¶¶ 111-117). The sixth claim alleges that Sure had business relationships with other third parties, including an online alternative investment platform and software company, that Boost wrongfully used Sure's confidential information in order to interfere with Sure's business relationships, and that Sure was damaged as a result (*id.* ¶¶ 118-123). Boost contends that Sure fails to plead that it lost any business, and fails to plead wrongful means or malice.

A cause of action for tortious “interference with prospective contractual relations is actionable when a contract would have been entered into had it not been for the conduct of the defendant . . . [and] the means employed to induce a termination of the relationship are dishonest, unfair, or in any other way improper” (*CBS Corp. v Dumsday*, 268 AD2d 350, 352-353 [1st Dept 2000] [internal quotation marks and citation omitted]). Stated differently, tortious “interference with business relations applies to those situations where [a] third party would have entered into or extended a contractual relationship with plaintiff but for the intentional and wrongful acts of the defendant” (*WFB Telecom. v NYNEX Corp.*, 188 AD2d 257, 257 [1st Dept 1992], *lv denied* 81 NY2d 709 [1993]).¹ Under either formulation, the plaintiff must allege

¹ The Second Circuit has noted that tortious interference with prospective economic advantage and tortious interference with business relations are alternative names for the same tort (*see Catskill Dev., L.L.C. v Park Place Entertainment Corp.*, 547 F3d 115, 132 [2d Cir 2008], *cert denied* 556 US 1166 [2009]).

“wrongful means,” which includes “physical violence, fraud or misrepresentation, civil suits and criminal prosecutions, and some degrees of economic pressure,” but more than mere persuasion (*NBT Bancorp v Fleet/Norstar Fin. Group*, 87 NY2d 614, 624 [1996] [internal quotation marks and citation omitted]). “[A]s a general rule, the defendant’s conduct must amount to a crime or an independent tort” (*Carvel Corp. v Noonan*, 3 NY3d 182, 190 [2004]). Misappropriation of confidential information or trade secrets is sufficient to allege “wrongful means” (*see e.g. CBS Corp.*, 268 AD2d at 353).

While Sure has sufficiently alleged misappropriation of confidential information (*see id.*), it has failed to plead “allegations from which damages attributable to [defendant’s conduct] might be reasonably inferred” (*CWCapital Invs. LLC v CWCapital Cobalt VR Ltd.*, 182 AD3d 448, 453 [1st Dept 2020] [internal quotation marks and citation omitted]). Sure admits that it ultimately won the two contracts with which Boost allegedly interfered (NYSCEF Doc No. 15, complaint ¶¶ 74-75). The complaint only makes conclusory allegations that Sure had to “expend significant additional time and expense” as a result of the interference (*id.* ¶ 75). Accordingly, the fifth and sixth causes of action are insufficient to state a cause of action and must be dismissed (*see Arts4All, Ltd. v Hancock*, 5 AD3d 106, 109 [1st Dept 2004] [tortious interference claim was properly dismissed where there were “no allegations showing that Arts4All would have realized a profit from the alleged prospective contract with Korn . . . or otherwise showing any damages caused thereby”]; *Gordon v Dino De Laurentiis Corp.*, 141 AD2d 435, 436 [1st Dept 1988] [“the pleadings must set forth facts showing the damage upon which the action is based”]).

D. Sure's Second, Third, and Fourth Claims Are Duplicative of its First Claim

The second, third, and fourth claims are labeled misappropriation of skills and expenditures, unjust enrichment, and unfair competition, respectively. Boost contends that these claims are redundant of Sure's first claim.

Because the misappropriation of skills and expenditures, unjust enrichment, and unfair competition claims are based on the same facts as the first claim for misappropriation of confidential information -- and Sure does not explain how these claims differ from its first claim² -- the second, third, and fourth claims are dismissed as duplicative of the first claim (*see Corsello v Verizon N.Y., Inc.*, 18 NY3d 777, 790 [2012], *rearg denied* 19 NY3d 937 [2012] ["An unjust enrichment claim is not available where it simply duplicates, or replaces, a conventional contract or tort claim"]; *Fada Intl. Corp. v Cheung*, 57 AD3d 406, 406 [1st Dept 2008], *lv denied* 12 NY3d 706 [2009] [unfair competition claim was duplicative of misappropriation of confidential information and goodwill claims]; *Mujae Group, Inc. v Spotify USA Inc.*, 2021 WL 230207, *1, 2021 US Dist LEXIS 3552, *4 [SD NY, Jan. 7, 2021, No. 20 Civ 6719 (AKH)] ["unfair competition under New York law, and misappropriation of skills and expenditures under New York law, are duplicative of the misappropriation of trade secrets counts"]; *Bytemark Inc. v Xerox Corp.*, 342 F Supp 3d 496, 512 [SD NY 2018] [unjust enrichment claim was duplicative of tort claims, including misappropriation of trade secrets claim]).

² Sure appears to concede that these claims are "premised on the same facts underlying the misappropriation claim" (NYSCEF Doc No. 17 at 21).

E. Sure States a Cause of Action for Aiding and Abetting a Breach of Fiduciary Duty (Seventh Claim)

Boost contends that Sure's aiding and abetting claim should be dismissed because Sure fails to plead an underlying breach of fiduciary duty. Specifically, Boost argues that: (1) Maffeo disclosed his alleged conflict of interest to Sure; and (2) a breach of fiduciary duty claim against Maffeo is time-barred. The court finds these arguments to be unpersuasive.

The elements of an aiding and abetting a breach of fiduciary duty claim are: "(1) 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*, 133 AD3d at 25 [internal quotation marks and citation omitted]). "A person knowingly participates in a breach of fiduciary duty only when he or she provides 'substantial assistance' to the primary violator" (*Kaufman v Cohen*, 307 AD2d 113, 126 [1st Dept 2003]). "Substantial assistance occurs when a defendant affirmatively assists, helps conceal or fails to act when required to do so, thereby enabling the breach to occur" (*id.*).

The parties agree that the underlying breach of fiduciary duty claim is governed by Delaware law (*see Schroeder*, 133 AD3d at 24, 25 n 6). Under Delaware law, "[a] breach of fiduciary duty occurs when a fiduciary commits an unfair, fraudulent, or wrongful act, including misappropriation of trade secrets, misuse of confidential information, solicitation of employer's customers before cessation of employment, conspiracy to bring about mass resignation of an employer's key employees, or usurpation of the employer's business opportunity" (*Beard Research, Inc. v Kates*, 8 A3d 573, 602 [Del Ch 2010], *affd sub nom. ASDI, Inc. v Beard Research, Inc.*, 11 A3d 759 [2010], citing *Science Accessories Corp. v Summagraphics Corp.*, 425 A2d 957, 965 [Del 1980]).

A claim for breach of fiduciary duty is subject to a three-year statute of limitations (*In re Tysons Foods, Inc. Consol. Shareholders Litig.*, 919 A2d 563, 584 [Del Ch 2007], citing 10 Del. C. § 8106). Generally, “a director who has resigned or has been terminated no longer owes fiduciary duties to the company” (*Schroeder*, 133 AD3d at 23 [applying Delaware law]). However, there is an important exception. “A former director . . . breaches his fiduciary duty if he engages in transactions that had their inception *before* the termination of the fiduciary relationship or were founded on information acquired *during* the fiduciary relationship” (*id.* at 24, quoting *BelCom, Inc. v Robb*, 1998 WL 229527, *3, 1998 Del Ch LEXIS 58, *9 [Del Ch April 28, 1998] [emphasis in original]).

Viewing the allegations in the light most favorable to Sure, the complaint adequately alleges that Maffeo, a former director of Sure, breached his fiduciary duty to Sure when he “acquired [confidential] information while he was unquestionably a fiduciary, and subsequently gave it to [Boost], a competitor, to advance his own interests” (*Schroeder*, 133 AD3d at 24). Sure alleges that Maffeo acquired the information when he was a fiduciary and that Boost used it in 2019 and 2020 (NYSCEF Doc No. 15, complaint ¶¶ 67-70, 75). Giving these allegations their most favorable intendment, Sure has alleged that Maffeo breached his duty of loyalty to Sure within three years of the filing of the instant complaint.

Nor do Maffeo’s purported disclosures warrant dismissal of this case. Taking Sure’s allegations to be true, Maffeo’s representations did not accurately reflect his (or Boost’s) intended use of Sure’s purportedly confidential information. This reflects a factual dispute that cannot be determined on a motion to dismiss.

Accordingly, Boost is not entitled to dismissal of the seventh claim for failure to state a cause of action.³

F. Leave to Replead is Denied

To the extent that Sure requests leave to replead (NYSCEF Doc No. 17 at 9 n 2, 22), this application is denied. Sure “failed to submit a proposed amended pleading accompanied by an affidavit of merit” (*Parker Waichman LLP v Squier, Knapp & Dunn Communications, Inc.*, 138 AD3d 570, 571 [1st Dept 2016]). If additional information surfaces during discovery that supports re-pleading one or more claims dismissed herein, Sure can move for leave to amend at that time.

* * * *

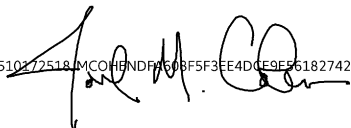
Accordingly, it is

ORDERED that the motion (sequence number 002) of defendants Boost Insurance USA, Inc. and Boost Insurance Agency, Inc. to dismiss is **GRANTED** to the extent of dismissing the second cause of action (misappropriation of skills and expenditures), third cause of action (unjust enrichment), fourth cause of action (unfair competition), fifth cause of action (tortious interference with prospective economic advantage), and sixth cause of action (tortious interference with business relations), but is **DENIED** with respect to the first cause of action (misappropriation of confidential information) and seventh cause of action (aiding and abetting breach of fiduciary duty); and it is further

³ Boost’s suggestion that the seventh claim is duplicative of the first claim is unavailing. The aiding and abetting a breach of fiduciary duty claim is not solely based upon Maffeo’s alleged misappropriation of Sure’s confidential information. Sure also alleges that Boost provided substantial assistance to Maffeo in misappropriating confidential information (*cf. Delville v Firmenich Inc.*, 920 F Supp 2d 446, 471 [SD NY 2013] [dismissing breach of fiduciary duty claim in part as duplicative of misappropriation of trade secrets claim]).

ORDERED that defendants answer the surviving causes of action in the complaint within 21 days after service of a copy of this decision and order with notice of entry.

This constitutes the decision and order of the Court.

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JOEL M. COHEN, J.S.C.

5/10/2022
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