Zabit v Brandometry, LLC
2026 NY Slip Op 31802(U)
April 16, 2026
Supreme Court, New York County
Docket Number: Index No. 656563/2021
Judge: Emily Morales-Minerva
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. EMILY MORALES-MINERVA** **PART** **42M**

Justice

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WILLIAM ZABIT, BRANDTRANSACT WORLDWIDE, INC.,

Plaintiffs,

- v -

BRANDOMETRY, LLC,BRANDOMETRY GROUP, LLC,LARRY A. MEDIN, LAM ASSOCIATES, INC.,SUSAN AVARDE, TONY WENZEL, BRANDLOGIC CORP., COREBRAND ANALYTICS, LLC,COREBRAND DATA SCIENCE, TENET PARTNERS, HAMPTON BRIDWELL, JAMES GREGORY, TOROSO INVESTMENTS, LLC,MICHAEL VENUTO, ACSI FUNDS, EXPONENTIAL ETFS, PHIL BAK, CHARLES A RAGAUSS, EQM INDEXES, LLC,JANE EDMONDSON, FRANK ZARABI, BACON LAW GROUP, THOMAS C BACON

Defendants.

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INDEX NO. 656563/2021

MOTION DATE 03/10/2022

MOTION SEQ. NO. 005

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 005) 56, 57, 58, 59, 60, 61, 62, 63, 74, 75, 77

were read on this motion to/for DISMISSAL.

APPEARANCES:

Alexander Edward Eisemann, Esq., 20 Vesey Street, New York, NY 10007, of counsel, for plaintiffs.

Amster, Rothstein & Eberstein, LLP, 405 Lexington Avenue, New York, NY 10174 (Charles Robert Macedo, Esq., of counsel), for defendant Frank Zarabi a/k/a Farhad M. Zarabi and Farhad Zarabi.

Barclay Damon, LLP, 1270 Avenue of the Americas, New York, NY 10020 (Michael James Case, Esq., of counsel), for defendants Brandlogic Corp., Corebrand Analytics, LLC, Corebrand Data Science, Tenet Partners and Hampton Bridwell.

Richman Law Firm, PLLC, 630 3rd Avenue, New York, NY 10017 (Scott Brandon Richman, Esq., and Stefan B. Kalina, Esq., of counsel), for defendants Brandometry, LLC f/k/a

Brandtransact Investments, LLC, Brandometry Group, LLC, Larry A. Medin, and Lam Associates, Inc.

Traub Lieberman Strauss & Shrewsberry, LLP, 445 Hamilton Avenue, White Plains, NY (Lisa L. Shrewsberry, Esq., of counsel), for defendants Thomas C Bacon and the Bacon Law Group.

EMILY MORALES-MINERVA, J.S.C.

In this motion (seq. no. 005), defendants BRANDLOGIC CORP., TENET PARTNERS, COREBRAND DATA SCIENCE, and HAMPTON BRIDWELL (defendants) seek an order dismissing the complaint against them based on res judicata (see CPLR § 3211 [a] [5]) or, in the alternative, for failure to state a cause of action against them (see CPLR § 3211 [a] [7]).

Plaintiffs WILLIAM ZABIT and BRANDTRANSACT WORLDWIDE, INC. (plaintiffs) do not oppose the motion to the extent that they have withdrawn the following causes of action against defendants: (1) theft/embezzlement; (2) breach of fiduciary duty; (3) breach of attorney-client relationship; and (4) aiding and abetting breach of attorney-client relationship (see New York State Courts Electronic Filing System [NYSCEF] Doc. No. 91, stipulation, dated October 14, 2025, at ¶ 2).[1] Plaintiffs also do not oppose the instant motion with respect to the fraudulent misrepresentation and unfair trade practices causes of action (see NYSCEF Doc. No. 66, plaintiffs' opposition to motion to

[1] Plaintiffs dismiss the complaint in its entirety against defendant COREBRAND ANALYTICS LLC, which is a non-existent entity (see NYSCEF Doc. No. 91, stipulation, dated October 14, 2025, at ¶ 1).

dismiss, p 2 ["plaintiffs do not oppose the motions to dismiss Counts II (Theft/Embezzlement), VIII (Fraudulent Misrepresentation), and XIV (Unfair Trade Practices), but maintain that the remainder of the complaint withstands their motion to dismiss"]).

Plaintiffs otherwise oppose the motion in all remaining respects.

RES JUDICATA

A party may move to dismiss a cause of action asserted against them on the ground that "the cause of action may not be maintained because of . . . res judicata" (CPLR § 3211 [a] [5]). "'Under res judicata, or claim preclusion, a valid final judgment bars future actions between the same parties on the same cause of action'" (Simmons v Trans Express Inc., 37 NY3d 107, 111 [2021], quoting Parker v Blauvelt Volunteer Fire Co., 93 NY2d 343, 347 [1999], citing Matter of Reilly v Reid, 45 NY2d 24, 28 [1978]). Further, "once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy" (id. [emphasis in original], quoting O'Brien v City of Syracuse, 54 NY2d 353, 357 [1981]).

Under this transactional analysis, if a provision in the judgment dismisses of a party's claim "without prejudice," the claim is saved from preclusion (see City of New York v Caristo Constr. Corp., 62 NY2d 819, 820 [1984] [emphasis added]). Indeed, the phrase "'without prejudice' literally and precisely means that the judgment in the first action shall not prejudice, i.e., bar, the later action" (McMahon v New York, 105 AD2d 101, 105 [1st Dept 1984]]; see also Stiles v Graves, 143 AD3d 1215, 1216 [3d Dept 2016] [a court denies parties finality "when it dismisses an action without prejudice; such a determination permits a plaintiff to relitigate an identical claim to that which has been dismissed"] [internal citations omitted]).

Therefore, defendants' argument that res judicata bars this action fails. Yes, plaintiffs commenced a federal action, pursuant to the Defend Trade Secrets Act (DTSA) (18 USC § 1836 [b]) and New York State law, accusing defendants, as here, "of conspiring to steal 'their groundbreaking stock-index concept' and 'strip [Zabit's] ownership in the company that was created to market financial products around th[at] index" (see NYSCEF Doc. No. 46, Zabit and Brandtransact Worldwide, Inc. v Brandometry, LLC, et al., 20 Civ. 555 Opinion and Order, 20 Civ. 555 [SDNY 2021]). However, the District Court (Cronan, J.) explicitly granted all motions to dismiss plaintiffs' federal claims "with prejudice", and dismissed all motions to dismiss

the remaining state related claims "without prejudice" (id. at 2 [emphasis added], and at 24).

The Court now turns to defendants' alternative argument that the complaint fails to state a cause of action against them (see CPLR § 3211 [a] [7]).

Defendants BRANDLOGIC CORP. and COREBRAND DATA SCIENCE

The complaint is dismissed entirely against defendants BRANDLOGIC CORP. and COREBRAND DATA SCIENCE as an impermissible group pleading. CPLR § 3013 requires statements in a pleading to be "sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved and the material elements of each cause of action or defense." A complaint that fails to differentiate between the defendants is an improper group pleading (see Principia Partners LLC v Swap Fin. Group, 194 AD3d 584 [1st Dept 2021]; Aetna Cas. & Surety Co. v Merchants Mut. Ins. Co., 84 AD2d 736 [1st Dept 1981] [holding that complaint that collectively refers to defendants without any specification as to the precise conduct charged to a particular defendant does not comport with CPLR § 3013]).

With respect to these defendants, the complaint alleges, without any factual support, that BRANDLOGIC CORP. and COREBRAND

DATA SCIENCE conduct business under, and are alter egos of, defendant TENET PARTNERS (see NYSCEF Doc. No. 01, complaint, p 11). Aside from this brief description in the background section of the complaint, the complaint fails to allege any specific conduct by these defendants. Therefore, by attributing the alleged conduct of defendant TENET PARTNERS to defendants BRANDLOGIC CORP. and COREBRAND DATA SCIENCE, without any specificity, is an impermissible group pleading.

Further, the alter ego allegations are entirely conclusory (see S.M. v Madura, 223 AD3d 486, 487 [1st Dept 2024] ["Alter ego liability requires allegations of complete dominion over a corporation, or other entity, which was used to commit a wrong against the plaintiff thereby causing injury to plaintiff"] [emphasis added], citing Baby Phat Holding Co., LLC v Kellwood Co., 123 AD3d 405, 407 [1st Dept 2014] [emphasis added]).

Having dismissed the causes of action against defendants BRANDLOGIC CORP. and COREBRAND DATA SCIENCE, the Court will next address the motion to dismiss the complaint against defendants TENET PARTNERS and HAMPTON BRIDWELL.

Defendants TENET PARTNERS and HAMPTON BRIDWELL

The causes of action plaintiffs assert against these defendants are: (1) misappropriation of trade secrets; (2)

breach of confidence; (3) fraud; (4) aiding and abetting fraud; (5) fraudulent inducement; (6) fraudulent concealment; (7) aiding and abetting breach of fiduciary duty; (8) tortious interference; (9) unjust enrichment; (10) unfair competition; (11) breach of contract; (12) civil conspiracy; and (13) declaratory judgment and equitable relief.

CPLR § 3211 (a) (7)
FAILURE TO STATE A CAUSE OF ACTION

"On a CPLR § 3211 (a)(7) motion to dismiss for failure to state a cause of action, the complaint must be construed in the light most favorable to the plaintiff and all factual allegations must be accepted as true" (Alden Glob. Value Recovery Master Fund, L.P. v KeyBank N.A., 159 AD3d 618, 621-622 [1st Dept 2018], citing 219 Broadway Corp. v Alexander's, Inc., 46 NY2d 506, 509 [1979]). Further, on such a motion, the complaint is to be construed liberally, and all reasonable inferences must be drawn in favor of the plaintiff (see Leon v Martinez, 84 NY2d 83, 87 [1994]). "Whatever an ultimate trial may disclose as to the truth of the allegations, on such a motion, a court is to take them as true and resolve all inferences which reasonably flow therefrom in favor of the pleader" (Sander v Winship, 57 NY2d 391, 394 [1982]).

Misappropriation of Trade Secrets

To assert a claim for misappropriation of a trade secret, a plaintiff must make a showing that "(1) it possessed a trade secret, and (2) defendant is using that trade secret in breach of an agreement, confidence, or duty, or as a result of discovery by improper means" (E.J. Brooks Co. v Cambridge Sec. Seals, 31 NY3d 441, 452 [2018] [internal citation omitted]; see also Schroeder v Pinterest Inc., 133 AD3d 12, 27 [1st Dept 2015] [quotation and citations omitted]).

"A trade secret is any formula, pattern, device or compilation of information which is used in one's business, and which gives one an opportunity to obtain an advantage over competitors who do not know or use it" (Colgate Inn, LLC v Eberhardt, LLC, 206 AD3d 1197, 1203 [3d Dept 2022], quoting E.J. Brooks Co., 31 NY3d at 453 [internal quotation marks, brackets and citation omitted]). "An essential prerequisite to legal protection against the misappropriation of a trade secret is the element of secrecy" (id. [emphasis added] [internal quotation marks and citations omitted]).

"Some of the factors to be considered in evaluating a claim of trade secret status include: (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; [and] (6) the ease or difficulty with which the information could be properly acquired or duplicated by others (Women's Cancer Care Assoc., LLC v. Godoy, 2022, N.Y. Misc. LEXIS 7170, *26-27 [Sup Ct Albany Cnty 2022], citing Restatement of Torts § 757, Comment b).

Here, plaintiffs allege that movants, among other defendants, acquired a computational method known as the Brandtransact 50 Index (BTW50 Index), which was plaintiff William Zabit's (Zabit) "brilliant idea" and which plaintiff Brandtransact Worldwide, Inc. (BTWW) "refin[ed] . . . into a marketable reality" (NYSCEF Doc. No. 01, summons and complaint, ¶ 2). However, the complaint is devoid of any element of secrecy surrounding this algorithm (see generally Colgate Inn, LLC, 206 AD3d at 1203 ["an essential prerequisite to legal protection against the misappropriation of a trade secret is the element of secrecy"]). There is no allegation that only Zabit knew of this idea and that he shared it with any particular person or group of limited persons at BTWW in a confidential manner, or that the idea/algorithm was not accessible to other members/employees of BTWW.

Further, no factual allegations are set forth as to "the extent of measures [if any] taken to guard the secrecy of the information" relating to Zabit's idea or encompassing the algorithm once realized (see Restatement of Torts § 757, Comment b).

Similarly, the complaint, on its face, appears to defeat the notion of secretiveness. Plaintiff Zabit concedes that he shared his idea for the algorithm with a company to develop it. That company, plaintiff BTWW, spent five years developing the Index (NYSCEF Doc. No. 01, summons and complaint, ¶ 2).

After the idea went from individual to company without any apparent secrecy, Zabit shared the BTW50 Index/algorithm with an additional third party, defendant LARRY MEDIN. Plaintiff "ZABIT hired defendant Larry Medin" and, together, they "formed BTI [BrandTransact Investments]" for the purpose of "developing and . . . marketing financial products based on the BTW50 Index" ((NYSCEF Doc. No. 001, ¶ 3). BrandTransact Investments (BTI) then built on the BTW50 Index and operationalized products based on it, including "the Brand Value Exchange Traded Fund on the New York Stock Exchange" designed to track the BTW50 Index which launched on the New York Stock Exchange (id., ¶ 34). Again, in setting forth these facts, plaintiffs omit any description or facts to support any attempt to maintain the index/algorithm as

a secret, or to maintain it as a secret within a select group at, now, a second company.

Even in the light most favorable to plaintiffs, the facts alleged infer progressive sharing of Zabit's idea and the resulting BTW50 Index, not careful preservation of a trade secret. Therefore, the Court finds plaintiffs failed to set forth a cause of action against Tenet Partners and Hampton Bridwell for misappropriation of one.

Breach of Confidence

"The misappropriation of trade secrets can [] occur when one discloses or uses another's trade secret without a privilege to do so, and the 'disclosure or use constitutes a breach of confidence reposed in him by the other in disclosing the secret to him'" (Zylon Corp. v Medtronic, Inc., 2015 NY Misc LEXIS 1276, *27 [Sup Ct NY Cnty 2015] [J. Scarpulla, Associate Justice, Appellate Division, First Department], quoting Restatement of Torts § 757[b]; see also Lis v Lancaster, 2024 NY Misc Lexis 73132, *23-24 [Sup Ct NY Cnty 2024]). "To determine whether a duty of confidence exists between the parties, the relevant question is whether the defendant knows or should know that the information is plaintiff's trade secret and that its disclosure is made in confidence" (id. [internal quotation marks

omitted], quoting Restatement of Torts § 757[b], Comment on clause b).

Further, under the Restatement (Third) of Unfair Competition, which has been incorporated into New York's trade secrets law:

> "[a] person to whom a trade secret has been disclosed owes a duty of confidence to the owner of the trade secret . . . if: (a) the person made an express promise of confidentiality prior to the disclosure of the trade secret; or (b) the trade secret was disclosed to the person under circumstances in which the relationship between the parties to the disclosure or the other facts surrounding the disclosure justify the conclusions that, at the time of the disclosure, (1) the person knew or had reason to know that the disclosure was intended to be in confidence, and (2) the other party to the disclosure was reasonable in inferring that the person consented to an obligation of confidentiality"

(Restatement (Third) of Unfair Competition, § 41; see also Wiener v Lazard Freres & Co., 241 AD2d 114, 124 [1st Dept 1998]).

Additionally, "in some cases an express agreement regarding the confidentiality of particular information may be evidence of the parties' expectations regarding the confidentiality of other information not within the scope of the agreement" (Zylon Corp., 2015 NY Misc LEXIS 1276, *31, citing Restatement (Third) of Unfair Competition, § 41).

Here, plaintiffs' breach of confidence claim fails as it is predicated entirely on movants' alleged misappropriation of the BTW50 Index, as a trade secret. However, as addressed in the previous section, plaintiffs allege no facts in the complaint to indicate that the BTW50 Index was disclosed to any party confidentially or as proprietary information.

Further, plaintiffs' bare assertion that "explicit confidentiality agreements" exist between them and movants is wholly conclusory (NYSCEF Doc. No. 01, complaint, p 79, and Doc. No. 66, plaintiffs' opposition to motion to dismiss). They do not set forth any factual allegations, including basic things like whether any agreement was oral or written, the date of such agreements, the scope of the alleged protected information, and the manner of the breach. In fact, the term "confidentiality agreement" does not appear anywhere in the complaint, and the term "non-disclosure agreement" appears only in passing as part of a broader narrative, without any supporting detail.[2]

Fraud, Aiding and Abetting Fraud,
Fraudulent Inducement, and Fraudulent Concealment

[2] Specifically, the term "non-disclosure agreement" appears six times in the 98-page complaint.

"The elements of a cause of action for fraud require a material misrepresentation of a fact, knowledge of its falsity, intent to induce reliance, justifiable reliance by the plaintiff[,] and damages" (Carlson v American Intl. Group, Inc., 30 NY3d 288, 310 [2017], quoting Eurycleia Partners, LP v Seward & Kissel, LLP, 12 NY3d 553, 559 [2009]; see also Lama Holding Co. v Smith Barney, 88 NY2d 413, 421 [1996]). In an action for fraud, "the circumstances constituting the wrong shall be stated in detail" (Carlson, supra, 30 NY3d at 310, quoting CPLR § 3016 [b] [governing "[p]articularity in specific actions"]).

To properly plead "a claim for aiding and abetting fraud, the complaint must allege: (1) the existence of an underlying fraud; (2) knowledge of this fraud on the part of the aider and abettor; and (3) substantial assistance by the aider and abettor in achievement of the fraud" (Stanfield Offshore Leveraged Assets, Ltd. v Metro. Life Ins. Co., 64 AD3d 472, 476 [1st Dept 2009] [quotations and citations omitted] lv denied 13 NY3d 709 [2009]; see generally Owens v New Empire Corp., 244 AD3d 454, 457 [1st Dept 2025] [citing Stanfield as authority for the elements for fraud and aiding and abetting fraudulent misrepresentation]). Further, the plaintiff must "adequately plead that defendants had actual knowledge of the fraud, or that they provided substantial assistance in the fraud's commission"

(Lumen at White Plains, LLC v Stern, 135 AD3d 600, 600 [1st Dept 2016], citing Stanfield, supra, 64 AD3d at 476]).

"To state a claim for fraudulent inducement, there must be a knowing misrepresentation of material present fact, which is intended to deceive another party and induce that party to act on it, resulting in injury" (Gosmile, Inc. v Levine, 81 AD3d 77, 81 [1st Dept 2010]; see Gateway Intl., 360, LLC v Richmond Capital Group, LLC, 201 AD3d 406, 408 [1st Dept 2022]). A fraudulent inducement claim requires a showing that a defendant made a false representation for the purpose of inducing another to act on it (see EVUNP Holdings LLC v Dman, 225 AD3d 469 [1st Dept 2024]).

"The elements of a fraudulent concealment claim [are] concealment of a material fact which defendant was duty-bound to disclose, scienter, justifiable reliance, and injury" (Mitschele v Schultz, 36 AD3d 249, 254-255 [1st Dept 2006]; see also P.T. Bank Central Asia v ABN AMRO Bank N.V., 301 AD2d 373, 376 [1st Dept 2003] [holding that a cause of action for fraudulent concealment requires, in addition to the elements for fraud, "an allegation that the defendant had a duty to disclose material information and that it failed to do so"]).

In a narrative, plaintiffs essentially allege that Tenet Partners and Hampton Bridwell fraudulently concealed the Tri-

Agreement's[3] true purpose, and that "the net result of all this scheming [gave defendant LARRY A. MEDIN (Medin)] . . . unilateral power, and secured a promise from [movants] for complicit assistance" (see NYSCEF Doc. No. 01, complaint, p 38). Further, plaintiffs allege that, in the days leading up to the signing of the Tri-Agreement, Medin, Tenet Partners and Hampton Bridwell "omitted the material fact that these two companies were colluding against [plaintiffs]" in order to "cripple" them and "steal" the technology underlying the BTW50 Index (see id., at p 38-39).

These allegations do not support a reasonable inference that Tenet Partners and Hampton Bridwell (1) had actual knowledge of Medin's alleged misrepresentations or fraudulent scheme; that they (2) provided substantial assistance in the commission of any such scheme; that they (3) made any false representations to plaintiffs to induce plaintiffs' reliance; or that they (4) were aware of a material fact which they were duty-bound and failed to disclose (see, e.g., CMB Export Infrastructure Inv. Group 48, LP, 223 AD3d 513, 514 [dismissing fraudulent inducement cause of action where the "plaintiff []

[3] The Tri-Agreement was a licensing and royalty agreement signed by defendant HAMPTON BRIDWELL, on behalf of defendant TENET PARTNERS, defendant Medin, on behalf of BrandTransact Investments (BTI), and Zabit, on behalf of plaintiff BRANDTRANSACT WORLDWIDE (see NYSCEF Doc. No. 01, complaint, p 36). Therein, movants granted plaintiffs the "exclusive use of its brand data for the BTW50 Index" (see id.).

did not allege any specific facts with respect to the time, place, or manner of [the] purported misrepresentation]; INTL FCStone Mkts., LLC v Corrib Oil Co. Ltd., 172 AD3d 492, 493 [1st Dept 2019] [holding "[t]he allegations supporting the fraud claims [] lack particularity, as, with minimal exceptions, they fail to identify who made the misrepresentations, when the misrepresentations were made, and the substance of the misrepresentations"]).

Rather, plaintiffs' serious allegations are purely speculative, asserting in a conclusory fashion that movants provided "complicit assistance" in Medin's alleged fraudulent scheme, without alleging any specific circumstances, agreements, or conduct giving rise to such an inference.[4] Such conclusory statements, without more, require dismissal as they are insufficient to satisfy the particularity required in pleading fraud (see Mandarin Trading Ltd. v Wildenstein, 16 NY3d 173, 179 [2011] ["The narrative within the complaint is devoid of facts . . . Highlighting this deficiency are pleadings that require leaps of fact and logic"]). Therefore, these causes of action are dismissed.

[4] Plaintiffs cite to one e-mail exchange between Medin and movants (see NYSCEF Doc. No. 01, complaint, p 48) as proof of the "conspiratorial plotting." However, the e-mail -- reflecting, at most, a request that a conversation be kept confidential -- does not give rise to any reasonable inference of fraudulent conduct.

Aiding and Abetting Breach of Fiduciary Duty

Plaintiffs do not articulate any arguments in opposition to that part of movants' motion seeking to dismiss the aiding and abetting breach of fiduciary duty cause of action against them (see generally NYSCEF Doc. No. 66, plaintiffs' opposition to motion to dismiss). Therefore, the claim shall be dismissed. In any event, the claim is insufficiently pled.

"A claim for aiding and abetting a breach of fiduciary duty requires: (1) [that a fiduciary breach its] obligations to another, (2) that the defendant knowingly induced or participated in the breach, and (3) that plaintiff suffered damages as a result of the breach" (Baldeo v Majeed, 150 AD3d 942, 945 [2d Dept 2017], citing Deblinger v Sani-Pine Prods. Co., Inc., 107 AD3d 659, 660 [2d Dept 2013] and Rut v Young Adult Inst., Inc., 74 AD3d 776, 777 [2d Dept 2010]). Further, "a plaintiff must plead this cause of action with particularity; conclusory allegations are insufficient" (Schroeder, 133 AD3d at 25, quoting Front, Inc v Khalil, 103 AD3d 481 [1st Dept 2013]).

Here, even assuming, arguendo, that other defendants owed a fiduciary duty to plaintiffs and breached such duties, plaintiffs fail to assert facts alleging that movants were aware of any alleged scheme or "takeover plot fraudulently concocted by Medin," and fail to allege facts indicating that movants

knowingly induced or participated in another's breach of fiduciary duty to plaintiffs (see NYSCEF Doc. No. 01, complaint, p 59; see also Schroeder, 133 AD3d at 25).

Tortious Interference with Contract

To state a cause of action for tortious interference with a contract, a plaintiff must demonstrate "the existence of a valid contract between the plaintiff and a third party, defendant's knowledge of that contract, defendant's intentional procurement of the third party's breach of the contract without justification, actual breach of the contract, and damages resulting therefrom" (330 Acquisition Co., LLC v Regency Savings Bank, F.S.B., 293 AD2d 314, 315 [1st Dept 2002], quoting Lama Holding Co. v Smith Barney, Inc., 88 NY2d 413, 424 [1996]).

Here, the alleged contract is the Tri-Agreement which the following parties executed: BTWW, BTI, and movants. As movants are not "third parties" to the Tri-Agreement, plaintiffs fail to set forth this cause of action against them (see, e.g., XpresSpa Holdings, LLC v Cordial Endeavor Concessions of Atlanta, LLC, 171 AD31 511, 513 [1st Dept 2019] ["The tortious interference with contract claim fails because [defendants] were not strangers to these agreements"]; Ashby v ALM Media, LLC, 110 AD3d 459 [1st Dept 2013] [dismissing tortious interference claim

against corporate officer because he "was not a stranger to plaintiff's contract with [the breaching party] as he was one of [the breaching party's] executives"]; Buller v Giorno, 28 AD3d 258, 258-259 [1st Dept 2006]).

Unjust Enrichment

To state a claim for unjust enrichment, a plaintiff must show "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" (Mandarin Trading Ltd. v Wildenstein, 16 NY3d 173, 182 [2011] [internal quotation marks omitted]). In order for an unjust enrichment claim to be viable, plaintiff must identify "what benefit was conferred on defendants" (Woods v 126 Riverside Dr. Corp., 64 AD3d 422, 424 [1st Dept 2009]).

Plaintiffs appear to allege the benefit to Tenet Partners and Hampton Bridwell is that they entered into a new agreement with BTI, which resulted in them receiving a "share of the income/profits" of the EQM Index, and that those profits "should be returned to Zabit" (see NYSCEF Doc. No. 01, complaint, p 88, and Doc. No. 66, plaintiffs' opposition, p 39). This alone cannot reasonably infer movants' enrichment let alone enrichment

against equity and good conscious at the expense of plaintiffs Zabit and BTWW.

Unfair Competition

While not withdrawing this claim against Tenet Partners and Hampton Bridwell, plaintiffs fail to articulate any argument in opposition to the motion for dismissal of this claim as against them. Therefore, the Court will dismiss the claim.

In any event, "[i]t is well settled that 'the primary concern in unfair competition is the protection of a business from another's misappropriation of the business, organization [or its] expenditure of labor, skill, and money" (Macys Inc. v Martha Stewart Living Omnimedia, Inc., 127 AD3d 48, 56 [1st Dept 2015], quoting Ruder & Finn v Seaboard Sur. Co., 52 NY2d 663, 671 [1981]). A plaintiff asserting an unfair competition claim must allege "the bad faith misappropriation of a commercial advantage which belonged exclusively to" the plaintiff (Valkyrie AI LLC v PriceWaterhouseCoopers LLP, 233 AD3d 460 [1st Dept 2024], quoting Brook v Peconic Bay Med. Ctr., 152 AD3d 436, 439 [1st Dept 2017]). "[B]ad faith can be established by a showing of fraud, deception, or an abuse of a fiduciary or confidential relationship" (Schroeder, 133 AD3d at 30).

Here, plaintiffs allege that the subject algorithm was plaintiff Zabit's idea, that plaintiff BTWW developed the BTW50 Index, and that defendant BTI launched it. However, the element of exclusivity is simply not pled beyond conclusory allegations. There are no supporting details of any protective measures over the idea and index.

Breach of Contract

To maintain an action for a breach of contract, the plaintiff must show: that (1) a contract exists between the parties; that (2) plaintiff performed in accordance with the contract; that (3) defendants breached their contractual obligations; and that (4) defendants breach resulted in damages (see generally 34-06 73, LLC v Seneca Ins. Co., 39 NY3d 44, 51 [2022] [quotations and citations omitted] [discussing the standard for a breach of contract in the context of a pleading]).

Here, the alleged contract is the Tri-Agreement which the following parties executed: BTWW, BTI, and Tenet Partners. However, plaintiffs do not identify any specific provision of the Tri-Agreement that movants allegedly breached. To the contrary, plaintiffs concede that movants were within their contractual right to terminate the agreement based on BTI's failure to make royalty payments required therein (see NYSCEF

Doc. No. 66, plaintiffs' opposition to motion to dismiss ["(Movants) obviously had every right to terminate the Tri-Agreement once (defendant) BTI breached"]).

Plaintiffs' assertions that BTI's breach was "concocted" and that movants' refusal to renegotiate the Tri-Agreement "made no business sense" are entirely conclusory and speculative.

Civil Conspiracy

"Although New York does not recognize an independent cause of action for civil conspiracy, allegations of civil conspiracy are permitted 'to connect the actions of separate defendants with an otherwise actionable tort'" (Cohen Bros. Realty Corp. v Mapes, 181 AD3d 401, 404 [1st Dept 2020], quoting Alexander & Alexander of N.Y. v Fritzen, 68 NY2d 968, 969 [1986] ["a mere conspiracy to commit a (tort) is never of itself a cause of action"). "To establish a claim of civil conspiracy, the plaintiff must demonstrate the primary tort, plus the following four elements: an agreement between two or more parties; an overt act in furtherance of the agreement; the parties' intentional participation in the furtherance of a plan or purpose; and resulting damage or injury" (id.).

Here, plaintiffs' allegations do not set forth a viable tort or facts supporting a reasonable inference that movants

were aware of any purported scheme by the other defendants, much less that they agreed to or intentionally participated in it. Further, based on the Court's decisions on the other three motions to dismiss (seq. nos. 01, 03, and 04), there are no remaining defendants with whom movants could have conspired with. Accordingly, the civil conspiracy claim is dismissed.

Declaratory Judgment and Equitable Relief

As there are no remaining substantive claims interposed against Tenet Partners and Hampton Bridwell, plaintiffs remaining request -- that the Court "enter a judgment declaring that [plaintiffs] are the sole and exclusive owners and licensees of the BTW50 Index and its underlying algorithms" and "permanently enjoin defendants from using the BTW50 Index, its underlying algorithms and the EQM Index and from representing that any of these items are owned by them" -- shall also be dismissed (NYSCEF Doc. No. 01, complaint, p 93-94).

"[I]njunctive relief is simply not available when the plaintiff does not have any remaining substantive causes of action against [] defendant" (Weinreb v 37 Apt. Corp., 97 AD3d 54, 58-59 [1st Dept 2012]). "An injunction is a remedy, a form of relief that may be granted when its proponent establishes the merits of its substantive cause of action against that

defendant" (Hejailan-Amon v Amon, 160 AD3d 481, 483 [1st Dept 2018] [citation omitted]; Talking Capital LLC v Omanoff, 169 AD3d 423, 424 [1st Dept 2019] [holding that injunctive relief "is a remedy for an underlying wrong, not a cause of action"]).

Pursuant to CPLR § 3001, "[t]he supreme court may render a declaratory judgment having the effect of a final judgment as to the rights and other legal relations of the parties to a justiciable controversy whether or not further relief is or could be claimed." A declaratory judgment is an equitable remedy that is generally only available where there is no adequate remedy at law (see Boyle v Kelley, 42 NY2d 88, 91 [1977]), and is intended to "declare the respective legal rights of the parties based on a given set of facts, not to declare findings of fact" (Touro Coll. V Novus Univ. Corp., 146 AD3d 679, 679 [1st Dept 2017]).

"A declaratory judgment requires a 'justiciable controversy,' in which not only does the plaintiff 'have an interest sufficient to constitute standing to maintain the action,' but also that the controversy involve present, rather than hypothetical, contingent, or remote prejudice to plaintiff" (id., quoting American Ins. Assn. v Chu, 64 NY2d 379, 383, cert. denied 474 US 803 [1985]). "Stated differently, the general purpose of a declaratory judgment is to quiet or stabilize an uncertain or disputed jural relationship concerning present or

prospective obligations" (Pappas v B&G Holding Co., 83 Misc3d 1285[A], *3 [Sup Ct Bx Cnty 2024], citing James v Alderton Dock Yards, 256 NY 298, 305 [1931]).

Here, plaintiffs fail to allege a justiciable controversy against Tenet Partners and Hampton Bridwell sufficient to maintain a claim for declaratory relief. While the complaint seeks a declaration concerning the ownership of the "BTW50 Index and related algorithms", plaintiffs do not allege facts demonstrating a present, concrete dispute between plaintiffs and movants with respect to those ownership rights (see Touro Coll. v Novus Univ. Corp., 146 AD3d at 679). Rather, the complaint contains a generalized narrative that fails to link any claimed ownership interest or adverse conduct to movants specifically.

Accordingly, it is hereby

ORDERED that the complaint against defendant COREBRAND ANALYTICS LLC is dismissed entirely; it is further

ORDERED that the complaint against defendants BRANDLOGIC CORP. and COREBRAND DATA SCIENCE is dismissed entirely pursuant to CPLR § 3013; it is further

ORDERED that the theft/embezzlement, breach of fiduciary duty, breach of attorney-client relationship, and aiding and abetting breach of attorney-client relationship causes of action asserted against defendants TENET PARTNERS and HAMPTON BRIDWELL are dismissed, as withdrawn; it is further

ORDERED that the fraudulent misrepresentation and unfair trade practices causes of action asserted against defendants TENET PARTNERS and HAMPTON BRIDWELL are dismissed, without opposition; it is further

ORDERED that the misappropriation of trade secrets, breach of confidence, fraud, aiding and abetting fraud, fraudulent inducement, fraudulent concealment, aiding and abetting breach of fiduciary duty, tortious interference, unjust enrichment, unfair competition, breach of contract, civil conspiracy, and declaratory judgment and equitable relief causes of action asserted against defendants TENET PARTNERS and HAMPTON BRIDWELL are dismissed pursuant to CPLR § 3211 (a) (7) for failure to state a cause of action; it is further

ORDERED that the complaint is dismissed in its entirety against defendants TENET PARTNERS and HAMPTON BRIDWELL; it is further

ORDERED that defendants shall serve this order with notice of entry on plaintiffs within 15 days of entry of this order; and it is further

ORDERED that the Clerk of the Court shall mark the file accordingly.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

4/16/2026
DATE

EMILY MORALES-MINERVA, J.S.C.

CHECK ONE:	[X]	CASE DISPOSED		[ ]	NON-FINAL DISPOSITION		
	[X]	GRANTED	[ ] DENIED	[ ]	GRANTED IN PART	[ ]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE