UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	2:18-cv-06881-CAS(GJSx)	Date	November 5, 2018
Title	SIVA ENTERPRISES ET AL. v. LANCE OTT ET AL.		

Present: The Honorable	CHRISTINA A. SNYDER	
CATHERINE JEANG	Not Present	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:	
N/A	N/A	

Proceedings: DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT (Dkt. 42, filed Sept. 29, 2018)

I. INTRODUCTION

On August 8, 2018, plaintiffs Siva Enterprises ("Siva") and Avis Bulbuyan filed a complaint against defendants Lance Ott, David Yeager, Steve Baghoomian, Cirrata Ventures LLC ("Cirrata"), and Does 1 through 25, inclusive. Dkt. 1. Plaintiffs filed a first amended complaint on August 10, 2018, adding Colton Dane Lasater and Charles Christopher as defendants. Dkt. 6 ("FAC"). In brief, plaintiffs allege that defendants are former officers and employees of Siva who misappropriated proprietary data from Siva and used that data to start a rival company. Id. Plaintiffs' complaint asserts claims for relief based on: (1) misappropriation of trade secrets; (2) unauthorized access to computers, computer systems and computer data; (3) intentional interference with prospective economic relations; (4) negligent interference with prospective economic relations; (5) intentional interference with contractual relations; (6) conversion; (7) civil conspiracy; (8) breach of fiduciary duty; (9) concealment; (10) unjust enrichment; (11) violation of statutory obligations of employees; (12) unfair competition; (13) honest services fraud; (14) defamation; (15) trade libel; (16) breach of contract; and (17) money had and received. Id. On September 28, 2018, the parties entered a stipulation to dismiss plaintiffs' claim for relief based on honest services fraud, which the Court subsequently granted. Dkts. 41, 45.

On September 29, 2018, defendants filed the instant motion to dismiss plaintiffs' complaint. Dkt. 42 ("Mot."). [1] Plaintiffs filed an opposition on October 15, 2018, dkt. 46

[1] Defendant also filed a request for judicial notice of the complaint filed in the Los Angeles County Superior Court in the case entitled Cirrata Ventures, LLC et al. v Avis Bulbuyan, et al., No. BC723827. Dkt. 44, Ex. 1 ("State Compl."). Although when ruling on a Rule 12 motion a court generally cannot consider materials outside of the complaint

("Opp'n"), and defendants filed a reply on October 22, 2018, dkt. 47 ("Reply"). The Court held a hearing on November 5, 2018. Having carefully considered the parties' arguments, the Court finds and concludes as follows.

II. BACKGROUND

A. Plaintiffs Siva and Bulbulyan

Plaintiffs allege the following facts in the first amended complaint. Siva provides a range of business solutions and operational services for the cannabis industry nationwide. FAC ¶ 12. According to plaintiffs, Siva is one of the most successful companies in obtaining state licensing applications and is recognized as one of the top cannabis consulting firms in the United States. Id. Bulbulyan is Siva's founder and Chief Executive Officer. Id. ¶ 13. Bulbulyan has been in the cannabis industry for more than a decade and is an appointed member of California's Cannabis Advisory Committee for the Bureau of Cannabis Control under The Department of Consumer Affairs and serves as the President of the Los Angeles Cannabis Task Force. Id.

Plaintiffs allege that as a result of Bulbulyan's efforts, Siva has generated "valuable, confidential, proprietary and trade secret information not generally known to the public," such as "a listing of Siva's clients and their contract information, the identities of key decision makers at each client, the sensitive needs and preferences of each client, details as to the types of services needed by the clients, on-boarding

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(e.g., facts presented in briefs, affidavits, or discovery materials), see In re American Cont'l Corp./Lincoln Sav. & Loan Sec. Litig., 102 F.3d 1524, 1537 (9th Cir. 1996), rev'd on other grounds sub nom Lexecon, Inc. v. Milberg Weiss Bershad Hynes & Lerach, 523 U.S. 26 (1998), a court may consider exhibits submitted with or alleged in the complaint and matters that may be judicially noticed pursuant to Federal Rule of Evidence 201. Lee v. City of Los Angeles, 250 F.3d 668, 689 (9th Cir. 2001). Federal Rule of Evidence 201 authorizes a court to take judicial notice of "matters of public record," Mack v. S. Bay Beer Distrib., 798 F.2d 1279, 1282 (9th Cir. 1986), abrogated on other grounds by Astoria Fed. Sav. & Loan Ass'n v. Solimino, 501 U.S. 104 (1991), or any other "adjudicative" facts, which are "facts concerning the immediate parties." See United States v. Gould, 536 F.2d 216, 219 (8th Cir. 1976); In re Homestore.com, Inc. Sec. Lit., 347 F. Supp. 2d 814, 816–17 (C.D. Cal. 2004). Accordingly, the Court grants defendants' request for judicial notice.

documents, Siva's business strategies and comprehensive operations manuals, business plans, accumulated market data, [a] financial modeling workbook, other form templates, as well as other confidential and proprietary information." Id. at ¶ 14. Plaintiffs refer to the foregoing as Siva's "confidential business information." Id.

B. Siva's Employment of Defendants Ott, Baghoomian, Yeager, Lasater, and Christopher

Around October 2017, Ott became Siva's Chief Strategy Officer and Vice President of Business Development. Id. Baghoomian became Siva's Vice President of Licensing and Compliance in or about early November 2017, and Yeager began as Siva's Chief Operating Officer on January 2, 2018. Id. ¶¶ 17–19. Yeager hired Lasater and Christopher to work at Siva around mid-February 2018, as Siva's Application Consultant and Financial Analyst, respectively. Id. ¶¶ 23–24.

C. Defendants' Alleged Conspiracy to Take Siva's Clients and Misappropriate Plaintiffs' Proprietary Business Information

Plaintiffs allege that as early as October 2017, Ott, Baghoomian, Yeager, Lasater, and Christopher began conspiring to start a competing business, Cirrata, and steal Siva's clients. Id. ¶¶ 20–21. Specifically, plaintiffs allege that:

(1) throughout January 2017, defendants regularly used their Siva email accounts to communicate with real estate brokers and agents about potential commercial properties for their competing business, id. ¶ 20;

(2) from January through March 2018, Yeager and Ott used Siva and Bulbulyan's reputation, resources, and contacts to actively fundraise for a company named Tokr, in which Yeager is an investor and shareholder, id. ¶ 22;

(3) defendants diverted active and potential Siva clients away from Siva by offering competing services from their side businesses, id. ¶ 25;

(4) defendants failed to deliver on promises to Siva's clients so that they could blame Bulbulyan for said failures and cause Siva's clients to believe Bulbulyan was inattentive and eventually take their business to defendants' competing business or elsewhere, id.;

(5) defendants sought to establish independent relationships with Siva clients by excluding Bulbulyan from communications and meetings, id. ¶ 26; and

(6) from January 2018, defendants have used Siva's resources and Bulbulyan's contacts to establish credibility and relevance for themselves, including by gaining access to committees in different associations, working groups such as the West Hollywood banking group, the regulatory advisory board of the LA Cannabis Task Force, the California Cannabis Bar Association, and Arcview Investment Group, id. ¶¶ 26–27.

Plaintiffs further allege that an audit log of Siva's computer servers confirmed that on March 20, 2018, three days before Ott's resignation from Siva, Ott spent the day copying confidential documents from Siva's servers and emailing them to his personal email address, including client contact lists, onboarding documents, company operation manuals, pitch decks, templates developed by Bulbulyan to provide services to clients, contracts, and other confidential, proprietary documents providing a roadmap into Siva's business strategies and client management techniques. Id. ¶ 29. That same day, Yeager allegedly emailed Ott, Baghoomian, Lasater, and Christopher a list of Siva's current and prospective clients, stating that the list included "a lot of prospects" that Siva needed to close. Id. Plaintiffs aver that this email was a pretext to transfer Siva's confidential business information to their personal emails. Id.

During this same week, Yaeger allegedly transferred Siva's confidential business information from Siva's computer files to his personal email and his new Cirrata email address. He also allegedly contacted Siva vendors and service providers to change his primary contact information and to cancel services on behalf of Siva "in an attempt to sabotage and create chaos" after defendants' departure from Siva. Id. ¶ 33. Yeager was suspended by Bulbulyan on March 28, 2018, for an unrelated incident. Id. Plaintiffs allege that Yeager subsequently logged into Siva's system and exported 59 "deal files" relating to Siva's customers which contained confidential information, and then modified the remaining files by changing account names, deleting files, and changing the administrator settings to prevent Bulbulyan from gaining access to the system. Id. ¶ 34. Plaintiffs further allege that Baghoomian's employment with Siva was terminated on March 30, 2018, and Baghoomian subsequently contacted Siva clients to ask them to contact him using his personal email address because he was having "technical difficulties" with his Siva email address. Id. ¶ 38.

Plaintiffs allege that defendants' business, Cirrata, directly competes with Siva by "providing the same cannabis-focused licensing, consulting and branding services," and that defendants are using Siva's confidential business information to take Siva's clients. Compl. ¶¶ 45–47.

III. LEGAL STANDARD

A. Federal Rule of Civil Procedure 12(b)(1)

A motion to dismiss an action pursuant to Fed. R. Civ. P. 12(b)(1) raises the objection that the federal court has no subject matter jurisdiction over the action. This defect may exist despite the formal sufficiency of the allegations in the complaint. T.B. Harms Co. v. Eliscu, 226 F. Supp. 337, 338 (S.D.N.Y. 1964), aff'd 339 F.2d 823 (2d Cir. 1964). When considering a Rule 12(b)(1) motion challenging the substance of jurisdictional allegations, the Court is not restricted to the face of the pleadings, but may review any evidence, such as declarations and testimony, to resolve any factual disputes concerning the existence of jurisdiction. See McCarthy v. United States, 850 F.2d 558, 560 (9th Cir. 1988).

B. Federal Rule of Civil Procedure 12(b)(6)

A motion pursuant to Federal Rule of Civil Procedure 12(b)(6) tests the legal sufficiency of the claims asserted in a complaint. Under this Rule, a district court properly dismisses a claim if "there is a 'lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory.'" Conservation Force v. Salazar, 646 F.3d 1240, 1242 (9th Cir. 2011) (quoting Balisteri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1988)). "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007) (internal citations omitted). "Factual allegations must be enough to raise a right to relief above the speculative level." Id. (internal citations omitted).

In considering a motion pursuant to Rule 12(b)(6), a court must accept as true all material allegations in the complaint, as well as all reasonable inferences to be drawn from them. Pareto v. FDIC, 139 F.3d 696, 699 (9th Cir. 1998). The complaint must be read in the light most favorable to the nonmoving party. Sprewell v. Golden State Warriors, 266 F.3d 979, 988 (9th Cir. 2001). However, "a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations." Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009); see Moss v. United States Secret Service,

572 F.3d 962, 969 (9th Cir. 2009) ("[F]or a complaint to survive a motion to dismiss, the non-conclusory 'factual content,' and reasonable inferences from that content, must be plausibly suggestive of a claim entitling the plaintiff to relief."). Ultimately, "[d]etermining whether a complaint states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." Iqbal, 556 U.S. at 679.

Unless a court converts a Rule 12(b)(6) motion into a motion for summary judgment, a court cannot consider material outside of the complaint (e.g., facts presented in briefs, affidavits, or discovery materials). In re American Cont'l Corp./Lincoln Sav. & Loan Sec. Litig., 102 F.3d 1524, 1537 (9th Cir. 1996), rev'd on other grounds sub nom Lexecon, Inc. v. Milberg Weiss Bershad Hynes & Lerach, 523 U.S. 26 (1998). A court may, however, consider exhibits submitted with or alleged in the complaint and matters that may be judicially noticed pursuant to Federal Rule of Evidence 201. In re Silicon Graphics Inc. Sec. Litig., 183 F.3d 970, 986 (9th Cir. 1999); Lee v. City of Los Angeles, 250 F.3d 668, 689 (9th Cir. 2001).

As a general rule, leave to amend a complaint which has been dismissed should be freely granted. Fed. R. Civ. P. 15(a). However, leave to amend may be denied when "the court determines that the allegation of other facts consistent with the challenged pleading could not possibly cure the deficiency." Schreiber Distrib. Co. v. Serv-Well Furniture Co., 806 F.2d 1393, 1401 (9th Cir. 1986); see Lopez v. Smith, 203 F.3d 1122, 1127 (9th Cir. 2000).

C. Motion to Stay

"[C]onsiderations of [w]ise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation," may counsel federal courts to stay or remand proceedings concerning the same matter as a pendent state court action. Colo. River Water Conservation Dist. v. United States, 424 U.S. 800, 817 (1976) (alteration in original) (internal quotation marks omitted). In determining whether to stay an action under the Colorado River doctrine, courts consider eight factors: "(1) which court first assumed jurisdiction over any property at stake; (2) the inconvenience of the federal forum; (3) the desire to avoid piecemeal litigation; (4) the order in which the forums obtained jurisdiction; (5) whether federal or state law provides the rule of decision on the merits; (6) whether the state court proceedings can adequately protect the rights of the federal litigants; (7) the desire to avoid forum shopping; and (8) whether the state court proceedings will resolve all issues before the federal court." R.R. St. & Co. v.

Transp. Ins. Co., 656 F.3d 966, 978-79 (9th Cir. 2011). "Ultimately, the decision whether to dismiss a federal action because of parallel state-court litigation hinges on a careful balancing of the [relevant] factors . . . ." Id. at 983 (internal quotation marks omitted). "Any doubt as to whether a factor exists should be resolved against a stay." Id. at 979.

IV. DISCUSSION

Defendants move to dismiss plaintiffs' complaint on Rule 12(b)(1) and Rule 12(b)(6) grounds. Defendants' motion is entirely focused on plaintiffs' two claims for relief under federal law: (1) misappropriation of trade secrets in violation of 18 U.S.C. §§ 1836 et seq., and (2) violation of section 43(a) of the Lanham Act, 15 U.S.C. §§ 1125(a). Defendants also request, in the alternative to dismissing plaintiffs' federal claims and declining to exercise supplemental jurisdiction over the remaining state claims, that the Court stay the present action under the Colorado River doctrine to allow a state court action involving the same parties to proceed first. Mot. at 14–15.

A. Whether Plaintiffs Have Standing

Defendants contend that both of plaintiffs' federal claims involve the facilitation of the "trafficking" of recreational marijuana—activity which is proscribed by the Controlled Substances Act ("CSA"), 21 U.S.C. §§ 801 et seq., and therefore cannot give rise to a legally cognizable injury for purposes of Article III standing. Mot. at 5–6.

Defendants' argument fails because plaintiffs have indeed alleged a legally cognizable injury for purposes of Article III standing: that defendants misappropriated plaintiffs' proprietary business information and misused plaintiffs' identity and reputation. Defendants are essentially arguing that their alleged actions are immune from federal law because plaintiffs are engaged in an illegal enterprise under federal law. The Court observes that authority in this area is sparse, particularly with respect to the applicability of federal civil laws to state-sanctioned cannabis businesses. However, the Court is persuaded by the decision in Greenwood v. Green Leaf Lab LLC, No. 3:17-CV-00415PK, 2017 WL 3391671, at *2–3 (D. Or. July 13, 2017), which examined a similar challenge by a defendant who argued that the Fair Labor Standards Act did not apply to his marijuana business due to the Controlled Substances Act. There, the court found that there is "no inherent conflict between the FLSA's requirements and the [CSA's] prohibition of marijuana" and explained that "just because an employer is violating one federal law, does not give it license to violate another." Id. at *3.

Here, plaintiffs are not seeking a remedy that would compel either party to violate the Controlled Substances Act. Moreover, the dispute in this case does not involve the actual production or sale of cannabis. Rather, the first amended complaint concerns the actions of defendants in allegedly misappropriating plaintiffs' confidential business information and passing themselves off as Siva to take Siva's clients. Accordingly, the Court does not find a conflict between plaintiffs' claims and the CSA and declines to dismiss plaintiffs' claims due to lack of standing.

B. Whether Plaintiffs Can State Any Federal Claims

Defendants argue that plaintiffs have not stated a claim for misappropriation of trade secrets because "there is no trade secret protection for ongoing illegal activities." Mot. at 10. Defendants characterize plaintiffs' trade secrets as "merely ideas on how to evade federal law and are, therefore, unprotected." Id. Defendants contend that plaintiffs' Lanham Act also fails because it involves "the aiding and abetting" of the commission of a crime. Mot. at 10. This is a mischaracterization of plaintiffs' allegations, which are predominantly focused on defendants' alleged theft of plaintiffs' client lists and client information. Moreover, as explained earlier, the Court finds that the CSA's prohibition on cannabis does not immunize defendants from federal laws. Accordingly, the Court declines to dismiss plaintiffs' federal claims based on the Controlled Substances Act.

C. Whether Plaintiffs Have Stated a Claim for Violation of the Lanham Act

Section 43(a) of the Lanham Act prohibits the use of false designations of origin, false descriptions, and false representations in the advertising and sale of goods and services. 15 U.S.C. § 1125(a). The Ninth Circuit has held that false endorsement claims are cognizable under section 43(a):

> [C]ourts have recognized false endorsement claims brought by plaintiffs, including celebrities, for the unauthorized imitation of their distinctive attributes, where those attributes amount to an unregistered commercial 'trademark.' . . . Section 43(a) now expressly prohibits, inter alia, the use of any symbol or device which is likely to deceive consumers as to the association, sponsorship, or approval of goods or services by another person.

Waits v. Frito-Lay, Inc., 978 F.2d 1093, 1106 (9th Cir. 1992) (abrogated on other grounds).

Plaintiffs' Lanham Act claim is based on defendants' alleged misuse of Siva's goodwill and false designation of origin by the defendants to promote Cirrata's business. Opp'n at 15. According to plaintiffs, defendants used their Siva-linked e-mail addresses and executive titles to cultivate credibility and establish industry contacts to generate business for Cirrata. FAC ¶ 27. Thus, Siva clients who received communications from defendants could have believed that Bulbulyan granted defendants such permission and access to client information and hence endorsed the referral or communication. Opp'n at 16; FAC ¶¶ 21, 22, 25–30. Plaintiffs have sufficiently alleged that defendants' use of Siva's name and references to Siva in connection with the promotion of Cirrata's services was likely to cause confusion as to Siva's association or sponsorship of defendants' business.

Defendants contend that plaintiffs' Lanham Act fails because "it makes no sense." Mot. at 11. According to defendants, plaintiffs cannot premise their Lanham Act violation on defendants' use of confidential business information because "this information cannot be a hidden 'trade secret' while simultaneously being so universally associated with Siva by the general public that the public thinks Cirrata is Siva." Mot. at 11–12. Defendant mischaracterizes plaintiffs' claim, which is based on defendants' alleged use of Siva's client lists and proprietary client information, in addition to Siva's name, to mislead Siva's clients into believing Siva was associated with or sponsored by Cirrata. Accordingly, the Court declines to grant defendants' motion to dismiss plaintiffs' Lanham Act claim.

D. Whether to Stay the Federal Action

On October 1, 2018, two months after the instant action was filed, Defendants filed a complaint in the Los Angeles County Superior Court against plaintiffs in this action alleging fraud in the inducement of their employment contracts and unfair competition based on false advertisement. Mot. at 15. Defendants contend that the instant action and the state action are substantially similar, and that plaintiffs' claims here are compulsory crossclaims in the state action. Id. Accordingly, defendants argue that the Court should stay the case under Colorado River doctrine.

The Court finds that the Colorado River factors do not weigh in favor of a stay. First, defendants in this case, not plaintiffs, filed the state action *after* plaintiffs filed the instant action in federal court. Second, the present case does not raise any "special concern[s] about piecemeal litigation" because this case "involves ordinary contract and tort issues and is thus unlike Colorado River where important real property rights were at

stake and where there was a substantial danger of inconsistent judgments." Travelers Indem. Co. v. Madonna, 914 F.2d 1364, 1369 (9th Cir. 1990). Third, the factor regarding forum shopping weighs against a stay because defendants filed a case in state court rather than bringing counterclaims in the first-filed action. And finally, because plaintiffs have stated federal claims, the factors regarding whether state court proceedings can adequately protect the rights of the federal litigants or resolve all issues before the federal court weigh against a stay. Colorado River abstention is only appropriate under "exceptional circumstances," 424 U.S. at 813, and no such circumstances exist here. Accordingly, the Court declines to stay the instant action.

VI. CONCLUSION

In accordance with the foregoing, the Court hereby **DENIES** defendants' motion to dismiss plaintiffs' first amended complaint.

IT IS SO ORDERED.

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