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NO JS-6

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

NETJETS SERVICES, INC., a Delaware corporation;	)	Case No. CV 12-06869 DDP (JCGx)
MARQUIS JET PARTNERS, INC., a Delaware corporation,	)	
	)	
Plaintiffs,	)	<b>ORDER GRANTING DEFENDANT'S MOTION TO DISMISS IN PART AND DENYING IN PART</b>
v.	)	
	)	
WILLIAM PAPARIELLA, an individual,	)	
	)	[Dkt. No. 29]
Defendant.	)	
_____	)	

Presently before the court is Defendant William Papariella's Motion to Dismiss. Having considered the submissions of the parties, the court grants the motion and adopts the following order.

**I. Background**

Plaintiff NetJets Inc. ("NetJets") operates a fractional jet ownership program, through which participants purchase shares of a private aircraft. (First Amended Complaint "FAC" ¶ .) Plaintiff Marquis Jet Partners, Inc. ("Marquis") sells blocks of prepaid flight time on NetJets planes. (Id. ¶ 8.)

1 Prior to June 3, 2011, Defendant was a Marquis employee, and  
2 had access to confidential customer information. (Id. ¶¶ 13, 14.)  
3 Defendant signed a confidentiality agreement, which listed NetJets  
4 as a third part beneficiary. (Id. ¶ 13, Ex. A at 4.)

5 Plaintiffs allege that Defendant transferred NetJets' and  
6 Marquis' confidential information to his own personal e-mail  
7 accounts and electronic devices. (Id. ¶¶ 14, 15.) Defendant also  
8 sold competitors' services to Marquis' customers, sometimes without  
9 those customers' knowledge. (Id. ¶¶ 16, 17.) On June 3, 2011,  
10 Defendant resigned from Marquis and went to work for a competitor,  
11 Centennial. (Id. ¶ 14.)

12 Plaintiffs now bring four causes of action against Defendant  
13 for 1) breach of duty of loyalty, 2) breach of contract, 3)  
14 "intentional interference with existing and prospective economic  
15 advantage," and 4) unfair competition in violation of California  
16 Business and Professions Code § 17200. Papariella now moves to  
17 dismiss all claims brought by Plaintiff NetJets Services, Inc. and  
18 to dismiss the second claim for breach of duty of loyalty and third  
19 claim for intentional interference with existing and prospective  
20 economic advantage as to all Plaintiffs.

## 21 **II. Legal Standard**

22 A complaint will survive a motion to dismiss when it contains  
23 "sufficient factual matter, accepted as true, to state a claim to  
24 relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S.  
25 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544,  
26 570 (2007)). When considering a Rule 12(b)(6) motion, a court must  
27 "accept as true all allegations of material fact and must construe  
28 those facts in the light most favorable to the plaintiff." Resnick

1 v. Hayes, 213 F.3d 443, 447 (9th Cir. 2000). Although a complaint  
2 need not include "detailed factual allegations," it must offer  
3 "more than an unadorned, the-defendant-unlawfully-harmed-me  
4 accusation." Iqbal, 556 U.S. at 678. Conclusory allegations or  
5 allegations that are no more than a statement of a legal conclusion  
6 "are not entitled to the assumption of truth." Id. at 679. In  
7 other words, a pleading that merely offers "labels and  
8 conclusions," a "formulaic recitation of the elements," or "naked  
9 assertions" will not be sufficient to state a claim upon which  
10 relief can be granted. Id. at 678 (citations and internal  
11 quotation marks omitted).

12 "When there are well-pleaded factual allegations, a court should  
13 assume their veracity and then determine whether they plausibly  
14 give rise to an entitlement of relief." Id. at 679. Plaintiffs  
15 must allege "plausible grounds to infer" that their claims rise  
16 "above the speculative level." Twombly, 550 U.S. at 555.  
17 "Determining whether a complaint states a plausible claim for  
18 relief" is a "context-specific task that requires the reviewing  
19 court to draw on its judicial experience and common sense." Iqbal,  
20 556 U.S. at 679.

### 21 **III. Discussion**

#### 22 A. Plaintiff Netjets Services, Inc.

23 There are three Plaintiffs in this action: Netjets, Marquis,  
24 and Netjets Services, Inc. ("Netjets Services"). The First Amended  
25 Complaint, however, makes virtually no reference to any  
26 relationship between Defendant and Netjets Services. The FAC  
27 alleges that Netjets Services is a Delaware Corporation with a  
28 principal place of business in Ohio. (FAC ¶ 3.) The FAC also

1 alleges that in a state court proceeding, Defendant alleged that he  
2 was a Netjets Services employee. (FAC ¶ 9.) Beyond that, the FAC  
3 states no facts regarding Netjets Services. Nevertheless, the FAC  
4 proceeds to allege causes of action either on behalf of Netjets  
5 Services or on behalf of unspecified and undifferentiated  
6 "Plaintiffs."

7 Defendant argues that because the FAC alleges no facts  
8 whatsoever regarding any relationship between himself and Netjets  
9 Services, all claims brought by Netjets Services should be  
10 dismissed. Defendants argue, in response, that Netjets Services  
11 need not plead facts integral to their claims because such facts  
12 can be inferred from other filings. (Opp. at 10.)

13 Plaintiffs' arguments have no merit. The FAC's first cause of  
14 action alleges that Defendant breached a duty of loyalty to his  
15 employers, NetJets Services and Marquis, yet nowhere alleges that  
16 Defendant was ever employed by Netjets Services. Though the FAC  
17 does refer to allegations in a state court proceeding, it proceeds  
18 to allege that Defendant "was employed by Marquis until he resigned  
19 . . . ." (FAC ¶14.)

20 Plaintiffs also argue that Netjets Services' Breach of  
21 Contract is sufficiently pled, even though the FAC makes no  
22 allegation that Defendant entered into any contract with Netjets  
23 Services nor alleges that Netjets Services was a beneficiary of any  
24 agreement entered into by Defendant. (Opp. at 10.) The FAC  
25 alleges that Defendant entered into a confidentiality agreement  
26 that identified Netjets, not Netjets Services, as an intended third  
27 party beneficiary. (FAC ¶ 13.) Plaintiffs do not dispute that the  
28 FAC's breach of contract claim makes no mention of Netjets

1 Services. Instead, Plaintiffs argue that because their  
2 Certification of Interested Parties identifies a relationship  
3 between Netjets Services and Netjets, "it must also be conceded  
4 that Netjets Services is an affiliate of its parent corporation,  
5 Netjets," and that they need not include specific factual  
6 allegations about Netjets Services in their complaint (Opp. at 11.)  
7 Plaintiffs are mistaken. Iqbal, 556 U.S. at 678 ([A] complaint  
8 must contain sufficient factual matter, accepted as true, to state  
9 a claim that is plausible on its face.") (emphasis added) (internal  
10 quotation and citation omitted). Because the FAC does not allege  
11 any facts regarding Netjets Services, all claims brought by  
12 Plaintiff Netjets Services are dismissed, with leave to amend.

13 B. Breach of Duty of Loyalty to Marquis

14 The FAC alleges that Defendant occupied a "position of trust  
15 and confidence" as a sales executive for Marquis, and that  
16 Defendant therefore had a fiduciary duty and duty of loyalty to  
17 Marquis. (FAC ¶ 20.) The FAC alleges that Defendant breached that  
18 duty of loyalty by diverting sales away from Marquis,  
19 misappropriating confidential information, and poaching Marquis  
20 employees. (FAC ¶ 22.) Though Defendant initially moved to  
21 dismiss the breach of duty loyalty claim as to Netjets Services and  
22 Marquis, Defendant appears to have abandoned his arguments with  
23 respect to Marquis. (Reply at 3-5, 11.) The Motion to Dismiss  
24 Plaintiff Marquis' Breach of Duty of Loyalty claim is, therefore,  
25 denied.

26 C. Intentional Interference with Existing and Prospective  
27 Economic Advantage

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1 Plaintiffs bring a third cause of action for "intentional  
2 interference with existing and prospective economic advantage."  
3 The torts of intentional interference with contract and intentional  
4 interference with prospective economic advantage are, however,  
5 distinct. Korea Supply Co. v. Lockheed Martin Corp., 29 Cal.4th  
6 1134, 1157 (2003). The court therefore addresses each claim  
7 separately. See Fed. R. Civ. P. 8(d)(2).

8 1. Intentional Interference with Contract

9 A claim for intentional interference with contractual  
10 relations requires "(1) a valid contract between plaintiff and a  
11 third party; (2) defendant's knowledge of this contract; (3)  
12 defendant's intentional acts designed to induce a breach or  
13 disruption of the contractual relationship; (4) actual breach or  
14 disruption . . . , and (5) resulting damage." Quelimane Co., Inc.  
15 v. Stewart Title Guaranty Co., 19 Cal.4th 77, 55 (1998). Defendant  
16 argues that the FAC fails to allege any facts regarding Plaintiffs'  
17 contracts with third parties. (Mot. at 14.)

18 A complaint must provide a defendant with "some facts  
19 surrounding the type or nature of the 'contracts' their conduct  
20 allegedly interfered with." AccuImage Diagnostics Corp. v.  
21 Terarecon, Inc., 260 F.Supp.2d 941, 956 (N.D. Cal. 941).  
22 The FAC alleges that Plaintiffs "provide . . . fractional owners  
23 with private aircraft" and "offers . . . a prepaid lease offering  
24 25 hours of occupied flight time . . . ." (FAC ¶¶ 7-8.)  
25 Plaintiffs argue that because "Defendant was employed by  
26 Plaintiffs, he is well aware and on notice of the nature of the  
27 contacts between Plaintiffs and their customers . . . ." (Opp. at  
28 13.)

1 Plaintiffs' allegations are insufficient. Perhaps as a result  
2 of the third cause of action's conflation of two distinct claims,  
3 the FAC does not identify any existing contract. Part of this  
4 failure stems from the FAC's imprecision in referring to  
5 "Plaintiffs," collectively. As explained above, none of the claims  
6 brought on behalf of Plaintiff Netjets Services are viable. It is  
7 unclear from the FAC whether remaining Plaintiff Marquis or Netjets  
8 is alleged to have entered into a contract with some third party,  
9 though references to "Redirected Restricted Marquis Customer[s]"  
10 suggests the former. These references, however, apply to alleged  
11 "economic relationship[s] between Plaintiffs and their customers  
12 that likely would have resulted in an economic relationship to  
13 Plaintiffs."<sup>1</sup> Thus, even though the FAC does generally identify  
14 "prepaid lease" and "fractional ownership" business arrangements,  
15 those allegations alone do not adequately identify the existing  
16 contracts allegedly disrupted.

17 2. Intentional Interference with Prospective  
18 Economic Advantage

19 The elements of this tort are similar, but not identical to  
20 those of an intentional interference with contract claim.  
21 Interference with prospective economic advantage requires "(1) an  
22 economic relationship between the plaintiff and some third party,  
23 with the probability of future economic benefit to the plaintiff;  
24 (2) the defendant's knowledge of the relationship; (3) intentional  
25 acts on the part of the defendant designed to disrupt the

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26  
27 <sup>1</sup> As discussed below, this language is more applicable to  
28 claims for intentional interference with prospective economic  
advantage than interference with contract.

1 relationship; (4) actual disruption of the relationship; and (5)  
2 economic harm . . . ." Korea Supply, 29 Cal.4th at 1153 (internal  
3 quotation and citations omitted). To satisfy the third element, a  
4 plaintiff must plead some intentional wrongful act other than the  
5 interference itself. Id. at 1154. In other respects, however, an  
6 interference with prospective economic advantage is broader than a  
7 claim for interference with contract, in that the former claim does  
8 not depend upon the existence of a valid contract. Id. at 1157-58.

9 The FAC alleges that an economic relationship between  
10 Plaintiffs and "Redirected Restricted Marquis Customer[s]" "likely  
11 would have resulted in an economic benefit to Plaintiffs." (FAC ¶  
12 32.) The FAC further states that Defendant interfered with this  
13 likely benefit by selling flights and services to competitors in  
14 breach of his duty of loyalty. (FAC ¶ 33.) These allegations  
15 satisfy the first three elements of an interference with  
16 prospective advantage claim. See Ikon Office Solutions, Inc. V.  
17 Rezente, No. CIV. 10-1704 WBS, 2011 WL 1402882 at \*4-5 (E.D. Cal.  
18 Apr. 13, 2011). The FAC also alleges that Defendant actually did  
19 disrupt Marquis' business relationships by booking Restricted  
20 Marquis Customers on competitors' planes, and that Marquis lost  
21 revenue as a result.<sup>2</sup> (FAC ¶¶ 32, 34-35.) Marquis' claim for  
22 intentional interference with prospective economic advantage is,  
23 therefore, adequately pled.

#### 24 **IV. Conclusion**

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26 <sup>2</sup> Plaintiff again uses the term "Plaintiffs," collectively, as  
27 does this portion of Defendant's Reply. It appears, however, that  
28 only Plaintiff Marquis had any prospective business relationships  
with Restricted Marquis Customers. As described above, the FAC  
does not allege any specific facts regarding Netjets Services.



1 For the reasons stated above, Defendant's Motion to Dismiss is  
2 GRANTED in part and DENIED in part. All claims brought by  
3 Plaintiff Netjets Services are DISMISSED, with leave to amend.  
4 Plaintiffs' claim for intentional interference with contractual  
5 relations is also DISMISSED with leave to amend. Any amended  
6 complaint shall be filed within fourteen days of the date of this  
7 order.<sup>3</sup>

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9 IT IS SO ORDERED.

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12 Dated: May 28, 2013

  
DEAN D. PREGERSON  
United States District Judge

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27 <sup>3</sup> Though Plaintiffs' conflation of their interference with  
28 contract claim and interference with prospective advantage claim is  
not in and of itself fatal to either claim, Plaintiffs may wish to  
separate any such amended claims in the interest of clarity.