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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

WAGNER AERONAUTICAL, INC.; et  
al,  
  
Plaintiffs,  
  
vs.  
  
DAVID DOTZENROTH; et al,  
  
Defendants.

Case No.: 21-cv-0994- L-AGS

**ORDER GRANTING MOTION TO  
DISMISS [ECF NO. 142.]**

Pending before the Court is Defendants’ Motion to Dismiss the Fourth and Fifth Counts of Plaintiff’s First Amended Complaint.<sup>1</sup> [ECF No. 142.] Plaintiffs have filed an Opposition, and Defendants have filed a Reply. The Court has considered the motion and grants the request for the following reasons.

I. FACTUAL BACKGROUND

The facts as asserted in Plaintiff’s Complaint include the following:

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<sup>1</sup> Defendants mistakenly identify Count Four as the Unfair Competition Law (“UCL”) claim, and Count Five as the breach of fiduciary duty claim, however Count Five alleges violation of the UCL, and Count Six alleges breach of fiduciary duty.

1 Plaintiff Mammoth Freighters LLC (“Mammoth” or “Mammoth Freighters”) is  
2 developing a passenger aircraft conversion program, designed in part by Plaintiff Wagner  
3 Aeronautical, Inc. (“Wagner Aeronautical”), that takes passenger aircraft and modifies  
4 them to carry cargo for the world’s leading air freight companies. The co-CEOs of  
5 Mammoth are Plaintiffs William Wagner (“Wagner”) and William Tarpley (“Tarpley”).  
6 Wagner, is the founder and president of Wagner Aeronautical and Tarpley is the business  
7 lead for Mammoth’s conversion program.

8 When Wagner and Tarpley began work on the conversion program, they asked  
9 Defendant David Dotzenroth (“Dotzenroth”), a long-time friend with connections in the  
10 financial industry, if he would be interested in exploring the possibility of a collaboration  
11 whereby Wagner and Wagner Aeronautical would contribute the engineering expertise;  
12 Tarpley would contribute project management expertise and marketing expertise to  
13 attract potential clients; and Dotzenroth would secure investment capital to fund the  
14 development of the conversion program.

15 Plaintiffs now allege that Defendants David Dotzenroth; Charles Wiley  
16 Dotzenroth; and Andrew Mansell; stole valuable, confidential and proprietary  
17 information belonging to Plaintiffs including a business plan, budget, and schedule  
18 roadmap, in order to launch a competing business converting large passenger aircraft into  
19 cargo freighters.

## 20 II. PROCEDURAL BACKGROUND

21 On May 25, 2021, Plaintiffs filed a complaint in this Court alleging  
22 misappropriation of trade secrets under federal and state law, false advertising under the  
23 Lanham Act, unfair competition under California law, breach of fiduciary duty, and civil  
24 conspiracy. (Complaint [ECF No. 1.]) On June 21, 2021, Plaintiffs filed a motion for  
25 preliminary injunction. (Mot. [ECF No. 16.]) On July 8, 2021, Plaintiffs withdrew the  
26 motion for preliminary injunction. [ECF No. 48.] On November 9, 2021, Plaintiffs filed a  
27 First Amended Complaint, adding a claim for misappropriation against Defendant NIAR.  
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1 [ECF No. 132.] On November 23, 2021, Defendants filed the present Motion to Dismiss  
2 Counts Four and Five. [ECF No. 142.] On December 13, 2021, Plaintiffs filed an  
3 Opposition. [ECF No. 159.] On December 17, 2021, Defendants filed a Reply. [ECF No.  
4 160.]

5 III. LEGAL STANDARD

6 The court must dismiss a cause of action for failure to state a claim upon which  
7 relief can be granted. Fed. R. Civ. P. 12(b)(6). A motion to dismiss under Rule 12(b)(6)  
8 tests the complaint's sufficiency. *See N. Star Int'l v. Ariz. Corp. Comm'n.*, 720 F.2d 578,  
9 581 (9th Cir. 1983). The court must assume the truth of all factual allegations and  
10 "construe them in the light most favorable to [the nonmoving party]." *Gompper v. VISX,*  
11 *Inc.*, 298 F.3d 893, 895 (9th Cir. 2002); *see also Walleri v. Fed. Home Loan Bank of*  
12 *Seattle*, 83 F.3d 1575, 1580 (9th Cir. 1996).

13 As the Supreme Court explained, "[w]hile a complaint attacked by a Rule 12(b)(6)  
14 motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to  
15 provide the 'grounds' of his 'entitlement to relief' requires more than labels and  
16 conclusions, and a formulaic recitation of the elements of a cause of action will not do."  
17 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citations and quotation  
18 marks omitted). Instead, the allegations in the complaint "must be enough to raise a right  
19 to relief above the speculative level." *Id.* A complaint may be dismissed as a matter of  
20 law either for lack of a cognizable legal theory or for insufficient facts under a cognizable  
21 theory. *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530,  
22 534 (9th Cir. 1984).

23 IV. DISCUSSION

24 A. UNFAIR COMPETITION- COUNT FIVE

25 Defendants contend the claims for unfair competition and breach of fiduciary duty  
26 must be dismissed pursuant to Rule 12(b)(6) because they are preempted by California's  
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1 Uniform Trade Secret Act (“CUTSA”), Cal. Civ. Code § 3426. (Motion at 1 [ECF No.  
2 142-1.]

3 CUTSA is codified in sections 3426 through 3426.11 of the California Civil Code.  
4 Cal.Civ.Code § 3426 et seq. The breadth of CUTSA covers a range of matters, including  
5 definitions for “misappropriation” and “trade secrets,” injunctive relief, attorneys’ fees,  
6 limitations periods, severability, and methods for preserving the secrecy of trade secrets.  
7 *K.C. Multimedia, Inc. v. Bank of America Technology & Operations, Inc.*, 171 Cal.App.4th  
8 939, 954 (Ct. App. 2009). The expansiveness of CUTSA suggests “a legislative intent to  
9 preempt the common law . . . [a]t least as to common law trade secret misappropriation  
10 claims.” *Id.* “CUTSA provides the exclusive civil remedy for conduct falling within its  
11 terms, so as to supersede other civil remedies ‘based upon misappropriation of a trade  
12 secret’.” *Silvaco Data Systems v. Intel Corp.*, 184 Cal.App.4th 210, 236 (Ct. App. 6th  
13 2010) *distinguished on other grounds in Kwikset v. Superior Court*, 51 Cal.4th 310, 337  
14 (Cal. 2011). “[T]he avowed purpose of CUTSA is “to make uniform the law with respect  
15 to the subject of this title among states enacting it.” *Silvaco*, 184 Cal.App.4th at 241.  
16 CUTSA “therefore supersedes claims—including Section 17200 claims—based on the  
17 same nucleus of facts as trade secret misappropriation.” *Waymo LLC v. Uber*  
18 *Technologies, Inc.*, 256 F.Supp.3d 1059, 1062 (N.D. Cal. 2017); *Digital Envoy, Inc., v.*  
19 *Google, Inc.*, 370 F.Supp.2d 1025, 1035 (N.D. Cal. 2005)(Section 3426.7(b) preempts  
20 “claims for unfair competition and unjust enrichment since those claims are based on the  
21 same nucleus of facts as the misappropriation of trade secrets claim for relief.”) If a claim  
22 for common law or statutory unfair competition is based on the same facts as the  
23 misappropriation claim, it may be preempted under CUTSA. *K.C. Multimedia, Inc., v.*  
24 *Bank of America Technology*, 171 Cal.App.4th 939, 961 (Ct. App. 6th 2009).

25 However, CUTSA “does not affect (1) contractual remedies, whether or not based  
26 upon misappropriation of a trade secret, (2) other civil remedies that are not based upon  
27 misappropriation of a trade secret or (3) criminal remedies, whether or not based upon  
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1 misappropriation of a trade secret.” Cal.Civ.Code § 3426.7(b)(2). “If the plaintiff  
2 identifies no property right outside of trade secrets law, then he has no remedy outside  
3 that law, and there is nothing unsound or unjust about holding other theories superseded.”  
4 *Silvaco*, 184 Cal.App.4th at 239. As a result, “preemption is not triggered where the facts  
5 in an independent claim are similar to, but distinct from, those underlying the  
6 misappropriation claim.” *Gabriel Techs. Corp. v. Qualcomm Inc.*, No. 08cv1992-  
7 MMA(POR), 2009 WL 3326631, at \*11 (S.D. Cal. Sept. 3, 2009).

8 Defendants argue that Plaintiffs unfair competition (“UCL”), Cal Bus. & Prof.  
9 Code § 17200, claim is premised on the wrongful taking and use of confidential business  
10 information, which is the same basis for their CUTSA claim, therefore CUTSA preempts  
11 the cause of action and it must be dismissed. (Mot. at 1.) In addition, Defendants contend  
12 that Plaintiffs cannot protect information that does not qualify as a trade secret, such as  
13 the business plan, and there is no allegation that the information was protected by some  
14 other provision of law, therefore the exclusive remedy for allegations that Defendants  
15 used Plaintiffs’ information for unlawful purposes is through CUTSA. (Reply at 7-8.)

16 In response, Plaintiffs argue that the unfair competition claim is not preempted by  
17 CUTSA because it is “based upon a broader spectrum of misconduct than  
18 misappropriation,” including Defendants’ use of Plaintiffs’ marketing strategy, investor  
19 strategy, and methods to identify potential customers. (Oppo at 5.) As a result of the  
20 alleged theft, Plaintiffs assert that Defendants gained an unfair advantage because they  
21 “knew Plaintiff’s playbook and how Plaintiffs planned to conduct their business.” (*Id.*)  
22

23 The Court finds that the UCL claim is based on the same nucleus of facts as the  
24 misappropriation claim. The UCL claim alleges that the Dotzenroth Defendants “unfairly  
25 and unlawfully competed directly against Plaintiffs by improperly and unlawfully using  
26 Plaintiffs’ own *business plan, engineering strategy, and marketing strategy* to start a  
27 competing conversion program and by approaching the same partners and customers as  
28 Plaintiffs.” (FAC at ¶ 143(emphasis added)). Plaintiffs further allege:

1 ¶144. After misappropriating Plaintiffs’ confidential and proprietary  
2 information, and after learning the details of Plaintiffs’ engineering and  
3 marketing strategy, Defendants started a conversion program to compete  
4 directly with Plaintiffs’ conversion program. With the competing program  
5 established, Defendants then sought deals with the same customers and  
6 partners as Plaintiffs. Defendants had an unfair advantage against Plaintiffs  
7 when they entered the conversion market because Defendants knew  
8 Plaintiffs’ playbook and how Plaintiffs planned to conduct their business.  
9 This unfair advantage has allowed and will continue to allow Defendants to  
10 profit from their wrongdoing.

11 145. Defendants have been enriched by, and have significantly benefited  
12 from, their use of Plaintiffs’ proprietary and confidential business  
13 information, including the business plan and the budget and schedule  
14 roadmap. Defendants obtained that benefit at the expense of Plaintiffs. They  
15 have not compensated Plaintiffs for that information.

16 (*Id.* at ¶ 144-145).

17 Plaintiffs argue that this claim does not rest on the same conduct underlying the  
18 misappropriation claim because it concerns what Defendants have done and are able to  
19 do as a result of the “unlawful disclosure” of their trade secrets, citing *BladeRoom Group*  
20 *Limited v. Facebook*, (*BladeRoom I*), 2018 WL 452111 at \*6 (N.D. Cal. 2018). The Court  
21 does not agree.

22 In the misappropriation claim, Plaintiffs alleges that “Plaintiffs’ *business plan*,  
23 *budget and schedule roadmap*, and *supporting data* are trade secrets under the California  
24 Uniform Trade Secrets Act. Cal. Civ. Code §3426.” (FAC at ¶ 130) (emphasis added).  
25 The claim identifies the alleged misconduct, contending that “Dotzenroth Defendants  
26 intentionally, willfully, and maliciously misappropriated Plaintiffs’ trade secrets to  
27 provide their conversion program with a competitive advantage.” (FAC at ¶133). This  
28 was effectuated by Defendants accessing “Plaintiffs’ *business plan*, *roadmap*, and  
29 *engineering strategy*.” (FAC at ¶ 133)(emphasis added). The harm Plaintiffs claimed they  
30 suffered includes “disclosure of Plaintiffs’ trade secrets, loss of Plaintiffs’ competitive

1 edge, loss of potential customers, loss of potential partnerships, and loss of revenues and  
2 profits.” (*Id.* at ¶ 146)(emphasis added).

3 The alleged misappropriation of the business plan, budget analysis, project  
4 roadmap, and potential customer base constitute the same nucleus of fact for both Claim  
5 Four, misappropriation, and Claim Five, unfair competition in violation of the UCL. The  
6 acts of unfair competition are prefaced with the statement that the Defendants’  
7 misappropriation led to the unlawful conduct: “After misappropriating Plaintiffs’  
8 confidential and proprietary information, and after learning the details of Plaintiffs’  
9 engineering and marketing strategy Defendants started a conversion program to compete  
10 directly with Plaintiffs’ conversion program.” (FAC at ¶ 144.) As a result of the  
11 misappropriation, Plaintiffs contend that Defendants “unfairly and unlawfully competed  
12 directly against Plaintiffs by improperly and unlawfully using Plaintiffs’ own business  
13 plan, engineering strategy, and marketing strategy to start a competing conversion  
14 program and by approaching the same partners and customers as Plaintiffs.” (FAC at ¶  
15 143.)

16 Without the alleged misappropriation of the business plan, marketing scheme, and  
17 potential customers there is no basis for unfair competition. As in *Silvaco*, Plaintiffs have  
18 not identified any conduct that “did not depend for its supposed wrongfulness on the use  
19 of trade secrets.” *Silvaco*, 184 Cal.App.4<sup>th</sup> at 236. The UCL claim can only be proven  
20 with reference to the same facts as in the CUTSA claim. There is no independent basis  
21 for the claims of unfair competition that does not rest on the alleged misappropriation,  
22 therefore these claims are superseded by CUTSA. *Id.* (“Without the claimed theft of a  
23 trade secret, the complaint would set forth no foundation for any of these claims.”)

24 Plaintiffs reliance on *Leatt Corp. v. Innovative Safety Tech., LLC*, No. 09-cv-1301,  
25 2010 WL 2803947, at 6 (S.D. Cal. July 15, 2010). (Oppo. at 5) and *BladeRoom I* to  
26 support their argument that the unfair competition claim is based on a broader spectrum  
27 of misconduct than misappropriation, is unavailing. As a preliminary matter, neither *Leatt*  
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1 nor *BladeRoom I* are binding on this Court. To the extent the holdings are instructive, the  
2 Court finds that the holdings are inapposite.

3 In *Leatt*, the Plaintiff alleged to have spent many years of independent research and  
4 development creating neck safety braces for use in motorsports. *Leatt Corp., v*  
5 *Innovative Safety Technology*, 09-cv-1301, 2010 WL 2803947, \*1 (S.D. Cal. 2010). Two  
6 employees of *Leatt* improperly disclosed and commercialized Plaintiffs' proprietary and  
7 confidential information to develop and produce a neck brace based on the  
8 misappropriated information. *Id.* Plaintiff filed a suit in South Africa, where the former  
9 employees were located, and obtained an injunction. *Id.* at \*2. Following that action, the  
10 Plaintiff file suit in the Southern District of California, alleging causes of action for  
11 misappropriation of trade secrets, unfair competition, tortious interference and  
12 enforcement of foreign arbitration award. *Id.* On a motion to dismiss, the district court  
13 found that the unfair competition claim could survive dismissal because it was "based on  
14 more than just the misappropriation of Plaintiffs' trade secrets." *Id.* at \*6. Specifically,  
15 the Court noted that the claim "states that conduct underlying it includes, but is not  
16 limited to, misappropriation of trade secrets" and that injury is based "not only on theft of  
17 trade secrets but also on other 'confidential' and/or 'proprietary' information." *Id.* As a  
18 result, the Court held "to the extent these claims are based upon non-trade secret  
19 information, the Court agrees that they should be allowed to go forward at this stage." *Id.*

20  
21 The *Leatt* decision has been described as the "something more" approach to  
22 CUTSA preemption, meaning that a Plaintiff's claim could survive if it asserts some  
23 basis other than trade secret theft. *See Zayo Group LLC v Hisa*, No. SACV 13-752-JST  
24 (JPRx), 2013 WL 12201401 (C.D. Cal. Sept. 17, 2013). However, this approach has been  
25 rejected as incorrect under CUTSA and contrary to *Silvaco in Artec Group, Inc., v.*  
26 *Klimov*, No. 15-CV-03449-EMC, 2016 WL 8223346, at \*6-7 (N.D. Cal. Dec. 22, 2016).  
27 There the court found that alleging unfair competition based on information that was  
28 "confidential or proprietary, but not trade secret" was not enough to avoid CUTSA



1 preemption. *Id.* at \*6. Moreover, “CUTSA supersedes claims based on the  
2 misappropriation of information, regardless of whether such information ultimately  
3 satisfies the definition of a trade secret.” *SunPower Corp v SolarCity Corp.*, No 12-CV-  
4 00694-LHK, 2012 WL 6160472, at \*6 (N.D. Cal. Dec. 11, 2012).

5 Similarly, *BladeRoom I* does not support Plaintiffs argument. In *BladeRoom I*, the  
6 plaintiff asserted two UCL claims. First, plaintiff claimed that defendant Emerson  
7 “violated the unlawful prong of the UCL by wrongfully disclosing and using its  
8 confidential information.” *BladeRoom I*, 2018 WL 452111 \*4. Second, plaintiff alleged  
9 that due to the misappropriation, Emerson could unfairly compete with BladeRoom in the  
10 market, and that “Emerson falsely claim[ed] to have collaborated in creating its own  
11 competing design and method.” *Id.*, at \*6. The court found that the first claim was  
12 superseded by CUTSA because it could only be proven by reference to the same “nucleus  
13 of facts” as plaintiff’s CUTSA claim. *Id.* But the district court held that the second UCL  
14 claim was not preempted because the basis of the claim was “rooted in what Emerson has  
15 done and can do as a result of the unlawful disclosure and use of BladeRoom’s  
16 confidential information, and not on the same conduct underlying the misappropriation  
17 claim.” *Id.* The court denied the claim based on the allegations that Emerson falsely  
18 claimed to have collaborated in creating its own design and method. *Id.*

19 Much as in *Leatt*, the court in *BladeRoom I* drew a distinction between the acts  
20 underlying the misappropriation, and the allegation of “something more” that occurred as  
21 a result of the alleged theft of trade secrets. As noted above, this approach has been  
22 rejected, with courts noting that “claims based on [plaintiffs] non-trade secret proprietary  
23 information are superseded.” *Artec Group*, 2016 WL 8223346 at \*7. “The majority of  
24 district courts that have considered *Silvaco* have held that CUTSA supersedes claims  
25 based on the misappropriation of information that does not satisfy the definition of trade  
26 secret under CUTSA.” *SunPower*, 2012 WL 6160472, at \*6 (collecting cases). Plaintiffs  
27 contradict themselves by stating that “Plaintiffs’ unfair competition claim arises not from  
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1 Defendants' disclosure and use of Plaintiff's trade secret information, but from  
2 Defendants' ability to 'unfairly compete with [Plaintiffs] in the market for' P2F  
3 conversions '*because of the misappropriation.*'" (Oppo. at 6)(emphasis added).

4 In addition, Plaintiffs argue that dismissal of this claim at this stage in the  
5 proceedings is inappropriate because further factual support is required, however a  
6 motion to dismiss may be granted if it lacks a "cognizable legal theory or for insufficient  
7 facts under a cognizable theory." *Robertson*, 749 F.2d at 534. For the reasons stated  
8 above, Plaintiffs' UCL claim lacks sufficient facts to support a cognizable legal theory  
9 because it is based on the same nucleus of facts as the trade secret misappropriation  
10 claim, and is dismissed without prejudice.

#### 11 B. FIDUCIARY DUTY- COUNT SIX

12  
13 Defendants argue that the claim for breach of fiduciary duty must be dismissed  
14 "because the parties never agreed on the essential terms of a joint venture." (Mot. at 10)  
15 Defendants further contend that Plaintiffs are attempting to exploit the alleged joint  
16 ventures' property for their own personal benefit, which makes it is clear that" there was  
17 no joint venture formed and no fiduciary duties owed." (*Id.*)

18 In response, Plaintiffs contend that the fiduciary duty claim is not preempted, and  
19 that it is adequately pled. (Oppo. at 8-9.) Plaintiffs claim they were joint venturers with  
20 Defendants Wagner and Tarpley working toward a combined enterprise, "with each  
21 person assigned a specific role." (*Id.* at 10). Though the partnership was not  
22 memorialized in writing, Plaintiffs argue that it is immaterial that no agreement was  
23 signed, but instead it is the intent of the parties that matters. Plaintiffs claim that the  
24 parties' intended to collaborate "to commercialize a passenger-to-freighter conversion  
25 program and share profits and losses in to-be determined percentages." (*Id.*) As a result,  
26 they claim that Defendants breached their duty to protect trade secrets as part of the joint  
27 venture agreement.

1           “To state a claim for breach of fiduciary duty, plaintiff must allege: 1) the  
2 existence of a fiduciary relationship; 2) its breach; and 3) damage proximately caused by  
3 that breach.” *AccuImage Diagnostics Corp v. Terarecon, Inc*, 260 F.Supp.2d 941, 955  
4 (N.D. Cal. 2003). “A fiduciary or confidential relationship can arise when confidence is  
5 reposed by persons in the integrity of others, and if the latter voluntarily accepts or  
6 assumes to accept the confidence, he or she may not act so as to take advantage of the  
7 other's interest without that person's knowledge or consent.” *Pierce v. Lyman*, 1  
8 Cal.App.4th 1093, 1101-02 (1991).

9           “Under California law, a joint venture exists if there is an agreement between the  
10 parties under which they have a ‘joint interest, in a common business undertaking, an  
11 understanding as to the sharing of profits and losses, and a right of joint control.’”  
12 *Goodworth Holdings Inc. v. Suh*, 239 F.Supp. 2d 947, 956 (N.D. Cal. 2002); *see also*  
13 *Ramirez v. Long Beach Unified School Dist.*, 105 Cal.App.4th 182, 193 (2002). When  
14 essential elements are reserved for future agreement, a legally binding agreement is not  
15 formed. *Goodworth Holdings*, 239 F.Supp.2d at 956.

16           In Count Six, Plaintiffs allege breach of fiduciary duty against David  
17 Dotzenroth and CAI Consulting. Plaintiff claims:

18           148. Dotzenroth and CAI Consulting had a fiduciary duty to Wagner  
19 Aeronautical, Wagner, and Tarpley because Dotzenroth was a joint venturer  
20 with Wagner and Tarpley while working with them to develop Plaintiffs’  
21 conversion program. Dotzenroth and CAI Consulting owed Wagner,  
22 Tarpley, and Wagner Aeronautical the duty of utmost good faith.

23           149. Dotzenroth and CAI Consulting breached that duty when Dotzenroth  
24 exploited his relationship with Tarpley and Wagner to misappropriate  
25 information, work product, and intellectual property developed and owned  
26 by Wagner, Tarpley, and Wagner Aeronautical. Dotzenroth then  
27 impermissibly used the misappropriated property for his own benefit –  
28 without compensating Tarpley or Wagner – to form Sequoia Aircraft  
Conversions and compete directly with Plaintiffs for conversion customers  
and other business opportunities.

1 (FAC at ¶¶ 148-150.)

2       However, the facts as alleged in the FAC demonstrate that although  
3 Plaintiffs, Dotzenroth and Wagner shared a business interest in developing a  
4 commercial aircraft conversion program, there was no understanding as to the  
5 sharing of profits and losses, and a right of joint control, as required to show a  
6 fiduciary relationship. *See Ramirez*, 105 Cal.App.4th at 193.

7       In the operative complaint, Plaintiffs assert that the joint business interest  
8 was formed when Wagner and Tarpley approached Dotzenroth to ask “if he would  
9 be interested in exploring the possibility of a collaboration whereby Wagner and  
10 Wagner Aeronautical would contribute the engineering expertise; Tarpley would  
11 contribute project management expertise and marketing expertise to attract  
12 potential clients; and Dotzenroth would secure investment capital to fund the  
13 development of the conversion program.” (FAC. at ¶ 4.)

14       The parties moved forward, and “[i]n May 2019, Wagner, Tarpley, and  
15 Dotzenroth considered ways to formalize their relationship.” (*Id.* at ¶52.) The  
16 venture stalled, as noted in the complaint, when “Tarpley . . . struggled to find a  
17 role for Dotzenroth that would justify the one-third ownership interest in the LLC  
18 that Dotzenroth had requested. Because Dotzenroth lacked P2F conversion  
19 experience and expertise, there were few roles he could fill.” (*Id.* at ¶ 53.) The  
20 relationship further soured when Dotzenroth and his wife “demanded a full one-  
21 third of the ownership, even though Dotzenroth was unwilling to accept significant  
22 responsibility and had made only minor contributions – if any, at all – to the  
23 development of the business plan and budget and schedule roadmap.” (*Id.* at ¶55.)  
24 “When it became clear Dotzenroth would not receive a one-third share, he stopped  
25 collaborating with Tarpley and Wagner around the summer of 2019.” (*Id.* at ¶ 56.)

26       At that point, “[i]nstead of formalizing their collaboration, the trio broke  
27 apart when Wagner and Tarpley refused – because of Dotzenroth’s meager  
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1 contributions – to grant Dotzenroth the sizeable ownership stake in the conversion  
2 program that he had demanded.” (*Id.* at ¶ 8.)

3 These allegations fail to support the conclusion that a joint venture was  
4 created because there is no reference to an agreement on profit and loss sharing,  
5 and joint control. *See Ramirez*, 105 Cal.App.4th at 193. Therefore, Defendants’  
6 motion to dismiss Plaintiffs’ claim for breach of fiduciary duty is granted for  
7 failure to allege sufficient facts under a cognizable theory. *Robertson*, 749 F.2d at  
8 534.

9 V. CONCLUSION AND ORDER

10 For the foregoing reasons, the Court GRANTS Defendants’ motion to  
11 dismiss the following counts in Plaintiffs’ First Amended Complaint: Count Five,  
12 unfair competition, and Count Six, breach of fiduciary duty, without prejudice.

13 **IT IS SO ORDERED.**

14 Dated: September 16, 2022

15   
16 Hon. M. James Lorenz  
17 United States District Judge  
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