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OF THE
STATE OF DELAWARE**

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Re: *Simplexity, LLC v. Zeinfeld*
Civil Action No. 8171-VCG

Dear Counsel:

This Letter Opinion explains my decision regarding the Defendants' Motion to Dismiss Counts I, II, III, IV, IX, X and XI of the Amended Complaint.¹ For the reasons I explain below, I dismiss the portion of Count II that seeks damages without prejudice. I dismiss Counts III and IV in their entirety with prejudice. However, I decline to dismiss Count I or certain claims for damages in Counts IX and X of the Complaint, as explained below. Finally, because Count XI of the Complaint is merely a request for injunctive relief and not a cause of action in its own right, the Motion to Dismiss Count XI is moot.

¹ This Letter Opinion is an adumbration; the facts (and, where so stated in this Letter Opinion, the reasoning) is set out fully in my Memorandum Opinion in this matter. *Simplexity, LLC v. Zeinfeld*, 2013 WL 1457726 (Del. Ch. Apr. 5, 2013).

A. Background Facts

The following facts are alleged in the Amended Complaint.² Defendant Andrew Zeinfeld is former CEO and former member of the Board of Managers of the Plaintiff, Simplexity, LLC (“Simplexity”), a Delaware limited liability corporation with its principal offices in Reston, Virginia.³ Zeinfeld served as Simplexity’s CEO since the company’s inception in 2007.⁴ Before serving as Simplexity’s CEO, Mr. Zeinfeld was the President of Simplexity’s predecessor, InPhonic, Inc.⁵ Simplexity is an online provider of wireless products and services.⁶ Simplexity sells wireless products through its own website, Wirefly.com, and also provides sales and activation services for the major mobile retailers.⁷ Additionally, Simplexity sells wireless products and services in the brick-and-mortar stores of some its business partners.⁸

² This Motion to Dismiss is somewhat unusual in that I am charged with assessing the sufficiency of the Complaint after an abbreviated record has been developed in a preliminary injunction proceeding. Because my task here is to determine whether the Plaintiff has adequately stated a claim for relief, I rely only on the facts as alleged in the Amended Complaint, as well as the documents incorporated by reference therein, including Zeinfeld’s Employment Agreement and the Master Services Agreement. I note, however, that the facts developed through expedited discovery only reinforce the decision stated in this Letter Opinion.

³ Am. Compl. ¶¶ 10, 21.

⁴ *Id.* at ¶ 21.

⁵ *Id.*

⁶ *Id.* at ¶ 10.

⁷ *Id.* at ¶¶ 17-18.

⁸ *Id.* at ¶¶ 19-20.

As CEO, Zeinfeld was Simplexity’s highest ranking officer and “involved in every aspect of its business.”⁹ For example, Simplexity has alleged that Zeinfeld managed key relationships with customers and retailers, and participated in developing Simplexity’s strategies.¹⁰ Prior to his resignation, Zeinfeld had been overseeing Simplexity’s expansion into brick-and-mortar stores.¹¹ In addition, Zeinfeld had access to Simplexity’s sensitive confidential information, including its trade secrets.¹² In sum, the facts alleged in the Amended Complaint regarding Zeinfeld’s knowledge of Simplexity’s confidential information, which I have abbreviated considerably, indicate that Zeinfeld has knowledge of Simplexity’s customer lists, cost structure, profitability, intellectual property, trade secrets, contracts, and company-wide strategy.

Because, as CEO, Zeinfeld would be exposed to Simplexity’s confidential information, Zeinfeld’s employment agreement (the “Employment Agreement”) contains non-disclosure, non-competition, and non-solicitation provisions.¹³ The non-disclosure provision prevents Zeinfeld from using or disclosing any Confidential Information, for himself or for anyone else, while employed at Simplexity “and at all times thereafter.”¹⁴ Confidential Information is defined as:

⁹ *Id.* at ¶ 22.

¹⁰ *Id.* at ¶¶ 23-24.

¹¹ *Id.* at ¶ 25.

¹² *Id.* at ¶ 22.

¹³ *Id.* at ¶ 40.

¹⁴ *Id.* at ¶ 41.

“all information (whether or not specifically identified as confidential) . . . that is disclosed to, or developed or learned by, [Zeinfeld] in the performance of duties for, or on behalf of, [Simplexity] or that relates to the business, services or research of [Simplexity] or any of [its] investors, partners, affiliates, strategic alliance participants, officers, managers, employees or members.”¹⁵

The Employment Agreement also provides examples of Confidential Information, which includes “identities of potential target companies, management teams, and transaction sources identified by, or on behalf of, [Simplexity]”¹⁶

The non-competition provision in the Employment Agreement provides that during Zeinfeld’s employment and for twelve months following his employment (the “Restricted Period”), Zeinfeld shall not “directly or indirectly, engage in any activity . . . that is competitive with any business, activities, products or services conducted or offered by [Simplexity].”¹⁷ In addition to this broad non-competition clause, Zeinfeld agreed to detailed restrictions on his ability to solicit or contact Simplexity’s customers, suppliers, or employees to compete in any way with Simplexity.¹⁸

¹⁵ *Id.* at ¶ 42.

¹⁶ *Id.* at ¶ 43.

¹⁷ *Id.* at ¶ 44.

¹⁸ *Id.* at ¶¶ 45-46. Zeinfeld agreed to forbear from taking certain actions during the Restricted Period, directly or indirectly, including: (1) contacting, recruiting, or soliciting any current customers or suppliers of Simplexity for any purpose in competition with Simplexity; (2) entering into any agreement with any party to recruit or solicit such customers or suppliers for any purpose in competition with Simplexity; (3) requesting any customers or suppliers of Simplexity to curtail or cancel their business with Simplexity; (4) inducing or attempting to induce, or in any way cause, any current employee or agent of Simplexity to leave Simplexity’s employment or engagement for the purpose of providing any services to any other person in competition with Simplexity; (5) assisting any other person or entity in requesting or inducing

Zeinfeld's Employment Agreement also contained the following broad arbitration clause:

Except as otherwise provided herein, any and all legally cognizable controversies, disputes or claims arising out of or relating to this Agreement, or to the performance of the parties of the terms hereof, or otherwise arising out of the employment relationship between any Company Entity and you, including without limitation disputes arising out of any law, regulation or ordinance affecting, regulating, or governing the employment relationship, and including claims of conduct alleged to be contractual or tortious, shall be submitted to binding arbitration to be conducted in Washington, DC¹⁹

There was an exception to this arbitration clause, however, for requests for injunctive relief.²⁰ In the Employment Agreement, Zeinfeld "acknowledged that there was no adequate remedy at law for any breach or threatened breach of the confidentiality, non-competition, or non-solicitation provisions of the Employment Agreement."²¹ Consequently, Zeinfeld agreed that Simplexity "shall be entitled to apply to any court of law having jurisdiction injunctive relief in case of any breach

any such employee or agent of Simplexity to leave such employment or engagement; (6) inducing or attempting to induce any employee or agent of Simplexity to join with him in any capacity to compete with Simplexity; or (7) hiring, employing, or participating in any offer of employment to or recruitment of any employee or agent of Simplexity for the purpose of having any such employee or agent provide any service to any other person in competition with Simplexity. *Id.*

¹⁹ Jowers Transmittal Aff. Ex. A, at A-4 § 4.1.

²⁰ *Id.* at A-3 § 3.

²¹ Am. Compl. ¶ 47.

or threatened breach.”²² The parties also expressly contracted for the arbitrator to determine issues of arbitrability.²³

Defendants Brightstar Corp., a Delaware corporation, and Brightstar U.S., Inc., a Florida corporation, are competitors of Simplexity (collectively, “Brightstar”).²⁴ In 2011, while Zeinfeld was still the CEO of Simplexity, Brightstar won a contract to manage online sales of wireless products and services for a major national retailer (“Retailer A”).²⁵ Brightstar allegedly lacked the technology to provide all the services required for its contract with Retailer A, so it subcontracted those services from Simplexity.²⁶ In late 2011, Brightstar and Simplexity executed a memorandum of understanding (the “MOU”) in which the parties agreed to discuss a potential contractual relationship where Simplexity would provide some services in connection with Brightstar’s contract with Retailer A.²⁷ Under Section 9 of the MOU, Brightstar and Simplexity agreed that, if a definitive agreement was executed, the period of “twelve (12) months following the expiration or termination of the Definitive Agreement, [Brightstar and Simplexity] will not, directly or indirectly, solicit for employment or hire . . . any

²² *Id.*

²³ Jowers Transmittal Aff. Ex. A, at A-5 § 4.9.

²⁴ Am. Compl. ¶¶ 12-13.

²⁵ *Id.* ¶ 50.

²⁶ *Id.* at ¶¶ 50-52.

²⁷ *Id.* at ¶¶ 52-53.

member of senior management of the other Party.”²⁸ The MOU specifies that Section 9 survives the termination of the MOU.²⁹

Brightstar and Simplexity executed a definitive agreement, the Master Services Agreement (“MSA”), in March 2012.³⁰ The MSA “has not expired or been terminated.”³¹ The MSA included a merger clause which provides that:

This Agreement supersedes all previous letters, offers, quotations, negotiations and agreements in respect of its subject matter including, by way of example and not limitation, the Memorandum of Understanding entered into by the Parties³²

Further, Brightstar and Simplexity are prevented from using each other’s confidential information, except as required under the MSA.³³

In August 2012, five months after Brightstar and Simplexity entered into the MSA, Brightstar acquired LetsTalk.com, a direct competitor of Simplexity.³⁴ Much like Simplexity, LetsTalk.com provides activation services to U.S. carriers, retailers, and manufacturers of wireless devices.³⁵ Additionally, LetsTalk.com operates a website, similar to Simplexity’s Wirefly.com, which allows consumers to research, compare, buy, and activate mobile devices from several wireless

²⁸ *Id.* at ¶ 54.

²⁹ *Id.* at ¶ 55.

³⁰ *Id.* at ¶ 57.

³¹ *Id.*

³² Jowers Transmittal Aff. Ex. C § 21.9.

³³ Am. Compl. ¶¶ 64-65.

³⁴ *Id.* at ¶ 72.

³⁵ *Id.* at ¶ 73.

carrier networks.³⁶ Brightstar changed LetsTalk.com's name to "Consensus," but otherwise, the business remains the same.³⁷

Shortly after Brightstar acquired LetsTalk.com, unbeknownst to Simplexity, Brightstar began negotiating with Zeinfeld to run Brightstar's "Omni Channel Retail Services" as the CEO of "Brightstar Global Retail Solutions."³⁸ Such a role would include oversight over Brightstar's retail services, online services (the new Consensus website), and Brightstar's new Viva Movil project.³⁹ The draft employment agreement between Zeinfeld and Brightstar includes a "firewall" provision that states: "no Company personnel engaged in [Brightstar's] activation business shall work or engage [Zeinfeld] in its day-to-day operations, disclose or communicate with [Zeinfeld] on matters relating to the on-line business."⁴⁰ The Brightstar employment agreement does not explain how such a firewall would be implemented.⁴¹ Simplexity alleges that Brightstar and Zeinfeld have already violated the broad terms of the firewall.⁴²

On December 10, 2012, Zeinfeld attended an all-day strategy meeting with Simplexity's Board of Managers.⁴³ The next day, he informed the Board that he

³⁶ *Id.* at ¶ 75.

³⁷ *Id.* at ¶ 76.

³⁸ *Id.* at ¶¶ 77-78, 86-88.

³⁹ *Id.* at ¶¶ 78-85.

⁴⁰ *Id.* at ¶ 91.

⁴¹ *Id.* at ¶ 92.

⁴² *Id.* at ¶ 93.

⁴³ *Id.* at ¶ 105.

was resigning.⁴⁴ Because the Employment Agreement required Zeinfeld to give thirty days notice of his resignation, he continued to work for Simplexity after providing notice of his resignation.⁴⁵ Nevertheless, Simplexity alleges that Zeinfeld was helping Brightstar compete against Simplexity during this time period.⁴⁶ For example, Zeinfeld purportedly contacted a representative of one of Simplexity’s most important customers, Retailer B, to “update [him] on something that is very confidential.”⁴⁷ Emails from Brightstar’s CEO suggest that Zeinfeld met with Brightstar and Retailer B to discuss Brightstar’s Viva Movil project.⁴⁸ Simplexity later learned that Retailer B selected Brightstar, instead of Simplexity, to manage its in-store sales.⁴⁹ Furthermore, while he was still working for Simplexity, Zeinfeld advised Brightstar on ways to increase Brightstar’s online sales to Hispanics.⁵⁰ Simplexity has alleged several additional instances of competitive behavior that I omit here for brevity’s sake.⁵¹

Simplexity filed its first Verified Complaint on January 2, 2013. As Zeinfeld’s thirty-day notice period for his resignation from Simplexity ended on

⁴⁴ *Id.* at ¶ 106.

⁴⁵ *Id.* at ¶ 107.

⁴⁶ *Id.* at ¶ 108.

⁴⁷ *Id.* at ¶¶ 97-98.

⁴⁸ *Id.* at ¶¶ 97-102.

⁴⁹ *Id.* at ¶ 100.

⁵⁰ *Id.* at ¶ 110.

⁵¹ *See id.* at ¶¶ 111-15.

January 10, 2013,⁵² Simplexity moved for a temporary restraining order on January 2 to prevent Zeinfeld from going to work for Brightstar following his resignation. The parties stipulated to a standstill order on January 17, 2013. Following expedited discovery, Simplexity amended its Complaint on January 31, 2013, alleging several counts of breach of contract, breach of fiduciary duty, and tortious interference with contract, as well as misappropriation of trade secrets, civil conspiracy, and various counts of aiding and abetting. A preliminary injunction hearing was held on February 7, 2013. On February 14, 2013, the Defendants moved to dismiss and to compel arbitration. On April 5, 2013, I issued a Memorandum Opinion on Simplexity's Motion for a Preliminary Injunction, finding that Simplexity had satisfied the requirements for a preliminary injunction. Specifically, I found that Simplexity had demonstrated a likelihood of success on the merits that the Employment Agreement's non-competition clause was valid and that Zeinfeld's involvement with either the Retailer B or Viva Movil projects likely violated that clause.

The parties completed briefing on the Defendants' Motion to Dismiss and Compel Arbitration, and oral argument was held on July 25, 2013. After oral argument, I determined that forum non conveniens was not an appropriate basis for dismissal in this case. However, I dismissed Counts V, VI, VII, and VIII, as well

⁵² *Id.* at ¶ 119.

as Counts IX and X to the extent they contain allegations arising from the Employment Contract, without prejudice, because the parties agreed at oral argument that those claims required a determination of substantive arbitrability by the arbitrator.⁵³ I expressly exempted from dismissal the MSA-based allegations contained in Counts IX and X of the Complaint, as those allegations are not subject to mandatory arbitration. I reserved for written decision my analysis of the sufficiency of Counts I, II, III, IV, and XI of the Complaint, as well as the MSA-based allegations contained in Counts IX and X. This Letter Opinion explains my decision as to those Counts.

B. Standard

Under Court of Chancery Rule 12(b)(6), this Court will only dismiss a complaint if “the plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances.”⁵⁴ In deciding a motion to dismiss, I am required to draw all reasonable inferences flowing from the Complaint and view the facts before me in the light most favorable to the non-moving party.⁵⁵ At the

⁵³ Based on the broad language of the arbitration clause in Zeinfeld’s Employment Agreement, the parties agreed at oral argument that the Plaintiff’s claims for damages should be dismissed in favor of a determination of arbitrability and possible arbitration. *See* Oral Arg. Tr. 37:18-39:10, 55:7-20. During oral argument, I asked the parties whether they wished to stay consideration of the Motion to Dismiss the remaining Counts of the Complaint until after a determination of substantive arbitrability had been made. Both parties agreed that I should not stay my decision of the remaining Counts.

⁵⁴ *Cambium Ltd. v. Trilantic Capital P’rs III L.P.*, 36 A.3d 348, *1 (Del. 2012) (TABLE).

⁵⁵ *In re Gen. Motors (Hughes) S’holder Litig.*, 897 A.2d 162, 168 (Del. 2006).

motion to dismiss stage, “even vague allegations are ‘well-pleaded’ if they give the opposing party notice of the claim.”⁵⁶

C. Analysis

This Letter Opinion contains my decision as to the following Counts. Count I seeks injunctive relief based on allegations that Zeinfeld breached his Employment Agreement by “using Simplicity’s confidential information to benefit the Brightstar Defendants, competing with Simplicity, accepting employment with Brightstar, and soliciting Simplicity’s customers and suppliers.”⁵⁷ Count II alleges that Brightstar tortiously interfered with Zeinfeld’s Employment Agreement by soliciting Zeinfeld to compete against Simplicity and to disclose Simplicity’s confidential information.⁵⁸ Count III alleges that Brightstar breached the no-hire section of the MOU executed between Brightstar and Simplicity.⁵⁹ Count IV alleges that Zeinfeld tortiously interfered with the Brightstar-Simplicity MOU by agreeing to work for Brightstar.⁶⁰ Count IX alleges that Brightstar misappropriated Simplicity’s trade secrets, and Count X alleges that Zeinfeld and Brightstar

⁵⁶ *Savor, Inc. v. FMR Corp.*, 812 A.2d 894, 896-97 (Del. 2002) (quoting *Precision Air v. Standard Chlorine of Del.*, 654 A.2d 403, 406 (Del. 1995)).

⁵⁷ Am. Compl. ¶ 126; *see also id.* at ¶¶ 125-26, 127.

⁵⁸ *Id.* at ¶¶ 130-35.

⁵⁹ *Id.* at ¶¶ 137-40.

⁶⁰ *Id.* at ¶¶ 142-46.

engaged in civil conspiracy.⁶¹ Count XI is a request for remedies in which Simplexity alleges that it is entitled to temporary, preliminary, and permanent injunctive relief as a result of its claims.⁶² I discuss each of these claims in turn.

1. Counts I and II of the Complaint: Zeinfeld's Breach of the Employment Agreement and Brightstar's Tortious Interference with the Employment Agreement.

Count I of the Complaint seeks only injunctive relief, and thus is not subject to arbitration. In my Memorandum Opinion granting Simplexity's request for a preliminary injunction, I found that Simplexity had demonstrated a likelihood of success on the merits that Zeinfeld's employment at Brightstar would breach the non-competition clause of the Employment Agreement. I based that finding on my determinations that the non-competition clause was valid under Virginia law and that the activities the Defendants wanted Zeinfeld to perform at Brightstar would be competitive with Simplexity. Since that time, the Defendants have represented that no new case has been decided in Virginia which in any way alters my analysis; the Defendants simply disagree with my decision, reached under the "likelihood of success" prong of the preliminary injunctive relief analysis, that the non-competition clause is valid.⁶³ I have reviewed the cases underlying my decision that Simplexity demonstrated a likelihood of success on the merits and stand by my

⁶¹ *Id.* at ¶¶175-84. As I noted above, Counts IX and X survive only to the extent that those claims are based on breaches of the terms of the MSA. Those portions that relate to the Employment Agreement have been dismissed.

⁶² *Id.* at ¶¶ 186-90.

⁶³ *See* Oral Arg. Tr. 11:9-13:19.

previous decision. Therefore, and for the reasons stated fully in my Memorandum Opinion of April 5, 2013, I find that Simplexity has adequately stated a claim for Zeinfeld's breach of the Employment Agreement in Count I of the Complaint.⁶⁴

Count II of the Complaint alleges that Brightstar tortiously interfered with Zeinfeld's Employment Agreement, and seeks both injunctive and monetary relief. Simplexity alleges the following in its Complaint: (1) that Zeinfeld's Employment Agreement is valid under Virginia law, (2) that Brightstar knew of the existence of terms of the Zeinfeld's Employment Agreement before entering into an agreement with Zeinfeld, (3) that Brightstar intentionally solicited Zeinfeld to compete directly with Simplexity and to use Simplexity's confidential information to benefit Brightstar, (4) that Brightstar knew that Zeinfeld could not accept a position with Brightstar without violating his Employment Agreement, (5) that as a result of Brightstar's intentional acts, Zeinfeld has breached his Employment Agreement, and (6) that Simplexity has been damaged as a result and will suffer ongoing harm absent injunctive relief. These allegations are sufficient to state a claim.

In its briefing, Simplexity conceded that its claims for damages are each subject to arbitration (and thus dismissal).⁶⁵ Therefore, the portion of Count II that seeks damages is dismissed without prejudice.

⁶⁴ See *Simplexity*, 2013 WL 1457726, at *8-15.

2. Counts III and IV of the Complaint: Brightstar’s Breach of the MOU and Zeinfeld’s Tortious Interference with the MOU.

In my Memorandum Opinion, I determined that Simplexity had failed to demonstrate a likelihood of success on the merits that Brightstar had breached the MOU in hiring Zeinfeld.⁶⁶ At oral argument, Simplexity asked me to reconsider my decision on this point since the burden has shifted from Simplexity to Brightstar, and because demonstrating a claim for relief is a lower hurdle to clear than demonstrating likely success on the merits. I am mindful of the standard of review in deciding this issue.

I determined, in the Memorandum Opinion, that the MOU had been superseded by the MSA.⁶⁷ Therefore, any claims based on the MOU—e.g., Counts III and IV of the Complaint—were moot. Simplexity asks me to reconsider my finding that the MOU had been superseded on the basis that the MOU’s language is ambiguous. Under this theory, Simplexity would be entitled to discovery to aid Simplexity in attempting to prove that the MOU was not superseded by the MSA. I find no such ambiguity here. To the contrary, the language in the MSA, which was executed after the MOU, expressly supersedes all prior agreements, *including the MOU*. In light of such a clear and unmistakable indication of the parties’ intent, I

⁶⁵ Pl.’s Ans. Br. 18 (“Simplexity agrees that its other non-injunctive relief claims are subject to arbitration. Those claims include the damages part of Counts II, IX, and X, to the extent that those counts are not directed to the new MSA allegations.”). The exception to Simplexity’s concession, involving the “new MSA allegations,” is not pertinent to Count II.

⁶⁶ *Simplexity*, 2013 WL 1457726, at *6-7.

⁶⁷ *Id.* at *7.

reaffirm my earlier decision that the MSA superseded the MOU. As a result, and for the reasons stated fully in my Memorandum Opinion,⁶⁸ Counts III and IV of the Complaint are dismissed with prejudice.

3. Counts IX and X of the Complaint: Misappropriation of Trade Secrets and Civil Conspiracy Claims Based on the MSA.

Simplexity concedes that Counts IX and X should be dismissed to the extent there are claims for money damages arising out of facts other than the “‘new MSA claims,’ *i.e.* its claims that Brightstar personnel improperly shared Simplexity information . . . which Simplexity entrusted to certain Brightstar personnel for the sole purpose of the work which Simplexity and Brightstar were jointly conducting for Retailer A.”⁶⁹ Preliminarily, I note that it is not entirely clear from Simplexity’s Amended Complaint, or its oral argument, whether Count X states damages-based claims under the MSA. To the extent that it does, however, those claims are entitled to the same treatment as the MSA-based damages claims in Count IX. Accordingly, the only issue remaining is whether the MSA-based portions of Counts IX and X state a claim for misappropriation of trade secrets or civil conspiracy.

The Defendants challenge Counts IX and X of the Complaint on the basis that the Plaintiff’s allegations lack specificity and fail to adequately allege how

⁶⁸ *See id.* at *6-7.

⁶⁹ Pl.’s Ans. Br. 18.

Simplexity has been harmed by the alleged conduct. Simplexity alleges that the MSA governing the Retailer A engagement between Simplexity and Brightstar prevents Brightstar from using Simplexity's confidential information.⁷⁰ Specifically, Section 14.1 of the MSA provides: "Except as permitted or required by this Agreement, each Party must not use any of the other Party's Confidential Information."⁷¹ The MSA allows confidential information to be disclosed solely on a need-to-know basis.⁷² Notwithstanding this provision of the MSA, Simplexity has pled facts showing that a Brightstar employee forwarded confidential Simplexity information (which had been designated as highly confidential by Simplexity) to Brightstar's CEO for use in Brightstar's Viva Movil negotiations.⁷³

The Defendants argue that I should dismiss the portions of Counts IX and X that seek damages because the Plaintiff's allegations fail to specify how the Plaintiff has been harmed by the alleged disclosure. I find that, at the motion-to-dismiss stage of litigation, the Plaintiff has pled adequate facts to put the Defendants on notice of its allegations; drawing all reasonable inferences on behalf of the Plaintiff, it is enough that the Plaintiff has pled facts showing a specific instance of Simplexity's trade secrets being improperly used and that Simplexity has suffered damages as a result. I decline to require Simplexity to quantify its

⁷⁰ Am. Compl. ¶¶ 63-64.

⁷¹ *Id.* at ¶ 64 (quoting Master Servs. Agmt. § 14.1).

⁷² *See id.* at ¶ 65.

⁷³ *See id.* at ¶¶ 66-71.

damages at the pleading stage, particularly in a case where damages would be difficult to calculate, such as this one.⁷⁴

The Defendants further contend that the MSA-based portions of Counts XI and X should be dismissed because Simplexity failed to comply with, and plead compliance with, the MSA dispute resolution procedures.⁷⁵ I do not find, however, that compliance with the MSA dispute resolution procedures is part of the pleading requirement. Additionally, further factual development is required in order to determine whether Simplexity complied with these procedures; this issue is not amenable to resolution here. Although I find that Simplexity's alleged failure to comply with Section 18 of the MSA is an inadequate basis to grant the Defendant's Motion to Dismiss, I make no factual determination about whether Simplexity complied with these procedures. Nothing in this Letter Opinion, therefore, prevents either party from arguing compliance with these procedures, or lack thereof, in any future pleading; I simply find that Simplexity's alleged non-compliance with Section 18 of the MSA is an inappropriate basis to dismiss the MSA-based claims for damages in Counts IX and X.

As a result, I deny the Defendants' Motion to Dismiss the MSA-based damages portions of Counts IX and X of the Complaint.

⁷⁴ Under our liberal notice-pleading rules, all that is required is that the Defendants have notice of the claims against them. The harms may be quantified at trial.

⁷⁵ See *Jowers Transmittal Aff. Ex. C* § 18.

4. Count XI of the Complaint: Request for Injunctive Relief.

Because Count XI simply seeks injunctive relief based on the substantive Counts in the Complaint, it is not a cause of action in its own right, and the Motion to Dismiss Count XI is therefore moot.

D. Conclusion

For the foregoing reasons, the Defendants' Motion to Dismiss is granted in part and denied in part. IT IS SO ORDERED.

Sincerely,

/s/ Sam Glasscock III

Sam Glasscock III