

1 **WO**

2

3

4

5

6

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

7

8

9

Sunshine Media Group, Inc.; Sunshine
Media I, Inc.; and Sunshine Media
Advertising, Inc.,

No. CV-10-0761-PHX-DGC

10

ORDER

11

Plaintiffs,

12

vs.

13

Michael Goldberg; and Montdor Medical
Media, LLC,

14

Defendants.

15

16

Sunshine Media Group, Inc. (“Sunshine Group”) is a custom content publishing
company. Sunshine Media I, Inc. (“Sunshine Media”) performs publishing functions for
Sunshine Group. Sunshine Media Advertising, Inc. (“Sunshine Advertising”) coordinates
the advertising efforts of Sunshine Media’s publications, including M.D. News.

20

Michael Goldberg is a former Independent Contractor Publisher (“ICP”) of Sunshine
Advertising. His contract with Sunshine Advertising was terminated on November 2, 2009.
Goldberg subsequently started Montdor Medical Media, LLC (“Montdor”), publisher of New
Jersey Physician magazine.

24

The Sunshine entities filed suit against Goldberg and Montdor on April 6, 2010. Doc.
1. The complaint asserts five claims: breach of contract against Goldberg, intentional
interference with existing and prospective business relations against Goldberg and Montdor,
inevitable disclosure/misappropriation of trade secrets and confidential information against
Goldberg and Montdor, breach of the implied covenant of good faith and fair dealing against

25

26

27

28

1 Goldberg, and tortious interference with contract against Montdor. Doc. 1 at 10-17. Plaintiffs
2 seek compensatory damages and injunctive relief. *Id.* at 17-19.

3 Defendants have filed a motion to dismiss pursuant to Rule 12(b)(6) of the Federal
4 Rules of Civil Procedure. Doc. 25. The motion is fully briefed. Docs. 26, 27. No party has
5 requested oral argument. For reasons that follow, the Court will grant the motion in part and
6 deny it in part.

7 **I. Nature of the Motion.**

8 In support of their motion to dismiss, Defendants rely on the declaration of David
9 McDonald, CEO of the three Sunshine entities. Doc. 25. Plaintiffs submitted the declaration
10 in support of their application for a preliminary injunction. Doc. 4-1 at 10-22. Defendants
11 assert that their motion to dismiss is a proper Rule 12(b)(6) motion, as all facts set forth
12 therein are based upon Plaintiffs' complaint, documents appended to that complaint, and a
13 "party admission" contained in Mr. McDonald's declaration. Doc. 27 at 2.

14 Plaintiffs note, correctly, that the Court generally may not consider any matter that has
15 not been presented in a "pleading" when deciding a Rule 12(b)(6) motion. Fed. R. Civ. P.
16 12(d); *see Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007). Plaintiffs
17 treat the motion to dismiss as one for summary judgment and argue that, because triable issues
18 of fact exist, the entry of summary judgment is inappropriate. Doc. 26 at 2.

19 The Court agrees that Mr. McDonald's declaration is a matter outside of the pleadings,
20 *see* Fed. R. Civ. P. 7(a), and was not filed in support of the complaint. Doc. 1. When ruling
21 on a Rule 12(b)(6) motion, courts may consider the complaint, documents incorporated into
22 the complaint by reference, and matters of which a court may take judicial notice. *Tellabs*,
23 551 U.S. at 322. "A fact of which a court may take judicial notice must be indisputable."
24 *Ariz. Title Ins. & Trust Co. v. Realty Inv.*, 430 P.2d 934, 936 (Ariz. App. 1967). Mr.
25 McDonald's statements do not qualify. The Court will decide Defendants' motion to dismiss
26 under Rule 12(b)(6) without considering Mr. McDonald's declaration.

1 **II. Rule 12(b)(6) Standard.**

2 When analyzing a complaint for failure to state a claim to relief under Rule 12(b)(6),
3 the factual allegations “‘are taken as true and construed in the light most favorable to the
4 nonmoving party.’” *Cousins v. Lockyer*, 568 F.3d 1063, 1067 (9th Cir. 2009) (citation
5 omitted). To avoid a Rule 12(b)(6) dismissal, a complaint need not contain detailed factual
6 allegations; rather, it must plead “‘enough facts to state a claim to relief that is plausible on its
7 face.’” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The plausibility standard “‘asks
8 for more than a sheer possibility that a defendant has acted unlawfully,” demanding instead
9 sufficient factual allegations to allow “‘the court to draw the reasonable inference that the
10 defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949
11 (2009). “[W]here the well-pleaded facts do not permit the court to infer more than the mere
12 possibility of misconduct, the complaint has alleged – but it has not ‘show[n]’ – ‘that the
13 pleader is entitled to relief.’” *Id.* at 1950 (citing Fed. R. Civ. P. 8(a)(2)).

14 **III. Analysis.**

15 **A. Third-Party Beneficiary Status.**

16 On January 1, 2009, Sunshine Advertising and Goldberg executed an Independent
17 Contractor Agreement (“Agreement”) whereby Goldberg agreed to serve as the exclusive ICP
18 for M.D. News in the New Jersey territory. Doc. 1 at 5. Plaintiffs assert that Sunshine Group
19 and Sunshine Media are entitled to enforce the Agreement as third-party beneficiaries. Docs.
20 1 at 10, 26 at 8-9. Defendants argue that Goldberg had a contractual relationship only with
21 Sunshine Advertising and that the Agreement does not provide third-party beneficiary status
22 for Sunshine Group and Sunshine Media. Doc. 25 at 11.

23 The parties agree that in order to “‘recover under the third party beneficiary doctrine,
24 the contract relied upon by the third party must reflect that the parties thereto intended to
25 recognize him as a primary party in interest.” *Stratton v. Inspiration Consol. Copper Co.*, 683
26 P.2d 327, 329 (Ariz. Ct. App. 1984); *see* Docs. 25 at 10, 26 at 8. “‘Not only must the benefit
27 be intentional and direct, but the third person must be a real promisee.” *Stratton*, 683 P.2d
28 at 329. Furthermore, “‘the intent of the parties, as ascertained by the language used, must

1 control the interpretation of the contract.” *Shattuck v. Precision-Toyota, Inc.*, 566 P.2d 1332,
2 1334 (Ariz. 1977).

3 In this case, the Court finds that neither Sunshine Media nor Sunshine Group qualifies
4 for third-party beneficiary status under the Agreement. The Agreement was entered into by
5 two parties: Sunshine Advertising (the “Corporation”) and Goldberg (the “Contractor”).
6 Doc. 1-1 at 3. While sections 6.3 and 6.4 of the Agreement refer to the Corporation’s
7 “affiliates,” neither section indicates that these unnamed affiliates are the primary parties in
8 interest or that the benefit to the unnamed affiliates is intentional and direct. *Id.* at 5. Further,
9 in the event of a breach of those sections by Goldberg, section 6.5 specifies only the rights and
10 remedies *the Corporation* (i.e. Sunshine Advertising) may enforce. *Id.*

11 Plaintiffs note that the Agreement was signed by Ken Minneti as a Vice President of
12 Sunshine Media. Doc. 1-1 at 7, 9-10. The Court is unpersuaded by the argument that the
13 inclusion of Mr. Minneti’s title reflects a clear intent to benefit all Sunshine entities. Doc. 26
14 at 8. Including Mr. Minneti’s title on the signature line indicates only that a Vice President
15 from Sunshine Media had the authority to enter into a contract on behalf of Sunshine
16 Advertising, not that Sunshine Media is the primary party to the Agreement or an intended
17 beneficiary. Because the Agreement fails to identify Sunshine Media and Sunshine Group
18 as the real promisees, these entities are not entitled to third-party beneficiary status under the
19 Agreement. The Court will dismiss Plaintiffs Sunshine Group and Sunshine Media from
20 counts one (breach of contract), four (breach of the implied covenant of good faith and fair
21 dealing), and five (tortious interference with contract).

22 **B. Breach of Contract.**

23 The Agreement between Sunshine Advertising and Goldberg contains a non-
24 competition clause (section 6.4), a non-solicitation clause (section 6.4(ii)), and a
25 confidentiality clause (section 6.3). Doc. 1-1 at 5.

26 **1. Breach of The Non-Competition Provision in Section 6.4.**

27 Defendants contend that Sunshine Advertising has failed to state a claim that
28 Goldberg’s present business activities violate the two-year non-competition clause contained

1 in section 6.4 of the Agreement. Doc. 25 at 8. Defendants rely on the description of Sunshine
2 Advertising’s “business” provided in Mr. McDonald’s declaration and argue that section 6.4
3 contains only a limitation on Goldberg’s ability to compete with Sunshine Advertising for the
4 *placement of ads in Sunshine publications. Id.* at 9.

5 Excluding Mr. McDonald’s extra-pleading statements, the Court finds that Sunshine
6 Advertising’s complaint adequately states a claim to relief against Goldberg for breach of
7 section 6.4. Section 6.4 provides:

8 [Goldberg] shall not serve as, be a consultant to, or an employee, officer, agent,
9 director or owner of another corporation, partnership or other entity that
10 competes, *directly or indirectly*, with [Sunshine Advertising] in the Business
within [New Jersey].

11 Doc. 1-1 at 5 (emphasis added). The complaint alleges that Goldberg “has held himself out
12 as a publisher and ‘corporate sales development’ person” for Montdor and produces a
13 “directly competing publication in New Jersey.” Doc. 1 at 9-10. Plaintiff contends that these
14 activities constitute *direct* competition by seeking to reduce Sunshine Advertising’s market
15 share in the region and solicit potential Sunshine Advertising customers to instead place
16 advertisements or purchase content in his magazine. *Id.* Plaintiff further alleges that
17 Goldberg’s publication of New Jersey Physician “is direct competition with M.D. News and
18 Sunshine Media” and thus constitutes *indirect* competition with Sunshine Advertising. *Id.*
19 They suggest that, because of the symbiotic relationship between the Sunshine entities,
20 “competition with one Sunshine entity detrimentally affects, and constitutes competition with,
21 the other Sunshine entities[.]” Doc. 26 at 5.

22 Taking these allegations as true, the Court finds sufficient factual allegations to draw
23 the reasonable inference that Goldberg has violated the non-competition provision. *See Iqbal*,
24 129 S. Ct. at 1949. Defendants’ motion to dismiss count one, for breach of section 6.4 of the
25 Agreement, will be denied.

26 **2. Breach of the Non-Solicitation Provision in Section 6.4(ii).**

27 Defendants next argue that the complaint fails to state a claim that Goldberg violated
28 section 6.4(ii), the non-solicitation clause of the Agreement. Doc. 25 at 6. That clause

1 provides that Goldberg may not “solicit, induce, or influence any supplier, customer, agent,
2 consultant, independent contractor or other person or entity that has a business relationship
3 with [Sunshine Advertising] to discontinue, reduce or modify such relationship with
4 [Sunshine Advertising].” Doc. 1-1 at 5. Defendants assert that Plaintiff has not identified any
5 relevant party, having a business relationship with Sunshine Advertising, who was improperly
6 solicited, induced, or influenced by Goldberg. *Id.*

7 Plaintiff argues that an ICP is an agent of Sunshine Advertising, and that any person
8 with whom an ICP contracts is a customer of Sunshine Advertising. Doc. 26 at 7. Plaintiff
9 cites an e-mail Goldberg sent to 96 people with whom he developed a relationship as
10 Sunshine Advertising’s agent. Doc. 1-1 at 16-17. Plaintiff argues that the e-mail constitutes
11 solicitation of Sunshine Advertising’s customers in violation of section 6.4(ii) of the
12 Agreement. *Id.*

13 The Court agrees with Plaintiff. Goldberg sent correspondence to 96 “Valued Clients,
14 Loyal Readers and Friends” the day after his engagement ended, informing them that he
15 would be producing his own magazine. Doc. 1-1 at 16. The e-mail tells recipients it is
16 “important” for them to contact Goldberg at his personal e-mail address because “any
17 correspondence sent to our MD NEWS address will not be received by us.” *Id.* It is plausible
18 that these recipients have business relationships with Sunshine Advertising and were solicited
19 by Goldberg in violation of the Agreement. Docs. 1 at 8, 26 at 6-7. Defendants’ motion to
20 dismiss count one, for breach of section 6.4(ii) of the Agreement, will be denied.

21 **3. Breach of the Confidentiality Provision in Section 6.3.**

22 Defendants argue that Plaintiff fails to adequately allege a cause of action against
23 Goldberg for breach of section 6.3, prohibiting the use or disclosure of confidential
24 information. Doc. 25 at 10. Defendants assert that the complaint lacks any material
25 allegations that Goldberg used any information which was not publicly available or
26 ascertainable by reviewing a readily available copy of M.D. News magazine. *Id.* at 12.

27 Plaintiff asserts that Goldberg received specialized knowledge and confidential
28 information during his tenure with Sunshine Advertising, including Sunshine Media’s

1 confidential Publisher Orientation Manual (“Manual”). Doc. 1 at 14. Plaintiff alleges, upon
2 information and belief, that Goldberg has used the confidential information in his new
3 business. *Id.* Parties are permitted to plead upon information and belief. Because this
4 allegation sufficiently states a claim for breach of section 6.3, which prohibits the use as well
5 as the disclosure of confidential information, Defendants’ motion to dismiss this claim will
6 be denied.

7 **C. Misappropriation of Trade Secrets and Confidential Information.**

8 Count three of the complaint asserts a claim for misappropriation of trade secrets and
9 confidential information, including, without limitation, a Publisher Orientation Manual
10 (“Manual”) which was provided only to ICPs who signed a noncompetition and/or
11 confidentiality agreement. Doc. 1 at 13-14. While Defendants do not separately move to
12 dismiss count three, they do assert that Plaintiffs have failed to plead that Goldberg used any
13 information which would constitute “confidential information” or a “trade secret” under
14 A.R.S. § 44-401-407. Doc. 25 at 12.

15 The Uniform Trade Secrets Act (“Act”), A.R.S. §§ 44-401 et seq., defines a “trade
16 secret” as follows:

17 “Trade secret” means information, including a formula, pattern, compilation,
18 program, device, method, technique or process that both:

19 (a) Derives independent economic value, actual or potential, from not being
20 generally known to, and not being readily ascertainable by proper means by,
21 other persons who can obtain economic value from its disclosure or use.

(b) Is the subject of efforts that are reasonable under the circumstances to
maintain secrecy.

22 A.R.S. § 401(4)(a)-(b). Here, Plaintiffs specifically assert that the Manual includes
23 information from which the Sunshine entities derive independent economic value, as it
24 “provides details on how to successfully operate an independent contractor business in the
25 custom publishing field”. Doc. 1 at 14. Plaintiffs further allege that the Manual is subject to
26 reasonable efforts to maintain its confidentiality, including requiring a confidentiality
27 agreement from all ICPs and stamping each page with the bold, capitalized word
28 “Confidential.” *Id.* As noted above, Plaintiffs plead upon information and belief that

1 Goldberg has used confidential information in his new business.

2 **D. Breach of the Implied Covenant of Good Faith and Fair Dealing.**

3 Count four of the complaint asserts a claim against Goldberg for breach of the implied
4 covenant of good faith and fair dealing. Doc. 1 at 15-16. Defendants assert that Goldberg did
5 not breach the contract with Sunshine Advertising. Doc. 25 at 4-6, 8-12. Therefore, they
6 conclude, he cannot be liable for breaching the implied covenant of good faith and fair
7 dealing. Doc. 25 at 14-15.

8 Defendants' argument fails. A breach of the implied covenant of good faith and fair
9 dealing does not require a breach of contract. *See Wells Fargo Bank v. Ariz. Laborers,*
10 *Teamsters & Cement Masons Local No. 395 Pension Trust Fund*, 38 P.3d 12, 29 (Ariz. 2002)
11 (finding that a party may breach its duty of good faith without actually breaching an express
12 covenant in the contract); *Deese v. State Farm Mut. Auto. Ins. Co.*, 838 P.2d 1265, 1270 (Ariz.
13 1992) (holding that breach of an express covenant is not a necessary prerequisite to an action
14 for bad faith).

15 Defendants further note that "an implied covenant of good faith and fair dealing cannot
16 directly contradict an express contract term." *Kuehn v. Stanley*, 91 P.3d 346, 354 (Ariz. Ct.
17 App. 2004). Plaintiff's complaint alleges that Goldberg breached the covenant of good faith
18 and fair dealing by, "among other things, misappropriating Sunshine Media's confidential and
19 proprietary information and producing a competing magazine in willful non-compliance with
20 [the Agreement's] restrictive covenants." Doc. 1 at 16. Defendants do not cite any express
21 contract terms providing Goldberg with authority to engage in these activities. Hence,
22 Plaintiff's application of the implied covenant does not "directly contradict an express
23 contract term." *Kuehn*, 91 P.3d at 354. Defendants' motion to dismiss count four will
24 therefore be denied.

25 **E. Tortious Interference.**

26 Count two of the complaint asserts a claim against Goldberg and Montdor for tortious
27 interference with business relationships (Doc. 1 at 12-13), and count five asserts a claim
28 against Montdor for tortious interference with contract (*id.* at 16-17). The elements of a claim

1 for tortious interference are the existence of a contractual or business relationship, knowledge
2 of the relationship on the part of the interferor, and intentional and improper interference
3 causing damage to the relationship. *See Antwerp Diamond Exch. of Am., Inc. v. Better Bus.*
4 *Bur. of Maricopa County, Inc.*, 637 P.2d 733, 740 (Ariz. 1981); *Wagenseller v. Scottsdale*
5 *Mem'l Hosp.*, 710 P.2d 1025, 1043 (Ariz. 1985).

6 **1. Tortious Interference with Contract.**

7 Plaintiff's complaint alleges that Montdor intentionally and improperly interfered with
8 the Agreement by, "among other things, encouraging Goldberg: to compete with the Sunshine
9 Entities; to solicit the Sunshine Entities' customers and to publish a magazine competitive
10 with M.D. News; and to disclose and use the Sunshine Entities' confidential and proprietary
11 information." Doc. 1 at 17.

12 Defendants contend that Plaintiff's claim that Montdor induced Goldberg to breach the
13 Agreement with Sunshine Advertising fails because Goldberg did not breach the contract (an
14 assertion based on Mr. McDonald's declaration). Doc. 25 at 13. This argument has been
15 rejected above. They further contend that Goldberg, as a matter of law, cannot be liable for
16 tortious interference with his own contract with Sunshine Advertising. *Id.* (citing *Wells*
17 *Fargo*, 38 P.3d at n.19).

18 Plaintiffs correctly note that this cause of action is brought against Montdor, not
19 Goldberg. Montdor was not a party to the Agreement and can be liable for tortious
20 interference with that contract. Doc. 26 at 11 (citing *Spratt v. N. Auto, Corp.*, 958 F. Supp.
21 456, 464 (D. Ariz. 1996) (noting that "[i]nterference with contract requires, among other
22 things, a contract between the plaintiff and a third party")). Defendants' motion to dismiss
23 count five will therefore be denied.

24 **2. Intentional Interference with Business Relations.**

25 Plaintiffs brought this action against Goldberg and Montdor, alleging intentional
26 interference with all three of the Sunshine entities' existing and prospective business relations
27 with individuals and entities in the New Jersey area. Doc. 1 at 12.

28 The Court finds that Plaintiffs have adequately pled the first four elements required to

1 establish a claim of tortious interference. *See Antwerp*, 637 P.2d at 740. Plaintiffs' complaint
2 alleges that the Sunshine entities have existing and prospective business relationships with an
3 identifiable class of individuals and business entities; that Goldberg and Montdor have "first-
4 hand knowledge" of these business relationships, due to Goldberg's personal experience as
5 a former agent of Sunshine Advertising; that Goldberg and Montdor have acted intentionally
6 to interfere with Plaintiffs' business relations by "among other things, communicating to
7 Sunshine Media's existing and prospective customers that Goldberg is no longer associated
8 with the Sunshine Entities and by producing a publication that is in direct competition with
9 M.D. News"; and that they have suffered "significant damages" as a result of this interference,
10 in an amount to be proven at trial. Doc. 1 at 8, 12-13.

11 In addition to these allegations, Plaintiffs must also plead sufficient facts to
12 demonstrate that Defendants acted improperly. *Wagenseller*, 710 P.2d at 1043 (noting that
13 unless the plaintiff is able to show the impropriety of the defendant's conduct, the conduct is
14 not tortious).

15 **a. Montdor.**

16 Defendants argue that Montdor has not acted improperly. They contend that Montdor
17 is not subject to the Agreement and is thus free to compete with all of the Sunshine entities.
18 Doc. 25 at 14. Defendants argue that Montdor's right of competition negates the element of
19 "improper" interference. *Id.* (citing *Miller v. Hehlen*, 104 P.3d 193, 202 (Ariz. Ct. App.
20 2005)).

21 The Court agrees that Plaintiffs have failed to demonstrate that Montdor acted
22 improperly. Plaintiffs assert that Montdor acted to interfere with their business relationships
23 by "among other things, communicating to Sunshine Media's existing and prospective
24 customers that Goldberg is no longer associated with the Sunshine Entities and by producing
25 a publication that is in direct competition with M.D. News." Doc. 1 at 12. The Court rejects
26 this argument for two reasons. First, there are no facts alleged actually connecting Montdor
27 to the e-mail announcing Goldberg's separation from Sunshine. The complaint indicates that
28 Montdor did not even exist at the time the e-mail was sent. Doc. 1 at 10. Second, as Montdor

1 was not bound by any restrictive covenants with Plaintiffs, it was not improper for Montdor
2 to produce a publication that competes directly with M.D. News. *See Miller*, 104 P.3d at 202
3 (quoting *Bar J Bar Cattle Co. v. Pace*, 763 P.2d 545, 549 (Ariz. Ct. App. 1988) (finding “a
4 competitor does not act improperly if his purpose at least in part is to advance his own
5 economic interests”)). Defendants’ motion to dismiss count two will be granted as against
6 Montdor.

7 **b. Goldberg.**

8 Defendants also assert that Goldberg has not acted improperly. Defendants contend
9 that, absent third-party beneficiary status for Plaintiffs Sunshine Media and Sunshine Group,
10 Goldberg is free to compete with these entities. Doc. 25 at 14. They do not separately
11 address Sunshine Advertising’s claim of tortious interference with business relations as
12 against Goldberg, other than to again assert (based on Mr. McDonald’s declaration) that
13 Goldberg did not violate the Agreement. *Id.* at 12-14.

14 Arizona courts consider seven factors in determining whether a defendant’s interfering
15 conduct was improper: the nature of the actor’s conduct, the actor’s motive, the interests of
16 the other with which the actor’s conduct interferes, the interests sought to be advanced by the
17 actor, the social interests in protecting the freedom of action of the actor and contractual
18 interests of the other, the proximity of the actor’s conduct to the interference, and the relations
19 between the parties. *Wagenseller*, 710 P.2d at 1042-43. The Court finds that several of the
20 factors – the nature of the actor’s conduct, the actor’s motive, the proximity of the actor’s
21 conduct to the interference – plausibly suggest that Goldberg’s interference with Plaintiffs’
22 business relations was improper.

23 Plaintiffs’ complaint alleges that Goldberg was contractually obligated not to compete
24 directly or indirectly with Sunshine Advertising or solicit any party with whom Sunshine
25 Advertising had a business relationship. (*See* count one). Further, Plaintiffs allege that prior
26 to filing this lawsuit, the Sunshine entities contacted Goldberg’s counsel to determine whether
27 Goldberg intended to abide by the restrictive covenants of their Agreement. Doc. 1 at 9.
28 Goldberg’s counsel revealed that Goldberg would directly compete with M.D. News. *Id.*

1 This plausibly suggests that the nature of Goldberg’s conduct was knowing and willful
2 violation of the Agreement.

3 In considering Goldberg’s motive, the complaint indicates that Goldberg sent an e-mail
4 to “persons and entities with which the Sunshine Entities ha[d] a business relationship”,
5 encouraging recipients to contact him directly instead of Sunshine Media. Docs. 1 at 8, 1-1
6 at 16. This plausibly suggests that Goldberg’s motive was to willfully and intentionally
7 interfere with Plaintiffs’ business relations.

8 Regarding the proximity of Goldberg’s conduct to the interference, the complaint
9 asserts that Goldberg directly contacted 96 entities with which Plaintiffs allege they had a
10 business relationship. Doc. 1-1 at 16. He directly asked recipients to work with him, rather
11 than Plaintiffs. *Id.* Further, Plaintiffs assert that Goldberg’s publication “directly compete[s]”
12 with Plaintiffs’ publication. Doc. 1 at 9. These factual allegations plausibly indicate that
13 Goldberg’s conduct is closely and proximately related to any interference with Plaintiffs’
14 business relations.

15 Because the complaint sufficiently alleges that Goldberg’s alleged conduct was
16 improper, Plaintiffs have stated a claim against Goldberg for intentional interference with
17 business relations. Defendants’ motion to dismiss count two will be denied as against
18 Goldberg.

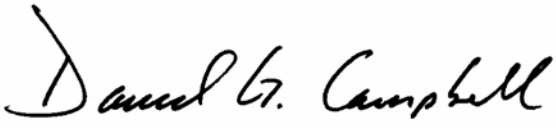
19 **IT IS ORDERED:**

- 20 1. Defendants’ motion to dismiss (Doc. 25) is **granted in part** and **denied in**
21 **part**. The motion is granted with respect to count one, as asserted by Sunshine
22 Media and Sunshine Group; count two, as asserted against Montdor by all
23 Plaintiffs; count four, as asserted by Sunshine Media and Sunshine Group; and
24 count five, as asserted by Sunshine Media and Sunshine Group.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2. A case management conference is set for **August 11, 2010** at **3:00 p.m.**
(Doc. 35).

DATED this 22nd day of July, 2010.



David G. Campbell
United States District Judge