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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MOSSIMO HOLDINGS, LLC,)	Case No. CV 14-05912 DDP (JE)
)	
Plaintiff,)	
)	
v.)	ORDER GRANTING THIRD-PARTY
)	DEFENDANT VICTOR SIASAT'S
HARRY HARALAMBUS, ET AL.,)	MOTION FOR SUMMARY
)	JUDGMENT
Defendants,)	
<hr/>)	[Dkt. 117]
THE LAMBUS CORPORATION,)	
)	
Third-party plaintiff,)	
)	
v.)	
)	
VICTOR SIASAT, et al.,)	
)	
Third-Party Defendants.)	
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Presently before the court is Third-Party Defendant Victor Siasat's Motion for Summary Judgment. After considering the parties' submissions and hearing oral argument, the court GRANTS the motion and adopts the following Order.

I. BACKGROUND

Third-Party Plaintiff The Lambus Corporation ("TLC") is an entity partly-owned and operated by Harry Haralambus. (Declaration of Harry Haralambus ¶ 4.) For

1 approximately the past two decades, TLC, along with several other corporate entities that
2 Haralambus operates, has had a business relationship with an apparel company called
3 Mossimo concerning trademarks in the MOSSIMO brand.¹ During a similar period,
4 Haralambus also had a business relationship with an apparel manufacturing and
5 distribution company called Promark Industries, Inc. (“Promark”). (Declaration of Victor
6 Siasat ¶ 5.) Across numerous agreements, which will be addressed in greater detail
7 below, Promark acquired a sublicense to the MOSSIMO mark from Haralambus for use
8 in connection with the manufacture and sale of branded apparel in the Philippines.

9 At some point, relations between Haralambus and Mossimo broke down and
10 Mossimo sued Haralambus for breach of contract, conversion, fraud, and other related
11 claims in July 2014. (See Dkt. 35.) The gravamen of Mossimo’s suit was that Haralambus
12 assigned his companies’ rights in the MOSSIMO mark to various shell companies and
13 then collected royalties from sublicenses without Mossimo’s knowledge or consent and

14
15 ¹ Initially, the MOSSIMO mark was owned by an entity called Mossimo, Inc. On October 31,
16 2006, this entity assigned its rights in the MOSSIMO mark to Mossimo Holdings, LLC, which
17 was the plaintiff that filed the original lawsuit in this case. (See Dkt. 35 [Plaintiff’s First Amended
18 Complaint].) Around that time, Mossimo was acquired by the Iconix Brand Group, Inc. (See
19 Haralambus Decl. ¶ 15.) Because the precise chain of assignments within Mossimo itself does not
20 affect the analysis of the instant Motion, the court will generally refer to the company as Mossimo.

21 A separate issue that must be addressed here is whether the court can take judicial notice of facts
22 contained in the First Amended Complaint that Mossimo filed against Haralambus, the operative
23 complaint that initiated this case, and the attached exhibits. Siasat argues that these documents are
24 judicially noticeable pursuant to Fed. R. Evid. 201. (Dkt. 118.) Ordinarily, district courts can
25 consider exhibits attached to a Complaint as evidence, even at the motion to dismiss stage. *Van*
26 *Buskirk v. Cable News Network, Inc.*, 284 F.3d 977, 980 (9th Cir. 2002). Here, the question is
27 complicated by the fact that the complaint and exhibits at issue are the ones that initiated the entire
28 proceeding rather than the specific third-party complaint that initiated the instant dispute.
Nonetheless, courts in similar situations have held that “[d]ocuments previously filed with the
court in the instant litigation are subject to judicial notice.” *Century Indem. Co. v. Marine Grp.,*
LLC, No. 3:08-CV-1375-AC, 2015 WL 5144330, at *1 (D. Or. Aug. 31, 2015) (taking judicial
notice of facts contained in both complaint and third-party complaint) (citing *Asdar Group v.*
Pillsbury, Madison and Sutro, 99 F.3d 289, 290 n. 1 (9th Cir.1996)). However, the court may not
judicially notice the truth of the disputed facts contained in such document. *Lee v. City of Los*
Angeles, 250 F.3d 668, 689 (9th Cir. 2001). Accordingly, the court shall take notice of the exhibits
attached to Mossimo’s Complaint, including the licensing agreement which no party disputes are
inauthentic, but will not take notice of any disputed facts.

1 without making required royalty payments to Mossimo. (*Id.* ¶¶ 4-8.) These unauthorized
2 sublicenses allegedly included the deal with Promark. (*Id.* ¶ 32.) These allegations were
3 never adjudicated and, instead, the parties entered into a settlement and Mossimo
4 dismissed its suit. (*See* Dkts. 92, 97.) Before the case settled, in September 2014, Mossimo
5 directly granted Promark a license to use the MOSSIMO mark in the Philippines.
6 (Declaration of Adamson Bactat, Ex. 5.) Also while the suit was pending, TLC filed a
7 Third-Party Complaint against Victor Siasat and Iconix Brand Group. (Dkt. 57.)
8 According to TLC, when relations had begun to break down between Haralambus and
9 Mossimo, the parties discussed granting TLC a new exclusive license in exchange for an
10 advance payment of \$100,000. (*Id.* ¶ 10.) Based on those discussions, TLC made the
11 payment but alleges that the draft licensing agreement Iconix later provided to TLC did
12 not represent the parties' prior understanding. (*Id.* ¶ 14.) According to TLC, this was
13 because Siasat had interceded with Iconix to interfere with TLC's contractual relations
14 and prospective economic advantage. (*Id.* ¶¶ 40-49.)

15 **A. Haralambus's Relationship with Siasat and Promark Industries**

16 In 1997, Victor Siasat first introduced Harry Haralambus to Promark Industries.
17 (Siasat Decl. ¶ 5; Haralambus Decl. ¶ 8.) Siasat made the introduction because, at the
18 time, Haralambus was looking for a firm to manufacture and distribute apparel bearing
19 the "MOSSIMO" brand mark in the Philippines. (*Id.*) Although the parties dispute the
20 precise relationship between Siasat and Promark, it is undisputed that the owner, or one
21 of the owners, of Promark was a relative of Siasat's and that Siasat had facilitated
22 business for Promark on various occasions. (Declaration of Harry Haralambus ¶ 8; Siasat
23 Decl. ¶ 14.) Haralambus also alleged that Siasat was a co-owner of Promark.
24 (Haralambus Decl. ¶ 8.)

25 On January 1, 1998, Promark entered into a Master License Agreement with Sole
26 Supply, Inc. ("Sole Supply")—a company owned and operated by Haralambus. (Bacatat
27 Decl. ¶ 3, Ex. 1 [Promark Master License Agreement.] Sole Supply represented in this
28 agreement that it held "all licensing right, title and interest" to the relevant trademarks in

1 the Philippines pursuant to a separate licensing agreement with Mosssimo Inc. (*Id.* at 1;
2 *id.* § 4.1.) Under the terms of the Promark Master License Agreement, Promark was
3 granted a non-exclusive right to use the MOSSIMO mark in connection with
4 manufacturing “anywhere in the world” and an exclusive right to use the mark in
5 connection with sale and distribution of branded products in the Philippines for a period
6 of five years and four months (expiring on April 30, 2003). (*Id.* §§ 2.1, 15.1.) The
7 agreement also included a one-time renewal option for five years, which Promark
8 exercised. (*Id.* § 15.2; Bactat Decl. ¶ 5.) From January 1, 1998 until April 30, 2008, Promark
9 made royalty payments to Sole Supply and TLC—as noted above, another entity owned
10 and operated by Haralambus—totaling \$1.08 million for the use of the MOSSIMO marks
11 in the Philippines. (Bactat Decl. ¶ 6; Haralambus Decl. ¶ 13.)

12 In May 2008, immediately after the agreement between Promark and Sole Supply
13 expired, Promark entered into a new licensing agreement with Onward Pacific (the
14 “Second Promark License Agreement.”) (Bactat Decl. ¶ 7, Ex. 2.) Onward Pacific was
15 another entity that Haralambus directed and partially-owned. Under this agreement,
16 Promark was again granted the right to manufacture apparel with the MOSSIMO mark
17 anywhere in the world and sell licensed products in the Philippines. (*Id.* § 2.1). The term
18 of the agreement was five years, expiring on April 30, 2013. (*Id.* §§ 3.1, 3.2, 3.3.) Although
19 the Second Promark License Agreement was made with Onward Pacific at least some of
20 the royalty payments under the agreement were sent to TLC. (*See* Declaration of Susan
21 Baker, Ex. 2 (Haralambus Depo. 186:18-187:3.) Between 2010 and 2013, Promark asserts
22 that it transferred at least \$926,187 to TLC. (Bactat Decl. ¶ 11.) Immediately after the
23 Second Promark License Agreement expired, Promark entered into a third license
24 agreement for the MOSSIMO marks with Onward Pacific on May 1, 2013. (Bactat Decl. ¶
25 10, Ex. 3 [Third Promark License Agreement].)

26 **B. Haralambus’s Relationship with Mossimo**

27 The parties dispute the precise status of the Mossimo marks in the Philippines
28 when Sole Supply and Promark entered into the Promark Master License Agreement in

1 1998. Haralambus contends that prior undisclosed agreements between Mossimo and
2 Sole Supply dating back to 1996 gave Sole Supply an exclusive right to license the marks
3 in the Phillipines, while Promark questions whether Sole Supply or any other entity
4 owned by Haralambus had any such right at that time. (*Compare* Haralambus Decl. ¶ 4
5 *with* Siasat Mot. Summ. J (“Mot.”) 4-5.) What the undisputed evidence does show is that
6 Mossimo, Inc. licensed the MOSSIMO mark to Beyond Blue, Inc. (“Beyond Blue”)—
7 another Haralambus owned entity—on April 1, 2001. (Dkt. 35, Ex. 1.) According to that
8 agreement, Mossimo granted Beyond Blue an exclusive license to use the MOSSIMO
9 trademark in Hong Kong, Japan, Korea, Singapore, and the Philippines. (*Id.* at 1) The
10 initial term of the agreement was five years and Beyond Blue was given an option to
11 renew for another five years. (*Id.* §§ 2.1, 2.2.) Under the terms of the agreement, Beyond
12 Blue had the right to sublicense the mark but was required to secure Mossimo’s prior
13 written consent and pay Mossimo seventy percent of all royalties from any sublicense
14 agreements. (*Id.* §§ 1.2, 5.1.) On July 6, 2007, Mossimo and Beyond Blue executed and
15 Amendment to the License Agreement, which terminated Beyond Blue’s license to use
16 the MOSSIMO trademark everywhere but the Philippines where Beyond Blue retained
17 an exclusive license to the marks until December 31, 2012. (Dkt. 35, Ex. 2.) Under the
18 terms of the Amended License Agreement, Beyond Blue was permitted to assign its
19 interests and rights to Onward Pacific—as noted above, a company Haralambus partly-
20 owned and directed. (*Id.* § 7.) The Amended License Agreement provided for certain
21 guaranteed minimum royalties and maintained the same rights and responsibilities for
22 sublicensing the mark. (*Id.* §§ 4, 10.)

23 The three assertions Siasat makes about this account are that Haralambus never
24 informed Mossimo of its sublicense agreement with Promark, Haralambus never paid
25 Mossimo the required portion of sublicense royalties, and that Haralambus, and his
26 entities, had lost their rights to the MOSSIMO mark at least five months prior to
27 Promark’s third license agreement with Onward Pacific. Haralambus disputes each of
28 these claims. As to the first two, Haralambus asserts that Mossimo was aware of the

1 arrangement and was not owed any additional royalty payments. As to the final point,
2 Haralambus notes that the rights to license the MOSSIMO mark in the Philippines
3 derived from the alleged 1996 agreement with Sole Supply and not any subsequent
4 agreement. (Haralambus Decl. ¶¶ 19, 27.) Thus, any claimed expiration of licensing rights
5 is irrelevant.

6 **C. The Parties' Accounts Intersect**

7 After entering into the Amended License Agreement with Haralambus, Mossimo
8 alleges that Onward Pacific failed to make the guaranteed minimum royalty payments.
9 (Dkt. 35 ¶ 44.) Mossimo contacted Haralambus about the issue and, after some
10 discussion, Mossimo alleges that Haralambus had TLC transfer \$100,000 to Mossimo to
11 partially satisfy the owed royalty payments. (*Id.* ¶ 45.) During this period, Haralambus
12 agrees that the parties were engaged in discussions about the MOSSIMO marks.
13 (Haralambus Decl. ¶ 23.) In Haralambus's view, he did not owe any minimum
14 guaranteed royalty payments because of the alleged agreement with Sole Supply that
15 gave that company the rights to the MOSSIMO mark in the Philippines. (*Id.*) Nonetheless,
16 Haralambus concedes making a \$100,000 payment to Mossimo. (*Id.* ¶ 24.) Haralambus
17 asserts that this payment was made as "part of an overall far-reaching settlement
18 between the parties . . . which was to be consummated in writing." (*Id.*) Subsequent to
19 this payment, in September 2013, Haralambus received a draft agreement between
20 Onward Pacific and Iconix. (*Id.* ¶ 28, Ex. 7.) This draft agreement was never executed.

21 Around this time, two other relevant events transpired. First, Mossimo entered
22 into a new joint venture on September 30, 2013 with an affiliate of the Global Brands
23 Group ("Global Brands")—an independent company that no party or third-party claims
24 an ownership or interest in—that granted Global Brands the exclusive right to exploit
25 and sublicense the MOSSIMO brand trademarks in a number of Southeast Asian
26 Companies including the Philippines. (Declaration of Jared Margolis ¶ 3.)

27 Second, also in September 2013, Siasat met with representatives from Mossimo.
28 (Siasat Decl. ¶ 6.) Siasat states that the meeting was to discuss the possibility of acquiring

1 the licensing rights for certain other brands not at issue here. (*Id.* ¶ 6.) As Mossimo was
2 now operated by Iconix, Siasat claims he did not even know that this meeting was with a
3 Mossimo representative and he claims that he never discussed the Mossimo mark. (*Id.*)
4 Haralambus disputes this assertion and contends that Siasat spoke about the MOSSIMO
5 mark on this occasion. (Haralambus Decl. ¶ 27.) Subsequently, in December 2013, Siasat
6 met with an individual named Jason Rabin who was a representative of the Global
7 Brands Group. (*Id.* ¶ 11.) Siasat claims that this was the first of multiple interactions with
8 Mossimo representatives who told Siasat that Promark was using the MOSSIMO mark
9 without authorization in the Philippines. (*Id.* ¶¶ 11, 12.) During these interactions, Siasat
10 claims he turned over Promark's licensing agreements with the various entities
11 Haralambus operated, as well as records of Promark's past payments to TLC and other
12 companies. (*Id.* ¶ 12.) Subsequently, Promark directly entered into a licensing agreement
13 with Mossimo to manufacture and distribute apparel with the MOSSIMO mark in the
14 Philippines. (Declaration of Adamson Bactat, Ex. 5.)

15 In July 2014, Mossimo filed a lawsuit against Haralambus, Onward Pacific, and
16 Beyond Blue. (Dkt. 1.) The Complaint asserted claims for breach of contract, conversion,
17 fraud, accounting, and injunctive relief. (*See id.*) In March 2015, TLC filed a Third-Party
18 Complaint against Siasat and Iconix asserting claims for contribution, fraud, unjust
19 enrichment, unfair competition, intentional interference with contractual relations,
20 intentional interference with prospective economic advantage, and civil conspiracy. (*See*
21 Dkt. 57.) According to Haralambus, the \$100,000 payment TLC sent to Iconix in January
22 2013 was based on representations made by Iconix that the two companies had resolved
23 their trademark disputes and would enter into a new licensing agreement in the
24 Philippines for several brands including MOSSIMO. (Haralambus Decl. ¶ 24.) TLC's
25 Third-Party Complaint raises two primary allegations. First, TLC alleges that this new
26 agreement never materialized because Iconix negotiated in bad faith. (Dkt. 57 ¶¶ 14, 18.)
27 Second, TLC alleges that, beginning with the September 2013 meeting with a Mossimo
28 representative, Siasat was engaged in a scheme to undermine the business relationship

1 between Mossimo and TLC so that Promark could go around TLC and directly license
2 the Mossimo marks. (*See id.* ¶¶ 48, 51.) Siasat now moves for summary judgment on all
3 counts.

4 **II. LEGAL STANDARD**

5 Summary judgment is appropriate where the pleadings, depositions, answers to
6 interrogatories, and admissions on file, together with the affidavits, if any, show “that
7 there is no genuine dispute as to any material fact and the movant is entitled to judgment
8 as a matter of law.” Fed. R. Civ. P. 56(a). A party seeking summary judgment bears the
9 initial burden of informing the court of the basis for its motion and of identifying those
10 portions of the pleadings and discovery responses that demonstrate the absence of a
11 genuine issue of material fact. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). All
12 reasonable inferences from the evidence must be drawn in favor of the nonmoving party.
13 *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 242 (1986). If the moving party does not
14 bear the burden of proof at trial, it is entitled to summary judgment if it can demonstrate
15 that “there is an absence of evidence to support the nonmoving party’s case.” *Celotex*,
16 477 U.S. at 323.

17 Once the moving party meets its burden, the burden shifts to the nonmoving party
18 opposing the motion, who must “set forth specific facts showing that there is a genuine
19 issue for trial.” *Anderson*, 477 U.S. at 256. Summary judgment is warranted if a party
20 “fails to make a showing sufficient to establish the existence of an element essential to
21 that party’s case, and on which that party will bear the burden of proof at trial.” *Celotex*,
22 477 U.S. at 322. A genuine issue exists if “the evidence is such that a reasonable jury
23 could return a verdict for the nonmoving party,” and material facts are those “that might
24 affect the outcome of the suit under the governing law.” *Anderson*, 477 U.S. at 248. There
25 is no genuine issue of fact “[w]here the record taken as a whole could not lead a rational
26 trier of fact to find for the nonmoving party.” *Matsushita Elec. Indus. Co. v. Zenith Radio*
27 *Corp.*, 475 U.S. 574, 587 (1986).

1 It is not the court's task "to scour the record in search of a genuine issue of triable
2 fact." *Keenan v. Allan*, 91 F.3d 1275, 1278 (9th Cir. 1996). Counsel has an obligation to lay
3 out their support clearly. *Carmen v. San Francisco Sch. Dist.*, 237 F.3d 1026, 1031 (9th Cir.
4 2001). The court "need not examine the entire file for evidence establishing a genuine
5 issue of fact, where the evidence is not set forth in the opposition papers with adequate
6 references so that it could conveniently be found." *Id.*

7 **III. DISCUSSION**

8 **A. Intentional Interference Claims**

9 TLC alleges that Siasat's conduct while TLC and Iconix were attempting to
10 negotiate a new licensing agreement between 2012 and 2014 constitutes both intentional
11 interference with contractual relations and intentional interference with prospective
12 economic advantage. (Dkt. 57 ¶¶ 9-20.) Siasat contends that he is entitled to summary
13 judgment on both claims because the evidence fails to create triable issue as to any
14 existing contract or prospective economic advantage. At best, Siasat contends that the
15 parties were contemplating entering into a possible contract or future relationship. In the
16 alternative, Siasat contends that TLC's claims are unavailing because there is no evidence
17 that Siasat engaged in any intentional acts intended to interfere with any possibly
18 existing contract or economic relationship.

19 1. Intentional Interference with Contractual Relations

20 To prove a claim for intentional interference with contractual relations, Plaintiffs
21 must show: "(1) a valid contract between plaintiff and a third party; (2) defendant's
22 knowledge of this contract; (3) defendant's intentional acts designed to induce a breach
23 or disruption of the contractual relationship; (4) actual breach or disruption and (5)
24 resulting damage." *Quelimane Co., Inc. v. Stewart Title Guaranty Co.*, 19 Cal. 4th 26, 55
25 (1998). The third element incorporates a causation requirement that that the intentional
26 acts be a substantial factor in causing the breach. *See Bank of New York v. Fremont Gen.*
27 *Corp.*, 523 F.3d 902, 909 (9th Cir. 2008); *see also Hahn v. Diaz-Barba*, 194 Cal. App. 4th 1177,
28

1 1196 (2011) (stating that a plaintiff must allege that the contract would otherwise have
2 been performed).

3 The threshold requirement for an intentional interference with contractual
4 relations is the existence of a valid contract. *Tuchscher Dev. Enterprises, Inc. v. San Diego*
5 *Unified Port Dist.*, 106 Cal. App. 4th 1219, 1239 (2003). In its opposition to the instant
6 Motion, TLC includes only a single sentence about the existence of a valid contract: “The
7 relationship that TLC had with Mossimo was via an assignment of rights it was granted
8 from Sole Supply, Inc. and those rights were continuing. (See Dec. of Harry Haralambus,
9 ¶).” Setting aside the lack of adequate citation to record evidence, this conclusory
10 declaration is inadequate to create a triable issue of fact. The contract TLC appears to be
11 referencing is an alleged 1996 agreement between Haralambus and Mossimo where,
12 “[f]or an approximately 1.4 million cash injection into its coffers, Mossimo relinquished
13 rights in eleven countries in Southeast Asia for apparel and apparel accessories, and
14 Worldwide for footwear.” (Haralambus Decl. ¶ 4.) No other party or third-party has ever
15 acknowledged the existence or validity of this alleged agreement nor has TLC provided
16 any other evidence substantiating its existence. To the contrary, the evidence shows that,
17 from 2001 until 2012, Haralambus and his various corporate entities entered into a series
18 of licensing agreements with Mossimo for the rights to use the MOSSIMO mark in the
19 Philippines, among other places. (Dkt. 35, Exs. 2, 3.) These agreements, which
20 Haralambus signed, expressly affirm that “MOSSIMO is the owner of various MOSSIMO
21 trademarks” and that Mossimo “has the right, power and authority to grant licenses to
22 others.” (Dkt. 35 at 25.) If Mossimo had indeed permanently “relinquished” the mark to
23 Haralambus’s company, Sole Supply, it is unclear why Haralambus would have entered
24 into any subsequent licensing agreements for the same mark.

25 A second possible contract might be the oral agreement that TLC alleges it had
26 with Iconix in January 2013. Although Haralambus does not rely on this alleged contract
27 in his opposition papers, the court nonetheless considers whether these allegations create
28 a triable issue of fact out of an abundance of caution. According to the First Amended

1 Complaint, "discussion occurred between Iconix and TLC pertaining to conflicting
2 claims concerning the rights for the use of the 'Mossimo' trademarks in the Philippines"
3 in 2012. (Dkt. 57 ¶ 9.) At the end of 2012, Iconix allegedly represented to TLC that, in
4 exchange for an advance payment of \$100,000.00, Iconix would grant continued exclusive
5 rights" to several trademarks including MOSSIMO. (*Id.* ¶ 10.) TLC then alleges that it
6 paid this "\$100,000.00 advance payment pursuant to the parties' agreement and based on
7 discussions that could lead to settlements, new license agreements, and/or joint
8 ventures." (*Id.* ¶ 11.) This agreement broke down however, when "[i]n 2013, Iconix sent a
9 draft agreement that in no way represented the parties' earlier agreements." (*Id.* ¶ 14.)
10 Haralambus's Declaration provides a similar account and describes the \$100,000 paid to
11 Mossimo "as part of an overall far-reaching settlement between the parties which arose
12 in late 2012 and which was to be consummated in writing." (Haralambus ¶ 24.)

13 Even drawing all inferences in favor of TLC, no reasonable jury could find that
14 these barebone allegations constituted a valid oral contract between TLC and Iconix for
15 future licensing rights to the Mossimo marks. As Haralambus himself admits, the
16 payment was part of a settlement over conflicting claims to the Mossimo marks. In
17 Mossimo's account this payment was made after it notified Haralambus that he owed
18 licensing royalty payments dating back to 2011. (Dkt. 35 ¶¶ 44, 45.) But even setting aside
19 Mossimo's allegation, the TLC complaint and single declaration cannot substantiate the
20 contract claim. It is possible that the parties were contemplating a possible contract but
21 there is no indication of what this oral agreement precisely entailed or that there was a
22 genuine meeting of the minds. Indeed, all previous licensing agreements between the
23 parties were codified in writing and, as Haralambus admits, negotiations broke down
24 when the parties began to exchange draft agreements. Thus, given the absence of any
25 valid contract between TLC and Iconix, the court finds that Siasat is entitled to summary
26 judgment on the intentional interference of contractual relations claim.

27 2. Intentional Interference with Prospective Economic Advantage

28

1 The elements of intentional interference with prospective economic advantage are:
2 “(1) an economic relationship between the plaintiff and some third party, with the
3 probability of future economic benefit to the plaintiff; (2) the defendant’s knowledge of
4 the relationship; (3) intentional acts on the part of the defendant designed to disrupt the
5 relationship; (4) actual disruption of the relationship; and (5) economic harm to the
6 plaintiff proximately caused by the acts of the defendant.” *Korea Supply Co. v. Lockheed*
7 *Martin Corp.*, 29 Cal.4th 1134, 1153 (2003).

8 As with the prior claim, Siasat contends that the evidence cannot sustain a finding
9 that there was an economic relationship between plaintiff and some third party with the
10 probability of future economic benefit. On this issue, TLC’s opposition papers present no
11 argument about the existence of an economic relationship with the probability of future
12 economic benefit aside from restating the applicable legal standard. (*See Opp’n 14.*) Based
13 on the First Amended Complaint and Haralambus’s declaration, TLC’s argument on this
14 point appears to be that, but for Siasat’s intervention, TLC would have secured a new
15 licensing agreement with Mossimo and would have continued earning royalties from
16 sublicensing the mark to Promark.

17 The court finds that TLC has not submitted adequate evidence to create a triable
18 issue as to an existing economic relationship with the probability of economic benefit.
19 Although TLC has provided evidence to demonstrate that there was, at one point, an
20 economic relationship between Haralambus-associated entities and Mossimo, there is no
21 evidence of an *existing* economic relationship at the time of Siasat’s alleged interference.
22 Instead, the evidence reflects that the last licensing agreement between Haralambus and
23 Mossimo expired on December 31, 2012, nearly a year prior to the Siasat meetings with
24 Mossimo representatives that gave rise to this suit. (Dkt. 35, Ex. 2.) Indeed, TLC’s
25 Complaint even acknowledges that the relationship had deteriorated by 2012 over
26 “conflict claims concerning the rights for the use of the ‘Mossimo’ trademarks” and the
27 parties were discussing “new license agreement.” (Dkt. 57 ¶ 9.) Although the parties had
28 prior economic relations and the payment of \$100,000 might have indicated that they

1 were contemplating restarting an economic relationship, there was no existing
2 relationship. *Roth v. Rhodes*, 25 Cal. App. 4th 530, 546 (1994) (holding that a speculative
3 relationship does not satisfy the existing relationship prong).

4 Even if there were a triable issue of fact as to an existing economic relationship
5 between TLC and Iconix, “Plaintiff also has the burden of proving that there was the
6 probability of economic benefit with a third party.” *Golden v. Sound Inpatient Physicians*
7 *Med. Grp., Inc.*, 93 F. Supp. 3d 1171, 1177 (E.D. Cal. 2015) (citing *Korea Supply Co. v.*
8 *Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1153 (2003); *Buckaloo v. Johnson*, 14 Cal. 3d 815, 827
9 (1975)); *see id.* (also noting that “the law precludes recovery for overly speculative
10 expectancies”) (citing *Westside Ctr. Assoc. v. Safeway Stores 23, Inc.*, 42 Cal. App. 4th 507,
11 522 (1996)). The undisputed evidence in this case does not support the conclusion that
12 there was a probability of economic benefit. Although the allegations in Mossimo’s initial
13 complaint cannot be taken as true, they do offer some indication about how the parties’
14 viewed their economic relationship. Mossimo alleges that it received the payment of
15 \$100,000 as part of the royalty payments it believed it was owed by TLC. (Dkt. 35 ¶ 45.)
16 There is no indication that Mossimo intended to accept payment as a guarantee of future
17 economic benefit it would provide to TLC. Likewise, even Haralambus acknowledges
18 that Mossimo was in the process of negotiating an exclusive licensing agreement with a
19 third-party not associated with Haralambus during the relevant period. (Dkt. 57 ¶ 16.) In
20 response, the only evidence Haralambus has submitted to substantiate his assertion that
21 TLC had a probability of economic benefit was his own declaration. The court finds that
22 this single declaration fails to create triable issue of fact as to Siasat’s intentional
23 interference with prospective economic advantage.

24 An alternate ground for granting Siasat summary judgment on the intentional
25 interference with prospective economic advantage claim is that TLC has failed to create a
26 triable issue as to the intentional act prong. “[T]he act of interference with prospective
27 economic advantage is not tortious in and of itself.” *Korea Supply*, 29 Cal. 4th at 1159. To
28 state a claim for intentional interference under California law, a plaintiff must allege that

1 “the defendant engaged in an independently wrongful act,” that is “wrongful by some
2 legal measure other than the act of interference itself.” *Id.* at 1153 (citing *Della Penna v.*
3 *Toyota Motor Sales, U.S.A., Inc.*, 11 Cal. 4th 376, 393 (1995)). This is understood as an act
4 “proscribed by some constitutional, statutory, regulatory, common law, or other
5 determinable legal standard.” *Korea Supply*, 29 Cal. 4th at 1159. Here, TLC provides no
6 allegations of any independent wrongful conduct on Siasat’s part aside from his alleged
7 interference. Under some conditions interference with an existing contract might satisfy
8 the independent wrong conduct. *See Cisco Sys., Inc. v. STMicroelectronics, Inc.*, 77 F. Supp.
9 3d 887, 898–99 (N.D. Cal. 2014) (citing *Korea Supply*, 29 Cal. 4th at 1157–58.) However,
10 given that the court has already concluded that there was no valid contract for Siasat to
11 interfere with and given the absence of any other wrongful conduct, the court GRANTS
12 Siasat summary judgment on TLC’s intentional interference with prospective economic
13 advantage.

14 3. Stranger to the Relationship

15 “California law has long recognized that the core of intentional interference
16 business torts is interference with an economic relationship by a third-party *stranger* to
17 that relationship, so that an entity with a direct interest or involvement in that
18 relationship is not usually liable for harm caused by pursuit of its interests.” *Marin Tug &*
19 *Barge, Inc. v. Westport Petroleum, Inc.*, 271 F.3d 825, 832 (9th Cir. 2001) (citing *Della*
20 *Penna*, 45 Cal. Rptr. 2d 436.) Relying on the Restatement of Torts, the Ninth Circuit has
21 state the inquiry as follows:

22 “One who, having a financial interest in the business of a third person
23 intentionally causes that person not to enter into a prospective contractual relation
24 with another, does not interfere improperly with the other's relation if he
(a) does not employ wrongful means and
(b) acts to protect his interest from being prejudiced by the relation.”

25 *Id.* (quoting Restatement (Second) of Torts § 769 (1979)). Although neither party raised
26 this issue in their summary judgment briefing, the court notes that this rule would
27 provide an independent reason for granting Siasat summary judgment. *See Bullis v.*
28

1 *Twentieth Century-Fox Film Corp.*, 474 F.2d 392, 394 (9th Cir. 1973) (affirming district
2 court’s grant of summary judgment on an issue not raised either by party).

3 Here, the undisputed evidence shows that Siasat and Promark had a financial
4 interest in the Mossimo marks. Since 1998, Promark had been sublicensing the Mossimo
5 marks from Haralambus. While the specifics of Siasat’s interaction with Mossimo are
6 disputed, no party could dispute that Promark had a financial interest in maintaining the
7 ability to license or sublicense the Mossimo marks. If TLC failed to secure a licensing
8 agreement from Mossimo so that it could continue to sublicense the marks to Promark, it
9 would prejudice Promark’s business interests. Given that the court has held that Siasat
10 did not use any independently wrongful means to secure the MOSSIMO license directly
11 from Mossimo, his actions would not constitute economic interference as he was not a
12 stranger to the business relationships at issue.

13 **B. Remaining Claims.**

14 Siasat has also filed for summary judgment on TLC’s claims for contribution,
15 unjust enrichment, conspiracy, and violations of California’s unfair competition law. Of
16 these, TLC only addresses Siasat’s argument regarding unfair competition in its
17 opposition brief. The failure to address the remaining claims is grounds for deeming the
18 issues conceded and granting Siasat summary judgment on them. *See Ramirez v. Ghilotti*
19 *Bros. Inc.*, 941 F. Supp. 2d 1197, 1210 n.7 (N.D. Cal. 2013) (collecting cases and finding a
20 party's failure to address an argument concedes the issue raised).² Nonetheless, the court
21 briefly addresses why there are no triable issues as to contribution, unjust enrichment,
22 and conspiracy.

23 In the event that TLC was found liable to Mossimo for conversion in the original
24 lawsuit, TLC’s contribution claim sought to hold Siasat partially responsible for paying
25 any amounts awarded to Mossimo. (*See* Dkt. 57.) Given that Mossimo and TLC settled

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27 ² At oral argument, counsel for TLC went further and indicated that it was not pursuing the “fraud
28 or conspiracy” but was “going forward with the unjust enrichment claim and the claims for
tortious interference.”

1 their claims, there was no judgment entered against TLC on the conversion claim and
2 there can never be any such judgment since the original lawsuit has been dismissed. (*See*
3 *Dkts. 92, 97.*) Thus, TLC is not entitled to contribution from Siasat as a matter of law. *See*
4 *General Electric Co. v. State of Cal. ex rel. Dept. Pub. Wks.*, 32 Cal. App. 3d 918, 925 (1973).

5 TLC also seeks damages against Siasat for unjust enrichment. The elements for a
6 claim of unjust enrichment are “receipt of a benefit and unjust retention of the benefit at
7 the expense of another.” *Prakashpalan v. Engstrom, Lipscomb & Lack*, 223 Cal. App. 4th
8 1105, 1132 (2014). Here, TLC’s Complaint makes no allegations that Siasat personally
9 received a benefit and unjustly retained a benefit at TLC’s expense. Indeed, there are no
10 allegations about Siasat at all on this count. Instead, the allegations concerning this issue
11 in the Complaint are focused only on Iconix and TLC’s discussions and TLC’s payment
12 of \$100,000 to Iconix. (*See Dkt. 57 ¶¶ 33-36.*) Thus, Siasat is entitled to summary judgment
13 on this claim as a matter of law.

14 TLC’s claim for conspiracy is premised on the allegation that Siasat and Iconix
15 formed a conspiracy for the purpose of engaging in fraudulent conduct intended to
16 interfere with TLC’s contractual relations and prospective economic advantage. Having
17 already concluded that there are no triable issues as to the intentional interference claims,
18 the court concludes for substantially similar reasons that there is also no triable issue as
19 to conspiracy. The Complaint is devoid of specific allegations about Siasat’s
20 conspiratorial conduct nor can the evidence support a finding that Siasat
21 interfered with any existing economic relationship or valid contract.

22 The only claim that TLC has contested is the unfair completion law claim.
23 Specifically, TLC contends that Siasat violated California’s Unfair Competition law, *see*
24 *Cal. Bus. & Prof. Code § 17200 et seq.*, by “working to undermine TLC’s authority and
25 contractual rights with Mossimo, by meeting with them and sharing information from
26 Promark regarding payments made by TLC.” (*Opp’n 17.*) However, given the court’s
27 conclusion that Siasat did not interfere with TLC’s contractual rights, the court also finds
28 that Siasat is entitled to summary judgment on the unfair competition law claim.

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IV. CONCLUSION

For the reasons stated above, the court GRANTS Siasat’s Motion for Summary Judgment and VACATES all pending motions.

IT IS SO ORDERED.

Dated: April 4, 2017



DEAN D. PREGERSON
UNITED STATES DISTRICT JUDGE