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**United States District Court  
Central District of California**

CONVERSION LOGIC, INC.,

Plaintiff,

v.

MEASURED, INC., et al.,

Defendants.

Case No: 2:19-cv-05546-ODW (FFMx)

**ORDER GRANTING DEFENDANTS’  
MOTION TO DISMISS [21]**

**I. INTRODUCTION**

Plaintiff Conversion Logic, Inc. (“Conversion”) brings an action against Measured, Inc. (“Measured”), Trevor Testwuide (“Testwuide”), Madan Bharadwaj (“Bharadwaj”), and Antonio Magnaghi (“Magnaghi”), (collectively, “Defendants”). (See Compl., ECF No. 1.) Pending before the Court is Defendants’ Motion to Dismiss for failure to state a claim. (Mot. to Dismiss (“Mot.”), ECF No. 21.) For the reasons that follow, the Court **GRANTS** Defendants’ Motion.<sup>1</sup>

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<sup>1</sup> Having carefully considered the papers filed in connection to the instant Motion, the Court deemed the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15.

1 **II. BACKGROUND**

2 Plaintiff Conversion Logic offers software and services analyzing which  
3 marketing efforts generate a return on investment. (Compl. ¶ 1.) Testwuide was  
4 Conversion’s CEO, and Bharadwaj and Magnaghi were Conversion’s formal advisors.  
5 (Compl. ¶ 3.) While at Conversion, Testwuide, Bharadwaj, and Magnaghi had access  
6 to Conversion’s scientific and technical trade secrets, including “confidential and  
7 proprietary information related to Conversion[’s] machine-learning-based techniques,  
8 methodologies, and data-science models.” (Compl. ¶ 4.) The three also had access to  
9 Conversion’s sales-related trade secrets including “confidential customer and sales  
10 information such as current and prospective customer lists, contact information,  
11 pricing information, and contracts.” (Compl. ¶ 4.) Between 2014 and 2017,  
12 Conversion had entered into several contracts, which included various covenants,  
13 with Testwuide, Bharadwaj, and Magnaghi.<sup>2</sup>

14 In 2017, Testwuide left Conversion. (Compl. ¶ 10.) Within weeks, Testwuide  
15 and Bharadwaj started Measured, allegedly to compete against Conversion. (Compl.  
16 ¶ 10.) Defendant Magnaghi joined them and allegedly used Conversion’s trade  
17 secrets to help build Measured. (Compl. ¶ 10.) Testwuide and Bharadwaj also  
18 allegedly solicited Conversion’s customers and former employees. (Compl. ¶ 11.)

19 Testwuide entered into a Confidentiality Agreement. (Compl. ¶ 290; Vu Decl.  
20 Ex. A (“Confidentiality Agreement”), ECF No. 21-2.) The agreement indicated that  
21 Testwuide’s obligation to maintain the confidentiality of Conversion’s trade secrets  
22 “will survive expiration or termination of [the Confidentiality Agreement].” (Compl.  
23 ¶ 293.) Conversion alleges that Testwuide breached the Confidentiality Agreement by

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26 <sup>2</sup> Defendants attach copies of the agreements referenced in the Complaint. (Decl. of Jacqueline Vu  
27 (“Vu Decl.”) Exs. A–F, ECF No. 21-2.) As Conversion does not object to the consideration of the  
28 agreements (Opp’n to Mot (“Opp’n”) 1 n.1, ECF No. 30), and the Court may consider agreements  
incorporated by reference to the Complaint, the Court considers the six agreements in the disposition  
of this motion. *See United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003) (stating courts may  
consider documents incorporated by reference).

1 obtaining and refusing to return technical and sales-related trade secrets, soliciting  
2 former employees and current advisors of Conversion to join Measured, soliciting  
3 clients of Conversion such as AARP, and failing to disclose and assign rights of  
4 discoveries and inventions. (Compl. ¶¶ 294–299.) In August 2017, Testwuide also  
5 entered into a Separation Agreement with Conversion. (Compl. ¶ 300; Vu Decl. Ex.  
6 B (“Separation Agreement”), ECF No. 21-2.) Conversion alleges that Testwuide  
7 breached the Separation Agreement by misappropriating technical and sales-related  
8 trade secrets, soliciting advisors and former employees of Conversion to work for  
9 Measured, and disparaging Conversion both publicly and privately. (Compl. ¶¶ 303–  
10 305.)

11       Regarding Bharadwaj, on June 15, 2015, he entered into an Advisor Agreement  
12 with Conversion. (Compl. ¶ 308; Vu Decl. Ex. C (“Advisor Agreement”), ECF  
13 No. 21-2.) He allegedly breached the Advisor Agreement by misappropriating  
14 Conversion’s technical and sales-related trade secrets, soliciting employees and  
15 advisors of Conversion to become employees of Measured, developing and failing to  
16 disclose and assign inventions, and providing services to Measured. (Compl. ¶¶ 314–  
17 318.) Bharadwaj also entered into two subsequent consulting agreements: the First  
18 Consulting Agreement on September 24, 2015 and the Second Consulting Agreement  
19 on June 1, 2016. (Compl. ¶¶ 319, 326; Vu Decl. Ex. D (“First Consulting  
20 Agreement”), ECF No. 21-2; Vu Decl. Ex. E (“Second Consulting Agreement”), ECF  
21 No. 21-2.) Bharadwaj allegedly breached both the First and Second Consulting  
22 Agreement by misappropriating Conversion’s technical and sales-related trade secrets  
23 and failing to disclose and assign “inventions, discoveries, improvements, and  
24 copyrightable works.” (Compl. ¶¶ 324, 325, 330, 331.) Conversion alleges that  
25 Bharadwaj also breached the Second Consulting Agreement by co-founding Measured  
26 and offering his services to Conversion’s competition, and by soliciting Conversion’s  
27 former employees, advisors, and clients. (Compl. ¶¶ 332–335.)

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1 experience and common sense.” *Id.* at 679. A court is generally limited to the  
2 pleadings and must construe all “factual allegations set forth in the complaint . . . as  
3 true and . . . in the light most favorable” to the plaintiff. *Lee v. City of Los Angeles*,  
4 250 F.3d 668, 679 (9th Cir. 2001). But a court need not blindly accept conclusory  
5 allegations, unwarranted deductions of fact, and unreasonable inferences. *Sprewell v.*  
6 *Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

7 Where a district court grants a motion to dismiss, it should generally provide  
8 leave to amend unless it is clear the complaint could not be saved by any amendment.  
9 *See Fed. R. Civ. P. 15(a); Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d  
10 1025, 1031 (9th Cir. 2008).

#### 11 IV. DISCUSSION

12 Defendants move to dismiss Conversion’s second, third and fourth claims  
13 primarily because clauses in the six agreements at issue violate the California  
14 Business and Professions Code section 16600. (*See Mot.9.*) Conversion preliminarily  
15 argues that, even if those clauses were invalid, the motion should be denied as  
16 Conversion has adequately plead alternative unchallenged grounds for a breach of  
17 contract against Testwuide, Bharadwaj, and Magnaghi. (*Opp’n 3–5.*) Conversion  
18 alternatively asserts that the clauses are in fact valid under current California law.  
19 (*Opp’n 6–20.*) The Court addresses the arguments in turn.

##### 20 A. Alternative Allegations of Breach

21 Conversion asserts that the Defendants’ motion is procedurally unsound,  
22 because it challenges some but not all of Conversion’s allegations of breach of  
23 contract. (*Opp’n 3–5.*) For instance, Conversion notes that Defendants do not  
24 challenge its allegations that Testwuide, Bharadwaj, and Magnaghi misappropriated  
25 its trade secrets or that Testwuide disparaged Conversion. (*Opp’n 4.*) Defendants  
26 reply that they “challenge [only] the legal sufficiency of Conversion’s breach of  
27 contract claims to the extent that they are based on restrictive covenants” in  
28 contravention to the law. (*Reply in Supp. of Mot. (“Reply”) 3, ECF No. 31.*)

1 Defendants further contend that allegations based on the unlawful contract terms are  
2 separable from those allegations seeking to enforce valid contractual provisions.  
3 (Reply 4.)

4 Where a complaint “groups together multiple theories and operative facts  
5 which, if independently found to be valid, could each give rise to a right enforceable  
6 in the courts,” each claim should be addressed separately. *Doe v. Napa Valley Unified*  
7 *Sch. Dist.*, No. 17-CV-03753-SK, 2018 WL 4859978, at \*3 (N.D. Cal. Apr. 24, 2018)  
8 (internal quotation marks omitted); *Bautista v. Los Angeles Cty.*, 216 F.3d 837, 840  
9 (9th Cir. 2000) (stating claims founded on a separate transaction or occurrence are  
10 properly stated in separate counts).

11 Here, Conversion alleges several theories of breach based on several different  
12 contracts for each Defendant. (*See* Compl. ¶¶ 289–349.) Each theory involves  
13 different transactions or occurrences. For instance, allegations showing Testwuide  
14 made disparaging remarks about Conversion would show a breach of the covenant not  
15 to make such comments but would fail to demonstrate breach of the employee or  
16 customer non-solicitation provisions. However, sufficient proof of either theory may  
17 adequately give rise to a breach of contract claim. Accordingly, the Court may  
18 consider each theory independently in determining whether Conversion has  
19 sufficiently alleged a claim and dismiss allegations and theories that are barred by the  
20 California Business and Professions Code section 16600. *See Hill v. Opus Corp.*, 841  
21 F. Supp. 2d 1070, 1082 (C.D. Cal. 2011) (dismissing a claim to the extent that the  
22 plan is covered and preempted by ERISA while permitting the claim based on non-  
23 ERISA plans to proceed). The Court now addresses whether certain provisions in the  
24 contracts are void.

25 **B. Non-Solicitation of Employees or Consultants Provision**

26 Defendants move to dismiss the breach of contract claim against Testwuide and  
27 Bharadwaj on the basis of the non-solicitation of employees or consultant clauses in  
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1 the Confidentiality Agreement and the Second Consulting Agreement because the  
2 clauses are void. (Mot. 11, 20.)

3 California Business and Professions Code section 16600 provides that,  
4 “[e]xcept as provided in this chapter, every contract by which anyone is restrained  
5 from engaging in a lawful profession, trade, or business of any kind is to that extent  
6 void.” Cal. Bus. & Prof. Code § 16600. The California Supreme Court has found that  
7 “section 16600 prohibits employee noncompetition agreements unless the agreement  
8 falls within a statutory exception.” *Edwards v. Arthur Andersen LLP*, 44 Cal. 4th 937,  
9 942 (Cal. 2008). In *AMN Healthcare, Inc. v. Aya Healthcare Servs., Inc.*, the  
10 California appellate court extended *Edwards* to find that a provision for  
11 “nonsolicitation of employee” was void under section 16600. 28 Cal. App. 5th 923,  
12 935 (2018). Though California appellate courts have distinguished *AMN*’s application  
13 of *Edwards*, such courts have consistently concurred with *AMN*’s reasoning as applied  
14 to employee agreements. *Quidel Corp. v. Superior Court*, 39 Cal. App. 5th 530, 539  
15 (2019). “The strict application of section 16600 in the employment context is  
16 supported by the policy: California courts have consistently declared this provision an  
17 expression of public policy to ensure that every citizen shall retain the right to pursue  
18 any lawful employment and enterprise of their choice.” *Id.* (internal quotation marks  
19 omitted).

20 In *AMN*, the court found void the “broadly worded provision prevent[ing]  
21 individual defendants, for a period of at least one year after termination of  
22 employment with [plaintiff], from either ‘directly or indirectly’ soliciting or recruiting,  
23 or causing others to solicit or induce, any employee of [plaintiff].” *AMN*, 28 Cal.  
24 App. 5th at 936. The Court reasoned that the provision restrained individual  
25 defendants from practicing their chosen profession because it restricted who the  
26 employee could work with in their new position. *Id.*

27 The provisions at issue here mirror the provision discussed in *AMN*. The  
28 Confidentiality Agreement prohibits Testwuide for a period of one year following his

1 termination from Conversion from “directly or indirectly” “employing, engaging or  
2 soliciting” any employee who was an employee of Conversion during the  
3 twelve-month period immediately prior to the termination of his employment.  
4 (Confidentiality Agreement ¶ 5.) The Second Consulting Agreement states that  
5 Bharadwaj was prohibited during the period he was providing services to Conversion  
6 and for one year thereafter from “directly or indirectly, anywhere in the world,  
7 solicit[ing] for employment . . . any Conversion employee.” (Second Consulting  
8 Agreement ¶ 10.) As in *AMN*, both provisions restrain Testwuide and Bharadwaj,  
9 respectively, from engaging in their profession by restricting who may work alongside  
10 them. Furthermore, the provision in the Confidentiality Agreement not only bars  
11 soliciting Conversion’s employees, but also prohibits *hiring* Conversion’s  
12 employees—a stricter restraint than in *AMN*.

13 Conversion relies on *Loral Corp. v. Moyes* to assert that certain non-solicitation  
14 provisions may be valid and argues that *Edwards* did not supersede the reasoning in  
15 *Moyes*. 174 Cal. App. 3d 268 (1985); (Opp’n 6–7.) However, in *AMN*, the court  
16 stated that it “doubt[ed] the continuing viability of *Moyes* post-*Edwards*” as “the  
17 *Edwards* court found section 16600 ‘unambiguous’ . . . [and] ‘if the Legislature  
18 intended the statute to apply only to restraints that were unreasonable or overbroad, it  
19 could have included language to that effect.’” *AMN*, 28 Cal. App. 5th at 938–39  
20 (citing *Edwards*, 44 Cal. 4th at 950). Districts courts following *AMN* have declined to  
21 follow *Moyes*. See *WeRide Corp. v. Kun Huang*, 379 F. Supp. 3d 834, 852 (N.D. Cal.  
22 2019) (citing *Barker v. Insight Glob., LLC*, No. 16-CV-07186-BLF, 2019 WL  
23 176260, at \*3 (N.D. Cal. Jan. 11, 2019)). “[T]he Court is *not persuaded that the*  
24 *secondary ruling* in *AMN* finding the non-solicitation provision invalid under [*Moyes*]  
25 based upon those employees’ particular job duties *abrogates or limits the primary*  
26 *holding* [which finds the clause violates section 16600].” *Id.* (emphasis added).

27 The Court finds the non-solicitation provisions at issue here at least as broad as  
28 those in *AMN*. Further, given the strong California public policy to permit lawful



1 employment and enterprise of choice, the Court finds the provisions void.  
2 Accordingly, the Court **GRANTS without leave to amend** the motion to dismiss the  
3 second and third causes of action as to the breach of contract claims premised on the  
4 employee non-solicitation provisions.

5 **C. Non-Solicitation of Customers Provision**

6 Defendants also move to dismiss the breach of contract claims against  
7 Testwuide and Bharadwaj premised on the non-solicitation of customers provisions in  
8 the Confidentiality Agreement and the Second Consulting Agreement because  
9 Defendants contend the clauses are void. (Mot. 12, 20.) The Confidentiality  
10 Agreement states that Testwuide may not directly or indirectly solicit for a period of  
11 one year after the termination of his employment from Conversion “a customer or  
12 vendor or prospective customer or vendor of the Company.” (Confidentiality  
13 Agreement ¶ 5.) The Second Consulting Agreement states that Bharadwaj may not,  
14 during the period he was providing services to Conversion and for one year thereafter,  
15 “directly or indirectly, anywhere in the world, solicit . . . companies known to  
16 [Bharadwaj] to be a customer or prospective customer of Conversion.” (Second  
17 Consulting Agreement ¶ 10.)

18 The previously-discussed public policy apply here. In *Dowell v. Biosense*  
19 *Webster, Inc.*, the California Court of Appeals found the customer non-solicitation  
20 provision at issue “broadly worded” and restrained the employees from practicing  
21 their chosen profession, similar to other provisions that had been found void under  
22 section 16600. 179 Cal. App. 4th 564, 575 (2009).

23 Conversion contends that the customer non-solicitation provisions are valid  
24 under the trade-secret exception. (Opp’n 10–12.) However, the *Dowell* court  
25 “doubt[ed] the continued viability of the common law trade secret exception to  
26 covenants not to compete,” although it did not reach that question. *Dowell*, 179 Cal.  
27 App. 4th at 575. The court ultimately determined that the provision at issue was so  
28 broadly worded that it could not be “narrowly tailored or carefully limited to the

1 protection of trade secrets.” *Id.* (finding overbroad the provision prohibiting  
2 employees “for a period of 18 months postemployment from soliciting any business  
3 from, selling to, or rendering any service directly or indirectly to any of the accounts,  
4 customers or clients with whom they had contact during their last 12 months of  
5 employment.”)

6 In *The Ret. Grp. v. Galante*, the California appellate court took a different  
7 approach. In *Galante*, the court recognized the “tension” between section 16600 and  
8 trade secrets but nonetheless found that section 16600 barred a court from  
9 “specifically enforcing . . . a contractual clause purporting to ban a former employee  
10 from soliciting former customers.” 176 Cal. App. 4th 1226, 1238 (2009). The court  
11 reasoned that the conduct was enjoined because it was wrongful independent of the  
12 contractual provision and arose to tortious heights by using trade secret information to  
13 identify and solicit existing customers. *Id.* at 1237 (“[I]t is not the *solicitation* of the  
14 former employer’s customers, but is instead the *misuse of trade secret information*,  
15 that may be enjoined.”) Per *Galante*, remedy may be granted for conduct that  
16 tortiously misuses trade-secrets, and Conversion alleges a separate cause of action for  
17 misappropriation of its trade secrets against all three individual defendants. (*See*  
18 Compl. ¶¶ 265–88.) Therefore, the Court does not address that analysis under breach  
19 of contract claim.

20 However, as for Conversion’s breach of contract claim, the Court finds as in  
21 *Dowell*, the provisions in the Confidentiality Agreement and the Second Consulting  
22 Agreement are overly broad and could not be narrowly construed to protect trade-  
23 secrets alone. Accordingly, the Court finds the provisions void and **GRANTS**  
24 **without leave to amend** the motion to dismiss the second and third causes of action  
25 as to the breach of contract claims premised on the customer non-solicitation  
26 provisions.

1 **D. Non-Competition Provision**

2 Defendants move to dismiss the breach of contract claim against Bharadwaj and  
3 Magnaghi premised on non-competition clauses in the Second Consulting Agreement  
4 and the Advisor Services Agreement because Defendants contend the clauses are void.  
5 (Mot. 20, 23.) Per the Second Consulting Agreement, Bharadwaj may not “provide  
6 services to companies known to be a customer or a prospective customer of  
7 [Conversion] that are directly competitive to Conversion[’s] offerings” while he  
8 provides services to Conversion and for one year after he desists. (Second Consulting  
9 Agreement ¶ 10.) Magnaghi was allegedly bound by the Advisor Services Agreement  
10 which required him to notify Conversion in writing “prior to performing any services  
11 for or otherwise participating in a company developing or commercializing new  
12 services, methods, or devices which may be competitive with [Conversion].”  
13 (Advisor Services Agreement ¶ 9.)

14 Courts have repeatedly found that provisions prohibiting competition violate  
15 public policy and are accordingly void. *See Dowell*, 179 Cal. App. 4th at 575 (finding  
16 the customer non-solicitation provision void); *Metro Traffic Control, Inc. v. Shadow*  
17 *Traffic Network*, 22 Cal. App. 4th 853, 859 (1994) (“Section 16600 has specifically  
18 been held to invalidate employment contracts which prohibit an employee from  
19 working for a competitor when the employment has terminated . . .”). However,  
20 where a noncompete provision bars competitive conduct while still employed, courts  
21 have found them permissible, especially as the prohibition likely protects an  
22 employer’s trade secrets. *See W. Air Charter, Inc. v. Schembari*, No. CV 17-00420-  
23 AB (KSx), 2017 WL 10638759, at \*8 (C.D. Cal. Oct. 6, 2017) (“[S]ection 7.4 [which  
24 prohibits competition during employment] is a provision that is necessary to protect  
25 Plaintiff’s trade secrets”); *Sevigny v. DG Fastchannel, Inc.*, No. CV 11-9197 CAS  
26 (JEMx), 2011 WL 6149284, at \*5 (C.D. Cal. Dec. 12, 2011) (“[Section 16600] is  
27 typically applied to invalidate ‘certain far-reaching *postemployment* covenants not to  
28 compete.’”)

1 Here, Conversion asserts that Bharadwaj and Magnaghi engaged in competitive  
2 conduct in contravention to the noncompete provisions in issue while they were still  
3 consulting for Conversion. (Opp’n 12.) However, Conversion’s allegations are  
4 inconsistent regarding whether Bharadwaj and Magnaghi still consult for Conversion  
5 and unclear whether Bharadwaj and Magnaghi were consulting for Conversion when  
6 they engaged in the allegedly competitive behavior. (*Compare* Compl. ¶¶ 329, 341  
7 *with* Compl. ¶¶ 332, 348.)

8 Accordingly, the Court **GRANTS with leave to amend** Defendants’ Motion to  
9 Dismiss as to the third and fourth causes of action to the extent these breach of  
10 contract claims are premised on the non-competition provisions. The Court grants  
11 leave to amend to the extent Conversion can plead that Bharadwaj and Magnaghi  
12 breached the non-competition provisions while still providing services to Conversion.

13 **E. Assignment of Intellectual Property**

14 Defendants move to dismiss the breach of contract claim against Testwuide,  
15 Bharadwaj, and Magnaghi premised on the assignment clauses in the Confidentiality  
16 Agreement, the First and Second Consulting Agreement, and the Advisor Services  
17 Agreement because Defendants argue these clauses are void. (Mot. 15, 17, 23.)

18 Intellectual property assignment provisions in employment contracts have been  
19 upheld when limited to inventions that are based on the employer’s confidential  
20 information. *See Winston Research Corp. v. Minnesota Mining & Mfg. Co.*, 350 F.2d  
21 134 (9th Cir. 1965); *but see Applied Materials, Inc. v. Advanced Micro-Fabrication*  
22 *Equip. (Shanghai) Co.*, 630 F. Supp. 2d 1084, 1090 (N.D. Cal. 2009) (striking the  
23 assignment clause that targeted any inventions “relate[d] to former employees’ work  
24 with [employer]” since such a clause would “encompass[] both inventions based on  
25 confidential employer information and inventions relating to former . . . employees’  
26 work in the broad field of semiconductor research and manufacturing”) (internal  
27 quotations omitted). “As long [as] the assignment [of ideas and inventions] does not  
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1 extend to post-employment work, it is generally enforceable.” *Mattel, Inc. v. MGA*  
2 *Entm’t, Inc.*, 782 F. Supp. 2d 911, 946 (C.D. Cal. 2011).

3 Here, the assignment provision in the Confidentiality Agreement Conversion  
4 seeks to enforce against Testwuide states that all inventions shall be the sole and  
5 exclusive property of the Company. (Confidentiality Agreement ¶ 3.) “Invention” is  
6 defined (in relevant part) as “all Inventions . . . conceived or developed by Employee  
7 while employed with the Company or within one (1) year following termination of  
8 such employment which relate to or result from the actual or anticipated business,  
9 work, research or investigation of the Company or any of its Affiliates.”  
10 (Confidentiality Agreement ¶ 3.) This provision not only extends the assignment  
11 provision beyond the length of the employment but also includes broad language  
12 sweeping up inventions and discoveries unrelated to Conversion’s proprietary  
13 information. The Court therefore finds this clause void. Accordingly, the Court  
14 **GRANTS without leave to amend** the motion to dismiss Conversion’s second cause  
15 of action against Testwuide on this basis.

16 The First Consulting Agreement between Conversion and Bharadwaj similarly  
17 states that “[t]he obligations of [Bharadwaj] set forth in [the section about IP  
18 Assignment] (including, without limitation, the assignment obligation) will continue  
19 beyond the termination of [Bharadwaj]’s engagement with [Conversion].” (First  
20 Consulting Agreement ¶ 7.6.) As above, the Court finds this clause void as well.  
21 Accordingly, the Court **GRANTS without leave to amend** the motion to dismiss  
22 Conversion’s third cause of action against Bharadwaj on this basis.

23 The Second Consulting Agreement between the two does not require  
24 Bharadwaj to assign his rights beyond termination and instead states that  
25 “[i]mmediately upon the end of the Term . . . the consultant will deliver all such files  
26 and Work Product to Conversion” and requires Bharadwaj assign rights to inventions  
27 created “under or in performing the Services under [the Second Consulting  
28 Agreement].” (Second Consulting Agreement ¶¶ 9(b), (c).) As the provision limits

1 the assignment requirement to his work as a consultant for Conversion, the Court does  
2 not find the provision void. However, the Court **GRANTS with leave to amend** the  
3 motion to dismiss Conversion’s third cause of action against Bharadwaj on this basis,  
4 for failure to state a claim as Conversion’s Complaint is devoid of any detail.  
5 Conversion simply alleges “Bharadwaj breached the Second Consulting Agreement to  
6 the extent that he developed any work product that arose out of or resulted from his  
7 performance under the Agreement.” (Compl. ¶ 331.) Conversion fails to allege that  
8 Bharadwaj developed a work product without assigning it to Conversion and such  
9 bald allegation cannot give adequate notice. *Ashcroft*, 556 U.S. at 678.

10 Finally, the Advisor Services Agreement Conversion seeks to enforce against  
11 Magnaghi states that “[i]nventions . . . conceived or developed by Employee while  
12 employed with the Company or within one (1) year following termination of such  
13 employment which relate to or result from the actual or anticipated business, work,  
14 research or investigation of the Company or any of its Affiliates” shall be assigned to  
15 Conversion. (Advisor Services Agreement ¶ 7(a).) Again, this provision not only  
16 extends the assignment provision beyond the length of the employment but also  
17 includes broad language sweeping up inventions and discoveries unrelated to  
18 Conversion’s proprietary information. The Court therefore finds this clause void.  
19 Accordingly, the Court **GRANTS without leave to amend** the motion to dismiss  
20 Conversion’s fourth cause of action against Magnaghi on this basis.

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**V. CONCLUSION**

For the reasons discussed above, the Court **GRANTS** Defendants' Motion to Dismiss certain theories of breach in the second, third, and fourth causes of action (ECF No. 21). Where leave to amend was granted, Conversion has 14 days from the date of this Order to amend its complaint. Defendants must file an answer to the amended complaint, if one is filed, or the remaining claims in the Complaint as it stands in 28 days from the date of this Order

**IT IS SO ORDERED.**

December 13, 2019

  

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**OTIS D. WRIGHT, II**  
**UNITED STATES DISTRICT JUDGE**