

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CALSOFT LABS, INC. and PVR
TECHNOLOGIES, INC.,

Plaintiffs,

v.

VENKATA PANCHUMARTHI and
TRUINFO TECHNOLOGIES INC.,

Defendants.

Case No. 19-cv-04398-NC

**ORDER GRANTING
DEFENDANT’S MOTION TO
DISMISS WITH LEAVE TO
AMEND**

Re: Dkt. No. 15

Before the Court is defendants Venkata Panchumarthi and Truinfo Technologies, Inc.’s motion to dismiss plaintiffs Calsoft Labs, Inc. and PVR Technologies, Inc.’s first amended complaint. See Dkt. No. 15. Because Plaintiffs’ complaint fails to allege specific facts to support their allegations, the Court GRANTS Defendants’ motion to dismiss with leave to amend.

I. Background

A. Factual Allegations in the Complaint

Calsoft is a technology company. See Dkt. No. 14 (“FAC”) ¶ 11. In February 2016, Calsoft purchased PVR, a biostatistics and statistical programming services company, from Panchumarthi, the former owner and CEO of PVR. Id. ¶¶ 12, 14. To assist the acquisition transition, Calsoft hired Panchumarthi as the CEO of PVR pursuant to an Employment Agreement. Id. ¶ 16. In addition, as part of the acquisition,

1 Panchumarthi was prohibited from disclosing confidential Calsoft information, soliciting
2 Calsoft’s customers and employees, and competing with Calsoft in certain business
3 activities pursuant to the parties’ Purchase Agreement. Id. ¶ 14. But Panchumarthi did not
4 intend to honor those restrictions and instead intended to unfairly compete with Calsoft.
5 Id. ¶¶ 15, 17, 23. Panchumarthi’s employment with PVR was terminated on August 31,
6 2018. Id. ¶ 18.

7 On September 4, 2018, Calsoft and PVR hired Truinfo—another company owned
8 and operated by Panchumarthi—as an independent contractor. Id. ¶ 19. The parties’
9 Contractor Agreement prohibited Panchumarthi and Truinfo from disclosing confidential
10 information and soliciting Calsoft and PVR’s customers and employees. Id. The
11 Contractor Agreement also prohibited Panchumarthi from competing against Calsoft in
12 certain business activities. Id. ¶ 21. Neither Panchumarthi nor Truinfo intended to honor
13 those responsibilities. Id. ¶ 20.

14 On December 31, 2018, the parties terminated the Contractor Agreement. Id. ¶ 24.
15 Under that agreement, Truinfo was required to turn over to Plaintiffs “all documents,
16 papers and other matters in its possession or under its control that relate to [Calsoft] or its
17 end Clients.” Id. Plaintiffs also terminated Panchumarthi’s access to their confidential
18 information, email and data servers, electronic files, and intellectual property in January
19 2019. Id. ¶ 25.

20 On February 11, 2019, Panchumarthi contacted GoDaddy Inc. and requested a
21 password reset for his former email account, which was owned by PVR. Id. ¶ 27.
22 Panchumarthi identified himself as an agent of Plaintiffs by using a confidential PIN for
23 authorization. Id. ¶¶ 27, 29. GoDaddy then sent Panchumarthi a one-time password to
24 access the email account. Id. ¶ 28. Panchumarthi then accessed Plaintiffs’ email and data
25 servers to copy and delete confidential information. Id. ¶¶ 31, 32.

26 On February 26, 2019, Plaintiffs discovered that Panchumarthi had changed the
27 password to his PVR email account because he had changed the password without their
28 knowledge. Id. ¶ 29.

1 **B. Procedural History**

2 On June 10, 2019, Calsoft initiated this lawsuit in Santa Clara County Superior
3 Court. See Dkt. No. 1 at 6. After Defendants removed the lawsuit to this Court on the
4 basis of diversity jurisdiction (see *id.* at 3), Calsoft filed a first amended complaint and
5 added co-plaintiff PVR. See Dkt. No. 14.

6 In their first amended complaint, Plaintiffs allege claims for: (1) breach of fiduciary
7 duty; (2) conversion; (3) fraud; (4) violation of California’s Unfair Competition Law
8 (“UCL”), Cal. Bus. & Prof. Code §§ 17200 et seq.; (5) intentional interference with
9 contract; (6) intentional interference with prospective economic relations; (7) trade secrets
10 misappropriation; (8) breach of the Purchase Agreement; (9) breach of the Employment
11 Agreement; (10) breach of the Contractor Agreement; (11) breach of the covenant of good
12 faith and fair dealing; (12) violation of the Computer Fraud and Abuse Act (“CFAA”), 18
13 U.S.C. §§ 1030 et seq.; and (13) conspiracy to violate CFAA. See *id.*

14 Defendants moved to dismiss the majority of Plaintiffs’ claims on September 11,
15 2019. See Dkt. No. 15. All parties have consented to the jurisdiction of a magistrate
16 judge. See Dkt. Nos. 10, 11; see also Dkt. No. 23 at 5–6.

17 **II. Legal Standard**

18 A motion to dismiss for failure to state a claim under Rule 12(b)(6) tests the legal
19 sufficiency of a complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). Under
20 Rule 8(a), a complaint must include a short and plain statement showing that the pleader is
21 entitled to relief. See Fed. R. Civ. P. 8(a). Although a complaint need not allege detailed
22 factual allegations, it must contain sufficient factual matter, accepted as true, to “state a
23 claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570
24 (2007). The Court need not accept as true “allegations that are merely conclusory,
25 unwarranted deductions of fact, or unreasonable inferences.” *In re Gilead Scis. Secs.*
26 *Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008). A claim is facially plausible when it “allows
27 the court to draw the reasonable inference that the defendant is liable for the misconduct
28 alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The claim also “must contain

1 sufficient allegations of underlying facts to give fair notice and to enable the opposing
2 party to defend itself effectively.” *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011).

3 If a court grants a motion to dismiss, leave to amend should be granted unless the
4 pleading could not possibly be cured by the allegation of other facts. *Lopez v. Smith*, 203
5 F.3d 1122, 1127 (9th Cir. 2000).

6 **III. Discussion**

7 **A. Breach of Fiduciary Duty**

8 In their first claim, Plaintiffs accuse Defendants of breaching their fiduciary duty.
9 See FAC ¶¶ 33–38. “The elements of a cause of action for breach of fiduciary duty are the
10 existence of a fiduciary duty, its breach, and damage proximately caused by that breach.”
11 *City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 68 Cal. App. 4th 445,
12 483 (1998).

13 “A fiduciary relationship is any relation existing between parties to a transaction
14 wherein one of the parties is in duty bound to act with the utmost good faith for the benefit
15 of the other party.” *Wolf v. Superior Court*, 107 Cal. App. 4th 25, 29 (2003) (quotations
16 omitted). “[B]efore a person can be charged with a fiduciary obligation, he must either
17 knowingly undertake to act on behalf and for the benefit of another, or must enter into a
18 relationship which imposes that undertaking as a matter of law.” *City of Hope Nat’l Med.*
19 *Center v. Genetech, Inc.*, 43 Cal. 4th 375, 386 (2008) (quoting *Comm. on Children’s*
20 *Television, Inc. v. Gen. Foods Corp.*, 35 Cal. 3d 197, 221 (1983)). “Traditional examples
21 of fiduciary relationships in the commercial context include trustee/beneficiary, directors
22 and majority shareholders of a corporation, business partners, joint adventurers, and
23 agent/principal.” *Wolf*, 107 Cal App. 4th at 30.

24 Here, Plaintiffs allege that “[a] fiduciary relationship existed between plaintiffs and
25 defendants because defendants acted as agents [and] corporate officers” FAC ¶ 34.
26 From February 2016 to August 2018, Panchumarthi was the CEO of PVR. See *id.* ¶¶ 16–
27 18. “[O]fficers of corporations who participate in the management of the corporation are
28 considered fiduciaries as a matter of law.” *Los Angeles Mem’l Coliseum Comm. v.*

1 Insomniac, Inc., 233 Cal. App. 4th 803, 834 (2015) (citing GAB Bus. Servs. v. Lindsey &
 2 Newsom Claim Servs., 83 Cal. App. 4th 409, 421 (2000)). Although an officer’s fiduciary
 3 duty to their employer generally ends upon their resignation (GAB, 83 Cal. App. 4th at
 4 421), officers are charged with a continuing duty to protect privileged and confidential
 5 information even after they leave the company. *AlterG, Inc. v. Boost Treadmills LLC*, 388
 6 F. Supp. 3d 1133, 1148–49 (N.D. Cal. 2019). Because Panchumarthi served as PVR’s
 7 CEO, the Court assumes he had a fiduciary duty to PVR and that the duty continued after
 8 the end of his tenure.

9 On the other hand, Plaintiffs fail to allege any facts suggesting that Truinfo had a
 10 fiduciary duty to Plaintiffs. Plaintiffs argue that the confidentiality provisions of the
 11 Contractor Agreement created a fiduciary relationship. See Dkt. No. 17 at 8–9; FAC ¶ 34.
 12 But Plaintiffs cite no authority suggesting that ordinary confidentiality provisions alone
 13 can impose fiduciary duties. Plaintiffs’ reliance on *Wolf* is unpersuasive. Although the
 14 California Court of Appeal described a fiduciary relationship as “ordinarily synonymous
 15 with a confidential relation[.]” the court’s reference to “confidential” described the
 16 “confidence . . . reposed by one person in the integrity of another,” not a contractual
 17 obligation to keep information confidential. *Wolf*, 107 Cal. App. 4th at 29–30.

18 Moreover, if Plaintiffs’ breach of fiduciary duty claim relies solely on Defendants’
 19 misappropriation of their trade secrets in violation of the confidentiality provisions,
 20 California’s Uniform Trade Secrets Act (“CUTSA”), Cal. Civ. Code §§ 3426 et al., may
 21 supersede Plaintiffs’ claim. See *K.C. Multimedia, Inc. v. Bank of Am. Tech. & Operations,*
 22 *Inc.*, 171 Cal. App. 4th 939, 958 (2009) (CUTSA “preempts common law claims that are
 23 based on the same nucleus of facts as the misappropriation of trade secrets claim for
 24 relief.”); *see also Mattel, Inc. v. MGA Entm’t, Inc.*, 782 F. Supp. 2d 911, 989–991 (C.D.
 25 Cal. 2010) (dismissing breach of fiduciary duty claim to the extent predicated on
 26 misappropriation of confidential information).

27 In any case, Plaintiffs fail to adequately allege breach as to both Panchumarthi and
 28 Truinfo. The only allegations suggesting that Defendants breached their fiduciary duty are

1 Plaintiffs’ threadbare assertions that Defendants “acquired information from the Plaintiffs
2 regarding their clients and potential clients, and took steps to compete against plaintiffs
3 and such acts were against the plaintiffs’ best interests.” Id. ¶ 23. Without more factual
4 development, these allegations are conclusory and fail “to give fair notice and to enable the
5 opposing party to defend itself effectively.” Starr, 652 F.3d at 1216. Plaintiffs must
6 explain what steps Defendants took that were against Plaintiffs’ best interests.

7 Accordingly, the Court GRANTS Defendants’ motion to dismiss Plaintiffs’ breach
8 of fiduciary duty claim with leave to amend.

9 **B. Conversion**

10 Plaintiffs’ second claim alleges conversion. See FAC ¶¶ 39–43. Defendants argue
11 that this claim is preempted by CUTSA. See Dkt. No. 18 at 12. Because Defendants raise
12 this argument for the first time in their reply and Plaintiffs have not had a chance to
13 respond, the Court will not dismiss Plaintiffs’ conversion claim at this time.

14 **C. Fraud**

15 In their third claim, Plaintiffs allege that Defendants committed fraud on three
16 instances: (1) entering into the Employment and Purchase Agreement (see FAC ¶ 45); (2)
17 entering into the Contractor Agreement (see id. ¶ 46); and (3) accessing and concealing the
18 fact that they accessed Plaintiffs’ confidential information (see id. ¶¶ 47–51). The
19 elements of fraud are: “(a) misrepresentation (false representation, concealment, or
20 nondisclosure); (b) knowledge of falsity (or ‘scienter’); (c) intent to defraud, i.e., to induce
21 reliance; (d) justifiable reliance; and (e) resulting damage.” *Kearns v. Ford Motor Co.*,
22 567 F.3d 1120, 1126 (9th Cir. 2009) (quoting *Engalla v. Permanente Med. Grp., Inc.*, 15
23 Cal. 4th 951, 974 (1997)).

24 Under Federal Rule of Civil Procedure 9(b), “the circumstances constituting fraud
25 or mistake” must be alleged with particularity. Thus, “[a]verments of fraud must be
26 accompanied by ‘the who, what, when, where, and how’ of the misconduct charged.” *Vess*
27 *v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003) (quoting *Cooper v. Pickett*,
28 137 F.3d 616, 627 (9th Cir. 1997)). Although intent and other mental conditions may be

1 alleged generally, conclusory allegations do not suffice. See *Senah, Inc. v. Xi'an Forstar*
2 *S&T Co, Ltd*, No. 13-cv-04254-BLF, 2014 WL 6065895, at *2 (N.D. Cal. Nov. 12, 2014);
3 *Kowalsky v. Hewlett-Packard Co.*, No. 10-cv-02176-LHK, 2011 WL 3501715, at *3 (N.D.
4 Cal. Aug. 10, 2011).

5 Plaintiffs' allegations that Defendants committed fraud by entering into the three
6 Agreements are conclusory. Although allegations of intent do not need to satisfy the
7 heightened pleading standard of Rule 9(b), Plaintiffs must still plead some facts that allow
8 the Court to reasonably infer that Plaintiffs never intended to uphold their obligations
9 under the Agreements. See *Senah*, 2014 WL 6065895, at *2.

10 Plaintiffs' alternative theory that Defendants committed fraud by concealing their
11 unauthorized access to confidential information is also insufficiently alleged. In their
12 complaint, Plaintiffs claim that Panchumarthi lied when "confronted . . . regarding his
13 unauthorized accessing of confidential information . . ." FAC ¶ 48. This allegation of
14 when the fraud occurred must be alleged with particularity.

15 More critically, it is not clear that Plaintiffs can establish reliance and damage based
16 on this theory of concealment. In the complaint, Plaintiffs allege that Panchumarthi
17 accessed their confidential information on February 11, 2019. *Id.* ¶ 27. Plaintiffs
18 discovered the unauthorized access two weeks later. *Id.* ¶ 29. Even if the Court assumes
19 that Panchumarthi fraudulently concealed his unauthorized access during that two-week
20 period, Plaintiffs' allegation that they "would have acted differently . . . to prevent
21 defendants' unauthorized and unlawful access to such information" is confusing because
22 the harm—Panchumarthi's unauthorized access to Plaintiffs' confidential information—
23 has already been done.

24 Accordingly, the Court GRANTS Defendants' motion to dismiss Plaintiffs' fraud
25 claim with leave to amend.

26 **D. Intentional Interference with Contractual Relations**

27 Plaintiffs' fifth claim alleges that Defendants intentionally interfered with their
28 contractual relationships by soliciting and taking their customers and employees. See FAC

1 ¶¶ 56–62. The elements of an intentional interference with contractual relations claim are:
2 “(1) a valid contract between plaintiff and a third party; (2) defendant’s knowledge of this
3 contract; (3) defendant’s intentional acts designed to induce a breach or disruption of the
4 contractual relationship; (4) actual breach or disruption of the contractual relationship; and
5 (5) resulting damage.” *Pac. Gas & Elec. Co. v. Bear Stearns & Co.*, 50 Cal. 3d 1118,
6 1126 (1990).

7 Plaintiffs’ allegations fail to state a claim for intentional interference with
8 contractual relations. The first amended complaint does not, for example, identify (1)
9 particular contracts that were interfered with; (2) any breach or disruption of those
10 contracts; and (3) what damage Plaintiffs suffered as a result. Likewise, Plaintiffs vaguely
11 assert that Defendants’ conduct “prevented performance or made performance more
12 expensive or difficult” without explanation what it was that Plaintiffs needed to perform.
13 *Id.* ¶ 59. Instead, the complaint merely recites the elements of the claim and provides no
14 factual details. See *AlterG*, 388 F. Supp. 3d at 1150 (N.D. Cal. 2019) (dismissing claim
15 where plaintiff failed to identify the particular “vendors, supplies, and customers” or
16 provide details regarding their third-party contracts); cf. *HiQ Labs, Inc. v. LinkedIn Corp.*,
17 938 F.3d 985, 996 (9th Cir. 2019) (applying the elements of an interference of contractual
18 relations claim on a motion for preliminary injunction).

19 In their opposition, Plaintiffs contend that more detailed pleading is not possible
20 without discovery. See Dkt. No. 17 at 11–12. The Court is not persuaded. Plaintiffs do
21 not need discovery to learn which clients and employees they have lost.

22 Accordingly, the Court GRANTS Defendants’ motion to dismiss Plaintiffs’
23 intentional interference with contractual relations claim with leave to amend.

24 **E. Intentional Interference with Prospective Economic Relations**

25 Plaintiffs’ sixth claim alleges that Defendants intentionally interfered with their
26 prospective economic relations. See FAC ¶¶ 63–70. The elements of an intentional
27 interference with prospective economic relations claim are similar to the elements of an
28 intentional interference with contractual relations claim. See *PG&E*, 50 Cal. 3d at 1126.

1 The key difference is that an interference with prospective economic relations claim does
2 not require a legally binding contract. *Id.* Instead, it only requires “an economic
3 relationship between the plaintiff and some third party, with the probability of future
4 economic benefit to the plaintiff.” *Id.* at 1126 n.2.

5 As with their intentional interference with contractual relations claim, Plaintiffs fail
6 to identify which third parties they had a relationship with. Plaintiffs also fail to allege any
7 facts suggesting that those relationships had a “probability of future economic benefit.”
8 *Id.*; see also *AlterG*, 388 F. Supp. 3d at 1151–52.

9 Accordingly, the Court GRANTS Defendants’ motion to dismiss Plaintiffs’
10 intentional interference with prospective economic relations with leave to amend.

11 **F. Trade Secret Misappropriation**

12 In their seventh claim, Plaintiffs allege that Defendants misappropriated their trade
13 secrets. See FAC ¶¶ 71–78. Specifically, Plaintiffs claim that Defendants misappropriated
14 and destroyed “confidential information, including intellectual property, customer and
15 employee lists and contact information” *Id.* ¶ 72.

16 To state a claim for trade secret misappropriation, a plaintiff must allege that: “(1)
17 the plaintiff owned a trade secret; (2) the defendant misappropriated the trade secret; and
18 (3) the defendant’s actions damaged the plaintiff.” *Alta Devices, Inc. v. LG Elecs., Inc.*,
19 343 F. Supp. 3d 868, 877 (N.D. Cal. 2018). CUTSA defines a trade secret as:

20 information, including a formula, pattern, compilation, program, device,
21 method, technique, or process, that:

- 22 (1) Derives independent economic value, actual or potential, from not
23 being generally known to the public or to other persons who can
24 obtain economic value from its disclosure or use; and
- 25 (2) Is the subject of efforts that are reasonable under the circumstances
26 to maintain its secrecy.

27 Cal. Civ. Code § 3426.1(d). Misappropriation encompasses both improper acquisition and
28 unauthorized disclosure or use of a trade secret. *Id.* § 3426.1(b). “[A] plaintiff need not

1 spell out the details of the trade secret . . . but must describe the subject matter of the trade
2 secret with sufficient particularity to separate it from matters of general knowledge in the
3 trade or of special persons who are skilled in the trade, and to permit the defendant to
4 ascertain at least the boundaries within which the secret lies.” *Alta Devices*, 343 F. Supp.
5 3d at 881 (citation and quotation marks omitted).

6 Here, Plaintiffs fail to adequately describe the trade secrets at issue. The complaint
7 merely lists broad categories of “confidential information” rather than specific descriptions
8 of the alleged trade secrets. See *AlterG*, 388 F. Supp. 3d at 1145–46. For example,
9 Plaintiffs’ naked allegation that its customer list constitutes a trade secret does not provide
10 enough factual detail to suggest that it “[d]erives independent economic value . . . from not
11 being generally known to the public.” Cal. Civ. Code § 3426.1(d). It is not clear whether
12 Plaintiffs’ lists simply contain public information or information already known to
13 Defendants (see, e.g., *AMN Healthcare, Inc. v. Aya Healthcare Services*, 239 Cal. Rptr. 3d
14 577, 595–96 (2018) (“very general” information revealed through a public social media
15 group is not secret)) or if those lists include extensive customer or employee data (see, e.g.,
16 *ReadyLink Healthcare v. Cotton*, 126 Cal. App. 4th 1006, 1018 (2005) (lists were trade
17 secret when they contained compilations of compensation, employment preferences,
18 contact information, applications and tests)).

19 Accordingly, the Court GRANTS Defendants’ motion to dismiss Plaintiffs’ trade
20 secrets misappropriation claim with leave to amend.

21 **G. Breach of Contract and the Covenant of Good Faith and Fair Dealing**

22 Plaintiffs’ eight, ninth, and tenth claims assert breach of the Purchase, Employment,
23 and Contractor Agreements. See FAC ¶¶ 79–100. Plaintiffs’ eleventh claim asserts breach
24 of the implied covenant of good faith and fair dealing. See *id.* ¶¶ 101–107.

25 The elements of a breach of contract claim are: (1) the existence of a contract, (2)
26 performance or excuse for nonperformance, (3) defendant’s breach, and (4) damages.
27 *Oasis West Realty, LLC v. Goldman*, 51 Cal. 4th 811, 821 (2011). A claim for breach of
28 the implied covenant of good faith and fair dealing is similar to a breach of contract claim

1 except the plaintiff must show “the defendant unfairly interfered with the plaintiff’s rights
2 to receive the benefits of the contract.” *Rosenfeld v. JPMorgan Chase Bank, N.A.*, 732 F.
3 Supp. 2d 952, 968 (N.D. Cal. 2010). The implied covenant of good faith and fair dealing
4 “cannot impose substantive duties or limits on the contracting parties beyond those
5 incorporated in the specific terms of their agreement.” *Agosta v. Astor*, 120 Cal. App. 4th
6 596, 607 (2004) (citations omitted).

7 The only element at issue here is breach. See Dkt. No. 15 at 18. Plaintiffs allege
8 that Panchumarthi breached the Purchase and Employment Agreements during his tenure
9 as CEO of PVR by “acquir[ing] information from the Plaintiffs regarding their clients and
10 potential clients, and [taking] steps to compete against plaintiffs” *Id.* ¶ 23. However,
11 as explained above, these allegations are conclusory and fail to give fair notice of the
12 misconduct in question. *Starr*, 652 F.3d at 1216. Thus, as with their breach of fiduciary
13 duty claim, Plaintiffs must allege specific facts to support their claim: either the specific
14 “steps” taken by Defendants or factual circumstances plausibly suggesting wrongdoing.

15 Plaintiffs also allege that Defendants breached the Contractor Agreement by using
16 their confidential information to solicit customers and employees. As with their trade
17 secrets misappropriation claim, Plaintiffs do not allege with sufficient particularity what
18 confidential information was stolen. They merely list broad categories of information
19 covered by the agreements. This is insufficient to state a claim. See *AlterG*, 388 F. Supp.
20 3d at 1147.

21 Lastly, Plaintiffs’ breach of the implied covenant of good faith and fair dealing
22 claim merely recites the elements of the claim. See FAC ¶¶ 101–07. Plaintiffs allege no
23 facts supporting their assertion that Defendants unfairly interfered with their rights under
24 the three Agreements.

25 Accordingly, the Court GRANTS Defendants’ motion to dismiss Plaintiffs’ breach
26 of contract and the implied covenant of good faith and fair dealing claims with leave to
27 amend.

28

H. Computer Fraud and Abuse Act Conspiracy

Plaintiffs’ thirteenth claim alleges conspiracy to violate the Computer Fraud and Abuse Act (“CFAA”). See FAC ¶¶ 116–17. Defendants argue that the CFAA does not permit a civil conspiracy claim and the claim should accordingly be dismissed with prejudice. See Dkt. No. 15 at 23. Plaintiffs do not oppose dismissal of the claim but argues that dismissal should be with leave to amend. See Dkt. No. 17 at 17.

As an initial matter, the Court disagrees with Defendants; the CFAA permits a civil conspiracy claim. Under the CFAA, “[a]ny person who suffers damage or loss by reason of a violation of this section may maintain a civil action against the violator” 18 U.S.C. § 1030(g). A “violation of this section” includes conspiracy to commit conduct prohibited by the CFAA. See 18 U.S.C. § 1030(b). Thus, a plaintiff may pursue a claim for conspiracy under the CFAA if that conspiracy caused damage or loss. Other courts in this district have also permitted conspiracy claims under the CFAA. See, e.g., *Genentech, Inc. v. JHL Biotech, Inc.*, No. 18-cv-06582-WHA, 2019 WL 2476617, at *4 (N.D. Cal. June 13, 2019); *NetApp, Inc. v. Nimble Storage, Inc.*, No. 13-cv-05058-LHK, 2015 WL 400251, at *8 (N.D. Cal. Jan. 20, 2015).

Defendants argue that the Plaintiffs cannot sue for conspiracy under the CFAA because § 1030(b) provides for criminal, not civil, punishment for conspiracy. See Dkt. No. 15 at 23. But § 1030(g) broadly provides a civil right of action for any person injured “by reason of a violation of this section.” The only limit on the scope of § 1030(g) is that the conduct alleged must include one of five factors listed in § 1030(c)(4)(A)(i). Defendants do not argue that all of those factors are absent.

Nonetheless, the Court will dismiss Plaintiffs’ claim, but with leave to amend. To successfully allege a civil conspiracy claim, “the plaintiff [must] plead at least the basic elements of the conspiracy, especially the existence of an agreement.” *Wasco Products, Inc. v. Southwall Technologies, Inc.*, 435 F.3d 989, 990-91 (9th Cir. 2006) (citing *Montgomery v. City of Ardmore*, 365 F.3d 926, 940 (10th Cir. 2004)). Accordingly, Plaintiffs must allege with sufficient factual particularity that defendants reached some

1 explicit or tacit understanding or agreement.” *Alfus v. Pyramid Tech. Corp.*, 745 F. Supp.
2 1511, 1521 (N.D. Cal. 1990). Because such factual allegations are missing here, the Court
3 GRANTS Defendants’ motion to dismiss Plaintiffs’ CFAA conspiracy claim with leave to
4 amend.

5 **I. Alter Ego Liability**

6 Finally, Plaintiffs seek to impose alter ego liability on Defendants. See FAC at 20.
7 To invoke the alter ego theory of liability, Plaintiffs must establish that (1) “there is such a
8 unity of interest and ownership that the individuality, or separateness, of the said person
9 and corporation has ceased;” and (2) “adherence to the fiction of the separate existence of
10 the corporation would . . . sanction a fraud or promote injustice.” *In re Schwarzkopf*, 626
11 F.3d 1032, 1038 (9th Cir. 2010) (quoting *Wood v. Elling Corp.*, 20 Cal.3d 353, 364 n. 9
12 (1977)).

13 Plaintiffs’ broad assertions of unity of interest and injustice are conclusory. See
14 FAC ¶ 6. There are no factual allegations, for example, to support Plaintiffs’ assertion that
15 Panchumarthi and Truinfo commingle funds or that Panchumarthi treats Truinfo’s assets as
16 his own. See *Schwarzkopf*, 626 F.3d at 1038. Nor do Plaintiffs explain the factual basis
17 for their conclusion that Defendants “disregarded legal formalities.” FAC ¶ 6. Likewise,
18 Plaintiffs simply conclude, with no factual support, that an inequitable result will occur if
19 alter ego liability were not imposed. *Id.* Such broad allegations are insufficient. See
20 *Carlson v. Clapper*, 791 F. Supp. 2d 774, 782–83 (N.D. Cal. 2011).

21 Accordingly, the Court GRANTS Defendants’ motion to dismiss Plaintiffs’ claims
22 against Truinfo to the extent they are based on alter ego liability. Dismissal is with leave
23 to amend.

24 **IV. Conclusion**

25 The Court GRANTS Defendants’ motion to dismiss with leave to amend. Plaintiffs
26 must file their second amended complaint by **November 29, 2019**. Plaintiffs may not add
27 additional claims or parties without further leave of the Court. If Plaintiffs fail to
28 meaningfully amend their factual allegations, further dismissal will be with prejudice.

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Defendants need not answer the first amended complaint unless Plaintiffs give notice that they will not file a second amended complaint.

IT IS SO ORDERED.

Dated: November 7, 2019



NATHANAEL M. COUSINS
United States Magistrate Judge