IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

GEOMETWATCH CORPORATION, a Nevada corporation, Plaintiff, v. ALAN HALL, et al., Defendants.	**SEALED MEMORANDUM DECISION AND ORDER GRANTING DEBBIE WADE'S MOTION TO DISMISS; GRANTING MARK HURST'S MOTION TO DISMISS; GRANTING BRENT KELLER'S MOTION TO DISMISS; GRANTING ERIN HOUSLEY'S MOTION TO DISMISS; AND GRANTING IN PART AND DENYING IN PART ALAN HALL'S, ISLAND PARK INVESTMENTS', AND TEMPUS GLOBAL DATA, INC.'S MOTION TO DISMISS** Case No. 1:14-cv-00060-JNP-PMW District Judge Jill N. Parrish
UTAH STATE UNIVERSITY RESEARCH FOUNDATION and ADVANCED WEATHER SYSTEMS FOUNDATION, Counterclaim Plaintiffs, v. GEOMETWATCH CORPORATION, a Nevada corporation, Counterclaim Defendant.	
UTAH STATE UNIVERSITY RESEARCH FOUNDATION, Third-Party Plaintiff, v. DAVID CRAIN, an individual, Third-Party Defendant.	

Before the court are the following motions: Debbie Wade's Motion to Dismiss [Docket 271], Mark Hurst's Motion to Dismiss [Docket 288], Brent Keller's Motion to Dismiss [Docket

289], Erin Housley's Motion to Dismiss [Docket 290], and Alan Hall's, Island Park Investments' ("Island Park"), and Tempus Global Data, Inc.'s ("Tempus") Motion to Dismiss [Docket 296]. The court heard oral argument on the motions on December 20, 2016[1], after which the court took the motions under advisement. After considering the parties' written submissions, oral argument, and relevant legal authority, the court issues this Memorandum Decision and Order Granting Debbie Wade's Motion to Dismiss; Granting Mark Hurst's Motion to Dismiss; Granting Brent Keller's Motion to Dismiss; Granting Erin Housley's Motion to Dismiss; and Granting in Part and Denying in Part Alan Hall, Island Park Investments, and Tempus Global Data, Inc.'s Motion to Dismiss.

FACTUAL BACKGROUND

Because the factual allegations of the Complaint are to be "taken as true," the facts recited here are the relevant facts as alleged in the Complaint. *Kansas Penn Gaming, LLC v. Collins*, 656 F.3d 1210, 1214 (10th Cir. 2011).

GeoMetWatch Corporation ("GMW") is a global weather services company. GMW's business model is to provide unique and proprietary earth observation and weather data from an array of state-of-the-art hyperspectral sensors in orbit around the earth. Hyperspectral

[1] In addition to these motions, the court heard argument on Curtis Roberts's Motion to Dismiss [Docket 283], Robert Behunin and Utah State University Research Foundation's ("USURF") Motion for Judgment on the Pleadings [Docket 361], Scott Jensen and Advanced Weather Systems Foundation's ("AWSF") Motion for Judgment on the Pleadings [Docket 330], and AWSF's Joinder in the other parties' motions to dismiss [Docket 380]. Near the conclusion of the December 20 hearing, counsel for USURF notified the court that USURF, Mr. Roberts, and Mr. Behunin had filed a motion for summary judgment [Docket 398] in which they challenged the court's subject matter jurisdiction to hear the tort and state statutory claims against them under the Utah Governmental Immunity Act ("Immunity Act"). Mr. Jensen and AWSF also filed a motion for summary judgment arguing that the Immunity Act applied to claims against them [Docket 404]. Because these motions for summary judgment challenge this court's subject matter jurisdiction over the state statutory and tort-based claims against them, rulings on Mr. Roberts's Motion to Dismiss, Mr. Behunin and USURF's Motion for Judgment on the Pleadings, and Mr. Jensen and AWSF's Motion for Judgment on the Pleadings will be withheld until after a ruling on the summary judgment motions.

imaging/sounding technology utilizes sophisticated technology to simultaneously collect thousands of atmospheric "soundings" every minute. The technology was initially developed by the U.S. National Oceanic and Atmospheric Administration (NOAA) and National Atmospheric and Space Administration (NASA), but was abandoned after an investment of more than $400 million. In September 2010, GMW obtained the first-ever license from NOAA to use the technology in the private sector. Through the efforts of GMW, the hyperspectral sounder program was reborn commercially as the Sounding and Tracking Observatory for Regional Meteorology ("STORM").

In 2009, GMW approached Utah State University ("USU" or the "University") as a potential contractor to build STORM-1, the first of a planned network of sensors. USU agreed to work with GMW through the Utah State University Research Foundation ("USURF"). On January 28, 2010, GMW and USURF entered into a nondisclosure agreement ("GMW-USURF 2010 NDA") for the purpose of keeping confidential GMW and USURF's proprietary information related to the STORM project and associated business model and partnering discussions. On July 20, 2010, GMW and USURF signed a two-year, extendible preferred provider agreement to develop the STORM-1 sensor ("GMW-USURF 2010 PPA"). Under the GMW-USURF 2010 PPA, GMW agreed to exert all reasonable efforts to obtain title to a sensor prototype to assist USURF in developing and building the STORM-1 sensor and to obtain a license from NOAA to launch, fly, and operate a satellite. The GMW-USURF 2010 PPA cited the GMW-USURF 2010 NDA and noted that the parties would be exchanging proprietary technical and other information as necessary to fulfill the purposes of the agreement, and that both parties would keep that information confidential. On April 23, 2012, GMW and USURF signed another preferred provider agreement ("GMW-USURF 2012 PPA") for contract work on

the STORM project, setting forth additional terms relating to exclusivity and commercialization performance.

In January 2013, USU formed the Utah State University Advanced Weather Systems Foundation ("AWSF") to assist USURF with the STORM project. On Feb 25, 2013, GMW and AWSF entered into a nondisclosure agreement ("GMW-AWSF 2013 NDA"). At the request of USU and USURF officials, GMW and USURF entered into a Mutual Termination Agreement ("GMW-USURF 2013 Termination") formally terminating the GMW-USURF 2012 PPA for the purpose of having GMW enter into a new Preferred Provider Agreement with AWSF. The termination did not affect the GMW-USURF 2010 NDA. GMW and AWSF entered into a preferred provider agreement ("GMW-AWSF 2013 PPA"), which became effective April 19, 2013. Through this agreement, AWSF became the sole preferred provider to build the STORM-1 sensor.

On June 19, 2013, GMW signed an agreement with NASA to provide it with data from GMW's first STORM mission in return for a sensor prototype that AWSF could use to develop and complete the STORM-1 sensor. After obtaining the prototype, GMW was still in need of a partner that could get the STORM-1 sensor into orbit. GMW approached a number of commercial satellite operators over several years, until it was introduced to Asia Satellite Telecommunications Co. ("AsiaSat") in the summer of 2011. After a prolonged relationship-building process and extensive negotiations, GMW and AsiaSat executed a Cooperation Agreement ("AsiaSat Agreement"). Through the AsiaSat Agreement, AsiaSat obtained the rights to become an equity and strategic partner in GMW and agreed to join GMW as an applicant and guarantor on a U.S. Export - Import (EXIM) Bank loan. AsiaSat agreed to finance, on a reimbursable basis, construction and integration of the STORM-1 sensor and to share in the revenue generated. STORM-1 was slated to be launched on the AsiaSat-9 rocket in 2016.

With the sensor prototype from NASA and the AsiaSat Agreement in hand, GMW still faced significant hurdles for the STORM project. The overall expected cost of the STORM project was about $170 million. GMW developed a funding model that relied on securing loans from EXIM Bank. AsiaSat agreed to guarantee the payments on these loans but, to reduce its risks, also required GMW to obtain “backstop” funding for these payments—financial guarantees equivalent to AsiaSat's total STORM investment. Beginning in early 2013, University officials repeatedly represented to GMW and AsiaSat that USU could provide this backstop. In an effort to reduce USU’s financial exposure, GMW continued to work with USU to seek financial commitments related to the backstop from other investors and financial institutions.

On or about September 20, 2013, GMW’s attorney introduced GMW to Alan Hall, a potential large-scale investor. USU, USURF, and AWSF strongly encouraged GMW to meet with Hall as someone who could potentially provide the backstop funding himself or who could bring investors to do so. USU, USURF, and AWSF also represented to GMW that Hall had already signed a non-disclosure agreement with them and pressured GMW to share "everything" with Hall, including all of its confidential information, and to introduce him to persons of interest in connection with GMW’s business, including AsiaSat, so that Hall could evaluate a potential investment.

GMW was initially encouraged that Hall could provide the backstop funding needed to keep the STORM project moving forward. Based on assurances from USU, USURF, and AWSF and pressure from Hall, GMW made numerous “advocacy introductions” of Hall to key players in the market, including business, government and academic contacts that had taken GMW years to develop.

In early October 2013, USU and AWSF asked GMW to sign a new GMW-AWSF Contract for STORM Fabrication (“STORM 001 Contract”) that included an automatic

termination provision if the EXIM funding did not close by January 6, 2014. USURF and AWSF employees also repeatedly represented that AWSF would extend the dates for termination if the EXIM funding was pushed back. Relying on these representations, GMW signed the new STORM 001 Contract.

Beginning on October 11, 2013, relying on representations by USU, USURF, and AWSF that Hall had signed an NDA with USU, and Hall's own assurances that he would sign an additional NDA with GMW, GMW made dozens of highly sensitive and confidential business and technical files available to Hall and his due diligence team members at Island Park. These files were loaded into a folder on a secure, web-based file sharing-site (the "GMW Data Room"), and only a very limited number of immediate employees of Hall and/or Island Park, USURF, and AWSF were "invited" to access the site. Specifically, Hall, Housley, Hurst, Wade, and Keller were provided access to the GMW Data Room. These individuals downloaded, accessed and studied GMW's confidential documents to evaluate a potential investment.

On November 6, 2013, Hall and GMW entered into a Mutual Non-Disclosure Agreement ("GMW-Hall NDA"). The GMW-Hall NDA states that it is "between" Alan Hall and GMW, and bears the signature of Hall as Chairman of Island Park Investments. The NDA memorialized GMW's prior understanding with Hall and expressly protected against the unauthorized use and disclosure of GMW's confidential information.

Hall made a series of informal investment proposals to GMW. Hall's proposed investment was to be through a new business entity, SkyStar. Even though GMW reduced some of these proposals to writing, Hall never signed a written offer or contract. Instead, he requested access to more of GMW's confidential documents to continue his investigation of the project.

Beginning at least as early as October 2013, GMW alleges that Hall and his representatives began privately meeting with GMW's commercial partners, without GMW

present. These meetings included representatives of AsiaSat, USU, AWSF, USURF and possibly others. By early November of 2013, if not sooner, Hall began to discuss methods and actions with USU and AsiaSat that would harm GMW, including forcing GMW into a desperate bargaining position, and leveraging the automatic termination provision of the STORM 001 Contract against GMW as a way to dilute GMW's financial interest in its business or to destroy GMW altogether.

In response to these actions by Hall, Wade, Keller, Housley, and Hurst sent a memorandum (the "Ethics Memorandum") to Hall outlining their concerns that Hall had met with AsiaSat and USU without GMW being present. The Ethics Memorandum stated the following:

> GMW is being left out of the conversations you are having with AsiaSAT and AWS[F]. While this perhaps has been necessary in the short-term while you feel things out, we believe that negotiating a deal behind their back is not ethical. The reason we feel this way is that GMW has divulged confidential information to us and is helping us (without even an NDA in place) to have conversations with those they have relationships with believing that doing so is in their best interest and will help them. However, if you do this while waiting for the time to elapse for them to default on the loan, and then come forward with a different deal to save them, they will perceive you as a predator that unethically used their information to capitalize on your own purposes. Even if you don't take a dime from them, they could come after you legally for misuse of their information, and they could rightfully make this claim.

Hall did not respond to the Ethics Memorandum by email and claims to have no memory of it or any conversation related to it.

On November 14, 2013, Hall told GMW that he had an investor (or investors) that were willing to backstop the STORM project for $150 million and requested further details of GMW's specific use of funds. GMW sent Hall two highly confidential documents in response, entitled "Use of Funds" and "GMW Revenue Model."

On or around November 22, 2013, after Hall threatened to interfere with GMW's shareholders to undermine GMW's management, GMW unshared the GMW Data Room and removed access to its confidential files. This effectively blocked Hall, his due diligence team, and anyone else from those files, but could not keep anyone from using either the information that they had already seen, or from using files that they had downloaded during the approximately six weeks that the confidential Data Room was accessible.

On December 20, 2013, Hall formed a new company, Tempus, in Ogden, Utah. On January 7, 2014, AWSF sent GMW a Notice of Termination, citing the EXIM funding deadline in the STORM 001 Contract. Based on the contested provision of the STORM 001 Contract, AWSF purported to terminate *both* the STORM 001 Contract and the GMW-AWSF 2013 PPA, even though GMW had been promised extensions as necessary to get the full EXIM funding for the AsiaSat-9 deal. On March 31, 2014, Tempus announced via a press-release on its website that it had "opened its operations in Utah to deliver next generation weather data to commercial and government customers."

On April 1, 2014, Tempus announced that it was in the final stages of securing a Remote Sensing License from the Department of Commerce. On April 14, 2014, AsiaSat formally notified GMW that the GMW-AsiaSat Cooperation Agreement was terminated. Tempus announced an agreement with AsiaSat and acknowledged on its website that AsiaSat "originally signed its sensor hosting agreement with GMW."

GMW brought this suit, filing its complaint on May 16, 2014. [Docket 2]. GMW filed its first amended complaint a month later. [Docket 16]. GMW moved to file a second amended complaint to add claims against Robert Behunin and USURF. [Docket 43]. The court granted the unopposed motion [Docket 46] and GMW filed its second amended complaint on December 12, 2014 [Docket 48]. In February 2016, GMW again sought leave to amend its complaint. [Docket

124]. The court granted GMW leave to amend and GMW filed its Third Amended Complaint on May 27, 2016, adding claims against Erin Housley, Mark Hurst, Debbie Wade, Brent Keller, Curtis Roberts, and Scott Jensen. [Docket 229 (the "Complaint")]. The Complaint alleges twelve causes of action against twelve defendants, including misappropriation of trade secrets under the Utah Uniform Trade Secrets Act ("UTSA"), breach of contract, several federal and state statutory violations, fraud, and civil conspiracy.

LEGAL STANDARD

"[T]o withstand a [Rule 12(b)(6)] motion to dismiss, a complaint must have enough allegations of fact, taken as true, 'to state a claim to relief that is plausible on its face.'" *Kansas Penn Gaming, LLC*, 656 F.3d at 1214 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Although the court must take the factual allegations of the complaint as true, the court is not required to take "mere labels and conclusions," or "formulaic recitation[s] of the elements of a cause of action" as true. *Id.* (quotations and citations omitted). Rather, "a plaintiff must offer specific factual allegations to support each claim." *Id.*

"[O]nly a complaint that states a plausible claim for relief survives a motion to dismiss." *Id.* "'[P]lausibility' refers to 'the scope of the allegations in a complaint: if they are so general that they encompass a wide swath of conduct, much of it innocent, then the plaintiffs have not nudged their claims across the line from conceivable to plausible.'" *Id.* at 1215 (quoting *Robbins v. Okla. ex rel. Dep't of Human Servs.*, 519 F.3d 1242, 1247 (10th Cir. 2008)). This standard "may have greater bite" when dealing with "complex claims against multiple defendants." *Robbins*, 519 F.3d at 1249. It is therefore "particularly important in such circumstances that the complaint make clear exactly *who* is alleged to have done *what* to *whom*, to provide each individual with fair notice as to the basis of the claims against him or her, as distinguished from collective allegations . . . ." *Id.* at 1249–50 (emphasis in original).

Further, the Federal Rules of Civil Procedure require a plaintiff alleging fraud-based claims to "state with particularity the circumstances constituting fraud . . . ." Fed. R. Civ. P. 9(b). "At a minimum, Rule 9(b) requires that a plaintiff set forth the 'who, what, when, where and how' of the alleged fraud and must set forth the time, place, and contents of the false representation, the identity of the party making the false statements and the consequences thereof." *U.S. ex rel. Sikkenga v. Regence Bluecross Blueshield of Utah*, 472 F.3d 702, 726–27 (10th Cir. 2006) (internal quotations and citations omitted). When evaluating fraud-based claims under Rule 9(b), the court will accept as true "well-pleaded facts, as distinguished from conclusory allegations." *Id.* at 726.

Although the court normally will not consider any evidence beyond the pleadings in reviewing a Rule 12(b)(6) motion to dismiss, "the district court may consider documents referred to in the complaint if the documents are central to the plaintiff's claim and the parties do not dispute the documents' authenticity." *Alvarado v. KOB-TV, L.L.C.*, 493 F.3d 1210, 1215 (10th Cir. 2007) (quoting *Jacobsen v. Deseret Book Co.*, 287 F.3d 936, 941 (10th Cir.2002)).

Finally, when a motion to dismiss under Fed. R. Civ. P. 12(b)(6) is granted, dismissal with prejudice is appropriate only when granting leave to amend would be futile. *Brereton v. Bountiful City Corp.*, 434 F.3d 1213, 1219 (10th Cir. 2006).

DISCUSSION

I. The Law of the Case Doctrine

GMW contends that the law of the case doctrine demands dismissal of each of defendants' motions. The law of the case doctrine permits a court, at its discretion, "to decline the invitation to reconsider issues already resolved earlier in the life of a litigation." *Entek GRB, LLC v. Stull Ranches, LLC*, 840 F.3d 1239, 1240 (10th Cir. 2016). But the Tenth Circuit has held that the law of the case doctrine "only applies if there was a final judgment that decided that

issue." *United States v. Phillips*, 59 F. Supp. 2d 1178, 1187 (D. Utah 1999) (first citing *United States v. Bettenhausen*, 499 F.2d 1223, 1230 (10th Cir. 1974); then citing *Unioil v. Elledge (In re Unioil)*, 962 F.2d 988, 993 (10th Cir. 1992)). Indeed, "where a ruling remains subject to reconsideration, the doctrine is inapplicable." *Unioil*, 962 F.2d at 993. *See also Price v. Philpot*, 420 F.3d 1158, 1167 n.9 (10th Cir. 2005) ("[E]very order short of a final decree is subject to reopening at the discretion of the district judge."). GMW urges the court to apply the law of the case doctrine because defendants' arguments to dismiss the Complaint are strikingly similar to arguments that they previously presented to the Court in opposing GMW's motion to amend its complaint.

In opposing GMW's motion to amend, the defendants argued that the amendment would be futile because the Complaint failed to sufficiently plead certain claims. [*See, e.g.*, Dockets 146, 16; 142, 9; 145, 4]. Magistrate Judge Warner granted GMW's motion to amend its complaint. [Docket 224]. Defendants objected to Judge Warner's order [Dockets 241, 242, and 243], but the court overruled those objections. [Docket 257]. GMW argues that because "[t]he standards of review for determining whether a motion to amend should be denied for futility under Fed. R. Civ. P. 15(a) and determining whether a motion to dismiss should be granted under Fed. R. Civ. P. 12(b)(6) are identical," *City of Charleston, S.C. v. Hotels.com, LP*, 520 F. Supp. 2d 757, 775 (D.S.C. 2007), the law of the case doctrine compels denial of defendants' motions. But those previous rulings are not final.

Neither Judge Warner's order granting GMW's motion to amend nor the Court's order overruling objections to Judge Warner's order are final. Thus, both remain subject to reconsideration. *See McClendon v. City of Albuquerque*, 630 F.3d 1288, 1292 (10th Cir. 2011) ("[A] final decision does not normally occur until there has been a decision by the District Court that ends the litigation on the merits and leaves nothing for the court to do but execute the

judgment." (quoting *Van Cauwenberghe v. Biard*, 486 U.S. 517, 521–22 (1988))); Fed. R. Civ. P. 54(b) ("[A]ny order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities."). Accordingly, the law of the case doctrine is inapplicable to the resolution of the current motions.

II. Plausibility of GMW's Claims

GMW asserts twelve causes of action against twelve Defendants. In the motions now before the court, Alan Hall, Island Park, and Tempus (the "Hall Defendants"), and Erin Housley, Mark Hurst, Debbie Wade, and Brent Keller (the "Individual Defendants" and together with the Hall Defendants, the "Moving Defendants") seek dismissal of some or all of the claims against them.

A. The Contract Claims

Hall seeks dismissal of GMW's first and third claims against him for breach of contract and breach of implied covenant of good faith and fair dealing. Both of these claims require the existence of a contract between Hall and GMW. *Bair v. Axiom Design, L.L.C.*, 20 P.3d 388, 392 (Utah 2001) ("The elements of a prima facie case for breach of contract are (1) a contract, (2) performance by the party seeking recovery, (3) breach of the contract by the other party, and (4) damages." (citation omitted)).

Hall argues that the contract-based claims against him should be dismissed under Rule 12(b)(6) because he was not a party to any contract with GMW. Hall maintains that the GMW-Hall NDA—upon which GMW bases these claims—is between GMW and Island Park, and not Hall in his personal capacity. Hall argues that although the GMW-Hall NDA recites that the agreement is between "Alan Hall" and GMW, it was executed by "Alan E. Hall" as "Chairman"

and "duly authorized signatory" for Island Park Investments. He reasons that the Complaint fails to state a claim because an individual "can be held personally liable for a signed contract only if he executed the contract 'in a manner clearly indicating that the liability was his alone.'" *Daines v. Vincent*, 190 P.3d 1269, 1280 (Utah 2008) (quoting *Starley v. Deseret Foods Corp.*, 74 P.2d 1221, 1223 (Utah 1938)).

In *Daines*, the Utah Supreme Court upheld the district court's conclusion that an agent, Vincent, was not acting in his personal capacity when he signed an agreement with Daines. *Id.* The agreement at issue included a signature line for Vincent directly under the heading "ASC," the company for which Vincent worked. *Id.* Because the agreement expressly stated that Vincent would sign on behalf of ASC, "it [was] apparent that Daines recognized that he would be dealing with ASC through Vincent and not with Vincent in his individual capacity." *Id.* The Utah Supreme Court agreed that Mr. Daines had no competent evidence that Vincent was acting in anything other than a representative capacity for ASC in his dealings with Daines. *Id.*

GMW alleges that Hall, on behalf of himself and others on his team, entered into the GWM-Hall NDA. It further alleges that the GMW-Hall NDA lists Hall personally as a party to the agreement, and that Island Park is an alter ego of Hall. GMW argues that because the GWM-Hall NDA expressly states that it is between Hall and GMW, the allegations in its complaint must be taken as true and its claims against Hall should not be dismissed. GMW maintains that *Daines* is distinguishable from this case because the agreement at issue there unambiguously stated that it was between Daines and ASC, not Vincent personally. GMW argues that, at best, Hall's argument reveals an ambiguity as to which parties are bound by the GMW-Hall NDA and that the issue must be resolved by the trier of fact. GMW argues that this case is further distinguishable from *Daines* because of the allegation that Island Park was an alter ego of Hall.

GMW also argues that Hall became bound by the GMW-Hall NDA by virtue of his performance when he received its confidential information under the agreement.

The court concludes that Hall is not a party to the GMW-Hall NDA in his individual capacity. On its face, the GMW-Hall NDA[2] indicates that Hall did not "execute[] the contract in a manner clearly indicating that the liability was his alone." *Id.* Rather, the manner in which the contract was executed indicates that it is Island Park that is party to the agreement, as witnessed by the signature of its authorized representative and chairman, Hall. GMW alleges that Hall executed the GMW-Hall NDA "on behalf of himself and others on his team," and the document itself states that the agreement is between Alan Hall and GMW. While it may be true that GMW intended for Hall to be subject to the terms of the agreement, the manner of execution shows that Hall agreed to its terms only in his capacity as an agent of Island Park Investments. Although GMW has alleged that Island Park is an alter ego of Hall, such an allegation is a mere label or legal conclusion that the court need not accept as true. And GMW has failed to make factual allegations sufficient to state a plausible claim that Island Park is, in fact, an alter ego of Hall.[3] *See Jones & Trevor Marketing, Inc.*, 284 P.3d at 635–36 (setting out the two prong test and eight

[2] In ruling on a Rule 12(b)(6) motion, the court is normally limited to considering the contents of the complaint. *Berneike v. CitiMortgage, Inc.*, 708 F.3d 1141, 1146 (10th Cir. 2013). Exceptions to this general rule include "documents incorporated by reference in the complaint; documents referred to in and central to the complaint, when no party disputes [their] authenticity; and 'matters of which a court may take judicial notice.'" *Id.* (*quoting Gee v. Pacheco*, 627 F.3d 1178, 1186 (10th Cir. 2010)). Here, the contract may be considered and analyzed by the court because it is referred to in and is central to the complaint and no party disputes its authenticity.

[3] Even if GMW had made such allegations, the alter ego doctrine is not a basis for treating officers as if they are the same as a corporate entity. Rather, an alter ego theory allows a plaintiff to "pierce the corporate veil" and recover from corporate shareholders in order to satisfy the debts and liabilities of the corporation. *See Albright v. Attorney's title Ins. Fund*, 504 F.Supp.2d 1187, 1210 (D. Utah 2007) ("It is only in extreme circumstances that the corporate form will be disregarded and the personal assets of a controlling shareholder or shareholders may be attached in order to satisfy the debts and liabilities of the corporation." (internal quotations and citation omitted)); *Jones & Trevor Mktg., Inc. v. Lowry*, 284 P.3d 630, 635–36 (Utah 2012) ("The alter ego doctrine is an exception to the general rule that limits stockholders' liability for obligations of the corporation.").

factors to be considered in determining whether the alter ego doctrine applies to impose personal liability for the debts and liabilities of a business entity).

Furthermore, Hall's receipt of confidential information under the terms of the GMW-Hall NDA does not render him individually liable under the agreement. As an agent and representative of Island Park, Hall was able to receive and analyze GMW's confidential information in his capacity as an agent of Island Park, just like the Individual Defendants, without becoming a party to the GMW-Hall NDA.

In short, Hall did not "execute[] the contract in a manner clearly indicating that the liability was his alone" and GMW makes no allegations that would give rise to personal liability for Hall under the GMW-Hall NDA. Accordingly, GMW's contract-based claims against Hall must be dismissed.

B. The Misappropriation Claim

The Individual Defendants move to dismiss GMW's second claim against them for misappropriation of trade secrets in violation of Utah Code § 13-24-1. A trade secret misappropriation claim requires three elements: (1) the existence of a trade secret, (2) communication of the trade secret under an express or implied agreement limiting disclosure of the secret, and (3) use of the secret that results in injury. *USA Power, LLC v. PacifiCorp*, 235 P.3d 749, 758 (Utah 2010). The Individual Defendants argue that GMW's allegations fail to satisfy the 12(b)(6) plausibility standard for each of these three elements.

1. <u>The Existence of a Trade Secret</u>

The Utah Uniform Trade Secret Act defines a "trade secret" as:

> information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Utah Code § 13-24-2(4).

Although the Individual Defendants argue generally that the Complaint fails to satisfy the plausibility standard for each of the elements of the trade secret misappropriation claim, none of them advance arguments specific to this first element. And it is clear from the Complaint that GMW has met the plausibility standard for the existence of its trade secrets.

The Complaint lists certain documents containing information that plausibly meet the UTSA definition of a trade secret. Those documents include GMW business plans, corporate documents, customer agreements, EXIM Bank financing documents, market studies, agreements with GMW business partners, presentations, public relations documents, and its comprehensive financial model and business plan. [*Complaint*, ¶ 80]. The Complaint acknowledges that "certain general technical and business information in these documents is publicly available, such as through press releases or presentations," but "the vast majority of the data in these documents is secret and not available outside of a very small circle of GMW management and under non-disclosure agreements." [*Id.* ¶ 84]. The Complaint also describes a proprietary contact list of "over 100 contacts that are vital to build a global satellite weather data company" and also GMW's "rankings of each contact and detailed notes [that] show an informed user which contacts are most helpful." This list and the rankings were put together by GMW "at great expense of time and money." [*Id.* ¶ 81].

The Complaint also states that "GMW took extensive steps to protect the proprietary and confidential trade secrets contained in the documents shared with [Defendants.]" [*Id.* ¶ 83]. GMW details those steps in the Complaint as follows:

> First, only senior GMW employees had access to these documents, and only on a need to know basis. Second, these documents were kept on a secure hard drive that is not accessible to anyone outside of GMW. Third, these documents were only shared with Hall, members of Hall's team, AWSF, USURF/SDL, Behunin, Roberts, and Jensen, with the understanding that an NDA was in place directly

> between GMW and Hall, USU/CE, USURF/SDL and AWSF, as well as between Hall, USU/CE, and AWSF. Fourth, GMW management and employees knew these documents are confidential, treated them sensitively and did not share their contents outside of work, or under a non-disclosure agreement, on a limited need-to-know basis.

[*Id.* ¶ 83].

Taking the allegations of the Complaint as true, GMW has adequately pled the existence of its trade secrets.

2. Trade Secret Communicated Under an Express Agreement Limiting Disclosure of the Trade Secret

GMW has also adequately pled facts to plausibly satisfy the second element. None of the Individual Defendants deny that the trade secrets listed above were communicated by GMW to Island Park under the GMW-Hall NDA and that they were bound, as agents of Island Park, to the terms of that agreement. The Complaint specifically alleges that GMW shared its confidential information with the Individual Defendants through the GMW Data Room in reliance on non-disclosure agreements. [*Id.* ¶¶ 65–66].

3. Use of the Trade Secret that Causes Injury

The Individual Defendants focus their arguments on the third and final element of a claim for trade secret misappropriation, which requires a showing that the party's misappropriation or improper use of a trade secret resulted in injury. The UTSA provides that misappropriation can occur through the

> disclosure or use of a trade secret of another without express or implied consent by a person who . . . at the time of disclosure or use, knew or had reason to know that [her] knowledge of the trade secret was . . . acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use, or derived from or through a person who owed a duty to the person seeking relief to maintain its secret or limit its use.

Utah Code § 13-24-2(2)(b).

The Individual Defendants argue that GMW has failed to offer non-conclusory fact-based allegations that support even an inference that any of them improperly used or disclosed GMW's trade secrets in violation of the UTSA or that GMW suffered an injury as a result of any alleged misuse. In response, GMW first points to the general allegations made regarding the Individual Defendants' access to and use of its confidential information. GMW also references the Ethics Memorandum in support of the plausibility of its misappropriation claim against the Individual Defendants. In addition to these general allegations relating to all of the Individual Defendants, GMW asserts specific allegations regarding the use of its information by Wade, Keller, and Housley. As to its injury, GMW relies on its allegation that "[t]he actions of Defendants . . . have caused and will continue to cause damage to GMW, in an amount to be determined at trial." [*Complaint*, ¶ 156].

The court concludes that GMW has failed to offer sufficiently specific factual allegations against the Individual Defendants to satisfy this third element. It therefore grants their motions to dismiss the misappropriation claim. *See Smith*, 561 F.3d at 1098 (quotations and citations omitted).

i. *The general allegations of access and use of GMW's information by the Individual Defendants*

GMW first argues that paragraphs 4, 66, 75, 102, and 108 of its complaint contain adequate allegations to state a plausible misappropriation claim against the Individual Defendants. But the allegations in these paragraphs "are so general that they encompass a wide swath of conduct, much of it innocent," *Robbins v. Oklahoma*, 519 F.3d 1242, 1247 (10th Cir. 2008) (internal citations and quotations omitted), and do not state a plausible claim against the Individual Defendants. Paragraphs 4 and 66 of the complaint describe the Individual Defendants' access to GMW's confidential information. But these allegations go only to the uncontested issue

of whether confidential information was communicated to the Individual Defendants in the first place. They say nothing about improper disclosure or use of GMW's trade secrets.

Paragraphs 75 and 102 lump all of the Individual Defendants together into a collective group that GMW calls the "Hall Team." These paragraphs make the conclusory statement that the "Hall Team" had opportunity and motive to misuse GMW's trade secrets and that each member seized that opportunity by misusing that information. These "mere labels and conclusions" are not sufficient to raise a right to relief above the speculative level. *Kan. Penn Gaming, LLC*, 656 F.3d at 1214. Neither Paragraph 75 nor Paragraph 102 reference what it is that anyone on the "Hall Team" purportedly did to misuse GMW's confidential information, simply asserting that misuse occurred.

Paragraph 108 alleges that "Hurst, Wade, and Keller . . . drafted portions of the Tempus business plan, and relied upon GMW's confidential materials to draft their respective portions of the Tempus business plan." Conspicuously missing from this allegation—and absent through the entirety of the complaint—is an allegation of what portions of GMW's confidential information the Individual Defendants purportedly relied on in drafting their portions of the Tempus business plan. To survive dismissal, a complaint must "offer specific factual allegations to support each claim." *Smith*, 561 F.3d at 1098 (citing *Twombly*, 550 U.S. at 555). When dealing with "complex claims against multiple defendants," it is "particularly important . . . that the complaint make clear exactly *who* is alleged to have done *what* to *whom*, to provide each individual with fair notice as to the basis of the claims against him or her, as distinguished from collective allegations . . . ." *Id.* (quoting *Robbins v. Okla. ex rel. Dep't of Human Servs.*, 519 F.3d 1242, 1249–50 (10th Cir. 2008)) (emphasis in original). Without specifics of what information the Individual Defendants allegedly used in drafting the Tempus business plan, the claims do not "provide each individual with fair notice as to the basis of the claims against him or her," nor do

the claims rise above the level of speculation and into the realm of plausible. *Robbins*, 519 F.3d at 1250.

GMW also argues that its allegations regarding the Ethics Memorandum support a plausible claim against the Individual Defendants. GMW alleges that "[d]espite articulating their concerns in the Ethics Memorandum, each [of the Individual Defendants] marched forward with Hall's plan to destroy GMW and continued to misuse GMW's confidential and propriety information," and that "the [Individual Defendants persisted in their efforts to destroy GMW, despite their full knowledge that their conduct was unethical and actionable, as they had articulated to Hall in the Ethics Memorandum." [*Complaint*, ¶¶ 75, 110]. But again, these allegations simply conclude that some misuse of GMW's confidential information continued without articulating how any of the Individual Defendants misused that information. While the allegations reference the Ethics Memorandum, there is nothing in that document that suggests that any of the Individual Defendants' actions were unethical or actionable. Rather, the Ethics Memorandum was aimed at Hall's conduct in having conversations with AsiaSat and AWSF without GMW. The Individual Defendants were expressing concern that their work analyzing GMW's business could be used in an unethical manner *by Hall*, not that the Individual Defendants themselves were doing so. As GMW itself argues, "the Ethics Memorandum acknowledges that the [Individual Defendants] had been given access to GMW's confidential and trade secret information, and either expressly or implicitly acknowledges its use and disclosure among Hall and the [Individual Defendants]." [Dockets 313, 8; 319, 11; 347, 10; 348, 9]. But Hall and the Individual Defendants were all authorized to access, use, analyze, and otherwise disclose GMW's confidential information among themselves as employees of a

potential investor, Island Park. In short, the Ethics Memorandum says nothing about any misuse or wrongdoing on the part of any of the Individual Defendants.[4]

ii. *Specific allegations against Hurst*

GMW does not make any allegation against Hurst other than the general allegations already discussed. Because of the inadequacy of those allegations, GMW has not pled a plausible claim against Hurst for misappropriation of trade secrets and that claim against Hurst will be dismissed.

iii. *Specific allegations against Wade*

As to Wade, GMW alleges that "Wade actively facilitated the Defendants' misappropriation of GMW's trade secrets by, among other things, drafting a commercial market study for weather data that Tempus ultimately shared with various investors. Wade relied on GMW's confidential information for the creation of this document." [*Complaint*, ¶ 9]. But this allegation does not state that Wade improperly disclosed or used any confidential information. Rather, it alleges that Wade, in the performance of her duties as an analyst for Island Park, created a commercial market study. At the time the commercial market study was created, Wade was authorized by GMW to access the GMW Data Room under the GMW-Hall NDA and to analyze the information contained therein. GMW's allegation in paragraph 9 of the Complaint that Tempus later shared the commercial market study with various investors does not make Wade's creation of that study wrongful, nor does it subject Wade to liability for misuse of GMW's confidential information. GMW alleges that there are "other things" that Wade did to facilitate the misappropriation of its trade secrets, but no specifics are alleged regarding those "other things." In sum, GMW's allegations against Wade, including the general allegations

[4] Indeed, the Ethics Memorandum states the Individual Defendants' objections to misusing GMW's confidential information and speaks more to their innocence than to any wrongdoing on their part.

analyzed above, fail to support a plausible claim against her for misappropriation of trade secrets. Accordingly, GMW's claim for trade secret misappropriation must be dismissed.

iv. *Specific allegations against Keller*

GMW alleges that "Keller misappropriated GMW's highly confidential and proprietary financial models by downloading GMW's financial models and simply replacing the word 'GMW' with various iterations of the names for Hall's venture, including 'SkyStar' and 'Tempus' in the headings of the documents." [*Id.* ¶ 104]. GMW further alleges that "Keller also encouraged Housley to use other highly confidential GMW information to build a prospectus or investor brief."[5] [*Id.*]

Keller's alleged encouragement of Housley to use GMW information to build a prospectus or investor brief is inadequate to support a plausible claim of misappropriation against Keller. Encouraging Housley to use information that both were authorized to use and analyze to create a prospectus or investor brief is not misappropriation because there is no allegation that any prospectus or investor brief was ever actually created. Additionally, GMW does not allege the purpose of the investor brief or prospectus, whether these documents were created for a competitor or whether they were created as part of Island Park's authorized due diligence.

Keller responds to GMW's allegation that he altered the GMW financial models by arguing that he had permission to download and review the financial models, that he only minutely altered them and saved them to his computer to distinguish between the original and altered versions, and then never used them again. It is true that Keller's downloading and manipulating GMW's financial models as part of his due diligence for Island Park would not

[5] In its response to Keller's motion to dismiss, GMW attached an email from Keller to Housley. However, that email is not incorporated by reference or otherwise a part of the complaint and is not appropriately considered on a 12(b)(6) motion.

have been a wrongful use of GMW trade secrets. But if Keller had manipulated the models for a purpose not authorized by GMW, such as for assisting a potential competitor like Tempus, then that use would be wrongful. The allegation that Keller replaced GMW's name with that of other ventures, at least one of which is alleged to have been created to compete with GMW, gives rise to a reasonable inference that Keller misused GMW's financial models. *See Big Cats of Serenity Springs, Inc. v. Rhodes*, 843 F.3d 853, 858 (10th Cir. 2016) ("A claim is facially plausible when the allegations give rise to a reasonable inference that the defendant is liable." (quoting *Mayfield v. Bethards*, 826 F.3d 1252, 1255 (10th Cir. 2016))).

To state a claim for misappropriation of trade secrets, GMW must not only allege misuse of the trade secrets, it must also allege injury arising from that misuse. Keller argues that GMW has failed to plead that his alleged manipulation of the financial models or his alleged encouragement of Housley to use GMW information to build a prospectus or investor brief resulted in any demonstrable harm to GMW. The UTSA states that "damages can include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss." Utah Code § 13-24-4. The UTSA also provides that a reasonable royalty can be awarded in lieu of damages. *Id.* GMW has generally alleged that the collective actions of the Defendants have caused and continue to cause it harm. [*Complaint*, ¶ 156]. But GMW fails to allege that Keller's actions damaged it in any way. Even taking as true GMW's allegation that Keller relabeled GMW's financial models, there is no allegation that Keller's relabeling of the model caused it any injury. As alleged in the Complaint, the damaging use of its trade secrets was not perpetrated by Keller, but by Hall, Island Park, and Tempus when they allegedly usurped GMW's business and stepped into its shoes. There similarly is no allegation that Keller has been unjustly enriched by any of his alleged misappropriation. In short, there are no factual allegations that support a plausible claim that

Keller's use of GMW's confidential information injured GMW or unjustly enriched Keller. Accordingly, Keller's motion to dismiss the misappropriation claim against him must be granted.

v. *Specific allegations against Housley*

GMW alleges that "Housley misappropriated GMW's highly confidential and proprietary information, including its business plans," and that "[b]efore GMW blocked the Hall Team's access to the GMW Data Room, Housley downloaded at least one copy of GMW's confidential Business Plan onto her own computer. She then used GMW's business plan as the template for a Tempus business plan that Tempus shared with investors shortly thereafter." [*Id.* ¶¶ 105–106].[6]

Housley argues that the allegations against her do not state a plausible claim. She maintains that accessing and downloading GMW's business plan cannot be deemed improper because GMW itself provided Housley and the other Individual Defendants with its confidential information so they could perform due diligence on the STORM project. Housley argues that there needs to be a more specific allegation of wrongdoing against her. For example, Housley points out that nowhere in the complaint does GMW allege that it instructed Housley to return or destroy the things to which she had previously been given access after it rescinded access to its confidential information, nor does GMW allege that it had discontinued its negotiations with Hall.

Taking the allegations of the complaint as true, GMW's claim against Housley for misappropriation of trade secrets falls short of the mark. The allegations against Housley suffer from the same deficiencies as the allegations against Keller; they do not link any of their alleged damages to Housley's specific conduct. GMW alleges that its confidential business plan was used by Housley as a template for a business plan that *Tempus* shared with investors. This

[6] In GMW's response to Housley's Motion to Dismiss, it attached an email allegedly supporting these allegations. But the attached email was neither referenced in the complaint nor attached thereto and thus the court may not consider it in ruling on a motion to dismiss.

allegation does not link Housley's conduct to any injury; rather, it shows that it was Tempus's alleged use of GMW's business plan that injured GMW. GMW has not alleged that Housley caused it injury by disclosing or using GMW trade secrets, only that Tempus did so. There likewise are no allegations in the Complaint that Housley benefitted or has been unjustly enriched as a result of any alleged misuse of GMW trade secrets. Again, it was Hall, Tempus, and Island Park that stood to benefit from allegedly usurping GMW's business. Accordingly, the allegations of the complaint do not state a viable claim against Housley.

In sum, GMW's allegations against the Individual Defendants fail to support a plausible claim against for misappropriation of trade secrets. The allegations against Wade and Hurst "are so general that they encompass a wide swath of conduct, much of it innocent." *Robbins*, 519 F.3d at 1247 (internal citations and quotations omitted). Thus, GMW "ha[s] not nudged [its] claims [against Wade and Hurst] across the line from conceivable to plausible." *Id.* With respect to the claims against Keller and Housley, GMW has not made specific allegations of injury resulting from their use of its confidential information and therefore has not adequately pled a claim for relief against them. Accordingly, GMW's claim for misappropriation of trade secrets under the UTSA against the Individual Defendants must be dismissed.

C. The Fraud Claims

1. Fraudulent Nondisclosure

GMW brings a claim of fraudulent nondisclosure against Hall, Tempus, Housley, Hurst, Wade, and Keller.[7] The elements of a fraudulent nondisclosure claim are: "(1) the nondisclosed information is material, (2) the nondisclosed information is known to the party failing to disclose, and (3) there is a legal duty to communicate." *Hermansen v. Tasulis*, 48 P.3d 235, 242

[7] These Defendants, among others, are listed in the heading under GMW's Eleventh Cause of Action for Fraudulent Nondisclosure. But all of the factual allegations under that heading refer only to "Defendants" generally.

(Utah 2002) (*citing Mitchell v. Christensen*, 31 P.3d 572, 574 (Utah 2001)). Hall, Tempus, Housley, Hurst, Wade, and Keller do not argue that the Complaint is deficient in its allegations regarding the first and second elements. Rather, they argue only that GMW failed to allege facts to support the third element—a legal duty to communicate.

The Moving Defendants argue that the facts alleged in the Complaint do not give rise to a legal duty to communicate anything to GMW and thus do not state a claim upon which relief can be granted. Further, Rule 9(b) requires that a plaintiff bringing a fraudulent nondisclosure claim allege specific facts that show that "the defendant had a legal duty to communicate information." *Anderson v. Kriser*, 266 P.3d 819, 823 (Utah 2011) (emphasis omitted).

The determination of whether a legal duty to communicate exists "is a purely legal question" answerable by the court. *Yazd v. Woodside Homes Corp.*, 143 P.3d 283, 286 (Utah 2006). The Utah Supreme Court has made clear that a legal duty arises from "the structure and dynamics of the relationship between the parties . . . ." *Id.* "A relationship that is highly attenuated is less likely to be accompanied by a duty than one, for example, in which parties are in privity of contract." *Id.* A legal duty "is the product of policy judgments applied to relationships." *Id.* at 286–87 (*citing DeBry v. Valley Mortgage Co.*, 835 P.2d 1000, 1003–04 (Utah Ct. App. 1992) ("Duty is not sacrosanct in itself, but only an expression of the sum total of those considerations of policy which lead the law to say that the particular plaintiff is entitled to protection." (internal quotation marks and brackets omitted))). Further explaining the circumstances that give rise to a legal duty, the *Yazd* court continued:

> Age, knowledge, influence, bargaining power, sophistication, and cognitive ability are but the more prominent among a multitude of life circumstances that a court may consider in analyzing whether a legal duty is owed by one party to another. Where a disparity in one or more of these circumstances distorts the balance between the parties in a relationship to the degree that one party is exposed to unreasonable risk, the law may intervene by creating a duty on the advantaged party to conduct itself in a manner that does not reward exploitation of its advantage.

Id. at 286. Importantly, "[a] person who possesses important, even vital, information of interest to another has no legal duty to communicate the information where no relationship between the parties exists." *Id.* at 287.

GMW alleges that the Defendants generally had a duty to disclose Hall's conversations and negotiations with AsiaSat (what GMW calls the "AsiaSat Omissions"), the alleged misappropriation of GMW's confidential information and trade secrets, and that Defendants also made "other unlawful nondisclosures and concealments." [*Complaint*, ¶ 242]. GMW also alleges that "Defendants owed a legal duty to GMW to communicate and disclose to GMW material facts, by virtue of their relationship with GMW, the trust and confidence placed in them by GMW, and their superior knowledge of the relevant facts and circumstances." [*Id*. at ¶ 241]. But outside of these formulaic and conclusory allegations of a duty based on *some* relationship and the trust and confidence placed in Defendants generally, there are no particular factual allegations supporting the kind of relationship that would give rise to a legal duty between many of the Defendants and GMW.

The complaint alleges that Hall had a contractual relationship with GMW. [*Id.* at ¶¶ 78–79]. But as discussed previously, Hall was not personally a party to any contract with GMW. Although the *Yazd* court noted that parties who are in privity of contract may have a legal duty to communicate certain things to each other, *Yazd*, 143 P.3d at 286, Hall and GMW were not in privity of contract. Thus, the court concludes that GMW has not adequately pled that Hall owed GMW a legal duty to communicate.

Likewise, the factual allegations of the Complaint cannot support GMW's claim that Tempus or any of the Individual Defendants owed it a legal duty to communicate. First, the only allegations relating to Tempus's relationship with GMW refer to Tempus as a competitor. [*Complaint*, ¶¶ 5, 82, 95, 131]. A competitive relationship is antithetical to the kind of

relationship that would establish a duty between Tempus and GMW under the standards outlined in *Yazd*.

Similarly, the alleged relationship between GMW and the Individual Defendants does not give rise to a legal duty. The Individual Defendants are alleged to be Hall's agents and "intimately involved in the collection and review of GMW's confidential information." [*Id.* at ¶ 4]. Outside of that introduction and the general allegation that "Defendants owed a legal duty to GMW," there are no allegations regarding *any* relationship between GMW and the Individual Defendants, let alone a relationship sufficient to give rise to a legal duty.

The court concludes that GMW has failed to allege particular facts sufficient to support a legal duty to communicate as to Hall, Tempus, Wade, Keller, Hurst, or Housley. Accordingly, GMW's eleventh cause of action for Fraudulent Nondisclosure against Hall, Tempus, Wade, Keller, Hurst, and Housley must be dismissed.

2. Fraudulent Inducement

Hall moves for dismissal of GMW's claim against him for fraudulent inducement, arguing that the allegations in the Complaint fail to state a claim under Rule 9(b)'s heightened pleading standard for fraud claims. Fed. R. Civ. P. 9(b) requires a plaintiff to "state with particularity the circumstances constituting fraud." A claim of fraudulent inducement requires the following elements:

> (1) that a representation was made (2) concerning a presently existing material fact (3) which was false and (4) which the representor either (a) knew to be false or (b) made recklessly, knowing that there was insufficient knowledge upon which to base such a representation, (5) for the purpose of inducing the other party to act upon it and (6) that the other party, acting reasonably and in ignorance of its falsity, (7) did in fact rely upon it (8) and was thereby induced to act (9) to that party's injury and damage.

Keith v. Mountain Resorts Development, L.L.C., 337 P.3d 213, 225–26 (Utah 2014).

Hall argues that the only misrepresentation that GMW alleges is that "Hall claimed that he possessed the means to personally invest significant funds in the GMW business venture, or that he would be able to raise the money from a venture fund, Mercato Partners." [*Complaint*, ¶ 123]. Hall maintains that these alleged statements do not concern a presently existing material fact because the statements do not contain an affirmative commitment to invest and they include an option for Hall to perform an act in the future by raising money from a venture fund. But Hall ignores the allegation that he also represented "that he could *and planned to* personally investment [sic] $10–20MM of his own money in GMW." [*Id.* ¶ 124 (emphasis added)]. Taking these allegations together as true, GMW has adequately pled that a representation was made concerning a presently existing material fact.

Hall also argues that GMW failed to allege the who, where, when, and how of the alleged misrepresentation as required by controlling Tenth Circuit precedent. *See U.S. ex rel. Sikkenga*, 472 F.3d at 726–27 (stating that to meet Rule 9(b)'s particularity requirement, a plaintiff must "set forth the who, what when, where and how of the alleged fraud, and must set forth the time, place, and contents of the false representation, the identity of the party making the false statements and the consequences thereof" (internal citations and quotations omitted)). Hall argues that GMW's allegation that the alleged misrepresentations occurred "in the Fall of 2013 at various meetings with GMW," [*Complaint*, ¶ 124], is insufficient. The court agrees.

GMW's allegations regarding when and where the alleged misrepresentations occurred are general. There are no specific, particular allegations regarding where the misrepresentations occurred other than "at various meetings with GMW." Likewise, an allegation that a misrepresentation occurred "in the Fall of 2013" cannot be considered a particular allegation of when the misrepresentation occurred. During the three or four months that comprised the "Fall of 2013," there were undoubtedly regular meetings that were attended by both GMW and Hall.

Rule 9(b)'s particularity standard unquestionably requires more than these general assertions in order to provide Hall with adequate notice of the basis for the fraud claims against him. Accordingly, GMW's claim for fraudulent inducement against Hall must be dismissed.

D. The Statutory Claims

Hall and Island Park seek dismissal of GMW's claims against them for violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)–(b), the Utah Truth in Advertising Act, Utah Code § 13-11a-1, et seq., and the Utah Unfair Practices Act, Utah Code § 13-5-1, et seq. (the "Statutory Claims"). Hall and Island Park argue that the factual allegations relating to the Statutory Claims all relate to statements made and actions taken only by Tempus. The Statutory Claims are each based on false advertising and/or unfair business practices. Hall and Island Park contend that GMW's allegations relating to the Statutory Claims focus solely on the advertising and business practices of Tempus and have little or nothing to do with either Island Park or Hall.

Island Park argues that there are no specific references to Island Park in any of the allegations supporting the Statutory Claims. The only allegations that could possibly be construed as referencing Island Park are allegations against "Defendants" generally. [*E.g.*, *Complaint*, ¶¶ 170–78, 185–203]. GMW responds by pointing to its allegation that Island Park is the alter ego of Hall and thus the conduct of Hall and Island Park may be attributed to each other. But as discussed above, GMW's allegation that Island Park is the alter ego of Hall is not a well-pled fact. Rather it is a legal conclusion unsupported by any factual allegations. *See supra* II.A. And as previously discussed, this allegation is based upon a misunderstanding of the scope and purpose of an alter ego claim. *See supra* n.3. Without any specific allegations of actions by Island Park that implicate the statutory provisions at issue here, GMW has failed to assert plausible Statutory Claims against Island Park.

Hall argues that although he is specifically referenced in the allegations supporting the Statutory Claims, he is referenced only as acting in his role as an agent for Tempus. In spite of the fact that Hall is alleged to have been the individual making many of the statements giving rise to the Statutory Claims, the context and content of those statements indicate that Hall was making those statements in a representative capacity on behalf of Tempus. Business entities "ordinarily act only through their agents, and, when the agent acts within the scope of his employment, the agent's liability generally becomes the liability of the employer." *Diversified holdings, L.C. v. Turner*, 63 P.3d 686, 701 (Utah 2002). GMW responds by arguing that it specifically alleges that Hall made certain statements that give rise to the Statutory Claims and that Hall is also included in all of the allegations against the "Defendants" generally.

After analyzing the allegations of the Complaint, the court concludes that GMW has failed to allege sufficient facts in support of its Statutory Claims against Hall. GMW's general allegations about "Defendants" are too general. The allegations against "Defendants" do not distinguish between any of the twelve defendants named in this case and therefore do not adequately state a claim against Hall. Furthermore, each of the statements that Hall allegedly made relates to Tempus, its capabilities, and its obtaining licensing in connection with the STORM project. [*Complaint*, ¶¶ 127–30]. It follows that Hall was making these statements in a representative capacity for Tempus. As pled, GMW's Statutory Claims go only to the advertising and business practices of Tempus. Accordingly, GMW's Statutory Claims against Hall and Island Park must be dismissed.

E. Intentional Interference Claim

The Individual Defendants each move to dismiss GMW's fourth claim for intentional interference with existing or potential economic relations, arguing that GMW has failed to assert any factual allegations tying any of them to the alleged wrongful conduct.

An intentional interference claim requires three elements: "(1) that the defendant intentionally interfered with the plaintiff's existing or potential economic relations, (2) ... by improper means, (3) causing injury to the plaintiff." *Eldridge v. Johndrow*, 345 P.3d 553, 565 (Utah 2015). The Individual Defendants argue that GMW failed to adequately plead that any of them employed improper means to interfere with GMW's economic relations.

The Utah Supreme Court has stated that "improper means is satisfied where the means used to interfere with a party's economic relations are contrary to law, such as violations of statutes, regulations, or recognized common-law rules." *Leigh Furniture & Carpet Co. v. Isom*, 657 P.2d 293, 308 (Utah 1982) (overruled on other grounds by *Eldridge*, 345 P.3d 553). GMW argues that it adequately pled improper means by each of the Individual Defendants by alleging trade secret misappropriation and fraudulent omissions by Defendants.

GMW relies on the following allegations:

> Defendants intentionally *induced GMW to enter into contracts with Defendants by deceit or misrepresentation* for the purpose of gaining personal competitive advantage with GMW's business partners and prospective business partners, and depriving GMW of its existing or prospective relationships with those business partners. Defendants also *obtained and used GMW's confidential information* by the improper means of deceit, misrepresentation, breach of contract and by inducing others to breach their contracts with GMW with the intent to gain unfair competitive advantage against GMW, to deprive GMW of the value of its investment and business opportunities and to steal its business and business model.

[*Complaint*, ¶¶ 165–66 (emphasis added)]. These allegations make clear that the "improper means" employed by the "Defendants" were fraudulent inducement and misappropriation of trade secrets. They say nothing about fraudulent omissions as the means used by the Individual Defendants to interfere with GMW's relations with its business partners. And there are no allegations in the Complaint that the Individual Defendants somehow induced GMW to enter into any contracts—indeed, GMW brings a claim of fraudulent inducement against only Hall, USURF, AWSF, and Behunin. Thus GMW cannot plausibly claim that the Individual

Defendants employed the improper means of inducing it to enter into contracts by deceit or misrepresentation to support its intentional interference claim against them. And the court has also already determined that the allegations of trade secret misappropriation were inadequate to state a plausible claim against the Individual Defendants. Because there are no well-pled allegations that the Individual Defendants employed "improper means," the intentional interference claim against them must be dismissed.

F. Conspiracy Claim

The Moving Defendants seek dismissal of GMW's claim of civil conspiracy against them arguing that the allegations of the complaint fail to meet the particularity standard of Fed. R. Civ. P. 9(b). The Individual Defendants also argue that the allegations of civil conspiracy fail to state a claim under Fed. R. Civ. P. 12(b)(6).

A civil conspiracy claim requires that a plaintiff establish the following elements: "(1) a combination of two or more persons, (2) an object to be accomplished, (3) a meeting of the minds on the object or course of action, (4) one or more unlawful, overt acts, and (5) damages as a proximate result thereof." *Pohl, Inc. v. Webelhuth*, 201 P.3d 944, 954–55 (Utah 2008). GMW alleges that there was a combination of two or more persons and that the object to be accomplished by them was "to interfere with and destroy GMW's business, to eliminate GMW as a competitor, and to improperly exclude GMW from the very business opportunity that GMW had created and brought to Defendants." [*Complaint* ¶ 247–48]. GMW then alleges that "[t]here was a meeting of the minds as to these objects." [*Id.* ¶ 249]. GMW next alleges that the unlawful, overt acts committed as part of the conspiracy are the other causes of action alleged in the Complaint, including the misappropriation of GMW's trade secrets, the interference with GMW's contractual and economic relationship with its critical business partner AsiaSat, the fraudulent representations to GMW, and the fraudulent omissions withheld from GMW. [*Id.* ¶

250]. GMW finally alleges that it was "damaged as a proximate result of Defendants' conduct." [*Id.* ¶ 251].

To support their argument that GMW's civil conspiracy claim must meet the requirements of Rule 9(b), the Moving Defendants rely on *Unified Container, LLC v. Mazuma Capital Corp.*, 280 F.R.D. 632 (D. Utah 2012). In that case, the court stated: "As a general rule, civil conspiracy is not one of the listed causes of action which must meet the requirements of Rule 9(b). However, where the unlawful act underlying the civil conspiracy is a fraud-based tort, both the underlying tort and the conspiracy claim must be pleaded with particularity." *Id.* at 636–37 (internal citations and quotations omitted). The court clarified that "even if the [c]ourt were to find that Plaintiffs have not pleaded their civil conspiracy claims with requisite particularity with regard to the fraud based claims, Plaintiffs' civil conspiracy claim need not be dismissed to the extent it is based on non-fraud torts." *Id.* at 637.

The court has already determined that GMW's fraud-based claims against each of the Moving Defendants fail to meet Rule 9(b)'s requirements. Accordingly, to the extent that GMW's civil conspiracy claim against the Moving Defendants is based on fraud, it is inadequately pled. However, GMW's conspiracy claim is also based on non-fraud torts (i.e., misappropriation of GMW's trade secrets, and interference with GMW's contractual and economic relationship with AsiaSat). Thus, GMW's failure to plead its fraud claims with particularity does not justify dismissing the claim in its entirety. Because the Hall Defendants have not challenged GWM's civil conspiracy claim against them to the extent that it is on non-fraud torts, they have failed to establish a basis for its dismissal.

In contrast to the Hall Defendants, the Individual Defendants have argued that GMW's civil conspiracy claim also fails to state a claim against them under Rule 12(b)(6). The Tenth Circuit has provided guidance on pleading standards for conspiracy claims, emphasizing that

"[t]he *Twombly* Court was particularly critical of complaints that 'mentioned no specific time, place, or person involved in the alleged conspiracies.'" *Robbins*, 519 F.3d at 1248 (citation omitted). The factual allegations supporting the civil conspiracy claim in this case are far too general to meet this pleading standard because there is no mention of a specific time or place involved in the alleged conspiracy. The most glaring generality is GMW's allegation that "[t]here was a meeting of the minds." This is a classic example of a "formulaic recitation of the elements of a cause of action" that simply "will not do." *Twombly*, 550 U.S. at 555. This conclusory allegation with no mention of a specific time or place where a meeting of the minds took place fails to state a plausible claim that the Individual Defendants came to any kind of agreement or understanding. GMW also consistently lumps the Individual Defendants together with all of the other Defendants in its allegations regarding the alleged civil conspiracy. The allegations do not indicate that the Individual Defendants had the objective to destroy GMW. To the contrary, the Ethics Memorandum indicates that the Individual Defendants were attempting to protect GMW. There are simply no specific factual allegations suggesting that the Individual Defendants entered into a conspiracy to destroy or otherwise harm GMW. Accordingly, GMW's claim of civil conspiracy against the Individual Defendants must be dismissed.

III. Preemption By the Utah Uniform Trade Secrets Act

Each of the Moving Defendants alternatively argues that GMW's tort-based claims—specifically, the claims for intentional interference with existing or potential economic relations (Claim 4), unjust enrichment (Claim 6), fraudulent inducement (Claim 9), fraudulent nondisclosure (Claim 11), and civil conspiracy (Claim 12)—are premised, in whole or in part, on the same factual allegations that underpin GMW's claim for misappropriation of trade secrets and therefore are preempted by the Utah Uniform Trade Secrets Act. The UTSA "displaces conflicting tort, restitutionary, and other [Utah law] providing civil remedies for

misappropriation of a trade secret . . . [but] does not affect . . . civil remedies that are not based upon misappropriation of a trade secret . . . ." Utah Code § 13-24-8. GMW concedes that its tort claims are based, at least in part, on misappropriation of trade secrets, but argues that the UTSA does not preempt its tort-based claims because they are not based *solely* on the misappropriation of trade secrets.

The Utah Court of Appeals has interpreted the UTSA as preempting tort claims "to the extent that [they are] based on factual allegations supporting a misappropriation of trade secrets or otherwise confidential information." *CDC Restoration & Constr., LC v. Tradesmen Contractors, L.L.C.*, 274 P.3d 317, 331 (Utah Ct. App. 2012).[8] The Utah Court of Appeals clarified that "[u]nder this standard, if proof of a non-UTSA claim would also simultaneously establish a claim for misappropriation of trade secrets, it is preempted irrespective o[f] whatever surplus elements of proof were necessary to establish it." *Id.* (citation and quotations omitted). "Stated differently, if the [non-UTSA] claim fails without the allegations regarding misuse of information, the UTSA preempts it." *Giles Const.*, 2015 WL 3755863 at *6. (emphasis in original) (analyzing UTSA preemption of claims for interference with contractual relations and unjust enrichment based on the alleged unauthorized use of information). In adopting this more narrow interpretation of preemption, the Utah Court of Appeals specifically rejected the interpretation of other state courts that hold that the uniform trade secret act preempts all claims that are factually related to the alleged misappropriation of trade secrets. *CDC Restoration &*

[8] The court notes the non-precedential value of this Utah Court of Appeals case, but finds it persuasive of how the Utah Supreme Court might rule. *See Occusafe, Inc. v. EG&G Rocky Flats, Inc.*, 54 F.3d 618, 622 n.1 (10th Cir. 1995) ("In a diversity case, federal courts are not 'absolutely bound' by the decisions of intermediate state appellate courts, but those decisions can be 'persuasive of how the [State] Supreme Court might rule." (citations omitted)). *See also Mona Vie, LLC v. FVA Ventures, Inc.*, No. 2:12-cv-152-TS, 2012 WL 1952496, at *2 & *3 (May 30, 2012, D. Utah) (unpublished) (citing to and relying on *CDC Restoration* in a UTSA preemption case); *Giles Const., LLC v. Tooele Inventory Solution, Inc.*, No. 2:2-cv-37-RJS, 2015 WL 3755863, *6 (June 2, 2015, D. Utah) (unpublished) (same).

Const., 274 P.3d at 330–31 (citation omitted). The standard articulated in *CDC Restoration & Const.* works to accomplish the purpose of the UTSA "to preserve a single tort action under state law for misappropriation of a trade secret." *Id.* at 329 (citation omitted).

In evaluating a UTSA preemption claim, courts perform "a preliminary examination of the facts underlying the non-UTSA claim . . . to determine whether a claim is preempted." *Id.* at 330. The court will accordingly analyze the factual allegations of the complaint underlying each of GMW's tort-based claims to determine whether they fail without the allegations regarding misuse of information.

A. Intentional Interference With Existing or Potential Economic Relations

GMW alleges intentional interference against all of the Moving Defendants. To properly bring a claim for intentional interference, GMW must allege facts supporting the following elements: "(1) . . . the defendant intentionally interfered with the plaintiff's existing or potential economic relations, (2) . . . by improper means, (3) causing injury to the plaintiff." *Eldridge*, 345 P.3d at 565. In support of its claim for intentional interference, GMW alleges the following as the improper means used by Defendants:

> 165. Defendants *intentionally induced GMW to enter into contracts with Defendants by deceit or misrepresentation* for the purpose of gaining personal competitive advantage with GMW's business partners and prospective business partners, and depriving GMW of its existing or prospective relationships with those business partners.
>
> 166. *Defendants also obtained and used GMW's confidential information by the improper means of deceit, misrepresentation, breach of contract and by inducing others to breach their contracts with GMW with the intent to gain unfair competitive advantage against GMW, to deprive GMW of the value of its investment and business opportunities and to steal its business and business model.*

[*Complaint*, ¶¶ 165–66 (emphasis added)].

1. <u>The Individual Defendants</u>

As discussed *supra* II.E., GMW does not allege that the Individual Defendants induced it to enter into any contracts. Rather, GMW's claim for fraudulent inducement is alleged against only Hall, Mr. Behunin, USURF, and AWSF. Thus, the only "improper means" allegedly used by the Individual Defendants is the obtaining and use of GMW confidential information. Because proof of the non-UTSA claim of intentional interference against the Individual Defendants would also simultaneously establish a claim for misappropriation of trade secrets, the intentional interference claim against the Individual Defendants is preempted by the UTSA. Preemption is therefore an alternative basis on which to dismiss the intentional interference claim against the Individual Defendants.

2. The Hall Defendants

The Complaint does not allege that Island Park or Tempus induced GMW to enter into contracts by deceit, misrepresentation, or otherwise. The only "improper means" allegedly used by Island Park and Tempus are the obtaining and use of GMW confidential information. Because proving the improper means would also simultaneously establish a claim for misappropriation of trade secrets, the intentional interference claim against Island Park and Tempus is preempted by the UTSA.

Hall, on the other hand, is alleged to have fraudulently induced GMW to enter into contracts with him. But, as discussed *supra* II.C.2., GMW has failed to plead its claim of fraudulent inducement against Hall with the requisite particularity. The only adequately-pled allegation supporting GMW's claim for intentional interference is its allegation that Hall misappropriated GMW's trade secrets. Because GMW's intentional interference claim against Hall necessarily fails without the allegations regarding the misappropriation of its trade secrets, the UTSA preempts it.

B. Unjust Enrichment

GMW brings an unjust enrichment claim against the Hall Defendants. The Hall Defendants argue that this claim is preempted by the UTSA. Three elements are required to establish an unjust enrichment claim:

> First, there must be a benefit conferred on one person by another. Second, the conferee must appreciate or have knowledge of the benefit. Finally, there must be the acceptance or retention by the conferee of the benefit under such circumstances as to make it inequitable for the conferee to retain the benefit without payment of its value.

Desert Miriah, Inc. v. B & L Auto, Inc., 12 P.3d 580, 582 (Utah 2000) (internal citations and quotations omitted).

GMW's claim for unjust enrichment is supported by the following allegation: "The foregoing acts of Defendants [alleged in the Complaint] constitute a wrongful appropriation of, and invasion into, GMW's confidential trade secret information under common law." [*Complaint*, ¶¶ 180]. Because GMW's claim for unjust enrichment against the Hall Defendants is entirely based on the allegations supporting its claim for misappropriation of trade secrets, its claim for unjust enrichment against the Hall Defendants is preempted and must therefore be dismissed.

C. Fraudulent Inducement

GMW brings a claim for fraudulent inducement against Hall. A claim of fraudulent inducement requires proof of the following elements:

> (1) that a representation was made (2) concerning a presently existing material fact (3) which was false and (4) which the representor either (a) knew to be false or (b) made recklessly, knowing that there was insufficient knowledge upon which to base such a representation, (5) for the purpose of inducing the other party to act upon it and (6) that the other party, acting reasonably and in ignorance of its falsity, (7) did in fact rely upon it (8) and was thereby induced to act (9) to that party's injury and damage.

Keith, 337 P.3d at 225–26. Hall argues that the fraudulent inducement claim against him is preempted by the UTSA. GMW relies on the following allegation to support its fraudulent

inducement claim against Hall: "Hall made the [false] statements for the purpose of inducing GMW to act upon them, *including for the purpose of inducing GMW to divulge its confidential and proprietary information*, and to induce GMW to further evaluate a transaction with Hall to limit GMW's bargaining position in the future." [*Complaint*, ¶ 225 (emphasis added)].

GMW alleges that Hall had two purposes for making the allegedly false statements: to induce GMW to divulge its confidential information and to induce GMW to further evaluate a transaction with Hall. Because proof of Hall's purpose for making the alleged false statements would not simultaneously establish a claim for misappropriation of trade secrets, GMW's fraudulent inducement claim against Hall is not preempted by the UTSA. However, because GMW failed to particularly plead this claim under Fed. R. Civ. P. 9(b), the fraudulent inducement claim against Hall will be dismissed.

D. Fraudulent Nondisclosure

GMW brings a fraudulent nondisclosure claim against all the Moving Defendants, except for Island Park. Such a claim is composed of three elements: "(1) that the nondisclosed information is material, (2) that the nondisclosed information is known to the party failing to disclose, and (3) that there is a legal duty to communicate." *Yazd*, 143 P.3d at 286. GMW alleges that the material information not disclosed by the Defendants generally included the so-called AsiaSat Omissions, the fact that none of the defendants informed GMW that they had misappropriated GMW's confidential and proprietary information (the "Misappropriation Omissions"), and "other unlawful nondisclosures and concealments." [*Complaint*, ¶ 242]. Proving the nondisclosure of this information would not simultaneously establish a claim for misappropriation of trade secrets because it does not require proof of a UTSA violation. Accordingly, GMW's fraudulent nondisclosure claim is not preempted by the UTSA. As

previously discussed, however, because GMW failed to adequately plead the existence of a legal duty on the part of the Moving Defendants, the fraudulent nondisclosure claim against them must be dismissed on that ground.

E. Civil Conspiracy

GMW alleges a claim for civil conspiracy against the Moving Defendants. To prevail on a claim for civil conspiracy, a plaintiff must demonstrate "(1) a combination of two or more persons, (2) an object to be accomplished, (3) a meeting of the minds on the object or course of action, (4) one or more unlawful, overt acts, and (5) damages as a proximate result thereof." *Pohl, Inc. of Am. v. Webelhuth*, 201 P.3d 944, 954–55 (Utah 2008). As to the fourth element, GMW alleges that

> Defendants engaged in one or more unlawful, overt acts in furtherance of this object, as set forth in the preceding twelve causes of action, including but not limited to, *the misappropriation of GMW's trade secrets*, the interference with GMW's contractual and economic relationship with its critical business partner AsiaSat, the fraudulent representations to GMW, and the fraudulent omissions withheld from GMW.

[*Complaint*, ¶¶ 250 (emphasis added)].

GMW alleges that all of the actions on which it bases its claims against the Moving Defendants were overt acts in furtherance of the alleged conspiracy. As has been discussed above, however, many of those actions and claims have either been inadequately pled or are preempted by the UTSA. Specifically, all causes of action against Hall, Housley, Keller, Hurst, and Wade are either inadequately pled or preempted. Thus, the civil conspiracy claim against Housley, Keller, Hurst, and Wade fails because the allegations regarding misuse of GMW's trade secrets are preempted and there are no other well-pled allegations of one or more unlawful, overt acts against these defendants. Likewise, the civil conspiracy claim against Hall fails because all causes of action except for the trade secret misappropriation claim against him are either

inadequately pled or are preempted. There are, however, still allegations of unlawful, overt conduct by Island Park and Tempus, i.e., allegations of breach of contract and breach of the implied covenant of good faith and fair dealing by Island Park, and allegations of statutory violations by Tempus. Thus, the court denies the motion to dismiss the civil conspiracy claim against Island Park and Tempus.

CONCLUSION AND ORDER

In sum, the court GRANTS Debbie Wade's Motion to Dismiss [Docket 271]; GRANTS Mark Hurst's Motion to Dismiss [Docket 288]; GRANTS Brent Keller's Motion to Dismiss [Docket 289]; GRANTS Erin Housley's Motion to Dismiss [Docket 290]; and GRANTS IN PART AND DENIES IN PART Alan Hall's, Island Park Investments', and Tempus Global Data, Inc.'s Motion to Dismiss [Docket 296].

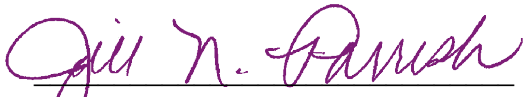
The court hereby ORDERS that the following causes of action be DISMISSED WITHOUT PREJUDICE:

1. GMW's first and third causes of action for breach of contract and breach of the implied covenant of good faith and fair dealing against Hall;
2. GMW's second cause of action for trade secret misappropriation against Housley, Hurst, Wade, and Keller;
3. GMW's fourth cause of action for intentional interference with existing or potential economic relations against Hall, Island Park, Tempus, Housley, Hurst, Wade, and Keller;
4. GMW's fifth cause of action for violations of Section 43(a) of the Lanham Act against Hall and Island Park;
5. GMW's sixth cause of action for unjust enrichment against Hall, Island Park, and Tempus;

6. GMW's seventh cause of action for violation of the Utah Truth in Advertising Act against Hall and Island Park;
7. GMW's eighth cause of action for violations of the Utah Unfair Practices Act against Hall and Island Park;
8. GMW's ninth claim for fraudulent inducement against Hall;
9. GMW's eleventh cause of action for Fraudulent Nondisclosure against Hall, Tempus, Housley, Hurst, Wade, and Keller; and
10. GMW's twelfth cause of action for civil conspiracy against Hall, Housley, Hurst, Wade, and Keller.

Signed March 27, 2017.

BY THE COURT



Jill N. Parrish
United States District Court Judge