2018 WL 5903915
Only the Westlaw citation
is currently available.
United States District Court, C.D. California.

Justice LAUB
v.
Nicholas HORBACZEWSKI, et al.

Case No. LA CV17-6210 JAK (KS)
|
Filed 07/05/2018

Attorneys and Law Firms

Patrick M. Ryan, Stephen C. Steinberg, Gabriella A. Wilkins, Joseph John Fraresso, Bartko Zankel Bunzel and Miller APC, San Francisco, CA, for Justice Laub.

Kenneth A. Kuwayti, Morrison and Foerster LLP, Paolo Alto, CA, Andrew Ditchfield, Pro Hac Vice, Brian M. Burnovski, Pro Hac Vice, Peter M. Bozzo, Pro Hac Vice, Cindy S. McNair, Pro Hac Vice, Davis Polk and Wardwell LLP, New York, NY, Nicholas Rylan Fung, Morrison and Foerster LLP, Los Angeles, CA, for Nicholas Horbaczewski, et al.

Proceedings: (IN CHAMBERS) ORDER RE DEFENDANTS' MOTION TO DISMISS SECOND AMENDED COMPLAINT (DKT. 43)

JOHN A. KRONSTADT, UNITED STATES DISTRICT JUDGE

I. Introduction

***1** On July 10, 2017, Justice Laub ("Laub") brought this action against Nicholas Horbaczewski ("Horbaczewski") and Drone Racing League, Inc. ("DRL, Inc.") (collectively, "Defendants") in the Los Angeles Superior Court. Dkt. 1-1. The Complaint advanced claims for breach of contract, common count, fraud and breach of fiduciary duty. On August 22, 2017, Defendants removed the action. Dkt. 1.

On September 27, 2017, Daniel Kanes ("Kanes") and Laub (collectively, "Plaintiffs") filed an amended complaint ("FAC"). Dkt. 13. It advanced claims against Horbaczewski for breach of oral contract, breach of written contract, fraud, breach of fiduciary duty and intentional interference with prospective economic advantage. *Id.* It also brought claims for breach of implied contract and common count against all Defendants. *Id.* Defendants filed a motion to dismiss the FAC, which was granted in part. Dkt. 39.

On April 13, 2018, Plaintiffs filed a second amended complaint ("SAC"). Dkt. 42. It advances claims for breach of oral, written and implied-in-fact contract and quantum meruit against both Defendants, and claims for fraud, breach of fiduciary duty, intentional interference with prospective economic advantage and promissory estoppel against Horbaczewski. On April 30, 2018, Defendants filed a motion to dismiss the SAC ("Motion" or "Mot."). Dkt. 43. [1] The Motion challenges all but two of the claims -- the one advanced by Laub for intentional interference with prospective economic advantage and the fraud claim. DRL, Inc., also challenges personal jurisdiction with respect to the

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

contract claims. Plaintiffs opposed the Motion ("Opp'n" (Dkt. 54)), and Defendants replied ("Reply" (Dkt. 56)).

A hearing on the Motion was conducted on June 11, 2018, and the matter was taken under submission. For the reasons stated in this Order, the Motion is **GRANTED IN PART**.

II. Factual Background

A. The Parties

Both Laub and Kanes reside in California. SAC ¶¶ 6, 7. Horbaczewski resides in New York. *Id.* ¶ 8. DRL, Inc. is a Delaware corporation. *Id.* ¶ 9.

B. Allegations in the SAC

The SAC alleges that in 2014, Plaintiffs conceived the idea of a televised drone racing league ("DRL"), and agreed to be partners in the venture. *Id.* ¶ 16. It also alleges that, in order to proceed with this project, they began meeting with prospective partners and investors in early 2015. *Id.* ¶ 17. The SAC alleges that, in January 2015, Plaintiffs presented their idea to Blank Paige Productions ("Blank Paige"), a television production company that is located in Los Angeles. *Id.* It also alleges that, on January 22, 2015, Matthew Mazzeo ("Mazzeo"), a venture capitalist who resides in California, introduced Plaintiffs to Horbaczewski, and identified him as a potential investor. *Id.* ¶ 18.

***2** The SAC next alleges that Plaintiffs and Horbaczewski "corresponded and talked on the phone numerous times" over the following weeks and conducted additional in-person meetings in Los Angeles on March 11-12, 2015. *Id.* ¶ 19. It also alleges that during these meetings Plaintiffs and Horbaczewski "orally agreed to be partners in and co-founders of the DRL, with each owning a third of the company." *Id.* ¶ 20.

During February and March 2015, Plaintiffs and Horbaczewski allegedly jointly drafted and agreed to a "Business Plan." *Id.* ¶ 21.[2] To facilitate this process, Horbaczewski uploaded a draft of the Business Plan to the "Google Docs" platform, thereby allowing each of them to access and make written comments and proposed changes to the document. *Id.* ¶ 21. Through that process, in February 2015, Plaintiffs added the following language about the shared ownership of the planned operation: "At this Time [sic] we are thinking 33% Dan [Kanes], 33% Justice [Laub], and 33% Nick [Horbaczewski]. We want to give Matt [Mazzeo] the additional 1% for introducing us." Kuwayti Decl. Ex. B ("Business Plan"), at 8, Dkt. 43-4. This language remained in the Business Plan. The SAC alleges that during their meetings in March 2015, Plaintiffs and Horbaczewski "discussed that this language in the Business Plan was intended by the Parties to mean that each of them would own 1/3 of the DRL and they would work together as co-founders." SAC ¶ 21. The SAC also alleges that "[i]mmediately after the March 11-12, 2015 meetings, Dan, Justice, and Horbaczewski proceeded to act together as partners and co-founders to continue the development of their drone racing venture." *Id.*

The SAC next alleges that, during the March meetings Horbaczewski stated his intention to serve as CEO of the operation, invest $250,000 as seed money and work

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

on business development. *Id.* ¶ 22. Laub and Kanes were to provide ideas for the DRL, and assist with technical issues and logistics, community outreach, marketing, strategy, location scouting, and competitor and fan interaction and experience. *Id.* Kanes allegedly offered to invest $250,000 in the venture, but Horbaczewski declined to require it, stating that "Plaintiffs did not need to contribute capital because they had contributed their ideas, concepts, and existing work product to the venture." *Id.* ¶ 22. It is also alleged that, between January and the fall of 2015, Plaintiffs "performed substantial work for Horbaczewski and the yet-to-be-formed DRL to help get it off the ground." *Id.* ¶¶ 25, 43; *see id.* ¶¶ 26-33.

It is alleged that on February 9, 2015, Plaintiffs received an offer from Blank Paige to develop and televise a program featuring drone racing. *Id.* ¶ 24. Plaintiffs allegedly sought advice from Horbaczewski on the offer. *Id.* On February 16, 2015, Horbaczewski allegedly urged them to reject the offer because the three of them would get better financial returns from DRL by retaining television rights. *Id.*

***3** Horbaczewski then allegedly requested that Plaintiffs provide to him written biographies and other personal information about themselves. It is next alleged that after they did so, he used this information "to identify Plaintiffs as co-founders of the DRL in pitch decks shown to one or more potential investors." *Id.* ¶ 34. It is alleged that, between April and June 2015, Plaintiffs and Horbaczewski met in Los Angeles two to three times on their planned operation. *Id.* ¶ 35. It is alleged that, during these meetings, Plaintiffs "repeatedly asked ... for more formal documentation of their co-ownership of the DRL," but that "Horbaczewski repeatedly dodged the issue, claiming that it could not be done until the company was formed." *Id.*

The SAC next alleges that Horbaczewski incorporated DRL, Inc. in Delaware on April 17, 2015. *Id.* ¶ 36. It is also alleged that he did so without providing any advance notice to Plaintiffs and without providing them with any ownership interests in this entity. *Id.* On May 28, 2015, Horbaczewski allegedly informed Laub and Kanes that he was actively seeking funding, but had not yet secured any. *Id.* ¶ 37. The SAC then alleges that he next said that the three of them should invest funds in DRL "on the same terms." *Id.* The SAC then alleges that, on or about August 19, 2015, Horbaczewski sent Kanes documents that offered to have him invest in DRL, Inc. on the same terms as outside investors. *Id.* ¶ 38. However, these documents did not acknowledge their existing agreement that each of them would own one-third of the company. *Id.* Those documents allegedly stated that Horbaczewski and three others already had invested in DRL, Inc. *Id.* ¶ 39. The SAC alleges that, prior to seeing these documents, neither Laub nor Kanes was aware of either the corporate structure or the shareholders of DRL, Inc. It also alleges that they could not have discovered this information through the exercise of reasonable diligence. *Id.* ¶ 40. On August 24, 2015, Kanes allegedly declined to invest in DRL, Inc. on the same terms as the existing investors because the investment documents failed to recognize that he already owned one-third of the company. *Id.* ¶¶ 41-42. The next day, DRL, Inc. allegedly completed the sale of shares to certain outside investors. *Id.*

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

Finally, the SAC alleges that Plaintiffs continued to provide valuable services to Horbaczewski and DRL, Inc. until the fall of 2015. *Id.* ¶¶ 43-45. In late 2015, Horbaczewski ceased communications. *Id.* ¶ 44.

III. Analysis

A. Fed. R. Civ. P. 12(b)(6)

1. Legal Standards

Fed. R. Civ. P. 8(a) provides that a "pleading that states a claim for relief must contain ... a short and plain statement of the claim showing that the pleader is entitled to relief." The complaint must state facts sufficient to show that a claim for relief is plausible on its face. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The complaint need not include detailed factual allegations, but must provide more than a "formulaic recitation of the elements of a cause of action." *Id.* at 555. "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks and citations omitted).

Pursuant to Fed. R. Civ. P. 12(b)(6), a party may bring a motion to dismiss a cause of action that fails to state a claim. It is appropriate to grant such a motion only where the complaint lacks a cognizable legal theory or sufficient facts to support one. *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008). In considering a motion to dismiss, the allegations in the challenged complaint are deemed true and must be construed in the light most favorable to the non-moving party. *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-38 (9th Cir. 1996). However, a court need not "accept as true allegations that contradict matters properly subject to judicial notice or by exhibit. Nor is the court required to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences." *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008) (citing *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001)).

***4** In considering a motion brought pursuant to Rule 12(b)(6), a court may consider the complaint, documents attached to, or incorporated by reference in the complaint, and matters that are properly the subject of judicial notice. *Ritchie*, 342 F.3d at 908. However, if evidence that goes beyond these categories is considered, in general the motion is converted to one for summary judgment, with the non-moving parties provided a reasonable opportunity to respond with evidence. *Id.* at 907; Fed. R. Civ. P. 12(d). In light of the procedural history of this matter, it is neither appropriate nor efficient to convert the Motion in this manner. *See* *Hamilton Materials, Inc. v. Dow Chem. Corp.*, 494 F.3d 1203, 1207 (9th Cir. 2007) ("Federal Rule of Civil Procedure 12(b)(6) specifically gives courts the discretion to accept and consider

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

extrinsic materials offered in connection with these motions"). [3]

2. Application

a) First, Second and Third Causes of Action: Breach of Oral, Written and Implied Contracts

(1) Legal Standards

"The essential elements of a claim of breach of contract, whether express or implied, are the contract, the plaintiff's performance or excuse for nonperformance, the defendant's breach, and the resulting damages to the plaintiff." *Green Valley Landowners Ass'n v. City of Vallejo*, 241 Cal. App. 4th 425, 433 (2015). "A contract is either express or implied. The terms of an express contract are stated in words. The existence and terms of an implied contract are manifested by conduct. The distinction reflects no difference in legal effect but merely in the mode of manifesting assent." *Retired Employees Ass'n of Orange Cty., Inc. v. County of Orange*, 52 Cal. 4th 1171, 1178 (2011) (citing Cal. Civ. Code §§ 1619-1621). Such a contract "must be founded upon an ascertained agreement of the parties to perform it," and such agreement "may be inferred from the conduct ... of the parties." *Friedman v. Friedman*, 20 Cal. App. 4th 876, 887 (1993). In general, California law does not apply different standards as to written and oral contracts, or those that may be hybrids, unless the agreement is one that must be in writing. Cal. Civ. Code § 1622 ("All contracts may be oral, except such as are specially required by statute to be in writing.").

"A written contract may be pleaded either by its terms — set out verbatim in the complaint or a copy of the contract attached to the complaint and incorporated therein by reference — or by its legal effect," which also requires allegations as to "the substance of its relevant terms." *Haskins v. Symantec Corp.*, No. 13-CV-1834-JST, 2013 WL 6234610, at *10 (N.D. Cal. Dec. 2, 2013) (internal quotation marks and citations omitted). "[I]t is unnecessary for a plaintiff to allege the terms of the alleged contract with precision," but "the Court must be able generally to discern at least what material obligation of the contract the defendant allegedly breached." *Langan v. United Servs. Auto. Ass'n,* 69 F. Supp. 3d 965, 979 (N.D. Cal. 2014).

(2) Application

(a) Breach of Oral Contract by Horbaczewski

***5** The SAC advances claims against Horbaczewski for breach of oral contract, breach of written contract, or, in the alternative, breach of an implied contract. The premise for these claims are the allegations that Horbaczewski and Plaintiffs agreed to be co-founders of the DRL, and that each would have a one-third ownership interest in the entity. The SAC alleges that Horbaczewski breached that agreement.

In support of the claim for breach of oral contract, the SAC alleges that Laub, Kanes

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

and Horbaczewski jointly drafted the Business Plan prior to their meetings in Los Angeles in March 2015. It then alleges that, during those meetings, Horbaczewski orally accepted the offer made by Plaintiffs that he become a co-founder of DRL in accordance with the material terms of the Business Plan. SAC ¶ 50. These included that each co-founder would hold a one-third interest in the entity. *Id.*

Defendants argue that these allegations are insufficient to state a claim for a breach of an oral contract. In support of this position, they contend that the alleged terms are indefinite and incomplete. Mot. at 12-13. They rely on the absence of allegations as to how work would be allocated among Plaintiffs and Horbaczewski in the development and operation of DRL. They also claim that the allegations are insufficient as to how DRL would be funded.

Defendants have cited no legal authority that supports these positions. Under California law, to show the formation of a partnership requires "the association of two or more persons to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership." Cal. Corp. Code § 16202. The SAC sufficiently alleges there was an association of Plaintiffs and Horbaczewski, that they were joint and equal owners, and that their purpose was to generate revenues and profits. This is sufficient. *See B.K.K. Co. v. Schultz*, 7 Cal. App. 3d 786, 796 (1970) (an agreement among three individuals that they would conduct a business for profit and have equal ownership interests was sufficient to prove that they had created a joint venture or partnership); *see also* *Swierkiewicz v. Sorema N. A.*, 534 U.S. 506, 511-12 (2002) (it would be incongruous to require a plaintiff to plead more facts to survive a motion to dismiss than he would ultimately be required to prove at trial to succeed on the merits).

Further, the SAC includes allegations regarding the distribution of work and funding. Thus, it alleges that at the meetings in March 2015

> Horbaczewski stated that he would invest $250,000 as seed money, serve as CEO, and work on business development while Dan and Justice would provide ideas for the league, many of which they had already developed and shared, and services related to technical issues and race logistics, community outreach and marketing, strategy, location scouting, and competitor and fan interaction and experience, among other things.

SAC ¶ 22.

For the foregoing reasons the Motion is **DENIED** for the claims for breach of oral contract as to Horbaczewski.

(b) Breach of Written Contract by Horbaczewski

With respect to the claim for breach of written contract, the SAC alleges that "[a]t their March 11-12, 2015 meetings, Horbaczewski accepted Dan's and Justice's offer contained the Business Plan." *Id.* ¶ 58. Defendants argue that there was no written contract because the Business Plan could not constitute an offer, was too vague to be accepted and lacks significant, material terms. Mot. at 12-16. In support of this position, Defendants identified two terms in the Business Plan: (i) it provides that each party will hold 33% of the equity in the entity, and that the remaining 1% will be provided to Matt Mazzeo; and (ii) the parties intended to conduct the operation through an LLC.

***6** As noted in connection with the discussion of the oral contract claim, the Business Plan has sufficient material terms as required by California law. The Business Plan does include certain terms that are vague or that were to be refined based on the outcome of future discussions among the parties or research. However, none of these terms was essential to the Business Plan. A contract will not be deemed vague and unenforceable because it is missing terms that are not essential. *City of Los Angeles v. Superior Court*, 51 Cal. 2d 423, 433 (1959) ("Where the matters left for future agreement are unessential, each party will be forced to accept a reasonable determination of the unsettled point or if possible the unsettled point may be left unperformed and the remainder of the contract be enforced."). The essential terms of the Business Plan are alleged. Thus, each of the Plaintiffs and Horbaczewski would own 33% of DRL, and the three of them would work to build a profitable enterprise.

At the hearing, Defendants presented a new argument: the Business Plan required the parties to form an LLC, but they did not do so. Defendants argue that this confirms that the Business Plan cannot be deemed a binding contract to which they agreed. *See* Business Plan at 5. However, drawing plausible inferences in favor of the non-moving parties, that an LLC was not formed at the outset would not preclude its later creation or a subsequent modification as to the form of the entity. Further, as noted, the SAC alleges that Horbaczewski incorporated DRL, Inc. without notice to Plaintiffs. One potential inference from this averment is that this was also inconsistent with the terms of the contract.

Defendants' final argument is that the Business Plan was indeterminate. The premise of this position is that it states that each party would own 33% of DRL with 1% to Mazzeo. In contrast, the SAC alleges that each of the Plaintiffs owns one-third of the operation, *i.e.,* 33.33%. As to the capital structure of DRL, the Business Plan states: "At this Time we are thinking 33% Dan [Kanes], 33% Justice [Laub], and 33% Nick [Horbaczewski]. We want to give Matt [Mazzeo] the additional 1% for introducing us." SAC ¶ 58 (alterations in original). In explaining how the parties transitioned from 33% to 33.33%, the SAC alleges:

> At their March 11-12, 2015 meetings, Horbaczewski accepted Dan's and Justice's offer contained [in] the Business Plan. And, at their meetings on March 11-12,

> 2015, Dan, Justice, and Horbaczewski confirmed their agreement that they would each be co-founders of the DRL and confirmed their agreement to the terms set out in the Business Plan. Dan, Justice, and Horbaczewski discussed that the language in the Business Plan was intended by the Parties to mean that each of them would own 1/3 of the DRL and they would work together as co-founders to commercialize Dan and Justice's ideas for a televised drone racing league.

Id.

An issue has been presented as to these allegations. However, there could be plausible explanations. For example, after initially agreeing to provide a 1% interest to Mazzeo, through later discussions, they orally agreed not to so. But this cause of action presents a claim for breach of written contract. Although a written contract may be accepted orally, the SAC does not allege, and Plaintiffs have not explained, how a writing that is modified orally, remains a written contract. *Bank of Am. v. Sec. Pac. Nat. Bank*, 23 Cal. App. 3d 638, 645 (1972) ("[W]hile the acceptance does not have to be in writing, the writing which is orally accepted must contain the items of the agreement and the obligations sued upon.") (citations omitted).

Finally, as presently alleged, the written and oral contract causes of action do not present material differences. Both appear to rely on the drafting of the Business Plan, and the subsequent discussions about its implementation.

For the foregoing reasons, the Motion is **GRANTED**, without prejudice, as to the claim for breach of written contract as to Horbaczewski.

(c) Breach of Implied Contract by Horbaczewski

***7** The SAC alleges, in the alternative, that Horbaczewski breached an implied contract. SAC ¶¶ 64-72. The SAC alleges that the implied contract was created as the result of the conduct of the parties up to the time of the breach by Horbaczewski and DRL, Inc. in August 2015. It also alleges that Plaintiffs continued to perform until they were prevented from doing so in late 2015. *Id.* ¶¶ 69-70. The SAC alleges that under the terms of the implied contract, each co-founder would hold a one-third interest in the entity, as opposed to the 33% share stated in the Business Plan. It also alleges that the one-third interests were first discussed at the March 2015 meetings. *Id.* ¶¶ 21, 76. The inference from these allegations is that the alleged implied contract was formed after the March meetings.

Many of the allegations offered to support this claim do not include relevant dates. *See* SAC ¶¶ 65-68. For example, the SAC alleges that, based on their understanding that an implied contract was in place, "Plaintiffs provided ideas

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

and services to Horbaczewski and the DRL, rejected an earlier TV production deal, and assigned their rights to a drone racing league TV show to the yet-to-be-formed DRL, among other things." *Id.* ¶ 66. However, the SAC also alleges that Plaintiffs rejected a television production proposal made on February 16, 2015. That is prior to the alleged agreement that each would hold a one-third interest. *Id.* ¶ 24. The SAC does allege that Plaintiffs provided services to Horbaczewski and DRL, Inc. through July 2015, and that they continued to do so during the summer and fall of 2015. *Id.* ¶¶ 25, 43. These allegations are not sufficient to support a claim that the parties manifested their assent to a contract through performing or accepting these services.

For the foregoing reasons the Motion is **GRANTED**, without prejudice, as to the claim for breach of an implied contract as to Horbaczewski.

(d) Breach of Contract by DRL, Inc.

The SAC alleges that DRL, Inc. is liable for breach of contract because after its incorporation it implicitly ratified it. SAC ¶¶ 52, 53, 60, 61, 67, 69, 70. Defendants argue that the allegations of the SAC support a contrary conclusion, *i.e.,* that DRL, Inc. disavowed the contract. Mot. at 16-17. Plaintiffs respond that the prior order on the motion to dismiss the FAC found that it adequately alleged ratification by DRL, Inc. They add that the new allegations of the SAC provide further support for this determination because they expressly allege that DRL, Inc. accepted the benefits of the contract. Opp'n at 18.

The order on the motion to dismiss the FAC concluded that DRL, Inc. was subject to personal jurisdiction in this District, through its implied ratification of the alleged agreement between the parties. Dkt. 39 at 7-9. However, because that order addressed a motion to dismiss for lack of personal jurisdiction, evidence was presented and considered. The evidence included Plaintiffs' declarations. *Id.* at 8 ("The FAC alleges and Plaintiffs' declarations assert that DRL received the benefits of Plaintiffs' creative contributions and other services through the summer of 2015."). The order did not address whether the allegations in the FAC were sufficient as to whether DRL, Inc. ratified a contract made by Horbaczewski because it concluded that the FAC did not sufficiently allege that the parties had entered any contract. Dkt. 39 at 11-12. Because this Order has determined that the SAC has sufficiently alleged such a claim, the issue of ratification by DRL, Inc. is ripe for adjudication. The question is whether the SAC sufficiently alleges that, after DRL, Inc. was incorporated in April 2015, it implicitly ratified a contract among the other parties by accepting certain contractual benefits.

The SAC alleges that Plaintiffs performed substantial work for Horbaczewski through at least July 2015 to assist in starting and advancing the operations of DRL, Inc. SAC ¶ 25. Kanes also allegedly "contributed contacts and potential business connections, including arranging an opportunity to showcase the DRL at the Amazon AWS event in Las Vegas in October 2015." *Id.* ¶ 29. The SAC also alleges that, between April and June 2015, Plaintiffs met two to three times with Horbaczewski

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

in Los Angeles to discuss the DRL business plan and operations. *Id.* ¶ 35. The SAC further alleges that Plaintiffs continued to provide services to Horbaczewski and DRL, Inc. through the fall of 2015. *Id.* ¶ 43. Finally, the SAC alleges that DRL, Inc. continued to accept the benefits and services provided by Plaintiffs until November 2015. *Id.* ¶ 45. These allegations are sufficient to state that DRL, Inc. implicitly ratified a contract by Horbaczewski and Plaintiffs with respect to its establishment and operations.

***8** The allegations cited by Defendants do not support a different outcome. Mot. at 21-23. Construing them in the light most favorable to Plaintiffs, they could show that DRL, Inc. breached the same contract that it ratified. These allegations are inconsistent with the contentions that DRL, Inc. lacked knowledge of the purported contract, did not receive the benefits of the contract or rejected Plaintiffs' contributions prior to November 2015.

For the foregoing reasons, the Motion is **DENIED** as to the claim for breach of contract against DRL, Inc.

b) Fourth Cause of Action: Quantum Meruit

Defendants challenge the quantum meruit claim based solely on the financial relief that it seeks. Mot. at 24-25. The SAC alleges that "Horbaczewski and the DRL promised to compensate the Plaintiffs for their contributions by providing each of them with ownership of 1/3 of the company, the reasonable value of which is to be determined at trial." SAC ¶ 76. Defendants argue that a quantum meruit claim is equitable in nature, and that available financial remedies are measured by the reasonable value of the services provided by Plaintiffs. Because the FAC alleges that DRL should be valued at $100 million, potential damages of $66 million would be "orders of magnitude higher than the reasonable value of any services [Plaintiffs] have provided." Mot. at 24-25. Those allegations are not included in the SAC. However, even if they were considered, Defendants do not dispute that the SAC sufficiently alleges that there is some basis for relief, but only dispute the method of calculation that is alleged. Although this might have supported a motion to strike these particular allegations as to the scope of the remedy, it is not a basis to dismiss the cause of action.

For the foregoing reasons, the Motion is **DENIED** as to the claim for quantum meruit.

c) Sixth Cause of Action: Breach of Fiduciary Duty

The prior order concluded that the FAC had sufficiently alleged a claim for breach of fiduciary duty. Dkt. 39 at 15. Defendants assert that they can renew their challenge because an amended complaint has been filed. Reply at 6-7 (citing *Bruton v. Gerber Prods. Co.*, No. 12-CV-02412-LHK, 2014 WL 172111, at *7 n.2 (N.D. Cal. Jan. 15, 2014) ("Under Ninth Circuit law, 'an amended complaint supersedes the original complaint and renders it without legal effect,' ... such that a defendant may challenge an amended complaint in its entirety.") However, *Bruton* does not address whether a challenge to a prior ruling must be

addressed under the standards that apply to a motion for reconsideration. *See* Opp'n at 20. "Under the law of the case doctrine, a court is generally precluded from reconsidering an issue that has already been decided by the same court, or a higher court in the identical case." *United States v. Alexander*, 106 F.3d 874, 876 (9th Cir. 1997) (quotation marks and citation omitted). The Ninth Circuit has identified five factors that should be assessed in determining whether a matter should be reconsidered: "1) the first decision was clearly erroneous; 2) an intervening change in the law has occurred; 3) the evidence on remand is substantially different; 4) other changed circumstances exist; or 5) a manifest injustice would otherwise result." *Id.* The law of the case doctrine is discretionary, not mandatory, and a district court maintains the inherent procedural power "to *reconsider* its own interlocutory order provided that the district court has not been divested of jurisdiction over the order." *City of L.A., Harbor Div. v. Santa Monica Baykeeper*, 254 F.3d 882, 888-89 (9th Cir. 2001) (emphasis added). These standards are also included in Local Rule 7-18. [4]

***9** Defendants have not met these standards. Moreover, even if there were a de novo review of the issue, there is no basis to change the prior ruling. Defendants argue that the allegations of the SAC are insufficient to show that a contract was entered, and for the same reason cannot establish that a partnership was established. Absent an alleged partnership, there would be no basis to impose any fiduciary obligations on Horbaczewski. Mot. at 25-26. However, as explained above, the SAC sufficiently alleges a contract between the parties that created a partnership.

For the foregoing reasons, the Motion is **DENIED** as to the claim for breach of fiduciary duty.

d) Eighth Cause of Action: Promissory Estoppel

(1) Legal Standards

Under California law, the elements of promissory estoppel are: "(1) a promise clear and unambiguous in its terms; (2) reliance by the party to whom the promise is made; (3) his reliance must be both reasonable and foreseeable; and (4) the party asserting the estoppel must be injured by his reliance." *B & O Mfg., Inc. v. Home Depot U.S.A., Inc.*, No. C 07-02864 JSW, 2007 WL 3232276, at *6 (N.D. Cal. Nov. 1, 2007) (quoting *Laks v. Coast Fed. Sav. & Loan Ass'n*, 60 Cal. App. 3d 885, 890 (1976)).

(2) Application

Defendants argue that the SAC fails to allege a clear and unambiguous promise because it lacks contentions as to certain material terms. These include the role of the parties and capital contribution. Mot. at 23-24. Defendants also argue that any reliance by Plaintiffs must have been unreasonable, because Plaintiffs "knew or should have known that essential terms, such as capital contribution, financing and roles of parties, were lacking." *Id.* at 24. As explained above, Defendants have not identified any authority that requires the inclusion of these

specific terms in an agreement to form a business. Further, the SAC includes allegations as to the initial funding of the business and the roles of the co-founders. SAC ¶ 22. The SAC also alleges that Horbaczewski promised that each Plaintiff would own one-third of DRL if they would be co-founders with him and work to advance the venture. *Id.* ¶ 102.

This alleged promise is sufficiently clear and unambiguous to state a claim.

For the foregoing reasons the Motion is **DENIED** as to the claim for promissory estoppel.

e) Statute of Limitations

Defendants contend that the breach of oral contract, breach of implied contract, quantum meruit, promissory estoppel and tortious interference claims brought by Kanes are time-barred. Mot. at 26-30.

Kanes was added as a plaintiff in the FAC, which was filed on September 27, 2017. The SAC alleges that Plaintiffs became aware by August 19, 2015, that Horbaczewski had breached their agreement. SAC ¶¶ 38-40. Plaintiffs do not appear to dispute that Kanes' claims for breach of oral contract, breach of implied contract, quantum meruit, promissory estoppel and tortious interference are all subject to a two-year statute of limitations. Opp'n at 21-25; *see also* Dkt. 39 at 10. However, Plaintiffs argue that Kanes' claims are timely because they "relate back" to the original Complaint, which was filed on July 10, 2017. Absent the application of the relation back doctrine, any claim subject to a two-year statute of limitations would likely be time-barred.

The parties agree that claims relate back to when the Complaint was filed if: "1) the original complaint gave the defendant adequate notice of the claims of the newly proposed plaintiff; 2) the relation back does not unfairly prejudice the defendant; and 3) there is an identity of interests between the original and newly proposed plaintiff." *Immigrant Assistance Project of L.A. Cty. Fed'n of Labor (AFL-CIO) v. I.N.S.*, 306 F.3d 842, 857 (9th Cir. 2002) ("*Immigration Assistance Project*") (quoting *Rosenbaum v. Syntex Corp.*, 95 F.3d 922, 935 (9th Cir. 1996)).

(1) Notice

***10** Defendants argue that the Complaint failed to give them notice of claims by Kanes as to his alleged ownership interest in DRL because it was framed in terms of actions directed toward Laub. Mot. at 28-29; Reply at 8. Defendants also argue that an assessment of adequate notice requires a court to "examine whether the original complaint clearly stated that the plaintiff sought to represent others." Reply at 8 (quoting *Allen v. Similasan Corp.*, 96 F. Supp. 3d 1063, 1069 (S.D. Cal. 2015)). Plaintiffs disagree and argue that "notice does not relate to the identity of the party asserting the claim but instead relates to notice of the underlying transaction, conduct, or occurrence." Opp'n at 22 (citing *Lorenzen v. Conn. Gen. Life Ins. Co.*, No. CV 13-08427 DDP (PLAx), 2014 WL 696437, at *5 (C.D. Cal. Feb. 24, 2014)).

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

Defendants' reliance on *Allen* is unpersuasive. Defendants distinguish the class action cases on which Plaintiffs rely as to other elements of the relation back test on the ground that this is not a class action, but rely on *Allen*, which was a class action. Reply at 8-10. Further, the analysis in *Allen* of "whether the original complaint clearly stated that the plaintiff sought to represent others" is sensible in that context because that allegation would clearly provide notice of the claims of later-named Plaintiffs. However, the Ninth Circuit has expressly endorsed the application of the relation back doctrine to plaintiffs that were not part of a class, but had no legal or familial relationship to the original plaintiffs. *Immigration Assistance Project*, 306 F.3d at 858 n.14 (citing with approval *In re Glacier Bay*, 746 F. Supp. 1379 (D. Alaska 1990)).

Plaintiffs argue that adequate notice "only requires notice of the relevant conduct, transaction, or occurrence — not the precise claims or identity of the party asserting them." Opp'n at 22. This follows the text of Fed. R. Civ. P. 15(c)(1)(B), and is the same as the test applied in *Lorenzen*. 2014 WL 696437, at *5 (because the new plaintiff was a co-beneficiary of the same policy and his claims were identical to the original claims, the claims arose from the same conduct and defendants were therefore provided adequate notice). This is consistent with Ninth Circuit authority, which requires that the proffered claims must be "sufficiently confined to the facts stated in the original pleadings to support an inference of adequate notice." *Besig v. Dolphin Boating & Swimming Club*, 683 F.2d 1271, 1278 (9th Cir. 1982).

The allegations of the Complaint were sufficient to put Defendants on notice of Kanes' claims. Although the original Complaint was filed by a self-represented litigant on forms created by the Judicial Council of California, it clearly alleged the relevant conduct that forms the basis for the claims of all of the Plaintiffs. Thus, there was an alleged agreement among Laub, Kanes and Horbaczewski to co-found DRL; Horbaczewski breached that agreement; and he "intended to steal Mr. Laub's ideas and the entire Drone Racing League for himself." Compl. at 3-4, 6, Dkt. 1-1. These averments were sufficient to put Defendants on notice that they were at risk of claims by Laub and Kanes with respect to the creation and operation of DRL, Inc. This was adequate notice under Rule 15(c)(1)(B) as to claims by Kanes.

(2) Unfair Prejudice

Defendants argue that they would be "severely prejudiced" if Kanes could pursue his claims because their exposure would double, *i.e.,* from the value of one-third of DRL to two-thirds of its value. Mot. at 29. However, "[t]he addition of new plaintiffs who are similarly situated to the original plaintiffs does not cause defendants any prejudice except that defendants incur the potential for increased liability. Increased liability is not sufficient prejudice to deny the relation back of such plaintiffs." *In re Glacier Bay*, 746 F. Supp. at 1391.

***11** The Ninth Circuit has concluded that "[d]efendants usually are prejudiced by the different identity of plaintiffs, if by nothing else." *Besig*, 683 F.2d at

1278. However, defendants must show some resulting unfairness, particularly when all of the plaintiffs are aligned and interacted collectively with defendants. Based on the allegations of the Complaint, it was clear that Kanes played a material role in the underlying interaction with Defendants. Finally, the time period between the filing of the Complaint and the SAC was approximately 80 days. This also undermines the claim of prejudice. This case remains at an early stage. Finally, discovery and testimony by Kanes would be relevant to the issues even if he were not a party. This confirms that adding Kanes as a Plaintiff will not have a material effect on the proceedings.

Based on the foregoing, this factor does not support a finding that relation back should not apply.

(3) Identity of Interests

The identity of interests requirement is met if the "circumstances giving rise to the claim remained the same as under the original complaint." *Raynor Bros. v. Am. Cyanimid Co.*, 695 F.2d 382, 384 (9th Cir. 1982). The Ninth Circuit has held that there was no identity of interests in a gender discrimination class action where the "amended complaint transformed the case from one seeking equal membership access to one seeking identical nonmember access." *Besig*, 683 F.2d at 1279. However, an identity of interests was present when the original and amended complaints were based on the same Immigration and Naturalization Service regulations and practices defining and interpreting the phrase "known to the government." *Immigrant Assistance Project*, 306 F.3d at 858.

Defendants argue that Kanes and Laub do not have an identity of interests. In support of this position, they cite the quantum meruit claim. Mot. at 24-25. Defendants also cite certain facts from prior declarations and allegations from the earlier complaints that they contend show that there is no identity of interest. *Id.* at 25. These arguments are unpersuasive. Plaintiffs collectively allege that they conceived of the idea that has been implemented through DRL, that they shared this concept with Defendants, that they were promised a share of the ownership of the entity but were denied their respective rights. This confirms the commonality of their claims. That each may claim a different amount in terms of valuing their respective services does not change the outcome. The relevant question is whether the underlying circumstances are the same as to the earlier claims and those of the plaintiff who seeks to apply the relation back doctrine. As noted, the claims advanced by Kanes arise from the same events alleged in the Complaint.

For the foregoing reasons, the Motion is **DENIED** as to whether Kanes' claims are time-barred.

IV. Conclusion

For the reasons stated in the Order, the Motion is **GRANTED IN PART**. It is **DENIED** as to the breach of oral contract and breach of written contract claims against DRL, Inc. for lack of personal jurisdiction. It is **DENIED** as to Kanes' claims as time-barred. It is **GRANTED**, without prejudice, as to the

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

failure to state a claim is as to the claims for breach of written contract and breach of implied contract, but **DENIED** as to the claims for breach of oral contract, quantum meruit, breach of fiduciary duty, and promissory estoppel. Plaintiffs shall file any amended complaint no later than July 19, 2018.

IT IS SO ORDERED.

All Citations

Not Reported in Fed. Supp., 2018 WL 5903915

Footnotes

1 Plaintiffs argue that the Motion should be denied because Defendants' counsel failed to meet and confer at least ten days prior to its filing as required by Local Rule 7-3. Defendants did not comply with Local Rule 7-3. However, because many of the issues addressed in this Order were expressly addressed in the prior one with respect to the motion to dismiss the FAC, there is no showing that compliance would have narrowed the issues presented. Therefore, this Order addresses the merits of the arguments raised in the Motion.

2 Defendants seek judicial notice of the Business Plan on the ground that it is integral to the claims alleged in the SAC. Defs.' RJN, Dkt. 43–5. Because the Business Plan is incorporated by reference by the SAC, is a basis of Plaintiffs' claims, and "Plaintiffs do not object to the Court's consideration of the Business Plan" (Opp'n at 9 n.2), it is considered in connection with the Motion. *See* *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003).

3 DRL, Inc. also raises a challenge as to personal jurisdiction as to the claims in the SAC for breach of written and oral contract. Mot. at 20-23. The prior Order on the motion to dismiss the FAC concluded that there was personal jurisdiction over DRL, Inc. with respect to the claim for breach of implied contract. There was no determination as to claims for breach of a written or oral contract because neither was advanced against DRL, Inc. in the FAC. The finding of personal jurisdiction as to the breach of implied contract claim was premised on a ratification theory. Dkt. 39 at 7-9. The alleged ratification occurred several months after the actions by DRL that form the basis for the current breach of written and oral contract claims. Therefore, the prior Order applies as the law of the case. *Vanleeuwen v. Keyuan Petrochemicals, Inc.*, No. CV 11-9495 PSG JCGX, 2013 WL 2247394, at *10 (C.D. Cal. May 9, 2013) (the law of the case doctrine applies when the same issue was

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

resolved in a prior motion to dismiss). Therefore, this element of the Motion is **DENIED**.

4 Local Rule 7-18 provides:

> A motion for reconsideration of the decision on any motion may be made only on the grounds of (a) a material difference in fact or law from that presented to the Court before such decision that in the exercise of reasonable diligence could not have been known to the party moving for reconsideration at the time of such decision, or (b) the emergence of new material facts or a change of law occurring after the time of such decision, or (c) a manifest showing of a failure to consider material facts presented to the Court before such decision. No motion for reconsideration shall in any manner repeat any oral or written argument made in support of or in opposition to the original motion.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.