

STATE OF NORTH CAROLINA
ORANGE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
22 CVS 255

BIOMILQ, INC.,

Plaintiff and
Counterclaim Defendant,

v.

SHAYNE GUILIANO and 108LABS,
LLC,

Defendants and
Counterclaim Plaintiffs,

v.

MICHELLE EGGER;
BREAKTHROUGH ENERGY
VENTURES, LLC; BEV JOHN DOES;
and BIOMILQ JOHN DOES,

Counterclaim Defendants.

**ORDER AND OPINION ON
MOTIONS TO DISMISS SECOND
AMENDED COUNTERCLAIMS**

1. **THIS MATTER** is before the Court on the 4 August 2023 filing of (1) *Defendant-in-Counterclaim Breakthrough Energy Ventures, LLC's Motion to Dismiss Second Amended Counterclaims* (“BEV’s Motion”), (ECF No. 177 [“BEV Mot.”]); (2) *Counterclaim Defendant Michelle Egger's Motion to Dismiss* (“Egger’s Motion”), (ECF No. 180 [“Egger Mot.”]); and (3) *BIOMILQ, Inc.'s Motion to Dismiss Second Amended Counterclaims* (“BIOMILQ’s Motion”; together, the “Motions”), (ECF Nos. 185–86 [“BIOMILQ Mot.”]).¹

¹ The Court previously granted in part and denied in part as moot BIOMILQ’s Motion, dismissing Leila Strickland (“Strickland”) pursuant to Rules 4 and 12(b)(5) of the North Carolina Rules of Civil Procedure (the “Rule(s)”), which mooted the remainder of BIOMILQ’s Motion as to Strickland. (9 Jan. 2024 Order & Op., ECF No. 250 [“9 Jan. Opinion”].) The Court otherwise deferred ruling on BIOMILQ’s Motion to the extent BIOMILQ sought dismissal of the Counterclaims against it pursuant to Rule 12(b)(6). (9 Jan. Opinion at 15.) The Court now addresses the remainder of BIOMILQ’s Motion.

2. On 5 June 2023, Defendants Shayne Guiliano (“Guiliano”) and 108Labs, LLC (“108Labs”; with Guiliano, “Defendants”), filed their First Amended Joint Partial Answer to Plaintiff’s Second Amended Complaint and Second Amended Counterclaims and Third-Party Claim (the “Counterclaims”). (ECF No. 154 [“Countercls.”].) Now, pursuant to Rule 12(b)(6), Counterclaim Defendants Breakthrough Energy Ventures, LLC (“BEV”), Michelle Egger (“Egger”), and BIOMILQ, Inc. (“BIOMILQ”; together, “Movants”) seek dismissal of nearly all the counterclaims alleged against them.

3. For the reasons set forth herein, the Court **GRANTS** in part and **DENIES** in part the Motions.

Robinson, Bradshaw & Hinson, P.A., by J. Dickson Phillips and Stephen D. Feldman, and Goodwin Procter, LLP, by Rachel M. Walsh, for Plaintiff BIOMILQ, Inc.

*Carnes Warwick, PLLC, by Jonathan A. Carnes and Tara D. Warwick, for Defendants Shayne Guiliano and 108Labs, LLC.*²

Wallis, Bowens, Averhart & Associates, PLLC, by Stephon J. Bowens and Saleisha Averhart, for Defendant 108Labs, LLC.

McGuireWoods LLP, by Joan S. Anderson, and O’Melveny & Myers, LLP, by Amy S. Park, for Counterclaim Defendant Breakthrough Energy Ventures, LLC.

¹ The Court observes that identical copies of BIOMILQ’s Motion were filed at ECF Nos. 185–86.

² Following the filing of the Motions and completion of briefing, Guiliano elected to proceed *pro se*. (See ECF No. 223.) On 29 November 2023, the Court permitted attorneys Tara D. Warwick and Jonathan A. Carnes of Carnes Warwick, PLLC to withdraw as counsel of record for Mr. Guiliano, (ECF No. 232), but they remain as counsel for 108Labs in this action.

Ellis & Winters LLP, by James M. Weiss, Derrick C. Foard, and Jeremy Falcone, for Counterclaim Defendant Michelle Egger.

Robinson, Judge.

I. INTRODUCTION

4. This action arises out of a dispute between BIOMILQ and Defendants regarding certain human cell-cultured technologies and products. At issue in this Order and Opinion are Defendants' Counterclaims against Movants, who Defendants contend conspired to misappropriate Defendants' technology and intellectual property for Movants' own financial benefit. Defendants allege twenty-seven broad-ranging counterclaims covering a litany of events. Movants seek dismissal of these counterclaims, in their near-entirety, pursuant to Rule 12(b)(6).

II. FACTUAL BACKGROUND

5. The Court does not make determinations of fact on motions to dismiss under Rule 12(b)(6) but instead recites only those factual allegations of the Counterclaims that are relevant and necessary to the Court's determination of the Motions. *Gateway Mgmt. Servs. v. Carrbridge Berkshire Grp., Inc.*, 2018 NCBC LEXIS 45, at *9 (N.C. Super. Ct. May 9, 2018). When reviewing the allegations in the Counterclaims pursuant to Rule 12(b)(6), the Court treats the allegations as true but does not determine or opine on the veracity of those allegations. *See Krawiec v. Manly*, 370 N.C. 602, 606 (2018); *Wood v. Guilford Cty.*, 355 N.C. 161, 166 (2002).

A. The Formation of 108Labs and the Focus of its Research

6. Guiliano, who trained as an organic chemist and transitioned to focus on inventing novel biomedical technologies, met Strickland in 2003. (Countercls. ¶¶ 14,

16.) The pair were married in 2008. (Countercls. ¶ 16.) Strickland was a scientific researcher who, in 2013, expressed interest in returning to lab research. (Countercls. ¶ 17.)

7. Guiliano proposed that he and Strickland start a family-run company, and in 2013, “they began discussing steps to form a biotechnology company and secure lab facilities to begin research.” (Countercls. ¶ 19.) Guiliano alleges that around 11 September 2013, he “conceived of the concept of milking cells, or making milk with mammalian mammary cells,” and from there, he and Strickland pursued research related to cell-cultured milk, focused specifically on bovine milk. (Countercls. ¶ 20.)

8. The pair thereafter formed 108Labs on 1 October 2013. (Countercls. ¶ 21.) 108Labs is a member-managed limited liability company with Guiliano and Strickland as its sole members. (Countercls. ¶ 22.) Guiliano alleges that he developed the “concept for simultaneous biosynthesis of human milk and human milk immunoglobulins,” and that Strickland memorialized the idea in a lab notebook. (Countercls. ¶ 26.)

9. “On or about 30 September 2014, 108Labs began induction of lactation in a polarized monolayer of mammary cells for the first time, using a 2D cell culture setup in a transwell plate.” (Countercls. ¶ 34.) 108Labs continued its research through 2018. (*See* Countercls. ¶¶ 35–37.)

10. On 18 September 2019, Strickland and Guiliano met with an individual at FiberCell Technologies, Inc. (“FiberCell”) to discuss its bioreactors and the possibility of using FiberCell’s services to run proof of concept experiments. (Countercls. ¶ 40.)

After initial discussions, FiberCell executed a non-disclosure agreement with 108Labs, and 108Labs thereafter began using FiberCell bioreactors for mammary cell research. (Countercls. ¶ 41.)

11. The next day, 108Labs hired a patent attorney from Myers Bigel, P.A. (“Myers Bigel”) to assist with identifying patentable concepts and filing patent applications for its technology. (Countercls. ¶ 42.)

12. Defendants allege that on about 17 October 2019, “Guiliano conceived of the human milk basement membrane formulation.” (Countercls. ¶ 43.)

B. 108Labs’s Scientific Advances and Relevant Events Preceding BIOMILQ’s Formation

13. Strickland met Egger on 28 June 2019. (Countercls. ¶ 81.) Egger represented that she had experience working for General Mills as a food scientist and with the Bill and Melinda Gates Foundation on the nutrition team. (Countercls. ¶ 83.) Guiliano first met Egger on or about 9 October 2019. (Countercls. ¶ 85.) Egger signed a non-disclosure agreement for 108Labs at a meeting around that time, and Defendants allege that Guiliano and Egger then discussed 108Labs’s research and business plan. (Countercls. ¶ 85.)

14. Defendants allege that Egger suggested that she, 108Labs, Strickland, and Guiliano form a new entity with Strickland as its majority owner. (Countercls. ¶ 86.) Egger allegedly “asserted that her connections to the Gates Foundation could lead to immediate non-dilutive funding.” (Countercls. ¶ 86.)

15. Around November 2019, 108Labs began leasing lab space and cold storage at both the University of North Carolina at Chapel Hill (“UNC”) and the National

Institutes of Health to store samples from FiberCell and prepare its experimental results. (Countercls. ¶ 53.)

16. On 13 December 2019, 108Labs submitted a grant application to the National Science Foundation (“NSF”). (Countercls. ¶ 48.) Before doing so, it ensured that “its intellectual property, business strategies, research and information related to potential marketability of its anticipated products, and overall plan were held in confidence, and were only shared with Strickland, Guiliano, those under non-disclosure agreements, attorneys, or organizations committed to protecting confidentiality.” (Countercls. ¶ 49.) Defendants allege on information and belief that the NSF’s policies and procedures protect confidential information. (Countercls. ¶ 50.)

17. Defendants allege that, throughout the remainder of 2019, 108Labs developed a business plan for its technology, which was summarized in the NSF grant application. (Countercls. ¶ 88.) The NSF grant application allegedly describes (1) how Defendants and Strickland expected 108Labs’s business plan to unfold, including that Defendants, Strickland, and Egger intended to form a “C-corp in 2020 that w[ould] license the technology for making human milk from 108Labs[,]” and (2) the new company’s relationship to 108Labs’s intellectual property. (Countercls. ¶ 90.) Defendants allege that Strickland and Guiliano’s marriage continued “in harmony” through August 2019. (Countercls. ¶ 177.)

18. Defendants allege that 108Labs intended to create a brand mark, “Biomilq,” and that the mark was published on 108Labs’s public Facebook page on 2 January 2020. (*See* Countercls. ¶ 93.)

19. On 8 January 2020, Guiliano and Strickland, “as individual inventors,” filed with the United States Patent and Trademark Office (“USPTO”) U.S. Provisional Patent Application No. 62/958,407 (the “’407 Provisional”), entitled “Live Cell Constructs for Milk Production and Methods Using the Same.” (Countercls. ¶ 51; Ex. F, ECF No. 154.7.) 108Labs’s patent counsel at Myers Bigel thereafter sent Guiliano and Strickland an assignment agreement that would transfer all inventorship rights in the technology to 108Labs; however, the assignment was not completed. (Countercls. ¶ 52.)

20. That same day, Defendants allege that “a C-corp under the tradename Biomilq, Inc. was incorporated in the State of Delaware.” (Countercls. ¶ 94.)

21. Thereafter, on around 14 January 2020, Defendants allege that Guiliano arranged for the transfer of samples, on a rolling basis, from FiberCell’s Maryland lab space to 108Labs’s UNC lab space. (Countercls. ¶ 54.) Defendants allege that early results from 108Labs’s “prolactin escalation protocol” showed “the presence of lactose (milk sugars) and casein (milk proteins).” (Countercls. ¶ 55.)

22. On 11 February 2020, Strickland emailed an individual at the University of California, Davis’s (“UC Davis”) Department of Food Science and Technology regarding these results. (Countercls. ¶ 56.) Following execution of a non-disclosure agreement, a series of “proof of concept samples” generated in January 2020 were

sent to UC Davis for additional testing. (Countercls. ¶ 57.) 108Labs commissioned and paid for the testing, and the results were sent directly to 108Labs. (Countercls. ¶ 58.)

23. Around this time, and throughout the following month, Defendants allege that “a growing conflict between Strickland and Guiliano arose” regarding “what to do with the intellectual property of 108Labs[.]” (Countercls. ¶ 187.)

24. On 16 March 2020, Strickland and Guiliano were informed that the results of the UC Davis testing “provide[d] really strong evidence” that the pair were “making a product that contains all the main human milk proteins[.]” (Countercls. ¶ 60 (cleaned up).) Defendants allege that, as of March 2020, all 108Labs’s technology was developed and invented by Guiliano and Strickland, including the results of the UC Davis testing. (Countercls. ¶ 61.)

C. BIOMILQ’s Formation and Early Fundraising

25. As stated, BIOMILQ was incorporated on 8 January 2020. (Countercls. ¶ 94.) Despite its formation, the exact nature of BIOMILQ’s relationship to 108Labs was not decided. (Countercls. ¶ 95.) Defendants allege that, BIOMILQ had no shareholders, contracts, labs or lab space, pending experiments, or intellectual property at its formation. (Countercls. ¶ 96.)

26. On 6 February 2020, Egger posted on her personal blog titled, “Medium,” that BIOMILQ may have made breast milk using “first-of-its-kind technology to provide a cultured human-milk product[.]” (Countercls. ¶ 97.) Defendants allege that

108Labs did not approve the content and that the post did not mention 108Labs. (Countercls. ¶ 98.)

27. Throughout February 2020, Defendants allege that Guiliano, Strickland, and Egger had several meetings to discuss their individual roles and interests in BIOMILQ and that the discussions resulted in proposed equity percentages as follows: Strickland as Chief Science Officer and 53% member; Egger as Chief Executive Officer and 42% member; and Guiliano as Technical Advisor and 5% member.³ (Countercls. ¶ 99.) At that time, 108Labs did not agree to any terms regarding transfer of its intellectual property. (Countercls. ¶ 100.)

28. On 25 February 2020, Defendants allege that Egger emailed Guiliano and Strickland, stating that BIOMILQ would purchase 108Labs's technology, including the '407 Provisional, for \$150,000.00 cash with no stipulations. (Countercls. ¶ 102.) Defendants allege that Guiliano continued to view BIOMILQ as "part of 108Labs'[s] business plan and in 108Labs'[s] family." (Countercls. ¶ 103.)

29. On or about 20 March 2020, Egger had multiple meetings with potential investors in BIOMILQ, and "met with Strickland and Guiliano beforehand to discuss the ongoing issues of courting investors and deciding what was to be done with the intellectual property." (Countercls. ¶ 110.) During that meeting, Defendants allege that Guiliano demanded Egger "refrain from using 108Labs'[s] scientific data in

³ The Counterclaims describe this plan as being for BIOMILQ to have members, but corporations like BIOMILQ have shareholders, not members. *See, e.g.*, N.C.G.S. § 55-2-02 (describing the Articles of Incorporation for corporations, including that the articles *may* set forth information regarding the corporation's board of directors and shareholders, including the par value for authorized shares or classes of shares). Notwithstanding this fact, the Court uses the term "member" in this paragraph as this was the term used by Defendants.

fundraising because 108Labs needed to understand the science and significance of its discoveries before sharing any data relating to proteomics and immunoglobulins with third parties[.]” (Countercls. ¶ 111.) Egger allegedly refused. (See Countercls. ¶ 112.)

30. In a discussion after the fact, Guiliano indicated to Strickland that he wanted, in part, to hire a lawyer to issue a cease-and-desist letter to Egger, but he alleges that Strickland reassured him and allowed him to “witness all calls throughout the day on her computer.” (Countercls. ¶ 114.) Defendants allege that other participants on the virtual 20 March 2020 meetings “were not expressly aware” that Guiliano was present off-screen for those calls. (Countercls. ¶ 114.)

31. During one meeting that day, Defendants allege that Guiliano heard Egger disclose 108Labs’s “proteomics data” to a BEV representative. (Countercls. ¶ 115.) Egger allegedly continued to disclose aspects of 108Labs’s data, which 108Labs considered to be a trade secret. (Countercls. ¶ 116.)

32. During the same call with Egger, Strickland, and a BEV representative, Guiliano overheard the BEV representative ask, “when will the husband problem be solved?” (Countercls. ¶ 116.) Egger allegedly responded that, “the contracts will be finalized by Wednesday.” (Countercls. ¶ 116.) Defendants allege that “the husband problem” referred to Guiliano, and that the following Wednesday was 25 March 2020. (Countercls. ¶ 117.) When Guiliano confronted Strickland about this comment after the call with BEV, she “tried to convince him that it was not a big deal.”

(Countercls. ¶ 118.) Notwithstanding Strickland’s assurances, Guiliano was no longer permitted to observe investor calls with Strickland. (Countercls. ¶ 118.)

33. Ultimately, on 25 March 2020, BEV sent a letter of intent for a Simple Agreement for Future Equity (“SAFE”) to Strickland and Egger, offering to invest \$3,000,000.00. (Countercls. ¶¶ 130–31; *see* Ex. K, ECF No. 154.12.) The \$3,000,000.00 offer was based on the pre-money valuation of BIOMILQ, “which was assessed by BEV as \$11,500,00.00 and BEV’s expectation that it would own approximately 26%” of BIOMILQ.⁴ (Countercls. ¶ 131.)

34. Strickland and Guiliano were at odds regarding issues of 108Labs’s intellectual property and what rights, if any, to assign to BIOMILQ. (*See* Countercls. ¶ 133.) In a 25 March 2020 email, Strickland appeared to indicate that 108Labs and BIOMILQ’s interests were incompatible. (Countercls. ¶ 136; *see* Ex. M, ECF No. 154.14.) That same day, Defendants allege that 108Labs began operating as NeutraSiga Therapeutics (“NeutraSiga”), although that entity was not formally organized and incorporated as a corporation until 21 October 2020. (Countercls. ¶ 218.)

35. Four days later, on 29 March 2020, Strickland resigned from 108Labs. (Countercls. ¶ 139.) Strickland also messaged Guiliano, “I love you. No matter how things unfold, that will not change. You are my partner in this life, and our science is only a part of that partnership. I am never leaving you, and I hope you never leave me.” (Countercls. ¶ 189.) Defendants allege that around this time, Strickland’s

⁴ The Counterclaims do not address how this offer factored into the previous plans for ownership in the company. (*Supra* ¶ 27.)

actions began to reflect permanent separation from her marital relationship as a “result of pressure from Egger” and individuals at BEV. (Countercls. ¶¶ 191–92.)

36. On 3 April 2020, Guiliano received an email from an attorney at Goodwin Procter, LLP (“Goodwin Procter”) on behalf of BIOMILQ, attaching an offer to purchase his interest in the ’407 Provisional and everything related to it for \$250,000.00. (Countercls. ¶ 143; *see* Ex. O, ECF No. 154.17.) Defendants allege that the email provided that if BIOMILQ was unable to obtain the desired assignment, it would “(1) terminate all working relationships with 108Labs, (2) terminate all discussions with BEV, True Ventures, and other potential funding sources, and (3) that all scientific development on this project would cease.” (Countercls. ¶ 144.) In a follow up email from the attorney the next day, it was made clear that this was BIOMILQ’s “best and final offer.” (Countercls. ¶ 147; *see* Ex. P, ECF No. 154.18.) Allegations in the Counterclaims demonstrate that Strickland sent numerous messages or emails to Guiliano encouraging him to accept the offer. (*See* Countercls. ¶¶ 196–200 (describing the messages sent by Strickland to Guiliano).) On behalf of 108Labs, Guiliano declined the offer. (Countercls. ¶ 153.)

37. On 10 April 2020, Strickland assigned all her rights in the ’407 Provisional to BIOMILQ. (Countercls. ¶ 162.)

D. Patents and Trademark at Issue

38. Numerous patent applications relevant to this matter were filed with the USPTO in 2020 and 2021, some of which ultimately issued as patents, as described

in detail in the Court’s 10 February 2023 Order and Opinion.⁵ See *BIOMILQ, Inc. v. Guiliano*, 2023 NCBC LEXIS 24, at **6–9 (N.C. Super. Ct. Feb. 10, 2023) (describing the patents, patent applications, and marks in detail based on the allegations in BIOMILQ’s Amended Complaint).

39. As stated already herein, the ’407 Provisional was filed with the USPTO on 8 January 2020. (See Countercls. ¶ 62.a.)

40. On 26 May 2020, U.S. Provisional Application No. 63/030,149, titled “Milk Product Compositions” was filed with the USPTO (the “’149 Provisional”). (Countercls. ¶ 62.b.) The ’149 Provisional disclosed “milk compositions that comprise protein, lipid, and oligosaccharide components at concentrations that mimic and/or are substantially similar to human breast milk as produced by a lactating female.” (Countercls. ¶ 62.b.)

41. On 2 December 2020, U.S. Provisional Application No. 63/120,378, titled “Cultured Milk Product Compositions” was filed with the USPTO (the “’378 Provisional”). (Countercls. ¶ 62.c.) It disclosed “milk components produced in vitro and/or ex vivo from cultured bovine mammary cells.” (Countercls. ¶ 62.c.)

42. On 10 December 2020, U.S. Provisional Application No. 63/199,164, titled “Live Cell Constructs for Production of Cultured Milk Product and Methods Using the Same” was filed with the USPTO (the “’164 Provisional”). (Countercls. ¶ 62.d.)

⁵ While the information set forth in this Section II.D. is already in the record, the Court restates it herein based on the allegations in the Counterclaims for ease of reference and to comport with the Rule 12(b)(6) standard.

43. On 18 December 2020, U.S. Patent Application No. 17/247,672, titled “Live Cell Constructs for Production of Cultured Milk Product and Methods Using the Same” was filed with the USPTO (the “’672 Application”). (Countercls. ¶ 62.e.) The ’672 Application claims priority to the ’407 Provisional and ’149 Provisional. (Countercls. ¶ 62.e.) Defendants allege that the ’672 Application ultimately issued as U.S. Patent No. 11,111,477 (the “’477 Patent”). (Countercls. ¶ 62.e.)

44. The same day, International Application No. PCT/US2020/066209 was filed bearing the same title as the ’672 Application (“’209 International Application”). (Countercls. ¶ 62.f.)

45. On 9 March 2021, U.S. Provisional Patent Application No. 63/200,480, titled “Milk Product Compositions,” was filed with the USPTO (the “’480 Provisional”). (Countercls. ¶ 62.g.) It disclosed “milk compositions that comprise protein, lipid, and oligosaccharide components at concentrations that mimic and/or are substantially similar to human breast milk as produced by a lactating female.” (Countercls. ¶ 62.g.)

46. On 29 March 2021, U.S. Patent Application No. 17/301,216, titled “Milk Product Compositions,” was filed with the USPTO (the “’216 Application”). (Countercls. ¶ 62.h.) The ’216 Application claims priority to the ’149 Provisional and ’480 Provisional. (Countercls. ¶ 62.h.) Defendants allege that the ’216 Application ultimately issued as U.S. Patent No. 11,206,843 (the “’843 Patent”). (Countercls. ¶ 62.h.)

47. On 6 September 2021, U.S. Patent Continuation Application No. 17/467,358, titled “Live Cell Constructs for Production of Cultured Milk Product and Methods Using the Same,” was filed with the USPTO (the “’358 Application”). (Countercls. ¶ 62.i.) The ’358 Application was a continuation of the ’672 Application from December 2020 and claimed priority to the same provisional patent applications. (Countercls. ¶ 62.i.)

48. Finally, on 30 November 2021, Patent Cooperation Treaty Application No. PCT/US21/61147, entitled “Cultured Milk Product Compositions” was filed (the “’147 Treaty Application”). (Countercls. ¶ 62.j.) The ’147 Treaty Application claimed priority to the ’348 Provisional. (Countercls. ¶ 62.j.)

49. Also at issue in this litigation is the registration of the mark “BIOMILQ”. (See Countercls. ¶¶ 141–42.) Defendants allege that Egger applied for trademark registration of the wordmark “BIOMILQ” with the USPTO on 29 March 2020. (Countercls. ¶ 141; see Ex. N(a), ECF No. 154.15.) Defendants allege that, while attorneys for BIOMILQ demanded that Guiliano cease to assert rights in that wordmark as early as 25 June 2020, USPTO records do not reflect assignment of rights in the wordmark from Egger to BIOMILQ until 9 December 2020. (Countercls. ¶ 142 (citing Ex. N(b), ECF No. 154.16).)

E. Events that Followed Strickland’s Resignation from 108Labs

50. On 21 May 2020, roughly two months after Strickland resigned from 108Labs, Defendants allege that Strickland “posed as a principal of 108Labs to enter 108Labs’[s] secure lab and cold storage facility [at UNC] to remove all the cell-

cultured human milk and immunoglobulins samples” from 108Labs’s experiments. (Countercls. ¶ 166.) Prior to removing those samples, Defendants allege that Strickland and Egger discussed “the plan to take the samples” and that attorneys at Goodwin Procter gave Strickland “approval to do so.” (Countercls. ¶ 166.) On 26 May 2020, the ’149 Provisional was filed with the USPTO, allegedly as a “direct result [of] using information taken from 108Labs by Strickland and Egger[.]” (Countercls. ¶ 168.) The ’149 Provisional listed only Strickland as an inventor. (Countercls. ¶ 168.)

51. Defendants allege that, on or before 25 May 2020, Strickland provided BIOMILQ with all her notebooks, “trade secrets, knowledge, know-how, protocols, and other property belonging to 108Labs[.]” (Countercls. ¶ 205.)

52. In conversations with Guiliano in June 2020, Strickland allegedly confirmed that she gained unauthorized access to 108Labs’s secure storage facility and took its samples on 21 May 2020. (Countercls. ¶ 167.)

53. On about 11 March 2021, Defendants allege that “Egger and Strickland contacted scientific partners of 108Labs, interfering with 108[L]abs scientific collaborations that were identified in a 3 March 2021 publication” regarding 108Labs’s history. (Countercls. ¶ 220.) These scientific partners included Dr. Daniella Barile (“Dr. Barile”) of UC Davis, who served as a “scientific advisor to NeutraSiga,” and Dr. Rebecca Powell who served as a “contractual scientific advisor to NeutraSiga[.]” (Countercls. ¶¶ 56, 220.)

54. In October 2021, Defendants allege that BIOMILQ moved forward with its Series A funding, raising more than \$21,000,000.00. (Countercls. ¶ 175.) Defendants allege that BEV received shares in BIOMILQ around that time. (Countercls. ¶ 175.)

55. As a result of the above-described facts and circumstances, Defendants allege that “108Labs has been divested of its property rights in intellectual property, personal property, patents and patent applications, usurped business opportunities and funds, scientific research, partnerships, and collaborations[,] . . . leaving it impaired and unable to compete in the market[.]” (Countercls. ¶ 243.)

III. PROCEDURAL BACKGROUND

56. The Court sets forth herein only those portions of the procedural history relevant to its determination of the Motions.⁶

57. Following the filing of the Court’s Order and Opinion on Defendants’ Joint Motion to Dismiss or in the Alternative Hold Proceedings in Abeyance, Defendants filed their First Amended Joint Answer and Counterclaims on 2 March 2023. (ECF No. 127.) BIOMILQ thereafter filed its Second Amended Complaint on 21 April 2023 with leave of Court, (ECF No. 137), and the Court entered its Case Management Order on 24 April 2023, (ECF No. 138).

58. Defendants subsequently sought partial dismissal of BIOMILQ’s Second Amended Complaint, (*see* Defs.’ Partial Mot. Dismiss, ECF No. 145), which the Court

⁶ A detailed recitation of the procedural history of this matter may be found in the Court’s 10 February 2023 Order and Opinion on Defendants’ Joint Motion to Dismiss or in the Alternative Hold Proceedings in Abeyance. *See BIOMILQ, Inc. v. Guiliano*, 2023 NCBC LEXIS 24, at **12–14 (N.C. Super. Ct. Feb. 20, 2023). The Court does not restate herein the procedural history stated in that Order and Opinion.

denied on 13 November 2023, *see BIOMILQ, Inc. v. Guiliano*, 2023 NCBC LEXIS 142 (N.C. Super. Ct. Nov. 13, 2023).

59. On 5 June 2023, Defendants filed the Counterclaims after being granted leave to do so. (*See Countercls.*; ECF No. 150 (granting Defendants' consent motion for leave to amend).)

60. On 4 August 2023, all counterclaim defendants sought dismissal of nearly all of their counterclaims through the filing of Motions to Dismiss pursuant to Rule 12(b)(5)–(6).⁷ (BEV Mot.; Egger Mot.; BIOMILQ Mot.; *see also* ECF No. 182 (Goodwin Procter's Motion to Dismiss the Counterclaims).)

61. Defendants attempt to allege twenty-seven separate counterclaims. (*See Countercls.*) The Court addresses herein only the claims alleged against BEV, Egger, and BIOMILQ, separated into four groups.

62. First, Defendants assert against BIOMILQ claims for injunctive relief ("Count One"), trespass to chattels ("Count Eight"), and civil liability for larceny ("Count Nine"). (*See Countercls.* ¶¶ 258–75, 344–72.)

63. Second, Defendants assert claims against Egger for breach of fiduciary duty ("Count Three"), breach of contract ("Count Sixteen"), and alienation of affections ("Count Twenty-Two"). (*See Countercls.* ¶¶ 279–86, 439–42, 509–14.)

64. Third, Defendants assert claims against Egger and BIOMILQ for declaratory relief ("Count Two"), constructive fraud ("Count Four"), conversion

⁷ The Court entered a scheduling order governing briefing on these motions to dismiss; therefore, the Motions were timely filed. (*See Scheduling Order*, ECF No. 175.)

“Count Seven”), slander of title (“Second Count Eleven”),⁸ tortious interference with contract (“Count Fourteen”), and slander *per se* and *per quod* (“Count Fifteen”). (See Countercls. ¶¶ 276–78, 287–300, 325–43, 400–06, 421–37.)

65. Finally, Defendants alleged claims against Movants for constructive trust (“Count Five”); fraudulent conveyance (“Count Six”); misappropriation of trade secrets under the North Carolina Trade Secrets Protection Act (“TSPA”), N.C.G.S. § 66-152 *et seq.* (“Count Ten”), and the federal corollary, 18 U.S.C. § 1836 *et seq.* (“Count Eleven”); false designation of origin (“Count Twelve”); false advertising (“Count Thirteen”); fraud (“Count Seventeen”); civil conspiracy (“Count Eighteen”); unjust enrichment (“Count Nineteen”); violation of the North Carolina Unfair and Deceptive Trade Practices Act (“UDTPA”), N.C.G.S. § 75-1.1 *et seq.* (“Count Twenty”); loss of consortium (“Count Twenty-Three”); punitive damages (“Count Twenty-Four”); and property interference pursuant to N.C.G.S. § 99A (“Count Twenty-Five”). (See Countercls.)

66. The Motions seek dismissal of nearly every claim alleged against Movants, except that BIOMILQ does not seek dismissal of Counts Eight, Nine, and Fourteen.

67. Following full briefing, the Court held a hearing on the Motions on 7 November 2023, at which all parties were present and represented through counsel. (See ECF No. 210.)

⁸ The Counterclaims include two claims marked as number eleven. (See Countercls. ¶¶ 386–406.) To avoid confusion, the Court refers to these claims as “Count Eleven” and “Second Count Eleven,” rather than renumbering subsequent claims in full.

68. On 9 October 2023, two days following the filing of the Notice of Hearing on the Motions, Defendants' counsel filed sur-replies. (See ECF Nos. 211–13.) A sur-reply is not a permitted brief in opposition to a motion absent an order of the Court permitting further briefing. See BCR 7.7. The Court therefore does not consider those filings in its determination of the Motions. (See ECF Nos. 211–13.)

69. The Motions are ripe for resolution.

IV. LEGAL STANDARD

70. In ruling on a motion to dismiss pursuant to Rule 12(b)(6), the Court reviews the allegations in the Second Amended Complaint in the light most favorable to Plaintiffs. See *Christenbury Eye Ctr., P.A. v. Medflow, Inc.*, 370 N.C. 1, 5 (2017). The Court's inquiry is "whether, as a matter of law, the allegations of the [Counterclaims] . . . are sufficient to state a claim upon which relief may be granted under some legal theory[.]" *Harris v. N.C.N.B. Nat'l Bank*, 85 N.C. App. 669, 670 (1987) (citation omitted). The Court accepts all well-pleaded factual allegations in the relevant pleading as true. See *Krawiec*, 370 N.C. at 606. The Court is therefore not required "to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences." *Good Hope Hosp., Inc. v. N.C. Dep't of Health & Human Servs.*, 174 N.C. App. 266, 274 (2005) (cleaned up).

71. Furthermore, the Court "can reject allegations that are contradicted by the documents attached, specifically referred to, or incorporated by reference in the complaint." *Moch v. A.M. Pappas & Assocs., LLC*, 251 N.C. App. 198, 206 (2016) (citation omitted). The Court may consider these attached or incorporated documents

without converting the Rule 12(b)(6) motion into a motion for summary judgment. *Id.* (citation omitted). Moreover, the Court “may properly consider documents which are the subject of [the Counterclaims] and to which the [Counterclaims] specifically refers even though they are presented by the [Movants].” *Oberlin Capital, L.P. v. Slavin*, 147 N.C. App. 52, 60 (2001) (citation omitted).

72. Our Supreme Court has observed that “[i]t is well-established that dismissal pursuant to Rule 12(b)(6) is proper when ‘(1) the complaint on its face reveals that no law supports the plaintiff’s claim; (2) the complaint on its face reveals the absence of facts sufficient to make a good claim; or (3) the complaint discloses some fact that necessarily defeats the plaintiff’s claim.’” *Corwin v. British Am. Tobacco PLC*, 371 N.C. 605, 615 (2018) (quoting *Wood*, 355 N.C. at 166). This standard of review for Rule 12(b)(6) motions is the standard our Supreme Court “routinely uses . . . in assessing the sufficiency of complaints in the context of complex commercial litigation.” *Id.* at 615 n.7 (citations omitted).

V. ANALYSIS

73. In this section, the Court addresses the Motions by claim group, (*supra* ¶¶ 62–65), beginning with the claims alleged against only BIOMILQ. The Court turns next to claims against only Egger and proceeds thereafter to claims alleged against both Egger and BIOMILQ. The Court concludes its analysis of the Motions by considering the thirteen claims that Defendants allege against all Movants.

74. Prior to turning to the claims against BIOMILQ, the Court must first address BEV and Egger’s arguments regarding Rule 4(a) and Defendants’

summons in this case. (See Egger Br. Supp. Mot. 9–10, ECF No. 181 [“Egger Br. Supp.”]; BEV Br. Supp. Mot. 7, ECF No. 178 [“BEV Br. Supp.”]; BEV Reply Supp. Mot. 2, ECF No. 207 [“BEV Reply”].)

75. Rule 4(a) provides that, “[u]pon the filing of the complaint, summons shall be issued forthwith, and in any event within five days The date the summons bears shall be prima facie evidence of the date of issue.” N.C.G.S. § 1A-1, Rule 4(a).

When a summons is not issued within five days, the action abates and is deemed never to have commenced. *Roshelli v. Sperry*, 57 N.C. App. 305, 308 (1982). However, a properly issued and served summons can revive and commence a new action on the date of its issuance, unless defendant moves to dismiss the action prior to issuance and service of the summons. *Stokes v. Wilson & Redding Law Firm*, 72 N.C. App. 107, 111 (1984); *Roshelli*, 57 N.C. App. at 308.

Pavin v. Foy, 289 N.C. App. 195, 197 (2023) (parallel citations omitted).

76. Here, Defendants’ summonses addressed to newly-added parties Egger and BEV were not issued within five days of the filing of the Counterclaims as required by Rule 4(a). Therefore, the Court determines that this action, as to the Counterclaims, did *not* commence with the filing of the first iteration of the Counterclaims on 6 February 2023, (ECF No. 120), or the second iteration filed on 2 March 2023, (ECF No. 127).

77. The effect of the summonses ultimately issued was to revive and commence a new action on the date of issue, and therefore, as to Egger and BEV, the Counterclaims are deemed filed on 20 April 2023. (Egger Mot. Ex. A, ECF No. 181.1 (civil summons issued for service upon Egger, dated 20 April 2023 at 8:58 a.m.); BEV Mot. Ex. A, ECF No. 179.1 (civil summons issued for service upon BEV, dated

20 April 2023 at 8:58 a.m.) This is a necessary determination, given that Movants make various claim-specific statute of limitations arguments in the Motions, some of which the Court addresses herein.

A. Count One: Injunctive Relief, Alleged Against Only BIOMILQ

78. BIOMILQ seeks dismissal of Count One against it. (BIOMILQ Br. Supp. Mot. 11–12, ECF No. 187 [“BIOMILQ Br. Supp.”].)

79. Injunctive relief, often sought through a preliminary injunction, “is an ancillary remedy, not an independent cause of action.” *Revelle v. Chamblee*, 168 N.C. App. 227, 230 (2005). It is well-settled that “injunctive relief is not a standalone claim[.]” *Window World of St. Louis, Inc. v. Window World of Bloomington, Inc.*, 2021 NCBC LEXIS 88, at **15 (N.C. Super. Ct. Oct. 6, 2021); *see also Lendingtree, LLC v. Intercontinental Capital Grp., Inc.*, 2017 NCBC LEXIS 54, at **16–17 (N.C. Super. Ct. June 23, 2017) (granting defendants’ motion to dismiss a “purported cause of action for preliminary injunction” and construing the claim as a request to file an appropriate motion during the litigation).

80. Since there is no standalone claim for injunctive relief in North Carolina, and because such relief is better sought through motions practice pursuant to Rule 65, BIOMILQ’s Motion is **GRANTED** in part and Count One is hereby **DISMISSED** without prejudice to Defendants’ ability to seek injunctive relief by motion, if legally and procedurally warranted.⁹

⁹ Notwithstanding the Court’s conclusions that this claim should be dismissed, “[t]he decision to dismiss an action with or without prejudice is in the discretion of the trial court[.]” *First Fed. Bank v. Aldridge*, 230 N.C. App. 187, 191 (2013). The Court concludes, in the exercise of its discretion, that dismissal of Defendants’ Count One should be without prejudice to

B. Claims Alleged Against Only Egger

81. Defendants allege three claims for relief against only Egger: Counts Three, Sixteen, and Twenty-Two. The Court also addresses Count Fourteen in this section because only Egger seeks dismissal of that claim. (Egger Mot. 3; *see* Egger Br. Supp. 20–21.)

1. Count Three: Breach of Fiduciary Duty

82. Defendants allege a claim for breach of fiduciary duty against Egger, contending that she was part of the 108Labs “team,” “was either a manager or employee of 108Labs or was engaged in a partnership with 108Labs,” and/or the BIOMILQ “partnership created by Strickland and Guiliano[.]” (Countercls. ¶ 282.) Egger argues that dismissal of Count Three is proper because Defendants have failed to allege facts that support a contention that Egger owed Defendants a fiduciary duty. (*See* Egger Br. Supp. 11–12.) The Court agrees.

83. Defendants do not appear to allege or argue in the briefing that Egger owed a *de facto* fiduciary duty to them, and therefore the Court considers only whether a *de jure* fiduciary relationship exists. (*See* Countercls. ¶¶ 280–86; Defs.’ Br. Opp’n Egger Mot. 14–15, ECF No. 196 [“Br. Opp. Egger Mot.”].)

84. In opposition to Egger’s Motion, Defendants argue that Egger “partnered with 108Labs,” citing to a paragraph in the Counterclaims discussing the NSF Grant Application and Strickland’s relationship to Egger as being part of 108Labs’s business plan. (Br. Opp. Egger Mot. 15 (citing Countercls. ¶ 90).) Defendants admit

Defendants’ right to attempt to reassert such claim or to seek injunctive relief through the filing of an appropriate motion.

that Egger was not an employee of 108Labs, arguing instead that she furthered its marketing and fundraising goals and was provided confidential information pursuant to a non-disclosure agreement. (Br. Opp. Egger Mot. 15.) Thus, it appears that the only possible fiduciary relationship between Defendants and Egger was as a purported partner through either Egger's alleged furtherance of 108Labs's marketing goals or the BIOMILQ "partnership."

85. "A claim for breach of fiduciary duty cannot exist in the absence of a fiduciary relationship between the parties." *Sykes v. Health Network Sols., Inc.*, 2017 NCBC LEXIS 73, at *67 (N.C. Super. Ct. Aug. 18, 2017) (citing *Dalton v. Camp*, 353 N.C. 647, 651 (2001)). While it is true that business partners in North Carolina owe each other *de jure* fiduciary duties, see *HAJMM Co. v. House of Raeford Farms, Inc.*, 328 N.C. 578, 588 (1991), the allegations in the Counterclaims do not properly support a legal contention that Egger was a "partner" in 108Labs. Defendants allege, and it is clear, that 108Labs is a member-managed limited liability company and that it does not have partners. (Countercls. ¶ 22.) Further, a careful review of all 551 paragraphs of the Counterclaims demonstrates that Defendants describe Egger as an interloper into 108Labs's affairs, not a partner in it. (See, e.g., Countercls. ¶¶ 105, 107, 113–16, 168, 192–93 ("Egger did not want to associate with, negotiate with, or work with 108Labs").) Defendants' allegations simply do not support their conclusory allegation that an ongoing partnership existed between Egger, Guiliano, and 108Labs, or that they took actions "in continuance and furtherance of a partnership

for profit.” *Loyd v. Griffin*, 2022 NCBC LEXIS 63, at **17 (N.C. Super. Ct. June 23, 2022).

86. Therefore, Egger’s Motion is **GRANTED** in part, and Count Three for breach of fiduciary duty is **DISMISSED** with prejudice as to Egger.¹⁰

2. Count Fourteen: Tortious Interference with Contract

87. Egger argues that Defendants’ Count Fourteen for tortious interference fails because Defendants did not allege that Egger’s actions were “without justification.” (Egger Br. Supp. 20–21.) Count Fourteen is based upon Defendants’ allegation that in August 2020, Egger and BIOMILQ “threaten[ed] litigation if UC Davis continued to work with 108Labs” on “any milk project.” (Countercls. ¶ 424.) Defendants allege that Dr. Barile of UC Davis resigned as a scientific advisor to NeutraSiga because of this threat. (Countercls. ¶ 428.)

88. Egger argues that her alleged interference was for a legitimate business purpose since, according to the allegations, her actions were taken on behalf of BIOMILQ. (Egger Br. Supp. 21 (citing Countercls. ¶¶ 421, 429).) In response, Defendants argue that Egger’s actions were not justified because making false statements to a third-party is neither justified nor in support of a legitimate business interest, but rather is based in malice. (Br. Opp. Egger Mot. 22.)

89. To state a claim for tortious interference with contract, a claimant must allege: “(1) a valid contract exists between the [claimant] and a third person which

¹⁰ The Court, in its discretion, dismisses this claim, and others, with prejudice. Defendants had three chances to state a claim in the Counterclaims, and further opportunity for amendment(s) would not remedy the factual deficiencies.

confers upon the plaintiff a contractual right against a third person; (2) the defendant knows of the contract; (3) the defendant intentionally induces the third person not to perform the contract; (4) and in doing so acts without justification; (5) resulting in actual damage to plaintiff.” *United Labs., Inc. v. Kuykendall*, 322 N.C. 643, 661 (1988) (citing *Childress v. Abeles*, 240 N.C. 667, 674 (1954)).

90. “A motion to dismiss a claim of tortious interference is properly granted where the complaint shows the interference was justified[.]” *Pinewood Homes, Inc. v. Harris*, 184 N.C. App. 597, 605 (2007) (citing *Peoples Sec. Life Ins. Co. v. Hooks*, 322 N.C. 216, 220 (1988)). “The interference is ‘without justification’ if the defendants’ motives . . . were ‘not reasonably related to the protection of a legitimate business interest’ of the defendant.” *Privette v. Univ. of N.C.*, 96 N.C. App. 124, 134 (1989) (quoting *Smith v. Ford Motor Co.*, 289 N.C. 71, 94 (1976)). Accordingly, the counterclaims “must admit of no other motive for interference other than malice.” *Id.* at 134–35. Mere “[g]eneral allegations of malice are insufficient as a matter of pleading.” *Pinewood Homes, Inc.*, 184 N.C. App. at 605 (citation omitted).

91. The Court agrees with Egger’s argument that Defendants’ allegations fail as to the fourth required element of Count Fourteen: acting without justification. Defendants allege only generally that Egger had no reasonable motive or explanation “other than a malicious effort to stop 108Labs from legally advancing its own scientific research[.]” (Countercls. ¶ 429.) This conclusory allegation is insufficient to satisfy Defendants’ pleading requirements.

92. Further, the Counterclaim must admit of no motive for interference other than malice and have a factual basis to support the assertion of malice. *Pinewood Homes, Inc.*, 184 N.C. App. at 605. In this case the face of the Counterclaims, as Egger points out, provides a factual reason for her actions other than malice: competition.

93. Therefore, the Court **GRANTS** Egger's Motion, and Count Fourteen is **DISMISSED** with prejudice.

3. Count Sixteen: Breach of Contract

94. Egger seeks dismissal of Count Sixteen, arguing that Defendants failed to sufficiently allege the existence of a valid contract and that the claim is time-barred. (Egger Br. Supp. 22; Egger Reply Br. 4, ECF No. 206 ["Egger Reply"].)

95. To properly plead breach of contract, the claimant must allege "(1) [the] existence of a valid contract and (2) [a] breach of the terms of that contract." *Poor v. Hill*, 138 N.C. App. 19, 26 (2000) (citing *Jackson v. Cal. Hardwood Co.*, 120 N.C. App. 870, 871 (1995)).

96. Defendants allege that Egger signed a non-disclosure agreement on 9 October 2019 and that it was a valid contract. (Countercls. ¶¶ 439–40.) Defendants also allege that Egger breached the agreement by sharing 108Labs's confidential information during the 20 March 2020 investor calls. (Countercls. ¶¶ 110, 441.) While these allegations are sufficient to satisfy the elements of Defendants' claim, they also demonstrate that the claim is time-barred.

97. “A statute of limitations can provide the basis for dismissal on a Rule 12(b)(6) motion if the face of the complaint establishes that plaintiff’s claim is so barred.” *Soderlund v. N.C. Sch. of the Arts*, 125 N.C. App. 386, 389 (1997) (citation omitted). Dismissal on this basis “is proper only when all the facts necessary to establish that the claim is time-barred are either alleged or admitted in the complaint, construing the complaint liberally in favor of plaintiff.” *Lau v. Constable*, 2017 NCBC LEXIS 10, at **10 (N.C. Super. Ct. Feb. 7, 2017) (cleaned up) (citing *Fox v. Sara Lee Corp.*, 210 N.C. App. 706, 708–09 (2011)).

98. A breach of contract action has a three-year statute of limitations which begins to run at the time of notice of the breach. N.C.G.S. § 1-52(1); *Brown v. Lattimore Living Tr.*, 264 N.C. App. 682, 687 (2019). Defendants affirmatively allege that Guiliano was listening to the 20 March 2020 investor call when Egger purportedly breached the non-disclosure agreement. (Countercls. ¶¶ 110, 114–18.) Defendants even allege that Guiliano “confronted Strickland about the disclosures made by Egger” after the call. (Countercls. ¶ 118.) Therefore, the limitations period ran on 20 March 2023, a month before this action was deemed initiated.¹¹ (*See supra* ¶¶ 74–77.)

¹¹ Although styled as a counterclaim, the Counterclaims added new parties Egger and BEV to the action. As to them, the Counterclaims are not a compulsory counterclaim but rather initiate an action against BEV and Egger as third-party defendants pursuant to Rule 14(a). This distinction is important here, as our Supreme Court recently held that, for purposes of determining whether the statute of limitations for a compulsory counterclaim has run, the counterclaim will be deemed filed as of the date of the initiation of the action, i.e., when the complaint was filed. *See Upchurch v. Harp Builders, Inc.*, 2024 N.C. LEXIS 144, at *8, 12–13 (“[T]he Rules do not preclude the relation back of [compulsory] counterclaims,” as the Rules “do not treat the filing of compulsory counterclaims as procedurally equivalent to the commencement of civil actions.”). Here, where a summons must issue pursuant to Rule 4(a),

99. Therefore, Egger's Motion is **GRANTED** in part, and Count Sixteen for breach of contract is **DISMISSED** with prejudice.

4. **Count Twenty-Two: Alienation of Affections**

100. For a claim of alienation of affections to withstand a motion to dismiss, the Counterclaims must allege: "(1) that the plaintiff and his or her spouse 'were happily married, and that a genuine love and affection existed between them; (2) that the love and affection so existing was alienated and destroyed; and (3) that the wrongful and malicious acts of the defendant produced and brought about the loss and alienation of such love and affection.'" *Beavers v. McMican*, 2024 N.C. LEXIS 147, at *11–12 (N.C. Mar. 22, 2024) (quoting *McCutchen v. McCutchen*, 360 N.C. 280, 283 (2006)). "A malicious act has been loosely defined to include any intentional conduct that would probably affect the marital relationship." *Id.* at *12 (cleaned up). Where the defendant has engaged in sexual intercourse with the plaintiff's spouse, malice is presumed. *Id.*

101. Egger contends that this claim fails because Defendants have not alleged the malice required to support this claim or that Egger was the controlling or effective cause of the dissolution of Guiliano's marriage. (Egger Br. Supp. 27–28; Egger Reply 14.) Additionally, Egger argues that Guiliano and Strickland were separated in March 2020, and that any claims against her that are based on acts prior to 20 April 2020 are time-barred. (Egger Br. Supp. 28.)

the claimant does not get the benefit of a relation back to the filing of the complaint for statute of limitations purposes, as the action is newly initiated with respect to the third-party defendant.

102. Claims for alienation of affections have a three-year statute of limitations that begins to run when “the wrong,” or the “the actual alienation of the spouse’s affections by a third party,” is complete. *McCutchen*, 360 N.C. at 283. However, mandatory accrual does not happen on the date of separation; it can occur post-separation. *Id.* at 284. Egger’s contention that the claim is time-barred fails because the Counterclaims do not affirmatively allege facts that would cause the Court to conclude as a matter of law that the statute of limitations period began to run in March 2020. Therefore, the Court next considers Egger’s argument regarding the insufficiency of Defendants’ allegations of malice.

103. Here, the Counterclaims allege generally that “Strickland and Guiliano’s love was alienated by the intentional and malicious acts of . . . Egger[.]” (Countercls. ¶ 513.) Because Defendants do not allege sexual intercourse, they must instead allege that the wrongful and malicious acts of Egger produced and brought about the alienation through allegations of intentional conduct that would affect the marital relationship. *Beavers*, 2024 N.C. LEXIS 147, at *20 (citation omitted).

104. Defendants have failed to allege malicious conduct by Egger, designed to alienate the affections of Strickland. The Counterclaims allege that Egger and Strickland had an ongoing business relationship. (See Countercls. ¶¶ 90, 97, 109, 219–20.) Defendants have not alleged malicious conduct by Egger designed to alienate the affections of Strickland and Guiliano but rather focus their allegations only on their business dealings. See *Beavers*, 2024 N.C. LEXIS 147, at *16 (citing *Coachman v. Gould*, 122 N.C. App. 443, 448 (1996)). Even reading the Counterclaims

in the light most favorable to Defendants, the Court agrees with Egger that there is no allegation, or collection of allegations, that could be read together that would allow the Court to infer that Egger was the controlling or effective cause of the dissolution of Strickland and Guiliano's marriage. (See Egger Reply 14.)

105. Therefore, Egger's Motion is **GRANTED** in part, and Count Twenty-Two for alienation of affections is **DISMISSED** with prejudice.

C. Defendants' Claims Against BIOMILQ and Egger

106. Defendants allege five claims against Egger and BIOMILQ together. The Court addresses each claim in turn.

1. Count Two: Declaratory Relief

107. "A motion to dismiss for failure to state a claim is seldom appropriate 'in actions for declaratory judgments, and will not be allowed simply because the plaintiff may not be able to prevail.'" *Morris v. Plyler Paper Stock Co.*, 89 N.C. App. 555, 557 (1988) (quoting *N.C. Consumers Power, Inc. v. Duke Power Co.*, 285 N.C. 434, 439 (1974)). "Rather, a motion to dismiss a declaratory[] judgment claim is appropriate only when the complaint does not allege an actual, genuine existing controversy, which prevents a court from entering a purely advisory opinion." *Bennett v. Bennett*, 2019 NCBC LEXIS 19, at *30–31 (N.C. Super. Ct. Mar. 15, 2019) (cleaned up). The question is "only whether [Defendants] have identified an actual, genuine controversy." *Id.* at *32.

108. Defendants seek a declaration from the Court that 108Labs is the owner of certain intellectual property. (See Countercls. ¶¶ 276–78.)

109. Egger contends that the claim makes no mention of her, and that it therefore presents no actual or real controversy between her and 108Labs. (Egger Br. Supp. 10 (citing *Claggett v. Wake Forest Univ.*, 126 N.C. App. 602, 608 (1997)).) Defendants do not respond to this argument. (See Br. Opp. Egger Mot. 14–15 (making fiduciary duty arguments without mention of the declaratory judgment claim).) The Court therefore agrees with Egger’s argument. It is clear based on the allegations, and Defendants’ failure to respond on this point, that there is no actual or real controversy between 108Labs and Egger regarding the intellectual property issues alleged. Egger’s Motion is therefore **GRANTED** in part, and Count Two for declaratory judgment against Egger is hereby **DISMISSED** without prejudice.

110. BIOMILQ separately contends that Count Two fails as to it because Defendants pleaded no cognizable basis that 108Labs was the owner of equitable title to the intellectual property at issue in this litigation. (BIOMILQ Br. Supp. 12–13.) BIOMILQ highlights that, based on the allegations in the Counterclaims, Strickland did not assign her rights in the ’407 Provisional to 108Labs, and she ultimately did assign her rights in it to BIOMILQ. (BIOMILQ Br. Supp. 13–14.)

111. Defendants fail to respond to this argument, again seemingly conceding the lack of controversy. (See Defs.’ Br. Opp’n BIOMILQ Mot. 12–13, ECF No. 194 [“Br. Opp. BIOMILQ Mot.”].) Defendants instead focus their attention on Strickland and how, in their view, she was “required” to assign her rights in the ’407 Provisional to 108Labs. (Br. Opp. BIOMILQ Mot. 12–13.) Strickland is no longer a party to the action, and Defendants do not argue how or why Strickland’s assignment of her

interest to BIOMILQ was wrongful or should be rendered invalid. (See Br. Opp. BIOMILQ Mot. 12–13.)

112. “It is not the Court’s job to sift through the record to make [Defendants’] case for [them].” *Brewster v. Powell Bail Bonding, Inc.*, 2020 NCBC LEXIS 27, at *9 (N.C. Super. Ct. Mar. 11, 2020) (cleaned up); see also *BIOMILQ, Inc. v. Guiliano*, 2023 NCBC LEXIS 137, at *3 (N.C. Super. Ct. Nov. 3, 2023).

113. Notwithstanding that failure, and although the Court would prefer that the claim was alleged in a more definite and concrete fashion, the Court is nevertheless able to identify an actual, genuine existing controversy between Defendants and BIOMILQ regarding who is the rightful owner of title in the ‘407 Provisional and other patents and/or Provisional Patent Applications at issue in this litigation. (Countercls. ¶ 278.)

114. Therefore, BIOMILQ’s Motion is **DENIED** in part as to Count Two for declaratory judgment.

2. Count Four: Constructive Fraud

115. To state a claim for constructive fraud, a plaintiff must allege “(1) that the defendant owes the plaintiff a fiduciary duty; (2) that the defendant breached that duty; and (3) that the defendant sought to benefit himself in the transaction.” *Bryant v. Wake Forest Univ. Baptist Med. Ctr.*, 281 N.C. App. 630, 637 (2022). The element of a “relation of trust and confidence” is satisfied when there is a fiduciary duty owed to the plaintiff; constructive fraud is “based on a confidential relationship rather than

a specific misrepresentation.” *Barger v. McCoy Hillard & Parks*, 346 N.C. 650, 666 (1997) (cleaned up).

116. As an initial matter, the Court has already determined herein that Defendants have failed to allege a cognizable basis on which Egger owed a fiduciary duty to Defendants. Therefore, Egger’s Motion is **GRANTED** in part, and Count Four for constructive fraud is **DISMISSED** with prejudice as to her.

117. BIOMILQ argues that Count Four makes no mention of it, despite the claim being captioned in a manner that would seem to suggest that the claim was alleged against it. BIOMILQ specifically argues that “Defendants do not allege, and could not plausibly allege, that BIOMILQ owed them fiduciary duties.” (BIOMILQ Br. Supp. 20 n.11.) The Court agrees.

118. A thorough review of the Counterclaims demonstrates that there is no mention of BIOMILQ owing anyone a fiduciary duty,¹² and instead the allegations concern only Egger and Strickland’s purported fiduciary duties. As a result, Defendants have failed to allege a necessary element of constructive fraud.

119. Therefore, the Court **GRANTS** in part BIOMILQ’s Motion, and Count Four for breach of fiduciary duty is **DISMISSED** with prejudice.

¹² Nor could it, based on the allegations here. Even if Guiliano happened to be a director or officer of BIOMILQ, “a corporation does not owe a reciprocal fiduciary duty to its directors and officers.” *Merrell v. Smith*, 2020 NCBC LEXIS 150, at **22 (N.C. Super. Ct. Dec. 22, 2020) (citing *Talisman Software, Sys. & Servs. v. Atkins*, 2015 NCBC LEXIS 108, at *12 (N.C. Super. Ct. Nov. 18, 2015)).

3. Count Seven: Conversion

120. Under North Carolina law, “[t]wo essential elements are necessary in a claim for conversion: (1) ownership in the plaintiff, and (2) a wrongful conversion by the defendant.” *Steele v. Bowden*, 238 N.C. App. 566, 574 (2014) (cleaned up). In cases where a defendant comes into possession of plaintiff’s property lawfully, plaintiff must show that it made a demand for the return of the property that was refused by defendant. *Hoch v. Young*, 63 N.C. App. 480, 483 (1983) (citations omitted). Further, “‘there is no conversion until some act is done which is a denial or violation of the plaintiff’s dominion over or rights in the property.’” *Bartlett Milling Co. v. Walnut Grove Auction & Realty Co.*, 192 N.C. App. 74, 86 (2008) (quoting *Lake Mart Ltd. P’ship v. Johnston*, 145 N.C. App. 525, 532, *rev. denied*, 354 N.C. 363 (2001)).

121. Defendants allege that BIOMILQ and Egger took and exerted control over (1) the patents and trademarks at issue, (Countercls. ¶ 326); and (2) 108Labs’s “[n]otebooks, sample cells created from the proof of concept experiment with FiberCell . . . and data/results generated from testing[,]” (Countercls. ¶ 328). Defendants also allege that Strickland gained access to 108Labs’s secure storage facility and lab space on 21 May 2020 that resulted in her wrongfully taking the sample cells. (Countercls. ¶¶ 333–35.) Defendants allege that the wrongful possession of this property was to the exclusion of 108Labs. (Countercls. ¶ 341.)

122. Egger contends that the conversion claim fails (1) to the extent it concerns intellectual property, and (2) because Defendants allege that Egger converted

property that Defendants also allege Strickland took actual possession of. (Egger Br. Supp. 13 (citing Countercls. ¶¶ 166–68, 326, 328).) In response, Defendants argue without citation to the Counterclaims, “that Egger participated in the plan to convert the physical property of 108Labs and then remained in possession of it after its conversion, along with Strickland.” (Br. Opp. Egger Mot. 16.)

123. BIOMILQ similarly argues that the conversion claim fails as to intangible property, like patents and intellectual property, but does not address the notebooks, sample cells, and data. (BIOMILQ Br. Supp. 22–23.) Defendants do not respond to the merits of BIOMILQ’s arguments, instead contending generally that they “have clearly set out defined tangible property as part of its claim for conversion, including, inter alia, technology, methods, trade secrets, discoveries, inventions, data, lab notebooks, lab samples, cell samples, documents, and recorded data.” (Br. Opp. BIOMILQ Mot. 19.)

124. North Carolina does not recognize a claim for conversion of intangible interests, and our courts have determined that this includes trademark rights. *HCW Ret. & Fin. Servs., LLC v. HCW Emp. Benefit Servs., LLC*, 2015 NCBC LEXIS 73, at *57–58 (N.C. Super. Ct. July 14, 2015) (dismissing conversion claim as to trademark rights as intangible property). Therefore, to the extent the claim for conversion concerns the trademark at issue, the claim fails.

125. As to Egger and BIOMILQ’s arguments regarding other intellectual property, the Court agrees that “[i]ntellectual property rights are indeed intangible interests[,]” and that a claim for conversion of the intellectual property itself,

including the patents at issue, rather than physical products protected by intellectual property, fails. *McFee v. Presley*, 2022 NCBC LEXIS 74, at **13–14 (N.C. Super. Ct. July 11, 2022) (citations omitted). Defendants have not directed the Court to caselaw suggesting otherwise.

126. Finally, regarding the notebooks, sample cells, and data, the Counterclaims specifically allege that Strickland took possession of those materials. (See Countercls. ¶¶ 333–35.) Defendants then allege in a conclusory fashion that Egger wrongfully possessed or converted the property to Defendants’ exclusion. (Countercls. ¶ 341.) “The allegation is conclusory, contradicted by other allegations, and therefore insufficient to save the claim.” *Vanfleet v. City of Hickory*, 2020 NCBC LEXIS 40, at *16 (N.C. Super. Ct. Mar. 30, 2020) (citation omitted).

127. Therefore, Egger’s Motion is **GRANTED** in part, and Count Seven is **DISMISSED** with prejudice as to her. BIOMILQ’s Motion is similarly **GRANTED** in part, and Count Seven is **DISMISSED** with prejudice to the extent it concerns intellectual property rights, including the trademarks and patents at issue in this litigation, because those are intangible interests. The Motions are otherwise **DENIED** as to Count Seven.

4. Second Count Eleven: Slander of Title

128. “The elements of slander of title are: (1) the uttering of slanderous words in regard to the title of someone’s property; (2) the falsity of the words; (3) malice; and (4) special damages.’” *Maynard v. Crook*, 289 N.C. App. 357, 361 (2023) (quoting *Broughton v. McClatchy Newspapers, Inc.*, 161 N.C. App. 20, 30 (2003)).

129. BIOMILQ and Egger argue that a claim for slander of title applies only to derogatory matter published with respect to real property. (BIOMILQ Br. Supp. 27; see Egger Br. Supp. 16.) The Court agrees. See *Whyburn v. Norwood*, 47 N.C. App. 310, 315 (1980) (citation omitted) (“Slander of title occurs when one publishes matter derogatory to the title to *real property* with the malicious intent to injure the owner thereof and which in fact does cause injury.” (emphasis added)). While it should go without saying, a patent or trademark right is not real property. See *Property*, Black’s Law Dictionary (11th ed. 2019) (“Land and anything growing on, attached to, or erected on it, excluding anything that may be severed without injury to the land.”).

130. Therefore, the Court hereby **GRANTS** in part BIOMILQ’s Motion and Egger’s Motion, and Second Count Eleven for slander of title is hereby **DISMISSED** with prejudice.

5. Count Fifteen: Defamation

131. “Under North Carolina law, slander *per se* and slander *per quod* are the two actionable classes of oral defamation.” *Izydore v. Alade*, 242 N.C. App. 434, 445 (2015). The statute of limitations in an action for libel or slander is one year, regardless of the date of discovery. N.C.G.S. § 1-54(3); *Philips v. Pitt Cty. Mem. Hosp., Inc.*, 222 N.C. App. 511, 526 (2012).

132. Both Egger and BIOMILQ contend that Count Fifteen is time-barred because the defamatory statements at issue allegedly occurred on 6 February 2020, 27 February 2020, and 21 March 2021. (Egger Mot. 4; Egger Br. Supp. 21–22 (citing Countercls. ¶ 435); BIOMILQ Br. Supp. 27.) Defendants do not respond to the

argument directly, instead erroneously contending that any dismissal of claims for statute of limitations reasons would be improper at this stage. (*See* Br. Opp. Egger Mot. 12–13; Br. Opp. BIOMILQ Mot. 8–10.)

133. Defendants cite no authority to support their assertion that the defamation claims against Egger are not barred by the applicable limitations period. Further, the Counterclaims are clear that, for purposes of this defamation claim, Defendants take issue with statements from February 2020 and 21 March 2021. (*See* Countercls. ¶¶ 432, 435.) As already discussed, this action was not initiated as to Egger until the issuance of summonses on 20 April 2023. Even assuming, *arguendo*, that this action was deemed initiated on the date of the filing of the first iteration of the Counterclaims on 6 February 2023, the defamation claim would still be untimely. Accordingly, the claim against Egger is time-barred.

134. As to BIOMILQ, the analysis is slightly different. Under *Upchurch*, 2024 N.C. LEXIS 144, at *8, *12–13, for statute of limitations purposes, the Counterclaims may be deemed filed as of 4 March 2022—the date BIOMILQ initiated this action by filing its Complaint, (ECF No. 3). Therefore, statements allegedly made by BIOMILQ in February 2020 are time-barred. (*See* Countercls. ¶¶ 432–34.)

135. However, the 21 March 2021 statement, which Defendants allege was made by Egger on behalf of BIOMILQ, is not time-barred under the Supreme Court’s holding in *Upchurch*. Rather, Defendants get the benefit of the date the action was initiated by BIOMILQ for statute of limitations purposes. *Upchurch*, 2024 N.C.

LEXIS 144, at *11–12. Therefore, the defamation claim is deemed filed on 4 March 2022, just a few weeks before the one-year statute of limitations expired.

136. Therefore, the Court hereby **GRANTS** in part Egger’s Motion, and Count Fifteen is **DISMISSED** with prejudice as to her because the claim is time-barred. The Court **GRANTS** in part and **DENIES** in part BIOMILQ’s Motion as set forth in this section.

D. Defendants’ Claims Against Movants

137. Defendants allege thirteen claims for relief against Movants, and the Court addresses each in turn.

1. Count Five: Constructive Trust

138. BIOMILQ and BEV argue that constructive trust is a remedy, not a claim, making Count Five ripe for dismissal. (BIOMILQ Br. Supp. 21; BEV Br. Supp. 10.) Egger also argues that the remedy is unavailable here because Defendants have not sufficiently alleged a fiduciary relationship with Egger. (Egger Br. Supp. 11.)

139. “[A] constructive trust is not a standalone claim for relief or cause of action.” See *LLG-NRMH, LLC v. N. Riverfront Marina & Hotel, LLLP*, 2018 NCBC LEXIS 105, at *14 (N.C. Super. Ct. Oct. 9, 2018) (citing *Weatherford v. Keenan*, 128 N.C. App. 178, 179 (1997)); see also *Flynn v. Pierce*, 2020 NCBC LEXIS 149, at *15 (N.C. Super. Ct. Dec. 22, 2020) (dismissing a claim for constructive trust because it is a remedy rather than a standalone claim).

140. Accordingly, the Court **GRANTS** in part the Motions, and Count Five for constructive trust is hereby **DISMISSED** without prejudice to Defendants' right to pursue this remedy on any surviving claims as warranted and permitted by law.

2. Count Six: Fraudulent Conveyance

141. Count Six concerns Strickland's assignment of "her entire right, title and interest" in the '407 Provisional to BIOMILQ. (Countercls. ¶¶ 316, 318.) The claim appears to be based upon N.C.G.S. § 39-23.4, which each Movant argues cannot support Defendants' claim because neither BIOMILQ, Egger, nor BEV are debtors of Defendants, and Defendants have not pleaded facts that could support a creditor-debtor relationship. (BEV Br. Supp. 11–12; Egger Br. Supp. 12–13; BIOMILQ Br. Supp. 22.) The Court agrees.

142. A claim for fraudulent conveyance or transfer under the Uniform Voidable Transactions Act ("UVTA"), N.C.G.S. § 39-23.1 *et seq.*, must be based upon allegations that a transfer or obligation was incurred by a debtor and that "the debtor made the transfer or incurred the obligation: (1) [w]ith intent to hinder, delay, or defraud any creditor of the debtor[.]" N.C.G.S. § 39-23.4(a)(1). A creditor is "[a] person that has a claim[.]" and a debtor "[a] person that is liable on a claim." *Id.* §§ 39-23.1(4), (6). Claims for fraudulent conveyance must also comply with the heightened pleading standard set by Rule 9(b). *See Azure Dolphin, LLC v. Barton*, 2017 NCBC LEXIS 90, at *26 (N.C. Super. Ct. Oct. 2, 2017) (citing *Doby v. Lowder*, 72 N.C. App. 22, 27 (1984)).

143. Here, the claim makes no mention of Egger and BEV at all, and there are no allegations regarding how BEV or Egger stand in a creditor-debtor relationship with Defendants. (See Countercls. ¶¶ 316–24.) BIOMILQ argues that an obligation to assign intellectual property is not a duty to make a payment, and the person allegedly obligated to assign that interest is not a debtor. (BIOMILQ Br. Supp. 22 (citing *Maloney v. Alliance Dev. Grp., LLC*, 2006 NCBC LEXIS 14, at **19–20 (N.C. Super. Ct. Sept. 18, 2006)).) This is reason alone to grant the Motions.

144. Further, the allegations are insufficient because, as BIOMILQ points out, they are conclusory in violation of Rule 9(b). (BIOMILQ Br. Supp. 22.) As is true with respect to BEV and Egger, there is no allegation regarding how Defendants and BIOMILQ stand in a debtor-creditor relationship. Moreover, the allegations are unclear regarding how Strickland’s assignment to BIOMILQ would give rise to a “claim” under the UVTA. See *Estate of Chambers v. Vision Two Hosp. Mgmt., LLC*, 2013 NCBC LEXIS 49, at **14–15 (N.C. Super. Ct. Nov. 21, 2013) (noting that one must have a “claim” or a “right to payment” in order to be a creditor such that that the wrong causing injury “creates an enforceable obligation” that “generates a right to payment”).

145. The Court therefore **GRANTS** in part the Motions, and Count Six for fraudulent conveyance is hereby **DISMISSED** with prejudice.

3. Count Ten: Misappropriation of Trade Secrets

146. At the motion to dismiss stage, Defendants must “identify a trade secret with sufficient particularity so as to enable [Movants] to delineate that which he is

accused of misappropriating and a court to determine whether misappropriation has or is threatened to occur.” *Washburn v. Yadkin Valley Bank & Tr. Co.*, 190 N.C. App. 315, 326 (2008) (citations omitted). “[G]eneral allegations in sweeping and conclusory statements, without specifically identifying the trade secrets allegedly misappropriated, [are] insufficient to state a claim for misappropriation of trade secrets.” *Krawiec*, 370 N.C. at 610 (cleaned up).

147. As an initial matter, Egger and BEV contend that Count Ten is barred by the applicable statute of limitations. (Egger Br. Supp. 9–10; Egger Reply 4; BEV Br. Supp. 9–10.) The Court agrees.

148. “An action for misappropriation of a trade secret must be commenced within three years after the misappropriation complained of is or reasonably should have been discovered.” N.C.G.S. § 66-157.

149. Defendants allege that Egger and BIOMILQ shared “high-level results” from 2020 testing and trade secret patent-related information with investors and third parties not affiliated with 108Labs. (Countercls. ¶ 382.) Defendants further allege that Egger and Strickland shared these specified secrets in a 6 February 2020 blog post and on the 20 March 2020 investor call. (See Countercls. ¶¶ 97, 110–18.) As stated already herein, Guiliano observed the 20 March 2020 call and complained after the call about the disclosures made therein. The allegations establish that he was on notice of the disclosures. (See Countercls. ¶¶ 112–14.) Thus, on 20 March 2020, at the latest, Guiliano was aware of the purported misappropriation at issue here.

150. Count Ten is time-barred as to Egger and BEV. Egger’s Motion and BEV’s Motion are therefore **GRANTED** in part, and Count Ten for trade secret misappropriation is **DISMISSED** with prejudice as to them.

151. The Court next considers BIOMILQ’s Motion. BIOMILQ argues that Defendants fail to allege each element necessary to state a claim for misappropriation under the TSPA. (BIOMILQ Br. Supp. 24–26.)

152. The TSPA defines a trade secret as “business or technical information, including but not limited to a formula, pattern, program, device, compilation of information, method, technique, or process that” both:

- a. Derives independent actual or potential commercial value from not being generally known or readily ascertainable through independent development or reverse engineering by 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.

N.C.G.S. § 66-152(3); *see also United Therapeutics Corp. v. Liquidia Techs.*, 2022 NCBC LEXIS 120, at **8–9 (N.C. Super. Ct. Oct. 13, 2022) (citing *Sterling Title Co. v. Martin*, 266 N.C. App. 593, 601 (2019)).

153. Defendants allege that the following constitutes a trade secret: “108Labs Notebooks, the pre-published ’407 Provisional, 108Labs’ research and development plans, 108Labs’ commercial development plans, 108Labs’ confidential business information, and disclosures within the pre-published NSF Grant Application[.]” (Countercls. ¶ 374.)

154. The Court is mindful that, at this stage, Defendants’ “only obligation is to provide notice sufficient to enable [BIOMILQ] to understand the trade secrets it is accused of misappropriating and the Court to determine whether misappropriation has occurred.” *Bldg. Ctr., Inc. v. Carter Lumber, Inc.*, 2016 NCBC LEXIS 79, at *11 (N.C. Super. Ct. Oct. 21, 2016) (cleaned up). While Defendants’ identification of its purported trade secrets is threadbare and further development may reveal that the identified information does not constitute a trade secret, a liberal reading of the allegations demonstrates that they are sufficient to put BIOMILQ on notice of the trade secrets it is accused of misappropriating. *See id.* at *11–12 (collecting cases where allegations were sufficient to state trade secrets claim).

155. The lone exception is 108Labs’s “confidential business information.” This category could include any number of documents which, without a more specific description, would make it nearly impossible for BIOMILQ to understand exactly what it is accused of misappropriating. *See id.* at *12 (citing in relevant part *Washburn*, 190 N.C. App. at 327). BIOMILQ’s Motion is therefore **GRANTED** in part to this extent, and Count Ten is **DISMISSED** with prejudice in part.

156. As to Defendants’ efforts to maintain secrecy, Defendants allege that they made reasonable efforts to maintain the secrecy of the trade secrets by: “requiring execution of relevant nondisclosure agreements, using secure facilities for the storage and testing of samples and products, giving express instructions regarding use of the trade secrets including updated information, including applying multiple encryption

and obfuscation measures, restricting and tracking access, and requiring authorized users to maintain confidentiality.” (Countercls. ¶ 378.)

157. These allegations are sufficient at this stage. *See Bldg. Ctr., Inc.*, 2016 NCBC LEXIS 79, at *14 (“Generally, only where efforts to maintain secrecy of the allegedly misappropriated trade secrets were completely absent have North Carolina courts dismissed claims at the 12(b)(6) stage.”).

158. BIOMILQ’s Motion is therefore **DENIED** in part as to Count Ten. Defendants have, at this early stage, adequately pleaded a cause of action for trade secret misappropriation against BIOMILQ.

4. **Count Eleven: Federal Misappropriation of Trade Secrets**

159. Defendants’ Count Eleven is brought pursuant to the Defend Trade Secrets Act (“DTSA”), 18 U.S.C. § 1836.¹³ The DTSA provides that civil causes of action for misappropriation have a three-year statute of limitations. 18 U.S.C. § 1836(d). “[T]he first discovered (or discoverable) misappropriation of a trade secret commences the limitation period[.]” *Azima v. Del Rosso*, 2021 U.S. Dist. LEXIS 236611, at *19 (M.D.N.C. 2021) (citation omitted).

160. Count Eleven fails as to Egger and BEV for the same reason the TSPA claim fails: the claim is time-barred. Therefore, Egger’s Motion and BEV’s Motion is

¹³ The Court notes that “Congress has granted state courts concurrent jurisdiction over federal claims for misappropriation of trade secrets under the DTSA[.]” *Cultural Experiences Abroad, LLC v. Colon*, 2024 U.S. Dist. LEXIS 23229, at *18 n.9 (D. Del. 2024) (citing 18 U.S.C. § 1836(c) (granting district courts original, but not exclusive, jurisdiction over civil actions brought under the DTSA)).

GRANTED in part, and Count Eleven for misappropriation of trade secrets under the DTSA is **DISMISSED** with prejudice as to them.

161. As for BIOMILQ, the elements for properly stating a claim under the DTSA largely overlap with the elements required for stating a claim under the TSPA. *See Sysco Mach. Corp. v. DCS USA Corp.*, 2023 U.S. Dist. LEXIS 204845, at *5 (E.D.N.C 2023) (“To plead a claim for misappropriation of trade secrets under either the DTSA or North Carolina law, ‘a plaintiff must identify a trade secret with sufficient particularity so as to enable a defendant to delineate that which he is accused of misappropriating and a court to determine whether misappropriation has or is threatened to occur.’” (quoting *Krawiec*, 370 N.C. at 609)).

162. Defendants also “must allege: (1) [they] own[] a trade secret; (2) the trade secret was misappropriated; and (3) the trade secret implicates interstate or foreign commerce.” *JTH Tax LLC v. Cortorreal*, 2024 U.S. Dist. LEXIS 36499, at *15 (E.D. Va. 2024) (citation omitted). A conclusory allegation as to the third element will not suffice. *Id.* at *19 (discussing *Lithero, LLC v. Astrazeneca Pharms. LP*, 2020 U.S. Dist. LEXIS 145592, at *1–2 (D. Del. 2020)). The pleader must allege facts supporting an assertion that the trade secret implicates interstate or foreign commerce. *Id.* at *20–21. It is insufficient to state simply that a party “owns numerous [t]rade [s]ecrets that implicate interstate commerce” because the statement “lacks any supporting evidence to allege a nexus between interstate or foreign commerce.” *Id.* at *20.

163. Here, Defendants allege that 108Labs’s “trade secrets are related to products and/or services used in, and/or intended for use in, interstate commerce.”

(Countercls. ¶ 387.) This conclusory allegation, standing alone, is not sufficient to survive a motion to dismiss.

164. Therefore, BIOMILQ's Motion is **GRANTED** in part as to Count Eleven because Defendants have failed adequately to allege a nexus between its purported trade secrets and interstate or foreign commerce. Count Eleven is therefore **DISMISSED** with prejudice.

5. Count Twelve: False Designation of Origin

165. A reverse passing off claim pursuant to 15 U.S.C. § 1125(a)(1)(A) of the Lanham Act, styled here as a claim for false designation of origin, requires a plaintiff to allege:

(1) that the work at issue originated with [the plaintiff]; (2) that origin of the work was falsely designated by [a defendant]; (3) that the false designation of origin was likely to cause consumer confusion; and (4) that [the plaintiff was] harmed [or likely to be harmed] by [a defendant's] false designation of origin.

Vitaform, Inc. v. Aeroflow, Inc., 2022 NCBC LEXIS 128, at **45–46 (N.C. Super. Ct. Oct. 27, 2022) (modifications in original) (cleaned up); *Dynatemp Int'l, Inc. v. R421A, LLC*, 2021 U.S. Dist. LEXIS 142363, at *15 (E.D.N.C. 2021).

166. The origin of the work, or “origin of goods,” as the phrase has evolved, “refers to the producer of the tangible goods that are offered for sale, and not to the author of any idea, concept, or communication embodied in those goods.” *Dastar Corp. v. Twentieth Century Fox Film Corp.*, 539 U.S. 23, 37 (2003) (citation omitted). The Supreme Court has held that, to conclude otherwise would result in Congress having created “a species of perpetual patent and copyright,” which it cannot do. *Id.*

“[U]nlike copyright and patent laws, the Lanham Act was not designed to protect originality or creativity.” *Mannella Grp., Inc. v. Cornerstone Chiropractic Mktg.*, 2015 U.S. Dist. LEXIS 66598, at *9 (W.D.N.C. 2015) (citing *Dastar*, 539 U.S. at 37).

167. Here, there is no allegation regarding the goods or work at issue. Defendants allege that they “originated one-of-a-kind property—including the [r]elevant [s]ubject [m]atter, the ’407 Provisional and subsequently derived applications for patent—and the exclusive, unique rights extending therefrom[.]” (Countercls. ¶ 409.) None of this, even taken as true, amounts to a tangible good being offered for sale. Instead, Defendants appear to seek what the Supreme Court in *Dastar* explicitly prohibited: a claim for reverse passing off to protect ideas and concepts that may one day amount to a good for sale.

168. Simply put, Defendants have failed to allege that the ideas in question have been reduced to actual production and sale of a product or good, a failing that is fatal to their claim. Therefore, the Court **GRANTS** in part the Motions, and Count Twelve for reverse passing off is **DISMISSED** with prejudice.

6. Count Thirteen: False Advertising

169. A party asserting a claim for false advertising under the Lanham Act must allege that:

- (i) the defendant made a false or misleading statement of fact about a product,
- (ii) the statement either deceived, or had the capacity to deceive a substantial segment of potential consumers,
- (iii) the deception is material, in that it is likely to influence the consumer’s purchasing decision,
- (iv) the product is in interstate commerce, and
- (v) the claimant has been or is likely to be injured as result of the statement at issue.

Dillon v. Stafford, 2020 NCBC LEXIS 153, at **35 (N.C. Super. Ct. Dec. 30, 2020) (cleaned up) (citing *Pizza Hut, Inc. v. Papa John's Int'l, Inc.*, 227 F.3d 489, 495 (5th Cir. 2000), *cert. denied*, 532 U.S. 920 (2001)). Defendants must allege “either that an advertisement is false on its face or that the advertisement is literally true or ambiguous but likely to mislead and confuse consumers.” *Id.* (citing *Clorox Co. P.R. v. P&G Comm. Co.*, 228 F.3d 24, 33 (1st Cir. 2000)).

170. Determining whether a statement is a commercial advertisement under the Lanham Act requires the Court to consider whether the statement is: “(1) commercial speech; (2) by a defendant in commercial competition with plaintiff; (3) for the purpose of influencing consumers to buy defendant’s goods or services; and (4) . . . disseminated sufficiently to the relevant purchasing public” to constitute advertising or promotion. *Applied Med. Res, Corp. v. Steuer*, 527 F. Supp. 2d 489, 493 (E.D. Va. 2007); *see Reynolds Consumer Prods. v. Handi-Foil Corp.*, 2014 U.S. Dist. LEXIS 26932, at *14–15 (E.D. Va. 2014).

171. A careful review of the allegations in the Counterclaims demonstrates that Defendants have failed to identify a statement made by one or more of the Movants that amounts to a commercial advertisement and have similarly failed to identify with any specificity a commercial, physical product. The Motions are therefore **GRANTED** in part, and Count Thirteen for false advertising is **DISMISSED** with prejudice.

7. Count Seventeen: Fraud

172. Movants each contend that the fraud claim fails because the allegations do not comport with the particularity requirements in Rule 9(b). (BIOMILQ Br. Supp. 31–32 (citing Countercls. ¶¶ 444(a)–(e), (j)–(k), (m)–(n)); Egger Br. Supp. 23 (citing Countercls. ¶¶ 444(f), 448(b)); BEV Br. Supp. 17–19 (citing Countercls. ¶¶ 444(j)–(k), (n).)

173. To survive a motion to dismiss, Defendants must allege the five essential elements of a fraud claim: “(1) [f]alse representation or concealment of a material fact, (2) reasonably calculated to deceive, (3) made with intent to deceive, (4) which does in fact deceive, (5) resulting in damage to the injured party.” *Ragsdale v. Kennedy*, 286 N.C. 130, 138 (1974) (citations omitted). In addition, a defendant’s reliance on the fraudulent misrepresentation “must be reasonable.” *Forbis v. Neal*, 361 N.C. 519, 527 (2007) (citing *Johnson v. Owens*, 263 N.C. 754, 757 (1965)). Reliance is not reasonable if a party exercising reasonable diligence fails to make any independent investigation as to the truth of the assertion. *See Calloway v. Wyatt*, 246 N.C. 129, 134–35 (1957).

174. In addition, Rule 9 requires that fraud claims be pleaded with particularity. N.C.G.S. § 1A-1, Rule 9(b); *Value Health Sols. Inc. v. Pharm. Research Assocs.*, 385 N.C. 250, 265–66 (2023). “A pleader meets the requirements of Rule 9(c) when its fraud claim alleges the ‘time, place, and content of the fraudulent representation, identity of the person making the representation and what was obtained as a result of the fraudulent acts or representations.’” *Lawrence v. UMLIC-Five Corp.*,

2007 NCBC LEXIS 20, at **6 (N.C. Super. Ct. June 18, 2007) (quoting *Bob Timberlake Collection, Inc. v. Edwards*, 176 N.C. App. 33, 39 (2006)). “Mere generalities and conclusory allegations of fraud will not suffice.” *Sharp v. Teague*, 113 N.C. App. 589, 597 (1994).

175. Defendants’ allegations as to Egger fail to satisfy the particularity required by Rule 9. Defendants allege that Egger stated, “to interviewers regarding Biomilq, ‘we were preparing to close the round and hadn’t yet re-opened our lab space or hired anyone.’”¹⁴ (Countercls. ¶ 444(f).) This allegation fails to specify the time and place of the alleged fraudulent representation, and it similarly fails to specify what Egger obtained as a result of the representation. Egger’s Motion is therefore **GRANTED** in part, and Defendants’ Count Seventeen is **DISMISSED** with prejudice as to Egger.

176. Defendants’ allegations as to BEV similarly fail. Defendants allege that (1) Chris Rivest (“Rivest”) at BEV emailed Strickland on 25 March 2020 stating: “the [Intellectual Property Right of First Refusal] will really need to be included between Biomilq and 108 labs [sic] (rather than between Biomilq and new investors),” (Countercls. ¶ 444(g) (modification in original)); (2) that on 4 April 2024, Strickland emailed Guiliano that “Rivest ‘wants me to tell you that he is sympathetic to your position[,]’” (Countercls. ¶ 444(j)); and (3) that Strickland, on behalf of BEV, represented that “therapeutic falls outside the scope of BEVs [sic] fund but it is “willing to support 108Labs’s efforts by leveraging other resources[,]” (Countercls. ¶ 444(k)).

¹⁴ This is the only alleged misrepresentation by Egger.

177. Each allegation fails to comport with Rule 9(b) because none of them includes any identification of what was obtained as a result of the allegedly fraudulent representation. The third allegation fails for the additional reason that it does not specify the time or place of the representation. BEV's Motion is therefore **GRANTED** in part as to the allegations of fraud against it, and Defendants' Count Seventeen is **DISMISSED** with prejudice as to BEV.

178. Finally, the Court considers Defendants' fraud claim as to BIOMILQ. (*See* Countercls. ¶¶ 444(h).) The Court first observes that Defendants do not allege that Strickland's statements were made on behalf of BIOMILQ. (*See* Countercls. ¶¶ 444–50.) Thus, the only fraudulent representation that Defendants contend was made by BIOMILQ is that “[i]n the 3 April 2020 Biomilq, Inc. offer letter from Strickland and Egger to 108Labs . . . the Parties represented that if Biomilq, Inc. was unable to obtain the assignment of the []407 application by the 6 April 2020 deadline ‘all scientific development on this project would cease.’” (Countercls. ¶ 444(h).) This allegation does not satisfy Rule 9(b) because Defendants do not allege what it was that BIOMILQ received as a result of the representation. In fact, the allegations seem to demonstrate that BIOMILQ received *nothing*, since Guiliano, on behalf of 108Labs, alleges that he declined the offer. (Countercls. ¶¶ 143–44, 154–55.)

179. The Court therefore **GRANTS** in part BIOMILQ's Motion, and Defendants' Count Seventeen is **DISMISSED** with prejudice as to BIOMILQ, as well.

8. Count Eighteen: Civil Conspiracy

180. Defendants' Count Eighteen is based upon their numerous and varied allegations regarding Movants' "wrongful overt acts." (Countercls. ¶¶ 455–69 (listing Movants' various alleged wrongful acts).) Movants argue that the claim is ripe for dismissal because Defendants fail to allege that there was an agreement to do an unlawful act. (BEV Br. Supp. 20; Egger Br. Supp. 24–25; BIOMILQ Br. Supp. 34–35.) Again, the Court agrees.

181. Civil conspiracy requires "(1) an agreement between two or more individuals; (2) to do an unlawful act or to do a lawful act in an unlawful way; (3) resulting in injury to plaintiff inflicted by one or more of the conspirators; and (4) pursuant to a common scheme." *Strickland v. Hedrick*, 194 N.C. App. 1, 19 (2008) (quotation omitted). The failure to allege an agreement among defendants to commit the alleged wrongful overt act is fatal to the conspiracy claim. *See S.N.R. Mgmt. Corp. v. Danube Partners 141, LLC*, 189 N.C. App. 601, 609 (2008).

182. Defendants do not allege that Movants had an agreement to do an unlawful act. Instead, Defendants allege that Movants' various wrongdoings listed in the Counterclaims "were a combined effort" to "deprive" 108Labs of its rights and interests in its intellectual property. (Countercls. ¶ 474.) Stating that Movants undertook allegedly unlawful acts in a "combined effort" is not the same as the required allegation that they had an agreement. Rather, such statement goes to the fourth required element that Defendants must allege the acts were undertaken pursuant to a common scheme.

183. Defendants have failed to allege that there was an agreement among Movants. The Court therefore **GRANTS** in part the Motions, and Count Eighteen for civil conspiracy is **DISMISSED** with prejudice.

9. Count Nineteen: Unjust Enrichment

184. To sufficiently state a claim for unjust enrichment, a party must allege that: “(1) it conferred a benefit on another party; (2) the other party consciously accepted the benefit; and (3) the benefit was not conferred gratuitously or by an interference in the affairs of the other party.” *Worley v. Moore*, 2018 NCBC LEXIS 114, at *25 (N.C. Super. Ct. Nov. 2, 2018) (citing *Se. Shelter Corp. v. BTU, Inc.*, 154 N.C. App. 321, 330 (2002)). “A claim for unjust enrichment ‘is neither in tort nor contract but is described as a claim in quasi contract or a contract implied in law.’” *Cty. of Wake PDF Elec. & Supply Co., LLC v. Jacobsen*, 2020 NCBC LEXIS 103, at *28 (N.C. Super. Ct. Sept. 9, 2020) (quoting *Booe v. Shadrick*, 322 N.C. 567, 570 (1988)).

185. “There is no claim for unjust enrichment if the benefit was ‘voluntarily bestowed without solicitation or inducement.’” *Herrera v. Charlotte Sch. of Law, LLC*, 2018 NCBC LEXIS 35, at *49 (N.C. Super. Ct. Apr. 20, 2018) (quoting *HOMEQ v. Watkins*, 154 N.C. App. 731, 733 (2002)).

186. Movants contend that this claim fails because Defendants have not alleged that Defendants conferred a benefit upon Movants. (See Egger Br. Supp. 25–26; Egger Reply 9; BEV Br. Supp. 20–21; BIOMILQ Br. Supp. 35.)

187. Defendants allege that Movants “received various benefits,” including Defendants’ rights in certain intellectual property and the ’407 Provisional.

(Countercls. ¶ 477.) Notably, Defendants do not allege that they *conferred* a benefit on Movants, just that Movants *received* various benefits. (See Countercls. ¶¶ 477–82.)

188. Because Defendants have failed to allege that one or both of them conferred a benefit upon Movants, the Motions are **GRANTED** in part, and Count Nineteen for unjust enrichment is **DISMISSED** with prejudice.

10. Count Twenty-Three: Loss of Consortium

189. Movants each seek dismissal of Defendants' Count Twenty-Three for loss of consortium.

190. “[T]he essence of consortium today has become the mutual right of a husband and wife to the society, companionship, comfort and affection of one another.” *Nicholson v. Hugh Chatham Mem’l Hosp., Inc.*, 300 N.C. 295, 297 (1980) (citations omitted). “[A] spouse may maintain a cause of action for loss of consortium due to the negligent actions of third parties so long as that action for loss of consortium is joined with any suit the other spouse may have instituted to recover for his or her personal injuries.” *Id.* at 304; *see also Vaughn v. Clarkson*, 324 N.C. 108, 110 (1989) (“[C]laims for loss of consortium should be limited to the spousal relationship[.]”).

191. As an initial matter, to the extent Count Twenty-Three was alleged by 108Labs against Movants, the claim fails. To state the obvious, 108Labs is an entity and cannot be a spouse or otherwise party to a marriage. *See Nicholson*, 300 N.C.

at 303 (holding that “[s]trangers to the marriage partnership cannot maintain such an action”).

192. Movants argue that this claim fails because the Counterclaims do not allege an underlying personal injury claim by Strickland. (BIOMILQ Mot. 5; Egger Mot. 5.) BEV also contends that the Counterclaims fail to plead negligence by BEV that caused a marital rift between Strickland and Guiliano. (BEV Br. Supp. 23–24.) In response, Defendants have not directed the Court to an underlying personal injury claim that could have been maintained by Strickland. (See Br. Opp. BEV Mot. 25–26; Br. Opp. BIOMILQ Mot. 30; Br. Opp. Egger Mot. 29–30.)

193. A thorough review of the Counterclaims demonstrates that Guiliano has not alleged an underlying personal injury claim that Strickland could have instituted. (See Countercls. ¶¶ 516–18.) The allegations clearly demonstrate that Strickland has not suffered any personal injuries that would support Guiliano’s claim for loss of consortium.

194. Therefore, the Motions are **GRANTED** in part, and Count Twenty-Three for loss of consortium is **DISMISSED** with prejudice.

11. Count Twenty-Four: Punitive Damages

195. Movants each seek dismissal of Defendants’ claim for punitive damages. (BIOMILQ Br. Supp. 21; BEV Br. Supp. 24–25; Egger Br. Supp. 28.)

196. “North Carolina courts have repeatedly held that ‘a claim for punitive damages is not a stand-alone claim.’” *Aldridge v. Metro. Life Ins. Co.*, 2019 NCBC LEXIS 116, at *146 (N.C. Super. Ct. Dec. 31, 2019) (quoting *Funderburk v. JPMorgan*

Chase Bank, N.A., 241 N.C. App. 415, 425 (2015)); *see also Collier v. Bryant*, 216 N.C. App. 419, 434 (2011); *Iadanza v. Harper*, 169 N.C. App. 776, 783 (2006). Punitive damages are appropriate “to punish a defendant for egregiously wrongful acts and to deter the defendant and others from committing similar wrongful acts.” N.C.G.S. § 1D-1.

197. The Motions are therefore **GRANTED** in part, and Count Twenty-Four is hereby **DISMISSED** without prejudice to Defendants’ ability to seek this relief later in the litigation as a remedy to an appropriate underlying claim for relief.

12. Count Twenty-Five: Property Interference

198. North Carolina has a private cause of action for a property owner against someone who possesses personal property known to be stolen. *See* N.C.G.S. § 99A-1. The statute provides, in relevant part, that:

[W]hen personal property is wrongfully taken and carried away from the owner or person in lawful possession of such property without his consent and with the intent to permanently deprive him of the use, possession and enjoyment of said property, a right of action arises for recovery of actual and punitive damages from any person who has or has had, possession of said property knowing the property to be stolen.

N.C.G.S. § 99A-1. Recovery under the statute is available only “from one who is criminally guilty of receiving the stolen property.” *Russell v. Taylor*, 37 N.C. App. 520, 527 (1978).

199. Egger contends that Defendants have failed to allege that she is “criminally guilty of receiving any stolen property.” (*See* Egger Br. Supp. 29.) BEV makes a similar argument, and it is an argument that Defendants fail to address on the merits in their response briefs. (*See* BEV Br. Supp. 25–26; Br. Opp. BEV Mot. 26.)

BIOMILQ argues that Defendants failed to plead that the property at issue was carried away without the owner's consent and with an intent to permanently deprive him of its use. (BIOMILQ Reply 13–14.)

200. Defendants' responses to these arguments are blasé, stating, for example, only that “[e]ach element of the claim of Property Interference, with supporting factual basis, has been sufficiently and particularly pleaded,” without citation to the Counterclaims or to any legal authority, persuasive or otherwise. (Br. Opp. Egger Mot. 30; *see also* Br. Opp. BEV Mot. 26; Br. Opp. BIOMILQ Mot. 19–20.)

201. Despite Defendants' complete failure to respond to Movants' arguments with citation for the Court's consideration, even a review of the Counterclaims in the light most favorable to Defendants demonstrates that they have failed to allege that Movants received stolen property, a required element to sufficiently state a claim under § 99A-1. (*See* Countercls. ¶ 521.)

202. Therefore, the Motions are **GRANTED**, and Count Twenty-Five for property interference is hereby **DISMISSED** with prejudice.

13. Count Twenty: Violations of the UDTPA

203. In North Carolina, “[t]o successfully state a claim under [the UDTPA] . . . a plaintiff must allege (1) an unfair or deceptive act or practice, or an unfair method of competition, (2) in or affecting commerce, (3) which proximately caused actual injury to the plaintiff or to his business.” *Spartan Leasing v. Pollard*, 101 N.C. App. 450, 460–61 (1991) (citing *Marshall v. Miller*, 302 N.C. 539 (1981)).

204. Defendants' UDTPA claim appears to be based upon their claims for misappropriation of trade secrets, conversion, tortious interference with contract, and fraud. (Countercls. ¶ 484.)

205. As an initial matter, none of these underlying torts remains as to Egger or BEV. Because the Court has determined that those claims must be dismissed, they cannot provide the basis for Defendants' UDTPA claim against Egger and BEV. *Loray Master Tenant, LLC v. Foss N.C. Mill Credit 2014 Fund I, LLC*, 2022 NCBC LEXIS 1, at *38 (N.C. Super. Ct. Jan. 11, 2022) (citing *Craven v. SEIU COPE*, 188 N.C. App. 814, 819 (2008)).

206. However, because the Court has dismissed the claim for misappropriation of trade secrets on the basis that the claim is time-barred, the Court determines that the conduct underlying that claim may still support a claim for violation of the UDTPA as to Egger because a UDTPA claim has a four-year statute of limitations. *See Strata Solar, LLC v. Naftel*, 2020 NCBC LEXIS 129, at **14–15 (N.C. Super. Ct. Oct. 29, 2020) (the basis for plaintiff's UDTPA claim was unlawful utilization of plaintiff's trade secret); N.C.G.S. § 75-16.2 (providing limitations period for a UDTPA claim).

207. The Court therefore **GRANTS** in part Egger's Motion and BEV's Motion, and Count Twenty for violations of the UDTPA is **DISMISSED** with prejudice as to BEV, and in part as to Egger. Count Twenty remains as to Egger to the limited extent that Defendants contend that her disclosure of alleged trade secret information

during the 20 March 2020 virtual meetings may serve as a basis for the UDTPA claim.

208. BIOMILQ's Motion is **GRANTED** in part and **DENIED** in part. Defendants' claim for BIOMILQ's alleged violations of the UDTPA remains to the extent that Defendants' claims for tortious interference with contract, conversion, and violations of the TSPA survive. In other respects, Defendants' claim for violations of the UDTPA is **DISMISSED** with prejudice.

VI. CONCLUSION

209. **THEREFORE**, for the foregoing reasons, the Court hereby **GRANTS** in part and **DENIES** in part the Motions as follows:

a. The Motions are **GRANTED** in part as to: Count Three for breach of fiduciary duty; Count Four for constructive fraud; Count Six for fraudulent conveyance; Count Seven for conversion, as to Egger, and as to BIOMILQ to the extent the claim concerns the intellectual property at issue; Count Ten for violation of the TSPA as against BEV and Egger; Count Eleven for misappropriation of trade secrets under the DTSA; Second Count Eleven for slander of title; Count Twelve for reverse passing off; Count Thirteen for false advertising; Count Fourteen for tortious interference with contract; Count Fifteen for defamation as to Egger, and as to BIOMILQ for statements made in February 2020; Count Sixteen for breach of contract; Count Seventeen for fraud; Count Eighteen for civil conspiracy; Count Nineteen for unjust enrichment; Count Twenty for violations of the UDTPA

as to BEV and Egger in part, as set forth more fully above; Count Twenty-Two for alienation of affections; Count Twenty-Three for loss of consortium; and Count Twenty-Five for property interference. Those claims are **DISMISSED** with prejudice;

b. The Motions are **GRANTED** in part as to: Count One for injunctive relief; Count Two for declaratory relief as to Egger; Count Five for constructive trust; and Count Twenty-Four for punitive damages. Those claims are **DISMISSED** without prejudice; and

c. The Motions are otherwise **DENIED**.

d. As a result of the Court's rulings herein, the surviving claims in the Counterclaims are: Count Two for declaratory relief against BIOMILQ; Count Seven for conversion against BIOMILQ regarding 108Labs's notebooks, sample cells, and data; Count Eight for trespass to chattels against BIOMILQ; Count Nine for civil liability for larceny against BIOMILQ;¹⁵ Count Ten for trade secret misappropriation under the TSPA against BIOMILQ; Count Fourteen for tortious interference with contract against BIOMILQ; Count Twenty for violations of the UDTPA against BIOMILQ, to the extent that claim is based upon Counts Seven, Ten, or Fourteen, and against Egger to the limited extent that her conduct during the 20 March 2020 virtual meetings may serve as a basis for the UDTPA claim.

¹⁵ Counts Eight and Nine remain only as to BIOMILQ, and it did not seek dismissal of those claims in its motion to dismiss.

210. The Court further **ORDERS** that the stay of discovery in this action remains in place, (*see* ECF No. 265), but that the parties shall confer, as previously ordered in the Court's 31 October 2023 Order regarding the Case Management Order in this matter, (ECF No. 218). Within fourteen (14) days of the entry of this Order and Opinion, the parties are directed to file proposed revised discovery and post-discovery dispositive motions deadlines for the Court's consideration.¹⁶ Following the filing of those proposed deadlines, the Court will enter a revised case management schedule and lift the stay on discovery in this matter.

IT IS SO ORDERED, this the 19th day of April, 2024.

/s/ Michael L. Robinson

Michael L. Robinson
Special Superior Court Judge
for Complex Business Cases

¹⁶ The Court is aware of the *Guiliano Motion to Amend Case Management Order*, (ECF No. 256), and intends to handle all proposed amendments to the Case Management Order together.