STATE OF NORTH CAROLINA WAKE COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 22 CVS 7588
MARKETPLACE 4 INSURANCE, LLC, Plaintiff, v. JEFFREY VAUGHN and GUIDELIGHT INSURANCE SOLUTIONS, INC., Defendants.	**ORDER AND OPINION ON MOTIONS FOR JUDGMENT ON THE PLEADINGS**

THIS MATTER comes before the Court on Defendant Guidelight Insurance Solutions, Inc.'s Motion for Judgment on the Pleadings (ECF No. 25) and Defendant Jeffrey Vaughn's Motion for Judgment on the Pleadings (ECF No. 28) (collectively, "Motions"). The Court, having considered the Motions, the parties' briefs, the arguments of counsel, and all appropriate matters of record, concludes that the Motions should be **GRANTED**, in part, and **DENIED**, in part.

Fox Rothschild LLP, by Jeffrey R. Whitley, for Plaintiff MarketPlace 4 Insurance, LLC.

Bell, Davis & Pitt, P.A., by Kevin G. Williams and Kevin J. Roak, for Defendant Jeffrey Vaughn.

Brooks, Pierce, McLendon, Humphrey & Leonard, LLP, by Jennifer K. Van Zant and Agustin M. Martinez, for Defendant Guidelight Insurance Solutions, Inc.

INTRODUCTION

1. The present motions mostly require the Court to revisit familiar territory in assessing the legal sufficiency of claims alleging that an ex-employee has

engaged in tortious conduct against his former employer, including the misappropriation of its trade secrets. In addition, however, the Court must also address more novel issues requiring it to clarify the extent to which the employee's new employer can be held liable on a theory of vicarious liability.

FACTUAL AND PROCEDURAL BACKGROUND

2. The Court does not make findings of fact on motions for judgment on the pleadings under North Carolina Rule of Civil Procedure 12(c) and recites only those allegations in the pleadings that are relevant and necessary to the Court's determination of the Motions. *Golden Triangle #3, LLC v. RMP-Mallard Pointe, LLC*, 2020 NCBC LEXIS 37, at *1 (N.C. Super. Ct. Mar. 23, 2020).

3. Plaintiff MarketPlace 4 Insurance, LLC ("MarketPlace") is a limited liability company that is organized and existing under the laws of Georgia with its principal office in Cherokee County, Georgia. MarketPlace has an office in Charlotte, North Carolina. (Verif. Compl. and App. for Temp., Prelim., and Perm. Injunctive Relief ["Verif. Compl."] ¶ 1, ECF No. 3.)

4. MarketPlace "owns and operates independent insurance agencies in several states across the United States." (Verif. Compl. ¶ 6.) On 13 November 2020, MarketPlace entered into a written Asset Purchase Agreement ("APA") with Mike Gilliam and the Mike Gilliam Agency, Inc. (the "Gilliam Agency") through which MarketPlace acquired "the assets of the [Gilliam] Agency including, without limitation its: book of business; customer lists; policies and rights of renewals thereof; post-closing commissions; accounts receivable; physical property; telephone number,

website, internet address, name (the 'Mike Gilliam Agency'); and the covenants not to compete in effect between the Agency and its current and former agents, representatives, contractors, and employees." (Verif. Compl. ¶ 10.) "Under the terms of the [APA], copies of all non-solicitation agreements and nonpiracy agreements executed between the [Gilliam] Agency and its current or former staff members were to be conveyed to [MarketPlace]." (Verif Compl. ¶ 12.)

5. In connection with MarketPlace's acquisition of the Gilliam Agency, certain staff members, employees, agents, and contractors previously employed by the Gilliam Agency became employees of MarketPlace, including Defendant Jeffrey Vaughn. (Verif. Compl. ¶¶ 15, 16.)

6. MarketPlace alleges the existence of an Agency Associate Agent/Office Staff Agreement (the "Agreement") executed between Vaughn, Nationwide Mutual Insurance Company, and the Gilliam Agency. Although a copy of the document is not attached to the Complaint, MarketPlace asserts that it contains the following promises by Vaughn:

> a. To return, within 24 hours of the termination of the Associate Agreement, any property (including manuals, forms, and records necessary for selling insurance products) furnished by the Agency or Nationwide (Associate Agreement § 6);
>
> b. Not to directly or indirectly "solicit or service" customers/policyholders of Nationwide or policyholders of the Agency for a period of one year following the termination of the Associate Agreement (Associate Agreement § 11);
>
> c. Not to "interfere in any way" with existing policies or customers/policyholders of Nationwide or serviced by any Nationwide agencies within 25 miles of the Agency for a period of one year following the termination of the Associate Agreement (Associate Agreement § 11);

> d. To hold in strict confidence any "proprietary information, confidential information, and/or trade secrets" belonging to the Agency and furnished to Vaughn in the scope of his work (Associate Agreement § 14); and
>
> e. Not to disclose or utilize any of such information for any purpose other than Nationwide or the Agency's business, during or after the termination of the Associate Agreement (Associate Agreement § 14).

(Verif. Compl. ¶ 19.)

7. After the execution of the APA, Vaughn continued working for MarketPlace until he resigned on or around 30 June 2021. (Verif. Compl. ¶ 22.) During Vaughn's employment with MarketPlace, he "had access to [MarketPlace's] confidential information including trade secrets, relating to insurance and financial products, and [MarketPlace's] customers." (Verif. Compl. ¶ 23.)

8. After his resignation, Vaughn began working for Defendant Guidelight Insurance Solutions, Inc. ("Guidelight") in August 2021. (Verif. Compl. ¶ 36.) An individual named Jason Trent owned Guidelight "in whole or in part" until September 2021, when it was acquired by High Street Insurance Partners. (Verif. Comp. ¶¶ 37–38.) Following this acquisition, Trent was retained as the Chief Executive Officer of Guidelight, which currently operates as a wholly owned subsidiary of High Street Insurance Partners. (Verif. Compl. ¶ 39.) Vaughn has reported to Trent during his entire tenure at Guidelight. (Verif. Compl. ¶ 40.)

9. The Complaint alleges that "[i]n late 2021, [MarketPlace] began receiving unusually frequent electronic notices from Nationwide and other insurance carriers, informing [MarketPlace] that [MarketPlace's] customers had allegedly

submitted requests to change their Agent of Record ('AOR') and move their business to a different agency." (Verif. Compl. ¶ 41.) In the insurance industry, an AOR "refers to a document a client would sign in order to specify which agent the client designates to represent their interests with one or more insurance companies." (Verif. Compl. ¶ 42.) In other words, MarketPlace was placed on notice that many of its customers "were leaving [MarketPlace] and moving to another [agency] shortly after Vaughn began his employment with Guidelight." (Verif. Compl. ¶ 43.)

10. In attempting to retain its customer relationships, MarketPlace contacted customers from whom it received AOR change forms in late 2021 and early 2022. (Verif. Compl. ¶ 44.) During several of these conversations, certain customers informed MarketPlace representatives that they had not, in fact, signed a new AOR form and had not "request[ed] to transfer their business to another agency." (Verif. Compl. ¶ 45.)

11. For example, MarketPlace alleges that it contacted a client named Debra Ledford on 24 March 2022 after MarketPlace received an AOR form from her. (Verif. Compl. ¶¶ 46–47.) Ledford said that Vaughn had approached her and asked her for a copy of her insurance policies, but that she never actually requested that Vaughn or Guidelight become her new insurance agent. (Verif. Compl. ¶¶ 48–50.) Vaughn thereafter submitted an AOR form on behalf of Ledford without her consent "in an attempt to steal her business from" MarketPlace. (Verif. Compl. ¶¶ 50–51.)

12. On 7 February 2022, a MarketPlace employee received an anonymous telephone call stating that Vaughn was "purging [their] client list" and was "actively

pursuing [MarketPlace's] customers for AORs and purging [MarketPlace's] customer base with Nationwide." (Verif. Compl. ¶ 55.)

13. MarketPlace received another suspicious call concerning Vaughn in February 2022 from a customer named Amanda Beavers. Beavers told MarketPlace she had received a call from a Guidelight representative who "requested her permission to quote her home and automobile insurance policies to potentially save her money[.]" (Verif. Compl. ¶¶ 57–58.) Beavers was told such a review would be quick because the Guidelight representative already had her current policy information. (Verif. Compl. ¶ 59.) Beavers said she called MarketPlace to ask whether the Guidelight representative was affiliated with MarketPlace. (Verif. Compl. ¶ 60.) These phone calls caused MarketPlace to believe that Vaughn was using MarketPlace's "confidential customer and policy information to solicit its customers to leave [MarketPlace] and move their business to Guidelight." (Verif. Compl. ¶ 61.)

14. The Complaint also contains allegations regarding the Vertafore QQ database that was used by the Gilliam Agency to manage its internal company information. MarketPlace sought to transition Gilliam Agency information on the Vertafore QQ system over to another database in late 2021, during which time MarketPlace attempted to terminate access to the old Vertafore QQ system. (Verif. Compl. ¶¶ 62–64.) However, unbeknownst to MarketPlace, the Vertafore QQ database was not actually terminated in late 2021, meaning that certain users—

including Vaughn—had continuing access to the Vertafore system, "including confidential and trade secret information." (Verif. Compl. ¶ 65.)

15. MarketPlace alleges that Vaughn "exploited this failure by the third-party Vertafore QQ and accessed [its] computer database without authorization on multiple occasions in late 2021 and early 2022." (Verif. Compl. ¶ 66.) After receiving an anonymous report of Vaughn's activities, MarketPlace contacted Vertafore to regain access to the system so that it could learn the full extent of Vaughn's access. (Verif. Compl. ¶ 67.) MarketPlace confirmed that Vaughn's access had never been revoked and that "since August 2021 (when he became employed by Guidelight), Vaughn had logged into Vertafore QQ repeatedly, logging well over *150 hours* of unauthorized access to [MarketPlace's] systems." (Verif. Compl. ¶¶ 68–71.) MarketPlace alleges that Vaughn used the information from the Vertafore QQ database in order to submit AOR forms on behalf of MarketPlace's clients in order to transfer their business to Guidelight and did so without customer authorization. (Verif. Compl. ¶¶ 73–74.)

16. On 23 March 2022, it was revealed that the anonymous caller who had contacted MarketPlace about Vaughn's alleged misconduct was a former Guidelight employee (and former colleague of Vaughn's) named Ian Buchanan. (Verif. Compl. ¶ 75.) Buchanan stated that he became suspicious of Vaughn's sales performance after discovering that most of Vaughn's sales were through AORs, which was unusual. (Verif. Compl. ¶ 76.) Because Buchanan suspected that Vaughn was improperly using information from his former employer, he reported his suspicions

to his supervisor at Guidelight, Regina Hensley, who then reported this information to Trent. (Verif. Compl. ¶ 76.)

17. Despite learning of Vaughn's actions, Guidelight took no steps to prevent Vaughn "from stealing [MarketPlace's] customers." Indeed, Buchanan later noticed that Vaughn "had created a profile for Debra Ledford on Guidelight's agency management system and uploaded to Ledford's profile a screenshot of Ledford's information *from* [*Marketplace's*] *agency management system,* Vertafore QQ." (Verif. Compl. ¶ 76.) Buchanan was familiar with Vertafore QQ from a prior job and concluded that Vaughn had taken Ledford's information from another insurance agency. (Verif. Compl. ¶ 76.) Buchanan once again reported this information to Hensley, and she relayed it to Trent. Buchanan was subsequently told by Hensley and Trent to "stay in his lane" and that he should "let it go." (Verif. Compl. ¶ 76.) Buchanan's employment with Guidelight was terminated shortly afterward, and he was told he was not "a team player." (Verif. Compl. ¶ 76.) MarketPlace alleges that Vaughn continued to access the Vertafore QQ system and utilize MarketPlace's confidential information and trade secrets following Buchanan's termination. (Verif. Compl. ¶ 77.)

18. On 17 March 2022, Vaughn sent an email to MarketPlace, requesting that MarketPlace send "policy information relating to Raymond 'Trevis' Hicks directly to Vaughn." (Verif. Compl. ¶ 82.) Vaughn copied Hicks on the email and instructed him to provide his consent via email. (Verif. Compl. ¶ 83.) MarketPlace replied that it would only forward policy information if specifically requested by

Hicks. (Verif. Compl. ¶ 84.) In response, Vaughn filed a complaint against MarketPlace with the North Carolina Department of Insurance on 24 March 2022. (Verif. Compl. ¶ 85.) Vaughn also emailed "two of [MarketPlace's] customers, erroneously informing them that [MarketPlace] had refused to release their policy information 'to you or to me.' " (Verif. Compl. ¶ 86.)

19. MarketPlace alleges that since August 2021 it has "lost a substantial amount of customers and business and suffered damage to its reputation due to Vaughn's wrongful conduct and misrepresentations[.]" (Verif. Compl. ¶ 89.)

20. On 23 June 2022, MarketPlace initiated the present action by filing a Complaint in Wake County Superior Court. (Verif. Compl.) The Complaint asserts claims for misappropriation of trade secrets against Vaughn and Guidelight; computer trespass against Vaughn and Guidelight; tortious interference with contract against Vaughn and Guidelight; tortious interference with prospective economic advantage against Vaughn and Guidelight; tortious interference with prospective economic advantage against Guidelight alone; tortious interference with contract against Guidelight alone; breach of contract/restrictive covenants against Vaughn; and unfair and deceptive trade practices ("UDTP") against Vaughn and Guidelight. (Verif. Compl. ¶¶ 90–160.) In its Complaint, MarketPlace also requested the issuance of a temporary restraining order, a preliminary injunction, and a permanent injunction. (Verif. Compl. ¶¶ 161–72.)

21. On 29 June 2022, the Honorable Graham Shirley entered a Temporary Restraining Order ("TRO") against Defendants, enjoining Vaughn and Guidelight

from "A. Using or disclosing [MarketPlace's] confidential or trade secret information, including any information obtained by Vaughn from [MarketPlace's] computer database(s); and B. Soliciting customers of [MarketPlace's] using any information obtained by Vaughn from [MarketPlace's] computer database(s)." (TRO p. 2, ECF No. 6.)

22. This case was designated a mandatory complex business case on 1 July 2022 and assigned to the undersigned on 5 July 2022. (ECF Nos. 1, 2.)

23. On 10 August 2022, at the parties' request, the Court issued a Consent Order providing that the TRO would stay in effect while this action remains pending. (Consent Order, ECF No. 20.)

24. Guidelight and Vaughn filed Answers to the Complaint on 26 August 2022. (ECF Nos. 22, 23.)

25. On 15 September 2022, Guidelight filed a Motion for Judgment on the Pleadings pursuant to Rule 12(c) of the North Carolina Rules of Civil Procedure seeking the dismissal of all claims against it in this action. (ECF No. 25.) On 21 September 2022, Vaughn filed a similar motion. (ECF No. 28.)

26. The Motions came before the Court for a hearing on 20 December 2022 and are now ripe for decision.

LEGAL STANDARD

27. "A [Rule 12(c)] motion for judgment on the pleadings is the proper procedure when all the material allegations of fact are admitted in the pleadings and only questions of law remain. When the pleadings do not resolve all the factual

issues, judgment on the pleadings is generally inappropriate." *Ragsdale v. Kennedy*, 286 N.C. 130, 137 (1974). "A complaint is fatally deficient in substance, and subject to a motion by the defendant for judgment on the pleadings if it fails to state a good cause of action for plaintiff and against defendant[.]" *Bigelow v. Town of Chapel Hill*, 227 N.C. App. 1, 3 (2013).

28. When deciding a motion under Rule 12(c), the Court may only consider "the pleadings and exhibits which are attached and incorporated into the pleadings." *Davis v. Durham Mental Health/Dev. Disabilities/Substance Abuse Area Auth.*, 165 N.C. App. 100, 104 (2004). The Court must "view the facts and permissible inferences in the light most favorable to the nonmoving party." *Ragsdale*, 286 N.C. at 137. "All well pleaded factual allegations in the nonmoving party's pleadings are taken as true and all contravening assertions in the movant's pleadings are taken as false. All allegations in the non-movant's pleadings, except conclusions of law, legally impossible facts, and matters not admissible in evidence at the trial, are deemed admitted by the movant[.]" *Id.* (internal citations omitted).

ANALYSIS

I. Vaughn's Motion for Judgment on the Pleadings

29. Vaughn seeks judgment on the pleadings on all claims asserted against him by MarketPlace. The Complaint raises the following claims against him: breach of contract/restrictive covenants; misappropriation of trade secrets; computer trespass; tortious interference with contract; tortious interference with prospective economic advantage; and UDTP.

A. Breach of Contract

30. Vaughn first seeks judgment on the pleadings as to MarketPlace's breach of contract claim on a number of grounds, which the Court will address in turn.

31. A threshold issue raised by Vaughn concerns the ability of MarketPlace to bring a claim for breach of contract based on covenants contained in an agreement that was entered into between Vaughn and the *Gilliam Agency* (rather than between him and *MarketPlace*). In response, MarketPlace asserts that by virtue of the APA it acquired all of the Gilliam Agency's contracts—including the contractual rights that the Gilliam Agency possessed based on its Agreement with Vaughn.

32. However, as Vaughn notes, this Court has held that when an asset purchase agreement is executed that purports to transfer a former employer's rights under a restrictive covenant to a new employer, the prescribed period contained within the covenant begins to run from the date of the execution of the agreement.

> The North Carolina courts have held that the acquisition of another company through an asset purchase — as opposed to a purchase of ownership interests — terminates the seller's existing employment relationships. *See, e.g., Calhoun v. WHA Med. Clinic, PLLC*, 178 N.C. App. 585, 597, 632 S.E.2d 563, 571 (2006) (noting that, in an asset sale, an offer of employment to the seller's employees is an offer of new employment); *Covenant Equip. Corp. v. Forklift Pro, Inc.*, 2008 NCBC LEXIS 12, at *25 (N.C. Super. Ct. May 1, 2008) (Tennille, J.) (recognizing that an asset sale terminates employment relationships on the date of the asset sale); *see also AmeriGas Propane, L.P. v. Coffey*, 2015 NCBC LEXIS 98, at *12-13 (N.C. Super. Ct. Oct. 15, 2015) ("[A]cquisition of another company by asset purchase will act as a termination of existing employment relationships, and existing employees of the acquired business do not necessarily become employees of the acquiring entity.").

> This Court has therefore held that "when an employer sells its assets, including its right to enforce a restrictive covenant in an employment contract, the period of the restrictive covenant begins to run because the employment relationship has been terminated." *Better Bus. Forms & Prods., Inc. v. Craver*, 2007 NCBC LEXIS 34, at *21 (N.C. Super. Ct. Nov. 1, 2007) (Tennille, J.). *See also Covenant*, 2008 NCBC LEXIS 12, at *24-25 ("[T]he buyer of a noncompetition agreement does not step fully into the shoes of the original employer because the buyer is a new employer. Instead, the buyer can either enforce the noncompetition agreement or enter into a new noncompetition agreement."). Thus, "a noncompetition agreement that has been sold as part of an asset sale . . . gives the buyer the right to enforce the noncompetition agreement as of the date of the sale but not to enforce the noncompetition agreement as if it had been entered into originally by the buyer." *Id.* at *24.

Artistic S. Inc. v. Lund, 2015 NCBC LEXIS 113, at **14 (N.C. Super. Ct. Dec. 9, 2015).

33. Therefore, any time-based covenants contained in Vaughn's Agreement with the Gilliam Agency began to run when the APA was executed on 13 November 2020. As quoted above, the non-solicitation provisions in Vaughn's Agreement stated that they would remain in effect for one year. Accordingly, any actionable breach of those covenants alleged to have been committed by Vaughn must have occurred prior to 13 November 2021—that is, one year from the date the APA was executed.

34. Therefore, to the extent that Vaughn's Motion seeks judgment on the pleadings as to MarketPlace's claim for breach of contract regarding any breaches of non-solicitation covenants in the Agreement that occurred *after* 13 November 2021, the Motion is **GRANTED**.

35. Vaughn next argues that the restrictive covenants themselves are unenforceable because they are unreasonable under North Carolina law.

36. The Court will first analyze the reasonableness of the two non-solicitation provisions. This Court has previously stated that

> valid non-solicitation provisions must be: (1) in writing, (2) entered into at the time and as part of the contract of employment, (3) based on valuable consideration, (4) reasonable both as to the time and territory embraced in the restrictions, (5) fair to the parties, and (6) not against public policy. *Aeroflow Inc. v. Arias*, 2011 NCBC LEXIS 21, *24 (N.C. Super. Ct. 2011).

Sandhills Home Care, L.L.C. v. Companion Home Care - Unimed, Inc., 2016 NCBC LEXIS 61, at **25 (N.C. Super Ct. Aug. 1, 2016).

37. The two non-solicitation provisions here state that Vaughn, as an associate of the Gilliam Agency, agreed

> b. Not to directly or indirectly "solicit or service" customers/policyholders of Nationwide or policyholders of the Agency for a period of one year following the termination of the Associate Agreement (Associate Agreement § 11); [and]
>
> c. Not to "interfere in any way" with existing policies or customers/policyholders of Nationwide or serviced by any Nationwide agencies within 25 miles of the Agency for a period of one year following the termination of the Associate Agreement (Associate Agreement § 11)

(Verif. Compl. ¶ 19.)

38. We have previously stated that "North Carolina's courts will enforce a covenant prohibiting a former employee from soliciting his former employer's customers even when not tied to a specific geographic region where the terms and conditions of this contract clause were reasonably necessary to protect the employer's legitimate business interests." *Sandhills*, 2016 NCBC LEXIS 61, at **25–26 (cleaned up).

39. With regard to subpart c., the Court finds that this provision is impermissibly broad and was not necessary to protect the Gilliam Agency's legitimate business interests. The provision forbids contact with any customers/policyholders of

Nationwide, which would encompass even those Nationwide customers who never did business with the Gilliam Agency. The Court therefore concludes that subpart c. is unenforceable. Accordingly, to the extent that Vaughn seeks judgment on the pleadings as to the portion of MarketPlace's breach of contract claim based on subpart c., the Motion is **GRANTED**.

40. Subpart b.—as written—likewise includes customers/policyholders of Nationwide and, as such, is also overbroad. MarketPlace does not seriously contest this conclusion. Instead, it requests that the Court "blue pencil" subpart b. so as to limit it solely to solicitation of policyholders *of the Gilliam Agency*—thereby curing the overbreadth of the provision.

41. "[B]lue-penciling is the process by which a court of equity will take notice of the divisions the parties themselves have made [in a restrictive covenant] and enforce the restrictions in the territorial divisions deemed reasonable and refuse to enforce them in the divisions deemed unreasonable." *Beverage Sys. of the Carolinas, LLC v. Associated Beverage Repair, LLC*, 368 N.C. 693, 699 (2016) (cleaned up). "North Carolina has adopted a 'strict blue pencil doctrine' wherein a court cannot rewrite an unenforceable covenant; instead, to avoid scrapping an entire covenant, a Court may enforce the divisible parts of a covenant that are reasonable." *NFH, Inc. v. Troutman*, 2019 NCBC LEXIS 66, at *33 (N.C. Super. Ct. Oct. 29, 2019) (citing *Bev. Sys. of the Carolinas*, 368 N.C. at 696).

42. MarketPlace asserts that subpart b. would be fully enforceable if the Court would strike the words "customers/policyholders of Nationwide or" such that the revised provision applies solely to "policyholders of the [Gilliam] Agency."

43. It is true that this Court has previously noted that where two clauses in a restrictive covenant (one enforceable and the other unenforceable) are separated by the word "or," the blue pencil doctrine allows a reviewing court to give effect to the covenant by striking the unenforceable clause. *See Wells Fargo Ins. Servs. USA v. Link*, 2018 NCBC LEXIS 42, at *24–25 (N.C. Super. Ct. May 8, 2018), *aff'd per curiam*, 372 N.C. 260 (2019).

44. Here, however, the Court is not comfortable "blue penciling" subpart b. without being able to review the covenants in their entirety. Moreover, the Court's analysis on this issue will be guided by information likely to be obtained during discovery such as the number of employees and policyholders the Gilliam Agency had, the number of offices it maintained, and other relevant information. Accordingly, the Court elects to defer a final decision on whether to apply the "blue pencil" doctrine to subpart b. until a more fully developed factual record exists. In the meantime, however, Vaughn's Motion is **DENIED** as to subpart b.[1]

[1] At the 20 December hearing, counsel for MarketPlace acknowledged that the covenants themselves are not part of the record and that he does not know if any copies of the Agreement still exist. In addition, he candidly conceded that if he is unable to obtain a copy of the Agreement during discovery, the entry of summary judgment in Vaughn's favor as to MarketPlace's breach of contract claim would be appropriate.

45. Finally, MarketPlace also seeks damages for Vaughn's alleged improper disclosure of confidential information. The provisions of the Agreement that are pertinent to this argument state that Vaughn promised:

> d. To hold in strict confidence any "proprietary information, confidential information, and/or trade secrets" belonging to the Agency and furnished to Vaughn in the scope of his work (Associate Agreement § 14); and
>
> e. Not to disclose or utilize any of such information for any purpose other than Nationwide or the Agency's business, during or after the termination of the Associate Agreement (Associate Agreement § 14).

(Verif. Compl. ¶ 19.)

46. Based on our prior caselaw, however, it is clear that—by virtue of the APA—MarketPlace acquired the ability to enforce the Agreement against Vaughn *only* as to those rights the Gilliam Agency possessed as of that date. *See Artistic S.*, 2015 NCBC LEXIS 113, at **17 ("In short Plaintiff could only buy what [the selling company] could sell—and that only included [the selling company's rights] at the time of sale."). This means that MarketPlace is unable to enforce the confidentiality provisions of the Agreement with regard to confidential information that belonged solely to *MarketPlace* (i.e. information that was never possessed by the *Gilliam Agency*).

47. Thus, to the extent that the Complaint seeks to hold Vaughn liable for breach of contract based on his disclosure of *MarketPlace's* confidential information, the Motion is **GRANTED**. However, to the extent that the Complaint seeks to hold Vaughn liable for breach of contract based on disclosure of the *Gilliam Agency's* confidential information, Vaughn's Motion is **DENIED**.

B. Misappropriation of Trade Secrets

48. Vaughn also moves for judgment on the pleadings as to MarketPlace's claim for misappropriation of trade secrets.

49. North Carolina's Trade Secrets Protection Act (the "Act") provides that "[t]he owner of a trade secret shall have a remedy by civil action for misappropriation of his trade secret." N.C.G.S. § 66-153 (2021). The Act defines misappropriation as "acquisition, disclosure or use of a trade secret of another without express or implied authority or consent, unless such trade secret is arrived at by independent development, reverse engineering, or was obtained from another person with a right to disclose the trade secret." N.C.G.S. § 66-152(1) (2021).

50. Therefore, a threshold question in any action involving such a claim is whether the information at issue actually constitutes a trade secret under the Act. *Koch Measurement Devices, Inc. v. Armke*, 2015 NCBC LEXIS 45, at *10 (N.C. Super. Ct. May 1, 2015).

51. The Act defines a trade secret as follows:

> "Trade secret" means business or technical information, including but not limited to a formula, pattern, program, device, compilation of information, method, technique, or process that:
>
> > 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).

52. Vaughn first argues that MarketPlace has failed to plead the existence of a trade secret with the particularity required by our caselaw. The Court disagrees.

53. As our Supreme Court has held, "[t]o plead misappropriation of trade secrets, a plaintiff must identify a trade secret with sufficient specificity 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." *Krawiec v. Manly*, 370 N.C. 602, 609 (2018).

54. In its Complaint, MarketPlace identified its trade secrets as follows:

> Plaintiff's trade secrets include, but are not limited to, documents and information which specify the insurance policies and financial products Plaintiff has sold to its customers; the pricing and terms of specific policies for each of its customers; expiration dates of customer policies; policy application information; policy renewal information; sales and account maintenance practices; cost data; sales data; profit and loss statements; and profit margins.
>
> Additionally, Plaintiff maintains its trade secrets in unique compilations in one or more computer databases. These compilations include the relevant information for each of customers [sic] and their respective policies. These databases in which Plaintiff maintains its customer [sic] and other information are protectable trade secrets as well.

(Verif. Compl. ¶¶ 24–25.)

55. Based on our case law, the Court is satisfied that the information forming the basis for MarketPlace's claim under the Act has been pled with sufficient particularity to survive a motion for judgment on the pleadings.

56. In making this determination, the Court is guided by its prior decision in *Wells Fargo*. In *Wells Fargo*, the plaintiff employer, an insurance broker, sued several former employees and their new employer alleging, *inter alia*, that the

employees had misappropriated the plaintiff's confidential information in order to solicit its customers and bring them to their new employer. *Wells Fargo*, 2018 NCBC LEXIS 42, at *1–8.

57. The plaintiff's complaint described its trade secrets as follows:

> [I]nformation concerning Wells Fargo's customers and the details of their insurance needs and policies, including but not limited to, customer policies, insurance application information, policy cost information, payment information, profit loss statements, insurance schedules, certificate of holder lists, underwriting information, detailed customer information, detailed employee information, detailed property information, customer financial information, expiration dates of insurance policies and insurance daily reports.
>
> . . .
>
> The books, files, electronic data, and all other records of Wells Fargo, the confidential information contained in [the records], and especially the data pertaining to Wells Fargo customers, such as customers' names and addresses, as well as additional information such as customers' social security numbers, account numbers, financial status, and other highly confidential personal and financial information[.]
>
> . . .
>
> [T]he names, addresses, and contact information of the Company's customers and prospective customers, as well as any other personal or financial information relating to any customer or prospect, including, without limitation, account numbers, balances, portfolios, maturity and/or expiration or renewal dates, loans, policies, investment activities, purchasing practices, insurance, annuity policies and objectives[.]

Id. at *35–36.

58. In analyzing whether this information was sufficient to constitute a trade secret under the TSPA, we held the following:

> Within these sprawling lists, there are particular pieces of information that might constitute trade secrets, including: "insurance application

> information, policy cost information, payment information, profit loss statements, insurance schedules, certificate of holder lists, [and] underwriting information"; "expiration dates of insurance policies and insurance daily reports"; "customers' social security numbers, account numbers, [and] financial status"; and "maturity and/or expiration or renewal dates, loans, . . . investment activities, purchasing practices, [and], annuity policies and objectives." (*Id*.) In addition, while not expressly pleaded, this information, if compiled in a database or other form for each of Plaintiff's customers, might also constitute a trade secret. This Court has held that "where an individual maintains a compilation of detailed records over a significant period of time," such that they have particular value as a compilation or manipulation of information, "those records could constitute a trade secret even if 'similar information may have been ascertainable by anyone in the . . . business.' " *Koch Measurement Devices, Inc. v. Armke*, 2015 NCBC LEXIS 45, at *13 (N.C. Super. Ct. May 1, 2015) (quoting *Byrd's Lawn & Landscaping, Inc. v. Smith*, 142 N.C. App. 371, 376, 542 S.E.2d 689, 692 (2001)). *See also, State ex rel. Utils. Comm'n v. MCI Telecomms., Corp.*, 132 N.C. App. 625, 634, 514 S.E.2d 276, 282 (1999) (concluding that a "compilation of information" involving customer data and business operations which has "actual or potential commercial value from not being generally known" is sufficient to constitute a trade secret under the NCTSPA); *RoundPoint Mortg. Co. v. Florez*, 2016 NCBC LEXIS 18, at *31-32 (N.C. Super. Ct. Feb. 18, 2016); *Red Valve v. Titan Valve*, 2018 NCBC LEXIS 41, at *27 (N.C. Super. Ct. Apr. 17, 2018) (citing *Koch*, *Byrd's*, and *RoundPoint*).

Id. at *37–38.

59. Although admittedly the allegations in *Wells Fargo* contained greater detail than those set out in MarketPlace's Complaint, the Court is unable to conclude that the allegations presently before the Court are insufficient to survive Rule 12 scrutiny. *See, e.g., Am. Air. Filter Co. v. Price*, 2018 NCBC LEXIS 73, at *19–20 (N.C. Super. Ct. July 10, 2018) ("This Court has held that where an individual maintains a compilation of detailed records over a significant period of time, such that they have particular value as a compilation or manipulation of information, those records could

constitute a trade secret even if similar information may have been ascertainable by anyone in the business.") (cleaned up).

60. Vaughn also argues that the Complaint does not contain sufficient allegations of reasonable measures taken by MarketPlace to protect this information as is required in order to state a valid claim under the Act. *See BIOMILQ, Inc. v. Guiliano,* 2023 NCBC LEXIS 24, at **20 (N.C. Super. Ct. Feb. 10, 2023) ("North Carolina law is clear that to state a claim for misappropriation of trade secrets, a plaintiff must allege that the trade secret information is subject to reasonable efforts to maintain its secrecy.").

61. Claims under the Act, however, are subject to dismissal on this basis at the pleadings stage only where the complaint contains virtually no allegations at all of such protective measures. *See, e.g., BIOMILQ*, 2023 NCBC LEXIS 24, at **20–24 ("While [Plaintiff] alleges its security measures generally, it does not allege measures taken to maintain the secrecy of the trade secrets at issue in the Notebook, or what its security practices were for notebooks currently in use[.]"). Here, MarketPlace alleges that it took the following measures to protect its trade secrets:

> Plaintiff password-protects its computer systems, limits access to trade secret files to employees with a demonstrated need to access such information for their job functions, and maintains policies for document retention and destruction to minimize copies of trade secrets.

(Verif. Compl. ¶ 28.)

62. The Court concludes that these allegations are sufficient to allow this claim to go forward. *See Bldg. Ctr., Inc. v. Carter Lumber Inc.*, 2016 NCBC LEXIS 79, at *13–14 (N.C. Super. Ct. Oct. 21, 2016) (holding that the plaintiff had alleged

sufficient reasonable measures when it cited "security measures, including but not limited to password-protected login, controlled and permission-restricted access on a need-to-know basis, and confidentiality policies and/or agreements").

63. Finally, Vaughn contends that the Complaint fails to allege that the trade secrets at issue were actually misappropriated. But in its Complaint MarketPlace asserts that Vaughn, improperly using his continued access to the Vertafore QQ system, "viewed, copied, or extracted confidential and trade secret customer and policy data." (Verif. Compl. ¶ 72.) Such conduct, if proven, would fall squarely within the scope of "acquisition, disclosure or use" that our General Statutes define as misappropriation of a trade secret. N.C.G.S. § 66-152(1); *see also Mech Sys. & Servs. v. Howard*, 2021 NCBC LEXIS 69, at *7 (N.C. Super. Ct. Aug. 11, 2021) ("The allegations of misappropriation are also adequate. . . . Here, [Defendant] allegedly accessed [Plaintiff's] trade secrets after deciding to join a competitor, kept them in his possession after resigning, and then used them to solicit [Plaintiff's] customers on behalf of his new employer.").

64. The Court therefore concludes that Vaughn's Motion is **DENIED** as to MarketPlace's misappropriation of trade secrets claim.

C. Computer Trespass

65. In addition, Vaughn seeks judgment on the pleadings as to MarketPlace's claim for computer trespass.

66. N.C.G.S. § 14-458(a) states, in pertinent part, as follows:

> (a) Except as otherwise made unlawful by this Article, it shall be unlawful for any person to use a computer or computer network without authority and with the intent to do any of the following:
>
> > (1) Temporarily or permanently remove, halt, or otherwise disable any computer data, computer programs, or computer software from a computer or computer network.
> >
> > (2) Cause a computer to malfunction, regardless of how long the malfunction persists.
> >
> > (3) Alter or erase any computer data, computer programs, or computer software.
> >
> > (4) Cause physical injury to the property of another.
> >
> > (5) Make or cause to be made an unauthorized copy, in any form, including, but not limited to, any printed or electronic form of computer data, computer programs, or computer software residing in, communicated by, or produced by a computer or computer network.
> >
> > (6) Falsely identify with the intent to deceive or defraud the recipient or forge commercial electronic mail transmission information or other routing information in any manner in connection with the transmission of unsolicited bulk commercial electronic mail through or into the computer network of an electronic mail service provider or its subscribers.

N.C.G.S. § 14-458(a) (2021).

67. For purpose of this statute, the phrase "without authority" means, *inter alia*, "when . . . the person has no right or permission of the owner to use a computer, or the person uses a computer in a manner exceeding the right or permission[.]" *Id*.

68. Section 14-458 provides for both civil and criminal liability against persons who engage in the conduct prohibited by the statute. *Id*. § 14-458(b)–(c).

69. In his Motion, Vaughn acknowledges that MarketPlace has alleged that his accessing of its computerized database was unauthorized but asserts that MarketPlace has failed to allege he acted with *intent*. The Court is unpersuaded.

70. The Complaint is replete with allegations of intentional acts by Vaughn as part of a scheme on his part to use MarketPlace's computer systems in order to gain unauthorized access to customer information for the purpose of obtaining additional clients for Guidelight at the expense of MarketPlace. Taken as a whole, the allegations in the Complaint allow for no other rational inference than that Vaughn's allegedly unlawful actions were intentional.

71. Vaughn's Motion for Judgment on the Pleadings as to MarketPlace's computer trespass claim is therefore **DENIED**.

D. Tortious Interference with Contract

72. Our Supreme Court has articulated the following elements of a tortious interference with contract claim:

> (1) a valid contract between the plaintiff and a third person which 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).

73. Vaughn makes two arguments as to why judgment on the pleadings is proper as to this claim. First, he contends that the Complaint contains no allegations that any MarketPlace customers or policyholders actually breached their contracts with MarketPlace.

74. This argument, however, rests upon a misapprehension of North Carolina law. A plaintiff asserting this claim is *not* required to allege, or prove, that the defendant's acts actually caused a third party to breach its contract with the plaintiff. Instead, a plaintiff must merely show that the defendant wrongfully *interfered* with such a contract. *See Lexington Homes, Inc. v. W.E. Tyson Builders, Inc.*, 75 N.C. App. 404, 411 (1985) ("[The plaintiff] does not have to prove that [the defendant] caused [the third party] to *breach* its contract with [the plaintiff], because its claim is only that [the defendant] wrongfully interfered with [the plaintiff's] rights under the contract.").

75. Here, the Complaint alleges that Vaughn improperly interfered with the contractual relationship between MarketPlace and several of its customers. For example, MarketPlace alleges that Vaughn submitted an AOR form requesting a change in agency on behalf of Debra Ledford without Ledford's consent, used MarketPlace's confidential customer information about Amanda Beavers in order to solicit her to move her business away from MarketPlace, and falsely told MarketPlace customers that MarketPlace was withholding their customer information. (Verif. Compl. ¶¶ 50–51, 56–61, 86.) The Court concludes that these allegations are sufficient.

76. Vaughn's remaining argument is that MarketPlace fails to allege that Vaughn acted without "justification." Moreover, he asserts that all of his actions were, in fact, justified because at all relevant times he was acting as a business competitor of MarketPlace.

77. This Court has previously stated the following regarding the justification element of a tortious interference claim:

> "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. North Carolina*, 96 N.C. App. 124, 134 (1989) (quoting *Smith v. Ford Motor Co.*, 289 N.C. 71, 94 (1976)).

Avadim Health, Inc. v. Harkey, 2021 NCBC LEXIS 104 , at **18 (N.C. Super. Ct. Nov. 30, 2021).

78. It is true that "North Carolina's case law paints a less-than-clear picture of when a defendant's interference is justified by a legitimate business interest." *K&M Collision, LLC v. N.C. Farm Bureau Mut. Ins. Co.*, 2017 NCBC LEXIS 109, at *21 (N.C. Super. Ct. Nov. 21, 2017). "A plaintiff [in a tortious interference claim] must plead legal malice, which is just another way of saying 'the intentional doing of the harmful act without legal justification.' " *Lunsford v. ViaOne Servs., LLC*, 2020 NCBC LEXIS 111, at *14 (N.C. Super Ct. Sept. 28, 2020) (quoting *Childress v. Abeles*, 240 N.C. 667, 675 (1954).

79. However, this Court has recently emphasized that the "without justification" element of a tortious interference claim is satisfied where the defendant's conduct involved the use of unlawful means. *See, e.g., Mech. Sys.*, 2021 NCBC LEXIS 69, at *13 ("It is true that competition in business constitutes justifiable interference in another's business relations and is not actionable so long as it is carried on in furtherance of one's own interests and by means that are lawful.

. . . . But the amended complaint alleges that the means of competition used by [Defendants]—misappropriation of trade secrets, for example—were not lawful. This is sufficient to allege a lack of justification.") (cleaned up).

80. This limitation on a defendant's ability to assert justification is eminently logical. After all, if a defendant could automatically escape liability on a tortious interference claim simply by claiming that it was engaged in a competitive relationship with the plaintiff during the time period referenced in the complaint, then it would be virtually impossible for a plaintiff to *ever* succeed on a tortious interference claim in this context.

81. In this case, the Complaint alleges that the means used by Vaughn to "compete" with MarketPlace were unlawful: Vaughn, among other things, misappropriated MarketPlace's trade secrets by accessing them without permission—committing computer trespass in the process—and used MarketPlace's confidential information in attempts to persuade customers to leave MarketPlace and take their business to Guidelight.

82. The Court therefore **DENIES** Vaughn's Motion as to MarketPlace's claim for tortious interference with contract.

E. Tortious Interference with Prospective Economic Advantage

83. Vaughn also seeks judgment on the pleadings as to MarketPlace's claim against him for tortious interference with prospective economic advantage. Vaughn argues that because the Complaint fails to allege the loss of any specific contractual opportunity, dismissal of this claim is proper. The Court agrees.

84. "To state a claim for tortious interference with prospective economic advantage, a plaintiff must show that the defendant, without justification, induced a third party to refrain from entering into a contract with the plaintiff and which would have been entered into absent the defendant's interference." *Silverdeer, LLC v. Berton*, 2013 NCBC LEXIS 21, at **31 (N.C. Super. Ct. Apr. 24, 2013). Our Supreme Court has held that a plaintiff must identify a *specific* contractual opportunity that was lost as a result of the defendant's allegedly tortious conduct in order to sustain a claim for interference with prospective economic advantage. *See Beverage Sys. of the Carolinas*, 368 N.C. at 701 ("[A] plaintiff must produce evidence that a contract would have resulted but for a defendant's malicious intervention."); *see also Bldg. Ctr.*, 2016 NCBC LEXIS 79, at *29 ("Plaintiff alleges only that it 'reasonably expected that, but for [Defendants'] conduct, its business relationships with its customers would have continued and grown.' The Complaint does not identify any particular prospective contracts with which Defendants interfered, nor does it expressly allege that any contract would have ensued.").

85. Vaughn argues that the Complaint in this case is devoid of any reference to specific contracts that would have resulted but for his alleged tortious conduct. At the 20 December hearing, counsel for MarketPlace conceded both that such a pleading requirement exists under North Carolina law for this claim and that the Complaint lacks sufficient allegations to go forward. Accordingly, Vaughn's Motion for Judgment on the Pleadings is **GRANTED**, and MarketPlace's claim for tortious

interference with prospective economic advantage is **DISMISSED** without prejudice.[2]

F. UDTP

86. Finally, Vaughn seeks judgment on the pleadings as to MarketPlace's claim for UDTP.

87. We have previously stated that

> Chapter 75 of the North Carolina General Statutes [the "UDTPA"] provides, in pertinent part, that "[u]nfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are declared unlawful. For purposes of this section, 'commerce' includes all business activities, however denominated, but does not include professional services rendered by a member of a learned profession." N.C.G.S. § 75-1.1(a)-(b) (2019). Therefore, "[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." *Window World of N. Atlanta, Inc. v. Window World, Inc.*, 2018 NCBC LEXIS 111, at *14–15 (N.C. Super. Ct. Oct. 22, 2018) (cleaned up).

Poluka v. Willette, 2021 NCBC LEXIS 105, at **13 (N.C. Super Ct. Dec. 2, 2021).

88. Vaughn argues that he is entitled to judgment on the pleadings as to MarketPlace's UDTP claim because there is no conduct by him alleged in the Complaint that constitutes a violation of the UDTPA. However, this contention lacks merit.

89. Most basically, this Court has held that the existence of valid underlying claims for misappropriation of trade secrets or tortious interference with contract is

[2] "The decision whether to dismiss a claim with or without prejudice is one vested in the sound discretion of the trial court." *Miriam Equities, LLC v. LB-UBS 2007-C2 Millstream Road, LLC*, 2020 NCBC LEXIS 2, at **6 (N.C. Super Ct. Jan. 9, 2020).

sufficient to give rise to liability on a UDTP theory. *See, e.g.*, *Power Home Solar, LLC v. Sigora Solar, LLC*, 2021 NCBC LEXIS 55, at *51 (N.C. Super. Ct. June 18, 2021) ("Our Courts have long recognized that claims for misappropriation of trade secrets and tortious interference with contract may form the basis of a UDTPA claim.") (cleaned up). Therefore, at a minimum, MarketPlace has stated a valid UDTP claim based on the Court's rulings set out above with regard to those claims.[3] As a result, Vaughn's Motion for Judgment on the Pleadings as to MarketPlace's UDTP claim is **DENIED**.

II. Guidelight's Motion for Judgment on the Pleadings

90. Guidelight seeks judgment on the pleadings on all claims raised against it. The Complaint asserts the following claims against Guidelight: misappropriation of trade secrets; computer trespass; tortious interference with contract; tortious interference with prospective economic advantage; and UDTP. As discussed more fully below, all of these claims are based—at least in part—on a theory of vicarious liability for the conduct of Vaughn. In addition, however, MarketPlace has also asserted *direct* claims against Guidelight for tortious interference with contract and tortious interference with prospective economic advantage.

A. Tortious Interference with Contract

i. Direct Claim

[3] Therefore, the Court need not—and does not—consider whether any of MarketPlace's additional allegations in the Complaint of conduct by Vaughn are likewise sufficient to support a UDTP claim.

91. Guidelight argues that MarketPlace's direct claim for tortious interference with contract against it fails to plead any actual inducement by *Guidelight* (as opposed to inducement by Vaughn) and that for this reason the claim fails as a matter of law. The Court agrees. As noted earlier, the elements for this claim are as follows:

> (1) a valid contract between the plaintiff and a third person which 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, 322 N.C. at 661.

92. When examining the inducement element at the Rule 12 stage, this Court has previously held that "[t]o sufficiently plead inducement, there must be allegations of purposeful conduct, active persuasion, request, or petition." *Se. Anesthesiology Consultants, PLLC v. Charlotte-Mecklenburg Hosp. Auth.*, 2019 NCBC LEXIS 107, at *19 (N.C. Super. Ct. Dec. 13, 2019) (cleaned up).

93. Here, as conceded by counsel for MarketPlace at the 20 December hearing, the Complaint contains no such allegations against anyone other than Vaughn himself as Vaughn is the only employee or representative at Guidelight alleged to have made any contact with MarketPlace's customers.

94. The Court therefore **GRANTS** Guidelight's Motion for Judgment on the Pleadings as to MarketPlace's *direct* claim against Guidelight for tortious interference with contract, and this claim is **DISMISSED** with prejudice.

ii. Vicarious Liability Claim

95. The Court reaches a different result, however, with regard to MarketPlace's tortious interference with contract claim against Guidelight premised upon a theory of vicarious liability. As discussed above, the Court has refused to enter judgment on the pleadings on MarketPlace's claim against Vaughn for tortious interference with contract. Therefore, the question that remains is whether the Complaint sufficiently alleges a claim against Guidelight on a theory of vicarious liability.

96. "Generally, liability of a principal for the torts of his agent may arise in three situations: (1) when the agent's act is expressly authorized by the principal; (2) when the agent's act is ratified by the principal; or (3) when the agent's act is committed within the scope of his employment and in furtherance of the principal's business." *Creel v. N.C. HHS*, 152 N.C. App. 200, 202 (2002) (citing *Hogan v. Forsyth Country Club Co.*, 79 N.C. App. 483, 491 (1986), *disc. rev. denied*, 317 N.C. 334 (1986)).

97. In order to prove "ratification, the plaintiff[] must show that the principal had knowledge of all material facts and circumstances relative to the wrongful act, and that the principal, by words or conduct, showed an intention to ratify the act. Ratification may be express or implied, and intent may be inferred from failure to repudiate an unauthorized act." *Walker v. Sloan*, 137 N.C. App. 387, 397 (2000) (cleaned up).

98. Although an employer's alleged ratification of an employee's tortious conduct is typically pled by inference based on circumstantial evidence,

MarketPlace's ratification allegations here are more tangible. Specifically, the Complaint alleges that a former colleague of Vaughn's at Guidelight, Ian Buchanan, affirmatively told his supervisor, Regina Hensley, of his suspicions about Vaughn's actions.

99. Moreover, the Complaint asserts that after Hensley reported Buchanan's concerns to Trent, Guidelight did nothing "to prevent Vaughn from stealing Plaintiff's customers." (Verif. Compl. ¶ 76.) MarketPlace further alleges that Buchanan discovered subsequent evidence on Guidelight's computer system that a profile for a MarketPlace customer, Debra Ledford, had been created based on information from Guidelight's Vertafore system. Buchanan, who believed such acts by Vaughn to have been illegal, reported Vaughn's conduct once again to Hensley, who then shared the information with Trent. According to the Complaint, rather than taking any action against Vaughn, Trent or Hensley instead instructed Buchanan to "stay in his lane." (Verif. Compl. ¶ 76.) Shortly afterward, Buchanan was allegedly terminated by Guidelight for "not being a team player." (Verif. Compl. ¶ 76.)

100. These allegations of ratification easily suffice to overcome Guidelight's Rule 12 Motion. The Court therefore **DENIES** Guidelight's Motion for Judgment on the Pleadings as to the claim for tortious interference with contract based on a theory of vicarious liability.[4]

[4] Guidelight also makes the same justification argument asserted by Vaughn, which the Court has rejected.

B. Tortious Interference with Prospective Economic Advantage

i. Direct Claim

101. As with MarketPlace's claim for tortious interference with prospective economic advantage claim against Vaughn, MarketPlace's similar claim against Guidelight fails to allege the essential elements of this cause of action. Specifically, the Complaint does not sufficiently allege "that [Guidelight], without justification, induced a third party to refrain from entering into a contract with [MarketPlace] and which would have been entered into absent [Guidelight's] interference." *See Silverdeer*, 2013 NCBC LEXIS 21, at **31. MarketPlace has failed to identify any specific prospective contractual opportunity that was lost as a result of Guidelight's interference. Therefore, Guidelight's Motion for Judgment on the Pleadings as to MarketPlace's direct claim against it for tortious interference with prospective economic advantage is **GRANTED**, and that claim is **DISMISSED** with prejudice.

ii. Vicarious Liability

102. Judgment on the pleadings is likewise proper as to MarketPlace's tortious interference with prospective economic advantage claim against Guidelight premised on a theory of vicarious liability.

103. It is axiomatic that when a court dismisses the underlying tort claim upon which a vicarious liability claim is based, the claim for vicarious liability must be dismissed as well. *See*, *e.g.*, *Berkeley Fed. Sav. & Loan Ass'n v. Terra Del Sol*, 111 N.C. App. 692, 708 1993) ("[The claims] for vicarious liability necessarily fail since the underlying causes of action . . . fail.").

104. Here, as discussed above, the Court has dismissed without prejudice MarketPlace's claim against Vaughn for tortious interference with prospective economic advantage. Accordingly, Guidelight's Motion as to the claim against it for tortious interference with prospective economic advantage based on vicarious liability is similarly **GRANTED**, and this claim is **DISMISSED** without prejudice.

C. UDTP (Vicarious Liability)

105. The Court rejects Guidelight's argument seeking judgment on the pleadings as to the UDTP claim asserted against it. As discussed above, MarketPlace has pled a valid claim for UDTP against Vaughn, and the Complaint sufficiently alleges that Guidelight ratified Vaughn's conduct.

106. Guidelight does not dispute the fact that liability can exist for UDTP on a theory of vicarious liability. *See*, *e.g.*, *White v. Consol. Planning, Inc.*, 166 N.C. App. 283, 300 (2004) ("A jury could find, on the basis of this evidence, that [the employee] was acting within the scope of his employment or authority and [his employer] was, as a result, liable for [the employee's] fraud, conversion, and *unfair and deceptive trade practices*." (emphasis added)), *disc rev. denied*, 359 N.C. 286 (2005).

107. The Court therefore **DENIES** Guidelight's Motion as to MarketPlace's UDTP claim.

D. Misappropriation of Trade Secrets (Vicarious Liability)

108. Guidelight also seeks judgment on the pleadings with regard to MarketPlace's misappropriation of trade secrets claim, which was asserted against Guidelight solely under the theory of vicarious liability. Guidelight argues that North

Carolina law does not permit vicarious liability principles to be applied to *statutory* claims (such as a claim under the Trade Secrets Protection Act) absent express authorization from our General Assembly.

109. A prior opinion from this Court suggests that misappropriation of trade secrets claims based on a theory of vicarious liability are recognized in this State. In *Salon Blu, Inc. v. Salon Lofts Grp., LLC*, 2018 NCBC LEXIS 72 (N.C. Super. Ct. July 16, 2018), this Court stated the following with regard to such a claim:

> Salon Blu, however, has not alleged facts that would support an allegation that Salon Lofts is vicariously liable for the acts of Salon Blu's former stylists. Salon Blu concedes that Salon Lofts does not employ the former Salon Blu stylists at issue; the former stylists are instead tenants who rent space from Lofts. (ECF No. 30, at ¶ 16); *see Gordon v. Garner*, 127 N.C. App. 649, 658, 493 S.E.2d 58, 63 (1997) ("Under the doctrine of respondeat superior, for one defendant to be held vicariously liable for the actions of another, an employer-employee relationship must exist between the two."). There is also no allegation that the former stylists were agents of Salon Lofts. Therefore, any attempt by Salon Blu to attribute the conduct of its former stylists to Salon Lofts must fail.

Id. at *17.

110. Thus, although our opinion in *Salon Blu* dismissed the vicarious liability claim based on the facts of that case, it implicitly recognized that such a claim *could* exist—given the existence of sufficient factual support.

111. A federal court applying North Carolina law has expressly held that such a claim is proper, stating the following:

> Because corporations, and other legal entities, only have knowledge through [their] agents and can only act through [their] agents, the NCTSPA cannot be construed to disallow liability under agency princip[les]. "[A] corporation is liable civil[ly] for torts committed by its servants or agents precisely as a natural person. Though it may have no mind with which to plot a wrong or hands capable of doing an injury,

> yet it may employ the minds and hands of others." *Dickerson v. Atl. Refining Co.*, 201 N.C. 90, 99, 159 S.E. 446, 452 (1931); *see Woodson v. Rowland*, 329 N.C. 330, 344, 407 S.E.2d 222, 231 (1991) ("A corporation can act only through its agents . . . ."); *Sledge Lumber Corp. v. S. Builders Equip. Co.*, 257 N.C. 435, 439, 126 S.E.2d 97, 100 (1962) (holding that executives' position "was such that his acts and knowledge would be the acts and knowledge of the corporation which can act only through its agents"); *see also St. Paul Mercury Ins. Co. v. Am. Bank Holdings, Inc.*, 819 F.3d 728, 734 (4th Cir. 2016) ("Because a corporation is a fiction that can have knowledge only through its agents, knowledge of an agent acquired within the scope of the agency relationship is imputable to the corporation." (applying Maryland law)). Construing [the] NCTSPA to preclude the application of agency theory would shield legal entities such as limited liability companies and corporations from liability under the NCTSPA. This is inconsistent with the language of the NCTSPA, which defines person to include a "corporation . . . or any other legal or commercial entity." N.C. Gen. Stat. § 66-152(2). North Carolina appellate courts have also affirmed rulings holding corporations and limited liability companies liable under [the] NCTSPA for the acts of their employee agents. For example, the North Carolina Court of Appeals affirmed a claim against a limited liability company where the trial court sitting as fact finder found that defendant's employees "knew of [Plaintiff's] trade secrets and had access to them, and each had the opportunity to acquire them for disclosure and use." *Sunbelt Rentals, Inc. v. Head & Engquist Equip., LLC.*, 174 N.C. App. 49, 57-58, 620 S.E.2d 222, 229 (2005). Therefore, the NCTSPA does permit liability based upon an agency theory, and the jury instructions as a whole adequately state the controlling law on this matter.

Legacy Data Access, LLC v. Mediquant, Inc., 2017 U.S. Dist. LEXIS 198817, at *25–26 (W.D.N.C. Dec. 4, 2017).

112. Courts in other states interpreting analogous trade secret statutes have reached a similar conclusion. *See*, *e.g.*, *Newport News Indus. v. Dynamite Testing*, 130 F. Supp.2d 745, 751 (E.D. Va. 2001) ("[N]othing in the statute precludes liability for the employer due to the misconduct or bad faith of his employee conducted for the employer's benefit. Respondeat superior liability simply does not change the nature of the prohibited conduct in the [statute]."); *Hagen v. Burmeister & Assocs., Inc.*, 1999

Minn. App. LEXIS 85, at *9–10 (Minn. App. Jan. 26, 1999) (applying respondeat superior to a misappropriation of trade secrets claim because the doctrine "applies to common law torts and a wide range of federal statutory wrongs" and "[t]he same principles that support extension of the respondeat superior doctrine in federal law apply to violations of state statutes . . . Logically, the general rule for vicarious liability should apply to trade secrets torts that an agent commits in the course and within the scope of the agency which are not for a purpose personal to the agent.").

113. The Court agrees with the reasoning set out in these cases and is satisfied that the public policy underlying North Carolina's Act supports extending liability to an employer in cases where (as has been alleged here) it has ratified acts of wrongful misappropriation by its employee.

114. Nor has the Court identified any decision from our Supreme Court that would prohibit the application of vicarious liability principles to this statute. Indeed, to the contrary, the Supreme Court—albeit in a different context—has recognized the continuing validity of common law remedies where a statute does not contain language suggesting an intent to preclude them. *See Amos v. Oakdale Knitting Co.*, 331 N.C. 348, 358 (1992) ("In determining whether the state legislature intended to preclude common law actions, [courts] first look to the words of the statute to see if the legislature expressly precluded common law remedies. The Wage and Hour Act, unlike the Workers' Compensation Act, does not expressly preclude common law remedies. . . . Because the legislature did not expressly preclude common law remedies, we look to the purpose and spirit of the statute and what the enactment

sought to accomplish, considering both the history and circumstances surrounding the legislation and the reason for its enactment.") (cleaned up).

115. Similarly, nothing in the text of North Carolina's Trade Secrets Protection Act suggests an intent by our General Assembly to preclude liability based on common law principles such as the doctrine of respondeat superior. Moreover, as noted above, allowing vicarious liability in appropriate cases is perfectly consistent with the purpose of the Act. Indeed, it would make little sense to avoid holding accountable employers who ratify their employees' unlawful misappropriation of another company's trade secrets.

116. For all of these reasons, Guidelight's Motion is **DENIED** as to MarketPlace's misappropriation of trade secrets claim against it.

E. Computer Trespass (Vicarious Liability)

117. The Court declines, however, to recognize a vicarious liability claim for computer trespass.

118. Although it also provides for civil liability, N.C.G.S. § 14-458 is a criminal statute that authorizes specified criminal penalties against violators. *See*, *e.g.*, N.C.G.S. § 14-458(b). The statute also contains a scienter requirement. *See* N.C.G.S. § 14-458(a).

119. Moreover, the statutory text suggests a legislative intent to limit civil liability to a specific class of defendants—namely, those persons who intentionally violate one or more of the enumerated statutory provisions. *See* N.C.G.S. § 14-458(a) ("[I]t shall be unlawful for any person to use a computer or computer network without

authority and with the intent to do any of the following[.]"); *see also Doe v. Dartmouth-Hitchcock Med. Ctr.*, 2001 U.S. Dist. LEXIS 10704, at *12–16 (D.N.H. July 19, 2001) (declining to apply vicarious liability to the federal Computer Fraud and Abuse Act ("CFAA") because it is "essentially a criminal statute" that created a "limited private of right of action," which was confined to liability "against the violator" and because the CFAA's primary purpose was to "deter and punish those who intentionally access computer files and systems without authority and cause harm," rather than the improper use of any information accessed therein).

120. The Court therefore **GRANTS** Guidelight's Motion for Judgment on the Pleadings as to MarketPlace's computer trespass claim, and that claim is **DISMISSED** with prejudice.

CONCLUSION

THEREFORE, IT IS ORDERED as follows:

1. Vaughn's Motion for Judgment on the Pleadings is **GRANTED**, in part, and **DENIED**, in part, as follows:
    a. Vaughn's Motion for Judgment on the Pleadings as to MarketPlace's breach of contract claim against him is **GRANTED**, in part, and **DENIED**, in part.
    b. Vaughn's Motion for Judgment on the Pleadings is **GRANTED** as to MarketPlace's claim against him for tortious interference with prospective economic advantage, and that claim is **DISMISSED** without prejudice.

c. Vaughn's Motion for Judgment on the Pleadings is otherwise **DENIED**.

2. Guidelight's Motion for Judgment on the Pleadings is **GRANTED,** in part, and **DENIED**, in part, as follows:

   a. Guidelight's Motion for Judgment on the Pleadings as to MarketPlace's *direct* claims against it for tortious interference with prospective economic advantage and tortious interference with contract is **GRANTED**, and those claims are **DISMISSED** with prejudice.

   b. Guidelight's Motion for Judgment on the Pleadings is **GRANTED** as to MarketPlace's vicarious liability claim against Guidelight for tortious interference with prospective economic advantage, and that claim is **DISMISSED** without prejudice.

   c. Guidelight's Motion for Judgment on the Pleadings is **DENIED** as to MarketPlace's vicarious liability claims against it for tortious interference with contract, UDTP, and misappropriation of trade secrets.

   d. Guidelight's Motion for Judgment on the Pleadings is **GRANTED** as to MarketPlace's vicarious liability claim against it for computer trespass, and that claim is **DISMISSED** with prejudice.

   SO ORDERED, this the 24th day of February, 2023.

/s/ Mark A. Davis
Mark A. Davis
Special Superior Court Judge for
Complex Business Cases