IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

WEINFUSE, LLC,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Civil Action No. **3:20-CV-1050-L**
	§	
INFUSEFLOW, LLC, GUSTAVO "GUS" DE AVILLEZ, AND REIN HEALTH HOLDINGS, LLC,	§	
	§	
Defendants.	§	

MEMORANDUM OPINION AND ORDER

Before the court are Defendants InfuseFlow, LLC and Gustavo "Gus" De Avillez's Motion to Dismiss Plaintiff WeInfuse, LLC's First Amended Complaint Pursuant to Federal Rule of Civil Procedure 12(b)(6) ("Motion") (Doc. 15), filed July 2, 2020; Defendants InfuseFlow, LLC and Gustavo "Gus" De Avillez's Motion to Dismiss Plaintiff WeInfuse, LLC's State Court Causes of Action in Its Original Complaint Pursuant to Federal Rule of Civil Procedure 12(b)(1) (Doc. 16), filed July 2, 2020; Rein Health Holdings, LLC's Motion Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(6) and Joinder to the Other Defendants' Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(6) (Doc. 32), filed December 4, 2020; and Rein Health Holdings, LLC's Motion Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(1) and Joinder to the Other Defendants' Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(1) (Doc. 33), filed December 4, 2020. After considering the Motions, briefs, pleadings, and applicable law, the court, for the reasons herein explained, **grants in part and denies in part** Defendants InfuseFlow, LLC and Gustavo "Gus" De Avillez's Motions to Dismiss (Doc. 15 and 16); **grants** Plaintiff's Motion to Seal (Doc. 11); **denies** as moot Defendants' Motion to Strike (Doc. 13);

denies Rein's Motions to Dismiss (Docs. 32 and 33); and **declines** to dismiss Plaintiff's state law claims, except those as herein determined.

I. Factual and Procedural Background

On April 28, 2020, WeInfuse, LLC ("Plaintiff" or "WeInfuse") filed its Original Complaint (Doc. 1) against InfuseFlow, LLC and Gustavo "Gus" De Avillez (collectively, "Defendants InfuseFlow and Mr. De Avillez"). Plaintiff asserted claims pursuant to the Defend Trade Secrets Act of 2016, 18 U.S.C. § 1836 ("DTSA"), including various state law claims. On June 11, 2020, WeInfuse filed a First Amended Complaint ("Amended Complaint") and Motion to Seal First Amended Complaint (Doc. 11) pursuant to the DTSA, Copyright Act, 17 U.S.C. § 101, and state law claims for tortious interference. In the Amended Complaint, Plaintiff's asserted eight claims as follows: Count 1—misappropriation of trade secrets (against all Defendants); Count 2—copyright infringement (against all Defendants); Count 3—vicarious copyright infringement (against Defendant Rein Health Holdings, LLC ("Rein")); Count 4—tortious interference with existing contracts (against Infuseflow and Mr. De Avillez); Count 5—tortious interference with prospective business relations (against InfuseFlow and Mr. De Avillez); Count 6—breach of contract (against Rein); Count 7—breach of contract (against Rein); and Count 8—attorney's fees (against all Defendants).

Plaintiff moved to seal its Amended Complaint to protect its confidential and/or trade secret material described therein as well as information marked confidential by Defendants in a related state-court action. There was significant contention between the parties concerning Plaintiff's First Amended Complaint. After much to-and-fro, the parties reached a Stipulation (Doc. 30) on November 2, 2020. The parties agree that the First Amended Complaint as redacted (Doc. 31) is to be filed for public disclosure and that all motions to dismiss remain before the court.

Accordingly, the court orders that the Amended Complaint (Doc. 11) remain **filed under seal** because it states the entirety of Plaintiff's claims, allows the court to see all statements made in support of Plaintiff's claims and, at the same time, shields the confidential information from public disclosure.

In Defendants' Motion to Dismiss for Failure to State a Claim, InfuseFlow and Mr. De Avillez seek dismissal of Plaintiff's claims for trade secret misappropriation (Count 1); copyright infringement (Count 2); tortious interference with existing contract and prospective business relations (Counts 4 and 5); and attorney's fees (Count 8). Defendants contend that these claims by Plaintiff should be dismissed because: (1) Plaintiff has no trade secret; (2) Defendants did not misappropriate Plaintiff's trade secret; (3) Plaintiff does not have a valid copyright; (4) Plaintiff's common law tortious interference claims are preempted by the Copyright Act; (5) Plaintiff's common law tortious interference claims are preempted by the Texas Uniform Trade Secrets Act ("TUTSA"); and (5) there was no tortious interference in either existing contracts or prospective business relationships. Defendants further contend that Plaintiff's claim for attorney's fees should be denied because they are insufficiently pleaded.

Plaintiff responds that its claims satisfy Federal Rule of Civil Procedure 8's pleading standard. It contends that: (1) its Software is a protectable trade secret; (2) Defendants misappropriated its Software; (3) its copyright is valid and was infringed upon by Defendants; (4) its state law tortious interference claims are not preempted by the Copyright Act; (5) its state law tortious interference claims are not preempted by TUTSA; and (5) Defendants tortiously interfered with existing and prospective contracts. Plaintiff also maintains that it has sufficiently stated a claim for attorney's fees and, in a footnote, requests that it be granted the opportunity to amend its pleadings should the court find them to be defective.

Defendants reply that Plaintiff's request for leave to amend should be denied because of its lack of particularity regarding the grounds on which it seeks to amend. They maintain that Plaintiff has not cured the defects in its trade secret, copyright, and tortious interference claims. They also maintain that Plaintiff's tortious interference claims are preempted by TUTSA and the Copyright Act.

II. Standard for Rule 12(b)(6) - Failure to State a Claim

To defeat a motion to dismiss filed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, a plaintiff must plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *Reliable Consultants, Inc. v. Earle*, 517 F.3d 738, 742 (5th Cir. 2008); *Guidry v. American Pub. Life Ins. Co.*, 512 F.3d 177, 180 (5th Cir. 2007). A claim meets the plausibility test "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal citations omitted). While a complaint need not contain detailed factual allegations, it must set forth "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly,* 550 U.S. at 555 (citation omitted). The "[f]actual allegations of [a complaint] must be enough to raise a right to relief above the speculative level . . . on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Id.* (quotation marks, citations, and footnote omitted). When the allegations of the pleading do not allow the court to infer more than the mere possibility of wrongdoing, they fall short of showing that the pleader is entitled to relief. *Iqbal*, 556 U.S. at 679.

In reviewing a Rule 12(b)(6) motion, the court must accept all well-pleaded facts in the complaint as true and view them in the light most favorable to the plaintiff. *Sonnier v. State Farm Mutual Auto. Ins. Co.,* 509 F.3d 673, 675 (5th Cir. 2007); *Martin K. Eby Constr. Co. v. Dallas Area Rapid Transit*, 369 F.3d 464, 467 (5th Cir. 2004); *Baker v. Putnal*, 75 F.3d 190, 196 (5th Cir. 1996). In ruling on such a motion, the court cannot look beyond the pleadings. *Id.*; *Spivey v. Robertson*, 197 F.3d 772, 774 (5th Cir. 1999). The pleadings include the complaint and any documents attached to it. *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498-99 (5th Cir. 2000). Likewise, "'[d]ocuments that a defendant attaches to a motion to dismiss are considered part of the pleadings if they are referred to in the plaintiff's complaint and are central to [the plaintiff's] claims.'" *Id.* (quoting *Venture Assocs. Corp. v. Zenith Data Sys. Corp*., 987 F.2d 429, 431 (7th Cir. 1993)). In this regard, a document that is part of the record but not referred to in a plaintiff's complaint *and* not attached to a motion to dismiss may not be considered by the court in ruling on a 12(b)(6) motion. *Gines v. D.R. Horton, Inc.*, 699 F.3d 812, 820 & n.9 (5th Cir. 2012) (citation omitted). Further, it is well-established and "'clearly proper in deciding a 12(b)(6) motion [that a court may] take judicial notice of matters of public record.'" *Funk v. Stryker Corp.*, 631 F.3d 777, 783 (5th Cir. 2011) (quoting *Norris v. Hearst Trust*, 500 F.3d 454, 461 n.9 (5th Cir. 2007) (citing *Cinel v. Connick*, 15 F.3d 1338, 1343 n.6 (5th Cir. 1994)).

The ultimate question in a Rule 12(b)(6) motion is whether the complaint states a valid claim when it is viewed in the light most favorable to the plaintiff. *Great Plains Trust Co. v. Morgan Stanley Dean Witter*, 313 F.3d 305, 312 (5th Cir. 2002). While well-pleaded facts of a complaint are to be accepted as true, legal conclusions are not "entitled to the assumption of truth." *Iqbal*, 556 U.S. at 679 (citation omitted). Further, a court is not to strain to find inferences favorable to the plaintiff and is not to accept conclusory allegations, unwarranted deductions, or

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