STATE OF NORTH CAROLINA

MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
23 CVS 5594

HUSQVARNA PROFESSIONAL PRODUCTS, INC. and HUSQVARNA BUSINESS SUPPORT AB,

Plaintiffs,

v.

ROBIN AUTOPILOT HOLDINGS, LLC; ROBIN TECHNOLOGIES, INC.; ROBOTIC MOWING INVESTMENTS, LLC; RLAM AZALEA, LLC; JEFFREY R. DUDAN IRREVOCABLE TRUST; JEFFREY DUDAN; and ANTHONY HOPP,

Defendants.

ORDER AND OPINION ON PLAINTIFFS' MOTION TO DISMISS AMENDED COUNTERCLAIMS

1. **THIS MATTER** is before the Court on Plaintiffs' Motion to Dismiss Defendant Robin Autopilot Holdings, LLC's Amended Counterclaims (the "Motion") pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure (the "Rule(s)") in the above-captioned case. (ECF No. 50.)

2. For the reasons set forth below, the Court **GRANTS in part** and **DENIES in part** the Motion.

Nelson Mullins Riley & Scarborough, LLP, by Thomas G. Hooper, Paul J. Osowski, Adam J. Hegler, and Cory E. Manning, for Plaintiffs/Counterclaim Defendants Husqvarna Professional Products, Inc. and Husqvarna Business Support AB.

Lincoln Derr PLLC, by R. Jeremy Sugg and Tricia M. Derr, and Jackson Walker LLP, by Blake T. Dietrich and Hailey Oestreich, for Defendant/Counterclaim Plaintiff Robin Autopilot Holdings, LLC.

Bledsoe, Chief Judge.

I.

FACTUAL AND PROCEDURAL BACKGROUND

A. Factual Background

3. The Court does not make findings of fact on motions presented under Rule 12. Rather, the Court recites the allegations asserted and documents referenced in the pleadings that are relevant to the Court's determination of the Motion.

4. This action arises out of the relationship between Plaintiffs Husqvarna Professional Products, Inc. ("Husqvarna Products") and Husqvarna Business Support AB ("Husqvarna Business"; together with Husqvarna Products, "Plaintiffs" or the "Husqvarna Parties"), and Defendant Robin Autopilot Holdings, LLC ("Robin" or "Defendant").

5. Husqvarna Business is a Swedish foreign limited company with its principal place of business in Stockholm, Sweden.[1] Husqvarna Products is a Delaware corporation with its principal place of business in Charlotte, North Carolina and is a world leader in professional robotic lawn mowers.[2]

6. Robin is an Ohio limited liability company with its principal place of business in Texas, and the Husqvarna Parties have acknowledged that Robin is a

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[1] (Def. Robin Autopilot Holdings, LLC's Am. Countercls. [hereinafter "Am. Countercls."] ¶ 3, ECF No. 32.)

[2] (Am. Countercls. ¶¶ 2, 8.)

world leader in the technological integration of robotic lawn care with professional landscapers.[3]

7. According to Robin, since 2017, the Husqvarna Parties and Robin have had a long-standing commercial and strategic relationship which the Husqvarna Parties have described publicly as a "partnership."[4] In furtherance of this relationship, the parties entered into a series of contracts. The first of these contracts was a Non-Disclosure Agreement dated 5 June 2019 (the "NDA").[5] The NDA permitted the Husqvarna Parties to gain access to Robin's "confidential information, including [Robin's] internal know-how, with the understanding that the Parties would in fact continue to operate as partners."[6] Thereafter, Robin alleges that the Husqvarna Parties induced or attempted to induce Robin to make significant investments and acquisitions for the Husqvarna Parties' benefit.[7]

8. Two years later, on 27 May 2021, the Husqvarna Parties and Robin entered into an Admission Agreement (the "Original Admission Agreement").[8] According to Robin, the Original Admission Agreement provided that, in exchange for the Husqvarna Parties' "monetary investment and future monetary investment

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[3] (Am. Countercls. ¶¶ 1, 8.)

[4] (Am. Countercls. ¶¶ 7–9.)

[5] (Am. Countercls. ¶¶ 10, 129–35.)

[6] (Am. Countercls. ¶ 10.)

[7] (Am. Countercls. ¶¶ 11–15.)

[8] (Am. Countercls. ¶¶ 16, 115–23.)

commitments to Robin," the Husqvarna Parties would "become a shareholder in [Robin] and were allowed a seat on [Robin's] Board."[9] The Agreement also included a non-solicitation provision prohibiting the Husqvarna Parties from soliciting two businesses—Weed Man, USA and MowBot, Inc.—for a period of twelve months. Steve Collins ("Collins"), Plaintiffs' Chief Transformational Officer and VP of Strategy + Development, was appointed as the Husqvarna Parties' representative on Robin's Board.[10] In that role, Robin alleges that Collins (and thus the Husqvarna Parties) had "direct access to Board meetings where Robin's financial information, business plans, commercial launches and customer strategies were discussed under extremely confidential conditions" and was otherwise "provided access to all [of Robin's] internal strategies by virtue of his role as a Board member."[11]

9. In early 2022, the parties had, but ultimately resolved, several disputes concerning intellectual property, customer issues, and alleged violations of the NDA.[12] To settle these disputes and "drive their partnership forward," the Husqvarna Parties and Robin agreed, after meeting in May 2022, "to 'collaborate' and act as 'partners' " going forward and entered into two agreements on 8 September 2022: a Settlement and Release Agreement (the "Settlement Agreement") and an

[9] (Am. Countercls. ¶ 16.)

[10] (Am. Countercls. ¶¶ 17, 18.)

[11] (Am. Countercls. ¶¶ 16–19.)

[12] (Am. Countercls. ¶ 19.)

Amended and Restated Admission Agreement (the "Amended Admission Agreement").[13]

10. Under the Amended Admission Agreement, the Husqvarna Parties were allowed a second seat on Robin's Board.[14] Robin also alleges that the Husqvarna Parties agreed through this Agreement to make their Application Programming Interfaces ("APIs") available to Robin for use in Robin's Automower Connect and Fleet applications[15] and to pay Robin an additional $500,000 in the first quarter of 2023 if certain metrics were met.[16] Robin alleges that, although the Husqvarna Parties confirmed that these metrics were met at one of Robin's Board meetings and through a text message to Robin's CEO, the Husqvarna Parties never paid the promised $500,000.[17]

11. Beginning after the May 2022 meeting and continuing until the fall of 2022, Robin alleges that the Husqvarna Parties requested and received confidential information from Robin,[18] including Robin's list of subscribers and their physical locations,[19] information about Robin's software and hardware related to its

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[13] (Am. Countercls. ¶¶ 26, 115–23.)

[14] (Pls.' Opp'n Defs.' Mot. Dismiss Claims Against Member Defs. and Robin Technologies Ex. E, § 3, ECF No. 17.5 (sealed), ECF No. 41.4 (redacted).)

[15] (Am. Countercls. ¶ 52.)

[16] (Am. Countercls. ¶ 53.)

[17] (Am. Countercls. ¶¶ 53, 54.)

[18] (Am. Countercls. ¶¶ 27–43.)

[19] (Am. Countercls. ¶¶ 28, 30.)

subscription sales pilot program,[20] and a proprietary roadmap and demonstration of Robin's fleet platform and puck system.[21] Robin asserts that to protect its confidential information, Robin and the Husqvarna Parties entered into a Confidentiality Agreement in July 2022 (the "Confidentiality Agreement") under which the Husqvarna Parties agreed to use Robin's confidential information only to the extent necessary for the creation of machine fleet management software to be used in the Husqvarna Parties' and Robin's cooperative business activities.[22]

12. In December 2022, Robin alleges that the Husqvarna Parties secretly changed their business strategy and began pursuing sales of their robotic products directly to professional users without notice to Robin.[23] Robin alleges that in connection with this change in strategy, the Husqvarna Parties launched a subscription program similar to Robin's after they "repeatedly mined Robin" for confidential information about Robin's program.[24] Robin also alleges that the Husqvarna Parties used Robin's research and development information—provided

[20] (Am. Countercls. ¶¶ 34–38.)

[21] (Am. Countercls. ¶¶ 39, 40.)

[22] (Am. Countercls. ¶ 27.)

[23] (Am. Countercls. ¶¶ 45–51.)

[24] (Am. Countercls. ¶ 48.)

pursuant to the Confidentiality Agreement—to enhance their own fleet and puck system.[25]

13. Robin further alleges that the Husqvarna Parties engaged in a concerted effort to undercut Robin's pricing and to interfere with Robin's existing and prospective customers by using Robin's trade secret information.[26] In particular, Robin alleges that it had a deal with the Mariani Group that was "good to move forward" until Husqvarna employees successfully solicited the Mariani Group to work with the Husqvarna Parties,[27] that it was in contract discussions with AutoCut until the Husqvarna Parties interfered,[28] and that it lost its customer relationship with Nature Works as a result of Plaintiffs' interference.[29]

14. Robin also alleges that the Husqvarna Parties, through its Board representative Collins, induced Robin to purchase a significant amount of inventory through false representations,[30] and that the Husqvarna Parties told Robin's customers that Robin was "going under," attempted to poach Robin's key

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[25] (Am. Countercls. ¶ 51.)

[26] (Am. Countercls. ¶¶ 59–67, 77.)

[27] (Am. Countercls. ¶¶ 59–64, 74.)

[28] (Am. Countercls. ¶ 66.)

[29] (Am. Countercls. ¶ 65.)

[30] (Am. Countercls. ¶¶ 57, 58.)

salespersons, and successfully diverted 75% of Robin's business to the Husqvarna Parties.[31]

15. In response to the Husqvarna Parties' alleged interference with Robin's business, Logan Fahey, Robin's CEO, sent a memorandum to the Husqvarna Parties on 6 March 2023 summarizing Robin's concerns about the Husqvarna Parties' conduct (the "March 6 Memo"), which led to a meeting and e-mail exchanges between the parties.[32] A day after this meeting—described by the Husqvarna Parties' general counsel as "productive"—the Husqvarna Parties filed the complaint initiating this action.[33]

B. Procedural History

16. The Husqvarna Parties filed their Complaint on 3 April 2023, asserting eight claims against Robin, Robin Technologies, Inc., and Robin's members, including claims against Robin for anticipatory breach of the Settlement Agreement, the Original Admission Agreement, the Amended Admission Agreement, and several

[31] (Am. Countercls. ¶¶ 72–79.)

[32] (Am. Countercls. ¶¶ 68–70.)

[33] (Am. Countercls. ¶ 71; Compl., ECF No. 4.)

other contracts.[34] On 15 May 2023, Robin filed an answer and counterclaims.[35] The Husqvarna Parties moved to dismiss Robin's counterclaims on 23 June 2023.[36]

17. On 13 July 2023, Robin filed Amended Counterclaims as of right, asserting counterclaims against the Husqvarna Parties for (i) breach of fiduciary duty; (ii) constructive fraud; (iii) misappropriation of trade secrets; (iv) tortious interference with prospective economic advantage; (v) unfair and deceptive trade practices; (vi) breach of the Original and Amended Admission Agreements; (vii) breach of the implied covenant of good faith and fair dealing; and (viii) breach of the Confidentiality Agreement.[37] In light of this filing, the Court denied the Husqvarna Parties' Motion to Dismiss the original counterclaims as moot on 20 July 2023.[38]

18. On 3 August 2023, the Husqvarna Parties filed the current Motion, seeking dismissal of each of Robin's Amended Counterclaims.[39] After full briefing, the Court

[34] (Compl. ¶¶ 69–126.)

[35] (Def. Robin's Answer and Countercls., ECF No. 9.)

[36] (Pls.' Mot. Dismiss Countercls., ECF No. 28.)

[37] (Am. Countercls.)

[38] (Order Den. Pls.' Mot. Dismiss Countercls. as Moot, ECF No. 37.)

[39] (Pls.' Mot. Dismiss. Am. Countercls.)

held a hearing on the Motion on 13 September 2023, at which all parties were represented by counsel (the "Hearing"). The Motion is now ripe for resolution.

II.

LEGAL STANDARD

19. When deciding whether to dismiss for failure to state a claim under Rule 12(b)(6), the Court considers "whether the allegations of the complaint, if treated as true, are sufficient to state a claim upon which relief can be granted under some legal theory." *Corwin v. Brit. Am. Tobacco PLC*, 371 N.C. 605, 615 (2018) (quoting *CommScope Credit Union v. Butler & Burke, LLP*, 369 N.C. 48, 51 (2016)).

20. "[D]ismissal 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*, 371 N.C. at 615 (quoting *Wood v. Guilford Cnty.*, 355 N.C. 161, 166 (2002)).

21. Under Rule 12(b)(6), "the trial court is to construe the pleading liberally and in the light most favorable to the plaintiff, taking as true and admitted all well-pleaded factual allegations contained within the [pleading]." *Donovan v. Fiumara*, 114 N.C. App. 524, 526 (1994) (cleaned up).

22. When considering a motion to dismiss under Rule 12(b)(6), a court "may properly consider documents which are the subject of a plaintiff's complaint and to which the complaint specifically refers even though they are presented by the defendant." *Oberlin Cap., L.P. v. Slavin*, 147 N.C. App. 52, 60 (2001); *see, e.g.*, *Deluca*

v. River Bluff Holdings II, LLC, 2015 NCBC LEXIS 12, at *8 (N.C. Super. Ct. Jan. 28, 2015) (stating that under Rule 12(b)(6), "a trial court may properly consider a contract that is the subject matter of the complaint, even if the plaintiff did not attach it to the complaint[ ]"). Moreover, the Court "can reject allegations that are contradicted by the documents attached [to], specifically referred to, or incorporated by reference in the complaint." *Moch v. A.M. Pappas & Assocs., LLC*, 251 N.C. App. 198, 206 (2016) (quoting *Laster v. Francis*, 199 N.C. App. 572, 577 (2009)).

III.

ANALYSIS

A. Breach of Fiduciary Duty

23. Robin's counterclaim against Plaintiffs for breach of fiduciary duty is premised on alleged fiduciary duties Robin contends the Husqvarna Parties owed to Robin arising from (i) Collins's position on Robin's Board, (ii) Plaintiffs' alleged "partnership" with Robin, (iii) Plaintiffs' contractual obligations to maintain the confidentiality of Robin's trade secrets and confidential information, and (iv) Plaintiffs' ability to control Robin's membership and thereby outside investment in Robin.[40] Robin contends that the Husqvarna Parties breached these duties by engaging in unfair and inequitable business activities, taking unfair advantage of the confidence Robin placed in them, dealing dishonestly with Robin, taking advantage of their position to gain a benefit at Robin's expense, placing themselves in positions

[40] (Am. Countercls. ¶ 72.)

"where their self-interest conflicted with their fiduciary duties," and failing to "fully and fairly disclose all material information" to Robin.[41]

24. The Husqvarna Parties seek dismissal, contending that Robin has failed to allege facts showing that they owed a fiduciary duty to Robin under any of Robin's theories.[42] The Court agrees.

25. As an initial matter, the Court notes that (i) Robin is an Ohio, manager-managed LLC, (ii) Robin's Operating Agreement provides that it is governed by Ohio law, and (iii) the Ohio Revised Limited Liability Company Act governs LLCs formed under Ohio law like Robin. *See* Ohio Rev. Code Ann. §§ 1706.01–.84. Thus, Ohio law provides the standard of care owed by Robin's members and managers. *See, e.g.*, *Bluebird Corp. v. Aubin*, 188 N.C. App. 671, 680 (2008) ("States normally look to the State of a business' incorporation for the law that provides the relevant corporate governance general standard of care." (quoting *Atherton v. F.D.I.C.*, 519 U.S. 213, 224 (1997))).

26. Under Ohio law, unless the LLC's operating agreement provides otherwise, members of a manager-managed LLC like Robin do not owe a duty of loyalty or duty of care to the LLC. Ohio Rev. Code Ann. § 1706.31(A), (B). Instead, a member need only meet the duties imposed by the implied covenant of good faith and fair dealing to satisfy the member's obligation to the LLC. *Id.* § 1706.31(E). Here, the Operating

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[41] (Am. Countercls. ¶ 74.)

[42] (Mem. Supp. Pls.' Mot. Dismiss Am. Countercls. 7 [hereinafter "Pls.' Br. Supp. Mot. Dismiss"], ECF No. 51.)

Agreement expressly provides that Robin's members "may engage in . . . other business . . . that may be competitive with [Robin]" and that they "have no duty to disclose to or permit [Robin] to participate in any projects or investments that may be of interest to [Robin]."[43] Thus, Robin's members, including the Husqvarna Parties, do not owe a fiduciary duty to Robin under Ohio law by virtue of their membership in Robin.

27. In a similar vein, and contrary to Robin's contention,[44] the fact that the Husqvarna Parties were permitted to designate two of Robin's seven Board members does not make them either a manager of Robin or a member of Robin's Board. The Operating Agreement provides that "[a] board of managers shall be responsible for the operation and management of the Company" and that the Board of Managers shall be comprised of designees of the members.[45] Neither of the Husqvarna Parties is alleged to be a Board designee; instead, the Husqvarna Parties were afforded the right to designate two Board members, and they exercised that right to designate Collins as a member of Robin's Board.[46] Collins, not the Husqvarna Parties, is a manager of Robin and a member of Robin's Board. Thus, neither of the Husqvarna

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[43] (*See* Pls.' Opp'n Defs.' Mot. Dismiss Claims Against Member Defs. and Robin Technologies Ex. C, § 9(b) [hereinafter "Operating Agreement"], ECF No. 17.3 (sealed), ECF No. 41.2 (redacted).)

[44] (*See* Robin's Resp. Opp'n Pls.' Mot. Dismiss Am. Countercls. 7–8 [hereinafter "Def.'s Br. Opp. Mot. Dismiss Am. Countercls."], ECF No. 67.)

[45] (Operating Agreement § 7(a).)

[46] It is unclear from the Amended Counterclaims and its attachments whether the Husqvarna Parties exercised their right to appoint the second Board member they were allotted under the Amended Admission Agreement.

Parties owes a fiduciary duty to Robin by virtue of their right to designate two members of Robin's Board.

28. Robin's reliance on the Husqvarna Parties' press release references to a "partnership" to claim a fiduciary duty[47] is likewise unavailing. As the Husqvarna Parties correctly point out, Robin has not alleged the elements of a partnership or joint venture sufficient to give rise to a fiduciary duty on either basis. Under North Carolina law, "co-ownership and sharing of any actual profits are indispensable requisites for a partnership." *Wilder v. Hobson*, 101 N.C. App. 199, 202 (1990). Similarly, "a joint venture exists when there is: (1) an agreement, express or implied, to carry out a single business venture with joint sharing of profits, and (2) an equal right of control of the means employed to carry out the venture." *Sykes v. Health Network Sols., Inc.*, 372 N.C. 326, 340–41 (2019) (cleaned up). Here, Robin has not alleged any agreement with the Husqvarna Parties to share profits, so no fiduciary duty can arise from the Husqvarna Parties' public references to their "partnership" with Robin.[48]

29. The Husqvarna Parties' agreement to maintain the confidentiality of Robin's trade secrets and other confidential information likewise does not give rise to

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[47] (Am. Countercls. ¶¶ 8, 9.)

[48] The Court further notes that the Operating Agreement, the Original Admission Agreement, and the Amended Admission Agreement do not reflect a sharing of profits. Moreover, they contain merger clauses stating that these contracts reflect the full extent of the parties' agreement concerning each contract's subject matter. *See, e.g.*, *Phelps-Dickson Builders, L.L.C. v. Amerimann Partners*, 172 N.C. App. 427, 436 (2005) (enforcing a merger clause and barring parol evidence concerning oral representations of the defendant); *Deutsche Bank Nat'l Tr. Co. v. Pevarski*, 187 Ohio App. 3d 455, 471 (Ohio Ct. App. 2010)

a fiduciary duty.[49] Under North Carolina law, "parties to a contract do not thereby become each others' fiduciaries [and] generally owe no special duty to one another beyond the terms of the contract and the duties set forth in the U.C.C." *Branch Banking & Tr. Co. v. Thompson*, 107 N.C. App. 53, 61 (1992); *see also Sykes*, 372 N.C. at 340. Robin has not alleged a special duty, nor has it alleged the existence and breach of any duties or damages separate and apart from those created by contract. As a result, Robin has failed to allege a fiduciary duty arising from the Husqvarna Parties' confidentiality agreements with Robin. *See, e.g.*, *Wijewickrama v. Christian*, 2023 NCBC LEXIS 98, at *19–20 (N.C. Super. Ct. Aug. 11, 2023) (dismissing fiduciary duty claim based solely on contract duties); *Perry v. Frigi-Temp Frigeration, Inc.*, 2020 NCBC LEXIS 100, at *17 (N.C. Super. Ct. Sept. 3, 2020) (same); *Wilkins v. Wachovia Corp.*, No. 5:10-CV-249, 2011 U.S. Dist. LEXIS 30896, at *6 (E.D.N.C. Mar. 24, 2011) (dismissing breach of fiduciary duty claims which arose "out of the duties in the . . . agreement and relate to contract performance[ ]").

30. Finally, Robin claims that the Husqvarna Parties owe Robin a fiduciary duty arising from their control of Robin through their ability to designate two of seven Board seats and through other contractual provisions. But as our appellate courts have recognized, "[t]he standard for finding a *de facto* fiduciary relationship is a demanding one: Only when one party figuratively holds all the cards—all the

(noting that the presumption that a written contract embodies the parties' final and complete agreement is strongest "when the written agreement contains a merger or integration clause") (citation omitted).

[49] (Am. Countercls. ¶ 84.)

financial power or technical information, for example—have North Carolina courts found that the special circumstance of a fiduciary relationship has arisen." *Lockerman v. S. River Elec. Membership Corp.*, 250 N.C. App. 631, 636 (2016) (cleaned up). The Court cannot conclude from Robin's allegations that the Husqvarna Parties "held all of the cards" in their relationship with Robin, particularly when Robin alleges that the Husqvarna Parties controlled only two of the seven seats on Robin's Board.

31. For each of these reasons, therefore, the Court concludes that Robin has failed to allege the existence of a fiduciary duty owing from the Husqvarna Parties to Robin. As a result, Robin's claim for breach of fiduciary duty necessarily fails and shall be dismissed with prejudice.

B. Constructive Fraud

32. The Husqvarna Parties next seek to dismiss Robin's claim for constructive fraud, which asserts that Plaintiffs abused the trust and confidence that Robin placed in them.[50] Under North Carolina law, however:

> A claim for constructive fraud only arises where a confidential or fiduciary relationship exists. . . . In the event that a party fails to allege any special circumstances that could establish a fiduciary relationship, dismissal of a claim which hinges upon the existence of such a relationship would be appropriate.

Azure Dolphin, LLC v. Barton, 371 N.C. 579, 599 (2018) (cleaned up). Since the Court has concluded that Robin's allegations fail to give rise to a fiduciary duty, Robin's constructive fraud claim likewise fails and must be dismissed.

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[50] (Am. Countercls. ¶¶ 89–94.)

C. Misappropriation of Trade Secrets

33. The Husqvarna Parties also seek to dismiss Robin's claim for misappropriation of trade secrets.[51]

34. North Carolina's Trade Secret Protection Act (the "NCTSPA") provides that the owner of a trade secret "shall have a remedy by civil action for misappropriation of his trade secret." N.C.G.S. § 66-153. Not all confidential business information is a trade secret, however. The NCTSPA 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:
>
> 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.

Id. § 66-152(3).

35. "To plead misappropriation of trade secrets, 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." *Krawiec v. Manly*, 370 N.C. 602, 609 (2018) (citation omitted). While "[t]his 'sufficient particularity' standard does not require a party to define every minute detail of its trade secret down to the finest detail[,]" *Safety Test & Equip. Co. v. Am. Safety Util. Corp.*, 2015 NCBC LEXIS 40, at *25 (N.C. Super. Ct.

[51] (Am. Countercls. ¶¶ 95–102.)

Apr. 23, 2015) (cleaned up), "[a pleading] that makes general allegations in sweeping and conclusory statements, without specifically identifying the trade secrets allegedly misappropriated, is insufficient to state a claim for misappropriation of trade secrets." *Krawiec*, 370 N.C. at 610 (cleaned up).

36. In determining whether processes or information are trade secrets, North Carolina courts generally consider six factors:

> (1) the extent to which information is known outside the business; (2) the extent to which it is known to employees and others involved in the business; (3) the extent of measures taken to guard secrecy of the information; (4) the value of information to [the] business and its competitors; (5) the amount of effort or money expended in developing the information; and (6) the ease or difficulty with which the information could properly be acquired or duplicated by others.

Wilmington Star-News, Inc. v. New Hanover Reg'l Med. Ctr., 125 N.C. App. 174, 180–81 (1997). "These factors overlap, and courts do not always examine them separately and individually." *Vitaform, Inc. v. Aeroflow, Inc.*, 2020 NCBC LEXIS 132, at **19 (N.C. Super. Ct. Nov. 4, 2020) (citation omitted).

37. The Husqvarna Parties first contend that Robin's claim should be dismissed for failure to identify its trade secrets with the particularity our courts require.[52] The Court disagrees.

38. To begin, Robin identifies its trade secrets in its Amended Counterclaims as including:

> (1) Robin Autopilot's entire list of active and prospective customers; (2) information about Robin Autopilot's subscription sales pilot program, including projections for taking Robin Autopilot's pilot program to a full-scale service and SalesForce data on subscription hardware and growth;

[52] (Pls.' Br. Supp. Mot. Dismiss 19.)

> (3) Robin Autopilot's proprietary roadmap for Robin Autopilot's fleet platform and puck system; and (4) two private, full demonstrations of Robin Autopilot's fleet platform and puck system.[53]

39. As to category (1) above, Robin also alleges that it provided "customer projections" to the Husqvarna Parties in February 2022.[54] As to category (2), Robin alleges that it "created and implemented [the] pilot program to gather necessary data regarding the growth potential and profitability of a subscription sales program versus traditional sales" and disclosed to the Husqvarna Parties Robin's "data," "strategy," and "operational details" for the pilot program, "at the Husqvarna Parties' request."[55] Last, as to categories (3) and (4), Robin alleges that its fleet platform and puck system is "patented and trade-secret protected technology."[56]

40. The Court turns first to Robin's customer lists and notes that our Supreme Court has held that such lists can be trade secrets. *See Krawiec*, 370 N.C. at 610. Our Supreme Court has likewise made clear that a customer-list-based-NCTSPA claim should be dismissed if the plaintiff fails to allege that the customer list "contained any information that would not be readily accessible" to the defendant. *Id.* at 611; *see also, e.g.*, *Bldg. Ctr., Inc. v. Carter Lumber of the North, Inc.*, 2017 NCBC LEXIS 85, at *19–20 (N.C. Super. Ct. Sept. 21, 2017) ("Although customer lists, when compiled with pricing and bidding formulas, can sometimes qualify as a

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[53] (Am. Countercls. ¶ 97.)

[54] (Am. Countercls. ¶ 38.)

[55] (Am. Countercls ¶¶ 34, 35.)

[56] (Am. Countercls. ¶ 45.)

trade secret under the [NCTSPA], the Court does not consider a customer list containing only information that is easily accessible through a telephone book or other readily available sources to be a trade secret.").

41. Although the Husqvarna Parties have failed to make such an express allegation to this end here, they do plead that Plaintiffs repeatedly sought Robin's customer list "to implement an inbound lead sharing plan," which at least implies that the Husqvarna Parties did not have ready access to the information in Robin's list. Therefore, viewing Robin's allegations in the light most favorable to Robin, the Court concludes that the customer lists comprising Robin's category (1) have been sufficiently pleaded to constitute trade secrets to survive dismissal under Rule 12(b)(6). *See, e.g.*, *Area Landscaping, L.L.C. v. Glaxo-Wellcome, Inc.*, 160 N.C. App. 520, 525 (2003) ("Information regarding customer lists, pricing formulas and bidding formulas can qualify as a trade secret under G.S. § 66-152(3).").

42. The Court reaches a similar conclusion concerning the business strategy and technical information Robin has identified in categories (2), (3), and (4) above. First, these categories reflect the sort of information expressly recognized as trade secret information in the NCTSPA. *See, e.g.*, *Horner Int'l Co. v. McKoy*, 232 N.C. App. 559, 568 (2014) (holding that manufacturing processes may constitute trade secrets); *TSG Finishing, LLC v. Bollinger*, 238 N.C. App. 586, 594–95 (2014) (recognizing that specific steps and refinements in a process may constitute trade secrets); *BIOMILQ, Inc. v. Guiliano*, 2023 NCBC LEXIS 24, at *19–20 (N.C. Super. Ct. Feb. 10, 2023) (holding that "research and development efforts," "research priorities and next steps

for research and development[,]" and "strategies regarding product development and commercialization of products" constituted trade secrets for purposes of Rule 12(b)(6)); *Sunbelt Rentals, Inc. v. Head & Engquist Equip., L.L.C.*, 2002 NCBC LEXIS 2, at *41–42 (N.C. Super. Ct. July 10, 2002) (holding that allegations of misappropriation of business plans, marketing strategies, and customer information were sufficient to constitute trade secrets); *see also, e.g., PepsiCo, Inc. v. Redmond*, 54 F.3d 1262, 1269 (7th Cir. 1995) (holding that "particularized plans or processes developed by [the plaintiff] and disclosed to [the defendant] . . . which are unknown to others in the industry and which give the [defendant] an advantage over [its] competitors[ ]" were trade secrets under Illinois' similar trade secrets protection statute). The Court further finds that Robin's specific allegations are more than sufficient to put the Husqvarna Parties on notice of the strategy and technical information which they are accused of misappropriating.

43. The Husqvarna Parties next contend that Robin has failed to allege facts showing that the Husqvarna Parties misappropriated Robin's alleged trade secrets. Again, the Court disagrees.

44. Misappropriation is defined under the NCTSPA as the "acquisition, disclosure, or use of a trade secret of another without express or implied authority or consent, unless such trade secret was 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). "[G]eneral and conclusory" allegations of misappropriation are insufficient to survive a motion to dismiss under Rule 12(b)(6)).

See Washburn v. Yadkin Valley Bank & Tr. Co., 190 N.C. App. 315, 327 (2008); *see, e.g.*, *Bite Busters, LLC v. Burris*, 2021 NCBC LEXIS 26, at *22–23 (N.C. Super. Ct. Mar. 25, 2021) (dismissing trade secrets claim where plaintiff failed to plead "how [defendant] accessed or acquired [plaintiff's] trade secrets when he was not authorized to do so or how he used [plaintiff's] trade secrets without authorization"); *Strata Solar, LLC v. Naftel*, 2020 NCBC LEXIS 129, at *11–12 (N.C. Super. Ct. Oct. 29, 2020) (holding that a trade secret misappropriation claim necessarily fails when a "[p]laintiff does not allege any specific acts by [defendants] to show that they accessed, disclosed, or used [p]laintiff's trade secrets without [p]laintiff's authorization[ ]").

45. Here, Robin has made numerous, specific allegations of misappropriation, which satisfy its pleading burden. First, Robin alleges with specificity the dates on which it provided specific trade secret information to Plaintiffs upon Plaintiffs' request and under the parties' Confidentiality Agreement.[57] Then, Robin further alleges that the Husqvarna Parties used those trade secrets "to enhance their own direct-to-professional fleet system," "launch their own asset tracking puck," and "create their own subscription program" and to interfere with Robin's customer and prospective customer relationships and to divert those customers to Plaintiffs and away from Robin.[58] Robin identifies several customers by name and alleges that "at

[57] (Am. Countercls. ¶¶ 31, 36–42.)

[58] (Am. Countercls. ¶¶ 48–52, 59–67, 77–78, 100–01, 105–07.)

least 75% of [Robin's] customers have moved their business to the Husqvarna Parties" due to the Husqvarna Parties' misuse of Robin's trade secrets.[59]

46. Such allegations are sufficient to survive Rule 12(b)(6) scrutiny. *See, e.g.*, *Strata Solar, LLC*, 2020 NCBC LEXIS 129, at *10–11 (finding sufficient under Rule 12(b)(6) allegations that defendants planned a competing business venture several months prior to their resignations, obtained plaintiff's trade secrets on their personal devices in violation of plaintiff's policies, and disclosed plaintiff's trade secrets in defendants' competing venture); *Wells Fargo Ins. Servs. USA v. Link*, 2018 NCBC LEXIS 42, at *40–42 (N.C. Super. Ct. May 8, 2018) (finding sufficient under Rule 12(b)(6) allegations that defendant had access to plaintiff's trade secrets as plaintiff's employee, defendant went to work for a competitor and used plaintiff's trade secrets to solicit plaintiff's customers, and some of plaintiff's customers for whom defendant was responsible shifted business to the competitor), *aff'd per curiam*, 372 N.C. 260 (2019); *Byrd's Lawn & Landscaping, Inc v. Smith*, 142 N.C. App. 371, 376–77 (2001) (holding "sufficient circumstantial evidence" of misappropriation existed under Rule 56 where former employee had access to pricing proposals through employment with

[59] (Am. Countercls. ¶¶ 59–67, 77–78, 100–01, 105–07.)

plaintiff, moved to a competitor, and caused customers to move their business to competitor).

47. Accordingly, the Court will deny the Motion as to Robin's claim for misappropriation of trade secrets.

D. Tortious Interference with Prospective Economic Advantage

48. A claim for tortious interference with prospective economic advantage "arises when a party interferes with a business relationship by maliciously inducing a person not to enter into a contract with a third person, which he would have entered into but for the interference, if damage proximately ensues, when this interference is done not in the legitimate exercise of the interfering person's rights." *Beverage Sys. of the Carolinas, LLC v. Associated Beverage Repair, LLC*, 368 N.C. 693, 701 (2016) (cleaned up). A plaintiff must show that "a contract would have resulted but for a defendant's malicious intervention." *Id*.

49. The Husqvarna Parties move to dismiss Robin's claim that Plaintiffs tortiously interfered with Robin's prospective contracts with the Mariani Group and AutoCut,[60] contending first that Robin has failed to allege that, but for the alleged interference, "a contract would have ensued." *Dalton v. Camp*, 353 N.C. 647, 655 (2001).[61]

50. Plaintiffs' "but-for causation" argument as to the Mariani Group is unpersuasive. Robin alleges that the deal between the Mariani Group and Robin was

[60] (Am. Countercls. ¶¶ 103–08.)

[61] (Pls.' Br. Supp. Mot. Dismiss 23–24.)

"set to close" until the Husqvarna Parties contacted the Mariani Group and attempted to "convince the Mariani Group that contracting with Robin would not be as cost-effective as working directly with the Husqvarna Parties."[62] Viewing these allegations in the light most favorable to Robin, the Court concludes that Robin has pleaded the required but-for causation necessary to sustain its tortious interference claim at the pleading stage.

51. Robin's allegations concerning AutoCut, however, are fatally deficient. Robin alleges only that it discussed the possibility of working with and sharing its platform with AutoCut and that these discussions ceased after the Husqvarna Parties contacted AutoCut to discourage the company from working with Robin.[63] Robin's allegations therefore show only that Robin hoped for a contract with AutoCut, but do not show that but for Plaintiffs' interference Robin would have entered into a contract with AutoCut. *See, e.g.*, *Beverage Sys. of the Carolinas, LLC*, 368 N.C. at 701 (holding that "plaintiff ha[d] not demonstrated that any contract would have ensued but for defendants' conduct[ ]" where plaintiff relied on an expectation that former customers would contract with plaintiff in the future).

52. The Husqvarna Parties also contend that Robin's claim must fail because Robin's allegations show that the Husqvarna Parties acted with legal justification as Robin's competitor.[64] The Court disagrees. "[C]ompetition in business constitutes

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[62] (Am. Countercls. ¶ 64.)

[63] (Am. Countercls. ¶ 66.)

[64] (Pls.' Br. Supp. Mot. Dismiss 24.)

justifiable interference in another's business relations and is not actionable so long as it is carried on in the furtherance of one's own interest and by means that are lawful." *Peoples Sec. Life Ins. Co. v. Hooks*, 322 N.C. 216, 221 (1988). "[M]isappropriation of trade secrets is not a lawful means of competition." *New Restoration & Recovery Servs., LLC v. Dragonfly Pond Works, LLC*, 2023 NCBC LEXIS 80, at *17 (N.C. Super. Ct. June 15, 2023). Because Robin has sufficiently alleged that the Husqvarna Parties unlawfully disclosed and used Robin's trade secrets to interfere with Robin's potential contract with the Mariani Group, Plaintiffs' Motion based on this argument must be denied.

53. Next, the Husqvarna Parties argue that Robin's allegations fail because they do not show the "economic advantage" that Robin lost as a result of Plaintiffs' interference.[65] Again, the Court disagrees. Under North Carolina law, a plaintiff asserting a claim for tortious interference with prospective economic advantage must allege "what economic advantage was lost to plaintiff[ ] as a consequence of defendants' conduct[ ]" so that defendant knows the "character of the injury for which he must answer." *Walker v. Sloan*, 137 N.C. App. 387, 394–95 (2000) (cleaned up). Robin alleges that it lost the profits that it would have realized from the contract that it would have entered into with the Mariani Group but for Plaintiffs' conduct.[66] The

[65] (Pls.' Br. Supp. Mot. Dismiss 25.)

[66] (Am. Countercls. ¶ 108.)

Husqvarna Parties thus have adequate notice of the "character of the injury" Robin alleges, and their argument to the contrary fails.

54. Finally, the Husqvarna Parties argue that Robin's claim is barred by the economic loss rule because the claim arises from the purported breach of the Confidentiality Agreement.[67] In North Carolina, the economic loss rule "prohibits recovery for purely economic loss in tort, as such claims are instead governed by contract law." *Lord v. Customized Consulting Specialty, Inc.*, 182 N.C. App. 635, 639 (2007). The rule's premise is that "[t]he average plaintiff in a tort lawsuit does not choose his or her tortfeasors[,]" while "[c]ontracting parties, by comparison, have the ability to allocate risk among themselves at the outset of a transaction and are encouraged to do so." *Crescent Univ. City Venture, LLC v. AP Atl., Inc.*, 2019 NCBC LEXIS 46, at *76 (N.C. Super. Ct. Aug. 8, 2019) (citing *Lord*, 182 N.C. App. at 639).

55. The result is that "[t]he tort claim 'must be grounded on a violation of a *duty* imposed by operation of law, and the right invaded must be one that the law provides without regard to the contractual relationship of the parties.' " *Window Gang Ventures, Corp. v. Salinas*, 2019 NCBC LEXIS 24, at *24 (N.C. Super. Ct. Apr. 2, 2019) (quoting *Rountree v. Chowan Cnty.*, 252 N.C. App. 155, 160 (2017)). In short, "a plaintiff must allege a duty owed to him by the defendant [that is] separate and distinct from any duty owed under a contract." *Artistic S., Inc. v. Lund*, 2015 NCBC

[67] (Pls.' Br. Supp. Mot. Dismiss 25–26.)

LEXIS 113, at **23 (N.C. Super. Ct. Dec. 9, 2015) (quoting *Akzo Nobel Coatings, Inc. v. Rogers*, 2011 NCBC LEXIS 42, at **48 (N.C. Super. Ct. Nov. 3, 2011)).

56. Robin alleges such a separate and distinct duty here. While the Husqvarna Parties agreed to certain obligations under the Confidentiality Agreement, Robin does not allege a contractual obligation that includes a duty not to interfere with Robin's relationship with the Mariani Group. To the extent that duty exists, it arises under tort, not contract, and therefore the economic loss rule does not bar Robin's claim.

57. Accordingly, based on the above, the Court will grant Plaintiffs' Motion and dismiss Robin's claim for tortious interference with prospective advantage to the extent it is based on Plaintiffs' alleged interference with AutoCut but will otherwise deny the Motion to the extent Robin's claim is based on Plaintiffs' alleged interference with the Mariani Group.

E. Unfair and Deceptive Trade Practices

58. The Husqvarna Parties next seek to dismiss Robin's claim for unfair and deceptive trade practices under N.C.G.S. § 75-1.1 (the "UDTPA"). Because Robin's claim is based, in substantial part, on the Husqvarna Parties' alleged misappropriation of Robin's trade secrets and alleged tortious interference with Robin's prospective contract with the Mariani Group—claims that the Court has concluded will survive dismissal under Rule 12(b)(6)—Plaintiff's Motion must necessarily be denied. *See, e.g.*, *Charrah, LLC v. Sequoia Servs., LLC*, 2020 NCBC LEXIS 52, at *19 (N.C. Super. Ct. Apr. 17, 2020) ("[C]laims for misappropriation of

trade secrets and tortious interference with contract may form the basis of a UDTP claim.").

F. Breach of the Admission Agreement and Amended Admission Agreement[68]

59. Robin alleges that the Husqvarna Parties breached the Original and Amended Admission Agreements by failing to make their APIs available to Robin as promised and by failing to pay Robin $500,000 in early 2023 after the required conditions precedent for that payment had been met.[69] The Husqvarna Parties move to dismiss on grounds that (i) Robin has failed to allege that Plaintiffs' time to provide the APIs to Robin has expired or, alternatively, that Plaintiffs have repudiated their obligation to provide the APIs under the Agreements, and (ii) Robin relieved Plaintiffs of any duty to make the $500,000 payment by repudiating the Agreements through the March 6 Memo before the duty to make the payment was triggered.[70]

60. Turning to Plaintiffs' initial contention first, the Court notes that "[t]he elements of a claim for breach of contract are (1) [the] existence of a valid contract and (2) breach of the terms of that contract." *Poor v. Hill*, 138 N.C. App. 19, 26 (2000). A claim is adequate under North Carolina's notice pleading standard "if it gives

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[68] The parties stipulate that North Carolina law applies to the Admission Agreement and the Amended Admission Agreement. (*See* Joint Stipulation Regarding Law Governing Admission Agreements, ECF No. 70.) Under North Carolina's choice-of-law principles, "the interpretation of a contract is governed by the law of the place where the contract was made." *Tanglewood Land Co. v. Byrd*, 299 N.C. 260, 262 (1980). The Court therefore infers that the parties have concluded that the Admission Agreements were negotiated and executed in North Carolina and will accordingly apply North Carolina law.

[69] (Am. Countercls. ¶¶ 115–23.)

[70] (Pls.' Br. Supp. Mot. Dismiss 14–16.)

sufficient notice of the claim asserted to enable the adverse party to answer and prepare for trial, to allow for the application of the doctrine of *res judicata*, and to show the type of case brought." *Sutton v. Duke*, 277 N.C. 94, 102 (1970) (cleaned up).

61. Where, as here, the time of performance is not provided in the contract, "the law implies a reasonable time standard within which performance may be required." *Harris & Garganus, Inc. v. Williams*, 37 N.C. App. 585, 589 (1978). The determination of what constitutes a reasonable time for performance requires "taking into account the purposes the parties intended to accomplish." *Rodin v. Merritt,* 48 N.C. App. 64, 72 (1980) (citation omitted). This determination presents a "mixed question of law and fact[.]" *Fletcher v. Jones*, 314 N.C. 389, 396–97 (1985). North Carolina "authority is to the effect that, where this question of reasonable time is a debatable one, it must be referred to the jury for decision[,]" *Holden v. Royall,* 169 N.C. 676, 678 (1915), unless "the facts are undisputed and different inferences cannot be reasonably drawn from them," *Fletcher*, 314 N.C. at 397.

62. Robin alleges that the Original and Amended Admission Agreements required the Husqvarna Parties to provide access to the APIs, that the Husqvarna Parties failed to provide the promised access, and that Plaintiffs' failure to provide access to the APIs has harmed Robin and impaired the value of its software.[71] Although Robin has not specifically pleaded that the time for performance has expired, our appellate courts have recognized that "the failure to assert when a party's performance becomes due is not, standing alone, fatal to a claim for breach of

[71] (Am. Countercls. ¶ 52.)

contract" under North Carolina law. *Ward v. Nucapital Assocs.*, No. COA14-1249, 2015 N.C. App. LEXIS 602, at *7 (N.C. Ct. App. July 21, 2015); *see also, e.g.*, *Sockwell & Assocs. v. Sykes Enters.*, 127 N.C. App. 139, 142 (1997) (pleading "[s]pecificity of payment due dates is not required to show breach of contract for nonpayment[ ]"); *Loray Master Tenant, LLC v. Foss N.C. Mill Credit 2014 Fund I, LLC*, 2022 NCBC LEXIS 1, at *29–30 (N.C. Super. Ct. Jan. 11, 2022) (holding that "[p]laintiffs' failure to specifically plead that . . . payment was not made 'within a reasonable time' is without consequence . . . because [p]laintiffs have pleaded facts and made allegations that effectively convey the very same thing[ ]").

63. As to the timing of performance, the Court notes that Robin alleges that the Original Admission Agreement was entered into on 27 May 2021, the Amended Agreement was entered into on 8 September 2022, and the Amended Counterclaims alleging nonperformance were filed on 13 July 2023. Robin's amended pleading is replete with allegations permitting an inference that Plaintiffs' performance was required before the Amended Counterclaims were filed.[72] Accordingly, the Court concludes that Robin's Motion seeking dismissal of Robin's breach of contract claim for failure to allege time of performance should be denied.

64. Plaintiffs' arguments seeking dismissal of Robin's claim based on Robin's alleged repudiation excusing the missed $500,000 payment fare no better. Repudiation occurs when one party makes "a positive statement" to the other party "indicating he will not or cannot substantially perform his contractual duties." *Millis*

[72] (Am. Countercls. ¶¶ 54, 56, 118.)

Constr. Co. v. Fairfield Sapphire Valley, Inc., 86 N.C. App. 506, 510 (1987). "[T]o result in a breach of contract, 'the refusal to perform must be of the whole contract or of a covenant going to the whole consideration, and must be *distinct, unequivocal, and absolute*[.]' " *Profile Invs. No. 25, LLC v. Ammons E. Corp.*, 207 N.C. App. 232, 237 (2010) (emphasis added) (quoting *Edwards v. Proctor*, 173 N.C. 41, 44 (1917)). Moreover, such a refusal to perform "is not a breach of contract unless it is treated as such by the adverse party." *Edwards*, 173 N.C. at 44.

65. As an initial matter, Robin's March 6 Memo is not a "distinct, unequivocal, and absolute" refusal to perform the Agreements. Although the Memo states that "[Robin] cannot continue forward as things currently stand," it also states that Robin "look[s] forward to moving forward quickly and productively in a manner that will benefit both parties" and that Robin "remain[s] open to discussion on these issues."[73] As such, the Memo could reasonably be interpreted as an invitation to negotiate and not simply as an absolute or unequivocal refusal to perform.

66. In addition, Robin's Amended Counterclaims do not permit an inference that the Husqvarna Parties treated the March 6 Memo as a repudiation of the Agreements. To the contrary, Robin alleges that Plaintiffs met and exchanged e-mails with Robin after receiving the Memo, subsequently provided a term sheet to

[73] (Pls.' Opp'n Defs.' Mot. Dismiss Claims Against Member Defs. and Robin Technologies Ex. A, ECF No. 17.1.)

Robin,[74] and called Robin's CEO the weekend before initiating litigation,[75] in what Plaintiffs' general counsel termed as "productive" efforts to resolve the disputes presented in the Memo.[76] Rather than treat the Memo as a repudiation, Robin's allegations permit the inference that the Husqvarna Parties treated the Memo as an invitation to negotiate, which they accepted. It was only after these negotiations failed that Plaintiffs decided to file suit alleging anticipatory breach of contract.[77] Accordingly, since Robin's allegations do not establish Robin's repudiation as a matter of law, Plaintiffs' Motion based on this contention must be denied.

G. Breach of Implied Covenant of Good Faith and Fair Dealing

67. The Husqvarna Parties seek dismissal of Robin's claim for breach of the implied covenant of good faith and fair dealing on the same grounds that they seek dismissal of Robin's claims for breach of the Admission Agreements. Under North Carolina law, "where a party's claim for breach of the implied covenant of good faith and fair dealing is based on the same acts as its claim for breach of contract, we treat the former claim as 'part and parcel' of the latter." *Cordaro v. Harrington Bank, FSB*, 260 N.C. App. 26, 38–39 (2018). Since Robin's implied covenant claim is based on the same acts as its claim for breach of contract, the Court's denial of Plaintiffs' Motion

[74] (Am. Countercls. ¶ 71.)

[75] (Am. Countercls ¶ 71.)

[76] (Am. Countercls. ¶ 70.)

[77] (Compl. ¶¶ 101–14.)

on the contract claim compels the same result on Plaintiffs' Motion seeking dismissal of the implied covenant claim.

H. Breach of the Confidentiality Agreement

68. Robin alleges that the Husqvarna Parties breached the Confidentiality Agreement by using Robin's confidential information to create their own fleet and puck system and subscription program and by soliciting one of Robin's employees to work for the Husqvarna Parties.[78]

69. The Husqvarna Parties argue that Robin's claim should be dismissed for failure to allege how Plaintiffs breached the Confidentiality Agreement, pointing out that Robin did not attach the contract at issue to the Amended Counterclaims or identify the specific provisions Plaintiffs allegedly breached.[79]

70. As noted above, North Carolina permits notice pleading, *see* N.C. R. Civ. P. 8(a), and it is well-settled under North Carolina law that "claims for breach of contract are 'not subject to heightened pleading standards[,]' " *Vanguard Pai Lung, LLC v. Moody*, 2019 NCBC LEXIS 39, at *10 (N.C. Super. Ct. June 19, 2019) (quoting

[78] (Am. Countercls. ¶¶ 129–35.)

[79] (Pls.' Br. Supp. Mot. Dismiss 16–18.) The Court notes that at the Hearing, Robin presented a demonstrative exhibit that included an image of what appeared to be the Confidentiality Agreement. The Court sustained the Husqvarna Parties' objection to the presentation of this document because the proffered provisions were not in the record. Accordingly, the Court will rely only on the allegations in the Amended Counterclaims and the referenced documents.

The Husqvarna Parties also objected at the Hearing to the Court's consideration of an image of an e-mail from Plaintiffs' employee to Fahey. The Court overruled this objection because the proffered exhibit was submitted by the Husqvarna Parties in support of a separate brief and incorporated by Robin into the Amended Counterclaims. (*See* ECF No. 17.7; Am. Countercls. ¶ 81.)

AYM Techs., LLC v. Rodgers, 2018 NCBC LEXIS 14, at *52 (N.C. Super. Ct. Feb. 9, 2018)).

71. Robin has alleged that under the Confidentiality Agreement, the Husqvarna Parties had an obligation (i) to use Robin's confidential information only to the extent necessary for the Husqvarna Parties' and Robin's cooperative creation of fleet management software, and (ii) not to solicit Robin's directors, officers, or employees to work for the Husqvarna Parties.[80] Robin asserts that the Husqvarna Parties breached these obligations by using the confidential information for the Husqvarna Parties' own fleet and puck system and subscription program and by attempting to hire Robin's head of sales.[81]

72. The Court concludes that these allegations are adequate to establish the elements of a claim for breach of contract and to put Plaintiffs on notice of the events that give rise to Robin's claim. *See, e.g.*, *Maxwell Foods, LLC v. Smithfield Foods, Inc.*, 2023 NCBC LEXIS 20, at **14 (N.C. Super. Ct. Feb. 3, 2023) (noting that "naming a specific contractual provision by paragraph number or quoting its language would make the claim more clear[,]" but that "notice pleading rules do not require that level of detail[ ]"). Accordingly, the Court will deny Plaintiffs' Motion to

[80] (Am. Countercls. ¶¶ 131, 133.)

[81] (Am. Countercls. ¶¶ 79–81, 132.)

the extent it seeks dismissal of Robin's claim for breach of the Confidentiality Agreement.

IV.

CONCLUSION

73. **WHEREFORE**, for the reasons set forth above, the Court hereby **GRANTS in part** and **DENIES in part** the Motion as follows:

a. The Motion is **GRANTED** as to Robin's claims for breach of fiduciary duty, constructive fraud, and tortious interference with a prospective contract with AutoCut, and those claims are hereby **DISMISSED with prejudice**; and

b. The Motion is **DENIED** as to Robin's claims for misappropriation of trade secrets, unfair and deceptive trade practices under N.C.G.S. § 75-1.1, tortious interference with a prospective contract with the Mariani Group, and breach of the Admission Agreements, the implied covenant of good faith and fair dealing, and the Confidentiality Agreement, and those claims shall proceed to discovery.

SO ORDERED, this the 28th day of November, 2023.

/s/ Louis A. Bledsoe, III
Louis A. Bledsoe, III
Chief Business Court Judge