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MEMORANDUM OPINION and ORDER

Plaintiffs Eli Research, Inc. ("Eli") and Idapat Corporation("Idapat") filed this action against Defendants United CommunicationsGroup, L.P. ("UCG"), Henry Sporn, Alison Knopf, Elizabeth Heath, andElizabeth Glaser (collectively, "the Editors"). Plaintiffs assert a widevariety of claims, including claims for violations of the Lanham Act,15 U.S.C. § 1125 et seq., civil conspiracy, defamation, fraud,negligent misrepresentation, misappropriation of trade secrets, unfairand deceptive trade practices, conversion, negligence, breach of duty ofgood faith, breach of contract, and tortious interference withcontractual relations. Plaintiffs seek compensatory and punitive damages,as well as an injunction. This matter is now before the court on Defendants' Motion to Dismiss. For the reasons statedherein, Defendants' motion will be granted in part and denied in part.

I. FACTUAL BACKGROUND

The following facts are presented in the light most favorable toPlaintiffs.[1]

Plaintiff Eli is a Durham, North Carolina-based company engaged in,among other things, the production of newsletters for hospitals,physicians, and other health care providers. On March 29, 2002, Elipurchased the assets of Florida-based Global Success Corporation("GSC").[2] Among the assets purchased was a line of 23 "specialtyspecific medical coding" newsletters[3] published by GSC under thebusiness name "The Coding Institute." Along with these newsletters, Elipurchased assorted publication methodologies, subscriber data, styleguides, and other materials necessary for engaging in the specialtyspecific medical coding newsletter industry. Defendants Henry Sporn, Alison Knopf, Elizabeth Heath, and ElizabethGlaser were each employed as independent contract editors by GSC/TheCoding Institute. Each had executed contracts that included provisionsbarring disclosure of GSC's secret materials and methodologies andnon-competition clauses. After the sale of GSC's assets, the Editorsbegan to work for Eli as contributing editors and writers for Eli'snewsletters. Eli paid the Editors for work they performed for GSC beforethe asset sale and for work done for Eli afterwards. Sometime after theasset sale, Eli approached the Editors and proposed new contracts togovern their relationship with Eli. The Editors refused to sign the newcontracts, and instead offered to work under the same terms that hadgoverned their relationship with GSC. Eli accepted this offer.

In April 2002, the Editors approached Defendant UCG and discussed thepossibility of launching specialty specific medical coding publicationswith UCG. UCG is engaged in a wide variety of

publishing operations, witha subscriber base of over 2,000,000. In addition, UCG is a competitor ofEli's in the specialty specific medical coding field. While the Editorsengaged in these discussions with UCG, they continued to work for Eli. Inlate May and early June 2002, each of the Editors resigned from Eli andsoon thereafter began working for UCG. UCG then began publishing severalspecialty specific medical coding newsletters in fields in which it had never before published,including obstetrics, pediatrics, general surgery, ophthalmology,otolaryngology, urology, radiology, and gastroenterology. Plaintiffsallege that UCG could not get these new publications off the groundwithout the assistance of the Editors and the use of secret materials ofeither GSC or Eli that were the subject of the Editors' non-disclosureagreements.

On September 12 and 13, 2002, Eli filed separate lawsuits against UCGand each of the Editors in the Superior Court of Durham County, NorthCarolina. UCG removed its case to this court, while the state courtentered a temporary restraining order against the Editors. The Editorsthen removed their cases to this court. On October 2, 2002, this courtconsolidated the cases[4] and granted a preliminary injunction againstDefendants that was later dissolved.

On April 7, 2003, this court permitted Eli to file a new complaint. OnApril 28, 2003, Eli filed its second amended complaint, adding Idapat asa plaintiff and adding several new claims. On May 28, 2003, Defendantsmoved to dismiss Idapat and all but one of Plaintiffs' claims for failureto state a claim upon which relief can be granted under Federal Rule ofCivil Procedure 12(b)(6). II. ANALYSIS

A. Standard of Review

A court should dismiss a case for failure to state a claim upon whichrelief can be granted under Federal Rule of Civil Procedure 12(b)(6)"only in very limited circumstances." Rogers v. Jefferson-Pilot LifeIns. Co., 883 F.2d 324, 325 (4th Cir. 1989). When considering amotion to dismiss, the court must evaluate the complaint in the lightmost favorable to the plaintiff, accepting as true all well-pleadedfactual allegations. Randall v. United States, 30 F.3d 518, 522(4th Cir. 1994). Dismissal should not be granted "unless it appearscertain that the plaintiff can prove no set of facts which would supportits claim and would entitle it to relief." Mylan Labs., Inc. v.Matkari, 7 F.3d 1130, 1134 (4th Cir. 1993). The Supreme Court hasemphasized that all that is required at this stage is "a short and plainstatement of the claim" sufficient to "give the defendant fair notice ofwhat the plaintiff's claim is and the grounds upon which it rests."Swierkiewicz v. Sorema N.A., 534 U.S. 506, 512, 122 S.Ct. 992,998 (2002) (quoting Conley v. Gibson, 355 U.S. 41, 47-48, 78 So.Ct. 99, 103 (1957)). The Court went on to note that this "simplifiednotice pleading standard relies on liberal discovery rules and summaryjudgment motions to define disputed facts and issues and to dispose ofunmeritorious claims." Id. B. Contract Claims

Plaintiffs assert four claims based on their contractual relations: twoclaims for breach of contract, one claim for tortious interference withcontractual relations, and one claim for bad faith breach of contract.

In deciding non-federal questions, federal courts must apply the law ofthe state in which they sit. United States v. Little,52 F.3d 495, 498 (4th Cir. 1995); New England Leather Co. v. Feuer LeatherCorp., 942 F.2d 253, 255 (4th Cir. 1991). Under North Carolina law,rules affecting the substance of a claim are governed by lexloci, the law of the situs of the claim. Boudreau v.Baughman, 322 N.C. 331, 335, 368 S.E.2d 849, 853-54 (1988). For acontract claim, the governing law is determined by lex locicontractus, or the law of the place where the contract wasformed. Fortune Ins. Co. v. Owens, 351 N.C. 424, 428,526 S.E.2d 463, 466 (2000). The place where a contract is formed isdetermined by the "place at which the last act was done by either of theparties essential to a meeting of the minds." Key Motorsports, Inc.v. Speedvision Network, LLC, 40 F. Supp.2d 344, 347 (M.D.N.C. 1999)(quoting Fast v. Gulley, 271 N.C. 208, 212, 155 S.E.2d 507, 510(1967)).

Plaintiffs first allege breach of the contracts between the Editors andGSC. GSC was a Florida corporation with its principal offices in Naples,Florida. It is not clear where the last act by either of the parties essential to a meeting of theminds occurred, but Plaintiffs have sufficiently alleged a claim forbreach of contract under either Florida or North Carolina law.

Defendants' central argument with regard to the GSC contracts is thatunder Florida law, personal service contracts are not assignable withoutconsent of the parties. See Orlando Orange Groves Co. v. Hale,161 So. 284, 290 (Fla. 1935); see also Corporate Express Prods.,Inc. v. Phillips, 847 So.2d 406, 413-14 (Fla. 2003) (holding thatpersonal service contracts may be enforced by the surviving corporationafter a merger, but that the employee's consent is required when apersonal service contract is purported to be assigned in a sale ofassets). An employee's continued employment with the new corporationstanding alone is not sufficient to constitute consent to the assignmentof the contract. Johnston v. Dockside Fueling of N. Am., Inc.,658 So.2d 618, 619 (Fla. Dist. Ct. App. 1995); Schweiger v.Hoch, 223 So.2d 557, 559 (Fla. Dist. Ct. App. 1969).

Based on these cases, Defendants contend that Plaintiff Eli cannotstate a claim upon which relief can be granted based on the GSCcontracts, since Eli cannot enforce them without consent. Here, however,Plaintiffs have alleged that the Editors offered to work for Eli underterms identical to the GSC contracts, and that Eli accepted their offers.(Second Am. Compl. ¶¶ 110-11, 113.) These assertions are sufficient to allege consent to theassignment of the contracts because they indicate a knowing agreement tothe terms of the contract with a new employer, rather than merelycontinuing to work for the employer without discussing terms as inJohnston and Schweiger. Plaintiffs subsequentlyallege breach of these contracts. (Id. 11 126-27, 420-21.) Assuch, Plaintiffs have stated a claim for breach of the GSC contracts, andDefendants' motion as to this claim will be denied.

Eli also asserts a separate claim for breach of contracts that italleges it entered into with the Editors after acquiring the assets ofGSC. The essential elements for a breach of contract claim are theexistence of a valid contract and a breach of the terms of that contract.Poor v. Hill, 138 N.C. App. 19, 27, 530 S.E.2d 838, 843 (2000)(citing Jackson v. California Hardwood Co., 120 N.C. App. 870,871, 463 S.E.2d 571, 572 (1995)). A valid contract requires an agreementbased on a meeting of the minds

and sufficient consideration. Creechex rel. Creech v. Melnik, 147 N.C. App. 471, 477, 556 S.E.2d 587,597 (2001). In addition, a covenant not to compete must be in writing andsigned by the party who agrees not to compete. N.C. Gen. Stat. §75-4.

Defendants assert that Plaintiffs have failed to allege the existenceof signed writings for the Eli-Editor contracts, and as such cannot state a claim upon which relief can be granted. Defendants'assertion contradicts the plain language of the complaint, which allegesa "valid and binding contract" between Eli and each Editor based on"offers, acceptances, consideration, and written proof of the existenceof the contracts." (Second Am. Compl. ¶ 431.) Such allegations aresufficient to establish the prerequisites for a breach of contract actionand give the Defendants notice of Plaintiff Eli's claim.[5] SeeSwierkiewicz v. Sorema N.A., 534 U.S. 506, 512, 122 S.Ct. 992, 998(2002) (quoting Conley v. Gibson, 355 U.S. 41, 47,78 S.Ct. 99, 103 (1957)). Defendants' motion as to this claim will be denied.Plaintiffs also assert a claim for tortious interference with contractualobligations against UCG. The elements of a tortious interference claimare (1) a valid contract between the plaintiff and a third party,conferring rights on the plaintiff against the third party; (2) thedefendant knows of the contract; (3) the defendant intentionally inducesthe third party not to perform; (4) the defendant acts withoutjustification; and (5) actual damage to the plaintiff. EmbreeConstr. Group, Inc. v. Rafcor, Inc., 330 N.C. 487, 498,411 S.E.2d 916, 924 (1992). Defendants' argument against this claim is that Plaintiffs have pleadedno valid contracts. As noted above, however, Plaintiffs have sufficientlyalleged several valid contracts. Plaintiffs have also alleged thatDefendant UCG knew of the contracts (Second Am. Compl. ¶¶ 134, 442)that UCG intentionally induced the Editors to breach their contracts(Id. 11 126-35, 181, 443-44), that UCG acted withoutjustification (Id. ¶¶ 443-45), and that Plaintiffs wereactually damaged (Id. ¶¶ 446-47). These allegations aresufficient to state a claim for tortious interference with contract andto put Defendant UCG on notice as to Plaintiffs' claim. As such,Defendants' motion as to this claim will be denied.

Finally, Plaintiffs assert a claim for bad faith breach of contract. Inresponse, Defendants again assert that Plaintiffs have pleaded no validcontracts, a contention that has been rejected by this court. Plaintiffs'claim, however, does not appear to state a recognized cause of actionindependent of a claim for breach of contract. Instead, bad faith isusually asserted when seeking punitive damages on a breach of contracttheory.[6] Plaintiffs have already made one specific claim for punitive damages, which would seem to include the relief sought bytheir bad faith breach claim. Because Plaintiffs' bad faith breach ofcontract claim duplicates their claim for punitive damages, Defendants'motion will be granted.

C. Misappropriation of Trade Secrets

Plaintiffs also assert a claim against all Defendants formisappropriation of trade secrets under North Carolina General Statute§ 66-153. A trade secret is defined as "business or technicalinformation" that both "[d]erives independent actual or potentialcommercial value from not being generally known or readily ascertainable"and " [i]s the subject of efforts that are reasonable under thecircumstances to

maintain its secrecy." N.C. Gen. Stat. § 66-152(3).In addition to this statutory definition, North Carolina courts also lookto a six-factor test to assist in the determination of whether materialsconstitute trade secrets. See, e.g., Byrd's Lawn &Landscaping. Inc. v. Smith, 142 N.C. App. 371, 375, 542 S.E.2d 689,692 (2001); Wilmington Star-News, Inc. v. New Hanover Reg'l Med.Ctr., Inc., 125 N.C. App. 174, 180-81, 480 S.E.2d 53, 56 (1997). Thesix factors include: (1) the extent to which the information is knownoutside the business; (2) the extent it is known to those within thebusiness; (3) the measures taken to guard its secrecy; (4) the value of the information to the business and itscompetitors; (5) the amount of time and money spent to develop theinformation; and (6) the ease or difficulty of properly acquiring ordeveloping the information by others. Byrd's Lawn &Landscaping, 142 N.C. App. at 375, 542 S.E.2d at 692.

Defendants assert that Plaintiffs have failed to allege sufficientreasonable efforts to maintain the secrecy of the alleged trade secrets.Plaintiffs, however, are not required to allege this claim withspecificity. Rule 8(a)(2)'s requirement of a "short and plain statementof the claim" is all that is necessary. Here, Plaintiffs have alleged theidentity of the trade secrets (Second Am. Compl. ¶¶ 25-27, 70-72), themeasures taken to protect their secrecy, (Id. 11 28-30, 73-75),their value to Plaintiffs (Id. ¶¶ 25, 70, 81), and the factthat they cannot easily be duplicated (Id. ¶¶ 31-32, 79).These allegations are more than sufficient to put Defendants on notice asto what alleged trade secrets are the subject of this action. Inaddition, Plaintiffs have alleged that Defendants knew of the existenceof the trade secrets (Id. ¶¶ 59-60, 121, 140-41), and thatDefendants used the information (Id. 11 126, 166, 210-15, 229).Taken together, these assertions are sufficient to allege a prima faciecase of misappropriation of trade secrets. See N.C. Gen. Stat.§ 66-155. Because it does not appear "to a certainty that theplaintiff would be entitled to no relief under any state of facts which could be proved in support of his claim,"Rogers v. Jefferson-Pilot Life Ins. Co., 883 F.2d 324, 325 (4thCir. 1989) (quoting Johnson v. Mueller, 415 F.2d 354, 355 (4thCir. 1969)), Defendants' motion as to this claim will be denied.

D. Unfair and Deceptive Trade Practices

Plaintiffs next assert a cause of action under North Carolina's Unfairand Deceptive Trade Practices Act ("UDTPA"), N.C. Gen. Stat. § 75-1.1et seq.[7] To prevail on such a claim, a plaintiff must prove(1) that defendant committed unfair or deceptive acts, (2) thatdefendant's action was in or affecting commerce, and (3) that the actproximately caused injury to the plaintiff. Dalton v. Camp,353 N.C. 647, 656, 548 S.E.2d 704, 711 (2001). Typically, employer-employeedisputes are deemed beyond the scope of the commerce that section 75-1.1was intended to protect.[8] See Id. at 657, 548 S.E.2d at711. For the act to apply in an employer-employee dispute, some egregiousor aggravating circumstances must be shown. Id. In Sara LeeCorp. v. Carter, the court concluded that because the employeewas a fiduciary and was engaged in buyer-seller transactions of the typeusually covered by the act, liability could attach for the employee'sactions. 351 N.C. 27, 33-34, 519 S.E.2d 308, 312 (1999). InDalton, on the other hand, the court held that the statute wasnot applicable to an employee's conduct because he was not a fiduciaryand was not involved in any buyer-seller transactions. 353 N.C. at657-58, 548 S.E.2d at 711-12.

Defendants argue that Plaintiffs have failed to plead facts sufficientto establish that Defendants' actions were in or affecting commerce, andthat, given Dalton, no claim can be had against the Editorsbecause they were not fiduciaries. Dalton, however, does notforeclose the possibility that an employee might be subject to UDTPAliability without being a fiduciary if sufficient egregious oraggravating circumstances were found. See id.

At this stage in the litigation, however, the court is not consideringwhether there is sufficient evidence to prove that Defendants engaged inegregious or aggravating circumstances. All that is required is thatPlaintiffs' allegations include enough detail that Defendants have noticeof the nature of Plaintiffs' claim and the facts underlying it. It isclear from the complaint that Plaintiffs are asserting a claim under the UDTPA, and it is clear that the basic facts underlying theclaim involve various alleged misrepresentations and actions taken byDefendants that allegedly damaged Plaintiffs. Defendants have not shownthere is no set of facts that Plaintiffs could prove that would allowrecovery. See Rogers v. Jefferson-Pilot Life Ins. Co.,883 F.2d 324, 325 (4th Cir. 1989). Defendants' motion as to this claim will bedenied.

E. Negligence

Plaintiffs raise three negligence-based claims against Defendants. Thefirst is a claim of negligence against all Defendants, the second is aclaim of negligence against UCG alone, and the third is a claim for grossnegligence against all Defendants.

Each of Plaintiffs' negligence claims is based on Defendants' allegedfailure to act with due care in protecting Eli's trade secrets. Theessential elements of negligence are duty, a breach of that duty,causation, and damages. Camalier v. Jeffries, 340 N.C. 699,706, 460 S.E.2d 133, 136 (1995). Here, Defendants argue that they owedPlaintiffs no duty, and, as such, cannot be liable for negligence.

A duty to act for negligence purposes may flow from a contract orstatute or may be implied from attendant circumstances. Huyck Corp.v. C.C. Mangum, Inc., 309 N.C. 788, 794, 309, S.E.2d 183, 187(1983). Statutes, even those that do not specifically mention tortious conduct, can establish a duty toact and a standard of care. See NCNB Nat'l Bank of N.C. v.Gutridge, 94 N.C. App. 344, 348, 380 S.E.2d 408, 411 (1989). Tocreate such a duty, however, the statute must be a public safety statute,that is, it must impose a duty on a person for the protection of others.See Hart v. Ivey, 332 N.C. 299, 303-04, 420 S.E.2d 174, 177(1992) (holding that a statute barring the sale of alcohol to those under21 was not a public safety statute and thus did not trigger a negligenceduty); Gregory v. Kilbride, 150 N.C. App. 601, 610,565 S.E.2d 685, 692 (2002) rev. denied, 357 N.C. 164, 580 S.E.2d 365(2003) (holding that civil commitment statute was not a public safetystatute, and thus violation of the statute by a psychiatrist whichresulted in a patient killing his wife and himself was not negligence perse). The statute that arguably creates a duty of care in this case is theNorth Carolina Trade Secret Protection Act, which creates a cause ofaction for misappropriation of one's trade secrets. See N.C.Gen. Stat. § 66-153. The protection of trade secrets, however, hasnothing to do with protecting public safety. As

such, it is not the typeof statute upon which a negligence duty can be based.

Plaintiffs also argue that North Carolina recognizes a common law dutyto protect trade secrets. In Travenol Labs., Inc. v. Turner,the North Carolina Court of Appeals, although applying California law, noted that North Carolina recognized aduty of an employee not to disclose an employer's confidentialinformation. 30 N.C. App. 686, 691, 228 S.E.2d 478, 484 (1976). No NorthCarolina court, however, has cited this case for that proposition sinceit was published. Moreover, the Travenol decision came fiveyears before North Carolina enacted its Trade Secrets Protection Act. TheAct largely codified the existing common law of trade secrets protection.See David P. Hathaway, Comment, Is the North CarolinaTrade Secrets Protection Act Itself a Secret, and is the Act WorthProtecting?, 77 N.C. L. Rev. 2149, 2150-51 (1999). The common lawremains in effect in North Carolina, unless abrogated, otherwise providedfor, or obsolete. N.C. Gen. Stat. § 4-1. When the General Assemblylegislates "in respect to the subject matter of any common law rule, thestatute supplants the common law rule and becomes the public policy ofthe State in respect to that particular matter." McMichael v.Proctor, 243 N.C. 479, 483, 91 S.E.2d 231, 234 (1956); see alsoState v. Green, 124 N.C. App. 269, 280, 477 S.E.2d 182, 187 (1996)aff'd, 348 N.C. 588, 502 S.E.2d 819 (1998). Because thelegislature has enacted statutes dealing with the protection of tradesecrets and because no North Carolina court has cited Travenolfor the common law duty since it was published, this court concludes thatNorth Carolina courts would no longer recognize a common law duty not to disclose tradesecrets.

Without a statutory or common law duty on which to ground their claims,Plaintiffs' negligence claims must fail as a matter of law. Without aduty, there is no set of facts that Plaintiffs can prove upon which theycould recover. See Mylan Labs., Inc. v. Matkari, 7 F.3d 1130,1134 (4th Cir. 1993). Plaintiffs' two claims for negligence, as well astheir claim for gross negligence, will be dismissed.

F. Fraud and Misrepresentation

In counts 4 and 5 of the complaint, Plaintiff Eli asserts claims offraud and negligent misrepresentation against all Defendants. A claim offraud requires a false representation or concealment of material factthat is reasonably calculated to deceive, made with intent to deceive,which does in fact deceive, which is relied upon by the plaintiff, andwhich results in damage to the plaintiff. Pleasant Valley Promenade,L.P. v. Lechmere. Inc., 120 N.C. App. 650, 663, 464 S.E.2d 47, 57(1995).

Eli primarily bases its fraud claims on the Editors' failure todisclose to Eli that they were negotiating for new jobs with UCG. Relyingon this silence, Eli alleges, it continued to give the Editors access tosecret materials and information regarding its business. Had the Editorsdisclosed their negotiations, Eli asserts, it would not have continued toallow the Editors to use its materials or be a part of its secret planning meetings.(See Second Am. Compl. ¶¶ 134-62.) Defendants respond thatEli's claims must be dismissed because the Editors were under no duty todisclose the negotiations with

UCG.

Failure to disclose the truth can be as much fraud as an affirmativefalse representation but is only actionable where the party remainingsilent has a duty to disclose. Everts v. Parkinson, 147 N.C. App. 315,321, 555 S.E.2d 667, 672 (2001). A duty to disclose may arisefrom a relationship of trust and confidence between the parties.Setzer v. Old Republic Life Ins, Co., 257 N.C. 396, 399,126 S.E.2d 135, 137 (1962). The duty may also arise when one party hasinformation material to the second party but which the second party isunable to obtain. See Everts, 147 N.C. App. at 321, 555 S.E.2dat 672 (holding that sellers of a house were obligated to disclose itsdefects to buyers).

The question in this case is whether an employee, or an independentcontractor in an employment relationship, has a duty to disclose jobnegotiations with a competitor to his employer. The North Carolina Courtof Appeals has held that in commercial transactions one party to atransaction has no duty to tell the other party that it is negotiatingwith a third party. Computer Decisions. Inc. v. Rouse Office Mgmt.of N.C., Inc., 124 N.C. App. 383, 389, 477 S.E.2d 262, 265 (1996).The North Carolina Supreme Court has held that an employee does not owe a fiduciaryduty to his employer unless his "position in the workplace resulted in`domination and influence on'" his employer. Dalton v. Camp,353 N.C. 647, 652, 548 S.E.2d 704, 708 (2001) (quoting Abbitt v.Gregory, 201 N.C. 577, 598, 160 S.E.2d 896, 906 (1931)). Likewise,an employee owes no additional duty of loyalty to his employer.Id. at 653, 548 S.E.2d at 709 (holding that the duty of loyaltycreates no cause of action but may serve as an employer's defense to aclaim of wrongful discharge).

Given the above cases, it seems likely that North Carolina courts wouldhold that an employee or independent contractor has no duty to disclosehis employment discussions with a competitor to his present employer.Dalton demonstrates that North Carolina courts are extremelyhesitant to burden employees with duties to their employers.Computer Decisions adds that there is no general duty todisclose contract negotiations absent some special relationship. Takentogether, the court concludes that the Editors were under no duty todisclose their negotiations with UCG. As such, Eli's claims on thesegrounds cannot state a cause of action for fraud.

Eli also asserts a series of concealments and misrepresentations theEditors and UCG made to Eli's sources, contributing editors, andcustomers. Eli alleges that Defendants either concealed that they were nolonger working for Eli or misrepresented that they still were, even after they had ended theirrelationship with Eli. (See Second Am. Compl. ¶ 217-23,275-83.) Even taking these allegations as true, however, Eli cannotmaintain an action for fraud based upon them. Fraud requires actualreliance by the plaintiff, which is "demonstrated by evidence plaintiffacted or refrained from acting in a certain manner due to defendant'srepresentations." Pleasant Valley Promenade, L.P. v. Lechmere.Inc., 120 N.C. App. 650, 663, 464 S.E.2d 47, 57 (1995) (citingLibby Hill Seafood Restaurants. Inc. v. Owens, 62 N.C. App. 695,698, 303 S.E.2d 565, 568 (1983)). Eli has not alleged that it wasdeceived by or relied upon these misrepresentations and concealments.Third parties, not Eli, were the targets of the alleged deception. Assuch, if anyone has a claim for fraud, it is the third parties, not Eli.Eli's

claim for fraud will be dismissed.

For similar reasons, Eli's claim for negligent misrepresentation willalso be dismissed. "The tort of negligent misrepresentation occurs when(1) a party justifiably relies (2) to his detriment (3) on informationprepared without reasonable care (4) by one who owed the relying party aduty of care." Jordan v. Earthgrains Cos., Inc., 155 N.C. App. 762,766, 576 S.E.2d 336, 339 (2003) (citing Raritan River Steel Co.v. Cherry. Bekaert & Holland, 322 N.C. 200, 206, 367 S.E.2d 609,612 (1988) rev'd on other grounds, 329 N.C. 646, 407 S.E.2d 178(1991)). As with Eli's fraud claims, its allegations that the Editors failed todisclose their negotiations with UCG cannot state a claim for negligentmisrepresentation because the Editors owed no duty to Eli. Likewise,Eli's claims that the Defendants concealed or misrepresented theiraffiliation with Eli to customers and others cannot be the basis of aclaim because it was the third parties, if anyone, not Eli, who wouldhave relied on these statements. For these reasons, Eli's claim fornegligent misrepresentation will be dismissed.

G. Breach of Duties

Eli alone asserts a claim for breach of the duty of loyalty and goodfaith against the Editors. As noted above, however, North Carolina lawdoes not recognize a tort claim for breach of loyalty by an employee.See Dalton v. Camp, 353 N.C. 647, 652, 548 S.E.2d 704, 708(2001); Combs & Assoc., Inc. v. Kennedy, 147 N.C. App. 362,372, 555 S.E.2d 634, 641 (2001). To the extent Eli is attempting to statea claim for breach of the duty of loyalty, that claim must be denied.

Eli also asserts that the Editors have breached the duty of good faithimplied in contractual relations. North Carolina courts have held that"[i]n every contract there is an implied covenant of good faith and fairdealing that neither party will do anything which injures the right ofthe other to receive the benefits of the agreement." Bicycle TransitAuth., Inc. v. Bell, 314 N.C. 219, 228, 333 S.E.2d 299, 305 (1985) (quoting Brown v.Superior Court, 212 P.2d 878, 881 (Cal. 1949)). Several NorthCarolina courts have considered claims for breach of this impliedcovenant as separate claims from traditional breach of contract claims.See, e.g., Claggett v. Wake Forest Univ.,126 N.C. App. 602, 610, 486 S.E.2d 443, 447-48 (1997); Murray v. NationwideMut. Ins. Co., 123 N.C. App. 1, 19, 472 S.E.2d 358, 368 (1996);see also Polygenex Int'l, Inc. v. Polyzen, Inc., 133 N.C. App. 245, 251-52,515 S.E.2d 457, 461-62 (1999) (agreeing with the defendant'scontention that a breach of the implied covenant of good faith cannotexist absent a breach of the terms of a contract).

As noted above, Plaintiffs have sufficiently alleged claims forbreaches of contract. Plaintiffs have also alleged conduct that can beviewed as bad faith. As such, Plaintiffs have done enough to putDefendants on notice that they must defend against a claim of breach ofthe implied duty of good faith. For this reason, Defendants' motion as tothis claim will be denied.

H. Defamation

Eli also asserts a claim of defamation against all Defendants. NorthCarolina retains two distinct defamation torts, libel and slander. Eithertype of defamation can be per se when it is found defamatory consideredalone, without innuendo or explanatory circumstances. See Boyce& Isley, PLLC v. Cooper, 153 N.C. App. 25, 29, 568 S.E.2d 893, 898 (2002), rev.denied, 357 N.C. 163, 580 S.E.2d 361 (2003). Libel per se includesany written publication that (1) charges that a person has committed aninfamous crime, (2) charges a person with having an infectious disease,(3) tends to impeach a person in that person's trade or profession, or(4) otherwise tends to subject one to ridicule, contempt, or disgrace.Id. Slander per se is a false oral communication that amountsto (1) an accusation that the plaintiff committed a crime involving moralturpitude, (2) an allegation that impeaches the plaintiff in his trade,business, or profession, or (3) an imputation that the plaintiff has aloathsome disease. Baker v. Kimberly-Clark Corp., 136 N.C. App. 455,459, 524 S.E.2d 821, 824 (2000). In either case, a prima faciepresumption of malice and a conclusive presumption of damage arises,obviating the need for the plaintiff to plead and prove special damages.Id. at 460, 524 S.E.2d at 825.

When the defamatory character of the words does not appear on theirface, but only in connection with extrinsic, explanatory facts, they areonly actionable as either libel or slander per quod. Badame v.Lampke, 242 N.C. 755, 756-57, 89 S.E.2d 466, 467-68 (1955). In thissituation, plaintiff is obligated to plead and prove special damage.Id. at 757, 89 S.E.2d at 468.

Finally, North Carolina retains a third type of libel, in which thealleged defamatory material is "susceptible of two meanings, one defamatory, and that the defamatory meaning wasintended and was so understood by those to whom the publication wasmade." Renwick v. News & Observer Publ'g Co., 310 N.C. 312,317, 312 S.E.2d 405, 408 (1984).

The Federal Rules of Civil Procedure do not prescribe a specialpleading standard for libel or slander cases. Some courts neverthelessfollow a heightened pleading standard, requiring either pleading inhaec verba (i.e., the precise defamatory words), or requiringpleading of the substance of the words asserted to be defamatory.[9]See 5 Charles Alan Wright & Arthur R. Miller, FederalPractice & Procedure: Civil 2d § 1245 (1990 & Supp. 2003).The Fourth Circuit, however, has joined with a growing number of courtsin concluding that since the Federal Rules do not mandate a heightenedpleading standard for defamation cases, the liberal pleading requirementof Rule 8(a) requiring only a short and plain statement showing thepleader is entitled to relief applies. See Wuchenich v. ShenandoahMem'l HOSP., No. 99-1273, 2000 WL 665633, at *14 (4th Cir. May 22,2000) (per curiam); see also Swierkiewicz v. Sorema N.A.,534 U.S. 506, 513, 122 S.Ct. 992, 998 (noting that unless Rule 9 demands a heightened pleading standard, the simple mandate ofRule 8(a) applies).

Eli primarily asserts two instances of defamation. The first is basedon an advertisement allegedly prepared by UCG containing five statementsthat Eli alleges are false and defamatory. First, Eli alleges that UCGstated that it had 16 years of experience in the coding and reimbursementfield, while Eli lacked that experience. Eli further alleges that UCGstated that its newsletter was prepared by veteran "certified" coders,while Eli had no such veteran or certified coders on its staff. Next,

Eliasserts that UCG represented that its publications cited to officialMedicare and insurer documents and that Eli's newsletter failed to do so.Eli also alleges that UCG claims to offer a free coding guide, whilefalsely claiming that Eli does not. Finally, Eli claims that UCG falselyasserts that its newsletter is $50 cheaper than Eli's.

Even assuming UCG's claims in its advertisement are false, they do notrise to the level of defamation. The claims do not impeach Eli in itsbusiness reputation to the extent required for defamation. The assertionsmade by UCG do not imply that Eli is dishonest, do not claim that Elibreaches its contracts, and do not have a tendency to damage therelationship between Eli and its employees. Cf. R.H. Bouligny, Inc.v. United Steelworkers of Am., 270 N.C. 160, 168, 154 S.E.2d 344,352 (1971); Raymond U. v. Duke Univ., 91 N.C. App. 171, 182, 371 S.E.2d 701, 709(1988); Matthews. Cremins, McLean, Inc. v. Nichter,42 N.C. App. 184, 188, 256 S.E.2d 261, 264 (1979). These assertions are betterunderstood as the factual basis for Eli's claim under the Lanham Act. Asa matter of law they do not rise to the level of defamatorycommunications recognized by North Carolina law.

Eli's second alleged instance of defamation involves statementsallegedly made by Defendants at various trade shows and other venues. Eliasserts that Defendants told customers, editors, and others that Eli was"mismanaging its company," that it "engaged in unethical and morallyrepugnant dealings with its employees and contractors," that itssubstantive work was "shoddy and faulty," and that Eli was "goingbankrupt." (Second Am. Compl. ¶¶ 270, 272.) These allegations arelegally sufficient to reach the level of slander per se. Allegations thatEli is mismanaged, treats its employees and contractors unethically, andperforms shoddy work can impugn Eli's corporate reputation by injuringits business goodwill. See Bouligny, 270 N.C. at 168, 154S.E.2d at 352.

It is true that Eli has not pled these claims with the specificity thatsome courts would require in a defamation action. Nevertheless, Eli hasprovided at least enough information to put Defendants on notice as tothe type of claim they face. See Wuchenich, 2000 WL 665633, at*14. As noted above, a motion for summary judgment after discovery is thepreferred method for disposing of undisputed or unmeritorious claims.Swierkiewicz, 534 U.S. at 512, 122 S.Ct. at 998 (citingConley v. Gibson, 355 U.S. 41, 47-48, 78 S.Ct. 99, 103(1957)). Defendants' motion to dismiss this claim will be denied.

I. Conversion

Plaintiffs also assert a claim of conversion against all Defendants.Conversion is the "unauthorized assumption and exercise of the right ofownership over goods or personal chattels belonging to another, to thealteration of their condition or the exclusion of an owner's rights."Wall v. Colvard, Inc., 268 N.C. 43, 49, 149 S.E.2d 559, 564(1966) (quoting Peed v. Burleson's, Inc., 244 N.C. 437, 439,94 S.E.2d 351, 353 (1956)); Lake Mary L.P. v. Johnston,145 N.C. App. 525, 531, 551 S.E.2d 546, 552, rev. denied, 354 N.C. 363,557 S.E.2d 538 (2001). The two essential elements are the plaintiff'sownership and wrongful conversion by the defendant. Lake MaryL.P., 145 N.C. App. at 532, 551 S.E.2d at 552.

Here, Plaintiffs have alleged their ownership of the materials thatthey assert have been converted. (See Second Am. Compl. ¶¶33, 76, 87, 89, 224.) Plaintiffs have likewise alleged Defendants'unauthorized possession and use of their materials. (See Id.¶¶ 126-27, 235-43.) These allegations are more than sufficient to putDefendants on notice of the Plaintiffs' claim.[10] For this reason, Defendants' motion must be denied asto this claim.

J. Other Claims

Plaintiffs also assert a claim of civil conspiracy against allDefendants. A civil conspiracy requires (1) an agreement between two ormore persons to commit a wrongful act; (2) an act in furtherance of theagreement; and (3) damage to the plaintiff as a result. PleasantValley Promenade, L.P., v. Lechmere, Inc., 120 N.C. App. 650, 657,464 S.E.2d 47, 54 (1995). Because liability attaches as a result of thewrongful act committed, not the agreement itself, the existence of anunderlying tortious act is the key to establishing a civil conspiracy.See Dickens v. Puryear, 302 N.C. 437, 456, 276 S.E.2d 325, 337(1981). Here, Defendants have moved to dismiss this claim solely becausethey argue there is no predicate tort to support it. As noted above,however, Plaintiffs have in fact alleged several tort claims. Plaintiffs'allegations of various wrongful acts, in addition to their allegations ofagreement between the Defendants are sufficient to put Defendants onnotice regarding their claim for civil conspiracy. As such, Defendants' motion to dismiss this claimwill be denied.

Defendants have also moved to dismiss Plaintiffs' specific claims forinjunctive relief and punitive damages. Defendants are correct when theyargue that claims for punitive damages and injunctive relief do not existas unique causes of action per se. See, e.g., Shugar v.Guill, 304 N.C. 332, 335, 283 S.E.2d 507, 509 (1981) (holding thata civil action may not be maintained solely for the purpose of collectingpunitive damages, and that punitive damages may be awarded only whena cause of action otherwise exists in which at least nominaldamages are recoverable). This rule, however, does not mean that aplaintiff cannot make a specific claim in his complaint for these typesof relief.[11]

As to Plaintiffs' claim for injunctive relief, Defendants' onlyargument is that Plaintiffs have failed to state any cause of action uponwhich injunctive relief may be granted. Since the court has denied muchof Defendants' motion to dismiss, claims do remain upon which injunctiverelief might be granted. Thus the court will not dismiss Plaintiffs'specific claim for injunctive relief. Cf. Haylash v. Volvo Trucks ofN. Am., No. 1:97CV1135, 1998 U.S. Dist. LEXIS 12511, at *8-9 (M.D.N.C. Apr. 10, 1998)(dismissing claims for punitive damages and injunctive reliefspecifically labeled as causes of action but agreeing to consider them aspart of the plaintiff's prayer for judgment).

Regarding the claim for punitive damages, Defendants again move todismiss solely on the grounds that there remain no claims upon which aclaim for punitive damages may be predicated. As noted above, however,claims do remain in this case. In addition, Plaintiffs have alleged thatDefendants engaged in wilful or wanton conduct or acted with malice.See N.C. Gen. Stat. § ID-15(a) (describing the aggravatingfactors that permit an award of punitive damages). For these reasons, thecourt will

not dismiss Plaintiffs' specific claim for punitive damages.

III. IDAPAT

Idapat is included as a plaintiff in 10 of the claims againstDefendants.

Defendants have moved to dismiss Idapat from the case, arguing thatIdapat, having either sold the assets upon which the claims are based toEli, or having assigned the claims themselves to Eli, has no interest inthe case. Plaintiffs respond by asserting that even though Idapat is inthe process of winding up its business, it is still capable of suing andbeing sued under Florida law. Plaintiffs' interpretation of Florida lawmay well be true, but it does not change the fact that Idapat has nointerest in this case.

Plaintiffs admit in their complaint that on March 29, 2002, Elipurchased all of then-GSC's assets, including its alleged secretinformation referred to by Plaintiffs as "The GSC Materials." (Second Am.Compl. ¶ 83.) Also included in the purchased assets were all of GSC'srights in any restrictive covenants and confidentiality agreementsbetween GSC and any of its employees or contractors, including theEditors. (See Id. ¶¶ 90-91.) Without any rights in thealleged trade secrets, GSC/Idapat has suffered no injury that would beremedied by a claim for misappropriation of trade secrets, conversion, ornegligence with respect to the safeguarding of trade secrets. Likewise,having assigned its rights to enforce the contracts with the Editors,GSC/Idapat cannot bring claims for breach of contract or tortiousinterference with contractual relations. See Lipe v. Guilford Nat'lBank, 236 N.C. 328, 331, 72 S.E.2d 759, 762 (1952) (holding thatonce a right is assigned, the assignor cannot maintain an action on itbecause he has no interest in it). Without the trade secrets and thecontracts, GSC/Idapat can also assert no injury upon which to ground aclaim for unfair and deceptive trade practices. Finally, without any ofthe above tortious conduct, GSC/Idapat cannot assert any claim for civilconspiracy, since recovery on such a claim is premised upon the existence of a predicate tort. See Dickens v.Puryear, 302 N.C. 437, 456, 276 S.E.2d 325, 337 (1981). For thesereasons, Idapat Corporation will be dismissed as a plaintiff in thisaction.

IV. CONCLUSION

For the reasons stated above,

IT IS ORDERED that Defendants' Motion to Dismiss [79] is GRANTED inpart and DENIED in part. Plaintiff Idapat Corporation is dismissed fromthe case, as are Plaintiffs' claims for fraud (Count 4), negligentmisrepresentation (Count 5), negligence (Counts 9 and 11), breach of theduty of loyalty (part of Count 10), gross negligence (Count 12), and badfaith breach of contract (Count 16).

1. When considering a motion to dismiss, the court must evaluate thecomplaint in the light most favorable to the plaintiff, accepting as trueall well-pleaded factual allegations. Randall v. United States,30 F.3d 518, 522 (4th Cir. 1994).

2. After its assets were sold, GSC changed its name to Idapat.Idapat is still a valid Florida corporation, capable of suing and beingsued.

3. These newsletters help health care providers and their staffsproperly "code" their activities for insurance reimbursementpurposes.

4. The four cases against the Editors, 1:02CV798, -799, -800, and-801 were consolidated into the lead case, 1:02CV787.

5. If, as Defendants assert, no written contract existed, that factshould become clear during discovery. The use of motions for summaryjudgment after discovery is the preferred method for disposing ofundisputed or unmeritorious claims. Swierkiewicz v. SoremaN.A., 534 U.S. 506, 512, 122 S.Ct. 992, 998 (2002) (citingConley v. Gibson, 355 U.S. 41, 47-48, 78 S.Ct. 99, 103(1957)).

6. North Carolina courts, it should be noted, are very reluctant togrant punitive damages in a breach of contract case. See Shore v.Farmer, 351 N.C. 166, 170, 522 S.E.2d 73, 76 (1999); Newton v.Standard Fire Ins. Co., 291 N.C. 105, 111, 229 S.E.2d 297, 301(1976). Punitive damages can be awarded, however, "when the breach ofcontract also constitutes or is accompanied by an identifiable tortiousact" plus "some element of aggravation. Shore, 351 N.C. at170, 522 S.E.2d at 76 (quoting Newton, 291 N.C. at112, 229 S.E.2d at 301).

7. The act makes unlawful "[u]nfair methods of competition, in oraffecting commerce, and unfair or deceptive acts or practices in oraffecting commerce." N.C. Gen. Stat. § 75-1.1.

8. The statute broadly defines commerce as "all business activities,however denominated" while specifically excluding "professional servicesrendered by a member of a learned profession." N.C. Gen. Stat. §75-1.(b). Besides excluding most employer-employee disputes, courts havefurther narrowed the scope of the definition by excluding securitiestransactions. See Dalton v. Camp, 353 N.C. 647, 657,548 S.E.2d 704, 711 (2001).

9. For example, at least one case in this district has held thatwhile allegedly defamatory words need not be pleaded verbatim, they mustbe alleged "`substantially' in haec verba." Carter v. DukeMedical Ctr., No. 1:95CV00042, 1995 U.S. Dist. LEXIS 16145, at *6(M.D.N.C. Oct. 3, 1995) (quoting Stutts v. Duke Power Co.,47 N.C. App. 76, 84, 266 S.E.2d 861, 866 (1980)).

10. Defendants also assert that Plaintiffs' claims fail as a matterof law because intangible interests cannot be the subject of a conversionaction. See Norman v. Johnson & Sons' Farms, Inc.,140 N.C. App. 390, 414, 537 S.E.2d 248, 264 (2000). Even though Defendants'citation of law is correct, it is inapplicable to this case. Plaintiffshave alleged the conversion of various tangible items, such as styleguides, editorial manuals, and subscriber lists. (See, e.g.,Second Am. Compl. ¶¶ 26, 290.)

11. Indeed, in the North Carolina courts, a specific claim forpunitive damages is required. See N.C. Gen. Stat. § 1A-1,Rule 9(k) (mandating that demands for punitive damages be specificallystated, with the aggravating factor permitting such damages being averredwith particularity).