UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

MERIDIAN AUTONOMOUS INC., MERIDIAN USA, INC., and GLOBAL RESOURCES MANAGEMENT CONSULTANCY INC.,

Plaintiffs,

v.

COAST AUTONOMOUS LLC, PHOENIX WINGS, LTD., EMAPSCAN LLC, PIERRE LEFEVRE, MATTHEW LESH, COREY CLOTHIER, CYRIL ROYERE, JONATHAN GARRETT, and ADRIAN SUSSMANN,

Defendants.

Case No. 1:17-cv-05846 (VSB)

OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

(DOC. 88)

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I. INTRODUCTION

Defendants' motion to dismiss should be denied as moot because Plaintiffs have filed an amended complaint pursuant to Fed. R. Civ. P. 15(a)(1)(B).

As alleged in the amended complaint, Defendants engaged in a scheme whereby they illegally obtained Plaintiffs' financial support, intellectual property, and physical assets and unlawfully used them to form their own business to compete against—and take the business opportunities of—Plaintiffs. Defendants admit that they traveled to New York to meet with Plaintiffs on multiple occasions and, as alleged in the amended complaint, it is from these and other contacts with New York that Plaintiffs' claims arise.

In addition to traveling to New York, Defendants' work for Plaintiffs was closely directed and supervised from Plaintiffs' New York head office. Defendant Lefevre himself supervised the other individual Defendants as part of his role in Plaintiffs' New York head office. And Defendants' salaries were paid from New York and Defendants submitted their expenses to New York for reimbursement. Moreover—and although it was shipped to various locations—the equipment used by Defendants was purchased by Plaintiffs from New York and was invoiced to Plaintiffs' address at 333 West 39th Street, New York.

Defendant Coast also has directed conduct related to this case to New York. Defendant Coast sent repeated correspondence to Plaintiffs in New York in March and April of 2017 denying that it had any idea of the specific property it removed from Plaintiffs' possession and vowing that any such property "will be returned promptly." But in early November, those denials were proven untrue when Defendants belatedly—

and inexplicably—returned one of the computer "brains" of Plaintiffs' autonomous vehicles that Defendants had taken from Plaintiffs' facilities six months earlier. Defendants' efforts to cover-up and conceal their scheme were directed to Plaintiffs in New York.

To be sure, some conduct related to this case has occurred in Florida and California. But when Defendants brought suit in California alleging declaratory judgment claims that mirror the claims in this case, that case was transferred here for lack of jurisdiction in California. And despite Defendants' attempts to link this case to Florida, Defendants have not filed suit there and have failed to show that a Florida court would have personal jurisdiction over all of the parties.

II. FACTUAL BACKGROUND

Plaintiff Meridian created an innovative mobility solution for a range of autonomous electric vehicles that incorporates Plaintiff GRMC's advanced geo-spatial and geo-intelligence solutions. (Compl.[1] ¶1). Plaintiffs' technology is focused on, among other things, "urban-speed" autonomous solutions that integrate with existing traffic management systems and transport modes. (Compl. ¶2).

From about November 2015 to May 2017, Defendants orchestrated a scheme in which they took Plaintiffs' intellectual property, logistical and technical expertise, money, and physical property to obtain multi-million dollar business opportunities for themselves at the expense of Plaintiffs. (Compl. ¶19). Without knowledge of this

[1] All references to "Compl." are to Plaintiffs' First Amended Complaint (Doc. 94), a copy of which is attached as Exhibit A for the Court's convenience.

scheme, Plaintiffs invested millions of dollars to pursue business opportunities related to autonomous vehicles. (*Id.*). And when those business opportunities were nearing fruition, Defendants took Plaintiffs' property and formed Defendant Coast to continue the scam and to benefit from the investments made by Plaintiffs. (*Id.*).

Defendant Lefevre first approached Plaintiff GRMC in November 2015, trying to sell equipment from his company, Viametris, and to promote his autonomous vehicle plans. (Compl. ¶22). In about March 2016, Plaintiffs began to work with Defendant Lefevre and his company, Defendant Phoenix Wings, to pursue an autonomous vehicle project. (*Id.*). In addition to Defendant Lefevre, Plaintiffs brought Defendants Clothier, Garrett, Lesh, Royere, and Sussmann into the autonomous vehicle project as employees. (Compl. ¶23). Plaintiffs paid Defendants salaries and expenses, arranged other compensation, rented facilities for them in Florida, purchased supplies and equipment, and/or provided technical staff and logistical support in an amount that exceeds $1,250,000. (*Id.*).

Plaintiffs also provided technical and commercial leadership from Plaintiffs' own executives and technical team in New York and elsewhere. (Compl. ¶24). Plaintiffs' CEO and CTO, Lincoln Satkunarajah—based in New York—was extensively involved with Defendants and the autonomous vehicle project. (*Id.*) He has over thirty years of experience working on highway, traffic, and transportation systems and holds, among other degrees, a Masters of Science from the City University of London as well as certification as a Professional Traffic Operations Engineer in the United States. (*Id.*) Mr. Satkunarajah is also an inventor and owns patent rights covering foundational technology

in the field of autonomous vehicles. (*Id.*) In addition, Kay Satha, Senior Executive Vice President of Plaintiffs—also based in New York—was deeply involved with Defendants. (*Id.*) She has over 20 years of experience in the industry. (*Id.*)

The focus of the part of Plaintiffs' autonomous vehicle project that included Defendants centered primarily on two vehicle demonstrations, one at Disney World and one for a vehicle called the World Bus. (Compl. ¶25). Defendant Clothier identified the Disney World demonstration as Plaintiff Meridian's "moon shot" that would allow Plaintiff to begin receiving substantial revenue. (*Id.*). According to Defendant Clothier's calculations, the Disney World demonstration alone would give Plaintiff Meridian sales of over $70 million in 2018. (*Id.*).

But on the eve of the crucial demonstrations, Defendants removed Plaintiffs' physical property from Plaintiffs' facility—including the demonstration vehicles—and formed Defendant Coast to pursue the business opportunities properly belonging to Plaintiffs. (Compl. ¶26).

Defendants also sued Plaintiffs for declaratory judgment in California federal court in a case that Defendants admit shared "a common identity of parties and a common nucleus of operative facts" with this case. (Doc. 33 at 11, Case No. 1:17-cv-08422-VSB). The California case was ultimately dismissed for lack of personal jurisdiction, transferred to this Court, deemed related to this case, and assigned to the Hon. Vernon S. Broderick.

Defendants' scheme and their efforts to cover it up continued after they had left to Defendant Coast. (Compl. ¶27). In a March 28, 2017 telephone call and letter to

Plaintiffs in New York, Coast acknowledged that "Meridian incurred some expenses that it seeks to recoup" and proposed "possible deal terms that may entail an equity stake for Meridian in Coast." (*Id.*). On a telephone call to New York on March 31, 2017, Defendant Coast admitted that its employees had removed property from Plaintiff Meridian's facilities that had been "comingled with Meridian's property" "unintentionally." (Compl. ¶82). In an April 12, 2017 email to Plaintiffs in New York, Defendants' representative acknowledged that Defendants would be returning "some sensors purchased with Meridian funds" that had been removed from Plaintiffs' facilities by Defendants. Defendants also represented that "if there are additional items that were inadvertently removed, they will be returned promptly." (*Id.*). But despite Defendants' representations, Defendants continued to withhold at least one computer that functions as the "brain" of Plaintiffs' autonomous vehicles until November 2017. (*Id.*). During the seven months that Defendants retained possession of Plaintiffs' property, they repeatedly professed ignorance of any property wrongfully in their possession, despite the fact that the computer had been in Defendants' possession since at least December 2016. (*Id.*).

III. DEFENDANTS' ADMITTED CONDUCT IN NEW YORK SUPPORTS SPECIFIC PERSONAL JURISDICTION

Defendant Coast does not dispute that this Court has personal jurisdiction over it and, as such, Defendant Coast has waived that defense under Fed. R. Civ. P. 12(h)(1).

As for the remaining Defendants, "to establish personal jurisdiction under [N.Y.C.P.L.R.] section 302(a)(1), two requirements must be met: (1) the defendant must have transacted business within the state; and (2) the claim asserted must arise from that

business activity." *McGowan v. Smith*, 52 N.Y.2d 268, 273, 419 N.E.2d 321, 437 (1981). "New York courts have held that a claim 'arises from' a particular transaction when there is some articulable nexus between the business transacted and the cause of action sued upon." *Sole Resort, S.A. de C.V. v. Allure Resorts Mgmt., LLC*, 450 F.3d 100, 103 (2nd Cir. 2006) ("In cases where claims have been dismissed on jurisdictional grounds for lack of a sufficient nexus between the parties' New York contacts and the claim asserted, the event giving rise to the plaintiff's injury had, at best, a tangential relationship to any contacts the defendant had with New York.").

Here, Defendants have had direct contacts with New York from which Plaintiffs' claims arise:

A. Pierre Lefevre

Defendants admit that Defendant Lefevre had "contacts with New York related to the claims." (Doc. 87, Defs.' Memo. at 1). And Defendants admit that "negotiations over the Proposed Transaction described in the Complaint were conducted in face-to-face meetings between Lincoln Satkunarajah [Plaintiffs' President and CEO] and [Pierre Lefevre] in Las Vegas, Nevada, Tampa, Florida, London, England and France, as well as New York." (Doc. 90, Lefevre Decl. ¶ 8). As such, Defendants themselves have identified the "articulable nexus" between Mr. Lefevre's contacts with New York and the claims.

Defendants argue that Mr. Lefevre's contacts do not establish personal jurisdiction because "the bulk of Lefevre's visits to New York were at Satkunarajah's request, and thus not voluntary." (Doc. 87, Defs.' Memo. at 6). But even if the "bulk" of the visits

were "not voluntary," there can be no dispute that the remaining visits were voluntary and thus would support jurisdiction. Moreover, in his declaration, Mr. Lefevre does not state that his visits to New York were not voluntary—he simply says they were "at the request of Lincoln Satkunarajah." (Doc. 90, Lefevre Decl. ¶ 8).

The amended complaint alleges that Mr. Lefevre's visits to New York were to conduct business related to claims in this case. In November 2016, Mr. Lefevre submitted an expense reimbursement request to Plaintiffs seeking reimbursement for his travel expenses for six separate trips to New York. (Compl. at ¶61). Plaintiffs reimbursed these expenses in November of 2016. (*Id.*). Defendant Lefevre labeled his list of expenses as "MERIDIAN Expenses June-November 12." (*Id.*). As alleged in the Complaint, Plaintiffs' claims arise out of Plaintiff Meridian's decision to "include Defendants Lefevre, Royere, Clothier, Lesh, and Garrett in its development of autonomous vehicles as employees." (Compl. at ¶19). And Mr. Lefevre's trips to New York and his expenses were incurred in connection with his work on Plaintiffs' autonomous vehicle project. (Compl. at ¶61). The fact that Mr. Lefevre sought—and received—reimbursement for his six trips to New York as "MERIDIAN Expenses" further proves that the claims in this case arise out of his contact with Plaintiffs in New York.

In addition, Mr. Lefevre's activities for Plaintiffs occurred as part of his work in Plaintiffs' "NYC head office." (Compl. ¶69). According to the "Communications Protocols and Approval System" for Plaintiff Meridian Autonomous, Defendants were required to "obtain final approval from NYC Head Office (Pierre [Lefevre], Kay [Satha],

and [Lincoln Satkunarajah]) on all critical matters." (*Id.*). And Defendant Lefevre prepared a detailed description of the Meridian "Business & Technical Development 2016," which stated under the heading "Human Resources" that Defendant Lefevre would work on product development in "New York" as an "Employee." (*Id.*).

B. eMAPscan

This court has specific personal jurisdiction over eMAPscan under N.Y. C.P.L.R. §302(a)(1) because its principal and "authorized manager," Defendant Pierre Lefevre, transacted business in New York that gives rise to the claims against Defendant eMAPscan. (Compl. ¶¶116-120). Defendant Lefevre entered into the Confidentiality Agreement that gives rise to the breach of contract claim against eMAPscan in this case. (Compl. ¶116). The Confidentiality Agreement signed by Lefevre applies to himself and to any of his "partners" or "affiliates." (Compl. ¶117). Defendant eMAPscan is an affiliate of Lefevre because, as alleged in the complaint, Lefevre formed eMAPscan for the purpose of improperly using Plaintiff Meridian's trade secrets, property, and intellectual property obtained in breach of the Confidentiality Agreement. (Compl. ¶85). By its terms, the Confidentiality Agreement creates ongoing "obligations of confidentiality, non-disclosure, and non-use" that last for seven years from its April 2016 effective date. (Compl. ¶119). In addition, the parties chose New York law to govern the Confidentiality Agreement and Lefevre admits that he traveled to New York "5 or 6 times" to work on the "Possible Transaction" contemplated in the Confidentiality Agreement. (Compl. ¶85). All of these facts support the exercise of specific personal jurisdiction over defendant eMAPscan. *Agency Rent a Car Sys. v. Grand Rent a Car*

Corp., 98 F.3d 25, 29 (2d Cir. N.Y. 1996) (facts supporting personal jurisdiction include "(i) whether the defendant has an on-going contractual relationship with a New York corporation. . . (ii) whether the contract was negotiated or executed in New York, and whether, after executing a contract with a New York business, the defendant has visited New York for the purpose of meeting with parties to the contract regarding the relationship; (iii) what the choice-of-law clause is in any such contract."). Alternatively, Plaintiffs request the opportunity to conduct jurisdictional discovery.

It would not be "fundamentally unfair" for eMAPscan to be subject to this Court's specific personal jurisdiction because eMAPscan could foresee being hailed into New York court. The complaint alleges that Lefevre is a principal, an authorized member, and is authorized to manage Defendant eMAPscan. (Compl. ¶8). Thus, eMAPscan—by virtue of its principal, registered agent, and authorized manager Lefevre—was well aware of the obligations of Lefevre and his affiliates under the Confidentiality Agreement. The fact that eMAPscan was formed after the Confidentiality Agreement was signed is immaterial because Defendant Lefevre was aware of the ongoing obligations under that agreement. And as such, the possibility of litigation in New York arising out of the Confidentiality Agreement was foreseeable to eMAPscan.

C. Adrian Sussmann

Defendant Sussmann admits he visited New York in September 2016 and met with Defendant Lefevre and the president and CEO of Plaintiffs, Mr. Satkunarajah, for two days on September 7 and 8, 2016. (Doc. 93, Sussmann Dec. ¶ 10). Plaintiffs paid Mr. Lefevre's travel expenses to attend that meeting in New York. (Compl. ¶51). During the

meetings on September 7 and 8, 2016, Mr. Sussmann discussed in detail Plaintiffs' autonomous vehicle project and his role in it. (*Id.*).

In addition, Mr. Sussmann was an employee and agent of Plaintiffs and, among other things, represented Plaintiffs in discussions with Disney. (*Id.*). Less than a month after Mr. Sussmann's meeting in New York with Plaintiffs, Mr. Sussmann conducted negotiations with Disney on behalf of Plaintiffs regarding a project to provide "up to 30 vehicles for their [Disney's] parking operations." (*Id.*). Mr. Sussmann represented to Disney that "we [Plaintiffs] were working on the 2nd generation and it should be ready by January." (*Id.*). Mr. Sussmann sent an email to Mr. Satkunarajah which stated that if "we can land the Disney project for [Plaintiff] Meridian I am sure it will open the door for many other [Plaintiff] GRMC services." (*Id.*). There is no dispute that Plaintiff Meridian Autonomous Inc. and Plaintiff Global Resources Management Consultancy, Inc. (GRMC) are located at 333 West 39th Street, New York, New York. (Compl. ¶3, 5). And Mr. Sussmann's actions representing Plaintiffs in business discussions with Disney and reporting those discussions back to New York establish sufficient contacts with New York for personal jurisdiction.

D. Corey Clothier

Defendant Clothier admits he visited the New York offices of Plaintiff Meridian "on 3 occasions (September, October, and November 2016)" and that these "trips to New York lasted 1 to 2 days each." (Doc. 89, Clothier Dec. ¶11). According to Defendant Clothier's declaration, he visited New York in September 2016 "to negotiate the terms of my independent contractor relationship with [Plaintiff] Meridian." (Doc. 89, Clothier

Dec. ¶9). Plaintiffs paid Defendant Clothier's expenses, including expenses he listed as "New York," on November 10, 2016. (Compl. ¶59). In addition, Plaintiffs provided Mr. Clothier a laptop he used in conducting his business for Plaintiffs. (*Id.*). As part of Mr. Clothier's responsibilities with Plaintiffs, he was required to obtain "final approval from NYC Head Office (Pierre [Lefevre], Kay, and [Lincoln Satkunarajah]) on all critical matters." (*Id.*).

In addition, and among other things, Defendant Clothier spoke with Disney on behalf of Plaintiffs and reported to Plaintiffs in New York that Disney wanted up to 100 vehicles in 2017 from Plaintiffs. (*Id.*). Defendant Clothier told Plaintiffs in New York that Disney was Plaintiffs "moon shot" and that working towards Disney's business would lead to Plaintiffs receiving more business from others. (*Id.*). Defendant Clothier outlined to Defendants in New York that the plan was to provide a vehicle demonstration involving two vehicles. (*Id.*).

Moreover, Defendant Clothier, along with Defendant Lesh, signed a contract on behalf of Plaintiff Meridian with Stantec. (Compl. ¶¶197, 198). Defendants listed Defendant Clothier as Plaintiff Meridian's "Chief Strategy Officer" and Defendant Lesh as Plaintiff Meridian's "Chief Commercial Officer" under their signatures in the Stantec agreement. (*Id.*). The Stantec agreement identified Plaintiff Meridian as "Meridian Autonomous, Inc., 333 West 39th Street, Suite 202, New York, NY 10018." (*Id.*). Prior to signing the agreement, Defendants Clothier and Lesh obtained approval from executives in Plaintiffs' New York Head Office. (*Id.*).

Defendant Clothier thus has sufficient contacts with New York to support personal jurisdiction.

E. Matthew Lesh

Like the other individual defendants, Defendant Lesh admits he travelled to New York on multiple occasions. (Doc. 91, Lesh Dec. at ¶9). According to Defendant Lesh, one of these occasions was for a meeting with "Corey Clothier, Pierre Lefevre, and Lincoln Satkunarajah." (Doc. 91, Lesh Dec. at ¶9). As alleged in the First Amended Complaint, this trip occurred in the first week of October and the purpose of this trip was to discuss Mr. Lesh's employment by Plaintiff Meridian Autonomous for the autonomous vehicle project. (Compl. ¶58). After this meeting, Plaintiffs began paying Mr. Lesh his salary and expenses. (*Id.*). In addition, Mr. Lesh traveled to New York to meet with Mr. Satkunarajah in November 2016 to discuss the autonomous vehicle project. (*Id.*). Like Mr. Clothier and Mr. Royere, Mr. Lesh was required to obtain "final approval from NYC Head Office (Pierre [Lefevre], Kay, and [Lincoln Satkunarajah]) on all critical matters." (*Id.*). Also like Mr. Clothier and Mr. Royere, Mr. Lesh was required to "copy at least Kay [Satha, Plaintiffs' executive in New York] in all communications, including with external parties and internal team members." (Compl. ¶65). Finally, as noted above, Mr. Leash signed an agreement with Stantec on behalf of Plaintiff Meridian which lists Plaintiffs' address in New York. (Compl. ¶¶197, 198).

F. Cyril Royere

Defendant Royere admits he traveled to New York "to meet with Lincoln Satkunarajah and his patent lawyers" on November 7 and 8, 2016. (Doc. 92, Royere Dec.

¶ 9). The purpose of this meeting was to discuss the technology being developed by Plaintiffs in connection with Plaintiffs' autonomous vehicle project. (Compl. ¶65). As with Defendants Clothier and Lesh, Mr. Royere was required to obtain "final approval from NYC Head Office (Pierre [Lefevre], Kay [Satha], and [Lincoln Satkunarajah]) on all critical matters." (*Id.*). In addition, Mr. Royere was required to "copy at least Kay [Satha] in all communications, including with external parties and internal team members." (*Id.*). Kay Satha is a senior executive for Plaintiffs based in New York. (*Id.*). In mid-December 2016, Defendant Royere sent an email to Plaintiffs in New York in which he admitted that the software he had created for autonomous vehicles did not work and was based on pirated source code. (*Id.*). And based on these contacts, personal jurisdiction in New York is properly exercised over Defendant Royere.

G. Phoenix Wings

Defendant Lefevre is a principal and agent of Defendant Phoenix Wings and Defendant Royere acted as an agent of Phoenix Wings. (Compl. ¶¶9-10). In April 2016, Plaintiffs and Defendant Phoenix Wings entered into a non-binding term sheet. (Compl. ¶29). The non-binding term sheet was negotiated and signed by Defendant Lefevre. (*Id.*). Mr. Lefevre admits in his declaration that the negotiations over the proposed transaction between Defendant Phoenix Wings and Plaintiffs were conducted in face-to-face meetings, including in New York. (Doc. 90, Lefevre Decl. ¶ 8, 1120). In addition, Plaintiff Meridian engaged Phoenix Wings to provide various consulting services and these services were performed by Lefevre and Royere for the autonomous vehicle project. (Compl. ¶¶7, 29). The services provided by Defendant Lefevre on behalf of

Phoenix Wings were performed in New York during at least several of the six trips to New York that were paid for by Plaintiffs. (*Id.*). Defendants Phoenix Wings and Lefevre also attempted to negotiate a deal with Plaintiffs in New York after they rejected Plaintiffs' offer related to the non-binding term sheet in early 2017. (Compl. ¶7).

IV. VENUE IS PROPER IN THIS DISTRICT

As an initial matter, the heading in Defendants' Memorandum suggests that they are challenging venue "as to all claims and defendants." (Doc. 87; Defs.' Memo. at 13). But nowhere do Defendants make any arguments—or even mention—Defendants eMAPscan or Phoenix Wings and, as a result, Defendants eMAPscan and Phoenix Wings have waived any venue defense under Fed. R. Civ. P. 12(h)(1).

Courts conduct a two-part inquiry to determine whether venue is appropriate under Section 1391(b)(2). First, the Court must "identify the nature of the claims and the acts or omissions that the plaintiff alleges give rise to those claims." *Daniel v. Am. Bd. of Emergency Med.*, 428 F.3d 408, 432 (2d Cir. 2005). Second, the Court determines whether "a substantial part of those acts or omissions occurred in the district where suit was filed, that is, whether 'significant events or omissions material to [those] claim[s] . . . have occurred in the district in question.'" *Id*. (quoting *Gulf Ins. Co. v. Glasbrenner*, 417 F.3d 353, 357 (2d Cir.2005)). As to the second part of this inquiry, "'[s]ubstantiality' for venue purposes is more a qualitative than a quantitative inquiry." *Daniel*, 428 F.3d at 432-33. As such, "[w]hen material acts or omissions within the forum bear a close nexus to the claims, they are properly deemed 'significant' and, thus, substantial, but when a close nexus is lacking, so too is the substantiality necessary to support venue." *Id*. at 433.

Importantly, venue is appropriate in "each district where a substantial part of the events . . . occurred," and thus venue may be appropriate in this district even if a greater portion of events occurred elsewhere. *Concesionaria DHM, S.A. v. Int'l Finance Corp.*, 307 F. Supp. 2d 553, 559 (S.D.N.Y. 2004). "A plaintiff does not have to prove that his or her chosen venue is the best forum for the action, a plaintiff need only demonstrate that the choice is a permissible one." *Reynolds Corp. v. Nat'l Operator Servs., Inc.*, 73 F. Supp. 2d 299, 306 (W.D.N.Y. 1999).

A. Conversion

Under New York law, "a conversion takes place when someone, intentionally and without authority, assumes or exercises control over personal property belonging to someone else, interfering with that person's right of possession." *Marketxt Holdings Corp. v. Engel & Reiman, P.C.*, 693 F. Supp. 2d 387, 395 (S.D.N.Y. 2010).

Defendants have failed to establish that the location where they took actual physical possession of Plaintiffs' property is the only place where "a substantial part" of the acts or omissions giving rise to Plaintiffs' claims occurred. "It is not necessary that one take actual physical possession of property to be guilty of conversion." *Fleet Capital Corp. v. Yamaha Motor Corp., U.S.A.*, 2002 U.S. Dist. LEXIS 18115, *84, 2002 WL 32063614 (S.D.N.Y. 2002) ("No manual taking of the property or application of it to the defendant's own use is required. The exercise of dominion over property to the exclusion of and in defiance of the owner's right is a conversion."). Thus, to the extent Defendants contend that they took actual physical possession of Plaintiffs' property outside of New

York, they have failed to establish that that location is the ***only*** place where a "substantial" part of the conversion occurred.

1. Defendant Lefevre

Defendant Lefevre was a New York employee of Plaintiffs who was entrusted with Plaintiffs' personal property. As part of his role in the New York head office of Plaintiffs, the other Defendant employees of Plaintiffs were required to get approval from Defendant Lefevre on all critical matters. (Compl. ¶69). Defendant Lefevre also agreed to send to Plaintiffs' New York head office a set of keys to the Plaintiffs' facility from which personal property was illegally removed, but he never sent them. (Compl. ¶79). In addition, Defendant Lefevre sent an email message to Plaintiffs' executives in New York expressing his desire to work together in a "decent and respectful way to manage the transition"—and it was during this "transition" time that Plaintiffs' property was illegally converted. (*Id.*). Defendant Lefevre was also identified as the recipient on invoices for shipments of personal property sold to Plaintiffs listed at their New York address that was unlawfully converted by Defendants. (*Id.*). Finally, Defendant Lefevre was paid a salary from and submitted his expenses for reimbursement to Plaintiffs' New York head office. (*Id.*).

2. Defendant Coast

As for Defendant Coast, Defendants do not dispute that personal jurisdiction over Defendant Coast is proper in New York and argue that "the Central District of California is a proper venue for these claims." (Doc. 87; Defs.' Memo. at 13). But simply because California may be a "proper venue" does not mean that venue is not also proper in New

York. And, in any event, as alleged in the complaint, Defendant Coast had repeated communications with Plaintiffs in New York (in-person, by telephone, and by email) related to, and in furtherance of, its conversion of Plaintiffs' property. (Compl. ¶¶27, 82).

3. Defendants Clothier, Lesh, Royere, and Sussmann

Defendants Clothier, Lesh, and Royere were required to obtain "final approval from NYC Head Office (Pierre [Lefevre], Kay [Satha], and [Lincoln Satkunarajah) on all critical matters." (Compl. ¶65). As alleged in the Complaint, Defendants failed to obtain approval from Plaintiffs' head office in New York City to take any actions with respect to Plaintiffs' personal property. (Compl. ¶79).

Defendants omission—the failure to obtain final approval from the New York office—has a "close nexus" to Plaintiffs' conversion claim because that omission establishes that Defendants' actions with respect to Plaintiffs' personal property were "without authorization." And because Defendants' omission was the failure to take an action that is directly connected to Plaintiffs' New York office, a substantial part of Plaintiffs' conversion claim arises in this district.

With respect to Defendant Sussmann, he admits that he visited New York in September 2016 and met with Defendant Lefevre and the president and CEO of Plaintiffs, Mr. Satkunarajah, for two days on September 7 and 8, 2016. (Doc. 93, Sussmann Dec. ¶ 10). During the meetings on September 7 and 8, 2016, Mr. Sussmann discussed in detail Plaintiffs' autonomous vehicle project and his role in it. (*Id.*). Mr. Sussmann also was an employee and agent of Plaintiffs and, among other things, represented Plaintiffs in discussions with Disney regarding the autonomous vehicle

project. (*Id.*). As alleged in the complaint, Defendants' conversion arose out of—and was possible because of—Defendants' work on Plaintiffs' autonomous vehicle project and the relationships of trust and confidence between Plaintiffs and, among others, Defendant Sussmann.

B. Trade Secret Misappropriation

Defendants limit their venue challenge to Plaintiffs' trade secret claims to arguments related to "Lefevre and the Individual Defendants." (Doc. 87; Defs.' Memo. at 13). Defendants have thus waived any venue challenge related to trade secret misappropriation as to Defendant Coast.

As alleged in the amended complaint, Defendants Clothier, Lefevre, Lesh, Royere, and Sussmann gained access to Plaintiffs' trade secrets in New York. Specifically, the amended complaint alleges that Defendants each met with the Plaintiffs in New York and that during these meetings Plaintiffs disclosed trade secrets to Defendants. (Compl. ¶105). Although Plaintiffs disclosed these trade secrets to Defendants based on the understanding that they would not be used without Plaintiffs' authorization and consent, Defendants used them without Plaintiffs' authorization or consent. (*Id.*). In addition, Plaintiffs entered into a non-disclosure agreement with Defendant Lefevre that protected Plaintiffs' trade secrets and the obligations in that agreement extend to the other Defendants as his "affiliates." (Compl. ¶117). "One of the ways in which a plaintiff may establish that trade secrets were misappropriated under New York law is by showing that a defendant 'used the trade secrets in breach of an agreement' between the parties." *Broker Genius, Inc. v. Zalta*, 2017 U.S. Dist. LEXIS 198951, *38 (S.D.N.Y. 2017). The

non-disclosure agreement was negotiated in New York, is governed by New York law, and was at least partially executed in New York. *Gen. Capital Partners LLC v. Liberty Ridge, LLC*, No. 07-cv-4089, 2007 WL 3010028, at *2 (S.D.N.Y. Oct. 12, 2007) ("[T]he fact that the underlying contract was at least partially negotiated and executed in New York is, standing alone, sufficient for this action to proceed in this District.")

Because Defendants' acquisition of Plaintiffs' trade secrets occurred in New York and their obligation not to use them without Plaintiffs' consent flowed to Plaintiffs in New York, a "substantial part" of Plaintiffs' trade secret claim arose in New York. *Universal Marine Med. Supply, Inc. v. Lovecchio*, 8 F. Supp. 2d 214, 220 ("The gravamen of a complaint for misappropriation is the wrongful taking of a trade secret, which allegedly occurred in New York. Thus, venue is proper for this claim in the Eastern District of New York.").

C. Breach of Duty of Loyalty

As set forth in the amended complaint, Defendants Clothier, Lefevre, Lesh, Royere, and Sussmann owed a duty of loyalty to Plaintiffs as employees and representatives of Plaintiffs. This duty arose out of meetings in New York and correspondence with Plaintiffs in New York. (Compl. ¶98). In addition, Defendants' duty to Plaintiffs in New York arose out of Plaintiffs' supervision of Defendants from New York and the payment of Defendants' salaries and expenses from New York. (*Id.*); *Corning Data Servs. v. Kermick*, 2007 U.S. Dist. LEXIS 52088, *9, 2007 WL 2080917 (venue was proper in New York for breach of duty of loyalty claim against former employee who "was supervised by, and reported to, Linderman, who resides in Corning,

New York. Moreover, [employee] received paychecks, work assignments, and travel plans from Corning, New York and sent his expense slips to a location within New York.").

D. Breach of Contract

As alleged in the amended complaint, the non-disclosure agreement was negotiated in New York, is governed by New York law, and was at least partially executed in New York. (Compl. ¶¶45, 119); *Gen. Capital Partners LLC v. Liberty Ridge, LLC*, No. 07-cv-4089, 2007 WL 3010028, at *2 (S.D.N.Y. Oct. 12, 2007) ("[T]he fact that the underlying contract was at least partially negotiated and executed in New York is, standing alone, sufficient for this action to proceed in this District.") In addition, there were multiple communications in and to New York related to the contract and its breach. (Compl. ¶¶29, 61, 69, 79, 82). *Armstrong Pump, Inc. v. Hartman*, 2010 U.S. Dist. LEXIS 94565, *24-25, 2010 WL 3547754 ("In evaluating venue in a breach of contract action . . . the § 1391 (a)(2) standard may be satisfied by as little as a single communication transmitted to or from the district in which the cause of action was filed, given a sufficient relationship between the communication and the cause of action.").

As such, venue over the breach of contract claim is proper in New York.

E. Unfair Competition

Defendants allege that venue is improper as to Plaintiffs' claims for unfair competition "because they are all derivative of the conversion and misappropriation claims." (Doc. 87; Defs.' Memo. at 13). But as set forth above, Plaintiffs' conversion

and misappropriation claims are properly venued in this district and, as such, venue is also proper in this district over Plaintiffs' unfair competition claims.

V. SERVICE WAS PROPER ON THE INDIVIDUAL DEFENDANTS AND PHOENIX WINGS

With respect to individual defendants Sussmann, Clothier, Lesh, and Royere, each of them is identified by Coast as a "Managing Director" or "Officer" of Defendant Coast. (Compl. ¶84). The process server attempted to personally serve the complaint and summons on individual defendants Sussmann, Clothier, Lesh, and Royere at the offices of Defendant Coast on three occasions: August 8, 9, and 10, 2017. (Doc. 53, 56, 57, and 58). On the third attempt, the process server left a copy of the complaint and summons with a legal assistant at the address listed for Defendant Coast's offices. (*Id.*). Thereafter, copies of the complaint and summons were mailed to the individual defendants and the individual Defendants admitted they received them by mail in a letter to this Court. (Doc. 70 (October 10, 2017 Letter from David Hickey to Court); Doc. 70-1 (Copies of supplemental proofs of service showing mailing of complaint and summons)). As such, substituted service was accomplished pursuant to Cal. Code Civ. P. § 415.20.

As for Phoenix Wings, Article 19 of the Hague Convention provides for service to be made pursuant to the "internal law of a Contracting State" for documents coming from abroad. *Sparrow Capital, LLC v. Katcharian*, 2013 U.S. Dist. LEXIS 200093, *24 (E.D.Ky. 2013). Here, the United Kingdom is the state of destination or contracting state, and the applicable internal laws are contained in Part 6 of the United Kingdom's Civil Procedure Rules ("U.K. Civil Rules"). *Id.*; *See* U.K. MINISTRY OF JUSTICE, RULES &

PRACTICE DIRECTIONS, Part 6 - Service of Documents, available at http://www.justice.gov.uk/courts/procedure-rules/civil/rules/part06 (noting that the Rules apply to service in England and Wales of any document in connection with civil or commercial proceedings in a foreign court or tribunal). Section 6.3(b) of the U.K. Civil Rules provides that service may be made by "first class mail, document exchange, or other service which provides for delivery on the next business day." As set forth in the proof of service for Phoenix Wings, the complaint and summons were served by Federal Express. (Doc. 77). And, accordingly, service on Phoenix Wings was properly made.

VI. THIS COURT HAS SUBJECT MATTER JURISDICTION

As alleged in the amended complaint, Plaintiffs' cause of action for violation of the United States Defend Trade Secrets Act of 2016, 18 U.S.C. § 1836, relates to Defendants misappropriation of trade secrets related to autonomous transportation technology and products. (Compl. ¶102). Defendants Coast, Phoenix Wings, and Lefevre admit in their amended complaint in the related action (Case No. 1:17-cv-08422-VSB) that they own "autonomous transportation technology" that is "used in, or intended for use in, interstate commerce." (Doc. 18 at ¶¶182-84; First Amended Complaint). The amended complaint in this case alleges that this "autonomous transportation technology" that Defendants admit to using in interstate commerce includes Plaintiffs' trade secrets. (Compl. ¶102). And, as a result, subject matter jurisdiction exists as to Plaintiffs' claim under 18 U.S.C. § 1836. In addition, Plaintiffs have alleged causes of action under the Lanham Act (15 U.S.C. §§ 1125, *et seq.*) and the United States Computer Fraud and

Abuse Act (18 U.S.C. §§ 1030, *et seq*.), which also give this Court subject matter jurisdiction.

VII. CONCLUSION

For the foregoing reasons, Defendants' motion to dismiss should be denied as moot in light of the amended complaint filed by Plaintiffs.

Dated: December 22, 2017

Respectfully submitted,

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