STATE OF IDAHO)
County of KOOTENAI)ss

FILED 6/17/2021

AT 11:45 O'Clock A M
CLERK OF DISTRICT COURT

Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

SNAP! MOBILE, INC., a Delaware corporation, *Plaintiff,* vs. **VERTICAL RAISE, LLC,an Idaho limited liability company, and PAUL LANDERS, individually,** *Defendants.*	Case No. **CV28-19-8796** **MEMORANDUM DECISION AND ORDER GRANTING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT, DENYING DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT, AND ORDER GRANTING PLAINTIFF'S MOTION FOR LEAVE TO AMEND TO ADD A CLAIM FOR PUNITIVE DAMAGES**

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.

This matter is before the Court on cross motions for partial summary judgment as well as plaintiff Snap! Mobile, Inc.'s (Snap)'s motion for leave to amend to add a claim for punitive damages. Snap and Defendant Vertical Raise are both in the business of online fundraising. First Am. Compl. 2. This dispute is over Snap's claims that "Vertical Raise and Landers intentionally interfered with Snap's contractual relationship with Clay, Sanford, Hack and other Snap sales representatives by encouraging them to breach their Sales Representative Agreement with Snap". *Id.* at 18. Snap claims that "Vertical Raise and Landers intentionally targeted Clay, Sanford, Hack, and other Snap Sales Representatives for the express purpose of inducing Snap's clients to cancel campaigns with Snap and start campaigns with Vertical Raise, in violation of non-solicitation, non-competition, and confidentiality agreements to which Snap's former

employees were subject as part of their Sales Representative Agreements". *Id.* at 19.

On December 10, 2019, Snap filed a Complaint and Demand for Jury and Request for Injunctive Relief. On January 13, 2020, Vertical Raise filed its Answer. On September 23, 2020, Snap filed a First Amended Complaint and Demand for Jury Trial and request for Injunctive Relief, which also added Landers as a defendant. On October 21, 2020, and again on October 22, 2020, Vertical Raise and Paul Landers filed an Answer to First Amended Complaint and Counterclaim and Demand for Jury Trial. On December 31, 2020, Snap filed an Answer to Vertical Raise and Landers' Counterclaim.

On January 26, 2021, Snap filed Snap!'s Motion for Partial Summary Judgment, Memorandum in Support of Snap!'s Motion for Partial Summary Judgment, Declaration of Keely E. Duke in Support of Plaintiff's Partial Motion for Summary Judgment, Declaration of Brandon Moreno in Support of Plaintiff's Motion for Summary Judgment, and Declaration of Christopher Morris in Support of Plaintiff's Motion for Summary Judgment. That motion sought partial summary judgment on Vertical Raise's and Landers' counterclaims against Snap. That motion later became moot as this Court dismissed Vertical Raise's and Landers' counterclaims as a sanction for failure to comply with discovery. March 13, 2021, Judgment. Also on January 26, 2021, Vertical Raise and Landers filed Defendants' Motion for Summary Judgment, Defendants' Memorandum in Support of Motion for Summary Judgment, Defendants' Statement of Undisputed Facts in Support of Motion for Summary Judgment, and Declaration of Counsel in Support of Defendants' Motion for Summary Judgment. This motion sought a dismissal of <u>all</u> claims brought by Snap; it was not a motion for partial summary judgment.

On February 9, 2021, Snap filed its Response to Defendants' Motion for Summary Judgment, a Declaration of Counsel in Support of Plaintiff's Response to Defendants' Motion for Summary Judgment, and a Declaration of Jeff Bone in Support of Plaintiff's

Response to Defendants' Motion for Summary Judgment. Also on February 9, 2021, Vertical Raise and Landers filed their Response to Plaintiff Snap's Motion for Partial Summary Judgment, a Declaration of Paul Landers in Support of Opposition to Snap's Motion for Partial Summary Judgment, a Declaration of Jason Brissette in Opposition to Snap's Motion for Partial Summary Judgment, a Declaration of Paul Croghan in Support of Opposition to Snap's Motion for Partial Summary Judgment, a Declaration of Jen Ashlee in Support of Defendant's Response to Plaintiff's Motion for Partial Summary Judgment, and a Declaration of Jennifer Escruceria in Support of Opposition to Snap's Motion for Partial Summary Judgment [again, all rendered moot by the March 13, 2021, Judgment],

On February 16, 2021, Vertical Raise and Landers filed Defendants' Reply Memorandum in Support of Motion for Summary Judgment.

On February 23, 2021, this Court heard oral argument on Vertical Raise and Landers' motion for summary judgment and other matters. At the conclusion of that lengthy oral argument, this Court denied the motion for summary judgment filed by Vertical Raise and Landers "at that time", and allowed Snap additional time to look at the discovery it had obtained from Vertical Raise and Landers regarding Snap's motion for partial summary judgment. On February 25, 2021, this Court issued an Order denying Vertical Raise and Paul Landers' Motion for Summary Judgment "at this time", and in such order this Court added that "Plaintiff is granted additional time to complete discovery to defend any future motion for summary judgment." Order on Defs.' Mot. for Summ. J. 2.

On April 5, 2021, under seal, Snap filed Snap!'s Motion for Partial Summary Judgment, Memorandum in Support of Snap!'s Motion for Partial Summary Judgment, Snap!'s Statement of Undisputed Facts, a Declaration of Keely E. Duke in Support of Snap!'s Motion for Partial Summary Judgment, and a Declaration of Trevor Downs in

Support of Snap!'s Motion for Partial Summary Judgment. On April 6, 2021, Snap filed a Corrected Amended Statement of Undisputed Facts in Support of Plaintiff's Motion for Partial Summary Judgment and an Amended Declaration of Counsel (Keely Duke) in Support of Plaintiff's Motion for Partial Summary Judgment.

On April 7, 2021, Vertical Raise and Landers filed a Defendants' Renewed Motion for Partial Summary Judgment. Also on April 7, 2021, Snap filed its Notice of Hearing on its Motion for Partial Summary Judgment for oral argument on May 5, 2021, and Vertical Raise and Landers did likewise, filing their Notice of Hearing on their Renewed Motion for Partial Summary Judgment for oral argument on May 5, 2021. Oral argument on these cross motions for partial summary judgment was later changed to May 12, 2021.

On April 21, 2021, Vertical Raise and Landers filed their Response to Plaintiff Snap's Motion for Partial Summary Judgment, a Declaration of Arik K. Van Zandt in Support of Defendants' Response to Snap's Motion for Partial Summary Judgment and a Motion to Strike Snap's motion for Partial Summary Judgment. These were not filed under seal.

On April 27, 2021, Snap filed its Response to Defendants' Motion for Summary Judgment. This was filed under seal.

On April 29, 2021, Snap filed its Corrected Amended Statement of Undisputed Facts in Support of Snap!'s Motion for Partial Summary Judgment, and an Amended Declaration of Counsel in Support of Plaintiff's Response to Defendants' Renewed Motion for Summary Judgment and in Support of Plaintiff's Motion for Summary Judgment and in Support of Plaintiff's Motion for Leave to Amended for a Claim for Punitive Damages. These were filed under seal.

On May 10, 2021, Snap filed its Reply in Support of Snap's Motion for Partial Summary Judgment. This was not filed under seal.

As to Snap's motion for leave to amend its complaint to add a claim for punitive damages, Snap filed Plaintiff's Motion for Leave to Amend to Add a Claim for Punitive Damages on April 21, 2021. Vertical Raise and Landers filed Defendants' Opposition to Plaintiff's Motion for Leave to Add a Claim for Punitive Damages on April 28, 2021. Snap filed its Reply in Support of SNAP's Motion for Leave to Amend to Add a Claim for Punitive Damages on May 3, 2021.

Oral argument on Snap's Motion for Partial Summary Judgment and on the renewed motion for summary judgment of Vertical Raise and Landers, as well as Snap's motion for leave to amend to add a claim for punitive damages was held on May 12, 2021. At the conclusion of the May 12, 2021, hearing, this Court granted Snap's motion for leave to amend to add a claim for punitive damages (no order was prepared by counsel for Snap), and this Court took under advisement Snap's Motion for Partial Summary Judgment, and Vertical Raise's and Landers' Renewed Motion for Partial Summary Judgment.

II. STANDARD OF REVIEW.

Idaho Rule of Civil Procedure 56 governs motions for summary judgment. According to Rule 56, summary judgment must be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." I.R.C.P. 56(a). A party asserting that there is no genuine dispute as to any material fact, or a party asserting that a genuine dispute exists, must support that assertion by "citing to particular parts of materials in the record" or "showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." I.R.C.P. 56(c).

> If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may:
>
> (1) give an opportunity to properly support or address the fact;
> (2) consider the fact undisputed for purposes of the motion;
> (3) grant summary judgment if the motion and supporting materials, including the facts considered undisputed, show that the movant is entitled to it; or
> (4) issue any other appropriate order.

I.R.C.P. 56(e).

The burden of proof is on the moving party to demonstrate the absence of a genuine issue of material fact. *Rouse v. Household Fin. Corp.*, 144 Idaho 68, 70, 156 P.3d 569, 571 (2007) (citing *Evans v. Griswold*, 129 Idaho 902, 905, 935 P.2d 165, 168 (1997)). "Once the moving party establishes the absence of a genuine issue of material fact, the burden shifts to the non-moving party" to provide specific facts showing there is a genuine issue for trial. *Kiebert v. Goss*, 144 Idaho 225, 228, 159 P.3d 862, 864 (2007) (citing *Hei v. Holzer*, 139 Idaho 81, 85, 73 P.3d 94, 98 (2003)). To do so, the non-moving party "must come forward with evidence by way of affidavit or otherwise that contradicts the evidence submitted by the moving party, and that establishes the existence of a material issue of disputed fact." *Chandler v. Hayden*, 147 Idaho 765, 769, 215 P.3d 485, 489 (2009) (citing *Kiebert v. Goss*, 144 Idaho 225, 228, 159 P.3d 862, 865 (2007)). "Circumstantial evidence can create a genuine issue of material fact. . . . However, the non-moving party may not rest on a mere scintilla of evidence." *Shea v. Kevic Corp.*, 156 Idaho 540, 545, 328 P.3d 520, 525 (2014) (quoting *Park West Homes, LLC v. Barnson*, 154 Idaho 678, 682, 302 P.3d 18, 22 (2013)).

> In determining whether material issues of fact exist, all allegations of fact in the record and all reasonable inferences from the record are construed in the light most favorable to the party opposing the motion. *City of Kellogg v. Mission Mountain Interests Ltd., Co.*, 135 Idaho 239, 240, 16 P.3d 915, 919 (2000). When a jury is to be the finder of fact, summary judgment is not proper if conflicting inferences could be drawn from the record and reasonable people might reach different conclusions. *State*

> *Dep't of Fin. v. Res. Serv. Co., Inc.*, 130 Idaho 877, 880, 950 P.2d 249, 252 (1997).

Edmondson v. Shearer Lumber Prod., 139 Idaho 172, 176, 75 P.3d 733, 737 (2003).

The moving party may also meet "the 'genuine issue of material fact' burden. . . by establishing the absence of evidence on an element that the nonmoving party will be required to prove at trial." *Dunnick v. Elder*, 126 Idaho 308, 311, 882 P.2d 475, 478 (Ct. App. 1994). "Such an absence of evidence may be established either by an affirmative showing with the moving party's own evidence or by a review of all the nonmoving party's evidence and the contention that such proof of an element is lacking." *Heath v. Honker's Mini-Mart, Inc.*, 134 Idaho 711, 712, 8 P.3d 1254, 1255 (Ct. App. 2000) (citing *Dunnick* at 311, 882 P.2d at 478).

> Once such an absence of evidence has been established, the burden then shifts to the party opposing the motion to show, via further depositions, discovery responses or affidavits, that there is indeed a genuine issue for trial, or to offer a valid justification for the failure to do so under [I.R.C.P. 56(d)]. *Sanders v. Kuna Joint School Dist.*, 125 Idaho 872, 874, 876 P.2d 154, 156 (Ct.App.1994) (alteration added).

Dunnick at 311, 882 P.2d at 478; *see also Heath* at 712, 8 P.3d at 1255.

The decision to grant or deny a motion to amend to add a prayer for punitive damages is reviewed under the abuse of discretion standard. *Rockefeller v. Grabow,* 136 Idaho 637, 647, 39 P.3d 577, 587 (2001); *Kuntz v. Lamar Corp.,* 385 F.3d 1177, 1187 (9th Cir. 2004) (Finding that the district court did not abuse its discretion in denying leave to amend on the grounds that Kuntz had not established a reasonable likelihood of proving the requisite "extremely harmful state of mind"). Appellate courts apply a four-prong standard for discretionary review: "whether the trial court (1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by the exercise of reason."

Lunneborg v. My Fun Life, 163 Idaho 856, 867, 421 P.3d 187, 198 (2018). The evidence is reviewed to determine whether there was sufficient evidence for the jury to find that a defendant acted with aggressive, fraudulent, malicious, or outrageous conduct. *See* I.C. 6-1604. Punitive damages are not favored in the law and should only be used in the most unusual and compelling circumstances. *Manning v. Twin Falls Clinic & Hosp.,* 122 Idaho 47, 52, 830 P.2d 1185, 1190 (1992).

III. ANALYSIS.

To provide historical context, this Court on May 5, 2021, denied Vertical Raise and Landers' Motion to Strike Snap's Motion to Amend to Add Punitive Damages, but in doing so, this Court postponed the hearing on Snap's motion for leave to amend complaint to allow a claim for punitive damages. The basis for Vertical Raise/Landers' motion to strike was that counsel for Vertical Raise/Landers did not have time to file additional briefing on Snap's motion regarding punitive damages, given the fact that trial was rapidly approaching. At that time, the two-week trial was scheduled to begin on May 10, 2021. Subsequently, Vertical Raise and Landers filed no responsive pleading opposing Snap's Motion to Amend to add Punitive Damages. As mentioned above, on May 12, 2021, this Court granted Snap's Motion to Amend to Add Punitive Damages. Since no order has been prepared, this Court at the end of this memorandum decision creates an order granting Snap's Motion to Amend to add Punitive Damages.

In regards to the cross-motions before this Court, this Court will first address Snap's Motion for Partial Summary Judgment. This Court will then address Vertical Raise's and Landers' renewed Motion for Partial Summary Judgment.

As a preliminary matter, this Court notes that all of Snap's submissions on Snap's Motion for Partial Summary Judgment are filed under seal.

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A. Snap's Motion for Partial Summary Judgment.

Regarding Snap's Motion for Partial Summary Judgment, this Court will first analyze Snap's motion as it pertains to its Tortious Interference with Contract claim followed by analysis of Snap's motion as it pertains to its Misappropriation of Trade Secrets claim.

1. Snap's Tortious Interference with Contract Claim Against Vertical Raise and Landers

This Court will first address Snap's Motion for Partial Summary Judgment for their Tortious Interference with Contract claim as it applies to all the contracts. Next, this Court will address Vertical Raise and Landers' specific legal arguments against summary judgment for tortious interference with contract as they pertain to: (1) Landers personal liability; (2) the California-based Contracts; (3) the Washington-based contracts; and (4) Vertical Raise and Landers' argument that summary judgment is improper because the contracts lack consideration.

a) Tortious Interference with Snap's Contracts

Snap argues that this Court should grant Snap's Tortious Interference with Contract Claim because no genuine issue of material fact remains regarding Snap meeting the four factors of a prima facia case for tortious interference with contract. This causes the burden to shift to Vertical Raise and Landers to prove "justification", and Vertical Raise and Landers have offered no evidence of "justification". Mem. in Supp. of Snap's Mot. for Summ. J. (the Memorandum is unnumbered, page 3-9). Snap argues that: (1) "It is undisputed Snap! had contracts with its Sales Representatives across the country"; (2) "Vertical Raise and Landers knew Snap!'s Sales Representatives had contracts with Snap! and that those contracts included non-compete, non-solicitation, and confidentiality provisions"; (3) "Vertical Raise and

Landers intentionally and improperly interfered with Snap!'s employment contracts"; (4) "Snap! has been – and is continuing to be -- harmed by Vertical Raise's and Landers' Conduct." *Id.* at 3, 4 and 7 (italics omitted). Snap summarizes their argument as follows:

> In summary, as a result of Paul Landers and Vertical Raise's actions (and inaction) the necessary consequence of recruiting Snap!'s employees in the same territory in which he or she worked while employed by Snap! for the same work, using the same customer lists, and selling fundraising services to the same teams he or she worked with for Snap! was an intentionally improper interference with Snap!'s employment agreements. *Bybee v. Isaac*, 145 Idaho 251, 259, 178 P.3d 616 (2008). Accordingly, no genuine issue of material fact exists as to Vertical Raise's intentional interference of Snap!'s employment contracts and Vertical Raise's and Landers' causing a breach of those contracts.

Id. at 7 (underlining in original).

Vertical Raise and Landers argue that as to the thirty-five non-California based former Snap representatives:

> First, in reviewing the Motion and its supporting materials, Plaintiff has failed to provide an executed agreement (containing the restrictive covenants at issue or otherwise) between itself and thirty-one (31) of these thirty-five (35) non-California based former Snap! representatives. Plaintiff cannot be allowed to assert a claim predicated under contract – and move for summary judgment by asserting there is no question of material fact to show the existence of such contract or the contractual terms at issue - if it has failed to even produce the underlying contract(s) at issue. Accordingly, Plaintiff's claim for tortious interference with contract patently fails for all but four (4) of the non-California based former Snap! representatives simply on the basis that Plaintiff cannot show the existence of an operative contract. *Drug Testing Compliance Grp., LLC*, 161 Idaho at 100, 383 P.3d at 1270, *citing Bybee*, 154 Idaho at 259, 178 P.3d at 624.
>
> Beyond the Motion's failure to introduce and reference an operative contract for all but four (4) of the non-California based former Snap! representatives, Plaintiff has additionally failed to provide any evidence establishing: (1) when these representatives were hired by Plaintiff and/or Defendant Vertical Raise; (2) the areas these former Snap! Representatives serviced for Plaintiff and/or Defendant Vertical Raise; and (3) the "Business Partners" purportedly serviced by these representatives while employed with Plaintiff. As such information is critical to the instant claims, Plaintiff is required to make an affirmative showing of the same in order to survive its burden of proof. As Plaintiff

has failed to do so, the Motion fails as a matter of law and should be rejected in its entirety for this reason alone.

Resp. to Pl. Snap's Mot. for Partial Summ. J. 14. Vertical Raise and Landers conclude:

> Simply stated, Plaintiff has presented no evidence establishing that each of these requirements were met with respect to any of the non-California based former representatives at issue in this case. Accordingly, as material questions of fact in this regard therefore remain, Plaintiff has not satisfied its requisite burden of proof and the Motion must accordingly be denied in its entirety in this regard and for this reason only.

Id. at 16.

In their reply brief Snap argues that:

> Confusingly, Defendants claim that Snap! has produced no evidence of an executed representative agreement while simultaneously citing a sworn declaration submitted by Snap! President Trevor Downs stating that particular listed individuals signed a Sales Representative Agreement with the relevant language. *See* Response at p. 7; Declaration of Trevor Downs in Support of Plaintiff's Motion for Partial Summary Judgment, ¶¶ 4, 6. Defendants repeatedly state that Snap! has not cited to contracts executed by the individuals in question but nowhere support the proposition that a copy of an executed employment contract is the only admissible evidence of that contract. Additionally, Snap! has included signed contracts for some representatives in the record. *See e.g.* Punitive Damages Decl. at Exs J, L. The rules governing motions for summary judgment allow factual propositions to be supported by "particular parts of materials in the records including [...] affidavits or declarations." I.R.C.P. 56(c)(1)(A). Snap! has met this evidentiary requirement and Defendants provide no evidence to controvert the sworn statements in Trevor Downs' declaration.

Reply in Supp. of Pl.'s Mot. for Summ. J. 10.

The Idaho Supreme Court has found that:

> Tortious interference with contract has four elements: (1) the existence of a contract; (2) knowledge of the contract on the part of the defendant; (3) intentional interference causing a breach of the contract; and (4) injury to the plaintiff resulting from the breach. *Idaho First Natl. Bank v. Bliss Valley Foods, Inc.*, 121 Idaho 266, 283–84, 824 P.2d 841, 858–59 (1991).

Com. Ventures, Inc. v. Rex M. & Lynn Lea Fam. Tr., 145 Idaho 208, 217, 177 P.3d 955, 964 (2008). In *Idaho First Nat. Bank v. Bliss Valley Foods, Inc.*, the Idaho Supreme Court found that "after the plaintiff has established a *prima facie* case, 'the burden is on

the defendant to prove justification.' *Idaho First Nat. Bank v. Bliss Valley Foods, Inc.*, 121 Idaho 266, 284, 824 P.2d 841, 859 (1991) (quoting *Barlow v. International Harvester Co.*, 95 Idaho 893, 522 P.2d 1114 (1974)). The Idaho Supreme Court in discussing the *Barlow* case within that *Idaho First* case, noted the following in footnote 15:

> With regard to justification for an interference, the *Barlow* case noted:
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> > " 'Unlike the law of defamation, this branch of the law [interference with contract] has not crystallized a complete set of definite rules as to the existence or non-existence of privilege. * * * The issue in each case is whether the actor's conduct is justifiable under the circumstances; whether, upon a consideration of the relative significance of the factors involved, his conduct should be permitted despite its expected effect of harm to another." Restatement of Torts § 767, comment a at 63 (1939). 'What is "unwarranted" interference depends on the facts of each case.' *Watson v. Settlemeyer,* 150 Colo. 326, 372 P.2d 453, 456 (1962). *See also Freed v. Manchester Service, supra* [165 Cal.App.2d 186], 331 P.2d [689] at 691–692 [1958]. When an action involving interference with contract is tried to a jury, it is ordinarily for the jury to determine whether the interference of the defendant was justified. *Mitchell v. Aldrich, supra,* [122 Vt. 19], 163 A.2d [833] at 837 [1960]; *Jackson v. O'Neill,* 181 Kan. 930, 317 P.2d 440, 443 (1957). "Otherwise justifiable conduct is rendered unjustified where improper means, such as defamation, are employed by the defendant. W.L. Prosser, Handbook of the Law of Torts § 129, pp. 936–37 (4th ed. 1971). *See Calbom v. Knudtzon, supra* [65 Wash.2d 157], 396 P.2d [148] at 151 [1964]."
>
> 95 Idaho at 893, 522 P.2d at 1114.

121 Idaho at 284, 824 P.2d at 859, n. 15.

This Court will apply the analysis laid out by the Idaho Supreme Court above. Thus, this Court must first look to see if Snap has established a prima facia case for tortious interference with contract. Following this determination, the burden of proof switches to Vertical Raise and Landers to show justification.

This Court agrees with Snap that they have provided evidence satisfying all four elements of a prima facia case for tortious interference with contract. A claim of tortious

interference with contract requires: (1) the existence of a contract; (2) knowledge of the contract on the part of the defendant; (3) intentional interference causing a breach of the contract; and (4) injury to the plaintiff resulting from the breach. *Idaho First Natl. Bank v. Bliss Valley Foods, Inc.,* 121 Idaho 266, 283–84, 824 P.2d 841, 858–59 (1991). Snap's declarations and exhibits have provided evidence satisfying all of the elements required above.

Regarding the first element, "existence of a contract", Vertical Raise and Landers' argue that no evidence has been presented that the named representatives were subject to or "executed representative — or 'employment' – agreement[s]." Resp. to Pl.'s Mot. for Partial Summ. J. 5-7. This is simply not true. Snap has provided the language of the contracts signed by the former Snap employees located within California and a list of the four people who signed such contracts (Decl. of Trevor Downs in Supp. of Pl.'s Mot. for Partial Summ. J. 6-7, ¶¶ 5-7; Am. Decl. of Counsel in Supp. of Mot. for Summ. J. Ex. D), as well as the contract language of former employees located outside California and a list of the 35 people who signed those contracts. Decl. of Trevor Downs in Supp. of Pl.'s Mot. for Partial Summ. J. at 2-5, ¶¶ 3-4. There is not an attached contract for every one of the 39 total Snap employees, but there are contracts of some of the Snap employees attached (Amended Decl. of Counsel in Supp. of Mot. for Summ. J., Ex. B, E. F, H, J, K., and Ex. D "Independent contractor agreement"), and Downs' testimony that each of these employees has signed such an agreement. Decl. of Trevor Downs in Supp. of Pl.'s Mot. for Partial Summ. J. 2-7, ¶¶ 3-7. Despite Vertical Raise's and Landers' objection to the contrary, the Declaration of Trevor Downs provides evidence to show the existence of the contracts and a copy of each individual signed contract is not required to show proof of their existence. Additionally, this Court finds that Vertical Raise and Landers have

provided no evidence to dispute Snap's evidence regarding the "existence of the contracts". For these reasons, this Court finds that Snap has satisfied the "existence of a contract" element and no genuine issue of material fact exists regarding the "existence of a contract" element.

As to the second element, "knowledge of the contract on the part of the defendant", there has been a myriad of evidence, provided by Snap, that Vertical Raise and Landers knew of the contracts ("Corrected Amended Facts" ¶ G.1), and this point does not appear to be contested in the briefing provided by Vertical Raise and Landers. For these reasons, this Court finds that the "knowledge of the contract on the part of the defendant" element has been met. Additionally, as this element is not disputed, this Court finds that no genuine issue of material fact exists regarding the element of "knowledge of the contract on the part of the defendant".

Regarding the third element, "intentional interference causing a breach of the contract", Vertical Raise and Landers argue that Snap has failed to articulate how any of the representatives breached their contracts. Resp. to Pl.'s Mot. for Summ. J. 6-7. Contrary to this assertion, Snap has provided an extensive amount of evidence that Vertical Raise and Landers' intentional interference caused a breach of Snap's former employees' contracts. Reply in Supp. of Pl.'s Mot. for Partial Summ. J. 11-13. Such evidence includes (taken from Snap's reply brief, with this Court's citation to the source of the evidence in bold):

- Vertical Raise and Landers knowingly recruited Snap!'s employees to work for Vertical Raise despite Vertical Raise's and Landers' knowledge that the Sales Representatives' work at Vertical Raise would violate Snap!'s non-compete and non-solicitation agreements if those Snap! Sales Representatives contacted, solicited, assisted in soliciting, and/or worked with Snap!'s Business Partners for Vertical Raise. Corrected Amended Statement of Undisputed Fa[c]ts in Support of Snap!'s Motion for Partial Summary Judgment ("Corrected Amended Facts") ¶ G.1.

[Amended Decl. of Counsel in Supp. of Mot. for Summ. J., Ex. D, H, I, J, and K]

- Vertical Raise and Landers knew that former Snap! Representatives had books of business they handled at Snap! and intended to target for Vertical Raise. *Id.* at ¶ J.a. **[Amended Decl. of Counsel in Supp. of Mot. for Summ. J., Ex. RR, 2]**

- The former Snap! Sales Representatives accessed Snap!'s Confidential Information, including client lists and other confidential customer information such as participation rates, commission rates, and upcoming non-public schedules, with Vertical Raise's knowledge and to Vertical Raise's benefit. *Id.* at ¶ J.c.

- Vertical Raise and Landers developed a scripted text to be used by Vertical Raise's representatives to target Snap! customers. *Id.* at ¶ J.d.

- Vertical Raise created the Belichick spreadsheet to directly target Snap! customers. *Id.* at ¶ J.d. **[Amended Decl. of Counsel in Supp. of Mot. for Summ. J., Ex. CC]**

- Vertical Raise hired so many ex-Snap! reps that the need for onsite training at Vertical Raise was made unnecessary. *Id.* at ¶ J.e. **[Amended Decl. of Counsel in Supp. of Mot. for Summ. J., Ex. AA]**

- Prior to the Court issuing the Preliminary Injunction in this case, Landers and Vertical Raise did not instruct former Snap! representatives that they should not violate their non-compete, non-solicit, and confidentiality provisions in their contracts. *Id.* at ¶ H. **[Amended Decl. of Counsel in Supp. of Mot. for Summ. J., Ex. T, pp. 154-57]**

- Vertical Raise and Landers knew or should have known that Vertical Raise's former Snap! Sales Representatives were obtaining and running campaigns they previously ran at Snap! based on commissions being paid to former Snap! Sales Representatives at Vertical Raise. *Id.* at ¶ J.f. **[Amended Decl. of Counsel in Supp. of Mot. for Summ. J., Ex. DD]**

- Vertical Raise and Landers had knowledge that Snap! has sought to enforce its former Sales Representatives in litigation based on their violations of their Sales Representative Agreements. *Id.* at ¶ G.2. **[Amended Decl. of Counsel in Supp. of Mot. for Summ. J., Ex. EE]**

- Vertical Raise and Landers know that Vertical Raise was temporarily enjoined in Washington from engaging in the very conduct at issue in this lawsuit. *Id.* at ¶ G.3. **[Amended Decl. of Counsel in Supp. of Mot. for Summ. J., Ex. S, p. 16]**

- Vertical Raise and Landers knew that these recruiting activities amounted to tortious interference. *Id.* at ¶ K.a. **[Amended Decl. of Counsel in Supp. of Mot. for Summ. J., Ex. FF]**

- Vertical Raise knew its actions/inaction were wrongful as to the former Snap! representatives from their own attorneys and a Washington Judge. *Id.* at ¶¶ K.a, b. **[Amended Decl. of Counsel in Supp. of Mot. for Summ. J., Ex. D and S]**

- Vertical Raise and Landers directed and facilitated the destruction of evidence and used other tactics in an attempt to cover up their wrongful conduct. *Id.* at ¶ K.d. **[Amended Decl. of Counsel in Supp. of Mot. for Summ. J., Ex. GG, HH, II, JJ and KK]**

- Vertical Raise and Landers knew that Snap! had sent multiple cease-and-desist letters related to former Snap! Sales Representatives—including Kyle Aratin, Bradly Clay, Paul Croghan, and Joseph Sanford—violating their Sales Representative Agreements. (Punitive Damages Decl., ¶¶ 17, 18, 19, 20, 21, Exs. P, Q, R, S, T.) **[Amended Decl. of Counsel in Supp. of Pl.'s Resp. to Defs.' Renewed Mot. for Summ. and in Supp. of Pl.'s Mot for Leave to Amend for a Claim for Punitive Damages, ¶¶ 17121, Ex. P, Q, R, S and T]**

Reply in Supp. of Pl.'s. Mot. for Partial Summ. J. 11-12.

The Idaho Supreme Court has found that:

> A plaintiff may show the defendant's interference with another's contractual relation is intentional if the actor desires to bring it about or "if he knows that the interference is certain or substantially certain to occur as a result of his action." *Highland Enter., Inc. v. Barker,* 133 Idaho 330, 340, 986 P.2d 996, 1006 (1999) (citing Restatement (Second) of Torts § 766B cmt. d (1977)). Intent can be shown even if the interference is incidental to the actor's intended purpose and desire "but known to him to be a necessary consequence of his action." *Highland Enter., Inc.,* 133 Idaho at 340, 986 P.2d at 1006 (citing Restatement (Second) of Torts § 766 cmt. j (1977)). In addition, for liability to arise from intentional interference with another's performance of a contract, that interference must be improper. *Jensen v. Westberg,* 115 Idaho 1021, 1027, 772 P.2d 228, 234 (Ct.App.1988) (citing Restatement (Second) of Torts § 766A cmt. e (1977)). Section 767 of the Restatement (Second) of Torts enumerates certain factors a court may consider to determine whether interference is improper. The Restatement provides:
>
> > In determining whether an actor's conduct in intentionally interfering with a contract or a prospective contractual relation of another is improper or not, consideration is given to the following factors:
> > (a) the nature of the actor's conduct,
> > (b) the actor's motive,

> (c) the interests of the other with which the actor's conduct interferes,
> (d) the interest sought to be advanced by the actor,
> (e) the social interests in protecting the freedom of action of the actor and the contractual interests of the other,
> (f) the proximity or remoteness of the actor's conduct to the interference and
> (g) the relations between the parties.
>
> Restatement (Second) of Torts § 767 (1979), *cited in Jensen,* 115 Idaho at 1027, 772 P.2d at 234. Weighing the above factors in each individual case involves a complex interplay between overlaying public interests. *Id.* In order for BECO to prevail on its claim, it must establish not only that J–U–B acted with the requisite intent to interfere with performance of the contract, but also that such intentional interference was improper.

BECO Const. Co. v. J-U-B Engineers, Inc., 145 Idaho 719, 723–24, 184 P.3d 844, 848–49 (2008).

Despite Vertical Raise and Landers' attempts to obfuscate some of the issues in their response, it is abundantly clear to this Court that Vertical Raise and Landers do not actually refute any of the factual assertions made by Snap as set forth above regarding the element of "intentional interference causing a breach of the contract". Specifically, Vertical Raise and Landers do not refute the fact that they "knowingly recruited Snap!'s employees to work for Vertical Raise despite Vertical Raise's and Landers' knowledge that the Sales Representatives' work at Vertical Raise would violate Snap!'s non-compete and non-solicitation agreements if those Snap! Sales Representatives contacted, solicited, assisted in soliciting, and/or worked with Snap!'s Business Partners for Vertical Raise." Corrected Amended Statement of Undisputed Facts in Support of Snap!'s Mot. for Partial Summ. J., Ex. G1. This undisputed fact on its face shows that Vertical Raise's and Landers' interference with the contracts at issue was intentional. For these reasons this Court finds that Vertical Raise's and Landers' actions were intentional under *BECO.*

As shown in *BECO*, the next step of the analysis regarding the element of "intentional interference causing a breach of the contract" is determining whether the breach was improper. Keeping in mind the factual assertions made by Snap regarding this element are undisputed, that undisputed evidence shows that the nature, motive and interest sought by Vertical Raise and Landers was a scheme to knowingly entice Snap employees to break their contracts with Snap in order to build a cadre of trained former Snap employees to work for Vertical Raise, and to utilize the client lists and industry knowledge of the poached Snap employees for the purpose of benefiting Vertical Raise's competing business in online fundraising. The interest of Snap would be to retain their workforce and protect their trade secrets from competitors. All of these factors weigh heavily in favor of finding Vertical Raise's and Landers' actions as improper. The final *BECO* factors do little to alleviate the improper nature of Vertical Raise and Landers' interference with the contracts. These final *BECO* factors in the balancing test are "the social interests in protecting the freedom of action of the actor and the contractual interests of the other,"... "the proximity or remoteness of the actor's conduct to the interference and" ... "the relations between the parties." *BECO Const. Co.* 145 Idaho at 723–24, 184 P.3d at 848–49

As described in *AMX Int'l, Inc. v. Battelle Energy Alliance LLC*, "the social interest in competition that underpins the prohibition against unreasonable noncompete agreements equally justifies protecting defendants who do business with former employees unfairly shackled by unreasonable noncompete agreements." 744 F. Supp. 2d 1087, 1093–94 (D. Idaho 2010). In the present case, this Court finds that Snap's restrictive covenants that bar former Snap employees from soliciting business from their former Snap clients in the same geographic area in which they worked for Snap does not unfairly shackle the former Snap employees under Idaho law. The number of high

school sports teams in Idaho and across each geographic area are vast, and the sports teams serviced by the former Snap employees is just a drop in the bucket of available clients. Additionally, no evidence has been provided by Vertical Raise and Landers regarding any justification, social or otherwise, for why they undertook their actions to interfere with Snap's employees' contracts. The undisputed facts show that Vertical Raise intentionally interfered with Snap's employee's contracts for the purpose of benefiting their competing business. For the reasons described above, this Court finds that the *BECO* factors weigh heavily in favor of finding that Vertical Raise and Landers' interference was improper. Therefore, this Court finds that the third element of intentional interference with contract, "intentional interference causing a breach of the contract", has been satisfied. For the reasons described above, this Court finds that no genuine issue of material fact exists regarding this element.

Regarding the fourth element for Intentional Interference with contract, "injury to the plaintiff resulting from the breach", Vertical Raise and Landers argue that "Plaintiff's unsubstantiated claim of harm - and the extent of damages set forth in pages 8-9 of the Motion – are purely conclusory and therefore deserving of outright denial. At the least, they are reflective of a question of material fact sufficient to defeat summary judgment." Resp. to Pl. Snap's Mot. for Partial Summ. J. 26-27.

Snap argues that:

> Defendants do not controvert Snap!'s expert opinion on this matter, other than to state without analysis that it is conclusory. Snap!'s expert reports are detailed analyses of financial data from both Snap! and Vertical Raise. (Amended Declaration of Counsel in Support of Plaintiff's Motion for Partial Summary Judgment, Ex. C.) This Court may properly consider Snap!'s expert as the opinion of a witness "qualified as an expert by knowledge, skill, experience, training, or education" who has "scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or determine a fact in issue." I.R.E. 702. Accordingly, Snap!'s damages are neither conclusory nor unsupported.

Reply in Supp. of Snap's Mot. for Partial Summ. J. 14.

This Court finds that Snap's claim of damages is not merely a conclusory statement, as argued by Vertical Raise and Landers. (see, Resp. to Pl.'s Mot. for Partial Summ. J. 26-27. In fact, Snap has provided extensive financial analysis by Harald G. Martin Jr. that shows, what may be obvious, that Snap's loss of employees to Vertical Raise and Snap's loss of contracts resulted in financial loss for Snap. Amended Declaration of Counsel in Support of Plaintiff's Motion for Partial Summary Judgment, Ex. C. For the reasons described above, this Court finds that Snap has met the requirements for proving a prima facia case regarding the element of damages. As to the specific amount of damages sought, this Court finds that an issue of material fact exists. This finding is due largely to the two competing amounts for damages offered by Snap in Snap's Declarations, and at this point, this represents an issue of fact for decision by a jury.

For the reasons described above, this Court finds that all four elements of a prima facie case of Tortious Interference with Contract have been met by Snap. The burden to prove justification shifts to Vertical Raise and Landers, and they have not provided any evidence to justify their actions. For these reasons this Court finds that no genuine issue of material fact remains regarding these issues.

As described above, while the facts regarding Snap's claim for Tortious Interference with Contract are not in dispute (except for the amount of damages), Vertical Raise and Landers do make several legal arguments as to why Summary Judgment on Snap's claim of tortious interference with contract should not be granted. These arguments will be considered by the Court below.

b) Landers' Personal Liability Regarding Snap's Claims

Vertical Raise and Landers argue that, "Specifically, Plaintiff has provided no

evidence establishing any alleged conduct by Defendants [sic] Landers beyond his role as a member of Vertical Raise as purportedly giving rise to the claims set forth in the Motion." Resp. to Pl. Snap's Mot for Partial Summ. J. 4.

Snap argues in their Reply brief that (again, with this Court's citation to any additional evidence in bold):

> Here, Snap! is not seeking to recover against Landers simply because he was the CEO and owner of Vertical Raise. Indeed, Landers was personally involved in and directed Vertical Raise's wrongful conduct. As outlined in greater detail in Snap!'s Memorandum in Support of its Motion for Partial Summary Judgment ("MPSJ Memo") it is undisputed that Landers personally participated in the following wrongful conduct by Vertical Raise:
>
> - Landers hired a data miner to develop a list of formerly run Snap! fundraising campaigns in 2017 before he started Vertical Raise (Declaration of Counsel in Support of Plaintiff's Reply in Support of Snap!'s Motion for Partial Summary Judgment ("Reply Decl."), ¶¶ 1, 2 Exs. A, B);
>
> - After starting Vertical Raise, Landers worked with Paul Croghan (the first Snap! Representative he hired away from Snap!) to bring Snap! representatives to Vertical Raise (Amended Declaration of Counsel in Support of Plaintiff's Response to Defendants' Renewed Motion for Summary Judgment and in Support of Plaintiff's Motion for Leave to Amend for a Claim for Punitive Damages ("Punitive Damages Decl.")), ¶¶ 43-45 **[Ex. PP, QQ and RR]**.
>
> - Landers directly recruited and hired numerous Snap! Sales Representatives and requested they get him copies of Snap!'s contracts with them, their Commission Statements, and their Commission Structures so he could learn and become informed as to the terms of those contracts, their campaigns (shown on the Commission Statements), and their compensation (*Id.* at Exs. G, J, K, L, M);
>
> - Because Landers was sent numerous Snap! contracts before hiring Snap! Representatives, he knew that those contracts included non-solicit and non-compete obligations to which the non-California Sales Representatives were bound and confidentiality obligations to which all Snap! Sales Representatives were bound (MPSJ Memo at § A(2));

- Despite knowing about these non-compete and non-solicit provisions, Landers provided Snap! campaign lists to the former Snap! Representatives so they could solicit Snap! Business Partners and take them from Snap! (*Id.* at § A(3); Punitive Damages Decl. at Exs. GG, HH, II, JJ, KK XX.)

- Landers knew that former Snap! Representatives had books of business they handled at Snap! and intended to target for Vertical Raise. (Corrected Amended Statement of Undisputed Facts in Support of Snap!'s Motion for Partial Summary Judgment ("Corrected Amended Facts"), ¶ J.a.) **[Am. Decl. of Counsel in Supp. of Pl.'s Mot for Partial Summ. J. Ex. RR, Z];**

- Landers created a script to target Snap! Business Partners and failed to instruct former Snap! Sales Representatives to not solicit Snap!'s Business Partners (*Id.* at ¶ J.c);

- Landers did not attempt any verification that the restrictive covenants were being observed. (*Id.* at ¶ H) **[also at Ex. T, pp. 154-57]**;

- Landers knew that Snap! had sent multiple cease-and-desist letters related to former Snap! Sales Representatives—including Kyle Aratin, Bradly Clay, Paul Croghan, and Joseph Sanford—who were violating their Sales Representative Agreements. (Punitive Damages Decl., **[Am. Decl. of Counsel in Supp. of Pl.'s Resp. to Defs.' Renewed Mot. for Summ. J. and in Supp. of Pl.'s Mot. for Leave to Am. For a Cl. For Punitve Damanges]** ¶¶ 17, 18, 19, 20, 21, Exs. P, Q, R, S, T.)

- Landers knew or should have known that Vertical Raise's former Snap! Sales Representatives were obtaining and running campaigns they previously ran at Snap! based on commissions being paid to former Snap! Sales Representatives at Vertical Raise. (Corrected Amended Facts at ¶ J.f.) **[Am. Decl. of Counsel in Supp. of Mot. for Summ. J. Ex. DD]**

- Landers had knowledge that Snap! has sought to enforce its former Sales Representatives in litigation based on their violations of their Sales Representative Agreements. (*Id.* at ¶ G.2.) **[Am. Decl. of Counsel in Supp. of Mot. for Summ. J. Ex. FF]**

- Landers knows that Vertical Raise was temporarily enjoined in Washington from engaging in the very conduct at issue in

this lawsuit. (*Id.* at ¶ G.3.) **[Am. Decl. of Counsel in Supp. of Mot. for Summ. J. Ex. S, p. 1b]**

- Landers knew that these recruiting activities amounted to tortious interference. (*Id.* at. ¶ K.a.) **[Am. Decl. of Counsel in Supp. of Mot. for Summ. J. Ex. FF]**

Reply in Supp. of Pl.'s Mot. for Partial Summ. J. 6-7.

This Court finds that because there is no dispute of material fact that Landers personally contributed to the wrongful conduct against Snap, Landers is personally liable regarding Snap's claim of Tortious Interference with Contract, as well as Misappropriation of Trade Secrets.

Idaho Code 30-25-304 reads:

> (a) A debt, obligation, or other liability of a limited liability company is solely the debt, obligation, or other liability of the company. A member or manager is not personally liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of the company solely by reason of being or acting as a member or manager. This subsection applies regardless of the dissolution of the company.
> (b) The failure of a limited liability company to observe formalities relating to the exercise of its powers or management of its activities and affairs is not a ground for imposing liability on a member or manager for a debt, obligation, or other liability of the company.

Vertical Raise and Landers cite Idaho Code §30-25-304 as supporting their contention that Landers should not be held personally liable, but this would only be true if Snap was trying to hold Landers liable based "solely by reason of being or acting as a member or manager [of an LLC]" as set forth in that statute. The Idaho Supreme Court has found that:

> "A director who personally participates in a tort is personally liable to the victim, even though the corporation might also be vicariously liable." *Eliopulos v. Knox*, 123 Idaho 400, 404, 848 P.2d 984, 988 (Ct. App. 1992). The same is true for corporate officers. *See, e.g.*, 18B Am. Jur. 2d *Corporations* § 1609 (2016) ("A director or officer of a corporation does not incur personal liability for its torts ... unless he or she has participated in the wrong, had direct personal involvement ... or authorized or directed that the wrong be done."). "A contrary rule would enable a director or officer of a corporation to perpetrate flagrant injuries and escape liability

> behind the shield of his or her representative character even though the corporation might be insolvent or irresponsible." *Id.*

Forbush v. Sagecrest Multi Fam. Prop. Owners' Ass'n, Inc., 162 Idaho 317, 332, 396 P.3d 1199, 1214 (2017). As mentioned above, Vertical Raise and Landers have made the bald assertion that, "Plaintiff has provided no evidence establishing any alleged conduct by Defendants [sic] Landers beyond his role as a member of Vertical Raise as purportedly giving rise to the claims set forth in the Motion." Resp. to Pl.'s Mot for Partial Summ. J. 4. Despite this assertion, this Court finds that Landers is not being held liable for tortious interference with contract simply as a result of him being a member/CEO of Vertical Raise. As shown above, Snap has provided a myriad of evidence that Landers has participated in the wrongful acts pertaining to Snap's claim of Tortious Interference with Contract. Vertical Raise and Landers have presented no evidence to contradict Snap's evidence of Lander's wrongful acts. Under I.C. §30-25-304 and *Forbush*, and for the reasons described above, this Court finds that Landers is liable regarding Snap's claim of Tortious Interference with Contract claim and Misappropriation of Trade Secrets claim. Therefore, this Court finds that no genuine issue of material fact remains regarding this issue.

c) Snap's Claim of Tortious Interference with contract regarding its California Based Representatives.

Vertical Raise and Landers argue that "the restrictive covenants purportedly in place through the respective employment agreement with the California-based representatives are void under well-established California law." Resp. to Pl. Snap's Mot. for Partial Summ. J. 5-6.

Vertical Raise and Landers cite to California case law in their argument that the California Sales Representative agreements are void. The California Supreme Court in *Edwards v. Arthur Andersen LLP* stated:

> Today in California, covenants not to compete are void, subject to several exceptions discussed briefly below.
>
> Section 16600 states: "Except as provided in this chapter, every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void." The chapter excepts noncompetition agreements in the sale or dissolution of corporations (§ 16601), partnerships (*ibid.;* § 16602), and limited liability corporations (§ 16602.5). In the years since its original enactment as Civil Code section 1673, our courts have consistently affirmed that section 16600 evinces a settled legislative policy in favor of open competition and employee mobility. (See *D'sa v. Playhut, Inc.* (2000) 85 Cal.App.4th 927, 933, 102 Cal.Rptr.2d 495.) The law protects Californians and ensures "that every citizen shall retain the right to pursue any lawful employment and enterprise of their choice." (*Metro Traffic Control, Inc. v. Shadow Traffic Network* (1994) 22 Cal.App.4th 853, 859, 27 Cal.Rptr.2d 573.) It protects "the important legal right of persons to engage in businesses and occupations of their choosing." (*Morlife, Inc. v. Perry* (1997) 56 Cal.App.4th 1514, 1520, 66 Cal.Rptr.2d 731.)

44 Cal. 4th 937, 945–46, 189 P.3d 285, 290–91 (Calif. 2008).

Snap argues that, "[e]nforceability of the underlying contract is not relevant to a tortious interference claim." Reply in Supp. of Snap's Mot. for Partial Summ. J. 8. Furthermore, Snap argues that, "Defendants' responses related to enforceability—including responses about California law, Washington law, and consideration—miss the mark and are directed toward a requirement that does not exist in Idaho law for a tortious interference with contract claim." *Id.*

Neither Snap nor Vertical Raise and Landers have provided the correct description of Idaho law regarding contracts deemed void *ab initio* in tortious interference with contract claims. The issue, as it relates to the California Contracts, revolves around the distinction between voidable contracts and contracts that are void *ab initio*. This distinction and how it relates to a claim of intentional interference with contract was outlined by the Idaho Federal District Court in *AMX Int'l, Inc. v. Battelle Energy Alliance*:

> "[p]rotection is extended against unjustifiable interference with contracts even though the contract is voidable or unenforceable in an adversary

> proceeding." *Barlow v. International Harvester Co.,* 95 Idaho 881, 522 P.2d 1102, 1114 (1974). But this protection does not extend to contracts void ab initio. *Id.* at 1114, n. 2. Contracts that are void ab initio are deemed never to have existed in the eyes of the law and cannot form the basis for a tortious interference action. *Thompson v. Ebbert,* 144 Idaho 315, 160 P.3d 754, 757 (2007). The threshold issue in this case, then, is whether an unreasonable covenant not to compete is void ab initio or simply voidable.
> No Idaho court has squarely answered this question. The Court must therefore predict how the Idaho Supreme Court would resolve the issue. *Air–Sea Forwarders, Inc. v. Air Asia Co.,* 880 F.2d 176, 186 (9th Cir.1989), cert. denied, 493 U.S. 1058, 110 S.Ct. 868, 107 L.Ed.2d 952 (1990).

744 F. Supp. 2d 1087, 1093 (D. Idaho 2010). The Court in *AMX* dealt with an Idaho contract containing a non-compete clause that "did not limit the restrictive covenants to only those clients with whom its employees had prior contact", and "failed to restrict the geographic area to those areas where the AMX employee provided services or had a significant presence or influence." *Id.* at 1095. The Court in *AMX* ultimately found that the non-compete clauses in the Idaho Contracts were void ab initio and therefore could not form the basis for a tortious interference with contract claim. *Id.* at 1096. In the case at hand, unlike in *AMX* which dealt with Idaho contracts, this Court must decide under California law whether the non-compete clauses in the California contracts render the contracts void *ab initio*. If such California contracts are deemed to be void *ab initio*, these contracts cannot form the basis for a tortious interference with contract claim. *Barlow v. Int'l Harvester Co.,* 95 Idaho 881, 893, 522 P.2d 1102, 1114 (1974) footnote 2. (see also void contracts generally, *Thompson v. Ebbert,* 144 Idaho 315, 160 P.3d 754, 757 (2007)).

> In *Edwards v. Arthur*, the California Supreme Court found that:
>
> Andersen's noncompetition agreement was invalid. As the Court of Appeal observed, "The first challenged clause prohibited Edwards, for an 18–month period, from performing professional services of the type he had provided while at Andersen, for any client on whose account he had worked during 18 months prior to his termination. The second challenged

> clause prohibited Edwards, for a year after termination, from 'soliciting,' defined by the agreement as providing professional services to any client of Andersen's Los Angeles office." The agreement restricted Edwards from performing work for Andersen's Los Angeles clients and therefore restricted his ability to practice his accounting profession. (See *Thompson v. Impaxx, Inc.* (2003) 113 Cal.App.4th 1425, 1429, 7 Cal.Rptr.3d 427 [distinguishing "trade route" and solicitation cases that protect trade secrets or confidential proprietary information].) The noncompetition agreement that Edwards was required to sign before commencing employment with Andersen was therefore invalid because it restrained his ability to practice his profession. (See *Muggill, supra,* 62 Cal.2d at pp. 242–243, 42 Cal.Rptr. 107, 398 P.2d 147.)

44 Cal. 4th 937, 948, 189 P.3d 285, 292 (2008).

The restrictive covenants in Snap's California-based contracts contain a confidentiality clause a non-compete agreement and a non-solicitation agreement. Corrected Amended Statement of Undisputed fact Ex. D (Independent Contractor Agreement); Am. Decl. of Counsel in Supp. of Mot. for Summ. J. Ex. D. Similar to *Edwards*, Snap's California employees were barred from soliciting customers that they serviced while working for Snap. *Id.* Additionally, even more broad than the contract in *Edwards*, there is a provision that barred former Snap employees from "Directly or indirectly engaging in any business competitive with Snap within the United States of America." *Id.* When comparing Snap's California-based non-competition clause and non-solicitation clause to those of *Edwards*, this Court finds that California's heightened standard renders them void *ab initio*. Snap's non-compete/non-solicitation clauses are, if anything, more restrictive than those found in *Edwards*. Additionally, non-competition agreements are invalid under section California Code § 16600, even if narrowly drawn, unless they fall within the applicable statutory exceptions of sections 16601, 16602, or 16602.5. *Edwards v. Arthur Andersen LLP*, 44 Cal. 4th at 955, 189 P.3d at 297. None of the exceptions apply to Snap's California non-competition and non-solicitation clauses. It is clear to this Court that Snap's California non-compete and non-solicitation

clauses are void *ab initio* under California Code § 16601 and California Case Law. Since this Court finds the non-compete and non-solicitation clauses void *ab initio*, these contracts cannot form the basis for a tortious interference with contract claim. *Barlow v. Int'l Harvester Co.,* 95 Idaho 881, 893, 522 P.2d 1102, 1114 (1974) Footnote 2. (see void contracts generally, *Thompson v. Ebbert,* 144 Idaho 315, 160 P.3d 754, 757 (2007)).

Despite this finding, this Court does find that a basis for tortious interference with contract claim regarding Snap's California contracts exists due Snap's "Confidentiality" clause in the California contracts. Corrected Amended Statement of Undisputed fact Ex. D (Independent Contractor Agreement). Snap's Confidentiality clause includes "customer lists and records" and "trade secrets". *Id.* This Court describes how the trade secrets in question are valid later in this opinion. For these reasons, this Court finds that no genuine issue of material fact remains regarding these issues.

d) The Washington Contracts and RCW 49.62

Vertical Raise and Landers argue that:

> Significantly, RCW 49.62.020 includes provisions rendering such restrictive covenants void and unenforceable under a number of circumstances. As explained by the U.S. District Court of the Eastern District of Washington in *Robins*, "noncompetition agreements are void and unenforceable unless they satisfy three statutory requirements." *Robins v. NuVasive, Inc.*, 2020 U.S. Dist. LEXIS 227313, *9 (E.D. Wash. Dec. 3, 2020), *citing* Wash. Rev. Code. § 49.62.010, *A Place for Mom v. Perkins*, 2020 U.S. Dist. LEXIS 136597, 2020 WL 4430997 at *5 (W.D. Wash. Jul. 31, 2020). First, at or before the employee's acceptance of the employment offer, the employer "must disclose the terms of the noncompete covenant in writing to the prospective employee, and, if the agreement becomes enforceable only at a later date due to the changes in the employee's compensation, the employer must specifically disclose that the agreement may be enforceable against the employee in the future." *Robins*, 2020 U.S. Dist. LEXIS 227313 at *9, *citing* Wash. Rev. Code § 49.62.020(1)(a)(i). Second, the employee's earnings must exceed $100,000.00. *Robins*, 2020 U.S. Dist. LEXIS 227313 at *9, *citing* Wash. Rev. Code § 49.62.020(1)(b). Third, the "employee's separation cannot

result from being laid off." *Robins*, 2020 U.S. Dist. LEXIS 227313 at *9, *citing* Wash. Rev. Code § 49.62.020(1)(c).8.

Simply stated, Plaintiff has presented no evidence establishing that each of these requirements were met with respect to any of the non-California based former representatives at issue in this case. Accordingly, as material questions of fact in this regard therefore remain, Plaintiff has not satisfied its requisite burden of proof and the Motion must accordingly be denied in its entirety in this regard and for this reason only.

Moreover, "[e]ven if these requirements are satisfied, the court must still consider whether enforcing the non-compete agreement is reasonable." *A Place for Mom v. Perkins*, 475 F. Supp. 3d 1217, 1227, 2020 U.S. Dist. LEXIS 136597 (W.D. Wash. Jul. 31, 2020), *citing Wood v. May*, 73 Wn.2d 307, 438 P.2d 587, 590 (1968). To determine such requisite reasonableness, "the court considers (1) whether the restraint is necessary to protect the employer's business, (2) whether it imposes on the employee any greater restraint than is reasonably necessary to secure the employer's interests, and (3) whether enforcing the covenant would offend public policy." *A Place for Mom*, 475 F. Supp. 3d at 1227, *citing Emerick v. Cardiac Study Ctr., Inc., P.S.,* 189 Wn. App. 711, 357 P.3d 696, 701 (Wash. Ct. App. 2015). Again, as Plaintiff has made no such showing of reasonableness, the Motion fails and must be rejected for this additional reason alone.

Def's Resp.l to Pl.'s Mot. for Partial Summ. J. 15-16.

In Reply Snap argues:

Defendants make the same argument with respect to Washington law, arguing that RCW 49.62 renders the non-solicitation and non-competition provisions in some of Snap!'s Sales Representative Agreements unenforceable. *See* Response at p. 14. As with the California agreements, Snap! is not seeking recovery under a breach of contract theory in its MSJ Motion and the enforceability of the underlying contract is not an element for a tortious interference claim. *Commercial Ventures*, 145 Idaho at 217, 177 P.3d at 964. Accordingly, this argument is not persuasive nor is it based in Idaho law.

Reply in Supp. of Snap's Mot. for Partial Summ. J. 9.

Revised Code of Washington 49.62.010 states:

(4) "Noncompetition covenant" includes every written or oral covenant, agreement, or contract by which an employee or independent contractor is prohibited or restrained from engaging in a lawful profession, trade, or business of any kind. A "noncompetition covenant" does not include: (a) A nonsolicitation agreement; (b) a confidentiality agreement; (c) a covenant prohibiting use or disclosure of trade secrets or inventions; (d) a covenant entered into by a person purchasing or selling the goodwill of a business or otherwise acquiring or disposing of an ownership interest;

or (e) a covenant entered into by a franchisee when the franchise sale complies with RCW **19.100.020**(1).

RCW 49.62.020 states:

> (1) A noncompetition covenant is void and unenforceable against an employee:
> (a)(i) Unless the employer discloses the terms of the covenant in writing to the prospective employee no later than the time of the acceptance of the offer of employment and, if the agreement becomes enforceable only at a later date due to changes in the employee's compensation, the employer specifically discloses that the agreement may be enforceable against the employee in the future; or
> (ii) If the covenant is entered into after the commencement of employment, unless the employer provides independent consideration for the covenant;
> (b) Unless the employee's earnings from the party seeking enforcement, when annualized, exceed one hundred thousand dollars per year. This dollar amount must be adjusted annually in accordance with RCW **49.62.040**;
> (c) If the employee is terminated as the result of a layoff, unless enforcement of the noncompetition covenant includes compensation equivalent to the employee's base salary at the time of termination for the period of enforcement minus compensation earned through subsequent employment during the period of enforcement.
> (2) A court or arbitrator must presume that any noncompetition covenant with a duration exceeding eighteen months after termination of employment is unreasonable and unenforceable. A party seeking enforcement may rebut the presumption by proving by clear and convincing evidence that a duration longer than eighteen months is necessary to protect the party's business or goodwill.

This Court finds that the restrictive covenants in the Washington contracts do not fall under a "noncompetition covenant" found in RCW 49.62.010 – RCW 49.62.020 because RCW 49.62.010(4) clearly defines a "noncompetition covenant" as: "A 'noncompetition covenant' does not include: (a) A nonsolicitation agreement; (b) a confidentiality agreement; (c) a covenant prohibiting use or disclosure of trade secrets or inventions".

The contracts signed by the former Snap employees included a non-competition clause, a non-solicitation clause, a confidentiality clause, and a covenant prohibiting use or disclosure of trade secrets. Corrected Statement of Undisputed facts Ex. E.,

page 3-4. This Court need not reach the analysis of whether the non-competition section is void under RCW 49.62.010 – RCW 49.62.020 because even if the non-competition section is found to be void, the non-solicitation, confidentiality, and covenant prohibiting use and disclosure of trade secrets clause are specifically carved out as not being covered by RCW 49.62.010 – RCW 49.62.020.

Vertical Raise and Landers cite to *Robins v. NuVasive, Inc.,* No. 2:20-CV-292-RMP, 2020 WL 7081588, at 4 (E.D. Wash. Dec. 3, 2020). Resp. to Pl. Snap's Motion for Partial Summ. J. 15-16. In the present case, it must first be noted that, unlike in *Robins*, this Court is not dealing with a breach of contract claim. Instead, this Court is dealing with a tortious interference with contract claim, but as shown above, under Idaho case law, there remains a lingering question of whether a void contract can form the basis for a tortious interference with contract claim. For this reason, this Court will analyze whether Snap's Washington non-solicitation clause is void under Washington law as suggested by Vertical Raise and Landers.

In *Robins*, the District Court found the non-compete clause in question to be invalid under the statute, and turned its analysis to the non-solicitation clause. No. 2:20-CV-292-RMP, 2020 WL 7081588, at 7. The Court in *Robins* held:

> Even if the statutory requirements were satisfied, which the Court finds that they are not, the Court still must consider whether enforcing the restrictive covenants is reasonable. *A Place for Mom v. Perkins*, 2020 WL 4430997 at *5. To decide whether a restrictive covenant is reasonable involves a consideration of three factors:
>
> (1) whether restraint is necessary for the protection of the business or goodwill of the employer;
> (2) whether it imposes upon the employee any greater restraint than is reasonably necessary to secure the employer's business or goodwill; and
> (3) whether the degree of injury to the public is such loss of the service and skill of the employee as to warrant nonenforcement of the covenant.
>
> *Emerick v. Cardiac Study Ctr., Inc., P.S.,* 357 P.3d 696, 701 (Wash. Ct. App. 2015). Since the noncompetition covenants are unenforceable

> pursuant to Chapter 49.62, the Court focuses its analysis on the reasonableness of the nonsolicitation obligations.

No. 2:20-CV-292-RMP, 2020 WL 7081588, at 7. In *Robins*, the District Court dealt with a motion by defendants, NuVasive/neXus, "to enjoin former employees ...from violating the restrictive covenants in their 'Confidential Information, Inventions, Nonsolicitation and Noncompetition Agreements.'" No. 2:20-CV-292-RMP, 2020 WL 7081588, at 1.

In the present case, this Court finds that the first factor of the *Robins* and *Emerick* reasonableness test is met because Snap's restraint on former Snap employees poaching Snap's clients is obviously "necessary for the protection of the business or goodwill of the employer" (Snap) because Snap's clients are essentially the sole source of revenue for Snap's business. This Court finds that the second element of the *Robins* and *Emerick* reasonableness test is met because barring former Snap employees from poaching their former clients does not impose "upon the employee any greater restraint than is reasonably necessary to secure the employer's business or goodwill." In order to retain their contracts with former clients, barring former employees from poaching their clients represents a minimum measure Snap could take to retain their business in this regard.

The third factor of the reasonableness test was found to be lacking in *Robins*. *Robins* involved former sales employees of defendant NuVasive/neXus, who left NuVasive/neXus for a competitor company. *Robins,* No. 2:20-CV-292-RMP, 2020 WL 7081588, at 1. These former sales employees allegedly solicited their former surgeon clients on behalf of their new company. *Id.* The District Court in *Robins* found that

> NuVasive and neXus do not provide any evidence to contradict that these surgeons' decisions to switch to Alphatec products was independent and not at the request of either Mr. Robins or Mr. Arthun. Furthermore, based on the potential commissions associated with these surgeon-customers, it is likely that Mr. Robins and Mr. Arthun were motivated to switch employers as a result of the surgeons' choice, rather than vice versa.

No. 2:20-CV-292-RMP, 2020 WL 7081588, at 10. In the present case, unlike in *Robins*, Snap has provided evidence that Vertical Raise and Landers deliberately induced former Snap employees to break their contracts in order to benefit Vertical Raise. Corrected Amended Statement of Undisputed Facts ¶ G.1. All of this evidence has been undisputed by Vertical Raise and Landers. Therefore, this Court finds that the third factor of reasonableness is clearly met.

For the reasons described above, this Court finds that the non-solicitation clause in the Washington contracts is reasonable under Washington law and can form a valid basis for Snap's tortious interference with contract claim, and this Court finds that no genuine issue of fact remains regarding these issues.

e) Consideration

Vertical Raise and Landers argue that "Although not referenced in Plaintiff's Motion or Moving Papers, at some point prior to Plaintiff's use of the *Sales Representative Agreement (At Will Employmnet)*, Plaintiff utilized an entirely different representative agreement as entitled Independent Contractor Agreement." Resp. to Pl.'s Mot. for Partial Summ. J. 21. Vertical Raise and Landers argue that the second agreement included different and more limiting restrictive covenants and Snap has not provided evidence of independent consideration supporting these additions. *Id.* For these reasons, Vertical Raise and Landers argue that the additional covenants are void. *Id.* As shown above, Vertical Raise and Landers have met the elements of a prima facia case for tortious interference with contract. The burden then shifts to the defendant, Vertical Raise and Landers to show justification. *Idaho First Nat. Bank v. Bliss Valley Foods, Inc.*, 121 Idaho 266, 284, 824 P.2d 841, 859 (1991)(quoting *Barlow v. International Harvester Co.*, 95 Idaho 893, 522 P.2d 1114 (1974)). Vertical Raise

and Landers have shown no proof by way of affidavit or otherwise showing any of the contracts lacked additional consideration. For this reason, this Court finds that no genuine issue of material fact exists regarding the question of Snap's employees' contracts lacking consideration.

For the reasons described above, this Court grants Snap's motion for summary Judgment on its tortious interference with contract claim because no genuine issue of material fact exists. The sole factor regarding this claim left for the jury's decision at trial is the amount of damages.

2. Snap's Misappropriation of Trade Secrets Claim Against Vertical Raise and Landers.

Construing a claim for misappropriation of trade secrets, the Idaho Supreme Court has found that:

> "To prevail in a claim brought under the ITSA, '[a] plaintiff must show that a trade secret actually existed.' " *La Bella Vita, LLC v. Shuler*, 158 Idaho 799, 353 P.3d 420, 428 (quoting *Basic Am., Inc. v. Shatila,* 133 Idaho 726, 734, 992 P.2d 175, 183 (1999)). Without this showing, there can be no misappropriation. *Id.* The ITSA defines a trade secret as:
>
> > [I]nformation, including a formula, pattern, compilation, program, computer program, device, method, technique, or process, that:
> > (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other 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. ...
>
> I.C. § 48-801(5). This Court has also taken direction from the Restatement of Torts section 757, which lists six additional factors that can be used to determine whether information is, or is not a trade secret. *Shatila,* 133 Idaho at 735, 992 P.2d at 184. These factors include
>
> > (1) the extent to which the information is known outside [the plaintiff's] business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken by [the business] to guard the secrecy of the information; (4) the value of the information to [the business] and [its] competitors; (5) the amount of effort or money expended by [the business] in developing the

> information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.
>
> *Id.* (quoting RESTATEMENT OF TORTS § 757, cmt. b (1939)). These factors are not required, but "address the issue of whether the information in question is generally known or readily ascertainable." *Id.*

Trumble v. Farm Bureau Mut. Ins. Co. of Idaho, 166 Idaho 132, 148-49, 456 P.3d 201, 217–18 (2019), *reh'g denied* (Jan. 30, 2020).

Snap argues that a trade secret exists and:

> From its inception, Snap! has compiled financial, sales, and business data from its fundraising campaigns and efforts for sports teams and other groups in a proprietary database ("Snap Database"). *Statement of Undisputed Facts*, ¶ D. In all, millions of data points were compiled. *Id.* Snap! experimentally varied the timing of campaigns, the type and duration of communication with potential donors, and the strategies employed in those campaigns. *Id.* Snap! worked with and hired multiple full-time data scientists to identify and interpret the statistically significant data it had gathered. *Id.* Snap! programmers and staff used the data to develop a set of data-driven strategies and techniques for maximizing the results of fundraising campaigns, which Snap! calls the Rep Attack Timeline or RAT. *Id.* The Snap Database used to create the RAT is updated on an on-going basis with new data. *Id.* The costs associated with this research and development totaled millions of dollars. *Id.*
>
> Based on the Declaration of Trevor Downs, this element is satisfied.

Mem. in Supp. of Snap's Mot. for Summ. J. 10 (unnumbered pages). This Court agrees with Snap that, "a trade secret (the Business Partners and campaign data maintained by Snap!) actually existed." *Id.* (italics omitted). Despite Vertical Raise and Landers assertion that no evidence of a true trade secret has been provided by Snap, this Court concludes that under *Trumble*, the Business Partners and campaign data constitutes a "trade secret". Snap has shown that they have spent years to accumulate this data on clients and that this data does not consist of a simple list of their current clients, but instead represents extensive and costly market data and scientific analysis of the data which provides insight into which campaigns should be perused and how to pursue them. *See* Statement of Undisputed Facts, ¶ D; and Decl. of Trevor Downs in Supp. of Pl.'s Mot

for Partial Summ. J. 8-11, ¶¶ 7-11. The Court specifically finds that it is undisputed that this kind of data accumulated by Snap is not generally available to the public. This element of the ITSA has been satisfied by Snap.

This Court also agrees with Snap that, "[t]he Business Partner lists and campaign data had 'independent economic value.'" Snap's Mot. for Summ. J. 10 (Italics omitted). On this point Snap argues:

> The value of these lists is undeniable. As a result of this ongoing-data collection, the Snap Database contains detailed information about campaigns run since Snap!'s inception, as well as campaigns that were canceled – and the reasons for such cancelations. *Statement of Undisputed Facts*, ¶ D. The identity of schools, teams, groups, and coaches or organizers, which is part of Snap!'s Campaign Data and is known to individual sales representatives, would allow a competitor to direct sales efforts to those customers who have already shown a willingness to use online donation fundraising and avoid those with a propensity to decline solicitations or to cancel campaigns. *Id.* A compilation of these identities and performance data for these schools, teams, groups and coaches within each locality and throughout the United States is is not available to anyone else in the fundraising industry and could not be ascertained without actually repeating the business experiences and years-long joint data collection efforts of Snap!'s personnel. *Id.*
>
> For each school, team, or coach, the Campaign Data stored on the Snap! Database allows future campaigns to be run more efficiently because some information is in place and can be reused. *Id.* The Campaign Data allows Snap!, through data analysis, to enhance and update its approach to specific campaigns; to optimize the types of donor communication methods for each campaign; to optimize the timing and content of automated follow-up communications to donors; and to forecast the results of future campaigns. *Id.* For example, campaigns with a history of lower participation can be identified with techniques to ensure higher future participation – and thus more funds raised. *Id.* Through these uses and analysis of the Campaign Data, Snap! is able to raise more money for its customers more efficiently and provide better service to its customers and their donors, which gives Snap! a competitive edge in seeking business from repeat and new customers. *Id.* Snap's ability to collect and securely manage campaign information at the Snap Business Partner level also allows Snap the ability to solicit previous campaign participants, effectively expanding the number of potential donors with each consecutive campaign. *Id.*
>
> Based on the above, this element is satisfied.

Id. 10-11. This Court is convinced by Snap's evidence of the 'independent economic

value" of the Business Partner lists and campaign data, and finds that this element of the ITSA has been met.

Finally, this Court finds that Snap has performed a reasonable effort to maintain the secrecy of the Business Partner lists and campaign data. Snap's Database is password protected and sales representatives signed an agreement advising them of the trade secret information and requiring them to protect this information. Reply in Supp. of Snap's Mot. for partial Summ. J. 19; Decl. of Trevor Downs in Supp. of Pl.'s Mot for Partial Summ. J. 11, ¶ 11. This issue is uncontroverted by Vertical Raise and Landers. This Court finds the final element of the ITSA has been met.

Vertical Raise and Landers cite to *Trumble* to support their assertion that a trade secret does not exist. Resp. to Pl. Snap's Mot for Partial Summ. J. 29-33. This Court finds that the facts in *Trumble* are distinguishable from those of the present case. The Court in *Trumble* found that the customer list (the Subject List) in *Trumble,* "does not constitute a trade secret because it was almost wholly generated from alternative and independent sources, it contained generally known information and Farm Bureau took few efforts to maintain its secrecy." *Trumble,* 166 Idaho at 150, 456 P.3d at 219. The Idaho Supreme Court noted:

> First, the Subject list was generated from alternative and independent sources. In *La Bella Vita*, the district court found the customer list may not have been a trade secret because the list could be generated from alternative and independent sources such as "cell phone and email contacts, church membership directories, social media connections, suggestions and referrals from family and friends, public phone books, online directories, internet searches, word of mouth, and use of referral cards. 158 Idaho at 808, 353 P.3d at 429. * * * Thus, customer lists generated from independent sources such as those identified do not automatically constitute trade secrets. *See id.* Here, the Subject List was mostly generated from Trumble's personal knowledge accumulated while working as an insurance agent as well as through contacts in his phone. Although around twenty names on the Subject List were compiled from old commission statements and calendars accessed when Trumble was working for Farm Bureau, most of the names included on the list were from

> Trumble's own alternative and independent sources.
>
> Second, the Subject List generally contains only contact information of individuals—their names and addresses. As briefly noted in *La Bella Vita*, contact information can be determined in many ways, even if involuntarily, making it essentially public information. *Id.* at 814, 353 P.3d at 435. Such public information cannot, on its own, constitute a trade secret.

166 Idaho at 150, 456 P.3d at 219.

As shown above, this Court has found that Snap's trade secrets consist of clients and information on clients that was generated from Snap using Snap's own efforts and analysis. Vertical Raise and Landers have not provided evidence that any of their clients generated this information from alternative and independent sources. Vertical Raise and Landers assert that the list of coaches and school officials is generally accessible information, but this Court finds that a simple contact list does not encompass the whole of what Snap's asserted trade secrets represent. While lists of schools, coaches and athletic directors are certainly available, Vertical Raise and Landers were targeting those specific schools, coaches and athletic directors they knew were looking for the services that Vertical Raise provided because they got all that information from the Snap employees that they had hired away from Snap, and Landers and Vertical Raise knew that these former Snap employees had that information from their employment with Snap, *which provided essentially the same services as Vertical Raise*. There was *value* to Vertical Raise in the information it obtained from Snap employees. The value was that it was not just a list of all schools, coaches and athletic directors; it was a list of schools, coaches and athletic directors *known to be currently or at least historically, looking for these exact services*. That isn't a list simply derived out of a directory. That is a list of schools, coaches and athletic directors who have or are needing a product which Vertical Raise sells, and the list was derived from Snap as a result of their efforts of selling the same product previously. There can be no doubt that Vertical Raise benefitted from the

work that Snap had done. This was a list Vertical Raise and Landers obtained directly from former Snap employees; it was not a list obtained from "alternative and independent sources" as described in *Trumble*. Additionally, unlike in *Trumble*, Snap has shown adequate measures taken to safeguard the Business Partners and campaign data. As shown above, this Court finds that no genuine issue of material fact exists regarding the existence of a trade secret in the form of the Business Partners and campaign data, as well as the economic value of the trade secret and Snaps' efforts to maintain secrecy of the trade secret. The remaining issue for this Court to decide upon regards whether Snap has proven that no genuine issue of material fact exists regarding Snap's assertion that Vertical Raise and Landers misappropriated Snap's Trade Secret.

The Idaho Supreme Court in *Trumble* held:

> When a plaintiff successfully establishes the existence of a trade secret, the plaintiff must also show that the defendant misappropriated the trade secret. *See* I.C. § 48-801. Misappropriation is defined as:
>
> (a) Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or
>
> (b) Disclosure or use of a trade secret of another without express or implied consent by a person who:
>
> A. Used improper means to acquire knowledge of the trade secret; or
>
> B. At the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was:
>
> i. Derived from or through a person who had utilized improper means to acquire it;
>
> ii. Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or
>
> iii. Derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or
>
> C. Before a material change of his position, knew or had reason to know that it was a trade secret and that knowledge of it has been acquired by accident or mistake.
>
> I.C. § 48-801(2). Improper means include "theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy. ..." I.C. § 48-801(1).

166 Idaho at 149, 456 P.3d at 218.

Snap argues that:

> Vertical Raise and Landers obtained Snap!'s confidential information, including information in the Snap! Database and the information that all of the former Snap! representatives had related to their campaigns and Snap! and the Snap! database. *Statement of Undisputed Facts,* ¶ H, I. Vertical Raise and Landers obtained this information through improper means by knowingly recruiting and hiring Snap!'s former employees in violation of that employee's covenant against competition and non-solicitation. *Magic Valley v. Meyer*, 133 Idaho 110, 115, 982 P.2d 945 (1999). Additionally, Vertical Raise and Landers knew that the Independent Contractors poached from Snap! were subject to confidentiality agreements and that the disclosure of the defined confidential information was not to be disclosed. *Statement of Undisputed Facts*, ¶ G.

Mem. in Supp. of Snap!'s Mot. for Partial Summ. J. (unnumbered page 12).

Vertical Raise and Landers argue that "Plaintiff has failed to provide any evidence that Defendants engaged in actionable misappropriation as recognized under Idaho Law, the Plaintiff's arguments in this regard – as set forth in the Motion and Memorandum – must be rejected in their entirety." Resp. to Pl.'s Mot. for Partial Summ. J. 33.

The Idaho Supreme Court in *Trumble* held:

> Even if the list were a trade secret, Farm Bureau is also required to prove Trumble misappropriated its trade secrets in order to establish a successful ITSA claim. Merely using information obtained during his association with Farm Bureau in a new capacity does not rise to the level of misappropriation. *Northwest Bec-Corp v. Home Living Service,* 136 Idaho 835, 839, 41 P.3d 263,267 (2002) (explaining that the legislature did not intend the ITSA to be read so broadly that merely hiring a competitor's employee constitutes acquiring a trade secret because employees will naturally take with them the skills, training and knowledge acquired from previous employment). Nor is there any evidence in the record that the Subject List was acquired through improper means. Farm Bureau made no allegation of theft, bribery or misrepresentation. Its argument is founded on Trumble breaching a duty to maintain secrecy. As discussed directly above, Farm Bureau did not take reasonable efforts to maintain secrecy. Even so, the district court found that the Agent Contract provided a specific list of forbidden activities that a terminated agent could not participate in for a period of ninety days. Thus, the district court found that this provision signified that after the ninety days had passed, Trumble was free to engage in any of the listed activities without

> breaching the Agent Contract. Trumble adhered to the ninety-day term in the Agent Contract and thus there was no evidence of breach to maintain secrecy. Farm Bureau had the duty "to present evidence that demonstrated there was a genuine issue of material fact in order to survive summary judgment." *Id.* at 841, 41 P.3d at 269. It failed to do so. Summary judgment in Trumble's favor was proper on the misappropriation claim.

166 Idaho at 151, 456 P.3d at 220.

This Court agrees with Snap's argument above. Unlike in *Trumble*, whose case dealt with a misappropriation of trade secrets claim against a former employee, the present case involves a third-party company, Vertical Raise and Landers who hired those former employees from Snap. The undisputed evidence shows that Vertical Raise and Landers actively sought out and encouraged Snap employees to breach their contracts and bring their clients to Vertical Raise, as well as all of their knowledge and experience in dealing with those clients. That knowledge and experience included not only who those clients were, but a host of information about those clients, and Snap's pricing regarding those clients. Corrected Amended Statement of Undisputed Facts ¶ G, I, J, K. All of this undisputed evidence shows that Vertical Raise and Landers had misappropriated Snap's trade secrets, but there really is a smoking gun in this regard that shows a former Snap employee, Travis Tiner, sent Snap's trade secrets to Vertical Raise and Landers, and Vertical Raise and Landers used the trade secrets to further their business. Corrected Amended Statement of Undisputed Facts 12-13. "Mr. Tiner accepted Vertical Raise's and Landers' offer making it clear that he would be bringing his 'book of business' worth $2 million to Vertical Raise." *Id.* at 12, citing Duke Decl. Ex. U, ¶ 22 and Ex. W. "Mr. Tiner then remained at Snap! for another full month while sending confidential information to Landers and Vertical Raise, including his confidential Sales Representative Agreement and confidential payment information." *Id.* An email Exchange between Paul Landers and Travis Tiner in late June 2018

shows negotiations with Tiner to break his contract with Snap and join Vertical Raise, bringing "a book of business worth nearly $2[million]." *Id.* (citing Amended Decl. of Counsel Ex. U, W). The email chain also shows a concern by Tiner regarding the timing of him leaving Snap to make sure Snap does not have a chance to put someone else in charge of managing the clients Tiner was managing for Snap before he can bring them to Vertical Raise. Amended Decl. of Counsel Ex. W. Finally, on July 18, 2018, before Tiner left Snap, he requested and received from Snap! "a list of all Snap customers in Arizona containing the names, emails, and phone numbers of customers, as well as information about the performance of the campaigns Snap had run in Arizona." Corrected Amended Statement of Undisputed Facts 12-13 (citing Amended Decl. of Counsel Ex. U,V). Tiner resigned from Snap on August 1, 2018, and signed an agreement with Vertical Raise the same day. Amended Decl. of Counsel Ex. X, page 91-93. Next, in perhaps the most flagrantly condemning move possible, "[t]hat same day, Vertical Raise customer support sent an email to every person included on the list of Snap!'s Arizona Business Partners he obtained in July 2018 – in the same order that they appeared on the customer list obtained from Snap." Corrected Amended Statement of Undisputed facts 13 (citing Amended Decl. of Counsel Ex. Y).

This undisputed evidence clearly shows that Vertical Raise and Landers misappropriated Snap's trade secrets under the factors set forth in *Trumble*. Vertical Raise and Landers acquired Snap's trade secrets through Tiner, and Tiner breached his duty of maintaining Snap's trade secret. The undisputed evidence shows that Vertical Raise induced Tiner to breach his duty of secrecy. Additionally, the undisputed evidence shows Vertical Raise and Landers knew or should have known that that the trade secret was derived from or through Tiner and that Tiner owed a duty to Snap to maintain its secrecy or limit its use.

For the reasons described above, this Court finds that no genuine issue of material fact exists regarding Snap's Partial Motion for Summary Judgment regarding Snap's Misappropriation of Trade Secrets claim.

For the same reasons as described above regarding the amount of damages for Snap's claim of Tortious Interference with Contract claim, this Court finds that a genuine issue of material fact remains regarding the Issue of the amount of damages for Snap's Misappropriation of Trade Secrets claim.

B. Motion for Partial Summary Judgment by Vertical Raise and Landers.

On April 7, 2021, Landers and Vertical Raise filed their Defendants' Renewed Motion for [Partial] Summary Judgment, and a Notice of Hearing setting oral argument on such motion for May 5, 2021. Landers and Vertical Raise then moved that hearing to May 12, 2021. Landers and Vertical Raise did not file a memorandum contemporaneous with that motion. In that motion, Paul Landers has moved for summary judgment against Snap on all counts, and Vertical Raise has moved for summary judgment against Snap on all counts except Count I, and Count II. Def.'s Renewed Mot. for [Partial] Summ. J. 2. Reviewing the previously filed Defendants' Statement of Undisputed Facts in Support of Motion for Summary Judgment (page 2) and Defendants' Memorandum in Support of Motion for Summary Judgment (page 3), it is clear defendants view Count I as Snap's Tortious Interference of Contract claim, and Count II as Snap's Tortious Interference with Prospective Business Advantage claim. For clarity, those two claims have been enumerated by Snap in its Complaint as Count V and Count VI (and Count VI is actually titled Tortious Interference with Prospective Economic Advantage). Complaint and Demand for Jury Trial filed December 10, 2019, pages 16-18, ¶¶ 60-80; First Amended Complaint and Demand for Jury and Request for Injunctive Relief, filed September 23, 2020, pages 18-19, ¶¶ 73-87; Second

Amended Complaint and Demand for Jury Tial and Request for Injunctive Relief, (soon to be filed) pages 18-19, ¶¶ 73-87.

Since no contemporaneous memorandum was filed by Landers and Vertical Raise, the Court has reviewed the Defendants' Motion for Summary Judgment, Defendants' Memorandum in Support of Motion for Summary Judgment, a Declaration of Counsel in Support of Defendants' Motion for Summary Judgment, and the Defendants' Statement of Undisputed Facts in Support of Motion for Summary Judgment, all filed back on January 26, 2021. That motion was denied at oral argument on February 25, 2021, and this Court found genuine issues of material fact remained as to all counts in Snap's Complaint. That initial motion for summary judgment filed by Landers and Vertical Raise is difficult to understand. At first it starts as being based entirely upon Snap's alleged non-compliance with discovery. The "Introduction" section of the opening memorandum filed by Landers and Vertical Raise reads in its entirety:

> Vertical Raise propounded written discovery relevant to each element within each of the 8 causes of action contained in Snap's unverified First Amended Complaint upon which Snap will bear the burden of proof at trial. Snap responded with unverified answers and responses to Vertical Raise's written discovery that are wholly deficient and fail to present evidence regarding Snap's 8 causes of action sufficient to present a question of material fact to survive summary judgment under Rule 56(c). Snap had notice that Vertical Raise would be filing its motion for summary judgment as previously
> scheduled for December 31, 2020 and had previously reserved a hearing date of January 14, 2021 to bring a Rule 56(d) motion in response to same. Throughout this time, Snap failed to supplement its discovery responses to produce evidence to support its numerous causes of action.
>
> While Vertical Raise anticipates Snap will present materials requested in discovery in opposition to this motion that may create a question of fact, in part, as to Snap's tortious interference claims, there are no questions of fact as to Snap's remaining claims to prevent this Court from granting Vertical Raise's motion for summary judgment by dismissing Landers and Counts III-VIII of Snap's First Amended Complaint.

Def.'s Mem. in Supp. of Mot. for Summ. J. 2. Following that introduction, the memorandum submitted by Landers and Vertical Raise then focuses primarily on legal argument, with little argument on any lack of admissible evidence. *Id.* 2-18.

On April 21, 2021, Snap filed under seal its Response to Defendants' Motion for Summary Judgment and Declaration of Counsel in Support of Plaintiff's Response to Defendants' Renewed Motion for Summary Judgment and in Support of Plaintiff's Motion for Leave to Amend For a Claim for Punitive Damages. On April 27, 2021, Snap filed an Amended Declaration of Counsel in Support of Plaintiff's Response to Defendants' Renewed Motion for Summary Judgment and in Support of Plaintiff's Motion for Leave to Amend For a Claim for Punitive Damages.

Incredibly, no reply memorandum was ever filed by Landers and Vertical Raise prior to oral argument on May 12, 2021. The Court has gone back and re-read the Defendants' Reply Memorandum in Support of Motion for Summary Judgment filed back on February 16, 2021.

In its memorandum, Snap notes that the claim by Landers and Vertical Raise back on January 26, 2021, was false when written, and is false at the present time as Snap has continued to supplement its discovery responses. Resp. to Def.'s Mot. for Summ. J. 2-3. Since Landers and Vertical Raise have filed nothing in response, that claim by Snap is uncontradicted.

It is axiomatic that because Landers and Vertical Raise have submitted no new evidence and no real argument following this Court's February 25, 2021, denial of their motion for summary judgment, the "renewed" motion for [partial] summary judgment must be denied at this time. It is. Nothing really changed in the last four months.

It should come as no surprise that since this Court is presently granting Snap's motion for summary judgment against Landers and Vertical Raise as to Snap's claims

of Tortious Interference with a Contract (Count V) and Misappropriation of Trade Secrets (Count VII), the Court denies the renewed motion for summary judgment filed by Landers and Vertical Raise on those two counts. Not only has Landers and Vertical Raise failed to submit admissible evidence to support summary judgment in their favor on those claims, they have failed to submit admissible evidence sufficient to raise a question of material fact as to the elements of those claims, save for the amount of damages. Snap extensively briefed why Landers' and Vertical Raise's summary judgment motion should be denied as to Count VII, misappropriation of trade secrets. Resp. to Def.'s Mot. for Summ. J. 6-12. This Court finds all legal argument and assertions of fact contained therein to be valid.

As to the remaining claims of Snap in its First Amended Complaint and Demand for Jury Trial and Request for Injunctive Relief, Count VI – Tortious Interference with Prospective Economic Advantage, Count VIII - Common Law Unfair Competition, Count IX - Idaho Competition Act, Count X - California Unfair Competition Law, Count XI - Civil Conspiracy, and Count XII - Idaho Consumer Protection Act, the renewed motion for partial summary judgment by Landers and Vertical Raise must be denied.

Counsel for Snap failed to address Count VI – Tortious Interference with Prospective Economic Advantage, in its response memorandum. However, that does not mean Landers and Vertical Raise prevail on their motion for summary judgment on this claim. Counsel for Landers and Vertical Raise correctly note that *Trumble* sets forth the elements for this claim:

> To set forth a prima facie tortious interference with prospective business advantage claim, Snap bears the burden of proof on the following elements:
>
> "(1) [T]he existence of a valid economic expectancy, (2) knowledge of the expectancy on the part of the interferer, (3) intentional interference inducing termination of the expectancy, (4) the interference was wrongful by some measure beyond the fact of the

> interference itself, and (5) resulting damage to the plaintiff whose expectancy has been disrupted."
> *Trumble v. Farm Bureau Mut. Ins. Co.*, 456 P.3d 201, 2019 Ida. LEXIS 231.

Defs.' Mem. in Supp. of Mot. for Summ J. 5. Counsel for Landers and Vertical Raise obliquely conclude, "Travis Tiner did not violate the terms of his sales representative agreement with Snap. See Exhibit I to Decl. of Counsel, at ¶ 10. Consequently, there is no basis upon which to support Snap's tortious interference claim against Defendants." *Id.* at 6. Exhibit I is a Declaration of Travis Tiner prepared for a different lawsuit in which Tiner claims he "completely honor[ed] his 18-month non-competition obligations to Snap." Decl. of Counsel in Supp. of Defs.' Mot for Summ. J, Ex. I, 2, ¶ 8. The problem with this argument is Tiner is not even mentioned by name as former Snap employees to breach their obligations to Snap. Former Snap employees Bradley Clay and Joseph Sanford are the named persons in this cause of action. First Am. Compl. and Demand for Jury Trial, 20 ¶¶ 88-101.

Next, counsel for Landers and Vertical Raise argues that, "Snap's tortious interference claims or claims arising out of Clay and Sanford are barred by res judicata." Defs.' Mem. in Supp. of Mot. for Summ J. 6-7. After reciting the applicable case law regarding res judicata, counsel for Landers and Vertical Raise note the State of Washington lawsuit against Clay and Sanford. However, counsel for Landers and Vertical Raise does not even make the argument that a claim for tortious interference was made in that lawsuit, or that any decision was made on the merits in that lawsuit. In fact, counsel for Landers and Vertical Raise notes just the opposite, "Snap's claims against Clay were dismissed with prejudice following Clay's discharge from bankruptcy and Snap has stipulated to dismiss its claims against Sanford." *Id.* at 7. This Court specifically finds that res judicata does not apply given the present state of the evidence

before this Court.

Next, counsel for Landers and Vertical Raise argues, "Snap's tortious interference claims do not apply to its former sales representatives located in California." *Id.* The Court has addressed this issue above. The Court found that Snap's California non-compete and non-solicitation clauses are void *ab initio* under California Code § 16601 and California Case Law and, thus, these contracts cannot form the basis for a tortious interference with contract claim, but that a basis for tortious interference with contract claim regarding Snap's California contracts exists due to Snap's "Confidentiality" clause in the California contracts.

Finally, counsel for Landers and Vertical Raise argues that Landers is not liable pursuant to the Idaho Uniform Liability Act, Idaho Code § 30-25-304. Defs.' Mem. in Supp. of Mot. for Summ J. 8-9. This Court has addressed this above as well. This Court found that Vertical Raise and Landers' claim that Idaho Code §30-25-304 supports their claim that Landers should not be held personally liable would only be true if Snap was trying to hold Landers liable based "solely by reason of being or acting as a member or manager [of an LLC]" as set forth in that statute. This Court also found that Landers is not being held liable for tortious interference with contract simply as a result of him being a member/CEO of Vertical Raise, as Snap has provided a myriad of evidence that Landers has participated in the wrongful acts pertaining to Snap's claim of Tortious Interference with Contract. Under I.C. §30-25-304 and *Forbush*, and for the reasons described above, this Court finds that Landers is liable regarding Snap's claim of Tortious Interference with Contract claim and Misappropriation of Trade Secrets claim. Therefore, Landers' and Vertical Raise's motion for summary judgment as to Snap's Count VI – Tortious Interference with Prospective Economic Advantage is denied.

Landers and Vertical Raise argue, again obliquely, "Snap has failed to support its common law unfair competition claim and consequently, Count IV [the Court uses Count VIII, the numbering used by Snap in is various Complaints] of Snap's *FAC* [First Amended Complaint] must be dismissed." That is it. That is the entirety of the argument by Landers and Vertical Raise. Snap points out there is a material issue of fact as to the elements of common law unfair competition. Resp. to Defs.' Mot. for Summ. J. 12-13. Snap's sales representatives were given access to Snap's Database including Snap's Business Partners, campaign history, record of outreach and other data reflecting Snap's successful fundraising with a specific Business Partner. *Id.* at 12, citing Duke Joint Decl. Ex. F. Vertical Raise, through Snap's former sales representatives, used the knowledge gained from Snap's Database to unlawfully solicit Snap's Business Partners. *Id.* at Ex. H, I. From its inception, Vertical Raise, whose leadership includes multiple prior Snap personnel, has sought to build its business by recruiting Snap employees in knowing violation of enforceable restrictive covenants in the former Snap employees' agreements. *Id.* at 13, Ex. N, O. Y-BB. Landers and Vertical Raise directly targeted Snap's sales representatives who had significant books of business intending for those sales representatives to target that book of business for Vertical Raise. *Id.* at Y-BB. Vertical Raise continued this improper conduct despite Snap sending cease-and-desist letters to Landers and Vertical Raise, filing this lawsuit, and obtaining a preliminary injunction against it and its independent contractors in Washingon. *Id.* at Ex. P-U, V, W. Snap's former sales representative have solicited and stolen Snap's Business Partners for Vertical Raise, resulting in lost profits to Snap in an amount of $1,199,437.00 and unjust enrichment to Vertical Raise in an additional amount of $70,427.00. *Id.* at Ex. X ¶18, CC ¶28. Landers' and Vertical Raise's motion for summary judgment as to Snap's Count IV – common law unfair competition claim is

denied.

Landers and Vertical Raise cite at length case law interpreting the Idaho Competition Act. Defs.' Mem. in Supp. of Mot. for Summ. J. 12-15. Landers and Vertical Raise again obliquely state:

> Snap's *FAC* fails to include allegations to show standing under 15 U.S.C. § 1 (and therefore, the ICA); fails to include any allegations re: the relevant market and market power as required under 15 U.S.C. § 1 (and the ICA); and fails to include any allegations that Vertical Raise's alleged conduct has caused a reduction of competition in the market in general. Snap failed to produce any materials in response to Vertical Raise's discovery to shore up such defects.
>
> Count V of Snap's FAC must be dismissed.

Id. at 15. Snap points out there is a material issue of fact as to the elements of the Idaho Competition Act. Resp. to Defs.' Mot. for Summ. J. 14-15. Snap discusses the following material issues of fact. Landers and Vertical Raise's "recruiters" targeted current and former Snap sales representatives to lessen the costs associated with recruiting and training. Duke Joint Decl. Ex. N, O. Y-BB. Landers and Vertical Raise's job postings sought individuals with fundraising "books of business" to build upon, indicating that Vertical Raise expected former Snap sales representatives would use their books of business to Vertical Raise's benefit. *Id.* at Ex. Y-BB. Landers created a script for its sales representatives he recruited from Snap to get Snap's Business Partners to switch from Snap to Vertical Raise. *Id.* at Ex. DD. Travis Tiner, Vertical Raise's head recruiter, sent Vertical Raise's sales representatives an email with a script to use to steal Snap's Business Partners under the guise of "converting" them to Vertical Raise (*Id.* at Ex. EE) and he acknowledged to Landers and Paul Croghan that a number of Vertical Raise's recent hires "brought a book of business with them." *Id.* at Ex. FF. Landers and Vertical Raise, on a weekly basis, sent data scraped from Snap's website to its sales representatives with the instruction to "steal" the fundraisers from

Snap. *Id.* at Ex. GG-KK. Vertical Raise's current marketing tool, "The Belichick" includes a list of Snap's customers and the tool fails to include any other competitor's information. *Id.* at Ex. MM. Snap has presented evidence from Vertical Raise's own documents that show a genuine issue of material fact exists as to whether Vertical Raise's actors engaged in an unlawful conspiracy under Idaho Code § 48-102. Landers' and Vertical Raise's motion for summary judgment as to Snap's Count XII – Idaho's Competition Act claim is denied.

As to the California Unfair Competition Act, Landers and Vertical Raise simply contend that Snap has failed to present any evidence supporting that claim, and make the legal argument that the Act only provides equitable relief which Snap does not claim. Defs.' Mem. in Supp. of Mot. for Summ. J. 15-16. Snap states the Act provides restitution as well as injunctive relief and that questions remain as to Paul Croghan's classification as an "independent contractor" under that Act. Resp. to Defs' Mot. for Summ. J. 15-18. The Court finds an issue of material fact exists as to whether Croghan is or is not an "independent contractor", given the evidence and the law set forth in the Supreme Court of California case *Dynamex Operations W. v. Superior Ct.*, 4 Cal. 5th 903, 917, 416 P.3d 1, 7 (Calif. 2018). Landers' and Vertical Raise's motion for summary judgment as to Snap's Count X – California Unfair Competition Act claim is denied.

As to Snap's claim of Civil Conspiracy, Vertical Raise and Landers claim that such claim is not a claim for relief, and that an agent cannot conspire with his or her principal. Defs.' Mem. in Supp. of Mot. for Summ. J. 16. As to the latter point, Snap argues a genuine issue of material fact exists "as to whether Landers, as an individual, conspired with Pareto Recruiting, LLC to tortuously interfere with Snap!'s Business Partners and Snap!'s Sales Representatives." Resp. to Defs.' Mot. for Summ. J. 19-20.

Snap claims its evidence as to Civil Conspiracy is as follows. Vertical Raise, along with Landers, as an individual, have worked to hire 39 of Snap's sales representatives. Duke Joint Decl. Ex. F. These sales representatives signed agreements with Snap to keep Snap's confidential information confidential, to not solicit Snap's Business Partners, and to not compete with Snap's business, either directly or indirectly, for eighteen months. *Id.* Landers requested and received the former Snap's sales representatives' agreements with Snap. *Id.* at Ex. I-M. Landers targeted Snap sales representatives as "hot candidates." *Id.* at Ex. PP. Landers received a list of "X-Snap Rep in Harm" and "Potential Snap Reps" with a listing of the specific Snap sales representatives' production and potential worth. *Id.* at Ex. QQ. Landers received a list of "Snap Raise Past Employees" wherein 106 former Snap sales representatives were listed. *Id.* at Ex. RR. Landers provided former Snap sales representatives template resignation scripts to be used when resigning from Snap to join Vertical Raise. *Id.* at Ex. SS. Landers solicited former Snap sales representative Travis Tiner to move to Tennessee while helping to "help" recruit sales representatives, which was prohibited by Tiner's Snap Sales Representative Agreement, and Landers indicated that the former Snap employees could get a "kick back" for referrals. *Id.* at Ex. TT. Landers engaged former Snap sales representative Tiner to create a separate entity from Vertical Raise to recruit Snap's sales representatives precisely to avoid a claim of tortious interference. *Id.* at Ex. UU. At Landers' direction, Tiner created this recruiting entity, Pareto Recruiting Partners, which received significant funds from Vertical Raise in 2019. *Id.* at Ex. VV. This Court finds there is an issue of material of fact as to Snap's claims of civil conspiracy. Landers' and Vertical Raise's motion for summary judgment as to Snap's Count XI – Civil Conspiracy is denied.

Finally, Landers and Vertical Raise claim summary judgment should be granted

under Snap's claims under the Idaho Consumer Protection Act because Snap has no contractual relationship with Landers. Defs.' Mem. in Supp. of Mot. for Summ. J. 17. Snap points out, "Snap!'s cause of action of violation of the Idaho Consumer Protection Act claim is based on Landers' intentional interference with valid and existing contracts. Genuine issues of material fact remain regarding Landers' personal involvement in the alleged conspiracy against Snap!" Resp. to Defs.' Mot. for Summ. J. 20. This Court agrees that while there was no direct contractual relationship between Landers and Snap, Snap had a plethora of contracts with others and there is evidence that Landers conspired to disrupt those contractual relationships to Snap's financial disadvantage and Landers' and Vertical Raise's financial advantage. Landers' and Vertical Raise's motion for summary judgment as to Snap's Count XII – Idaho Consumer Protection Act claim is denied.

IV. CONCLUSION AND ORDER.

For the reasons described above, this Court grants Snap's Motion for Partial Summary Judgment regarding its claims of Tortious Interference with Contract and Misappropriation of Trade Secrets. A genuine issue of material fact remains regarding the issue of the amount of damages for both claims. This Court denies defendants Vertical Raise's and Landers' Renewed Motion for Summary Judgment. Snap's Motion for Leave to Add a Claim for Punitive Damages was granted at the May 12, 2021, hearing, but no order has been prepared as of this date.

IT IS HEREBY ORDERED that plaintiff Snap's Motion for Summary Judgment for Tortious Interference with Contract is GRANTED, excluding the issue of the amount of damages.

IT IS FURTHER ORDERED that plaintiff Snap's Motion for Summary Judgment for Misappropriation of Trade Secrets is GRANTED, excluding the issue of the amount

of damages.

IT IS FURTHER ORDERED that defendants' Renewed Motion for Partial Summary Judgment filed on April 7, 2021, is DENIED.

IT IS FURTHER ORDERED that plaintiff Snap's Motion for Leave to Amend to Add a Claim for Punitive Damages filed April 21, 2021, is GRANTED. This Court orders that Exhibit A (the Second Amended Complaint and Demand for Jury Trial and Request for Injunctive Relief) attached to Plaintiff's Motion for Leave to Amend to Add a Claim for Punitive Damages be FILED by the Clerk of Court and that plaintiff effect service of such upon defendants.

Entered this 17th day of June, 2021.

John T. Mitchell, District Judge

Certificate of Service

I certify that on the _____ day of June, 2021, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

Lawyer	Fax #	Lawyer	Fax #
Keely Duke	sls@dukescanlan.com	T. Jeff Bone	jbone@corrcronin.com
Lawrence Cock	lrc@corrcronin.com	Keven Griffiths	kag@dukescanlan.com
Jack Lovejoy	jlovejoy@corrcronin.com	Nathan Ohler	nohler@rmedlaw.com

Jeanne Clausen, Deputy Clerk