IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

KNOWMADICS, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Civil Action No.**
	)	**1:14-cv-00078 GBL/IDD**
JOUBEH TECHNOLOGIES, INC. et al.	)	
	)	
Defendants.	)	
	)	

DEFENDANTS' BRIEF IN SUPPORT OF THEIR
MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT

Defendants Joubeh Technologies, Inc. ("Joubeh"), and Anthony Chedrawy (collectively, "Defendants"), pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(2), 12(b)(3), and 12(b)(6), move to dismiss the Amended Complaint filed by Plaintiff Knowmadics, Inc. ("Knowmadics"). The Amended Complaint fails to allege facts showing a plausible claim for relief, fails to allege facts that would create venue in this district, and fails to allege facts demonstrating that the amount in controversy exceeds the sum or value of $75,000. Moreover, the Defendants are both citizens of Canada and neither is subject to personal jurisdiction in this Court. The Court should dismiss the Amended Complaint for these reasons and also because Knowmadics lacks standing to bring this action and any dispute relating to the Letter of Intent is subject to mandatory arbitration.

BACKGROUND

This case arises out of a planned merger between two technology companies that ultimately did not go through after negotiations broke down. Knowmadics brought this action against the two Defendants—both citizens of Canada—for alleged violation of the Virginia Trade Secrets Act and unjust enrichment. Although the Amended Complaint alleges in

conclusory terms that the Defendants engaged in "willful and malicious misappropriation of trade secrets and unjust enrichment," the Amended Complaint does not actually identify or describe the trade secrets at issue other than to state that they consisted generally of a "business plan" to merge the two companies and combine Knowmadics' data-analytics capabilities with Joubeh's telematics technology. (*See* Am. Compl. ¶¶ 1, 15, 38). Knowmadics alleges that Defendants misappropriated the business plan by "shopping" the proposal to another data analytics firm. (Am. Compl. ¶ 31). There are no allegations that the "shopping" occurred in Virginia or regarding how the "shopping" resulted in any benefit to either of the Defendants.

ARGUMENT

I. NEITHER DEFENDANT IS SUBJECT TO PERSONAL JURISDICTION IN VIRGINIA.

Due process only permits the exercise of personal jurisdiction over a defendant that has purposefully established "minimum contacts" with the forum state. *Consulting Engineers Corp. v. Geometric Ltd.*, 561 F.3d 273, 277 (4th Cir. 2009) (citing *Int'l Shoe Co. v. Wash.*, 326 U.S. 310, 316 (1945)). To establish minimum contacts and satisfy the Due Process Clause, a plaintiff must show either (a) specific or (b) general jurisdiction. *Coastal Video Comms. Corp. v. Staywell Corp.*, 59 F. Supp. 2d 562, 565 (E.D. Va. 1999). "Specific jurisdiction" refers to jurisdiction over a suit that arises out of the defendant's activities in the forum state. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 n.8 (1984). "General jurisdiction" arises when a defendant's contacts with the forum state are so "continuous and systematic" that the defendant may be subject to suit for causes of action entirely distinct from the in-state activities. *Id.* at 414 n.9. The minimum contacts required for general jurisdiction is a more demanding standard than is necessary for establishing specific jurisdiction. *ALS Scan, Inc. v. Digital Serv. Consultants, Inc.*, 293 F.3d 707, 712 (4th Cir. 2002). In this case, the Defendants are subject to neither specific nor general jurisdiction in Virginia. The plaintiff bears the burden

of demonstrating personal jurisdiction once its existence is questioned by the defendant. *Mylan Lab., Inc. v. Akzo, N.V.*, 2 F.3d 56, 59-60 (4th Cir. 1993).

A. <u>This Court Does Not Have Specific Jurisdiction Over the Defendants</u>.

For a district court to exercise personal jurisdiction over a nonresident defendant, two conditions must be satisfied: (1) the exercise of jurisdiction must be authorized under the state's long-arm statute; and (2) the exercise of jurisdiction must comport with the due process requirements of the Fourteenth Amendment. *Carefirst of Md., Inc. v. Carefirst Pregnancy Ctrs.*, Inc., 334 F.3d 390, 396 (4th Cir. 2003). Virginia's long-arm statute, Va. Code § 8.01-328.1, permits specific jurisdiction where at least one of the statutory prerequisites is satisfied. *Match.com, L.L.C. v. Fiesta Catering Int'l, Inc.*, 1:12-CV-363 AJT/IDD, 2013 WL 428056 (E.D. Va. Jan. 31, 2013) (citing *Young v. New Haven Advocate*, 315 F.3d 256, 261 (4th Cir. 2002)). The statute "is intended to extend personal jurisdiction to the extent permissible under the due process clause." *Consulting Eng'rs Corp. v. Geometric Ltd.*, 561 F.3d 273, 277 (4th Cir. 2009). Therefore, "the statutory and constitutional inquiries coalesce into the question of whether [defendants] had sufficient minimum contacts with Virginia to satisfy due process requirements." *Diamond Healthcare of Ohio, Inc. v. Humility of Mary Health Partners*, 229 F.3d 448, 450 (4th Cir. 2000).

Knowmadics does not allege the basis for asserting personal jurisdiction in this case, but it appears that it is relying on the provision in Virginia's long-arm statute that allows for the exercise of personal jurisdiction as to a cause of action arising from the person's "transacting any business in this Commonwealth." *See* Va. Code § 8.01-328.1(A)(1). Knowmadics claims that Joubeh transacted business in Virginia that is "pertinent to" its allegations. (Am. Compl. ¶ 3). Specifically, Knowmadics alleges that on June 26, 2013 (approximately two months after the alleged trade secrets were voluntarily disclosed to Mr. Chedrawy), Mr. Chedrawy attended a

meeting in Virginia during which the merger plans were further discussed. (See Am. Compl. ¶¶ 14-15, 29).

These allegations are insufficient to establish personal jurisdiction under the long-arm statute. The statute only applies where the cause of action being asserted "arises from" the transaction of business in Virginia. *See* Va. Code § 8.01-328.1(A)(1). Transaction of business that is merely "pertinent" to the claim is not enough. (*See* Am. Compl. ¶ 3). "Arising from" means "caused by." *Chedid v. Boardwalk Regency Corp.*, 756 F. Supp. 941, 943 (E.D. Va. 1991). In other words, there must be "a causal link between the acts relied on for personal jurisdiction and the cause of action asserted. ... Significantly, courts agree that this causation element requires more than simple 'but-for' causation; it requires something akin to legal or proximate causation." *Id.*; *see also City of Virginia Beach v. Roanoke River Basin Ass'n*, 776 F.2d 484, 487 (4th Cir. (Va.) 1985) ("In order for a cause of action to arise from business transacted in Virginia, the activities that support the jurisdictional claim must coincide with those that form the basis of the plaintiff's substantive claim").

Here, the Plaintiff's claim does not "arise from" Mr. Chedrawy's single visit to Crystal City on June 26, 2013. (Am. Compl. ¶ 29). Plaintiff claims that the Defendants misappropriated its trade secrets not through improper acquisition of the information, but by "shopping" the information to third parties. (Am. Compl. ¶ 31). The allegations are that the visit to Virginia was simply a meeting to further discuss the "business plan" that had already been shared. There are no allegations that the "shopping" on which Plaintiff's claims are based occurred in Virginia. And in fact, no such shopping took place. (*See* Declaration of Anthony Chedrawy ("Chedrawy Dec.") ¶ 18, Ex. A). Therefore, the exercise of personal jurisdiction is not authorized by Virginia's long-arm statute.

Turning to the constitutional inquiry, the Fourth Circuit requires consideration of three factors to determine whether the exercise of specific jurisdiction comports with due process: "(1) the extent to which the defendant 'purposefully availed' itself of the privilege of conducting activities in the State; (2) whether the plaintiffs' claims arise out of those activities directed at the State; and (3) whether the exercise of personal jurisdiction would be constitutionally reasonable."[1] *ALS Scan*, 293 F.3d at 712. This Court lacks personal jurisdiction over Joubeh because although it may have purposely availed itself of the benefits of conducting business in Virginia, the exercise of personal jurisdiction over Joubeh in this particular case would be constitutionally unreasonable because Joubeh has transacted only a very small amount of business in Virginia and the claims alleged herein have nothing to do with those transactions. (*See* Chedrawy Dec. ¶¶ 7-9). In his individual capacity, Mr. Chedrawy hasn't transacted any business in Virginia at all over the last five years. (Chedrawy Dec. ¶ 11). Nor has he engaged in any other activity that would subject him to personal jurisdiction in Virginia. (*See* Chedrawy Dec. ¶¶ 10-13, 15, 18).

In seeking to determine whether a defendant has engaged in "purposeful availment," courts have looked to such factors as (1) whether the defendant maintains offices or agents in the forum state; (2) whether the defendant owns property in the forum state; (3) whether the defendant reached into the forum state to solicit or initiate business; (4) whether the defendant deliberately engaged in significant or long-term business activities in the forum state; (5)

[1] The third prong of the Fourth Circuit's test is not reached unless and until the Court has determined that a defendant has purposefully availed itself of the forum. *Consulting Eng'rs*, 561 F.3d at 279. Factors relevant to constitutional reasonableness include: "(1) the burden on the defendant of litigating in the forum; (2) the interest of the forum state in adjudicating the dispute; (3) the plaintiff's interest in obtaining convenient and effective relief; (4) the shared interest of the states in obtaining efficient resolution of disputes; and (5) the interests of the states in furthering substantive social policies." *Id.* (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477 (1985); *World–Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)).

whether the parties contractually agreed that the law of the forum state would govern disputes; (6) whether the defendant made in-person contact with the resident of the forum in the forum state regarding the business relationship; (7) the nature, quality and extent of the parties' communications about the business being transacted; and (8) whether the performance of contractual duties was to occur within the forum. *Consulting Engineers Corp. v. Geometric Ltd.*, 561 F.3d 273, 278 (4th Cir. 2009) (citations omitted).

The Amended Complaint fails to allege that any of these circumstances are present here. Even if the Amended Complaint had contained such allegations, the attached Declaration of Mr. Chedrawy clarifies that neither he nor Joubeh has engaged in purposeful availment within the meaning of the Due Process Clause. (*See* Chedrawy Dec. ¶¶ 4-18 (showing absence of circumstances described in *Consulting Engineers*)). Therefore, Plaintiff has failed to meet its burden to demonstrate any ground for the exercise of specific personal jurisdiction over the Defendants.

B. <u>This Court Does Not Have General Jurisdiction Over the Defendants</u>.

General jurisdiction may apply where the defendant's contacts with the forum state are not related to the causes of action alleged in the complaint and is appropriate only where the defendant's contacts with the forum state are so systematic and continuous as to make it consistent with traditional notions of fair play and substantial justice to subject the defendant to jurisdiction in the forum. *Helicopteros*, 466 U.S. at 414. No such contacts exist in this case.

As reflected in the caption of the Amended Complaint, Mr. Chedrawy is a resident of Nova Scotia, Canada. He has not transacted any business whatsoever in Virginia in his personal capacity over the past five years. (*See* Chedrawy Dec. ¶ 11, Ex. A). Although Joubeh has transacted some amount of business in Virginia over the years, Joubeh received only two small orders from Virginia customers in 2013, and no orders at all from Virginia customers during the

years 2008-2012. (Chedrawy Dec. ¶ 8). Those two orders represented only 0.004% of Joubeh's total revenue for 2013. (Chedrawy Dec. ¶ 9). When analyzing general personal jurisdiction, courts look to a defendant's proportionate sales in the forum. *Kuennen v. Stryker Corp.*, 1:13cv00039, 2013 WL 5873277 (W.D. Va. Oct. 30, 2013); *see Nichols v. G.D. Searle & Co.*, 991 F.2d 1195, 1198, 1200 (4th Cir. 1993) (upholding finding that general jurisdiction did not exist over defendant who had seventeen to twenty-one employees in the state, and sold between $9 million and $13 million worth of products in the state over four years, representing two percent of total sales). Here, Joubeh's proportionate sales in Virginia represent a tiny fraction of its overall sales. Such a small percentage is insufficient to confer general jurisdiction.

II. THE COURT LACKS SUBJECT-MATTER JURISDICTION TO HEAR THIS DISPUTE.

A. Knowmadics Lacks Standing.

When a plaintiff lacks standing, federal courts are deprived of subject-matter jurisdiction and the plaintiff's complaint is subject to objection under Fed. R. Civ. P. 12(b)(1). *Taubman Realty Grp. Ltd. P'ship v. Mineta*, 320 F.3d 475, 480 (4th Cir. 2003); *Canterbury v. J.P. Morgan Acquisition Corp.*, 3:11cv00059, 2013 WL 3899226 (W.D. Va. July 29, 2013) ("federal courts are under an independent obligation to examine their own jurisdiction, and standing 'is perhaps the most important of [the jurisdictional] doctrines'") (quoting *Allen v. Wright*, 468 U.S. 737, 750 (1984)). This Court lacks subject matter jurisdiction to hear this dispute because Knowmadics has not alleged facts demonstrating that it is the real party in interest.

To have standing, a plaintiff must be able to show: (1) it has suffered an "injury in fact" that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. *Lane v.*

Holder, 703 F.3d 668, 671 (4th Cir. 2012) (citing *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180–81 (2000)). To establish an "injury in fact," the plaintiff must demonstrate that its claim rests upon "a distinct and palpable injury" to a legally protected interest. *Warth v. Seldin*, 422 U.S. 490, 501 (1975). This injury must "affect the plaintiff in a personal and individual way." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 n.1 (1992).

Knowmadics, the Plaintiff in this case, was formed on June 25, 2013. (*See* Am. Compl. ¶ 27; Chedrawy Dec. ¶ 23). Its claims, however, are based on alleged misappropriation of trade secrets that were created in April 2013, before the Plaintiff's existence. (*See* Am. Compl. ¶¶ 15, 38). Therefore, to the extent the "business plan" is a trade secret, it's a secret that belongs to the individuals who created it prior to Knowmadics' existence, not to Knowmadics. Knowmadics itself acknowledges that its business plan was "created by the individuals who would become the directors of Knowmadics." (Am. Compl. ¶ 15). Significantly, however, there are no allegations that these individuals ever transferred, assigned, or licensed their ideas to Knowmadics.

Knowmadics also appears to base its trade-secrets claim (at least in part) on an alleged breach of a Letter of Intent that it delivered to Mr. Chedrawy on May 8, 2013. (Am. Compl. ¶ 22, 31 (claiming that "Defendants misappropriated...all of the confidential details of the Knowmadics/JouBeh LOI"). First of all, Knowmadics could not have shared any trade secrets with Mr. Chedrawy on May 8, 2013, because, by its own admission, it did not exist on that date. (*See* Am. Compl. ¶ 27). Second, the Letter of Intent described in the Amended Complaint was entered into between Joubeh and Louis M. Brown, not Knowmadics. (*See* Chedrawy Dec. ¶¶ 20-21). So again, Knowmadics would not have standing to enforce a breach of the Letter of Intent.

Knowmadics has not sustained an injury in fact. Therefore, it cannot maintain this suit, and the Court lacks subject-matter jurisdiction to hear it.

B. The Amended Complaint Contains No Allegations Showing the Value of the Amount in Controversy.

Knowmadics asserts that this Court has subject-matter jurisdiction based on diversity. (*See* Am. Compl. ¶ 5). Under 28 U.S.C.A. § 1332(a), district courts have original jurisdiction when the dispute is between citizens of different states and "the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs." It is the plaintiff's burden to show that the matter in controversy exceeds this jurisdictional threshold. *Powers v. Equitable Prod. Co.*, 1:09cv00055, 2010 WL 547395 (W.D. Va. Jan. 26, 2010), *report and recommendation adopted sub nom. Powers v. EQT Prod. Co.*, 1:09cv00055, 2010 WL 520201 (W.D. Va. Feb. 9, 2010); *see Cradle v. Monumental Life Ins. Co.*, 354 F. Supp. 2d 632, 634 (E.D. Va. 2005) (holding that the party seeking to establish diversity jurisdiction "must show at law that the amount being sought by the plaintiff could produce a sufficient award to exceed $75,000"). If it is obvious from the face of the complaint that the jurisdictional amount under § 1332(a) cannot be satisfied, "the court must dismiss the case outright for lack of jurisdiction." *Shanaghan v. Cahill*, 58 F.3d 106, 112 (4th Cir. 1995) (citing *Wiggins v. North American Equitable Life Assurance Co.*, 644 F.2d 1014, 1016-18 (4th Cir. 1981)).

Here, there are no allegations anywhere in the Amended Complaint regarding the extent of Plaintiff's alleged damages. The Amended Complaint contains only two allegations pertinent to damages. The first is the conclusory assertion in the jurisdictional recitals that "the matter in controversy exceeds the sum or value of $75,000." (Am. Compl. ¶ 5). The second is the assertion that "Plaintiff has sustained substantial damages and will continue to sustain damages." (Am. Compl. ¶ 42). Neither of these allegations sheds any light on the value of Plaintiff's claim. Plaintiff claims the Defendants misappropriated its "confidential business plan" but does not allege what was disclosed, to whom it was disclosed, or how the alleged disclosure hurt its business. (*See* Am. Compl. ¶¶ 15, 31). Without providing these crucial details, the Plaintiff

cannot meet its burden to establish that the matter in controversy exceeds the $75,000 jurisdictional minimum.

Although Plaintiff includes a demand for punitive damages for "willful and malicious" misappropriation, punitive damages for trade-secret misappropriation are limited by statute in Virginia to twice the amount of compensatory damages (up to a maximum of $350,000). *See* Va. Code § 59.1-338(B). Compensatory damages include actual loss and unjust enrichment caused by the alleged misappropriation. *Id.* § 59.1-338(A). Because the Amended Complaint is devoid of any allegations detailing the amount of Knowmadics' loss or the amount of Defendants' alleged unjust enrichment, it is impossible to determine the amount of punitive damages that might plausibly be recovered, even when all the allegations are taken as true.

Moreover, it takes more to demonstrate the jurisdictional amount in controversy than to simply demand punitive damages; the Amended Complaint must include a plausible claim for recovery of such damages. *See Cradle v. Monumental Life Ins. Co.*, 354 F. Supp. 2d 632, 634 (E.D. Va. 2005) (declining to consider punitive damages in determining amount in controversy where complaint failed to state a claim that would allow recovery of such damages); *Saval v. BL Ltd.*, 710 F.2d 1027, 1033 (4th Cir. 1983) (noting that "claims for punitive damages proffered for the purpose of achieving the jurisdictional amount should be carefully examined"). As argued below, Knowmadics' Amended Complaint fails to state a plausible claim for recovery of any sort. Therefore, even when the claim for punitive damages is considered, Plaintiff has failed to invoke this Court's diversity jurisdiction.

III. VENUE IS NOT PROPER IN THIS DISTRICT.

To survive a motion to dismiss for improper venue pursuant to Rule 12(b)(3), a plaintiff must make a prima facie showing that venue is proper. *Kelly v. Ammado Internet Servs., Ltd.*, 3:12cv291-HEH, 2012 WL 4829341 (E.D. Va. Oct. 10, 2012) (citing *Aggarao v. MOL Ship*

Mgmt. Co., Ltd., 675 F.3d 355, 366 (4th Cir. 2012)). Once improper venue is raised by the defendant, the burden to establish that venue is proper is on the plaintiff. *Mid Atl. Paper, LLC v. Scott Cnty. Tobacco Warehouses, Inc.*, 1:03cv00126, 2004 WL 326710 (W.D. Va. Feb. 23, 2004) (citing *United Coal Co. v. Land Use Corp.*, 575 F. Supp. 1148, 1158 (W.D. Va. 1983)).

A. Arbitration Is the Only Proper Forum for This Dispute.

Dismissal is a proper remedy when all of the issues presented in a lawsuit are arbitrable. *Choice Hotels Int'l, Inc. v. BSR Tropicana Resort, Inc.*, 252 F.3d 707, 709-10 (4th Cir. 2001). An arbitration clause is a specialized kind of forum-selection clause. *Aggarao v. MOL Ship Mgmt. Co., Ltd.*, 675 F.3d 355, 366 n.9 (4th Cir. 2012). A motion to dismiss based on a forum-selection clause should be treated as a motion to dismiss on the basis of improper venue under Rule 12(b)(3). *Id.* (citing *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 550 (1974)).

Plaintiff's claims appear to be based in part on the alleged improper disclosure of terms contained in a "confidential Letter of Intent." (*See* Am. Compl. ¶¶ 22, 31). The Letter of Intent at issue contains a mandatory arbitration clause, providing that

> All claims demands, disputes, controversies, differences, or misunderstanding [sic] between the parties ***relating to this Letter of Intent*** shall be settled first by an effort in good faith between the parties to resolve the matter, and then failing which by arbitration, and judgment on the award rendered by the arbitrator or arbitrators may be entered and enforced in any court having jurisdiction.

(Chedrawy Dec. ¶ 24 (emphasis added)). Arbitration clauses should be construed liberally. *Iowa Beef Packers, Inc. v. Thompson*, 405 U.S. 228, 230 (1972). Because Plaintiff's claims relate to the Letter of Intent, they are subject to mandatory arbitration.

B. The Amended Complaint Is Devoid of Facts that Would Create Venue in this District.

Plaintiff claims that venue is proper under 28 U.S.C. § 1391(b) "because a substantial part of the events giving rise to the claims alleged herein occurred in this district." (Am. Compl.

¶ 6). Other than this naked assertion, the Amended Complaint does not allege that any of the facts upon which Plaintiff's claims are based occurred in Virginia. In other words, the Amended Complaint contains no factual enhancement of Plaintiff's conclusory statement that venue exists in this Court.

Knowmadics alleges that it shared its trade secrets with Mr. Chedrawy on May 8, 2013, but does not state whether this occurred in Virginia or somewhere else. (See Am. Compl. ¶ 22). The Amended Complaint alleges that the parties conducted merger discussions in Boston, Massachusetts (Am. Compl. ¶ 19) and states that "representatives of Knowmadics traveled to Nova Scotia" to conduct the due diligence process. (Am. Compl. ¶ 26). Most importantly, the basis of Knowmadics' claims is that the Defendants allegedly misappropriated Plaintiff's trade secrets by "shopping" them to another data analytics firm (*see* Am. Compl. ¶ 31), but completely absent from the Amended Complaint are any allegations with respect to the identity of the recipients of the information or any allegations to suggest the "shopping" took place in Virginia. Thus, even when all the allegations of the Amended Complaint are taken as true, there are no facts supporting Plaintiff's conclusory assertion that the events "giving rise" to its claims occurred in this judicial district. Therefore, venue is improper.

IV. THE AMENDED COMPLAINT FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.

A complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). A pleading that offers "labels and conclusions" or "a formulaic recitation of the elements of a cause of action," without more, is insufficient to survive a motion to dismiss. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A claim has facial plausibility when the plaintiff pleads factual content that

allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Id.*

A. Count I Fails to State a Claim for Misappropriation of Trade Secrets.

Count I of the Amended Complaint seeks to recover for "Violation of the Virginia Trade Secrets Act." (Am. Compl. at 7). To state a claim under the Virginia Uniform Trade Secrets Act ("VUTSA"), a plaintiff must allege (1) that the information at issue is a trade secret; and (2) that the defendant misappropriated it. *S&S Computers & Design, Inc. v. Paycom Billing Servs., Inc.*, 2001 WL 515260 (W.D. Va. Apr. 5, 2001) (citing Va. Code §§ 59.1-341 - 59.1-343). VUTSA defines a "trade secret" as "information, including but not limited to a formula, pattern, compilation, program, device, method, technique, or process, that (1) 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 (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy." *See* Va. Code § 59.1–336.

Thus, to state a valid claim under VUTSA, a plaintiff must state facts—not just conclusions—that, if accepted as true, would demonstrate that the information at issue qualifies as a "trade secret" under the statute, and that the Defendants misappropriated it. *McKay Consulting, Inc. v. Rockingham Mem'l Hosp.*, 665 F. Supp. 2d 626, 633-34 (W.D. Va. 2009); *see All Bus. Solutions, Inc. v. NationsLine, Inc.*, 629 F. Supp. 2d 553, 558-59 (W.D. Va. 2009) (granting motion to dismiss where VUTSA claim based on "single, conclusory assertion" that the defendant "sought...to appropriate and disclose the names of ABS customers, along with other ABS trade secrets and confidential information").

Here, Knowmadics seeks trade-secret protection for information it describes merely as its "confidential business plan and detailed operation plans." (*See* Am. Compl. ¶ 38). It appears

from the vague allegations of the Amended Complaint that Knowmadics is asserting that the "trade secret" consists of its former plans[2] to merge its business with that of Joubeh, as reflected in a letter of intent. (*See* Am. Compl. ¶¶ 15, 17, 22) (referring to "the confidential business plan to integrate Brown's existing data analytics services with JouBeh Technologies' telematics services"). These allegations are insufficient to enable the Court to determine that the information at issue is entitled to protection as a trade secret.

For example, there are no allegations regarding how Plaintiff's plans to acquire Joubeh had any economic value to anyone. Plaintiff does not claim its stock price would have gone up or down upon the disclosure of the information to third parties, nor does it allege any facts to show why keeping its acquisition aspirations a secret was important. Plaintiff dutifully recites VUTSA's trade-secret definition (*see* Am. Compl. ¶ 38) and asserts that its "confidential business plan" meets that definition, but formulaic recitations of this sort are no longer sufficient to survive a motion brought under Rule 12(b)(6). *See Twombly*, 550 U.S. at 555.

The Amended Complaint also fails to offer any factual support for Plaintiff's assertion that its trade secrets were "misappropriated." Misappropriation requires a showing of either improper acquisition of a trade secret, or improper disclosure of a trade secret. Va. Code § 59.1-336. Plaintiff's own allegations suggest it really doesn't know what, if anything, either Defendant has done wrong. Rather than accuse a specific Defendant of actual disclosure of a trade secret, Knowmadics alleges only that "[t]here exists the ***threatened or actual*** misappropriation of trade secrets by Defendants by ***acquiring, disclosing and/or using***, by improper means, the Plaintiff's trade secrets...." (*See* Am. Compl. ¶ 40 (emphasis added)). Although Rule 8(d)(2) permits a plaintiff to allege alternative theories of recovery, inconsistent

[2] Or rather, the former plans of its Chairman, Louis M. Brown. (Am. Compl. ¶ 12-13). As discussed above, Knowmadics did not exist prior to June 25, 2013. (Am. Compl. ¶ 27).

factual allegations are not permitted. *SecureInfo Corp. v. Telos Corp.*, 387 F. Supp. 2d 593, 617 (E.D. Va. 2005); *see also* Fed. R. Civ. P. 11(b)(3) (requiring that all factual representations in a pleading have, or be likely to have, evidentiary support). Here, Knowmadics hasn't decided whether to accuse the Defendants of using improper means to acquire a trade secret (even though the Amended Complaint alleges in paragraph 17 that the alleged trade secrets were voluntarily disclosed to Mr. Chedrawy), of improperly disclosing its trade secrets, or of only threatening to make improper use of its trade secrets. By refusing to commit to a consistent set of factual allegations, Knowmadics has failed to present a plausible claim for relief. It has failed to plead factual content sufficient to enable the Court to draw any reasonable inference that either Defendant has misappropriated any trade secrets.

B. Count II Fails to State a Claim for Unjust Enrichment.

In Virginia, a plaintiff alleging unjust enrichment must establish the following elements: (1) a benefit conferred on the defendant by the plaintiff; (2) knowledge on the part of the defendant of the conferring of the benefit; and (3) acceptance or retention of the benefit by the defendant in circumstances that render it inequitable for the defendant to retain the benefit without paying for its value. *Firestone v. Wiley*, 485 F. Supp. 2d 694, 704 (E.D. Va. 2007); *see Kern v. Freed Co., Inc.*, 224 Va. 678, 681 (1983) ("a man shall not be allowed to enrich himself unjustly at the expense of another"). Here, Count II suffers from the same defect as Count I: the allegations are purely conclusory and devoid of factual content.

Plaintiff alleges, for example, that "Defendants have gained benefit by accessing, disclosing and using Plaintiff's proprietary information." (Am. Compl. ¶ 45). Plaintiff proceeds to recite the elements of the claim, but fails to state exactly what "benefit" the Defendants supposedly received. The only alleged use of the information is the allegation in Paragraph 31 that the Defendants "shopped" the proposal to another company. Nowhere does Plaintiff explain

its use of the term "shopping" or present factual details showing how such "shopping" resulted in an unjust benefit to either Defendant. There are no allegations that Defendants sold Joubeh to another company, nor are any facts alleged that would enable the Court to determine that Defendants should pay any amount of money to Plaintiff. Therefore, the Amended Complaint fails to state a claim upon which relief can be granted.

CONCLUSION

The Court lacks personal jurisdiction over the Defendants, who are Canadian and conduct little or no business in Virginia. Subject-matter jurisdiction is also lacking because Knowmadics lacks standing and because the allegations do not demonstrate that the amount in controversy exceeds $75,000. Venue is inappropriate here because the Letter of Intent is subject to mandatory arbitration and because none of the facts giving rise to the claims occurred in this district. Finally, the Amended Complaint fails to state a claim upon which relief can be granted. Therefore, the Court should dismiss the Amended Complaint, with prejudice, pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(2), 12(b)(3), and 12(b)(6).

Dated: April 7, 2014

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I hereby certify that on April 7, 2014, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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