UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DAVID LEE, Plaintiff, - against - RAYMOND BROTHERS, IAM SPORTS & ENTERTAINMENT, INC., and INTERNATIONAL ATHLETE MANAGEMENT, INC., Defendants.	Case No. 21 Civ. 4213 (JSR)

MEMORANDUM OF LAW IN OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS THE AMENDED COMPLAINT

BRICK LAW PLLC
2 Milford Close
White Plains, New York 10606
(917) 696-3430

Attorneys for Plaintiff

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Plaintiff David Lee, by his attorneys Brick Law PLLC, respectfully submits this memorandum of law in opposition to Defendants' motion for an order, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, dismissing the Amended Complaint.

PRELIMINARY STATEMENT

What stands out about Defendants' conduct is that they solicited and promised a minor that they would buy him a brand new pickup truck if he would fire Plaintiff and sign a contract with their sports agency instead. Interested only in securing a commission from a then-seventeen-year-old kid with high NBA draft prospects, Defendants stepped all over Plaintiff's existing contract with Mitchell Robinson and violated a National Basketball Players Association ("NBPA") regulation expressly prohibiting them from offering a player any monetary inducement to sign a contract with them.

Defendants do not seem bothered by the grievance that they lured Mr. Robinson away from Plaintiff or that they bought him a truck to do so – except that Defendants describe the $34,464.50 that they paid to the Chevrolet dealership as an "advance" against future commissions Defendants expected to earn from their contract with Mr. Robinson (not an outright purchase). And, Defendants argue that neither Plaintiff nor this Court can do anything about their unabashed breach of the NBPA regulations governing player agents (the "NBPA Regulations"). Defendants claim that only the NBPA can hold them accountable for buying a minor a pickup truck to poach his business away from Plaintiff.

(Before filing this action, Plaintiff did, in fact, approach the NBPA to request arbitration against Defendants for improperly luring away Mr. Robinson. The NBPA told Plaintiff that arbitration was not available for this type of dispute. Plaintiff then brought this action in the New York County Supreme Court, which Defendants then removed to this Court on the basis of

diversity jurisdiction.)

As the amended complaint alleges, Plaintiff had Mr. Robinson as an existing client since signing a standard player agent contract ("SPAC") with him in September 2017. Mr. Robinson suddenly terminated Plaintiff as his agent with a March 28, 2018 termination notice that breached the parties' contract because it made the termination immediate without the required fifteen-day notice period. Two days later on March 30, 2018, Defendants ordered in Mr. Robinson's name a 2017 Chevrolet Silverado 1500 pickup truck from Best Chevrolet in Kenner, Louisiana. Defendants then paid for the pickup truck with a $34,464.50 check that they sent to the dealership. Defendants and Mr. Robinson signed a standard player agent contract a few weeks later on April 25, 2018.

In response to Plaintiff's allegations, Raymond Brothers is reported to have said that he did not previously know who Mitchell Robinson was. This means that Mr. Brothers either bought or advanced the money for a pickup truck for a seventeen-year-old minor whom he did not know – without any loan agreement, promissory note, or accompanying document of any kind except for the words "Mitchell Car Loan" written on the memo line of the check that Defendants sent to the dealership. Aside from the odd set of events that would follow from Defendant truthfully not knowing who Mitchell Robinson was at the time, Defendants' characterization of the money as an advance against future commissions is equally puzzling.

More specifically, Defendants did not enter into a contract with Mr. Robinson until April 25, 2018 – weeks after having advanced money against an *expectation* of future commissions. Defendants could not have any such future expectancy especially before signing a contract. (And, according to their own arguments against Plaintiff's tort claims, Defendants cannot even have a future expectancy after signing a contract because that SPAC is terminable at will on

fifteen days' notice.)

In their attack on the amended complaint, Defendants incorrectly suggest that Plaintiff is trying to enforce rules that only the NBPA has the authority and discretion to enforce. To the contrary, Plaintiff is asserting a very narrow right based on the particular impact to him as an intended beneficiary of Mr. Brothers' promise not to provide monetary inducements to players (including players under contract with Plaintiff). The particular reasons why Plaintiff is an intended third-party beneficiary are detailed below in Point I. In addition, Plaintiff's tortious interference claims both should survive this motion for the reasons in Points II and III.

Plaintiff's claims in the amended complaint are legally sufficient and contain ample factual details showing the facial plausibility of Plaintiff's claims. Defendants' motion should be denied.

ARGUMENT

In ruling on Defendants' motion to dismiss under Rule 12(b)(6), the Court should accept as true the factual allegations in the Amended Complaint and should draw all reasonable inferences in Plaintiff's favor. *See Ray v. Watnick*, 182 F. Supp. 3d 23, 25 (S.D.N.Y. 2016) (Rakoff, J.) (citing *Town of Babylon v. Fed. Hous. Fin. Agency*, 699 F.3d 221, 227 (2d Cir. 2012). The Amended Complaint should survive Defendants' motion to dismiss because it "contain[s] sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Rankel v. Town of Somers*, 999 F. Supp. 2d 527, 536 (S.D.N.Y. 2014) (citations omitted). Plaintiff's claims have facial plausibility because the Amended Complaint's substantial factual detail goes well beyond the minimums imposed by Rule 8 and "allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Hampshire Recreation, LLC v. Village of Mamaroneck*, 2016 WL 1181727, at *4 (S.D.N.Y. Mar.

25, 2016) (citation omitted).

In addition, in a diversity case such as this, the Court applies the substantive law of the state in which it sits (here, the substantive law of New York). *See Ray*, 182 F. Supp. 3d at 31 (citations omitted); *see also Pappas v. Philip Morris, Inc*., 915 F.3d 889, 893 (2d Cir. 2019) (citing *Erie R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938)).

I.

PLAINTIFF'S BREACH OF CONTRACT CLAIM HAS BEEN PROPERLY ALLEGED

When any person becomes a certified player agent with the NBPA, that person enters into a contract with the NBPA. Under that contract, the NBPA agrees to delegate to the agent its statutorily-given authority (as the labor union for NBA players) in exchange for the payment of annual fees and the promise to be bound by and to comply with the NBPA Regulations. And, because certain of the Regulations (as a part of the NBPA-Agent contract) prohibit conduct that would harm other certified agents, the other certified agents are third-party beneficiaries of those prohibitions.

"To form a valid contract under New York law, there must be an offer, acceptance, consideration, mutual assent and intent to be bound." *Artists Rights Enforcement Corp. v. Estate of King*, 370 F. Supp. 3d 371, 380 (S.D.N.Y. 2019) (citation omitted). A person accepts the NBPA's offer of agent certification by paying the annual fees, submitting an application for certification, passing a written test, and agreeing to be bound by and to comply with the NBPA Regulations. There is both mutuality of consideration and of an intent to be bound. In fact, Section 2.A. of the Regulations expressly provides that "[t]he signing and filing of an Application constitutes the applicant's agreement to comply with and be bound by these Regulations, including the exclusive arbitration remedy set forth in Section 5 . . . ." (Brick Decl.

Exh. 2 at 16) (emphasis added).

In relevant part, the NBPA Regulations state in the Introduction that the NBPA's primary objectives in enacting and enforcing the regulations include affording "each Player the opportunity to select a certified Player Agent who, in turn, has agreed to comply with these Regulations . . . ." (*Id*. at 5) (emphasis added). The NBPA Regulations are also intended "[t]o provide Players and Player Agents with an expeditious, fair, informal, cost efficient and exclusive procedure for resolving any dispute concerning their relationship, transactions or contractual obligations." (*Id*. at 6) (emphasis added). There is objective intent on the face of the NBPA Regulations that the relationship between the NBPA and each player agent is contractual.

Specifically at issue here is Mr. Brothers' breach of Section 3.B.2. of the NBPA Regulations, which expressly provides that "[t]o further effectuate the objectives of these Regulations, Player Agents are prohibited from . . . 2 Providing or offering a monetary inducement (other than a fee less than the maximum fee contained in the SPAC) to any Player (including a rookie) or college athlete to induce or encourage that person to utilize his services." (Brick Decl. Exh. 2 at 24.) The amended complaint alleges facts showing that Defendants' purchase of a pickup truck for Mr. Robinson directly violated Section 3.B.2.

Defendants try to describe it as an advance against future commissions, which makes things worse because that advance against future commissions was made weeks before Defendants entered into a standard player agent contract with Mr. Robinson. (It is hard for an agent like Mr. Brothers to have a legitimate expectation of future commissions when Mr. Robinson had not yet signed the contract and was under no obligation to do so even after Defendants gave him the "advance.") Nonetheless, both an outright purchase of a pickup truck and an advance of the money to do so constitute a "monetary inducement" and both run afoul of

Section 3.B.2. when done to induce the player to sign with the agent.

Under New York law, the elements of a breach of contract claim are (1) the existence of an agreement between the parties, (2) adequate performance of the contract by the plaintiff, (3) breach of contract by the defendant, and (4) damages. *See, e.g.*, *Terwilliger v. Terwilliger*, 206 F.3d 240, 245-46 (2d Cir. 2000). Defendants do not contest that a person enters into a contract with the NBPA when becoming certified as an agent. Instead, they vehemently insist that Plaintiff cannot be a third-party beneficiary of the Regulation prohibiting an agent from offering a player anything of monetary value to induce him to retain the agent's services.

A. Player Agents (Like Plaintiff) Are Obvious Intended Third Party Beneficiaries Of The NBPA Regulations Governing Player Agents

"Under New York law in order to recover as a third-party beneficiary of a contract, a claimant must establish that the parties to the contract intended to confer a benefit on the third party." *Leawood Bancshares Inc. v. Alesco Preferred Fundings X, Ltd*., 823 F. Supp. 2d 244, 252 (S.D.N.Y. 2011) (Rakoff, J.) (citing *Subaru Distribs. Corp. v. Subaru of Am., Inc*., 425 F.3d 119, 124-25 (2d Cir. 2005)). A person is a third-party beneficiary of a contract under New York law where (1) there is a valid and binding contract between the contracting parties, (2) that contract was intended for the third party's benefit, and (3) the benefit to that third party is sufficiently immediate to indicate the assumption by the contracting party of a duty to compensate the third party if the benefit is lost. *See In re George Washington Bridge Bus Station Development Venture LLC*, 2021 WL 3403590, at *3 (S.D.N.Y. Aug. 4, 2021) (Rakoff, J.) (internal quotation marks and citation omitted). A court should consider both "the circumstances surrounding the transaction as well as the actual language of the contract" to determine the contracting parties' intentions. *Id*. (quoting *Subaru Distribs. Corp*., 425 F.3d at 124); *see also Encore Lake Grove Homeowners Ass'n, Inc. v. Cashin Assocs., P.C.*, 111 A.D.3d 881, 882-83

(2d Dep't 2013) (citations omitted).

An intent to benefit a third-party may be found where (i) no one other than the third-party can recover if the promisor breaches the contractual provision, or (ii) the language of the contract otherwise clearly evidences an intent to permit enforcement by the third-party. *See Bd. of Mgrs. of Gateway Condominium v. Gateway II, LLC*, 2016 WL 1424560, at *5 (Supt. Ct. N.Y. Co. Jan. 5, 2016) (citation omitted); *Piccoli A/S v. Calvin Klein Jeanswear Co*., 19 F. Supp. 2d 157, 162 (S.D.N.Y. 1998). Here, the only party who can meaningfully recover from an agent's breach of Section 3.B.2. by luring a player away from that agent with a monetary inducement is the harmed agent. Except for the losing agent, no other party will have meaningfully lost something of value when another agent unscrupulously tempts a client with something of value to change agents. In addition, there are several provisions in the NBPA Regulations showing an intent for player agents to enforce those breaches either by players or by other player agents (including the arbitration provision in Section 5). While the NBPA retains the ability to discipline player agents for violations of the rules, the NBPA Regulations do not negate the separate private enforcement by a player agent affected by another agent's conduct.

As the First Department explained in *CB by Suarez v. Howard Security*, 158 A.D.3d 157 (1st Dep't 2018), the "identity of a third-party beneficiary need not be set forth in the contract or, for that matter, even be known as of the time of its execution . . . the intention which controls in determining whether a stranger to a contract qualifies as an intended third-party beneficiary is that of the promisee." *Id*. at 166 (emphasis added) (citation omitted). Here, the "promisee" is the NBPA in extracting a promise from Mr. Brothers not to offer monetary inducements to lure players to sign a contract with him (*i.e.*, not to violate Section 3.B.2.).

Defendants insist that the regulations are devoid of any sentences indicating an intent to

protect player agents, but one of the NBPA's stated objectives in establishing the regulations is "(4) To establish and enforce uniform standards of conduct and fiduciary responsibility applicable to all certified Player Agents, which has become increasingly important because the business of many Player Agents has become international in scope and the promulgation of a host of different – often conflicting – laws and rules issued by federal, state and local authorities designed to regulate the conduct of sports Agents in general." (Brick Decl. Exh. 2 at 6.) The NBPA's objectives also include providing "Players and Player Agents with an expeditious, fair, informal, cost efficient and exclusive procedure for resolving any dispute concerning their relationship, transactions or contractual obligations." (*Id*.) (emphasis added). These are certainly two sentences that show an interest in and the protection of player agents and not just players. Of course, where a genuine issue exists as to a party's intention to benefit another, that issue should be determined by a jury. *See CB by Suarez*, 158 A.D.3d at 166 (citing *MK W. St. Co. v. Meridien Hotels*, 184 A.D.2d 312, 313 (1st Dep't 1992)).

Third-party beneficiaries can have rights limited to the particular provisions in the contract that affect them, and they need not derive benefits from the entirety of the contract. *See Gilbane Bldg. Co./TDX Const. Corp. v. St. Paul Fire & Marine Ins. Co*., 143 A.D.3d 146, 153 (1st Dep't 2016) (finding third-party beneficiaries would have standing to sue for breach of the provisions in those contracts requiring that insurance be procured covering them as additional insureds); *Chapman v. 2 King St. Apts. Corp*., 2005 WL 1961330, at *4 (Sup. Ct. N.Y. Co. Aug. 12, 2005) (finding third-party beneficiaries could enforce Article 16(b) of contract); *Kamens v. Utica Mut. Ins. Co*., 6 A.D.3d 1237, 1239-41 (4th Dep't 2004) (noting sole provision of stipulation that explicitly benefited plaintiffs required that they be named as primary beneficiaries of a life insurance policy). In *Kamens*, the court explained "that plaintiffs are not

third-party beneficiaries of the stipulation, except with respect to its provision requiring that plaintiffs be named as beneficiaries of Charles's life insurance. In other words, plaintiffs are not third-party beneficiaries with respect to the annuity payments that Susan gave up by the stipulation." *Id*. at 1240-41.

Likewise here, only certain of the regulations have the capacity to protect or to benefit player agents (like Section 3.B.2.). But, player agents are also required by Section 3.A.2. to pay annual fees by July 1 each year to maintain certification as a player agent. (Brick Decl. Exh. 2 at 20.) Other player agents derive no direct benefit when a player agent pays his or her fee to the NBPA. Nor do other player agents suffer a direct harm when a fellow player agent fails to pay the annual fee. This shows that some of the NBPA Regulations are designed to protect the NBPA, some of the regulations are designed to protect players, and some of the regulations are designed to protect player agents (with overlapping beneficiaries likely as well). Defendants are incorrect that the players are the sole beneficiaries of the NBPA Regulations.

The decision in *Cohen v. CASSM Realty Corp*., 54 Misc. 3d 256 (Sup. Ct. N.Y. Co. 2016), provides a helpful basis to see why Mr. Lee can privately enforce Mr. Brothers' violation of Section 3.B.2. as a third-party beneficiary of Mr. Brothers' promise to comply with Section 3.B.2. CASSM Realty Corp. owned a cooperative building in which each unit was required to be owned and occupied by a family with an artist. The cooperative had a set of bylaws and a proprietary lease with each lessee – both of which required that each unit be owned and occupied by a family with an artist. When plaintiff (a lessee) discovered that another lessee's unit was not owned and occupied by a family with a certified artist, she sued both CASSM Realty and the lessee (O'Neill). *Id*. at 258-59, 270.

The lessee's claims were based in part on CASSM Realty's and O'Neill's breach of their

contractual obligations under the bylaws and the proprietary leases. She successfully argued (and was granted partial summary judgment) on her claims asserting her entitlement to live in a building where each unit is owned and occupied by a family with an artist. *Id*. at 270. And like here, the governing agreements contained a provision by which O'Neill agreed to comply with the bylaws. *Id*. at 273.

The court observed that CASSM Realty derives no benefit itself from its contract requiring an artist to occupy O'Neill's unit but nonetheless unambiguously intends compliance with this requirement. The court therefore concluded that CASSM Realty imposed this requirement "for no reason other than for the benefit of the building residents, to whom CASSM Realty owes its overarching duty, and who thus are the beneficiaries of the building's status as an artist's residence." *Id*. at 274-75. The court continued that "[a]s the beneficiaries of the building's status, its residents are the immediate and direct beneficiaries of the requirements in the purchasers' agreement that O'Neill use his unit consistent with that status." *Id*. at 275. In addition, the court explained that there is "no obligation of CASSM Realty under the agreement for plaintiff or other shareholders to enforce, but the agreement does entitle plaintiff as a third-party beneficiary to enforce O'Neill's obligation against O'Neill." *Id*. (emphasis added). The court drove home the point by noting: "Even if plaintiff lacks standing to require CASSM Realty to enforce its purchasers' agreement with O'Neill or its bylaws against him, or it owes no duty of enforcement, she is entitled to enforce her rights to live and work in a building where each unit is owned and occupied by a family with an artist as guaranteed by her proprietary lease with CASSM Realty." *Id*. at 279.

There are a number of similarities between *CASSM Realty* and Plaintiff's claims here. Like the lessee entitled to live in a building under the premise that all other tenants are

complying with the bylaws and contracts requiring occupancy by artists and their families, Mr. Lee is entitled to operate as a player agent under the NBPA Regulations with the understanding that all other player agents are likewise adhering to the Regulations – particularly those regulations designed to protect player agents. CASSM Realty did not directly benefit from O'Neill's compliance with the artist-only requirement, which was instead enjoyed by its lessees. Similarly, the NBPA is not directly affected by a player agent's unlawful poaching of another agent's existing client in violation of Section 3.B.2. Instead, other agents are the obvious beneficiaries of the prohibition in Section 3.B.2. (Players may also be beneficiaries of that section, but that does not detract from the clear benefits to player agents against unfair competition.)

Given the obvious harm to player agents when another well-funded agent lures away players with monetary benefits like pickup trucks, player agents have to have been intended third-party beneficiaries of the protections afforded by Section 3.B.2. And, the benefit to such third parties is sufficiently immediate to indicate the assumption by the contracting party (both the NBPA and the offending player agent) of a duty to compensate the third-party if the benefit is lost. The amended complaint sufficiently establishes that Plaintiff is a third-party beneficiary of Mr. Brothers' contractual agreement to comply with Section 3.B.2. Plaintiff's first cause of action should be sustained.

B. The NBPA Regulations' Arbitration Provisions Undermine Defendants' Insistence That Player Agents (Like Plaintiff) Cannot Enforce The Regulations

The arbitration provisions in Section 5 of the NBPA Regulations also show an intent for player agents to have certain private rights of action pertaining to the regulations. More specifically, Section 5 allows for the internal arbitration of three categories of disputes, including certification denials, disputes between a player and an agent over their contract, and disputes

between player agents concerning the division of fees from joint representation of a player. (Brick Decl. Exh. 2 at 33.) While none of these three categories applies to Plaintiff's claims, the existence of the arbitration remedy nonetheless shows an intent to allow player agents certain private rights of action falling under the regulations. This is separate from and in addition to the disciplinary mechanisms that the NBPA provides in Section 6. In other words, the regulations show a textual intent for player agents to have the right to enforce certain of the benefits given to them. By extension, this means that player agents have standing to enforce the benefits given to them under the regulations as third-party beneficiaries.

Defendants' assertion that only the NBPA has the authority to enforce the NBPA Regulations sweeps too broadly because it fails to distinguish between those rights or benefits that player agents derive directly and immediately from rules like Section 3.B.2. Because of the specific and direct harm that Plaintiff uniquely suffered from Mr. Brothers' breach of Section 3.B.2., he is entitled to recover for the damages suffered as an intended third-party beneficiary of Mr. Brothers' contractual promise to obey Section 3.B.2.

C. IAM Sports and IAM Are Liable For Their Inducement Of Raymond Brothers' Breach Of The NBPA Regulations

IAM Sports and IAM are separately liable for inducing Raymond Brothers' breach of Section 3.B.2. A claim for tortious interference with contract requires (i) the existence of a valid contract between the plaintiff and a third party, (ii) the defendant's knowledge of that contract, (iii) the defendant's intentional procurement of a third-party's breach of that contract without justification, and (iv) damages. *See, e.g.*, *Lama Holding Co. v. Smith Barney Inc*., 88 N.Y.2d 413, 424 (1996). Here, IAM Sports and IAM are alleged to have known about the valid and binding contract between Mr. Brothers and the NBPA (including his obligation to obey Section 3.B.2.) and to have induced Mr. Brothers' breach of Section 3.B.2. by providing the means for

him to buy Mitchell Robinson a pickup truck. (*See* Brick Decl. Exh. 1 ¶¶ 128-134.)

Plaintiff's second cause of action is legally sufficient and should be sustained. Defendants' motion to dismiss Plaintiff's contract-based claims should be denied.

II.

DEFENDANTS TORTIOUSLY INDUCED MITCHELL ROBINSON TO BREACH HIS CONTRACT WITH PLAINTIFF BY IGNORING AND VIOLATING THE REQUIRED FIFTEEN-DAY NOTICE PERIOD

Defendants' sole argument is that a contract terminable at will cannot anchor a claim for tortious interference with contract. But, New York law provides otherwise when the defendant induces a third-party to terminate an at-will contract in a way that violates the termination provisions (such as a required notice period) – because *that* is a breach of contract. A failure to observe the notice requirements of a termination clause will render an attempted termination invalid or will constitute a breach of contract. *See* 22A N.Y. Jur. 2d Contracts § 500 (citing *United Merchandise Wholesale, Inc. v. IFFCO, Inc*., 51 F. Supp. 3d 249, 264 (E.D.N.Y. 2014) (applying New York law)); *see also Gertler v. Davidoff Hutcher & Citron LLP*, 186 A.D.3d 801, 807 (2d Dep't 2020) (plaintiff established, *prima facie*, that defendant breached term of written agreement which entitled him, upon termination, to four months' notice); *Rivas Paniagua, Inc. v. World Airways, Inc*., 673 F. Supp. 708, 715 (S.D.N.Y. 1987) (finding breach of contract where party did not give requisite notice of termination).

Contract language that clearly and explicitly establishes the time for notice (like the notice provision in Plaintiff's SPAC with Mr. Robinson) should be interpreted according to its terms. *See* 22A N.Y. Jur. 2d Contracts § 499 (citing *Arnold Weiss Corp. v. Manisha Sportswear, Inc*., 882 F. Supp. 58, 59-60 (S.D. N.Y. 1991) (explaining contract automatically renewed where notice of termination not properly given in accord with 120-day notice provision)). Thus, in

Lankau v. Luxoft Holding, Inc., 266 F. Supp. 3d 666 (S.D.N.Y. 2017), the court denied the portion of defendants' motion to dismiss the breach of contract claim based on a failure to comply with a provision requiring ninety days' notice for termination. The plaintiff alleged he was given only seventeen days and suffered damages from this breach, which the court found sufficient to state a claim. *Id*. at 683.

In *Smart Trike, MNF, PTE, Ltd. v. Piermont Products, LLC*, 147 A.D.3d 477 (1st Dep't 2017), the court ruled that because a Singapore company failed to provide the contractually required six months' notice of termination of the parties' agreement, the counter-party was entitled to commissions on all sales it made in the six month period after termination. *Id*. at 477-78 (citation omitted). And, in *Freyer v. Kinetic Concepts, Inc*., 1988 WL 96033 (S.D.N.Y. Aug. 23, 1988), although the contract required fifteen days' notice of termination, the plaintiff received a termination letter that "was effective immediately." *Id*. at *5. (This was just like Mr. Robinson's termination notice to Mr. Lee.) The plaintiff alleged that the defendant breached his employment agreement by failing to provide adequate notice (which the defendants conceded), and the court denied the defendants' summary judgment motion as a result. *Id*.

A cause of action alleging tortious interference with contract must provide sufficient facts establishing (i) the existence of a valid contract between the plaintiff and a third party, (ii) the defendant's knowledge of that contract, (iii) the defendant's intentional procurement of a third-party's breach of that contract without justification, and (iv) damages. *See, e.g., Lama Holding Co*., 88 N.Y.2d at 424. The Amended Complaint alleges that Defendants knew about Plaintiff's contract with Mr. Robinson, knew about the terms of that contract (because it was a standard player agent contract), and intentionally induced Mr. Robinson to breach that agreement with an immediate termination in breach of the required fifteen-day notice period. (*See* Brick Decl.

Exh. 1 ¶¶ 137-146.)

Despite what they insist, Defendants did not merely induce Mitchell Robinson to terminate a contract with Plaintiff that was terminable at will. Instead, Defendants induced a termination of Plaintiff's contract in violation of the termination provisions of that contract – because they induced Mr. Robinson to terminate the contract "immediately" instead of with the required fifteen days' notice expressly stated in the contract. (*Id*. ¶¶ 144-145.) The Amended Complaint further alleges that during the fifteen-day period, Defendants purchased the pickup truck for Mr. Robinson and send the check to the dealership to pay for the truck. Mr. Robinson was induced to accept an improper gift from a competing agent during the fifteen days that he was still under a contract with Plaintiff, which was inconsistent with his contract with Plaintiff and which caused Plaintiff to suffer damages. (*Id*. ¶¶ 146-156.) And, the fifteen-day notice provision is a required term in all standard player agent contracts by Section 4.A. of the NBPA Regulations – meaning that it should be strictly enforced according to its express terms. (*See* Brick Decl. Exh. 2 at 29.)

Here, Defendants induced Mr. Robinson to breach the termination provisions of his contract with Plaintiff, which makes Plaintiff's third cause of action for Defendants' tortious interference with contract legally sufficient and adequately alleged.

III.

DEFENDANTS' PURCHASE OF A NEW TRUCK FOR A SEVENTEEN YEAR OLD MINOR IS SUFFICIENTLY WRONGFUL CONDUCT THAT STATES A CLAIM FOR TORTIOUS INTERFERENCE

Even if Plaintiff must pursue Defendants' conduct as a tortious interference with his business relations, his claim is still legally sufficient because Defendants' purchase of a pickup truck for a seventeen year old minor – to lure him away from Plaintiff and to their agency instead

– was sufficiently wrongful. Defendants not only bribed a minor but also violated the NBPA Regulations expressly prohibiting them from luring Mr. Robinson with something of monetary value like a pickup truck (or even a loan to buy a pickup truck).[1]

In *Seven Star Shoe Co. v. Strictly Goodies, Inc*., 657 F. Supp. 917 (S.D.N.Y. 1987), the court explained that when the parties are business competitors and the claim involves a contract terminable at will, a competitor is not liable for interference with a contract "where the interference is intended at least in part to advance the competing interest of the interferer, no unlawful restraint of trade is effected, and the means employed are not wrongful." *Id*. at 920 (quoting *Guard-Life Corp. v. S. Parker Hardware Mfg. Corp*., 50 N.Y.2d 183, 191 (1980) (footnote omitted)). "Wrongful means" include physical violence, fraud or misrepresentation, civil suits and criminal prosecutions, and some degrees of economic pressure but does not include persuasion alone although it is knowingly directed at interference with the contract. *Id*. (citations omitted).[2]

Here, Defendants wrongfully solicited a seventeen year old minor by buying him a

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[1] Defendants took "offense" to Plaintiff's use of the word bribe even though the definitions of a bribe in the Merriam-Webster Dictionary squarely describe what Defendants did. As a noun, a "bribe" includes "something that serves to induce or influence," and as a verb, it means "to influence the judgment or conduct of (someone) with or as if with offers of money or favor; to induce or influence by or as if by bribery." (https://www.merriam-webster.com/dictionary/bribe.) The gift of a brand new pickup truck – made specifically to have Mr. Robinson sign a contract with Defendants – is precisely "something that serves to induce or influence." (*Id*.) And, Defendants "influence[d] the judgment or conduct of (someone) with or as if with offers of money." (*Id*.)

[2] Throughout this action, Defendants have referenced *Miller v. Walters*, 46 Misc. 3d 417 (Sup. Ct. N.Y. Co. 2014), a trial level decision never reviewed on appeal, in which the court observed the plaintiff's concession that the defendants' breach of the NBPA Regulations did not state an independent tort. *Id*. at 424. While Defendants did not cite *Miller* in their moving papers, *Miller* is nonetheless inapposite because Plaintiff has certainly not made a similar concession. And, Defendants' bribing of a seventeen-year-old minor with a $34,000 pickup truck separately provides the wrongful means as undue economic pressure and the improper solicitation of a minor.

$34,000 pickup truck. Defendants did *not* approach a 25-year old player already accustomed to life as a pro-basketball player. They lured an underage player (who was about to enter the NBA draft) with a brand new pickup truck, which is sufficiently wrongful – particularly as "some degree[] of economic pressure." *Guard-Life Corp*., 50 N.Y.2d at 191. And, Defendants' conduct also was a direct violation of Section 3.B.2. of the NBPA Regulations, which prohibits player agents like Defendants from giving a player something of monetary value to induce him to use the agent's services. (*See* Brick Decl. Exh. 2 at 24.) Plaintiff has alleged sufficiently wrongful conduct to state a claim for tortious interference with business relations.

A. The Amended Complaint Contains Sufficient Factual Details Under Rule 8(a)

Attacking the slew of details Plaintiff put in the amended complaint, Defendants profess confusion about Plaintiff's purported "vague" and "conclusory" claims that are "devoid of supporting facts" and that "lack[] any specificity." (Defs' Mem. at 9-10.) But, even an apathetic or a distracted read of the amended complaint makes it difficult to miss what Plaintiff has alleged that Defendants did and what resulted from their alleged conduct.

For example, paragraphs 141 through 143 allege that each Defendant "intentionally induced Mr. Robinson to breach the Contract by luring Mr. Robinson with a new 2017 Chevrolet Silverado 1500 pickup truck (in violation of NBPA Regulations) in exchange for his terminating the Contract with Plaintiff and switching to Defendants' agency services." (Brick Decl. Exh. 1 ¶¶ 141-143.) Paragraphs 1 through 12 provide a clear factual summary of what Plaintiff has alleged against Defendants to begin the amended complaint. Plaintiff's allegations provide more than enough facts to satisfy the governing pleading standards under Rule 8(a).

Defendants also argue that the amended complaint lacks allegations that their conduct was the "but for" cause of the alleged breach, but this ignores the details provided in Paragraphs

64, 65, 146, and 162 of the amended complaint. The words "but for" may be absent, but these four paragraphs clearly allege facts establishing the substance of "but for" causation:

- "Defendants offered Mr. Robinson a brand new pickup truck to induce him to terminate the Contract with Plaintiff and to use Defendants' agency services instead" (Brick Decl. Exh. 1 ¶ 64);
- "Defendants' unlawful inducement led Mr. Robinson to send Plaintiff the March 28, 2018 termination notice" (*Id*. ¶ 65);
- "Mr. Robinson terminated the Contract on an immediate basis only because Defendants induced him to do so with the lure of a new 2017 Chevrolet Silverado 1500 pickup truck" (*Id*. ¶ 146) (emphasis added); and
- "Defendants induced Mr. Robinson to terminate his business relationship with Plaintiff by improperly offering and then purchasing a new pickup truck for Mr. Robinson in exchange for his termination of Plaintiff's services." (*Id*. ¶ 162).

Plaintiff has sufficiently alleged facts showing that "but for" Defendants' actions, Mr. Robinson would not have terminated his contract with Plaintiff.

Ironically, Defendants point to Paragraph 64 as proof of just how vague and conclusory Plaintiffs' allegations are – even though Defendants do not actually specify what in Paragraph 64 if vague or conclusory. Instead, Defendants' concern is that Plaintiff did not specify enough facts about when, where, and how Defendants bribed Mr. Robinson to terminate his contract with Plaintiff. (Defs' Mem. at 10.) But, the amended complaint gives ample details about Defendants' purchase of a 2017 Chevrolet Silverado 1500 pickup trick from Best Chevrolet in Kenner, Louisiana for $34,464.50 – including details about the April 9, 2018 check (Check Number 4139) that IAM wrote to pay for the pickup truck.

Paragraph 64 alleges that Defendants offered Mr. Robinson a pickup truck to induce him to switch from Plaintiff's agency services to their agency services. Mr. Robinson then sent Plaintiff a March 28, 2018 termination notice, followed by the March 30, 2018 order forms for the pickup truck just two days following the Mr. Robinson's termination. (*See* Brick Decl.

Exh. 1 ¶¶ 64-67.) After Defendants bought Mr. Robinson the truck, they signed a standard player agent contract with Mr. Robinson on April 25, 2018. (*Id*. ¶ 74.) Plaintiff also alleged that other than the words "Mitchell Car Loan" written on the memo line of Defendants' check, there was an absence of any contemporaneous or corresponding loan documents or promissory note despite Defendants' insistence that this was a loan. (And, Plaintiff alleged that it was odd for Defendants to have loaned $34,464.50 to a seventeen-year-old minor whom Mr. Brothers stated he did not know without any memorialization of the loan – particularly a loan made to a seventeen-year-old minor who was not yet Defendants' client and who would not sign a contract until a few weeks later on April 25, 2018. (*Id*. ¶¶ 82-87.)

Defendants cite to *Antonios A. Alevizopoulos and Assocs., Inc. v. Comcast Int'l Holdings, Inc*., 100 F. Supp. 2d. 178 (S.D.N.Y. 2000), to argue that Plaintiff's tortious interference claims "must be pled with particularity as to the details of when and how the alleged tortious conduct occurred." (Defs' Mem. at 9.) But, instead of the Rule 9(b)-like "particularity" standard that Defendants advance, what Judge Scheindlin actually wrote in *Antonios A. Alevizopoulos and Assocs., Inc*., was "the pleadings may not be conclusory as the law requires some factual specificity in pleading tortious interference." *Id*., 100 F. Supp. 2d at 186 (citing *De Jesus v. Sears, Roebuck & Co*., 87 F.3d 65, 70 (2d Cir. 1996)) (emphasis added). This is the general pleading standard of Rule 8(a), which requires enough facts (but not necessarily particularity) to show the facial plausibility of the claim. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

Plaintiff was not privy to the conversations that Defendants had with Mr. Robinson – and for obvious reason: Defendants were trying to lure Mr. Robinson *away* from Plaintiff. Whatever specifics the amended complaint lacks about communications between Defendants and

Mr. Robinson, the substantial details provided allow for a plausible inference that in the few weeks before the March 28, 2018 termination notice, Defendants promised to buy Mr. Robinson a pickup truck if he would terminate Plaintiff and hire Defendants instead. This inference fits well with the timeline and confirming documents, in which Mr. Robinson got a new pickup truck paid for by Defendants just days after he sent Plaintiff a termination notice.

The amended complaint contains enough factual details required by Rule 8(a) and gives Defendants clear notice of what Plaintiff has alleged against them. The words "vague" and "conclusory" do not accurately describe the amended complaint.

B. Plaintiff's Tortious Interference Claims Are Timely

Plaintiff's tortious interference claims are timely because they were filed within three years after those claims actually accrued. Generally, any statute of limitations begins to run when a cause of action accrues. See *Ely-Cruikshank Co. v. Bank of Montreal*, 81 N.Y.2d 399, 402 (1993) (citing CPLR § 203(a)). A tort cause of action (such as Plaintiff's tortious interference claims) accrues "when the claim becomes enforceable, *i.e.*, when all elements of the tort can be truthfully alleged in a complaint." *Belair Care Center, Inc. v. Cool Insuring Agency, Inc.*, 161 A.D.3d 1263, 1266 (3d Dep't 2018) (quoting *Kronos, Inc. v. AVX Corp.*, 81 N.Y.2d 90, 94 (1993)). That requires Plaintiff to be able to allege damages as a part of the cause of action – meaning that Plaintiff's claims did not accrue until the date on which he was first injured. *See Snyder v. Town Insulation, Inc.*, 81 N.Y.2d 429, 432-33 (1993) (citations omitted).

The termination notice that Mr. Robinson sent to Plaintiff was dated March 28, 2018. (*See* Brick Decl. Exh. 1 ¶¶ 59-60.) Despite whatever conduct took place before March 28, 2018 as part of Defendants' inducement, Plaintiff did not suffer (and could not have suffered) damages until Mr. Robinson acted on the inducement and terminated his contract with Plaintiff on March

28, 2018. And, Defendants did not actually order the pickup truck for Mr. Robinson until March 30, 2018, with their check paying for the truck dated April 9, 2018. Plaintiff's tortious interference claims accrued no earlier than March 28, 2018, and he commenced this action in the New York County Supreme Court on March 29, 2018 (because the previous day, March 28, 2021, was a Sunday). Plaintiff's third and fourth causes of action are timely.

IV.

PLAINTIFF 'S NEGLIGENCE *PER SE* CLAIM IS LEGALLY SUFFICIENT

Plaintiff's negligence *per se* claim is also legally sufficient because it rests on Defendants' unequivocal and blatant violation of Section 3.B.2. The amended complaint alleges that Defendants owed Plaintiff a duty (as certified player agents) not to violate particularly those rules with a direct impact on other player agents. It further alleges that Plaintiff is a part of the class of those that Section 3.B.2. is specifically intended to protect (player agents). And, the particular injury that Plaintiff has alleged stems directly from Defendants' violation of Section 3.B.2. in a manner that the rule was designed to prevent.

This sufficiently states a cause of action against Defendants for negligence *per se*.

CONCLUSION

For the foregoing reasons, Defendants' motion for an order, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, should be denied in its entirety.

Dated: White Plains, New York
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BRICK LAW PLLC

By: /s/ Brian H. Brick
Brian H. Brick, Esq.

2 Milford Close
White Plains, New York 10606
(917) 696-3430
brianbrick@bricklawpllc.com

Attorneys for Plaintiff