STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

INFUSION, INC., a Michigan corporation,

Plaintiff/Counter-Defendant,

vs.

OLIVIA GONZALES, an emancipated minor; DOMINIQUE GONZALES, an individual; DAVID GONZALES, an individual; and CHACHI GONZALES LLC, an unincorporated company,

Defendants.

and

GUADALUPE GONZALES, an individual; and CHACHIMOMMA, INC., an unincorporated company,

Defendants/Counter-Plaintiffs and Cross-Plaintiffs,

vs.

OLIVIA GONZALES, an emancipated minor; and DOMINIQUE GONZALES, an individual,

Cross-Defendants.
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Case No. 12-10712-CKB

HON. CHRISTOPHER P. YATES

OPINION AND ORDER ON CROSS-MOTIONS FOR SUMMARY DISPOSITION

Just as Abraham was promised descendants as numerous as the stars in the sky, so too has the Specialized Business Docket ushered in the promise of claims and counterclaims so numerous they cannot be counted. Time and time again, the Court has issued lengthy opinions clearing away the underbrush in this dispute about pants made famous by Olivia "Chachi" Gonzales. In the final

word on this dispute prior to trial, the Court must wade through the three remaining claims asserted by Plaintiff Infusion, Inc. ("Infusion") and all 14 of the counterclaims advanced by Counter-Plaintiffs Guadalupe Gonzales and ChachiMomma, Inc. ("ChachiMomma") under the standards set forth by MCR 2.116(C)(8) and (10). Ultimately, the Court must leave two claims and two counterclaims in place for resolution at trial.

I. Factual Background

In 2011, Olivia "Chachi" Gonzales and her dance crew, I.aM.mE., won MTV's talent-search television show, "America's Best Dance Crew: Season 6." Olivia Gonzales not only earned acclaim for her talent as a dancer, but also became known for her unique style of pants, which had been hand-crafted by her mother, Guadalupe Gonzales. Although Guadalupe Gonzales began filling orders for the ChachiMomma pants shortly after the MTV show began to air, the demand for ChachiMomma pants quickly became more than she could handle out of her home in Texas. As a result, Guadalupe Gonzales and her daughter, Olivia, signed a two-year exclusive licensing agreement with Plaintiff Infusion on January 9, 2012, for the production and marketing of ChachiMomma pants in exchange for a royalty payment of $10,000 per month. See First Amended Complaint, Exhibit 1 (Exclusive Licensing Agreement, §§ 2, 4). The exclusive licensing agreement granted Infusion control over the ChachiMomma product line, including "all goods, services, trademarks, patents, pending patents, merchandise, apparel, products, promotions, endorsements, sponsorships and the like, which are related, in any way, to Gonzalez [sic] and/or Chachimomma, Inc., including, without limitation, the mark 'Chachimomma.'" See id., § 1(b). But when Infusion concluded that Guadalupe and Olivia Gonzales had failed to abide by the terms of the licensing agreement, Infusion initiated this action

for breach of contract against Guadalupe Gonzales, Guadalupe's company, ChachiMomma, Olivia Gonzales, and Olivia's sister and guardian, Dominique Gonzales, on November 16, 2012. Infusion eventually amended its complaint to include claims against Guadalupe Gonzales's husband, David Gonzales, and Olivia's company, Chachi Gonzales LLC ("Chachi LLC"). In addition, Guadalupe Gonzales and ChachiMomma pleaded three cross-claims against Guadalupe's daughters, Olivia and Dominique Gonzales, and 14 counterclaims against Infusion. Thus, at the height of this litigation, the parties were proceeding on 23 claims, cross-claims, and counterclaims.

The Court has already begun the process of bringing order to this legal morass by concluding that Plaintiff Infusion is entitled to default judgments against Olivia Gonzales and Chachi LLC, and that Guadalupe Gonzales and ChachiMomma are entitled to a default judgment on their cross-claims against Olivia Gonzales. In addition, both Infusion and Guadalupe Gonzales have prevailed against Dominique Gonzales by way of default, but the amount of damages Dominique Gonzales must pay cannot be resolved prior to trial. Having resolved the claims against Olivia Gonzales, Dominique Gonzales, and Chachi LLC, the Court still must address the three claims asserted by Infusion against Guadalupe Gonzales, David Gonzales, and Chachimomma as well as the 14 counterclaims asserted by Guadalupe Gonzales and ChachiMomma against Infusion. Now, on cross-motions for summary disposition, the Court must analyze each of the remaining claims and counterclaims.

II. Legal Analysis

"A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a complaint." See Michigan *ex rel* Gurganus v CVS Caremark Corp, 496 Mich 45, 62 (2014). The Court must grant summary disposition under MCR 2.116(C)(8) if "'[t]he opposing party has failed

to state a claim on which relief can be granted[,]'" id. at 62-63, and when reviewing a motion under this rule, the Court may consider only the pleadings and "must accept all factual allegations in the complaint as true, along with all reasonable inferences or conclusions that can be drawn from them." Id. at 63. In contrast, a motion for summary disposition under MCR 2.116(C)(10) "'tests the factual sufficiency of the complaint[,]" Corley v Detroit Board of Ed, 470 Mich 274, 278 (2004), and the Court must consider "the entire record in the light most favorable to the party opposing the motion, including affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties." Id. "Summary disposition is appropriate under MCR 2.116(C)(10) if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." West v General Motors Corp, 469 Mich 177, 183 (2003). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." Id. Applying these well-settled standards, the Court shall address each of the various claims and counterclaims *seriatim*.

A. Claims and Counterclaims Concerning the Licensing Agreement.

Several of the claims and counterclaims require the Court to interpret the exclusive licensing agreement. Contract interpretation involves questions of law that the Court must consider in the first instance. See Klapp v United Ins Group Agency, Inc, 468 Mich 459, 463 (2003). "It is well settled that the meaning of an ambiguous contract is a question of fact that must be decided by the jury[,]" id. at 469, but "unambiguous contracts are not open to judicial construction and must be *enforced as written.*" Rory v Continental Ins Co, 473 Mich 457, 468 (2005). Plaintiff Infusion contends that Guadalupe Gonzales and ChachiMomma breached the licencing agreement by selling and marketing

licensed products in direct competition with Infusion. To be sure, the licensing agreement granted Infusion exclusive rights related to the licensed products, see First Amended Complaint, Exhibit 1 (Exclusive Licensing Agreement, §§ 1, 2), such as "all goods, services, trademarks, patents, pending patents, merchandise, apparel, products, promotions, endorsements, sponsorships and the like, which are related, in any way, to Gonzalez [sic] and/or Chachimomma, Inc., including, without limitations, the mark 'Chachimomma.'" Id., § 1(b). Under the terms of the licensing agreement, Guadalupe and Olivia Gonzales gave Infusion:

> (1) exclusive control of all operational functions including manufacturing, shipping, vendor selection, distribution and sales of all Licensed Products that consist of merchandise, apparel and products; (2) exclusive control of development and maintenance, including access to web keys, coding and related material, of "Chachimomma.com," "Chachigonzalez.com" and any other websites related to the sale of the Licensed Products; (3) exclusive control over all social media content related to the Licensed Products including social networking sites such as Myspace, Facebook, Twitter, flikr, and YouTube; (4) development, implementation and execution of all brand development related to the Licensed Products; (5) exclusive control over licensing opportunities related to the Licensed Products.

Id., § 2. In exchange, Infusion agreed to pay a licensing fee of $10,000 per month for the two-year term of the exclusive licensing agreement to Olivia Gonzales and ChachiMomma See id., § 4.

Plaintiff Infusion alleges that Guadalupe Gonzales and ChachiMomma breached the licensing agreement by accepting a $5,000 sponsorship for Olivia Gonzales from Paul Mitchell, by permitting David Gonzales to sell ChachiMomma Pants at the Body Rock Show in San Diego, California, and by marketing similar pants on fanatikapparel.com. But the testimony of Guadalupe Gonzales gives rise to a genuine issue of material fact as to her involvement in the first and third alleged violations. Guadalupe Gonzales testified that she did not know that her daughter had accepted the sponsorship from Paul Mitchell, see Defendants' Brief in Support of Response to Plaintiff's Motion for Summary

Disposition Pursuant to MCR 2.116(C)(8) and (10), Exhibit 1 (Deposition of Guadalupe Gonzales at 31), and she testified that her son – albeit with her knowledge – was the individual marketing ChachiMomma pants on the fanatikapparel.com website. See id. at 110-111. Guadalupe Gonzales did admit that she worked together with her husband to sell ChachiMomma pants at the Body Rock Show in San Diego on June 29, 2013. Id. at 54. Thus, Guadalupe Gonzales has admitted, in at least one regard, that she breached the licensing agreement, so the Court must grant summary disposition to Infusion on that portion of its claim for breach of contract.

Next, Guadalupe Gonzales and ChachiMomma have pleaded four counts seeking declaratory relief in connection with the licensing agreement and one count of breach of contract – each of which the Court has considered on prior occasions. First, they request a declaratory judgment stating that Guadalupe Gonzales and ChachiMomma, as opposed to Olivia Gonzales, are entitled to the $10,000 per month in licensing payments. Olivia Gonzales abandoned her claim to the licensing payments by failing to defend against Guadalupe Gonzales's cross-claim, and the Court has already approved the entry of a default judgment in favor of Guadalupe Gonzales on that claim. At the conclusion of the trial, the Court shall award all of the licensing payments to Guadalupe Gonzales unless Infusion obtains set-off against those funds based upon Infusion's claims against Guadalupe Gonzales.[1]

Second, Guadalupe Gonzales and ChachiMomma claim that Infusion breached the exclusive licensing agreement by losing control of the ChachiMomma Facebook page. Guadalupe Gonzales contends that, because she notified Infusion of that breach, the Court must declare that the licensing agreement terminated on August 4, 2013, with the loss of the Facebook page. The Court has already

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[1] Indeed, Plaintiff Infusion has already prevailed on at least a portion of its claim for breach of contract against Guadalupe Gonzales and ChachiMomma.

considered those issues and reached the conclusion that "Infusion simply had administrative rights to that Facebook page, but Defendant Guadalupe Gonzales had control of the Facebook page, so the harm done to the Facebook page cannot be attributed to Infusion." See Opinion and Order Granting Preliminary Injunction at 6 (Sept 5, 2013). Because Infusion did not breach the licensing agreement when it lost control of the Facebook page, Guadalupe Gonzales and ChachiMomma had no right to terminate the licensing agreement. Thus, the Court must grant summary disposition to Infusion on Count Two of the counterclaims pursuant to MCR 2.116(C)(10).

Third, Guadalupe Gonzales and ChachiMomma have asked the Court to declare that Infusion must cease selling licensed products unless those products were ordered prior to December 31, 2013. The licensing agreement affords Infusion "the authority to carry out and/or sell Licensed Products and/or inventory that was contracted, paid for, produced, partially produced as work in progress, or ordered prior to termination" of the agreement "for a period of 12 months following termination[,]" see First Amended Complaint, Exhibit 1 (Exclusive Licensing Agreement, § 6(a)), and the Court has already explained that this provision unambiguously "permits Infusion to sell off its entire inventory of Chachimomma clothing as long as Infusion does so by the end of 2014." See Opinion and Order Denying Motion for Preliminary Injunction at 4 (June 16, 2014). Therefore, the Court must grant summary disposition to Infusion on Count Three of the counterclaims.

Finally, Guadalupe Gonzales and ChachiMomma have requested an order directing Infusion to give up the new ChachiMomma Facebook page to Guadalupe Gonzales. By all accounts, Infusion created the new ChachiMomma Facebook page after it lost access to the original ChachiMomma Facebook account. Infusion built the new page from scratch and redeveloped a fan following for the new ChachiMomma Facebook account, but Infusion has now purportedly converted that Facebook

page into the Chachi Pants Facebook page Infusion is using to sell its excess ChachiMomma pants inventory.[2] But Guadalupe Gonzales and ChachiMomma contend that Infusion should have turned over all social media, including the new Chachimomma Facebook page, upon the termination of the exclusive licensing agreement. While it seems reasonable for Infusion to return the ChachiMomma Facebook page to Guadalupe Gonzales upon the expiration of the exclusive licensing agreement, the agreement does not address that issue and the Court cannot interpret the parties' contract based upon the Court's assessment of reasonableness. See Rory, 473 Mich at 468-469. Therefore, because the exclusive licensing agreement leaves that issue open, the Court must submit to the jury that dispute framed in Count Four of the counterclaims. See Klapp, 468 Mich at 469.

B. Infusion's Claim for Unjust Enrichment.

Next, Plaintiff Infusion has advanced a claim for unjust enrichment against Defendants David Gonzales, Guadalupe Gonzales, and ChachiMomma. "An implied-in-law contract is a legal fiction 'to enable justice be accomplished' even if there was no meeting of the minds and no contract was intended." AFT Michigan v Michigan, 303 Mich App 651, 660 (2014). To prevail on such a claim for unjust enrichment, "a plaintiff must demonstrate (1) the defendant's receipt of a benefit from the plaintiff and (2) an inequity to plaintiff as a result." Id. at 661. But under Michigan law, a contract ought not be implied "if the parties have an express contract covering the same subject matter." Id. Here, Infusion claims a right to damages flowing from ChachiMomma pants orders that Guadalupe Gonzales accepted prior to entering into the licensing agreement, but which Infusion had to fulfill.

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[2] The Court arrived at this conclusion based upon the Court's review of the transcript of the January 30, 2014, evidentiary hearing, which is much more comprehensive than the excerpts from depositions that have been provided by the parties. See Evidentiary Hearing Tr. Vol I of II at 39-40 (Jan 30, 2014).

In addition, Infusion demands damages for ChachiMomma pants that Infusion allowed Guadalupe Gonzales and her family to sell at trade shows while the exclusive licensing agreement was in effect. In response, the defendants assert that those claims are covered by express agreements ancillary to the licensing agreement.[3] First, the defendants contend that Infusion agreed to fulfill the outstanding ChachiMomma pants orders in exchange for all of Guadalupe Gonzales's inventory and materials. See Defendants' Brief in Support of Response to Plaintiff's Motion for Summary Disposition Pursuant to MCR 2.116(C)(8) and (10), Exhibit 1 (Deposition of Guadalupe Gonzales at 17-18) & Exhibit 3 (e-mail from Brent Hawkins to David and Guadalupe Gonzales on May 8, 2012). Second, the defendants insist that Infusion agreed to provide them with ChachiMomma pants, at cost, to be sold by the defendants at trade shows. See id., Exhibit 3 (e-mail from Brent Hawkins to David and Guadalupe Gonzales on May 8, 2012). Accordingly, the defendants have created an issue of fact as to whether Infusion's claims for unjust enrichment are covered by express agreements and whether those agreements were breached, so the Court must leave those issues to be resolved at trial.

C. Counterclaims Related to Infusion's Continued Competition.

After the licensing agreement expired on December 31, 2013, Plaintiff Infusion began selling pants under the trade name Rul9. Those pants bear a striking resemblance to ChachiMomma pants, so Guadalupe Gonzales and ChachiMomma pleaded counterclaims against Infusion for conversion, violations of the Michigan Uniform Trade Secrets Act, MCL 445.1901, *et seq.*, unfair competition, and unjust enrichment arising from Infusion's retention of ChachiMomma's customer lists, supplier

[3] The unjust-enrichment claim may fall within the ambit of the licensing agreement because that agreement contains both a merger clause and a written-modification clause, see First Amended Complaint, Exhibit 1 (Exclusive Licensing Agreement, §§ 15, 16), but the defendants have forgone that argument in order to reduce their obligation to pay attorney fees if they breached the agreement.

information, patterns, ideas, creative works, and related materials as well as the new ChachiMomma Facebook page. The Court shall address each counterclaim in this collection in turn.

First, the conversion claim cannot survive Infusion's motion for summary disposition under MCR 2.116(C)(10). "Conversion is defined as 'any distinct act of dominion wrongfully asserted over another's personal property in denial of or inconsistent with the rights therein.'" See Lawsuit Financial, LLC v Curry, 261 Mich App 579, 591 (2004). In addition, a plaintiff must prove that the defendant's "initial exercise of domain over the property was in fact wrongful." Id. at 592. In this case, Guadalupe Gonzales initially permitted Infusion to exercise dominion over the ChachiMomma customer lists, supplier information, patterns, ideas, creative works, and related material as well as the new ChachiMomma Facebook page, so Infusion plainly did not convert any of those items. As a result, the Court must award summary disposition to Infusion on Count Seven of the counterclaims pursuant to MCR 2.116(C)(10).

Second, the Court must grant summary disposition to Infusion, in part, with respect to the Michigan Uniform Trade Secrets Act ("MUTSA") claim. Guadalupe Gonzales and ChachiMomma regard their customer lists, supplier information, patterns, ideas, creative works, and related materials as protected trade secrets, but customer lists and supplier information do not enjoy protection under the MUTSA. See Industrial Control Repair, Inc v McBroom Electric Co, Inc, No 302240, slip op at 8 (Mich App Oct 10, 2013) (unpublished decision). The patterns and designs for ChachiMomma pants may be protected under the MUTSA. Guadalupe Gonzales and ChachiMomma contend that the pants are made with unique specifications and design templates that are not easily replicated, see Defendants' Brief in Support of Response to Plaintiff's Motion for Summary Disposition Pursuant to MCR 2.116(C)(8) and (10), Exhibit 1 (Deposition of Guadalupe Gonzales at 11-14), but Infusion

insists that any manufacturer could produce similar pants simply by running an Internet search. This dispute presents a genuine issue of material fact that can only be resolved at trial. Consequently, the Court must deny, in part, Infusion's request for summary disposition pursuant to MCR 2.116(C)(10) on the MUTSA theory pleaded as Count Eight of the counterclaims.

Third, the Court must award summary disposition to Infusion pursuant to MCR 2.116(C)(10) on the claim for "Unfair Competition/Palming Off" presented as Count Twelve of the counterclaims. "'Unfair competition ordinarily consists in the simulation by one person, for the purpose of deceiving the public, of the name, symbols, or devices employed by a business rival, or the substitution of the goods or wares of one person for those of another, thus falsely inducing the purchase of his wares and thereby obtaining for himself the benefits properly belonging to his competitor.'" Moon Bros, Inc v Moon, 300 Mich 150, 162 (1942). Guadalupe Gonzales and ChachiMomma do not allege that Infusion has passed off its goods as ChachiMomma pants. Instead, they contend that Infusion should not be offering products similar to ChachiMomma pants under the Rul9 brand. That allegation does not support any claim for unfair competition under Michigan law, so the Court must grant summary disposition to Infusion on that counterclaim under MCR 2.116(C)(8).

Finally, the unjust-enrichment claim advanced by Guadalupe Gonzales and ChachiMomma as Count Fourteen of their counterclaims cannot survive Infusion's motion for summary disposition under MCR 2.116(C)(8). To the extent that the unjust-enrichment claim concerns retention of the new ChachiMomma Facebook page, the claim is barred because Guadalupe Gonzales contends that she is entitled to possession of that page based upon the exclusive licensing agreement. See AFT Michigan, 303 Mich App at 661 (no implied-contract claim "if the parties have an express contract covering the same subject matter"). To the extent the unjust-enrichment claim relates to retention

of the patterns, ideas, creative works, and related materials, the claim is barred because the MUTSA displaces all civil remedies, except those arising under a contract, for the misappropriation of trade secrets. See MCL 445.1908; see also CMI Int'l, Inc v Intermet Int'l Corp, 251 Mich App 125, 132 (2002). Therefore, the Court must award summary disposition under MCR 2.116(C)(8) to Infusion with respect to the unjust-enrichment claim set forth as Count Fourteen of the counterclaims.

D. Claim and Counterclaim for Tortious Interference.

Although a claim for tortious interference with contractual relations or tortious interference with business expectancies is difficult to establish under Michigan law, both sides have opted to take a run at such a claim. Predictably, however, neither side's effort can survive the other side's demand for summary disposition. To prove tortious interference of a contract, Infusion must prove "(1) the existence of a contract, (2) a breach of the contract, and (3) an unjustified instigation of the breach by the defendant." Health Call of Detroit v Atrium Home & Health Care Services, Inc, 268 Mich App 83, 90 (2005). Similarly, to sustain their counterclaim for tortious interference with a business relationship or expectancy, Guadalupe Gonzales and ChachiMomma must prove "(1) the existence of a valid business relationship or expectancy that is not necessarily predicated on an enforceable contract, (2) knowledge of the relationship or expectancy on the part of the defendant interferer, (3) an intentional interference by the defendant inducing or causing a breach or termination of the relationship or expectancy, and (4) resulting damage to the party whose relationship or expectancy was disrupted." Id. Claims of that nature require proof that the interferer acted unlawfully or for an unlawful purpose. Knight Enterprises, Inc v RPF Oil Co, 299 Mich App 275, 280 (2013); Dalley v Dykema Gossett PLLC, 287 Mich App 296, 324 (2010). Moreover, if "'the defendant's actions were motivated by legitimate business reasons, its actions would not constitute improper motive or

interference.'" Dalley, 287 Mich App at 324. Here, the facts alleged by both sides fall short of the requirements established under Michigan law, so the Court must grant summary disposition pursuant to MCR 2.116(C)(8) with respect to each side's tortious-interference claim. Consequently, Count Six of Infusion's first amended complaint and Count Six of the counterclaims are no longer at issue in this case.

E. Counterclaims for Fraud and Misrepresentation.

Although Guadalupe Gonzales and ChachiMomma have pleaded counterclaims for fraud and misrepresentation, neither their general allegations nor their specific counts contain any details about the nature of the alleged fraud and misrepresentation. Because those two counterclaims "are based on alleged fraudulent activity, the heightened pleading standard for fraud claims applies." Gurganus, 496 Mich at 63. As our Supreme Court recently observed, "MCR 2.112(B)(1) provides, in full, 'In allegations of fraud or mistake, the circumstances constituting fraud or mistake must be stated with particularity.'" Gurganus, 496 Mich at 63. Here, the failure to plead fraud and misrepresentation with particularity dooms those claims under MCR 2.116(C)(8). Accordingly, on that basis, the Court shall grant summary disposition to Infusion on Counts Nine and Ten of the counterclaims.

F. Counterclaim for Breach of Fiduciary Duty.

In Count Eleven of the counterclaims, Guadalupe Gonzales and ChachiMomma allege breach of fiduciary duties against Infusion. "[T]he existence of a duty is generally a question of law," see Calhoun County v Blue Cross Blue Shield of Michigan, 297 Mich App 1, 20 (2012), and a fiduciary relationship exists when "'one person is under a duty to act for the benefit of the other on matters within the scope of the relationship.'" Id. More specifically, our Court of Appeals has explained:

> Fiduciary relationships [usually] arise in one of four situations: (1) when one person places trust in the faithful integrity of another, who as a result gains superiority or influence over the first, (2) when one person assumes control and responsibility over another, (3) when one person has a duty to act for or give advice to another on matters falling within the scope of the relationship, or (4) when there is a specific relationship that has traditionally been recognized as involving fiduciary duties, as with a lawyer and client or a stockbroker and a customer.

Id. Here, Guadalupe Gonzales and ChachiMomma have failed to allege that the relationship between themselves and Infusion fits into any of the above categories. Indeed, no such argument could even be made in these circumstances, so the Court must grant summary disposition in favor of Infusion under MCR 2.116(C)(8) and (10) on Count Eleven of the counterclaims.

G. Counterclaim for Negligence.

The oddest counterclaim asserted by Guadalupe Gonzales and ChachiMomma takes the form of a negligence claim in Count Thirteen. Such a claim requires proof of "(1) duty; (2) breach of that duty; (3) causation, both cause in fact and proximate causation; and (4) damages." See Romain v Frankenmuth Mutual Ins Co, 483 Mich 18, 21-22 (2009). Count Thirteen of the counterclaims does not plead any of those elements, but Guadalupe Gonzales and ChachiMomma describe their claim as arising from Infusion's alleged failure to maintain the security of their ChachiMomma Facebook page, as required by the licensing agreement. This constitutes an improper effort to convert a claim for breach of contract into a tort. Our Supreme Court has held: "a tort action will not lie when based solely on the nonperformance of a contractual duty." See Fultz v Union-Commerce Assoc, 470 Mich 460, 466 (2004). That ruling leads ineluctably to the conclusion that Infusion is entitled to summary disposition under MCR 2.116(C)(8) and (10) on the negligence claim set forth as Count Thirteen of the counterclaims. Simply put, Guadalupe Gonzales and ChachiMomma cannot recast a claim for breach of a contractual duty as a tort claim alleging negligence.

III. Conclusion

For all of the reasons stated in this opinion, the Court must clear away most of the claims and counterclaims by granting summary disposition pursuant to MCR 2.116(C)(8) and (10). The Court's analysis leaves only two claims and two counterclaims for resolution at trial. Specifically, Infusion may proceed with its claims for breach of contract and unjust enrichment in Counts Two and Three of its first amended complaint. In addition, Guadalupe Gonzales and ChachiMomma may proceed on their claims against Infusion for declaratory relief concerning the ChachiMomma Facebook page as alleged in Count Four of their counterclaims and for violation of the MUTSA with respect to the patterns and designs of ChachiMomma pants as alleged in Count Eight of their counterclaims.

IT IS SO ORDERED.

Dated: December 23, 2014

HON. CHRISTOPHER P. YATES (P41017)
Kent County Circuit Court Judge