

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**  
(Greenbelt Division)

SPORT SQUAD, INC.,

*Plaintiff,*

v.

USA PICKLEBALL ASSOCIATION,

*Defendant.*

Case No. 8:24-cv-01712-PX

**DEFENDANT USA PICKLEBALL ASSOCIATION'S  
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
MOTION TO DISMISS**

**TABLE OF CONTENTS**

INTRODUCTION ..... 1

FACTS ..... 4

I. Overview of USAP Approval Process ..... 4

II. Sport Squad Submits the “Wrong” Paddles to USAP in November 2023 ..... 6

III. Sport Squad Submits the “Market Version” Paddles to USAP in May 2024 ..... 9

LEGAL STANDARD ..... 10

ARGUMENT ..... 10

I. Sport Squad Fails to State a Claim for Breach of Implied Contract (Count 1) Because the Complaint Does Not Show That USAP Breached Any Alleged Understanding ..... 10

II. Sport Squad Fails to State a Claim for Promissory Estoppel (Count 4) for Similar Reasons and Because Sport Squad Fails to Plead Reasonable Reliance. .... 15

III. Sport Squad Fails to State a Claim for Negligent Misrepresentation (Count 5) or Fraud (Count 6)..... 17

IV. Sport Squad Fails to State a Claim for Tortious Interference with Contractual Relations (Count 2) or Tortious Interference with Business Expectancy (Count 3). ..... 20

CONCLUSION ..... 23

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>Cases</b>	
<i>Aarow Elec. Sols. v. Tricore Sys., LLC</i> , 2024 U.S. Dist. LEXIS 61828 (D. Md. Apr. 3, 2024) .....	10, 22, 23
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009).....	10
<i>Baltimore Sports &amp; Social Club, Inc. v. Sport &amp; Social, LLC</i> , 228 F. Supp. 3d 544 (D. Md. 2017).....	20, 21
<i>Bell Atl. Corp. v. Twombly</i> , 550 U.S. 544 (2007).....	10
<i>Blue Cross of California Inc. v. Insys Therapeutics Inc.</i> , 390 F. Supp. 3d 996 (D. Ariz. 2019) .....	22
<i>Cains v. Grassi</i> , 2017 U.S. Dist. LEXIS 10395 (D. Ariz. Jan. 24, 2017) .....	21
<i>D &amp; G Flooring, LLC v. Home Depot U.S.A., Inc.</i> , 346 F. Supp. 2d 818 (D. Md. 2004).....	17
<i>D.C. Water &amp; Sewer Auth. v. Samaha Assocs., PC</i> , 2024 U.S. Dist. LEXIS 64346 (D. Md. Apr. 9, 2024) .....	4
<i>Dolan v. McQuaide</i> , 215 Md. App. 24, 79 A.3d 394 (2013).....	11
<i>Dube v. Likins</i> , 216 Ariz. 406, 167 P.3d 93 (Ct. App. 2007).....	20
<i>Fowler v. Printers II, Inc.</i> , 89 Md. App. 448, 598 A.2d 794 .....	21
<i>Gabaldoni v. Washington County Hosp. Ass’n</i> , 250 F.3d 255 (4th Cir. 2001) .....	20
<i>Griffey v. Magellan Health Inc.</i> , 562 F. Supp. 3d 34 (D. Ariz. 2021) .....	11
<i>Hobart-Mayfield, Inc. v. Nat’l Operating Comm. on Standards for Athletic Equipment</i> , 48 F.4th 656 (6th Cir. 2022) .....	21

*Lilly v. Baltimore Police Dept.*,  
694 F. Supp. 3d 569 (D. Md. 2023).....22

*Lloyd v. Gen. Motors Corp.*,  
397 Md. 108, 916 A.2d 257 (2007) .....18

*Malnar v. Embry-Riddle Aeronautical Univ. Inc.*,  
2022 WL 3923525 (D. Ariz. Aug. 31, 2022).....15

*McCulley v. Banner Health*,  
2024 U.S. Dist. LEXIS 85232 (D. Ariz. May 10, 2024) .....10

*Md. Transp. Auth. Police Lodge # 34 of FOP, Inc. v. Md. Transp. Auth.*,  
195 Md. App. 124, 5 A.3d 1174 (2010).....16

*Megawatt Corp. v. Tucson Elec. Power Co.*,  
1989 WL 95602 (D. Ariz. May 26, 1989) .....19

*Mohiuddin v. Doctors Billing & Mgmt. Solutions*,  
196 Md. App. 439, 9 A.3d 859 (2010).....10, 11

*Neonatology Assocs., Ltd. v. Phoenix Perinatal Assocs. Inc.*,  
216 Ariz. 185, 164 P.3d 691 (Ct. App. 2007).....20

*Nordstrom, Inc. v. Schwartz*,  
2019 U.S. Dist. LEXIS 151012, 2019 WL 4221475 (D. Md. Sept. 5, 2019).....18, 23

*Patel v. Scotland Memorial Hosp.*,  
1995 U.S. Dist. LEXIS 5258 (D. Md. Mar. 31, 1995).....22

*Pavel Enters. v. A.S. Johnson Co.*,  
342 Md. 143, 674 A.2d 521 (1996) .....15, 17

*Queiroz v. Harvey*,  
220 Ariz. 273, 205 P.3d 1120 (2009).....17

*Robinson v. Gardiner*,  
196 Md. 213, 76 A.2d 354 (1950) .....11

*Rucker v. Branch Banking & Tr. Co.*,  
2021 WL 962516 (D. Md. Mar. 14, 2021).....17

*Southern Volkswagen, Inc. v. Centrix Fin., LLC*,  
357 F. Supp. 2d 837 (D. Md. 2005).....20

*State Farm Fire & Cas. Co. v. Amazon.com Inc.*,  
2018 WL 1536390 (D. Ariz. Mar. 29, 2018).....18

*TECx Glob. Educ. Found. v. W. Nottingham Acad. in Cecil Cnty.*,  
2023 U.S. Dist. LEXIS 130030 (D. Md. July 26, 2023).....18

*Topline Solutions, Inc. v. Sandler Sys., Inc.*,  
2017 WL 1862445 (D. Md. May 8, 2017).....17, 19

*Total Recon. Auto Ctr., LLC v. Allstate Ins. Co.*,  
2023 U.S. Dist. LEXIS 219620 (D. Md. Dec. 11, 2023).....21

*Venkatraman v. REI Sys., Inc.*,  
417 F.3d 418 (4th Cir. 2005) .....10

*Young v. Arizona Summit L. Sch. LLC*,  
2018 WL 11470870 (D. Ariz. June 12, 2018) .....17

**Other Authorities**

Fed. R. Civ. P. 9(b) .....18

USA Pickleball Updated Statement on JOOLA, *available at* <https://usapickleball.org/news/usa-pickleball-statement-on-decertified-joola-paddles-and-equipment-testing-standards> .....4

USA Pickleball Updated Statement on JOOLA, *available at*  
<https://usapickleball.org/news/usa-pickleball-statement-on-decertified-joola-paddles-and-equipment-testing-standards>.....19

## INTRODUCTION

Pickleball is the fastest growing sport in the United States. Only a decade ago, many Americans had never heard of pickleball. Today, millions of Americans play pickleball on dedicated courts at public and private locations throughout the country. Defendant USA Pickleball Association (“USAP”) is the national governing body that establishes pickleball’s rules and equipment standards. It is easy for the public to take for granted the existence and importance of established, written guidelines in sports. Those rules and standards level the playing field—both literally and metaphorically. At the same time, public adherence to USAP’s rules and standards is a voluntary act that rests on USAP’s credibility as an institution.

As a national governing body, USAP serves as the arbiter of its own rules and specifications and evaluates new equipment, such as paddles, for compliance. USAP engages in a two-tiered process for approving pickleball paddles. First, manufacturers submit a prototype that will not be sold publicly. Second, if USAP approves the prototype, manufacturers submit updated models that the manufacturers would like to sell to the public. If USAP also approves those models, manufacturers may stamp the words “USA Pickleball Approved” on the face of the approved paddles. Manufacturers may, of course, sell unapproved paddles to the public; they just cannot stamp those paddles as “USA Pickleball Approved.”

This case involves three sets of paddles submitted by Plaintiff Sport Squad, Inc. (“Sport Squad”): (1) two prototype (or “base”) paddles approved by USAP; (2) nine inadvertently submitted paddles approved by USAP, but never sold to the public; and (3) nine unsubmitted paddles *never* approved by USAP but sold to the public by Sport Squad. Specifically, by its own admission, Sport Squad sent the “wrong” pickleball paddles to USAP in November 2023 for evaluation. Compl. ¶¶ 6, 60-61. USAP approved those paddles by mid-December. Then, by another judicially admitted “error,” Sport Squad began to manufacture *different* paddles in late

December. Although USAP had not approved the mass-produced paddles, Sport Squad stamped them as “USA Pickleball Approved,” distributed them to sponsored players for tournaments in early 2024, and publicly released them in April 2024. When Sport Squad disclosed its error to USAP in May 2024, USAP naturally informed Sport Squad that unapproved paddles could not be sold to the public with a “USA Pickleball Approved” logo. Instead, the paddles had to be submitted to USAP, like any other paddle, before displaying that representation.

Earlier this year, USAP updated its surface roughness standards for paddles. By the time Sport Squad realized its error, the updated rule was in effect, and the unapproved paddles failed that standard. Furthermore, professional players had used these unapproved paddles in tournaments for months, and the unapproved paddles developed a reputation as unfair to other players. Pickleball paddles exist on the spectrum between table tennis paddles and tennis racquets, but much closer to table tennis paddles. USAP’s equipment standards expressly prohibit paddles from exhibiting a “spring-like” or “trampoline” effect. Sport Squad had begun to capitalize on its production error by marketing the unapproved paddles as exhibiting a “catapult” effect because of a layer of internal foam along the outside rim. When Sport Squad evaluated the unapproved paddles, USAP determined that they were non-compliant.

The Complaint revolves around Sport Squad’s attempt to blame USAP for the fallout from its own errors and aggressive paddle design. To be clear, Sport Squad is free to sell its paddles without a “USA Pickleball Approved” logo. The thrust of the Complaint, however, is that Sport Squad wants the federal judiciary to become the new arbiter of pickleball’s rules and standards. Sport Squad also wants to have its arguments both ways. That is, Sport Squad sought to create “cutting edge” paddles by including foam around the rim—but, after USAP’s finding of non-compliance, Sport Squad claims the foam is not *that* unique. The recently submitted paddles are

allegedly “identical” to prototypes—except for manufacturing variances in the amount of foam. The “USA Pickleball Approved” designation is valuable for manufacturers—but USAP should look the other way when Sport Squad floods the market with unapproved paddles. Testing procedures are important—unless Sport Squad prefers a different test. These arguments speak to the reason why governing bodies like USAP exist and why the Complaint fails as a matter of law.

*First*, Sport Squad’s implied contract claim fails because Sport Squad does not plead a breach of any alleged understanding between the parties. On the contrary, the Complaint disproves any alleged breach. Sport Squad committed an admitted “error” by manufacturing unapproved paddles and selling them to the public. Later, USAP did not “revoke” approval of the unapproved paddles. Instead, the paddles failed USAP’s standards in place at the time of submission.

*Second*, Sport Squad’s promissory estoppel, negligent misrepresentation, and fraud claims fail based on the absence of reasonable reliance. Sport Squad received USAP approval for nine paddles and produced nine different ones. Sport Squad cannot plausibly allege reasonable reliance and impose civil liability on USAP when Sport Squad “accidentally” sent the “wrong” paddles to USAP for approval and then stamped *other*, unapproved paddles as “USA Pickleball Approved.”

*Third*, Sport Squad’s negligent misrepresentation claim also fails because USAP does not owe a tort duty to Sport Squad based on the parties’ commercial, quasi-contractual relationship.

*Fourth*, Sport Squad fails to identify any fraudulent misrepresentation made by USAP that induced Sport Squad to mass-produce the wrong type of unapproved paddles.

*Finally*, Sport Squad’s Plaintiff’s tortious interference claims fail based on the absence of a “wrongful” or “unlawful” act by USAP. USAP’s actions do not rise to the level of fraud or criminality; they reflect a business decision focused on the fairness of competition in pickleball.

For the reasons set forth below, the Court should dismiss the Complaint with prejudice.



## FACTS<sup>1</sup>

### I. Overview of USAP Approval Process

USAP is the national governing body for the sport of pickleball and establishes the standards for pickleball equipment in the United States. Compl., ¶¶ 1, 13. USAP-sanctioned tournaments require players to use USAP-approved paddles. *Id.* ¶ 21. The two major professional pickleball associations—Professional Pickleball Association and Major League Pickleball—also require players to use USAP-approved paddles. *Id.*

USAP “‘holds approved equipment to an extremely rigorous process and the highest testing standards and will evaluate . . . submissions for compliance with USA Pickleball’s equipment standards.’” *Id.* ¶ 18; *see* USA Pickleball Updated Statement on JOOLA, *available at* <https://usapickleball.org/news/usa-pickleball-statement-on-decertified-joola-paddles-and-equipment-testing-standards> (last visited July 17, 2024) (source of quotation).<sup>2</sup> For a manufacturer to represent a paddle as “USA Pickleball Approved,” USAP must “find[.]” that the submitted paddle “compl[ies] with its standards.” Compl. ¶ 18.

USAP establishes detailed equipment specifications, last comprehensively published in the Equipment Standards Manual version 2.0 (Nov. 2023) (“Manual”), attached hereto as Exhibit A. *See* Compl. ¶¶ 43, 53, 73, 90 (quoting or citing Manual). As the Manual explains, “[t]he goal of this document is to ensure the nature of the sport is preserved through ongoing management of equipment specifications and processes to measure them.” Ex. A at 3. The Manual further states that “USA Pickleball reviews equipment testing standards periodically and, with proper

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<sup>1</sup> Except as noted, USAP presents these facts as pleaded without acknowledgment of their truth or falsity.

<sup>2</sup> When a plaintiff references and cites a document in the complaint, the document may be considered by the court on a motion to dismiss. *See, e.g., D.C. Water & Sewer Auth. v. Samaha Assocs., PC*, 2024 U.S. Dist. LEXIS 64346, at \*7-8 (D. Md. Apr. 9, 2024).

notification to manufacturers, reserves the right to modify equipment specifications as needed to maintain the integrity of the game.” *Id.* at 14.

The Manual contains specifications for pickleball nets, balls, and paddles. *Id.* at Rules 2.C, 2.D, 2.E. The Manual provides that “[t]he approval of equipment authorized for sanctioned tournament play shall be made by the USA Pickleball Board of Directors acting on a recommendation of the Equipment Evaluation Committee (EEC).” *Id.* at Rule 2.F. Furthermore, “[m]anufacturers are subject to compliance testing to ensure that products as produced and sold are compliant with all requirements.” *Id.* at Rule 2.F.2.

For paddles, USAP’s specifications address materials, size, weight, surface roughness, reflection, alterations, and “prohibited features.” *Id.* at Rule 2.E.1-.6. Relevant here, those specifications provide that “[t]he paddle shall be made of rigid, non-compressible material.” *Id.* at Rule 2.E.1. The “prohibited features” include “[s]prings or spring-like material, flexible membranes or any compressible material that creates a trampoline effect.” *Id.* at Rule 2.E.6.f.

USAP “determine[s]” a paddle’s surface roughness by “[u]sing a Starrett SR160 or SR300 Surface Roughness Tester (or equivalent).” *Id.* at Rule 2.E.2.a.1. Under the November 2023 version of the Manual, the “allowable limits for roughness shall be an average of no greater than 30 micrometers ( $\mu\text{m}$ ) on the Rz readings . . . and an average of no greater than 40 micrometers on the Rt readings, with all readings to be taken in six different directions.” *Id.* Subsequently, as reflected in a notice of proposed rulemaking dated February 8, 2024, the updated rule added: **“Each face of the paddle will be measured in six different directions and the data will be averaged per paddle face. No single data point in the data set can be above 33 micrometers for Rz, and no single data point in the data set can be above 44 micrometers for Rt.”** USAP

NPRM 24-001, attached as Exhibit B, at 3 (bold in original).<sup>3</sup> The notice further provides: “**This NPRM will be effective April 1, 2024 – all paddles submitted for testing after April 1, 2024 must meet these new data requirements as outlined in this notice.**” *Id.* at 2 (bold in original).

## II. Sport Squad Submits the “Wrong” Paddles to USAP in November 2023

USAP has approved over 40 different pickleball paddle models designed and manufactured by Sport Squad under the brand name “Joola.” Compl. ¶ 16. USAP’s approval process follows a two-step procedure: (1) approval of prototype (or “base”) paddles; and (2) approval of “similarity” paddles for public purchase. *Id.* ¶¶ 2, 19, 23. In other words, after USAP approves a base paddle, manufacturers submit similarity paddles as “market versions” that must be “structurally and functionally identical” to the base paddle. *Id.* ¶¶ 3, 19.

In Summer 2023, Sport Squad designed what it describes as a “cutting-edge” paddle, part of a series of paddles Sport Squad describes as “next generation.” *Id.* ¶ 22; *see also id.* ¶¶ 4, 6, 9, 23, 27, 34, 36, 38, 40, 42, 43, 51, 59, 63, 65, 66, 71, 87. These “next generation” paddles contain various “innovations,” most notably a foam insert around the rim of the paddle, which enables pickleball players to “create more speed and spin,” coupled with increased control, which Sport Squad contends is “not found in any other paddles.” *Id.* ¶¶ 2, 22, 46, 96.<sup>4</sup>

On September 1, 2023, Sport Squad submitted two prototypes to USAP. *Id.* ¶ 23. In that submission, attached hereto as Exhibit C, Sport Squad affirmed: (a) “The submitted paddle will be identical to the paddle offered and sold to customers”; (b) “The submitted paddle will continue to meet Pickleball/IFP [International Pickleball Federation] rule specifications as it continues to be

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<sup>3</sup> Sport Squad challenges the updated rule as not “posted . . . in a public location” (Compl. ¶ 77)—not that USAP failed to notify Sport Squad. If Sport Squad plans to suggest otherwise, USAP will provide the email to the Court.

<sup>4</sup> Sport Squad observes that other manufacturers have placed foam in the paddle’s core, but not around the rim. *Id.* ¶¶ 109-10.

produced and sold to customers”; (c) “After approval, if the submitted paddle is modified, I understand it will need to be resubmitted to USA Pickleball for testing.” Ex. C. Sport Squad represented to USAP that the paddles “do[] not contain any prohibited surface features or mechanical features.” *Id.* (citing Rule 2.E.6.f). On September 16, USAP approved these two “base” models. *Id.* ¶ 25.

Next, on November 3 and 6, 2023, Sport Squad submitted nine additional paddles for “similarity” testing. *Id.* ¶¶ 28-30. In its submission, a sample submission of which is attached hereto as Exhibit D, Sport Squad certified: “I . . . am applying for paddle approval using similarity certification. The paddle being submitted is structurally and functionally identical to the model number . . . which was previously approved by [] USA Pickleball.” Ex. D; *see also* Compl., ¶¶ 3, 28. Sport Squad again represented: (a) “The submitted paddle will be identical to the paddle offered and sold to customers”; (b) “The submitted paddle will continue to meet Pickleball/IFP [International Pickleball Federation] rule specifications as it continues to be produced and sold to customers”; (c) “After approval, if the submitted paddle is modified, I understand it will need to be resubmitted to USA Pickleball for testing.” Ex. D. In an attached letter, Sport Squad further represented: “The only modifications we have made are the shape of the paddle and the surface artwork.” *Id.* Sport Squad again represented that the paddles “do[] not contain any prohibited surface features or mechanical features.” *Id.* (citing Rule 2.E.6.f).

By December 15, 2023, USAP approved these nine additional “similarity” paddles. Compl. ¶ 32. Sport Squad began manufacturing paddles in late December 2023. *Id.* ¶¶ 4, 40. Sport Squad set a public release date of April 16, 2024, for the nine paddle models. *Id.* ¶ 35. It proceeded to manufacture 150,000 paddles. *Id.* ¶ 40.

Something, however, had gone awry internally at Sport Squad. *By Sport Squad's own admission*, Sport Squad had committed an “administrative error” in November 2023 and “accidentally sent the ‘wrong’ paddles to [USAP] for similarity testing.” *Id.* ¶ 60. According to Sport Squad, it first realized this error around May 9, 2024. *Id.* ¶ 62. As a result, USAP had not approved the “market versions” of the paddles by the time of the release on April 16, 2024. *Id.* ¶ 63.

Before Sport Squad realized its error, the manufactured paddles had also met with public resistance. Beginning in January 2024, months before the “public” release, Sport Squad had already begun to provide the unapproved paddles to professional players. *Id.* ¶¶ 36-38. After these players won “numerous” tournaments using those paddles, “other paddle manufacturers and non-sponsored professional players began complaining that [Sport Squad’s] paddles gave an unfair advantage” to these players. *Id.* ¶¶ 38-39. Following these concerns, USAP “conduct[ed] a teardown” of the paddles, which revealed the full extent of foam around the rim and showed a violation of Rule 2.E.6.f, which prohibits “springs or spring-like material, flexible membranes or any compressible material that creates a trampoline effect.” *Id.* ¶¶ 43-44.

USAP had communicated these results to Sport Squad on April 11, 2024, before the public release date. *Id.* ¶ 44. USAP explained that “the foam insert along the rim . . . created an illegal ‘spring-like’ effect that made the exit velocity of batted balls ‘too fast.’” *Id.* ¶ 46. Indeed, Sport Squad itself had begun advertising the unapproved paddles “as having a ‘catapult’ effect.” *Id.* ¶ 50. Yet, Sport Squad chose to proceed with its public release on April 16, 2024.

On May 9, 2024, following USAP’s explanation, Sport Squad realized its “error” of submitting the “wrong” paddles to USAP for approval in November 2023. *Id.* ¶¶ 6, 60, 62. Those previously submitted paddles had a “manufacturing variance” and “did not fully meet [Sport Squad’s] specifications.” *Id.* ¶ 61. Those paddles, according to Sport Squad, “contained a layer of

foam that was considerably thicker than the foam layer contained in the two base paddles.” *Id.* Sport’s Squad’s own “error” had thus resulted in submitting “improperly-manufactured paddles” to USAP “instead of the ready-for-market versions of the paddles.” *Id.* As a result, the “market versions,” which Sport Squad manufactured and “marked . . . as ‘USA Pickleball Approved,’” were *not* approved by USAP. *Id.* ¶¶ 40, 63. Therefore, USAP removed these nine paddle models from its “Approved Pickleball Paddles” list. *Id.* ¶¶ 32, 65.

### III. Sport Squad Submits the “Market Version” Paddles to USAP in May 2024

On May 16, 2024, to “correct” its own “mistake,” Sport Squad finally submitted “market versions” of nine paddles for similarity testing. *Id.* ¶ 66. In its submission, attached hereto as Exhibit E, Sport Squad made the same representations as its last submission, including that the paddle was “structurally and functionally identical” to the prototype, which had been erroneous in November. Ex. E; *see also* Ex. D. On May 30, 2024, USAP informed Sport Squad by letter, attached hereto as Exhibit F, that the paddles were non-compliant. *Id.* ¶ 71; *see* Ex. F.

First, similarity testing seeks “to confirm that the submitted, market versions of a paddle are the same structurally and functionally as an already-approved base model.” *Id.* ¶ 70. USAP found that the paddles were *not* “identical” because they contained “additional foam around the perimeter.” *Id.* ¶ 84; *see* Ex. F. Sport Squad alleges that its own analysis showed the two sets of paddles were “*essentially* the same,” but acknowledges a lingering manufacturing variance issue: “less than 10% variance in foam for every market-version paddle,” and a less than 5% for five of the nine paddles. Compl. ¶ 87.

Second, USAP continued to explain to Sport Squad the same issue from its teardown that the paddles “contained an impermissible ‘compressible material that creates a trampoline effect’ and that [Sport Squad’s] ‘structural design impermissibly places spring-like, flexible, and

compressible material (foam) along the vertical edges of the paddles.” *Id.* ¶ 90; *see also* Ex. A at Rule 2.E.6.f.

Finally, the paddles did not pass USAP’s updated surface roughness rule, which went into effect on April 1, 2024. Six of the nine newly submitted paddles still failed under the prior rule, which concerned only “average” roughness. *Id.* ¶¶ 73-75. But all of the newly submitted paddles failed the updated rule on “maximum” roughness. *Id.* ¶¶ 76-77; *see* Ex. F.

### LEGAL STANDARD

To survive a Rule 12(b)(6) motion, a complaint must contain “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim has “facial plausibility” only when the plaintiff pleads “factual content that allows the court to draw reasonable inferences that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Although a district court must assume all well-pleaded allegations in a complaint are true, *Venkatraman v. REI Sys., Inc.*, 417 F.3d 418, 420 (4th Cir. 2005), courts should not accept mere “labels and conclusions,” “a formulaic recitation of the elements of a cause of action,” or “conclusory allegations.” *Aarow Elec. Sols. V. Tricore Sys., LLC*, 2024 U.S. Dist. LEXIS 61828, at \*11 (D. Md. Apr. 3, 2024) (citing *Twombly*, 550 U.S. at 555).

### ARGUMENT

#### **I. Sport Squad Fails to State a Claim for Breach of Implied Contract (Count 1) Because the Complaint Does Not Show That USAP Breached Any Alleged Understanding.**

An implied-in-fact contract is a “true” contract and thus required Plaintiff to plead all of the elements of a breach of contract claim. *Mohiuddin v. Doctors Billing & Mgmt. Solutions*, 196 Md. App. 439, 447-448, 9 A.3d 859, 864 (2010); *see McCulley v. Banner Health*, 2024 U.S. Dist. LEXIS 85232, at \*23-24 (D. Ariz. May 10, 2024) (“To state a claim under a theory of implied-in-

fact contract, a plaintiff must demonstrate the elements of a binding contract.”<sup>5</sup> Sport Squad must plead facts supporting a mutual agreement or consent, a shared intention of the parties, and a meeting of the minds. *See Mohiuddin*, 196 Md. App. at 447-448 (citing *Mogavero v. Silverstein*, 142 Md. App. 259, 275, 790 A.2d 43, 52 (2002)). An implied-in-fact contract must also have definite terms. *Dolan v. McQuaide*, 215 Md. App. 24, 36, 79 A.3d 394, 401-02 (2013); *see also Robinson v. Gardiner*, 196 Md. 213, 217, 76 A.2d 354, 356 (1950) (“[N]o action will lie upon a contract . . . where such contract is vague or uncertain in its essential terms.”); *Griffey v. Magellan Health Inc.*, 562 F. Supp. 3d 34, 51 (D. Ariz. 2021) (“[Implied contract] terms cannot be vaguely pleaded. Even at the motion to dismiss stage, courts cannot be left to ‘guess’ how a party failed to perform their contractual obligations.”).

Sport Squad alleges several “understandings”: (a) USAP “would examine and test [Sport Squad’s] new pickleball designs to confirm whether the new designs met [USAP’s] standards for certification; (b) “once [USAP] approved [Sport Squad’s] paddle designs, [USAP] would not revoke that certification on short notice if [Sport Squad] produced paddles that were structurally and functionally similar to the paddles that had been approved”; (c) “if [Sport Squad] submitted market versions of paddles that were structurally and functionally the same as [Sport Squad’s] already-approved base model paddles, [USAP] would conduct ‘similarity testing’ of the market-version paddles and approve them to the extent that they were in fact structurally and functionally similar to the base paddles”; and (d) “should [USAP] decide to revoke its approval of Plaintiff’s paddles, it would provide Plaintiff with 18-months’ notice before doing so.” Compl. ¶¶ 138, 140-41, 43. Sport Squad alleges USAP breached these understandings “by, without warning, revoking

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<sup>5</sup> No choice-of-law analysis is necessary because Maryland and Arizona law are consistent.



its approval of Plaintiff's next generation pickleball paddles and by failing to conduct valid similarity testing on the market versions of Plaintiff's next generation paddles." *Id.* ¶ 144.

Count 1 confuses the pleaded facts, reflects the absence of a clear understanding, and either way fails to state a claim. First, there was no "revocation" of approval. There are three sets of paddles: (1) the base paddles; (2) the "wrong" paddles; and (3) the "market version" paddles. *See id.* ¶¶ 23, 25, 28-30, 32, 60-61, 66. The base paddles and the "wrong" paddles received USAP approval in September and December 2023. *Id.* ¶¶ 25, 32, 60. Sport Squad did not, however, manufacture the base paddles or the wrong paddles for public purchase. *Id.* ¶¶ 61, 63. Instead, from late December 2023 through May 2024, Sport Squad manufactured the "market version" paddles *without* approval. *Id.* ¶¶ 4, 40, 61. Because Sport Squad had marketed and sold unapproved paddles under the same model names as the "wrong" paddles while selling a different product, USAP removed those paddle models from the "approved list."<sup>6</sup> *Id.* ¶¶ 11, 32, 63. A week later, Sport Squad finally applied for approval of the "market version" paddles. *Id.* ¶ 66. In short, there is no alleged breach based on "revocation" of approval because Sport Squad was not selling, and the public could not buy, an approved paddle.

Sport Squad also repeatedly attempts to invoke Rule 2.F.1, which allows USAP's board of directors to revoke approval of equipment on 18 months' notice in certain situations. *See id.* ¶¶ 53, 57, 70, 93-94, 112, 115, 117, 123, 143, 182. This argument is unavailing for several reasons. First, there was no revocation of an approved paddle. Second, even if there had been a revocation, Rule 2.F.1 does not cover these facts. The 18-month rule only applies "if the specified equipment is found to have been materially changed by the manufacturer or if the equipment materially degrades

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<sup>6</sup> For example, Sport Squad received approval for a paddle that it called the "Ben Johns Perseus 3 16mm," but any consumer who bought the paddle with that name five months later was not buying an approved paddle (which was never mass-produced), but rather an unapproved paddle also identified as the "Ben Johns Perseus 16mm." *See Compl.* ¶¶ 30, 75.

or changes under ordinary use so as to significantly alter the nature of the sport.” *Id.* ¶ 53; *see* Ex. A. Rule 2.F.1 has nothing to do with revoking approval because equipment *fails to comply with USAP rules and standards*, such as the inclusion of “prohibited features” like a trampoline effect or by failing compliance testing.<sup>7</sup> Rule 2.F.1 is not a loophole for manufacturers to produce non-compliant equipment to disrupt the market on 18-month intervals. Third, the very next rule, Rule 2.F.2, makes clear that: “Manufacturers are subject to compliance testing to ensure that products as produced and sold are compliant with all requirements.” *See* Ex. A. Finally, Rule 2.F.1 in no way confers a right to *receive* approval for *future* paddles after the manufacturer makes material changes.

Next, Sport Squad twists its own allegations by seeking to tie USAP’s approval to the concept of a “paddle designs” instead of the physical paddles themselves. *See* Compl. ¶¶ 138, 140. As the Complaint makes clear, there is a two-tiered process: (1) approval of a base paddle; then (2) approval of the similarity (“market version”) paddle. *Id.* ¶ 19. Sport’s Squad’s own allegations, detailing the company’s struggle with manufacturing variances to scale production after the submission of the base paddle, demonstrate the wisdom behind the two-step process. *See id.* ¶ 87. Sport Squad wrongly claims that it could stamp *unapproved* paddles with a “USA Pickleball Approved” logo because USAP “approved the two *base* paddles back in September 2023.” *Id.* ¶ 40 (emphasis added). This argument makes no sense and defeats the purpose of similarity certification. Sport Squad submitted two prototypes, followed by nine proposed market versions, which had to be “structurally and functionally identical,” except for different shapes and graphics. *Id.* ¶¶ 3, 19.

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<sup>7</sup> Sport Squad attempts to insert language into Rule 2.E.6.f by contending that foam around the rim is not a “prohibited *surface* feature” and not on the hitting surface. Compl. ¶¶ 94-95. This is not the language of the rule. *See* Ex. A at Rule 2.E.6.f.

Sport Squad’s allegations in Count 1 also attempt to switch from the word “identical” to “similar.” *See id.* ¶¶ 140-41. Elsewhere in the Complaint, Sport Squad acknowledges the requirement that the similarity paddle available on the market must be “structurally and functionally *identical to*” the base paddle. *Id.* ¶¶ 19, 87 (emphasis added); *see also id.* ¶¶ 3, 7, 28, 64, 141 (“structurally and functionally the same”). This is confirmed by Sport Squad’s submission form, which required this representation. Ex. D (“The paddle being submitted is structurally and functionally identical to the model number provided above which was previously approved by [ ] USA Pickleball.”). Sport Squad made this representation voluntarily in an attached letter. *See id.* (“The only modifications we have made are the shape of the paddle and the surface artwork.”). As Sport Squad concedes, however, the market version paddles are *not* structurally and functionally identical to the base paddles, but rather contain manufacturing variances resulting in more compressible foam in the outer perimeter. *Id.* ¶ 87.

Putting aside the requirement that base paddles and their market versions must be “structurally and functionally identical,” the fact remains that Sport Squad’s “market version” paddles failed surface roughness testing in May 2024. *Id.* ¶¶ 75-77. As pleaded, six of the nine paddles failed the “average” roughness test, while all nine paddles failed the updated “maximum” roughness test that came into effect on April 1, 2024. *Id.* ¶¶ 77, 79. Plaintiff’s allegation that USAP “made up” the new “maximum” roughness specification is refuted by the documentary record, which shows that USAP proposed modifying, and *did* modify, the Rule 2.E.2.a.1 long before Sport Squad submitted the new paddles. *See Ex. B.*

Sport Squad is therefore left to challenge those results by attacking the surface roughness testing *device* as “inaccurate” and “arbitrary,” evidently preferring its own device for measuring surface roughness. Compl. ¶¶ 80-82. Although these grievances are groundless, Sport Squad’s

allegation miss the mark for stating a claim for breach of implied contract. The Manual states in clear terms that USAP will be “[u]sing a Starrett SR160 or SR300 Surface Roughness Tester (or equivalent)” to “determine” surface roughness. Ex. A at Rule 2.E.2.a.1. In turn, Sport Squad admits that USAP “measures surface roughness with a Starrett SR160 or SR300 Surface Roughness Tester.” Compl. ¶ 81. In short, USAP complied with any alleged “understanding” regarding the method of testing for surface roughness.<sup>8</sup>

In sum, Sport Squad pleads itself into the inevitable fact that the company manufactured and sold unapproved paddles. USAP is not required to approve paddles that do not comply with its specifications. The fact that Sport Squad does not *like* the approval process or the result for its “cutting-edge” paddles does not state a claim (*id.* ¶ 22), much less a requirement that USAP must sacrifice its own business interests and integrity by allowing manufacturers to mislead consumers throughout the country by stamping and selling unapproved paddles as “USA Pickleball Approved” when they are not. For these reasons, the Court should dismiss Count 1 for breach of implied contract.

## **II. Sport Squad Fails to State a Claim for Promissory Estoppel (Count 4) for Similar Reasons and Because Sport Squad Fails to Plead Reasonable Reliance.**

Promissory estoppel requires (1) a clear and definite promise; (2) where the promisor has a reasonable expectation that the offer will induce an action or forbearance on the part of the promisee; (3) which does induce actual or reasonable action or forbearance by the promisee; and (4) causes a detriment which can only be avoided by enforcement of the promise. *Pavel Enters. v. A.S. Johnson Co.*, 342 Md. 143, 166, 674 A.2d 521, 532 (1996); *see Malnar v. Embry-Riddle Aeronautical Univ. Inc.*, 2022 WL 3923525, at \*2 (D. Ariz. Aug. 31, 2022). A promissory estoppel

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<sup>8</sup> Sport Squad also alleges an understanding about conducting expedited similarity testing, but fail to allege that the delay caused damages. Before and after similarity testing, the paddles remained unapproved.

claim is a device for contractual-type recovery where an element of a traditional bilateral contract, such as acceptance or consideration, is lacking. *See Md. Transp. Auth. Police Lodge # 34 of FOP, Inc. v. Md. Transp. Auth.*, 195 Md. App. 124, 213-15, 5 A.3d 1174, 1227 (2010).

In Count 4, Sport Squad alleges that USAP represented that: (a) “if [Sport Squad] submitted its paddle designs to [USAP] and paid a fee, [USAP] would test the paddles in good faith and approve them if they complied with [USAP’s] written rules”; (b) USAP “would also approve additional paddles submitted by [Sport Squad] if they were substantially the same in terms of both structure and materials as [Sport Squad’s] base model paddles that [USAP] had already approved”; and (c) USAP “would not revoke on short notice any paddle certifications that it had granted.” Compl. ¶¶ 165-67.

Count 4 fails for the same reasons set forth in the prior section. USAP further observes that Sport Squad’s allegations continue to evolve. USAP does not apply a standard that paddles be “substantially the same in terms of both structure and materials,” but rather that the base and similarity paddles be “structurally and functionally identical.” *Id.* ¶¶ 19, 87; Ex. D.

Count IV also fails for another reason. Sport Squad alleges that it “reasonably relied on [USAP’s] approval of its paddle designs by manufacturing nearly one hundred thousand paddles that were substantially similar to the ones that had been approved and by marketing them for sale to the general public.” Compl. ¶ 169. This allegation of reasonable reliance is baseless and fails as a matter of law. The Complaint sets forth in detail that Sport Squad committed an “error” by submitting the wrong version of the paddles for certification and then manufactured a different, unapproved version of the paddles. *Id.* ¶¶ 6-7, 60-62; *see also id.* ¶¶ 62, 66 (“mistake”); *id.* ¶¶ 6, 61-62 (“accident[.]”); *id.* ¶¶ 61, 63 (“mix up”). Sport Squad began manufacturing paddles in “late

December,” after these “wrong” nine similarity paddles were approved by December 15, 2023. *Id.* ¶¶ 4, 32, 40.

It is not reasonable to submit the “wrong” paddle to USAP for approval and then manufacture nearly 100,000 *different* paddles. A valid promissory estoppel claim requires that the plaintiff must have “clean hands.” *Pavel*, 342 Md. at 168; *see Queiroz v. Harvey*, 220 Ariz. 273, 275, 205 P.3d 1120, 1122 (2009) (stating the “cardinal rule” that a plaintiff “seeking equitable relief must come with clean hands”) (quoting *MacRae v. MacRae*, 57 Ariz. 157, 161, 112 P.2d 213, 215 (1941)). Any detrimental reliance resulted from Sport Squad’s own mistake, as well as the incorrect representations made in its submission to USAP. *See Ex. D.* Although Sport Squad attributes its submission as an “administrative error,” the fact remains that Sport Squad’s own conduct resulted in the production of paddles that USAP had never approved. Sport Squad did not realize its own mistake for nearly six months (Compl. ¶ 62), and therefore did not submit the “market versions” for approval until after USAP had updated its paddle specifications. *See Ex. B.* Therefore, the Court should dismiss Count IV as well.

### **III. Sport Squad Fails to State a Claim for Negligent Misrepresentation (Count 5) or Fraud (Count 6).**

Like the promissory estoppel claim in Count 4, Sport Squad’s claims for negligent misrepresentation and fraud require the element of justifiable reliance. *See, e.g., Topline Solutions, Inc. v. Sandler Sys., Inc.*, 2017 WL 1862445, at \*34 (D. Md. May 8, 2017); *D & G Flooring, LLC v. Home Depot U.S.A., Inc.*, 346 F. Supp. 2d 818, 824 (D. Md. 2004); *Rucker v. Branch Banking & Tr. Co.*, 2021 WL 962516, at \*9-10 (D. Md. Mar. 14, 2021) (granting motion to dismiss claims for negligent misrepresentation and fraud due to lack of justifiable reliance); *Young v. Arizona Summit L. Sch. LLC*, 2018 WL 11470870, at \*4-5 (D. Ariz. June 12, 2018) (same). In fact, Sport Squad does not even make a conclusory attempt at alleging “reasonable” or “justifiable” reliance

in Counts 5 or 6. *See* Compl. ¶¶ 174-178, 180-87. For the reasons set forth in the prior section, these claims fail as a matter of law.

A negligent misrepresentation claim also requires that the defendant must owe a duty of care to the plaintiff. *Lloyd v. Gen. Motors Corp.*, 397 Md. 108, 135-36, 916 A.2d 257, 273 (2007). Sport Squad has not alleged facts to establish that USAP owed Plaintiff a tort duty to prevent the injury alleged. *See TECx Glob. Educ. Found. v. W. Nottingham Acad. in Cecil Cnty.*, 2023 U.S. Dist. LEXIS 130030, at \*15-16 (D. Md. July 26, 2023) (dismissing negligent misrepresentation claim where there was no tort duty because the parties' obligations arose in contract); *State Farm Fire & Cas. Co. v. Amazon.com Inc.*, 2018 WL 1536390, at \*3-4 (D. Ariz. Mar. 29, 2018) (dismissing negligent misrepresentation claim where plaintiff "fail[ed] to provide any facts that establish the existence of a duty"). Instead, the "reasonable care" in Sport Squad's negligent misrepresentation claim is based on the same alleged obligations as its implied-in-fact contract and promissory estoppel claims in Counts 1 and 4: that USAP had a duty "to conduct any such testing using reasonable care and to communicate those test results to [Sport Squad] using reasonable care." Compl. ¶ 174. But "[a] contractual obligation, by itself, does not create a tort duty. Instead, the duty giving rise to a tort action must have some independent basis." *TECx Glob. Educ. Found.*, 2023 U.S. Dist. LEXIS 130030, at \*16. Here, Sport Squad has not established an independent duty outside of the alleged ones imposed by its implied-in-fact contract claim.

A claim for fraud must be pled with particularity. *See Nordstrom, Inc. v. Schwartz*, 2019 U.S. Dist. LEXIS 151012, 2019 WL 4221475, at \*4 (D. Md. Sept. 5, 2019); Fed. R. Civ. P. 9(b). Count 6, however, identifies only a single alleged misrepresentation: "that [USAP] would conduct rigorous testing of [Sport Squad's] paddles, which suggested that [USAP] would not later change its mind about any approvals issued." Compl. ¶ 183. Sport Squad does not identify the "time, place,

and contents of the false representations,” or “the identity of the person making the representation and what [it] obtained thereby.” *Nordstrom*, 2019 WL 4221475, at \*4 (quoting *Harrison v. Westinghouse Savannah River Co.*, 176 F.3d 776, 784 (4th Cir. 1999)). In fact, the only time the Complaint quotes USAP on this topic, Sport Squad is apparently quoting USAP’s after-the-fact press release regarding Sport Squad’s unapproved paddles. *See* Compl. ¶ 18; *see* USA Pickleball Updated Statement on JOOLA, available at <https://usapickleball.org/news/usa-pickleball-statement-on-decertified-joola-paddles-and-equipment-testing-standards> (last visited July 17, 2024) (“USA Pickleball utilizes a third-party testing facility that holds approved equipment to an extremely rigorous process and the highest testing standards and will evaluate those submissions for compliance with USA Pickleball’s equipment standards.”). Clearly, Sport Squad did not rely on this statement *before* production.

Otherwise, Count 6 only alleges that USA Pickleball gave “spurious reasons for de-certifying [Sport Squad’s] paddles” and for refusing to certify them, alleging that USA Pickleball’s reasons were “mere pretexts.” Compl. ¶¶ 181-82. Again, these are after-the-fact statements that occurred in May 2024, *months* after Sport Squad manufactured its paddles for sale. *Id.* ¶¶ 27-32 (timeline for manufacturing the paddles, beginning in late December 2024), ¶¶ 71-108 (discussing the alleged “spurious reasons” for failing to certify [Sport Squad’s] paddles in May 2024). Thus, such statements could not have formed the basis of Sport Squad’s detrimental reliance. Furthermore, as set forth above, the statements are not false.

Finally, Sport Squad has not alleged that USAP made any false statement before the manufacturing process began in late December 2023 “*for the purpose of defrauding*” Sport Squad. *Topline*, 2017 WL 1862445, at \*33; *see Megawatt Corp. v. Tucson Elec. Power Co.*, 1989 WL 95602, at \*11 (D. Ariz. May 26, 1989). Rather, Sport Squad alleges that it disagrees with the basis



for USAP's final decision not to approve the "market version" paddles in May 2024. That is insufficient.

For these reasons, the Court should dismiss Counts 5 and 6.

**IV. Sport Squad Fails to State a Claim for Tortious Interference with Contractual Relations (Count 2) or Tortious Interference with Business Expectancy (Count 3).**

In Maryland, the "two general types of tort actions for interference with business relationships are inducing the breach of an existing contract and, more broadly, maliciously or wrongfully interfering with economic relationships in the absence of a breach of contract." *Southern Volkswagen, Inc. v. Centrix Fin., LLC*, 357 F. Supp. 2d 837, 851 (D. Md. 2005) (quoting *Natural Design, Inc. v. Rouse Co.*, 302 Md. 47, 485, A.2d 663, 674 (1984)). "[B]oth of these torts require that a plaintiff prove wrongful or improper conduct by the tortfeasor." *Gabaldoni v. Washington County Hosp. Ass'n*, 250 F.3d 255, 263 (4th Cir. 2001); see *Neonatology Assocs., Ltd. v. Phoenix Perinatal Assocs. Inc.*, 216 Ariz. 185, 187, 164 P.3d 691, 693 (Ct. App. 2007); *Dube v. Likins*, 216 Ariz. 406, 413, 167 P.3d 93, 100 (Ct. App. 2007). "Plaintiffs often improperly plead" this element "because it must be conduct that is independently wrongful or unlawful, quite apart from its effect on the plaintiff's business relationships." *Baltimore Sports & Social Club, Inc. v. Sport & Social, LLC*, 228 F. Supp. 3d 544, 552 (D. Md. 2017). "Such wrongful conduct includes 'violence or intimidation, defamation, injurious falsehood or other fraud, violation of the criminal law, and the institution or threat of groundless civil suits or criminal prosecutions in bad faith.'" *Gabaldoni*, 250 F.3d at 263 (quoting *K & K Mgmt., Inc. v. Lee*, 316 Md. 137, 557 A.2d 965, 979 (1989)). It is insufficient that a defendant "pursued its own business interests." *Id.* It is also insufficient that the defendant breached a contract with the plaintiff unless the defendant "committed such breach so that the defendant could obtain the benefit of the relationship with the

plaintiff's customers." *Id.* (quoting *Volcjak v. Washington County Hosp. Ass'n*, 124 Md. App. 481, 723 A.2d 463, 479 (1999)).

To begin, USAP is not liable for tortious interference because its conduct was justified. *Fowler v. Printers II, Inc.*, 89 Md. App. 448, 467, 598 A.2d 794, 803 (1991). Sport Squad admits that it was selling unapproved paddles to the public with a logo stating those paddles were "USA Pickleball Approved" when Sport Squad had never submitted them for approval. Compl. ¶¶ 40, 63. This representation misled the public. Then, after Sport Squad submitted the "market version" paddles for approval, the paddles failed USAP's specifications.

Furthermore, Sport Squad has failed to plead the requisite type of "wrongful conduct." As set forth above, Count 6 fails to state a claim for fraud. There is no other type of wrongful conduct pleaded. Instead, Sport Squad pleads that USAP's action were "based in part on its intention to protect other paddle manufacturers from having to compete with [Sport Squad's] new paddles." Compl. ¶¶ 152, 161. This is insufficient. *See also Hobart-Mayfield, Inc. v. Nat'l Operating Comm. on Standards for Athletic Equipment*, 48 F.4th 656, 669 (6th Cir. 2022) ("protect[ing] brand credibility" is not a basis for a tortious interference claim). Therefore Counts 3 and 4 fail on this element alone. *See Baltimore Sports & Social Club*, 228 F. Supp. 3d at 552 (complaint failed to state a claim for defamation and "alleged no other act that meets this requirement").

Sport Squad's claims fail for additional reasons. To state a claim for tortious interference based on inducing a breach of contract, it is insufficient to allege in general terms that some contract somewhere existed. *Total Recon. Auto Ctr., LLC v. Allstate Ins. Co.*, 2023 U.S. Dist. LEXIS 219620, at \*11-12 (D. Md. Dec. 11, 2023); *Cains v. Grassi*, 2017 U.S. Dist. LEXIS 10395, at \*4-8 (D. Ariz. Jan. 24, 2017) (dismissing interference with contract claim where complaint did not allege what any of the contracts required or how defendants' actions led to a breach). Rather,

Sport Squad must identify the contracts and the terms of the contract that form the basis of this claim. *Id.* Sport Squad fails to plead these allegations. Instead, Sport Squad only alleges that it has “contractual relationships with its suppliers, distributors, vendors, and sponsored professional players relating to the production, marketing, and sale of its next generation pickleball paddles.” Compl., ¶¶ 122, 135, 147. These vague allegations fail to provide the required details to state a plausible claim.

Sport Squad also fails to plead facts to support that USAP was aware of specific contracts. Without identifying specific contracts with specific third-party contractual partners, USAP cannot have sufficient knowledge of these contracts to rise to the level of tortious interference. Vague, conclusory allegations or mere recitations of the elements are not enough. *Aarow Elec. Sols.*, 2024 U.S. Dist. LEXIS 61828, at \*11 (citing *Iqbal*, 446 U.S. at 678).

Similarly, Sport Squad fails to plead how USAP “*induced a third party to breach*” any alleged contract. *Lilly v. Baltimore Police Dept.*, 694 F. Supp. 3d 569, 595 (D. Md. 2023); *see Patel v. Scotland Memorial Hosp.*, 1995 U.S. Dist. LEXIS 5258, at \*20-22 (D. Md. Mar. 31, 1995) (dismissing claim for tortious interference with contractual relations where plaintiff “failed to allege that Defendants affirmatively induced the third party surgeons to breach their contractual agreements with [Plaintiff].”); *Blue Cross of California Inc. v. Insys Therapeutics Inc.*, 390 F. Supp. 3d 996, 1008-1009 (D. Ariz. 2019) (dismissing claim for tortious interference with contract, agreeing with defendant drug manufacturer that it did not induce third parties to breach contracts with plaintiff insurance company). Sport Squad only vaguely references “contractual relationships,” without identifying the parties, the terms of the contracts, USAP’s knowledge of those parties or terms, or how USAP’s actions “induced” a “breach” by those third parties rather than describing a commercial chain reaction that resulted in third parties exercising (not breaching)

their contractual rights by canceling orders or just straining a “relationship.” Placing Counts 3 and 4 side by side, they are virtually identical, alleging that “these third parties have refused to continue selling or using [Sport Squad’s] next generation paddles, and they have refused to allow [Sport Squad’s] paddles to be used in their facilities.” Compl. ¶ 153 (Count 3), ¶ 162 (Count 4). This is insufficient to plead that USAP *induced* those unidentified parties to breach.

With respect to the claim for tortious interference with prospective business relations, Sport Squad must identify “a possible future relationship which is likely to occur, absent interference, with specificity” or “specific transactions with bona fide purchasers that did not occur due to Defendant’s conduct.” *Aarow Elec. Sols.*, 2024 U.S. Dist. LEXIS 61828, at \*16 (citing *Baron Fin. Corp. v. Natanzon*, 471 F. Supp. 2d 535, 546 (D. Md. 2006)); *see also Nordstrom*, 2019 U.S. Dist. LEXIS 151012, at \*3. Sport Squad has not done this. Instead, Sport Squad relies on the exact same allegations as its tortious interference with contract claim, simply alleging that (instead of “*contractual* relationships”) Sport Squad “had *business* relationships with its suppliers, distributors, vendors, and sponsored professions players relating to the production, marketing, and sale of its next general [sic] pickleball paddles.” Compl., ¶¶ 122, 135, 156 (emphasis added). That is not enough. A tortious interference with prospective business relations claim cannot be based on the alleged interference of Sport Squad’s relationship with its contractual partners; rather, Sport Squad must allege specific prospective relationships *other than* its contractual partners. *Baron Fin.*, 471 F. Supp. 2d at 546; *Aarow Elec. Sols.*, 2024 U.S. Dist. LEXIS 61828, at \*17-18. Sport Squad has not done this either. In fact, Sport Squad has done the opposite, describing “curtailed” or “cancelled,” but nevertheless preexisting, relationships. Compl. ¶ 162. Accordingly, the Court should dismiss Counts 3 and 4.

### CONCLUSION

The Court should dismiss the Complaint with prejudice.

Dated: July 22, 2024

By: /s/ Philip D. Bartz

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 22nd day of July 2024, a copy of the foregoing was served via the Court's electronic filing system on all counsel of record.

/s/Philip D. Bartz  
Philip D. Bartz

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