IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Timothy W. Sharpe,	)	
Plaintiff,	)	Civil Action No. 1:17-cv-00258-CKK
v.	)	
American Academy of Actuaries,	)	
Defendant,	)	

DEFENDANT AMERICAN ACADEMY OF ACTUARIES' MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and the Local Rules, Defendant American Academy of Actuaries (the "Academy") respectfully moves this Court for an order dismissing with prejudice the amended complaint of Plaintiff Timothy W. Sharpe ("Sharpe") in this action for failure to state a claim for relief. The grounds of this motion are as follows:

1. Sharpe's amended complaint fails to state a claim for breach of contract because it fails to allege that the Academy breached any agreement with Sharpe;

2. Sharpe's amended complaint fails to state a claim for relief for negligence because it fails to allege that the Academy owes Sharpe any legal duty or that the Academy has breached any such duty;

3. Sharpe's amended complaint fails to state a claim for relief for publication of private facts for the same reasons set forth in Paragraph 2 of this motion and because the amended complaint's allegations establish that (a) Sharpe consented to the publication of any facts about him and (b) the alleged facts publicized concern matters of legitimate public concern;

4. Sharpe's amended complaint fails to state a claim for relief for violations of "due process" because (a) the Academy is not a state actor; (b) the amended complaint fails to allege Academy has violated its Bylaws or any agreement on joint discipline with other U.S.-based actuarial organizations; and (c) the amended complaint fails to allege that Sharpe has exhausted his internal remedies; and

5. Sharpe's amended complaint fails to state a claim for relief for tortious interference with contract or tortious interference with prospective business advantage because it fails to allege (a) any contract or business expectancy with which the Academy supposedly interfered, (b) any intent to interfere with any contract or business expectancy; and (c) any wrongful conduct by which such interference was effected.

This motion is based upon the foregoing, the Memorandum of Points and Authorities in support hereof filed concurrently, all other matters of record (including Sharpe's original complaint and the Academy's motion to dismiss that complaint), and any oral argument that the Court may hear.

April 4, 2017

Respectfully submitted,

s/William L. Monts III

William L. Monts III (D.C. Bar No. 428856)
HOGAN LOVELLS US LLP
555 Thirteenth Street, N.W.
Washington, D.C. 2004-1109
Tel. (202) 637-5600
Fax: (202) 637-5911
E-mail: william.monts@hoganlovells.com

Attorneys for Defendant
American Academy of Actuaries

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Timothy W. Sharpe, Plaintiff, v. American Academy of Actuaries, Defendant,	)	Civil Action No. 1:17-cv-00258-CKK

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT AMERICAN ACADEMY OF ACTUARIES' MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT

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Defendant American Academy of Actuaries (the "Academy") submits this memorandum of points and authorities in support of its motion to dismiss the amended complaint ("Am. Comp.") of plaintiff Timothy W. Sharpe ("Sharpe").

INTRODUCTION

This case arises from a professional discipline matter. Plaintiff Sharpe is an actuary and member of the Academy. On February 8, 2017, he sued the organization for disclosing what he contends is a confidential recommendation of the Actuarial Board for Counseling and Discipline ("ABCD") to expel him from the Academy. His original complaint ("Orig. Comp."), *see* Dkt. No. 1, alleged that the ABCD disclosed the substance of the recommendation to Tia Sawhney, the complainant in the matter. Sharpe contended that the disclosure violated the Academy's Bylaws (the "Bylaws") and the ABCD Rules of Procedure (the "ABCD Rules").[1] According to Sharpe, the Academy improperly disclosed the recommendation to Ms. Sawhney, and Ms. Sawhney in turn disclosed the substance of the recommendation to Wirepoints.com ("Wirepoints"), a website covering economics and government policy in Illinois. Wirepoints then posted an article noting the recommendation, which Sharpe claims, harmed his actuarial practice and caused him various other harms. On March 3, 2017, the Academy moved to dismiss, noting that the Bylaws and ABCD Rules expressly permit the disclosure of the outcome of ABCD proceedings to complainants and thus defeated each of Sharpe's claims for breach of

[1] The ABCD Rules are established under, and fully consistent with, the Bylaws. Article X, section 5 of the Bylaws sets forth general procedures for the ABCD. Article X, section 1.B, which is an enabling provision, authorizes the ABCD to establish "Rules of Procedure and operating guidelines not inconsistent with the requirements of this Article." *See* Am. Comp. Ex. 2. As with all enabling provisions, the resulting rules must be consistent with, and no broader than, the grant of authority to create them. Although Sharpe's amended complaint suggests that the ABCD Rules are independent and distinct from the authority in the Bylaws, they are not. *See id.* All references to the "ABCD Rules" are to those attached as Exhibit 3 to the amended complaint, which are established under the Bylaws enabling provision.

contract, negligence, and publication of private facts.

Rather than respond to the motion to dismiss, Sharpe filed an amended complaint on March 16. He alleges the same three claims as in his original complaint and adds new claims for tortious interference with contract and prospective business advantage and for violation of "due process." His amended complaint reads like an opposition to the Academy's motion to dismiss. Much of it consists of legal conclusions and legal and policy arguments challenging the Academy's construction of its own Bylaws and the ABCD Rules. *See, e.g.,* Am. Comp. ¶¶ 68-78, 81-82, 86-88, 136, 143, 160-66. None of these new averments is presumed true under the governing law; they add nothing substantive to Sharpe's pleading.

The most notable feature of the amended complaint is a factual alteration. While the original complaint alleged that the ABCD had disclosed its recommendation to Ms. Sawhney, Orig. Comp. ¶¶ 98-99, Sharpe now asserts that he does not know to whom the ABCD made the alleged disclosure. Am. Comp. ¶¶ 21, 140-41. This factual alteration is irreconcilable with the allegations of the original complaint. Sharpe apparently makes it in an attempt to circumvent the problems with his claims that the Academy identified in its motion to dismiss the original complaint – namely, that the disclosure is expressly permitted. The new allegation is unavailing for two reasons.

First, when a plaintiff alleges facts in an amended complaint that contradict those alleged in the original complaint, the newly asserted facts are not entitled to any presumption of truth. In ruling on a motion to dismiss the amended pleading, the courts presume the truth of the facts of the original complaint. Sharpe's amended complaint, therefore, fails for the same reasons as his original complaint – the Bylaws and ABCD Rules expressly permit disclosure of the outcome of ABCD matters to persons who file disciplinary complaints. Exercising an express contract right

neither breaches the agreement nor provides a predicate for tort liability of any sort. Sharpe's amended complaint, therefore, not only fails to state a claim but also affirmatively establishes the Academy's lack of liability.

Second, even accepting Sharpe's amended complaint on its own terms, it fails to allege a claim for relief. The central fact on all of his putative claims (except his "due process" claim) is the alleged disclosure of the ABCD's recommendation. But Sharpe's sudden professed lack of knowledge of the person to whom the disclosure was supposedly made fails to meet the requirements of Rule 8 of the Federal Rules of Civil Procedure. To state a plausible claim for relief, Sharpe's factual allegations must raise his right to relief above the speculative level. His amended complaint fails to do that.

Finally, Sharpe's newly minted "due process" claim, which is the only claim unrelated to the alleged disclosure of the ABCD recommendation, seeks to have this Court halt the pending Academy disciplinary proceedings against him and order the Academy to refer the disciplinary matter to another body for consideration. The courts, however, virtually never interfere with the internal affairs of private professional organizations. Nothing in Sharpe's amended complaint warrants departure from that rule. Sharpe's amended complaint should be dismissed.

FACTS

Although Sharpe's amended complaint makes numerous assertions about the ABCD, the Academy, and the disciplinary proceedings against him, the facts relevant to his putative claims are relatively simple.

Sharpe is a pension actuary. Since 1992, he has practiced in his own firm in suburban Chicago, primarily serving local municipalities throughout Illinois. Am. Comp. ¶¶ 33, 35. His principal work has been actuarial analysis for municipal police and fire pension funds. *Id.* ¶¶ 34-35, Ex. 1 (describing Sharpe as "actuary to dozens of troubled Illinois fire and police pension

funds").[2] He has been a member of the Academy for approximately 30 years. *Id.* ¶ 6. He is also an enrolled actuary. *Id.* Ex. 1 (noting that Sharpe is an "Enrolled Actuary," a designation "conferred by the Internal Revenue Service").

The Academy is a voluntary professional association of actuaries with more than 18,000 members. *Id.* ¶¶ 27, 36. Similar to four other U.S.-based actuarial associations, it has adopted the Code of Professional Conduct (the "Code"). *Id.* ¶¶ 38-39, 42; *see also id.* Ex. 2, art. IX, § 1 (referencing "the Academy's Code of Professional Conduct"). The Code establishes professional and ethical standards for actuaries that are members of those five organizations and requires adherence to standards of sound actuarial practice. This case grows out of disciplinary proceedings arising under the Code.

A. The Two-Step Actuarial Discipline Process

To enforce the Code, the Bylaws, among other things, establish the ABCD. *Id.* ¶ 37, Ex. 2, art. X, § 1.A. The ABCD is not a separate legal entity, *id.* ¶ 37, but is housed within the Academy. *Id.* Ex. 2, art. X, § 1.A. A Selection Committee consisting of the Presidents and Presidents-Elect of the five U.S.-based actuarial organizations participating in the ABCD appoint the ABCD's members. *Id.* Ex. 2, art. X, § 2.B. While the ABCD functions independently in its decision-making and has specific procedures applicable to its operations, the Academy staff provides "necessary legal, logistical, and technical support." *Id.* Ex. 2, art. X, § 7; *see also id.* ¶ 37. The ABCD's finances are accounted for separately from the Academy's finances, and the ABCD controls the expenditures of its own funds. *Id.* ¶ 37, Ex. 2, art. X, § 8.

Among other things, the ABCD investigates complaints alleging Code violations by

[2] Sharpe attaches seven exhibits to his complaint. They are part of the complaint, and the Court may consider them on a motion to dismiss. *English v. District of Columbia*, 717 F.3d 968, 971 (D.C. Cir. 2013) (on a 12(b)(6) motion, court "may consider attachments to the complaint as well as the allegations of the complaint itself").

actuaries who are members of one or more of the U.S.-based actuarial organizations. *Id.* ¶¶ 36, 38-39, Ex. 2, art. X, § 1.A.1. The ABCD may receive complaints from other actuaries, clients of actuaries, or the public. It may also investigate potential Code violations on its own initiative. *Id.* Ex. 2, art. X, §§ 1.A.1, 5.A. An actuary who is the subject of a complaint is referred to as a "subject actuary." *Id.* ¶ 39, Ex. 2, art. X, § 5.B.

When the ABCD receives a complaint, the Chairperson and two Vice Chairpersons decide whether to dismiss the matter, authorize a mediator to attempt to resolve it, or initiate review of the allegations. *Id.* Ex. 2, art. X, § 5.A. If review is warranted, the Chairperson appoints one or more investigators to inquire into the facts and issue a written report of the results. *Id.* Ex. 2, art. X, § 5.C.1. After receipt of that report, the ABCD as a whole may dismiss the complaint, counsel the subject actuary, or schedule a fact-finding hearing at which the subject actuary may appear, with counsel if he so chooses, and present his position on the issues. *Id.* Ex. 2, art. X, § 5.E-F. Following the hearing and based on the evidence before it, including any testimony from the subject actuary, the investigator, and any other witnesses, the ABCD may dismiss the complaint, counsel the subject actuary, or recommend discipline to the organizations of which the subject actuary is a member. *Id.* Ex. 2, art. X, § 5.G. The ABCD does not have the authority to, and does not, impose discipline on any subject actuary. *Id.* ¶¶ 16, 40. It may only recommend discipline. *Id.*

The ABCD may recommend four forms of discipline: private reprimand, public reprimand, suspension from an organization for a period, and expulsion from an organization. *Id.* Ex. 2, art. X, § 5.G.; *see also id.* ¶¶ 40, 77. If the ABCD recommends discipline, it prepares a written report to those organizations of which the subject actuary is a member identifying those Code provisions that the ABCD believes the subject actuary has violated, stating the nature of

the violations, and setting forth the recommended discipline. *Id.* ¶ 77, Ex. 2, art. X, § 5.G. That report, the transcript of the fact-finding hearing, and all documents that the ABCD considered are transmitted both to the subject actuary and to the organizations of which he is a member. *Id.* Ex. 2, art. X, § 5.G. At that point, the ABCD's work on a matter is complete. *See id.* Ex. 3, § VIII (describing the ABCD's "Final Determination").

Each actuarial organization receiving an ABCD report recommending discipline decides, using its own procedures, whether to accept the ABCD's finding of a Code violation and what, if any, discipline actually to impose on the subject actuary. *Id.* ¶ 42, Ex. 2, art. IX, §§ 3-4 (setting forth procedures the Academy uses in addressing recommendations of discipline of its members). Under the Bylaws, then, actuarial discipline is a two-step process. Step one is an ABCD investigation of a complaint, which may result in a finding of a material Code violation and a recommendation of discipline. Step two is a separate proceeding by the Academy, conducted under distinct provisions of the Bylaws, occurring after receipt of the ABCD's recommendation. Under those distinct Bylaws provisions, the Academy's President appoints a six-person disciplinary committee from among current or former Academy board members to consider the ABCD's recommendation and determine what action, if any, the Academy will take. *Id.* Ex. 2, art. IX, §§ 3-4.

In some limited circumstances, before considering an ABCD recommendation of discipline, the Academy will refer it to the Joint Discipline Council ("JDC"). Article IX of the Bylaws authorizes the Academy to enter a "joint discipline agreement" with other U.S.-based actuarial organizations, *id.* Ex. 2, art. IX, § 2 and provides that the terms of any such agreement will govern disciplinary matters in certain cases. *Id.*; *see also id.* ¶ 43 (quoting relevant Bylaw). The Academy originally entered an Agreement on Joint Discipline (the "Original JDA") with the

other U.S.-based actuarial organizations on November 17, 2012. *Id.* ¶ 45, Ex. 4. Effective December 15, 2015, however, the organizations entered into an Amended and Restated Agreement on Joint Discipline (the "Amended JDA"). *Id*. Ex. 7.

The Amended JDA supersedes and replaces the Original JDA and declares that the Original JDA "shall have no force and effect" for any disciplinary recommendation the ABCD issues on or after December 15, 2015. *Id.* Ex. 7, ¶ 13. The ABCD issued its recommendation to discipline Sharpe on January 29, 2016. *Id*. ¶¶ 112, 163. Accordingly, when it received the recommendation, the Academy followed the terms of the Amended JDA. *See id.* ¶ 168. The Amended JDA provides that disciplinary matters involving actuaries who are members of only one U.S.-based actuarial organization "shall proceed in accordance with [that organization's] own individually established procedures for addressing such a recommendation, and this Agreement shall have no application to such proceeding." *Id*. Ex. 7, ¶ 3.A. (last paragraph). Because Sharpe is a member only of the Academy, *id*. ¶¶ 17, 43, and the ABCD issued its recommendation after December 10, 2015, *id.* ¶¶ 112, 163, the Academy did not refer the recommendation to the JDC. *Id.* ¶ 168. It has proceeded in accordance with the two-step disciplinary process described above.

B. The Confidentiality of ABCD Proceedings

To ensure the fairness of ABCD proceedings, the Bylaws and ABCD Rules give subject actuaries substantial procedural protections. *Id.* Ex. 2, art. X, § 1.B. (providing for, among other things, notice, a right to be heard, and a right to assistance of counsel); *id.* Ex. 3 (same). Among those protections is a provision making ABCD matters confidential. *Id.* Ex. 2, art. X, § 9, Ex. 3, § X. In general, ABCD members, Academy staff assisting them, ABCD investigators, and any advisers assisting the ABCD keep proceedings confidential. *Id.* Ex. 2, art. X, §9. Confidentiality, however, is not absolute. Article X of the Bylaws and the ABCD Rules

expressly authorize the ABCD to advise "complainants and subject actuaries about the progress and outcome of matters under consideration." *Id.* & Ex. 3, § X.

C. The Sawhney Complaint Against Sharpe and Attendant Publicity

On March 23, 2014, Tia Sawhney, an actuary in Illinois, filed a lengthy complaint against Sharpe, alleging multiple violations of the Code stemming from his work for several Illinois municipal police and fire pension funds. *Id.* ¶¶ 92-93. Ms. Sawhney's complaint stated that because her allegations "concern public work, I claim the right to share them in the public domain." She also stated that she did not "intend to abide with [sic] the ABCD's request to keep my complaint or the ABCD's response to my complaint confidential." *Id.* ¶¶ 96-97. After receiving Ms. Sawhney's complaint and another complaint against Sharpe, *see id.*, Ex. 1 (noting that the ABCD's recommendation that Sharpe be expelled from the Academy "is the result of separate complaints by two actuaries" one of which was Ms. Sawhney), the ABCD opened an investigation. Nothing in the Bylaws or ABCD Rules requires complainants to maintain the confidentiality of the subject matter of a complaint or the identity of an actuary named in it. Sharpe does not allege otherwise.

In August 2014, Ms. Sawhney wrote an article for Wirepoints, a news aggregation website focusing on Illinois' economy and government, in which she disclosed the fact of her complaint against Sharpe. *Id.* ¶¶ 99-101. Sharpe also alleges that she spoke to a reporter for *Crane's Chicago Business* and *Forest Park Review* about the complaint. *Id.* ¶ 102. In July 2015, the *New York Times* ran an article entitled *Bad Math and a Coming Pension Crisis* that described Sharpe's actuarial work. *Id.* Ex. 1. The *Rockford Register Star* also ran an article concerning Sharpe's work. *Id.* Thus, by July 2015, major news outlets in the United States had discussed Sharpe's work, including whether he "used unrealistic assumptions about future plan experience that lead to lower estimates of fund liability, lower contributions (tax levies) and higher estimates

of funded states than more realistic assumptions." *Id.* Sharpe does not allege that any of these articles resulted from the Academy's disclosure of confidential information or that revelation of the information in them violates the law in any way.

D. The ABCD Recommends Sharpe's Expulsion from the Academy, Which Wirepoints Reports

After investigation and a hearing on the matters raised in Ms. Sawhney's complaint, on January 29, 2016, the ABCD concluded that Sharpe had materially violated the Code and recommended that he be expelled from the Academy. *Id.* ¶¶ 110-12. That recommendation has been referred to the Academy for the second step of the disciplinary process. *Id.* ¶ 168.[3] The ABCD matter based on Ms. Sawhney's complaint against Sharpe is complete.

In February 2016, shortly after the ABCD issued its recommendation, Wirepoints ran another article on Sharpe, noting that the ABCD recommended that he be expelled from the Academy. *Id.* Ex. 1. The article specifically mentions that the recommendation results from Ms. Sawhney's complaint. *Id.* Although Sharpe originally alleged that the Academy informed Ms. Sawhney of the ABCD's expulsion recommendation and that Ms. Sawhney became the source for the Wirepoints posting, Orig. Comp. ¶¶ 98-99, he now asserts that he does not know who disclosed the recommendation or to whom it was disclosed. Am. Comp. ¶¶ 21, 140-41. Despite the admitted lack of knowledge, he nonetheless contends that the Academy or ABCD must have made such as disclosure, *id.* ¶ 139, and that the purported disclosure violates the confidentiality of ABCD proceedings.

On March 17, 2017, Sharpe filed an amended complaint alleging six putative claims against the Academy. Five of them – breach of contract (Count I), negligence (Count II), publication of private facts (Count III), tortious interference with contract (Count V); and

[3] Although the amended complaint alleges that the Academy disciplinary committee has yet to hold a hearing, Am. Comp. ¶ 156, Sharpe's hearing occurred on March 31, 2017.

tortious interference with prospective economic advantage (Count VI) – seek damages. All of those purported claims turn on Sharpe's contention that the Academy violated its Bylaws and the ABCD Rules by improperly disclosing the ABCD's recommendation. The sixth putative claim (Count IV) seeks only injunctive relief and alleges the Academy has denied Sharpe "due process." The Academy now moves to dismiss the amended complaint because it does not state any claim for relief.

LEGAL STANDARDS ON MOTION TO DISMISS

To withstand dismissal under Rule 12(b)(6), a complaint must contain "sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation omitted). While detailed factual allegations are not necessary, the plaintiff must do more than furnish "labels and conclusions or a formulaic recitation of the elements of a cause of action." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A claim is facially plausible only when a plaintiff pleads facts that allow "the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 at 678. Although well-pleaded factual allegations are presumed true on a motion to dismiss, legal conclusions and conclusory statements masquerading as factual allegations are not. *Id.* In this case, as discussed below, *see infra* Section II, at 14-16, Sharpe's original complaint and amended complaint contain contradictory allegations. In such a situation, the allegations of the original complaint, not the amended complaint, are deemed true. *Id.* Applying that principle, Sharpe effectively pleads himself out of court because the Bylaws and ABCD Rules expressly permit the conduct he challenges.

Even crediting the allegations of his amended complaint, however, Sharpe asserts that he does not know to whom the alleged disclosure he challenges was made. When the well-pleaded facts do nothing more than permit the Court to infer the mere possibility of unlawful conduct, the

complaint fails to state a claim. *Iqbal*, 556 U.S. at 679. Thus, even on its own terms, Sharpe's amended complaint does not satisfy the pleading standards and should be dismissed.

ARGUMENT

I. THE COURT MAY APPLY DISTRICT OF COLUMBIA LAW TO SHARPE'S AMENDED COMPLAINT.

Because jurisdiction in this case rests on diversity of citizenship, state law provides the rules of decision for Sharpe's putative claims. *Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938). There are two possible choices: Illinois and the District of Columbia. The Academy is incorporated in Illinois and has its principal place of business in the District. Although Sharpe is now a citizen of Michigan, Am. Comp. ¶¶ 26, 29, the conduct at issue in his disciplinary matter relates to actuarial services he rendered in Illinois for Illinois municipalities. *Id.* ¶ 33-35, 93.

Because this Court sits in the District of Columbia, the District's choice-of-law rules govern determination of which state law to apply. *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 496 (1941); *Essroc Cement Corp. v. CTI/D.C.*, 740 F. Supp.2d 131, 141 (D.D.C. 2010) (Kollar-Kotelly, J.). The District uses a two-step choice of law analysis. The Court first determines whether a "true conflict" exists between the laws of the jurisdictions whose rules might be applicable. *Id.* at 144 (citing *GEICO v. Fetisoff*, 958 F.2d 1137, 1141 (D.C. Cir. 1992)); *see also Y.W.C.A of the Nat'l Capital Area, Inc. v. Allstate Ins. of Canada*, 275 F.3d 1145, 1150 (D.C. Cir. 2002) (under the D.C. choice-of-law rules, "the court must first determine if there is a conflict between the laws of the relevant jurisdictions"). If no conflict exists, then "a court applies the law of the District of Columbia by default." *Essroc Cement*, 740 F. Supp. 2d at 144; *Parnigoni v. St. Columba's Nursery Sch.*, 681 F. Supp. 2d 1, 12 (D.D.C. 2010). Only when a true conflict exists must a court proceed to the second step, which is to apply the District of Columbia's "constructive blending" of two tests often used to resolved choice-of-law issues –

the "governmental interests" analysis and the "most significant relationship analysis."[4] *Essroc Cement*, 740 F. Supp. 2d at 144.

Here, no conflict exists on any of the Sharpe's putative claims because the elements of all six are essentially the same under both District and Illinois law. On Sharpe's breach of contract claim,[5] District law requires him to plead and prove (1) a valid contract between the parties; (2) an obligation or duty arising out of the contract; (3) a breach of that duty; and (4) damages caused by the breach. *Francis v. Rehman*, 110 A.3d 615, 620 (D.C. 2015). Illinois law is effectively the same. On a breach of contract claim a plaintiff must allege and prove: (1) the existence of a valid and enforceable contract; (2) performance by the plaintiff; (3) breach of contract by the defendant; and (4) resultant injury to the plaintiff. *Burkhart v. Wolf Motors of Naperville, Inc.*, 61 N.E.3d 1155, 1159 (Ill. App. 2016) (quoting *Henderson-Smith & Assocs. v. Nahamani Family Serv. Ctr., Inc.*, 752 N.E.2d 33, 43 (Ill. App. 2001)).

Similarly, on Sharpe's negligence claim, there is no conflict. Under District law, a plaintiff seeking to recover in negligence must show: (1) the defendant owed a duty to the plaintiff; (2) breach of that duty; and (3) injury to the plaintiff proximately caused by the breach of duty. *Aguilar v. RP MRP Washington Harbour, LLC*, 98 A.3d 979, 982 (D.C. 2014). In

[4] That "constructive blending" analysis requires courts to "evaluate the governmental policies underlying the applicable laws and determine which jurisdiction's policy would be more advanced by the application of its law to the facts of the case under review." *Essroc Cement*, 740 F. Supp. 2d at 144 n.15 (internal quotations and citations omitted). Courts in the District use the factors enumerated in sections 145 (relating to alleged torts) and 188 (relating to contracts) of the RESTATEMENT (2D) CONFLICT OF LAWS to "identify the jurisdiction with the most significant relationship to the dispute, that presumptively being the jurisdiction whose policy would be more advanced by application of its law." *Id.* (internal quotations and citations omitted).

[5] Sharpe alleges that the relevant contract between the Academy and him is the Bylaws. Am. Comp. ¶ 180. Unlike the contract in *Essroc Cement*, the Bylaws do not have an express choice-of-law provision. While the Academy is an Illinois not-for-profit corporation, application of Illinois law does not change the outcome on Sharpe's contract claim because, as discussed below, Sharpe has not alleged any breach of the Bylaws.

Illinois, the elements are the same. *Krywin v. Chicago Transit Auth.*, 938 N.E.2d 440, 446 (Ill. 2010).

Similarly, the elements of Sharpe's claim for publication of private facts are effectively the same in both jurisdictions. *Compare Wolf v. Regardie*, 553 A.2d 1213, 1220 (D.C. 1989) (claim for publication of private facts has the following elements: (1) publicity; (2) absent any waiver or privilege; (3) given to private facts; (4) in which the public has no legitimate concern; and (5) which would be highly offensive to a reasonable person of ordinary sensibilities) *with Kapotas v. Better Gov't Ass'n*, 30 N.E. 3d 572, 596 (Ill. App. 2015) ("To state a cause of action for the public disclosure of private facts, plaintiff must plead (1) the [defendant] gave publicity; (2) to her private, not public life; (3) the matter publicized was highly offensive to a reasonable person; and (4) the matter publicized was not of legitimate public concern." (quoting *Green v. Chicago Tribune Co.*, 675 N.E.2d 249, 252 (Ill. App. 1996)).[6]

The elements of Sharpe's tortious interference claims are also essentially the same under the laws of both jurisdictions. To establish tortious interference with contract or prospective business advantage in the District, a plaintiff must show: "(1) the existence of a valid contract, business relationship or expectancy; (2) knowledge of the contract, relationship or expectancy on the part of the interferer; (3) intentional interference inducing or causing a breach or termination of the relationship or expectancy; and (4) damage caused by the interference." *Modis, Inc. v. InfoTran Syss., Inc.*, 893 F. Supp. 2d 237, 241 (D.D.C. 2012). In Illinois, to establish tortious interference with contract, a claimant must show: "(1) the existence of a valid and enforceable

[6] Although Illinois law does not expressly recognize the absence of waiver or privilege as an element of a claim for publication of private facts, the Academy has found no Illinois case permitting recovery when the plaintiff consented to the publication or when the defendant's conduct was privileged. Nothing in Illinois law suggests any tension with District law on this point.

contract between the plaintiff and another; (2) the defendant's awareness of this contractual relationship; (3) the defendant's intentional and unjustified inducement of a breach of the contract; (4) the subsequent breach by the other, caused by the defendant's wrongful conduct; and (5) damages." *Lusher v. Becker Bros., Inc.*, 509 N.E.2d 444, 445 (Ill. App. 1987). To show tortious interference with prospective business advantage, a plaintiff must plead and prove: (1) a reasonable expectation of entering into a valid business relationship; (2) defendant's knowledge of the; (3) defendant's intentional and malicious interference to defeat the expectancy; and (4) injury. *Id*. at 446. Again, there is no material difference.

Finally, to the extent that Sharpe's "due process" claim exists in either the District or Illinois, the standards are not in conflict. In both jurisdictions, the courts do not ordinarily interfere with disciplinary proceedings of private organizations, *see Levant v. Whitley*, 755 A.2d 1036, 1043 (D.C. 2000); *Butler v. USA Volleyball*, 673 N.E.2d 1063, 1066 (Ill. App. 1996), and neither requires organizations to meet the strict standards of constitutional due process in such matters but only a low, common-law standard of fundamental fairness. *Blodgett v. University Club*, 930 A.2d 210, 227 (D.C. 2007); *Butler*, 673 N.E.2d at 1066.

There is no "true conflict" between District and Illinois law on any of Sharpe's putative claims. Therefore, this Court need not reach the second step of the District's choice-of-law analysis and may apply District law to Sharpe's putative claims.

II. SHARPE'S CONTRACT CLAIM FAILS BECAUSE HE HAS NOT ALLEGED THAT THE ACADEMY BREACHED ANY CONTRACT.

Sharpe's amended complaint seeks to circumvent the Academy's motion to dismiss his original complaint, most notably by trying to adjust facts to plead around the express terms of the Bylaws and ABCD Rules. In addition, much of the added detail consists of legal conclusions and arguments that are not entitled to any presumption of truth and would have been more

appropriate in a brief responding to the Academy's motion. *See, e.g.*, Am. Comp. ¶ 143 (arguing reasons why the Academy's Bylaws and ABCD Rules do not permit disclosure of ABCD recommendations to complainants). Despite the prolixity of Sharpe's amendments, the gravamen of all of his claims (except Count IV) remains that the ABCD impermissibly disclosed the content of its recommendation that he be expelled in violation of the confidentiality provisions in the Bylaws and the ABCD Rules. Since any confidentiality obligation arises only from Sharpe's membership in the Academy, his contract claim is the linchpin of his case.

Contrary to his original complaint in which he alleged that the ABCD made the alleged disclosure to Ms. Sawhney, Orig. Comp. ¶¶ 98-99, Sharpe now states that "he does not know . . . to whom [the information] was released," Am. Comp. ¶ 21; *see also id.* ¶ 141 ("Mr. Sharpe does not know to whom the ABCD and/or Academy leaked the ABCD's confidential recommendation"), and suggests that "[d]iscovery will reveal . . . to whom the information was leaked."[7] This approach has two significant flaws, both fatal to Sharpe's claim.

First, in his original complaint, Sharpe expressly alleged that the ABCD disclosed its recommendation to Ms. Sawhney. Only after the Academy filed a motion to dismiss explaining why that alleged disclosure does not breach the Bylaws or ABCD Rules did Sharpe disclaim any knowledge of the person or persons to whom the disclosure was allegedly made. While the Federal Rules of Civil Procedure permit Sharpe to amend his complaint, they do not countenance inclusion of factual allegations that cannot be squared those in his original complaint. *Hourani v. Mirtchev*, 943 F. Supp. 2d 159, 171 (D.D.C. 2013). When "'a plaintiff blatantly changes his

[7] Sharpe's amended complaint asserts that "[t]he Academy has since [the filing of this action] suggested that the information may have been leaked to the complainant, Ms. Sawhney." Am. Comp. ¶ 147. The Academy has done no such thing. It filed a motion to dismiss *responding* to the allegation in Sharpe's original complaint that the ABCD disclosed the recommendation to Ms. Sawhney, Orig. Comp. ¶¶ 98-99, explaining why, even assuming the truth of those allegations, they failed to state a claim for relief.

statement of the facts in order to respond to the defendant['s] motion to dismiss . . . [and] directly contradicts the facts set forth in his original complaint a court is authorized to accept the facts described in the original complaint as true.'" *Id.* (alterations in original) (quoting *Colliton v. Cravath, Swaine & Moore LLP*, 2008 WL 438764, at *6 (S.D.N.Y. Sept. 24, 2009)); *see also W. Assocs. Ltd. P'Ship ex rel. Ave. Assocs. Ltd. P'ship v. Market Square Assocs.*, 235 F.3d 629, 634 (D.C. Cir. 2004) (comparing original and amended complaint on Rule 12(b)(6) motion and stating that court may "look beyond the amended complaint to the record, which includes the original complaint").

Taking the allegations of the original complaint, rather than the contradictory allegations of the amended complaint, as true, Sharpe's amended complaint fails to state a claim for relief because, as described below, the Bylaws and ABCD Rules permit disclosure of the outcome of ABCD proceedings to complainants, such as Ms. Sawhney. To the extent that Sharpe now alleges that the putative disclosure also violates any Joint Discipline Agreement, the Amended JDA is the operative agreement, and it and the JDC Rules of Procedure for Disciplinary Proceedings (the "JDC Rules"), *see* Am. Comp. Ex. 5, have no application to Sharpe's matter.

Second, as described below, even treating the few factual allegations of his amended complaint as true, Sharpe's lack of knowledge of the person to whom the alleged disclosure was made fails to assert any actionable conduct by the Academy and thus fails to meet the standards of *Iqbal* and *Twombly*. *See infra* Section II.C, at 31-32.

A. Taking as True the Allegations of Sharpe's Original Complaint that the ABCD Disclosed Its Recommendation of Discipline to Ms. Sawhney, His Amended Complaint Fails to State a Claim for Breach of Contract.

Sharpe's original complaint alleged that the ABCD disclosed its disciplinary recommendation to Ms. Sawhney. Orig. Comp. ¶¶ 98-99. Sharpe presumably had a good-faith

basis for making that allegation when he filed this action. *See* Fed. R. Civ. P. 11(b)(3) (presenting pleading certifies that "the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery"). Nothing in his amended complaint suggests that he now lacks a basis for that allegation. Accordingly, his sudden lack of knowledge (or even any information or belief), *see* Am. Comp. ¶¶ 21, 140-41, cannot be squared with his original pleading. The only apparent intervening event was the Academy's motion to dismiss, which explained why any such disclosure failed to state a claim. Given that Sharpe has irreconcilably changed positions on the central factual assertion in his case, this Court should treat the factual allegations of his original complaint on this point to be true. *Hourani*, 943 F. Supp. 2d at 171. Applying that rule, his amended complaint does not state any claim for breach of contract.

1. The Alleged Disclosure Does Not Violate the Bylaws or ABCD Rules.

For purposes of this motion, the Academy does not contest that the Bylaws constitute a contract between the Academy and its members. *See Local 31, Nat'l Ass'n of Broadcast Emps. v. Timberlake*, 409 A.2d 629, 632 (D.C. 1979) (constitution and bylaws of labor union constitute a contract between the union and its members). The proper interpretation of a contract is a legal question for this Court. *BSA 77 P Street LLC v. Hawkins*, 983 A.2d 988, 993 (D.C. 2009) ("The proper interpretation of a contract term is a question of law"). Sharpe asserts breach of three specific provisions of the Bylaws or ABCD Rules: (1) Article X, section 9 of the Bylaws, which relates to the confidentiality of ABCD proceedings; (2) section X of the ABCD Rules, which essentially repeats the confidentiality provisions of Article X, section 9 of the Bylaws; and (3) Article IX, section 6 of the Bylaws, which do not relate to ABCD matters at all but rather to the separate proceedings that the Academy conducts *after* receiving an ABCD disciplinary recommendation. Am. Comp. ¶¶ 183-85. None of these theories states a claim for breach of

contract.

With respect to the alleged breaches of Article X, section 9 of the Academy's Bylaws and section X of the ABCD Rules, both documents expressly permit the ABCD to disclose the "outcome" of its proceeding to complainants, such as Ms. Sawhney. Because both provisions authorize that disclosure, any contract claim resting on them is defective.

The third provision allegedly breached, Article IX, section 6 of the Bylaws, concerns only step two of the disciplinary process – the proceedings the Academy conducts *after* receiving a recommendation of discipline from the ABCD. It has no application to ABCD matters and therefore cannot support Sharpe's contract claim.

a. Article X, Section 9 of the Bylaws and Article X of the ABCD Rules Expressly Permit the Academy to Disclose the Outcome of ABCD Proceedings to Persons Who File Disciplinary Complaints.

Article X, section 9 of the Bylaws reads in pertinent part:

> Except as otherwise provided in these Bylaws, all proceedings *under this Article* shall be kept confidential by the ABCD, its staff, investigators, and advisers. *This requirement as to confidentiality shall not preclude the ABCD from:*
>
> A. *Advising complainants* and subject actuaries about the progress and outcome of the matters under consideration.

See Am. Comp. Ex. 2, art. X, § 9 (emphasis added).

The ABCD Rules contains virtually identical language: They read in pertinent part:

> The ABCD will make a reasonable effort to keep confidential the facts and circumstances involved in any matter considered by the ABCD for possible counseling or recommendations for discipline or the services of a mediator. ABCD members, ABCD staff, Investigator(s), Advisors, and mediators shall be specifically made aware of this section of the Rules of Procedure and the requirement for confidentiality.

* * * *

> The requirement as to confidentiality shall not preclude the ABCD from:
>
> 1. *Advising complainants* and subject actuaries about the progress and outcome of matters under consideration.

Id. Ex. 3, art. X (emphasis added).

Both provisions permit disclosure of the "outcome" of a matter before the ABCD to complainants. That is precisely what Sharpe alleges was done. Orig. Comp. ¶ 98. The exercise of an express contract right is not a contract breach. Accordingly, Sharpe's claims of breach of these provisions fail as a matter of law.

b. Sharpe Cannot Circumvent the Plain Language of the Bylaws and ABCD Rules.

Sharpe's amended complaint conjures three theories in an attempt to escape the plain language of the Bylaws and ABCD Rules. None salvages his contract claim. *First*, Sharpe contends that the right to disclose the "outcome" of an ABCD matter does not arise until there is "no further action" to be "taken by the ABCD or the actuarial organizations of which the subject actuary is a member." *See, e.g.*, Am. Comp. ¶¶ 68-70, 72. Apparently, his contention is that, because the ABCD only has the power to recommend discipline to the Academy, *id*. ¶ 40, there is no "outcome" of an ABCD matter until the Academy acts upon the disciplinary recommendation. *Id.* ¶ 73 (if the ABCD decides to recommend discipline "the matter has not concluded, but is referred to the member organizations of which the subject actuary is a member (in Mr. Sharpe's case the Academy), for further action on the matter"); *see also id.* ¶ 78 (contending that matter has not reached its "outcome" when the ABCD makes a disciplinary recommendation).

Second, Sharpe suggests that the right to inform a complainant about the "outcome" of an ABCD proceeding may not be exercised when the complainant has stated that she does not

intend to keep the matter confidential. *Id.* ¶¶ 87, 143, 149.

Third, Sharpe states that the informing a complainant would not "absolve the Academy" if the alleged disclosure "was made by someone with the Academy who is outside of the ABCD" or if the alleged disclosure "was made to someone other than the complainant." *Id.* ¶ 143.

i. The ABCD's Recommendation Is the "Outcome" of an ABCD Matter.

Actuarial discipline is a two-step process. First, the ABCD investigates complaints. If it concludes that the subject actuary has materially violated the Code, it notifies the actuarial organizations of which the actuary is a member and recommends discipline. *Id.* ¶¶ 38, 42. Second, after receipt of the recommendation, the actuarial organization determines under its own procedures whether to accept the recommendation and what, if any, discipline to impose. *Id.* ¶ 42.[8] As Sharpe concedes, the ABCD itself has no power to discipline any actuary, *id.* ¶¶ 16, 40, and no actuarial organization must implement an ABCD recommendation. *Id.* ¶ 16. Accordingly, an ABCD matter necessarily ends when the ABCD recommends discipline to an actuarial organization. In short, the recommendation is the "outcome" of the ABCD matter. Under Article X, section 9 of the Academy's Bylaws and section X the ABCD Rules, the ABCD may "advis[e] complaints and subject actuar[ies]" of that "outcome." *Id.* Exs. 2-3.

"Outcome" is unambiguous; it means "a final consequence" or a "result." *Webster's II New Collegiate Dictionary* (1995). Both Article X, section 9 of the Bylaws and section X of the ABCD Rules use "outcome" in precisely that way. Indeed, there is no other sensible reading of either provision.

Article X, section 9 of the Bylaws applies only to "proceedings under this Article." *Id.*

[8] As noted, in some circumstances, the Academy will refer a recommendation of discipline to the JDC for consideration. Am. Comp. Ex. 7. None of those circumstances exists in Sharpe's matter. *See infra* Section II.B, at 25-31.

Ex. 2, art. X § 9. In other words, the confidentiality provision there applies *only* to ABCD proceedings, the subject of Article X, not to any Academy disciplinary committee's subsequent consideration of an ABCD recommendation (a subject covered in Article IX of the Bylaws, *see infra* Section II.A.1.c, at 24-25). Moreover, the authorization to advise persons of the "outcome" of ABCD proceedings extends equally to *both* "complainants and subject actuaries." *Id.*; *see also id*. Ex. 3, § X. Sharpe, of course, is the "subject actuary" in the matter at issue. *Id.* ¶ 39. Were Sharpe's reading of the Bylaws and ABCD Rules correct, the Academy could not even inform him about the "outcome" of the ABCD matter because the entire disciplinary process had not concluded. Neither the Bylaws nor the ABCD Rules manifest any such intent. *See id.* Ex. 2, art. X, § 5.G (requiring ABCD recommendation of discipline be shared with subject actuary); *id.* Ex. 3, § 8.B.4 (same). Moreover, contracts should not be construed to lead to absurd results. *See Curtis v. Gordon*, 980 A.2d 1238, 1243-44 (D.C. 2009) (construing settlement to avoid "absurd results"). Here, the contract language allows the Academy to advise both complainants and subject actuaries of the "outcome" of ABCD matters. Sharpe has never alleged that that the Academy made a disclosure to any persons other than himself and Ms. Sawhney. His attempt to redefine "outcome" does not save his contract claim.

ii. Neither the Bylaws nor the ABCD Rules Limit the Academy's Right to Notify Complainants of the Outcome of ABCD Matters.

Sharpe's complaint also suggests the ABCD may not disclose the "outcome" of an ABCD matter to a complainant when the complainant states that she does not intend to keep the matter confidential. *See* Am. Comp. ¶¶ 87, 143, 149. This contention asks the Court to rewrite the Bylaws and ABCD Rules.

When Sharpe joined the Academy, he did so subject to the organization's Bylaws and the ABCD Rules established pursuant to them. Academy membership is voluntary. The Academy

does not license any actuary, and actuaries may practice their profession without being Academy members. *Id*. Ex. 1 (noting that expulsion from the Academy would not prohibit Sharpe from practicing). There is nothing ambiguous about the language of either document.[9] Accordingly, District law does not permit Sharpe to rewrite the terms of membership to engraft limitations not included. *Hart*, 667 A.2d at 584 ("we know of no legal authority permitting the court to rewrite the contract by inserting a limitation which does not appear therein").

Sharpe's asserted "expectation" about the confidentiality of the ABCD recommendation, Am. Comp. ¶¶ 18-19, avails him nothing. Given the plain language of the Bylaws and ABCD Rules, any "expectation" that the ABCD would refrain from notifying a complainant about the outcome of a matter concerning him is unreasonable. Yet even accepting his asserted "expectation" at face value, "the reasonable expectation doctrine is not a mandate for courts to rewrite [contracts]." *Chase v. State Farm Fire & Cas. Co*., 780 A.2d 1123, 1132 (D.C. 2001).

In sum, the plain language of Article X, section 9 of the Bylaws and section X of the ABCD Rules expressly permit disclosure of the outcomes of ABCD matters to persons filing complaints. Sharpe has never alleged that the ABCD did anything more. His amended complaint, therefore, does not allege a breach of either provision.

[9] "The question whether a writing is ambiguous is one of law," *Am. Bldg. Maint. Co. v. L'Enfant Plaza Props., Inc.*, 655 A.2d 858, 861 (D.C. 1995), and thus may be decided by this Court on a motion to dismiss. "'Ambiguity exists only if the court determines that [the] proper interpretation of the contract depends upon evidence outside the contract itself.'" *Hart v. Vermont Inv. Ltd. P'ship*, 667 A.2d 578, 584 (D.C. 1995) (quoting *Dodek v. CF 16 Corp.*, 537 A.2d 1086, 1093 (D.C. 1988)). Whether ambiguity exists is resolved is based on "the face of the language itself, giving that language its plain meaning, without reference to any rules of construction." *Sacks v. Rothberg*, 569 A.2d 150, 154 (D.C. 1990) (internal quotation omitted).

iii. Sharpe Has Not Alleged that Anyone Unaffiliated with the ABCD Made the Alleged Disclosure or Disclosed the Recommendation to Anyone Other Than Ms. Sawhney.

Sharpe also contends that the express terms of the Bylaws and ABCD Rules would not shield the Academy from liability if the alleged disclosure were made (a) by someone at the Academy unaffiliated with the ABCD or (b) to someone other than a complainant. These contentions are purely hypothetical. No facts in either of his complaints support either assertion.

To state a claim for breach of contract, Sharpe must allege *facts* that make a claim *plausible*, not conceivable. *Iqbal*, 556 U.S. at 679. Here, Sharpe has not asserted that anyone at the Academy unaffiliated with the ABCD made the alleged disclosure. In fact, he now disclaims any knowledge of who made the putative disclosure. Am. Comp. ¶¶ 21, 140. Moreover, nothing in the original or amended complaint even suggests that any such person exists. Sharpe concedes that the ABCD is not a legal entity and is housed within the Academy. *Id*. ¶ 37, Ex. 2, art. X, § 7. He also alleges that the Academy provides administrative, financial, and legal support for the ABCD. *Id.* ¶ 37, Ex. 2, art. X, § 7. The only reasonable inference to be drawn from these allegations is that any Academy employee making a disclosure to a complainant would be acting on behalf of the ABCD. Nothing in Sharpe's allegations suggests any other possibility.

Sharpe's contention that any disclosure to a person other than a complainant would also not shield the Academy from liability is beside the point. Sharpe's original complaint did not allege disclosure of the recommendation to anyone other than Ms. Sawhney. It did conclusorily allege that the Academy disclosed "the confidential ABCD recommendation to one or more other third parties outside of the Academy and Mr. Sharpe." Orig. Comp. ¶ 100. Sharpe did not, however, identify any "other third parties" to whom the Academy supposedly made the

disclosure, other than Ms. Sawhney. *Id.* ¶¶ 89-90, 98-99. The Wirepoints article, attached to both the original and amended complaints, identifies Ms. Sawhney as a complainant against Sharpe and suggests no other source. *See id*. Ex. 1; Am. Comp. Ex. 1.

A claim is plausible "when the plaintiff pleads factual content . . . that allows the court to draw the *reasonable* inference that the defendant is liable for the misconduct alleged. *Iqbal*, 556 U.S. at 678 (emphasis added). Aside from Ms. Sawhney, neither of Sharpe's complaints alleges to whom the disclosure was supposedly made – much less that it was made to anyone not permitted to receive a disclosure. Therefore, any inference of wrongdoing based on that conclusory statement is speculation. Paragraph 100 of Sharpe's original complaint is a "naked assertion" without "further factual enhancement" and therefore does not meet the plausibility standard. *Id*. Moreover, as discussed below, *see infra* Section II.C, at 31-32, the amended complaint's disclaimer of any knowledge to whom the alleged disclosure was made renders any claim implausible under *Twombly* and *Iqbal*. This contention does not salvage Sharpe's contract claims.

c. Article IX of the Bylaws Applies Only to Academy Disciplinary Proceedings, not to ABCD Matters.

Sharpe also alleges that the purported disclosure of the ABCD's recommendation violates Article IX, section 6 of the Academy's Bylaws. Am. Comp. ¶ 183. That contention also fails to state a claim for breach. As noted, the Academy follows a two-step disciplinary process. While Article X, section 9 of the Bylaws and the ABCD's Rules concern the first step in that process, Article IX, section 6 applies only to the second – namely, an Academy disciplinary committee's consideration of an ABCD recommendation. Article IX, section 6 reads in pertinent part:

> Except as otherwise provided in these Bylaws, a joint discipline agreement of which the Academy is a party, or by waiver of the person under investigation, all proceedings *under this Article* shall be kept confidential and secret. If the person [under investigation]

> discloses any aspect of these confidential proceedings, the Academy . . . reserves the right to respond to such disclosure by disclosing factual information about the proceedings.

Id. Ex. 2 (emphasis added). The confidentiality obligation in this provision applies *only* to proceedings "under this Article" – in other words, to Academy disciplinary committee proceedings to consider ABCD recommendations about Academy members. It has no relevance to ABCD matters, which may not even involve Academy members. Sharpe does not allege that there has been any disclosure about any such Academy proceeding. In fact, he concedes that at the time of the alleged disclosure, there had been no Academy disciplinary committee empaneled and no "proceeding" under Article IX of the Bylaws had begun. *See id.* ¶¶ 17, 120, 123, 138. The alleged disclosure, therefore, could not have possibly violated that provision. Count I of Sharpe's complaint should be dismissed.

B. The Joint Discipline Agreement Does Not Apply to Sharpe's Disciplinary Matter.

Sharpe's amended complaint also contends that the Academy has breached its contract with him by violating the confidentiality provision of paragraph 6 of the Original JDA. Sharpe makes numerous legal assertions about the Academy's participation in the Original JDA with other actuarial organizations and contends that his disciplinary matter should be handled by the JDC and not by an Academy disciplinary committee. Based on those legal conclusions, he further asserts that his matter is covered by the Original JDA's confidentiality term, *see id.* Ex. 4, ¶ 6, and the corresponding JDC Rules. *Id.* Ex. 5. The alleged disclosure of the ABCD's recommendation, he claims, violates those provisions as well. *Id.* ¶ 186.

Sharpe's claim of breach of the Original JDA fails for two independent reasons.[10] *First*,

[10] Sharpe is not a party to the Original JDA or the Amended JDA and has no standing to enforce either. His contract claim makes sense only if Article IX of the Bylaws requires that his matter

as a matter of law, the operative JDA is the Amended JDA, not the Original JDA. By its own terms, the Amended JDA does not apply to Sharpe's disciplinary matter. That defeats Sharpe's claim that the Academy breached the confidentiality provisions of the Original JDA or the JDC's Rules. *Second*, even accepting that Sharpe's allegation that the Amended JDA became effective in February 2016, the Academy withdrew from that the Original JDA on November 10, 2015, well before the ABCD issued a recommendation in Sharpe's matter. Therefore, even under Sharpe's theory, the Academy was not a party to a joint discipline agreement when the ABCD issued a recommendation in his matter on January 29, 2016. The only joint discipline agreement to which it has been a party since that time is the Amended JDA, which does not apply to Sharpe's matter.

1. The Operative JDA Is Attached as Exhibit 7 to Sharpe's Amended Complaint and Applies to All Recommendations of Discipline the ABCD Issues On or After December 10, 2015.

Sharpe's claim of breach of a joint discipline agreement rests on the notion that he is entitled to have his matter heard by a disciplinary panel of the JDC under the Original JDA that the Academy entered with the other U.S.-based actuarial organizations on November 17, 2012. *See id*. Ex. 4. That premise is wrong. The five U.S.-based actuarial organizations entered into the Amended JDA on December 10, 2015. *See id.* Ex. 7. By its own terms, the Amended JDA

> supersedes and replaces in all respects the Original [JDA], and the terms and conditions of the Original [JDA] shall have no further force and effect for any case in which a recommendation of disciplinary action is issued by a Referring Body[11] on or after December 10, 2015.

Id. Ex. 7, ¶ 13; *see also id.* Ex. 7, ¶ 10 ("This Agreement shall be effective for cases in which a

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be referred to the JDC and the confidentiality provisions of the operative JDA actually apply to disclosures of ABCD recommendations. The Academy analyzes his breach claim as such.

[11] The ABCD is a "Referring Body" under the Amended JDA. *See id.* Ex. 7, ¶ 3.A (defining a "Referring Body" to include the ABCD).

Referring Body recommends disciplinary action on or after December 10, 2015."). Sharpe concedes that the ABCD did not issue its recommendation of discipline until January 29, 2016. Am. Comp. ¶¶ 112, 163. Accordingly, the Amended JDA is the operative agreement applicable to his matter.

Sharpe's contention that the Original JDA governs his disciplinary proceedings turns on his assertion that the Amended JDA did not become effective until February 2016. *See id.* ¶ 47 (claiming that the "Agreement on Joint Discipline was amended in February 2016"); *id.* ¶ 160 (claiming amendment of JDA took effect on February 15, 2016). Sharpe apparently reaches that conclusion because the last party to execute the Amended JDA did so on February 15, 2016. That conclusion is erroneous as a matter of law.[12]

"It is a basic principle of contract law that parties are free to contract as they see fit, within certain limits." *Flynn v. Interior Finishes, Inc.*, 425 F. Supp. 2d 38, 46 (D.D.C. 2006). This includes "the freedom to agree on the date when the parties would become contractually bound, whether that date was before (or after) the date on which they actually signed the agreement." *Id.*; *see also Brewer v. Nat'l Surety Corp.*, 169 F.2d 926, 928 (10th Cir. 1948) ("It is competent for the parties to agree that a written contract shall take effect as of a date earlier than that on which it was executed, and when this is done, the parties will be bound by such agreement."); *Bridge Prods., Inc. v. Quantum Chem. Corp.*, 1990 WL 19968 (N.D. Ill., Feb. 28,

[12] Sharpe also makes the bizarre allegation that the Amended JDA is not posted on the Academy's website and that "it appears that the Academy never provided notice to its members of any change in the disciplinary process." Am. Comp. ¶ 161. The purpose of this allegation is not clear, and to the extent he makes it in support of his claim that the Amended JDA does not apply to his case, it has no merit. Nothing in the Bylaws compels the Academy to post any joint discipline agreement on its website or to give members notice of amendment of the JDA. Sharpe makes no allegation to the contrary. The Bylaws require only that the Academy Board of Directors, by a two-thirds vote, approve the Academy's entry into, amendment, or withdrawal from a joint discipline agreement with the other U.S.-based actuarial organizations. *Id.* Ex. 2, art. IX, § 2. Sharpe does not allege that the Academy failed to follow those procedures in agreeing to the Amended JDA.

1990), at 7 ("There is no question that the parties here were free to choose an effective date which was earlier than the execution date of the agreement. Such provisions are recognized and enforced as a matter of course."); *Sweetman v. Strescon Indus.*, 389 A.2d 1319, 1322 (Del. 1978) ("Assigning a date to a contract which antedates the execution, in the absence of express language showing a contrary intention, makes the contract effective on the date which the contract bears."). Here, the Amended JDA expressly states the intention of the parties that the agreement would become effective on December 10, 2015, and supersede and replace the Original JDA in all respects on that date. Indeed, the parties could have hardly been clearer about the issue, stating unequivocally that the Original JDA "*shall have no further force and effect* for any case in which a recommendation of disciplinary action is issued by a Referring Body on or after December 10, 2015." Am. Comp. Ex. 7, ¶ 13 (emphasis added); *see also id.* Ex. 7, ¶ 10. The Amended JDA, therefore, is the governing document.[13]

2. The Amended JDA Does Not Apply to Disciplinary Matters Involving Subject Actuaries, Such as Sharpe, Who Are Members of Only One U.S.-Based Actuarial Organization.

By its terms, the Amended JDA does not apply to matters involving subject actuaries who are members of only one U.S.-based actuarial organization. The agreement provides:

> If a Referring Body issues a recommendation to discipline a Subject Actuary who is a member of only one (1) of the Parties, *such Party shall proceed in accordance with its own individually established procedures for addressing such a recommendation, and this Agreement shall have no application to such proceeding*.

Id. Ex. 7, ¶ 3.A. (emphasis added) (last sentence of paragraph); *see also id.* (noting that the

[13] While the different execution dates are of no moment in the legal analysis, they reflect nothing more than the different dates on which the boards of the respective organizations executing the agreement authorized their officers to sign the document. The different timing results from the different dates on which the respective boards had meetings. In any event, the Academy executed the Amended JDA more than two months before the ABCD recommendation in Sharpe's matter.

agreement applies to ABCD recommendations to discipline subject actuaries who are members "of at least two (2) of more of the Parties"). Sharpe admits that he is a member only of the Academy. *Id.* ¶¶ 17, 43. The Amended JDA directs that the ABCD's recommendation will be handled under the Academy's own individually established procedures, precisely as the Academy has done.

Sharpe's amended complaint makes much of Article IX, sections 2-3 of the Bylaws, which states that the terms of any joint discipline agreement that the Academy enters shall govern disciplinary proceedings against Academy members. *Id.* ¶¶ 43-44. Yet there is nothing inconsistent between the Bylaws and the Amended JDA. As Sharpe concedes, the Bylaws direct that if "the Academy is party to a joint discipline agreement, *the terms of such agreement shall govern the consideration and adjudication of disciplinary recommendations concerning Academy members*." *Id.* Ex. 2, art. IX, § 2 (emphasis added); *id.* art. IX, § 3 (noting that the terms of any joint discipline agreement govern). In other words, the Bylaws make the terms of the joint discipline agreement controlling. Here, the Amended JDA directs that subject actuaries that are members of only one U.S.-based actuarial organization will have any ABCD disciplinary recommendations considered under the individual procedures of the organizations of which they are members. Therefore, an Academy discipline committee is the proper forum for addressing the ABCD's recommendation against Sharpe.

3. Because the Amended JDA Directs That Sharpe's Matter Be Handled by an Academy Disciplinary Committee, the Confidentiality Provisions of the Amended JDA and the JDC's Rules of Procedure Cannot Support His Contract Claim.

Sharpe's claim that the alleged disclosure constitutes a breach of the confidentiality provisions of the joint discipline agreement necessarily fails as a matter of law. Paragraph 6 of the Amended JDA provides:

> Except as otherwise provided herein, or by waiver of the Subject Actuary, all proceedings *under this Agreement* shall be confidential.

Id. Ex. 7, ¶ 6 (emphasis added). Since Sharpe's matter is not within the scope of the Amended JDA, the confidentiality provisions (and the concomitant provisions of the JDC Rules) have no application to him and thus cannot form the basis for a breach of contract claim.

An ABCD proceeding is not a proceeding under the Amended JDA.[14] A JDC proceeding does not begin until a subject actuary who is a member of at least *two* U.S.-based actuarial organizations and the subject of a ABCD recommendation of discipline elects to have a JDC hearing. *Id.* ¶ Ex. 7, ¶ 3.B ("If a Subject Actuary who is a member of two (2) or more Parties elects a single hearing before a Hearing Panel under Section 3.A.(i), then *a disciplinary proceeding shall commence upon such election*." (emphasis added)). Sharpe has never made such an election – he is not entitled to do so because he is a member only of the Academy, *id.* ¶¶ 17, 43 – and, therefore, the confidentiality provisions of the Amended JDA have no application to him. To the extent that his contract claim rests on the confidentiality provisions of a joint discipline agreement and the JDC Rules, it does not state a claim for relief.

4. Sharpe's Reliance on the Original JDA Fails Because the Academy Withdrew from that Agreement in November 2015.

Although the express language of the Amended JDA alone defeats Sharpe's reliance on the Original JDA, his argument fails for an independent reason – the Academy's execution of the Amended JDA on November 10, 2015, effected its withdrawal from the Original JDA. The Original JDA permitted any signatory to "withdraw from this Agreement upon 30 days written

[14] The same result would obtain even under the Original JDA, which contains the exact same confidentiality provision as the Amended JDA. *See* Am. Comp. Ex. 4, ¶ 6. The ABCD investigation and recommendation involving Sharpe was not a proceeding "under" any version of a joint discipline agreement to which the Academy was a party. While Sharpe lards his amended complaint with legal conclusions and argument on the point, he makes no factual allegation to the contrary.

notice to the other Parties." *Id.* Ex. 4, ¶ 12. By executing a new agreement expressly stating that the Original JDA "shall have no further force and effect," *id.* Ex. 7, ¶ 13, for matters arising on or after December 10, 2015, the Academy expressed its unequivocal intention not to be bound by the terms of that agreement as of December 10, 2015 and its willingness to participate in a joint discipline agreement only on the terms set forth in the Amended JDA. Sharpe's reliance on the Original JDA founders for this reason as well and accordingly defeats any breach claim resting on the confidentiality provisions of the Original JDA and the JDC Rules of Procedure.

C. Even Accepting the Allegations of the Amended Complaint as True, Sharpe Fails to State a Claim for Breach of Contract.

Even treating the allegations of Sharpe's amended complaint as true, he still fails to allege a claim for breach of contract. Sharpe must allege a plausible claim, not a conceivable one. *Iqbal*, 556 U.S. at 679 ("only a complaint that states a plausible claim for relief survives a motion to dismiss") (citing *Twombly*, 550 U.S. at 556). Determining plausibility is context-specific. *Iqbal*, 556 U.S. at 679. In this case, (1) the Bylaws and ABCD Rules permit the disclosure of the outcome of ABCD proceedings to complainants; (2) the Amended JDA and JDC Rules have no application to Sharpe's disciplinary matter; (3) the only publication of the disciplinary recommendation Sharpe cites is the Wirepoints article attached as Exhibit 1 to his amended complaint; (4) that publication connects the recommendation to Ms. Sawhney's complaint; and (5) Ms. Sawhney is the only person that Sharpe has ever alleged received any putative disclosure from the Academy. Under these circumstances, Sharpe's assertion that he does not know to whom the alleged disclosure was made only permits the Court to infer, at best, the mere "possibility of misconduct." *Id.* Since establishing *plausible*, rather than *possible*, illegality of the putative disclosure is central to his contract claim, Sharpe's pleading, even on its

own terms, fails to show his entitlement to relief. *Id*. (citing Fed. R. Civ. P. 8(a)(2)).[15] The contract claim should be dismissed.

III. SHARPE'S NEGLIGENCE CLAIM FAILS BECAUSE THE ONLY DUTY HE ASSERTS ARISES OUT OF A CONTRACT.

Count II of Sharpe's amended complaint alleges that the Academy negligently disclosed the ABCD's recommendation. To establish negligence, Sharpe must plead and prove: (1) the Academy owed him a duty; (2) the Academy breached that duty; and (3) Sharpe suffered injury proximately caused by the breach of duty. *Aguilar*, 98 A.3d at 982. The only duty Sharpe alleges, however, is a confidentiality obligation arising from the Bylaws, ABCD Rules, a joint discipline agreement, and the JDC Rules. Am. Comp. ¶ 148. In other words, the duty Sharpe alleges the Academy owes him arises solely from his contract with the Academy. *See id.* ¶ 180 ("The Academy's Bylaws establish a contractual relationship between Mr. Sharpe and the Academy.").

Under District law,

> The omission to perform a contractual obligation does not ordinarily create a cause of action in tort as between the contracting parties . . . . Rather, an action for breach of contract is the recognized and appropriate avenue of relief . . . . Moreover, '[t]he mere negligent breach of a contract, *absent a duty or obligation imposed by law independent of that arising out of the contract itself*, is not enough to sustain an action in tort.

Towers Tenant Ass'n v. Towers Ltd. P'ship, 563 F. Supp. 566, 570 (D.D.C. 1983) (quoting *Heckrotte v. Riddle*, 168 A.2d 879, 882 (Md. 1961))) (emphasis in original); *see also KBI Transp. Servs. v. Med. Transp. Mgmt., Inc.*, 679 F. Supp. 2d 104, 108-09 (D.D.C. 2010) ("a

[15] This same reasoning applies to all of Sharpe's damages claims – Counts I, II, III, V, and VI – in his amended complaint. Thus, to the extent that the Court treats his disclaimer of knowledge as true on this motion, all of those claims must be also dismissed for failure to meet the *Twombly* and *Iqbal* standards. The Academy incorporates this argument by reference into its discussion of each of those counts of Sharpe's amended complaint.

breach of contract may only give rise to a tort claim when there is an independent basis for the duty allegedly breached"; dismissing a negligence claim because plaintiff "does not identify any breached duty distinct from an obligation to adhere to the contract"). Here, the only duty allegedly breached was the putative confidentiality obligation Sharpe claims that the Academy owes him. Because that asserted obligation arises only from the parties' contract, not from an independent legal duty, Sharpe's negligence claim fails and must be dismissed.[16]

IV. SHARPE'S CLAIM FOR PUBLICATION OF PRIVATE FACTS FAILS BECAUSE SHARPE CONSENTED TO THE DISCLOSURE AND THE FACTS DISCLOSED ARE A MATTER OF PUBLIC CONCERN.

Sharpe's claim for publication of private facts fails for the same reasons as his negligence claim – the duty not to disclose arises from his contract with the Academy. *See supra* Section III. Sharpe's claim also fails on the merits. Publication of private facts is a species of invasion of privacy. *Wolf*, 553 A.2d at 1217. No claim for publication of private facts exists under District law when (1) the plaintiff has consented to the publication or (2) when the facts disclosed concern a matter of public interest or concern. *Id*. at 1220 (noting that failure to meet any single element of publication of private facts defeats the claim). Sharpe's complaint affirmatively establishes both his consent and the public concern with the facts disclosed.

A. By Joining the Academy, Sharpe Accepted the Bylaws and ABCD Rules, Both of Which Allow Disclosure of the Outcome of ABCD Matters to Complainants.

As Sharpe concedes, the Bylaws constitute a contract between the Academy and him.

[16] Although Sharpe's amended complaint makes vague reference to a "common-law duty" of confidentiality, Am. Comp. ¶ 148, he has not alleged any facts suggesting the existence of such a duty. Moreover, even though his amended complaint is full of legal arguments and conclusions, Sharpe never suggests any basis in law for the existence of an independent duty of confidentiality. The Academy has found no District case recognizing a common-law duty of confidentiality outside a fiduciary relationship. Sharpe has never contended that he and the Academy have a fiduciary relationship.

Am. Comp. ¶ 180. The contract's express terms permit disclosure of the outcome of ABCD matters to complainants. *See supra* Section II.A, at 16-25. When Sharpe joined the Academy, he accepted the Bylaws, its disciplinary procedures, and the ABCD Rules should he ever be the subject of a disciplinary complaint. By voluntarily remaining an Academy member for nearly 30 years, Sharpe necessarily consented to disclosure to a complainant of the outcome of any ABCD matter against him. *See* RESTATEMENT (2D) OF TORTS § 652F, cmt. b, illus. 2 ("A is a member of a club whose rules as A knows when he joins the club permit the posting of notices of delinquent club accounts upon the club bulletin board. A's account becomes delinquent, and the club posts a notice to that effect on the board. It is privileged to do so."). His complaint alleges that the Academy disclosed facts about him that it was, under contract, privileged to disclose. His claim for publication of private facts, therefore, fails on that basis alone. *Wolf*, 553 A.2d at 1220.

B. The Facts Disclosed About Sharpe Relate to Issues of Public Concern.

Sharpe's claim for publication of private facts also fails because the facts allegedly disclosed relate to a matter of public interest or concern. *See id*. at 1220 (publication of private facts claim lies only when "the public has no legitimate concern" in the facts disclosed).

Sharpe's amended complaint establishes that his work is a matter of public concern. As Sharpe notes, his "actuarial practice has focused on serving local municipalities throughout the State of Illinois," Am. Comp. ¶ 33, including "municipalities, auditors, and users of government financial statements regarding retiree medical liabilities and accounting." *Id.* ¶ 34. The Wirepoints article attached to the amended complaint further notes that his work was the subject of "three prior complaints, two by actuaries and another by Jim Palermo, then trustee of the Village of La Grange, IL." *Id.* Ex. 1. The same article states that a July 2015 *New York Times* piece entitled *Bad Math and a Coming Public Pension Crisis* discussed Sharpe's work, as did previous Wirepoints postings and articles in two other publications, the *Forest Park Review* and

Rockford Register Star. *Id.* All of these discussions of Sharpe's work occurred *before* the alleged disclosure his complaint challenges. Moreover, the Wirepoints posting expressly relates Sharpe's work to municipal tax levies, and concludes that "[e]very fire and police plan and sponsoring municipality should be taking a hard look at whether its actuary has the skills and fortitude to provide a true picture of the liability taxpayers ultimately face." *Id.* In addition, as Sharpe's admits, the disciplinary complaint that Ms. Sawhney filed against him noted that the matter concerned "public work." *Id.* ¶ 96.

The public has substantial interest in knowing what public officials are doing and how tax dollars are spent. *See White v. Fraternal Order of Police*, 909 F.2d 512, 517 (D.C. Cir. 1990) (in evaluating a claim for publication of private facts, the public interest "extends to 'anything which might touch on an official's fitness for office'" (quoting *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 344-45 (1974) (citation omitted)). While Sharpe is not himself a public official, he performed actuarial services for municipalities at the behest of public officials, Am. Comp. ¶¶ 33, 35, and indeed, one of the prior complainants against Sharpe, as the Wirepoints article states, was a public official, a trustee of La Grange, Illinois.[17] Facts about Sharpe's fitness as an actuary, therefore, "touch on" official action.

Moreover, even in cases not involving public officials, the "public interest exception to the right of privacy action" is "broad." *Dresbach v. Doubleday & Co.*, 518 F. Supp. 1285, 1290 (D.D.C. 1981). The exception encompasses a *subject matter* that is of legitimate public interest at the time a fact is published. *Id.* Here, the financial condition of public pension plans and the quality of actuarial services provided to government entities overseeing and funding those plans

[17] The Village Board of Trustees is the legislative body of the Village of La Grange. *See* Village of La Grange Illinois, President & Village Board of Trustees, http://www.villageoflagrange.com/index.aspx?NID=140.

through tax levies is of legitimate public concern. Sharpe's publication of private facts claim, therefore, fails for this reason as well. Like his contract and negligence claims, it should be dismissed.[18]

V. SHARPE'S TORTIOUS INTERFERENCE CLAIMS FAIL BECAUSE HE HAS NOT IDENTIFIED ANY CONTRACT OR EXPECTANCY WITH WHICH THE ACADEMY INTERFERED OR ANY WRONGFUL CONDUCT CAUSING THE TERMINATION OF ANY CONTRACT OR EXPECTANCY.

Sharpe's amended complaint alleges two new claims for tortious interference – one for interference with existing contracts and the other for interference with prospective business advantage. Neither states a claim for relief for several reasons.

First, to state a claim for tortious interference with contract, Sharpe must identify the contracts with which the Academy supposedly interfered and the terms of the agreements. *Gov't Relations, Inc. v. Howe*, 2007 WL 201264, at *9 (D.D.C. Jan. 24, 2007) (Kollar-Kotelly, J.); *see*

[18] Whether Sharpe's has adequately pleaded any element of a claim for publication of private facts is doubtful. His original complaint alleges that the Academy disclosed the disciplinary recommendation only to Ms. Sawhney. Orig. Comp. ¶¶ 98-99. His amended complaint disclaims even that fact. Am. Comp. ¶¶ 21, 140-41. Disclosure to a single person is not likely "publicity." That problem is even more acute under Sharpe's amended complaint because he cannot say to whom the recommendation was supposedly disclosed. *Id.* Moreover, the fact allegedly disclosed is not likely a "private" fact about Sharpe. Given the Academy's right under its Bylaws and the ABCD Rules to advise complainants of the outcome of the ABCD matters, Sharpe had no reasonable expectation that the outcome would be kept from Ms. Sawhney. Finally, the facts disclosed are not highly offensive to a reasonable person. As Sharpe concedes, Ms. Sawhney had already revealed the fact of her complaint against him before the challenged disclosure. *Id.* ¶¶ 99-101. The existence of the complaint was noted in an August 19, 2014 Wirepoints article that Ms. Sawhney wrote. *Id.* ¶ 100. Furthermore, Sharpe's work had been discussed widely both in local Illinois newspapers and in the *New York Times*. *Id.* Ex. 1. Given these extensive, less-than-flattering descriptions of Sharpe's actuarial practices, revelation of a recommendation that he be expelled from a professional organization is unlikely to strike a reasonable person as highly offensive or outrageous.

The Court need not reach these issues on this motion. The factual allegations of Sharpe's original complaint, if taken as true, affirmatively establish (1) the Academy's right to disclose the ABCD's recommendation to Ms. Sawhney and (2) legitimate public concern about the facts disclosed. Each independently defeats the claim. The facts of Sharpe's amended complaint, if taken as true, fail to allege any "publicity" by the Academy at all. That, too, defeats his claim.

also Econ. Research Servs. v. Resolution Econs., LLC, 2016 WL 5335666, at *5 (D.D.C. Sept. 22, 2016) (failure to specify contracts or expectancies with which defendant interfered does not state tortious interference claim). Similarly, to state a claim for tortious interference with prospective business advantage, Sharpe must identify the business expectancy with which the Academy interfered. *Nyambal v. Alliedbarton Sec. Servs, LLC*, 153 F. Supp. 3d 309, 316 (D.D.C. 2016) ("tortious interference claims are routinely dismissed where the plaintiff fails to name specific contractual relationships that the defendant allegedly interfered with, or to identify any facts related to future contracts compromised by the alleged interferer"). He does neither.

Count V of the amended complaint merely alleges that Sharpe "had a number of client relationships for which [he] provided actuarial services." Am. Comp. ¶ 239. It further alleges that the ABCD and the Academy "were aware" of those relationships as a result of the investigation and consideration of Ms. Sawhney's complaint. *Id.* ¶ 240. Sharpe then conclusorily alleges that the disclosure of the ABCD's recommendation caused his clients "to terminate their contractual and business relationships" with him. *Id.* ¶ 241. Count VI follows the same format, alleging that Sharpe "had a reasonable expectation of entering into business relationships involving the performance of actuarial services for certain past and prospective clients." *Id.* ¶ 245. It then asserts again that the investigation and consideration of Ms. Sawhney's complaint made the ABCD and Academy "aware" of these vague expectancies, *id.* ¶ 246, and that the putative disclosure of the recommendation "prevent[ed] Mr. Sharpe's legitimate expectancy from ripening into valid business relationships." *Id.* ¶ 247. These barebones allegations are precisely the type that *Twombly* holds to be insufficient to meet Rule 8's requirements. They are nothing more than "a formulaic recitation of the elements of a cause of action." *Twombly*, 550 U.S. at 555. Accordingly, Sharpe's tortious interference claims fail

for want of sufficient allegations of contractual or business expectancies with which the Academy interfered. *Gov't Relations, Inc.*, 2007 WL 201264, at *9; *Nyambal*, 153 F. Supp. 3d at 316.

Second, Sharpe's claims fail because he has not alleged any improper intentional interference with any contract or expectancy. The sole act of interference he alleges is the putative disclosure of the ABCD's recommendation. For the reasons stated above, the alleged disclosure is not wrongful and therefore cannot form a predicate for a tortious interference claim. *See E. Savings Bank, FSB v. Papageorge*, 31 F. Supp. 3d 1, 18 (D.D.C. 2014) ("a defendant's interference 'must be improper'" (quoting *Bowhead Info. Tech. Serv. LLC v. Catapult Tech. Ltd.*, 377 F. Supp. 2d 166, 174 (D.D.C. 2005)).

Finally, Sharpe's amended complaint alleges only in conclusory terms a general intent to interfere with any contract relationship or expectancy. A plaintiff must allege "more than a general intent or knowledge that the conduct will interfere" with a contract or expectancy. *Washington Metro. Area Transit Auth. v. Quik Serve Foods, Inc.*, 2006 WL. 1147933 at *6 (D.D.C. Apr. 28, 2006). Rather, the plaintiff must allege "strong intent to disrupt the business expectancy through egregious conduct." *Id.* (citing *Bannum, Inc. v. Citizens for a Safe Ward Five, Inc.*, 383 F. Supp. 2d 32, 45 (D.D.C. 2005)). Sharpe's tortious interference claims do not meet this requirement. They should be dismissed.

VI. SHARPE'S "DUE PROCESS" CLAIM SEEKS IMPROPER INTERFERENCE WITH THE DISCIPLINARY PROCEEDINGS OF A PRIVATE ASSOCIATION.

Count IV of Sharpe's amended complaint alleges that the Academy has denied him "due process." It is not exactly clear what claim Sharpe's intends to allege. The Academy is not a state actor; Sharpe does not allege to the contrary. Accordingly, the Academy is not subject to any constitutional requirement of due process. *Conant v. Wells Fargo Bank, N.A.*, 24 F. Supp.

3d 1, 16-17 (D.D.C. 2014) (Kollar-Kotelly, J.) (due process clauses of the Constitution offer no shield against private conduct).

To the extent that Sharpe purports to allege some common-law "due process" claim under District law, Count IV fares no better. Sharpe apparently contends that he will be denied "due process" because an Academy disciplinary committee rather than the JDC is addressing his matter. *See* Am. Comp. ¶¶ 226-230, 234. He also seems to contend that the Academy's alleged refusal to stay the disciplinary proceedings against him pending the outcome of this litigation is arbitrary and capricious. *Id.* ¶¶ 231-32, 235. He seeks only injunctive relief.[19] None of the allegations state any claim for relief.

The District of Columbia has never formally recognized a claim for denial of due process in disciplinary proceedings in private organizations. In *Levant v. Whitley*, 755 A.2d 1036 (D.C. 2000), the District of Columbia Court of Appeals assumed, without deciding, that a court will intervene in disciplinary proceedings "when an organization fails to follow its own rules." *Id.* at 1044. It noted, however, that interference with the internal affairs of a private association is ordinarily not warranted. *Id.* at 1043; *see also Blodgett*, 930 A.2d at 225-26 (D.C. 2007) (noting that courts ordinarily will not interfere with the management and internal affairs of a voluntary association and again refusing to decide "when, if ever, it would be appropriate to do so"). Here, the only violations of the Academy's procedures that Sharpe alleges are: (1) the failure to refer his case to the JDC; and (2) the failure to stay his proceedings pending completion of this litigation. As to the former, Sharpe is not entitled to any JDC proceeding for the reasons set

[19] Sharpe makes no attempt to establish that any of his alleged injuries constitute irreparable harm or that he lacks an adequate remedy at law. *See Beck v. Test Materials Educ. Servs., Inc.*, 994 F. Supp. 2d 98, 101 (D.D.C. 2014) (plaintiff must show irreparable injury and inadequate remedy at law to obtain injunctive relief). At this stage, the Academy has not disciplined Sharpe. Am. Comp. ¶¶ 7, 14, 120. He, therefore, has yet to suffer *any* injury, much less the irreparable harm necessary to warrant injunctive relief.

forth above. *See supra* Section II.B, at 25-31.

As for the latter, Sharpe has not cited any contractual or other legal right to a stay of proceedings during litigation or alleged any facts warranting interference with the Academy's disciplinary proceedings. In fact, the ordinary rule is that members of voluntary associations must exhaust internal remedies before seeking judicial intervention. *See Blodgett*, 930 A.2d at 225-30 (addressing fairness of procedures only after completion of all proceedings and imposition of discipline); *Levant*, 755 A.2d at 1038 (addressing challenge to association action only after plaintiff removed from office); *Logan v. 3750 N. Lakeshore Drive, Inc.*, 308 N.E.2d 278, 280 (Ill. App. 1974) ("It is well established that members of voluntary associations are required to exhaust their internal remedies prior to instituting legal action to enforce certain rights."). Sharpe admits that he has not yet exhausted his internal remedies. Am. Comp. ¶¶ 7, 14, 17, 120. He, therefore, is not entitled to seek judicial relief.

CONCLUSION

For the foregoing reasons, Sharpe's amended complaint should be dismissed. Sharpe has now filed two complaints, neither of which states a claim for relief. In fact, the affirmative allegations of both complaints establish that the Academy cannot be liable for any wrongful conduct. The Academy respectfully requests that the dismissal be with prejudice.

April 4, 2017

Respectfully submitted,

s/William L. Monts III

William L. Monts III (D.C. Bar No. 428856)
HOGAN LOVELLS US LLP
555 Thirteenth Street, N.W.
Washington, D.C. 2004-1109
Tel. (202) 637-5600
Fax: (202) 637-5911
E-mail: william.monts@hoganlovells.com

Attorneys for Defendant
American Academy of Actuaries

CERTIFICATE OF SERVICE

On April 4, 2017, Defendant American Academy of Actuaries filed the foregoing electronically using the Court's Electronic Case Filing system. Notice of this filing will be sent to counsel of record using the Court's electronic notification system.

s/William L. Monts III
William L. Monts III