

Plaintiff,

v.

KAUSHIK PATEL, *et al.*,

Defendants.

Civil Action No. 17-12706 (MAS) (DEA)

**MEMORANDUM OPINION**

**SHIPP, District Judge**

This matter comes before the Court upon Defendants Kaushik Patel, Ashwin Chaudhary, Dipen Patel, Yogesh Patel, Vipul Patel, Gulu Puri, Nilesh Patel, Danny Saparia, the Estate of Suresh Patel, and Atul Patel's Motion for Summary Judgment (ECF No. 28), and Plaintiff Central Jersey, CML's ("Plaintiff" or the "Central CML") Amended Motion for Summary Judgment (ECF No. 40).<sup>1</sup> In response to Defendants' Motion, Plaintiff submitted a Statement of Material Facts in Opposition (ECF No. 32) and an Opposition Brief (ECF No. 33), to which Defendants replied (ECF No. 35.) Defendants opposed Plaintiff's Motion. (ECF No. 44.) Plaintiff did not reply to Defendants' opposition.<sup>2</sup> The Court has carefully considered the parties' submissions and decides

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<sup>1</sup> The Court notes that Plaintiff's Motion was unaccompanied by a Notice of Motion, as required by Local Civil Rule 7.1(b)(2).

<sup>2</sup> Plaintiff submitted an informal Letter Brief in reply to Defendants' opposition to Plaintiff's original motion for summary judgment. (ECF No. 36.) Plaintiff, however, did not file a reply to Defendants' opposition to Plaintiff's Amended Motion for Summary Judgment. The Court also notes that Plaintiff's Letter Brief, apart from briefly referencing a case cited by Defendants, contains no citation to legal authority. (*Id.*)

## A. Undisputed Facts

### 1. Background Information and the South CML

The South Jersey CML, LLC (the “South CML”) is a limited liability company, organized under the laws of New Jersey, that manages and operates a baking facility that distributes inventory to Dunkin’ Donuts stores throughout southern New Jersey.<sup>3</sup> (Plaintiff’s Statement of Undisputed Material Facts (“PSUMF”) ¶¶ 1–2, ECF No. 40-1; Defendants’ Statement of Undisputed Material Facts (“DSUMF”) ¶ 2, ECF No. 28–2.) Defendants are 10 of the 12 members of the South CML. (Plaintiff’s Responsive Statement of Material Facts and Counter-Statement of Material Facts (“PRSUMF”) ¶ 1, ECF No. 32; DSUMF ¶ 1.) The South CML delivers product to Dunkin’ Donuts locations and operates under an Approved Bakery Manufacturing Agreement (“ABMA”), which is a third-party manufacturing agreement and not a franchise agreement. (PSUMF ¶¶ 4–5; DSUMF ¶¶ 2, 4.) Dunkin’ Brands Group, Inc. (“Dunkin’ Brands”) does not have a direct ownership interest in the South CML. (PSUMF ¶ 4; *see also* DSUMF ¶ 6.)

On or about December 17, 2013, Chris Powers, the Senior Manufacturing Manager of Dunkin’ Brands, informed non-party Sailesh “Sam” Patel, the lead board member of the South CML, that the South CML had been approved to supply Dunkin’ Donuts products. (PRSUMF ¶ 6; DSUMF ¶ 6.) The South CML commenced operations in or around July 2014. (PRSUMF ¶ 7; DSUMF ¶ 7.) When it opened, the South CML had signed supply agreements with approximately

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<sup>3</sup> These facilities are referred to as “CMLs.”

Brands, McCourt became acquainted with Sam Patel and non-party Paresh Patel. (PSUMF ¶ 7; *see* Transcript of the Deposition of Paresh Patel (“Paresh Patel Dep. Tr.”) 21:2–11, Ex. D to Pl.’s Am. Mot., ECF No. 40-7; *see* Transcript of the Deposition of Alexander McCourt (“McCourt Dep. Tr.”) 43:7–22, Ex. C to Pl.’s Am. Mot., ECF No. 40-6.) Sam and Paresh Patel solicited McCourt’s help with building the South CML facility. (PSUMF ¶ 7.) In or around November 2014, McCourt resigned his position with Dunkin’ Brands after Sam and Paresh Patel recruited him to join the South CML as the Plant Manager. (PSUMF ¶¶ 11–12; DSUMF ¶ 11.) As Plant Manager, McCourt was the highest-ranking non-member of the South CML, and oversaw all production operations and participated in board meetings with Defendants and the remaining members of the South CML. (DSUMF ¶ 12.) McCourt never executed a formal employment agreement with the South CML and also never became a member of the LLC. (PSUMF ¶ 13; DSUMF ¶ 13.)

## **2. Development of the Central CML**

In October or November of 2015, McCourt became interested in the prospect of opening his own central manufacturing facility, the Central CML near Trenton, New Jersey. (PSUMF ¶ 16; DSUMF ¶ 17.) During a meeting with a business associate, Christopher Fifis, McCourt learned of New Jersey’s Grow NJ tax credit program, available for new businesses. (PSUMF ¶ 17; DSUMF ¶ 17.) McCourt believed the Central CML would be profitable if he was able to secure the tax credits from the Grow NJ program. (PSUMF ¶ 17; DSUMF ¶ 17.) McCourt discussed the idea for the Central CML with Paresh Patel, who expressed interest in joining the project with him.

Patel each possessing a 50% ownership share and McCourt serving as Chief Executive Officer. (PRSUMF ¶ 21; DSUMF ¶ 21.) Between its formation and June 2016, Defendants were entirely unaware of the Central CML and the actions of McCourt and Paresh Patel. (PRSUMF ¶ 23; DSUMF ¶ 23.) In December 2015, McCourt and Paresh Patel gave a tour of the South CML facility to Trenton mayor Eric Jackson and the President and CEO of the Trenton Chamber of Commerce, to promote the Central CML as an economic opportunity for the city of Trenton. (PSUMF ¶ 20; DSUMF ¶¶ 24–25.) Defendants, however, were at no point informed that such a tour had occurred. (PRSUMF ¶ 24; DSUMF ¶ 24.) On December 31, 2015, the Director of Trenton’s Division of Economic and Industrial Development emailed McCourt and expressed excitement at the proposed Central CML project. (PRSUMF ¶ 26; DSUMF ¶ 26.) At some point prior to discussing his plans for the Central CML with Defendants, McCourt met with representatives of Bank of America about financing for the Central CML. (PRSUMF ¶ 27; DSUMF ¶ 27.)

On August 31, 2016, McCourt submitted an application for tax credits to the New Jersey Economic Development Authority (“NJEDA”), which operated the Grow NJ tax credit program. (PSUMF ¶¶ 21–22; DSUMF ¶ 29; *see also* Ex. F to Pl.’s Motion, ECF No. 40-9.) On October 14, 2016, the NJEDA approved McCourt’s application and awarded the Central CML \$18.9 million in tax credits (the “NJGROW Tax Credits”) over a 10-year period. (PSUMF ¶ 23; DSUMF ¶ 29.) The NJGROW Tax Credits would be applied to the Central CML’s payroll taxes for every employee that it hired. (PRSUMF ¶¶ 29, 78; DSUMF ¶ 29.)

Central CML in exchange for an ownership stake. (PSUMF ¶¶ 25–26; DSUMF ¶ 32; PRSUMF ¶¶ 32, 36.) By the terms of the pro forma, each Defendant would invest \$350,000 and receive a 5% ownership stake in the Central CML in return. (PRSUMF ¶ 32; DSUMF ¶ 32.) The same pro forma called for McCourt to possess a 22% ownership stake and draw an annual salary of \$771,461, without requiring him to make any capital contributions. (PRSUMF ¶ 32; DSUMF ¶ 32.) On July 30, 2016, McCourt circulated a revised pro forma, wherein each Defendant would receive a 6% ownership share in exchange for each Defendant investing \$300,000. Under this proposal, McCourt would draw the same annual salary and receive a 21% ownership share, still without making capital contributions. (PRSUMF ¶ 32; DSUMF ¶ 32.)

On October 10, 2016, McCourt sent correspondence and a proposed business plan for the Central CML to Ronald Cumbee of Dunkin’ Brands. (PRSUMF ¶ 37; DSUMF ¶ 37.) Defendants were not included in McCourt’s correspondence, however, the proposed business plan indicated that the Central CML and South CML would combine training, development, and other resources. (PRSUMF ¶ 37; DSUMF ¶ 37; *see* Oct. 10, 2016 Correspondence and Business Plan \*8,<sup>4</sup> Ex. P to Defs.’ Mot, ECF No. 28-18.) The proposed business plan also stated that “[o]wnership is not the same between both [the Central and South CML] facilities.” (Oct. 10, 2016 Correspondence and Business Plan \*5.) On October 15, 2016, Dunkin’ Brands former Senior Director of Global

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<sup>4</sup> Page numbers preceded by an asterisk refer to the page number listed in the ECF header.

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