DOCKET NO. CV-23-6130271-S	:	STATE OF CONNECTICUT
ELIZABETH CIANFLONE	:	SUPERIOR COURT
V.	:	JUDICIAL DISTRICT OF NEW HAVEN
	:	AT NEW HAVEN
YALE UNIVERSITY, INC.	:	MAY 28, 2024

MEMORANDUM OF DECISION
MOTION FOR JUDGMENT (#113)

STATEMENT OF CASE AND PROCEDURAL HISTORY

The plaintiff, Elizabeth Cianflone, alleges the following facts in the two-count substituted complaint filed on October 23, 2023, which is the operative complaint for purposed of the present motion. The defendant, Yale University, Inc., employed the plaintiff as a medical assistant until April 2022. In the plaintiff's role as a medical assistant, she had access to the Epic system ("Epic"), which is a computerized patient medical records system. Epic is used by medical providers across the country and is not a proprietary of the defendant. In April 2022, the defendant falsely accused the plaintiff of improperly accessing a patient's medical record. Relying upon the advice of her union the plaintiff resigned so that she would not risk termination and become ineligible for rehire by the defendant. After the plaintiff resigned, the defendant through email improperly and without cause designated her ineligible for hire. The defendant also improperly and without cause placed a lock on her access to Epic.

On July 18, 2022, the plaintiff was hired as a medical assistant by a medical provider, unaffiliated with the defendant, in Hamden, Connecticut. Upon starting her new job, she learned that the defendant had placed a lock on her access to Epic, and subsequently both the plaintiff and her new employer contacted the defendant to remove the lock. The plaintiff alleges that the

defendant did not take any steps to remove the lock, which led to the plaintiff's inability to access Epic, which caused her to lose her new job. The plaintiff alleges that the defendant's actions were malicious in that it had no justification for placing a permanent lock on the plaintiff's access to Epic. The plaintiff further alleges that the defendant's continued imposition of the lock, after the cessation of her employment with the defendant, constitutes tortious interference with business relations and a violation of the Connecticut Unfair Trade Practices Act (CUTPA).

On November 17, 2023, the defendant filed concurrently a request to revise and a motion for judgment. The defendant in its request to revise seeks to delete the plaintiffs first and second count of her substitute complaint on the grounds that the additions made to counts one and two of the substitute complaint do not cure the deficiencies identified in the court's decision granting the defendant's motion to strike. The defendant in its motion, again argues that the plaintiff's substituted counts one and two do not differ materially from their predecessor counts which were found to be legally insufficient and were previously stricken by the court. The plaintiff filed a memorandum of law in opposition to the request to revise and motion for judgment on December 4, 2023. The defendant filed a reply memorandum on December 4, 2023. The court heard oral argument on the motion on January 29, 2024.

ANALYSIS

I.

Legal Standard of Review

"In ruling on a motion to strike, we take the facts alleged in the complaint as true. . . . After a court has granted a motion to strike, the plaintiff may either amend his pleading [pursuant

to Practice Book § 10-44] or, on the rendering of judgment, file an appeal. . . . The choices are mutually exclusive [as] [t]he filing of an amended pleading operates as a waiver of the right to claim that there was error in the sustaining of the [motion to strike] the original pleading. . . . If the allegations in [the plaintiff's] substitute complaint are not materially different from those in his original complaint . . . the waiver rule applies, and the plaintiff cannot now challenge the merits of the court's ruling striking the amended complaint." (Citations omitted; internal quotation marks omitted.) Id., at 693–94, 879 A.2d 503; see also *Lund* v. *Milford Hospital, Inc.*, 326 Conn. 846, 851, 168 A.3d 479 (2017) ('if the allegations in a complaint filed subsequent to one that has been stricken are not materially different than those in the earlier, stricken complaint, the party bringing the subsequent complaint cannot be heard to appeal from the action of the trial court striking the subsequent complaint' (internal quotation marks omitted)); *Parker* v. *Ginsburg Development CT, LLC*, 85 Conn. App. 777, 782, 859 A.2d 46 (2004) (plaintiff bound to court's judgment striking amended complaint because amended complaint was not materially different).

"If the plaintiff elects to replead following the granting of a motion to strike, the defendant may take advantage of this waiver rule by challenging the amended complaint as not materially different than the [stricken] . . . pleading that the court had determined to be legally insufficient. That is, the issue [becomes] whether the court properly determined that the [plaintiff] had failed to remedy the pleading deficiencies that gave rise to the granting of the [motion] to strike or, in the alternative, set forth an entirely new cause of action. It is proper for a court to dispose of the substance of a complaint merely repetitive of one to which a demurrer had earlier been sustained. . . . The law in this area requires the court to compare the two complaints

to determine whether the amended complaint advanced the pleadings by remedying the defects identified by the trial court in granting the earlier motion to strike. . . . In determining whether the amended pleading is materially different, we read it in the light most favorable to the plaintiff. . . . Our Supreme Court has explained that [c]hanges in the amended pleading are material if they reflect a good faith effort to file a complaint that states a cause of action in a manner responsive to the defects identified by the trial court in its grant of the motion to strike the earlier pleading. . . . Factual revisions or additions are necessary; mere rewording that basically restate[s] the prior allegations is insufficient to render a complaint new following the granting of a previous motion to strike. . . . The changes in the allegations need not, however, be extensive to be material. . . . *To determine whether the revised complaint was 'materially different' from the original complaint, we first examine the ruling striking the first . . . complaint*." (Emphasis added; internal quotation marks omitted.) *Speer* v. *U.S. Bank Trust, N.A.*, 216 Conn. App. 506, 511–13, 285 A.3d 833 (2022), cert. denied, 346 Conn. 911, 289 A.3d 596 (2023).

II.

Count One - Tortious Interference with Business Relations

The defendant argues that the plaintiff's substituted count one alleging tortious interference does not materially differ from the plaintiff's previously stricken predecessor count. The defendant argues that the additions made to substitute count one do not cure any of the defects which resulted in the court striking the related predecessor count, in that the plaintiff's allegations that the defendant acted malicious and/or without justification are still mere legal conclusions unsupported by the facts; that the plaintiff failed to allege the defendant was engaged

in some improper motive and/or means; that the plaintiff failed to allege the defendant had a duty to remove the lock placed on the plaintiffs access to Epic; and that the plaintiff still has failed to allege facts establishing that the defendant's alleged interference resulted from the commission of a tort.

In response, the plaintiff argues that substituted count one is sufficiently plead because she now alleges that she was falsely accused of improperly accessing a patient's medical record; that she did not improperly access a patient's medical record; and that she resigned based on the advice of her union. The plaintiff argues that these new allegations cures the deficiency regarding whether the defendant acted without justification.

"It is well established that the elements of a claim for tortious interference with business expectancies are: (1) a business relationship between the plaintiff and another party, (2) the defendant's intentional interference with the business relationship while knowing of the relationship; and (3) as a result of the interference; the plaintiff suffers actual loss. . . . The plaintiff need not prove that the defendant caused the breach of an actual contract; proof of interference with even an unenforceable promise is enough. . . . A cause of action for tortious interference with a business expectancy requires proof that the defendant was guilty of fraud, misrepresentation, intimidation or molestation . . . or that the defendant acted maliciously. . . . It is also true; however, that not every act that disturbs a contract or business expectancy is actionable. . . . A defendant is guilty of tortious interference if he has engaged in improper conduct. . . . [T]he plaintiff [is required] to plead and prove at least some improper motive or improper means. . . . Stated simply, to substantiate a claim of tortious interference with a

business expectancy, there must be evidence that the interference resulted from the defendant's commission of a tort." (Citation omitted; internal quotation marks omitted.) *Brown* v. *Otake*, 164 Conn. App. 686, 709–710, 138 A.3 d 951 (2016).

"In the context of a tortious interference claim, the term malice is meant not in the sense of ill will, but intentional interference without justification. . . . In other words, the [plaintiff] bears the burden of alleging and proving lack of justification on the part of the [defendant]. . . . Our Supreme Court has recognized that the legal theory of tortious interference with a business expectancy encompasses a broad range of behavior." (Citations omitted; footnote omitted; internal quotation marks omitted.) *American Diamond Exchange, Inc.* v. *Alpert*, 101 Conn. App. 83, 90–91, 920 A.2d 357, cert. denied, 284 Conn. 901, 931 A.2d 261 (2007). "[I]t is essential to a cause of action for unlawful interference with business that it appear that, except for the tortious interference of the defendant, there was a reasonable probability that the plaintiff would have entered into a contract or made a profit." (Internal quotation marks omitted.) *Kelly* v. *Kurtz*, 193 Conn. App. 507, 531, 219 A.3d 507 (2019). "[I]f the ground of complaint is that he was about to make a contract, he is required to go further and show that he was not only about to, but would, but for the malicious interference of the defendants, have entered into the contract . . . . There must be some certainty that the plaintiff would have gotten the contract but for the fraud. This cannot be left to surmise or speculation." (Citation omitted; internal quotation marks omitted.) *Goldman* v. *Feinberg*, 130 Conn. 671, 675, 37 A.2d 355 (1944).

The court previously granted the defendant's motion to strike the tortious interference count on the basis that the plaintiff's allegations regarding whether the defendant acted malicious

and/or without a legitimate purpose were mere legal conclusions that were unsupported by any facts. The court further held that predecessor count one was legally insufficient because the plaintiff failed to allege sufficient facts that the defendant was engaged in some improper motive or means; that the defendant had a standard of procedure that the defendant typically takes when locking employees out of Epic so as to indicate that it was exceeding the number of days as to interfere with the plaintiff's ability to seek future employment; that the defendant had a duty to remove the lock; that the defendant's alleged interference resulted from the defendant's commission of a tort or malicious conduct to substantiate her claim. *Cianflone* v. *Yale University, Inc.*, Superior Court, judicial district of New Haven, Docket No. CV-23-6130271-S (October 10, 2023, *Wilson, J.*).

In amending her pleadings, the plaintiff in her substituted count one now alleges the following new facts: that she was falsely accused of improperly accessing patient medical records; that she did not access these medical records; that she continued to work for the defendant and was still able to access Epic for one month after the false accusation; that her union advised her that the meeting that was scheduled for the next day was to be a termination meeting rather than a counseling session that she was initially told it would be; that she relied on the advice of her union and resigned so that she would not risk termination and be ineligible for rehire by the defendant; that after the plaintiff resigned the defendant improperly and without cause designated her ineligible for hire via email; and that the defendant improperly and without cause placed a permanent lock on the plaintiff's access to Epic.

In reading the amended pleadings broadly and realistically, and in the light most favorable to the plaintiff, and when comparing the substitute complaint to the stricken complaint, these new allegations do not materially differ from the original complaint so as to cure the deficiencies that were the basis for the court granting the previous motion to strike. In comparing the two complaints, the substitute complaint does differ in regards to the plaintiff previously alleging that she was accused of improperly accessing a patient's medical records versus her now alleging that she was falsely accused. However, these new allegations do not materially differ so as to cure the deficiencies the court identified, because the plaintiff still has failed to allege whether the defendant had any standards of procedure typically taken by the defendant when locking employees out, that the defendant had a duty to remove the lock, and/or that the defendant's alleged interference resulted from the defendant's commission of a tort or malicious conduct.[1]

Accordingly, the court enters judgment for the defendant on count one of the substitute complaint.

III.

Count Two - CUTPA

The defendant argues that substituted count two alleging a violation of CUTPA is still deficient for the same reasons raised in its prior motion to strike, namely, that the plaintiff's allegations fall within the scope of her employment relationship with the defendant and do not constitute trade or commerce for the purposes of CUTPA; that the plaintiff has failed to allege

[1]Interestingly, the plaintiff does not allege that she denied improperly accessing a patient's medical record through the Epic system, nor is there any allegation of wrongful termination.

that the defendant had a duty under CUTPA to remove the lock from her EPIC access; and that the plaintiff failed to allege facts that the defendant engaged in conduct considered deceptive, unfair, or offensive to public policy.

In response the plaintiff argues that substituted count two is sufficiently plead because she now alleges that she was falsely accused of improperly accessing a patient's medical record and that the defendant without justification or cause placed a permanent lock to her access to EPIC, which shows the defendant's actions were outside the confines of the employment relationship. The plaintiff also maintains that the imposition of the permanent lock on the plaintiff's access caused substantial injury to consumers.

A.

Employer-Employee Relationship

"[T]he employer-employee relationship does not fall within the definition of trade or commerce for the purposes of an action under CUTPA. . . . Although an employer may engage employees for the purpose of promoting trade or commerce, the actual employment relationship is not itself trade or commerce for the purpose of CUTPA." (Citation omitted; footnote omitted; internal quotation marks omitted.) *Quimby* v. *Kimberly Clark Corp.*, 28 Conn. App. 660, 670, 613 A.2d 838 (1992).[2] Moreover, "[u]nder Connecticut precedent, acts within the employment

[2]The court wishes to clarify its citation of *Quimby* in its previous decision. The court in its previous ruling on defendant's motion to strike cited *Quimby* and stated that it had been overruled in part by *Hart* v. *Carruthers*, 77 Conn. App. 660, 670, 613 A.2d 838 (1992) on the issue of whether a single transaction can be the basis of a CUTPA violation. Upon further review of *Hart*, the court did not specifically overrule *Quimby*, but rather explained why *Quimby* was distinguishable from *Hart*, and therefore not applicable to *Hart* regarding whether a single transaction can be the basis for a CUTPA claim. *In footnote 5 of Hart, the court reaffirmed its*

relationship are not committed as part of a business' trade or commerce. . . . Even when unfair acts within trade or commerce are alleged, if the ultimate injury for which redress is sought occurs within the zone of the employment relationship, a claim under CUTPA will not lie." *Tanner* v. *Darly Custom Tech, Inc.*, Superior Court, judicial district of Danbury, Docket No. CV-00-0340177-S (February 8, 2001, *Adams, J.*) (29 Conn. L. Rptr. 415).

In reading the amended pleadings, broadly and realistically, and in the light most favorable to the plaintiff and when comparing the substitute complaint to the stricken complaint, the plaintiff's new allegations do not materially differ from the stricken complaint's allegation that the plaintiff resigned due to her misconduct that occurred during the course of her employment with Yale. Paragraph seven of count one in the original complaint which is incorporated into the CUTPA count alleges that "[i]n April 2022, Cianflone was accused of improperly accessing a patient's record." Pl. Orig. Compl. In paragraph seven of count one in the substitute complaint, the plaintiff alleges that she was "falsely accused of improperly accessing

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holding that a claim under CUTPA can be based on a single transaction: "The defendant cites to part II B of Quimby v. Kimberly Clark Corp., supra, 28 Conn.App. at 672, 613 A.2d 838, in support of her argument that she would have had to be engaging in similar types of unfair or deceptive practices with more individuals than just the plaintiffs for the court to have found properly that her actions constituted a CUTPA violation. The defendant's reliance on *Quimby* is misplaced because our holding in part II B of that opinion was based on our Supreme Court's decision in *Mead* v. *Burns*, 199 Conn. 651, 509 A.2d 11 (1986), and was limited to the specific situation in which a plaintiff has alleged violations of CUTPA and the Connecticut Unfair Insurance Practices Act (CUIPA), General Statutes § 38a–815 et seq., against an insurer on the basis of conduct that constitutes an unfair claim settlement practice as defined in General Statutes § 38a–816 (6). Because the present case does not involve insurer misconduct or an alleged unfair settlement practice in violation of § 38a–816 (6), our holding in *Quimby* is not applicable. Moreover, to the extent that one might read *Quimby* to stand for the broad proposition that all CUTPA claims require more than a single transaction, we squarely reject that notion. See *Johnson Electric Co.* v. *Salce Contracting Associates, Inc.*, 72 Conn.App. 342, 344, 805 A.2d 735, cert. denied, 262 Conn. 922, 812 A.2d 864 (2002)." *Hart* v. *Carruthers*, supra, 77 Conn. App. 618.

and navigating through a patient's record." Pl. Subst. Compl. Although the plaintiff added that she was falsely accused of accessing and navigating through a patient's account, Yale's placing a permanent lock on her access to Epic, "arose due to the plaintiff's misconduct in the course of her employment with the defendant. Although the plaintiff alleges that the defendant placed the lock on her access after she resigned, the action taken against the plaintiff was in direct response to her improperly accessing a patient's records in her role as a medical assistant employed by the defendant. Accordingly, the action taken by the defendant falls within the purview of an employer-employee relationship, and thus the plaintiff's CUTPA claim is insufficiently plead." *Cianflone* v. *Yale University, Inc.*, supra, Superior Court, Docket No. CV-23-6130271-S. Even accepting as true, that Yale falsely accused the plaintiff of improperly accessing Epic, an allegation which could constitute unfair acts within trade or commerce, the ultimate injury for which the plaintiff seeks redress "occurred within the zone of the employment relationship." *Tanner* v. *Darly Custom Tech, Inc.*, supra, Superior Court, Docket No. No. CV000340177S.

The plaintiff further alleges that "Yale had no legitimate purpose in permanently locking Cianflone out of the Epic system for providers outside of Yale following the cessation of her employment with Yale." Pl. Subst. Compl., count one, ¶ 23. However, this allegation is still insufficient because the plaintiff again has failed to allege anything relating to Yale's policies and/or procedures with regard to access to the Epic system, or that the defendant had a duty to remove the lock.

B.

Cigarette Rule

The plaintiff has alleged in her substitute complaint that Yale's conduct in placing the permanent "lock" on her ability to access the Epic system was immoral, unethical, oppressive, and/or unscrupulous, in that without justification it effectively prevents her from working as a Medical Assistant anywhere in the United States, including but not limited to competitors of Yale; was in the course of its primary trade or business of providing medical care to consumers in the State of Connecticut; caused substantial injury to consumers which is not outweighed by countervailing benefits to consumers, in that it prevents competitors of Yale from hiring Cianflone and providing them with needed medical care.

The crux of the issue presented in the present motion for judgment, is whether the plaintiff's substitute complaint alleges new facts to establish that Yale's conduct, namely, placing a permanent lock on the plaintiff's access to the Epic system in response to the plaintiff improperly accessing a patient's medical record, offends public policy, was immoral, unethical, oppressive, and/or unscrupulous or whether it caused substantial injury to consumers, and therefore a violation of CUTPA.

"It is well settled that in determining whether a practice violates CUTPA [our Supreme Court has] adopted the criteria set out in the cigarette rule by the [F]ederal [T]rade [C]ommission for determining when a practice is unfair: (1) [W]hether the practice, without necessarily having been previously considered unlawful, offends public policy as it has been established by statutes, the common law, or otherwise–in other words, it is within at least the penumbra of some

common law, statutory, or other established concept of unfairness; (2) whether it is immoral, unethical, oppressive, or unscrupulous; (3) whether it causes substantial injury to consumers, [competitors or other businesspersons]. . . . All three criteria do not need to be satisfied to support a finding of unfairness. A practice may be unfair because of the degree to which it meets one of the criteria or because to a lesser extent it meets all three." (Internal quotation marks omitted.) *Naples* v. *Keystone Building & Development Corp.*, 295 Conn. 214, 227–28, 990 A.2d 326 (2010).

1.

First Prong – Violation of Public Policy Prong/Unfairness

A violation of public policy established in statutes can constitute unfair acts or practices under CUTPA. See *Cheshire Mortgage Services, Inc.* v. *Monies*, supra, 223 Conn. 107-10 (holding that violations of Federal Truth in Lending Act, promoting informed use of consumer credit, and General Statutes § 36-224l, protecting consumers of credit, provided sufficient basis for CUTPA claim); *Cenatiempo* v. *Bank of America, N.A.*, 333 Conn. 769, 791-92, 805, 219 A.3d 767 (2019) (reversing the grant of a motion to strike and holding that a CUTPA claim predicated on the defendant's conduct in the loan servicing business—which was governed by statutes and regulations—alleged a "conscious, systematic departure from known, standard business norms" and satisfied unfairness and cigarette rule criterion). Regulations of a regulatory commission "have the force of statutes and a violation of a valid regulation of the commission is negligence per se" and can constitute unfair acts or practices under CUTPA. *Citerella* v. *United Illuminating Co.*, 158 Conn. 600, 608, 266 A.2d 382 (1969). The plaintiff's new allegations do

not cure the deficiencies the court previously identified regarding the first and second elements of the cigarette test. The plaintiff's substitute complaint remains devoid of any facts to suggest that Yale's alleged conduct offends public policy under the first prong of the "cigarette" test. The plaintiff merely concludes that the first element was met because the defendant prevented her from retaining employment with another medical group in violation of public policy. The plaintiff attempts to cure this defect by citing to the mere existence of general employment statutes in support of a general proposition that employment should be encouraged. There are no allegations that Yale was in violation of any policy and or regulation, or that placing a permanent lock on the plaintiff's access to the Epic system was a conscious, systematic departure from known, standard business norms and or standards. The plaintiff's general allegations about the violation of public policy are insufficient to overcome the fact that defendant's action of placing the lock on the plaintiff's access to the Epic system, was in furtherance of an established public policy not offending it. See *Dean* v. *Liberation Programs, Inc.*, Superior Court, judicial district of Stamford-Norwalk, Docket No. FSTCV136018607S. (November 13, 2013, *Tobin*, *J.T.R.*) (a violation of the patient privacy provisions of HIPAA has been recognized as a violation of an important public policy).

2.

Second Prong – Immoral, Unethical, Oppressive or Unscrupulous Conduct

"Connecticut courts have consistently held that a trade practice that is undertaken to maximize the defendant's profit at the expense of the plaintiff's rights comes under the second prong of the cigarette rule." (Internal quotation marks omitted.) *Rodriguez* v. *Star-Inns, LLC*,

Superior Court, judicial district of New London, Docket No. CV-21-6049373-S (November 8, 2021, *Young, J.*) (denying motion to strike CUTPA claim because allegations that defendant allowed criminal activity to occur on its premises in order to maximize its profits at plaintiff's expense satisfied cigarette rule). In *Coastline Construction Corp.* v. *Connecticut Natural Gas Corp.*, Superior Court, judicial district of Hartford, Docket No. HHD-CV-21-6149572-S (October 18, 2022, *Rosen, J.*), the court denied defendant's motion to strike plaintiff's CUTPA count because the plaintiff "allege[d] that the defendant did not disclose the location of its abandoned services that contained toxic PCBs in order to benefit from the plaintiff expending its own money and labor, which supports the allegation that the defendant's conduct was immoral, unethical, oppressive, or unscrupulous. Similarly, in count six, the plaintiff allege[d] that the defendant had a pattern or practice of failing to accurately mark gas main locations, and that the defendant knew its failure to correctly mark the gas main's location was a violation of state regulation and that it would benefit by having the plaintiff expend its own money and labor to remedy the gas main break. These allegations satisfy the immoral, unethical, oppressive, or unscrupulous conduct requirement."

In the present case the plaintiff alleges that "[a]s a result of Yale's active step in . . . permanently blocking Cianflone's access to the Epic system, even for providers outside of Yale, Cianflone is prevented from working in any position that requires access to patient records in any facility that uses the Epic system; Yale had no legitimate purpose in permanently locking Cianflone out of the Epic system for providers outside of Yale following the cessation of her employment with Yale; Yale's actions were malicious, in that it had no justification for intentionally placing a permanent "lock" on Cianflone's access to the Epic system for providers

who do not work for Yale, thus interfering with Cianflone's ability to work for other health care providers outside of Yale. . . .Yale's conduct in placing the permanent "lock" on Cianflone's ability to access the Epic system was immoral, unethical, oppressive, and/or unscrupulous, in that without justification it effectively prevents her from working as a Medical Assistant anywhere in the United States, including but not limited to competitors of Yale." Pl Subst. Compl., count one, ¶¶ 22-24, count two ¶ 22. The plaintiff merely concludes that Yale's placement of the permanent lock on her access to the Epic system is immoral, oppressive and unscrupulous. She does not allege facts to demonstrate how Yale's conduct in placing the permanent lock maximizes Yale's profits at her expense, or to demonstrate how Yale benefitted at the expense of the plaintiff's rights. Accordingly, plaintiff fails to cure the deficiencies to satisfy the second element of the cigarette rule.

3.

The Third Prong – Substantial Injury

The third prong requires an "unjustified consumer injury" that is a "necessary predicate for recovery under CUTPA." (Emphasis in original.) *A-G Foods, Inc*. v. *Pepperidge Farm, Inc.*, supra, 216 Conn. 200, 217, 579 A.2d 69 (1990). To satisfy the third prong, an injury must meet three additional tests. Id. at 216. The injury "must be substantial; it must not be outweighed by any counterveiling benefits to consumers or competition that the practice produces; and it must be an injury that consumers themselves could not reasonably have avoided." Id. Because the A-G Foods, Inc. plaintiff was found to be 40 percent negligent, the Supreme Court held that the

plaintiff had not established that the injury was one that the plaintiff "could not reasonably have avoided." Id.

Here, in order to satisfy the third prong of the cigarette rule, the plaintiff alleges in count two that "Yale's conduct in placing the permanent "lock" on Cianflone's ability to access the Epic system causes a substantial injury to consumers which is not outweighed by countervailing benefits to consumers, in that it prevents competitors of Yale from hiring Cianflone and providing them with needed medical care." Pl. Subst. Compl., count two, ¶ 24. The plaintiff in a conclusory manner alleges that Yale's placement of the lock on her access, was substantial; it was not outweighed by any counterveiling benefits to consumers or competition that the practice produces. However, she fails to allege any facts to support these allegations. In addition, the plaintiff fails to allege that the injury was one that consumers themselves could not reasonably have avoided.[3]

"The same evidence that supports proof of tortious interference of the defendants with . . . contractual and business relations can support proof of a violation of CUTPA. The tort of interference with business relations can overlap an unfair trade practice, since as to the former the plaintiff must prove a malicious or deliberate interference to a competitor's business relations and under the latter it need only prove that the defendants engaged in unfair competition or in an unfair or deceptive act." (Internal quotation marks omitted.) *Core Ventures, LLC* v. *Ignite Fitness, LLC*, judicial district of Hartford, Docket No. CV-18-6101599-S (July 25, 2019,

[3]Note that the reason the permanent lock was placed on plaintiff's access to Epic was due to her alleged misconduct in accessing a patient's medical record. Thus, because the reason for the placement of the lock on the plaintiff's access to the Epic system was due to her own misconduct, she would be hard pressed to allege that the injury was one that the plaintiff "could not reasonably have avoided." *A-G Foods, Inc.* v. *Pepperidge Farm, Inc.*, supra, 216 Conn. 216.

Gordon, *J.*). In the present case, the plaintiff's tortious interference claim is the basis of her CUTPA claim.

In its previous ruling on defendant's motion to strike, the court held that the plaintiff failed to sufficiently allege a viable cause of action under CUTPA, as the supporting underlying tortious interference claim lacked a factual basis to support said CUTPA claim. *Cianflone* v. *Yale University, Inc.*, supra, Superior Court, Docket No. CV-23-6130271-S. Similarly, as the court has determined here, the plaintiff's underlying tortious interference claim in her substituted count one also lacks a factual basis. Since the plaintiff's allegations in count one are the basis for her CUTPA claim, and the allegations in count one are lacking, so too are the plaintiff's allegations in the CUTPA count.

Thus, in viewing the substitute complaint broadly and realistically, and in a light most favorable to the plaintiff, the plaintiff's substituted count two does not materially differ so as to cure the deficiencies the court previously identified.

Accordingly, the court enters judgment in favor of the defendant on count two of the substitute complaint.

CONCLUSION

Accordingly, for the above stated reasons, the defendant's motion for judgment is granted in its entirety.

Juris No. 421279

Wilson, J.