Brian E. Klein
Scott M. Malzahn (*pro hac vice* application forthcoming)
Jose R. Nuño (*pro hac vice* application forthcoming)
Chloe N. George
WAYMAKER LLP
777 S. Figueroa St., Suite 2850
Los Angeles, California 90017
Telephone: (424) 652-7800
Facsimile: (424) 652-7850
bklein@waymakerlaw.com
smalzahn@waymakerlaw.com
jnuno@waymakerlaw.com
cgeorge@waymakerlaw.com

John G. Balestriere
Mandeep S. Minhas
BALESTRIERE FARIELLO
225 Broadway, 29th Floor
New York, New York 10007
Telephone: (212) 374-5401
Facsimile: (212) 208-2613
john.balestriere@balestrierefariello.com
mandeep.minhas@balestrierefariello.com
Attorneys for Defendant Hayden Adams

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

RICHARD BURTON,

Plaintiff,

– against –

HAYDEN ADAMS,

Defendant.

Index No. 506967/2021

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS THE COMPLAINT PURSUANT TO CPLR 3211 BECAUSE THE COMPLAINT FAILS TO STATE A CAUSE OF ACTION

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PRELIMINARY STATEMENT

This Court should dismiss the complaint of plaintiff Richard Burton ("Burton") in its entirety. Burton seeks a windfall of "$100 million" on the basis of vague and indefinite allegations that defendant Hayden Adams ("Adams") *orally* promised him the "ability to be an early investor in Uniswap[.]"[1] (Complaint ("Compl.") ¶ 17.) Even under the liberal pleading rules that govern a motion to dismiss, the three causes of action—breach of oral contract, unjust enrichment, and quantum meruit—are all fatally flawed.

Burton's first cause of action for breach of contract fails as a matter of law because the alleged oral contract is too vague and indefinite. The complaint does not set forth the material terms of the alleged contract, such as the price, quantity, or specific timing of Burton's opportunity to invest in "Uniswap." It is not even clear if Burton expected to receive shares in a future company which Adams later incorporated (*i.e.*, Uniswap Labs), or if he expected tokens or other digital assets associated with the Uniswap software. Without sufficiently definite contract terms that were agreed upon by the parties, Burton completely fails to adequately allege an enforceable oral contract.

Even if there were an oral contract—which there was not—the complaint does not allege that Adams breached any oral promise to provide Burton with an early investment opportunity. To the contrary, Burton acknowledges that Adams provided

[1] The complaint does not define "Uniswap", but uses the term interchangeably to refer both to a software protocol for a decentralized trading platform and a company called Universal Navigation, Inc. (*See, e.g.*, Compl. ¶¶ 1, 12, 28, 32.) For clarity, unless directly quoting from the complaint, this brief uses the term "Uniswap" to refer to the open-sourced software protocol, and the term "Uniswap Labs" to refer to the company, Universal Navigation, Inc.

Burton with a "term sheet" and that Burton declined to invest at that time. (*See id*. ¶ 26.) Based on those facts alone, there was no breach. Beyond all of this, to the extent that Burton's claims are based on Burton's alleged promise to assist Adams with identifying, negotiating, or pitching Uniswap or Uniswap Labs to third party investors, the claims are barred by the statute of frauds.

Burton's second and third causes of action for unjust enrichment and quantum meruit also should be dismissed. It is well established that these equitable claims may not be used as a backdoor to obtain the benefit of an otherwise unenforceable contract. But that is precisely what Burton seeks to do. Rather than seek only the reasonable value of any alleged services, Burton seeks at least $100 million on his theories for unjust enrichment and quantum meruit and bases those claims on the exact same factual allegations as his contract claim. As support for his outlandish monetary demand, Burton alleges that he gave Adams about $25,000 for software development, rent, and other costs in addition to unspecified technical and design advice. Burton makes no attempt to identify the specific services that he allegedly provided or their reasonable value.

For these reasons, Adams' motion to dismiss the complaint with prejudice should be granted.

FACTUAL BACKGROUND[2]

Defendant Hayden Adams is "a founder" and "Chief Executive Officer" of Uniswap Labs. (Compl. ¶ 13.) The company is alleged to be behind a decentralized on-line exchange powered by a software known as "Uniswap", which permits users to "trade cryptocurrencies and digital assets." (*Id.* ¶¶ 1, 12, 13.)

Plaintiff Richard Burton "is the founder of Balance, an Ethereum[3] blockchain wallet startup." (*Id.* ¶ 16.)

"Mr. Burton first met Mr. Adams in the spring of 2018 in New York City." (*Id.* ¶ 15.) At the time they met, Uniswap Labs had not yet been formed and the Uniswap software protocol was "little more than an idea" under development. (*Id.* ¶¶ 3, 17.)

After meeting in the spring of 2018, Burton alleges that he and Adams entered into an "oral contract" "described [] in Paragraph 17 of th[e] Complaint." (*Id.* ¶¶ 17, 19, 23.) Paragraph 17 claims that Uniswap was "in need of development, financing, and office space," and alleges that, "Mr. Adams accepted Mr. Burton's offer to provide assistance." (*Id.* ¶ 17.) Even assuming these facts are true for the purposes of this motion, the complaint nowhere describes Burton's purported offer or the specific terms of this supposed oral contract, such as the price or quantity of Burton's investment opportunity, the specific timing of Burton's investment opportunity, or the extent and scope of Burton's promised assistance. Instead, the complaint merely asserts that "[a]s

[2] The Factual Background is drawn from the complaint. By referencing the complaint in this motion, Adams does not accept or admit any of its allegations.
[3] The Ethereum blockchain is a widely used open-sourced blockchain software platform. *What is Ethereum?* ETHEREUM, https://ethereum.org/en/what-is-ethereum/ (last visited June 1, 2021).

consideration for [his] assistance, Mr. Adams agreed that Mr. Burton would have the ability to be an early investor in Uniswap." (*Id.*)

After the formation of the purported oral contract, Burton allegedly provided assistance to Adams in the spring and summer of 2018. At one point, the complaint alleges Burton "paid Mr. Adams $10,000 to do software development work for Balance" and "wrote off the expense" when Adams allegedly failed to perform these services. (*Id.* ¶ 22.) At another point, the complaint alleges Burton "provided Mr. Adams with money for travel expenses, as well as technical and design advice," which Burton asserts in a conclusory fashion was "*consistent with* the [alleged oral] contract[.]" (*Id.* ¶ 23 (italics added).) And, during "the summer of 2018", Burton allegedly provided Adams with "$15,000 to help him cover rent and [other] costs[.]" (*Id.* ¶ 24.) Over this period, Adams allegedly assured Burton that "he would be given a role in any to-be-formed company, as well as an opportunity to be an early investor if and when a lead investor for the Uniswap project was identified." (*Id.* ¶¶ 25-26.)

Although Burton claims that Adams breached an oral contract "to give [him] the opportunity to be an early investor in Uniswap" (*id.* ¶ 40), he admits that "Mr. Adams sent Mr. Burton a term sheet[.]" (*Id.* ¶ 26.) The complaint does not allege that this term sheet was unsatisfactory or otherwise inconsistent with Adams' purported earlier oral promise to provide Burton with an early investment opportunity. Instead, Burton implicitly acknowledges that he passed on the investment opportunity in the term sheet at a time when Uniswap had "no then-present financial value" (*id.* ¶ 28), and expressed a "desire and intention to invest [at some future date] when Mr. Adams had found a

lead investor to set the terms and price the deal." (*Id.* ¶ 26.)

Subsequently, Adams allegedly "pitch[ed] Uniswap to Paradigm, a well-known blockchain focused venture capital firm." (*Id.* ¶ 27.) "Paradigm invested by providing Mr. Adams and the eventually-formed Uniswap entity with $1 million in seed funding at a $10 million valuation." (*Id.* ¶ 32.)

After Uniswap Labs "attract[ed] the attention of institutional investors", Burton "attempted to accept" Adams' earlier "offer to invest[.]" (*Id.* ¶¶ 5, 30.) At that point, Burton "was told that he could not" invest. (*Id.*) Ultimately, Uniswap became the "largest decentralized trading and automated market making protocol . . . on Ethereum[.]" (*Id.* ¶ 12.)

Seeking to piggy-back on the "meteoric" success of Uniswap, Burton now claims that he has suffered a minimum of $100 million in damages. (*Id.* ¶¶ 14, 33.) He does not explain the factual basis for this damages calculation, except to assert that Adams "initially agreed to allow Mr. Burton to invest in Uniswap at a $10 million valuation for $100,000." (*Id.* ¶ 30.) Burton does not state when this alleged offer was made, or explain the factual basis for a $100,000 purchase price, or a $10 million valuation. Burton also claims that Adams was unjustly enriched by his support and that Burton is entitled to "a fair and equitable portion" of Adams' success. (*Id.* ¶ 7.) He seeks "money damages" or "restitution" "in an amount no less than $100 million" under each of his three causes of action. (*Id.*, Prayer for Relief.)

LEGAL STANDARD

A motion to dismiss under New York Civil Practice Law ("CPLR") 3211 may be brought on the grounds that the asserted complaint or cause(s) of action fail to state a claim. CPLR 3211(a)(7). Similarly, under CPLR 3211(a)(5), a motion may be brought on the grounds that a cause of action is subject to the statute of frauds. "The test of the sufficiency of a pleading is 'whether it gives sufficient notice of the transactions, occurrences, or series of transactions or occurrences intended to be proved and whether the requisite elements of any cause of action known to our law can be discerned from its averments.'" *Nasca v. Sgro*, 130 A.D.3d 588, 588 (2d Dep't 2015) (citations omitted). Although allegations in the pleadings are generally accepted as true, "allegations consisting of bare legal conclusions, as well as factual claims either inherently incredible or flatly contradicted by documentary evidence, are not entitled to such consideration." *Kliebert v. McKoan*, 228 A.D.2d 232, 232 (1st Dep't 1996).

ARGUMENT

I. The First Cause of Action for Breach of Oral Contract Should Be Dismissed for Multiple Reasons

A. The Alleged Oral Contract Lacks Definite and Certain Terms

Burton's first cause of action for breach of an oral contract fails because he has not pleaded—and cannot plead—the material terms of the alleged contract. "Before a party may obtain redress for breach of a promise, the promise must be sufficiently certain and specific to ascertain the parties' intentions and the terms of the agreement." *Balco Dev. Corp. v Peters*, 276 A.D.2d 729, 729 (2d Dep't 2000) (citations omitted).

When, as here, "a plaintiff alleges the existence of an oral agreement, he 'faces a ***heavier burden***'[] [t]o ensure that parties are not trapped into surprise contractual obligations." *Delaney v. Bank of America Corp.,* 908 F. Supp. 2d 498, 514 (S.D.N.Y. 2012) (citations omitted) (emphasis added).) "[V]ague allegations suggesting that there may have been an agreement do not suffice." *Reznick v. Bluegreen Resorts Mgt., Inc.*, 154 A.D.3d 891, 893 (2d Dep't 2017). "'[I]f the terms of the agreement are so vague and indefinite that there is no basis or standard for deciding whether the agreement had been kept or broken, or to fashion a remedy, and no means by which such terms may be made certain, then there is no enforceable contract.'" *Foros Advisors LLC v. Digital Globe, Inc.*, 333 F. Supp. 3d 354, 360 (S.D.N.Y. 2018); *see also 2004 McDonald Ave. Realty, LLC v. 2004 McDonald Ave. Corp.*, 50 A.D.3d 1021, 1021 (2d Dep't 2008) ("[D]efiniteness as to material matters is of the very essence of contract law.'") (Citations omitted)).

It is proper to dismiss a breach of oral contract claim at the pleading stage where the terms of the alleged agreement are not sufficiently pled. For example, in *Brembo, S.P.A. v. T.A.W. Performance LLC*, 176 A.D.3d 535, 536 (1st Dep't 2019), the defendant alleged that the plaintiff had "promise[d] to appoint [the] defendant as its exclusive distributor in meetings and through correspondence." The Appellate Division upheld the trial court's dismissal of the defendant's counterclaim for breach of contract, ruling that the alleged oral agreement was insufficiently "definitive in its material terms so as to be enforceable." *Id.* The Appellate Division reasoned that "[n]o terms were agreed upon when the plaintiff allegedly made the promise: not the duration of the agreement, not the pricing of [the] plaintiff's parts, and not any other term governing the alleged

[agreement]." *Id.*

Similarly here, Burton's cause of action for breach of oral contract rests on vague and indefinite allegations that Adams accepted Burton's "offer to provide assistance" and in exchange, "Mr. Adams agreed that Mr. Burton would have the ability to be an early investor in Uniswap." (Comp. ¶ 17.)[4] As in *Brembo*, Burton—relying on alleged assurances by Adams—fails to plead the material terms of the consideration he would provide, including the "scope of the expected" assistance, the time commitment, or material terms such as price and duration. *Brembo*, 176 A.D.3d at 536. Burton does not even specify if he was promised shares in a future company (Uniswap Labs), or future tokens or other digital assets associated with Uniswap (the software protocol). In any event, the complaint "is silent with respect to the amount [Burton would be allowed to invest], the exercise price [at which Burton would be allowed to invest], or the date on which [Burton] could [invest]." *Kunica v. St. Jean Financial, Inc.*, 1998 WL 437153, *6 (S.D.N.Y. Aug. 3, 1998); *see also Canzona v. Atanasio*, 118 A.D.3d 837, 839 (2d Dep't 2014) ("the plaintiff failed to plead the material terms of the alleged oral loan agreement by which the defendants agreed to repay or reimburse him for his payment of expenditures").

[4] Burton makes clear throughout his complaint that these allegations in paragraph 17 constitute the alleged oral agreement at issue. (*See* Comp. ¶ 19 ("Knowing Mr. Adams was running low on funds, and consistent with the oral contract describe above in paragraph 17 of this Complaint"); *see also id.* ¶ 23 ("Mr. Burton also provided Mr. Adams with money for travel expenses, as well as technical and design advice, consistent with the contract previously reached and described above in paragraph 17 of this Complaint").)

"[Burton's] allegations regarding the alleged oral agreement [ar]e too vague and indefinite to plead a breach of contract cause of action." *Canzona*, 118 A.D.3d at 839.

B. At Best, Burton Has Alleged an Unenforceable Agreement to Agree

Taking Burton's allegations as true, and resolving all reasonable inferences in his favor, a plain reading of the complaint makes clear that the alleged oral contract, at best, was an unenforceable "agreement to agree." *See New York Military Academy v. New Open Group*, 142 A.D. 3d 489, 490 (2d Dep't 2016) ("'[I]t is rightfully well settled . . . that a mere agreement to agree, in which a material term is left for future negotiations, is unenforceable'") (citations omitted).

This Court need go no further than Burton's pleading to find a prime example of why indefinite contracts, or "agreements to agree" are unenforceable. Unable to plead any material terms demonstrating the agreed-upon price or valuation of the purported investment he was "denied," Burton baselessly claims that he would have invested $100,000 in Adams' business and is thus entitled to at least *$100 million* in present-day damages. (Compl. ¶ 33.) In other words, even though there are no factual allegations that the parties agreed to any definite contract terms, Burton attempts to speculate into existence an alternate reality in which he would have invested $100,000 in a company that did not exist and had "no then-present value" but is now worth billions of dollars. (*See id*. ¶¶ 28, 32, 33.)

This Court should reject Burton's attempt at "wait and see" investing. To allow otherwise would enable anyone to retroactively reap the benefits of a putative investment without any of the attendant risks, merely by alleging in a lawsuit that a

plaintiff was denied an opportunity to invest on his or her own preferred terms.

Moreover, Burton cannot adequately plead around the definiteness requirement by asserting that Burton confirmed a desire to invest when "Adams found a lead investor to set the terms and price the deal." (*Id.* ¶ 26.) The complaint nowhere alleges that Adams *agreed* that Burton could invest after a lead investor was found, or that a deal with an unknown, hypothetical lead investor would set the terms of Burton's deal. (*See, e.g., id.* ¶¶ 17, 25.) Thus, "the[] allegations are insufficient to plead the existence of an enforceable contract for the simple reason that [Burton] fails to allege that the parties *actually agreed* to look to any extrinsic event, commercial practice, or trade usage to ascertain the price." *Gutkowski v. Steinbrenner*, 680 F. Supp. 2d 602, 610 (S.D.N.Y. 2010) (emphasis in original).)

Nor does the complaint allege any specific facts showing how an unknown future "lead investor" would create an objective standard or method to set the price for *Burton's* investment. *See Ashkenazi v. Kelly,* 157 A.D.2d 578, 579 (1st Dep't 1990) ("there was no objective standard or method articulated in the agreement to establish essential terms"); *Grasso v. Donnelly-Schoffstall*, 2021 WL 1224052, at *3 (N.D.N.Y. Mar. 31, 2021) (rejecting the argument that the price was sufficiently definite when it would be set by the "price paid [for a puppy] by a third-party" because the price "to be paid by third parties provides no definiteness to the price term . . . [and] is not an objective method by which the Court, or any outsider, could determine how much is owed.")

The first cause of action should be dismissed because the complaint fails to allege the existence of an enforceable oral contract with definite terms.

C. The Complaint Fails to Allege that Defendant Breached Any Agreement to Provide Plaintiff with an Early Investment Opportunity

Even assuming Burton has alleged the existence of an enforceable oral contract (which he has not), Burton still fails to allege any breach. To state a claim for breach of contract, "[t]he pleadings must be sufficiently particular to give the court and [the] parties notice of the transactions, [or] occurrences… intended to be proved," and must allege "the specific provisions upon which liability is predicated." *Clifden Futures, LLC v. Man Fin., Inc.*, 858 N.Y.S.2d 580, 582–83 (Sup. Ct., N.Y. Co. 2008). "It is well-settled that in an action to recover damages for the breach of a contract, the facts constituting the breach must be pleaded." *Id.*

Burton alleges in a conclusory fashion that Adams breached the parties' oral contract by "failing and refusing to grant Plaintiff the ability to invest [$100k at a $10 million valuation]." (Compl. ¶¶ 30, 33, 42.) However, Burton nowhere alleges that the parties had reached agreement on those specific price or valuation terms. At most, the complaint alleges that Adams "sent Mr. Burton a term sheet", that Burton responded by expressing his "desire and intention to invest [at some future date] when Mr. Adams had found a lead investor to set the terms and price the deal", and that Burton subsequently was denied "the ability to invest when he attempted to do so" at a later time. (*Id.* ¶¶ 26, 42.) In short, the complaint acknowledges that Burton was given an early investment opportunity and rejected it. *See Jericho Group, Ltd. v. Midtown Devl., L.P.*, 32 A.D.3d 294, 299 (1st Dep't 2006) ("Rejection by counteroffer extinguishes the offer and renders any subsequent acceptance thereof inoperative"); *Thor Properties, KKC*

v. Willspring Holdings, LLC, 118 A.D.3d 505, 507 (1st Dep't 2014) (if the offeree responds by conditioning acceptance on new or modified terms, "thereafter the offeree cannot, [later], unilaterally revive the offer by accepting it").

Because Burton has "failed to allege the breach of any particular contractual provision", this Court should dismiss the first cause of action. *See Feld v. Apple Bank for Sav.*, 116 A.D. 3d 549, 550 (1st Dep't 2014).

D. Any Purported Agreement Based on Plaintiff's Assistance in "Finding a Lead Investor" Is Barred by the Statute of Frauds

The statute of frauds also bars Burton's claims, which are based on allegations that Burton assisted Adams in negotiating business opportunities with Paradigm or other investors. Under General Obligations Law ("GOL") section 5-701(a)(10), "a contract to pay compensation for services rendered in negotiating a . . . 'business opportunity' must be made in writing."

The New York Court of Appeals has held that "business opportunity" includes agreements that contemplate one party's use of his or her "'know-how' or 'know-who', in bringing about between principals an enterprise of some complexity or an acquisition of a significant interest in an enterprise." *J.F. Capital Advisors, LLC v. Lightstone Group, LLC*, 25 N.Y. 3d 759, 767 (2015) (citing *Freedman v. Chemical Constr. Corp.*, 43 N.Y. 2d 260, 267 (1977)). For example, in *Goldfarb v. Shaeffer*, 135 A.D.3d 505, 505 (1st Dep't 2016), a claim for breach of contract was dismissed because plaintiff's allegations that he "was responsible for introducing [defendant] to [nonparty investor]," and that his work resulted in the underlying transaction, squarely fell within the statute of frauds. *See also*

Zeising v. Kelly, 152 F. Supp. 2d 335, 344 (S.D.N.Y. 2001) (the plaintiff's duties under the alleged agreement put the contract "squarely within the Statute of Frauds," because "'negotiating a business opportunity' within the meaning of [Section] 5–701(a)(10) includes the use of 'connections,' 'ability' and 'knowledge' to facilitate or assist in the transaction by helping the acquirer of the business opportunity meet the right people and have the right information.")

Here, Burton, a self-proclaimed software developer, designer, and entrepreneur, alleges that he "spent countless hours . . . with Mr. Adams helping to think through the project and pitch to prospective investors" (Compl. ¶ 20), that "[h]e did whatever possible to help Hayden connect with the right people to work and partner with" (*id.* ¶ 21), and that "[a]s part of the process of helping locate a lead investor, Mr. Burton sent Mr. Adams additional cash so he could fly to San Francisco and pitch Uniswap to Paradigm." (*Id.* ¶ 26.) These allegations, purporting to constitute Burton's consideration under the alleged agreement, contemplate the use of Burton's "know how" and "know who" and thus required any agreement to be in writing. As Burton seeks to enforce an oral agreement, all three of his causes of action are barred. *See Snyder v. Bronfman*, 13 N.Y.3d 504, 508 (2009) (Unjust enrichment and quantum meruit are claims under "a contract implied . . . in law to pay reasonable compensation" and thus subject to the statute of frauds).

II. The Second Cause of Action for Unjust Enrichment Is Duplicative of The Contract Claim

This Court should dismiss Burton's second cause of action for unjust enrichment because it is based on the same facts, and seeks the same relief, as his contract claim. While pleading in the alternative may be permissible, Burton cannot plead around an unenforceable agreement to agree simply by asserting a claim for unjust enrichment.

"'An unjust enrichment claim is not available where it simply duplicates, or replaces, a conventional contract or tort claim.'" *Doller v. Prescott*, 167 A.D.3d 1298, 1301 (3d Dep't 2018) (citing *Corsello v. Verizon N.Y., Inc.*, 18 N.Y.3d 777, 790 (2012)). For example, in *Doller*, the plaintiff alleged that the defendant reneged on a memorandum of understanding to give the plaintiff the right of first refusal to purchase equity in his company and wrongfully usurped that opportunity for himself. *Id*. at 1298. The Appellate Division upheld the dismissal of the breach of contract claim on the grounds that the memorandum of understanding was an unenforceable "agreement to agree." *Id.* at 1300. The Appellate Division then affirmed the dismissal of the unjust enrichment claim, reasoning that the allegations were duplicative of the dismissed contract claim and thus the claim for unjust enrichment was unavailable. *Id.* at 1301.

Here too, the factual allegations Burton relies on to demonstrate that Adams was unjustly enriched are the same allegations that he uses to demonstrate he performed his contractual obligations. The unjust enrichment claim expressly incorporates all the prior allegations of the complaint. (Compl. ¶ 44.) It then alleges that defendant was enriched by "Burton's technical, financial and other assistance", which is the exact same

consideration that Burton relies on for the contract claim. (*Compare id.* ¶ 45 *with* ¶ 19 ("consistent with the oral contract… Burton gave Mr. Adams money to help support"); ¶ 23 (Burton provided Adams "technical and design advice consistent with the contract"); ¶ 28 ("Burton provided [] Adams financial and personal assistance"). The second cause of action is duplicative and insufficient.

Akerson Advertising & Marketing, Inc. v. St. John & Partners Advertising, 89 F. Supp. 3d 341, 345-46 (N.D.N.Y. 2015), is instructive. There, the plaintiff marketing firm transferred all its assets and its lead client account to the defendant, who agreed to pay market value for the assets and not sell the account to a third party. The plaintiff sued for breach and unjust enrichment, alleging with respect to the unjust enrichment claim that: (1) the defendant transferred the lead client account to a third party; (2) the value of the account was no less than $5 million; and (3) as a result of the defendant's unjust enrichment, plaintiff was damaged "in no case less than $5 million." *Id.* at 353. The court dismissed the claim as duplicative of the breach of contract claim, noting that the plaintiff sought "at least $5,000,000.00 as damages on their unjust enrichment claim, which is the same amount they seek on their breach-of-contract claims[.]" *Id*. at 353-54. The court reasoned that the plaintiff "clearly seeks the benefit of the bargain, *i.e.*, the value of the assets of [the] [p]laintiff which were sold", and concluded that a proper unjust enrichment claim seeks to recover the value of the work performed and "does not depend on an unenforceable promise." *Id.*; *see also Fallon v. McKeon*, 230 A.D.2d 629, 630 (1st Dep't 1996) (dismissing unjust enrichment claim "since instead of identifying the reasonable value of services rendered… [the] plaintiff simply claims damages

identical to the other four causes of action" rendering the "claim indistinguishable from the others"and therefore insufficient).

As in *Akerson*, Burton seeks identical relief both through his unjust enrichment and breach of contract claims and does not limit the relief sought to the reasonable value of his services. Burton expressly seeks to recover "money damages" and "restitution" on all three claims "in an amount not less than $100 million." (Compl., Prayer for Relief ¶¶ A-C.) As support for this demand, Burton asserts that "Adams' failure and refusal to allow Mr. Burton to invest . . . translates into damages, of, at minimum, $100 million. This ***amount inured to the benefit of Mr. Adams at Mr. Burton's expense***." (*Id.* ¶ 33 (emphasis added); ¶ 48 ("it would be against equity and good conscience to allow Mr. Adams… [to] retain[] the amount Mr. Burton seeks to recover in this lawsuit"). Burton "clearly seek[s] the benefit of the bargain" and does not limit the relief sought to the reasonable value of his services. *See Akerson*, 89 F. Supp. 3d at 353-54.

Because Burton's unjust enrichment claim "seeks precisely the same damages" and is "indistinguishable" from his contract claim, it "must be dismissed." *Benhan v. eCommission Solutions, LLC*, 118 A.D. 3d 605, 606-07 (1st Dep't 2014).

III. The Third Cause of Action for Quantum Meruit Should Be Dismissed

A. The Quantum Meruit Claim Is Duplicative of the Contract Claim

As with his claim for unjust enrichment, Burton's third cause of action for quantum meruit should be dismissed because it is indistinguishable from the breach of contract claim.

Under New York law, claims for quantum meruit and unjust enrichment are analyzed as a single quasi-contract claim. *Mid-Hudson Catskill Rural Migrant Ministry, Inc. v. Fine Host Corp.*, 418 F.3d 168, 175 (2d Cir. 2005) ("'quantum meruit and unjust enrichment are not separate causes of action,' and [] 'unjust enrichment is a required element for an implied-in-law, or quasi contract, and quantum meruit . . . is one measure of liability for the breach of such a contract.'") (citing *Seiden Assocs., Inc. v. ANC Holdings, Inc.*, 768 F. Supp. 89, 96 (S.D.N.Y. 1991) (rev'd on other grounds).)

Like unjust enrichment, quantum meruit is an equitable remedy. It is *not* a backdoor to enforce an otherwise invalid contract. *See Martin H. Bauman Assoc., Inc. v. H & M Intern. Transport, Inc.*, 171 A.D.2d 479, 484 (1st Dep't 1991) (dismissing quantum meruit claim and noting "quantum meruit is intended to avoid a party's unjust enrichment; it is certainly not a device wherein a plaintiff may enforce a purported agreement which might ultimately be found not to be viable.") To that end, a cause of action for quantum meruit is not stated when it requests that the court enforce the benefit of the bargain rather than "recovery for the value of the services []rendered." *Toll v. Tannebaum*, 982 F. Supp. 2d 541, 559 (E.D. Penn. 2013) (applying New York state law) (dismissing claim when "Complaint does not seek recovery for the value of the services he rendered . . . [but] [r]ather, he asks the Court to order payment "that he would have contracted for.").

Burton's quantum meruit claim is based on the same factual allegations and seeks the same relief as his contract claim. In support of the third cause of action, the complaint expressly alleges that Burton "performed the services described in this

Complaint" and it asserts that the reasonable value of the purported services rendered can be "readily calculated and is equal to, at a minimum, ***$100 million, the value of the investment which Mr. Burton was not allowed to make***." (Compl. ¶¶ 50, 53 (emphasis added).) This is a serious problem. Burton is not seeking to recover the reasonable value of his purported services, but rather is attempting to use the equitable theory of quantum meruit as a backdoor to enforce an unenforceable agreement to agree. The quantum meruit claim is therefore not properly stated and should be dismissed.

B. Burton Fails to Allege the Reasonable Value of Any Services that He Provided

The cause of action for quantum meruit also fails because other than money, the complaint does not sufficiently allege what "services" he provided or the reasonable value of those services.

"To state a claim in quantum meruit, a plaintiff must allege its good faith performance of services, the defendant's acceptance of those services, an expectation of compensation for the services, and the reasonable value of those services." *Skillgames, LLC v. Brody*, 1 A.D.3d 247, 251 (1st Dep't 2003). To support such a claim, a plaintiff must allege that it actually performed services for defendant not "only that it provided him with money." *Id.; see also id.* (affirming dismissal of quantum meruit claim and stating that the claim does not apply "to the provision of money rather than services").

Here, the complaint alleges that Burton "gave Mr. Adams money" (Compl. ¶ 19), "paid Mr. Adams $10,000" (*id.* ¶ 22), "provided Mr. Adams with money for travel expenses" (*id.* ¶ 23), and "sent [Adams] $15,000 to help him cover rent and costs." (*Id.* ¶

24.) These allegations that Burton provided Adams with money rather than "services" cannot support a quantum meruit cause of action. *See Skillgames*, 1 A.D.3d at 251. Moreover, the complaint fails to plead any facts that Burton in fact provided *any* services to Adams, let alone the reasonable value of such services. At most, Burton includes a passing allegation that he provided "technical and design advice" to Adams, but such vague allegations are insufficient to state a claim. *See DeSilva v. North Shore-Long Island Jewish Health System, Inc.*, 770 F. Supp. 2d 497, 535 (E.D.N.Y. 2011) ("because plaintiffs have set forth no more than vague and conclusory allegations regarding what services they provided to defendants or what the reasonable value for these services was, they have failed to state a claim for quantum meruit."). Burton's quantum meruit claim must fail.

IV. This Court Should Dismiss the Complaint with Prejudice

Although leave to amend is freely granted, it is permissible to dismiss a claim with prejudice where it would be futile to permit amendment. *See Carroll ex rel Pfizer, Inc. v. McKinnell,* 19 Misc. 3d 1106(A), 859 N.Y.S.2d 901 (Sup. Ct. 2008) ("it is well-settled that a complaint should be dismissed with prejudice where the plaintiff is unable to adequately allege facts sufficient to support his or her claim.")

Burton's alleged oral agreement is hopelessly indefinite. He has not and cannot allege the material terms necessary to prove an enforceable contract, and if Burton had the facts to do so, he would have. Further, his causes of action for unjust enrichment and quantum meruit are duplicative of the invalid contract. For these reasons dismissing the complaint with prejudice is more than justified.

CONCLUSION

Burton never thought to memorialize any alleged agreement in writing since there was no enforceable contract for Adams to provide anything, and he even rejected a term sheet when provided one. Burton is now simply seeking an undeserved windfall. His claim for breach of contract, and his duplicative claims for unjust enrichment and quantum meruit should all be dismissed with prejudice.

Dated: Los Angeles, California
June 3, 2021

By:_____
Brian E. Klein
Scott M. Malzahn (*p.h.v.* app. forthcoming)
Jose R. Nuño (*p.h.v.* app. forthcoming)
Chloe N. George
WAYMAKER LLP
777 S. Figueroa Street, Ste. 2850
Los Angeles, California 90017
Telephone: (424) 652-7800
Facsimile: (424) 652-7850
bklein@waymakerlaw.com
smalzahn@waymakerlaw.com
jnuno@waymakerlaw.com
cgeorge@waymakerlaw.com

Dated: New York, New York
June 3, 2021

By:_____
John G. Balestriere
Mandeep S. Minhas
BALESTRIERE FARIELLO
225 Broadway, 29th Floor
New York, New York 10007
Telephone: (212) 374-5401
Facsimile: (212) 208-2613
john.balestriere@balestrierefariello.com
mandeep.minhas@balestrierefariello.com
Attorneys for Defendant Hayden Adams