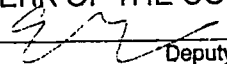


APR 29 2021

CLERK OF THE COURT

BY:  Deputy Clerk

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO  
DEPARTMENT 304

BEAUTY BARRAGE LLC, ET AL.,

Plaintiffs,

v.

DERMACEUTICAL LABORATORIES LLC,  
ET AL.,

Defendants.

Case No. CGC-20-587534

ORDER RE DEFENDANTS' DEMURRER  
TO PLAINTIFFS' FIRST AMENDED  
COMPLAINT

**INTRODUCTION**

The above-entitled matter came on regularly for hearing on April 28, 2021.<sup>1</sup> Counsel for the parties were present. A tentative ruling was issued by the Court before oral argument. The appearances are as stated in the record. Having reviewed and considered the argument and written submissions of all parties and being fully advised, the Court sustains the demurrer in part and overrules it in part. The demurrer to the second, fourth, fifth, sixth, and seventh causes of action is overruled. The demurrer to the third cause of action is sustained without leave to amend.

//

<sup>1</sup> The hearing on Plaintiffs' motion to disqualify is hereby vacated. Plaintiffs shall re-notice the motion if judicial intervention is required.

1 **BACKGROUND**

2 Plaintiffs Beauty Barrage LLC (“Beauty Barrage”), Shielded. Beauty LLC (“Shielded Beauty”),  
3 and Sonia Summers initiated this action against Defendants Dermaceutical Laboratories LLC  
4 (“Dermaceutical”) and Wendy McEvoy on November 6, 2020. Defendants demurred to the Complaint.  
5 Thereafter, Plaintiffs filed the operative First Amended Complaint (“FAC”). Defendants demurred to the  
6 FAC. Plaintiffs oppose the demurer.

7 In the FAC, Plaintiffs allege as follows.

8 Summers is the founder, CEO, and owner of Beauty Barrage. (FAC ¶ 2.) Summers is the sole  
9 owner and manager of Shielded Beauty. (*Ibid.*) Plaintiffs design, market, and are preparing to sell  
10 beauty products. (*Ibid.*)

11 McEvoy is a principal of Dermaceutical. (*Id.* at ¶ 4.) Dermaceutical is a contract manufacturer  
12 with which Beauty Barrage has had dealings in the past. (*Ibid.*)

13 In the Spring of 2020, Summers, with Beauty Barrage, “created and developed...the brand idea,  
14 module assortment and material for a novel and valuable skin care concept for products providing anti-  
15 microbial and anti-aging properties while also being soothing (the ‘Shielded Product Line’). Upon  
16 information and belief, the Shielded Product Line is a totally new concept of beauty products.” (*Id.* at ¶  
17 3.)

18 In search of a manufacturer to develop formulations for and manufacture the Shielded Product  
19 Line, Summers “disclosed the novel product concept and innovative marketing strategy to McEvoy in  
20 confidence[.]” (*Id.* at ¶ 5.) Summers and McEvoy entered into a partnership agreement to jointly  
21 develop and market the Shielded Product Line with a launch date in September 2020. (*Ibid.*)

22 The partners took steps to form Shielded Beauty as the corporate vehicle for the partnership and to  
23 file for intellectual property protections covering the novel product line under the name of Shielded  
24 Beauty. (*Ibid.*) Summers and Beauty Barrage shared proprietary and confidential information with  
25 McEvoy, including internal brand presentation, marketing strategy, brand idea, and novel concepts for  
26 formulations; worked with McEvoy and Dermaceutical to finalize formulations, test the products, file for  
27 FDA approval, design and produce packaging, and create sample products; and developed a detailed  
28 financial forecast, pricing strategies, and a profit and loss analysis for the Shielded Product Line. (*Id.* at ¶

1 6.)

2 In August 2020, McEvoy scuttled the September 2020 launch by cancelling an order for necessary  
3 ingredients. (*Id.* at ¶¶ 7, 61.) Thereafter, McEvoy abandoned the partnership. (*Id.* at ¶¶ 8, 60, 62.) As a  
4 result, Plaintiffs believe that Defendants intend to use intellectual property belonging to Plaintiffs in  
5 Defendants' business. (*Id.* at ¶¶ 9-10, 63-67.) Moreover, Plaintiffs have spent money and resources  
6 redoing the work that McEvoy performed on behalf of the partnership and have lost substantial profits as  
7 a result of the delay in launching the Shielded Product Line. (*Id.* at ¶¶ 68-69.)

8 Plaintiffs allege seven causes of action: (1) Breach of a partnership agreement (alleged by  
9 Summers against McEvoy); (2) Breach of fiduciary duties (alleged by Summers against McEvoy); (3)  
10 Breach of confidence (alleged by Plaintiffs against Defendants); (4) Misappropriation of trade secrets  
11 (alleged by Plaintiffs against Defendants); (5) Conversion (alleged by Plaintiffs against Defendants); (6)  
12 Unjust Enrichment (alleged by Plaintiffs against Defendants); and (7) Violation of the Unfair  
13 Competition Law ("UCL") (alleged by Plaintiffs against Defendants). (*Id.* at ¶¶ 71-150.)

#### 14 LEGAL STANDARD

15 A demurrer admits all material facts properly pleaded, but not contentions, deductions, or  
16 conclusions of fact or law. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) The complaint is given a  
17 reasonable interpretation, reading it as a whole and its parts in their context. (*Ibid.*) In reviewing a  
18 demurrer, the court also considers matters that may be judicially noticed. (*Ibid.*)

#### 19 DISCUSSION AND ANALYSIS

##### 20 **I. First Cause of Action – Breach of Partnership Agreement**

21 Defendants do not demur to the first cause of action. (See Reply, 10.)

##### 22 **II. Fourth Cause of Action – Misappropriation of Trade Secrets**

23 Defendants' demurrer to the fourth cause of action is overruled because Plaintiffs' allegations  
24 suffice to support a threatened misappropriation theory.

##### 25 **A. Essential Elements**

26 A trade secret is information that derives value from not being generally known to the public and  
27 is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. (Civ. Code,  
28 §§ 3426.1(b), 3426.3(a)-(b) 3426.1(d).) A prima facie claim for misappropriation of trade secrets

1 requires the plaintiff to demonstrate: (1) The plaintiff owned a trade secret, (2) the defendant acquired,  
2 disclosed, or used the plaintiff's trade secret through improper means, and (3) the defendant's actions  
3 damaged the plaintiff, unjustly enriched defendant, or should result in the payment of a reasonable  
4 royalty. (See Civ. Code, §§ 3426.1(b), 3426.3(a)-(b); *CytoDyn of New Mexico, Inc. v. Amerimmune*  
5 *Pharmaceuticals, Inc.* (2008) 160 Cal.App.4th 288, 297 [quoting *Sargent Fletcher, Inc. v. Able Corp.*  
6 (2003) 110 Cal.App.4th 1658, 1665.] However, "[a]ctual or threatened misappropriation may be  
7 enjoined." (See Civ. Code, § 3426.2(a); *Central Valley General Hospital v. Smith* (2008) 162  
8 Cal.App.4th 501, 523-24.) Moreover, "[i]n appropriate circumstances, affirmative acts to protect a trade  
9 secret may be compelled by court order." (See Civ. Code., § 3426.2(c); *Central Valley General*, 162  
10 Cal.App.4th at 530-31 [return of materials that contain trade secrets is an "affirmative act" as that term is  
11 used in the statute].)

## 12 **B. Existence of a Trade Secret**

### 13 **1. Background Law**

14 "One who seeks to protect his trade secrets from wrongful use or disclosure does not have to spell  
15 out the details of the trade secret to avoid a demurrer to a complaint. To so require would mean that the  
16 complainant would have to destroy the very thing for which he sought protection by making public the  
17 secret itself." (*Diodes, Inc. v. Franzen* (1968) 260 Cal.App.2d 244, 252.) "The plaintiff must  
18 nevertheless allege the ultimate facts showing the existence of a trade secret or other confidential data to  
19 state such a cause of action. An averment simply that the plaintiff has a 'secret process' is a bare legal  
20 conclusion." (*Ibid.*) "Before a defendant is compelled to respond to a complaint based upon claimed  
21 misappropriation or misuse of a trade secret and to embark on discovery which may be both prolonged  
22 and expensive, the complainant should describe the subject matter of the trade secret with sufficient  
23 particularity to separate it from matters of general knowledge in the trade or of special knowledge of  
24 those persons who are skilled in the trade, and to permit the defendant to ascertain at least the boundaries  
25 within which the secret lies." (*Id.* at 253; see also *Whyte v. Schlage Lock Co.* (2002) 101 Cal.App.4th  
26 1443, 1453 [quoting *Diodes*].)

### 27 **2. Identification of Trade Secrets**

28 Defendants argue that Plaintiffs have not adequately alleged any cognizable trade secret.

1 (Opening Brief, 19-21.) Plaintiffs respond that they have provided sufficient detail to identify two  
2 classes of trade secrets – formulation trade secrets and business-related trade secrets. (Opposition, 3-6.)  
3 For the reasons that follow, Plaintiffs have adequately identified the trade secrets at issue for pleading  
4 purposes.

5 **a. Formulations**

6 The formulation trade secrets relate to the Shielded Product Line. (FAC ¶ 3.) The Shielded  
7 Product Line rests on a concept for skin care products that are soothing, anti-microbial, and anti-aging.  
8 (*Ibid.*) The alleged trade secrets include novel concepts for the formulations of the products in the  
9 Shielded Product Line. (*Id.* at ¶ 6.) The alleged trade secrets also include the ingredients, recipes, and  
10 formulations retained by McEvoy, including the formulations set forth on a patent application and used  
11 to generate sample products. (*Id.* at ¶¶ 8-9, 39-40, 65, 107.) So, in short, the formulation trade secrets  
12 are the ingredients, recipes, and formulations for skin care products that are soothing, anti-aging, and  
13 anti-microbial.

14 The Court finds this description sufficient to withstand demurrer. In *Whyte*, the Court of Appeal  
15 ruled that “information about Schlage’s new products” was too vague, but, among other things,  
16 “composite material process technologies (i.e., the unique composite materials used by Schlage in its  
17 products used by Schlage in its products and the processes applied to those composite materials)” was  
18 sufficiently specific, at least where the defendant had not difficulty in understanding the scope of the  
19 putative trade secret information as demonstrated through deposition testimony. (See *Whyte*, 101  
20 Cal.App.4th 1452-53; Compare *Farhang v. Indian Institute of Technology, Kharagpur* (N.D. Cal. June 1,  
21 2010) 2010 WL 2228936, at \*13 [although technology was not explained with particularity, reference to  
22 patent application that disclosed technology rendered pleading sufficient]; *Power Integrations, Inc. v. De*  
23 *Lara* (S.D. Cal. Aug. 10, 2020) 2020 WL 4582675, at \*11 [references to high-voltage flyback controller  
24 ICs, PowiGaNTM, gallium nitride technology, and active clamp technology used in these products was  
25 sufficient to identify trade secrets at issue]; with *Diodes*, 260 Cal.App.2d 251-53 [“circumlocutions and  
26 innuendos” about “secret process,” with “hint[s] that it had something to do with the manufacture of  
27 diodes,” where plaintiff does not know if the “secret process” exists at all, were insufficient]; *Space Data*  
28 *Corp. v. X* (N.D. Cal. Feb. 16, 2017) 2017 WL 5013363, at \*2 [“data on the environment in the

1 stratosphere” and “data on the propagation of radio signals from stratospheric balloon-based receivers”  
2 insufficient to identify a trade secret under Rule 8 pleading standards]; *Becton, Dickinson and Co. v.*  
3 *Cytek Biosciences Inc.* (N.D. Cal. May 21, 2018) 2018 WL 2298500, at \*3 [finding references to broad  
4 categories of information, such as design review templates, fluidics design files, and source code files  
5 overbroad].) *Whyte* is not materially distinguishable.<sup>2</sup> There, the trade secret was the recipe and the  
6 process applied to generate composite materials. Here, the trade secret is the formulation for a specific  
7 line of skin care products that serve a specific purpose, including the formulation used to generate sample  
8 products. Taking the allegations of the FAC as true, the details regarding the formulation are known to  
9 Defendants because Plaintiffs and Defendants worked together to generate the formulations and sample  
10 products. Additional detail regarding the nature of the trade secret does not need to be included in a  
11 publicly-filed complaint.

12 **b. Business**

13 The business trade secrets are also related to the Shielded Product Line. They include the brand  
14 idea, a brand presentation (“a thorough discussion of the overall brand concept and brand positioning for  
15 the Shielded Product Line[,]” which included “a detailed marketing plan, marketing strategy, partnership  
16 strategy, sales channel strategy, rollout plans, and potential color directions for the new product  
17 packaging design and branding”), an updated brand presentation, module assortment, marketing strategy,  
18 financial forecasts, profit and loss analyses (“channel-by-channel monthly or quarterly sales projections,  
19 detailed financial analysis, and cash flow analysis for the period September 2020 through the end of 2021  
20 for multiple sales channels” and “by-month and by-product development cost analysis and cost of goods  
21 analysis”), pricing strategies, sales strategies, and test data. (FAC ¶¶ 3, 5-6, 8, 23, 30-31, 36, 41, 43,  
22 107.)

23  
24 <sup>2</sup> Defendants argue that *Whyte* is materially different because there was evidence that the identification  
25 was sufficient – the defendant’s president conceded as much at deposition. (Reply, 3.) *Whyte* involved  
26 the denial of an application for a preliminary injunction, which was affirmed. (*Whyte*, 101 Cal.App.4th at  
27 1464.) Accordingly, there was evidence in the record. (*Id.* at 1453.) However, the Court of Appeal  
28 independently stated that the categories of information were “drafted with sufficient detail to permit  
Whyte to identify and understand the protected information.” (*Ibid.*) The Court of Appeal drove this  
point home by referring to record documents, including representations in other documents and deposition  
testimony. (*Ibid.*) The Court takes guidance from the *Whyte* Court’s determination that the categories of  
information were drafted with sufficient detail. Indeed, from all of the factual allegations in the FAC it is  
quite clear what Plaintiffs are referring to. The further development of the record in *Whyte* does not  
materially distinguish it from Defendants’ challenge to the pleadings.

1 Taking guidance from *Whyte*, the Court finds the level of detail with which Plaintiffs have  
2 identified the alleged trade secrets adequate to withstand a demurrer. (See *Whyte*, 101 Cal.App.4th at  
3 1452-53 [for example, “pricing of Schlage’s products sold to its customers” and “advertising strategy  
4 plans for calendar year 2000” provided sufficient detail about the information alleged to constitute trade  
5 secrets].)

### 6 3. Trade Secret Status

7 Defendants contend that the information identified by Plaintiffs is not subject to trade secret  
8 protection. (See Opening Brief, 19-21.) While Defendants’ principal contention is that the trade secrets  
9 are not identified with particularity, this appears to include the assertion that the information described in  
10 the FAC is not entitled to trade secret protection. (See *ibid.*; *CleanFish, LLC v. Sims* (Aug. 14, 2020)  
11 2020 WL 4732192, at \*3-\*6 [although customer lists could constitute a trade secret, the factual  
12 allegations did not raise a plausible inference that the customer lists at issue were entitled to trade secret  
13 protection or identify other potential trade secrets with particularity].) However, the Court finds any such  
14 assertion unpersuasive as a challenge to the sufficiency of the FAC.

15 As set forth above, a trade secret is information that derives value from not being generally known  
16 to the public and is the subject of efforts that are reasonable under the circumstances to maintain its  
17 secrecy. Plaintiffs have included factual allegations in the FAC that meet this definition for pleading  
18 purposes as to at least some<sup>3</sup> of the trade secrets identified above. (FAC ¶¶ 4-6, 10, 23, 27-30, 37-38, 44,  
19 105, 109, 111-116.)<sup>4</sup>

20  
21 <sup>3</sup> The Court does not conduct a trade secret by trade secret analysis because a demurrer must dispose of an  
entire cause of action. (See, e.g., *Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148  
Cal.App.4th 97, 119.)

22 <sup>4</sup> At oral argument, Defendants contended that Plaintiffs did not allege that they undertook efforts that  
23 were reasonable under the circumstances to maintain secrecy because they shared trade secrets with  
McEvoy. Defendants directed the Court’s attention to page 21:23-25 of the opening brief in support of  
24 that argument. Moreover, Defendants argument seems to be that it is categorically unreasonable as a  
matter of law to share trade secret information with another person without first securing a non-disclosure  
25 agreement. The Court declines to enter such a ruling. On the facts alleged, Summers approached  
McEvoy, an individual with whom she had a 20-year friendship, in confidence to discuss going into  
26 business together. (FAC ¶¶ 4-6.) Thereafter, they began collaborating as business partners and shared  
trade secret information together. (*Id.* at ¶¶ 5-6, 10, 27-30.) With outside entities, Plaintiffs did secure  
27 non-disclosure agreements before sharing trade secret information. (*Id.* at ¶¶ 37-38.) On a demurrer,  
Defendants’ contention is essentially that Summers acted unreasonably in trusting McEvoy without a  
28 signed non-disclosure agreement in the context of the facts alleged, where Summers had a lengthy  
relationship with McEvoy, agreed to go into business with her and to form a partnership for that purpose  
with her, and did require non-disclosure agreements to share the information outside of the alleged

1           **C.     Ownership**

2           Plaintiffs allege that Summers and Beauty Barrage created and developed materials related to the  
3     Shielded Product Line and were the original owners of the trade secrets. (FAC ¶¶ 23-24, 108.) Plaintiffs  
4     allege that after the partnership was formed, the trade secrets and all development work belonged to the  
5     partnership. (*Id.* at ¶ 108.) Plaintiffs allege that Shielded Beauty is the current owner of the Shielded  
6     Product Line and the trade secrets. (*Ibid.*)

7           Defendants challenge Shielded Beauty’s trade secret claim on the ground that Plaintiffs have not  
8     alleged sufficient facts to support the inference that Shielded Beauty currently owns the trade secrets.  
9     (Opening Brief, 17-19.) Defendants cite only one case in support of their assertion that the Court may  
10    reject Plaintiffs’ allegation that Shielded Beauty is the current owner of the trade secrets, *California*  
11    *Police Activities League v. California Police Youth Charities, Inc.* (N.D. Cal. Mar. 3, 2009) 2009 WL  
12    537091. (*Id.* at 17.) There, the trade secret was an alleged list of donors. (*California Police Activities*  
13    *League*, 2009 WL 537091, at \*3.) The defendant argued that the plaintiff had never alleged who created  
14    the list of donors, who owned the list, or who possessed the list. (*Ibid.*) The District Court granted a  
15    motion to dismiss with leave to amend, noting that the complaint did not set forth “the factual basis of  
16    ownership of the trade secret” or “facts supporting the element of misappropriation.” (*Id.* at \*4.) It is not  
17    clear from the opinion whether or not the plaintiff did allege who owned the list at issue.

18           Plaintiffs note another federal case declined to take up an ownership challenge on the pleadings  
19    where ownership was pled in the complaint. (See Opposition, 7; *Pallen Martial Arts, LLC v. Shir*  
20    *Martial Arts, LLC* (N.D. Cal. May 23, 2014) 2014 2191378, at \*7 [allegation that Fe Pallen co-owned  
21    trade secrets at issue was sufficient to overcome standing challenge to, among other things,  
22    misappropriation of trade secrets claim].)

23           In ruling on a demurrer, the Court treats the factual allegations set forth in the operative complaint  
24    as true. Plaintiffs alleged that Shielded Beauty is the current owner of the trade secrets. That is a factual  
25    allegation. Defendants have not cited any authority, binding or otherwise, holding that this Court may  
26

27           \_\_\_\_\_ partnership. The Court declines to reach such a result on a demurrer. Plaintiffs have pled sufficient facts  
28    to support the conclusion that Plaintiffs took reasonable measures to keep the alleged trade secrets secret. Whether sharing the information with McEvoy without first securing a non-disclosure agreement was unreasonable is better addressed on a full evidentiary record.



1 discard that allegation because Plaintiffs did not explain how Shielded Beauty acquired ownership of the  
2 trade secrets. The Court finds this line of demurrer argument unpersuasive. Plaintiffs' allegation that  
3 Shielded Beauty is the current owner of the trade secrets is sufficient.

#### 4 **D. Misappropriation**

5 Defendants argue that Plaintiffs cannot state a claim for misappropriation because Plaintiffs allege  
6 only passive receipt without disclosure or use. (Opening Brief, 21 [citing *Silvaco Data Sys. v. Intel Corp.*  
7 (2010) 184 Cal.App.4th 210, 223, disapproved on other grounds by *Kwikset Corp. v. Superior Court*  
8 (2011) 51 Cal.4th 310].) Plaintiffs respond that they have stated a claim for a threatened  
9 misappropriation. (Opposition, 8-10.) Plaintiffs have pled sufficient facts to state a claim under that  
10 theory.

11 As set forth above, Civil Code § 3426.2 provides for injunctive relief to prevent a threatened  
12 misappropriation and, in appropriate circumstances, to secure the return of trade secret materials.  
13 Plaintiffs are seeking both forms of injunctive relief in this action. (See FAC ¶ 122, Prayer for Relief ¶  
14 (a).) Accordingly, the Court must evaluate whether Plaintiffs have pled a claim for threatened  
15 misappropriation.<sup>5</sup>

16 The Courts of Appeal have not clearly delineated the elements of a claim for threatened  
17 misappropriation, as opposed to actual misappropriation. The Court of Appeal in *Central Valley General*  
18 identified three potential<sup>6</sup> variants of the elements for a threatened misappropriation: (1) (a) Trade  
19 secrets (b) remain in the possession of a defendant (c) who has actually misused or disclosed some of  
20 those trade secrets in the past; (2) (a) Trade secrets (b) are held by a defendant (c) who intends to  
21 improperly use or disclose some of those trade secrets; and (3) (a) Trade secrets (b) are held by a  
22 defendant (c) who wrongly refuses to return them (d) after a demand for their return has been made.  
23 (*Central Valley General*, 162 Cal.App.4th at 527-29; see also *Power Integration*, 2020 WL 4582675 at  
24 \*12-\*13 [applying *Central Valley General* to a threatened misappropriation claim]; *FLIR Systems, Inc. v.*  
25 *Parrish* (2009) 174 Cal.App.4th 1270, 1278-80 [threatened misappropriation of trade secrets not shown  
26

27 <sup>5</sup> As noted above, a demurrer must dispose of an entire cause of action.

28 <sup>6</sup> At oral argument, Defendants correctly underscored that the *Central Valley General* Court did not hold that each of the three variants is viable, as a matter of law. But neither did it reject them, as a matter of law. Instead, it treated them as potential variants.

1 where employee downloaded technological data onto a portable hard drive to work from home after  
2 becoming frustrated with the slow computer network, then abandoned the enterprise and destroyed the  
3 portable hard drive after discovering that database hyperlinks were broken and the data was not readable  
4 – mere possession of trade secrets insufficient in the absence of a substantial threat of impending injury];  
5 *StrikePoint Trading, LLC v. Sabolyk* (C.D. Cal. Aug. 18, 2009) 2009 WL 10659684, at \*8 [reading  
6 *Central Valley General* and *FLIR* together to require a threat by a defendant to misuse trade secrets,  
7 manifested by words or conduct, such as past misuse or disclosure of some of the trade secrets or an  
8 intent to improperly use or disclose the trade secrets]; *Shippers, a Division of Illinois Tool Works, Inc. v.*  
9 *Fontenot* (S.D. Cal. Sept. 23, 2013) 2013 WL 12092056, at \*4-\*5 [applying second variant from *Central*  
10 *Valley General* in the preliminary injunction context, finding that circumstantial evidence regarding  
11 employee’s efforts to gather trade secret information he had no legitimate business motivation to access  
12 in the final weeks and days of his employment persuasively demonstrated that the plaintiff was likely to  
13 succeed on its misappropriation with trade secrets claim]; *Cypress Semiconductor Corp. v. Maxim*  
14 *Integrated Prods., Inc.* (2015) 236 Cal.App.4th 243, 265 [no claim for threatened misappropriation of  
15 trade secrets where there was a “complete absence of any coherent factual allegations suggesting a  
16 threatened misappropriation].<sup>7</sup> The *Central Valley General* Court rejected the notion that an injunction  
17 to compel affirmative acts could issue without at least a threatened misappropriation. (*Central Valley*  
18 *General*, 162 Cal.App.4th at 530.)

19 Here, Plaintiffs have alleged sufficient facts, outlined in more detail below, to support the  
20 inference that Defendants are in possession of Plaintiffs’ trade secrets, as identified above, and intend to  
21 improperly use or disclose the trade secrets. Having considered the foregoing authority, the Court finds  
22 those facts sufficient to state a misappropriation of trade secrets claim under a threatened  
23 misappropriation theory.

24 Plaintiffs and Defendants are established participants in the market for beauty products – Plaintiffs  
25 design, market, and sell beauty products and Defendants manufacture beauty products and sell  
26 formulations of beauty products to their clients for profit. (See FAC ¶¶ 2, 4, 9, 11-15.) Plaintiffs brought

27  
28 <sup>7</sup> The *Central Valley General* Court also raised and rejected the possibility that a claim for threatened misappropriation could be established based merely on a showing that the defendant is in possession of trade secrets. (*Central Valley General*, 162 Cal.App.4th at 528-29.)

1 a concept for a line of skincare products to Defendants, shared a business plan with Defendants, and  
2 worked to develop formulations with Defendants.<sup>8</sup> But, instead of bringing the product to market with  
3 Plaintiffs, Defendants took the trade secrets for themselves and refused to return them. (See *id.* at ¶¶ 60-  
4 67, 117.) Defendants, or at least McEvoy, have taken the position that some of the trade secrets belong  
5 to them. (*Id.* at ¶ 64.) Accordingly, as alleged, Defendants took trade secrets from Plaintiffs, falsely  
6 claimed to be the true owners of the trade secrets, and are in the business of using such information  
7 and/or selling such information for profit. At the pleading stage, this supports a reasonable inference that  
8 Defendants intend to use or disclose the trade secrets. The factual allegations go beyond mere possession  
9 of trade secret information.

### 10 **III. Preemption – Second, Third, Fifth, Sixth, and Seventh Causes of Action**

11 Defendants argue that Plaintiffs’ claims for breach of fiduciary duties, breach of confidence,  
12 conversion, unjust enrichment, and violation of the UCL are superseded by the California Uniform Trade  
13 Secret Act (“CUTSA”). (Opening Brief, 9-10, 13-17.) Defendants’ demurrer to these claims relies  
14 entirely on the preemption argument – Defendants have not argued that there is any other deficiency in  
15 the allegations. (See *ibid.*; Reply, 6-10.)<sup>9</sup> Plaintiffs argue that none of the claims is superseded because  
16 the claims rely on different facts or theories than those underlying the trade secret claim. (Opposition,  
17 11.) As detailed below, the Court finds that only the third cause of action is completely preempted.  
18 Because a demurrer must dispose of an entire cause of action, the demurrer is sustained as to the third  
19

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20 <sup>8</sup> This narrative permeates the FAC. The discussion in previous sections identifies the allegations that  
21 relate to the information that Plaintiffs shared with or developed with Defendants.

22 <sup>9</sup> In reply, Defendants argue that the demurrer to the sixth cause of action for unjust enrichment should be  
23 sustained because unjust enrichment is not a cause of action. (Reply, 9.) While there is authority  
24 supporting that argument, there is also authority to the contrary. (Compare, e.g., *Everett v. Mountains*  
25 *Recreation & Conservation Authority* (2015) 239 Cal.App.4th 541, 553 [affirming trial court ruling  
26 sustaining demurrer to cause of action for unjust enrichment on the ground that there is no cause of action  
27 in California for unjust enrichment]; *Hill v. Roll Internat. Corp.* (2011) 195 Cal.App.4th 1295, 1307  
28 [stating that unjust enrichment is a “restitution claim” rather than a “cause of action” and holding that  
there was no basis for relief because there was “no actionable wrong”]; with *Professional Tax Appeal v.*  
*Kennedy-Wilson Holdings, Inc.* (2018) 29 Cal.App.5th 230, 238-42 [stating that elements of cause of  
action for unjust enrichment are “receipt of a benefit and unjust retention of the benefit at the expense of  
another” before vacating trial court ruling sustaining demurrer to unjust enrichment cause of action and  
directing trial court to issue a new order overruling the demurrer to that cause of action]; see also  
*Prakashpalan v. Engstrom, Lipscomb & Lack* (2014) 223 Cal.App.4th 1105, 1132, 1137-38 [among other  
things, reversing trial court order sustaining demurrer to unjust enrichment claim without leave to  
amend].) Because there is appellate authority recognizing a claim for unjust enrichment under California  
law, the Court rejects Defendants’ argument that no such theory is cognizable.

1 cause of action and overruled as to the remaining causes of action.

2 **A. Background Law**

3 “CUTSA includes a specific provision concerning preemption. That provision, section 3426.7,  
4 reads in pertinent part as follows: ‘(a) Except as otherwise expressly provided, this title does not  
5 supersede any statute relating to misappropriation of a trade secret, or any statute otherwise regulating  
6 trade secrets. [¶] (b) This title does not affect (1) contractual remedies, whether or not based upon  
7 misappropriation of a trade secret, (2) other civil remedies that are not based upon misappropriation of a  
8 trade secret, or (3) criminal remedies, whether or not based upon misappropriation of a trade secret.’  
9 Section 3426.7 thus ‘expressly allows contractual and criminal remedies, whether or not based on trade  
10 secret misappropriation.’ (Trade Secrets Practice in California (Cont.Ed.Bar 2d ed. 2008) Litigation  
11 Issues § 11.35, p. 430, citing § 3426.7.) ‘At the same time, § 3426.7 implicitly preempts alternative civil  
12 remedies based on trade secret misappropriation.’ (*Ibid.*)” (*K.C. Multimedia, Inc. v. Bank of America  
13 Technology & Operations, Inc.* (2009) 171 Cal.App.4th 939, 954; see also *Silvaco*, 184 Cal.App.4th at  
14 236; *MedImpact Healthcare Systems, Inc. v. IQVIA Inc.* (S.D. Cal. Aug1 27, 2020) 2020 WL 5064253, at  
15 \*16 [collecting District Court opinions implementing CUTSA preemption].)

16 “[T]he determination of whether a claim is based on trade secret misappropriation is largely  
17 factual.” (*K.C. Multimedia*, 171 Cal.App.4th at 954.) CUTSA preempts common law claims and  
18 statutory UCL claims that are “based on the same nucleus of facts as the misappropriation of trade secrets  
19 claim for relief.” (*Id.* at 958.) So, for example, when, based on a review of the gravamen of the  
20 complaint, each and every cause of action hinges upon the factual allegation that the defendants  
21 misappropriated the plaintiff’s trade secrets, preemption applies. (*Id.* at 959-62.) On the other hand, a  
22 conversion claim, for example, is not preempted where the plaintiff’s requisite property right has some  
23 other basis in fact or law on which to predicate the asserted property right, and the basis is pled in the  
24 complaint. (See *Silvaco*, 184 Cal.App.4th at 238-40 [claims preempted where no other basis besides  
25 their trade secret status was alleged].)

26 **B. Second Cause of Action – Breach of Fiduciary Duty**

27 Summers has alleged numerous theories in support of her breach of fiduciary claim against  
28 McEvoy. (See FAC ¶ 91; Opposition, 12.) At least one of these theories is entirely independent of the

1 alleged trade secrets claims. Specifically, Summers alleges that McEvoy breached her fiduciary duties  
2 by cancelling the order for ingredients needed to launch the Shielded Product Line in September 2020.  
3 (FAC ¶¶ 61, 91.) Accordingly, the demurrer will not dispose of Summers' cause of action for breach of  
4 fiduciary duty against McEvoy, even if some of Summers' theories of liability may be preempted. The  
5 demurrer to the second cause of action for breach of fiduciary duty is overruled.

6 **C. Third Cause of Action – Breach of Confidence**

7 The breach of confidence theory is pled as a parallel theory to the trade secret theory, but applying  
8 to the information Plaintiffs shared with Defendants that does not warrant trade secret protection. (FAC  
9 ¶¶ 94-103.) This type of claim is foreclosed. The Court of Appeal in *Silvaco* “emphatically reject[ed]”  
10 the “suggestion that the uniform act was not intended to preempt ‘common law conversion claims based  
11 on the taking of information that, though not a trade secret, was nonetheless of value to the claimant.’”  
12 (*Silvaco*, 184 Cal.App.4th at 239 n.22.) Similarly, in *K.C. Multimedia* the Court of Appeal held that a  
13 claim for breach of confidence was preempted where it was premised on the same conduct that  
14 underpinned a claim for misappropriation of trade secrets. (*K.C. Multimedia*, 171 Cal.App.4th at 960.)  
15 Both *Silvaco* and *K.C. Multimedia* apply here. The demurrer to the breach of confidence claim is  
16 sustained without leave to amend.<sup>10</sup>

17 **D. Fifth Cause of Action – Conversion**

18 The conversion claim is based on Defendants' retention of Plaintiffs' “Confidential Information,”  
19 including tangible and intangible materials. (FAC ¶ 126.) Plaintiffs contend, on that basis, that the  
20 conversion claim is not only about retention of information, but physical property. (Opposition, 13-14.)

21 *Silvaco* holds that a conversion claim cannot be used to pursue the return of trade secrets or other  
22 information of value to a plaintiff absent an alternative basis for asserting a property interest over that  
23 property. (See *Silvaco*, 184 Cal.App.4th at 237-40, 239 n.22.) The elements of a conversion claim are  
24 (1) the plaintiff's ownership or right to possession of personal property; (2) the defendant's disposition of  
25 the property in a manner that is inconsistent with the plaintiff's property rights; and (3) resulting  
26 damages. (*Id.* at 238.) In *Angelica Textile Service, Inc. v. Park* (2013) 220 Cal.App.4th 495, 499, 508,

27  
28 <sup>10</sup> Plaintiffs did not contest the Court's tentative ruling to sustain the demurrer to the breach of confidence  
claim without leave to amend. Accordingly, the Court is satisfied that Plaintiffs cannot plead additional  
facts material to the Court's analysis of this claim.

1 510, the Court of Appeal held that even if tangible property contains no trade secrets it may have value  
2 and may give rise to a conversion claim, such that CUTSA preemption does not preclude a conversion  
3 claim based on the conversion of tangible documents.<sup>11</sup>

4 Accordingly, Plaintiffs have pled a theory of liability that falls outside the scope of CUTSA  
5 preemption – the conversion of tangible property. The demurrer to the fifth cause of action is overruled.

6 **E. Sixth Cause of Action – Unjust Enrichment**

7 The unjust enrichment claim is pled to run parallel to the conversion claim – Plaintiffs refer to the  
8 same tangible and intangible property and allege that Defendants have been unjustly enriched by  
9 obtaining physical possession of that property. (See FAC ¶¶ 126, 139, 142-146.) As with the conversion  
10 claim, Plaintiffs have pled a theory of liability that falls outside the scope of CUTSA preemption – unjust  
11 enrichment by the retention of tangible property. The demurrer to the sixth cause of action is overruled.

12 **F. Seventh Cause of Action – UCL**

13 Plaintiffs allege that each of the other causes of action are unlawful prong predicates for their UCL  
14 claim. (FAC ¶ 148.) Having determined that several of the causes of action are premised on, among  
15 other things, theories of liability independent of any trade secret issues, the Court concludes that CUTSA  
16 preemption cannot completely dispose of the UCL claim. Accordingly, the demurrer to the seventh  
17 cause of action is overruled.

18 **CONCLUSION AND ORDER**

19 The demurrer is sustained in part and overruled in part. The demurrer to the second, fourth, fifth,  
20 sixth, and seventh causes of action is overruled. The demurrer to the third cause of action is sustained

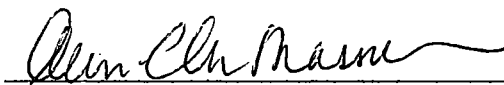
21  
22 <sup>11</sup> Defendants argue that *Angelica* is distinguishable because the trade secret theory in that case had  
23 already been disposed of. That distinction is immaterial. As Defendants have elsewhere correctly noted,  
24 CUTSA preemption bars all claims based on the misappropriation of information. (*Silvaco*, 184  
25 Cal.App.4th at 239 n.22.) Accordingly, whether or not any information contained in any physical  
26 documents at issue in *Angelica* was entitled to trade secret protection is immaterial. (*Angelica*, 220  
27 Cal.App.4th at 508.) The material distinction in *Angelica* is between a claim for conversion of intangible  
28 information and tangible documents. (*Ibid.*) The conversion of tangible documents is pled here.  
Defendants’ attempt to distinguish *Angelica* from the present case would render it irreconcilable with  
*Silvaco*. The Court reads the two cases to be consistent with each other. Under both cases, conversion is  
adequately pled here. To the extent Defendants may contend that the documents have no value  
irrespective of the information contained within them, that argument requires factual findings beyond the  
scope of a demurrer. (See, generally, *id.* at 510 [rejecting alternative argument that physical documents  
had no value outside of the alleged trade secrets contained within them on the ground that it was not fully  
litigated in the summary adjudication proceedings in the trial court].)

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without leave to amend.

IT IS SO ORDERED.

Dated: April 28, 2021



Anne-Christine Massullo  
Judge of the Superior Court

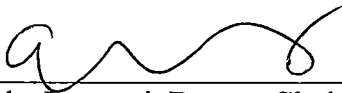
**CERTIFICATE OF ELECTRONIC SERVICE**  
(CCP 1010.6(6) & CRC 2.251)

I, Ericka Larnauti, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On April 29, 2021, I electronically served the attached document via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated: April 29, 2021

T. Michael Yuen, Clerk

By:   
\_\_\_\_\_  
Ericka Larnauti, Deputy Clerk