SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

West District, Santa Monica Courthouse, Department M

21SMCV01472 August 1, 2023
STRATEGIC LEGAL PRACTICES, APC, A CALIFORNIA CORPORATION vs CONSUMER LAW EXPERTS, P.C., A CALIFORNIA CORPORATION, et al. 3:44 PM

Judge: Honorable Mark A. Young
Judicial Assistant: Kristie Metoyer
Courtroom Assistant: J. Morgan

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Ruling on Submitted Matter

The Court, having taken the matter under submission on 7/25/23 and 7/27/23 now rules as follows:

BACKGROUND

Plaintiff Strategic Legal Practices ("SLP") sued three former associate attorneys, Benjeman Beck ("Beck"), Eleazar Kim ("Kim"), and Michael Resnick ("Resnick"), and two former staff members, Carolina Santos ("Santos") and Loren Garza ("Garza"), for allegedly misappropriating Plaintiff's proprietary/confidential information when they left SLP's employ to assist Defendant Consumer Law Experts, PC ("CLE") by using Plaintiff's confidential/proprietary information to solicit Plaintiff's clients and potential clients to leave SLP for CLE, and soliciting other SLP employees to leave and misappropriate SLP's proprietary/confidential information and join CLE. Based on the same allegations, Plaintiff also sued Jessica Anvar ("Anvar") and Eric Stotz ("Stotz") for alleged intentional interference with the former SLP employees' employment agreements, aiding and abetting breaches of duties to SLP, and unfair competition.

The July 25, 2023, hearing pertained to four motions for summary judgment, or in the alternative, summary adjudication filed by defendants Beck, Kim, Santos and Garza. The July 27, 2023, hearing pertained to three motions for summary judgment, or in the alternative, summary adjudication filed by defendants CLE, Anvar and Stotz (hereinafter, the "CLE Defendants").

LEGAL STANDARD

A party may move for summary judgment in any action or proceeding if it is contended the

action has no merit or that there is no defense to the action or proceeding. (CCP, § 437c(a).) "The purpose of the law of summary judgment is to provide courts with a mechanism to cut through the parties' pleadings in order to determine whether, despite their allegations, trial is in fact necessary to resolve their dispute." (Aguilar v. Atlantic Richfield Co. (2001) 25 Cal.4th 826, 843.)

"A party may move for summary adjudication as to one or more causes of action within an action, one or more affirmative defenses, one or more claims for damages, or one or more issues of duty, if the party contends that the cause of action has no merit, that there is no affirmative defense to the cause of action, that there is no merit to an affirmative defense as to any cause of action, that there is no merit to a claim for damages, as specified in Section 3294 of the Civil Code, or that one or more defendants either owed or did not owe a duty to the plaintiff or plaintiffs." (CCP, § 437c(f)(1).) If a party seeks summary adjudication as an alternative to a request for summary judgment, the request must be clearly made in the notice of the motion. (Gonzales v. Superior Court (1987) 189 Cal.App.3d 1542, 1544.) "[A] party may move for summary adjudication of a legal issue or a claim for damages other than punitive damages that does not completely dispose of a cause of action, affirmative defense, or issue of duty pursuant to" subdivision (t). (CCP, § 437c(t).)

To prevail, the evidence submitted must show there is no triable issue as to any material fact and that the moving party is entitled to judgment as a matter of law. (CCP, § 437c(c).) The motion cannot succeed unless the evidence leaves no room for conflicting inferences as to material facts; the court has no power to weigh one inference against another or against other evidence. (Murillo v. Rite Stuff Food Inc. (1998) 65 Cal.App.4th 833, 841.) In determining whether the facts give rise to a triable issue of material fact, "[a]ll doubts as to whether any material, triable, issues of fact exist are to be resolved in favor of the party opposing summary judgment…" (Gold v. Weissman (2004) 114 Cal.App.4th 1195, 1198-99.) "In other words, the facts alleged in the evidence of the party opposing summary judgment and the reasonable inferences there from must be accepted as true." (Jackson v. County of Los Angeles (1997) 60 Cal.App.4th 171, 179.) However, if adjudication is otherwise proper the motion "may not be denied on grounds of credibility," except when a material fact is the witness's state of mind and "that fact is sought to be established solely by the [witness's] affirmation thereof." (CCP, § 437c(e).)

Once the moving party has met their burden, the burden shifts to the opposing party "to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto." (CCP § 437c(p)(1).) "[T]here is no obligation on the opposing party... to establish

anything by affidavit unless and until the moving party has by affidavit stated facts establishing every element... necessary to sustain a judgment in his favor." (Consumer Cause, Inc. v. SmileCare (2001) 91 Cal.App.4th 454, 468.)

"The pleadings play a key role in a summary judgment motion. The function of the pleadings in a motion for summary judgment is to delimit the scope of the issues and to frame the outer measure of materiality in a summary judgment proceeding." (Hutton v. Fidelity National Title Co. (2013) 213 Cal.App.4th 486, 493, quotations and citations omitted.) "Accordingly, the burden of a defendant moving for summary judgment only requires that he or she negate plaintiff's theories of liability as alleged in the complaint; that is, a moving party need not refute liability on some theoretical possibility not included in the pleadings." (Ibid.)

EVIDENTIARY ISSUES

Request for Judicial Notice

Defendants' requests for judicial notice are DENIED. The cited news articles are not facts that are capable of "immediate and accurate determination by resort to sources of reasonably indisputable accuracy." (Evid. Code § 452(h).) Moreover, they do not appear relevant to the resolution of the motions.

Plaintiff's Objections

Plaintiff's objections to the Anvar declaration are SUSTAINED as to nos. 1-8 and 12-16 [as to the facts of CLE's knowledge; the statements as to the declarant's knowledge and actions are acceptable], no. 9 [speculation], and OVERULLED as to the remainder.

Plaintiff's objections to the Garza declaration are OVERRULED.

Plaintiff's objections to the Stotz declaration are SUSTAINED as to nos. 6, 8, 12 and 16 [as to the facts of CLE's knowledge], no. 9 [speculation], no. 11 [personal knowledge] and OVERULLED as to the remainder.

Plaintiff's objections to the Beck declaration are OVERRULED.

Plaintiff's objections to the Santos declaration are OVERRULED.

Plaintiff's objections to the Kim declaration are OVERRULED.

Defendants' objections

Defendants' objections to the Pauli declaration are SUSTAINED as to nos. 5-6 [personal knowledge], no. 16 [speculation], no. 17 [speculation starting with the sentence "and implies he received . . ..," and no. 26 [speculation]. The objections are OVERRULED as to the remainder.

Defendants' objections to the Eagan declaration are SUSTAINED as to no. 2 [as to the argumentative portions, e.g., "It is also highly suspect that Beck deleted all of his iMessages and SMS messages from his iPhone device,"]; and no. 8 [argumentative, legal conclusion]. The remaining objections are OVERRULED.

Defendants' objections to the Zahreddine declaration are OVERRULED.

Length of Briefs

California Rules of Court, Rule 3.1113(d) explicitly limits Plaintiff's oppositions to 20 pages. Plaintiff exceeded the page limit despite the liberal use of substantive footnotes yet did appear ex parte requesting permission to file an over-sized brief as required by California Rules of Court Rule 3.1113(e). Consequently, California Rules of Court Rule 3.1113(g) requires that "A memorandum that exceeds the page limits of these rules must be filed and considered in the same manner as a late-filed paper." (emphasis added). "A trial court has broad discretion under rule 3.1300(d) of the Rules of Court to refuse to consider papers served and filed beyond the deadline without a prior court order finding good cause for late submission." (Bozzi v. Nordstrom, Inc. (2010) 186 Cal.App.4th 755, 765.) On this occasion, the Court will consider the over-sized briefs, but cautions Plaintiff to comply with the rules of court in the future.

BECK'S MSJ/MSA

Beck moves for summary judgment, or summary adjudication of the first, third, fifth, sixth and seventh causes of action. Beck argues that these causes of action are premised on the same allegations, namely, that Beck: (1) misappropriated SLP's confidential/proprietary information and disclosed it to CLE to aid CLE in competing against SLP; (2) used SLP's confidential/proprietary information to solicit SLP's current and prospective clients to leave SLP

for CLE; and (3) inducing SLP employees to misappropriate SLP's confidential/proprietary information and solicited them to join CLE in furtherance of the misappropriation. Beck argues that each of the non-contract causes of action are based on misappropriation of SLP's "confidential and proprietary information," which are preempted by the Uniform Trade Secrets Act ("CUTSA") and Civil Code, §§ 3426-3426.11.

Issue no. 1.a & 1.b – Misappropriation of Confidential Information as Breach of Contract

Beck argues that he did not misappropriate any of SLP's confidential and proprietary information or disclose such information to CLE or Michael Resnick in violation of his employment contracts. The issues are noticed as follows:

a. Beck did not misappropriate any of SLP's confidential and proprietary information and disclose such information to defendant [CLE]; [and]

b. Beck did not misappropriate any of SLP's confidential and proprietary information and disclose such information to defendant [Resnick.]

"The standard elements of a claim for breach of contract are: '(1) the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) damage to plaintiff therefrom.'" (Wall Street Network, Ltd. v. New York Times Co. (2008) 164 Cal.App.4th 1171, 1178.) The mutual intention of the parties at the time the contract is formed governs interpretation, to be inferred, if possible, solely from the written provisions of the contract. (Civ. Code, §§ 1636, 1639.) The "clear and explicit" meaning of these provisions controls, interpreted in their "ordinary and popular sense," unless "used by the parties in a technical sense or a special meaning is given to them by usage." (Civ. Code §§ 1638, 1644.) Contract interpretation is a judicial function, exercised by the court pursuant to accepted canons of interpretation, unless the interpretation turns on the credibility of extrinsic evidence. (Sanchez v. Bally's Total Fitness Corporation (1998) 68 Cal.App.4th 62, 69; Equitable Life Assurance Society v. Berry (1989) 212 Cal.App.3d 832, 838 [interpretation goes to the jury only if the court makes three determinations: (1) The wording of the instrument is reasonably susceptible of the interpretation urged by the proponent of extrinsic evidence; (2) the extrinsic evidence is relevant to prove the proposed meaning; (3) the credibility of the proponent's parol evidence is disputed].)

Plaintiff entered into an Employment Agreement with Beck, effective as of January 15, 2015. (SAC ¶36.) Beck agreed to the following confidentiality provisions:

"…Employee agrees to maintain as secret and confidential all trade secret, attorney-client and non-public information relating to Company and the business of Company that was disclosed to or acquired or known by Employee during Employee's employment with Company. Such Company trade secrets or confidential information include… client intakes, the number of cases being handled by the firm, all original and duplicate client case records, client names and addresses, client phone numbers, payment records, communications, histories, correspondence, computer discs, programs, reports, office forms, advertising methods, (includes advertising vendors names, addresses and contact information), internal vehicle defect list, material and manuals, financial records, as well as any and all related records or associated information of any nature pertaining to clients of the Practice, and all other confidential information of any kind, nature or description concerning any matters affecting or related to professional practice conducted at the Practice, Company's manner of operation and all other confidential data of any kind, nature or description ('Confidential and Proprietary Information')."

(SAC ¶ 40, emphasis added.) Beck also acknowledged his "confidentiality obligations in the SLP Employee Handbook, a copy of which was signed by each of them." (SAC ¶ 48.)

The second amended complaint ("SAC") alleges that Beck "breached the Beck Agreement by misappropriating SLP's Confidential and Proprietary Information which he disclosed to CLE, and engaging in activities and other business competitive with SLP's business during his employment with SLP disclosing SLP's Confidential and Proprietary Information to CLE, inducing SLP employees to misappropriate SLP's Confidential and Proprietary Information and soliciting them to join CLE in furtherance of the misappropriation, and soliciting SLP's current and/or prospective clients to follow him to CLE." (SAC ¶59.) Thus, to prevail on his initial burden as to his alleged misappropriation, Beck needs to demonstrate that he did not disclose to CLE or others the specified "trade secret," "attorney-client," or "non-public" "Confidential and Proprietary Information."

In support of his position, Beck proffers the following facts. Beck was employed by SLP as an at-will associate attorney from January 15, 2015, through June 29, 2018, when he voluntarily resigned. (UMF 2.) Beck was never involved in the management of SLP nor in any of its strategic business decisions. (UMF 3.) Instead, SLP's owner, Shahian, controlled SLP and made all SLP decisions and ignored Beck whenever Beck voiced any disagreement. (UMF 3.) Beck left SLP because he did not like working for Shahian and he did believe he would ever be promoted to partner. (UMF 3, 4.) Beck worked for CLE from July 2018 until July 2022. (UMF

5.) Beck is currently a solo practitioner. (UMF 6.)

Beck denies having any agreement, plan or scheme with CLE, Anvar, Stotz, Resnick, or anyone else, to misappropriate SLP's confidential/proprietary information and take it to CLE to complete against SLP, to use SLP's alleged confidential/proprietary information to solicit SLP's current/prospective clients to leave SLP for CLE, or to induce SLP employees to misappropriate SLP's alleged confidential/proprietary information and solicit them to join CLE in furtherance of the misappropriation. (UMF 7.) When employed by SLP and after he left, Beck did not solicit any clients to leave and go to CLE. (UMF 8, 9.) While employed by SLP and afterwards, Beck did not solicit any potential clients whose identities he had learned while employed at SLP to go to CLE instead of SLP. (UMF 10, 11.) Beck did not ask, suggest, request, direct or induce any SLP employees to misappropriate any of SLP's alleged confidential and proprietary information and leave SLP. (UMF 12.) Beck did not solicit employees to leave to join CLE, before or after leaving SLP. (UMF 13.)

As to the alleged misappropriation, Beck states that when he left, he took the following documents, in electronic format:

1) transcripts from public hearings,
2) pleading and motion templates filed in court cases,
3) discovery requests served on opposing parties,
4) form retainer agreements and correspondence (closing letters, disengagement letters, demand letters),
5) a mediation brief lodged with the court, deposition transcripts, deposition outlines, and a non-confidential form settlement agreement;
6) a "SLP - LL Lit Case Spreadsheet Team BB" he created and used at SLP that tracked case deadlines and related info, but which was password protected so he never had access to after leaving SLP (Beck password protected that document so no one accidently accessed it and changed deadlines, not because anything in it was confidential or proprietary); and
7) a defendant's document production in the Yi v. BMW case.

(UMF 14.) Beck often used his personal laptop which contains some of the same materials identified above, including exemplars of MILs, oppositions to MILs, trial briefs, opening/closing arguments, witness examinations, and trial exhibits, all of which were filed in court. (UMF 15.) These documents and materials were either publicly available or disseminated to third parties, including opposing counsel. (UMF 17.)

Beck provided information to CLE regarding "Kia Motors America, Theta II Engine Defect Litigation." (UMF 19.) However, this information pertained to publicly available information. When Beck left SLP, several class actions were filed and publicly available, and other law firms were pursuing individual and class actions regarding this same defect. (UMF 20.) Beck did not provide CLE with any defect "hot list" from SLP and was not aware of there being any defect "hot list." (UMF 21.) Moreover, it is common knowledge which manufacturers/models are prone to specific defects and the target makes/models. (UMF 22.) This information is publicly accessible via the National Highway Traffic Safety Administration, recall notices, technical service bulletins, class actions, lemon law websites, news outlets, automotive forum websites (e.g. www.forums.edmunds.com, www.carcomplaints.com, etc.), and internet searches/blogs. (UMF 22.) Beck only shared one brief that Beck drafted while at CLE with Resnick as part of representing a CLE client. (UMF 26.) Beck and Resnick never went into business together, never formed a law firm, never competed against SLP while employed by SLP, and never formalized any agreement or undertook any actual steps to form a business or law firm together. (UMF 27, 28, 30.)

Beck meets his initial burden of establishing that each of the items he took and shared do not qualify as a "trade secret," or "attorney-client" or "non-public" "Confidential and Proprietary Information" as defined under his employment contract. The Court agrees that transcripts of public hearings are inherently not secret or non-public. Similarly, pleading and motion templates eventually filed in court cases would also not be secret, as their contents were and continue to be publicly available in court dockets. Likewise, Beck provides that the discovery requests served on opposing parties, form retainer agreements and correspondence, and Beck's drafted final briefs were shared with third parties, and thus not secret or non-public. Similarly, the cited mediation brief lodged with the court, deposition transcripts, deposition outlines, and form settlement agreements and their contents were also shared with other parties, and thus not confidential. A defendant's document production in the Yi v. BMW case necessarily came from a separate party, and thus could not be considered secret or non-public. The "SLP - LL Lit Case Spreadsheet Team BB" tracked case deadlines and related information. Deadlines for cases are not trade secrets or non-public information, as they are derivable solely from public sources such as the relevant case dockets, or otherwise received from third party sources. Otherwise, Beck denies the other allegations of the SAC. Beck has properly shifted the burden on summary adjudication as to this issue.

In opposing the motion, Plaintiff must demonstrate that Beck failed to maintain as secret and

confidential a trade secret, or attorney-client or non-public information as defined by the employment agreement. In response, Plaintiff points to evidence that Beck accessed SLP's computer system for the "unauthorized purpose of downloading and exporting over 12,000 documents from nearly 300 SLP case files, including, without limitation, draft and final versions of retainer agreements (with client personal information), demand letters, complaints, motions, discovery requests and responses, confidential mediation briefs, settlement negotiations and settlement agreements." (See UMF 7; AMF 253 [Beck exported SLP's case files and other documents, disclosed those files to CLE, and failed to return such property to SLP], 258 [same, stated as breach of fiduciary duty], 261 [same], 269-70 [same].)

The fact that Beck accessed or even shared information from SLP's case files does not necessarily mean that the shared information was secret or confidential. As defined, the Confidential and Proprietary Information would need to be "trade secret, attorney-client and[/or] non-public information." The issue for the Court is that while Plaintiff confirms that Beck took the files, Plaintiff fails to provide an evidentiary basis for the Court to conclude that most of the files were trade secrets, attorney-client protected, or non-public information. (See Pauli Decl., ¶¶ 22-27.) Plaintiff cites documents which include: case files (including, without limitation, draft and final versions of: retainer agreements (with client personal information), demand letters, complaints, motions, discovery requests and responses, mediation briefs, settlement negotiations, settlement agreements, meet and confer letters), pleading and motion templates, discovery requests, form retainer agreements, form correspondence (closing letters, disengagement letters, demand letters), mediation brief(s), deposition transcripts, deposition outlines, settlement agreements, defendant auto manufacturer document productions, and a spreadsheet of SLP cases. (Id., ¶¶ 23, 26.) Beck took "all or portions of approximately 27 SLP case files." (Id., ¶ 25, Ex. 046.) Plaintiff does not provide whether these items were non-public or trade secret information, such as whether Plaintiff kept the cited documents from third parties and only used them internally.

However, Plaintiff does provide that Beck took "SLP's intake phone scripts and lists of vehicle defects being targeted by SLP at the time." (Pauli Decl., ¶ 27; see Eagan Decl., ¶¶ 17-18.) Pauli provides that the "documents are the property of SLP and/or its clients. SLP has the exclusive right of ownership and possession of its drafts, templates and work product in its case files, and the right of possession (and duty to safeguard) the remainder of the case files to the extent that they are the property of its clients." (Pauli Decl., ¶ 27.) Critically, Beck "downloaded and exported SLP training and instructional materials used to educate SLP intake staff how to perform intake, including, among other things, what questions to ask prospective clients related

to specific vehicles and defects. SLP's training documents were developed at great expense by SLP over years, and are the property of SLP." (Id., Emphasis added, citing Exs. 085-086 and 089-092.) Viewed liberally, the declaration and exhibits establish that the intake and training materials were internal, would not generally be shared with the public, as they were used to educate SLP internal staff. Moreover, the contract flags client intake, office forms, advertising methods, and internal defect lists as confidential. Thus, it could be inferred from the evidence presented that Beck shared SLP's documents that were non-public and confidential.

Therefore, there is a dispute of material fact as to whether Beck disclosed "Confidential and Proprietary Information" in violation of his contract. The motion to adjudicate these issues is DENIED.

Issue 1.c, 1.d – Competition in Violation of Contract

With the denial as to issues nos. 1a and 1b, issues 1c and 1d are moot. However, the Court provides the following analysis.

Beck also moves to adjudicate the first cause of action on the following issues:

1c. Beck did not engage in activities and other business competitive with SLP's business during his employment with SLP by disclosing SLP's confidential and proprietary information to CLE, inducing SLP employees to misappropriate SLP's confidential and proprietary information and soliciting them to join CLE in furtherance of the misappropriation, and soliciting SLP's current and/or prospective clients to follow him to CLE; [and]

1d. to the extent SLP alleges Beck breached his Employment Agreement by soliciting SLP employees to work for CLE [after his employment ended], any such claim is barred by California Business & Professions Code, section 16600, and Beck never engaged in any such solicitation[.]

Business and Professions Code section 16600 provides that every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void. (See Metro Traffic Control, Inc. v. Shadow Traffic Network (1994) 22 Cal.App.4th 853, 859.) Courts find this section to be an expression of public policy, ensuring that every citizen shall retain the right to pursue any lawful employment and enterprise of their choice. (Id.) Consequently, an employer cannot lawfully make the signing of an employment agreement, which contains an unenforceable covenant not to compete, a condition of continued employment.

(See D'Sa v Playhut, Inc. (2000) 85 Cal App 4th 927, 929 [an employer's termination of an employee who refuses to sign such an agreement constitutes a wrongful termination in violation of public policy]; cf. Metro Traffic Control, Inc., supra, 22 Cal.App.4th at 861 [restriction valid where it is carefully limited and merely protects a proprietary or property right of the employer recognized under unfair competition principles].)

Beck's agreement included a provision prohibiting him "from engaging in any activity with a business that competes with Plaintiff during [his] employment." This provision states:

…During Employee's employment, Employee shall not, directly or indirectly, whether as partner, employee, creditor, shareholder, or otherwise, promote, participate, or engage in any activity or other business competitive with Company's business. The Employee shall not refer matters outside the Company. The Employee shall not disparage the Company, its employees, or clients. The Employee shall not disrupt the Company's current or prospective business relationships. The Employee shall conduct himself or herself in a profession manner."

(SAC ¶39, emphasis added.) Thus, as a simple matter of contract interpretation, as well as the provision of section 16600, Beck may only be liable for breach of contract.

Beck provides evidence that he never had an agreement, scheme or plan with CLE, Anvar, Stotz, Resnick or anyone to use SLP's alleged confidential/ proprietary information to solicit SLP's current/prospective clients to leave SLP for CLE or to induce SLP employees to misappropriate SLP's alleged confidential/proprietary information and solicit them to join CLE in furtherance of the misappropriation. (UMF 7.) While employed, Beck did not solicit any clients or co-workers to leave and go to CLE. (UMF 8-13.) Beck and Resnick never went into business together, never formed a law firm, never competed against SLP while employed by SLP, and never formalized any agreement or undertook any actual steps to form a business or law firm together. (UMF 27, 28, 30.) Beck never received any compensation, referrals, leads or anything of value from Resnick. (UMF 29.) Thus, Beck meets his initial burden.

Plaintiff provides evidence that while still employed, Beck recommended to Anvar and Stotz that they hire SLP paralegal Sapna Sharma and facilitated the "poaching" process by connecting them to Sharma via email. (UMF 7; see Pauli Decl., Ex. 030-031 [emails dated June 2-3, 2018].) Plaintiff cites evidence that Beck was emailing himself SLP documents until after 9:00 p.m. on his last day of employment with SLP. (AMF 253, 258, 261, 269-70.) In addition, Beck sent SLP exemplars to assist CLE in litigation against JLRNA at Anvar's request prior to his last day at

SLP. (AMF 253, 258, 261, 269-270.) Interpreted in the light most favorable to the non-moving parties, a reasonable juror could find Beck accessed the database and provided SLP's files to CLE (a competitor) to unfairly compete with SLP. Thus, a reasonable juror could conclude that Beck engaged in competitive activities with SLP while employed with SLP. With respect to Beck's solicitation of attorney Rodney Gi to join CLE, and the instructions to bring his SLP case documents with him (see UMF 12 and 62; Pauli Decl., ¶ 29, Exs. 018 [Texts between Beck and Gi]), this activity occurred after Beck left SLP. The contract only required non-competition during the term of employment.

Accordingly, if the Court was to reach these issues, the motion would be DENIED.

Issue 1.e – Damages

Beck argues that SLP also cannot establish that it has suffered any damages as a result of any of the alleged acts by Beck. As noted, damages are a necessary element for each of the breach of contract cause of action. Generally, any profit made in breach of the employee's duty of loyalty (such as unfair competition) belongs to the employer. (Rest.2d Agency § 403, comment "a"; see Service Employees Int'l Union, Local 250 v. Colcord (2008) 160 Cal.App.4th 362, 371 [disgorgement of salary and benefits paid to faithless employee while secretly competing with employer]; but see Daniel Orifice Fitting Co. v. Whalen (1962) 198 Cal.App.2d 791, 799 [an employee is not subject to liability for merely looking for another job, or developing a competitive enterprise].)

Beck moves solely on the grounds that SLP gave factually devoid discovery responses regarding their claim for damages. Indeed, when asked to explain the factual basis for the damages alleged against Beck for breach of contract and other tort claims, SLP did give factually devoid responses. (See UMF 47-50.) For instance, SLP only repeated their allegations as follows:

Supervising Attorney Benjeman Beck, along with the knowledge, participation, assistance, and/or encouragement of CLE's Managing Partner Jessica Anvar, CLE's Managing Agent/non-attorney Eric Stotz, Eleazar Kim, Intake Manager Carolina Santos, Loren Maddison Garza, Rodney Gi, Elizabeth Vasquez, Vanessa Olivia, Carey Wood, Julian Moore, Sean Crandall, Isabel Garcia, Varaz Gharibian, Nancy Zhang, participated, assisted, breached, and/or induced the breach of various agreements between SLP and its employees, including by way of accessing, using, copying, removing, downloading, and/or exporting, the firm's property and/or work product information, information from confidential settlement agreements, records, files,

confidential intake materials, including but not limited to lists of hot cases and/or vehicle defect lists, information related to Salesforce and the firm's intake process, as well the related targeted marketing and intake strategy that is derived from the compilation, analysis, and/or evaluation of such data and materials as well as soliciting SLP employees for the purpose of misappropriating SLP's confidential and proprietary information during and after his employment at SLP, causing harm to SLP.

(UMF No. 48, emphasis added.) Essentially, SLP responded that they were harmed, without further elaboration. SLP responded with the following generic, factually devoid response as to other questions regarding loss of future income or other damages attributable to the incidents alleged in this action:

SLP suffered harm through the Defendants' misappropriation of the firm's property and/or work product information, information from confidential settlement agreements, records, files, confidential intake materials, including but not limited to lists of hot cases and/or vehicle defect lists, information related to Salesforce and the firm's intake process, as well the related targeted marketing and intake strategy that is derived from the compilation, analysis, and/or evaluation of such data and materials, which were developed over several years by SLP at a cost of several million dollars. The economic value of the loss remains to be determined. Discovery is ongoing and continuous, and the Responding Party reserves the right to amend this response.

(UMF 50, emphasis added.) With these discovery responses, Beck meets his initial burden of production.

Plaintiff submits evidence that it has experienced damages in the following ways:

1) "the diminished value of its property interests in its case files, marketing strategies, business plans and other documents due to loss of exclusive possession over these materials;"
2) "the monies paid to Beck while he actively worked against SLP's interests with Resnick and later for the benefit of competitor CLE;"
3) "lost productivity and revenue due to departure of key personnel solicited by Beck and the CLE Defendants;"
4) "costs expended to hire and train new employees to replace the ones poached by CLE with Beck's material assistance;" and
5) "lost market share."

(AMF 254-55, 259, 263- 64, 267-68, 271-72.) As discussed above, there is evidence that while Beck was working for SLP, he engaged in unfair competition by recruiting other co-workers for CLE. Thus, at a minimum, SLP may properly claim damages in the form of monies paid to Beck by SLP during this period. (See Pauli Decl., ¶ 14 [amounts paid to Beck].) Since there is an amount of damages greater than zero, the Court cannot grant summary adjudication of this cause of action for lack of damages.

Accordingly, the motion is DENIED as to issue no. 1. The motion for summary judgment is therefore DENIED.

Issues 2.a, 3.a, 4.a, 5.a, CUTSA Displacement

Beck argues that each of the tort claims are preempted by the California Uniform Trade Secret Act ("CUTSA") – Civil Code sections 3426 through 3426.11. CUTSA "occupies" the field of common law trade secret misappropriation claims. (See K.C. Multimedia, Inc. v. Bank of America Technology & Operations, Inc. (2009) 171 Cal.App.4th 939, 954.) Civil Code section 3426.7 concerns displacement and provides that CUTSA "does not affect (1) contractual remedies, whether or not based upon misappropriation of a trade secret, (2) other civil remedies that are not based upon misappropriation of a trade secret, or (3) criminal remedies, whether or not based upon misappropriation of a trade secret." (Civ. Code, § 3426.7(b), emphasis.) Otherwise, CUTSA displaces all civil claims and remedies based on the same nucleus of facts as trade secret misappropriation. (Silvaco Data Systems v. Intel Corp. (2010) 184 Cal.App.4th 210, 232; K.C., supra, 171 Cal.App.4th at 962.) CUTSA "does not displace noncontract claims that, although related to a trade secret misappropriation, are independent and based on facts distinct from the facts that support the misappropriation claim." (Angelica Textile Services, Inc. v. Park (2013) 220 Cal.App.4th 495, 506, emphasis added.)

"In considering whether a particular claim has been displaced, [the Court] must recognize 'a prime purpose of the law was to sweep away the adopting states' bewildering web of rules and rationales and replace it with a uniform set of principles for determining when one is—and is not—liable for acquiring, disclosing, or using 'information . . . of value.' [Citations.] In general, the acquisition, disclosure or transfer of information that does not fit UTSA's definition of a trade secret does not give rise to any liability, even when that liability is couched in terms of a separate tort or statutory violation. [Citation.]" (Id., at 506, emphasis added; quoting Silvaco, supra, 184 Cal.App.4th at 232.)

The purpose of the CUTSA displacement provisions is to eliminate other tort causes of action founded on allegations of misappropriation of information that may not meet the statutory standard for a trade secret. In K.C. Multimedia, a software supplier brought tort claims, including breach of confidence against a former employee, and an interference with contract claim against customers. The K.C. court held that the tort claims were displaced by CUTSA because the claims were based on the same nucleus of facts as the supplier's trade secret misappropriation claim. (K.C. Multimedia, 171 Cal.App.4th at 960-962.) The employee allegedly "breached his duty of confidence to plaintiff by disclosing trade secrets in connection with proprietary technology and processes for wireless proxy products" to respondents. (Id. at 960.) The other defendants allegedly "aided and abetted" the employee in committing that breach of duty. (Id.) Further, the customers allegedly "engaged in intentional acts designed to induce a breach or disruption of plaintiff's contractual relationship" with the employee by "helping" and "encouraging" him to misappropriate trade secrets and lured him to become an employee of the customer. (Id. at 960-961.) The court found the gravamen of this conduct to be the misappropriation of trade secrets. (Id. at 961.)

In Silvaco, a marketer of computer applications brought an action against a circuit manufacturer for both CUTSA and non-CUTSA claims. The Silvaco court found that the conversion and conspiracy claims were preempted by CUTSA because claims were predicated on the conversion and use of the marketer's and developer's property which were allegedly trade secrets. (Silvaco, supra, 184 Cal.App.4th at 236.) The court described the causes as follows:

The conversion cause of action… was "predicated on 'the conversion and use of SILVACO's property as described herein.' Likewise the claim entitled 'Common Count' [was] predicated on Intel's having 'obtained certain property ... as alleged herein.' The count for common law unfair business practices was predicated on 'Intel's conduct' as previously described in the pleading—i.e., its use of CSI software containing Silvaco trade secrets. In its last iteration of the claim for intentional and negligent misrepresentation, in the fifth complaint, Silvaco alleged in essence that Intel lied about its continuing use of CSI code, which use—according to Silvaco—constituted a misappropriation of trade secrets."

(Id.) The Silvaco court concluded that such claims were either based on a misappropriation of a trade secret, or not legally cognizable at all. "[T]he only property described in the complaint [was] 'the stolen property that belongs to SILVACO' that was 'contained' in 'the CSI Software' used by Intel, and the only property interest that Silvaco could have in that software under the facts alleged in the pleadings is a trade secret." (Id., emphasis added.)

In contrast, the Silvaco court determined that the UCL claim was not preempted based on defendant's alleged participation in the third party's violation of an injunction that prevented the third party from transferring the disputed software. (Id. at 241.) The UCL claim alleged "wrongful conduct . . . other than the acts that constitute misappropriation of the Silvaco Trade Secrets . . . including . . . aiding and abetting . . . CSI's violation of the Judgment and the receipt of maintenance, consulting and support from CSI in violation of CSI's obligations under the Judgment." (Id.) "Such a claim does not depend on the existence of a trade secret, but on knowingly facilitating another in the violation of its obligations under a judicial decree." (Id.) The Court of Appeal criticized the trial court for ruling that "to the extent" the UCL claim was based on the "same operative facts as Silvaco's misappropriation claim," it remained subject to CUTSA supersession. (Id. at 242.) "This statement is true in the abstract, but sidesteps the pivotal concrete question of what are the 'operative facts' for purposes of the cause of action. As concluded above, the UCL claim as amended—whatever its other legal merits—appears to be free of any dependency on trade secrets law" (Id.)

Here, the SAC alleges that each tort cause of action is based on the same nucleus of facts as the alleged misappropriation of trade secrets. Unlike Silvaco and plaintiff's UCL claim, the allegations of the SAC are dependent on the trade secret claims. The items of confidential information listed in the SAC allegedly constitute trade secrets, as they are non-public, confidential and propriety information. The term "Confidential and Proprietary Information" would include "trade secrets" and "non-public information." (SAC ¶ 40.) The SAC establishes that the Confidential and Proprietary Information is information of value, which is not generally known (i.e., "secret" and "non-public") and that Plaintiff expended efforts to maintain its secrecy (i.e., their employees signed contracts attempting maintain the information's secrecy). Thus, misappropriation of such information would fall under the field preemption of CUTSA, including any tort claims based upon this misappropriation. After examining the allegations of the SAC and evidence proffered, the Court concludes that each cause of action arises directly from the misappropriation of the alleged trade secrets and non-public information.

For instance, the third cause of action alleges that Beck breached his fiduciary duty to Plaintiff by: (1) intentionally and recklessly divulging SLP's Confidential and Proprietary Information to CLE to establish and aid CLE, (2) using SLP's Confidential and Proprietary Information to aggressively solicit SLP's current and/or prospective clients to leave SLP for CLE, and (3) inducing several SLP employees, including, without limitation, each other, to misappropriate SLP's Confidential and Proprietary Information and join CLE in furtherance of the

misappropriation. (SAC ¶78, emphasis added.)

The fifth cause of action similarly alleges that Beck breached his duty of loyalty owed to Plaintiff by: "(1) intentionally and recklessly divulging SLP's Confidential and Proprietary Information to CLE, (2) using SLP's Confidential and Proprietary Information to aggressively solicit SLP's current and/or prospective clients to leave SLP for CLE, and (3) inducing several SLP employees, including, without limitation, each other, to disclose SLP's Confidential and Proprietary Information and join CLE for the purpose of carrying out the misappropriation." (SAC ¶ 93.)

The sixth cause of action alleges that Beck aided and abetted Resnick's alleged breach of duty of loyalty by doing much the same: "using SLP's confidential/proprietary information to start a competing law firm to compete with SLP." (SAC ¶105.) Beck was "aware of these breaches" and "provided Defendant Resnick with substantial assistance in breaching his duties of loyalty." (SAC ¶106.) Beck "was obligated to timely inform Plaintiff of Defendant Resnick's breaches of duty of loyalty, which Beck did not do in further breach of his duty." (Id.)

The seventh cause of action also alleges a violation of UCL from the same nexus of facts, that Beck "(1) knowingly and willfully misappropriating Plaintiff's Confidential and Proprietary Information; (2) knowingly and willfully interfering with contracts of SLP employees and inducing those employees to misappropriate SLP's Confidential and Propriety Information; and (3) soliciting SLP's clients and employees using SLP's Confidential and Proprietary Information." (SAC ¶113.) Thus, each tort claim is premised on the same nexus of facts as the alleged "misappropriation" of "trade secrets," even if that misappropriation also breached fiduciary duties or the UCL.

In opposition, Plaintiff asserts that it has a distinct property interest – separate from CUTSA – in case files, correspondence, retainer agreements, draft and final pleadings, discovery requests and responses, draft and final confidential mediation briefs, written settlement negotiations, draft and final settlement agreements, expert reports, deposition transcripts, templates for letters, pleadings, and motions, among others, downloaded, exported and used by Beck. Aside from a contract-based interest, Plaintiff identifies statutory duties to its clients to protect the information from disclosure, and surrender the client files to clients after representation has ended, as well as an anti-hacking criminal statute. (Citing, e.g., Bus & Prof. Code § 6068; Lab. Code § 2860; Penal Code § 502.)

However, the Labor Code and Business and Professions Code do not provide "positive" rights to the property outside of a breach of contract (e.g., the employment agreement). Labor Code § 2860 provides that "Everything which an employee acquires by virtue of his employment . . . belongs to the employer, whether acquired lawfully or unlawfully, or during or after the expiration of the term of his employment." While the statute generally recognizes a property right, this does not create a property right that is distinct from the employment contract. Likewise, the duties to clients and the criminal hacking statute cited by Plaintiff create no property rights to the information.

Second, violations of those statutes are not alleged in the SAC. For instance, Plaintiff did not allege any violation of Penal Code section 502 or provide notice that they sought such a remedy. (Penal Code § 502(e)(1).) In fact, the only other statutory violation Plaintiff cited was the general fraud statutes, including Civil Code §§ 1572 and 1709. (SAC ¶114.) The same is true for the other statutes, which do not provide for positive relief. Business and Profession Code § 6068 provides for general duties of attorneys to clients but does not provide an attorney with any private right of action. Only Penal Code § 502 provides a private, statutory remedy that is not preempted. Even if such a claim was noticed, Plaintiff alleges that Beck was authorized to access the computer systems as he was employed by Plaintiff and allegedly had access to those systems. Thus, Beck's access would not be considered "unauthorized access" to Plaintiff's computer data.

Plaintiff argues that it has an interest in its attorneys' work product and their client files, which is independent from any trade secrets. At oral argument, Plaintiff relied upon Tucker Ellis v. Superior Court, (2017) 12 Cal. App. 5th 1233, in support of its position that the work product was owned by SLP and not Beck or other SLP attorneys. The issue, however, is not whether SLP owns Beck's work product, which it does, but whether the civil remedy being sought by SLP is based upon the misappropriation of the trade secret at issue. The SAC defines the work product and the client files as confidential and proprietary information, which are trade secrets. Even if the Court was to ignore that allegation, Plaintiff does not explain what value the work product or client files have aside from its status as a trade secret. That is, any value of the work product, client files, or even recruitment of other employees, is in the information itself and the information the employees possess. Beck (and other employees) allegedly copied the information. Thus, Plaintiff was not damaged, apart from their attorneys alleged taking the information and using that information to gain a competitive advantage for themselves and CLE.

The appellate court's reasoning in Angelica supports this position. In Angelica, the court determined that the tort claims were not based on the misappropriation of trade secrets, but

wrongful conduct in violating the noncompetition agreement and defendant's violation of his duty of loyalty. (Angelica, supra, 220 Cal.App.4th at 508.) Throughout 2008 and 2009, while still employed by Angelica, defendant Park worked with outsiders to organize a competing laundry business. While Angelica asserted trade secrets claims, Angelica also alleged that Park violated his duty of loyalty by competing while still employed with Angelica, which did not depend on the existence of trade secrets. Thus, the Angelica court held that the wrongful recruitment of plaintiff's employees while defendant was still an officer in plaintiff's employ was independent of the facts of the trade secret claim. (Id.) Here, in contrast, the acts of competition and breach of fiduciary duty are expressly premised on the conversion of trade secrets. Specifically, Defendant Beck (and others) breached his fiduciary duties and non-competition agreement by (1) misappropriating the Confidential and Proprietary Information; (2) interfering with contracts of SLP employees by inducing those employees to misappropriate SLP's Confidential and Propriety Information; and (3) causing the clients and employees to join CLE for the purpose of carrying out said misappropriation. (SAC ¶¶. 78, 93, 106, 113.) The Information is pled to be "trade secrets" and other "non-public" information which allegedly had independent economic value. The damages claimed from the alleged breaches would therefore be "based upon" a misappropriation of the trade secret. While the duties stated are independent of the misappropriation in the abstract, defendants breached their duties by misappropriation, causing misappropriation, or recruiting other employees in furtherance of misappropriation. Thus, the acts of non-competition and breach of fiduciary duty stem from the same nexus of facts of misappropriation of trade secrets. As a result, the Court concludes that Beck's alleged wrongful activities are not independent of the allegations of trade secret misappropriation.

For these reasons, the Court concludes that each of these causes of action arise from the acquiring, disclosing, or using of the Confidential and Propriety Information of value. Therefore, the tort-based causes of action do not arise from conduct that is materially distinct from the wrongdoing proscribed by CUTSA. Thus, the tort causes of action are preempted as a matter of law.

For these reasons, Defendant Beck's motion for summary adjudication is GRANTED as to issues 2, 3, 4, and 5.

KIM'S MSJ/MSA

Kim moves for summary judgment or summary adjudication of the first, third, fifth and seventh causes of action. Generally, the causes of action against Kim are premised on the same

allegations as Beck, in that Kim: (1) misappropriated SLP's confidential/proprietary information and disclosed it to CLE to aid CLE in competing against SLP; (2) used SLP's confidential/proprietary information to solicit SLP's current and prospective clients to leave SLP for CLE; and (3) induced SLP's employees to misappropriate SLP's confidential/proprietary information and solicited them to join CLE in furtherance of the misappropriation. The Court will address each cause of action and issue in turn.

Issues 1.a – Misappropriation as Breach of Contract

Kim argues that he did not misappropriate any alleged confidential/proprietary information from SLP. Further, Kim asserts that SLP's factually devoid responses to "all facts" discovery requests demonstrates that SLP cannot establish the breach of contract cause of action. Kim's motion notices the following issue:

a. Kim did not misappropriate any of SLP's confidential and proprietary information and disclose such information to CLE.

Much like the Beck agreement, the Kim employment agreement included a provision prohibiting Kim from "engaging in any activity with a business that competes with Plaintiff during [his] employment. This provision states: "4. Competitive And Other Related Activities. During Employee's employment, Employee shall not, directly or indirectly, whether as partner, employee, creditor, shareholder, or otherwise, promote, participate, or engage in any activity or other business competitive with Company's business. The Employee shall not refer matters outside the Company. The Employee shall not disparage the Company, its employees, or clients. The Employee shall not disrupt the Company's current or prospective business relationships . . .." (SAC ¶39.)

Kim also agreed to the following confidentiality provision: "6. Confidential and Proprietary Information. Employee agrees to maintain as secret and confidential all trade secret, attorney-client and non-public information relating to Company and the business of Company that was disclosed to or acquired or known by Employee during Employee's employment with Company. Such Company trade secrets or confidential information include" the same items noted infra. (SAC ¶40.)

Unlike Beck, Kim also entered into an Employee Confidentiality and Proprietary Rights Agreement with SLP ("Employee Confidentiality Agreement"). (SAC ¶¶ 43-44, Ex. D.) The

relevant portions of the Kim Confidentiality Agreement are as follows:

1. Confidentiality.

(a) Confidential Information.

The Employee understands and acknowledges that during the course of employment by the Employer, Employee will have access to and learn about confidential, secret and proprietary documents, materials and other information, in tangible and intangible form, of and relating to the Employer and its business, and its existing and prospective customers, suppliers, advertisers, vendors, investors and other associated third parties ("Confidential Information"). The Employee further understands and acknowledges that this Confidential Information and the Employer's ability to reserve it for the exclusive knowledge and use of the Employer is of great competitive importance and commercial value to the Employer, and that improper use or disclosure of the Confidential Information by the Employee might cause the Employer to incur financial costs, loss of business advantage, liability under confidentiality agreements with third parties, civil damages and criminal penalties.

For purposes of this Agreement, Confidential Information includes, but is not limited to, all information not generally known to the public, in spoken, printed, electronic or any other form or medium, relating directly or indirectly to: business processes, practices, methods, policies, plans, publications, documents, research, operations, services, strategies, techniques, agreements, transactions, potential transactions, negotiations, pending negotiations, settlements, pending settlements, number and types of cases the Firm handles, know-how, trade secrets, computer programs, computer software, applications, operating systems, software design, web design, work-in-process, databases, manuals, records, articles, systems, material, sources of material, supplier information, vendor information, financial information, results, accounting information, accounting records, legal information, marketing information, advertising information, pricing information, credit information, design information, payroll information, staffing information, personnel information, supplier lists, vendor lists, developments, reports, internal controls, security procedures, graphics, drawings, sketches, market studies, sales information, revenue, costs, formulae, notes, communications, algorithms, product plans, designs, styles, models, ideas, audiovisual programs, inventions, unpublished patent applications, original works of authorship, discoveries, experimental processes, experimental results, specifications, customer information, customer lists, client information, client lists, manufacturing information, factory lists, distributor lists, and buyer lists of the Employer, or any existing or prospective customer, supplier, investor

or other associated third party, or of any other person or entity that has entrusted information to the Employer in confidence.

The Employee understands that the above list is not exhaustive, and that Confidential Information also includes other information that is marked or otherwise identified as confidential or proprietary, or that would otherwise appear to a reasonable person to be confidential or proprietary in the context and circumstances in which the information is known or used.

The Employee understands and agrees that Confidential Information developed by Employee in the course of Employee's employment by the Employer shall be subject to the terms and conditions of this Agreement as if the Employer furnished the same Confidential Information to the Employee in the first instance.

(b) Disclosure and Use Restrictions. [¶] The Employee agrees and covenants:

(i) to treat all Confidential Information as strictly confidential;

(ii) not to directly or indirectly disclose, publish, communicate or make available Confidential Information, or allow it to be disclosed, published, communicated or made available, in whole or in part, to any entity or person whatsoever (including other employees of the Employer not having a need to know and authority to know and use the Confidential Information in connection with the business of the Employer) and, in any event, not to anyone outside of the direct employ of the Employer except as required in the performance of the Employee's authorized employment duties to the Employer and with the prior express consent of the Managing Partner/Shareholder in each instance, and then, such disclosure shall be made only within the limits and to the extent of such duties or consent; and

(iii) not to access or use any Confidential Information, and not to copy any documents, records, files, media or other resources containing any Confidential Information, or remove any such documents, records, files, media or other resources from the premises or control of the Employer, except as required in the performance of the Employee's authorized employment duties to the Employer or with the prior express consent of the Managing Partner/Shareholder in each instance (and then, such disclosure shall be made only within the limits and to the extent of such duties or consent). Nothing herein shall be construed to prevent disclosure of Confidential Information as may be required by applicable law or regulation, or pursuant to the valid order of a court of competent jurisdiction or an authorized government agency, provided that the

disclosure does not exceed the extent of disclosure required by such law, regulation or order. The Employee shall promptly provide written notice of any such order to [] the Managing Partner/Shareholder of the Employer within 48 hours of receiving such order, but in any event sufficiently in advance of making any disclosure to permit the Employer to contest the order or seek confidentiality protections, as determined in the Employer's sole discretion. In addition, this Section does not, in any way, restrict or impede the Employee from discussing the terms and conditions of Employee's employment with co-workers or exercising protected rights to the extent that such rights cannot be waived by agreement, or otherwise disclosing information as permitted by law.

(c) Duration of Confidentiality Obligations. The Employee understands and acknowledges that Employee's obligations under this Agreement with regard to any particular Confidential Information shall commence immediately upon the Employee first having access to such Confidential Information (whether before or after Employee begins employment by the Employer) and shall continue during and after Employee's employment by the Employer.

(Italics added.)

Kim allegedly breached the Agreements "by misappropriating SLP's Confidential and Proprietary Information which he disclosed to CLE, engaging in activities and other business competitive with SLP's business during his employment with SLP, disclosing SLP's Confidential and Proprietary Information to CLE, inducing SLP employees to misappropriate SLP's Confidential and Proprietary Information and soliciting them to join CLE in furtherance of the misappropriation, and soliciting SLP's current and/or prospective clients to follow him to CLE." (SAC ¶60.)

Kim meets his initial burden on the noticed issue – that Kim did not misappropriate any of SLP's confidential and proprietary information and disclose such information to CLE. Kim was employed as an at-will associate at SLP from December 1, 2016 until November 2, 2018, when he voluntarily resigned. (UMF 2.) Kim left SLP because Mr. Shahian had created an abusive and hostile work environment, closely controlled all facets of SLP, and Kim knew that eventually he would also be the target of Shahian's abusive and threatening tirades. (UMF 3.) Kim started working for CLE on November 13, 2018, until September 11, 2022, when he voluntarily resigned. (UMF 4.)

Kim denies he had an agreement, scheme or plan of any kind with CLE, Anvar, Stotz, or anyone

else to misappropriate SLP's alleged confidential and proprietary information and take that information to CLE to complete against SLP, to use SLP's alleged confidential and proprietary information to solicit SLP's current and/or prospective clients to leave SLP for CLE nor to induce SLP employees to misappropriate SLP's alleged confidential and proprietary information and solicit them to join CLE in furtherance of the misappropriation. (UMF 5.) While employed by SLP and after leaving, Kim did not solicit any SLP clients to leave SLP and go to CLE. (UMF 6-7.) While employed by SLP and after leaving, Kim did not solicit any potential clients whose identities he had learned while employed at SLP to go to CLE instead of SLP. (UMF 8-9.) Kim did not ask, suggest, request, direct or induce any SLP employees to misappropriate any of SLP's alleged confidential and proprietary information and to leave SLP. (UMF 10.) While employed by SLP, Kim did not solicit any SLP employees to leave SLP and join CLE. (UMF 11.) Kim did not take any of SLP's alleged proprietary or confidential information from SLP when he left. (UMF 12.) In addition, Kim did not provide CLE with any information regarding the specific auto manufacturers, models or defects that SLP was targeting. (UMF 13.) Kim did not provide CLE with any defect "hot list" obtained from SLP and was not aware of there being any defect "hot list." (UMF 14.)

As noted, the Confidential and Proprietary Information pertains to trade secret, attorney-client and non-public information relating to SLP. Similarly, the Employee Confidentiality Agreement precludes Kim from disclosing, broadly, "all information not generally known to the public" stemming from his employment with SLP. In his UMFs, Kim establishes that he did not provide any of SLP's confidential/proprietary information to CLE, Anvar, Stotz or any third party. (UMF 12-14.) Kim also did not induce any SLP employees to misappropriate SLP's confidential/proprietary information and solicit them to join CLE in furtherance of the misappropriation. (UMF 10.) Thus, the burden shifts to Plaintiff to demonstrate that Kim breached the Agreements' confidentiality obligations by divulging the alleged "Confidential and Proprietary Information" or "Confidential Information."

Plaintiff argues that it has evidence that Kim breached the terms of the confidentiality obligations. However, reviewing this evidence in the light most favorable to Plaintiff, the Court cannot conclude that substantial evidence demonstrates Kim breached the agreement.

Plaintiff asserts that Kim breached the confidentiality provisions of the agreement by downloading and copying portions of eighteen SLP case files during the three weeks leading up to his departure from SLP for CLE. (AMF 151, Pauli Decl., ¶¶ 22-25, 32-35; see Exs. 047 [Kim iManage Data], 125-135 [CLE pleadings that are identical to SLP pleadings], 142 [case names

related to files taken by Kim].) Plaintiff, however, provides no basis to conclude that such files were confidential under the terms of the agreement. Plaintiff provides only that Kim took "all or some" case files, but the exhibit only provides a summary of the affected files, without any indication or evidence that the specific files taken included "trade secrets" or "non-public information" that would qualify as "Confidential and Proprietary Information." Liberally viewing the files cited, there is no indication that such files are, or contain, non-public information or were otherwise marked as confidential or proprietary.

Furthermore, Mr. Pauli does not declare the nature of the exhibits beyond suggesting that these documents were "draft and final versions of: retainer agreements (with client personal information), demand letters, complaints, motions, discovery requests and responses, confidential mediation briefs, settlement negotiations, settlement agreements, ESI meet and confer letters, etc.)" and that the documents were owned by SLP, to wit, "SLP has the exclusive right of ownership and possession of its drafts, templates and work product in its case files, and the right of possession (and duty to safeguard) the remainder of the case files to the extent that they are the property of its clients." (Pauli Decl., ¶25.)

Plaintiff attempts to paint Kim and Beck with the same brush, imprecisely stating that both took many, loosely specified, files. This does not meet Plaintiff's burden to provide specific and substantial evidence that Kim misappropriated Confidential and Proprietary Information under the agreement. For instance, Pauli explains with detail the nature of the documents Beck took, such that a reasonable fact finder could infer that the documents were nonpublic, and thus Confidential and Proprietary Information under the agreement. On the other hand, Pauli goes into no details about the files Kim took. The scant details that Pauli does provide about Kim's files only provides a general assessment that he took the above-quoted materials. The Court, however, cannot reasonably infer their confidentiality, since these documents would be provided to third parties as part of litigation and there is no evidence to suggest that the documents were never provided to third parties. More specific evidence would be required before a fact finder could conclude that the above categories of documents were protected under the agreements.

Therefore, Plaintiff fails to meet its burden to show a dispute of material fact as to Kim's breach of the confidentiality provisions.

Issue 1.b – Competitive Acts

As to the allegations of competitive activities, Kim notices the following issue: "Kim did not

engage in activities and other business competitive with SLP's business during his employment with SLP by disclosing SLP's confidential and proprietary information to CLE, inducing SLP employees to misappropriate SLP's confidential and proprietary information and soliciting them to join CLE in furtherance of the misappropriation, and soliciting SLP's current and/or prospective clients to follow him to CLE[.]" As discussed above, there is no dispute of fact regarding Kim's disclosure of confidential and proprietary information to CLE. Thus, the court will focus its analysis on Kim's "inducing SLP employees to misappropriate SLP's confidential and proprietary information and soliciting them to join CLE in furtherance of the misappropriation, and soliciting SLP's current and/or prospective clients to follow him to CLE."

Kim's employment agreement includes a provision prohibiting Kim from engaging in any activity with a business that competes with Plaintiff during his employment. This provision states:

4. Competitive And Other Related Activities. During Employee's employment, Employee shall not, directly or indirectly, whether as partner, employee, creditor, shareholder, or otherwise, promote, participate, or engage in any activity or other business competitive with Company's business. The Employee shall not refer matters outside the Company. The Employee shall not disparage the Company, its employees, or clients. The Employee shall not disrupt the Company's current or prospective business relationships. The Employee shall conduct himself or herself in a professional manner.

(SAC ¶39, emphasis added.)

Kim allegedly breached the anti-competition clause of his agreement by "engaging in activities and other business competitive with SLP's business during his employment with SLP disclosing SLP's Confidential and Proprietary Information to CLE, inducing SLP employees to misappropriate SLP's Confidential and Proprietary Information and soliciting them to join CLE in furtherance of the misappropriation, and soliciting SLP's current and/or prospective clients to follow him to CLE." (SAC ¶60.)

Kim meets his initial burden demonstrating that he did not engage in such activities or other competitive acts during his employment. (See UMF 5, 6, 8, 10, 11.) Kim did not solicit any of SLP's clients or prospective clients to leave SLP and hire CLE. (UMF 6-9.) Kim did not ask, suggest, request, direct or induce any SLP employees to misappropriate any of SLP's alleged confidential and proprietary information and to leave SLP. (UMF 10.) While employed by SLP,

Kim did not solicit any SLP employees to leave SLP and join CLE. (UMF 11.) Kim did not take any of SLP's alleged proprietary or confidential information from SLP when he left. (UMF 12.) Thus, the burden shifts to Plaintiff to show that Kim engaged in competitive conduct with SLP during his employment.

Plaintiff argues that Kim assisted the CLE defendants in soliciting a SLP paralegal and Resnick's establishment of a competing lemon law firm. (AMF 156; Pauli Decl. ¶¶ 22-25, 32-35; 047 [summary of iManage data downloaded by Kim].) However, Plaintiff does not provide substantial evidence showing Kim's assistance to the CLE defendants in any way during his employment, including by soliciting an SLP paralegal or otherwise assisting Resnick in establishing a competing firm while employed at SLP.

As to Kim, the cited paragraphs of the Pauli declaration only state:

a) Kim resigned effective November 2, 2018;
b) Kim accessed SLP case files including, without limitation, draft and final versions of retainer agreements (with client personal information), demand letters, complaints, motions, discovery requests and responses, confidential mediation briefs, settlement negotiations, settlement agreements, ESI meet and confer letters, etc.) as shown by SLP's iManage software;
c) as to Kim specifically, iManage software platform revealed that Kim downloaded or exported all or portions of approximately 18 SLP case files (see exhibit 047 [showing one file taken per case];
d) CLE used SLP templates, including filing motions to compel that are "virtually identical" to those used by SLP and taken by Kim, and discovery requests/meet and confer letters;
e) CLE increased their practice against certain manufacturers; and
f) SLP's formats were created through "thousands of man hours of labor over many years at a cost of millions of dollars" and such documents were the property of SLP.

(Pauli Decl. ¶¶ 22-25, 32-35.) There is no mention of Kim's purported solicitation of SLP employees or his assistance of Resnick at any point, including during Kim's employment. At best, Plaintiff demonstrates that Kim downloaded certain SLP case files during his employment, and that he shared those casefiles with CLE at some point. There is no evidence this violated the misappropriation clause of the agreement, since there is no evidence showing when the disclosure occurred. The record is silent as to when Kim provided CLE (or Resnick) with these documents. Plaintiff does not explain how a trier of fact could infer that this Kim disclosed the downloaded files during his employment. Thus, it cannot be inferred that he did so in violation of

the anti-competition clause.

As there is no dispute of material facts as to issues 1.a and 1.b, the motion for summary adjudication is GRANTED.

Issues 2-4 – CUTSA Displacement

The same analysis discussed above as to Beck applies to Kim and these tort causes of action. Each cause of action alleged against Kim is premised on the same nexus of facts. The SAC alleges that Kim violated his fiduciary duties and the UCL by (1)" misappropriating" and "divulging" Plaintiff's Confidential and Proprietary Information; (2) using the Information to interfere with contracts of SLP employees and inducing those employees to misappropriate SLP's Confidential and Propriety Information; and (3) soliciting SLP's clients and employees using SLP's Confidential and Proprietary Information. (SAC ¶¶ 77-79, 97, 113.) CUTSA would therefore apply to the three tort claims alleged against Kim.

As Kim has demonstrated that he is entitled to judgment as to each cause of action, and Plaintiff, in turn, has failed to demonstrate a dispute of material fact as to the discussed issues, Kim's motion for summary judgment is GRANTED.

GARZA'S MOTION

Issue 1.a – Misappropriation as Breach of Contract

Garza presents the following issues for adjudication relating to the first cause of action for breach of contract: Garza did not misappropriate any of SLP's confidential and proprietary information and disclose such information to CLE.

Garza's Employee Confidentiality and Proprietary Rights Agreement provides substantially identical terms to Kim's Confidentiality Agreement. (SAC ¶¶ 43, 45, Ex. F.) Garza signed and acknowledged her confidentiality obligations in the SLP Employee Handbook. (SAC ¶48.) Garza allegedly breached her Employee Confidentiality Agreement by "misappropriating SLP's Confidential and Proprietary Information which she disclosed to CLE, and engaging in activities and other business competitive with SLP's business during the term of her employment by disclosing SLP's Confidential and Proprietary Information to CLE, inducing SLP employees to misappropriate SLP's Confidential and Proprietary Information and soliciting them to join CLE

in furtherance of the misappropriation, and soliciting SLP's clients to move their cases to CLE." (SAC ¶62.)

Garza was an Intake Specialist at SLP from October 5, 2020, until June 4, 2021. (UMF 2.) Garza states that she resigned from SLP because of the toxic work environment. (UMF 3.) Garza started working for CLE on June 10, 2021, first as a marketing assistant and now working as a marketing manager. (UMF 4.)

Garza presents evidence that she never had any agreement, scheme or plan of any kind with CLE, Anvar, Stotz, or anyone else to misappropriate SLP's alleged confidential and proprietary information and take that information to CLE to complete against SLP, to use SLP's alleged confidential and proprietary information to solicit SLP's current and/or prospective clients to leave SLP for CLE nor to induce SLP employees to misappropriate SLP's alleged confidential and proprietary information and solicit them to join CLE in furtherance of the misappropriation. (UMF 5.) Furthermore, Garza did not ask, suggest, request, direct or induce any SLP employees to misappropriate any of SLP's alleged confidential and proprietary information and to leave SLP. (UMF 10.) Garza did not take or misappropriate any of SLP's alleged proprietary or confidential information from SLP when she left. (UMF 12.) Garza did not provide CLE with any information regarding the specific auto manufacturers, models or defects that SLP was targeting. (UMF 13.)

Garza notes that the only documents she kept/maintained when she left SLP were a copy of her offer letter from SLP, a copy of the SLP Employee Handbook, a copy of the "Professional History and Conflict of Interests Questionnaire for Attorneys" form that she was required to complete when she began with SLP, a copy of her SLP exit interview, and other documents she was provided by SLP at the conclusion of employment. (Garza Decl., ¶ 16.) She notes that she also retained a photo, dated October 2, 2020, of her home computer monitor screen of a blank Salesforce Agent form that she used when employed by SLP. (Id.) She explains that she took the photograph and sent it to herself from her personal email on her phone to her SLP email account because there was an error with Salesforce, and she was asked to send a picture of the issue to SLP so that its Salesforce agent could resolve it. (Id., Ex. C.) She states that she never shared that photograph with CLE, Anvar, Stotz or any other third party. (Id.)

Garza thus meets her initial burden on this issue. The burden shifts to Plaintiff to demonstrate that Garza breached her contract by misappropriating SLP's alleged confidential and proprietary information.

Plaintiff attempts to raise a dispute as to Garza's misappropriation as to certain confidential information. (See AMF 54.) Specifically, Plaintiff cites the Salesforce screenshot Garza took at the start of, or immediately prior to, her employment with SLP. (Pauli Decl., ¶¶ 37-40.) Mr. Pauli provides that "It is extremely valuable to a competitor because it shows one of the most important steps in the SLP intake process within the Salesforce platform that was built at great expense and is under an exclusive license to SLP. This is the way in which SLP brings client information into its CRM tool. It gathers facts from SLP's potential clients and turns it into a reportable format to determine if the case should immediately turn into a retained client, a case to "build" or one which SLP will reject. The proprietary view of one of our Salesforce screens which was taken by Garza, is completely created from within SLP by senior management and designed to improve efficiency, provide essential fact gathering in the intake process and is highly confidential and customized." (Pauli Decl., ¶ 37.) "The image taken by Garza also shows the integration of SLP's phone system with Salesforce and how that can create efficiency and automation of process. SLP would never share its Salesforce screens to anyone outside of the firm." (Pauli Decl., ¶ 38.) Plaintiff argues that it may be reasonably inferred that Garza collaborated with Santos in taking the screenshot. Pauli declares that this screenshot occurred "[a]round when Santos solicited her to join CLE" and thus an inference may be drawn "that Santos told Garza to take the image for CLE" in an act of unlawful competition with SLP. (Id., ¶ 39.)

The evidence does not support Plaintiff's requested inference. Plaintiff inaccurately claims that this photo was taken around the same time that Santos was soliciting Garza to join CLE. Plaintiff does not recognize when the screenshot was taken. Looking at the substance of the screenshot, the date indicated on the monitor is October 2, 2020, about eight months prior to Santos's solicitation of Garza on May 11, 2021. In fact, Garza took this screenshot before she signed the various employment agreements at-issue – October 5, 2020. Plaintiff's evidence demonstrates that Santos contacted Garza in May 2021, almost eight months after the screenshot was taken. (AMF 54, 58, 62-63, see Pauli Decl., ¶ 37, Exs. 038, 040.) These messages do not pertain to the screenshots. Plaintiff otherwise does not provide evidence that disputes that Garza took this screenshot at the behest of SLP/Salesforce, or that Garza otherwise shared this screenshot with CLE. Plaintiff generally cites phone records between Santos and Garza, indicating that they spoke to each other frequently. (Ex. 181.) Of course, these records do not show the contents of these communications. Furthermore, in light of the months delay between Garza taking this screen shot and Santos recruiting her, it would be an evidentiary leap to connect the two events. This is not a matter of the Court weighing the credibility of the evidence, but determining that

Plaintiff's requested inference is both unreasonable and unsupported by admissible evidence.

Issue 1.b – Competitive Acts in Breach of Contract

Garza notices the following two sub-issues:

b. Garza did not engage in activities and other business competitive with SLP's business during her employment with SLP by disclosing SLP's confidential and proprietary information to CLE, inducing SLP employees to misappropriate SLP's confidential and proprietary information and soliciting them to join CLE in furtherance of the misappropriation, and soliciting SLP's current and/or prospective clients to follow her to CLE; and

c. to the extent SLP alleges Garza breached her Employee Confidentiality and Proprietary Rights Agreement by soliciting SLP employees to work for CLE, any such claim is barred by California Business & Professions Code, section 16600, and Garza never engaged in any such solicitation.

Garza's contracts included two provisions regarding the non-solicitation of clients and employees:

3. Non-Solicitation of Clients. Employee understands and acknowledges that because of Employee's position with the Firm, Employee will have access to much or all of the Firm's trade secrets, which includes the Firm's Client Information. "Client Information" includes, but is not limited to, names, phone numbers, addresses, email addresses, and other information identifying facts and circumstances specific to the client that is relevant to the Firm's legal services. The Firm derives independent economic value from its Client Information not being generally known to the public or to other persons who can obtain economic value from their disclosure or use. The Firm spends a significant amount of time, effort and money in the acquisition, development and maintenance of its Client Information, and takes significant efforts to maintain their secrecy. Following Employee's separation of employment for any reason, whether voluntary or involuntary, Employee agrees and covenants, for a period of 12 (twelve) months after the termination or cessation of that employment for any reason, that Employee will not directly or indirectly solicit the Firm's clients, whether for Employee's own benefit or the benefit of a third party, or to interrupt, disturb, or interfere with the Firm's relationships with its clients, within the state of California. Employee also agrees and covenants not to use any of the Firm's trade secrets, including Client Information, to directly or indirectly solicit the Firm's clients.

4. Non-Solicitation of Employees. During the period of Employee's employment with the Firm, and for a period of 12 (twelve) months after the termination or cessation of that employment for any reason, Employee agrees and covenants not to disrupt or interfere with the Firm's business by directly or indirectly soliciting, recruiting or attempting to recruit the employees of the Firm with whom Employee worked while employed by the Firm, within the state of California, whether for Employee's own benefit or the benefit of a third party. Employee also agrees and covenants not to use any of the Firm's trade secrets to directly or indirectly solicit the Firm's employees.

(SAC ¶ 46.)

Here, Garza meets her initial burden of proof. Garza sets forth facts that while she was employed by SLP, she did not solicit any SLP clients to leave SLP and go to CLE. (UMF 6.) After leaving SLP, Garza did not solicit any SLP clients to leave SLP and go to CLE. (UMF 7.) While employed by SLP, Garza did not solicit any potential clients whose identities she had learned while employed at SLP to go to CLE instead of SLP. (UMF 8.) After leaving SLP, Garza did not solicit any potential clients whose identities she had learned while employed at SLP to go to CLE instead of SLP. (UMF 9.) While employed by SLP, Garza did not solicit any SLP employees to leave SLP and join CLE. (UMF 11.)

With this evidence, Garza meets her burden to show that she did not engage in competitive activities during her employment. The burden therefore shifts to Plaintiff to demonstrate that Garza engaged in competitive acts with SLP during her employment.

Plaintiff fails to address this argument in opposition. Instead, Plaintiff focuses solely on the confidentiality provisions. (See Opp. at 6.) In response to the above UMFs, Plaintiff only reiterates its arguments regarding the confidentiality provisions. (See UMF 5, 10-17; AMF 52-64.)

Accordingly, Garza's motion for adjudication is GRANTED as to issue no. 1.

Issue nos. 2-3 – CUTSA Displacement

Garza moves on the same general grounds discussed in the prior two motions, including that the two tort causes of action are displaced by CUTSA. The same analysis applies here. The allegations and evidence show that the tort causes arise from the same nucleus of facts as the

alleged misappropriation of trade secrets.

Accordingly, Garza's motion for summary judgment is GRANTED.

SANTOS'S MOTION

Issue 1.a – Misappropriation as Breach of Contract

Santos notices the following sub-issue:

a. Santos did not misappropriate any of SLP's confidential and proprietary information and disclose such information to CLE.

The SAC alleges that Santos entered into an employment agreement and an Employee Confidentiality and Proprietary Rights Agreement with Plaintiff. (SAC ¶¶ 41, 43; Exs. C, E.) Both agreements contain certain confidentiality clauses. (SAC ¶¶ 42, 44.) Relevantly, the agreements provide:

You also agree to maintain as secret and confidential all trade secret and nonpublic information relating to the Firm and the business of the Firm that was disclosed to or acquired or known by you during your employment with the Firm. Such Firm trade secrets or confidential information include, but are not limited to, the number of cases being handled by the Firm, all original and duplicate client case records, client names and addresses, client phone numbers, payment records, communications, histories, correspondence, computer discs, programs, reports, office forms, advertising methods (includes advertising vendors names, addresses and contact information), material and manuals, financial records, as well as any and all related records or associated information of any nature pertaining to clients of the Firm, and all other confidential information of any kind, nature or description concerning any matters affecting or related to professional practice conducted at the Firm, the Firm's manner of operation and all other confidential data of any kind, nature or description ("Confidential and Proprietary Information"). During your employment by the Firm and after the termination of your employment, you as the employee shall not, without prior written authorization and consent of the Firm, or as may otherwise be required by law or legal process, use or communicate or disclose any such trade secret or confidential information to any third party other than the Firm and those whom the Firm authorizes to receive such information in writing.

(Id., Ex. C.) Santos also agreed to nearly identical confidentiality provisions as Kim. (Id., Ex. E.) Santos acknowledged her confidentiality obligations in the SLP Employee Handbook. (SAC ¶48.)

SLP alleges Santos breached her employment agreement and Employee Confidentiality Agreement "by misappropriating SLP's Confidential and Proprietary Information which she disclosed to CLE, and inducing SLP employees to misappropriate SLP's Confidential and Proprietary Information and soliciting them to join CLE in furtherance of the misappropriation." (SAC ¶61.)

Santos provides the following undisputed facts in support of her motion. Santos was employed as an Intake Specialist and then Intake Manager at SLP from August 2014 to April 2021. (UMF 2, 4.) Santos left SLP because of the constant berating and verbal abuse she endured from its owner Payam Shahian that culminated in an incident where she ended up at the emergency room because she thought she was on the verge of having a stroke after his severe verbal abuse. (UMF 3.)

Santos denies having any agreement, scheme or plan of any kind with CLE, Anvar, Stotz, or anyone else to misappropriate SLP's alleged confidential and proprietary information and take that information to CLE to complete against SLP, to use SLP's alleged confidential and proprietary information to solicit SLP's current and/or prospective clients to leave SLP for CLE nor to induce SLP employees to misappropriate SLP's alleged confidential and proprietary information and solicit them to join CLE in furtherance of the misappropriation. (UMF 5.) Santos did not ask, suggest, request, direct or induce any SLP employees to misappropriate any of SLP's alleged confidential and proprietary information and to leave SLP. (UMF 10.) While employed by SLP, Santos did not solicit any SLP employees to leave SLP and join CLE. (UMF 11.) Santos did not take or misappropriate any of SLP's alleged proprietary or confidential information from SLP when she left. (UMF 12.) Finally, Santos puts forth evidence that she did not provide CLE with any information regarding the specific auto manufacturers, models or defects that SLP was targeting. (UMF 13.)

With these facts, Santos meets her initial burden to dispute the allegations of the SAC as to her breach of the confidentiality provisions in her employment agreements. The burden shifts to Plaintiff to demonstrate her breach of those provisions.

Plaintiff principally relies on the purported misappropriation by Garza, and Santos's

communications with Garza. (See AMF 54, 58, 62-64; see Pauli Decl., ¶¶ 37-40, Exs. 038, 039, 040.) The Court has already discussed at length why this evidence fails to establish a dispute of material fact as to Garza's breach of her employment and confidentiality agreements. As Garza did not breach the confidentiality provisions, Santos could not have breached her own confidentiality provisions through Garza's actions.

Issue 1.b - Competitive Acts/Solicitation

Santos notices the following issues:

b. Santos did not engage in activities and other business competitive with SLP's business during her employment with SLP by disclosing SLP's confidential and proprietary information to CLE, inducing SLP employees to misappropriate SLP's confidential and proprietary information and soliciting them to join CLE in furtherance of the misappropriation, and soliciting SLP's current and/or prospective clients to follow her to CLE; and

c. to the extent SLP alleges Santos breached her Employee Confidentiality and Proprietary Rights Agreement by soliciting SLP employees to work for CLE, any such claim is barred by California Business & Professions Code, section 16600, and Santos never engaged in any such solicitation.

Here, the SAC does not allege that Santos signed any agreement with an anti-competition or non-solicitation clause. (SAC ¶¶ 53, 57, Exs. C, F.) The record also does not demonstrate that Santos signed an agreement with any such clause. In any event, the SAC alleges that Santos breached her agreements "by misappropriating SLP's Confidential and Proprietary Information which she disclosed to CLE, and inducing SLP employees to misappropriate SLP's Confidential and Proprietary Information and soliciting them to join CLE in furtherance of the misappropriation." (SAC ¶61, emphasis added.)

Santos meets her burden to show that she did not violate her contracts. While Santos was employed by SLP and after leaving SLP, she did not solicit any SLP clients to leave SLP and go to CLE. (UMF 6-7.) While employed by SLP and after leaving SLP, Santos did not solicit any potential clients whose identities she had learned while employed at SLP to go to CLE instead of SLP. (UMF 8-9.) Thus, the burden shifts to Plaintiff to demonstrate: (1) Santos had an agreement not to engage in competitive acts with SLP while employed with SLP or solicit employees of SLP, and (2) Santos violated that agreement.

Plaintiff relies on Santos's solicitation of Isabel Garcia, Elizabeth Vazquez, Yanira-Andon, and Garza. (AMF 58, 63; see Pauli Decl., ¶ 38.) The recorded communications establish that Santos solicited the individuals for jobs at CLE as follows: Garza starting on May 11, 2021; Yanira-Andon on May 13, 2021; Garcia on June 10, 2021; and Vazquez on June 16, 2021. (Id.) It is undisputed that Santos left SLP in April 2021, prior to making the solicitations. Plaintiff merely establishes that Santos solicited employees after her employment ended. Thus, Plaintiff fails to establish the breach of any anti-competition or non-solicitation agreement. Moreover, to the extent that any agreement even exists, Business and Professions Code section 16600 would bar an action based on Santos's competitive acts following her employment.

Accordingly, Santos's motion for adjudication is GRANTED as to issue no. 1.

Issue nos. 2-3 – CUTSA Displacement

Santos argues that the fifth and seventh causes of action are preempted by CUTSA. The Court concurs that CUTSA displaces the tort causes of action for the same reasons discussed infra. The allegations and evidence show that the tort causes arise from the same nucleus of facts as the alleged misappropriation of trade secrets.

Accordingly, Santos's motion for summary judgment is GRANTED.

CLE DEFENDANTS

Finally, the CLE Defendants move against each cause of action on the grounds that these causes of action are displaced by CUTSA.

CUTSA Preemption

The Court concludes that each cause of action against the CLE Defendants are unambiguously premised on misappropriation claims. (See SAC ¶¶ 5-8, 26-28, 31, 33-35, 70, 85, 103, 113.) Theoretically, Plaintiff states duties that could be breached by means independent of misappropriation. However, Plaintiff simply did not make these allegations. For instance, CLE defendants could have induced Beck or another attorney to breach their duty of loyalty or interfere with contractual relations without requesting that they misappropriate Plaintiff's Confidential and Proprietary Information. For example, Plaintiff has offered that Beck recruited

another employee or otherwise aided CLE while still employed. However, the SAC does not allege these facts outside the trade secret context. The SAC expressly alleges that the recruitment and competition was in furtherance of misappropriation. For the purpose of this motion, the parties are bound by the allegations contained within the SAC.

Carefully examining the allegations of the SAC, the Court located one instance that, viewed out of context, could state a breach of loyalty without reference to misappropriation. Excising the references to misappropriation, the SAC alleges that the CLE Defendants "intentionally encouraged and caused Beck, Kim and Garza to breach their agreements with SLP . . . by, among other things, inducing them to . . . engage in activities and other business competitive with SLP's business during their employment [including] . . . soliciting SLP's clients to follow them to CLE." (SAC ¶ 70.) In every other regard, the SAC premises liability on trade secrets, including the alleged the misappropriating trade secrets including SLP's clients' names and other information. As such, the Court must determine whether there is a dispute of material fact as to the solicitation of current or prospective clients, the only potentially non-CUTSA claim alleged against the CLE defendants.

Non-CUTSA Displaced Claims

To the extent that the alleged client solicitation misconduct is not displaced by CUTSA, CLE defendants meet their initial burden to show that they did not solicit former or current clients of SLP. CLE Defendants present evidence that they never had any agreement, scheme or plan to solicit SLP's current and/or prospective clients to leave SLP and come to CLE. (UMF 4, 5, 6.) In fact, no SLP client terminated its relationship with SLP to come to CLE. (UMF 25.) CLE has never represented a former SLP client. (UMF 26.) None of the SLP former employees ever brought a client to CLE whose identity they learned of while employed by SLP. (UMF 27.) As such, the CLE defendants meet their initial burden of production to contest the allegation that they wrongfully solicited SLP's clients or had SLP's former employees solicit SLP's clients to follow them to CLE.

SLP does not present any evidence regarding the solicitation of clients. It is undisputed that no SLP client has terminated its relationship with SLP to come to CLE, that CLE has never represented a former SLP client, and that none of the former SLP employees brought a client to CLE whose identity they learned of while employed by SLP. (UMF 25-27.) While Plaintiff attempts to dispute other facts (see UMF no. 28-31 [responses re: Beck/Kim misappropriation]), they do not dispute the only basis of liability that is independent of CUTSA. For instance,

Plaintiff argues that the CLE Defendants disrupted the performance of the contracts by, among other displaced grounds, causing the former SLP employees to misuse/mishandle nonpublic, personal information of SLP's clients contained in its case files and other documents obtained by through accessing SLP's computer system for an unauthorized purpose. (AMF 259.) Plaintiff makes similar contentions regarding the breach of fiduciary duty and UCL causes. (AMF 262-265, 270, 277, 281.)

Accordingly, the result is that either (1) the tort claims against the CLE Defendants are displaced by CUTSA, or (2) there is no dispute of material fact regarding the non-displaced claim. Therefore, CLE Defendants' motion for summary judgment is GRANTED.

Plaintiff's Request for a Continuance of These Hearing Dates

In Plaintiff's opposition, Plaintiff requested a continuance. "If it appears from the affidavits submitted in opposition to a motion for summary judgment or summary adjudication, or both, that facts essential to justify opposition may exist but cannot, for reasons stated, be presented, the court shall deny the motion, order a continuance to permit affidavits to be obtained or discovery to be had, or make any other order as may be just." (Code Civ. Proc., § 437c(h).) Plaintiff must show that "(1) the facts to be obtained are essential to opposing the motion, (2) there is reason to believe such facts may exist, and (3) the reasons why additional time is needed to obtain these facts." (Chavez v. 24 Hour Fitness USA, Inc. (2015) 238 Cal.App.4th 632, 643.)

Upon reviewing the declarations regarding Plaintiff's discovery efforts, Plaintiff does not show why they were unable to secure the discovery prior to the opposition due date. (See Eagan Decl. ¶¶ 7-11, 13.) Previously, Plaintiff raised numerous discovery issues with the Court either through motions to compel or informal discovery conferences. In addition, the Court already granted Plaintiff a continuance of these motions from March 23, 2023, to the instant hearing dates in July. Based upon the prior continuances and discovery motions, the Court concludes that Plaintiff fails to demonstrate how any of the proposed discovery being sought could not have been obtained earlier.

As to particular areas of discovery, the proposed CUTSA discovery would probably be futile. The Court's CUTSA analysis depends on the nature of the action Plaintiff brought and it is based on the facts Plaintiff alleged. Plaintiff does not explain what facts they could reasonably discover to save the tort claims from CUTSA displacement.

As to discovery related to Beck, Beck's supplemental declaration largely covers these objections. Furthermore, Beck's motion for summary judgment was denied, and Plaintiff will be able to pursue further discovery. With respect to Kim, Plaintiff does not explain what discovery is sought against Kim, and why they didn't seek that discovery earlier. (Eagan Decl., ¶ 10.) As to the CLE discovery, CLE's financial discovery would not affect the material issues being addressed at these hearings. With respect to individual defendant communications with CLE, those communications were received from the individual defendants' discovery responses. (Eagan Decl., ¶ 9.) Thus, even if CLE was being evasive in their responses, Plaintiff has access to the pertinent communications. Finally, as to the Anvar deposition, Plaintiff fails to explain their delay in bringing this deposition if Anvar is, in fact, the lynchpin witness. While the parties were recently engaged in settlement discussions, these motions have been scheduled since December and already had been continued once.

Pending Motion for Leave to File a Third Amended Complaint

In the early morning of the July 27, 2023, hearing, Plaintiff filed a motion for leave to file a Third Amended Complaint (TAC). That hearing is set for August 22, 2023. Plaintiff further requested that the Court not rule on the motions until after ruling on its request to file a TAC. To the extent that the Court enters judgment in favor of Defendants on certain causes of action, Plaintiff would be precluded from amended those causes of action and the motion would be largely moot.

As set forth above, the Court has ruled on the motions and granted several defendants' motions for either summary judgment or adjudication. Therefore, the Court will briefly address the motion for leave and the rationale for the Court ruling without hearing that motion.
Here, Plaintiff has been aware of the CUTSA issue since at least the initial motions were filed on December 30, 2022, yet waited until after the Court had issued two tentative rulings and heard argument as to one set of motions before attempting to address these issues. While Plaintiff argues that the TAC would conform the allegations to proof, Plaintiff already understood the underlying facts, including the alleged breach of loyalty/unfair competition issues. Plaintiff has presented no evidence of recent discovery that revealed anything that Plaintiff did not already suspect or allege. The issue is that Plaintiff's express allegations admitted the breaches of loyalty and unfair competition were in furtherance of obtaining trade secrets.

Plaintiff also cites two other, more specific reasons for moving to amend: (1) To correct a purported (and disputed) deficiency in the SAC by identifying SLP employee Sapna Sharma; and

(2) To correct a purported (and disputed) deficiency in the SAC by specifically alleging the legal basis underlying SLP's property right in its client case files, employee training materials and other documents. These two grounds for the requested continuance do not carry much weight. As mentioned, Plaintiff already alleged that CLE targeted SLP for recruitment. The fact that employee Sharma was not specifically named is insignificant to the CUTSA issue. At argument, Plaintiff's counsel repeatedly argued that the value of this recruitment was taking employees who had confidential/proprietary knowledge of SLP's case intake.

Similarly, the precise nature of SLP's property interest in the case files, training manuals, etc., does not matter since these are unambiguously alleged to be trade secrets or confidential/proprietary information. As discussed, Plaintiff did not suffer any damages related to those property interests aside from their status as (potential) trade secrets. Note, that the specific language of the displacement focuses on the civil remedy sought, that is, CUTSA does not displace "other civil remedies that are not based upon misappropriation of a trade secret." Thus, the Court must focus on the remedies sought and their connection to misappropriation. Here, however, Plaintiff did not apparently suffer any independent damages, aside from the divulgence of the alleged trade secret/proprietary information. Additional allegations regarding the nature of the documents does not change the analysis unless Plaintiff can allege that the taking of those documents (whatever their nature) caused damage apart from the misappropriation. In Snapkeys, Ltd. v. Google LLC (N.D. Cal. 2020) 442 F.Supp.3d 1196, the district court found an independent value to the products alleged. Even though the hardware was a trade secret, the defendants also converted property and plaintiff therefore suffered damage independent from the trade secret violation. That is not the case here.

Plaintiff's cited cases are also inapposite. In Mediterranean Construction, defendant raised new arguments in its reply papers that constituted "12th-hour circumstances." (Trial Mediterranean Const. Co. v. State Farm Fire & Cas. Co. (1998) 66 Cal.App.4th 257, 258.) Here, however, Defendants made the same CUTSA arguments in the moving papers. Plaintiff had notice of this issue since at least December 2022. In Prue, the complaint (arguably) did not fully allege all essential facts to state a common law tort cause of action for wrongful termination in violation of public policy. (Prue v. Brady Co./San Diego, Inc. (2015) 242 Cal.App.4th 1367, 1384.) Here, legally significant allegations are not missing. Instead, Plaintiff is asking to omit previous allegations that are harmful to their action, to wit, the allegations connecting the breach of duty/unfair competition to the obtaining of trade secrets. This also flags a sham pleading.

For these reasons, the Court enters its ruling without waiting for the motion hearing date.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

West District, Santa Monica Courthouse, Department M

21SMCV01472 August 1, 2023
STRATEGIC LEGAL PRACTICES, APC, A CALIFORNIA CORPORATION vs CONSUMER LAW EXPERTS, P.C., A CALIFORNIA CORPORATION, et al. 3:44 PM

Judge: Honorable Mark A. Young
Judicial Assistant: Kristie Metoyer
Courtroom Assistant: J. Morgan

CSR: None
ERM: None
Deputy Sheriff: None

Counsel are ordered to prepare a proposed judgement for Kim, Garza, Santos and the CLE Defendants.

Certificate of Mailing is attached.