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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

HUMAN LONGEVITY, INC.,

Plaintiff,

v.

J. CRAIG VENTER INSTITUTE, INC. and DOES 1-100, inclusive,

Defendants.

Case No. 18-cv-1656-WQH-JMA

DEFENDANT J. CRAIG VENTER INSTITUTE, INC.'S POINTS & AUTHORITIES IN SUPPORT OF MOTION TO DISMISS PLAINTIFF HUMAN LONGEVITY, INC.'S COMPLAINT

Date: September 24, 2018
Dept.: 14B

NO ORAL ARGUMENT UNLESS REQUESTED BY THE COURT

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

TABLE OF AUTHORITIES

Page(s)

TABLE OF AUTHORITIES

Page(s)

TABLE OF AUTHORITIES

Page(s)

Statutes

TABLE OF AUTHORITIES

Page(s)

Other Authorities

I. INTRODUCTION

This lawsuit is a cynical ploy to embarrass and harass the J. Craig Venter Institute, Inc. ("JCVI") and its founder, J. Craig Venter, PhD. Plaintiff Human Longevity, Inc.'s ("HLI") Complaint is premised entirely on unidentified "trade secrets" and other purportedly confidential information. HLI admits it freely shared this information with Dr. Venter, HLI's co-founder (and former Chief Executive Officer and Chairman), and then knowingly permitted Dr. Venter to store the information on a joint platform shared with JCVI. HLI claims that Dr. Venter's laptop and email forwarding protocol were a conduit set up for Dr. Venter to take HLI's confidential information. HLI also claims that JCVI is now using that information to somehow improperly compete with HLI. Nonsense. As alleged in the Complaint, HLI willingly authorized and established the system that it now alleges is improper. Following Dr. Venter's removal from HLI, the company also inexplicably delayed for weeks before requesting the return of what it now claims is its "trade secret" information, showing HLI is not really concerned with protecting its information. HLI simply wants to exploit circumstances that HLI created to retaliate against Dr. Venter (and JCVI) and avoid its contractual obligations under Dr. Venter's employment agreement.

HLI's factual allegations are baseless. But even as alleged, HLI's claims fail as a matter of law. HLI's Complaint is legally defective for three primary reasons.

First, HLI cannot pursue a claim for misappropriation of trade secrets under the Federal Defend Trade Secrets Act ("DTSA") when it has not specified any trade secret. HLI's allegations are so vague and broad that its claimed "trade secrets" are impossible to identify. HLI demands the return of *all* HLI information that it has ever shared with Dr. Venter and other unnamed JCVI employees. And while HLI generally avers that it took reasonable steps to protect its "trade secrets," it also expressly admits that it knowingly authorized and created the system by which Dr. Venter allegedly shared such information with JCVI. Nor can HLI simply allege that "all" of its information is confidential because, in cases where the alleged trade secrets admittedly include

information already in the public domain, a plaintiff must distinguish between the secret and non-secret material. HLI's federal DTSA claim should be dismissed, and the Court should decline to exercise supplemental jurisdiction over HLI's remaining claims.

Second, HLI cannot overcome the fact that all four of its state and common law claims are superseded by the California Uniform Trade Secret Act ("CUTSA"). It is well-established that CUTSA prohibits state and common law claims if they are based on the same nucleus of facts as a trade secrets claim, as HLI's are here. HLI cannot artfully plead around the broad preemption afforded by CUTSA by bringing only a federal claim for trade secret misappropriation. The following causes of action should all be dismissed with prejudice as superseded by CUTSA: HLI's second cause of action (for conversion), HLI's third cause of action (for tortious interference with contract), HLI's fourth cause of action (for tortious interference with prospective economic advantage), and HLI's fifth cause of action (for unfair business practices under Cal. Bus. Prof. Code § 17200 *et seq.*).

Third, the Complaint does not contain adequate facts to support HLI's state and common law claims as a matter of law. There are no facts that would support HLI's conversion claim, which is a follow-on to the trade secrets claim. HLI has not identified any purported existing or prospective relationships with which JCVI or (although he is not a named defendant) Dr. Venter have "tortiously interfered." The only "investor" the Complaint mentions is the one that HLI's board of directors rejected on the same day they voted to remove Dr. Venter. HLI also fails to allege that Dr. Venter somehow interfered with his own employment relationship, but it is black letter law that a party cannot interfere with his own contract. Finally, the claim for unfair competition must fail without a predicate claim or any harm to competition.

HLI's claims against JCVI are fundamentally flawed as a matter of law and cannot be cured. The Court should dismiss the Complaint with prejudice.

II. RELEVANT FACTUAL ALLEGATIONS[1]

A. Dr. Venter and the Parties

Dr. Venter is a renowned scientist in the field of genomics. In addition to founding JCVI as a not-for-profit research institution, Dr. Venter currently serves as Chairman and CEO of JCVI. (Compl. ¶ 2.) Dr. Venter was also Chairman of the Board and interim Chief Executive Officer of HLI until his termination on May 24, 2018. (*Id.* ¶¶ 9–10, 24, 28.) Although HLI has not named Dr. Venter as a defendant in the Complaint, HLI's claims against JCVI relate to actions taken by Dr. Venter during his employment with, and following his separation from, HLI. (*Id.* ¶¶ 22–23, 29–38.)

JCVI is a not-for-profit research center founded by Dr. Venter in 1992 as The Institute for Genomic Research ("TIGR"). (*Id.* ¶ 8.) Through a series of consolidations occurring in 2004 and 2006, TIGR was renamed and became JCVI, which is now a leader in genomic and bioinformatics research. (*Id.*) HLI was co-founded by Dr. Venter as a for-profit research and wellness service that offers customers a range of medical and screening tests, including full genome sequencing and screening tests for early indications of cancer and other diseases. (*Id.* ¶¶ 6–7, 9.)

B. HLI's Purported "Trade Secrets"

HLI alleges in the Complaint that, while he worked at HLI, "[Dr.] Venter had access to all of HLI's Proprietary Information, including all of HLI's trade secrets (collectively, the 'Trade Secrets')." (*Id.* ¶ 16.) In its Complaint, HLI vaguely defines its "Trade Secrets" as "includ[ing]" but "not limited to":

> A. HLI's proprietary business plans and processes, including but not limited to the processes and data relating to HLI's development of its Health Nucleus, as well as bi-weekly business development updates, leadership updates, executive summaries, and weekly reports of all Health Nucleus activities;

[1] As is proper for a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), JCVI recites these facts from HLI's Complaint, but does not endorse or otherwise admit that any of the allegations are true.

> B. HLI's proprietary financing sources and potential financing sources, including private and confidential negotiating terms and strategies for potential transactions worth tens of millions of dollars;
>
> C. The identity and contact information of financing or potential financing sources, including the non-public contact information of high-net-worth individuals;
>
> D. The identity and contact information of clients and potential client [sic] who have sought out information or purchased HLI's services, including but not limited to the non-public contact information for high-net worth individuals such as Hollywood actors and actresses, corporate executives, NFL team owners, philanthropists and politicians;
>
> E. Private, proprietary, internal financial reports on HLI's business operations and future forecasts;
>
> F. HLI's confidential and proprietary plans, projections and negotiations regarding the potential expansion of its business operations;
>
> G. HLI's confidential and proprietary audits and reports of its industry, including analysis of market competitors;
>
> H. HLI confidential employee contact and compensation information; and
>
> I. HLI's proprietary research data, studies, imaging, as well as client results and prognoses.

(*Id.*) HLI generally alleges that its "Trade Secrets are critical to its business" and that "HLI spent significant time, effort and expense over the past four years to create and maintain its Trade Secrets." (*Id.* ¶¶ 17–21.) HLI avers that it has a "security system" that restricts physical access to HLI facilities and to computer files on HLI's system, and that "employees outside of the IT department cannot install, modify, alter, or connect additional equipment to the system without prior written approval from the employee's supervisor and the IT department and without assistance from the IT department." (*Id.* ¶ 21.) Nowhere in the Complaint does HLI allege that HLI applied these restrictions to Dr. Venter. To the contrary, HLI admits in the Complaint that these restrictions do not apply to "certain corporate executives." (*Id.*)

C. Dr. Venter's Laptop and Alleged Possession of HLI's "Trade Secrets"

While Dr. Venter was an executive at HLI, the company authorized and created a system for Dr. Venter to use a single laptop to perform his work for both HLI and JCVI (the "Laptop"). (*Id.* ¶¶ 22–23.) HLI installed a "Crash Recovery Program" on the Laptop that "recorded and saved the contents" whenever Dr. Venter used it and "backed up those contents on the HLI-owned space of the Microsoft Office 365 cloud." (*Id.* ¶ 22.) HLI also set up email forwarding at HLI that directed any emails sent to Dr. Venter's @humanlongevity.com email address to Dr. Venter at his jcvi.org email address. (*Id.* ¶ 23.) As a result, HLI "employees, donors and vendors" corresponded directly with Dr. Venter regarding "HLI business" at his jcvi.org email address. (*Id.*) Nowhere does HLI allege that JCVI was aware that the Crash Recovery Program had been installed on Dr. Venter's Laptop, or that HLI had informed JCVI or Dr. Venter that it had the ability (and intent) to monitor and review Dr. Venter's emails from his jcvi.org address.

HLI alleges that on May 24, 2018, HLI's board of directors (the "HLI Board") "considered a rushed investor deal which [Dr.] Venter presented to them only less than two weeks earlier" (the "May 24 Deal"). (*Id.* ¶ 28.) Apparently unsatisfied with the investor proposal, the HLI board "voted to terminate [Dr.] Venter from HLI" and then "communicated [his] termination to him." (*Id.*) After he learned of his removal, Dr. Venter left HLI's offices. (*Id.* ¶ 29.) Dr. Venter was still in possession of his Laptop, which he continued to use. (*Id.*) Nowhere does the Complaint allege that HLI asked Dr. Venter to return the Laptop (because HLI did not). The next day—May 25, 2018—"HLI disabled [Dr.] Venter's access to the HLI server and stopped forwarding [sic] of any e-mails." (*Id.* ¶ 30.) HLI did not request return of the Laptop or address any claimed HLI information until June 28, 2018, when HLI sent a "litigation hold letter" to JCVI, but not to Dr. Venter (the "Hold Letter"). (*Id.* ¶ 37.) HLI still "had access to the HLI computer retained by [Dr.] Venter through its Crash Recovery Program and Office 365." (*Id.* ¶ 30.)

After his removal as an HLI executive, HLI alleges that Dr. Venter continued to communicate with HLI employees and the investor for the deal that the HLI Board rejected on May 24, 2018, the same day it removed Dr. Venter. (*Id.* ¶¶ 31–33.) HLI alleges on information and belief that Dr. Venter intended to solicit the employees and the investor to work with JCVI. (*Id.* ¶¶ 31–33.)

D. JCVI's Alleged Possession of HLI's "Trade Secrets"

HLI's June 28 Hold Letter notified JCVI "of HLI's belief" that Dr. Venter and JCVI had "information belonging to HLI." (*Id.* ¶ 37.) The Hold Letter requested that JCVI "preserve any such evidence." (*Id.*) It "further stated that HLI believed Venter to have HLI's information and data on electronic devices belonging to [HLI]" (*i.e.*, the Laptop). (*Id.*) In response, JCVI directed HLI to contact Dr. Venter or his counsel regarding his Laptop: "With respect to Dr. Venter's laptop, if you believe that HLI has a right to this property, we trust that you will make your demand directly on Dr. Venter or his counsel." (*Id.*) Based only on that response, HLI alleges on information and belief that JCVI "has accessed and/or is accessing" the Laptop, "including HLI's Trade Secrets, and is using HLI's Trade Secrets for its own business purposes." (*Id.* ¶ 38.)

E. HLI Files this Lawsuit Against JCVI But Not Dr. Venter

HLI filed the Complaint against JCVI on July 20, 2018, but HLI did not properly serve JCVI until August 1, 2018. (*Compare* Dkt. 1 *with* Dkt. 18.) Instead, on July 25, 2018, HLI filed an *ex parte* application for a temporary restraining order ("TRO Application"). (Dkt. 6, *et seq.*) JCVI filed its opposition to the TRO Application on July 31, 2018. (Dkt. 12 *et seq.*) On August 3, 2018, the Court denied HLI's TRO Application in part because HLI had not served the Complaint on JCVI. (Dkt. 14.) HLI then filed an (incorrect) proof of service of summons on August 3, 2018. (Dkt. 15.) On August 7, 2018, HLI filed a corrected proof of service of summons. (Dkt. 18.)

Notably, the Complaint names "DOES 1-100," but does not name Dr. Venter as a Defendant. Nevertheless, HLI's allegations in the Complaint focus almost exclusively on Dr. Venter's use of the shared Laptop and email forwarding system that HLI

knowingly authorized and set up for him to use at JCVI and HLI. (*See* Dkt. 1.) HLI asserts these claims against JCVI despite HLI's contractual obligation to confidentially arbitrate this type of dispute (which stems from Dr. Venter's former employment as an HLI executive) with Dr. Venter under his employment agreement.[2]

III. LEGAL STANDARD

The Federal Rules of Civil Procedure require pleadings to contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Although "Rule 8 does not require 'detailed factual allegations,' it demands more than 'labels and conclusions.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). A "formulaic recitation of the elements of a cause of action will not do." *Id.*

To survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), a plaintiff must plead "enough facts to state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570. Those facts must be found within the four corners of the Complaint. *United States v. Corinthian Colls.*, 655 F.3d 984, 998 (9th Cir. 2011). Because a plaintiff must plead sufficient *facts*, it cannot avoid dismissal of its Complaint with conjecture, "labels and conclusions" or "a formulaic recitation of the elements of a cause of action." *Twombly*, 550 U.S. at 555 ("Factual allegations must be enough to raise a right to relief above the speculative level."). "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not *shown*—that the pleader is entitled to relief." *Iqbal*, 556 U.S. at 679 (quoting Rule 8(a)(2) (alterations omitted and emphasis added).

IV. ARGUMENT

For the following reasons, each of HLI's asserted claims fails as a matter of law, and the Complaint should be dismissed with prejudice.[3]

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[2] JCVI reserves all rights under the Federal Arbitration Act with respect to whether this action should be stayed pending arbitration, or even dismissed in favor of arbitration.

[3] "[D]ismissal with prejudice is proper where the defect appears to not be curable by amendment." *Jardin v. Datallegro, Inc.*, 2011 WL 1375311, at *2 (S.D. Cal. Apr. 12,

A. HLI Fails to State a Claim for Trade Secret Misappropriation

A complaint that "merely provide[s] a high-level overview of [plaintiff's] purported trade secrets" does not adequately state a misappropriation claim. *Space Data Corp. v. X*, 2017 WL 5013363, at *2 (N.D. Cal. Feb. 16, 2017). To state a claim under DTSA, HLI is required to plead specific facts showing "(1) the plaintiff owned a trade secret, (2) the defendant acquired, disclosed, or used the plaintiff's trade secret through improper means, and (3) the defendant's actions damaged the plaintiff." *Founder Starcoin, Inc. v. Launch Labs, Inc.*, 2018 WL 3343790, at *4 (S.D. Cal. July 9, 2018); *see also* 18 U.S.C. § 1836, *et seq.* HLI fails to sufficiently allege its cause of action for misappropriation under all three elements.

1. HLI Does Not Identify Any "Trade Secrets" with Sufficient Particularity

DTSA only protects "'information' that the owner has made 'reasonable' efforts to keep secret and which 'derives independent economic value . . . from not being generally known to' other persons." 18 U.S.C. § 1839(3). "Information that is public knowledge or that is generally known in an industry cannot be a trade secret." *Ruckelshaus v. Monstanto Co.*, 467 U.S. 986, 1002 (1984). For that reason, HLI must "identify" and "describe" the allegedly stolen information with sufficient factual detail to "separate it from either matters of general knowledge in the trade or of special knowledge of those skilled in the trade." *Profil Institut fur Stoffwechselforschung GmbH v. ProSciento, Inc.*, 2017 WL 1198992, at *5 (S.D. Cal. Mar. 31, 2017). A "high-level overview" of purported trade secrets will "not satisfy Rule 8 pleading requirements" because such general allegations do not "give the Court or Defendant[] notice of the boundaries" of the case. *Space Data*, 2017 WL 5013363, at *2; *see also Vendavo, Inc. v. Price f(x) AG*, 2018 WL 1456697, at *3 (N.D. Cal. Mar. 23, 2018)

2011) (quoting *Whitty v. First Nationwide Mortg. Corp.*, 2007 WL 628033, at *6 (S.D. Cal. Feb. 26, 2007); *see also Gabriel Techs. Corp. v. Qualcomm Incorp.*, 2009 WL 3326631, at *14 (S.D. Cal. Sept. 3, 2009).

(dismissing trade secret claim because plaintiffs did not allege essential facts showing information "qualif[ied] as protectable trade secrets" and thus did not state a "plausible" claim). Vague and general references to "categories of information" are "too broadly stated to identify the trade secrets on which [its] claims are based." *Becton, Dickinson & Co. v. Cytek Biosciences Inc.*, 2018 WL 2298500, at *3 (N.D. Cal. May 21, 2018).

HLI's attempt to identify its "trade secrets" fails this test. In Paragraph 16 of its Complaint, HLI avers that its "Trade Secrets" include "but are not limited to" nine broad and general categories of information. For example, HLI expansively refers to "any business plans or processes prepared for or by HLI" and "any information relating to any financing sources or potential financing sources that were derived by HLI." (Compl. ¶ 16.) The DTSA claim is thus inadequate because such "broad, categorical terms [] descriptive of the types of information that generally ***may*** qualify as protectable trade secrets" are not sufficient. *Vendavo*, 2018 WL 1456697, at *4. HLI's mere reference to the "Health Nucleus" program does not provide the necessary particularity. *Becton*, 2018 WL 2298500, at *3 ("Becton's reference to 'Project Newton' does not . . . serve to narrow the examples listed thereafter").

Nowhere else does HLI provide the specificity necessary to separate its unbounded categories of information from matters already in the public domain. The DTSA claim must therefore be dismissed. *See Vendavo*, 2018 WL 1456697, at *2 (dismissing trade secrets claim premised on undefined "strategic business development initiatives [and] ideas and plans for product enhancement" as "conclusory and generalized"); *Becton*, 2018 WL 2298500, at *3 (rejecting trade secrets claim based on "design review templates," "fluidics design files," and "source code files" as "too broadly stated to identify"); *Profil*, 2017 WL 1198992, at *5 (dismissing trade secret claims in part as "not adequately identified"); *Jun-En Enters. v. Lin*, 2013 WL 12126115, at *2 (C.D. Cal. June 17, 2013) ("[M]erely pleading that the proprietary information relates to potential customers and business leads is insufficient."); *Space Data*, 2017 WL 5013363, at *2 (rejecting trade secrets claim alleging categories of

information including, *inter alia*, "data on the environment in the stratosphere" and "data on the propagation of radio signals from stratospheric balloon-based transceivers" as too "high-level"); *see also Founder Starcoin*, 2018 WL 3343790, at *6 ("Plaintiff's purported trade secret suffers from a lack of 'sufficient particularity' that might separate it from matters of general knowledge.").

2. HLI Does Not Plausibly Allege that it Took Reasonable Measures to Protect its "Trade Secrets"

HLI also does not sufficiently plead, as required, that its alleged "trade secrets" are "the subject of efforts that are reasonable under the circumstances to maintain secrecy." *Design Art v. Nat'l Football League Props., Inc.*, 2000 WL 1919787, at *3 (S.D. Cal. Nov. 27, 2000). HLI generally alleges that it took certain steps to protect its information, but admits that Dr. Venter was an HLI executive, and that HLI's protections do not apply to "certain corporate executives." (Compl. ¶¶ 9, 10, 21, 24.) Further, HLI affirmatively avers that it not only knew about, but actually authorized and facilitated, the forwarding of Dr. Venter's HLI emails to his jcvi.org email address. (*Id.* ¶ 23.) HLI concedes that this arrangement has existed "[d]uring his HLI employment," and that Dr. Venter was employed by HLI since it was founded in 2014. (*Id.* ¶¶ 6, 9, 23.) Given these alleged facts, HLI cannot now argue that its voluntarily and systematic transfer of Dr. Venter's HLI emails to the JCVI domain constitutes "reasonable" efforts to keep its information secret from JCVI. *See, e.g.*, *Design Art*, 2000 WL 1919787, at *3 (ruling "plaintiff's trade secret claim fails as a matter of law" because alleged trade secret material was not secret).[4]

[4] HLI's conclusory allegations that it "derives substantial value" from the secrecy of the information, (Compl. ¶ 43), are insufficient to demonstrate that, even if the vaguely-defined categories of information were secret, the material was valuable because of it. *Webpass Inc. v. Banth*, 2014 WL 7206695, at *3 (N.D. Cal. Dec. 18, 2014) (rejecting "conclusorily alleg[ation] that the information had and continues to have significant independent economic value by virtue of not being generally known to the public or to Plaintiff's competitors").

3. HLI Does Not Allege that JCVI Wrongfully Acquired, Disclosed, or Used Any "Trade Secrets"

HLI has not alleged that JCVI "acquired" any of its purported trade secrets "through improper means," which "includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means," or that JCVI has "used" or "disclosed" any alleged trade secrets. 18 U.S.C. § 1839(5)–(6). Complaints that fail "to allege facts providing a reasonable basis for inferring that [the defendant] improperly disclosed or used plaintiff's trade secrets" must be dismissed because they do not state a claim "above the speculative level." *Space Data*, 2017 WL 5013363, at *2. HLI offers three bases for asserting misappropriation, each belied by both its factual allegations and established case law.[5]

First, HLI alleges that, because *Dr. Venter* "had access to" a broad range of alleged "Trade Secrets," (Compl. ¶ 16), that *JCVI* somehow acted illegally. But under DTSA, there is no presumption that Dr. Venter would inevitably disclose his personal knowledge to JCVI. *See* 18 U.S.C. § 1836(b)(3)(A)(i)(I) (prohibiting injunctions based "merely on the information the person knows"). This is consistent with California law, which rejects the doctrine of inevitable disclosure. *See Whyte v. Schlage Lock Co.*, 101 Cal. App. 4th 1443, 1462–63 (2002) ("Lest there be any doubt about our holding, our rejection of the inevitable disclosure doctrine is complete."). California's Business and Professions Code expressly prohibits restraint of competition, providing that "every contract by which anyone is restrained from engaging in a lawful profession, trade or

[5] Despite admitting that it was spying on Dr. Venter's use of the Laptop, (Compl. ¶¶ 22-23, 29-33, 36), HLI has alleged no evidence that JCVI or Dr. Venter improperly handled any HLI data on the Laptop or in Dr. Venter's jcvi.org mailbox. HLI also cannot justify its efforts to spy on Dr. Venter after his removal. HLI would be incorrect to argue that the Proprietary Information and Inventions Agreement ("PIIA") grants it the right to read all of Dr. Venter's documents. (Compl. ¶ 14 & Ex. A.) As is clear from the language of that agreement, the PIIA only governed the "Company's telecommunications, networking or information processing systems," (*Id.* ¶ 14 & Ex. A at ¶ 4); in other words, the PIIA did *not* grant HLI permission to review, among other things, JCVI's emails or privileged and confidential communications with any other entity that were housed on JCVI's server.

business of any kind is to that extent void." Cal. Bus. & Prof. Code § 16600. HLI therefore may not seek to impose on Dr. Venter (or JCVI) an improper and unjustified non-compete obligation via its unsupported trade secrets claim. *Pellerin v. Honeywell Int'l, Inc.*, 877 F. Supp. 2d 983, 989 (S.D. Cal. 2012) ("[A] party cannot prove trade secret misappropriation by demonstrating that a former employee's new employment will inevitably lead [him] to rely on [his] trade secrets.").

Second, HLI pleads—on information and belief only—that JCVI somehow has access to Dr. Venter's Laptop and thus is using HLI's unspecified "Trade Secrets." (Compl. ¶ 38.) But the only link that HLI draws between JCVI and the Laptop is an assumption that is flatly contradicted by the same correspondence that HLI cites in its Complaint. JCVI made it clear that it ***did not*** have the Laptop and invited HLI to contact Dr. Venter or his counsel. (*Id.*) HLI's attempt to allege, on information and belief, that JCVI's response somehow means it ***does*** have access to the Laptop must fail. *See Warner v. Tinder Inc.*, 105 F. Supp. 3d 1083, 1098 (C.D. Cal. 2015) (ruling "the complaint's allegations are inherently contradictory" and thus "do not meet Rule 8's requirement of a 'short and plain statement'" (internal quotation marks omitted)).

Third, insofar as the Complaint suggests that JCVI received any information from Dr. Venter's jcvi.org email account, the Complaint concedes that HLI authorized and affirmatively set up the email forwarding protocol. (Compl. ¶ 23.) HLI also alleges that it knew Dr. Venter "use[d] his jcventer@jcvi.org e-mail for HLI business, including communicating with employees, donors and vendors." (*Id.*) Given HLI's clear admissions and involvement in the intermingling of HLI and JCVI data, HLI cannot now disclaim responsibility or contend that JCVI used any "improper means" when allegedly receiving any HLI information by the shared email system that HLI established and participated in. *Call One, Inc. v. Anzine*, 2018 WL 2735089, at *9 (N.D. Ill. June 7, 2018) (finding no "improper means" when defendant sent emails "to her personal e-mail account" because plaintiff's practices created no "duty to maintain

secrecy").[6] At best, HLI asserts that JCVI now possesses some of its information, but "[a]lleging mere possession of trade secrets is not enough to survive a 12(b)(6) motion" because it does not show "impropriety," an essential element of a DTSA claim. *Be In, Inc. v. Google Inc.*, 2013 WL 5568706, at *3 (N.D. Cal. Oct. 9, 2013); *see also Silvaco Data Sys. v. Intel Corp.*, 184 Cal. App. 4th 210, 223 (2010) ("[O]ne who passively receives a trade secret, but neither discloses nor uses it, would not be guilty of misappropriation"), *disapproved on other grounds by Kwikset Corp. v. Superior Court*, 51 Cal. 4th 310 (2011).

HLI's Complaint contains no plausible allegations that JCVI actually used or disclosed any HLI information. Rather, it offers only unsupported and conclusory allegations, made only on information and belief, that JCVI "is using HLI's Trade Secrets." (Compl. ¶ 34–35.) That is not enough. *Space Data*, 2017 WL 5013363, at *2 ("These conclusory allegations [of improper use], however, are not supported by adequate factual allegations.")

4. HLI Does Not Allege Sufficient Facts that It Was Harmed

HLI has also failed to allege it has been harmed by JCVI's alleged use of its purported "trade secrets." DTSA requires a party to allege "damages for actual loss caused by the misappropriation" or "damages for any unjust enrichment." 18 U.S.C. § 1836(b)(3)(B). The only specific injury that HLI claims to have suffered is the alleged loss of an employee. (Compl. ¶ 33.) That allegation, based on "information and belief," is sufficient to support an actionable claim of damages under California law, which prohibits restraint of trade and competition under Business Professions Code Section 16600. And HLI's allegation that Dr. Venter "tried to solicit" an investor fails, because HLI does not allege that the unidentified investor actually did fund JCVI instead of HLI.

[6] Similarly, HLI's suggestion that JCVI's receipt of emails is somehow improper falters because the truth—that HLI authorized and set up the system—is a more-plausible "alternative explanation" that HLI cannot plead away. *Eclectic Props. E., LLC v. Marcus & Millichap Co.*, 751 F.3d 990, 996 (9th Cir. 2014) (holding "plaintiffs cannot offer allegations that are merely consistent with their favored explanation but are also consistent" with an innocuous explanation).

(*Id.* ¶ 32.) Further, the HLI Board's express rejection of the May 24 Deal (while simultaneously removing Dr. Venter for proposing it) is not cognizable harm. (*Id.* ¶¶ 28, 32.) Any injury HLI incurred by losing the deal is entirely its own fault. *Founder Starcoin*, 2018 WL 3343790, at *12 ("Plaintiff must demonstrate that Defendant's actions damaged Plaintiff."). HLI offers conclusory allegations that JCVI is attempting to "directly solicit investors" and HLI "employees," but these are likewise insufficient. (Compl. ¶ 35.) Again, HLI provides no allegations tying those indeterminate events—if they even actually happened—to JCVI's actions. *Copart, Inc. v. Sparta Consulting, Inc.*, 277 F. Supp. 3d 1127, 1156 (E.D. Cal. 2017) (plaintiff "cites no evidence to support its argument that the alleged misappropriation caused damages").

5. The Court Should Decline to Exercise Supplemental Jurisdiction Over HLI's Remaining Claims

HLI's cause of action under the DTSA is its sole federal claim, and there is no diversity jurisdiction between the parties. (Compl. ¶¶ 1–2, 4.) If the Court dismisses the DTSA claim, it should also dismiss HLI's remaining state and common law claims. "Under 28 U.S.C. § 1367(c)(3), the court has discretion to dismiss state law claims when it has dismissed all of a plaintiff's federal claims." *Pickern v. Best W. Timber Cove Lodge Marina Resort*, 194 F. Supp. 2d 1128, 1133 (E.D. Cal. 2002). "[I]n the usual case in which federal-law claims are eliminated before trial, the balance of factors to be considered under the [supplemental] jurisdiction doctrine—judicial economy, convenience, fairness, and comity—will point toward declining to exercise jurisdiction over the remaining state law claims." *Campos v. Failla*, 2016 WL 1241545, at *8 (S.D. Cal. Mar. 30, 2016) (quoting *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 n.7 (1988). Only "extraordinary or unusual circumstances" justify the exercise of jurisdiction in such cases. *Pickern*, 194 F. Supp. 2d at 1133. HLI only recently filed this case. If the Court dismisses the DTSA claim, HLI will not be able to identify any extraordinary circumstances that would justify supplemental jurisdiction over HLI's remaining claims. They should all be dismissed. *Campos*, 2016 WL 1241545, at *8

(dismissing "remaining state-law claims" after dismissing federal claim that "provide[d] the only basis for federal subject-matter jurisdiction").

B. HLI's State and Common Law Claims are Superseded by the California Uniform Trade Secrets Act

1. CUTSA Applies to HLI's State and Common Law Claims

The four causes of action alleged by HLI based on California state and common law are all superseded by CUTSA because they arise from the same nucleus of fact as a claim for trade secret misappropriation. It is well established that CUTSA precludes state and common law claims that are "based upon misappropriation of a trade secret." *Robert Half Int'l v. Ainsworth*, 68 F. Supp. 3d 1178, 1187 (S.D. Cal. 2014) (Hayes, J.). California courts have long held that the breadth of CUTSA demonstrates a legislative intent to "occup[y] the field" and preempt claims arising from alleged misappropriation of secret or confidential information. *K.C. Multimedia, Inc. v. Bank of Am. Tech. & Operations, Inc.*, 171 Cal. App. 4th 939, 958 (2009) (holding CUTSA "preempts common law claims that are based on the same nucleus of facts as the misappropriation of trade secrets claim for relief" (internal quotation marks omitted)). Federal courts have followed suit. *See Waymo LLC v. Uber Techs., Inc.*, 256 F. Supp. 3d 1059, 1062 (N.D. Cal. 2017) (holding CUTSA "provides the exclusive civil remedy for conduct falling within its terms and supersedes other civil remedies based on misappropriation of a trade secret"); *SunPower Corp., v. SolarCity Corp.*, 2012 WL 6160472, at *3 (N.D. Cal. Dec. 11, 2012) (same). Even when a state claim concerns material that is not actually "trade secret information," it "is still preempted by [CUTSA]." *Regents of the Univ. of Cal. v. Aisen*, 2016 WL 4097072, at *8–9 (S.D. Cal. Apr. 18, 2016) (dismissing conversion claim as superseded by CUTSA); *see also Mattel, Inc. v. MGA Ent., Inc.*, 782 F. Supp. 2d 911, 987 (C.D. Cal. 2011) (holding CUTSA "supersedes claims based on the misappropriation of confidential information, whether or not that information meets the statutory definition of a trade secret.").

Here, HLI avers that its lawsuit is for "theft and unauthorized disclosure of Trade Secrets, in violation of the laws of the United States." (Compl. ¶ 4.) And the facts that HLI alleges in support of its state and common law claims explicitly identify that they are grounded in the *exact* same nucleus of facts that HLI avers for its trade secret claim:

- HLI's conversion claim (the Second Cause of Action) is arises primarily from its claim of ownership of "trade secrets and other confidential information." (Compl. ¶ 51.)[7]
- HLI's interference with contract claim (the Third Cause of Action) is predicated on its allegations that JCVI "induc[ed]" Dr. Venter to "disclos[e] HLI's Trade Secrets" and thereby interfered with unspecified "contractual relationships" with HLI's "investors, employees, and clients." (*Id.* ¶¶ 56–57.)
- HLI's interference with prospective economic advantage claim (the Fourth Cause of Action) is premised on its allegation that JCVI "us[ed] HLI's Trade Secrets" to "solicit . . . third-party investors." (*Id.* ¶ 64.)
- HLI's claim under California's Unfair Competition Law ("UCL") (the Fifth Cause of Action) rests on the allegations that JCVI "misappropriat[ed] HLI's trade secrets to unfairly compete" and "improperly used HLI's Trade Secrets." (*Id.* ¶¶ 72, 76.)

These four causes of action are therefore superseded under CUTSA. *Robert Half*, 68 F. Supp. 3d at 1190–92 (holding claim for interference with prospective economic advantage superseded by CUTSA); *Diehl v. Starbucks Corp.*, 2014 WL 12540524, at *4–5 (S.D. Cal. June 17, 2014) (unfair competition claim under California Business and Professions Code § 17200 superseded because it "rel[ied] on conduct that gives rise to a misappropriation of trade secrets"); *Lakeland Tours, LLC v. Bauman*, 2014 WL 12570970, at *8 (S.D. Cal. Feb. 11, 2014) (interference with economic advantage and unfair competition claims, among others, superseded); *Jardin v. Datallegro, Inc.*, 2011 WL 1375311, at *2 (S.D. Cal. Apr. 12, 2011) ("Because they stem from alleged

[7] HLI also alleges that JCVI converted "HLI's physical property, including but not limited to a laptop computer." (Compl. ¶ 52.) That claim is inadequately pleaded and should also be dismissed, as argued below in Section C.1.

misappropriation of confidential information, claims III through VI are preempted by the CUTSA."); *Gabriel Techs. Corp. v. Qualcomm Incorp.*, 2009 WL 3326631, at *13 (S.D. Cal. Sept. 3, 2009) ("If the 'trade secret' facts are removed from [the state and common law claims], the claims fail to retain sufficient independent facts to survive preemption by CUTSA.")[8]

2. HLI Cannot Escape CUTSA Preemption by Artful Pleading

That HLI has chosen to allege a claim under DTSA, but not CUTSA, does not change the outcome. CUTSA's "comprehensive structure and breadth manifests a legislative intent to occupy the field" and thereby provide a uniform scheme to govern misappropriation claims. *K.C. Multimedia*, 171 Cal. App. 4th at 939; *see also Robert Half*, 68 F. Supp. 3d at 1187 (holding "'[C]UTSA occupies the field in California'" (quoting *K.C. Multimedia*, 171 Cal. App. 4th at 954)); *Copart, Inc. v. Sparta Consulting, Inc.*, 277 F. Supp. 3d 1127, 1158 (E.D. Cal. 2017) (ruling CUTSA broadly "occupies the field in California and preempts all claims of common law misappropriation" (internal quotation marks omitted)). The California Civil Code makes clear that CUTSA "shall be applied and construed to effectuate its general purpose to make uniform the law." Cal. Civ. Code § 3426.8. In *Silvaco*, the court recognized that California had faced a "notoriously haphazard web of disparate laws governing trade secret liability," and therefore the legislature sought to establish uniformity through CUTSA. 184 Cal. App. 4th at 234 ("The central purpose of [CUTSA] was precisely to

[8] *See also VasoNova Inc. v. Grunwald*, 2012 WL 4119970, at *4 (S.D. Cal. Sept. 18, 2012) (rejecting conversion and unfair competition claims as preempted by CUTSA); *Pyro-Comm Sys. Inc. v. W. Coast Fire & Integration Inc.*, 2015 WL 12765143, at *8 (C.D. Cal. Apr. 2, 2015) (ruling state and common law claims were "clearly preempted" when "based entirely" on alleged theft of trade secrets); *First Advantage Background Servs. Corp. v. Private Eyes, Inc.*, 569 F. Supp. 2d 929, 936 (N.D. Cal. 2008) (dismissing intentional interference claim because "all other claims which are based on misappropriation of trade secrets are preempted"); *SunPower Corp.*, 2012 WL 6160472, at *12–13, 16 (dismissing conversion, interference with prospective economic advantage, and unfair competition claims, among others, because they are "in essence the same wrongdoing as was alleged in connection with [the] Trade Secret Claim"); *K.C. Multimedia*, 171 Cal. App. 4th at 960–62 (dismissing unfair competition and interference with contract claims as superseded by CUTSA).

displace that web with a relatively uniform and consistent set of rules defining—and therefore *limiting*—liability."). Consequently, "CUTSA provides the exclusive civil remedy for conduct falling within its terms and supersedes other civil remedies for trade secret misappropriation." *Swarmify, Inc. v. Cloudfare, Inc.*, 2018 WL 1609379, at *2 (N.D. Cal. Apr. 3, 2018). HLI cannot avoid this broad preemption—and destroy this well-established uniformity—by pleading its trade secret claim as only a DTSA claim, while ignoring the CUTSA claim.

Courts have repeatedly rejected attempts to artfully plead around CUTSA preemption. "[T]o permit otherwise would allow plaintiffs to avoid the preclusive effect of CUTSA (and thereby plead potentially more favorable common law claims)." *SunPower*, 2012 WL 6160472, at *5 (collecting cases). In *SunPower* and the cases cited therein, courts blocked attempts by plaintiffs who attempted to avoid preemption of additional state law claims "by simply failing to allege one of the elements necessary for information to qualify as a trade secret." *Id.* Here, HLI seeks to avoid preemption by declining to allege a CUTSA claim at all, while still advancing in substance the exact same claim that would supersede its other state law claims. Under the clear purpose of CUTSA, the relevant court decisions, and public policy, HLI must fail.[9]

DTSA is a new statute, but at least one federal court has already denied the very maneuver that HLI attempts here. In *Opus Fund Services (USA) LLC v. Theorem Fund Services, LLC*, the plaintiff pled a DTSA claim but did *not* plead an Illinois Trade Secret Act ("ITSA") claim. 2017 WL 4340123, at *2 (N.D. Ill. Sept. 29, 2017). The court nonetheless held that ITSA superseded the additional state law claims because ITSA, like CUTSA, is a "comprehensive statutory protection for trade secrets," and the

[9] Permitting HLI to plead around CUTSA preemption would be especially unjustified because (a) the DTSA made *no* changes to state law, and thus cannot be a grounds to subvert California's longstanding preemption rules; (b) allowing plaintiffs to use federal courts to avoid state law substantive rules would lead to inconsistent results and encourage forum shopping; and (c) at base, the DTSA and CUTSA "are essentially the same." *Becton, Dickinson & Co. v. Cytek Biosciences Inc.*, No. 18-CV-00933-MMC, 2018 WL 2298500, at *2 (N.D. Cal. May 21, 2018).

additional claims were "premised on trade secret misappropriation." *Id.* at *5. That is precisely the scenario here. CUTSA is a comprehensive, preemptive state trade secret statute, and HLI is a plaintiff who seeks to avoid it by pleading only the federal trade secret claim. Where a plaintiff grounds its additional claims on alleged theft of trade secrets or confidential information, CUTSA's "preemptive sweep . . . must be respected and applied." *Waymo*, 256 F. Supp. 3d at 1063; *see also Swarmify*, 2018 WL 1609379, at *2 (finding state law claims superseded in part because they "arise from the same nucleus of operative facts, and form part of the same case and controversy, as [plaintiff's] federal [DTSA] claims").

C. HLI Has Not Alleged Facts Sufficient to Support Its State and Common Law Claims

1. Conversion

To allege a conversion claim, HLI must allege facts showing: (1) its "ownership or right to possession of the property; (2) the defendant's conversion by wrongful act inconsistent with the property rights of the plaintiff; and (3) damages." *In re Emery*, 317 F.3d 1064, 1069 (9th Cir. 2003). The primary thrust of HLI's conversion allegation is that JCVI, via Dr. Venter, acquired and used HLI's confidential information. (Compl. ¶¶ 50–54.) As explained in more detail with respect to HLI's trade secrets claim, HLI has not identified, and thus has not sufficiently pleaded, its ownership of any of the "confidential" material purportedly converted by JCVI. *Moore v. Regents of Univ. of Cal.*, 51 Cal. 3d 120, 142 (1990) (rejecting conversion claim for lack of non-conclusory allegations of ownership or possession). Additionally, HLI's bare-bones allegations that JCVI obtained this undefined material from HLI by a "wrongful act" and has somehow been harmed by JCVI's possession of it are nothing more than legal conclusions unsupported by facts, and therefore inadequate to sustain the claim. As for Dr. Venter's Laptop, HLI has not alleged that JCVI possesses or is using (or has ever possessed or used) the Laptop, that JCVI is doing or has done so by "wrongful act," or that HLI has suffered any quantifiable harm as a result. *Kenner v. Kelly*, 2012 WL

553943, at *3 (S.D. Cal. Feb. 21, 2012) (dismissing conversion claim because plaintiff did "not assert any factual allegations in support of their claim"). The Court should dismiss the conversion claim as a matter of law.

2. Intentional Interference with Contract

To state a claim for intentional interference with contract, HLI must allege facts showing: "(1) that there was a valid contract; (2) the defendant had knowledge of this contract; (3) the defendant's intentional acts were designed to induce a breach of disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage." *VasoNova*, 2012 WL 4119970, at *4 (citation omitted). Both of HLI's grounds for this cause of action fail.

First, HLI's allegation (on information and belief) that JCVI "intentionally interfered with HLI's contractual relationship with [Dr.] Venter" with respect to his employment relationship with HLI by "inducing" him to "disclos[e] HLI's Trade Secrets" is a circular allegation that cannot support a claim. (Compl. ¶ 56.) HLI primarily alleges that Dr. Venter's actions caused the purported interference and does not allege that any other person at JCVI was involved. (*Id.* ¶¶ 32–33.) And Dr. Venter, as alleged by HLI, is the Chairman and Chief Executive Officer of JCVI. (*Id.* ¶ 2.) Well-established California precedent states that "[o]nly a stranger to the contract, not an interested party whose performance is required under the contract, may be held liable for interfering with it." *Hamilton San Diego Apts. v. RBC Cap. Mkts. Corp.*, 2013 WL 12090313, at *2 (S.D. Cal. Mar. 5, 2013) (dismissing tortious interference claim) (citation omitted). HLI cannot maintain a claim for tortious interference for contract because Dr. Venter cannot legally interfere with his own employment relationship.

Second, HLI's vague allegation (also proffered only on information and belief) that JCVI interfered with "contractual relationships with its investors, employees and clients" is inadequate. (Compl. ¶ 57.) HLI has not pleaded the existence of any valid contract with which JCVI purportedly interfered. *Marin v. Eidgahy*, 2011 WL 2446384,

at *8 (S.D. Cal. June 17, 2011) (dismissing interference with contract claim because complaint failed to allege "basic information" about "whether a contract exists"). HLI alleges Dr. Venter "tried to solicit a former investment prospect of HLI's, (Compl. ¶ 32), but that skeletal assertion only reveals that HLI had no valid contract (the "investment prospect" was "former") and there was no disruption (Dr. Venter only "tried to solicit"). And HLI does not plead why Dr. Venter "arrang[ing] a meeting with as many as 9 HLI employees" would be improper, except for its suggestion that, "[o]n information and belief, [Dr.] Venter intended to solicit these employees." (*Id.* ¶ 33.) The same is true with respect to HLI's unsupported claim that one of its employees left as a result of Dr. Venter; HLI pleads no plausible facts connecting that employee's alleged departure to any action, intentional or not, taken by JCVI. (*Id.*) That type of uncertain allegation is not sufficient. *VasoNova*, 2012 WL 4119970, at *4 (dismissing interference with contract claim because plaintiff "failed to allege that [defendant] was the 'moving cause'" of the alleged breach). In sum, HLI's intentional interference with contract claim is legally inadequate.

3. Intentional Interference with Prospective Economic Advantage

To state a claim for intentional interference with prospective economic advantage, HLI must allege facts showing: "(1) an economic relationship between the plaintiff and some third party, with the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) intentional acts on the part of the defendant designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm to the plaintiff proximately caused by the acts of the defendant." *Westside Ctr. Assocs. v. Safeway Stores 23, Inc.*, 42 Cal. App. 4th 507, 521–22 (1996).

Here, HLI nebulously alleges that JCVI "solicit[ed]" unidentified "third-party investors." (Compl. ¶ 64.) HLI "does not allege any facts that show the existence of any specific economic relationship with identifiable third parties." *Satmodo, LLC v. Whenever Commc'ns, LLC*, 2017 WL 1365839, at *9 (S.D. Cal. Apr. 14, 2017). Nor

has HLI "alleged any facts regarding how" JCVI allegedly interfered with those unknown relationships. *SunPower*, 2012 WL 6160472, at *15. That is not enough to allege the first element. *Packaging Sys., Inc. v. PRC-Desoto Int'l, Inc.*, 268 F. Supp. 3d 1071, 1090 (C.D. Cal. 2017) (ruling "a general averment that [plaintiff] 'had relationships with its customers and prospective customers' is insufficient" (internal quotation marks omitted)); *Marin*, 2011 WL 2446384, at *10 ("The allegations in the [Complaint] are simply too speculative and do not establish Plaintiff had an existing economic relationship with a particular [third party] that was likely to provide him future economic benefit."); *Westside Ctr.*, 42 Cal. App. 4th at 524 (holding "tort applies to interference with *existing* noncontractual relations" (emphasis in original)).

The Complaint also fails to plead this cause of action to the extent HLI relies on its allegation that the rejected May 24 Deal represented a prospective economic advantage for HLI. "[T]o recover for a future loss," HLI "must show with reasonable certainty that the loss actually would have accrued." *Id.* at 530. HLI expressly avers that it declined the May 24 Deal, (Compl. ¶¶ 28, 32), and thus it cannot support HLI's claim here. And HLI also does not allege plausible facts to support any of the other elements. HLI pleads nothing that would plausibly show JCVI's actual knowledge of any relationships between HLI and another party, intentional acts by JCVI to disrupt them, actual disruption, or economic harm to HLI. *Marin*, 2011 WL 2446384, at *10 (dismissing interference claim for, *inter alia*, failure to allege defendants' "knowledge of the relationship that was allegedly interrupted"). HLI's intentional interference with prospective economic advantage claim consequently fails.

4. Unfair Competition

To plead its California UCL claim, HLI must either clearly show "violations of other laws" (the "unlawful" prong) or "conduct . . . violative of a public policy 'tethered to specific constitutional, statutory, or regulatory provisions" (the "unfair" prong). *Pellerin*, 877 F. Supp. 2d at 992. HLI's only basis for its UCL claim, as with its other claims, is the alleged misappropriation of its allegedly confidential information.

(Compl. ¶ 76.) As described in detail above, HLI has failed to adequately plead any of its other causes of action and "has not alleged any additional facts establishing 'unfair' conduct." *Pellerin*, 877 F. Supp. 2d at 992–93 (dismissing UCL claim); *see also Antman v. Uber Techs., Inc.*, 2018 WL 2151231, at *12 (N.D. Cal. May 10, 2018) ("[I]f there is no predicate unlawful violation, there is no UCL 'unlawful' claim." (internal quotation marks omitted)). The UCL claim is thus insufficient as a matter of law.

V. CONCLUSION

For the foregoing reasons, this Court should dismiss HLI's Complaint for failure to state a claim under Rule 12(b)(6) with prejudice.

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