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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CAVE CONSULTING GROUP, INC.,
Plaintiff,
v.
TRUVEN HEALTH ANALYTICS INC.,
Defendant.

Case No. [15-cv-02177-SI](#)

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT'S
MOTION TO DISMISS NON-PATENT
CLAIMS**

Re: Dkt. No. 167

On April 14, 2017, the Court held a hearing on defendant’s motion to dismiss the second, third, fourth, fifth, and sixth causes of action (the “non-patent claims”) from plaintiff’s third amended complaint. For the reasons set forth below, the Court GRANTS IN PART and DENIES IN PART defendant’s motion, and GRANTS leave to amend. **Any amended complaint must be filed no later than May 8, 2017.**

BACKGROUND

On May 14, 2015, plaintiff Cave Consulting Group, Inc. sued defendant Truven Health Analytics, Inc., alleging infringement of U.S. Patent No. 8,340,981 and U.S. Patent No. 8,768,726. Dkt. No. 1 ¶ 4. CCGroup’s complaint was amended once as of right on July 15, 2017 and again by stipulation on November 18, 2015. Leave to file a Third Amended Complaint was granted on December 22, 2016, but prior to filing that complaint plaintiff sought and was granted (over defense opposition) a further amended complaint. On February 21, 2017, CCGroup filed a third amended complaint (“TAC”), adding claims for misappropriation of trade secret under the California Uniform Trade Secret Act (“CUTSA”), the Michigan Uniform Trade Secret Act (“MUTSA”), and the federal Defend Trade Secret Act (“DTSA”); claims for unfair competition

1 under the California Unfair Competition Law, California common law, Michigan common law,
2 and the federal Lanham Act; and claims for intentional interference with prospective economic
3 advantage under California common law and Michigan common law. TAC (Dkt. No. 159) ¶¶ 65-
4 92.

5 The additional claims against Truven arise from conduct that apparently occurred in
6 Pennsylvania and Rhode Island. In December 2016, Truven produced in discovery e-mails that
7 allegedly show that in 2014 CCGroup was competing for a Truven client located in Pennsylvania.
8 TAC ¶¶ 14-36. The TAC alleges that after Truven’s senior account director informed a Truven
9 vice president that the account might be in jeopardy, the vice president asked if the account
10 director could acquire the materials CCGroup had presented to the client. *Id.* The account
11 director responded that he could. *Id.* The account director first asked one of the client’s
12 employees for copies of the presentation materials but the employee declined to turn over any
13 materials. *Id.* The account director then reached out to a contact in Rhode Island who worked at a
14 business that had formerly used CCGroup’s services. *Id.* The contact e-mailed the account
15 director a copy of CCGroup’s confidential presentation materials and the account director e-
16 mailed the presentation to the vice president, asking the vice president to keep the presentation
17 materials confidential. *Id.*

18 According to CCGroup, the confidential presentation materials contain trade secret
19 information about CCGroup’s software products. *Id.* ¶ 29. Upon obtaining the presentation
20 materials, Truven’s vice president and account manager reviewed and discussed them. *See id.*
21 ¶¶ 27, 28. According to CCGroup, Truven then used the confidential materials to prepare for a
22 meeting with the client that apparently took place in Pennsylvania in August 2014. *Id.* ¶ 35. The
23 client chose to remain with Truven. *Id.*

24 After the client meeting, a Truven vice president shared the confidential materials with
25 another Truven employee in April 2015. *Id.* ¶ 36. CCGroup alleges that Truven continues to use
26 the alleged trade secrets to date. Specifically, CCGroup claims that “[o]n information and belief,
27 Truven has continued to use CCGroup’s IP after securing the [client’s] business,” and “[o]n
28 information and belief, Truven has also used CCGroup’s IP in competing against CCGroup for

1 potential customers other than [the client], including for the purpose of developing products and
2 modifying existing products to be more competitive with CCGroup’s offering.” *Id.* ¶ 36.

3
4 **LEGAL STANDARDS**

5 **I. Personal Jurisdiction**

6 Federal Rule of Civil Procedure 12(b)(2) permits a court to dismiss a complaint for failure
7 to state personal jurisdiction. Fed. R. Civ. P. 12(b)(2). “Where a defendant moves to dismiss a
8 complaint for lack of personal jurisdiction, the plaintiff bears the burden of demonstrating that
9 jurisdiction is appropriate.” *Sher v. Johnson*, 911 F.2d 1357, 1361 (9th Cir. 1990). When the
10 motion is based only on the pleadings, “the plaintiff need only make a prima facie showing of
11 jurisdictional facts.” *Id.* Allegations that are unchallenged are taken as true and conflicts between
12 the pleadings are resolved in plaintiff’s favor. *AT & T v. Compagnie Bruxelles Lambert*, 94 F.3d
13 586, 588 (9th Cir. 1996). Because “the issue of personal jurisdiction with respect to non-patent
14 counts is not intimately linked to patent law,” Ninth Circuit law determines whether personal
15 jurisdiction obtains. *See Silent Drive, Inc. v. Strong Indus., Inc.*, 326 F.3d 1194, 1201 (Fed. Cir.
16 2003).

17
18 **II. Failure to State a Claim**

19 Federal Rule of Civil Procedure 12(b)(6) permits a court to dismiss a cause of action for
20 “failure to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). To survive a
21 Rule 12(b)(6) motion to dismiss, a plaintiff must allege “enough facts to state a claim to relief that
22 is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). This “facial
23 plausibility” standard requires a plaintiff to allege facts that add up to “more than a sheer
24 possibility that a defendant has acted unlawfully.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).
25 While courts do not require “heightened fact pleading of specifics,” a plaintiff must allege facts
26 sufficient to “raise a right to relief above the speculative level.” *Twombly*, 550 U.S. at 544, 555.

27 In deciding whether a plaintiff has stated a claim upon which relief can be granted, the
28 court must assume that the plaintiff’s allegations are true and must draw all reasonable inferences

1 in the plaintiff's favor. *See Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987).
2 However, the court is not required to accept as true “allegations that are merely conclusory,
3 unwarranted deductions of fact, or unreasonable inferences.” *In re Gilead Scis. Sec. Litig.*, 536
4 F.3d 1049, 1055 (9th Cir. 2008). If the court dismisses the complaint, it must then decide whether
5 to grant leave to amend. The Ninth Circuit has “repeatedly held that a district court should grant
6 leave to amend even if no request to amend the pleading was made, unless it determines that the
7 pleading could not possibly be cured by the allegation of other facts.” *Lopez v. Smith*, 203 F.3d
8 1122, 1130 (9th Cir. 2000) (citations and internal quotation marks omitted).

9
10 **DISCUSSION**

11 **I. Jurisdiction**

12 **A. Personal Jurisdiction**

13 Defendant argues that the Court lacks personal jurisdiction for plaintiff’s non-patent
14 claims.¹ Mot. (Dkt. No. 167) at 15. Plaintiff’s opposition to defendant’s motion only argues that
15 the Court has general and specific jurisdiction. However, at oral argument plaintiff contended that
16 the Court could also exercise pendent personal jurisdiction over plaintiff’s non-patent claims. As
17 discussed below, the Court finds that exercising pendent personal jurisdiction over plaintiff’s
18 claims is appropriate in this case.²

19 “If personal jurisdiction exists over one claim, but not others, the district court may
20 exercise pendent personal jurisdiction over any remaining claims that arise out of the same
21 ‘common nucleus of operative facts’ as the claim for which jurisdiction exists.” *Picot v. Weston*,

22
23 ¹ In its Answer to CCGroup’s First Amended Complaint, Truven admits that the Court has
24 personal jurisdiction over CCGroup’s patent claims. Dkt. No. 30 at 2. At oral argument,
25 CCGroup contended that this admission also renders Truven subject to jurisdiction for the non-
26 patent claims. The Court disagrees and finds that Truven’s jurisdictional admission was made in
27 the context of the patent claims and thus is limited to the patent claims.

28 ² The Court finds that the TAC does not allege a basis for general personal jurisdiction
over the non-patent claims because plaintiff does not allege that defendant is “essentially at home”
in California as required by *Daimler AG v. Bauman*, 134 S. Ct. 746, 762 (2014), nor does plaintiff
allege any suit-related contacts sufficient to establish personal jurisdiction. *See Walden v. Fiore*,
134 S. Ct. 1115, 1121 (2014) (holding a defendant’s knowledge that out-of-state conduct will
cause harm in the forum state is insufficient to establish required minimum contacts).

1 780 F.3d 1206, 1211 (9th Cir. 2015) (citing *Action Embroidery Corp. v. Atl. Embroidery, Inc.*, 368
2 F.3d 1174, 1181 (9th Cir. 2004)). “Whether to exercise pendent personal jurisdiction is
3 committed to the sound discretion of the district court.” *CE Distribution, LLC v. New Sensor*
4 *Corp.*, 380 F.3d 1107, 1113 (9th Cir. 2004).

5 Defendant does not dispute that the Court has personal jurisdiction over plaintiff’s patent
6 infringement claims. Exercising pendent personal jurisdiction over the non-patent claims is
7 appropriate because of the factual overlap between the patent and non-patent claims, and because
8 it is in the interest of judicial efficiency. Both the patent and non-patent claims concern the same
9 products and technology: defendant allegedly misappropriated trade secrets pertaining to
10 plaintiff’s MarketBasket system and plaintiff’s MarketBasket system practices the ‘726 patent that
11 defendant is allegedly infringing. Plaintiff’s Rule 26(a) disclosures for the patent claims also
12 identify as possible witnesses six of defendant’s employees who also allegedly misappropriated
13 plaintiff’s trade secrets. In *Action Embroidery*, the Ninth Circuit emphasized that the interests of
14 “judicial economy, avoidance of piecemeal litigation, and overall convenience of the parties”
15 animate the pendent personal jurisdiction doctrine. *Action Embroidery*, 368 F.3d at 1180. In
16 order to avoid multiple lawsuits involving the same parties and products, the Court finds it
17 appropriate to exercise pendent personal jurisdiction over plaintiff’s non-patent claims.

18

19 **B. Subject Matter Jurisdiction**

20 On April 19, 2017, while the Court held a supplemental claim construction hearing, the
21 parties appeared to agree that the Court has diversity jurisdiction over the state non-patent claims
22 under 28 U.S.C. § 1332. If plaintiff files an amended complaint, diversity jurisdiction should be
23 properly pled.

24

25 **II. Federal Claims**

26 **A. Defend Trade Secrets Act**

27 Defendant argues that plaintiff fails to state a claim under the Defend Trade Secrets Act
28 (“DTSA”) because the alleged misappropriation occurred before the DTSA’s passage. Mot. (Dkt.

1 No. 167) at 4. Plaintiff concedes that misappropriation occurring before the DTSA’s passage is
2 not actionable but argues that this “does not foreclose CCGroup from pursuing claims against
3 Truven’s use of CCGroup’s trade secrets after the enactment of the DTSA.” Mot. (Dkt. No. 174)
4 at 19.

5 Congress enacted the DTSA May 11, 2016. Defend Trade Secrets Act of 2016, PL 114-
6 153, May 11, 2016, 130 Stat 376. The DTSA only covers acts occurring “on or after the date of
7 the enactment of this Act.” *Id.* The Act creates a cause of action for the “owner of a trade secret
8 that is misappropriated . . . if the trade secret is related to a product or service used in, or intended
9 for use in, interstate or foreign commerce.” 18 U.S.C. § 1836(b)(1). A “trade secret” includes “all
10 forms and types” of information that derives value from being secret and that the owner took
11 reasonable measures to keep secret. *Id.* at § 1839(3)(A)(B). “Misappropriation” consists of (a)
12 “acquisition of a trade secret” by a person who knows or should know the secret was improperly
13 acquired or (b) “disclosure or use of a trade secret of another without express or implied consent.”
14 § 1839(5)(A)(B).

15 The Act’s text contemplates three theories of liability: (1) acquisition, (2) disclosure, or
16 (3) use. *Id.* at § 1839(5) (defining “misappropriation” as involving acquisition, disclosure, or use
17 of a trade secret). Nothing suggests that the DTSA forecloses a use-based theory simply because
18 the trade secret being used was misappropriated before the DTSA’s enactment. As the *Adams*
19 *Arms* court noted, “Congress omitted from DTSA the following language from Section 11 of the
20 [Uniform Trade Secret Act]: ‘With respect to a continuing misappropriation that began prior to the
21 effective date, the [Act] also does not apply to the continuing misappropriation that occurs after
22 the effective date.’” *Adams Arms, LLC v. Unified Weapon Sys., Inc.*, 16-1503, 2016 WL 5391394,
23 at *6 (M.D. Fla. Sept. 27, 2016) (quoting Unif. Trade Secrets Act, § 11).

24 Defendant cites *Adams Arms* for the proposition that “the court dismissed a DTSA claim
25 because the alleged trade secrets were acquired before the effective date of the DTSA.” Mot.
26 (Dkt. No. 167) at 4. In *Adams Arms*, the plaintiff was a manufacturer of military rifles and the
27 defendant company approached the plaintiff about working together on a bid to supply arms to the
28 Peruvian military. The parties signed a nondisclosure and confidentiality agreement, and the

1 plaintiff provided its confidential and proprietary information to the defendant in 2014 and 2015,
2 and the defendant used that information to secure the Peruvian military contract in May 2016. The
3 court held that the plaintiff’s pre-enactment acquisition claim failed as a matter of law but that the
4 plaintiff’s post-enactment disclosure claim was viable:

5 The Complaint specifically alleges that UWS signed a contract with the Peruvian
6 military in late May or early June 2016, which was after DTSA’s effective date,
7 and that the contract used “all the designs, specifications, and processes divulged
8 under false pretenses by [Adams Arms].” That allegation supports an inference
9 that Defendants disclosed Adams Arms’ trade secrets after the effective date.
10 Through discovery, the parties may clarify the timing and nature of any such
11 disclosures.

12 *Adams Arms*, 2016 WL 5391394, at *6 (internal citation omitted).

13 Defendant also cites *Avago Technologies* for the proposition that “activity that continued
14 past the DTSA enactment date . . . is not sufficient to allege a post-DTSA claim.” Mot. (Dkt. No.
15 167) at 5. In *Avago Technologies*, the plaintiff alleged that the defendant obtained the plaintiff’s
16 confidential and proprietary information and used that information in patent applications filed
17 prior to the enactment of the DTSA. The defendant moved to dismiss the DTSA claim on the
18 ground that all of the conduct at issue predated the DTSA. In response, the plaintiff argued that
19 the DTSA claim was viable because the defendant continued to use the confidential information
20 by prosecuting the same patent applications after the enactment of the DTSA. *Avago Techs. U.S.*
21 *Inc. v. Nanoprecision Prod., Inc.*, 16-3737 JCS, 2017 WL 412524, at *3-4, 8 (N.D. Cal. Jan. 31,
22 2017). The court dismissed the DTSA claim, reasoning:

23 As currently alleged, the confidential information at issue was disclosed when the
24 Avago Applications were published, before the DTSA came into effect. nPP has
25 not cited any authority suggesting that the DTSA allows a misappropriation claim
26 to be asserted based on the continued use of information that was disclosed prior to
27 the effective date of the statute. Simply alleging that the same information was
28 disclosed “again” is not sufficient to avoid this result as “disclosure,” by definition,
implies that the information was previously secret.

29 *Id.* (citation omitted). The *Avago* court distinguished *Adams Arms* by noting that in *Adams Arms*,
30 “there were allegations that specific information had been disclosed (apparently for the first time)
31 after the effective date of the DTSA and therefore, the court allowed the claim to go forward.” *Id.*
32 at *9.

33 Here, plaintiff alleges that defendant acquired the trade secrets in 2014 and used those

1 trade secrets in a 2014 client meeting. TAC (Dkt. No. 159) ¶¶ 15-34. Plaintiff also alleges that
2 “on April 1, 2015, Kristel Schimmoller, a Truven Vice President who was copied on Atkin’s July
3 17, 2014 email about [the client] being ‘ready to sign an agreement’ with CCGroup, forwarded the
4 CCGroup Confidential Presentation Materials to Mark Gillespie, another Truven employee.”
5 TAC (Dkt. No. 159) ¶ 36. However, all of this conduct predates the enactment of the DTSA.
6 Plaintiff generally alleges “[o]n information and belief, Truven has also used CCGroup’s IP in
7 competing against CCGroup for potential customers other than [the Pennsylvania client],
8 including for the purpose of developing products and modifying existing products to be more
9 competitive with CCGroup’s offerings.” *Id.* This allegation is insufficient to state a claim, as
10 plaintiff makes no specific allegations that defendant used the alleged trade secrets after the
11 DTSA’s May 11, 2016 enactment. The Court finds that without facts about when post-enactment
12 use occurred and whether the information disclosed was new or somehow different from the prior
13 misappropriation, plaintiff has failed to state a claim under the DTSA. Accordingly, plaintiff’s
14 third cause of action is dismissed. Although the Court is skeptical about doing so at this late date
15 in the litigation, leave to amend is granted. **Any amended complaint must be filed no later than**
16 **May 8, 2017.**

17
18 **B. Lanham Act**

19 Defendant argues that plaintiff fails to state a claim under 15 U.S.C. § 1125(a) because
20 plaintiff “makes no specific, factual allegations that Truven represented false or misleading facts
21 to [the client] or any other third party.” Mot. (Dkt. No. 167) at 5. The TAC alleges, “On
22 information and belief, in competing against CCGroup through the use of CCGroup’s IP, Truven
23 has made false or misleading descriptions and/or representations of fact regarding the nature,
24 development, quality, and/or origin[] of the products Truven offers in competition with
25 CCGroup’s offering.” TAC ¶ 82.

26 A plaintiff asserting a claim under 15 U.S.C. § 1125(a) must show that a defendant made a
27 false statement of fact in a commercial transaction about its own or another’s product. *See*
28 *Southland Sod Farms v. Stover Seed Co.*, 108 F.3d 1134, 1139 (9th Cir. 1997). “To demonstrate

1 falsity within the meaning of the Lanham Act, a plaintiff may show that the statement was literally
2 false, either on its face or by necessary implication, or that the statement was literally true but
3 likely to mislead or confuse consumers.” *Id.* (citation omitted).

4 Plaintiff argues that it pled facts that support a plausible inference that defendant made
5 misrepresentations during a client meeting. Opp’n (Dkt. No. 174) at 20-21. Plaintiff notes that
6 the TAC alleges that defendant and plaintiff were competing for the same client’s business, that
7 defendant became concerned plaintiff would win the client, that defendant sought out inside
8 information on plaintiff’s product, that defendant acquired the information from a source, that
9 defendant was impressed by the information and used the information to prepare for the client
10 meeting, and that defendant ultimately retained the client. Plaintiff argues that these allegations
11 support an inference that defendant misrepresented either its product or plaintiff’s product at the
12 client meeting in an effort to retain the client.

13 The Court disagrees. Plaintiff has not alleged that Truven made any specific false or
14 misleading misrepresentations of fact. Plaintiff’s allegation, that “in competing against CCGroup
15 through the use of CCGroup’s IP, Truven has made false or misleading descriptions and/or
16 representations of fact regarding the nature, development, quality, and/or origin[] of the products
17 Truven offers in competition with CCGroup’s offering,” (TAC ¶ 82) is simply a formulaic
18 recitation of the elements of a cause of action. The Court is also not persuaded that plaintiff has
19 alleged facts from which the Court could reasonably infer that defendant made any
20 misrepresentations about its own product or plaintiff’s product in the client meeting. From the
21 facts alleged, it is plausible that defendant used the information from plaintiff’s presentation
22 materials to make truthful representations about differences between the parties’ products or used
23 the information to determine which features of its own product should be emphasized. *See*
24 *Twombly*, 550 U.S. at 564-66. Accordingly, the Court concludes that plaintiff has failed to state a
25 claim under the Lanham Act and dismisses this claim. Although the Court is skeptical about
26 doing so at this late date in the litigation, leave to amend is granted. **Any amended complaint**
27 **must be filed no later than May 8, 2017.**

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III. State Claims

Plaintiff asserts four claims under California law: misappropriation of trade secrets under the California Uniform Trade Secret Act (“CUTSA”), unfair competition under the California Unfair Competition Law (“UCL”), unfair competition under California common law, and intentional interference with prospective economic advantage under California common law. TAC (Dkt. No. 159) ¶¶ 67, 77, 88. Plaintiff asserts three claims under Michigan law: misappropriation of trade secret under the Michigan Uniform Trade Secrets Act (“MUTSA”), unfair competition under Michigan common law, and tortious interference with economic expectancy under Michigan common law. *Id.*

A. Extraterritoriality

Defendant moves to dismiss the state claims on the ground that California and Michigan statutory and common law do not apply to conduct that occurred in Rhode Island and Pennsylvania, where there are no allegations that conduct occurred in California or Michigan. Plaintiff argues that the facts support extraterritorial application of California law, and plaintiff’s opposition does not address the extraterritorial application of Michigan law.

1. California

Plaintiff alleges statutory violations of the California Unfair Competition Law California and the California Uniform Trade Secrets Act. Plaintiff also alleges the common law torts of unfair competition and intentional interference with prospective economic advantage.

a. UCL Claim

When a plaintiff resides in California, the UCL may apply to out-of-state conduct, especially when the plaintiff suffered in-state harm. *Norwest Mortgage, Inc. v. Superior Court*, 72 Cal. App. 4th 214, 222 (1999); *see also Speyer v. Avis Rent A Car System, Inc.*, 415 F. Supp. 2d 1090, 1099 (S.D. Cal. 2005) (The “UCL applies to wrongful conduct that occurs out-of-state but results in injury in California.”). In contrast, the UCL may not apply to out-of-state conduct when

1 a non-resident plaintiff brings a claim. *Sullivan v. Oracle Corp.*, 51 Cal. 4th 1191, 1207-08
2 (2011).

3 Defendant relies on *Sullivan v. Oracle* for the proposition that the UCL does not apply to
4 out-of-state conduct. However, *Sullivan* involved residents of Arizona and Colorado who brought
5 UCL claims based upon conduct that occurred in Arizona and Colorado. Plaintiff, in contrast,
6 resides in California and alleges that it suffered harm in California. Accordingly, may bring a
7 claim under the UCL. *Adobe Sys.*, 125 F. Supp. 3d at 972 (“Accordingly, Adobe alleges that it is a
8 California resident that has suffered harm in California as a result of Blue Source’s actions. Even
9 assuming that Blue Source’s sales of infringing products occurred out-of-state, Adobe—as a
10 California resident who allegedly suffered harm in California—may still properly bring a cause of
11 action under the UCL.”).

12
13 **b. CUTSA Claim**

14 The Court concludes that plaintiff’s CUTSA claim is barred by the extraterritoriality
15 doctrine. This doctrine presumes that “the Legislature did not intend the statutes of this state to
16 have force or operation beyond the boundaries of the state.” *Norwest Mortg., Inc. v. Superior*
17 *Court*, 72 Cal. App. 4th 214, 222 (1999). The presumption is only overcome when “a contrary
18 intention is clearly expressed or reasonably can be inferred from the language or purpose of the
19 statute.” *Id.* (citing *Diamond Multimedia Systems, Inc. v. Superior Court*, 19 Cal.4th 1036, 1058-
20 59 (1999)).

21 Neither party cites case law specifically addressing CUTSA’s extraterritorial application.
22 The Act’s express purpose is to “make uniform” state trade secret law. Cal. Civ. Code § 3426.8.
23 No legislative history suggests the Act was intended to have extraterritorial effect. Further, “the
24 California Supreme Court has made clear that such limitations are *presumed to be present* unless
25 the legislature’s contrary intention ‘is clearly expressed or reasonably to be inferred from the
26 language of the act or from its purpose, subject matter or history.’” *O’Connor v. Uber Techs.,*
27 *Inc.*, 58 F. Supp. 3d 989, 1004 (N.D. Cal. 2014) (original emphasis) (citation omitted). That
28 presumption is not rebutted here. Accordingly, plaintiff’s CUTSA claim is dismissed. Although

1 the Court is skeptical about doing so at this late date in the litigation, leave to amend is granted. If
2 plaintiff wishes to reassert a claim under the CUTSA, plaintiff must allege a factual and legal basis
3 for such a claim.³ **Any amended complaint must be filed no later than May 8, 2017.**

4
5 **c. Common Law**

6 Plaintiff alleges California common law claims for unfair competition and intentional
7 interference with prospective economic advantage. Defendant's opening brief simply asserts that
8 the common law does not apply extraterritorially, citing inapposite authority. Mot. (Dkt. No. 167)
9 at 6 (citing *Diamond Multimedia Sys., Inc. v. Superior Court*, 19 Cal. 4th 1036, 1059 (1999)).
10 Plaintiff cites no authority regarding the California common law's extraterritorial application.
11 Without authority from the California courts or the California legislature, the Court will not
12 presume that the California common law is meant to have extraterritorial effect. Accordingly,
13 plaintiff's California common law claims are dismissed without leave to amend.

14
15 **2. Michigan**

16 Plaintiff does not allege that wrongful conduct occurred in Michigan nor does plaintiff
17 allege that it suffered harm in Michigan. Defendant argues that Michigan statutory law applies
18 extraterritorially "only when the legislature's intent is clear." Mot. (Dkt. No. 167) at 6. Defendant
19 further argues that Michigan common law does not apply extraterritorially. *Id.* Plaintiff does not
20 address defendant's arguments regarding the extraterritorial application of Michigan law.

21 Plaintiff cites no case law to support the proposition that a Michigan statute can be invoked
22 by a non-resident plaintiff basing a claim on out-of-state conduct that caused out-of-state harm
23 simply because the defendant resides in Michigan. Accordingly, the Court does not depart from

24
25 _____
26 ³ Defendant also contends that if plaintiff can bring a claim under the CUTSA, that statute
27 preempts other California claims arising out of the same facts. In light of the dismissal of the
28 CUTSA claim, the Court does not reach the issue of preemption. However, the Court notes that
"California's Uniform Trade Secrets Act 'occupies the field' of common law claims based on the
misappropriation of trade secret," *Mattel, Inc. v. MGA Entm't, Inc.*, 782 F. Supp. 2d 911, 985
(C.D. Cal. 2011), and also preempts UCL claims that arise from the same facts as CUTSA claims.
AirDefense Inc. v. AirTight Networks, Inc., No. C 05-04615 JF, 2006 WL 2092053, at *5 (N.D.
Cal. July 26, 2006).

1 the presumption that a “statute is intended to have no extraterritorial effect.” *Sexton v. Ryder*
2 *Truck Rental, Inc.*, 413 Mich. 406, 435 (1982) (citing 73 Am. Jur. 2d, Statutes, § 359, p. 492).
3 *Sexton* holds that only the legislature can create exceptions to the general rule that the common
4 law does not apply outside of a state’s territorial jurisdiction. *See Sexton*, 413 Mich. at 434.
5 Plaintiff does not cite authority establishing that the tort unfair competition or tortious interference
6 with economic activity is subject to an exception. Accordingly, plaintiff’s claims based on
7 Michigan statutory and common law are dismissed without leave to amend.

8
9 **CONCLUSION**


10 For the foregoing reasons, defendant’s motion to dismiss is GRANTED IN PART and
11 DENIED IN PART as follows:

- 12 1. Plaintiff’s DTSA claim is dismissed with leave to amend.
- 13 2. Plaintiff’s Lanham Act claim is dismissed with leave to amend.
- 14 3. Defendant’s motion to dismiss plaintiff’s UCL claim is denied.
- 15 4. Plaintiff’s CUTSA claims are dismissed with leave to amend.
- 16 5. Plaintiff’s California common law claims and Michigan statutory and common law claims
17 are dismissed without leave to amend.

18 **If plaintiff wishes to amend the complaint, plaintiff must do so by May 8, 2017.**

19
20 **IT IS SO ORDERED.**

21
22 Dated: April 24, 2017

23 

24 SUSAN ILLSTON
25 United States District Judge
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27
28