

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Oct 08, 2020

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED ENERGY WORKERS
HEALTHCARE CORPORATION,

NO: 4:19-CV-5283-RMP

Plaintiff,

ORDER GRANTING IN PART AND
DENYING IN PART INDIVIDUAL
DEFENDANTS' RULE 12
MOTIONS, DENYING HAVEN'S
MOTIONS TO DISMISS, AND
GRANTING HAVEN'S MOTION
TO STRIKE

v.

ATLANTIC HOME HEALTH CARE,
LLC, doing business as Haven Home
Health, LLC; VALERIE
THELANDER, an individual;
KRYSTAL VANBUSKIRK, an
individual; DANIELLE WOLFE, an
individual,

Defendants

BEFORE THE COURT is Defendants' Motion to Dismiss for failure to state a claim upon which relief may be granted. ECF Nos. 37, 38. Individual Defendants move, in the alternative, for a More Definite Statement for Counts I through X and Count XIII. ECF No. 37. The Court heard oral argument with Stefan Szpajda and Kevin Kooms appearing on behalf of Plaintiff United Energy Workers Healthcare

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' RULE 12 MOTIONS ~ 1

1 Corporation, and Brian G. Davis appearing on behalf of Valerie Thelander, Krystal
2 VanBuskirk, and Danielle Wolfe (collectively, “Individual Defendants”). James M.
3 Barrett appeared on behalf of Defendant Atlantic Home Health Care, LLC, doing
4 business as Haven Home Health, LLC (“Haven”). The Court has reviewed the
5 pleadings and law and is fully informed.

6 **BACKGROUND**

7 Plaintiff United Energy Workers Healthcare Corporation (“UEW Healthcare”)
8 provides home health services to beneficiaries of the Energy Employees
9 Occupational Illness Compensation Program and the Radiation Exposure
10 Compensation Act. ECF No. 1 at 6. Individual Defendant Thelander is alleged to
11 be a former independent contractor with UEW Healthcare. *Id.* at 7–8. Individual
12 Defendants VanBuskirk and Wolfe are alleged to be former employees of UEW
13 Healthcare. *Id.* at 11–12. Plaintiff alleges that when each Individual Defendant was
14 hired, she signed an employment agreement (“Agreement[s]”) including restrictive
15 covenants prohibiting the solicitation of UEW Healthcare patients and the disclosure
16 of confidential information. *Id.* at 8, 13; *see also* ECF Nos. 1-6, 1-7, and 1-8.
17 Plaintiff further alleges that VanBuskirk’s and Wolfe’s Agreements included
18 covenants not to compete. ECF Nos. 1-7 at 17, 1-8 at 4.

19 UEW Healthcare alleges that on or about November 26, 2019, the Individual
20 Defendants began “sharing their plans to end their association and employment with
21 UEW Healthcare, to depart for one of UEW Healthcare’s competitors, and to take

1 UEW Healthcare’s patients with them in violation of their respective Agreements
2 and obligations to UEW Healthcare.” ECF No. 1 at 14. On December 6, 2019, the
3 Individual Defendants allegedly resigned from UEW Healthcare. *Id.* As part of her
4 resignation announcement, Defendant Wolfe allegedly made it known that the
5 Individual Defendants’ new employer, Haven, offered the Individual Defendants
6 \$1,000 for each client that the Individual Defendants brought with them to Haven.
7 *Id.* at 15.

8 On December 7, 2019, UEW Healthcare sent each Individual Defendant a
9 cease and desist letter reminding them of the restrictive covenants to which they
10 previously had agreed. ECF No. 1-9 at 2–8. UEW Healthcare also sent Haven a
11 cease and desist letter which advised Haven that the Individual Defendants were
12 subject to “contractual commitments in their agreements” with UEW Healthcare. *Id.*
13 at 9–10.

14 UEW Healthcare filed a complaint asserting claims under the Defense of
15 Trade Secrets Act (“DTSA”) and the Washington Uniform Trade Secrets Act
16 (“WUTSA”). Additionally, UEW Healthcare asserts breach of contract claims,
17 alleging that the Individual Defendants breached the nonsolicitation provisions of
18 their Agreements with UEW Healthcare. UEW Healthcare further alleges that
19 Defendants VanBuskirk and Wolfe violated the covenants not to compete in their
20 Agreements. UEW Healthcare claims Haven tortiously interfered with a contract
21 and tortiously interfered with a business relationship or expectancy in violation of

1 Washington law. Against all Defendants, UEW Healthcare asserts a claim of civil
2 conspiracy under Washington law.

3 The Court granted in part UEW Healthcare's Motion for a Temporary
4 Restraining Order, restraining the Individual Defendants from soliciting any of
5 UEW Healthcare's clients or prospective clients with whom the Individual
6 Defendants had responsibilities or duties, possessed confidential information about,
7 or were involved in the development of such client, for the purpose of selling
8 competing services to those offered by UEW Healthcare. *See* ECF No. 24. The
9 Court then granted the parties' Stipulated Preliminary Injunction, now in effect,
10 enjoining the Individual Defendants from soliciting UEW Healthcare's clients,
11 prospective clients, employees, and independent contractors. *See* ECF No. 30.

12 The Individual Defendants and Haven move to dismiss all counts in the
13 Complaint for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6). ECF Nos.
14 37, 38. Alternatively, the Individual Defendants request that the Court order UEW
15 Healthcare to file a more definite statement pursuant to Fed. R. Civ. P. 12(e).
16 Defendant Haven moves to strike Plaintiff's request for punitive damages pursuant
17 to Fed. R. Civ. P. 12(f).

18 LEGAL STANDARD

19 Motion to Dismiss

20 A plaintiff's claim will be dismissed if it fails to state a claim upon which
21 relief can be granted. Fed. R. Civ. P. 12(b)(6). To survive a motion to dismiss

1 under Rule 12(b)(6), the plaintiff must plead “enough facts to state a claim to relief
2 that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570
3 (2007). A claim is plausible when the plaintiff pleads “factual content that allows
4 the court to draw the reasonable inference that the defendant is liable for the
5 misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

6 In ruling on a Rule 12(b)(6) motion to dismiss, a court “accept[s] factual
7 allegations in the complaint as true and construe[s] the pleadings in the light most
8 favorable to the nonmoving party.” *Manzarek v. St. Paul Fire & Marine Ins. Co.*,
9 519 F.3d 1025, 1031 (9th Cir. 2008). However, “[c]onclusory allegations of law and
10 unwarranted inferences are insufficient to defeat a motion to dismiss.” *Adams v.*
11 *Johnson*, 355 F.3d 1179, 1183 (9th Cir. 2004).

12 On a 12(b)(6) motion, “a district court should grant leave to amend even if no
13 request to amend the pleading was made, unless it determines that the pleading could
14 not possibly be cured by the allegation of other facts.” *Cook, Perkiss & Liehe v. N.*
15 *Cal. Collection Serv.*, 911 F.2d 242, 247 (9th Cir. 1990). If the “allegation of other
16 facts consistent with the challenged pleading could not possibly cure the deficiency,
17 then the dismissal without leave to amend is proper.” *Albrecht v. Lund*, 845 F.2d
18 193, 195–96 (9th Cir. 1988) (citation omitted).

19 **Motion for More Definite Statement**

20 As an alternative to dismissal, the Individual Defendants move for a more
21 definite statement pursuant to Rule 12(e). ECF No. 37. A Rule 12(e) motion for

1 more definite statement is appropriate where a pleading “is so vague or ambiguous
2 that the party cannot reasonably prepare a response.” Fed. R. Civ. P. 12(e).

3 **DISCUSSION**

4 The Individual Defendants move to dismiss Counts I through X of the
5 Complaint, and join Haven’s motion to dismiss Count XIII, arguing that UEW
6 Healthcare has failed to plead plausible claims of federal and state trade secret act
7 violations; breaches of contract arising under the three restrictive covenants; and
8 civil conspiracy under Washington law. ECF No. 1 at 17–32, 34–35; ECF Nos. 37,
9 38. Defendant Haven moves to dismiss Counts XI through XII, asserting that
10 United Energy Workers failed to plead plausible claims of tortious interference with
11 a contract, tortious interference with a business relationship or expectancy, and civil
12 conspiracy under Washington law. Defendant Haven also moves the Court to strike
13 Plaintiff’s request for punitive damages. ECF No. 1 at 32–38; ECF No. 38. The
14 Court will consider each claim in turn.

15 **Federal and State Trade Secret Claims (Counts I & II)**

16 For a claim arising under the Defense of Trade Secrets Act (“DTSA”) and
17 Washington Uniform Trade Secrets Act (“WUTSA”), plaintiffs must plead (1) the
18 existence of a protectable trade secret; (2) misappropriation of the secret by
19 defendants; and (3) a nexus between the trade secret and interstate commerce.

20 *DLMC, Inc. v. Flores*, 2018 WL 6682986, at *2 (Dec. 19, 2018 D. Hawai’i) (citing 8
21 U.S.C. § 1836(b)(1)).

1 **1. UEW Has Adequately Pleaded the Existence of Trade Secrets**

2 The Individual Defendants contend that UEW Healthcare failed to identify its
3 alleged trade secrets with sufficient particularity to state a claim under the DTSA
4 and WUTSA. ECF No. 37 at 4–6.

5 Under both the DTSA and WUTSA, information qualifies as a trade secret if
6 (a) the owner has taken reasonable measures to keep it secret; and (b) the
7 information derives independent economic value from not being generally known to,
8 and not being readily ascertainable through proper means, by another person who
9 can obtain economic value from it. 18 U.S.C. § 1839(3); RCW 19.108.010(4). A
10 key factor in determining whether information has “independent economic value” is
11 the effort and expense expended on developing the information. *Ed Nowogroski*
12 *Ins., Inc. v. Rucker et al.*, 971 P.2d 936, 945 (Wash. 1999). Although a complaint
13 need not spell out the details of the trade secret, a plaintiff must identify the trade
14 secret with “sufficient particularity . . . to permit the defendant to ascertain at least
15 the boundaries within which the secret lies. *Bombardier Inc. v. Mitsubishi Aircraft*
16 *Corp.*, 383 F.Supp.3d 1169, 1178 (W.D. Wash. 2019). Customer lists, which are the
17 result of effort and expense on the employer’s part, may be protected trade secrets;
18 however, other customer lists, where the information is readily ascertainable, are not
19 protected. *See Ed Nowogroski Ins., Inc.*, 971 P.2d at 945 (citing *MAI Systems Corp.*
20 *v. Peak Computer, Inc.*, 991 F.2d 511, 521 (9th Cir. 1993)).

1 The Complaint adequately pleads that a potential trade secret existed. First,
2 UEW Healthcare alleges its trade secrets are password protected and access is
3 limited to a select group of people. Thus, UEW Healthcare has taken reasonable
4 measures to keep the information secret. ECF No. 1 at 18. Second, UEW
5 Healthcare contends its patient list is a trade secret because it is based on unique
6 information and requires substantial money upfront to generate, as well as derives
7 “independent economic value” from not being generally known to the public. ECF
8 No. 1 at 6–7, 18; *See MP Med. Inc. v. Wegman*, 213 P.3d 931, 939 (Wash. Ct. App.
9 2009) (distinguishing customer list of commonly known sources from one that
10 provided a substantial business advantage). UEW Healthcare further claims that the
11 following information, used to identify, acquire, or generate patient lists, constitutes
12 “valuable proprietary confidential information and trade secrets”: market
13 demographic research; backend parameters for online platforms; web interface
14 information; proprietary empirical trial and error data; business relationships; and,
15 most notably, confidential patient lists. ECF No. 1 at 7, 18.

16 The alleged trade secrets include the patient lists and the information related
17 to generating those lists. Furthermore, the Agreements’ non-disclosure and
18 confidentiality provisions indicate that UEW Healthcare sought to safeguard specific
19 information, including patient lists. ECF Nos. 1-6 at 10 (Thelander); 1-7 at 10
20 (VanBuskirk); 1-8 at 2–3 (Wolfe); *See AlterG, Inc. v. Boost Treadmills LLC*, 388
21 F.Supp.3d 1133, 1146 (N.D. Cal. 2019) (“Such allegations may be enhanced if the

1 confidentiality agreements between the parties detail the protected information that
2 [Employer] imparted to Defendants.”).

3 Whether UEW Healthcare’s patient lists and related information are, in fact, a
4 protectable trade secret under the DTSA and WUTSA goes to the merits of the
5 action. For the purposes of this motion to dismiss, in which the Court accepts
6 Plaintiff’s allegations in the complaint as true and in the light most favorable to the
7 nonmoving party, the Court finds that UEW Healthcare has adequately alleged the
8 existence of trade secret[s].¹ See *Manzarek*, 519 F.3d at 1031.

9 **2. UEW Has Adequately Pleaded Misappropriation**

10 The Individual Defendants argue that UEW Healthcare’s claims under the
11 DTSA and WUTSA fail because the Complaint does not allege which Individual
12 Defendant misappropriated which alleged trade secret. ECF No. 37 at 7.

13 Misappropriation is the disclosure or use of a trade secret without express or
14 implied consent, by a person who either (1) used improper means to acquire
15 knowledge of the trade secret; or (2) at the time of disclosure or use, knew or had
16

17 ¹ The Court already examined UEW’s trade secret allegations in Plaintiff’s Motion
18 for a Temporary Restraining Order. ECF No. 24. As previously found by the
19 Court, UEW Healthcare did not demonstrate that the Individual Defendants’
20 knowledge of their own patients’ existence and addresses, without more, was a
21 protectable trade secret under the DTSA. *Id.* at 8. For the same reasons, UEW
Healthcare did not show a likelihood of success under WUSTA. *Id.* However,
taking the facts as alleged in favor of the non-moving party, it is plausible UEW
Healthcare’s client list qualifies as a “trade secret.”

1 reason to know, that his or her knowledge of the trade secret was acquired under
2 circumstances giving rise to a duty to maintain its secrecy or limit its use. *See* 18
3 U.S.C. § 1839(5); RCW 19.108.010(2).

4 UEW Healthcare alleges that the Individual Defendants “have used, are using,
5 and inevitably will continue to use UEW Healthcare’s trade secrets,” knowledge of
6 which was acquired during their employment. ECF No. 1 at 19. All three of the
7 Individual Defendants signed Agreements which sought to protect specific
8 information, including UEW Healthcare’s patient lists, so as to give rise to a duty to
9 maintain its secrecy or limit its use. ECF Nos. 1-6 at 10 (Thelander); 1-7 at 10
10 (VanBuskirk); 1-8 at 2–3 (Wolfe). UEW Healthcare further alleges that the
11 Individual Defendants accessed trade secrets without authorization via UEW
12 Healthcare computer systems using credentials that the Individual Defendants
13 obtained during their employment. ECF No. 1 at 19. Thus, UEW Healthcare
14 plausibly has alleged specific acts by which the Individual Defendants attempted to
15 appropriate information, and thus, survives the motion to dismiss.

16 Although the Court finds dismissal unwarranted, in order to refine the
17 litigation and give all defendants adequate due process, the Court grants the
18 Individual Defendants’ motion for a more definite statement with regard to
19 misappropriation of trade secrets, other than UEW Healthcare’s patient lists. UEW
20 Healthcare must clarify which additional purported trade secrets, if any, among those
21 listed in the complaint, that the Individual Defendants are alleged to have

1 misappropriated in connection with their resignation and subsequent employment
2 with Haven. ECF No. 1 at 7 (“including (1) market demographics research; (2)
3 backend parameters for social media and other online marketing platforms and
4 methods not readily ascertainable by the public; (3) web interface information for
5 websites and platforms; (4) proprietary empirical trial and error data/information
6 developed through experimentation and fine tuning of patient generation systems;
7 (5) business, customer, medical care provider and vendor information and
8 relationships; (6) and other proprietary, confidential information and trade secrets”).

9 **3. Interstate Commerce**

10 The Individual Defendants also argue that UEW Healthcare’s claim under the
11 DTSA fails to state a claim because it does not sufficiently plead a nexus between
12 the misappropriated trade secrets and interstate commerce. 18 U.S.C. § 1836(b)(1)
13 (alleged misappropriated trade secret must be “related to a product or service used
14 in, or intended for use in, interstate or foreign commerce”).

15 UEW Healthcare is an Ohio corporation, with its principal place of business in
16 Wyoming. ECF No. 1 at 3. The Individual Defendants allegedly reported to UEW
17 Healthcare’s office in Washington state and received assignments in the “Richland,
18 Washington area.” *Id.* at 7, 11, 12. The Court takes judicial notice that Richland,
19 Washington is approximately 45 miles from the Oregon border. *See* Fed. R. Evid.
20 201(b).

1 Construing the facts pleaded broadly in favor of the non-moving party for the
2 purposes of this motion, the patient lists alleged to be trade secrets and
3 misappropriated by the Individual Defendants likely includes patients from one or
4 more states. This case is distinguishable from *DLMC, Inc. v. Flores*, where DMLC,
5 a Hawai'i based corporation, unsuccessfully relied on its patients' receipt of federal
6 funds to support a nexus with interstate commerce. 2019 WL 309754 *2 (D.
7 Hawai'i January 23, 2019). Here, Plaintiff alleges that UEW Healthcare is
8 operational in multiple states; thus, it is reasonable to infer that its patient lists would
9 include patients from multiple states. Therefore, UEW Healthcare sufficiently
10 pleaded a nexus between the alleged misappropriated trade secret[s] and interstate
11 commerce.

12 **Breach of Restrictive Covenants**

13 **1. Non-Compete (Counts VI & IX)**

14 Defendants VanBuskirk and Wolfe argue that UEW Healthcare's breach of
15 contract claim arising under the non-compete provision in the Agreements fails to
16 state a claim because the covenants are void and unenforceable under newly enacted
17 49.62 RCW. ECF No. 37 at 10.

18 Under RCW 49.62.020, a noncompetition covenant is void against an
19 employee unless the employee's earnings exceed one hundred thousand dollars per
20 year. However, RCW 49.62.100 provides that the Chapter only applies to
21 proceedings commenced on or after January 1, 2020, regardless of when the cause of

1 action arose. To the extent that the action giving rise to a claim predates January 1,
2 2020, “*this chapter* applies retroactively, but in *all other respects* it applies
3 prospectively” (emphasis added). Contrary to the Individual Defendants’
4 interpretation, the plain language of RCW 49.62.100 indicates that the Chapter’s
5 application is clearly prospective.

6 RCW 49.62.080(4) operates to further limit its retroactive application.

7 Whereas the Chapter only applies to suits commenced on or after January 1, 2020,
8 RCW 49.62.08(4) states that “[a] cause of action may not be brought regarding a
9 noncompetition covenant signed prior to January 1, 2020, if the noncompetition
10 covenant is not being enforced.” Reading the two provisions together, even if a
11 party seeking enforcement² commences a suit on or after January 1, 2020, but that
12 suit relates to a noncompetition covenant signed prior to the effective date and the
13 covenant is not being enforced, then that party does not have a cause of action.

14 The present action was filed on December 12, 2019. *See* ECF No. 1.

15 Accordingly, RCW 49.62.020 is not relevant to the current motion or this case.

16 Under Washington law, noncompete agreements are enforceable only if they
17 are reasonable. *Knight, Vale and Gregory v. McDaniel*, 680 P.2d 448, 451 (Wash.
18 Ct. App. 1984). However, Washington courts will attempt to revise an invalid
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20 ² “Party seeking enforcement” means the named plaintiff or claimant in a proceeding to enforce a
21 noncompetition covenant or the defendant in an action for declaratory relief. RCW
49.62.010(6).

1 restrictive covenant in order to make it reasonable, rather than reject it altogether.
2 *Emerick v. Cardiac Study Ctr., Inc., P.S.*, 357 P.3d 696, 703 (Wash. Ct. App. 2015).
3 As previously found by this Court, there is a likelihood that the Agreements can be
4 revised so as to be reasonable and enforceable. ECF No. 24 at 12–13.

5 UEW Healthcare alleges that Defendants VanBuskirk and Wolfe breached the
6 restrictive covenants of their respective Agreements by joining Haven as an
7 employee within the 12-month period following the last day of employment with
8 UEW Healthcare. ECF No. 1 at 28, 31. Taking the factual allegations in the
9 complaint as true, UEW Healthcare has alleged sufficient facts to support its breach
10 of contract claims under the non-compete covenants.

11 **2. Solicitation (Counts III, VII, X)**

12 The Individual Defendants argue that UEW Healthcare’s claims for violating
13 the non-solicitation provisions in the Agreement fail to state a claim because the
14 provisions’ terms are overly broad, encompassing more than “solicitation,” as
15 contemplated by Washington law. ECF No. 37 at 11–13. The Individual
16 Defendants argue those terms falling beyond the purview of “solicitation” constitute
17 non-compete covenants subject to Chapter 49.62 RCW. *Id.* at 12. However,
18 Chapter 49.62 is inapplicable, as discussed *supra*. And, as noted above, Washington
19 courts will attempt to revise an invalid restrictive covenant in order to make it
20 reasonable, rather than reject it all together. *See Emerick*, 357 P.3d at 703.

1 UEW Healthcare claims the Individual Defendants breached the restrictive
2 covenants of their Agreements by “soliciting or inducing UEW Healthcare patients
3 to switch to Haven.” ECF No. 1 at 26, 29, 32. In support of this claim, UEW
4 Healthcare alleges that Haven offered the Individual Defendants a \$1,000 bonus for
5 every patient they brought to Haven. ECF No. 1 at 15. Furthermore, at the time the
6 Complaint was filed, six former UEW Healthcare patients allegedly had transferred
7 to Haven. *Id.* Taking the factual allegations in the complaint as true, UEW
8 Healthcare has alleged sufficient facts to support its breach of contract claims under
9 the non-solicitation covenants.

10 **3. Confidentiality & Non-disclosure (Counts IV, V, & VIII)**

11 The Individual Defendants argue that UEW Healthcare’s breach of contract
12 claims arising under the confidentiality and non-disclosure covenants fail to state a
13 claim because the confidential information allegedly being disclosed is not described
14 with sufficient particularity nor does UEW Healthcare differentiate which individual
15 defendant is disclosing what information. ECF No. 37 at 16.

16 UEW Healthcare alleges that the Individual Defendants breached the
17 restrictive covenants by “disclosing or divulging confidential information.” ECF
18 No. 1 at 27, 29, 30. Furthermore, UEW Healthcare alleges that each of the
19 Individual Defendants entered into an Agreement containing a “Confidentiality and
20 Nondisclosure” provision, which set forth the type of information related to its
21

1 business that UEW Healthcare sought to keep confidential. ECF Nos. 1-6 at 10
2 (Thelander); 1-7 at 10 (VanBuskirk); 1-8 at 2–3 (Wolfe).

3 Although the Court finds dismissal unwarranted, in order to refine the
4 litigation and give all defendants adequate due process, the Court grants the
5 Individual Defendants’ motion for a more definite statement with regard to what
6 information was allegedly “disclosed or divulged,” other than UEW Healthcare’s
7 confidential patient lists. UEW Healthcare must clarify what additional types of
8 information, if any, among those listed in the Agreements, that the Individual
9 Defendants are alleged to have “disclosed or divulged” in connection with their
10 resignation and subsequent employment with Haven. *See* ECF Nos. 1-6 at 10; 1-7 at
11 10 (including “(1) pricing or business strategies; (2) compensation or financial
12 information; (3) patient files; (4) charge data; (5) price lists; (6) contract forms and
13 other books, records or files relating to UEW’s business, or that of any of its
14 affiliates”); *see also* ECF No. 1-8 at 2–3 (also including “training methods and
15 materials” as confidential information).

16 **Tortious Interference Claims (Counts XI & XII)**

17 **1. Tortious Interference with a Contract**

18 Defendant Haven argues that UEW Healthcare’s tortious interference claims
19 under Washington law fail to state a claim because the Complaint is devoid of any
20 factual allegations showing Haven knowingly, intentionally, and improperly
21 interfered with UEW Healthcare’s contractual and business relationships.

1 Both tortious interference claims require five elements under Washington law:
2 (1) the existence of a valid contractual relationship or business expectancy; (2) that
3 the defendants had knowledge of the same; (3) defendants' intentional interference
4 induced or caused a breach or termination of that relationship or expectancy; (4) the
5 defendants interfered with an improper purpose or used improper means; and (5)
6 resultant damage. *Leingang v. Pierce Cnty. Medical Bureau, Inc.*, 930 P.2d 288,
7 300 (Wash. 1997).

8 First, UEW Healthcare must allege the existence of a valid contractual
9 relationship. UEW Healthcare pleads that it was a party to valid contracts with the
10 Individual Defendants. ECF Nos. 1 at 32; 1-6, 1-7, 1-8. Haven challenges the
11 validity of the Agreements' non-solicitation and non-compete restrictive covenants,
12 which is an issue for later litigation. As discussed *supra*, Chapter 49.62 RCW does
13 not govern the Agreements at issue. Thus, UEW Healthcare has sufficiently alleged
14 a valid, contractual relationship between it and the Individual Defendants for the
15 purposes of this motion.

16 Second, UEW Healthcare must allege that Haven had knowledge of the
17 Individual Defendants' contractual relationship with UEW Healthcare. UEW
18 Healthcare alleges that Haven "had knowledge of UEW Healthcare's contracts with
19 Thelander, Wolfe, and VanBuskirk. At all relevant times, Haven was a stranger to
20 these contracts." ECF No. 1 at 32. UEW Healthcare also alleges it "informed
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1 Haven of [the Individual Defendants’] restrictive covenants” by sending Haven a
2 cease and desist letter on December 7, 2019. ECF Nos. 1 at 16–17; 1-9 at 9–10.

3 The cease and desist letter from UEW Healthcare states:

4 We understand that recently associates of our company . . . may have been
5 soliciting, persuading or inducing UEW patients to use your company for their
6 health care services. Even though [the Individual Defendants] will [no] longer
be with UEW, they are still required to adhere to all of the contractual
commitments in their agreements.

7 ECF No. 1-9 at 9–10. The cease and desist letter to Haven provides no further detail
8 with respect to the Individual Defendants’ restrictive covenants. Thus, Haven’s
9 knowledge was limited to the fact that the Individual Defendants had contractual
10 relationships with UEW Healthcare, and this knowledge was imputed to them on
11 December 7, 2019. *See Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136,
12 1139 (9th Cir. 2003) (the Court “need not accept as true conclusory allegations that
13 are contradicted by documents referred to in the complaint.”). Nonetheless, based
14 on the facts as pleaded, Haven had knowledge of the Individual Defendants’
15 “contractual commitments.”

16 Third, UEW Healthcare must allege that Haven intentionally interfered and
17 that interference induced or caused a breach or termination of that relationship.
18 Interference with a contract is intentional if the actor “desires to bring it about or if
19 [it] knows that the interference is certain or substantially certain to occur as a result
20 of [its] action.” *Newton Ins. Agency & Brokerage, Inc. v. Caledonian Ins. Grp., Inc.*,
21 52 P.3d 30, 34 (Wash. Ct. App. 2002) (quoting Restatement (Second) of Torts §

1 766B cmt. d (Am. Law Inst. 1979)). UEW Healthcare alleges that Haven offered the
2 Individual Defendants a \$1,000 bonus for every patient brought with them to Haven.
3 As noted above, the facts as pleaded, do not show that Haven had knowledge of the
4 restrictive covenants at issue. *See Tabbert v. Howmedica Osteonics Corporation*,
5 2017 WL 72481 at *4 (E.D. Wash. 2017) (distinguishable in that new employer
6 allegedly received those documents which outlined employees’ legal obligations and
7 assisted employee in responding to the cease and desist letter sent by former
8 employer). However, taking the factual allegations in favor of UEW Healthcare as
9 the non-moving party, it is plausible that Haven’s interference was intentional to the
10 extent that Haven offered the Individual Defendants a monetary bonus despite
11 having knowledge of the Individual Defendants’ existing “contractual
12 commitments.” *See id.* at *5 (“Although [old employer] does not completely detail
13 how [new employer] intentionally interfered with the 1995 Agreement, it is under no
14 obligation to do so. The circumstances alleged here collectively make interference
15 plausible”). Furthermore, it is plausible that this bonus was offered with the
16 objective that the Individual Defendants be incentivized to terminate or breach those
17 commitments owed to UEW Healthcare.

18 UEW Healthcare also must allege that this interference induced or caused the
19 Individual Defendants to breach or terminate their contractual relationship with
20 UEW Healthcare. UEW Healthcare alleges that the Individual Defendants were
21 induced to breach their contractual obligations and terminate their employment with

1 UEW Healthcare by the \$1,000 per patient bonus. Finding the alleged bonus to be
2 necessarily incentivizing, the Court finds it plausible that the Individual Defendants
3 were induced by Haven to allegedly breach and terminate their contractual
4 relationship with UEW Healthcare.

5 Fourth, UEW Healthcare must allege that Haven interfered with an improper
6 purpose or used improper means. “[P]laintiff must prove that the defendant had a
7 duty of non-interference.” *Kiebertz & Assoc., Inc. v. Rehn*, 842 P.2d 985, 989
8 (Wash. Ct. App. 1992). “Interference is for an improper purpose if it is wrongful by
9 some measure beyond the interference itself, such as a statute, regulation, recognized
10 rule of common law, or an established standard of trade or profession.” *Bombardier*
11 *Inc.*, 383 F.Supp.3d at 1189 (citing *Newton Ins. Agency & Brokerage, Inc.*, 52 P.3d
12 at 34). UEW Healthcare alleges it “informed Haven of [the Individual Defendants’]
13 restrictive covenants” by sending Haven the cease and desist letter on December 7,
14 2019.” ECF Nos. 1 at 16–17; 1-9 at 9–10. UEW argues that it has sufficiently
15 alleged improper purpose because Haven interfered with the restrictive covenants
16 which is “per se improper.” *See Newton Ins. Agency & Brokerage, Inc.*, 52 P.3d at
17 34.

18 As noted above, the allegation that Haven was informed of the Individual
19 Defendants’ restrictive covenants, so as to make the \$1,000 financial incentive “per
20 se improper” is refuted by the contents of the cease and desist letter. ECF No. 1-9;
21 *see Warren*, 328 F.3d at 1139. The letter does not describe the restrictive covenants

1 in detail, but merely refers to “contractual commitments.” Thus, UEW Healthcare
2 has not sufficiently alleged that Haven’s interference was for an improper purpose
3 “per se,” absent facts showing that Haven had knowledge of the Agreements’
4 restrictive covenants.

5 However, using a per patient bonus to incentivize the Individual Defendants to
6 not only terminate their employment, but to also encourage their clients to transfer
7 care, suffices to allege an “improper purpose or means” so as to survive dismissal on
8 the pleadings. *See Tabbert*, 2017 WL 72481 *5 (“The pleaded facts in the []
9 complaint here suggest that MicroPort’s alleged interference was intended to have
10 Tabbert actively take away business from Howmedica even though it knew of
11 Tabbert’s existing contractual obligations.”); *see also Newton Ins. Agency &*
12 *Brokerage, Inc.*, 52 P.2d at 34 (“Under certain circumstances . . . ‘identifiable
13 standards of business ethics or recognized community customs as to acceptable
14 conduct’ have developed, such that ‘the determination of whether the interference
15 was improper should be made as a matter of law’”) (citation omitted).

16 Finally, UEW Healthcare must allege damages. UEW Healthcare maintains
17 that because the Individual Defendants terminated their employment, six of UEW
18 Healthcare’s patients have transferred to Haven. ECF No. 1 at 15. Logically, the
19 loss of patients results in the loss of income. Thus, it is plausible that UEW
20 Healthcare suffered resulting damage from the alleged tortious interference with a
21 contract.

1 Accordingly, UEW Healthcare has stated a plausible claim against Haven of
2 tortious interference with a contract.

3 **2. Tortious Interference with a Business Relationship or Expectancy**

4 UEW Healthcare also claims Haven tortiously interfered with its business
5 relationships and expectancies between UEW Healthcare and former patients treated
6 by the Individual Defendants. ECF No. 1 at 33–34.

7 The elements for a claim of tortious interference with a business relationship
8 or expectancy are the same as above, except plaintiff must allege the interference
9 with a valid business relationship or expectancy. *See Bombardier Inc.*, 383
10 F.Supp.3d at 1188. UEW must allege the existence of a valid business expectancy
11 and that Haven had knowledge of the same. A valid business expectancy includes
12 any prospective business relationship that would be of pecuniary value. *Id.* Haven
13 does not dispute that UEW Healthcare has a valid business expectancy with respect
14 to its patients, thereby conceding Haven’s knowledge of the same. ECF No. 44 at 7.

15 UEW Healthcare must allege that Haven intentionally interfered and that
16 interference induced or caused a termination of UEW Healthcare’s business
17 expectancies. UEW Healthcare alleges that Haven offered the Individual
18 Defendants a \$1,000 bonus for every patient brought with them to Haven and
19 subsequent to the Individual Defendants’ departure, at least six UEW Healthcare
20 patients had transferred to Haven. ECF No. 1 at 15. The financial incentive was not
21 offered to patients directly. *Id.* Thus, the alleged interference with UEW

1 Healthcare's business expectancy was indirectly achieved by inducing the Individual
2 Defendants to recruit UEW Healthcare patients to transfer to Haven.

3 Based on the facts as pleaded, it is plausible that Haven's objective in offering
4 the Individual Defendants a per patient bonus was to ultimately persuade UEW
5 Healthcare patients to transfer to Haven. Alternatively, it is plausible that Haven
6 was substantially certain that UEW Healthcare's clients would transfer to Haven as a
7 result of recruiting and offering the Individual Defendants a per patient bonus.
8 Furthermore, it is plausible that UEW Healthcare's former clients were induced to
9 transfer to Haven by the Individual Defendants' departure, or such transfer was
10 caused by the Individual Defendants' departure, as six patients allegedly have done
11 so already.

12 UEW Healthcare also must allege that it interfered with UEW Healthcare's
13 business expectancies for an improper purpose or used improper means. As noted
14 above, it is plausible that using a per patient bonus constitutes "improper means,"
15 especially in so far as that bonus was created specifically for Individual Defendants
16 and UEW Healthcare's former patients who transferred, as opposed to there being an
17 existing bonus program offered to every employee for any new client brought to
18 Haven. *See Newton Ins. Agency & Brokerage, Inc.*, 52 P.2d at 34.

19 Finally, UEW Healthcare must allege damages. At the time UEW Healthcare
20 filed its Complaint, six patients had transferred their care to Haven. ECF No. 1 at
21 15. As noted above, the loss of patients logically results in the loss of income.

1 Thus, it is plausible that UEW Healthcare suffered resulting damage from the
2 alleged tortious interference with a business expectancy.

3 Accordingly, UEW Healthcare has stated a plausible claim against Haven for
4 tortious interference with a business expectancy with respect to UEW Healthcare's
5 former patients.

6 **Civil Conspiracy (Count XIII)**

7 UEW Healthcare claims Defendants conspired to (a) interfere with UEW
8 Healthcare's business and contractual relationships with its patients; (b) breach the
9 terms of the Individual Defendants' Agreements; and (c) misappropriate UEW
10 Healthcare's purported trade secrets. ECF No. 1 at 34–35.

11 To ultimately prevail on a claim for civil conspiracy, a plaintiff "must prove
12 by clear, cogent, and convincing evidence that (1) two or more people combined to
13 accomplish an unlawful purpose, or combined to accomplish a lawful purpose by
14 unlawful means; and (2) the conspirators entered into an agreement to accomplish
15 the conspiracy." *Puget Sound Sec. Patrol v. Bates*, 389 P.3d 709, 715 (Wash. Ct.
16 App. 2017) (quoting *All Star Gas, Inc. v. Bechard*, 998 P.2d 367, 372 (Wash. Ct.
17 App. 2000)). A claim for civil conspiracy must be predicated on "a cognizable and
18 separate underlying claim." *Gossen v. JPMorgan Chase Bank*, 819 F.Supp.2d 1162,
19 1171 (W.D. Wash. 2011).

20 UEW Healthcare alleges that Defendants conspired to tortiously interfere with
21 UEW Healthcare's business and contractual relationships with its patients. ECF No.

1 1 at 34–35. Defendants argue that UEW Healthcare’s claim cannot be predicated on
2 tortious interference with a contract or business expectancy. *See Inteum Co., LLC v.*
3 *Nat’l Univ. of Sinapore*, 2018 WL 2317606 *2 (W.D. Wash. May 22, 2018). (“A
4 party cannot tortiously interfere with its own contract or prospective economic
5 advantage.”) (citation omitted). To the extent that the Individual Defendants cannot
6 tortiously interfere with their own contracts, the civil conspiracy claim must rely on
7 tortious interference with a business expectancy. The court in *Inteum Co., LLC v.*
8 *Nat’l Univ. of Sinapore* did not foreclose this as a valid underlying claim; rather the
9 court dismissed the claim as futile because plaintiff did not allege an underlying
10 claim against defendant for interference with a prospective economic advantage.
11 2018 WL 2317606 *2 (“a plaintiff alleging a conspiracy must have a valid
12 underlying claim that ‘would be independently actionable’ against one of the
13 defendants in the suit”) (citing 15A C.J.S. Conspiracy § 8). Here, UEW Healthcare
14 has alleged an underlying claim of tortious interference with a business expectancy
15 with respect to its patients.

16 UEW Healthcare also alleges that Defendants conspired to breach the terms of
17 the Individual Defendants’ Agreements. ECF No. 1 at 35. Defendants argue that
18 UEW Healthcare’s claim cannot be predicated on breach of contract. Although
19 Washington courts have yet to directly address whether a civil conspiracy claim can
20 stem from breach of contract, courts generally have limited “unlawful” actions to
21 torts or statutory violations. *See Inteum Co., LLC*, 2018 WL 2317606 *3. The court

1 in *Inteum Co., LLC* expressly declined to answer whether Washington law allows for
2 a civil conspiracy claim against a party to a contract based on a co-conspirator's
3 inducement to breach. *See id.*; *see also Douty v. Irwin Mortg. Co.*, 70 F. Supp. 2d
4 626, 631 (E.D. Va. 1999) (a third party is necessary to create an actionable
5 conspiracy to induce a breach of contract). Here, there is an underlying claim for
6 tortious interference with a business expectancy with respect to UEW Healthcare's
7 patients on which the civil conspiracy claim relies.

8 UEW Healthcare further alleges that Defendants conspired to misappropriate
9 UEW Healthcare's purported trade secrets. ECF No. 1 at 35. Defendants argue that
10 UEW Healthcare's conspiracy claim is preempted by Washington's Uniform Trade
11 Secret Act ("WUTSA"). The Court agrees. The WUTSA "displaces conflicting
12 tort, restitutionary, and other [Washington] law pertaining to civil liability for
13 misappropriation of a trade secret." Wash. Rev. Code 19.108.900(1). *See T-Mobile*
14 *USA, Inc. v. Huawei Device USA, Inc.*, 115 F.Supp.3d 1184, 1197 (W.D. Wash.
15 2015) (applying the "strong view of preemption" under which "a plaintiff may not
16 rely on acts that constitute trade secret misappropriation to support [another cause]
17 of action") (quoting *Ed Nowogroski Ins.*, 944 P.2d at 1097 (Wash. Ct. App. 1994)).

18 Although Washington courts have not addressed the preemptive scope of the
19 DTSA, other courts in the Ninth Circuit have found that the DTSA does not provide
20 for a stand-alone private action for a conspiracy to misappropriate trade secrets. *See*
21 *Genentech, Inc. v. JHL Biotech, Inc.*, 2019 WL 1045911 *12 (N.D. Cal. 2019)

1 (granting defendants’ motions to dismiss claim regarding conspiracy to
2 misappropriate under California UTSA and DTSA) (citing *Steves & Sons v. JELD-*
3 *WEN, Inc.*, 271 F. Supp. 3d 835, 843 (E.D. Va. 2017) (rejecting proposition that
4 Section 1832(a)(5), which criminalizes conspiracy to violate the DTSA, provides for
5 a private right of action)).

6 Since the Court has found that there is a valid predicate claim of tortious
7 interference with a business expectancy to support UEW Healthcare’s civil
8 conspiracy claim, the Court turns to the adequacy of the allegations with respect to
9 civil conspiracy. UEW Healthcare must allege two or more people combined to
10 accomplish an unlawful purpose, and the conspirators entered into an agreement to
11 accomplish the conspiracy. UEW has alleged that Haven offered the Individual
12 Defendants \$1,000 for every patient brought to Haven. ECF No. 1 at 15. It is
13 plausible that this bonus and the Individual Defendants’ acceptance of that bonus
14 formed the basis of an agreement between the Defendants to actively take away
15 patients from UEW Healthcare and transfer those patients’ care to Haven.

16 Accordingly, UEW Healthcare has stated a plausible claim against Defendants
17 for conspiring to tortiously interference with UEW Healthcare’s business expectancy
18 with respect to UEW Healthcare’s former patients.

19 **Motion to Strike Punitive Damages**

20 Defendant Haven moves to strike UEW’s request for punitive damages. Fed.
21 R. Civ. P. 12(f) provides that the “court may strike from a pleading an insufficient

1 defense or any redundant, immaterial, impertinent, or scandalous matter.”

2 “Washington law prohibits punitive damages awards absent express statutory
3 authorization.” *National City Bank*, 2010 WL 2854247, at *7 (E.D. Wash. 2010)
4 (citing *McKee v. AT&T Corp.*, 164 Wash.2d 372, 401, 191 P.3d 845, 860 (2008)).

5 There is no statute authorizing punitive damages for UEW Healthcare’s common
6 law claims. Although the DTSA and WUTSA allows for punitive damages, UEW
7 Healthcare has not asserted a DTSA and WUTSA claim against Haven.

8 Accordingly, the Court grants Haven’s motion to strike UEW Healthcare’s request
9 for punitive damages against Haven.

10 Accordingly, **IT IS HEREBY ORDERED:**

11 1. The Individual Defendants’ Rule 12 Motions, **ECF No. 37**, is **GRANTED**
12 **IN PART** and **DENIED IN PART**.

13 a. The Individual Defendants’ **Motion for a More Definite Statement**
14 with respect to Plaintiff’s state and federal trade secrets claims
15 (Counts I and II) is **GRANTED**. Plaintiff shall file a First Amended
16 Complaint within **30 days of the date of this Order**.

17 b. The Individual Defendants’ **Motion to Dismiss** Plaintiff’s claims for
18 breach of the covenant not to compete (Counts VI and IX) is
19 **DENIED**.

1 c. The Individual Defendants' **Motion to Dismiss** Plaintiff's claims for
2 breach of the covenant not to solicit (Counts III, VII, and X) is
3 **DENIED.**

4 d. The Individual Defendants' **Motion for More Definite Statement**
5 with respect to Plaintiff's claims for breach of the confidentiality
6 and nondisclosure covenants (Counts IV, V, and VIII) is
7 **GRANTED.** Plaintiff shall file any First Amended Complaint
8 within **30 days of the date of this Order.**

9 2. Defendant Haven's Motion to Dismiss and Motion to Strike, **ECF No. 38,**
10 **is GRANTED IN PART AND DENIED IN PART.**

11 a. Defendant's Motion to Dismiss Count XI is **DENIED.**

12 b. Defendant's Motion to Dismiss Count XII is **DENIED.**

13 c. Defendants' Motion to Dismiss Count XIII is **DENIED .**

14 d. Defendant's Motion to Strike UEW Healthcare's demand for
15 punitive damages against Haven is **GRANTED.**

16 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this
17 Order and provide copies to counsel.

18 **DATED** October 8, 2020.

19 *s/ Rosanna Malouf Peterson*
20 ROSANNA MALOUF PETERSON
21 United States District Judge