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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

BALMUCCINO, LLC,

Plaintiff,

v.

STARBUCKS CORPORATION,

Defendant.

CASE NO. 2:22-cv-01501 JHC

ORDER GRANTING DEFENDANT’S  
MOTION TO DISMISS THE FIRST  
AMENDED COMPLAINT

**I**

**INTRODUCTION**

This matter comes before the Court on Defendant Starbucks Corporation’s Motion to Dismiss Plaintiff Balmuccino, LLC’s First Amended Complaint. *See* Dkt. # 27. The Court has considered the materials filed in support of, and in opposition to, the motion, as well as the balance of the case file and the applicable law. Being fully advised, the Court GRANTS Starbucks’s Motion to Dismiss and DISMISSES Balmuccino’s First Amended Complaint (FAC) with prejudice.

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**II**

**BACKGROUND**

A. Factual Background

Because this is a motion to dismiss, the Court “assume[s] the truth of the facts alleged in the complaint.” *Flaa v. Hollywood Foreign Press Ass’n*, 55 F.4th 680, 685 (9th Cir. 2022) (quoting *Ellis v. Salt River Project Agric. Improvement & Power Dist.*, 24 F.4th 1262, 1266 (9th Cir. 2022)).

Balmuccino is a California limited liability company doing business in Los Angeles, California. Dkt. # 23 at 1. Starbucks is a Washington corporation that conducts business worldwide. *Id.* As relevant to the motion at issue, over nine percent of Starbucks’s retail stores are in California. *Id.* at 4.

As alleged in the FAC, Balmuccino began developing a line of coffee-flavored lip balms in 2016. *Id.* at 2. In or about June 2017, Samantha Lemole, one of Balmuccino’s principals, informed her brother-in-law, Mehmet Cengiz Öz (known professionally as “Dr. Öz”), of Balmuccino’s search for a joint venture partnership. *Id.* Öz then notified Howard Schultz, Starbucks’s then-CEO, of Balmuccino’s concept and product. *Id.* In response, Schultz suggested that Balmuccino reach out to Mesh Gelman, Starbucks’s Head of Product Development and Senior Vice President. *Id.* Starbucks then arranged for a meeting with Balmuccino at Starbucks’s New York corporate offices. *Id.*

On or about October 19, 2017, four Balmuccino representatives visited Starbucks’s New York offices to meet with Gelman and Peter Ginsburg,<sup>1</sup> Gelman’s assistant. *Id.* During the meeting, Balmuccino presented Gelman with a pitch deck and fully realized prototypes for the

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<sup>1</sup> The FAC refers to Gelman’s assistant as both “Ginsburg” and “Ginsberg.” Without clear guidance, the Court will refer to him as “Ginsburg” for consistency.

1 lip balm line, designed specifically for Starbucks. *Id.* Gelman “extensively questioned”  
2 Balmuccino’s team, making “detailed inquiries” into the concept and product. *Id.* at 3. In  
3 response, Balmuccino provided details about the product and the entire process, including the  
4 names and locations of the material suppliers and manufacturers involved in the development  
5 process. *Id.* Throughout the meeting, Ginsburg “took copious notes while Gelman listened  
6 intently.” *Id.* When the meeting ended, Gelman asked if he could retain the pitch deck in order  
7 to “run the idea ‘up the flagpole’ and explore the possibility of a partnership or joint venture  
8 moving forward.” *Id.*

9 At the meeting, Balmuccino also requested that Gelman sign a non-disclosure agreement.  
10 *Id.* at 2. Gelman declined to do so, stating, “that the meeting and the items discussed therein  
11 were completely confidential and that the relationship between [] Schultz and [] Öz, who had  
12 brokered the Meeting, should provide the necessary comfort and protections Plaintiff was  
13 seeking via the Non-Disclosure Agreement.” *Id.* at 2–3. Two weeks later, and without  
14 mentioning the status of the pitch, Gelman informed Balmuccino that he was leaving Starbucks.  
15 *Id.* at 3.

16 In 2018, Balmuccino received notice that Starbucks had contacted one of its suppliers to  
17 request prototypes for Starbucks-branded lip balms and cases. *Id.* Balmuccino also learned that  
18 the prototype specifications provided by Starbucks to the potential manufacturer were identical  
19 to those that Balmuccino had presented to Gelman during the 2017 meeting. *Id.* Around April  
20 2019, Starbucks announced the launch of “The S’mores Frappuccino Sip Kit,” a kit of four liquid  
21 lipsticks/glosses to celebrate the return of its S’mores Frappuccino. *Id.* The promotion soon  
22 reached California, where it allegedly helped to drive Starbucks’s product sales, thereby injuring  
23 Balmuccino (presumably—though Balmuccino does not say much on this point—by depriving  
24 Balmuccino of sales or royalty payments from Starbucks). *Id.* at 4.

1 B. Procedural History

2 On October 18, 2019, Balmuccino filed suit against Starbucks for breach of contract and  
3 trade secret misappropriation in the California Superior Court for the County of Los Angeles.  
4 *Id.*; *see also Balmuccino, LLC v. Starbucks Corp.*, No. 19STCV37444, 2020 Cal. Super. LEXIS  
5 2811 (Cal. Super. Ct. June 23, 2020). The court held that it lacked personal jurisdiction over  
6 Starbucks and entered a Notice of Entry of Dismissal on July 17, 2020. Dkt. # 23 at 5. On  
7 September 10, 2020, Balmuccino filed a Notice of Appeal with the California Court of Appeal.  
8 *Id.* The California Court of Appeal affirmed the Superior Court’s dismissal of the case for lack  
9 of personal jurisdiction on August 24, 2022, and issued its remittitur on October 26, 2022. *Id.*;  
10 *see also Balmuccino, LLC v. Starbucks Corp.*, No. B308344, 2022 WL 3643062 (Cal. Ct. App.  
11 Aug. 24, 2022).

12 On October 21, 2022, five days before the remittitur was issued, Balmuccino filed suit in  
13 this Court. *See* Dkt. # 1. On January 20, 2023, Starbucks moved to dismiss Balmuccino’s initial  
14 complaint under Federal Rule of Civil Procedure 12(b)(6). Dkt. # 12. In the motion, Starbucks  
15 argued that Balmuccino lacks standing because its California LLC status was deemed inactive by  
16 the State of California as of August 3, 2021. *Id.* at 6. Starbucks also argued that Balmuccino’s  
17 claims are time-barred and that at least two of its common-law claims are preempted under the  
18 Washington Uniform Trade Secrets Act (UTSA). *Id.* Balmuccino did not oppose Starbucks’s  
19 first motion to dismiss. *See generally* Dkt. Instead, Balmuccino filed an amended complaint on  
20 February 13, 2023, one business day after the deadline for doing so. Dkt. # 15.

21 On February 21, 2023, the Court struck Balmuccino’s amended complaint (Dkt. # 15) as  
22 untimely and granted Starbucks’s motion to dismiss without prejudice. Dkt. # 17. But as the  
23 filing was only one day late, the Court found that it was not within the interests of justice to  
24 dismiss the matter with prejudice and stated in the order that Balmuccino could move for leave to

1 file an amended complaint. *Id.* at 2. Balmuccino then filed an unopposed motion for leave to  
2 file a first amended complaint, which the Court granted on March 7, 2023. Dkt. ## 19, 21, 22.

3 On March 9, 2023, Balmuccino filed its First Amended Complaint, asserting six causes  
4 of action against Starbucks: (1) breach of implied-in-fact contract; (2) breach of oral contract; (3)  
5 breach of confidence; (4) trade secret misappropriation under California’s UTSA, Cal. Civ. Code  
6 §§ 3426–3426.11; (5) trade secret misappropriation under Washington’s UTSA, RCW 19.108;  
7 and (6) trade secret misappropriation under the Defend Trade Secrets Act (DTSA), 18 U.S.C.  
8 § 1836. Dkt. # 23.

9 On March 23, 2023, Starbucks filed a Rule 12(b)(6) motion to dismiss Balmuccino’s  
10 First Amended Complaint. Dkt. # 27. Balmuccino responded on April 10, 2023, and Starbucks  
11 replied on April 14, 2023. Dkt. ## 28, 30.

### 12 III

#### 13 DISCUSSION

##### 14 A. Rule 12(b)(6) Motion to Dismiss

15 Under the Federal Rules of Civil Procedure, a defendant may move to dismiss a  
16 plaintiff’s complaint if it “fails to state a claim upon which relief can be granted.” Fed. R. Civ.  
17 P. 12(b)(6). To survive a Rule 12(b)(6) motion to dismiss, “a complaint must contain sufficient  
18 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft*  
19 *v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570  
20 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the  
21 court to draw the reasonable inference that the defendant is liable for the misconduct  
22 alleged.” *Id.* In considering a Rule 12(b)(6) motion, the Court “presumes that the facts alleged  
23 by the plaintiff are true,” *Halet v. Wend Inv. Co.*, 672 F.2d 1305, 1309 (9th Cir. 1982), and will

1 construe the complaint in the light most favorable to the plaintiff. *See Livid Holdings Ltd. v.*  
2 *Salomon Smith Barney, Inc.*, 416 F.3d 940, 946 (9th Cir. 2005).

3 B. Choice of Law

4 As a threshold matter, the parties disagree about whether California or Washington law  
5 controls in this case. *See* Dkt. ## 27 at 12, 28 at 2. As discussed below, because Washington  
6 law presumptively applies and Balmuccino has not proven that both an actual conflict of law  
7 exists and California has the more significant relationship to its claims, the Court rejects  
8 Balmuccino’s request to apply California law and instead resolves this matter under Washington  
9 law.

10 1. Legal standard

11 “When a federal court sits in diversity, it must look to the forum state’s choice of law  
12 rules to determine the controlling substantive law.” *Patton v. Cox*, 276 F.3d 493, 495 (9th Cir.  
13 2002) (citing *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 496 (1941)). Under  
14 Washington State’s choice of law rules, Washington law presumptively applies unless: (1) there  
15 is an effective choice of law by the parties to apply another state’s law; (2) Washington law  
16 conflicts with federal law; or (3) there is an actual conflict between Washington law and the law  
17 of another state and the other state bears a more significant relationship to the claims. *See*  
18 *Tilden–Coil Constructors, Inc. v. Landmark Am. Ins. Co.*, 721 F. Supp. 2d 1007, 1013 (W.D.  
19 Wash. 2010) (presumption that Washington law applies); *Shanghai Com. Bank Ltd. v. Chang*,  
20 189 Wash. 2d 474, 484–85, 404 P.3d 62 (2017) (effective choice of law); *Butler v. Nat’l Cmty.*  
21 *Renaissance of Cal.*, 766 F.3d 1191, 1198 (9th Cir. 2014) (conflict with federal law); *Erwin v.*  
22 *Cotter Health Ctrs.*, 161 Wash. 2d 676, 692, 167 P.3d 1112 (2007) (actual conflict of law).  
23 Because the parties do not suggest that they effectively chose another state’s law (say, by  
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1 contract) or that Washington law conflicts with federal law, it is this third exception—an actual  
2 conflict with another state’s laws—that is at issue here.

3 Under Washington State’s choice of law rules, an “actual conflict” exists if the  
4 Washington law is “fundamentally incompatible” with the other state’s law. *Burnside v.*  
5 *Simpson Paper Co.*, 123 Wash. 2d 93, 100, 864 P.2d 937 (1994). If a party establishes an actual  
6 conflict for a tort or contract claim, Washington courts apply the “most significant relationships”  
7 test to resolve the choice of law problem. *See Canron, Inc. v. Fed. Ins. Co.*, 82 Wash. App. 480,  
8 492, 918 P.2d 937 (1996) (Washington courts apply the most significant relationships test to  
9 contract claims); *Johnson v. Spider Staging Corp.*, 87 Wash. 2d 577, 580, 555 P.2d 997 (1976)  
10 (Washington courts apply the most significant relationships test to tort claims). For contract  
11 claims, the test requires courts to consider these contacts:

- 12 (a) the place of contracting,
- 13 (b) the place of negotiation of the contract,
- 14 (c) the place of performance,
- 15 (d) the location of the subject matter of the contract, and
- 16 (e) the domicil[e], residence, nationality, place of incorporation and place of business of  
17 the parties.

18 *Canron*, 82 Wash. App. at 492 (quoting Restatement (Second) Conflict of Laws § 188(2)  
19 (1971)). For tort claims, courts consider:

- 20 (a) the place where the injury occurred,
- 21 (b) the place where the conduct causing the injury occurred,
- 22 (c) the domicile, residence, nationality, place of incorporation and place of business of  
23 the parties, and
- 24 (d) the place where the relationship, if any, between the parties is centered.

*Johnson*, 87 Wash. 2d at 581 (quoting Restatement (Second) Conflict of Laws § 145(2) (1971)).

In applying the test, Washington courts do not merely count contacts. *Id.* Rather, they evaluate  
the contacts according to their relative importance, considering which contacts are most

1 significant and where they might be found. *Id.*; *see also* Restatement (Second) Conflict of Laws  
2 §§ 145, 188 (1971).

3 2. Actual conflict

4 Balmuccino says that the Court must engage in a choice of law analysis because there is  
5 an actual conflict between California and Washington law in their treatment of breach of  
6 confidence claims and equitable tolling.<sup>2</sup> *See* Dkt. # 28 at 2–3.

7 The Court is not convinced that Balmuccino’s breach of confidence claim presents an  
8 actual conflict of law, as both the Washington and California UTSA preempt tort claims for  
9 breach of confidence when (as here) the breach of confidence claim arises out of the same  
10 nucleus of facts as a trade secret misappropriation claim.<sup>3</sup> *Compare Ed Nowogroski Ins., Inc. v.*  
11 *Rucker*, 88 Wash. App. 350, 445 n.5, 944 P.2d 1093 (1997) (affirming the Washington UTSA  
12 displaces conflicting tort laws pertaining to trade secret misappropriation.), *and* RCW  
13 19.108.900(1) (“This chapter displaces conflicting tort, restitutionary, and other law of this state  
14 pertaining to civil liability for misappropriation of a trade secret.”), *with K.C. Multimedia, Inc. v.*  
15 *Bank of Am. Tech. & Operations, Inc.*, 171 Cal. App. 4th 939, 958 (2009) (finding the California  
16 UTSA “preempts common law claims that are ‘based on the same nucleus of facts as the  
17 misappropriation of trade secrets claim for relief” (quoting *Digit. Envoy, Inc. v. Google, Inc.*,

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20 <sup>2</sup> Despite its discussion of California’s and Washington’s statutory tolling policies, Balmuccino  
21 does not allege, and therefore has not shown, that there is an actual conflict with respect to California’s  
22 and Washington’s statutory tolling policies. *See generally* Dkt. # 28. The Court therefore does not  
23 address this issue.

24 <sup>3</sup> Balmuccino is correct that California recognizes a tort of breach of confidence. *See* Dkt. # 28 at  
10; *see also Faris v. Enberg*, 97 Cal. App. 3d 309, 321 (1979). But while California courts continue to  
23 recognize the tort, California’s UTSA still preempts breach of confidence claims if, as here, they are  
24 based on the same nucleus of facts as a trade secret misappropriation claim. *See K.C. Multimedia, Inc. v.*  
*Bank of Am. Tech. & Operations, Inc.*, 171 Cal. App. 4th 939, 960 (2009) (finding appellant’s breach of  
confidence claim preempted by their trade secret misappropriation claim).



1 370 F. Supp. 2d 1025, 1035 (N.D. Cal. 2005)), and Cal. Civ. Code § 3426.7(b) (no exception for  
2 torts based on trade secret misappropriation).

3 There may, however, be an actual conflict of law between Washington’s and California’s  
4 equitable tolling doctrines. In Washington, equitable tolling is permitted:

5 [1] when justice requires. The predicates for equitable tolling are [2] bad faith,  
6 deception, or false assurances by the defendant and [3] the exercise of diligence  
7 by the plaintiff. In Washington equitable tolling is appropriate [4] when  
8 consistent with both the purpose of the statute providing the cause of action and  
9 the purpose of the statute of limitations.

8 *Millay v. Cam*, 135 Wash. 2d 193, 206, 955 P.2d 791 (1998) (internal citations omitted) (citing  
9 *Finkelstein v. Security Properties, Inc.*, 76 Wash. App. 733, 739–40, 888 P.2d 161 (1995);  
10 *Douchette v. Bethel Sch. Dist. No. 403*, 117 Wash. 2d 805, 812, 818 P.2d 1362 (1991)); see also  
11 *Fowler v. Guerin*, 200 Wash. 2d 110, 119, 515 P.3d 502 (2022) (reiterating the test provided in  
12 *Millay*). In California, the requirements for equitable tolling are: “timely notice, and lack of  
13 prejudice, to the defendant, and reasonable and good faith conduct on the part of the plaintiff.”  
14 *Addison v. State of California*, 21 Cal. 3d 313, 319, 578 P.2d 941 (1978).

15 Washington’s test thus contains an additional element—a “bad actor” requirement—  
16 which is not included in California’s test for equitable tolling.<sup>4</sup> Since Washington courts require  
17 satisfaction of an additional (and sometimes case-dispositive) element before equitably tolling a  
18 statute of limitations, there may be a conflict of law between California’s and Washington’s  
19 equitable tolling doctrines. Thus, the Court will assume for the purposes of this motion that  
20 Balmuccino has established an actual conflict of law and proceed to the most significant  
21 relationships analysis to determine which state’s laws apply.

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23 <sup>4</sup> Balmuccino also asserts that *Fowler*’s “bad actor” requirement is new and thus “should not be  
24 retroactively applied” to its claims. See Dkt. # 28 at 8. This argument, however, misunderstands  
Washington case law, as *Fowler* merely reiterates the four-part test for equitable tolling established in  
*Millay*, 135 Wash. 2d at 206. See *Fowler*, 200 Wash. 2d at 120; see also Section III.C(3).

1           3. Most significant relationships test

2           Assuming that Balmuccino has established an actual conflict of law, Washington law  
3 applies because Balmuccino has not shown that California bears a more significant relationship  
4 to its contract and tort claims. Thus, the Court must apply Washington law to resolve this case.

5           a. Contract claims

6           The most significant relationships test does not show that California has the more  
7 significant relationship to Balmuccino’s contract claims.<sup>5</sup> Since the pitch meeting between  
8 Balmuccino and Starbucks occurred in New York, the first two prongs of the test (place of  
9 contracting and place of negotiation of the contract) do not help decide whether Washington or  
10 California law applies. Similarly, analysis of the fifth prong (the domicile, residence, nationality,  
11 place of incorporation and place of business of the parties) is a draw, as Starbucks is a  
12 Washington corporation and Balmuccino is registered in California. Consequently, the Court’s  
13 choice of law analysis is guided exclusively by the third and fourth prongs (place of performance  
14 and location of the subject matter of the contract).

15           In considering the third and fourth prongs, the Court finds that Washington, not  
16 California, has the more significant relationship to this case. Because the contract concerned the  
17 sale of coffee-flavored lip balms by Starbucks, both the place of performance and the location of  
18 the contract’s subject matter relate more to Washington. According to the complaint, the  
19 implied-in-fact and oral contracts barred Starbucks from releasing coffee-flavored lip balms  
20 without compensating Balmuccino or obtaining its consent. Dkt. # 23 at 6–7. As a Washington-  
21 based company, Starbucks’s Washington employees would have performed the contract or  
22 breached the contract in Washington. At minimum, these factors do not rebut the presumptive

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24 <sup>5</sup> The complaint asserts that the parties entered an “implied-in-fact” contract and an “oral  
contract,” not that the parties formally signed a written contract. Dkt. # 23 at 5–7.

1 application of Washington law. *See Tilden–Coil Constructors*, 721 F. Supp. 2d at 1013 (unless  
2 there is both an actual conflict and the other state bears a more significant relationship to the  
3 claims, “Washington law presumptively applies”). Starbucks’s “sizeable retail presence in  
4 California,” *see* Dkt. # 28 at 9, also does not rebut this presumption, as this fact does not tie the  
5 place of performance or location of the contract’s subject matter to California more than any  
6 other state in which Starbucks has significant operations.

7         The California courts’ dismissal of this case for lack of personal jurisdiction also cuts  
8 strongly against Balmuccino’s argument that California has the more significant relationship to  
9 its claims. As relevant here, the California Court of Appeal concluded that the alleged points of  
10 contact between Starbucks and California did not “involv[e] the subject of this lawsuit” nor  
11 demonstrate that “the alleged trade secret misappropriation ‘arises out of or relates to’  
12 Starbucks’s contacts with California.” *Balmuccino*, 2022 WL 3643062, at \*5. The court added  
13 that “there is no forum-related activity or occurrence by Starbucks that took place in California,”  
14 as “[t]he uncontroverted evidence before us is that the Sip Kit lip glosses, as well as the entire  
15 promotional campaign, were created, developed, and launched in Washington, not California.”  
16 *Id.*

17         In light of these findings, Balmuccino has not overcome the presumptive application of  
18 Washington law. *See Tilden–Coil Constructors*, 721 F. Supp. 2d at 1013. Since the Court is not  
19 convinced that California bears the more significant relationship to this case, it declines to apply  
20 California law to Balmuccino’s contract claims.

21         b. Tort claims

22         The most significant relationships test also shows that Washington law should govern  
23 Balmuccino’s tort claims. The third and fourth prongs of the most significant relationships test  
24 for tort claims (the domicile, residence, nationality, place of incorporation and place of business

1 of the parties and the place where the relationship, if any, between the parties is centered)  
2 provide little help here: Starbucks is a Washington corporation, Balmuccino is registered in  
3 California, and the relationship between Starbucks and Balmuccino does not appear to be  
4 centered in any one location. Therefore, the tort choice of law analysis is guided by the first and  
5 second prongs (the place where the injury occurred and the place where the conduct causing the  
6 injury occurred).

7 In considering the first and second prongs in light of their relative importance, the Court  
8 finds that Washington, not California, has the more significant relationship to Balmuccino’s tort  
9 claims. Although Balmuccino’s alleged injury occurred in California, Washington was the place  
10 where the conduct causing the injury occurred. *See Balmuccino*, 2022 WL 3643062, at \*5  
11 (“[t]he uncontroverted evidence before us is that the Sip Kit lip glosses, as well as the entire  
12 promotional campaign, were created, developed, and launched in Washington, not California.”).  
13 Because this action centers on Starbucks’s alleged misconduct, the Court views the “place where  
14 the conduct causing the injury occurred” to be a more significant contact than “the place where  
15 the injury occurred.” *See, e.g., Kelley v. Microsoft Corp.*, 251 F.R.D. 544, 552 (W.D. Wash.  
16 2008) (finding that the place of injury is of less importance than the place where the conduct  
17 causing the injury occurred, especially when the defendant’s conduct caused harm in multiple  
18 states); *Bryant v. Wyeth*, 879 F. Supp. 2d 1214, 1221–22 (W.D. Wash. 2012) (finding that in  
19 cases of fraud and misrepresentation, the place of injury is often fortuitous and thus of lesser  
20 importance than the place where the conduct causing the injury occurred); *White v. Symetra*  
21 *Assigned Benefits Serv. Co.*, No. 20-1866 MJP, 2022 WL 2983943, at \*4 (W.D. Wash July 28,  
22 2022) (finding the location where the conduct causing the injury occurred to be more important  
23 because plaintiffs’ claims focus on defendants’ conduct arising out of Washington). The Court is

1 thus not convinced that California bears the more significant relationship to Balmuccino’s tort  
2 claims so will resolve the entirety of this matter under Washington law.

3 C. Dismissal of the Claims as Time-Barred

4 It is uncontested that all of Balmuccino’s causes of action have a three-year statute of  
5 limitations period. *See generally* Dkt. # 28; *see also* Dkt. # 27 at 16–17; RCW 4.16.080(3);  
6 RCW 4.16.080(2); Cal. Civ. Code § 3426.6; RCW 19.108.060; 18 U.S.C. § 1836(d). It is also  
7 uncontested that Balmuccino filed suit in this Court more than three years after learning of  
8 Starbucks’s alleged trade secret misappropriation.<sup>6</sup> *See generally* Dkt. ## 23, 27, 28.

9 Since Balmuccino filed this action after the applicable statutes of limitations expired, all  
10 of Balmuccino’s claims are time-barred unless Balmuccino can prove that the statutes tolled.  
11 Even reading Balmuccino’s complaint with the required liberality, as discussed below, the Court  
12 concludes that Balmuccino is not entitled to statutory or equitable tolling under Washington law.  
13 Thus, the Court must dismiss Balmuccino’s First Amended Complaint under Rule 12(b)(6) for  
14 failure to state a claim upon which relief can be granted.

15 1. Legal standard

16 To decide whether an action is time-barred, the Court “must determine whether the  
17 running of the statute is apparent on the face of the complaint.” *Bakalian v. Cent. Bank of*  
18 *Republic of Turkey*, 932 F.3d 1229, 1233 (9th Cir. 2019) (quoting *Huynh v. Chase Manhattan*  
19 *Bank*, 465 F.3d 992, 997 (9th Cir. 2006)). When a party brings a motion to dismiss based on the  
20 running of the statute of limitations, the motion may be granted “if the assertions of the

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21 <sup>6</sup> The FAC provides two potential dates for when Balmuccino allegedly learned of Starbucks’s  
22 trade secret misappropriation: 2018 (discovery that Starbucks contacted one of its suppliers) and April  
23 2019 (discovery of the Sip Kit launch). Dkt. # 23 at 3. Balmuccino does not specify which date it wishes  
24 the Court to use for the purposes of this motion. *See generally id*; *see also* Dkt. # 28. But even under the  
more generous reading of the complaint (i.e., assuming that Starbucks’s misconduct was discovered in  
April 2019), all of Balmuccino’s claims are time-barred under the applicable statutes of limitations as the  
three-year period would have lapsed in April 2022 and this action was not filed until October 2022.

1 complaint, read with the required liberality, would not permit the plaintiff to prove that the  
2 statute was tolled.” *Jablon v. Dean Witter & Co.*, 614 F.2d 677, 682 (9th Cir. 1980); *see also*  
3 *Supermail Cargo, Inc. v. United States*, 68 F.3d 1204, 1207 (9th Cir. 1995) (“[A] complaint  
4 cannot be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts  
5 that would establish the timeliness of the claim.”). A statute of limitations may be tolled  
6 statutorily or via the jurisdiction’s equitable tolling doctrine.

## 7 2. Statutory tolling

8 Balmuccino is not entitled to statutory tolling under Washington law. *See Miles v.*  
9 *Shanghai Zhenhua Port Mach. Co., Ltd.*, No. C08-5743 FDB, 2009 WL 5067513, at \*2 (W.D.  
10 Wash. Dec. 17, 2009) (“In diversity actions, federal courts generally apply state statutes related  
11 to the commencement and tolling of statutes of limitations.”). In Washington, statutory tolling is  
12 governed in part by RCW 4.16.170 and RCW 4.16.180. *See Dowell Co. v. Gagnon*, 36 Wash.  
13 App. 775, 776, 677 P.2d 783 (1984). As relevant here, RCW 4.16.170 reads:

14 For the purpose of tolling any statute of limitations an action shall be deemed  
15 commenced when the complaint is filed or summons is served whichever occurs  
16 first. If service has not been had on the defendant prior to the filing of the  
17 complaint, the plaintiff shall cause one or more of the defendants to be served  
18 personally, or commence service by publication within ninety days from the date  
19 of filing the complaint. If the action is commenced by service on one or more of  
the defendants or by publication, the plaintiff shall file the summons and  
complaint within ninety days from the date of service. If following service, the  
complaint is not so filed, or following filing, service is not so made, the action  
shall be deemed to not have been commenced for purposes of tolling the statute of  
limitations.

20 Balmuccino asserts that “[p]ursuant to RCW 4.16.170, the timely filing of a complaint, coupled,  
21 as here, with the timely service of summons, tolls the running of the statute of limitations as of  
22 the date of filing, on October 18, 2019.” Dkt. # 28 at 6. But Balmuccino misunderstands the  
23 statute. As interpreted by the Washington courts, the commencement of another action, even  
24 involving the same purpose and the same parties, does not statutorily toll the limitations period in

1 Washington. *Dowell*, 36 Wash. App. at 775–76; *see also Masse v. Clark*, No. C06-5375 RBL-  
2 KLS, 2007 WL 1468820, at \*7 (W.D. Wash. May 18, 2007) (“The tolling provisions of RCW  
3 4.16.170 do not apply to previously filed actions.”). This is because “the complaint” in RCW  
4 4.16.170 refers to *the* complaint “filed in the action before the court, not *a* complaint  
5 independently filed.” *Dowell*, 36 Wash. App. at 776. Since the relevant complaint here for  
6 RCW 4.16.170 purposes was filed by Balmuccino on October 21, 2022 (Dkt. # 1), Balmuccino  
7 has not shown that RCW 4.16.170 tolled the statutes of limitations as of October 18, 2019. Nor  
8 does Balmuccino allege that its claims are statutorily tolled by RCW 4.16.180. *See generally*  
9 Dkt. # 28. The Court thus rejects Balmuccino’s assertion that its claims are timely due to  
10 statutory tolling.

### 11 3. Equitable Tolling

12 Balmuccino is not entitled to equitable tolling under Washington law.<sup>7</sup> Washington  
13 courts apply equitable tolling:

14 [1] when justice requires. The predicates for equitable tolling are [2] bad faith,  
15 deception, or false assurances by the defendant and [3] the exercise of diligence by the  
16 plaintiff. In Washington equitable tolling is appropriate [4] when consistent with both the  
purpose of the statute providing the cause of action and the purpose of the statute of  
limitations.

17 *Millay*, 135 Wash. 2d at 206 (internal citations omitted) (citing *Finkelstein*, 76 Wash. App. at  
18 739–40; *Douchette*, 117 Wash. 2d at 812); *see also Fowler*, 200 Wash. 2d at 119 (reiterating the  
19 test provided in *Millay*). The party asserting equitable tolling bears the burden of proof. *See*  
20 *Price v. Gonzalez*, 4 Wash. App. 2d 67, 75, 419 P.3d 858 (2018). Although equitable tolling is

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21 <sup>7</sup> Balmuccino is also not entitled to equitable tolling for its federal claim (trade secret  
22 misappropriation under the DTSA) based on federal tolling law. Balmuccino did not raise its federal  
23 claim until March 9, 2023, at least 11 months after the statute of limitations expired. *Compare* Dkt. # 23  
24 at 11, *with* Dkt. # 1, *and Balmuccino*, 2022 WL 3643062. As Balmuccino’s federal claim was untimely,  
and federal equitable tolling principles do not extend to “garden variety claim[s] of excusable neglect,”  
*see Irwin v. Dep’t of Veterans Affairs*, 498 U.S. 89, 96 (1990), Balmuccino is not entitled to relief based  
on the federal equitable tolling doctrine.

1 permitted in Washington, its courts have “cautioned against broadly applying equitable tolling in  
2 a manner that ‘would substitute for a positive rule established by the legislature a variable rule of  
3 decision based upon individual ideas of justice.’” *Fowler*, 200 Wash. 2d at 119 (quoting  
4 *Leschner v. Dep’t of Lab. & Indus.*, 27 Wash. 2d 911, 926, 185 P.2d 113 (1947)). As a result,  
5 Washington “[c]ourts typically permit equitable tolling to occur only sparingly” and decline to  
6 extend it to “garden variety claim[s] of excusable neglect.” *Benyaminov v. City of Bellevue*, 144  
7 Wash. App. 755, 761, 183 P.3d 1127 (2008) (quotation marks omitted) (quoting *State v. Duvall*,  
8 86 Wash. App. 871, 875, 940 P.2d 671 (1997)).

9 Balmuccino has not satisfied the standard for equitable tolling in Washington. As stated  
10 above, one “predicate[]” for equitable tolling is “bad faith, deception, or false assurances by the  
11 defendant.” *Fowler*, 200 Wash. 2d at 119 (citing *Millay*, 135 Wash. 2d at 206). Washington  
12 courts construe this requirement as a fairly strict precondition for equitable tolling. In *Fowler*,  
13 the Washington Supreme Court observed that it had “explained [in *Douchette*] that the plaintiff  
14 was not entitled to equitable tolling because she ‘failed to act diligently in pursuing her legal  
15 remedy’ and because she ‘failed to show bad faith, deception or false assurances on the part of  
16 the [defendant].” *Id.* at 123 (emphasis in original) (quoting *Douchette*, 117 Wash. 2d at 812).  
17 The Washington Supreme Court then stated that its decision in *Douchette* “clarified that proof of  
18 both predicates is necessary to justify equitable relief: ‘In the absence of bad faith on the part of  
19 the defendant and reasonable diligence on the part of the plaintiff, equity cannot be invoked.’”  
20 *Id.* (quoting *Douchette*, 117 Wash. 2d at 812). The Washington Supreme Court concluded by  
21 observing that

22 [t]he four-part standard set forth in *Millay* remains the standard for equitable  
23 tolling of statutes of limitations in civil actions under Washington law.  
24 Washington courts must evaluate *each part* of this standard in light of the  
particular facts of each case and should equitably toll the applicable statute of  
limitations only when *all four parts* of the *Millay* standard are satisfied.



1 *Id.* at 124–25 (emphasis added).

2 Balmuccino does not allege—in either its First Amended Complaint or in its response to  
3 Starbucks’s motion to dismiss—that Starbucks acted in bad faith, engaged in deception, or made  
4 any false assurances. *See generally* Dkt. ## 23, 28. Accordingly, Balmuccino has not satisfied  
5 one of the predicate conditions for equitable tolling under Washington law. *See Fowler*, 200  
6 Wash. 2d at 123. Balmuccino also cites no case in which a Washington court equitably tolled a  
7 statute of limitations under Washington’s equitable tolling doctrine based on the filing of a  
8 complaint in another lawsuit. The Court thus rejects Balmuccino’s assertion that its claims are  
9 timely due to equitable tolling.

10 Rather than argue that Starbucks indeed acted in bad faith, Balmuccino argues that  
11 Washington courts previously applied a different equitable tolling standard which did not include  
12 a “bad actor” requirement. *See* Dkt. # 23 at 8 (“*Fowler*’s ‘bad actor’ requirement should not be  
13 retroactively applied.”). This argument, however, relies on a false premise. Contrary to  
14 Balmuccino’s claim, *Fowler* did not establish a new standard for equitable tolling in  
15 Washington. Rather, the case “reiterat[ed] the four conditions” for equitable tolling which the  
16 courts have applied “consistently” since *Millay*, a 1998 Washington Supreme Court case.  
17 *Fowler*, 200 Wash. 2d at 113, 120. Balmuccino’s citation to and reliance on federal district court  
18 cases before *Fowler* is also mistaken, as the cited cases involve the courts applying *federal*  
19 tolling law to federal claims, not *Washington* tolling law to claims brought under Washington  
20 law. *See e.g.*, *Abeyta v. BNSF Ry Co.*, No. 2:17-CV-0350-TOR, 2018 WL 327283 (E.D. Wash.  
21 Jan. 8, 2018) (employee brought action under Federal Employers’ Liability Act); *Nelson v.*  
22 *United States*, No. C05-643JLR, 2005 WL 1838620 (W.D. Wash. Aug. 1, 2005) (individual filed  
23 petition to quash IRS summons); *Figueroa v. BNSF Ry. Co.*, 275 F. Supp. 3d 1225 (E.D. Wash.  
24

1 2017) (employee brought action under Federal Employers’ Liability Act). It is therefore not  
2 “retroactive” or otherwise improper for the Court to apply *Fowler*’s four-part equitable tolling  
3 test to Balmuccino’s claims.

4 As a final matter, Balmuccino draws on California’s more forgiving tolling law to argue  
5 that declining to toll the statutes of limitations during the pendency of the state-court action is  
6 bad public policy. Balmuccino may have a point that requiring a plaintiff to concurrently file  
7 separate actions in two different jurisdictions is inefficient and laborious. *See* Dkt. # 28 at 6.  
8 Yet this is the tolling policy that Washington has apparently adopted. *See Dowell*, 36 Wash.  
9 App. at 776 (for statutory tolling under RCW 4.16.170, “[*t*]he complaint’ is the one filed in the  
10 action before the court, not *a* complaint independently filed.”); *Abear v. Teveliet*, No. C06-5550  
11 RBL, 2006 WL 3813560, at \*2 (W.D. Wash. Dec. 21, 2006) (“[RCW 4.16.170] says literally  
12 nothing about the effect of a timely, earlier filing on the limitations period applied to a second  
13 action regarding the same subject matter.”); *Fowler*, 200 Wash. 2d at 123–25 (“bad faith,  
14 deception or false assurances” by the defendant is a predicate for equitable tolling in  
15 Washington). Whatever can be said of the various policy arguments, the Court must follow and  
16 apply Washington State’s tolling laws, as interpreted by Washington courts, to Balmuccino’s  
17 claims.

18 Balmuccino’s policy argument is also weakened by its decision not to file suit elsewhere  
19 after the California Superior Court dismissed its claims for lack of personal jurisdiction. Even  
20 assuming that Balmuccino reasonably asserted personal jurisdiction in California at the outset of  
21 litigation, Balmuccino was on notice that it might need to file elsewhere at least as of June 2020,  
22 when the California Superior Court dismissed its claims for lack of personal jurisdiction. That  
23 Balmuccino knew, or should have known, that it might need to file elsewhere prior to the  
24

1 expiration of the limitations periods lessens the force of its policy argument that it would be  
2 unfair or redundant to have to concurrently file multiple suits in multiple jurisdictions.

3         Aside from arguing that *Fowler*'s four-part equitable tolling test is novel (it is not) and  
4 that Washington's tolling law reflects poor public policy, Balmuccino provides no other  
5 argument for why it is entitled to equitable tolling under Washington law. The Court therefore  
6 must grant Starbucks's motion to dismiss Balmuccino's claims as time-barred, as the assertions  
7 of the First Amended Complaint, even when read with the required liberality, do not permit  
8 Balmuccino to prove that the statute was tolled. *See Jablon*, 614 F.2d at 682.

9 D. Leave to Amend

10         "As a general rule, when a court grants a motion to dismiss, the court should dismiss the  
11 complaint with leave to amend." *CyWee Grp. Ltd. v. HTC Corp.*, 312 F. Supp. 3d 974, 981  
12 (W.D. Wash. 2018); *see also Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th  
13 Cir. 2003) (policy favoring leave to amend should be applied with "extreme liberality"). "In  
14 determining whether dismissal without leave to amend is appropriate, courts consider such  
15 factors as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to  
16 cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by  
17 virtue of allowance of the amendment, and futility of amendment." *CyWee Grp. Ltd.*, 312 F.  
18 Supp. 3d at 981 (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)). "A district court does not err  
19 in denying leave to amend where the amendment would be futile." *DeSoto v. Yellow Freight*  
20 *Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992). Similarly, if there are no other facts consistent with  
21 the challenged pleading that could possibly cure the deficiency, dismissal with prejudice is  
22  
23  
24

1 appropriate. *See Schreiber Distrib. Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1401 (9th  
2 Cir. 1986).

3 The Court declines to offer further leave to amend. Since Balmuccino’s claims are time-  
4 barred under Washington law, the Court does not see how Balmuccino could possibly allege  
5 other facts to cure this deficiency. Although Balmuccino states that it would be “premature” to  
6 bar further amendment, it does not provide any other information to support its claim. *See* Dkt. #  
7 28 at 12. Thus, the Court finds that granting leave to amend would be futile.

8 Moreover, two other *Foman* factors support denying leave to amend: Balmuccino has  
9 repeatedly failed to cure deficiencies in its complaint and Starbucks has experienced prejudice  
10 based on Balmuccino’s undue delays. The Court previously granted Balmuccino leave to  
11 amend, but the amended complaint failed to cure these deficiencies. *See King v. Select Comfort*  
12 *Corp.*, 824 F. App’x 532, 533 (9th Cir. 2020) (district court did not abuse its discretion when it  
13 dismissed plaintiffs’ third amended complaint under Rule 12(b)(6) with prejudice). And while  
14 Balmuccino is correct that Starbucks had timely notice of the suit due to Balmuccino’s  
15 continuous legal action against Starbucks, Starbucks may still be prejudiced by Balmuccino’s  
16 delays as well as the fact that multiple years have elapsed since the alleged events occurred. *See*  
17 *Mansfield v. Pfaff*, No. C14-0948JLR, 2014 WL 3810581, at \*4 (W.D. Wash. Aug. 1, 2014)  
18 (“Whether there has been ‘undue delay’ should be considered in the context of (1) the length of  
19 the delay measured from the time the moving party obtained relevant facts; (2) whether  
20 discovery has closed; and (3) proximity to the trial date.” (citing *Texaco, Inc. v. Ponsoldt*, 939  
21 F.2d 794, 798–99 (9th Cir. 1991)); *see also Morongo Band of Mission Indians v. Rose*, 893 F.2d  
22 1074, 1079 (9th Cir. 1990) (Supreme Court found plaintiffs’ two-year delay in filing the  
23 amended complaint relevant to denying leave to amend); *Douchette*, 117 Wash. 2d at 813 (court  
24 found prejudice “arising from the fact that 3 years have elapsed since the events at issue

1 occurred”). Based on these factors, the Court declines to grant leave to amend and dismisses  
2 Balmuccino’s claims with prejudice.

3 E. Other Arguments

4 Besides asserting that Balmuccino’s claims are time barred, Starbucks raises two  
5 additional grounds for dismissal in its motion. Dkt. # 27 at 7. Starbucks states that the Court  
6 should: (1) dismiss Balmuccino’s common-law breach of confidence claim (third cause of  
7 action), as it is preempted under the Washington UTSA; and (2) strike Balmuccino’s request for  
8 punitive damages because the requested punitive damages are not recognized under Washington  
9 law. *Id.* Because the Court is dismissing all of Balmuccino’s claims on timeliness grounds, it  
10 need not address Starbucks’s additional arguments.

11 **IV**

12 **CONCLUSION**

13 For the reasons above, the Court GRANTS Starbucks’s Motion to Dismiss (Dkt. # 27)  
14 and DISMISSES Balmuccino’s First Amended Complaint with prejudice.

15  
16 Dated this 26th day of July, 2023.

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20 John H. Chun  
21 United States District Judge  
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