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**United States District Court  
Central District of California**

DEBORAH M. MANCHESTER, PH.D.,  
Plaintiff,

v.

SIVANTOS GMBH, a German company;  
SIVANTOS, INC., a Delaware  
corporation, AURALCARE HEARING  
CENTERS OF AMERICA; DAVID D.  
LARSEN, and DOES 1-10, inclusive,  
Defendants.

Case No: 2:17-CV-05309-ODW (JEMx)

**ORDER GRANTING DEFENDANTS’  
MOTIONS FOR SUMMARY  
JUDGMENT [438, 446]**

**I. INTRODUCTION**

Presently before the Court are Motions for Summary Judgment filed by Defendants AuralCare Hearing Centers of America’s (“AuralCare”) and David Larsen (AuralCare Motion For Summary Judgment, (“AuralCare Mot.”), ECF No. 438), as well as Sivantos, Inc. and Sivantos GMBH. (Sivantos Motion for Summary Judgment (“Sivantos Mot.”), ECF No. 446.) For the reasons that follow, the Motions are **GRANTED.**<sup>1</sup>

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<sup>1</sup> After carefully considering the papers filed in connection with the Motion, the Court deemed the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15.

## II. FACTUAL BACKGROUND

Deborah M. Manchester, Ph.D., invented a tele-audiology technology called “HARP.” (Second Amended Compl. (“SAC”) ¶ 21, ECF No. 66.)

HARP allows an audiologist to access hearing aids remotely and adjust them according to the patient’s needs. (*Id.* ¶ 22.) It uses Bluetooth technology and is the subject of three patent applications filed by Manchester. (*Id.* ¶¶ 24, 29–31.) Manchester claims this technology “opens the door to increased global hearing aid sales and affords access to a \$270 billion untapped market for over-the-counter hearing aid sales.” (*Id.* ¶ 27.) At all times, Manchester maintains she has diligently protected her “intellectual property and the confidentiality of information pertaining to the HARP technology.” (*Id.* ¶ 33.)

Sivantos, Inc. is the “United States-based affiliate” of German-based Sivantos GMBH. (*Id.* ¶ 13.) Both companies have “at least an approximate 18% market share of the hearing instrument market” and are the subsidiaries of Sivantos Group. (*Id.* ¶ 14.) In May 2016, Zachary Call, Senior Business Development Consultant for Sivantos, Inc., arranged, and later attended, a meeting that included two “Sivantos team members including a technical expert,” Manchester and Dave Larsen (a business associate of Manchester). (*Id.* ¶ 44.) They met at a trade conference in Phoenix, Arizona, and according to Manchester, Defendants “expressed interest in a potential sale, license, or collaboration involving HARP.” (*Id.*) Sivantos GMBH, Harp, Inc., through Manchester, and Larsen all then entered a non-disclosure agreement, which did not include Sivantos, Inc. as a signatory. (*Id.* ¶ 45.)

During a conference call on June 16, 2016, Sivantos GMBH’s representatives told Manchester that, prior to their initial meeting, “Defendants had *not* been working on developing any technology similar to HARP.” (*Id.* ¶ 51.) If Sivantos GMBH ever did choose to pursue such a technology, “it would be in the distant future and Defendants would not do so independently.” (*Id.* ¶ 52.) Sivantos GMBH would work together with other members of the hearing aid industry to develop a “group type”

1 solution. (*Id.*) Manchester explained to Defendants the advantages of her HARP  
2 technology over a group solution, which would require an industry-wide agreement and  
3 standard. (*Id.*)

4 After the June 16, 2016 call, Defendants continued to express interest in HARP,  
5 and on June 27, 2016, Manchester provided a document responding to “a list of  
6 technical questions about the functionality of the HARP technology” that Naumann sent  
7 to her. (*Id.* ¶ 56.) She explained how she achieved HARP’s remote connection and  
8 other technical information regarding its low-energy, Bluetooth technology, and its  
9 functionality on Apple iOS. (*Id.*) Throughout July 2016, the parties continued their  
10 communications, and “Sivantos GMBH asked Dr. Manchester to send further materials,  
11 including the claims of her pending patent application so that Sivantos GMBH could  
12 ‘see what they might be investing in.’” (*Id.* ¶ 57.) Then, prior to Manchester submitting  
13 patent-related information, Sivantos GMBH’s in-house lawyer sent Manchester an  
14 email requesting that she stop sending information regarding her technology, and that  
15 any further confidential information she sent would not be covered by the NDA. (*Id.* ¶  
16 58.) As a result, all communications ended. (*Id.* ¶ 59.)

17 Months later, Defendants released their own remote programing technology  
18 called, “TeleCare.” (*Id.* ¶ 61.) According to Manchester, TeleCare used “some of the  
19 exact language [she] had used to describe HARP’s features in her presentations to  
20 Defendants.” (*Id.* ¶ 62.) Manchester claims \$50,000,000 in general, special, and  
21 consequential damages. (*Id.* ¶ 78.)

### 22 III. LEGAL STANDARD

23 A court “shall grant summary judgment if the movant shows that there is no  
24 genuine dispute as to any material fact and the movant is entitled to judgment as a matter  
25 of law.” Fed. R. Civ. P. 56(a). Courts must view the facts and draw reasonable  
26 inferences in the light most favorable to the nonmoving party. *Scott v. Harris*, 550 U.S.  
27 372, 378 (2007). A disputed fact is “material” where the resolution of that fact might  
28 affect the outcome of the suit under the governing law, and the dispute is “genuine”

1 where “the evidence is such that a reasonable jury could return a verdict for the  
2 nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).  
3 Conclusory or speculative testimony in affidavits is insufficient to raise genuine issues  
4 of fact and defeat summary judgment. *Thornhill Publ’g Co. v. GTE Corp.*, 594 F.2d  
5 730, 738 (9th Cir. 1979). Moreover, though a court may not weigh conflicting evidence  
6 or make credibility determinations, there must be more than a mere scintilla of  
7 contradictory evidence to survive summary judgment. *Addisu v. Fred Meyer, Inc.*, 198  
8 F.3d 1130, 1134 (9th Cir. 2000).

9       Once the moving party satisfies its burden, the nonmoving party cannot simply  
10 rest on the pleadings or argue that any disagreement or “metaphysical doubt” about a  
11 material issue of fact precludes summary judgment. *See Celotex Corp. v. Catrett*, 477  
12 U.S. 317, 322–23 (1986); *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475  
13 U.S. 574, 586 (1986); *Cal. Architectural Bldg. Prods., Inc. v. Franciscan Ceramics,*  
14 *Inc.*, 818 F.2d 1466, 1468 (9th Cir. 1987). Nor will uncorroborated allegations and  
15 “self-serving testimony” create a genuine issue of material fact. *Villiarimo v. Aloha*  
16 *Island Air, Inc.*, 281 F.3d 1054, 1061 (9th Cir. 2002). The court should grant summary  
17 judgment against a party who fails to demonstrate facts sufficient to establish an element  
18 essential to his case when that party will ultimately bear the burden of proof at trial. *See*  
19 *Celotex*, 477 U.S. at 322.

20       Pursuant to the Local Rules, parties moving for summary judgment must file a  
21 proposed “Statement of Uncontroverted Facts and Conclusions of Law” that should set  
22 out “the material facts as to which the moving party contends there is no genuine  
23 dispute.” C.D. Cal. L.R. 56-1. A party opposing the motion must file a “Statement of  
24 Genuine Disputes” setting forth all material facts as to which it contends there exists a  
25 genuine dispute. C.D. Cal. L.R. 56-2. “[T]he Court may assume that the material facts  
26 as claimed and adequately supported by the moving party are admitted to exist without  
27 controversy except to the extent that such material facts are (a) included in the  
28

1 ‘Statement of Genuine Disputes’ and (b) controverted by declaration or other written  
2 evidence filed in opposition to the motion.” C.D. Cal. L.R. 56-3.

#### 3 IV. SIVANTOS, INC. AND SIVANTOS GMBH’S MOTION

4 Sivantos, Inc. and Sivantos GMBH move for summary judgment because: 1)  
5 Manchester lacks standing to bring her claims; 2) Manchester cannot prove trade secret  
6 misappropriation because she lacks a protectable interest; 3) Manchester cannot prove  
7 Sivantos Inc. misappropriated the alleged trade secrets; 4) Manchester’s contractual  
8 claims fail as a matter of law because she cannot prove causation or harm; and 5)  
9 Manchester admits she did not disclose any confidential information to Sivantos, Inc.,  
10 and Sivantos Inc. is not a party to any nondisclosure agreement (“NDA”). (Sivantos  
11 Mot. 1–3, ECF No. 448-1.)

##### 12 A. Standing

13 Sivantos argues that Manchester lacks standing to enforce contractual claims  
14 because she was neither a party to a NDA with Sivantos GMBH nor designated as a  
15 non-party beneficiary. (Sivantos Mot. 7.)

16 As a general matter, a person who is not a party to a contract does not have  
17 standing either to seek its enforcement or to bring claims based on the contractual  
18 relationship. *Ruegsegger v. Caliber Home Loans, Inc.*, No. SA CV 17-0907-DOC  
19 (KESx), 2018 WL 5993857, at \*14 (C.D. Cal. Apr. 30, 2018) (quoting *Mega Life &*  
20 *Health Ins. Co. v. Superior Court*, 172 Cal. App. 4th 1522, 1528–32 (2009)).

21 California law provides that a third party may enforce a contract when the  
22 contract was made expressly for the benefit of the third party. Cal. Civ. Code § 1559;  
23 *see Hess v. Ford Motor Co.*, 27 Cal. 4th 516, 524 (2002). A “‘third party’s rights under  
24 a contract are predicated upon the contracting parties’ intent to benefit it.” *Hess*, 27  
25 Cal. 4th at 524 (quoting *Garcia v. Truck Ins. Exch.*, 36 Cal. 3d 426, 436 (1984)).  
26 “Ascertaining this intent is a question of ordinary contract interpretation.” *Id.* “Under  
27 long-standing contract law, a ‘contract must be so interpreted as to give effect to the  
28 mutual intention of the parties as it existed at the time of contracting, so far as the same

1 is ascertainable and lawful.” *Iqbal v. Ziadah*, 10 Cal. App. 5th 1, 7 (2017) (quoting  
2 Cal. Civ. Code § 1636). California recognizes the objective theory of contracts which  
3 “[i]t is the objective intent, as evidenced by the words of the contract, rather than the  
4 subjective intent of one of the parties, that controls interpretation.” *Berman v.*  
5 *Bromberg*, 56 Cal. App. 4th 936, 948 (1997) (quoting *Titan Group, Inc. v. Sonoma*  
6 *Valley County Sanitation Dist.*, 164 Cal. App. 3d 1122, 1127 (1985)). The parties’  
7 “undisclosed intent or understanding is irrelevant to contract interpretation.” *Iqbal*, 10  
8 Cal. App. 5th at 8 (collecting cases).

9 Here, Sivantos maintains that the text of the NDA includes the names and  
10 signatures of all parties to the NDA, but Manchester is not among them. (Sivantos Mot.  
11 at 7.) However, a review of the NDA reveals that Manchester is listed in the preamble  
12 and on the signature page, albeit immediately after HARP, Inc. (Multiparty Non-  
13 Disclosure and Restricted Use Agreement (“NDA”) 2, 10, ECF No. 448-5.) Thus, the  
14 Court concludes that there is insufficient evidence to determine that Manchester is not  
15 a party to the contract. Even if she were not, however, the NDA is clear that it was the  
16 intention of the parties to engage in discussions regarding a potential collaboration, and  
17 the only individual able to authorize such collaboration is Manchester. Thus, whether  
18 the Court analyzes the text or the parties’ intent, Manchester has standing.

19 **B. Breach of Contract<sup>2</sup>**

20 As an initial matter, the Court notes that Manchester only maintains a breach of  
21 contract cause of action against Sivantos GMBH, and not Sivantos, Inc. (SAC ¶¶ 72–  
22 79.)

23 “[T]he elements of a cause of action for breach of contract are (1) the existence  
24 of the contract, (2) plaintiff’s performance or excuse for nonperformance, (3)

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25 <sup>2</sup> The Court notes that Plaintiff alternates between the use of German and California law; specifically  
26 she maintains her failure to mark documents as confidential does not impact her contractual  
27 obligations under German law, but subsequently raises a claim of breach of good faith and fair dealing,  
28 which is inherent in every California contract, but offers no support that such a requirement exists  
under German law. Given that Manchester did not rely upon German law in her Complaint, and choice  
of law was not argued by either party, the Court will apply California law to all contract claims.

1 defendant’s breach, and (4) the resulting damages to the plaintiff.” *Oasis W. Realty,*  
2 *LLC v. Goldman*, 51 Cal. 4th 811, 821 (2011) (internal citations omitted).

3 Here, neither party presents argument regarding whether a contract was formed.  
4 Manchester maintains that Sivantos GMBH breached the NDA because it “has misused,  
5 and continues to misuse, the confidential and proprietary information provided  
6 thereunder for its own business purposes, to develop, market, and sell its own TeleCare  
7 application . . . .” (SAC ¶ 75.)

8 The NDA begins by establishing definitions, notably, of what constitutes  
9 confidential information. (NDA 1.) In essence, confidential information is defined as  
10 any information and data, which is marked as confidential. (*Id.*) Sivantos argues that  
11 Manchester never marked any information confidential. (Sivantos Mot. 9.) Manchester  
12 does not argue against this fact in her Opposition. Instead, she maintains, through her  
13 German law expert, that the lack of confidential markings does not run afoul of the  
14 NDA’s express requirement that all confidential material be marked as such.  
15 (Manchester Opp’n 4–5, ECF No. 569.) Given that Manchester does not dispute the  
16 fact she never marked information and data submitted to Sivantos GMBH as  
17 confidential, and no evidence exists that she submitted confidential information to  
18 Sivantos GMBH, the foundation she builds her argument upon is untenable, and she  
19 thus fails to generate a triable issue of material fact on breach.

20 Accordingly, the Court grants summary judgment on this claim.

### 21 **C. Trade Secret Misappropriation**

22 To obtain protection under the California Uniform Trade Secrets Act  
23 (“CUTSA”), a plaintiff must first prove: “(1) the plaintiff owned a trade secret, (2) the  
24 defendant acquired, disclosed, or used the plaintiff’s trade secret through improper  
25 means, and (3) the defendant’s actions damaged the plaintiff.” *CytoDyn of New Mexico,*  
26 *Inc. v. Amerimmune Pharm., Inc.*, 160 Cal. App. 4th 288, 297 (2008) (quoting *Sargent*  
27 *Fletcher, Inc. v. Able Corp.*, 110 Cal. App. 4th 1658, 1665 (2003)).

28 Under CUTSA, a trade secret is defined as:

1 information, including a formula, pattern, compilation, program, device,  
2 method, technique, or process, that

3 (1) Derives independent economic value, actual or potential, from not  
4 being generally known to the public or to other persons who can obtain  
5 economic value from its disclosure or use; and

6 (2) Is the subject of efforts that are reasonable under the circumstances to  
7 maintain its secrecy.

8 Cal. Civ. Code § 3426.1(d). To qualify as a trade secret, the information “must be  
9 secret, and must not be of public knowledge or of a general knowledge in the trade or  
10 business.” *DVD Copy Control Ass’n, Inc. v. Bunner*, 116 Cal. App. 4th 241, 251  
11 (internal quotation marks omitted) (2004).

12 Courts have consistently denied the existence of a trade secret where, as here, the  
13 claimed trade secret is submitted without redaction for registration with the United  
14 States Copyright Office. *See KEMA, Inc. v. Koperwhats*, 658 F. Supp. 2d 1022, 1031  
15 (N.D. Cal. 2009) (holding that defendant’s counter-claim for trade secret  
16 misappropriation failed where defendant failed to allege that his submission was  
17 redacted); *Mobile Active Defense, Inc. v. Los Angeles Unified Sch. Dist.*, No. 15-08762  
18 RGK (GJSx), 2015 WL 12860491, at \*5 (C.D. Cal. 2015) (denying a preliminary  
19 injunction pursuant to the CUTSA on the same grounds).

20 In order to obtain registration, an applicant must submit one or two complete  
21 copies of the work to the Copyright Office. *See* 17 U.S.C. § 408(b); 37 C.F.R. §  
22 202.20(c). Accordingly, Plaintiff must have submitted her claimed trade secrets to the  
23 Copyright Office, which submission was publicly accessible. Although the Copyright  
24 Office does place restrictions on requests for reproductions, 37 C.F.R. § 201.2(d)(2),  
25 the same restrictions do not apply to requests for inspection. *Compare* 17 U.S.C. §  
26 705(b) (“[A]rticles deposited in connection with completed copyright registrations and  
27 retained under the control of the Copyright Office, shall be open to public inspection.”)  
28



1 with 37 C.F.R. § 201.2(b)(1) (providing for public inspection at the Copyright Office of  
2 material deposited in connection with a completed copyright registration).

3 Here, Manchester never addresses the unredacted nature of her submission,  
4 arguing instead that *KEMA* was wrongly decided, and the mere act of submission is  
5 insufficient to eliminate secrecy. (Manchester Mot. 5-6.) This strained argument does  
6 not defeat the conclusions reached by courts in this Circuit facing the same claim. Thus,  
7 the Court accepts Sivantos' unredacted submission argument as undisputed, thereby  
8 eliminating the existence of a trade secret.

9 Given that trade secret possession is a necessary prerequisite to obtain protection  
10 under CUTSA and sustain a trade secret misappropriation claim, the Court need not  
11 analyze remaining elements, and grants summary judgment in Sivantos' favor as to this  
12 cause of action.

### 13 **C. Fraudulent Misrepresentation**

14 To establish a claim for fraudulent misrepresentation, the plaintiff must prove:

15 (1) the defendant represented to the plaintiff that an important fact was  
16 true; (2) that representation was false; (3) the defendant knew that the  
17 representation was false when the defendant made it, or the defendant  
18 made the representation recklessly and without regard for its truth; (4) the  
19 defendant intended that the plaintiff rely on the representation; (5) the  
20 plaintiff reasonably relied on the representation; (6) the plaintiff was  
21 harmed; and (7) the plaintiff's reliance on the defendant's representation  
22 was a substantial factor in causing that harm to the plaintiff.

23 *Perlas v. GMAC Mortgage, LLC*, 187 Cal. App. 4th 429, 434, (2010) (italics omitted).

24 Here, Manchester argues that during a June 2016 conference call, she was told  
25 that Sivantos was not working on a similar product, as cdthey would not be utilizing  
26 Bluetooth technology. (SAC ¶¶ 51–52.) Moreover, it is undisputed that the product  
27 that Sivantos released after the conference call did not possess Bluetooth. (Manchester  
28 Statement of Genuine Issues of Material Fact (“Manchester SUF”))

1 12, ECF No. 570.) Thus, given that the statement is undisputed, and the corresponding  
2 product lacks Bluetooth technology, Manchester cannot generate a triable issue of  
3 material fact as to fraudulent misrepresentation.

4 Accordingly, Sivantos is entitled to summary judgment as to this claim.

5 **D. Unjust Enrichment**

6 Manchester also brings a claim for unjust enrichment under California law. (SAC  
7 ¶¶ 95–98.) However, “California does not recognize a standalone cause of action for  
8 unjust enrichment.” *Robinson v. HSBC Bank USA*, 732 F. Supp. 2d 976, 978 (N.D. Cal.  
9 2010) (citing *Durell v. Sharp Healthcare*, 183 Cal. App. 4th 1350 (2010)). “Unjust  
10 enrichment is not a cause of action, however, or even a remedy, but rather, a general  
11 principle, underlying various legal doctrines and remedies.” *McBride v. Boughton*, 123  
12 Cal. App. 4th 379, 387 (2004). Thus, this claim cannot survive summary judgment.

13 Accordingly, the Court grants summary judgment as to this cause of action.

14 **E. California Business and Professions Code Section 17200**

15 Manchester also brings a claim under California’s Unfair Competition Law  
16 (“UCL”) pursuant to California Business and Professions Code section 17200, *et seq.*  
17 (SAC ¶¶ 95–98.)

18 Regarding claims of unlawful business practices, “[v]irtually any law[,] federal,  
19 state[,] or local can serve as a predicate for an action” under section 17200. *Smith v.*  
20 *State Farm Mut. Auto. Ins. Co.*, 93 Cal. App. 4th 700, 702 (2001). “If a plaintiff cannot  
21 state a claim under the predicate law, however, [the] Section 17200 claim also fails.”  
22 *Rudd v. Borders, Inc.*, No. 09-cv-832, 2009 WL 4282013, at \*2 (S.D. Cal. Nov. 25,  
23 2009).

24 Given that the Court has granted summary judgment on all causes of action  
25 heretofore, Manchester’s claim fails as a matter of law because she lacks a predicate to  
26 sustain a claim under California Business and Professions Code section 17200.

27 Accordingly, the Court grants summary judgment as to this cause of action.

28

1 **F. Implied Covenant of Good Faith and Fair Dealing**

2 “The covenant of good faith and fair dealing is implied in every contract and  
3 prevent[s] one contracting party from unfairly frustrating the other party’s right to  
4 receive the benefits of the agreement.” *Canas v. Ocwen Loan Servicing LLC*, No.  
5 SACV 15-1100 JVS (JCGx), 2015 WL 5601838, at \*5 (C.D. Cal. Sept. 21,  
6 2015) (quoting *Guz v. Bechtel Nat’l Inc.*, 24 Cal. 4th 317, 349 (2000)).

7 Courts have generally rejected breach of the implied covenant claims when they  
8 are merely duplicative of a breach of contract claim. *See, e.g., Davis v. Chase Bank*  
9 *U.S.A., N.A.*, No. CV 06-04804 DDP (PJWx), 2013 WL 169868, at \*6 (C.D. Cal. Jan.  
10 16, 2013); *Diaz v. Fed. Express Corp.*, 373 F. Supp. 2d 1034, 1066 (C.D. Cal. 2005); *see*  
11 *also Creager v. Yoshimoto*, No. C 05-01985 JSW, 2007 WL 2938168, at \*2–3 (N.D.  
12 Cal. Oct. 9, 2007).

13 In reviewing the NDA, the parties’ obligations are expressly set forth and are  
14 accordingly quite clear: all data that was marked as confidential should be kept as such.  
15 Thus, the NDA leaves little room for implied covenants, which “are justified only when  
16 they are not inconsistent with some express term of the contract and, in the absence of  
17 such implied terms, the contract could not be effectively performed.” *Tanner v. Title*  
18 *Ins. & Trust Co.*, 20 Cal. 2d 814, 824 (1942).

19 Moreover, the crux of Manchester’s good faith and fair dealing claim alleges that  
20 Sivantos misused Manchester’s information “for its own purposes and/or disclosing the  
21 information to third parties, and deprived Dr. Manchester of the benefit of the NDA.”  
22 (SAC ¶ 107.) This claim is merely a restatement of the breach of contract claim and is  
23 therefore duplicative.

24 Accordingly, given the duplicative nature of this claim, and that “[i]mplied terms  
25 should never be read to vary express terms,” the Court grants Sivantos’ motion for  
26 summary judgment with respect to this claim. *Carma Developers v. Marathon Dev.*, 2  
27 Cal. 4th 342, 374 (1992).

1 As the Court has found that Manchester has not generated a triable issue of  
2 material fact on any of her claims, Sivantos Inc. and Sivantos GMBH's Motion for  
3 Summary Judgment is **GRANTED**.

#### 4 **V. AURALCARE AND LARSEN'S MOTION**

5 Auralcare and Larsen joined Sivantos Inc. and Sivantos GMBH's Motion for  
6 Summary Judgment (AuralCare Joinder, ECF No. 496.), and also independently moved  
7 for Summary Judgment. (AuralCare Motion for Summary Judgment ("AuralCare  
8 Mot."), ECF No. 438), AuralCare moves on the following grounds: 1) Manchester's  
9 breach of contract claim fails for lack of standing and because it violates California law;  
10 2) Manchester failed to present sufficient evidence that AuralCare aided and abetted  
11 Sivantos in its alleged misappropriation, and that Manchester's unjust enrichment and  
12 UCL claims are derivative and therefore fail. (AuralCare Mot. 9.)

13 Given that AuralCare and Larsen joined in the Sivantos' Motion for Summary  
14 Judgment, the Court need only address Manchester's breach of contract cause of action,  
15 as her misappropriation, unjust enrichment, and unfair competition claims fail as a  
16 matter of law against AuralCare and Larsen for the same reasons they failed against  
17 both Sivantos entities.

#### 18 **A. Breach of Contract**

19 In Fall 2015, Manchester, an independent contractor who worked in AuralCare  
20 facilities,<sup>3</sup> approached Larsen about her invention, and subsequently entered into a Non-  
21 Disclosure and Non-Compete agreement. (Non-Compete and Non-Disclosure  
22 Agreement ("the Agreement"), ECF No. 43-4.)

23 The Agreement begins by confirming an agreement between My Hearing  
24 Centers, Larsen, Bacher (collectively, "The MHC Team"), and Manchester, Manchester  
25 Hearing Services, Inc. ("The Company"). (*Id.*) The Agreement also limited AuralCare  
26 from engaging in the following actions without consent from Manchester, for a term of  
27 three years:

28 \_\_\_\_\_  
<sup>3</sup> It is undisputed that Manchester worked in AuralCare facilities until at least May 2018.

- 1 a) [E]ngage or assist any other person or entity to engage in any  
2 business competitive with or substantially similar to the business of the  
3 Company or any of the Company's licensees in any geographic area where  
4 the Company and/or licensees are transacting business;
- 5 b) [S]olicit, cater to or serve or seek to solicit, cater to or serve any  
6 customer of the Company or its licensees with services and/or products  
7 which are the same as, or which are substantially similar to or competitive  
8 with, the Business of the Company or its licensees;
- 9 c) [D]ivert or attempt to divert, for its direct or indirect benefit or for  
10 the benefit of any other person, any customer of the Company or licensees  
11 or any of the business or patronage of any customer of the Company or  
12 licensees;
- 13 d) [I]nfluence or attempt to influence any customer of the Company or  
14 licensees to transfer its business or patronage from the Company or  
15 licensees directly or indirectly to any other person, corporation,  
16 partnership, joint venture, sole proprietorship or other form of business  
17 entity;
- 18 e) [A]ssist, be or become involved in or associated with, in any  
19 capacity, any person, corporation, partnership, joint venture, sole  
20 proprietorship or other form of business entity that Is engaged in the  
21 production, creation or authorship of products which are the same as, or  
22 which are substantially similar to or competitive with, the Business of the  
23 Company licensees, in any geographic area where the Company and/or  
24 licensees are transacting business; and
- 25 f) [I]n any other manner interfere with, disrupt[, ] or attempt to disrupt  
26 the relationship of the Company and licensees with any of the customers,  
27 suppliers, or employees of the company, including the solicitation of any  
28 of the foregoing.

1 g) [F]or purposes of clarity, and notwithstanding any of the foregoing  
2 or elsewhere in this agreement, the MHC Team may engage in business  
3 with the Company's licensees and Company's customers so long as not  
4 directly or indirectly competitive with the Business of the Company, i.e.  
5 HARP, or any products with HARP.

6 (*Id.* ¶ 1.1, (a)–(g).)

7 AuralCare raises the same standing argument raised by Sivantos—that  
8 Manchester lacks standing, and it thus fails for the same reason—Manchester was listed  
9 by name in the preamble, and signed the document herself. (*Id.* at 2, 5.) AuralCare's  
10 argument appears to ignore the preamble, which sets forth the agreement between the  
11 aforementioned parties. Consistent with the Court's previous conclusion, Manchester  
12 also has standing to challenge the Agreement. The Court turns to whether the  
13 Agreement violates California law.

14 California has a settled public policy in favor of open competition. *Hill Medical*  
15 *Corp. v. Wycoff*, 86 Cal. App. 4th 895, 900 (2001). Accordingly, the general rule is that  
16 covenants not to compete are void. *Id.* at 901. Section 16600 embodies this prohibition  
17 against restraints on trade as follows:

18 Except as provided in this chapter, every contract by which anyone is  
19 restrained from engaging in a lawful profession, trade, or business of any  
20 kind is to that extent void.

21 Generally, California Business Professions Code sections 16601 and 16602 permit  
22 broad covenants not to compete in two narrow situations, i.e., where a person sells the  
23 goodwill of a business and where a partner agrees not to compete in anticipation of  
24 dissolution of a partnership. *Kolani v. Gluska*, 64 Cal. App. 4th 402, 407 (1998). Thus,  
25 covenants not to compete in contracts *other than* for either the sale of goodwill or  
26 dissolution of a partnership are void. *Id.* Moreover, when a contract creates an illegal  
27 restraint on trade, there is nothing that the parties can do that will in any way add to its  
28

1 validity. If the contract is void, it cannot be ratified either by right or by conduct. *South*  
2 *Bay Radiology Medical Associates v. Asher* 220 Cal. App. 3d 1074, 1080 (1990).

3 Manchester argues that the Agreement is enforceable because Courts have  
4 excepted agreements that protect trade secrets, relying on *Latona v. Aetna Healthcare,*  
5 *Inc.*, 82 F. Supp. 2d 1089, 1096 (C.D. Cal. 1999). While *Latona* does indeed stand for  
6 the proposition that an NDA seeking to protect trade secrets constitutes an exception to  
7 the rule articulated herein, the Court in *Latona* concluded that the exception did not  
8 apply because the restrictions in the NDA were neither narrowly tailored nor limited to  
9 protecting trade secrets. *Id.* at 1096–97. Here, the NDA’s broad terms limit AuralCare  
10 from engaging in business competitive with Manchester in any geographic area, as well  
11 as prohibiting association with any person that is engaged in production of products  
12 similar to Manchester’s product. Thus, Manchester’s assertion that the purpose of the  
13 Agreement was to protect trade secrets is unavailing, as the express prohibitions far  
14 exceed what is necessary to protect a trade secret, and as such, is neither narrowly  
15 tailored nor limited to trade secret protection.

16 Accordingly, the Agreement violates California law, and AuralCare and Larsen  
17 are entitled to summary judgment on all claims.

## 18 VI. CONCLUSION

19 For the foregoing reasons, Sivantos and AuralCare’s Motions for Summary  
20 Judgment are **GRANTED**. (ECF Nos. 438, 446.) The parties shall submit proposed  
21 Judgment within one week of the issuance of this order.

22  
23 **IT IS SO ORDERED.**

24  
25 August 2, 2019

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OTIS D. WRIGHT, II  
UNITED STATES DISTRICT JUDGE