

1 **II. BACKGROUND**

2 For purposes of Defendants’ Rule 12(b)(6) Motion, the Court takes all of
3 Wixen’s well-pleaded allegations as true. *See Lee v. City of Los Angeles*, 250 F.3d
4 668, 688 (9th Cir. 2001). The Court also refers to these allegations in determining
5 whether it has personal jurisdiction over Oliveira, though in that context, the
6 allegations may be controverted by a presentation of evidence. *Schwarzenegger v.*
7 *Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004).

8 Wixen is a U.K. corporation that administers music copyrights and collects
9 royalties earned by its clients’ recordings, which are known as “neighboring rights”
10 royalties. (Compl. ¶ 13.) Wixen’s clients include musicians, vocalists, producers, and
11 others involved in creating recordings. (*Id.*)

12 TEG is a California corporation. (*Id.* ¶ 14.) Like Wixen, TEG also administers
13 and collects neighboring rights royalties. (*Id.* ¶ 2.) Dreith and Hoffman are TEG
14 officers who reside in California. (*Id.* ¶ 3, 4.) Oliveira is a London, U.K. resident and
15 former Wixen employee who now works for TEG. (Decl. Tania Oliveira (“Oliveira
16 Decl.”) ¶¶ 2, 8, ECF No. 16-1.)

17 Oliveira began working for Wixen at the end of 2019. (Compl. ¶ 17.) As a
18 condition of her employment, Oliveira agreed to retain Wixen’s “confidential and
19 proprietary information and trade secrets” in strict confidence. (*Id.*) These trade
20 secrets include the names, contact information, and incomes of Wixen’s clients,
21 contract amounts and expiration dates, Wixen’s methodology for collecting
22 neighboring rights, Wixen employee salaries, and more. (*Id.* ¶ 18.) Wixen took
23 measures to ensure the information remained confidential, such as requiring
24 employees to sign confidentiality agreements and securing the information in
25 password-protected repositories. (*Id.* ¶ 20.)

26 On October 29, 2020, while still employed by Wixen, Olivera entered into a
27 non-disclosure agreement with California-based TEG, Dreith, and Hoffman
28 (collectively, “TEG Defendants”) in which Oliveira agreed to share certain

1 information including Wixen’s trade secrets. (*Id.* ¶ 22.) On November 1, 2020, TEG
2 entered into an additional consulting agreement with Oliveira. (*Id.* ¶ 23.) During the
3 five months Oliveira worked for both Wixen (in the U.K.) and TEG (in California),
4 she emailed herself and TEG Defendants Wixen-related information, including Wixen
5 trade secrets, from her work computer. (*Id.* ¶ 25.) Moreover, during and after
6 Oliveira’s employment with Wixen, Oliveira contacted one or more of Wixen’s clients
7 using their non-public contact information found in Wixen’s client list, for the purpose
8 of soliciting business from those clients on behalf of TEG. (*Id.* ¶ 26.) As a result,
9 TEG did in fact gain the business of certain Wixen clients. (*Id.*)

10 On February 1, 2021, Oliveira informed Wixen that she would resign effective
11 March 12, 2021. (*Id.* ¶ 31.) Prior to resigning, Oliveira deleted several TEG-related
12 emails from her work laptop, which Wixen later found in the computer’s “Recycle
13 Bin.” (*Id.* ¶ 33.) The deleted emails show Oliveira shared confidential Wixen
14 information with TEG. (*Id.*)

15 On March 26, 2021, Wixen filed a Complaint alleging: (1) trade secret
16 misappropriation under federal law; (2) trade secret misappropriation under state law;
17 (3) intentional interference with contractual relations; (4) intentional interference with
18 economic relations; (5) unfair competition; and (6) conspiracy. (*Id.* ¶¶ 36–83.)
19 Defendants now move to dismiss on three grounds: (1) the Court lacks personal
20 jurisdiction as to Oliveira; (2) alternatively, Oliveira must be dismissed from the case
21 under the doctrine of forum non conveniens; and (3) irrespective of whether Oliveira
22 is dismissed on those grounds, failure to state a claim under Federal Rule of Civil
23 Procedure (“Rule”) 12(b)(6) as to all Defendants. (Mot. 3–15.) The matter is fully
24 briefed. (*See Id.*; Pls.’ Opp’n, ECF No. 18; Defs.’ Reply, ECF No. 20.)

25 **III. MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION**

26 For the following reasons, the Court finds it has personal jurisdiction over
27 Oliveira and thus **DENIES** Defendants’ Motion to dismiss Oliveira from this action.

28

1 **A. Legal Standard**

2 Federal courts have the power to exercise personal jurisdiction to the extent
3 permitted by the laws of the states in which they sit. Fed. R. Civ. P. 4(k)(1)(A).
4 California’s long-arm jurisdictional statute is coextensive with federal due-process
5 requirements, namely, that a defendant “have certain minimum contacts with [the
6 forum state] such that the maintenance of the suit does not offend traditional notions
7 of fair play and substantial justice.” *Int’l Shoe Co. v. State of Wash., Office of*
8 *Unemp’t Comp. & Placement*, 326 U.S. 310, 316 (1945); *Dole Food Co., Inc. v.*
9 *Watts*, 303 F.3d 1104, 1110 (9th Cir. 2002).

10 When a party seeks dismissal under Rule 12(b)(2) for lack of personal
11 jurisdiction, the plaintiff bears the burden of demonstrating that the exercise of
12 personal jurisdiction is proper. *Menken v. Emm*, 503 F.3d 1050, 1056 (9th Cir. 2007).
13 When the motion to dismiss is based on written materials rather than an evidentiary
14 hearing, “the plaintiff need only make a prima facie showing of jurisdictional facts.”
15 *Sher v. Johnson*, 911 F.2d 1357, 1361 (9th Cir. 1990). “Although the plaintiff cannot
16 simply rest on the bare allegations of its complaint, uncontroverted allegations in the
17 complaint must be taken as true.” *Schwarzenegger*, 374 F.3d at 800 (internal
18 quotations and citations omitted).

19 **B. Discussion**

20 Personal jurisdiction may be general or specific. *Daimler AG v. Bauman*,
21 571 U.S. 117, 127–28 (2014). General jurisdiction exists when a foreign defendant’s
22 “affiliations with the State are so continuous and systematic as to render [it]
23 essentially at home in the forum State.” *Goodyear Dunlop Tires Ops., S.A. v. Brown*,
24 564 U.S. 915, 919 (2011) (internal quotation marks omitted). The parties do not
25 dispute that the Court does not have general jurisdiction over Oliveira. (*See* Opp’n 5.)
26 Thus, the issue is whether this Court may exercise specific jurisdiction over Oliveira.

27 The Ninth Circuit uses a three-prong test for establishing specific jurisdiction:
28 (1) the non-resident defendant must purposefully direct activities or transactions with

1 the forum or purposefully avail him or herself of the benefits and protections of the
2 forum’s laws; (2) the claim must arise out of or relate to the defendant’s forum-related
3 activities; and (3) the exercise of jurisdiction must comport with fair play and
4 substantial justice such that it is reasonable. *Schwarzenegger*, 374 F.3d at 802. “The
5 plaintiff bears the burden of satisfying the first two prongs of the test.” *Id.* The
6 burden then shifts to the defendant to “present a compelling case” that the third prong
7 is not satisfied. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477 (1985).

8 **1. First Prong: Purposeful Direction or Availment**

9 The Court’s specific jurisdiction analysis begins by considering whether
10 Oliveira “purposefully directed” her conduct toward, or “purposefully availed” herself
11 of the privileges of, California. *Schwarzenegger*, 374 F.3d at 802. Courts typically
12 analyze contract disputes under the “purposeful availment” standard, and typically
13 apply the “purposeful direction” standard to tort claims. *See id.* (explaining that
14 purposeful availment and purposeful direction are “two distinct concepts”). However,
15 the Ninth Circuit “often use[s] the phrase ‘purposeful availment,’ in shorthand
16 fashion, to include both purposeful availment and purposeful direction.” *Id.* And
17 despite observing that the purposeful direction test is more appropriate for tort claims,
18 the *Schwarzenegger* court nevertheless analyzed the tort claims at issue under both the
19 purposeful direction and purposeful availment standards in determining specific
20 jurisdiction. *Id.* at 802–803. This Court follows suit and assesses Wixen’s claims
21 under both standards.

22 **a. Purposeful Direction**

23 To establish purposeful direction, a plaintiff must show the defendant
24 “(1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing
25 harm that the defendant knows is likely to be suffered in the forum state.” *Axiom*
26 *Foods, Inc. v. Acerchem Int’l, Inc.*, 874 F.3d 1064, 1069 (9th Cir. 2017) (citation
27 omitted). The inquiry is “defendant-focused,” meaning that “the relationship between
28 the nonresident defendant, the forum, and the litigation must arise out of contacts that

1 the defendant *himself* creates with the forum state.” *Id.* at 1068 (internal quotations
2 and citation omitted, emphasis in original).

3 Here, Wixen fails to demonstrate the third prong: that Oliveira “[knew] that the
4 harm caused would likely be suffered in California.” *See Krypt, Inc. v. Ropaar LLC*,
5 No. 19-cv-03226-BLF, 2020 WL 3639651, at *6 (N.D. Cal. July 6, 2020). To satisfy
6 this element, a defendant’s intentional act must have foreseeable effects in the forum.
7 *Brayton Purcell LLP v. Recordon & Recordon*, 606 F.3d 1124, 1131 (9th Cir. 2010).
8 Here, the harm arising from Oliveira’s actions did not occur in California at all. This
9 is because “a corporation incurs economic loss, for jurisdictional purposes, in the
10 forum of its principal place of business.” *CollegeSource, Inc. v. AcademyOne, Inc.*,
11 653 F.3d 1066, 1079 (9th Cir. 2011). Thus, Wixen suffered economic harm in the
12 U.K., not California. Wixen fails to allege or suggest it lost a California business
13 opportunity (such as by losing a California client) or some other economic harm
14 suffered in California that could satisfy this element. Wixen failed to satisfy the
15 foreseeable harm requirement under the purposeful direction standard. The Court
16 must therefore determine whether Wixen has met its burden under the purposeful
17 availment standard.

18 ***b. Purposeful Availment***

19 To establish purposeful availment, a plaintiff must show the defendant
20 “purposefully availed himself of the privilege of doing business in a forum state,”
21 which “typically consists of evidence of the defendant’s actions in the forum, such as
22 executing or performing a contract there.” *Schwarzenegger*, 374 F.3d at 802. “By
23 taking such actions, a defendant ‘purposefully avails itself of the privilege of
24 conducting activities within the forum State, thus invoking the benefits and
25 protections of its laws.’” *Id.* (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)).

26 Here, Oliveira entered into certain agreements with, and began working for,
27 California-based TEG. (Compl. ¶¶ 22, 25; Oliveira Decl. ¶ 9.) As part of her work,
28 Oliveira directed clients to TEG in California. (Decl. Sharon Wixen (“Wixen Decl.”))

1 Ex. E, ECF No. 18-1.) Moreover, Wixen points to an email in which Oliveira appears
2 to refer a Wixen client to Hoffman and Dreith and indicates that California-based TEG
3 could pay clients in U.S. Dollars more quickly than could Wixen. (Wixen Decl.
4 Ex. E.) The email demonstrates that Oliveira was aware that TEG was a California-
5 based company when she was working for TEG. Oliveira therefore “availed [her]self
6 of the privilege of doing business in the forum state,” satisfying the first prong of the
7 specific jurisdiction test. *Schwarzenegger*, 374 F.3d at 802.

8 **2. Second Prong: Claims Arise from Forum-Related Activities**

9 The court next assesses whether Wixen’s claims “arise out of or result from”
10 Oliveira’s “forum-related activities.” *Rio Properties, Inc. v. Rio Int’l Interlink*,
11 284 F.3d 1007, 1019 (9th Cir. 2002). “In the Supreme Court’s phrasing, a plaintiff’s
12 claims must ‘arise out of or relate to the defendant’s contacts with the forum.’” *Ayla*,
13 *LLC v. Alya Skin Pty. Ltd.*, 11 F.4th 972, 983 (9th Cir. 2021) (quoting *Ford Motor Co.*
14 *v. Montana Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1026 (2021)). Here, Wixen’s claims
15 arise from Oliveira’s relationship with California-based TEG, including the various
16 communications Oliveira had with TEG and the trade secrets Oliveira sent TEG.
17 Thus, the Court finds Wixen’s claims arise from Oliveira’s contacts with California,
18 satisfying the second prong.

19 **3. Third Prong: Fair Play and Substantial Justice**

20 Once the plaintiff has satisfied the first two prongs, “the defendant must come
21 forward with a compelling case that the exercise of jurisdiction would not be
22 reasonable.” *Boschetto v. Hansing*, 539 F.3d 1011, 1016 (9th Cir. 2008). In
23 determining reasonableness, the Court looks to seven factors: “(1) the extent of the
24 defendant’s purposeful interjection into the forum state’s affairs; (2) the burden on the
25 defendant of defending in the forum; (3) the extent of conflict with the sovereignty of
26 the defendant’s state; (4) the forum state’s interest in adjudicating the dispute; (5) the
27 most efficient judicial resolution of the controversy; (6) the importance of the forum
28 to the plaintiff’s interest in convenient and effective relief; and (7) the existence of an

1 alternative forum.” *Freestream Aircraft (Berm.) Ltd. v. Aero L. Grp.*, 905 F.3d 597,
2 607 (9th Cir. 2018). Here, although the second factor weighs against exercising
3 jurisdiction, the remaining six factors all weigh in favor of reasonableness and
4 therefore of exercising jurisdiction. Thus, as set forth below, the Court finds the
5 exercise of jurisdiction to be reasonable.

6 **a. Extent of Purposeful Interjection**

7 With regard to the first factor, the extent of the defendant’s purposeful
8 interjection into the forum state’s affairs, Oliveira purposefully availed herself of the
9 benefits and protections of California by doing business with California-based TEG.
10 *See Ayla*, 11 F.4th at 983 (“The purposeful interjection factor in the reasonableness
11 analysis is ‘analogous to the purposeful direction’ factor.” (quoting *Sinatra v. Nat’l*
12 *Enquirer, Inc.*, 854 F.2d 1191, 1199 (9th Cir. 1988)). Oliveira’s direct, intentional
13 contact with California weighs in favor of reasonableness.

14 **b. Burden of Defending in Forum State**

15 With regard to the second factor, Defendants argue that “it would be an extreme
16 burden for Oliveira to be forced to litigate the pending action in the U.S.” because
17 Oliveira “is not wealthy, nor does she have the financial means to engage in a dispute
18 with her former employer thousands of miles away from where she lives and works.”
19 (Mot. 7.) The Court agrees that forcing an individual defendant to defend an action
20 overseas is a significant burden—particularly when such defendant has little to no
21 history or familiarity with the forum state. Therefore, the Court finds that this factor
22 weighs against exercising jurisdiction over Oliveira.

23 **c. Extent of Conflict with Sovereignty of Defendant’s State**

24 “[L]itigation against a foreign corporation creates a higher jurisdictional barrier
25 than against a citizen from a sister state because important sovereignty concerns
26 exist.” *Ayla*, 11 F.4th at 984. Nevertheless, the *Ayla* court found that the resolution of
27 the plaintiff’s claims was unlikely to undermine Australian sovereignty because the
28 plaintiff only sought determinations under U.S. trademark law and California unfair

1 competition law. *Id.* In this case, Wixen seeks a determination of Defendants’
2 misappropriation only under U.S. federal and California state laws. (*See generally*
3 *Compl.*) Accordingly, the resolution of this action in California is unlikely to impede
4 on the U.K.’s sovereignty.

5 *d. California’s Interest in Adjudicating the Dispute*

6 The primary connection this action has to California is that TEG is a California-
7 based company and Oliveira did business in, and directed business to, California.
8 Therefore, California has a significant interest in adjudicating this dispute.

9 *e. Efficient Judicial Resolution*

10 If the Court declines to exercise jurisdiction over Oliveira, the Court could
11 continue to exercise jurisdiction over TEG, which could result in two parallel actions,
12 asserting the same claims, resulting from the same acts, but in two separate countries.
13 This Court exercising jurisdiction over Oliveira would lend to the most efficient
14 judicial resolution of this action. Thus, this factor weighs in favor of reasonableness.

15 *f. Importance of Forum to Relief; Existence of Alternative Forum*

16 Turning to the sixth factor—the importance of California courts to Wixen’s
17 interest in convenient and effective relief—the Court finds that this weighs somewhat
18 in favor of reasonableness. Wixen is a U.K. company suing a U.K.-based defendant
19 for harm suffered in the U.K. It appears Wixen could receive convenient relief by
20 bringing this action in the U.K., which also impacts the seventh factor—existence of
21 an alternative forum. Nevertheless, California is better suited to resolve claims arising
22 from California state and U.S. federal law, for a dispute stemming from business
23 conducted in and directed to, California. On balance, the Court finds that these factors
24 weigh in favor of reasonableness. Thus, exercising personal jurisdiction over Oliveira
25 would comport with fair play and substantial justice. *Dole Food*, 303 F.3d at 1110.
26 The Court finds that exercising personal jurisdiction over Oliveira would be
27 appropriate. Accordingly, the Court **DENIES** Defendants’ Motion to dismiss Oliveira
28 from the action for lack of personal jurisdiction.

1 **IV. MOTION TO DISMISS FOR FORUM NON CONVENIENS**

2 The Court now addresses Defendants’ argument that Oliveira should be
3 dismissed for forum non conveniens because Oliveira’s employment agreement with
4 Wixen has a governing law provision remitting the parties to the courts of England
5 and Wales. (Mot. 6.)

6 “A district court has discretion to decline to exercise jurisdiction in a case where
7 litigation in a foreign forum would be more convenient for the parties.” *Lueck v.*
8 *Sundstrand Corp.*, 236 F.3d 1137, 1142 (9th Cir. 2001). In determining whether to
9 dismiss an action on a forum non conveniens basis, courts look to: “(1) whether an
10 adequate alternative forum exists, and (2) whether the balance of private and public
11 interest factors favors dismissal.” *Id.* The Ninth Circuit has also held that “a district
12 court must make a choice of law determination in considering whether to dismiss the
13 action.” *Id.* at 1143. Based on the considerations discussed above and the fact that the
14 governing law provision does not constitute a mandatory forum selection clause,
15 Oliveira should not be dismissed from this action for forum non conveniens. “Ninth
16 Circuit precedent requires that the court pay careful attention to whether the language
17 in a forum selection clause is mandatory or permissive.” *Glob. Concierge Holdings v.*
18 *Charbo*, No. CV 13-5203-RGK MANX, 2013 WL 6241589, at *5 (C.D. Cal. Dec. 3,
19 2013). “The prevailing rule is . . . that where venue is specified with mandatory
20 language the clause will be enforced. When only jurisdiction is specified the clause
21 will generally not be enforced without some further language indicating the parties’
22 intent to make jurisdiction exclusive.” *Id.* (quoting *Docksider, Ltd. v. Sea Technology,*
23 *Ltd.*, 875 F.2d 762, 764 (9th Cir. 1989)). However, if the forum selection language is
24 permissive, “the clause will not preclude a party from bringing suit (or removing)
25 elsewhere.” *Id.*

26 Here, the forum selection clause at issue states, “This Agreement shall be
27 construed in accordance with and governed by the laws of England and Wales and the
28 parties submit to the exclusive jurisdiction of the Courts of England and Wales.”

1 (Mot. 6.) The clause states that the parties “submit” to the exclusive jurisdiction of
2 English and Welsh courts but does not specify the circumstances under which the
3 parties must do so. The Court will not interpret this clause so broadly as to bind the
4 parties to English and Welsh courts for any and all disputes. Thus, the Court finds that
5 this provision is not mandatory and is merely permissive. *See Northern Cal. Dist.*
6 *Council of Laborers v. Pittsburg–Des Moines Steel Co.*, 69 F.3d 1034, 1037 (9th Cir.
7 1995) (“To be mandatory, a clause must contain language that clearly designates a
8 forum as the exclusive one.”) Accordingly, Wixen is permitted to submit this dispute
9 to the courts of England and Wales, or any other court.

10 Aside from the governing law clause, the same considerations that support the
11 Court’s finding that exercising jurisdiction over Oliveira is reasonable support the
12 Court’s finding that California is not an inconvenient forum for Oliveira. The Court
13 therefore **DENIES** Defendants’ Motion for forum non conveniens.

14 **V. MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM**

15 Defendants move to dismiss all six causes of action for failure to state a claim
16 under Rule 12(b)(6). (Mot. 7–15.) The Court addresses each claim in turn.

17 **A. Legal Standard**

18 To survive a Rule 12(b)(6) dismissal, a complaint must allege facts that are
19 sufficient to provide both “fair notice” of the particular claim being asserted and “the
20 grounds upon which it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 & n.3
21 (2007) (citation omitted). Although detailed factual allegations are not required, a
22 complaint with “naked assertions devoid of further factual enhancement” would not
23 suffice. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal alteration and quotation
24 marks and citation omitted). Instead, “a complaint must contain sufficient factual
25 matter, accepted as true, to state a claim to relief that is plausible on its face. A claim
26 has facial plausibility when the plaintiff pleads factual content that allows the court to
27 draw the reasonable inference that the defendant is liable for the misconduct alleged.”
28 *Id.* (internal quotation marks and citation omitted). In determining whether a

1 complaint sufficiently states a claim, its allegations of material fact must be taken as
2 true and construed in the light most favorable to the plaintiff. *Lazy Y Ranch Ltd. v.*
3 *Behrens*, 546 F.3d 580, 588 (9th Cir. 2008). Finally, where a district court grants a
4 motion to dismiss, it should generally provide leave to amend unless it is clear the
5 complaint could not be saved by any amendment. *See* Fed. R. Civ. P. 15(a);
6 *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008).

7 **B. Discussion**

8 The Court finds that Wixen sufficiently pleads its first and second claims for
9 trade secret misappropriation and denies Defendants’ Motion with respect to those
10 claims. However, the Court finds that the California Uniform Trade Secrets Act
11 preempts the third, fourth, and fifth causes of action and dismisses these claims with
12 leave to amend. The Court also dismisses Wixen’s Sixth Claim for conspiracy to the
13 extent it relies on now-dismissed claims, providing leave to amend.

14 **1. Failure to State a Claim for Trade Secret Misappropriation (First**
15 **and Second Claims)**

16 Wixen alleges the TEG Defendants misappropriated trade secret information in
17 violation of the Defense of Trade Secrets Act (“DTSA”), 18 U.S.C. § 1836, and the
18 California Uniform Trade Secrets Act (“CUTSA”), Cal. Civ. Code section 3426.
19 (Compl. ¶¶ 36–53.) “[T]he DTSA and the CUTSA share the same pleading
20 requirements for the identification of trade secrets.” *Alta Devices, Inc. v. LG Elecs.,*
21 *Inc.*, 343 F. Supp. 3d 868, 881 (N.D. Cal. 2018). An adequate trade secret
22 misappropriation claim must contain allegations that: (1) the plaintiff owned a trade
23 secret, (2) that the defendant misappropriated, which (3) damaged the plaintiff. *Id.*
24 at 877. Defendants primarily contest the first element. To adequately plead the
25 existence of a trade secret, a plaintiff must describe the trade secret with sufficient
26 particularity. *Cisco Systems, Inc. v. Chung* 462 F. Supp. 3d 1024, 1047 (N.D. Cal.
27 2020). Under both federal and state law, information qualifies as a trade secret if it
28 derives independent economic value from not being known to others who can also

1 obtain economic value from the information, and the owner has “taken reasonable
2 measures to keep such information secret.” 18 U.S.C. § 1839 (3)(A)–(B); *see also*
3 Cal. Civ. Code. § 3426.1(d)(1)–(2). Here, Defendants argue that the Court must
4 dismiss Wixen’s trade secret claims because Wixen did not adequately allege the
5 existence of trade secrets or their independent economic values.

6 ***a. Wixen Alleges the Trade Secrets with Sufficient Particularity***

7 To sufficiently allege a trade secret, “a plaintiff need not spell out the details of
8 the trade secret” but must ‘describe the subject matter of the trade secret with
9 sufficient particularity to separate it from matters of general knowledge in the
10 trade . . . and to permit the defendant to ascertain at least the boundaries within which
11 the secret lies.” *Cisco Systems*, 462 F. Supp. 3d at 1047 (internal quotation marks
12 omitted) (collecting cases). Here, Wixen describes its alleged trade secrets as
13 “17 separate categories of trade secret information,” (Opp’n 14), including:

- 14 (a) the names and contact information of Wixen’s clients and potential
15 clients; (b) expiration dates of the contracts Wixen had with its clients;
16 (c) earnings amounts of Wixen’s clients’ income; (d) earnings history of
17 Wixen’s clients; (e) the names of Wixen’s top earnings clients; (f)
18 Neighboring Rights Societies that Wixen collects from; (g) Wixen’s
19 collection methodology; (h) the names of Wixen’s representatives at
20 those societies; (i) Wixen’s client representatives and their contact
21 information; (j) Wixen’s statement formats; (k) Wixen’s programs and
22 methodology used for e-mail statement distribution and pdf creation; (l)
23 Wixen’s vendors; (m) the names of Wixen’s key employees; (n)
information about the proprietary database system used by Wixen; (o) the
salaries of Wixen’s employees and employment terms and/or
employment agreements in effect; (p) Wixen’s client banking
information; and (q) Wixen’s unique way of paying clients

24 (Compl. ¶ 18.)

25 Defendants argue that Wixen’s trade secrets are insufficiently alleged. But
26 “[c]ourts consistently find that customer lists and customer information . . . can
27 qualify as trade secrets.” *Graduation Sols. LLC v Luya Enter. Inc.*, No. 2:19-cv-
28 01382-DMG-JPR, 2020 WL 6738000, at *10 (C.D. Cal Sep. 11, 2020) (collecting

1 cases). For example, in *Five Star Gourmet Foods, Inc. v. Fresh Express, Inc.*, the
2 court found the allegations of stolen “marketing strategy, product composition,
3 packaging and manufacturing logistics” too vague to support a trade secret claim.
4 No. 19-cv-05611-PJH, 2020 WL 513287, at *7 (N.D. Cal. Jan. 31, 2020). The court
5 said the plaintiff had merely “describe[d] categories of things that might contain trade
6 secret information, rather than trade secrets themselves.” *Id.* However, the court
7 found the plaintiff nevertheless sufficiently pleaded a trade secret with its other, more
8 specific allegations, including how plaintiff “staff[ed] its production lines, the
9 equipment and equipment vendors it use[d], and the order of operations, machinery
10 and live-personnel it use[d].” *Id.* Like the allegations of business operation trade
11 secrets in *Five Star Gourmet*, here, Wixen also alleges a number of unique and
12 proprietary aspects of its business operations, such as its methods of collecting
13 royalties, paying clients, preparing statements for clients, and storing information.
14 (Compl. ¶ 18). Wixen further narrowed the scope of the trade secrets as information
15 that Oliveira allegedly “had access to and [was] in possession of.” (*Id.*)

16 Additionally, to qualify as a trade secret, the owner must have “taken
17 reasonable measures to keep such information secret.” 18 U.S.C. § 1839 (3)(A)–(B);
18 *see also* Cal. Civ. Code. § 3426.1(d)(1)–(2). Defendants assert that Wixen does not
19 allege reasonable efforts to conceal its trade secrets, and in fact cannot, because the
20 trade secrets are “known and/or readily ascertainable, not proprietary, and not
21 maintained in secrecy sufficient to rise to the level of trade secrets.” (Mot. 10.) The
22 Court disagrees. Wixen alleges it made “reasonable efforts” to maintain the secrecy of
23 its trade secrets, including requiring employees to sign confidentiality agreements,
24 disclosing the trade secrets to employees only on a need-to-know basis, and password-
25 protecting the information. (Compl. ¶ 20.) The Court finds these allegations
26 satisfactory. At this stage in the litigation, the Court finds the trade secret pleadings
27 are sufficiently specific.

1 ***b. Wixen Adequately Alleges Independent Economic Value***

2 “To have independent economic value, a trade secret must be sufficiently
3 valuable and secret to afford an actual or potential economic advantage over others.”
4 *Cisco Systems*, 462 F. Supp. 3d at 1052 (citation omitted). The standard to plead
5 independent economic value is not high. *Calendar Research LLC v. StubHub, Inc.*,
6 No. 2:17-cv-04062-SVW-SS, 2017 WL 10378336, at *4 (C.D. Cal. Aug. 16, 2017).
7 For example, a plaintiff claiming that “a competitor could use th[e] information to
8 market itself more effectively” adequately pleads the independent economic value of
9 the information. *Nelson Bros. Prof. Real Est. LLC v. Jaussi*, No. SA CV 17–0158–
10 DOC (JCGx), 2017 WL 8220703, at *5 (C.D. Cal. Mar. 23, 2017).

11 Wixen defined its competitive asset by alleging its trade secrets give “Wixen an
12 advantage in its efforts to compete in the marketplace, to secure contracts with new
13 clients, to maintain its relationships with its existing clients . . . [and] its employees.”
14 (Compl. ¶ 38.) It is plausible that some of the alleged trade secrets, including client
15 contact information and unique payment methods, give Wixen this economic
16 advantage. Thus, the Court finds that Wixen adequately alleges economic value.

17 Defendants do not otherwise dispute that Wixen adequately alleges Defendants
18 misappropriated the trade secrets and Wixen suffered harm from the misappropriation.
19 Taking Wixen’s factual allegations as true for the purpose of deciding the Motion, the
20 Court finds Wixen adequately alleges claims for trade secret misappropriation, and
21 Defendants’ motion is accordingly **DENIED** as to Wixen’s first and second claims.

22 **2. CUTSA Preemption of Third, Fourth, and Fifth Claims**

23 Defendants argue that CUTSA preempts Wixen’s third claim (intentional
24 interference with contractual relations), fourth claim (intentional interference with
25 prospective economic advantage), and fifth claim (unfair competition) because they
26 are based on the same nucleus of facts as the misappropriation of trade secret claims.
27 (Mot. 12–15.) “CUTSA was enacted with . . . California’s legislative intent to occupy
28 the entire field of misappropriation of trade secrets.” *MedImpact Healthcare Sys., Inc.*

1 v. *IQVIA Inc*, No. 19cv1865-GPC(LL), 2020 WL 5064253, at *16 (S.D. Cal. Aug. 27,
2 2020) (collecting cases). The statute “serves to preempt all claims premised on the
3 wrongful taking and use of confidential business and proprietary information,”
4 regardless of whether that information is a trade secret. *Teva Pharm. USA, Inc. v.*
5 *Health IQ, LLC*, No. SACV 13-00308-CJC(RNBx), 2013 WL 12132029, at *5
6 (C.D. Cal. Apr. 29, 2013). CUTSA preempts Wixen’s common law claims to the
7 extent they arise from the “same nucleus of facts as trade secret misappropriation.”
8 *K.C. Multimedia, Inc. v. Bank of Am. Tech. & Ops., Inc.*, 171 Cal. App. 4th 939, 962
9 (2009). Thus, the Court must examine the elements and allegations for each claim and
10 dismiss those that Wixen cannot assert without the facts supporting trade secret
11 misappropriation. *See id.* at 959.

12 ***a. Intentional Interference of Contractual Relations and Prospective***
13 ***Economic Advantage (Third and Fourth Claims)***

14 Under California law, the elements for the tort of intentional interference with
15 contractual relations are: “(1) a valid contract between plaintiff and a third party;
16 (2) defendant’s knowledge of this contract; (3) defendant’s intentional acts designed to
17 induce a breach or disruption of the contractual relationship; (4) actual breach or
18 disruption of the contractual relationship; and (5) resulting damage.” *3500 Sepulveda,*
19 *LLC v. Macy’s West Stores, Inc.*, 980 F.3d 1317, 1325–26 (9th Cir. 2020). “The
20 elements of an intentional interference with prospective economic relations claim are
21 similar. The key difference is that [this claim] only requires an economic relationship
22 between the plaintiff and some third party,” not a contract, “with the probability of
23 future economic benefit to the plaintiff.” *Calsoft Labs, Inc. v. Panchumarthi*, No. 19-
24 cv-04398-NC, 2020 WL 512123, at *6 (N.D. Cal. Jan. 31, 2020) (citing *PG&E Co. v.*
25 *Bear Stearns & Co.*, 50 Cal. 3d 1118, 1126 (1990)).

26 Here, Wixen identifies two parties with whom it contracted or sought to
27 contract and with whose relations TEG Defendants’ actions allegedly interfered. First,
28 Wixen identifies the contracts between itself and the Wixen clients allegedly poached

1 by Defendants. (See Compl. ¶¶ 47, 55–57.) Wixen alleges existing clients typically
2 renew their annual contracts, and “Defendants purposefully disrupted Wixen’s
3 relationships with its existing and potential future clients.” (Compl. ¶ 66, 67.)
4 Second, Wixen identifies the contract between itself and Oliveira. (See *id.* ¶¶ 58–63).²

5 Thus, the same “scheme” gives rise to the interference claims and trade secret
6 claims: TEG Defendants recruited Oliveira to breach her employment agreement,
7 encouraged her to obtain and share confidential information, and then used that
8 information to poach Wixen clients and assist them in terminating their contracts. The
9 “gravamen of the wrongful conduct” for these claims is the same: the wrongful taking
10 and use of Wixen’s trade secrets. *K.C. Multimedia, Inc.*, 171 Cal. App. 4th at 96.
11 These claims rely on the same nucleus of facts as the trade secret claims. See *K.C.*
12 *Multimedia*, 171 Cal. App. at 958; see *Cisco Systems, Inc. v. Chung*, 462 F. Supp. 3d
13 1024, 1058–59 (N.D. Cal. 2020) (dismissing a claim of interference with contractual
14 relations based on misappropriation of a confidential client list because plaintiff
15 “cite[d] the same ‘scheme’ . . . that it proffered to support its trade secret
16 misappropriation claims”). Wixen therefore “failed to allege an intentional
17 interference with contract claim that arises out of a set of operative facts distinct from
18 those relied upon to support its trade secret misappropriation claims,” and CUTSA
19 preemption applies. *Cisco Systems*, 462 F. Supp. at 1058–59; Cal. Civ. Code
20 § 3426.1(b)(2). The Court **GRANTS** Defendants’ Motion to dismiss these claims
21 **with leave to amend** the deficiency.

22 ***b. Unfair Competition (Fifth Claim)***

23 California’s Unfair Competition Law (“UCL”) prohibits any “unlawful, unfair
24 or fraudulent business act or practice.” Cal. Bus. & Prof. Code § 17200. “The UCL’s
25 coverage is broad, sweeping and embracing of anything that can be properly called a
26

27 ² The Court is unpersuaded by Defendants’ contention that Wixen impermissibly alleged that
28 Oliveira interfered with her own contract. (Mot. 13–14, referring to Compl. ¶¶ 61–63.) In the
context of the preceding allegation, a plain reading suggests that Wixen was referring to the TEG
Defendants in describing the disruption with Oliveira’s employment contract. (See Compl. ¶ 60.)

1 business practice and at the same time forbidden by law.” *Santana v. BSI Fin. Servs.,*
2 *Inc.*, 495 F. Supp. 3d 926, 950 (S.D. Cal. 2020). The unfair competition claim is
3 based on the same acts of stealing Wixen’s client lists and poaching its clients. As
4 discussed above, these actions also form the basis of Wixen’s trade secrets claim. As
5 with the contract interference claims, if the trade secrets violations are disregarded, no
6 sufficient claim for unfair competition remains. *K.C. Multimedia*, 171 Cal. App.
7 at 958. Thus, the unfair competition claim is preempted. The Court therefore
8 **GRANTS** Defendants’ Motion to dismiss this Claim **with leave to amend** the
9 identified deficiency.

10 **3. Dismissal of Conspiracy Claim (Sixth Claim)**

11 Finally, Defendants seek to dismiss Wixen’s conspiracy claim. “Standing alone,
12 a conspiracy does no harm and engenders no tort liability. It must be activated by the
13 commission of an actual tort.” *Qwest Commc’ns Corp. v. Weisz*, 278 F. Supp. 2d
14 1188, 1191 (S.D. Cal. 2003) (internal quotations omitted). Thus, the Court dismisses
15 the conspiracy claims insofar as they allege conspiracy to commit torts alleged in the
16 now-dismissed claims. However, Wixen sufficiently alleges conspiracy claims with
17 respect to the two remaining trade secret misappropriation claims. To allege a
18 conspiracy, a plaintiff must allege the formation of a conspiracy, wrongful acts
19 committed pursuant thereto, and resulting damages. *Cellular Plus, Inc. v. Sup. Ct.*,
20 14 Cal. App. 4th 1224, 1236 (1993). Here, Wixen alleges the TEG Defendants
21 intentionally recruited Oliveira to share Wixen’s trade secrets because they knew she
22 worked for Wixen. (See Compl. ¶¶ 21, 25, 40.) This constitutes sufficient pleading of
23 a conspiracy to steal Wixen’s proprietary information.

24 Accordingly, the Court **DISMISSES** the conspiracy claim to the extent it is
25 based on any dismissed claim but not to the extent it is based on the trade secret
26 misappropriation claims, with leave to amend.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VI. CONCLUSION

For these reasons, Defendants’ Motion to Dismiss is **GRANTED IN PART** and **DENIED IN PART**. (ECF No. 16.) Wixen’s third through sixth claims are **DISMISSED** with leave to amend, as described above. The motion is otherwise **DENIED**, including dismissal on the basis of lack of personal jurisdiction and forum non conveniens. If Wixen chooses to file an Amended Complaint, it shall do so within **twenty-one (21) days** of the date of this Order, in which case Defendants shall answer or otherwise respond within **fourteen (14) days** of the filing. If Wixen does not amend its Complaint, then Defendants shall answer within **fourteen (14) days** of the date the amended Complaint would have been due.

IT IS SO ORDERED.

December 22, 2021



OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE