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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JAMES CARR, an individual,  
Plaintiff,  
v.  
AUTONATION INC., et. al.  
Defendants.

No. 2:17-cv-01539-JAM-AC

**ORDER GRANTING IN PART AND  
DENYING IN PART AUTONATION  
INC.'S MOTION TO DISMISS**

More than twenty years ago, Plaintiff James Carr ("Plaintiff" or "Carr") formulated a business plan (the "Business Plan") to "revolutionize" the automobile-wrecking industry into a profitable system. Compl. ¶¶ 2-3, ECF No. 1-2. He alleges that Defendant AutoNation, Inc. ("AutoNation") and others wrongfully stole his ideas from the Business Plan to open a new highly profitable company called LKQ Corporation ("LKQ"). After finding out about LKQ in October 2015, Plaintiff investigated and researched LKQ and, in June 2017, initiated this lawsuit, alleging Misappropriation of Trade Secrets against all defendants and Breach of Contract Implied in Fact against AutoNation and

1 defendant Wayne Huizenga ("Huizenga"). Compl. AutoNation moves  
2 to dismiss both claims against it. Mem., ECF No. 24. Plaintiff  
3 opposes. Opp'n, ECF No. 29. For the reasons explained below,  
4 the Court grants AutoNation's motion to dismiss the trade secret  
5 misappropriation claim without prejudice and denies the motion to  
6 dismiss the implied contract claim.<sup>1</sup>

7  
8 I. FACTUAL AND PROCEDURAL BACKGROUND

9 Plaintiff owned and operated an automobile-wrecking business  
10 in Placerville, California between 1985 and 1995. Compl. ¶ 2.  
11 Based on his experience and background as a college-educated  
12 certified public accountant, Plaintiff created the Business Plan  
13 to transform the automobile-wrecking industry into an efficient,  
14 interconnected, and highly profitable national system capable of  
15 synchronizing the supply of wrecked cars with the demand of  
16 recycled auto parts. Compl. ¶¶ 2-3. Around November 1995,  
17 Plaintiff sent letters to approximately 10 companies and  
18 individuals to gauge their interest in being a business partner  
19 and capital source. Compl. ¶ 4.

20 One of two respondents asked for the Business Plan and then,  
21 upon Plaintiff's request, returned the Business Plan after  
22 indicating they were not interested. Compl. ¶ 5. AutoNation,  
23 owned by well-known businessman Huizenga, was the other company  
24 that responded. Compl. ¶ 4. Specifically, between November 1995  
25 and January 1996, Jeff Davis ("Davis") of AutoNation called

26  
27 <sup>1</sup> This motion was determined to be suitable for decision without  
28 oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled  
for November 21, 2017. In deciding this motion, the Court takes  
as true all well-pleaded facts in the operative complaint.

1 Plaintiff to ask some follow-up questions and asked for the  
2 Business Plan. Compl. ¶¶ 6, 8. Plaintiff sent Davis the  
3 Business Plan, but without any confidentiality agreement or non-  
4 disclosure agreement. Compl. ¶¶ 8, 42. Davis then traveled to  
5 California to meet with Plaintiff in person and tour  
6 approximately five automobile wrecking yards throughout Northern  
7 California. Compl. ¶ 9. Plaintiff claims that, during the  
8 visit, he made clear to Davis that he "contemplated being  
9 compensated or otherwise involved should Huizenga, AutoNation, or  
10 any affiliates choose to move forward with the idea." Id.

11 After their visit, Davis called Plaintiff and told him that  
12 Huizenga and AutoNation were not interested in pursuing the  
13 Business Plan. Compl. ¶ 10. Plaintiff asked Davis to return the  
14 Business Plan and he did. Id. Then Plaintiff left the  
15 automobile-wrecking industry and moved on to other ventures. Id.  
16 He did not follow developments in the automobile-wrecking  
17 industry and did not keep in touch with people in the industry.  
18 Id.

19 At a barbeque almost twenty years later, Plaintiff told a  
20 new acquaintance who owned a Northern California auto parts  
21 recycler that Plaintiff once had a billion dollar business idea  
22 involving the automobile-wrecking industry. Compl. ¶ 11. He  
23 added that he pitched it to Huizenga and AutoNation. Id. The  
24 new acquaintance expressed shock and told Plaintiff that a  
25 successful company called LKQ Corporation ("LKQ") had been formed  
26 with Huizenga's involvement and that it was tremendously  
27 successful. Id.

28 Plaintiff did further research on the internet to learn that

1 Huizenga's business associate founded LKQ and that Huizenga and  
2 AutoNation were founding backers. Compl. ¶ 12. And Plaintiff  
3 discovered that AutoNation owned significant shares of LKQ until  
4 2003. Compl. ¶ 17.

5 After completing his initial research, Plaintiff filed suit  
6 against Defendants AutoNation, Huizenga, Davis, and LKQ in El  
7 Dorado County Superior Court, alleging misappropriation of trade  
8 secrets against all Defendants and breach of contract implied in  
9 fact against AutoNation and Huizenga. Compl. ¶ 53. Defendants  
10 collectively removed the case to this Court under 28 U.S.C.  
11 § 1441. Not. of Removal, ECF No. 1. On September 19, 2017, the  
12 Court approved the parties' stipulation to dismiss Defendants  
13 Huizenga and Davis without prejudice. Order, ECF No. 22.

## 14 15 II. OPINION

### 16 A. Statute Of Limitations

17 Trade secret misappropriation claims brought under the  
18 California Uniform Trade Secrets Act ("CUTSA") have a three year  
19 statute of limitations. Cal. Civ. Code § 3426.6. And the three  
20 year limitation begins to run from the time the misappropriation  
21 is discovered or by the exercise of reasonable diligence should  
22 have been discovered. Id.

#### 23 1. Plaintiff's Entitlement To Tolling

24 "Generally, an action may not be dismissed at the pleading  
25 stage based on the statute of limitations 'unless it is clear  
26 from the face of the complaint that the statute has run and that  
27 no tolling is possible.'" McMenemy v. Colonial First Lending  
28 Grp., Inc., No. 2:14-CV-1482 JAM-AC, 2015 WL 1926965, at \*2 (E.D.

1 Cal. Apr. 15, 2015) (citing Brocade Commc'ns Sys., Inc. v. A10  
2 Networks, Inc., 2011 WL 1044899, at \*3 (N.D. Cal. Mar. 23, 2011)  
3 (internal citation omitted)); see also Jablon v. Dean Witter &  
4 Co., 614 F.2d 677, 682 (9th Cir. 1980) ("When a motion to dismiss  
5 is based on the running of a statute of limitations, it can be  
6 granted only if the assertions of the complaint, read with the  
7 required liberty, would not permit the plaintiff to prove that  
8 the statute was tolled.") Whether a plaintiff is entitled to  
9 tolling based on delayed discovery is usually a question of fact  
10 for the jury, unless the uncontradicted facts are susceptible to  
11 only one legitimate inference. McMenemy, 2015 WL 1926965, at \*2  
12 (citing Kline v. Turner, 87 Cal. App. 4th 1369, 1374 (2001)).

13 To avail itself of delayed discovery tolling, a plaintiff  
14 must plead facts showing (1) the time and manner of discovery and  
15 (2) the inability to have made an earlier discovery despite  
16 reasonable diligence. McMenemy, 2015 WL 1926965, at \*2 (citing  
17 E-Fab, Inc. v. Accountants, Inc. Servs., 153 Cal. App. 4th 1308,  
18 1320 (2007) and Rey v. OneWest Bank, FSB, 2:12-CV-02078 MCE-GGH,  
19 2013 WL 127839, at \*5 (E.D. Cal. Jan. 9, 2013)). The burden is  
20 on the plaintiff to show diligence and conclusory allegations  
21 will not withstand a motion to dismiss. Fox v. Ethicon Endo-  
22 Surgery, Inc., 35 Cal. 4th 797, 808 (2005). But the plaintiff's  
23 duty to diligently investigate is only triggered when the  
24 plaintiff "has reason to suspect an injury and some wrongful  
25 cause." McMenemy, 2015 WL 1926965, at \*2 (citing E-Fab, Inc.,  
26 153 Cal. App. 4th at 1319).

27 Here, AutoNation got a copy of Plaintiff's Business Plan and  
28 corresponded with him about it in February 1995. Plaintiff

1 alleges that his Business Plan was used to open LKQ in 1998, 19  
2 years before Plaintiff filed his complaint. Compl. ¶¶ 8, 12.  
3 Given that the applicable statute of limitations is three years,  
4 Cal. Civ. Code § 3426.6, the Court must dismiss Plaintiff's CUTSA  
5 claim unless the Court determines Plaintiff is entitled to  
6 tolling based on delayed discovery of the facts constituting the  
7 alleged trade secret misappropriation.

8 Plaintiff has alleged that he had no reason to suspect any  
9 wrongdoing on AutoNation's part until October 2015, when he  
10 learned at a barbecue about LKQ's formation with Huizenga and  
11 AutoNation's involvement. Compl. ¶ 11. Plaintiff further  
12 alleges that he had "no reason to suspect Defendants had indeed  
13 pursued Plaintiff's plan without his knowledge" because he  
14 believed Davis when Davis said AutoNation would not be pursuing  
15 the Business Plan. Compl. ¶ 32. These allegations plausibly  
16 show that Plaintiff had no reason to suspect any injury or that  
17 AutoNation would do anything wrongful. Accordingly, whether  
18 Plaintiff's duty to diligently investigate was actually triggered  
19 is a factual issue that the Court cannot resolve from the  
20 pleadings alone. See McMenemy, 2015 WL 1926965, at \*2 (citing  
21 Kline, 87 Cal. App. 4th at 1374 and E-Fab, Inc., 153 Cal. App.  
22 4th at 1319).

23 In arguing that Plaintiff's allegations do not suffice to  
24 toll the statute of limitations, AutoNation relies on Goldberg v.  
25 Cameron, 482 F. Supp. 2d 1136 (N.D. Cal. 2007). AutoNation  
26 contends that Goldberg is "on all fours" with Plaintiff's case.  
27 Mem. at 4. It is not. The allegedly stolen copyright in  
28 Goldberg was one of the most well-known entertainment franchises

1 of the 1980's and 1990's: The Terminator trilogy. The Court in  
2 Goldberg found that, because "The Terminator movies have been  
3 exceedingly popular both domestically and abroad. . . . [e]ven  
4 attempting to eschew all electronic media, it is unreasonable to  
5 assert that plaintiff had zero exposure to The Terminator movies.  
6 . . ." 482 F. Supp. 2d at 1148. Finding a two-decade withdrawal  
7 from society beyond the realm of reasonable conduct, the Goldberg  
8 court also refused to believe Plaintiff's 20-year, self-imposed  
9 yoga exile. Id. at 1149.

10 But here, the existence of LKQ is not as notorious as The  
11 Terminator movies and Plaintiff has pleaded specific facts  
12 explaining why he did not have reason to suspect that AutoNation  
13 allegedly stole his idea and created LKQ:

- 14 • LKQ was formed under a different name than anyone or  
15 anything Plaintiff dealt with when initially pitching his  
idea to AutoNation.
- 16 • The LKQ IPO did not occur until 2003, and Plaintiff did  
17 not know about that because he had left the auto-parts  
industry.
- 18 • LKQ was given a name that, unlike Huizenga's other  
19 ventures (e.g. Blockbuster, Waste Management, AutoNation)  
20 did not clearly convey the nature of the company's  
business.

21 Compl. ¶¶ 32-36.

22 To support its argument that Plaintiff should have known  
23 about his potential claim earlier, AutoNation also cites Fox v.  
24 Ethicon Endo-Surgery, Inc., 35 Cal. 4th 797, 803-04 (2005) and  
25 McKelvey v. Boeing N. Am., 74 Cal. App. 4th 151, 161 (1999).  
26 Mem. at 9-10. AutoNation's reliance on those cases is misplaced.  
27 In Fox, the plaintiff was immediately aware of her injury and was  
28 hospitalized shortly after the surgery giving rise to her claim.

1 35 Cal. App. 4th at 803-04. In McKelvey, the plaintiffs were  
2 aware of their injury but not the full nature of the injuries or  
3 the defendant's responsibilities for those injuries. 74 Cal.  
4 App. 4th at 161. Here, Plaintiff has sufficiently alleged that  
5 he had no reason to suspect AutoNation would steal his idea after  
6 Davis told him that AutoNation was not pursuing his Business  
7 Plan. Compl. ¶ 32.

8 In further support of its argument that Plaintiff was on  
9 constructive notice of his potential claim, AutoNation also  
10 requests the Court to take judicial notice of numerous newspaper  
11 articles and public documents.<sup>2</sup> Mem. at 8-9. Plaintiff cites to  
12 public documents in his Complaint, belying his assertion that  
13 AutoNation's potential wrongdoing occurred "in secret." See  
14 Compl. ¶¶ 12-18. However, even if all of these public documents  
15 existed before the 2015 barbecue, whether that gave Plaintiff  
16 constructive notice of his claim and he should have known about  
17 the alleged trade secret misappropriation are questions of fact.  
18 See Kling v. Hallmark Cards, Inc., 225 F.3d 1030, 1041 (9th Cir.  
19 2000) (finding there was a "genuine issue of material fact as to  
20 whether" the plaintiffs knew or had reason to know about the  
21 actual or impending infringement of their alleged copyrights  
22 before 1994 even though defendants were "openly and continuously"  
23 conducting a national distribution of the allegedly infringing  
24 material).

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25 <sup>2</sup> The Court denies AutoNation's Request for Judicial Notice, ECF  
26 No. 25, because the documents referenced therein are either  
27 unnecessary for the disposition of AutoNation's motion or are  
28 documents that may not be judicially noticed to the extent that  
AutoNation relies on them for the truth of the contents therein,  
e.g. Exhibits A-O and K.

1 AutoNation also argues that the public filings about LKQ put  
2 Plaintiff on constructive notice about his potential claim,  
3 citing Wang v. Palo Alto Networks Inc., No. C 121095579 WHA, 2014  
4 WL 1410346 (N.D. Cal. Apr. 11, 2014), In Cmty. Cause v.  
5 Boatwright, 124 Cal. App. 3d 888 (1981), and Baker v. Beech  
6 Aircraft Corp., 96 Cal. App. 3d 321, 327-28 (1979). These cases  
7 are inapposite.

8 In Wang, the Court applied the rule that publication of  
9 patents puts those practicing in the same field and prosecuting  
10 their own patent applications in that field on notice of all the  
11 contents of the publication. Wang, 2014 WL 1410346, at \*6. But  
12 this rule was limited to the patent context and is not a "ringing  
13 universal rule of law for purposes of commencing a limitations  
14 period." Id. The Cal. Court of Appeal reviewed Boatwright and  
15 clarified that no case "suggest[s] the existence of public  
16 records precludes the application of the delayed discovery  
17 doctrine as a matter of law." Prudential Home Mtg. Co. v. Sup.  
18 Ct., 66 Cal. App. 4th 1236, 1247 (1998). In Baker, the Court of  
19 Appeal did not consider the issue of constructive notice where  
20 the plaintiff has no reason to suspect injury because the Baker  
21 plaintiffs (families of plane crash victims) knew of the injury  
22 immediately. 96 Cal. App. 3d at 332. In short, the cases relied  
23 upon by AutoNation fail to negate Plaintiff's argument that he  
24 has pleaded sufficient facts for delayed discovery.

## 25 2. Prejudice to Defendant

26 AutoNation argues that allowing Plaintiff to pursue his  
27 complaint would prejudice AutoNation in the way the statute of  
28 limitations is designed to prevent. Mem. at 6-7. This argument

1 is also unpersuasive given that none of the cases cited involve  
2 dismissing pleadings based on prejudice. See Gutierrez v. Mofid,  
3 39 Cal. 3d 892, 903 (1985) (summary judgment); Bollinger v. Nat'l  
4 Fire Ins. Co., 25 Cal. 2d 399, 411-12 (1944) (reversing lower  
5 court's grant of demurrer); Duty v. Abex Corp., 214 Cal. App. 3d  
6 742, 746, 753 (1989) (reversing grant of directed verdict at  
7 trial). Statute of limitations arguments based on alleged  
8 prejudice are similar to a defense of laches, which are typically  
9 resolved at trial. See Duty, 214 Cal. App 3d at 748-49; Kling,  
10 225 F.3d at 1041. Thus, the Court cannot resolve the prejudice  
11 argument at this early stage of the litigation.

12 Plaintiff has sufficiently pleaded facts to support the  
13 reasonableness of his delayed discovery of the alleged trade  
14 secret misappropriation. The Court denies AutoNation's motion to  
15 dismiss the claim based on a violation of the statute of  
16 limitations.

17 B. Plaintiff's Efforts To Maintain The Secrecy Of His  
18 Business Plan

19 AutoNation argues that Plaintiff's trade secret  
20 misappropriation claim also fails because he has not alleged  
21 sufficiently reasonable efforts to maintain the secrecy of the  
22 Business Plan. Mem. at 12. The Court agrees.

23 Under the CUTSA, a trade secret requires "efforts that are  
24 reasonable under the circumstances to maintain its secrecy."  
25 Cal. Civ. Code § 3426.1. Whether information is secret is "a  
26 relative concept and requires a fact-intensive analysis."

27 SkinMedica, Inc. v. Histogen Inc., 869 F.Supp.2d 1176, 1194 (S.  
28

1 D. Cal. 2012) (internal citations and quotation marks omitted).<sup>3</sup>  
2 If an individual discloses his trade secret to others who are  
3 under no obligation to protect the confidentiality of the  
4 information, or otherwise publicly discloses the secret, his  
5 property right is extinguished. Altavion, Inc. v. Konica Minolta  
6 Sys. Lab., Inc., 226 Cal. App. 4th 26, 57 (2014) (internal  
7 citation and quotation marks omitted); see also SkinMedica, 869  
8 F.Supp.2d at 1194 (“[I]t follows that an unprotected disclosure  
9 of the holder’s secret terminates the existence of a trade  
10 secret.”) (internal citation omitted).

11 Whether the recipient of the purported trade secret has a  
12 duty to maintain secrecy can be implied from the circumstances.  
13 Direct Tech., LLC v. Elec. Arts, Inc., 836 F.3d 1059, 1070 (9th  
14 Cir. 2016) (“Where the facts show that a disclosure is made in  
15 order to further a particular relationship, a relationship of  
16 confidence may be implied, e.g. disclosure to a prospective  
17 purchaser to enable him to appraise the value of the secret[.]”)  
18 (internal citation and quotation marks omitted).

19 Here, Plaintiff has not alleged sufficient facts  
20 demonstrating that he took reasonable steps to protect the  
21 secrecy of the Business Plan. Plaintiff concedes he did not  
22 issue a non-disclosure agreement before sending the Business Plan  
23 to AutoNation. Opp’n at 14. Plaintiff tries to justify this

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24  
25 <sup>3</sup> Plaintiff claims “[w]hether a trade secrets plaintiff has taken  
26 steps to preserve secrecy that are appropriate under the  
27 circumstances can only be determined in the summary judgment  
28 stage (let alone the pleading[s] stage) in an ‘extreme case.’”  
Opp’n at 11. But that proposition relies on an unpublished Ninth  
Circuit case that has no precedential value. U.S. Ct. of App.  
9th Cir. Rule 36-3.

1 conduct by arguing that he "was not concerned that AutoNation  
2 would take issue with the substance of the NDA, but rather that  
3 any hassle would cause [sic] to lose interest in the individual  
4 businessman trying to sell his vision." Opp'n at 14. While this  
5 may explain why Plaintiff acted the way he did, it does not  
6 explain how Plaintiff's inaction imposed a duty on AutoNation to  
7 keep the Business Plan secret.

8 The Complaint also lacks sufficient facts which would permit  
9 the Court to determine whether Plaintiff's alleged efforts to  
10 keep the Business Plan secret were reasonable. Plaintiff alleges  
11 in a conclusory manner that "Plaintiff believed the circumstances  
12 made clear to the recipients that their receipt of the Business  
13 Plan and Plaintiff's further input and expertise was conditioned  
14 upon their agreement not to use or further disclose the Business  
15 Plan without Plaintiff's consent." Compl. ¶ 42. Plaintiff does  
16 not plead what those specific circumstances were or how they  
17 relate to his efforts to keep the Business Plan secret.

18 Plaintiff also alleges that he "sought to further protect  
19 his Business Plan and confirm the parties' understanding" about  
20 the alleged secrecy of the Business Plan by asking the recipients  
21 to return the Business Plan. Compl. ¶ 42. But Plaintiff does  
22 not allege how this would have communicated to AutoNation that  
23 his Business Plan was secret when he had not asserted any secrecy  
24 until then. Compl. ¶¶ 4-6.

25 To support his argument that he has sufficiently pleaded the  
26 reasonableness of the efforts he took to maintain the secrecy of  
27 the Business Plan, Plaintiff cites to two Fifth Circuit cases  
28 that lack precedential value in this Court. Opp'n at 12.

1 Plaintiff also cites Montz v. Pilgrim Films & TV, Inc., 649 F.3d  
2 975 (9th Cir. 2001) and Gunther-Wahl Prods., Inc. v. Mattel,  
3 Inc., 104 Cal. App. 4th 27 (2002)—two cases from outside the  
4 CUTSA arena—to argue that the alleged circumstances imposed a  
5 duty of confidentiality on AutoNation. Opp’n at 12-13. In Montz  
6 and Gunther-Wahl Prods., those courts examined whether the  
7 circumstances showed an implied contract, not whether a party had  
8 a duty to keep a business idea secret. 649 F.3d at 979; 104 Cal.  
9 App. 4th at 42-43. The cases are neither applicable nor  
10 persuasive.

11 Because Plaintiff has failed to allege the reasonable steps  
12 he took to maintain the secrecy of the Business Plan, his trade  
13 secret misappropriation claim fails and must be dismissed. See  
14 Altavion, Inc., 226 Cal. App. 4th at 57.

15 C. Breach Of Contract Implied By Fact

16 AutoNation does not argue against the merits of Plaintiff’s  
17 breach of implied contract claim. See generally Mem. Rather,  
18 AutoNation again cites Goldberg (and no other case) to argue that  
19 Plaintiff has not adequately pleaded facts to toll the two-year  
20 statute of limitations on this claim. Mem. at 15. The Court has  
21 already indicated above that it does not find Goldberg to be on  
22 all fours here. The Court’s tolling analysis above applies for  
23 this claim as well.

24 In addition, whether Plaintiff exercised reasonable  
25 diligence in discovering AutoNation’s alleged breach is “a  
26 question of fact for the court or jury to decide.” April Enter.,  
27 Inc. v. KTTV, 147 Cal. App. 3d 805, 832-33 (1983) (internal  
28 quotation marks and citation omitted). And a plaintiff is on

1 inquiry notice when he suspects or should suspect that their  
2 injury was caused by wrongdoing. NBC Universal Media, LLC v.  
3 Sup. Ct., 225 Cal. App. 4th 1222, 1234, 1236 (2014) (finding  
4 plaintiffs were on inquiry notice from the date they sent an  
5 email asking whether their idea for a show was stolen). But, as  
6 the Court concluded above, Plaintiff has adequately pleaded that  
7 he had "no reason to suspect Defendants had indeed pursued  
8 Plaintiff's plan without his knowledge" because he believed Davis  
9 when he said AutoNation would not be pursuing the business idea.  
10 Compl. ¶ 32. Whether the existence of publicly available  
11 documents about LKQ's origins show that Plaintiff should have  
12 suspected wrongdoing is a factual issue the Court cannot resolve  
13 at this stage. Accordingly, the Court denies AutoNation's motion  
14 to dismiss the implied contract claim.

15 D. Leave to Amend

16 Courts dismissing claims under Federal Rule of Civil  
17 Procedure 12(b)(6) have discretion to permit amendment, and there  
18 is a strong presumption in favor of leave to amend. Eminence  
19 Cap., LLC v. Aspeon, Inc., 316 F.3d 1048, 1051-52 (9th Cir.  
20 2003). "Dismissal with prejudice and without leave to amend is  
21 not appropriate unless it is clear. . . that the complaint could  
22 not be saved by amendment." Id. at 1052 (internal citation  
23 omitted).

24 The Court is not completely convinced that further amendment  
25 would be futile and will give Plaintiff an opportunity to plead a  
26 legally sufficient trade secret misappropriation claim against  
27 AutoNation.

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III. ORDER

For the reasons set forth above, the Court DENIES AutoNation's motion to dismiss Plaintiff's implied contract claim and GRANTS AutoNation's motion to dismiss Plaintiff's trade secret misappropriation claim with leave to amend. Should Plaintiff elect to file a First Amended Complaint to address the dismissed trade secret misappropriation claim against AutoNation, he must do so by January 24, 2018. Defendant's responsive pleading to a First Amended Complaint is due twenty (20) days thereafter.

IT IS SO ORDERED.

Dated: January 5, 2018



JOHN A. MENDEZ,  
UNITED STATES DISTRICT JUDGE