

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

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

GATAN, INC.,  
Plaintiff,  
v.  
NION COMPANY,  
Defendant.

Case No. 15-cv-1862-PJH

**ORDER GRANTING MOTION TO DISMISS**

United States District Court  
Northern District of California

Defendant’s motion to dismiss came on for hearing before this court on November 18, 2015. Plaintiff Gatan, Inc. (“plaintiff”) appeared through its counsel, William Goines. Defendant Nion Company (“defendant”) appeared through its counsel, Alfred Pfeiffer. Having read the papers filed in conjunction with the motion and carefully considered the arguments and the relevant legal authority, and good cause appearing, the court hereby GRANTS defendant’s motion, with leave to amend, as stated at the hearing and as follows.

As to the first cause of action, plaintiff concedes that the non-competition provision of paragraph 16 is unenforceable unless one of the exceptions to California Business & Professions Code section 16600 applies. Plaintiff further asserts that the only applicable exception is for “trade secrets.” The second amended complaint (“SAC”) must plead facts supporting the application of a “trade secrets” exception.

As to the second cause of action, the SAC must clearly identify all alleged conduct giving rise to the alleged breach of the implied duty.

And as to the third cause of action, the SAC must clearly identify the nature of the

1 discovery (or discoveries) made by defendant, and must allege that a license was both  
2 requested and refused.

3 Plaintiff shall have until **December 16, 2015** to file a second amended complaint in  
4 accordance with this order, and defendant shall have 21 days thereafter to answer or  
5 otherwise respond to the complaint. No new claims or parties may be added without  
6 leave of court or the consent of all parties. If defendant files another motion to dismiss in  
7 response to the SAC, it should be noticed for hearing as required by the Local Rules, but  
8 the court is unlikely to hold a further hearing.

9 **IT IS SO ORDERED.**

10 Dated: November 18, 2015



---

PHYLLIS J. HAMILTON  
United States District Judge

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28