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2
3 UNITED STATES DISTRICT COURT
4 NORTHERN DISTRICT OF CALIFORNIA

5
6 BLOCKCHAIN INNOVATION, LLC,
7 Plaintiff,
8 v.
9 FRANKLIN RESOURCES, INC., et al.,
10 Defendants.

Case No. 21-cv-08787-HSG

**ORDER DENYING MOTIONS TO
DISMISS**

Re: Dkt. Nos. 56, 57, 58, 78

11
12 Before the Court are Defendants' motions to dismiss the First Amended Complaint
13 ("FAC"). The Court found this matter appropriate for disposition without oral argument and took
14 the motion under submission. *See* Civil L.R. 7-1(b); Dkt. No. 108. The Court **DENIES** the
15 motions.

16 **I. BACKGROUND**

17 The financial technology deal at the center of this case has spawned the following claims:
18 (1) breaches of fiduciary duty by Franklin Resources, Inc. ("FRI") doing business as Franklin
19 Templeton, FT FinTech ("FT"), and Roger Bayston; (2) trade secret misappropriation by FT, FRI,
20 and Franklin Templeton Companies, LLC ("Corporate Defendants"); (3) breach of contract by
21 Corporate Defendants; (4) copyright infringement by Corporate Defendants; and (5) aiding and
22 abetting by Jennifer Johnson of breaches of fiduciary duties by FRI, FT, and Bayston. FAC ¶ 64.

23 Plaintiff Blockchain Innovation, LLC is a Delaware limited liability company. FAC ¶ 51.
24 Plaintiff avers that it obtained the rights to the claims brought here through a complex series of
25 transactions. *See* FAC ¶¶ 17 n.5, 43, 48, 95, 146, 197, 199. Defendant FRI is an asset
26 management company incorporated in Delaware, and Plaintiff alleges that it was the controlling
27 shareholder of FT, thereby giving it 100% control of the voting stock of an entity called Onsa. *Id.*
28 ¶ 52. Plaintiff identifies Defendant FT, a Delaware limited liability company, as "the nominal

1 owner of 100% of Onsa’s issued and outstanding voting common stock and nominal owner of
2 approximately one-quarter of Onsa’s issued and outstanding non-voting common stock.” *Id.* ¶ 53.
3 Defendant Franklin Templeton Companies, LLC, also a Delaware limited liability company, was
4 allegedly a party to the Non-Disclosure Agreement (“NDA”) at issue in this litigation, and entered
5 into it on behalf of a group of companies including but not limited to FRI and its subsidiaries. *Id.*
6 ¶ 54. Defendant Jennifer Johnson is the President and CEO of Franklin Templeton and is also a
7 board member. *Id.* ¶ 55. Defendant Roger Bayston is a senior Franklin Templeton executive who
8 also served as Onsa’s sole board member. *Id.* ¶ 56.

9 According to Plaintiffs, “Onsa was a promising startup company” seeking to develop
10 breakthrough blockchain technology to tokenize financial assets. *Id.* ¶ 2. The complex cascade of
11 events leading to this suit began with FT investing in Onsa. *Id.* ¶ 4. In essence, what began as an
12 apparent investment became a purported acquisition, and Plaintiff believes that Defendants are
13 now launching technology that was developed by Onsa, enabled by Defendants’ deceptive and
14 misleading actions and representations. FAC ¶¶ 7-50.

15 **II. LEGAL STANDARD**

16 Federal Rule of Civil Procedure 8(a) requires that a complaint contain “a short and plain
17 statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). A
18 defendant may move to dismiss a complaint for failing to state a claim upon which relief can be
19 granted under Rule 12(b)(6). “Dismissal under Rule 12(b)(6) is appropriate only where the
20 complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory.”
21 *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008). To survive a Rule
22 12(b)(6) motion, a plaintiff must plead “enough facts to state a claim to relief that is plausible on
23 its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible
24 when a plaintiff pleads “factual content that allows the court to draw the reasonable inference that
25 the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

26 In reviewing the plausibility of a complaint, courts “accept factual allegations in the
27 complaint as true and construe the pleadings in the light most favorable to the nonmoving party.”
28 *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). Nonetheless,

1 courts do not “accept as true allegations that are merely conclusory, unwarranted deductions of
2 fact, or unreasonable inferences.” *In re Gilead Scis. Secs. Litig.*, 536 F.3d 1049, 1055 (9th Cir.
3 2008) (quoting *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001)). The Court
4 also need not accept as true allegations that contradict matters properly subject to judicial notice or
5 allegations contradicting the exhibits attached to the complaint. *Sprewell*, 266 F.3d at 988.

6 **III. DISCUSSION**

7 **A. Corporate Defendants**

8 Corporate Defendants seek dismissal on several grounds, including that Plaintiff lacks
9 standing to bring claims for trade secret misappropriation, copyright infringement, and breach of
10 contract. *See generally* Dkt. No. 60-3, (“Corporate Defs.’ Mot.”).

11 **1. Standing**

12 Corporate Defendants bring a factual attack on Plaintiff’s standing under Rule 12(b)(1),
13 arguing that the Court lacks subject matter jurisdiction over these claims. “A ‘factual’ attack . . .
14 contests the truth of the plaintiff’s factual allegations, usually by introducing evidence outside the
15 pleadings.” *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014) (internal citation omitted).
16 “When the defendant raises a factual attack, the plaintiff must support [its] jurisdictional
17 allegations with ‘competent proof,’ under the same evidentiary standard that governs in the
18 summary judgment context.” *Id.* (citations omitted). The plaintiff “bears the burden of proving
19 by a preponderance of the evidence that each of the requirements for subject-matter jurisdiction
20 has been met.” *Id.* However, “a court must leave the resolution of material factual issues to the
21 trier of fact when the issue of subject-matter jurisdiction is intertwined with an element of the
22 merits of the plaintiff’s claim.” *Id.* at 1121-22 and n.3. The merits and subject-matter jurisdiction
23 are “intertwined when the question of jurisdiction is dependent on the resolution of factual issues
24 going to the merits.” *Mie Yang v. Francesca's Collections, Inc.*, No. 17-CV-04950-HSG, 2018
25 WL 984637, at *3 (N.D. Cal. Feb. 20, 2018) (internal citations and quotations omitted). In that
26 scenario, the Court must apply the standard for summary judgment, “rather than resolving the
27 factual dispute[.]” *Id.* (internal citation and quotations omitted); *see also Edison v. U.S.*, 822 F.3d
28 510, 517 (9th Cir. 2016) (“Any factual disputes [at this stage] must be resolved in favor of

1 Plaintiffs” (internal citation omitted)).

2 Defendants’ subject matter jurisdiction argument is intertwined with the merits of the
3 claims, because Corporate Defendants argue that Plaintiff does not have standing since (1) it does
4 not actually own the asserted IP or trade secrets; and (2) no contract ever existed between Plaintiff
5 and Corporate Defendants. Corporate Defs.’ Mot. at 1-2. These arguments self-evidently attack
6 foundational elements of Plaintiff’s substantive claims. The Court accordingly applies the
7 summary judgment standard in assessing Defendants’ standing-based jurisdictional challenge, and
8 finds that, at this stage, Plaintiff has sufficiently established standing to bring claims for trade
9 secret misappropriation, copyright infringement, and breach of contract.

10 **i. Intellectual Property Ownership**

11 Corporate Defendants do not contest Plaintiff’s assertion that, of the intellectual property
12 (“IP”) potentially relevant in the suit, they dispute Plaintiff’s ownership of only the “TokenVault
13 IP.”¹ Dkt. No. 72 (“Corp. Defs.’ Reply”) at 1. This IP consists of “trade secrets” and computer
14 code developed by TokenVault Limited employees, such as its founder, Austin Trombley. *See*
15 FAC ¶ 197; Corp. Defs.’ Mot. at 6. Thus, for purposes of this motion, the Court need only
16 consider Defendants’ factual challenge to Plaintiff’s claim based on its ownership of the
17 TokenVault IP.

18 Corporate Defendants argue at length that Plaintiff has not adequately shown that it owns
19 the TokenVault IP so as to have standing to bring its trade secret and copyright claims. *See* Corp.
20 Defs.’ Mot. at 5-8; Corp. Defs.’ Reply at 1-5. In response, Plaintiff contends that it obtained
21 ownership of this IP through a series of transactions.² Plaintiff provides declarations with exhibits
22 showing that this IP was transferred from developers in India to TV Limited (Dkt. No. 70-1, Ex. 1
23 to Travis Decl., § 6), from TV Limited to Onsa (Dkt. No. 41-3, Ex. B to Bayston Decl., (“Asset
24 Purchase Agreement”) § 2.2(e)), from Onsa to BLKCHN (Dkt. No. 55-2, Ex. B to the FAC
25

26 _____
27 ¹ Onsa, Inc., from which Plaintiff alleges it ultimately obtained the right to assert these claims, was
28 formerly called “TokenVault, Inc.” *See* FAC ¶ 17, n. 5. Corporate Defendants refer to this as the
“India IP” in their reply. *See* Corp. Defs.’ Reply at 1.

² The Court discusses the sufficiency of Plaintiff’s pleading with respect to its copyright and trade
secrets below. *See supra* III.A.4.c; III.A.4.d.

1 (“ABC”)), and from BLKCHN to Plaintiff (Ex. C to the FAC, Dkt. No. 55-3). Plaintiff also
2 presents evidence describing an alternative route through which it retained all rights in any IP that
3 had been retained by Tokentech: a Software Transfer Agreement from Tokentech to Barefoot
4 Capital, LLC (Dkt. No. 70-4, Ex. A to Ex. 4 to Travis Decl.), and then a quitclaim assignment
5 from Maven Venture Capital, LLC (successor to Barefoot Capital, LLC) to Plaintiff (Dkt. No. 70-
6 4, Ex. 4 to Travis Decl.).

7 Plaintiff has done enough to plausibly support its claim of ownership of the IP at this stage.
8 *See Sprint Comm’ns Co., L.P. v. APCC Svcs., Inc.*, 554 U.S. 269 (2008) (finding that assignees
9 met case or controversy requirement so as to have Article III standing); *cf. Brown v. Bank of Am.,*
10 *N.A.*, 660 F. App’x 506, 508 (9th Cir. 2016) (holding that the plaintiff lacked standing because he
11 “did not allege any facts—or provide any exhibits with his [complaint]—to support his bald
12 assertion” of assignment). Corporate Defendants’ arguments take detailed issue with the ultimate
13 truth of Plaintiff’s theory, but the Court must resolve factual disputes in Plaintiff’s favor at this
14 stage. *See Corp. Defs.’ Reply* at 2 (complaining that Plaintiffs “ignore” a certain letter in their
15 opposition); *id.* at 3 (arguing that the quitclaim assignment is invalid for lack of consideration
16 and/or because the officer who authorized the transfer from Tokentech to Barefoot lacked
17 authority to do so). Ownership of the TokenVault IP is one of the central substantive issues to be
18 determined in this case, and the controlling precedent cited above makes clear that resolution of
19 this hotly contested factual issue must be deferred given the numerous disputes presented.

20 **ii. Breach of Contract**

21 The same reasoning largely applies to Plaintiff’s standing to bring its breach of contract
22 claim. Plaintiff has plausibly shown the nature of its rights in the NDA. *See Ex. D to FAC*, Dkt.
23 No. 55-4 at 1. That chain runs from TV Limited to Plaintiff in the same way for the NDA as for
24 the IP: from TV Limited to Onsa (Asset Purchase Agreement, § 2.2(a)), from Onsa to BLKCHN
25 (ABC, §§ 1.1, 3.1), and from BLKCHN to Plaintiff (Ex. C to the FAC, Dkt. No. 55-3, § 1).
26 Corporate Defendants again mount a fact-heavy argument that no assignment occurred and that
27 “Plaintiff’s allegations concerning the NDA contradict the plain terms of the APA and NDA” so
28 as to defeat standing. *Corp. Defs.’ Mot.* at 8-10. Plaintiffs respond with an equally fact-laden

1 discussion of the underlying events and documents. *See* Dkt. No. 67 (“Opp. to Corp. Defs.”) at 4-
 2 8. This is enough to establish standing based on the standard of review that applies at this stage,
 3 and these highly-convoluted factual disputes that are deeply intertwined with the ultimate
 4 contested merits questions will have to be resolved later. *Leite*, 749 F.3d at 1122 and n.3.

5 **2. Preemption or Supersession of Plaintiff’s Claims for Breach of**
 6 **Fiduciary Duty, Injunctive Relief, and Breach of Contract**

7 Corporate Defendants next argue that Plaintiff’s breach of fiduciary duty (Count I) and
 8 injunctive relief (Count VI) claims must be dismissed because they are superseded by the
 9 California Uniform Trade Secrets Act (“CUTSA”). Corp. Defs.’ Mot. at 10.³ Plaintiff responds
 10 that Delaware rather than California law governs these claims, and that under either state’s law the
 11 claims are not superseded. Opp. to Corp. Defs. at 8-13. So two questions are presented: (1)
 12 which state’s law applies?; and (2) does the choice of law decision make any substantive
 13 difference to the outcome of the motion to dismiss? The Court finds that it does not need to
 14 resolve the parties’ choice of law dispute to decide this motion, because the claims are not
 15 superseded under either Delaware or California law.⁴

16 As a general rule, “[i]n a federal question action where the federal court is exercising
 17 supplemental jurisdiction over state claims, the federal court applies the choice-of-law rules of the
 18 forum state. . . .” *Paracor Fin., Inc. v. Gen. Elec. Cap. Corp.*, 96 F.3d 1151, 1164 (9th Cir. 1996).
 19 The forum state here is California, so Defendants argue that California law applies here consistent
 20 with the general rule. Plaintiff, on the other hand, does no choice of law analysis at all, instead
 21 assuming that Delaware law applies because there is no dispute that under the internal affairs
 22 doctrine, Delaware law applies to the fiduciary duty claims.

23 _____
 24 ³ Plaintiff concedes that the injunctive relief claim “is a remedy, not a cause of action.” Opp. to
 25 Corp. Defs. at 8, n.9. So a choice of law and supersession analysis is required, at most, only as to
 26 the breach of fiduciary duty claim.

27 ⁴ In the end, for all the ink spilled on this issue, no one suggests that resolution of the choice of
 28 law question makes a difference in the outcome. *See* Corp. Defs.’ Reply at 8 (contending that
 “California and Delaware law are in accord,” such that “proper application of [the Delaware
 Uniform Trade Secrets Act, or] DUTSA preempts the claims here anyway”); Dkt. No. 68 (“Opp.
 to Johnson Mot.”) at 5 (arguing no preemption “[e]ven if CUTSA applies”); Dkt. No. 73
 (“Johnson Reply”) at 1 (“Resolving a conflict of law is unnecessary, however, because California
 and Delaware law are not in conflict . . .”).

1 First, under California law, the Court finds that the breach of fiduciary duty claim is not
2 superseded. CUTSA “preempts common law claims that are based on the same nucleus of facts as
3 the misappropriation of trade secrets claim for relief.” *K.C. Multimedia, Inc. v. Bank of Am. Tech.
4 & Operations, Inc.*, 171 Cal.App.4th 939, 958, 90 Cal.Rptr.3d 247, 261 (2009) (internal citations
5 and quotations omitted). “At the pleadings stage, the supersession analysis asks whether, stripped
6 of facts supporting trade secret misappropriation, the remaining factual allegations can be
7 reassembled to independently support other causes of action.” *Waymo LLC v. Uber Techs., Inc.*,
8 256 F.Supp.3d 1059, 1062 (N.D. Cal. 2017) (internal citation omitted). Here, the Court agrees
9 that Plaintiff pleads facts that would allow this claim to survive in the absence of the trade secret-
10 related facts. For example, Plaintiff pleads that Defendants breached their duties of care, good
11 faith and loyalty to Onsa by acting in secret from Onsa’s non-Franklin Templeton shareholders
12 and from Onsa’s management, to Onsa’s detriment. Opp. to Corp. Defs. at 10 (citing FAC ¶¶ 181-
13 183). Plaintiff also alleges that the process of winding down and liquidating Onsa breached these
14 duties. *Id.* (citing FAC ¶¶ 184-194). The complaint alleges several objectives beyond the
15 misappropriation of trade secrets, including “avoid[ing] having to compensate Onsa for its
16 development efforts,” “gain[ing] the ability to launch the tokenized money market without Onsa’s
17 involvement and thereby avoid payment obligations to Onsa under the promised [master services
18 agreement],” and “avoid[ing] liability for their numerous breaches of fiduciary duty and other
19 decisions (e.g., through a derivative action by the non-Franklin Templeton shareholders) by
20 assignment of Onsa’s legal claims to a third party.” FAC ¶ 47. The point for present purposes is
21 not whether these and the other claims in the complaint have merit, but only whether they could be
22 proven without facts going to trade secret misappropriation. The Court agrees that the claims as
23 pled meet this standard at this stage.

24 The result is the same under DUTSA. A breach of fiduciary duty claim is not preempted
25 where “the same facts are not required to establish all the elements of both the misappropriation
26 and breach of fiduciary duty claims.” *Beard Rsch., Inc. v. Kates*, 8 A.3d 573, 602 (Del. Ch. 2010),
27 *aff’d sub nom. ASDI, Inc. v. Beard Rsch., Inc.*, 11 A.3d 749 (Del. 2010). This is the case here: the
28 success of the breach of fiduciary duty claim does not depend on the success of the trade secret

1 claim, so DUTSA does not preempt that claim. *See id.* (finding that the plaintiff could still show
 2 breach of fiduciary duty by proving that the defendant, for example, “stole and misused []
 3 confidential information” even if the trade secret claim failed, meaning that the common law claim
 4 was not preempted).

5 **3. Preemption by the Copyright Act**

6 The Corporate Defendants’ contention that Plaintiffs’ breach of contract claim is
 7 preempted by the Copyright Act turns on whether the alleged “breach of contract [] affect[s] rights
 8 unrelated to those held under federal copyright law.” *Rumble, Inc. v. Daily Mail & Gen. Tr. PLC*,
 9 No. CV 19-08420-CJC(Ex), 2020 WL 2510652, at *4 (C.D. Cal. Feb. 12, 2020) (internal citation
 10 omitted). The parties do not dispute the standard. The Court agrees with Plaintiff that it is not met
 11 here for at least the following reasons: (1) copyright law does not bear on the obligation to delete
 12 material and provide verification thereof, as Plaintiff alleges Corporate Defendants failed to do
 13 (FAC ¶ 214), and (2) Plaintiff plausibly pleads that at least some of the material it alleges
 14 Corporate Defendants unlawfully kept would not fall within the scope of copyright.

15 **4. Adequate Pleading under Rule 12(b)(6)**

16 **i. Group Pleading**

17 Corporate Defendants argue that Plaintiff engages in impermissible group pleading. The
 18 Court disagrees. Paragraph 1 of the FAC understandably discusses “Defendants” without
 19 particularization because the remainder of the Complaint sets forth detailed allegations with regard
 20 to each defendant. Paragraph 32 of the FAC refers to “Defendants” after identifying the particular
 21 defendants “Franklin Templeton and Bayston.” Plaintiff is correct that all other paragraphs cited
 22 by Defendants do not use group pleading at all. The complaint adequately alleges wrongdoing by
 23 specific defendants. FAC ¶¶ 179, 212, 217, 226, 230.

24 **ii. Fiduciary Duty Claim⁵**

25 **a. Existence of Fiduciary Duty**

26 _____
 27 ⁵ Defendants FT and FRI join in Defendant Bayston’s motion with respect to Count I and vice
 28 versa. *See* Dkt. No. 56 (“Bayston Mot.”) at 13, 22-23; Corp. Defs.’ Mot. at 2. For purposes of
 this section, “Corporate Defendants” does not include Franklin Templeton Companies, against
 whom breach of fiduciary duty is not pled.

1 In their motion, Corporate Defendants argue that Plaintiff fails to adequately plead
2 controlling shareholder status. Corp. Defs.’ Mot. at 17. “Delaware law imposes fiduciary duties
3 on those who effectively control a corporation.” *In re Pattern Energy Group, Inc. Stockholders*
4 *Litig.*, 2021 WL 1812674, at *36 (Del. Ch. May 6, 2021) (internal citations and quotations
5 omitted). But “the question whether a shareholder is a controlling one is highly contextualized
6 and difficult to resolve based solely on the complaint[.]” and “there is no magic formula to find
7 control; rather, it is a highly fact specific inquiry.” *Id.* (cleaned up). Plaintiff provides support for
8 the proposition that an entity can have such control by owning more than half of the voting power
9 of a corporation or “exercis[ing] control over the business and affairs of the corporation.” *In re*
10 *Primedia Inc. Derivative Litig.*, 910 A.2d 248, 257 (Del. Ch. 2006) (internal citations and
11 quotations omitted).

12 FRI alleges that it cannot be held liable because it held shares in Onsa through FinTech.
13 But Plaintiff pleads “that FRI controlled Onsa” by controlling “FinTech, which owns 100 percent
14 of Onsa’s voting stock, directly as a wholly-owned subsidiary[.]” Opp. to Corp. Defs. at 16; FAC
15 ¶¶ 52, 53, 95. Given the “highly fact specific” nature of this inquiry, Plaintiff adequately pleads at
16 this stage that each Corporate Defendant exercised effective control over Onsa. *See In re Ezcorp*
17 *Inc. Consulting Agreemt. Derivative Litig.*, 2016 WL 301245, at *2, *10 (Del. Ch. Jan. 25, 2016)
18 (finding in derivative action brought by shareholder of a corporation called “EZCORP” that
19 corporation and limited partnership owed a fiduciary duty to EZCORP because limited partnership
20 was EZCORP’s immediate controller and corporation controlled the limited partnership and was
21 EZCORP’s indirect controller). As with many of the issues raised in these motions to dismiss, the
22 ultimate resolution of this factual dispute is for a later day.

23 **b. Breach of Fiduciary Duty**

24 “A basic duty of fairness, *i.e.*, the requirement to treat shareholders and their equity interest
25 in the corporation fairly, is the broadest notion of the duties directors owe to the corporation's
26 shareholders.” *Solomon v. Armstrong*, 747 A.2d 1098, 1111 (Del. Ch. 1999), *aff’d*, 746 A.2d 277
27 (Del. 2000). Corporate Defendants argue that (1) the FAC fails to plead facts sufficient to
28 plausibly support the breach of fiduciary duty claim; and (2) the “decision to enter the ABC” was

1 protected by the business judgment rule. Corp. Defs.’ Mot. at 15-20. The Court disagrees with
2 both arguments at this stage.

3 First, Plaintiff plausibly alleges that Corporate Defendants failed to act in the best interests
4 of the company and did so knowingly. The overall theory of the complaint, detailed at length, is
5 that the Corporate Defendants, in conjunction with Onsa’s sole director Bayston (who was a
6 longtime executive of Franklin Templeton and remained in that role at the time of the relevant
7 events), executed a scheme to handicap and ultimately eliminate Onsa for their own benefit. The
8 complaint alleges that FT falsely represented 1) that it “would compensate Onsa for use of its
9 technology” (FAC ¶ 25) and 2) that Onsa need not seek third-party financing because FT would
10 fully fund it (FAC ¶ 30). But according to the complaint, FT secretly schemed to liquidate Onsa,
11 executed that plan, fired Onsa’s staff, and disallowed Onsa from taking on new employees. FAC
12 ¶¶ 41-43. Plaintiff alleges that FT executives were even presented with a plan for using Onsa’s
13 cash to defend FT from the ensuing litigation. FAC ¶ 42. No other Onsa shareholder was
14 included in the liquidation decision-making process. FAC ¶ 45.⁶ The FAC alleges that the ABC
15 process was “undertaken in bad faith and for reasons that were contrary to Onsa’s best interests,”
16 for the purpose of, among other things “avoid[ing] having to compensate Onsa for its development
17 efforts,” “gain[ing] the ability to launch the tokenized money market without Onsa’s involvement
18 and thereby avoid payment obligations to Onsa under the promised [master services agreement],”
19 and “avoid[ing] liability for their numerous breaches of fiduciary duty and other decisions (*e.g.*,
20 through a derivative action by the non-Franklin Templeton shareholders) by assignment of Onsa’s
21 legal claims to a third party.” FAC ¶ 47. Contrary to Corporate Defendants’ protestations, these
22 allegations are not “conclusory,” Corp. Defs.’ Mot. at 16, and they provide amply enough detail to
23 survive a motion to dismiss. *See Prod. Res. Grp., L.L.C. v. NCT Grp., Inc.*, 863 A.2d 772, 798
24 (Del. Ch. 2004) (denying in part motion to dismiss breach of fiduciary duty claim where plaintiff
25 pled “a suspicious pattern of dealing that raise[d] legitimate concerns that the [defendant] board
26

27 ⁶ Corporate Defendants argue that Plaintiff cannot raise the issue of failure to disclose or consult
28 because those are “shareholder issues.” Corp. Defs.’ Reply at 12-13. But the Court does not
understand Plaintiff to assert these points as stand-alone claims: instead, they are pled as evidence
tending to suggest bad faith and disloyalty in the way that Defendants controlled Onsa’s affairs.

1 [was] not pursuing the best interests of” the company’s creditors).

2 Nor does the business judgment rule require dismissal of the fiduciary duty claim, because
3 Plaintiff has adequately pled a breach of the duty of loyalty at this stage. The business judgment
4 rule is a “presumption that in making a business decision the directors of a corporation acted on an
5 informed basis, and in the honest belief that the action taken was in the best interests of the
6 company and its shareholders.” *In re Walt Disney Co. Derivative Litig.*, 907 A.2d 693, 747 (Del.
7 Ch. 2005) (cleaned up). “This presumption applies when there is no evidence of ‘fraud, bad faith,
8 or self-dealing in the usual sense of personal profit or betterment’ on the part of the directors.” *Id.*
9 A plaintiff may allege bad faith violating the duty of loyalty by pleading facts showing that “the
10 fiduciary intentionally act[ed] with a purpose other than that of advancing the best interests of the
11 corporation” or “intentionally fail[ed] to act in the face of a known duty to act, demonstrating a
12 conscious disregard for his duties.” *In re Crimson Exploration Inc. Stockholder Litig.*, 2014 WL
13 5449419, at *22 (Del. Ch. October 24, 2014) (internal quotation omitted). Here, Plaintiff
14 adequately alleges a course of conduct in which Defendants were intentionally taking actions to
15 damage Onsa, based on their own self-interest. Taking those allegations as true, as it must at this
16 stage, the Court finds that the business judgment rule does not mandate dismissal. *See In re Walt*
17 *Disney Co. Derivative Litig.*, 907 A.2d at 753 (“In other words, an action taken with the intent to
18 harm the corporation is a disloyal act in bad faith.”).

19 For the same reason, the exculpation clause in the Certificate of Incorporation does not
20 exculpate Defendants as a matter of law at the motion to dismiss stage with respect to the breach
21 of fiduciary duty claim. Under Delaware law, an exculpation provision may not relieve directors
22 “from monetary liability for [] conduct that is not in good faith or a breach of the duty of loyalty.”
23 *In re Evergreen Energy, Inc.*, 546 B.R. 549, 561 (Bankr. D. Del. 2016) (internal citations and
24 quotations omitted). By contrast, such a provision may exculpate a claim for breach of duty of
25 care, but not if it “is not the *exclusive* claim[.]” *Id.* (internal citations and quotations omitted)
26 (emphasis in original). Because here Plaintiff sufficiently pleads breaches of both the duty of
27 loyalty and the duty of good faith, the exculpatory clause does not support dismissal *Cf. Malpiede*
28 *v. Towson*, 780 A.2d 1075, 1094 (Del. 2001) (“Because we have determined that the complaint

1 fails properly to invoke loyalty and bad faith claims, we are left with only a due care claim.”).

2 **iii. DTSA Claim**

3 To state a claim under the DTSA, Plaintiff must allege “that (1) the plaintiff owned a trade
4 secret; (2) the defendant misappropriated the trade secret; and (3) the defendant’s actions damaged
5 the plaintiff.” *Alta Devices, Inc. v. LG Elecs., Inc.*, 343 F.Supp.3d 868, 877 (N.D. Cal. 2018)
6 (internal citations and quotations omitted). Corporate Defendants’ arguments regarding the
7 sufficiency of the pleading of this claim largely track those they made in challenging Plaintiff’s
8 standing to bring its IP claims, and the Court finds them unpersuasive for the same reasons.
9 Plaintiff adequately alleges that Defendants copied and are using materials that were developed by
10 Onsa and protected as a trade secret. *See* FAC ¶¶ 202, 203, 207, 214. No party contests that
11 Corporate Defendants had access to such materials, and the FAC provides details about the
12 similarities between the technology that Onsa agreed to share with Defendants and the tokenized
13 assets Plaintiff alleges Defendants plan to launch, as well as detailing the circumstances under
14 which the Defendants obtained and planned to use the trade secret information. FAC ¶¶ 116-123,
15 217. This is enough to survive a motion to dismiss.

16 **iv. Copyright Infringement Claim**

17 To allege copyright infringement, a plaintiff must claim “(1) ownership of a valid
18 copyright; and (2) copying constituent elements of the work that are original.” *Feist Publ’ns, Inc.*
19 *v. Rural Tele. Serv. Co.*, 499 U.S. 340, 361 (1991) (internal citation omitted). A plaintiff must
20 also show “access to [the] copyrighted work[.]” *Cavalier v. Random House, Inc.*, 297 F.3d 815,
21 822 (9th Cir. 2002) (internal citation omitted). Plaintiff alleges and Corporate Defendants do not
22 seriously contest that they had access to Plaintiff’s copyrighted works, and the complaint describes
23 evidence that Franklin Templeton reviewed a number of specific code repositories by name. FAC
24 ¶ 224. Moreover, Plaintiff alleges that it owns valid copyrights, which Corporate Defendants also
25 do not contest. *See* Corp. Defs.’ Mot. at 24. And as is the case with the trade secret claim, the
26 FAC provides details about the similarities between the technology that Onsa agreed to share with
27 Defendants and the tokenized assets Plaintiff alleges Defendants plan to launch. FAC ¶ 226. This
28 is enough to survive a motion to dismiss.

v. Breach of Contract Claim

For purposes of this motion, Plaintiff pleads enough to plausibly allege breach of contract. The NDA includes FRI and FT among the parties to the agreement, and Corporate Defendants do not seriously contend otherwise. *See* NDA at 1. And the FAC plausibly alleges that Corporate Defendants breached the NDA in numerous ways. *See, e.g.*, FAC ¶¶ 93, 214.

B. Johnson⁷

1. Preemption

Johnson argues that Plaintiff's aiding and abetting claim is preempted for the same reasons as Corporate Defendants argued the breach of fiduciary duty claim is preempted. The Court rejects this argument on the same grounds as it did those arguments. *See supra* III.A.2.

2. Breach of Fiduciary Duty

Johnson next argues that there is no underlying breach alleged, and that Plaintiff fails to sufficiently allege that Johnson knowingly caused Plaintiff harm. *See* Johnson Mot. at 8-11. The Court again disagrees.

Plaintiff accuses Johnson of aiding and abetting the alleged breach of fiduciary duty committed by the Corporate Defendants in the form of knowingly participating in the plan to harm Onsa, before and as part of the liquidation. FAC ¶¶ 234-244. Plaintiff adequately pleads Johnson's knowing participation in the alleged breach of fiduciary duty. The complaint alleges that "Johnson is responsible for the operation of all aspects of Franklin Templeton's business. Johnson was responsible for catalyzing Franklin Templeton's equity investment in Onsa." FAC ¶ 55. The complaint also alleges that Johnson approved the liquidation and was part of the decision-making process that led to doing so. FAC ¶¶ 172, 244. Plaintiff is correct that courts have found similar facts to be enough to plead aiding and abetting a breach of fiduciary duty claim at the motion to dismiss stage. *See In re Shoe-Town, Inc. S'holders Litig.*, No. C.A. 9483, 1990 WL 13475, at *8 (Del. Ch. Feb. 12, 1990) (finding allegations regarding the defendant's involvement, presence, and activity at board meetings concerning the challenged transaction sufficient to

⁷ Johnson joins in the Corporate Defendants' motion as applicable and the motion brought by Bayston "except as to venue." Dkt. No. 58 ("Johnson Mot.") at 2.

1 survive motion to dismiss). The Court again finds that the complaint is adequate to state a claim at
2 this stage, with the ultimate truth of the allegations being a matter for summary judgment or trial.

3 **C. Bayston**

4 **1. The Forum Selection Clause Does Not Control**

5 Bayston argues that the claim against him must be dismissed because it may only be
6 brought in the Court of Chancery of Delaware under Onsa's Certificate of Incorporation. *See*
7 Bayston Mot. at 5. While the Court shares Bayston's view that some gamesmanship may be at
8 work here, it cannot find that the terms of the forum selection clause apply to this claim.

9 The Amended and Restated Certificate of Incorporation of TokenVault, Inc. provides in
10 relevant part that:

11 **Unless the Corporation consents in writing to the selection of an**
12 **alternative forum**, the Court of Chancery in the State of Delaware
13 shall be the sole and exclusive forum for **any stockholder (including**
14 **a beneficial owner)** to bring (i) any derivative action or proceeding
brought on behalf of the Corporation, **(ii) any action asserting a**
claim of breach of fiduciary duty owed by any director, officer or
other employee of the Corporation to the Corporation or the
Corporations stockholders

15 Dkt. No. 56-2 at 6 (emphasis added). Bayston argues that Plaintiff's claims against him here fall
16 within the scope of the clause, contends that Plaintiff is a stockholder or beneficial owner, and
17 posits that Onsa has not consented in writing to an alternative forum as would be required to file
18 the claim in this district. Bayston Mot. at 7-12. Plaintiff responds that venue here is proper
19 because Plaintiff is neither a stockholder nor a beneficial owner of Onsa and, in any event,
20 Plaintiff (*i.e.*, Blockchain) has *itself* consented in writing to this suit. *See* Opp. to Bayston at 4-6.

21 As with seemingly everything else in this case, what would normally be a straightforward
22 analysis is complicated by the byzantine series of transactions that led to Plaintiff's formation and
23 the filing of this lawsuit. But fundamentally, the Court finds that while the obvious spirit of the
24 forum selection clause would seem to counsel for this claim proceeding in the Chancery Court, the
25 letter of the clause does not require that outcome.

26 First, the Court rejects Plaintiff's argument that its own actions, including filing the
27 lawsuit, can constitute the required consent by "the Corporation" (*i.e.*, Onsa). Bayston represents,
28 and Plaintiff does not dispute, that at least at the time the motion was filed Onsa still existed as a

1 corporate entity. Bayston Mot. at 10.⁸ Plaintiff fails to show that the assignment of Onsa’s claims
2 to it also conferred Onsa’s right to choose the forum of the claims described in the certificate of
3 incorporation, and that result would make little sense given Onsa’s *own* ongoing interest in
4 making decisions for itself as to this issue.

5 That said, the Court cannot find based on the complaint that this is a claim brought by a
6 “stockholder or beneficial owner” so as to fall within the scope of the clause. From an equitable
7 standpoint, Bayston is right that in substance the core of the claims sure sounds like what the
8 clause is intended to cover. As Bayston correctly points out, the complaint itself characterizes this
9 suit as the result of “the non-Franklin Templeton shareholders’ resolve to have their day in court.”
10 FAC ¶ 173. “Plaintiff’s members include, without limitation, over fifty of the non-Franklin
11 Templeton shareholders of Onsa.” *Id.* ¶ 146. And the Asset Purchase Agreement attached to the
12 complaint explains that “prior to the formation of [Plaintiff] and the entering into of this
13 agreement, all Non-Voting Shareholders were offered the right to participate in an informal group
14 of Non-Voting Shareholders seeking to pursue claims against, *inter alia*, Franklin Templeton.”
15 *Id.*, Ex. C at 1. It is plain, therefore, that whatever machinations resulted in the creation of the
16 particular form Plaintiff now takes, the substance of its claims is the same as the substance of
17 those it acknowledges would have to be brought in Delaware if derivatively asserted by the
18 individual shareholders who comprise it. *See* Bayston Opp. at 5 (“Were these Onsa shareholders
19 to *individually* file a suit against Onsa or Bayston falling within the forum selection clause, they
20 would have to file it in Delaware Chancery Court (absent written consent by Onsa).”).

21 But while it may be that Plaintiff has exploited a loophole by virtue of the details of its
22 formation, the Court finds that the record does not support the conclusion that Plaintiff *itself* is a
23 “stockholder” or “beneficial owner” of Onsa, which are the triggering conditions. As Plaintiff
24 notes, none of Onsa’s stockholders are plaintiffs in this case, and those shareholders have not
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27 ⁸ The Court takes judicial notice of the certification from the Delaware Secretary of State
28 submitted with Bayston’s motion, as it is a reliable public record whose accuracy cannot
reasonably be questioned. *See* Dkt. Nos. 56-3 and 56-4.

1 transferred their Onsa shares to Plaintiff. Bayston Opp. at 4-5. And Plaintiff persuasively points
 2 out that while an entity comprised of Onsa shareholders ended up being the winning bidder for the
 3 Onsa assets at auction, any third party could have bought those assets, without being subject to the
 4 forum selection clause. *Id.* at 5. In short, Plaintiff simply is not a “stockholder” of Onsa.

5 Nor does the “beneficial owner” prong apply to the circumstances here. The Court of
 6 Chancery of Delaware has “held that the phrase ‘beneficial ownership’ requires construction by
 7 the Court, and that the context in which the term is used should shape its interpretation.”
 8 *Mangano v. Pericor Therapeutics*, No. CIV.A. 3777-VCN, 2009 WL 4345149, at *4 (Del. Ch.
 9 Dec. 1, 2009) (internal quotations and citations omitted). “[B]eneficial interest’ or ‘beneficial
 10 ownership’ is often used to describe the tangible interests one has in securities held in trust or held
 11 by a brokerage firm as record owner.” *Id.* at *5. Black’s Law Dictionary defines “beneficial
 12 ownership” as “[a] corporate shareholder’s power to buy or sell the shares, though the shareholder
 13 is not registered on the corporation’s books as the owner.” Black’s Law Dictionary (11th ed.
 14 2019). Neither this definition nor any other one proffered by Bayston fits the situation posed by
 15 this lawsuit.

16 The Court suspects that these claims *should* be subject to Onsa’s forum selection decision
 17 from a common sense standpoint. But it has to read the language of the certificate as written, and
 18 that language simply does not cover the lawsuit Plaintiff has brought. Accordingly, the motion to
 19 dismiss is denied to the extent it relies on a *forum non conveniens* rationale based on the forum
 20 selection clause.

21 **2. The Complaint Adequately Alleges a Breach of Fiduciary Duty By** 22 **Bayston**

23 For the same reasons detailed above in the discussion of the fiduciary duty claims against
 24 the Corporate Defendants, the complaint adequately pleads facts sufficient to state a claim against
 25 Bayston. The complaint sufficiently alleges Bayston’s role in the alleged scheme, and pleads his
 26 lack of independence, and breach of the duty of loyalty and bad faith by allegedly acting in the
 27 interest of his longtime employer Franklin Templeton at the expense of Onsa’s interests. *See, e.g.*,
 28 FAC ¶¶ 5, 11, 23, 30, 32, 41-47, 97-133, 178-195. Obviously, Bayston vehemently disagrees with

1 the facts pled in the complaint, but at this stage the Court must accept those facts as true and make
2 all inferences in Plaintiff's favor. At this stage, the claim is adequately pled.⁹

3 **D. Request for Judicial Notice**

4 "Generally, district courts may not consider material outside the pleadings when assessing
5 the sufficiency of a complaint under Rule 12(b)(6) of the Federal Rules of Civil Procedure."
6 *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 998 (9th Cir. 2018) (internal citation
7 omitted). "There are two exceptions to this rule: the incorporation-by-reference doctrine, and
8 judicial notice under Federal Rule of Evidence 201." *Id.* "Judicial notice under Rule 201 permits
9 a court to notice an adjudicative fact if it is 'not subject to reasonable dispute.'" *Id.* at 999
10 (quoting Fed. R. Evid. 201(b)). Incorporation-by-reference, by contrast, "treats certain documents
11 as though they are part of the complaint itself." *Id.* at 1002. Finally,

12 Submitting documents not mentioned in the complaint to create a
13 defense is nothing more than another way of disputing the factual
14 allegations in the complaint, but with a perverse added benefit: unless
15 the district court converts the defendant's motion to dismiss into a
16 motion for summary judgment, the plaintiff receives no opportunity
17 to respond to the defendant's new version of the facts. Without that
18 opportunity to respond, the defendant's newly-expanded version of
19 the complaint—accepted as true at the pleading stage—can easily
20 topple otherwise cognizable claims. Although the incorporation-by-
21 reference doctrine is designed to prevent artful pleading by plaintiffs,
22 the doctrine is not a tool for defendants to short-circuit the resolution
23 of a well-pleaded claim.

18 *Id.* at 1003.

19 Defendants filed a request for judicial notice regarding Exhibits A, B, C, and F to the
20 Bayston Declaration; Exhibit G to the Supplemental Declaration of Roger Bayston; and Exhibits
21 1, 2, 3, and 5 to the Woo Declaration. *See* Dkt. No. 59. Plaintiff opposes this request for judicial
22 notice as to the exhibits to the Bayston Declaration and the Supplemental Bayston Declaration on
23 the ground that these documents are not the proper subject of judicial notice because they are not
24 "matters of public record" or generally undisputed adjudicative facts. *Khoja*, 899 F.3d 988 at 999.

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26
27 ⁹ Plaintiff also objects to and moves to strike certain evidence submitted by Bayston in
28 support of his motion. *See* Dkt. No. 69 ("Opp. to Bayston") at 21-22. The Court need not and
does not rely on the challenged materials, and accordingly **DENIES** the request to strike.

1 The Court agrees that these not matter of public record and they are generally not undisputed facts.
 2 Plaintiff, however, relies on some of these documents in its pleading, and concedes that Exhibits
 3 A, B, and C to the Bayston Declaration, as well as Exhibit G to the Supplemental Bayston
 4 Declaration, are properly incorporated by reference. *See* Dkt. No. 65 at 2 (“as Plaintiff referred to
 5 Exhibits A, B, C, and G in its pleadings, Plaintiff does not oppose that such documents should be
 6 considered incorporated-by-reference into the original Complaint and FAC”). The Court thus
 7 **GRANTS** the request as unopposed as to these four exhibits.

8 The Court further agrees with Plaintiff that Exhibit F to the Bayston Declaration should not
 9 be incorporated by reference because Plaintiff does not rely on or even mention it in the
 10 Complaint. As pled, Plaintiff’s claims do not depend on it. The Court thus **DENIES** the request
 11 as to this document, and does not consider it.

12 Plaintiff does not oppose Defendants’ Request for Judicial Notice with respect to the
 13 exhibits to the Woo Declaration, so the RJN as to those documents is **GRANTED**.

14 Finally, the Court **DENIES AS MOOT** Plaintiff’s motion for leave to file a request for
 15 judicial notice because the Court is not considering Exhibit F to the Bayston Declaration (the
 16 Franklin-Templeton-Trombley Agreement) at this time. *See* Dkt. No. 78, Mot. for Leave to File
 17 Request for Judicial Notice.

18 **IV. CONCLUSION**

19 For the reasons set forth above, the Court **ORDERS** as follows:

20 The Court **DENIES** Defendants’ motions to dismiss the First Amended Complaint. Dkt.
 21 Nos. 56, 57, 58. The Court **DENIES AS MOOT** Plaintiff’s motion for leave to file a request for
 22 judicial notice at Dkt. No. 78.

23 The Court further **SETS** a telephonic case management conference on April 11, 2023, at
 24 2:00 p.m. All counsel shall use the following dial-in information to access the call:

25 Dial-In: 888-808-6929;

26 Passcode: 6064255


27 For call clarity, parties shall **NOT** use speaker phone or earpieces for these calls, and where
 28 at all possible, parties shall use landlines. **NOTE REGARDING TELEPHONIC CASE**

1 **MANAGEMENT CONFERENCES:** All attorneys and pro se litigants appearing for a
2 telephonic case management conference are required to dial in at least 15 minutes before the
3 hearing to check in with the CRD. The Court **DIRECTS** the parties to meet and confer and
4 submit a joint case management statement by April 4, 2023. The parties should be prepared to
5 discuss how to move this case forward efficiently.

6 This order terminates Docket Numbers 56, 57, 58 and 78.

7 **IT IS SO ORDERED.**

8 Dated: 3/20/2023

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11 HAYWOOD S. GILLIAM, JR.
12 United States District Judge
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United States District Court
Northern District of California