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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
6 SAN JOSE DIVISION

7
8 FORTINET INC.,
9 Plaintiff,
10 v.
11 FIREEYE INC.,
12 Defendant.

Case No. [5:13-CV-02496-EJD](#)

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT'S
MOTION TO DISMISS**

[Re: Dkt. No. 45]

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14 Presently before the court is Defendant FireEye, Inc.'s ("Defendant") Motion to Dismiss
15 Plaintiff Fortinet, Inc.'s ("Plaintiff") First Amended Complaint ("FAC"). The court found this
16 matter suitable for decision without oral argument pursuant to Civil Local Rule 7-1(b) and
17 previously vacated the hearing. Having fully reviewed the parties' briefing, and for the foregoing
18 reasons, the court GRANTS IN PART AND DENIES IN PART Defendant's Motion to Dismiss.

19 **I. BACKGROUND**

20 Plaintiff is a worldwide provider of network security appliances and unified threat
21 management solutions. FAC at ¶ 8. Through its research and development, it has obtained patents
22 for its network security innovations. Id. at ¶ 9. Defendant is Plaintiff's competitor in the network
23 security industry. Id. at ¶ 10.

24 In its FAC, Plaintiff alleges that since 2008, Defendant has hired at least eleven employees
25 who worked for Plaintiff ("Plaintiff employees"). Id. at ¶ 12. While working for Plaintiff, these
26 employees acquired sensitive and valuable trade secret information about Plaintiff's customers,
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1 partners, products, and personnel. Id. at ¶ 13. Plaintiff allegedly required its employees to sign an
2 employment agreement swearing them to secrecy. Id. at ¶¶ 14-15. The agreement also prohibited
3 them from inducing other employees to leave Plaintiff and from soliciting Plaintiff’s clients. Id. at
4 ¶16. When these employees left to work for Defendant, they allegedly took confidential trade
5 secret information to benefit Defendant. Id. at ¶ 13.

6 Plaintiff alleges three instances in which its employees took trade secrets with them. First
7 is the example of the “Law Firm Account,” in which a Plaintiff employee signed an engagement
8 letter with Defendant in August 2012, unbeknownst to Plaintiff. Id. at ¶ 20. While still working
9 for Plaintiff, this employee received internal confidential emails regarding an account with a large
10 international law firm. Id. This employee forwarded relevant emails relating to this account and
11 containing trade secret information to his personal email address. Id. This employee then left
12 Plaintiff for Defendant. Id. at ¶ 24. Second is the example of the “International Distributor,” in
13 which another Plaintiff employee who was a contact and liaison with a certain distributor left to
14 work for Defendant in August 2012. Id. at ¶¶ 25, 28. Shortly after beginning to work for
15 Defendant, this employee began contacting and soliciting the distributor on Defendant’s behalf,
16 attempting to forge a new relationship based on Plaintiff’s trade secrets about this distributor. Id.
17 at ¶¶ 28, 29. Third is the example of the “Salesforce Database,” in which numerous Plaintiff
18 employees accessed Plaintiff’s sales database at higher-than-normal frequencies to obtain
19 information regarding sales, leads, customers, distributors, pricing, and other confidential sales
20 information. Id. at ¶ 34. Plaintiff alleges that as their departure dates neared, employees who
21 logged into the database only occasionally during the normal course of their employment began to
22 secretly log in with urgency. Id. Two of these employees logged into the database on their last
23 day with Plaintiff, and one logged in two days after leaving Plaintiff. Id.

24 Furthermore, Plaintiff alleges that Defendant’s current Vice President of Product
25 Management was Plaintiff’s former Vice President of Product Management and Product
26 Marketing. Id. at ¶ 43. Defendant has allegedly hired this employee and others who are aware of
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1 Plaintiff's patent portfolio, and Defendant has used that information to infringe on Plaintiff's
2 patents. Id. at ¶¶ 43-44, 53-54, 63-64, 73-74, 83-84, 93-94.

3 Plaintiff commenced the instant action on August 22, 2012 in the United States District
4 Court, District of Delaware. See Dkt. No. 1. In September 2012, Plaintiff filed its First Amended
5 Complaint. See Dkt. No. 8. In May 2013, District Judge Sue L. Robinson from the District of
6 Delaware granted Defendant's Motion to Transfer Venue to the Northern District of California.
7 See Dkt. Nos. 30, 31. In June 2013, this case was transferred to this court and assigned to the
8 undersigned judge. See Dkt. Nos. 32, 38. In July 2013, Defendant filed the instant Motion to
9 Dismiss. See Dkt. No. 45. Plaintiff filed an opposition brief, and Defendant filed a reply brief.
10 See Dkt. Nos. 49, 54. No hearing was held.

11 In its First Amended Complaint, Plaintiff alleges the following claims: (1) patent
12 infringement on six patents; (2) misappropriation of trade secrets; (3) intentional interference with
13 contractual relations; and (4) intentional interference with prospective economic advantage and/or
14 relations.

15 **II. LEGAL STANDARD**

16 Federal Rule of Civil Procedure 8(a) requires a plaintiff to plead each claim with sufficient
17 specificity to "give the defendant fair notice of what the . . . claim is and the grounds upon which
18 it rests." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (citation omitted). A complaint
19 which falls short of the Rule 8(a) standard may be dismissed if it fails to state a claim upon which
20 relief can be granted. Fed. R. Civ. P. 12(b)(6). "Dismissal under Rule 12(b)(6) is appropriate only
21 where the complaint lacks a cognizable legal theory or sufficient facts to support a cognizable
22 legal theory." Mendiondo v. Centinela Hosp. Med. Ctr., 521 F.3d 1097, 1104 (9th Cir. 2008).
23 Moreover, the factual allegations "must be enough to raise a right to relief above the speculative
24 level" such that the claim "is plausible on its face." Twombly, 550 U.S. at 556-57.

25 When deciding whether to grant a motion to dismiss, the court generally "may not consider
26 any material beyond the pleadings." Hal Roach Studios, Inc. v. Richard Feiner & Co., 896 F.2d

1 1542, 1555 n.19 (9th Cir. 1990). The court must accept as true all “well-pleaded factual
2 allegations.” Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009). The court must also construe the
3 alleged facts in the light most favorable to the plaintiff. Love v. United States, 915 F.2d 1242,
4 1245 (9th Cir. 1988).

5 **III. DISCUSSION**

6 **A. Patent Infringement Claims**

7 In the FAC, Plaintiff alleges six claims for patent infringement—one claim for each patent.
8 FAC at ¶¶ 39-98. Defendant’s Motion to Dismiss addresses patent infringement under six theories
9 of liability: (1) direct infringement; (2) induced infringement; (3) contributory infringement; and
10 (4) willful infringement. Dkt. No. 45-1 at 10, 11, 13, 14. Each theory of liability will be
11 addressed in turn.

12 1. Direct Infringement

13 In its motion, Defendant argues that mere reliance on Form 18 allegations of direct
14 infringement may not be sufficient to survive a motion to dismiss. Mot. to Dismiss, Dkt. No. 45-1
15 at 10. Alternatively, it argues that at the very least, Plaintiff must plead the information required
16 by Form 18. Id. at 11. It argues that Plaintiff failed to sufficiently identify the component or
17 functionality of Defendant’s malware systems that allegedly infringed Plaintiff’s patents. Id.
18 Plaintiff, however, argues that its allegations are in compliance with Form 18 because it has pled
19 direct infringement on a per-patent, per-claim and per-product basis. Opp., Dkt. No. 49 at 5-6. It
20 also argues that at the pleading stage, where only fair notice and plausibility are at issue rather
21 than the merits of the case, it is not necessary to allege specific “component or functionality”
22 within the accused products and the ways in which the component satisfies claim language. Id. at
23 7.

24 Form 18, Complaint for Patent Infringement, is an appendix of the Federal Rules of Civil
25 Procedure. It sets forth a sample complaint and requires the following:

- 26 (1) an allegation of jurisdiction; (2) a statement that the plaintiff
27 owns the patent; (3) a statement that defendant has been infringing

1 the patent by “making, selling, and using [the device] embodying
2 the patent;” (4) a statement that the plaintiff has given the defendant
notice of its infringement; and (5) a demand for an injunction and
damages.

3 K-Tech Telecomm., Inc. v. Time Warner Cable, Inc., 714 F.3d 1277, 1283 (Fed. Cir. 2013) (citing
4 McZeal v. Sprint Nextel Corp., 501 F.3d 1354, 1357 (Fed. Cir. 2007)). “A complaint containing
5 just enough information to satisfy a governing form may well be sufficient under Twombly and
6 Iqbal.” K-Tech Telecomm., 714 F.3d at 1284. “Form 18 in no way relaxes the clear principle of
7 Rule 8, that a potential infringer be placed on notice of what activity or device is being accused of
8 infringement.” Id.

9 Here, Plaintiff alleges that he owns six patents: (1) the ‘135 patent titled “Systems and
10 Methods for Updating Content Detection Devices and Systems,” issued in November 2011; (2) the
11 ‘933 patent titled “Systems and Methods for Content Type Classifications,” issued in June 2012;
12 (3) the ‘974 patent titled “Systems and Methods for Content Type Classification,” issued in
13 August 2009; (4) the ‘543 patent titled “Systems and Methods for Categorizing Network Traffic
14 Content,” issued in July 2011; (5) the ‘483 patent titled “Systems and Methods for Updating
15 Content Detection Devices and Systems,” issued in November 2011; and (6) the ‘205 patent titled
16 “Systems and Methods for Updating Content Detection Devices and Systems,” issued in
17 September 2012. FAC at ¶¶ 40, 50, 60, 70, 80, 90.

18 Plaintiff also alleges that Defendant makes, uses, sells, offers for sale, and/or imports into
19 the United States devices that embody Plaintiff’s patents, thereby: (1) Defendant’s Malware
20 Protection Cloud infringes the ‘135, ‘483, and ‘205 patents; (2) Defendant’s Malware Protection
21 System(s) and Virtual Execution (VX) Engine infringes the ‘933 and ‘974 patents; and (3)
22 Defendant’s Malware Analysis System and Virtual Execution (VX) Engine infringes the ‘543
23 patent. Id. at ¶¶ 42, 52, 62, 72, 82, 92.

24 Plaintiff has sufficiently pled a direct infringement theory of liability to satisfy Form 18
25 and Rule 8 pleading standards because it has alleged sufficient facts to put Defendant on notice of
26 what devices are accused of infringing Plaintiff’s patents. At this time, it is not necessary for
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1 Plaintiff to identify the specific component or functionality that allegedly infringed on the patents.

2 2. Induced Patent Infringement

3 With the exception of the ‘205 patent, Defendant argues that Plaintiff’s allegations are
4 conclusory because Plaintiff fails to allege the identity of any third party who directly infringes the
5 asserted patents or any specific infringing activity by such third party. Dkt. No. 45-1 at 12. It also
6 argues that Plaintiff failed to show that Defendant possessed the requisite specific intent to
7 encourage others’ infringement of any of the patents. Id. at 13. Plaintiff, however, argues that it
8 has sufficiently pled the identity of third party infringers, as well as Defendant’s knowledge and
9 intent for indirect infringement. Dkt. No. 49 at 9-13.

10 As to the ‘205 patent, Defendant argues that inducement allegations are facially
11 implausible given that this patent was issued three days before Plaintiff filed its amended
12 complaint. Dkt. No. 45-1 at 13. Moreover, it argues that Plaintiff admitted the patent was issued
13 after the employee left Plaintiff, and Plaintiff does not allege that this employee continued to
14 monitor changes in Plaintiff’s patent portfolio. Id. Plaintiff provides no counterargument.

15 By statute, “[w]hoever actively induces infringement of a patent shall be liable as an
16 infringer.” 35 U.S.C. § 271(b). Liability “requires knowledge that the induced acts constitute
17 patent infringement.” In re Bill of Lading Transmission and Processing Sys. Patent Litig., 681
18 F.3d 1323, 1339 (Fed. Cir. 2012) (quoting Global-Tech Appliances, Inc. v. SEB S.A., —U.S.—,
19 131 S. Ct. 2060, 2068 (2011)). To survive a motion to dismiss, the complaint must contain facts
20 plausibly showing that defendants specifically intended a third party to infringe the patent and
21 knew that the third party’s acts constituted infringement. Id. This does not mean, however, that a
22 plaintiff must prove its case at the pleading stage. Id.

23 i. *Identifying Third-Party Infringers*

24 In identifying third-party infringers, “a plaintiff need not identify a *specific* direct infringer
25 if it pleads facts sufficient to allow an inference that at least one direct infringer exists.” In re Bill
26 of Lading, 681 F.3d at 1336 (emphasis in original). “Given that a plaintiff’s indirect infringement
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1 claims can succeed at trial absent direct evidence of a specific direct infringer, [the Federal
2 Circuit] cannot establish a pleading standard that requires something more.” Id.

3 Here, for each of the patents, Plaintiff identifies the third party in the FAC as “customers”
4 and “end users.” FAC at ¶¶ 43, 53, 63, 73, 83. While Plaintiff has not identified a particular
5 person, it has sufficiently pled to raise an inference that at least one direct infringer exists—a
6 customer and/or end user.

7 ii. *Defendant’s Knowledge of the Patents*

8 In pleading Defendant’s knowledge of the patents, Plaintiff alleges that Defendant’s
9 current Vice President of Product Management, who was Plaintiff’s former Vice President of
10 Product Management and Marketing, has intimate knowledge of each of the patents. FAC at ¶¶
11 43, 53, 63, 73, 83. Plaintiff further alleges that, since 2008, Defendant has hired at least eleven
12 Plaintiff employees from key divisions. FAC at ¶ 12. For each of the patents, these employees
13 allegedly have awareness of Plaintiff’s patent portfolio given the discussions of Plaintiff’s patents
14 and intellectual property rights with its employees. FAC at ¶¶ 43, 53, 63, 73, 83. Moreover,
15 Plaintiff alleges that Defendant has had actual knowledge of all the patents since the filing of the
16 FAC. FAC at ¶¶ 43, 53, 63, 73, 83.

17 Plaintiff does not allege that Defendant gained its knowledge of the patents through
18 Plaintiff’s former employees. However, Plaintiff alleges sufficient facts to indicate that Defendant
19 knew of the patents.

20 iii. *Defendant’s Knowledge and Intent of the Infringing Conduct*

21 In pleading Defendant’s knowledge and intent for the third party’s infringing conduct,
22 Plaintiff alleges that for each patent, Defendant’s products sold directly to consumers and through
23 its distribution partners are designed to be used (and are used by consumers and end-users) in an
24 infringing manner. FAC at ¶¶ 44, 54, 64, 74, 84.

25 These bare allegations are not sufficient to plead that Defendant knew of the third party’s
26 infringing conduct, and that they had the specific intent to cause a third party to infringe. The

1 allegations provided by Plaintiff are too conclusory.

2 iv. *The '205 Patent*

3 Plaintiff's opposition provides no counterargument to Defendant's contention that it is
4 facially implausible to allege induced patent infringement given that this patent was issued 3 days
5 prior to filing the FAC. Without an explanation to make sense of the allegations, this court agrees
6 with Defendant.

7 In sum, Plaintiff has not sufficiently pled an induced patent infringement theory of
8 liability. The allegations concerning Defendant's knowledge and intent of the infringing conduct
9 are insufficient, and the allegations concerning the '205 patent are facially implausible.

10 3. Contributory Patent Infringement

11 Defendant argues that Plaintiff failed to identify any direct infringer, any directly
12 infringing product or system, or any components that embody a material part of the invention
13 especially made for use in infringement of the patents. Dkt. No. 45-1 at 14. Defendant further
14 argues that Plaintiff did not allege facts showing Defendant's knowledge of instances of direct
15 infringement, or knowledge that the combination was both patented and infringing. *Id.* Plaintiff
16 presents the same arguments as with induced patent infringement. Dkt. No. 49 at 9-13.

17 By statute, "[c]ontributory infringement occurs if a party sells or offers to sell, a material
18 or apparatus for use in practicing a patented process, and that 'material or apparatus' is material to
19 practicing the invention, has no substantial non-infringing uses, and is known by the party 'to be
20 especially made or especially adapted for use in an infringement of such patent.'" 35 U.S.C. §
21 271(c); *In re Bill of Lading*, 681 F.3d at 1337. To state a claim, a plaintiff must "plead facts that
22 allow an inference that the components sold or offered for sale have no substantial non-infringing
23 uses." *In re Bill of Lading*, 681 F.3d at 1337. "[A] substantial non-infringing use is any use that
24 is not unusual, far-fetched, illusory, impractical, occasional, aberrant, or experimental." *Id.*
25 (internal quotations and citations omitted).

26 Plaintiff has not sufficiently pled a contributory patent infringement theory of liability.

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1 The allegations are too conclusory to form a viable claim.

2 4. Willful Patent Infringement Claim

3 Defendant argues that Plaintiff has not shown a good faith basis to allege this claim. Dkt.
4 No. 45-1 at 14. Plaintiff, however, argues that it sufficiently pled the knowledge its former
5 employees had when they went to work with Defendant, and that Defendant has continued to sell
6 its infringing product. Dkt. No. 49 at 14. As to the '205 patent, Plaintiff drops its claim of willful
7 infringement. Id. at 14 n.12.

8 For an award of enhanced damages under 35 U.S.C. § 284, there must be willful
9 infringement. Potter Voice Techs., LLC v. Apple Inc., —F. Supp. 2d—, 2014 WL 46768, at *2
10 (N.D. Cal. Jan. 6, 2014) (Wilken, J.). “A finding of willfulness allows the Court to multiply any
11 patent infringement damages up to threefold, as well as award attorneys’ fees.” Id.; 35 U.S.C. §§
12 284, 285. “The infringer acts willfully when it was aware of the asserted patent, but nonetheless
13 acted despite an objectively high likelihood that its actions constituted infringement of a valid
14 patent.” Potter Voice Techs., 2014 WL 46768, at *2. “Whether an act is willful is by definition a
15 question of the actor’s intent, the answer to which must be inferred from all the circumstances.”
16 Id. (internal quotations and citations omitted). To prove willful infringement, at least a showing of
17 objective recklessness must be made. In re Seagate Tech., LLC, 497 F.3d 1360, 1371 (Fed. Cir.
18 2007).

19 Here, Plaintiff has not sufficiently pled a willful patent infringement theory of liability.
20 Plaintiff alleges that Defendant’s Vice President of Product Management and former Plaintiff
21 employees knew of the patents. FAC at ¶¶ 43, 53, 63, 73, 83. It also alleges that Defendants had
22 knowledge of the patents and has continued the sale of its products. Id. However, Plaintiff does
23 not allege that it was the Vice President and former employees that told Defendants of the patents,
24 and with this knowledge acquired by these individuals, Defendants sold and continues to sell its
25 alleged infringing products. Defendant’s intent or objective recklessness has not been sufficiently
26 pled.

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5. Conclusion

The only patent infringement theory of liability that survives this motion is direct infringement. All other theories of liability are dismissed because they are insufficiently pled. Accordingly, Defendant’s motion to dismiss the patent infringement claim of each patent is GRANTED IN PART AND DENIED IN PART.

B. Misappropriation of Trade Secrets Claim

Defendant argues that Plaintiff provides no factual allegations that Defendant obtained any trade secrets, and that Defendant used or disclosed trade secrets in any improper manner. Dkt. No. 45-1 at 5. Defendant then focuses on the three examples provided by the FAC. First, as to the Law Firm Account, Defendant argues that Plaintiff cannot contend that the Firm’s identity is a trade secret. Id. at 6. Also, Plaintiff has not pled the requisite harm because it failed to allege that it lost the Law Firm Account or any of its business. Id. Second, as to the International Distributor, Defendant argues that Plaintiff cannot allege that the identities of its distributors are trade secrets because that information is publicly known, and it has not alleged that a Plaintiff employee obtained the trade secrets for Defendant’s benefit. Id. at 7. Third, as to the Salesforce Database, Defendant argues that Plaintiff has not sufficiently alleged the identities of the former employees, that these employees obtained a trade secret and gave it to Defendant, and that Defendant knew of this conduct and improperly used the information. Id. at 8. Plaintiff, however, argues that it did provide sufficient factual allegations for this claim. Dkt. No. 49 at 16-17. It also argues that Defendant’s arguments concerning the Law Firm Account, International Distributor, and Salesforce Database should not be considered because Defendant relies on a heightened pleading standard and are generally irrelevant to the point of this claim—that Defendant had access to a large quantity of trade secrets and used it to benefit its own growth. Id. at 19-20.

The California Uniform Trade Secrets Act prohibits misappropriation of trade secrets, which it defines as:

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(1) Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

(2) Disclosure or use of a trade secret of another without express or implied consent by a person who:

(A) Used improper means to acquire knowledge of the trade secret; or

(B) At the time of disclosure or use, knew or had reason to know that his or her knowledge of the trade secret was:

(i) Derived from or through a person who had utilized improper means to acquire it;

(ii) Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or

(iii) Derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or

(C) Before a material change of his or her position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

Cal. Civ. Code § 3426.1(b). “Improper means” include the “breach or inducement of a breach of a duty to maintain secrecy.” Cal. Civ. Code § 3426.1(a).

To state a claim for misappropriation of trade secrets under the California Uniform Trade Secrets Act (“CUTSA”), a plaintiff must allege that: (1) the plaintiff owned a trade secret; (2) the defendant misappropriated the trade secret; and (3) the defendant’s actions damaged the plaintiff. Mintel Learning Tech., Inc. v. Ambow Educ. Holding Ltd., 2012 WL 762126, at *2 (N.D. Cal. Mar. 8, 2012) (Davila, J.).

1. Trade Secret Subject Matter

As to the first element, Plaintiff alleges the trade secret to be: (1) customer and potential customer names, contacts, lists, purchasing histories, purchasing preferences, purchasing forecast, and identity of key corporate “decision makers;” (2) key business partner, distributor, wholesaler, and value-added reseller names, contacts, and lists, including key downstream companies in the sales channel; (3) non-public product, pricing, marketing, and sales information, including sales

1 histories, trends, forecasts, plans, techniques, methods, processes, product characteristics, product
2 tests, and other proprietary competitive knowledge and intelligence; and (4) non-public, unique
3 human resources information and employee-specific information, including confidential
4 competitive salary and compensation package information. FAC at ¶ 13, 15, 100. Moreover,
5 Plaintiff alleges that it took precautions to safeguard this information by protecting its facilities,
6 servers, computers, networks, databases, and communications systems using physical and
7 electronic security systems, such as access cards, password protection systems, firewalls, and
8 encrypted communications technology. Id. at ¶¶ 14, 103. Plaintiff further alleges that its
9 employees are required to read, acknowledge, and sign an employment agreement and/or a
10 proprietary information and inventions agreement swearing them to secrecy and loyalty. Id.

11 Plaintiff has alleged sufficient facts to show that it owned trade secrets and it took
12 measures to safeguard the information. See Brocade Commc'n Sys., Inc. v. A10 Networks, Inc.,
13 873 F. Supp. 2d 1192, 1214 (N.D. Cal. 2012) (customer-related information including lists and
14 historical purchasing information receive trade secret protection) (collecting cases); Competitive
15 Techs. v. Fujitsu Ltd., 286 F. Supp. 2d 1118, 1147 (N.D. Cal. 2003) (information pertaining to
16 pricing, marketing, and sales strategy may be considered a trade secret if it is not public
17 information).

18 2. Misappropriation of the Trade Secret

19 Plaintiff alleges that since 2008, Defendant has hired at least eleven Plaintiff employees
20 from key divisions such as product managers, marketing experts, security and systems engineers,
21 account managers, and senior sales managers. FAC at ¶ 12. While working for Plaintiff, these
22 employees allegedly acquired intimate knowledge of the trade secrets. Id. at ¶ 13. They allegedly
23 entered into an agreement with Defendant where they would misappropriate Plaintiff's trade
24 secrets, and they disclosed and/or used the trade secrets to sell Defendant's products, services, or
25 other offerings that would compete with Plaintiff's. Id. at ¶ 105-06. Plaintiff then discusses three
26 examples (1) the Law Firm Account example, where a Plaintiff employee, who had signed an
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1 engagement letter with Defendant without Plaintiff knowing, forwarded to his personal email
2 confidential information pertaining to one of Plaintiff's accounts before the employee left for
3 Defendant; (2) the International Distributor example, where a Plaintiff employee, who had
4 information about Plaintiff's distributors and resellers, left to work for Defendant and began to
5 contact and solicit one of Plaintiff's distributors using Plaintiff's confidential information; and (3)
6 the Salesforce Database example, where numerous Plaintiff employees, who had access to
7 Plaintiff's database holding its customer and sales information, accessed the database at higher-
8 than-normal frequencies before they left for Defendant, and one of these employee logged into the
9 database two days after leaving Plaintiff. Id. at ¶¶ 20, 28, 34.

10 Defendant argues that Plaintiff's allegations assume that because Plaintiff employees went
11 to work for Defendant, the employees disclosed the trade secrets. Reply, Dkt. No. 54 at 2. It
12 argues that Plaintiff's allegations ring more of inevitable disclosure than of trade secret
13 misappropriation. The doctrine of inevitable disclosure provides that the disclosure of trade
14 secrets is unavoidable because the employee inevitably will use them in his new position with a
15 competing employer. Bayer Corp. v. Roche Molecular Sys., Inc., 72 F. Supp. 2d 1111, 1117
16 (N.D. Cal. 1999). California has rejected this theory of liability. Id. at 1112.

17 Plaintiff's allegations that these employees had knowledge of the trade secrets and then
18 went to work for Defendant is not sufficient to allege misappropriation because they ring more of
19 inevitable disclosure than misappropriation. However, Plaintiff's allegations to the three instances
20 where former Plaintiff employees took information prior to leaving for Defendant are sufficient to
21 make a plausible claim of misappropriation.

22 3. Harm to Plaintiff

23 Plaintiff alleges that Defendant has "used and benefited" from Plaintiff's trade secrets
24 without permission or compensation. FAC at ¶ 19. It alleges that the trade secret
25 misappropriation interfered with Plaintiff's potential economic advantage to Plaintiff's detriment.
26 Id. at ¶ 24, 31. It further alleges that its business relationship with its customers and distributors

1 were disrupted. Id. at ¶ 38.

2 While these allegations are general, the failure to specifically plead the amount of harm or
3 the mechanism of causation is not necessarily fatal to a complaint. Plaintiff has made sufficient
4 allegations of the existence of a valuable trade secret and its improper use. The alleged harm of
5 interfering with Plaintiff’s potential economic advantage and the disruption of the business
6 relationship between Plaintiff and its customers and distributors is sufficient. Accordingly,
7 Defendant’s motion to dismiss this claim is DENIED.

8 **C. Tortious Interference**

9 Plaintiff sets forth two tortious interference claims. First, Plaintiff alleges intentional
10 interference with contractual relations. It alleges that a valid agreement existed between Plaintiff
11 and its former employees, and Defendant knew that these employees had a duty under their
12 employment agreements not to work for or assist any competitor and not disclose trade secrets to
13 any competitor. FAC at ¶¶ 115-16. Defendant intentionally solicited, induced, and encouraged
14 these employees to breach their contract with Plaintiff, and as a result, these employees did breach
15 their contract. Id. at ¶¶ 117-18. Second, Plaintiff alleges intentional interference with prospective
16 economic advantage and/or relations. Plaintiff alleges that it developed economic relationships
17 with its customers and business partners, and that Defendant used valuable confidential
18 information without authorization to compete with Plaintiff. Id. at ¶¶ 123-24. Plaintiff alleges
19 that Defendant offered to sell to Plaintiff’s existing and probable customers based on Plaintiff’s
20 confidential information, and that Defendant has solicited business relationships with Plaintiff’s
21 business partners. Id. at ¶¶ 125-26.

22 Defendant argues that both of these claims should be dismissed because they are both
23 preempted under CUTSA. Dkt. No. 45-1 at 9. Plaintiff concedes to CUTSA preemption and does
24 not object to this court disregarding the allegations that Defendant has committed torts through the
25 misappropriation of trade secrets. Dkt. No. 49 at 20. However, Plaintiff argues that the claims
26 should not be dismissed because they are not based on the same nucleus of facts as the trade
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1 secrets claims and, thus, are not preempted by CUTSA. Id. at 21.

2 Under California law, CUTSA preempts all common law claims based on the same
3 nucleus of facts as the misappropriation of trade secrets. MedioStream, Inc. v. Microsoft Corp.,
4 869 F. Supp. 2d 1095, 1114-15 (N.D. Cal. 2012) (collecting cases). Each claim will be addressed
5 in turn.

6 1. Intentional Interference with Contractual Relations

7 To state a claim for intentional interference with contractual relations, a plaintiff must
8 show: (1) a valid contract between plaintiff and a third party; (2) defendant’s knowledge of this
9 contract; (3) defendant’s intentional acts designed to induce breach or disruption of the contractual
10 relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting
11 damage. CRST Van Expedited, Inc. v. Werner Enters., Inc., 479 F.3d 1099, 1105 (9th Cir. 2007);
12 Reeves v. Hanlon, 33 Cal. 4th 1140, 1148 (2004).

13 Plaintiff’s claim focuses on Defendant’s alleged solicitation, inducement, and
14 encouragement of Plaintiff’s employees to breach their contracts with Plaintiff, thus this claim is
15 not preempted by CUTSA. Plaintiff, however, does not provide sufficient allegations to show that
16 Defendant’s intentional acts were designed to induce breach of disruption of the contractual
17 relationship. Plaintiff provides conclusory allegations that Defendant “solicited, induced, and
18 encouraged” the employees, but it provides no factual allegations as to how. These bare
19 allegations are insufficient, thus, Defendant’s motion as to this claim is GRANTED.

20 2. Intentional Interference with Prospective Economic Advantage and/or Relations

21 On its face, the allegations focus on Defendant’s alleged use of valuable confidential
22 information to sell its products to Plaintiff’s customers and solicit business relationships with
23 Plaintiff’s business partners. These allegations are based on the same nucleus of facts as the trade
24 secret claims. Accordingly, Defendant’s motion as to this claim is GRANTED. Given that this
25 claim is barred as a matter of law, there will be no leave to amend.

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IV. CONCLUSION

Based on the foregoing reasons, Defendant's Motion to Dismiss is GRANTED IN PART AND DENIED IN PART. In sum:

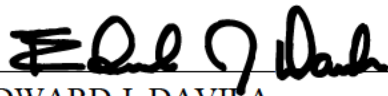
1. Plaintiff's direct patent infringement claims may proceed. All other theories of liability pertaining to the patent infringement claims are DISMISSED WITH LEAVE TO AMEND.
2. Plaintiff's trade secrets claim may proceed.
3. Plaintiff's intentional interference with contractual relations is DISMISSED WITH LEAVE TO AMEND.
4. Plaintiff's intentional interference with prospective economic advantage and/or relations is DISMISSED WITHOUT LEAVE TO AMEND.

Plaintiffs can file its second amended complaint addressing the deficiencies stated herein no later than 15 days from the date of this order.

The court schedules this case for case management conference at 10:00 a.m. on December 5, 2014. Parties shall file a joint case management conference statement on or before November 26, 2014.

IT IS SO ORDERED.

Dated: September 30, 2014



EDWARD J. DAVILA
United States District Judge