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**FILED**  
AUG 31 2011  
CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY DEPUTY

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

CREATIVE COMPOUNDS, LLC; S103,  
INC.,  
  
Plaintiffs,  
  
vs.  
MATTHIAS BOLDT; JOSEPH  
RODRIGUES; S.A.N. NUTRITION  
CORP.,  
  
Defendants.

CASE NO. 10CV1411 WQH (RBB)  
**ORDER**

HAYES, Judge:

The matter before the Court is the Motion to Dismiss the First Amended Complaint filed by Defendants Matthias Boldt and S.A.N. Nutrition Corp. (ECF No. 20).

**BACKGROUND**

On July 6, 2010, Creative Compounds, LLC and S103, Inc. initiated this action by filing the Complaint. (ECF No. 1). On September 15, 2010, Defendants Matthias Boldt and S.A.N. Nutrition Corp. filed a Motion to Dismiss the Complaint on the grounds that the statute of limitations on the misappropriation of trade secret claim has expired. (ECF No. 8). On January 12, 2011, this Court granted the Motion to Dismiss. (ECF No. 14).

On April 7, 2011, Plaintiff filed the First Amended Complaint asserting one claim for misappropriation of trade secret. (ECF No. 19). On April 27, 2011, Defendants Matthias Boldt and S.A.N. Nutrition Corp. filed a Motion to Dismiss the First Amended Complaint on the grounds that the claim is barred by the statute of limitations. (ECF No. 20). On May 24,

1 2011, Plaintiff filed an Opposition.<sup>1</sup> (ECF No. 23). On May 26, 2011, Defendant filed a  
2 Reply. (ECF No. 24).

### 3 ALLEGATIONS OF THE FIRST AMENDED COMPLAINT

4 Plaintiff Creative Compounds, LLC is a Nevada limited liability company with its  
5 principal place of business in Missouri. (ECF No. 1 at 1). Plaintiff S103, Inc.<sup>2</sup> is a Delaware  
6 corporation with its principal place of business in Missouri. Defendant Matthias Boldt is a  
7 resident of California and President of S.A.N. Nutrition Corp., a Nevada corporation with its  
8 principal place of business in California. Defendant Joseph Rodrigues is “currently” a resident  
9 of California. *Id.* at 2.

10 Syntrex Innovations, Inc. was a manufacturer and wholesaler of consumer dietary  
11 supplements and sports nutrition foods, founded and owned by Derek Cornelius. Cornelius  
12 also assisted in the startup and acted as an independent technical consultant to Plaintiff  
13 Creative Compounds. Plaintiff Creative Compounds and Syntrex worked closely together.

14 Defendant Rodrigues was employed by Syntrex as its National Sales Manager from  
15 2001 to March 2002 and he had access to information regarding products in development and  
16 trade secrets. In 2002, Defendant Rodrigues conspired with Defendants S.A.N. Nutrition and  
17 its president Matthias Boldt to misappropriate trade secrets from Plaintiff Creative Compounds  
18 and Syntrex. “One such piece of confidential information disclosed by Rodrigues to [S.A.N.  
19 Nutrition Corp.] and Boldt related to salts of creatine and malic acid ... and their use as an  
20 ingredient in a nutritional supplement.” *Id.* at 4.

21 Plaintiffs reformulated the product Swole to contain creatine malate salts and  
22 introduced it to the market in the fall of 2002. “Sometime after the reformulation of Swole,  
23 in approximately the fall of 2002, [S.A.N. Nutrition Corp.] introduced a product called V12  
24 that included creatine malate salts.” *Id.*

25 In December 2002, Syntrex initiated an action against S.A.N. Nutrition Corp., Boldt,

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27 <sup>1</sup> On May 17, 2011, Plaintiffs filed an Ex Parte Application for an extension of time to  
28 file an opposition to the Motion to Dismiss. (ECF No. 21). The Ex Parte Application is  
GRANTED.

<sup>2</sup> S103, Inc. acquired Syntrex, including the right to sue for past damages and claims.

1 and Rodrigues for misappropriation of trade secrets for products that Defendants had  
2 commercialized prior to Syntrax. The Missouri action did not allege misappropriation of trade  
3 secrets regarding creatine malate salts “because Syntrax publicly announced its  
4 commercialization ... before [S.A.N. Nutrition Corp.] and introduced a product containing  
5 creatine malate salts many months before [S.A.N. Nutrition Corp.] did. Therefore, Syntrax  
6 lacked evidence nor had any reason to believe at that time, that the defendants had  
7 misappropriated the creatine malate salts trade secret.” *Id.* at 5-6.

8 “Unbeknownst to Plaintiffs, Boldt filed a patent application for certain aspects of  
9 creatine malate salts on December 18, 2002.” *Id.* at 6. “On September 19, 2006, the Boldt  
10 patent application issued as U.S. Patent No. 7,109,373 (‘the ‘373 Patent’).” *Id.* “Shortly  
11 before the Boldt patent issued, [S.A.N. Nutrition Corp.] disclosed to the public for the first  
12 time that it had sought and was being granted a patent on creatine malate salts.” *Id.*

13 Following the public disclosure of the ‘373 Patent by S.A.N. Nutrition Corp.,  
14 “[Plaintiffs Creative Compounds and Syntrax] were first able to ascertain that Rodrigues, in  
15 cooperation with Boldt and [S.A.N. Nutrition Corp.] had misappropriated the trade secrets.”  
16 *Id.* “After public disclosure of the ‘373 Patent, [Plaintiffs Creative Compounds and Syntrax]  
17 learned that Boldt (on behalf of [S.A.N. Nutrition Corp.]) had contacted the same vendor  
18 [Plaintiff Creative Compounds] had previously contacted about supplying creatine malate salts;  
19 that contact was made shortly after Rodrigues left [Plaintiff Creative Compound’s]  
20 employment and began employment with [S.A.N. Nutrition Corp.]” *Id.* at 6-7. The file  
21 history of Boldt’s patent contained an invoice for creatine malate salts which “(a) predated  
22 Syntrax’s public disclosure of creatine malate salts; (b) was contemporaneous with Rodrigues’  
23 departure from Syntrax and move to [S.A.N. Nutrition Corp.]; and (c) was from the same  
24 vendor that Creative had been using for its supply of creatine malate salts.” *Id.* at 7. “Because  
25 the trade secrets related to creatine malate salts were the only ones misappropriated by  
26 defendants that were not involved in the commercialization (or announced thereof) of a  
27 product before Syntrax, Syntrax and its successor could not have known or proven that the  
28 Trade Secrets were misappropriated until the file history of the ‘373 Patent became public.”

1 *Id.*

2 Plaintiffs assert one claim under Missouri Uniform Trade Secrets Act, RSMo. 417.450  
3 et seq., based on misappropriation and disclosure of trade secrets by Rodrigues to Boldt and  
4 S.A.N. Nutrition Corp. regarding the creatine malate salts.

### 5 **CONTENTIONS OF THE PARTIES**

6 Defendants move to dismiss the Complaint on the grounds that the complaint is barred  
7 by California's three year statute of limitations. Defendants contend that California law  
8 applies to this case on the grounds that California has a significant interest in protecting its  
9 residents from "stale claims" which outweighs Missouri's interest in extending the statute of  
10 limitations. (ECF No. 24 at 4).

11 Plaintiffs contend the claim was timely filed. Plaintiffs contend that Missouri's five  
12 year statute of limitations applies to this case on the grounds that the misappropriation of trade  
13 secrets occurred in Missouri and Defendant Rodrigues lived and was employed in Missouri at  
14 the time of the misappropriation.

### 15 **DISCUSSION**

16 Federal Rule of Civil Procedure 12(b)(6) permits dismissal for "failure to state a claim  
17 upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). When considering a motion to  
18 dismiss, a court must accept as true all "well-pleaded factual allegations." *Ashcroft v. Iqbal*,  
19 --- U.S. ----, 129 S. Ct. 1937, 1950 (2009).

20 A federal court sitting in diversity jurisdiction applies the conflict of law rules of the  
21 forum state to determine whether the law of the forum state, or some other law, should govern  
22 the case. *See Klaxon Co. v. Stentor Electric Mfg. Co.*, 313 U.S. 487, 496-97 (1941). In  
23 California, courts apply a three-part governmental interest test. *In re Nucorp Energy Sec.*  
24 *Litig.*, 661 F.Supp. 1403, 1412 (S.D. Cal. 1987) (citing *Hurtado v. Super. Ct.*, 11 Cal.3d 574,  
25 579-80 (1974)); *see also Abogados v. AT&T, Inc.*, 223 F.3d 932, 934 (9th Cir. 2000). "First,  
26 the court must determine whether there is in fact a conflict between the competing jurisdictions  
27 since 'there is obviously no problem where the laws of the two states are identical.'" *In re*  
28 *Nucorp Energy Sec. Litig.*, 661 F.Supp. at 1412 (quoting *Hurtado*, 11 Cal.3d at 580). If a

1 conflict exists, the court must then “determine whether each jurisdiction has a legitimate  
2 interest in the application of its law[s] and underlying policy.” *In re Nucorp Energy Sec. Litig.*,  
3 661 F.Supp. at 1412 (explaining that “if only one jurisdiction has a legitimate interest, there  
4 is no actual conflict of laws problem.”) (citing *Hurtado*, 11 Cal.3d at 580). “If both  
5 jurisdictions have a legitimate interest in the application of their conflicting laws, the court  
6 should apply the law[s] of the state whose interest would be the more impaired if its law[s]  
7 were not applied.” *In re Nucorp Energy Sec. Litig.*, 661 F.Supp. at 1412; *see also Abogados*,  
8 223 F.3d at 934 (explaining that the final stage analyzes the “‘comparative impairment’ of the  
9 interested jurisdictions [and the court should] ... identify and apply the law[s] of the state  
10 whose interest would be the more impaired if its law[s] were not applied.”).

11 California’s Uniform Trade Secret Act provides: “An action for misappropriation must  
12 be brought within three years after the misappropriation is discovered or by the exercise of  
13 reasonable diligence should have been discovered.” Cal. Civ. Code § 3426.6. Missouri’s  
14 Uniform Trade Secret Act provides: “An action for misappropriation shall be brought within  
15 five years after the misappropriation is discovered or by the exercise of reasonable diligence  
16 should have been discovered.” Mo. Ann. Stat. § 417.461. The Court finds that there is a  
17 conflict between California’s three year statute of limitations and Missouri’s five year statute  
18 of limitations.

19 “Statutes of limitation are designed to protect the enacting state’s residents and courts  
20 from the burdens associated with the prosecution of stale cases ....” *Ashland Chemical Co. v.*  
21 *Provence*, 129 Cal. App. 3d 790, 794 (1982) (citing *McGee v. Weinberg*, 97 Cal. App. 3d 798,  
22 804 (1979) (“Statutes of limitations are enacted as matters of public policy designed to promote  
23 justice and prevent the assertion of stale claims after the lapse of long periods of time.)  
24 (citations omitted). In *American Bank of Commerce v. Corondoni*, 169 Cal. App. 3d 368  
25 (1985), the California Court of Appeal found that “the interests of the foreign state will not be  
26 significantly furthered” by applying the foreign state’s statute of limitations period to a case  
27 which was not brought in the foreign state against citizens of the foreign state. *See American*  
28 *Bank of Commerce*, 169 Cal. App. 3d at 372-73. The court held that under those circumstances

1 the statute of limitations period for California, the forum state, should be applied. *Id.*; *see also*  
2 *Deutsch v. Turner Corp.*, 324 F.3d 692, 717 (9th Cir. 2003) (explaining that where a California  
3 statute of limitations would bar a claim “the governmental interest approach generally leads  
4 California courts to apply California law[] ... because a state has a substantial interest in  
5 preventing the prosecution in its courts of claims which it deems to be ‘stale.’”) (citations  
6 omitted).

7 In this case, the Court finds that California and Missouri each have an interest in  
8 having their law applied to this case. The Court concludes that California’s interest would be  
9 more impaired if its laws did not govern this case on the grounds that: (1) the complaint alleges  
10 that a California citizen and a California corporation solicited and received misappropriated  
11 trade secrets; (2) the case was filed in the United States District Court for the Southern District  
12 of California; (3) the defendants are two California citizens and a California corporation; and  
13 (4) the claim would be barred under California’s statute of limitations. Accordingly, the Court  
14 concludes that the laws of California govern this case.

15 Plaintiffs allege that on September 19, 2006, Defendant Boldt’s patent application  
16 regarding creatine malate salts was issued. (ECF No. 19 at 6). Plaintiffs allege: “Shortly  
17 before the Boldt patent issued, [S.A.N. Nutrition Corp.] disclosed to the public for the first  
18 time that it had sought and was being granted a patent on creatine malate salts.” *Id.* Plaintiffs  
19 allege that following the public disclosure of by S.A.N. Nutrition Corp., “[Plaintiffs Creative  
20 Compounds and Syntrex] were first able to ascertain that Rodrigues, in cooperation with Boldt  
21 and [S.A.N. Nutrition Corp.] had misappropriated the trade secrets.” *Id.* This case was  
22 initiated on July 6, 2010, over three years after September 19, 2006. The Court finds that  
23 Plaintiffs’ claim is barred by the statute of limitations.

24 A claim should be dismissed with prejudice only where it is clear that the complaint  
25 cannot be saved by any amendment. *See Gompper v. VISX*, 298 F.3d 893, 898 (9th Cir. 2002).  
26 The Court finds that Plaintiffs’ failure to file this claim within the statute of limitations period  
27 cannot be remedied by repleading the claim.

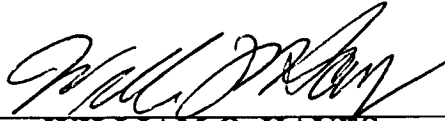
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**CONCLUSION**

IT IS HEREBY ORDERED that Defendants' Motion to Dismiss (ECF No. 20) is GRANTED. The Complaint is DISMISSED without leave to amend. Plaintiffs' Ex Parte Application for an extension of time to file an opposition to the Motion to Dismiss (ECF No. 21) is GRANTED.

DATED: 8/29/11

  
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**WILLIAM Q. HAYES**  
United States District Judge