

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JAVO BEVERAGE CO., INC.,
Plaintiff,
v.
CALIFORNIA EXTRACTION
VENTURES, INC. AND STEPHEN
COREY,
Defendants.

Case No.: 19-CV-1859-CAB-WVG
**ORDER DENYING MOTION TO
DISMISS**
[Doc. Nos. 7, 25]

This matter comes before the Court on Defendants California Extraction Ventures, Inc.’s (“CEV”) and Stephen Corey’s (collectively “Defendants”) motion to dismiss. [Doc. No. 7.] The motion has been fully briefed and the Court finds it suitable for determination on the papers submitted. See S.D. Cal. CivLR 7.1(d)(1). Defendants’ request for oral argument [Doc. No. 25] is therefore denied. For the reasons set forth below, Defendants’ motion to dismiss is denied.

I. BACKGROUND¹

Since 1993, Plaintiff Javo Beverage Co., Inc. (“Javo”) has been engaged in the business of coffee, tea, and botanical extracts, ingredients, and flavor systems, which are

¹ The Court is not making any findings of fact, but rather summarizing the relevant allegations of Plaintiff’s complaint. [Doc. No. 1]

1 sold across the country. [Doc. No. 1 at ¶ 13.²] Javo researched and developed a proprietary
2 process for its manufacture of extracts of coffee, tea, and other botanicals which includes,
3 among other things, introducing purified, deionized water within particular temperature
4 and pressure ranges into a proprietary columnar extraction vessel containing an extractable
5 material (e.g., roasted coffee) that has been ground into multiple particle sizes and specially
6 packed into the vessel into which deionized water is introduced, eventually resulting in a
7 pure, concentrated extract flowing from the top of the vessel. [Doc. No. 1 at ¶¶ 1, 14.]
8 Javo alleges it has continually maintained this process as a proprietary trade secret within
9 the industry. [Id.] Defendant Corey was an original co-founder of Javo and its
10 predecessors, and a principal inventor of Javo’s trade secret extraction process. [Id. at ¶
11 2.] During his time as an employee, Corey assigned all rights and interests he may have
12 had in the proprietary process to Javo through his Employment Agreement (“EA”) and the
13 associated Employee Confidentiality and Invention Assignment Agreement (“CIAA”),
14 executed on December 5, 2001. [Id. at ¶ 3.]

15 On January 24, 2011, Javo commenced a Chapter 11 bankruptcy proceeding to,
16 among other things, restructure its debt. [Id. at ¶ 42.] In or about August 2011, Javo
17 terminated Corey without cause because of the elimination of his position due to the
18 restructuring under the bankruptcy plan. [Id. at ¶ 47.]

19 Kurt Toney, a former President/CEO of one of Javo’s predecessors, is now involved
20 with Defendant CEV as its current CEO, alongside Defendant Corey who is CEV’s current
21 President. [Id. at ¶ 7, 22.] Javo alleges that Corey and CEV misused Javo’s trade secrets
22 and other confidential information to benefit CEV, constituting a breach of Corey’s EA
23 and CIAA with Javo, when Corey improperly disclosed the information in publicly-
24 available patent applications he filed with the United States Patent and Trademark Office
25 and assigned to CEV. [Id. at ¶¶ 15, 18.] CEV offered and sold securities to fund, at least
26

27
28 ² Document numbers and page references are to those assigned by CM/ECF for the docket entry.

1 in part, the preparation and filing of Corey’s provisional patent application, U.S. Pat. App.
2 No. 62/134,497, which Corey filed on March 17, 2015 (the “’497 Provisional
3 Application”). [Id. at ¶ 49–50.] The ’497 Provisional Application lists Corey as the
4 inventor and contains terminology frequently used by Corey at Javo and refers to “Javo”
5 processes in certain figures. [Id. at ¶ 51.] Thus far, Corey has obtained seven issued patents
6 and has seven additional published patent applications all claiming priority to Corey’s ’497
7 Provisional Application which have all been assigned to CEV. [Id. at ¶ 65.] According to
8 the complaint, the issued patents and published patent applications disclose material that
9 substantially describes and overlaps with the proprietary confidential information and trade
10 secrets of Javo, constituting a violation of Corey’s obligations to refrain from disclosing
11 confidential information of Javo and to transfer all interest in any inventions to Javo. [Id.
12 at ¶ 66.]

13 On May 30, 2019, Javo demanded, among other things, that Defendants immediately
14 assign rights in the patents and applications claiming priority to the ’497 Provisional
15 Application. [Id. at ¶ 68.] Javo then filed its complaint on September 26, 2019, alleging:
16 (1) Misappropriation of Trade Secrets Under the Defend Trade Secrets Act (“DTSA”), 18
17 U.S.C. § 1836, et seq.; (2) Misappropriation of Trade Secrets Under the California Uniform
18 Trade Secrets Act (“CUTSA”), Cal. Civ. Code §§ 3426-3426.11; (3) Declaratory Judgment
19 of Ownership of the Patents; and (4) Intentional Interference with Contractual Relations.

20 **II. REQUEST FOR JUDICIAL NOTICE**

21 At the motion to dismiss stage a court may consider materials incorporated into the
22 complaint or matters of public record, without converting the motion to dismiss into a
23 motion for summary judgment. *Coto Settlement v. Eisenberg.*, 593 F.3d 1031, 1038 (9th
24 Cir. 2010) (citation omitted); see also Federal Rules of Evidence 201(b): “The court may
25 judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally
26 known within the trial court’s territorial jurisdiction; or (2) can be accurately and readily
27 determined from sources whose accuracy cannot reasonably be questioned.”

28 Defendants request the Court take judicial notice of the patent applications and the

1 corresponding patents that are implicated in this case. [Doc. No. 7-2.] Javo filed a
2 statement of non-opposition to Defendants’ request for judicial notice. [Doc. No. 11.]
3 Accordingly, the Court takes judicial notice of Defendants’ exhibits.

4 **III. LEGAL STANDARD**

5 To survive a motion to dismiss under Rule 12(b)(6), “a complaint must contain
6 sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its
7 face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v.*
8 *Twombly*, 550 U.S. 544, 570 (2007)). Thus, the Court “accept[s] factual allegations in the
9 complaint as true and construe[s] the pleadings in the light most favorable to the
10 nonmoving party.” *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031
11 (9th Cir. 2008). On the other hand, the Court is “not bound to accept as true a legal
12 conclusion couched as a factual allegation.” *Iqbal*, 556 U.S. at 678; see also *Lee v. City of*
13 *Los Angeles*, 250 F.3d 668, 679 (9th Cir. 2001) (“Conclusory allegations of law are
14 insufficient to defeat a motion to dismiss”). Nor is the Court “required to accept as true
15 allegations that contradict exhibits attached to the Complaint or . . . allegations that are
16 merely conclusory, unwarranted deductions of fact, or unreasonable inferences.” *Daniels-*
17 *Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 998 (9th Cir. 2010). A claim may be dismissed
18 under Rule 12(b)(6) on the grounds that it is barred by the applicable statute of limitations
19 when “the running of the statute is apparent on the face of the complaint.” *Huynh v. Chase*
20 *Manhattan Bank*, 465 F.3d 992, 996 (9th Cir. 2006) (quotations omitted).

21 **IV. DISCUSSION**

22 Defendants contend that Javo’s complaint is time-barred. In addition, Defendants
23 contend that Javo’s claim for intentional interference with contractual relations is
24 preempted by the California Uniform Trade Secrets Act (“CUTSA”). [Doc. No. 7-1.] The
25 Court addresses each issue in turn.

26 **A. Statute of Limitations**

27 Defendants assert that the Court does not have to reach the merits of Javo’s claims,
28 which they do not address, because Javo failed to file its claims before the applicable statute

1 of limitations period. Primarily, Defendants claim that the publication of patent
2 applications constitutes constructive notice sufficient to trigger the statute of limitations,
3 and therefore, Javo’s claims accrued at the latest on September 22, 2016 – the date on
4 which the USPTO made the ’497 Provisional Application and six of the seven patent
5 applications publicly available. Defendants contend Javo was obligated to bring its
6 intentional interference claim within two years and its trade secret and declaratory
7 judgment claim within three years of September 22, 2016. Since Javo did not file the
8 instant lawsuit until September 26, 2019, Defendants contend all of Javo’s claims are time-
9 barred. Javo responds that Defendants’ statute of limitations argument fails for the
10 following reasons: (1) the mere publication of a patent application standing alone does not
11 create constructive notice; (2) it is not apparent from the face of the complaint that Javo
12 had reason to suspect misconduct and therefore the statute of limitations defense is not
13 appropriate for a motion to dismiss; and (3) Javo’s claim for declaratory judgment of patent
14 ownership is timely because the claim did not accrue until January 2, 2018, when the first
15 patent in the family issued.

16 **1. Trade Secret Misappropriation**

17 “Dismissal at the pleading stage on statute-of-limitations grounds ordinarily is
18 improper unless it is ‘apparent from the face of the complaint that the claim is time-
19 barred.’” *ABB Turbo Sys. AG v. Turbousa, Inc.*, 774 F.3d 979, 985 (Fed. Cir. 2014)
20 (citations omitted). “[T]o approve dismissal on timeliness grounds, [the court] would have
21 to conclude that [plaintiff’s] complaint alleges facts making it apparent that [plaintiff]
22 discovered, or ‘by the exercise of reasonable diligence should have . . . discovered,’ the
23 alleged misappropriations at least three years before [the statute of limitations ran].” *Id.*

24 Under both the DTSA and CUTSA, a civil action must be brought no later than three
25 years after the misappropriation “is discovered or by the exercise of reasonable diligence
26 should have been discovered.” 18 U.S.C. § 1836(d); Cal. Civ. Code § 3426.6.
27 Misappropriation is defined as (A) acquisition of a trade secret “by improper means” or
28 (B) “disclosure or use of a trade secret of another without express or implied consent” by

1 one who either used “improper means” or “at the time of disclosure or use,” had reasons to
2 know it was acquired by “improper means.” 18 U.S.C. § 1839(5); Cal. Civ. Code § 3426.1.
3 Thus, the statute of limitations began to run when Javo knew or should have known that
4 the alleged trade secrets were wrongfully acquired, disclosed, or used. See *id.* Here, to
5 approve dismissal on timeliness grounds, the Court would have to conclude that Javo’s
6 complaint alleges facts making it apparent that Javo discovered, or by the exercise of
7 reasonable diligence should have discovered, the alleged misappropriation at least three
8 years before the instant lawsuit was filed. The Court cannot so conclude.

9 Javo’s complaint alleges no facts to identify actual or constructive notice prior to
10 May 2019. Javo alleged in its complaint that it sent correspondence to the Defendants on
11 May 30, 2019, demanding immediate action with regard to the alleged misappropriation.
12 [Doc. No. 1 at ¶ 68.] Further, there are no facts to suggest Javo had reason to suspect, or
13 should have suspected, that there would be any wrongdoing on the part of the Defendants.
14 Accordingly, the Court cannot conclude, on the face of the complaint, that Javo alleged
15 any facts that make it apparent that Javo discovered, or by the exercise of reasonable
16 diligence should have discovered, the alleged misappropriation prior to May 2019.

17 The Ninth Circuit has recognized that the “issuance of a patent and recordation in
18 the Patent Office constitute notice to the world of its existence.” *Gen. Bedding Corp. v.*
19 *Echevarria*, 947 F.2d 1395, 1397-98 (9th Cir. 1991) (quoting *Wine Ry. Appliance Co. v.*
20 *Enterprise Ry. Equip. Co.*, 297 U.S. 387, 393 (1936)). However, the Court does not find
21 this holding, and the cases that rely on it, applicable to the circumstances in this case. Here,
22 it is undisputed that the first issuance of an implicated patent was not until January 2018.
23 The majority of cases relying on the issuance of a patent as constructive notice were either
24 at the summary judgment stage or later in the proceedings with sufficient evidence on the
25 record to decide this issue. Here, the Court cannot conclude, as a matter of law, that Javo’s
26 claims accrued at the latest on September 22, 2016 due to the publication of the patent
27 application itself. In the Court’s view, it would be unreasonable to require a company that
28 consciously chooses the proprietary trade secret route over the patent protection route to

1 devote significant time and resources searching for any relevant patents within its industry
2 that could potentially lead to some cognizable legal claim when it has no basis to suspect
3 some wrongdoing. Furthermore, because it is not apparent on the face of Javo's complaint
4 that its claims are time barred it is not Javo's burden to specifically plead the inability to
5 have made an earlier discovery. See *Fox v. Ethicon Endo-Surgery, Inc.*, 35 Cal. 4th 797,
6 808 (2005).

7 At this early stage of the proceeding, there is no evidence on the record from which
8 the Court could conclude that Javo was aware, or should have been aware, of the alleged
9 misappropriation, such that the publication of the patent application itself constituted
10 constructive notice. It is not apparent at what point in time Javo even became aware of
11 Defendants' operations as a business in the similar industry and Defendant Corey's
12 involvement with the business. Were such relevant evidence on the record, it is possible
13 the Court could find under specific circumstances that Javo should have been aware of the
14 alleged misappropriation such that it should be charged with having constructive notice of
15 its claims earlier than it contends. However, construing the complaint in its entirety, in the
16 light most favorable to Javo, the time of discovery of the alleged misappropriation is not
17 clear, and therefore at this time the Court cannot hold that Javo's trade secret
18 misappropriation claims are time-barred. Likewise, the Court cannot hold that Javo's
19 intentional interference with contractual relations claims are time-barred where it is not
20 clear that Javo had any reason to suspect wrongdoing on the part of Defendants with respect
21 to the EA and CIAA executed with Defendant Corey.

22 **2. Declaratory Judgment of Patent Ownership**

23 The parties do not dispute that the statute of limitations for a declaratory judgment
24 claim is equivalent to the statute of limitations for the underlying wrong, however, Javo
25 contends the underlying wrong for its declaratory judgment claim sounds in contract, and
26 therefore the applicable statute of limitations is four years. Javo alleges in its claim for
27 declaratory judgment that Defendant Corey contributed to the conception of at least one
28 claim of each issued patent and pending patent application claiming priority to the '497

1 Provisional Application during his employment at Javo. [Doc. No. 1 at ¶ 98.] As a result,
2 Javo claims ownership of the patents by virtue of the CIAA, wherein Defendant Corey
3 assigned his right, title, and interest in all inventions made, conceived, reduced to practice,
4 or learned during his employment by Javo and its predecessors. Accordingly, Javo's
5 declaratory judgment claim sounds in contract and the applicable statute of limitations is
6 four years. In the alternative, Javo argues that its claims are timely even under the three-
7 year statute of limitations Defendants seek to impose because as stated above, the first
8 patent was not issued until January 2018. Regardless of which statute of limitations applies
9 here, Javo is correct that its patent ownership claims run through at least September 2020,
10 and therefore are not time-barred.

11 Accordingly, Defendants' motion to dismiss Javo's complaint as time-barred is
12 **DENIED without prejudice** should discovery uncover the necessary facts to re-allege a
13 statute of limitations argument at the appropriate time.

14 **B. Preemption Under the CUTSA**

15 Defendants contend that Javo's claim for intentional interference with contractual
16 relations is preempted by the CUTSA because the CUTSA implicitly preempts alternative
17 civil remedies based on trade secret misappropriation. Javo argues that its intentional
18 interference claim exists independently of its trade secret allegations and is not preempted
19 because it extends to: (1) non-trade secret confidential information that CEV improperly
20 solicited from Corey; and (2) CEV's intentional interference with Corey's obligation to
21 assign to Javo any patents for inventions Corey conceived of during his employment.

22 Under California law, CUTSA provides the exclusive civil remedy for conduct
23 falling within its terms and preempts other civil remedies for trade secret misappropriation.
24 Cal. Civ. Code § 3426.7; *Silvaco Data Sys. v. Intel Corp.*, 184 Cal. App. 4th 210, 236
25 (2010), disapproved on other grounds by *Kwikset Corp. v. Superior Court*, 51 Cal. 4th 310
26 (2011). It therefore preempts claims based on the same nucleus of facts as trade secret
27 misappropriation. *Silvaco*, 184 Cal. App. 4th at 232 (quoting *K.C. Multimedia, Inc. v. Bank*
28 *of Am. Tech. & Operations, Inc.*, 171 Cal. App. 4th 939, 962 (2009)). At the pleading

1 stage, the preemption analysis asks whether, stripped of facts supporting trade secret
2 misappropriation, the remaining factual allegations can be reassembled to independently
3 support other claims for relief. *Qiang Wang v. Palo Alto Networks, Inc.*, No. C 12–05579
4 WHA, 2013 WL 415615, at *4 (N.D. Cal. Jan. 31, 2013). Claims are not preempted,
5 however, when based upon a broader spectrum of misconduct than misappropriation. See
6 Cal. Civ. Code § 3426.7(b) (noting that the UTSA does not affect “other civil remedies that
7 are not based upon misappropriation of a trade secret”).

8 Here, Javo alleges that Defendant CEV interfered with the contractual relations
9 between Javo and Defendant Corey with respect to the EA and CIAA. [Doc. No. 1 at ¶¶
10 107–110.] Javo alleges that Defendant CEV interfered with Defendant Corey’s duty to
11 assign the patents at issue which, among Javo’s trade secrets, also include non-trade secret
12 confidential information. [Id. at ¶¶ 110–112.] Therefore, Javo’s allegations sufficiently
13 plead wrongful conduct distinct from the alleged misappropriation of trade secrets. To the
14 extent these allegations are based upon the trade secret information, the Court agrees that
15 the intentional interference claim should be preempted. Accordingly, Defendants’ motion
16 to dismiss Javo’s intentional interference claim as preempted is **DENIED** to the extent the
17 allegations are based upon non-trade secret information.

18 V. CONCLUSION

19 For the reasons set forth above, Defendants’ motion to dismiss is **DENIED**.

20 It is **SO ORDERED**.

21 Dated: December 2, 2019



22
23
24 Hon. Cathy Ann Bencivengo
25 United States District Judge
26
27
28