

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	2:10-cv-06401-JHN -PJWx	Date	March 31, 2011
Title	Pilates Technologies, LLC v. Guthy-Renker Corporation et al		

Present: The Honorable	JACQUELINE H. NGUYEN		
Alicia Mamer	Not Reported		N/A
Deputy Clerk	Court Reporter / Recorder		Tape No.
Attorneys Present for Plaintiffs:		Attorneys Present for Defendants:	
Not present		Not present	
Proceedings:	ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO DISMISS (In Chambers)		

I. Introduction

On October 4, 2010, Defendants Guthy-Renker Corporation (“Guthy-Renker”) and Robson Splane (collectively, “Defendants”) filed a Motion to Dismiss Plaintiff’s Complaint (the “Motion”). Defendants concurrently filed a Request for Judicial Notice (“RJN”). (Docket no. 8.) On October 12, 2010, Plaintiff filed an Opposition. (Docket no.15.) On October 19, 2010, Defendants filed a Reply (docket no. 19). The Court has considered the briefs and deems the Motion appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78(b); Local Rule 7-15. For the reasons set forth below, the Court grants in part and denies in part the Motion.

II. Factual Background

The following facts are taken from Plaintiff’s Complaint and are deemed true for purposes of this Motion.

This case arises out of a dispute over the ownership of a Pilates chair design patent. In late 2004, David Krieff (“Krieff”), an agent of Guthy-Renker, met with Mark Presser (“Presser”) and Harry Zimmerman (“Zimmerman”), to discuss Presser and Zimmerman’s suggestions to improve Guthy-Renker’s Pilates chair designs. (*Id.* ¶¶ 10, 13.) Prior to the meeting, Presser sent an email to Krieff (“the Presser email”), requesting that Krieff supply a signed agreement acknowledging their rights to the Pilates chair design suggestions and promising confidentiality. (*Id.* ¶¶ 17–18.) At the meeting on December 7, 2004, Krieff signed the Presser email, including the handwritten statement: “We are agreed to [the] basic concept of the letter. The design concepts of the chair listed above are property of Mark Presser, Harry Zimmerman, David Harilela. . . . We will in good faith attempt to move forward with an agreement deal memo.” (*Id.* ¶ 20.) Subsequently, Presser and Zimmerman disclosed to Krieff their ideas and designs for an improved Pilates chair, under the belief that their ideas and designs would be kept confidential and that they would be compensated if Gunthy-Renker used their ideas. (*Id.* ¶ 22.) On March 24, 2005, Krieff informed Presser and Zimmerman that he would have some final answers by the following week

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about whether Guthy-Renker would utilize their designs. (*Id.* ¶ 24.) Presser and Zimmerman never heard from Krieff or Guthy-Renker again and assumed that Guthy-Renker had declined to pursue the project. (*Id.* ¶ 25.)

On August 25, 2005 and February 2, 2006, respectively, Guthy-Renker filed U.S. Provisional Application No. 60/706,983 and U.S. Patent Application No. 11/346,142, naming Robson Splane (“Splane”) as the sole inventor. (*Id.* ¶¶ 30–31.) Guthy-Renker and Splane utilized Presser and Zimmerman’s ideas and designs in developing and marketing the “Malibu Pilates Chair” without compensating Presser and Zimmerman, and without acknowledging Zimmerman as a joint inventor. (*Id.* ¶¶ 32–33.)

Presser and Zimmerman first learned of the “Malibu Pilates Chair” in the fall of 2009. (*Id.* ¶ 35.) They learned of Splane’s patents soon after, and subsequently informed Guthy-Renker of Presser and Zimmerman’s entitlement to compensation. (*Id.* ¶¶ 35–36.) On October 27, 2009, U.S. Patent Number 7,608,030 (“the ‘030 patent”) issued from the ‘142 application, naming Splane as the sole inventor and Guthy-Renker as the assignee of the patent. (*Id.* ¶ 36.)

The Complaint, filed on August 26, 2010, alleges that Plaintiff, a corporation, is the “owner of all rights that [Zimmerman, Presser, and Harilela] had in the subject matter of this lawsuit.” (*Id.* ¶ 6.) Presser, Zimmerman, and David Harilela (“Harilela”) assigned their ideas and design interests for the improved chairs to Pilates Technologies, LLC (“Plaintiff”). (*Id.* ¶ 38.)

The Complaint alleges the following causes of action: (1) correction of inventorship under 35 U.S.C. § 256; (2) breach of confidence; (3) common law unfair competition–misappropriation; (4) breach of implied/ inferred contract; (5) fraud; and (6) statutory unfair competition under California Business & Professions Code Section 17200, *et seq.* (“unfair business competition”). (*Id.* ¶¶ 39–88.)

III. Judicial Notice

Defendant requests judicial notice of the following: (1) a Certificate of Conversion issued on April 24, 2008 by the Secretary of State of the State of Delaware; (2) a copy of the ‘030 patent, entitled “Exercise Chair”, issued on October 27, 2009; and (3) an email dated December 6, 2004 from Mark Presser to David Krieff entitled “Malibu Method and Chair Design”. (RJN A–C.) The Court finds that the documents submitted by Defendant are either matters of public record, or are documents upon which the complaint relies and their authenticity is uncontested. Therefore, the Court takes judicial notice of these documents. *See Lee v. City of L.A.*, 250 F.3d 668, 688–89 (9th Cir. 2001) (In considering a motion to dismiss, the court may take judicial notice of documents on which the complaint necessarily relies, provided the authenticity is not contested, or of “matters of public record” under Federal Rule of Evidence 201).

IV. Legal Standard

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A defendant may seek dismissal of a complaint that “fail[s] to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). In evaluating a motion to dismiss, courts generally cannot consider material outside the pleadings, with the exception of material attached to the complaint, and judicially noticed materials. *Lee*, 250 F.3d at 688–89. Courts must accept as true all material factual allegations in the pleading and construe them in the light most favorable to the plaintiff. *Nursing Home Pension Fund, Local 144 v. Oracle Corp.*, 380 F.3d 1226, 1229 (9th Cir. 2004). However, this tenet is inapplicable to legal conclusions. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009). Based on judicial experience and common sense, courts must determine whether a pleading plausibly states a claim for relief. *Id.* at 1950.

Dismissal is also warranted where a complaint, alleging fraud, fails to meet the heightened pleading standards of Federal Rule of Civil Procedure 9(b). Although “[m]alice, intent, knowledge, and other conditions of a person's mind may be alleged generally,” a complaint “must state with particularity the circumstances constituting fraud or mistake.” Fed. R. Civ. P. 9(b). “Averments of fraud must be accompanied by ‘the who, what, when, where, and how’ of the misconduct charged.” *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003) (citation omitted).

V. Discussion

Defendants move to dismiss Plaintiff’s Complaint for the following reasons: (1) lack of standing, (2) claims are preempted by UTSA, (3) failure to plead within the statute of limitations, and (4) failure to sufficiently allege claims.¹ The Court will discuss each argument in turn.

A. Standing

¹ Defendants also argue that the Complaint should be dismissed because Plaintiff sued the wrong entity. (Mot. at 5.) Plaintiff counters that Delaware law permits a corporation to be named as a defendant in a lawsuit for up to three years after its dissolution. (Opp’n at 2 (*citing* 8 Del. Code § 278).) Since Guthy-Renker Corporation was converted to Guthy-Renker LLC on April 23, 2008, and the Complaint was filed less than three years later on August 26, 2010, Plaintiff contends that it sued the right entity. (*Id.*) Although Defendants argue that the Delaware law cited by Plaintiff does not apply because Guthy-Renker Corporation was *converted* into Guthy-Renker LLC rather than *dissolved* (Reply at 3), Defendants provide no persuasive authority in support of their position. Therefore, the Court finds that naming Guthy-Renker Corporation as Defendant, rather than Guthy-Renker LLC, is not fatal to the Complaint.

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1. Assignment of Legal Claims to Plaintiff

Defendants argue that the allegations regarding the assignment of Zimmerman, Presser, and Harilela's legal claims to Plaintiff are insufficient. (Mot. at 6.) The Court disagrees. *See* Fed.R.Civ.Pro. Rule 8(a)(2) (requiring a complaint contain a short and plain statement of the claim, showing that the pleader is entitled to relief). The Complaint states that "Presser, Zimmerman, and Harilela have assigned any interest that they have in Zimmerman's ideas and designs for an improved pilates chair and the subject matter of this lawsuit to Plaintiff." (Compl. ¶ 38.) The Complaint also states that "Plaintiff is the owner of all rights that [Zimmerman, Presser, and Harilela] had in the subject matter of this lawsuit." (*Id.* ¶ 6.) Nothing more is required at the pleading stage. The authority upon which Defendants rely is inapposite in that the issue there was determined at the summary judgment stage.² (*See* Mot. at 6 (citing to *Recorded Picture Co. (productions), Ltd. v. Nelson Entm't*, 53 Cal. App. 4th 350, 368 (1997).) Similarly, here, the issue of whether the legal claims have been properly assigned can be more appropriately addressed at the summary judgment stage. Thus, the Court finds Plaintiff's allegations regarding assignment of the legal claims sufficient to survive a motion to dismiss.

2. Assignability of California state law claims

Defendants argue that Plaintiff lacks standing to bring its claims for fraud, misappropriation, breach of implied-in-fact contract, breach of confidence and unfair business competition because those claims are unassignable under California state law. (Mot. at 7.)

California Civil Code section 954 provides that "[a] thing in action, arising out of the violation of a right of property, or out of an obligation, may be transferred by the owner." Cal. Civ. Code § 954; *see also* *McLaughlin v. Nat. Union Fire Ins. Co.*, 23 Cal. App. 4th 1132, 1147 (1994). "The exception is confined to purely personal torts—those involving wrongs done to the person, reputation or feelings of the injured party are not assignable." *McLaughlin v. Nat. Union Fire Ins. Co.*, 23 Cal. App. 4th 1132, 1147 (1994). For example, a "naked" cause of action for fraud "unconnected with any property or thing which had itself a legal existence and value independent of the right to sue for fraud" is not assignable." *Id.* (quoting *Jackson v. Deauville Holding Co.*, 219 Cal. 498, 502 (1933) (internal quotation marks omitted).

a. Common Law Fraud and Misappropriation Claims are Assignable

² Defendants also cite to *Giantceutical, Inc., v. Ken Marble, Inc.*, 356 F. Supp. 2d 374, 377–78 (S.D.N.Y. 2005). However, *Giantceutical* is factually different and involved a plaintiff's ability to bring a patent infringement claim when the plaintiff had not sufficiently demonstrated that it was the exclusive licensee of the patent. *Id.*

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Here, Plaintiff's case does not present an unassignable naked cause of action for fraud because, like in *McLaughlin*, Defendants' fraudulent behavior does not entail purely personal wrongs. *See McLaughlin*, 23 Cal. App. 4th at 1147. Plaintiff alleges that Krieff signed a contract as Guthy-Renker's agent, acknowledging that the design concepts were the property of Presser and Zimmerman. Plaintiff further alleges that "Krieff and Guthy-Renker knew that Krieff's representations . . . were false at the time they were made." (Compl. ¶ 73.) Defendants' allegedly fraudulent behavior was connected to the obligation Defendants owed to Presser, Zimmerman, and Harilela through the implied-in-fact contract, which had a legal existence and independent value of its own. Because the fraud claim does not entail a purely personal wrong, it is assignable.

Further, Defendants have presented no authority to suggest that misappropriation is a purely personal tort that is unassignable. Plaintiff alleges that "Splane and Krieff appropriated and used Plaintiff's ideas and designs in designing the Malibu Pilates Chair and in preparing the '030 patent at little or no cost to Guthy-Renker, Splane, or Krieff." (*Id.* ¶ 58.) Absent any authority barring the assignment of this claim to Plaintiff, the Court finds that the misappropriation alleged here is more analogous to a property tort such as conversion, than to a "purely personal tort" such as a "naked" cause of action for fraud. Therefore, the misappropriation claim is also assignable to Plaintiff.

b. Breach of Implied-in-Fact Contract and Breach of Confidence.

Defendants argue that *Rokos v. Peck*, 182 Cal. App. 3d 604 (1986), establishes a categorical limitation on the assignability of implied-in-fact contracts and claims for breach of confidence. Defendants contend that *Rokos* should be read as restricting assignability in any case where one party conveys its "ideas to [another party] seeking to sell and/or produce work." (Reply at 5 (citing *Rokos*, 182 Cal. App. 3d at 617)). This reading construes the holding in *Rokos* too broadly. Defendants' reliance on *Rokos* is misplaced, as *Rokos* is distinguishable from the instant case.

The plaintiff in *Rokos*, unlike Plaintiff in this case, did not sue on the theory that she was assigned a previously accrued cause of action for breach of implied-in-fact contract or breach of confidence. Instead, *Rokos* argued that defendant was in breach of an implied-in-fact contract and breach of confidence vis a vis Kathy Bucuzzo, the author of the movie script in question.³ *Id.* at 612. *Rokos* pursued the theory that she had been assigned a fractional interest to produce a film based on Bucuzzo's script. *See id.*

The court rejected *Rokos*' claims, finding that because the claims were not assigned to *Rokos* at the time that she was hired by Bucuzzo, the claims did not exist as "full-blown and known cause[s] of action" at the time of the alleged assignment. *Id.* at 616. The court in *Rokos* stressed the importance of

³ In fact, the author in *Rokos* (unlike inventor Zimmerman in the present case) sued on her own for breach of implied-in-fact contract and prevailed.

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distinguishing between cases involving an assignment of an interest in a not yet accrued cause of action and of rights to a “a full-blown and known cause of action, including an action for breach of an implied-in-fact contract,” a distinction Defendants’ argument ignores. *Compare id.* at 611–612 (“At the outset of our discussion, we think it important to stress that [the assignor] did not purport to assign her cause of action for breach of an implied-in-fact contract to Rokos. At the time she contracted with Rokos, [the assignor] was obviously unaware that she had any right against defendants.”); *with id.* at 617 (“Certainly a full-blown and known cause of action, including an action for breach of an implied-in-fact contract, can be assigned.”).

Accordingly, as the general rule favors free assignability, the Court takes the allegations in the Complaint as true and finds that Presser, Zimmerman, and Harilela assigned “full-blown and known” causes of action for breach of an implied-in-fact contract and breach of confidence to Plaintiff. Therefore, Plaintiff has standing to bring these claims.

c. Unfair Business Competition

Although Defendants challenge Plaintiff’s standing to bring an unfair competition claim, the Court need not address this argument because, as discussed below, the Court finds this claim to be time-barred.

B. Whether California claims are preempted by the California Uniform Trade Secrets Act (UTSA)

Defendants next argue that Plaintiff’s claims for breach of confidence, misappropriation, fraud, and unfair competition law are preempted by UTSA. (Mot. at 9.) Defendants argue that UTSA “preempts all common law claims that are based on an allegation of misappropriation of trade secrets” and “what is really being alleged is that Defendants misappropriated . . . Presser and Zimmerman’s trade secrets.” (Mot. at 9 (citing *Digital Envoy Inc. v. Google, Inc.*, 370 F. Supp. 2d 1025, 1033 (N.D. Cal 2005).) Plaintiff counters that its claims are not preempted “precisely because none of the factual allegations in the Complaint relate to trade secret misappropriation.” (Opp’n at 10.)

California’s Uniform Trade Secrets Act proscribes the improper disclosure, acquisition or use of a trade secret. A UTSA cause of action requires: (1) the possession of a trade secret; (2) defendant’s misappropriation of the trade secret, meaning its wrongful acquisition, disclosure, or use; and (3) resulting or threatened injury to plaintiff. *Silvaco Data Systems v. Intel Corp.*, 184 Cal. App. 4th 210, 220 (2010)(citing Cal. Civ. Code § 3426.3.)

The term “trade secret” is defined as:

[I]nformation, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can

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obtain economic value from its disclosure; and (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Cal. Civ. Code §3426.1(d). Information derives independent economic value from not being generally known when its secrecy "provides a business with a 'substantial business advantage.'" *Morlife, Inc. v. Perry*, 56 Cal. App. 4th 1514, 1522 (1997) (quoting *Klamath-Orleans Lumber, Inc. v. Miller*, 87 Cal. App. 3d 458, 465 (1978)). The determination of whether information is the subject of efforts that are reasonable under the circumstances to maintain its secrecy is fact specific. See *Rockwell Graphic Sys., Inc. v. DEV Indus., Inc.*, 925 F.2d 174, 176-77 (7th Cir. 1991).

The argument that all of Plaintiff's claims actually arise out of UTSA fails because Plaintiff's claims are not based on an allegation of misappropriation of trade secret. UTSA explicitly states that it does not preempt claims which derive from "(1) contractual remedies, whether or not based upon misappropriation of a trade secret, (2) other civil remedies that are not based upon misappropriation of a trade secret, or (3) criminal remedies, whether or not based upon misappropriation of a trade secret." Cal. Civ. Code § 3426.7(b). Plaintiff, as the master of its complaint, chose to allege causes of action for breach of implied contract, and breach of confidence, fraud, and misappropriation. All of Plaintiff's claims are based upon contractual remedies and other civil remedies which are unrelated to the existence of a trade secret.

Moreover, a cause of action under UTSA necessarily requires the existence of a trade secret. See *Silvaco Data Systems v. Intel Corp.*, 184 Cal. App. 4th at 220. In this case, Plaintiff has not alleged the existence of a trade secret, and the determination of whether information can be deemed a trade secret is fact specific. From the allegations in the complaint, the Court cannot determine that a trade secret in fact exists. The Court therefore concludes that Plaintiff's claims for breach of confidence, misappropriation, fraud, and unfair competition law, as alleged, are not preempted by UTSA.

C. Whether Claims are Barred by the Statute of Limitations

Defendants challenge all of Plaintiff's claims as time-barred. Dismissal of this action is inappropriate unless Plaintiff's claims are both (1) barred under the general rules of accrual of a cause of action and (2) barred under the "'discovery rule,' which postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action." *Fox v. Ethicon Endo-Surgery, Inc.*, 35 Cal. 4th 797, 806-07 (2005) (citing *Norgart v. Upjohn Co.*, 21 Cal. 4th 383, 397 (1999); *Neel v. Magana, Olney, Levy, Cathcart & Gelfand*, 6 Cal. 3d 176, 187 (1971)).

1. Plaintiff's Correction of Inventorship Claim is not Time-Barred

Defendants argue that Plaintiff's claim for correction of inventorship under 35 U.S.C. § 256 is time-barred because it accrued on or before August 10, 2005, the date on which Splane filed U.S. Provisional Application No. 60/706,983, and the applicable statute of limitations is 3 years. (Mot. at 13.) Plaintiff

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argues that there is no applicable statute of limitations, and moreover, the statute of limitations does not begin to run until the patent issues. (Opp'n at 13.)

The plain language of 35 U.S.C. Section 256 supports Plaintiff's contention that the private right of action to correct inventorship accrues upon issuance of the patent:

Whenever through error a person is named in an *issued* patent as the inventor, or through error an inventor is not named in an *issued* patent . . . the Director may, on application of all the parties and assignees . . . issue a certification correcting such error.

35 U.S.C. § 256 (emphasis added); *see also HIF Bio, Inc. v. Yung Shin Pharms. Indus.*, 600 F. 3d 1347, 1353 (Fed. Cir. 2010) (noting that "[o]nce a patent issues . . . 35 U.S.C. § 256 provides a private right of action to challenge inventorship.")

Here, Plaintiff has sufficiently pled the claim for correction of inventorship within the statute of limitations. The '030 patent was issued on October 27, 2009. Plaintiff filed the instant Complaint less than one year later, on August 26, 2010. Therefore, Plaintiff's claim is timely.

2. State Law Common Law Claims are Timely Under the Discovery Rule.

Defendants also argue that Plaintiff's state law claims are time-barred. (Mot. at 13–17.) Plaintiff relies on the discovery rule to postpone the accrual of its state law claims.

In order to invoke the discovery rule, the plaintiff must plead and prove facts showing: (a) lack of knowledge; (b) lack of means of obtaining knowledge (in the exercise of reasonable diligence the facts could not have been discovered at an earlier date); and (c) how and when he did actually discover the fraud or mistake. *Gen. Bedding Corp. v. Echevarria*, 947 F.2d 1395, 1397 (9th Cir. 1991). "Under this rule constructive and presumed notice or knowledge are equivalent to knowledge. So, when the plaintiff has notice or information of circumstances to put a reasonable person on inquiry, or has the opportunity to obtain knowledge from sources open to his investigation . . . the statute commences to run." *Id.*

A common law misappropriation cause of action has a two year statute of limitation. *Micrel Inc. v. Monolithic Power Systems, Inc.*, 2005 WL 6426678, at *3 (N.D. Cal. Dec. 9, 2005) (applying California law). Plaintiff's fraud claim has a three year statute of limitation. *State Comp. Ins. Fund v. Super. Ct.*, 184 Cal. App. 4th 1124, 1128 (2010) (citing Cal. Civ. Procedure § 338). California actions "upon a contract, obligation or liability not founded upon an instrument of writing," shall be brought within two years. Cal. Code Civ. Proc. § 339 (2011). Therefore, Plaintiff's claim for a breach of an implied contract has a two year statute of limitations period. *Goldberg v. Cameron*, 482 F. Supp. 2d 1136, 1151 (N.D. Cal. 2007). Similarly, the statute of limitations for Plaintiff's breach of confidence claim in

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California is two years. *K.C. Multimedia, Inc. v. Bank of America Technology & Operations, Inc.*, 171 Cal. App. 4th 939, 959 (2009) (citing Cal. Civ. Code § 339).

Defendants argue that Plaintiff's allegations lack the specificity to meet the requirements for invoking the discovery rule. (Mot. at 12.)⁴ However, the Court finds Plaintiff's allegations concerning the time and manner of discovery sufficient to avail itself of the discovery rule's tolling of the statutes of limitation for the state law claims, except for a claim under UCL, discussed below.

The Complaint states that Presser and Zimmerman did not know about the Malibu Pilates Chair until the fall of 2009, and promptly demanded compensation from Defendants. Further, Despite Defendants' argument to the contrary, Plaintiff's Complaint also asserts why Zimmerman and Presser could not have discovered the injury earlier with reasonable diligence. The Complaint states that on March 24, 2005, Krieff told Plaintiff's predecessors-in-interest that he "should have some final answers the following week," but "[t]hereafter, Zimmerman and Presser did not hear from Krieff or Guthy-Renker." (Compl. ¶¶ 24–25.) "Zimmerman and Presser were not aware, and had no reason to suspect, that Guthy-Renker had begun marketing a pilates chair that used Zimmerman's ideas and designs" until they discovered the chair in 2009 and learned of the patent applications shortly thereafter. (*Id.* ¶¶ 34–35.) Therefore, the Court finds that Plaintiff's complaint sufficiently alleges factual allegations to trigger the discovery rule. Because each claim carries at least a two year statute of limitations, and Plaintiff filed its Complaint on August 26, 2010, well within two years after learning about the alleged wrongs in fall of 2009, Plaintiff has sufficiently pled the California common law claims for breach of confidence, misappropriation, breach of implied-in-fact contract, and fraud within the statutes of limitation.

3. Statutory Claim for Unfair Competition under California Business & Professions Code Section 17200, et seq. is Barred by the Statute of Limitations

Plaintiff's sixth claim for relief under California Business & Professions Code Section 17200 is untimely, and the discovery rule does not apply to toll the statute of limitations. UCL claims are subject to a four-year statute of limitations, which begins to run on the date of accrual of the cause of action, not on the date of discovery. *See Karl Storz Endoscopy-Am., Inc. v. Surgical Techs., Inc.*, 285 F.3d 848, 857 (9th Cir. Cal. 2002)(citing Cal. Bus. & Prof. Code § 17208); *see also, Yumul v. Smart Balance, Inc.*, 733 F. Supp. at 1141 (explaining that delayed discovery does not toll the four year statute of limitations for UCL claims). Here, the UCL claim alleged in the Complaint is based upon the "unlawful, unfair, and

⁴ Several courts have considered whether a heightened pleading standard applies to allegations of delayed discovery and concluded that it does not. *Yumul v. Smart Balance, Inc.*, 733 F. Supp. 2d 1134, 1142 (C.D. Cal. July 30, 2010) (citing *Bonds v. Nicoletti Oil, Inc.*, No. CV-F-07-1600 OWW DLB, 2008 WL 2233511, at *5–6 (E.D. Cal. May 28, 2008)).

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fraudulent business actions,” including the misappropriation of Plaintiff’s ideas and designs and the filing of a patent application incorporating Plaintiff’s designs without naming Zimmerman as an inventor or compensating Plaintiff. (Compl. ¶¶ 82–84.) Based on these allegations, the Court finds that the UCL cause of action accrued on or before August 10, 2005, the date on which Splane filed U.S. Provisional Application No. 60/706,983. The Complaint, filed on August 26, 2010, is well outside of the applicable four year statute of limitation. Because the discovery rule does not apply to a UCL cause of action, Plaintiff’s UCL claim is time-barred. Therefore, the Court grants Defendants’ motion to dismiss this claim **with prejudice** because this cause of action cannot be saved by any amendment.⁵

D. Whether the Claims are Sufficiently Alleged

Finally, Defendants argue that Plaintiff’s allegations are insufficient to survive a motion to dismiss. (Mot. at 18–23.)

To begin, the Court finds that Plaintiff has alleged the fifth cause of action for fraud with sufficient particularity. The elements of fraud are (a) misrepresentation, (b) knowledge of falsity, (c) intent to defraud, (d) justifiable reliance, and (e) resulting damage. *Kaldenbach v. Mutual of Omaha Life Ins. Co.*, 178 Cal. App. 4th 830, 850 (2009). In the Complaint, Plaintiff alleges that Krieff represented that he would not misappropriate Plaintiff’s ideas and designs, but he had no intention of abiding by that representation. Plaintiff further alleges that at the time that the false representation was made, Guthy-Renker intended to later pass off Plaintiff’s ideas and designs as those of Krieff, Splane, and/or Guthy-Renker. Finally, Plaintiff alleges that Zimmerman and Presser reasonably relied on Krieff and Guthy-Renker’s representation, and Plaintiff is injured because it was denied “compensation to which it is entitled.” (Compl. ¶¶ 74-80.) Thus, Plaintiff’s fraud claim sufficiently alleges “the who, what, when, where, and how of the misconduct charged.” *Vess*, 317 F. 3d at 1106.

Defendants next argue that Plaintiff fails to plead sufficiently the third cause of action for common law misappropriation. Plaintiff alleges that Defendants “used Plaintiff’s ideas and designs in designing the Malibu Pilates Chair and in preparing the ‘030 patent at little or no cost . . . without authorization or consent.” (Compl. ¶¶ 58–59.) Defendants contend that Plaintiff failed to describe the “subject matter of the trade secret with sufficient particularity.” (Motion at 21 (*citing TMX Funding, Inc. v. Impero Techs., Inc.*, 2010 U.S. Dist. LEXIS 60260, at *7–*8 (N.D. Cal. June 8, 2010).) However, Defendants’ argument is unavailing because, as discussed above, Plaintiff has not alleged a claim for trade secret appropriation.

⁵ Leave to amend must be granted unless it is clear that the complaint’s deficiencies cannot be cured by amendment. *Lucas v. Department of Corrections*, 66 F. 3d 245, 248 (9th Cir. 1995). When amendment would be futile, dismissal may be ordered with prejudice. *Dumas v. Kipp*, 90 F. 3d 386, 393 (9th Cir. 1996).

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Defendants also contend that Plaintiff has failed to plead sufficiently its fourth cause of action for breach of an implied contract. (Mot. at 21.) Paragraphs 16 through 19 of the Complaint details the progression of the parties' agreement that Plaintiff would disclose the chair designs with the understanding that Zimmerman and Presser were "bringing the design of the chair to the table." (Compl.¶¶ 16–19.) These allegations are sufficient to support a claim for breach of an implied contract.

Finally, Defendants assert that the Complaint fails to state sufficiently the first cause of action for Correction of Inventorship. (Mot. at 23.) However, Plaintiff correctly points out that the Complaint alleges that Zimmerman's ideas and designs were disclosed to Krieff in December of 2004, Guthy-Renker then disclosed them to Splane, and Splane and Guthy-Renker then incorporated Zimmerman's ideas and designs into the '030 patent. These factual allegations are sufficient to support the claim.

V. Conclusion

For the reasons stated, the Motion is **DENIED** as to the first, second, third, fourth, and fifth causes of action and **GRANTED with prejudice** as to the sixth cause of action.

IT IS SO ORDERED.

_____: ____ N/A
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