UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

AURIS HEALTH, INC., et al.,

Plaintiffs,

v.

NOAH MEDICAL CORPORATION, et al.,

Defendants.

Case No. 22-cv-08073-AMO

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO DISMISS

Re: Dkt. No. 57

Before the Court is a Motion to Dismiss from Defendants Noah Medical Corporation, Kenneth Nip, Enrique Romo, Diana Cardona Ujueta, Mouslim Tatarkhanov, and Maziyar Keshtgar. The matter is fully briefed and suitable for decision without oral argument. Accordingly, the hearing set for July 22, 2023, was vacated. *See* Civil L.R. 7-6. Having read the parties' papers and carefully considered their arguments and the relevant legal authority, and good cause appearing, the Court hereby rules as follows.

BACKGROUND

Plaintiffs make the following allegations in the amended complaint, all of which are taken as true for purposes of the motion to dismiss. *See Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987). Plaintiff Auris Health, Inc. ("Auris") is a developer of medical robotics technology. ECF 36, First Amended Complaint ("FAC") ¶¶ 2, 52. Plaintiff Verb Surgical Inc. ("Verb") is a developer of medical robotics technology. FAC ¶¶ 3, 53. Verb is an affiliate of Auris's parent corporation, which began to "operate together" in early 2020. FAC ¶¶ 4, 45, 50. Plaintiff Cilag GmbH International ("Cilag") owns trade secrets in certain medical robotics technologies developed by Auris and Verb. FAC ¶¶ 46-50. Auris uses trade secrets from itself, Cilag, and Verb in its business. FAC ¶ 50.

Defendant Noah Medical Corporation ("Noah") is a competitor in the field of medical robotics development. Dr. Jian Zhang, who founded Noah in 2018 and serves as its CEO, is a former Auris executive. FAC ¶¶ 78-79. Defendants Enrique Romo, Diana Cardona Ujueta, Kenneth Nip, Leobardo Centeno Contreras, Mouslim Tatarkhanov, Maziyar Keshtgar, and Sarika Pandhare are all former Auris employees who left between 2019 and 2021. After departing Auris, Romo, Nip, and Keshtgar each joined Noah in 2020. The others joined Auris during 2021. FAC ¶¶ 98, 121, 135, 178, 191, 211. Neither of the other two Plaintiffs – Cilag and Verb – employed any Defendant.

A. Factual Background

Romo exfiltrated a trove of Plaintiffs' confidential and trade secret information just before he left Auris by (1) emailing the information to his personal email account (FAC ¶ 89); (2) using his personal cellphone to take dozens of screenshots of confidential program updates, product forecasts, and notes from prototype testing (¶ 95); and (3) connecting personal USB devices to his Auris laptop to copy the information (¶¶ 90, 92-93). Further, when Noah filed a 2020 patent application listing Romo as the inventor (the "Noah-Romo Provisional"), the patent document contained Auris trade secrets. FAC ¶ 100 ("The disclosures in the Noah-Romo Provisional include trade secrets related to Auris endoscopy systems developed during Romo's tenure at Auris."). And when Noah filed a June 2022 patent application listing Mr. Romo as an inventor, that separate patent document also contained Auris trade secrets. *See* FAC ¶¶ 20, 84-88.

Each of the individual Defendants is accused of taking files when leaving Auris Health or retaining them thereafter. FAC ¶¶ 108, 126, 137, 167, 181, 195, 212. Like Romo, Cardona exfiltrated a carefully gathered collection of Plaintiffs' confidential and trade secret information. She did so by connecting a personal external hard drive to her Auris laptop and by emailing information to her personal email account. FAC ¶¶ 113-114, 117. Cardona also accessed the external hard drive containing Auris's trade secrets multiple times after leaving Auris. FAC ¶¶ 122-23.

Defendants Tatarkhanov, Keshtgar, and Pandhare targeted, among other things, information in Auris's Agile Product Lifecycle Management System (the "Agile System"). FAC

¶¶ 13, 174, 189, 205. The Agile System contains purportedly confidential and trade secret documents related to FDA regulatory compliance and approval, manufacturing instructions, and standard operating procedures. FAC ¶¶ 174, 189, 205. Tatarkhanov resigned from Auris on February 19, 2021, and the next business day, February 22, downloaded 60 software quality management documents from the Agile System within 25 minutes. FAC ¶ 176. His download activity was unlike his prior usage of the system. *Id.* Three hours later, Tatarkhanov erased the contents of one of his hard drives on his Auris-issued computer by reformatting it. *Id.* On March 5, 2021, his last day at Auris, Tatarkhanov erased another Auris hard drive by reformatting it. *Id.* Eighteen months later, in August 2022, Tatarkhanov revealed that he had Auris files in his personal cloud-based storage accounts and his personal computer. FAC ¶ 179. These files included confidential presentations about Plaintiffs' visualization technology. FAC ¶ 13. Tatarkhanov returned these files but not the 60 software quality management documents. FAC ¶ 179.

Keshtgar's last day at Auris was November 19, 2020, and on November 16 and 18, he downloaded from the Agile System dozens of documents related to the design, manufacturing, and testing of Auris's endoscopes. FAC ¶ 189. Less than a week before he resigned, he emailed to his personal email a photograph containing trade secrets related to Auris's urology product. FAC ¶ 193. In combination, the photograph and the downloaded documents provided specific instructions for testing Auris's urology endoscope and efficiently calibrating the urology robot. *Id.* Two years later, on November 1, 2022, Keshtgar informed Auris that he had passively retained emails from his time at Auris. FAC ¶ 192. Two weeks later he stated that he also had Auris documents in his Google Drive, including an Auris spreadsheet containing confidential information about Auris's urology endoscope. *Id.* Keshtgar did not explain how he came to possess the spreadsheet. FAC ¶ 193. Keshtgar returned some of the retained materials, but he did not return the dozens of documents he downloaded from the Agile System. FAC ¶¶ 192, 195.

Noah Medical Corporation and the three original Defendants, Romo, Cardona, and Nip, have stolen at least 26,000 documents comprising 81 gigabytes of data from Plaintiffs to date. FAC ¶ 1. The four Defendants added to the FAC, Centeno, Tatarkhanov, Keshtgar, and Pandhare

have taken a similar amount of data. *Id.*

B. Procedural History

In December 2022, Plaintiffs filed their original complaint asserting, among others, claims under the Defend Trade Secrets Act ("DTSA") against Noah and three individuals: Romo, Cardona, and Nip. ECF 1. Plaintiffs also alleged (1) breach of contract claims against the individual defendants, and (2) state law tortious interference and statutory unfair competition claims against Noah. On February 24, 2023, Plaintiffs added DTSA and contract claims against Centeno, Tatarkhanov, Keshtgar, and Pandhare. ECF 36; *see also* ECF 37-3 (unredacted FAC, filed under seal). The FAC advances the following causes of action: (1) misappropriation of trade secrets in violation of the Defend Trade Secrets Act, Title 18 U.S.C. § 1836 et seq. (all Plaintiffs against all Defendants); (2) breach of written contract (Auris against Romo); (3) tortious interference with contract (Auris against Noah); (4) breach of written contract (Auris against Cardona); (5) Breach of written contract (Auris against Nip); (6) California statutory unfair competition (Cal. Bus. & Prof Code § 17200) (Auris against Noah); (7) breach of written contract (Auris against Centeno); (8) breach of written contract (Auris against Tatarkhanov); (9) breach of written contract (Auris against Keshtgar); and (1) breach of written contract (Auris against Pandhare).

LEGAL STANDARD

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) "tests the legal sufficiency of a claim. Rule 8 provides that a complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Thus, a complaint must plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Plausibility does not mean probability, but it requires "more than a sheer possibility that a defendant has acted unlawfully." *Ashcroft v. Iqbal*, 556 U.S. 662, 687 (2009). A complaint must therefore provide a defendant with "fair notice" of the claims against it and the grounds for relief. *Twombly*, 550 U.S. at 555 (quotations and citation omitted).

In considering a motion to dismiss, the court accepts factual allegations in the complaint as

true and construes the pleadings in the light most favorable to the nonmoving party. *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008); *Erickson v. Pardus*, 551 U.S. 89, 93-94 (2007). However, "the tenet that a court must accept a complaint's allegations as true is inapplicable to threadbare recitals of a cause of action's elements, supported by mere conclusory statements." *Iqbal*, 556 U.S. at 678.

If a Rule 12(b)(6) motion is granted, the "court should grant leave to amend even if no request to amend the pleading was made, unless it determines that the pleading could not possibly be cured by the allegation of other facts." *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc) (citations and quotations omitted). However, a court "may exercise its discretion to deny leave to amend due to 'undue delay, bad faith or dilatory motive on part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party . . . , [and] futility of amendment.'" *Carvalho v. Equifax Info. Servs., LLC*, 629 F.3d 876, 892-93 (9th Cir. 2010) (alterations in original) (quoting *Foman v. Davis*, 371 U.S. 178, 182 1962)).

DISCUSSION

Defendants' Motion to Dismiss advances piecemeal challenges to certain claims. The Motion does not ultimately seek dismissal of all claims or all Defendants. Defendants make the following arguments:

- (1) Plaintiffs fail to state DTSA and contract claims against Tatarkhanov and Keshtgar because they do not allege that those individuals took any documents away from Auris;
- (2) Plaintiffs fail to state valid "information and belief" allegations against Defendants Romo and Cardona because Plaintiffs acknowledge that they returned trade secret files;
- (3) Plaintiffs' injunctive relief claims fail because they only complain of past acts, not ongoing or future harm, and they seek impermissible and vague "obey the law" injunctions;
- (4) Plaintiffs fail to state a claim that their trade secrets were implicated; and
- (5) the California UTSA preempts the tortious interference and UCL claims.

The Court considers Defendants' arguments in turn.

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