

I. INTRODUCTION

On April 4, 2014, the parties attended a hearing on a discovery dispute before the Honorable Magistrate Judge William B. Mitchell Carter. (Doc. 45 at 1; Doc. 52 at 2). At the hearing's conclusion, Magistrate Judge Carter determined that before the discovery dispute could be ruled upon, certain choice of law issues had to be resolved. (*Id.*). As a result, SEYI filed its Motion to Determine the Applicability of California Rule of Civil Procedure § 2019.210 (Doc. 44), and Stamtec filed its Motion to Dismiss, or in the Alternative, to Determine that California Substantive Law Applies to SEYI's Complaint (Doc. 51).

At the core of the parties' present dispute is whether section 2019.210 of the California Code of Civil Procedure applies to SEYI's claim for misappropriation of trade secrets. In relevant part, section 2019.210 provides: "[i]n any action alleging the misappropriation of a trade secret under the Uniform Trade Secrets Act . . . , before commencing discovery relating to the trade secret, the party alleging the misappropriation shall identify the trade secret with reasonable particularity" Although SEYI asserts its claim for misappropriation of trade secrets pursuant to Tenn. Code Ann. § 47-25-1701 *et seq.*, Stamtec contends that California law governs SEYI's claims pursuant Tennessee's choice of law framework and, as a result, section 2019.210 bars SEYI from beginning discovery on its misappropriation of trade secrets claim because SEYI has not identified the trade secrets at issue with reasonable particularity. Conversely, SEYI contends that section 2019.210 has no application to its misappropriation of trade secrets claim because Tennessee law governs its claims. The parties' instant motions thus present the peculiar situation of a California corporation,

SEYI, advocating for application of Tennessee law and a Tennessee corporation, Stamtec, advocating for application of California law.

In connection with briefing the choice of law issues presently before the Court, Stamtec has also filed two Motions to Exclude (Docs. 59, 64): one seeking to exclude portions of SEYI's Response to Stamtec's Motion to Dismiss (Doc. 57), and one seeking to exclude SEYI's Notice and Attached Second Declaration of Lanny Griffin (Docs. 63, 63-1). First, Stamtec argues that portions of SEYI's Response to Stamtec's Motion to Dismiss should be excluded based on the Court's May 8, 2014 order stating that it would not consider SEYI's untimely filed reply brief in support of its Motion to Determine the Applicability of California Rule of Civil Procedure § 2019.210. (*See* Doc. 56). Stamtec argues that SEYI's Response to its Motion to Dismiss "contains verbatim sections of the previously excluded Reply" and, thus, should not be considered by the Court. (Doc. 59 at 1-2). Stamtec has misconstrued the extent of the Court's May 8, 2014 order. Although SEYI's Response to Stamtec's Motion to Dismiss may contain similar, or even verbatim, arguments previously asserted in its untimely filed reply brief, SEYI has reasserted these arguments in a timely filed response to a separate motion filed by Stamtec. That the Court was unwilling to consider an untimely filed reply brief does not foreclose SEYI's ability to assert similar, or even verbatim, arguments in timely responding to a separate motion filed by Stamtec. Accordingly, Stamtec's Motion to Exclude Portions of SEYI's Response to Stamtec's Motion to Dismiss (Doc. 59) will be **DENIED**.

Next, Stamtec argues that SEYI's Notice and Attached Second Declaration of Lanny Griffin (Doc. 63) should be excluded from consideration for failure to comply with Local Rule 7.1(d). Local Rule 7.1(d) provides that "[n]o additional briefs, affidavits,

or other papers in support of or in opposition to a motion shall be filed without prior approval of the Court, except that a party may file a supplemental brief of no more than 5 pages to call to the Court's attention developments occurring after a party's final brief is filed." SEYI filed its Notice and Attached Second Declaration of Lanny Griffin after the parties had fully briefed SEYI's Motion to Determine the Applicability of California Rule of Civil Procedure § 2019.210 and Stamtec's Motion to Dismiss, or in the Alternative, to Determine that California Substantive Law Applies to SEYI's Complaint. SEYI did not seek the Court's approval before filing the Second Declaration of Lanny Griffin and, thus, has not complied with Local Rule 7.1(d). Accordingly, Stamtec's Motion to Exclude will be **GRANTED**. The Court will not consider the SEYI's Notice and Second Declaration of Lanny Griffin (Docs. 63, 63-1) in ruling on SEYI's Motion to Determine the Applicability of California Rule of Civil Procedure § 2019.210 or Stamtec's Motion to Dismiss, or in the Alternative, to Determine that California Substantive Law Applies to SEYI's Complaint.

II. BACKGROUND AND FACTS

At the outset, the Court notes that the parties have provided the Court with very little evidentiary support for their respective arguments regarding choice of law. In support of its Motion, SEYI offers a five paragraph declaration from its Vice President, Lanny Griffin and a copy of its "Designation of Trade Secrets" filed in related litigation currently pending in California state court. (*See* Docs. 45-1, 45-2). According to Lanny Griffin, SEYI's corporate office is located in Walnut, California and "is primarily responsible for coordinating [SEYI's] activities with [its] Taiwanese parent company, and for performing [SEYI's] accounting functions." (Doc. 45-1 at 1). SEYI also has an

office in Tullahoma, Tennessee, which handles most of SEYI's sales and service operations.¹ (*Id.*).

Similarly, in support of its Motion, Stamtec has provided the Court only with pleadings and orders from related litigation currently pending in both California and Tennessee and the deposition testimony of Ronald Ostrin taken in connection with related litigation. (*See e.g.*, Docs. 52-1, 52-2, 52-3, 52-4). Aside from the parties' limited evidentiary submissions, the parties rely on the allegations in SEYI's Complaint to provide background regarding the present choice of law dispute. Although the allegations in SEYI's Complaint do not constitute evidence, the Court will summarize the allegations because, in addition to seeking a choice of law determination, Stamtec has moved to dismiss SEYI's claims.

According to its Complaint, SEYI is a California corporation engaged in the business of selling stamping presses. (Doc. 1 at 1). SEYI's principal place of business is in California. (*Id.*). Stamtec is a Tennessee corporation also engaged in the business of selling stamping presses. (*Id.*). Stamtec's principal place of business is in Tennessee. (*Id.*). Non-party Andrew Chase is a stamping press salesman and the owner of Stamping Solutions, Inc. ("SSI"). (*Id.*). SEYI alleges that Chase and SSI were Stamtec's agents or, alternatively, that they were engaged in a conspiracy with Stamtec to misappropriate SEYI's trade secrets and interfere with its business relationships. (*Id.* at 1-2).

SEYI uses "software known as the ACT database to maintain confidential information relating to business activities and customer information," which is stored

¹ Griffin also previously served as Vice President for Stamtec and has testified that "Stamtec's headquarters are located in Manchester, Tennessee, and Stamtec's sales and service operation are run from its Manchester, Tennessee office." (*Id.* at 2).

“for the purpose of efficiently pursuing sales and maintaining relationships with its customers and prospective customers.” (*Id.* at 2). Information maintained on the ACT database includes actual and potential customer information, as well as “emails and other communications with SEYI clients, notes of oral communication with SEYI clients and prospects, and inter-office and intra-office emails concerning the needs and desires of SEYI clients and prospects.” (*Id.* at 2-3). The ACT database also contains information concerning SEYI products and services, including “prices, costs, future plans, business affairs, trade secrets, technical information, customer lists, proposals, and purchase orders.” (*Id.* at 3).

SEYI makes efforts to keep information maintained on the ACT database secret. (*Id.* at 4). Physical and electronic access to the ACT database is “strictly limited . . . to customer-facing personnel working on SEYI’s behalf” and is “granted on a need-to-know basis.” (*Id.* at 2). Additionally, “SEYI advises every user of the ACT database that [information contained in the database] is confidential and proprietary and that it may not be disclosed to anyone who has not been authorized by SEYI to have access to it.” (*Id.* at 4). Based on these allegations, SEYI contends that information maintained on the ACT database qualifies as trade secret information. (*Id.* at 3-4).

In April 2006, Chase approached SEYI “and suggested doing business together.” (*Id.* at 2). Chase and SEYI thereafter agreed that Chase, through SSI, would “market products for SEYI on a recoverable draw against commission basis.” (*Id.*). Chase and SSI were granted access to SEYI’s ACT database so that they could generate sales for SEYI. (*Id.* at 3). Chase and SSI, however, “failed to generate sufficient sales to cover the monthly draws, and over the course of several years accumulated substantial debt to SEYI.” (*Id.*). In July 2010, SEYI notified Chase and SSI that it would not lend them any

additional money against future commissions, and, as a result, Chase and SSI decided to leave SEYI. (*Id.*). According to SEYI, when Chase and SSI left, they took “purchase orders, specification sheets, emails, invoices, checks and other proprietary documents belonging to SEYI.” (*Id.*). Additionally, Chase and SSI retained a copy of SEYI’s ACT database.² (*Id.*). SEYI alleges that Chase did not return SEYI’s trade secret information in his possession despite initially indicating that he would do so. (*Id.* at 4).

After leaving SEYI, “Chase and SSI went to work for Stamtec.” (*Id.*). According to SEYI, Stamtec, Chase and SSI “accessed SEYI’s ACT database, and used [SEYI’s trade secret information] to successfully compete with SEYI” by not only going after “the prospects Chase and SSI were developing themselves while at SEYI, but also those being developed by others at SEYI.” (*Id.*).

Based on these allegations, SEYI’s Complaint asserts claims against Stamtec for: (1) misappropriation of trade secrets in violation of Tennessee Code Annotated § 47-25-1701 *et seq.*; (2) interference with business relations; and, alternatively (3) conspiracy to misappropriate trade secrets and interfere with business relationships. (*Id.* at 5-6).

III. ANALYSIS

a. Choice of Law

“[W]hen jurisdiction is based on diversity of citizenship, a federal court must apply the choice-of-law rules of the state in which it sits.” *Mahne v. Ford Motor Co.*, 900 F.2d 83, 85 (6th Cir. 1990) (citing *Klaxon Co. v. Stentor Electric Mfg. Co.*, 313 U.S. 487 (1941)). With regard to tort claims, Tennessee has adopted the choice of law analysis set

² SEYI alleges that “[a]lthough it took the necessary measures to prevent Chase and SSI from linking to SEYI’s central mainframe database, [information on the ACT database] predating their departure, [] already resided on Chase’s computer . . . [and] could not be erased because Chase and SSI did not grant SEYI physical access to their computer, despite SEYI’s requests.” (Doc. 1 at 3).

forth in Restatement (Second) of Conflict of Laws.³ *Hataway v. McKinley*, 830 S.W.2d 53, 59 (Tenn. 1992). Pursuant to the Restatement, “[a] court, subject to constitutional restriction, will follow a statutory directive of its own state on choice of law.” Restatement (Second) of Conflict of Laws § 6(1) (1971); see *Hataway*, 830 S.W.2d at 59, nn. 2-3 (adopting sections 145 and 175 of the Restatement which incorporate section 6); *State ex rel. Smith v. Early*, 934 S.W.2d 655, 657 (Tenn. Ct. App. 1996). In determining whether a statutory directive regarding choice of law exists, the Restatement explains:

A court will rarely find that a question of choice of law is explicitly covered by statute. That is to say, a court will rarely be directed by statute to apply the local law of one state, rather than the local law of another state, in the decision of a particular issue. On the other hand, the court will constantly be faced with the question whether the issue before it falls within the intended range of application of a particular statute. The court should give a local statute the range of application intended by the legislature when these intentions can be ascertained and can constitutionally be given effect. If the legislature intended that the statute should be applied to the out-of-state facts involved, the court should so apply it unless constitutional considerations forbid. On the other hand, if the legislature intended that the statute should be applied only to acts taking place within the state, the statute should not be given a wider range of application. Sometimes a statute’s intended range of application will be apparent on its face, as when it expressly applies to all citizens of a state including those who are living abroad. When the statute is silent as to its range of application, the intentions of the legislature on the subject can sometimes be ascertained by a process of interpretation and construction. Provided that it is constitutional to do so, the court will apply a local statute in the manner intended by the legislature even when the local law of another state would be applicable under usual choice-of-law principles.

Restatement (Second) of Conflict of Laws § 6, cmt. b.

³ In its Motion, SEYI argues that the choice of law issue presently before this Court should be limited to whether discovery in this case is governed by section 2019.210 of the California Code of Civil Procedure. In its Motion, Stamtec frames the choice of law issue more broadly, seeking a determination that California law controls SEYI’s tort claims. Because the choice of law analysis set forth in the Restatement (Second) of Conflict of Laws applies in determining which state’s law governs tort claims, the Court agrees with Stamtec that the issue presently before the Court is whether Tennessee law or California law will govern SEYI’s claims.

Relying on the commentary in the Restatement, SEYI contends that the broadly crafted provisions of Tennessee's Uniform Trade Secrets Act are consistent with application of the statute to out-of-state conduct such that it requires application of the "local statute" to its statutory claim for misappropriation of trade secrets. Specifically, SEYI notes that, under Tennessee's Uniform Trade Secrets Act, any "person" may bring an action against another "person" for misappropriation of a trade secret, and that "person" is broadly defined as "a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity." See Tenn. Code Ann. §§ 47-25-1702(2),(3). Based on the commentary to section six of the Restatement and the broad language of Tennessee's Uniform Trade Secrets Act, SEYI contends that application of Tennessee law is required because the Tennessee legislature did not include any geographical limitations in enacting the Uniform Trade Secrets Act.

Section 6(1) of the Restatement provides that "[a] court, subject to constitutional restrictions, will follow a statutory directive of its own state on choice of law." The commentary to section six contemplates that, under certain circumstances, a legislature may implicitly direct application of a local statute to out of state conduct. However, the Restatement also states that courts "should give a local statute the range of application intended by the legislature when these intentions can be ascertained" and that "the intentions of the legislature on the subject can sometimes be ascertained by a process of interpretation and construction." Restatement (Second) of Conflict of Laws § 6, cmt. b.

The Court finds that Tennessee's Uniform Trade Secrets Act does not contain an implicit statutory directive that mandates application of Tennessee law to SEYI's claim for misappropriation of trade secrets. The reasoning set forth in *Dale v. Ala*

Acquisitions I, LLC, 434 F. Supp. 2d 423, 432 (S.D. Miss. 2006), is instructive. In *Dale*, plaintiffs alleged that defendants engaged in a scheme to defraud certain insurance companies. *Id.* at 427. One of the defendants argued that even if it could be considered a negligent participant in the fraudulent scheme, fault had to be apportioned to certain insurance regulators who could have stopped the fraudulent transactions. *Id.* at 427-28. Whether apportionment was available, however, was contingent on whether Mississippi or New York law applied. *Id.* In arguing that Mississippi law applied, defendant argued that the Mississippi legislature included a statutory directive regarding choice of law on the issue of apportionment of fault because Miss. Code Ann. § 85-5-7 provides that apportionment is available “in any civil action based on fault.” *Id.* at 431-32. The district court rejected defendant’s argument that the phrase “in any civil action” amounted to a legislative directive, explaining that “generic, prefatory language . . . is not considered sufficient to establish a statutory directive on choice of law.” *Id.* at 432.

Like the “general, prefatory language” employed in Mississippi’s apportionment statute, broadly crafted definitions and the lack of explicit geographical limitations on the scope of application are an insufficient basis upon which to rest a conclusion that the Tennessee Uniform Trade Secrets Act contains an implicit legislative directive regarding choice of law. Accordingly, the Court finds that Tennessee’s Uniform Trade Secrets Act does not contain a legislative directive mandating application of Tennessee law to SEYI’s statutory claim for misappropriation of trade secrets. *See also State ex rel. Smith v. Early*, 934 S.W.2d 655, 657-58 (Tenn. Ct. App. 1996) (holding that Tenn. Code Ann. § 36-5-207(a) constitutes statutory choice of law directive as applied to claims for child support); *Timoshchuk v. Long of Chattanooga Mercedes-Benz*, 2009 WL 3230961, at * 9 (Tenn. Ct. App. 2009) (applying “most significant relationship” choice of law analysis

to statutory claim for violation of the Tennessee Consumer Protection Act without analyzing whether there was a legislative directive on choice of law); *In re Skelaxin (Metaxalone) Antitrust Litig.*, 299 F.R.D. 555, 582 (E.D. Tenn. 2014).

In the absence of a statutory directive, Tennessee courts must look to the factors provided in the Restatement (Second) of Conflict of Laws § 145 in order to determine whether Tennessee or California law should apply in this action. Pursuant to section 145, “the law of the state where the injury occurred will be applied unless some other state has a more significant relationship to the litigation.” *Montgomery v. Wyeth*, 580 F.3d 455, 459-60 (6th Cir. 2009). Tennessee adopted this position “because generally the law of the state where the injury occurred will have the most significant relationship to the litigation.” *Id.* Thus, the most significant relationship “provides a ‘default’ rule whereby trial courts can apply the law of the place where the injury occurred when each state has an almost equal relationship to the litigation.” *Id.* “Contacts to be considered in determining which state has the most significant relationship include (1) the place where the injury occurred, (2) the place where the conduct causing the injury occurred, (3) the domicile, residence, nationality, place of incorporation and place of business of the parties, and (4) the place where the relationship, if any, between the parties is centered.”⁴ *Id.* (*quoting* Restatement (Second) Conflict of Laws § 145(2)).

Applying these factors to the facts of the instant case, the Court finds that California law governs SEYI’s tort claims against Stamtec. The alleged injury, Stamtec’s

⁴ These contacts are “to be taken into account in applying the principles of § 6 to determine the law applicable to an issue.” Section 6(2) of the Restatement provides that the factors relevant to the choice of the applicable rule of law include: (a) the needs of the interstate and national systems, (b) the relevant policies of the forum, (c) the relevant policies of the other interested states and the relative interests of those states in determination of the particular issue, (d) the protection of justified expectations, (e) the basic policies underlying the particular field of law, (f) certainty, predictability and uniformity of result, and (g) ease in the determination and application of the law to be applied.

intrusion into SEYI's ACT database through Chase and SSI, is presumed to have taken place at SEYI's principal place of business in California.⁵ *See Avery Dennison Corp. v. Juhasz*, 924 F. Supp. 2d 893, 898-99 (N.D. Ohio 2013) (applying Restatement choice of law analysis and finding that the place of injury on a claim for misappropriation of trade secrets is the plaintiff's principal place of business); *see also Salton, Inc. v. Philips Domestic Appliances and Personal Care B.V.*, 391 F.3d 871, 879 (7th Cir. 2004) (“[I]n a case such as this in which a company is complaining of a misappropriation of trade secrets [the place of injury] would be – one might suppose – the site of the company's principal place of business.”). Additionally, Chase, a person living in California, and his corporation, SSI, allegedly caused this injury.⁶ The remaining factors do not favor application of either Tennessee or California law. SEYI is a California corporation with its principal place of business in California. (Doc. 1 at 1; Doc. 45-1 at 1; Doc. 50 at 10). Conversely, Stamtec is a Tennessee corporation with its principal place of business in Tennessee. (Doc. 1 at 1; Doc. 45-1 at 2). “The parties' domicile or residence will usually carry little weight of itself unless all of the parties reside in a single state.” *Wayland v. Peters*, 1997 WL 776338, at *2 (Tenn. Ct. App. Dec. 17, 1997) (*citing* Restatement (Second) Conflict of Laws § 145(2), cmt. e)). Further, there is no relationship between the parties apart from the present lawsuit and the fact that they are competitors in selling stamping presses.

⁵ The only evidence submitted regarding the location of the ACT database is contained in the Second Declaration of Lanny Griffin (Doc. 63-1) which this Court has excluded from consideration in ruling on the motions presently before it. Because SEYI has failed to timely present evidence regarding the actual location of SEYI's ACT database, the Court will not infer that SEYI's ACT database is located in Tennessee based solely on the statement in Lanny Griffin's initial declaration that SEYI runs its sales operation from Tullahoma, Tennessee. (*See* Doc. 57 at 16).

⁶ Although not supported by evidence in the record, neither party appears to dispute that Chase lived in California at the time of the alleged injuries. (*See* Doc. 45 at 3; Doc. 50 at 10; Doc. 52 at 9; Doc. 57 at 2).

Moreover, the general principles provided in section six of the Restatement also weigh in favor of applying California law to SEYI's tort claims. California has a strong interest in protecting its corporate citizens from harm and in regulating the conduct of tortfeasors within its borders. This interest outweighs Tennessee's interest in having its law apply to all torts committed by its citizens, no matter where the injury may have occurred. Further, Tennessee has a lesser interest in protecting the rights of a California citizen injured in California. *See Inventory Locator Service, LLC v. Partsbase, Inc.*, 2005 WL 2179185, at *5 (W.D. Tenn. Sept. 6, 2005). Accordingly, because California law applies, the Court will **GRANT** Stamtec's Motion (Doc. 51) to the extent it seeks a determination that California law applies to SEYI's tort claims.

b. Applicability of California Code of Civil Procedure § 2019.210

Even though the Court has determined that California law applies to SEYI's tort claims against Stamtec, that does not end the Court's inquiry with regard to whether SEYI is obligated to comply with the requirements set forth in section 2019.210 of the California Code of Civil Procedure. Generally, when questions of state law are raised in federal court, the federal court applies the state's substantive law, but federal procedural law. *Erie R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938). However, "the line between 'substance' and 'procedure' shifts as the legal context changes." *Hanna v. Plumer*, 380 U.S. 460, 471 (1965). The determination of whether a particular rule is substantive or procedural requires the court to consider whether the state rule conflicts with an applicable federal rule. *Id.* If there is a conflict, the federal rule prevails. *Id.* If there is not a conflict, the court then looks to the question of whether the failure to apply the state rule would significantly affect the outcome of the litigation or forum-shopping incentives. *Id.* at 468.

In this case, however, the Court need not decide whether section 2019.210 is procedural or substantive or whether it applies in federal courts sitting in diversity because the Court finds that SEYI has identified the trade secrets at issue with reasonable particularity in its Complaint.⁷ The California Court of Appeal has interpreted “reasonable particularity” to include enough detail so that the defendant is able to learn the boundaries of the alleged trade secret in order to investigate defenses. *Vasanova, Inc. v. Grunwald*, 2012 WL 4119970, at *2-*3 (N.D. Cal. Sept. 18, 2012) (citing *Brescia v. Angelin*, 90 Cal. Rptr. 3d 842 (Cal. Ct. App. 2009)). The statute, however, “does not create a procedural device to litigate the ultimate merits of the case – that is, to determine as a matter of law on the basis of evidence presented whether the trade secret actually exists.” *Id.*

“Reasonable particularity” mandated by section 2019.210 does not mean that the party alleging misappropriation has to define every minute detail of its claimed trade secret at the outset of the litigation. Nor does it require a discovery referee or trial court to conduct a miniature trial on the merits of a misappropriation claim before discovery may commence. Rather, it means that the plaintiff must make some showing that is reasonable, i.e., fair, proper, just and rational, under all of the circumstances to identify its alleged trade secret in a manner that will allow the trial court to control the scope of subsequent discovery, protect

⁷ To date, no federal court of appeals – including the United States Court of Appeals for the Ninth Circuit which sits in California – has decided whether section 2019.210 applies to actions in federal court. Federal district courts that have considered this issue have reached differing conclusions. *See, e.g., Social Apps, LLC v. Zynga, Inc.*, 2012 WL 2203063 (N.D. Cal. June 14, 2012) (finding that section 2019.210 does not conflict with the Federal Rules of Civil Procedure and that application to trade secret claims filed in federal court avoids improper incentives for choosing a federal forum); *Gabriel Technologies Corp. v. Qualcomm, Inc.*, 2012 WL 849167 (S.D. Cal. Mar. 13, 2012) (applying *Erie* and *Hanna* to find that section 2019.210 should be applied in federal courts); *Hilderman v. Enea TekSci, Inc.*, 2010 WL 143440 (S.D. Cal. Jan. 8, 2010) (finding that section 2019.210 conflicts with Rule 26 of the Federal Rules of Civil Procedure); *Funcat Leisure Craft, Inc. v. Johnson Outdoors, Inc.*, 2007 WL 273949 (E.D. Cal. Jan. 29, 2007) (finding that even if the Federal Rules of Civil Procedure do not directly address a particular matter of discovery procedure, the court is not free to adopt bits and pieces civil procedure discovery rules of the various states); *see also Computer Econ., Inc. v. Gartner Grp., Inc.*, 50 F. Supp. 2d 980 (S.D. Cal. 1999); *Proven Methods Seminars, LLC v. Am. Grants & Affordable Housing Institute*, 2008 WL 282347 (E.D. Cal. Jan. 31, 2008); *Advante Int'l Corp. v. Mintel Learning Tech.*, 2006 WL 3371576 (N.D. Cal. Nov. 21, 2006).

all parties' proprietary information, and allow them a fair opportunity to present their best case or defense at a trial on the merits.

Brescia 90 Cal. Rptr. 3d at 848-49 (Cal. Ct. App. 2009) (citing *Advanced Modular Sputtering, Inc. v. Superior Ct.*, 33 Cal. Rptr. 3d 901 (Cal. Ct. App. 2005)). While “[t]he degree of ‘particularity’ that is ‘reasonable’ will differ, depending on the alleged trade secrets at issue in each case,” trade secret designation is “to be liberally construed, and reasonable doubts regarding its adequacy are to be resolved in favor of allowing discovery to go forward.” *Id.*

SEYI's Complaint alleges that Stamtec, by and through Chase and SSI, obtained SEYI's trade secrets by accessing its ACT database. Specifically, SEYI alleges that Stamtec accessed SEYI's ACT database which collected information regarding: (1) “actual and potential customers, including names and contact information, emails and other communications with SEYI clients, notes of oral communication with SEYI clients and prospects, and inter-office and intra-office emails concerning the needs and desires of SEYI clients and prospects”; and (2) “SEYI products and services, including prices, costs, future plans, business affairs trade secrets, technical information, customer lists, proposals, and purchase orders.” (Doc. 1 at 2-3). The Court finds that SEYI's Complaint provides “enough detail so that the defendant is able to learn the boundaries of the alleged trade secret[s] in order to investigate defenses” and “will allow the trial court to control the scope of subsequent discovery.” Because identification of trade secrets is “to be liberally construed, and reasonable doubts regarding its adequacy are to be resolved in favor of allowing discovery to go forward,” the Court finds that, to the extent section 2019.210 is applicable to a federal court sitting in diversity, SEYI has identified the trade secrets at issue with reasonable particularity such that discovery may proceed.

Accordingly, SEYI's Motion to Determine the Applicability of California Rule of Civil Procedure § 2019.210 will be **DENIED AS MOOT** as the Court has found that, to the extent section 2019.210 is applicable, SEYI has met its obligations under the statute.

c. Stamtec's Motion to Dismiss (Doc. 51)

In addition to arguing that California law should apply to SEYI's claims, Stamtec argues that SEYI's claim for misappropriation of trade secrets should be dismissed because SEYI failed to comply with section 2019.210. Because the Court has found that SEYI has complied with the requirements of section 2019.210, Stamtec's motion to dismiss SEYI's claim for misappropriation of trade secrets will be **DENIED**.⁸ Stamtec also argues that SEYI's claims for interference with business relations and conspiracy should be dismissed because they are preempted by California's Uniform Trade Secrets Act.

The Federal Rules of Civil Procedure provide, in relevant part, that all pleadings must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." *See* Fed. R. Civ. P. 8(a)(2). While Rule 8(a) does not require plaintiffs to set forth detailed factual allegations, "it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). At a minimum, Rule 8(a) requires the plaintiff to "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests" – that is, Rule 8(a)(2) "requires a 'showing,' rather than a blanket assertion, of entitlement to relief." *Bell Atlantic v. Twombly*, 550 U.S. 544, 555, 556 n.3 (2007). A motion to dismiss for failure

⁸ Even assuming section 2019.210 governs actions in federal court, and even assuming that SEYI failed to comply with its requirements, section 2019.210 does not provide grounds for dismissing a trade secret claim at the pleading stage. *See Meggitt San Juan Capistrano, Inc. v. Yongzhong*, 575 Fed. App'x 801, 803 (9th Cir. 2014); *New Show Studios LLC v. Needle*, 2014 WL 2988271, at *9 (C.D. Cal. June 30, 2014).

to state a claim pursuant to Fed. R. Civ. P. 12(b)(6) is thus not a challenge to the plaintiff's factual allegations, but rather, a "test of the plaintiff's cause of action as stated in the complaint." *Flanory v. Bonn*, 604 F.3d 249, 252 (6th Cir. 2010).

"[O]nly a complaint that states a plausible claim for relief survives a motion to dismiss." *Iqbal*, 556 U.S. at 679. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* at 678 (citing *Twombly*, 550 U.S. at 556). The reviewing court must determine not whether the plaintiff will ultimately prevail, but whether the facts permit the court to infer "more than the mere possibility of misconduct," which is "a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id.* at 679; *Twombly*, 550 U.S. at 570 (holding that a complaint is subject to dismissal where plaintiffs failed to "nudge their claims across the line from conceivable to plausible"). Although the Court must take all of the factual allegations in the complaint as true, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements do not suffice," and a plaintiff's legal conclusions couched as factual allegations need not be accepted as true. *Iqbal*, 556 U.S. at 678; see *Fritz v. Charter Twp. of Comstock*, 592 F.3d 718, 722 (6th Cir. 2010). Therefore, to survive a motion to dismiss under 12(b)(6), plaintiff's "factual allegations must be enough to raise a right to relief above the speculative level on the assumption that all the allegations in the complaint are true." *Ass'n of Cleveland Fire Fighters v. City of Cleveland, Ohio*, 502 F.3d 545, 548 (6th Cir. 2007) (citing *Twombly*, 550 U.S. at 555).

California's Uniform Trade Secrets Act provides the exclusive remedy for trade secret misappropriation under California law. *Ikon Office Solutions, Inc. v. Rezente*,

2010 WL 5129293, at *3 (E.D. Cal. Dec. 9, 2010) (citing *Silvaco Data Sys. v. Intel Corp.*, 109 Cal. Rptr. 3d 27 (Cal. Ct. App. 2010). California’s Uniform Trade Secrets Act therefore preempts all claims that are “based on the same nucleus of facts as the misappropriation of trade secrets claim for relief.”⁹ *Id.* (quoting *K.C. Multimedia, Inc. v. Bank of Am. Tech. & Operations, Inc.*, 90 Cal. Rptr. 3d 247 (Cal. Ct. App. 2009). “In other words, preemption generally applies where there is no material distinction between the wrongdoing underlying the [trade secrets] claim and the [non-trade secrets] claim.” *Id.*; *Gabriel Tech. Corp. v. Qualcomm, Inc.*, 2009 WL3326631, at *11 (S.D. Cal. Sept. 3, 2009) (“The preemption inquiry for those causes of action not specifically exempted by § 3426.7(b) focuses on whether other claims are no more than a restatement of the same operative facts supporting trade secret misappropriation.”).

While SEYI’s Complaint alleges how Stamtec, through Chase and SSI, misappropriated SEYI’s trade secrets, SEYI’s Complaint offers no allegations supporting its claims for interference with business relations and conspiracy that are materially distinct from its allegations regarding its claim for misappropriation of trade secrets. As alleged, SEYI’s claims for interference with business relations and conspiracy are “based on the same nucleus of facts as the misappropriation of trade secrets claim” and, thus, are preempted under California’s Uniform Trade Secrets Act. *See Rezente*, 2010 WL 5129293, at *3; *Gabriel Tech. Corp.*, 2009 WL3326631, at *12-*13. Accordingly, Stamtec’s Motion to Dismiss will be **GRANTED** and SEYI’s claims for interference with business relations and conspiracy will be **DISMISSED**.

⁹ However, California’s Uniform Trade Secrets Act explicitly states that it does not preempt claims which are derived 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).

IV. CONCLUSION

For the reasons stated herein:

- Stamtec's Motion to Exclude portions of SEYI's Response to Stamtec's Motion to Dismiss (Doc. 59) is **DENIED**;
- Stamtec's Motion to Exclude SEYI's Notice and attached Second Declaration of Lanny Griffin (Doc. 63) is **GRANTED**;
- SEYI's Motion to Determine the Applicability of California Rule of Civil Procedure § 2019.210 (Doc. 44) is **DENIED AS MOOT**; and
- Stamtec's Motion to Dismiss, or in the Alternative, to Determine that California Substantive Law Applies to SEYI's Complaint (Doc. 51) is **GRANTED IN PART** and **DENIED IN PART**. Stamtec's Motion is **GRANTED** to the extent that it seeks a determination that California law applies to SEYI's claims and to the extent it seeks dismissal of SEYI's claims for interference with business relations and conspiracy. SEYI's claims for interference with business relations and conspiracy are hereby **DISMISSED WITH PREJUDICE**. Stamtec's Motion is **DENIED** to the extent that it seeks dismissal of SEYI's claims for misappropriation of trade secrets.

SO ORDERED this 30th day of January, 2015.

/s/ Harry S. Mattice, Jr.
HARRY S. MATTICE, JR.
UNITED STATES DISTRICT JUDGE