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COLLATERAL ANALYTICS, LLC

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

COLLATERAL ANALYTICS, LLC,

Plaintiff,

v.

NATIONSTAR MORTGAGE LLC, XOME SETTLEMENT SERVICES LLC, and QUANTARIUM, LLC,

Defendants.

Case No. 3:18-cv-00019-RS

PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS COMPLAINT

Date: April 19, 2018
Time: 1:30 p.m.
Ctrm: 3, 17th Floor
Judge: Honorable Richard Seeborg

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Collateral Analytics, LLC ("Collateral Analytics") files this memorandum in opposition to the motion to dismiss filed by Defendants Nationstar Mortgage, LLC ("Nationstar"), Xome Settlement Services LLC ("Xome"), and Quantarium, LLC ("Quantarium") (together, "Defendants"):

I. INTRODUCTION

Collateral Analytics' Complaint contains a detailed narrative of Defendants' misconduct, including specific facts showing that Defendants have breached their contracts with Collateral Analytics, misappropriated Collateral Analytics' trade secrets, and committed numerous other tortious acts. In an effort to avoid having to answer for their misconduct, Defendants have moved to dismiss the Complaint based on several factually inaccurate and legally incorrect arguments.

First, Defendants are wrong when they assert that Collateral Analytics must itemize its trade secrets in the Complaint. In making this argument, Defendants have confused a state-law procedural rule that requires such a disclosure prior to receiving discovery with the legal standard for pleading trade-secret misappropriation. By its express terms, California Code of Civil Procedure section 2019.210 is a state-court rule of civil procedure that requires a plaintiff to provide a list of its secrets before it obtains discovery. It does not—even in state court—purport to set forth the standard for *pleading* a claim of trade-secret misappropriation.

At the pleading stage, the federal pleading standards only require Collateral Analytics to set forth facts giving rise to a plausible inference that it has trade secrets and that Defendants misappropriated them. Collateral Analytics has unquestionably satisfied this requirement: the Complaint identifies numerous specific categories of trade secrets, as well as facts, which, if true, show that Defendants have stolen them. After a protective order is in place, Collateral Analytics will provide a further disclosure of its trade secrets that would satisfy section 2019.210 before Defendants have to produce discovery.

Second, Collateral Analytics' false-advertising claim is well pled. Among other things, Collateral Analytics has reproduced—in the body of the Complaint—a chart that underlies its claim of false advertising. That chart was used by Quantarium to convince the other Defendants to adopt its services in place of those provided by Collateral Analytics. That is a specific act of false advertising and one to which Defendants can fairly respond. That is sufficient at the pleading stage—especially where the other relevant facts are exclusively in Defendants' possession.

Third, Quantarium can properly be sued for intentionally interfering with the contracts of its parent corporations, Nationstar and Xome. It is hornbook law that a subsidiary is a separate legal entity from its parent. And California courts have repeatedly held that such an entity may be liable for tortious interference with contract, notwithstanding its status as a corporate relative of the contracting party.

Fourth, the California Uniform Trade Secret Act ("CUTSA") does not preempt Count 7 (intentional interference with contract), Count 9 (false advertising), or Count 11 (computer fraud) because each count alleges misconduct that is distinct from the alleged acts of trade-secret misappropriation. Counts 7 and 9 allege, in relevant part, that Quantarium deceived Nationstar and Xome in order to divert their business from Collateral Analytics. Count 11 alleges that Nationstar and Xome illegally passed on computer access credentials, which Quantarium used to access Collateral Analytics' platforms without authorization. Those acts would be (and are) actionable misconduct regardless of whether or not any trade-secret misappropriation took place, and those claims are, therefore, distinct from, and not preempted by, the allegations of trade-secret misappropriation.

Fifth, Defendants' contention that they are not subject to California law with respect to Count 9 and Count 11 ignores the fact that Collateral Analytics, Nationstar, Xome, and Quantarium all ***stipulated*** that any state law claims brought in connection with this dispute will be governed by the laws of California, without regard to conflict-of-law principles. The parties entered into this stipulation as part of their pre-suit efforts to resolve this dispute and the agreement is both binding and enforceable.

II. FACTUAL ALLEGATIONS

The Complaint sets forth a detailed narrative of Defendants' contractual breaches, trade-secret misappropriation, and other tortious business misconduct. In particular, it explains that for years, Collateral Analytics has been one of the foremost developers of real-estate analytics software, including automated valuation models (AVMs) and related applications. ECF No. 1 ¶ 12. Collateral Analytics has succeeded in the real-estate valuation industry because its founders and engineers have spent more than three decades developing its software products and their underlying databases, algorithms, and feature sets. *Id.* ¶¶ 13–16. Collateral Analytics' customers include mortgage loan servicers such as Nationstar and appraisal-management companies such as Xome. *Id.* ¶¶ 21–22. Collateral Analytics conducted business with Nationstar and Xome under a series of agreements with stringent confidentiality

requirements. *Id.* ¶ 20.

Collateral Analytics provides a suite of products to assist customers like Nationstar and Xome with all phases of the real-estate valuations they conduct as an integral part of managing their mortgage portfolios. *Id.* ¶¶ 17, 18. For example, a customer's employee (typically a real-estate agent) will use Collateral Analytics' CA iBPO product to complete an automated broker price opinion ("BPO")[1] with the support of Collateral Analytics' enormous data bank and proprietary analytics tools for evaluating comparable properties and future price trends. *Id.* ¶ 71. After a real-estate agent completes a BPO or other valuation, a customer will check the BPO using Collateral Analytics' quality-control tools, including CA Risk Profiler (which provides a weighted score to reflect the risk of an inaccurate valuation, *id.* ¶ 59) and CA Neighborhood Value Range and CA iAVM (which generate automated valuations of comparable neighboring properties, *id.* ¶ 58). And when other valuation needs arise, customers will use other of Collateral Analytics' products, such as CA Market Conditions (which analyzes foreclosure activity in a given geographic area, *id.* ¶ 48) and the 90–95% Confidence AVM (which predicts the price that should be set for a home so the seller can be 90% confident and 95% confident that the home will sell within a given time period, *id.* ¶ 37). Collateral Analytics has spent decades refining the databases, algorithms, and industry knowledge that underlie these products, and it takes extensive measures to protect their secrecy. *Id.* ¶¶ 13, 20.

For years, Nationstar and Xome were two of Collateral Analytics' major customers for these products. *Id.* ¶ 37. But starting with their acquisition of Quantarium in May 2015, and throughout 2016 and 2017, Defendants copied Collateral Analytics' successful products through a series of tortious acts and contractual breaches: Nationstar and Xome falsely expressed a business need to understand the confidential algorithms, processes, and inputs of Collateral Analytics' products and then relayed the confidential information they learned to Quantarium, *id.* ¶¶ 51–52, 65, 73; Nationstar and Xome illegally trafficked their access credentials to Collateral Analytics' online testing environment to Quantarium, and Quantarium illegally used those credentials thousands of times to access Collateral Analytics' testing

[1] A broker price opinion is a valuation report that financial institutions use as a less costly alternative to traditional appraisals. ECF No. 1 ¶ 17. A broker price opinion is less costly than a traditional appraisal because it does not require physical inspection of the subject property. *Id.*

environment, *id.* ¶¶ 53–54, 63; Defendants used Collateral Analytics' products for parallel testing of Quantarium's unfinished software in violation of Nationstar's and Xome's contractual confidentiality obligations, *id.* ¶¶ 78–79; Quantarium falsely advertised its alleged independent-testing results to Nationstar and Xome to convince them it was a viable replacement for Collateral Analytics, *id.* ¶¶ 43–44, 83; and Defendants' executives lied to Collateral Analytics to conceal Quantarium's role in the misconduct, *id.* ¶ 46, 67. After copying Collateral Analytics' products through this course of misconduct, Nationstar's and Xome's purchases have dropped from thousands of orders per month to almost nothing, *id.* ¶¶ 69, 75, and Quantarium has announced its intent to sell copied software products to third parties, *id.* ¶ 76.

Collateral Analytics' allegations are remarkably specific for a case that has not yet reached discovery: the complaint includes a reproduction of a timetable that Quantarium created for its plan to copy Collateral Analytics' products and which refers to Collateral Analytics' products by name, *id.* at 14:1–11; quotations from Defendants' emails about their scheme to copy Collateral Analytics' products, *id.* ¶¶ 49, 78; a reproduction of the chart underlying Collateral Analytics' false-advertising claim, *id.* at 12:11–23; and some of the specific misrepresentations Defendants made to conceal the misconduct, *id.* ¶¶ 46, 67.

III. LEGAL STANDARD

A complaint serves to "give the defendant fair notice of what the . . . claim is and the grounds on which it rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quotation omitted, alteration in original). Thus, a complaint is sufficient to survive dismissal under Rule 12(b)(6) if it "contain[s] sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). A claim is facially plausible when it sets forth "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* Although a court may disregard allegations that are merely legal conclusions or threadbare assertions of misconduct, a plaintiff's well-pleaded factual allegations are entitled to an assumption of veracity at the motion-to-dismiss stage. *Id.* at 679.

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IV. COLLATERAL ANALYTICS' TRADE-SECRET ALLEGATIONS ARE SUFFICIENT

A. Neither the DTSA Nor the CUTSA Requires A Plaintiff To Plead Trade Secrets With Particularity.

Defendants ask the Court to impose heightened pleading standards on claims for breach of contract and trade-secret misappropriation under the Defend Trade Secrets Act ("DTSA") and the California Uniform Trade Secrets Act ("CUTSA"). ECF No. 27 at 6. There is, however, no authority for such a heightened pleading standard in this context. Indeed, the law is clear that Rule 9(b) does not apply to claims of trade-secret misappropriation. *See, e.g.*, *Mintel Learning Techn., Inc. v. Ambo Educ. Holding Ltd.*, No. 5:11-CV-01504-EJD, 2012 WL 762126, at *1 (N.D. Cal. Mar. 8, 2012) ("Claims for misappropriation of trade secrets are not held to the heightened pleading standard of Rule 9(b)." (citing *PhoneDog v. Kravitz*, No. 11–CV–03474 MEJ, 2011 WL 5415612, at *7 (N.D. Cal. Nov. 8, 2011)); *Cornerstone Staffing Sols., Inc. v. James*, No. C 12-01527 RS, 2013 WL 12124381, at *8 (N.D. Cal. Jan. 15, 2013) ("[T]here is no heightened standard of pleading in claims for misappropriation of trade secrets." (quotation omitted, alteration in original)).

Because Rule 9(b) does not apply, Defendants argue that California Code of Civil Procedure section 2019.210 imposes a "particularity" requirement on a trade-secret pleading. But that argument is wrong: ***neither*** the plain language of the statute ***nor*** the case law imposes such a requirement at the pleading stage. In fact, ***none*** of the Defendants' cited authority requires application of section 2019.210 to a pleading.

Section 2019.210 requires a party raising a claim of trade-secret misappropriation under the CUTSA to, "***before commencing discovery*** relating to the trade secret . . . identify the trade secret with reasonable particularity." Cal. Code Civ. Proc. § 2019.210 (emphasis added). As the Ninth Circuit has observed, California authority on section 2019.210 does not require that a trade-secret plaintiff have "identified the particular secrets ***at the pleading stage***"—rather, California authorities "simply require the plaintiff to identify a trade secret 'with reasonable particularity' prior to commencing discovery." *Meggitt San Juan Capistrano, Inc. v. Yongzhong*, 575 F. App'x 801, 803 (9th Cir. 2014) (emphasis in original); *see also Rockwell Collins, Inc. v. Wallace*, No. SACV 17-01369 AG (JCGx), 2017 WL 5502775, at *2 (C.D. Cal. Nov. 10, 2017) (rejecting defendant's argument that the court should apply

section 2019.210's particularity requirement to the complaint, "especially since the section doesn't discuss pleading requirements"). Indeed, courts are "in general agreement that trade secrets need not be disclosed in detail in a complaint alleging misappropriation for the simple reason that such a requirement would result in public disclosure of the purported trade secrets." *Autodesk, Inc. v. ZWCAD Software Co.*, No. 5:14-CV-01409-EJD, 2015 WL 2265479, at *6 (N.D. Cal. May 13, 2015); *see also Social Apps, LLC v. Zynga, Inc.*, No. 4:11-CV-04910 YGR, 2012 WL 2203063, at *2 (N.D. Cal. June 14, 2012) ("The nature of a trade secrets claim is such that pleading is necessarily general. To require more detail would be to force a plaintiff to disclose, in a publicly filed pleading, the very secrets it seeks to protect.").

For this reason California courts do not evaluate on demurrer how specifically the trade secrets are described in a pleading. Indeed, ***none*** of Defendants' California authorities stand for the proposition that section 2019.210 applies to pleadings. *See Brescia v. Angelin*, 172 Cal. App. 4th 133, 140 (2009) (appellate review of trade-secret designation filed pursuant to court order and under seal after complaint filed); *Perlan Therapeutics, Inc. v. Sup. Ct.*, 178 Cal. App. 4th 1333, 1336 (2009) (reviewing a petition from trial court's decision regarding sufficiency of an amended section 2019.210 trade-secret disclosure); *Advanced Modular Sputtering, Inc. v. Sup. Ct*., 132 Cal. App. 4th 826, 832 (2005) (writs taken from trial court's order adopting discovery referee's findings regarding sufficiency of section 2019.210 disclosure); *see also Space Data Corp. v. X*, No. 16-CV-03260-BLF, 2017 WL 3007078, at *3 (N.D. Cal. July 14, 2017) (referring to arguments related to the particularity of trade secrets disclosed in plaintiff's separately filed section 2019.210 disclosure statement).

Collateral Analytics acknowledges that in *Top Agent Network, Inc. v. Zillow, Inc.*, No. 14-CV-04769-RS, 2015 WL 7709655, at *5 (N.D. Cal. Apr. 13, 2015), this Court stated, "[t]o pass muster under Rule 8, plaintiffs raising claims under the CUTSA must itemize the information claimed as a trade secret with reasonable particularity," citing California Code of Civil Procedure section 2019.210 and two federal cases: *Agency Solutions.com, LLC v. TriZetto Grp.*, 819 F. Supp. 2d 1001, 1015 (E.D. Cal. 2011) and *Religious Tech. Ctr. v. Netcom On-Line Commc'n Servs., Inc.*, 923 F. Supp. 1231, 1252 (N.D. Cal. 1995). As explained above, however, section 2019.210 governs when discovery can commence, and does not impose a pleading standard. Nor did either of the two cited federal cases involve a motion to dismiss; both ruled on motions for preliminary injunctions, which required the courts to decide whether

the plaintiffs had defined their trade secrets sufficiently to show a *likelihood of success on the merits*, ***not*** whether a complaint *plausibly* alleges a claim. The other cited case, *Diodes, Inc. v. Franzen*, 260 Cal. App. 2d 244, 253 (1968), is the case that section 2019.210 codified as a discovery-commencing mechanism, not a pleading requirement, and held that "[o]ne who seeks to protect his trade secrets from wrongful use or disclosure does ***not*** have to spell out the details of the trade secret to avoid a demurrer to a complaint. To so require would mean that the complainant would have to destroy the very thing for which he sought protection by making public the secret itself." 260 Cal. App. 2d at 251–52 (citation omitted, emphasis added). Moreover, as explained in Section B below, Collateral Analytics' Complaint provides a level of detail far greater than what was provided in the original complaint in *Top Agent Network*, and at least equivalent to what was provided in the First Amended Complaint in that matter, which this Court held passed muster. *Compare* Compl. ¶¶ 25, 58, No. 14-cv-04769-RS (N.D. Cal. Oct. 27, 2014), ECF No. 1 (broadly alleging plaintiff's website's "unique features, its membership model, and its business strategy," "the manner in which this feature was developed and implemented, the strategy behind it, the operation of this feature, and the identity of which TAN member agents made listing posts on TAN's member-only web application" as trade secrets) *with* First Am. Compl. ¶¶ 32, 51, No. 14-cv-04769-RS (N.D. Cal. May 12, 2015), ECF No. 45 (alleging that trade secrets included "internal metrics" gauging client engagement, market penetration, members' use of plaintiff's information, and size of the secondary homebuyer market; frequency that members open email; percentage of home sales made by members in a defined geographic area; and "market research" regarding members' use of plaintiff's product); *see also* No. 14-cv-04769-RS, 2015 WL 10435931, at *3 (N.D. Cal. Aug. 6, 2015) (finding First Amended Complaint sufficiently alleged trade secrets).

As noted above, Collateral Analytics will provide an itemized list of trade secrets ***prior to*** commencing discovery in this case. Collateral Analytics acknowledges that some federal courts have required California Code of Civil Procedure section 2019.210 statements after the pleadings but before

discovery as a case-management tool for cases involving both CUTSA and DTSA claims.[2] *See, e.g.*, *Jobscience, Inc. v. CVPartners, Inc.*, No. C 13-04519 WHA, 2014 WL 852477, at *4 (N.D. Cal. Feb. 28, 2014); *Interserve, Inc. v. Fusion Garage PTE, Ltd.*, No. C 09-05812 JW (PVT), 2010 WL 1445553, at *3 (N.D. Cal. Apr. 9, 2010) ("As a matter of case management, this court generally requires a party claiming misappropriation of trade secrets to adequately identify those trade secrets before conducting discovery into its opponents' proprietary information."); *Applied Materials, Inc. v. Advanced Micro-Fabrication Equip.(Shanghai) Co.*, No. C 07-5248 JW (PVT), 2008 WL 183520, at *1 (N.D. Cal. Jan. 18, 2008). But there is no reason to require Collateral Analytics to disclose its trade secrets in the complaint, and/or to produce an itemized list of those secrets before the Court has entered a protective order to protect them.[3]

B. Collateral Analytics' Trade Secrets Are Well Pled.

Defendants challenge the sufficiency of Collateral Analytics' allegations that Collateral Analytics owns trade secrets, by citing to six paragraphs of Collateral Analytics' 176-paragraph Complaint and proclaiming they lack particularity. In so doing, Defendants vastly oversimplify the Complaint and gloss over Collateral Analytics' most detailed descriptions of its trade secrets. Moreover, Collateral Analytics need not plead an all-inclusive list of its trade secrets at this stage; under *Iqbal* and *Twombly*, Collateral Analytics need only plead the plausible existence of trade secrets and of Defendants' misappropriation of those secrets. *See Nextdoor.Com, Inc. v. Abhyanker*, No. C-12-5667 EMC, 2013 WL 3802526, at *5 (N.D. Cal. July 19, 2013) ("Reviewing [the trade-secret plaintiff's] allegations at a high level of generality at this early stage in this litigation, the Court finds that he has alleged sufficient facts to survive a motion to dismiss."); *SOAProjects, Inc. v. SCM Microsystems, Inc.*, No. 10-cv-01773-LHK, 2010 WL 5069832, at *10 (N.D. Cal. Dec. 7, 2010).

Collateral Analytics has satisfied its pleading burden. For example, it has identified as its trade

[2] Although courts in this District have applied section 2019.210 in trade-secret cases, these courts have also recognized that the Ninth Circuit has not authoritatively resolved: (1) whether section 2019.210 applies to DTSA claims, and (2) whether federal courts sitting in diversity must apply section 2019.210 to CUTSA claims. *Lilith Games (Shanghai) Co. v. uCool, Inc.*, No. 15-cv-01267-SC, 2015 WL 4149066, at *2–*3 (N.D. Cal. July 9, 2015) (collecting cases); *see also Rockwell Collins*, 2017 WL 5502775, at *2.

[3] The Court should note that, prior to filing this opposition, Collateral Analytics offered, in writing, to enter into a stipulation requiring the production of a 2019.210-style list as a way to resolve Defendant's motion to dismiss, but Defendants rejected that proposal. *See* Roberts Decl. ¶ 2 & Ex. 1.

secrets the "contacts and strategies that have allowed it to obtain legal access and usage rights to [Multiple Listing Service] data that covers more than 90% of residential properties in the United States," and its compilation of MLS data, which "includes a wide range of information on a home and corresponding parcel, such as the living area's square footage, bedrooms, bathrooms, listing prices, and land area." ECF No. 1 ¶ 14. Courts have recognized that data compilations, strategies for obtaining that data, and related contract terms may qualify as trade secrets, and that an allegation that they are trade secrets is sufficient at the pleading stage. *See*, *e.g.*, *Earthbound Corp. v. MiTek USA, Inc.*, No. CV 16-7223 DMG (JPRx), 2017 WL 2919101, at *12 (C.D. Cal. Feb. 10, 2017) ("It is 'well recognized' in the Ninth Circuit that a 'trade secret may consist of a compilation of data, public sources or a combination of proprietary and public sources' because 'a compilation that affords a competitive advantage and is not readily ascertainable falls within the definition of a trade secret.'" (quoting *United States v. Nosal*, 844 F.3d 1024, 1042 (9th Cir. 2016)); *Jobscience*, 2014 WL 852477, at *4 (allegations of trade secrets including "manuals, training materials, contract terms, and conditions of service" sufficient to withstand a motion to dismiss); *UCAR Tech. (USA) Inc. v. Yan Li*, No. 5:17-CV-01704-EJD, 2017 WL 6405620, at *3 (N.D. Cal. Dec. 15, 2017) (allegations regarding proprietary data, testing data of plaintiff's software applications, software, strategic business plans, and R&D work sufficient to identify trade secrets in a pleading).

Similarly, Collateral Analytics has asserted that it has trade secrets in its AVM. An AVM is a mathematical model (implemented in software) that values the price of a specific parcel of residential real estate, and Collateral Analytics has identified that the algorithms in that model (including its confidence intervals) as well as the negative knowledge of "what approaches do not work" are Collateral Analytics' trade secrets. ECF No. 1 ¶ 15, 18, 37, 77–79. Allegations that the algorithms and processes underlying an identified function are trade secrets are sufficient at the pleading stage. *See, e.g.*, *VasoNova Inc. v. Grunwald*, No. C 12-02422 WHA, 2012 WL 4119970, at *2–*3 (N.D. Cal. Sept. 18, 2012) (finding "devices, algorithms, and processes useful for catheter guidance" sufficient to identify trade secrets in a pleading).

Collateral Analytics has also alleged that the workflow and feature set for its proprietary software products—each of which are enumerated in the Complaint—are its trade secrets. ECF No. 1 ¶¶ 16, 32,

36, 56, 58, 71. Collateral Analytics acquired its insight into the workflow and features necessary to "speed up [a broker, agent, or appraiser's] work and make them more accurate" only after "working with hundreds of customers over many years to fully develop and refine" them. *Id.* ¶ 16. And Collateral Analytics has expressly stated that, unlike many software makers, it does not demonstrate these workflows or feature sets to persons absent a non-disclosure agreement. *Id*. ¶ 20. Such ***secret*** knowledge gleaned from experience and interaction with customers, including customer needs and preferences, has long been acknowledged as a being a trade secret. *See, e.g.*, First Am. Compl. ¶ 51, *Top Agent Network*, No. 14-cv-04769-RS (N.D. Cal. May 12, 2015), ECF No. 45 (alleging "internal metrics regarding how [the plaintiff's] clients used the non-public information they received through [the plaintiff's] members-only private portal" as a trade secret); *Top Agent Network*, 2015 WL 5439136, at *3 (allegations regarding plaintiff's "internal metrics" on clients' use of plaintiff's non-public information and "market research" regarding how clients used plaintiff's product to further their businesses sufficient to allege trade secrets); *see also Heller v. Cepia, L.L.C.*, No. C 11-01146 JSW, 2012 WL 13572, at *6 (N.D. Cal. Jan. 4, 2012), *aff'd in part*, 560 F. App'x 678 (9th Cir. 2014) (concluding that the plaintiff "has sufficiently alleged the existence of trade secrets—the 'unique combination of features, functionalities, and accessories'" underlying the toy at issue); *Henry Schein, Inc. v. Cook*, 191 F. Supp. 3d 1072, 1077 (N.D. Cal. 2016) ("Customer information such as sales history and customer needs and preferences constitute trade secrets." (citing *MAI Sys. Corp. v. Peak Comput., Inc.*, 991 F.2d 511, 521 (9th Cir. 1993)).

The Complaint further enumerates the following trade secrets:

- The information contained in Collateral Analytics' confidential grid adjustment white paper, namely, its explanation of the process by which Collateral Analytics makes comparable properties ***truly*** comparable to the subject property of the broker or appraiser's valuation by accounting for differences between the homes, ECF No. 1 ¶ 73;
- Collateral Analytics' risk score algorithm, which rates the overall quality of an appraisal or BPO by evaluating each of the appraiser or broker's inputs, *id*. ¶¶ 48, 56–59;
- Collateral Analytics' database of historical BPO valuations for specific residential real estate properties, *id*. ¶¶ 48, 61, 65;
- Collateral Analytics' sources for and method of evaluating the market conditions for a specific home based on the local market, *id*. ¶¶ 48, 71, 74;
- Collateral Analytics' method of forecasting home prices, *id*. ¶¶ 48, 71, 74.

Like the amended complaint in *Top Agent Network*, these allegations are sufficient to satisfy Collateral Analytics' burden of pleading the existence of trade secrets. For example, Collateral Analytics' compilation of its own past BPO valuations on real estate properties—which it uses to evaluate the accuracy of a new BPO—is exactly the type of "empirical data" sufficient to allege a trade secret. *See* First Am. Compl. ¶ 51, *Top Agent Network*, No. 14-cv-04769-RS (N.D. Cal. May 12, 2015), ECF No. 45; *Top Agent Network*, 2015 WL 10435931, at *3 (finding allegations including "internal metrics" on "client engagement, market penetration, members' use of information" constitutes "empirical data" protected by trade secret laws). In addition, courts have found that allegations of confidential white papers—such as Collateral Analytics' confidential white paper on grid adjustments discussed at paragraph 73 of the Complaint—are sufficient to allege trade secrets in a pleading. *See, e.g.*, *SOAProjects*, 2010 WL 5069832, at *10 (finding allegations that defendant misappropriated proprietary technical documents and white papers, among other information, sufficient to allege existence of trade secrets).

Collateral Analytics' allegations identifying the computation of its risk score, in connection with its Risk Profiler product, as a trade secret are likewise sufficient. The Complaint alleges in detail how Collateral Analytics' Risk Profiler examines "the broker, agent or appraiser's final value that she assigned to the house, her selected data sources, the comparable properties [that] she selected, and her market-condition evaluation, among a host of other inputs used in authoring the opinion," along with whether the appraisal or BPO passed a series of high, medium, and low risk questions. ECF No. 1 ¶ 56. The Complaint goes on to explain that:

> The Risk Profiler reports presents these analyses and rates the BPO or appraisal with an overall risk score that allows Nationstar and Xome to identify the most problematic BPOs and appraisals conducted for them. The risk score is a formula developed by Collateral Analytics to provide, on a scale from 1 to 100, the risk level of a BPO or an appraisal, analyzing numerous factors to determine the reliability of the report. ***Collateral Analytics considers the formula for its risk score a trade secret***.

Id. ¶ 59 (emphasis added).

Defendants' motion fails to address any of these allegations, each of which is sufficient to allege the existence of a trade secret. Instead, Defendants gloss over these specific allegations to focus on just a few paragraphs from the 176-paragraph complaint to try to gin up an argument. Their motion should be

denied accordingly.

C. Defendants Argue For Impermissible Merits-Based Analysis At The Pleading Stage.

Defendants' argument that Collateral Analytics' trade secrets may not be protectable (ECF No. 27 at 7–8) is premature. Indeed, that kind of merits-based analysis is inappropriate at ***both*** the motion-to-dismiss stage ***and*** the section 2019.210-disclosure stage.[4] Thus, for example, Courts have concluded that section 2019.210 is not a vehicle to litigate the merits of a trade-secret claim before discovery even starts. *See, e.g.*, *VasoNova*, 2012 WL 4119970, at *2 ("The statute . . . 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."); *Brescia*, 172 Cal. App. 4th at 138 ("[T]rade 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.").

D. Collateral Analytics' Breach-Of-Contract Claims Are Properly Pled.

Defendants provide no support for dismissing Collateral Analytics' breach-of-contract claims. In *Advanced Modular* and *Neothermia Corp. v. Rubicor Medical, Inc.* the court concluded that California Code of Civil Procedure section 2019.210 required a plaintiff to produce a trade-secret list before obtaining discovery for ***both*** trade-secret and related non-trade-secret causes of action. 132 Cal. App. 4th at 833–34; 345 F. Supp. 2d 1042, 1043–44 (N.D. Cal. 2004). That conclusion is correct because the plain language of section 2019.210 applies to "actions," not "causes of action." Cal. Civ. Proc. Code § 2019.210 ("*In any action* alleging the misappropriation of a trade secret . . . before commencing discovery relating to the trade secret, the party alleging the misappropriation shall identify the trade secret with reasonable particularity . . . ." (emphasis added)). But the cases say nothing about ***pleading*** standards, do not purport to make section 2019.210 into a pleading requirement, and do not otherwise provide a basis to argue that the Court should dismiss Collateral Analytics' breach-of-contract claims.

Indeed, the position Defendants have taken regarding the breach-of-contract counts (Counts 3–6) is remarkable: they contend that an alleged defect in Collateral Analytics' ***tort*** causes of action requires

[4] The only supposedly contrary authority defendants cite is an order denying a motion for preliminary injunction—a motion that requires a court to engage in an analysis of the likelihood of success on the merits. *See Agency Solutions.com*, 819 F. Supp. 2d at 1017. That is ***not*** necessary at the pleading stage and therefore irrelevant to this motion.

the dismissal of Collateral Analytics' ***contract*** causes of action, notwithstanding the fact that these claims represent distinct theories of liability requiring different elements of proof. There is no legal authority that supports that position. To the contrary, the law is clear that the CUTSA "does not affect . . . contractual remedies, whether or not based upon misappropriation of a trade secret . . . ." Cal. Civ. Code § 3426.7(b)(1); *Angelica Textile Servs., Inc. v. Park*, 220 Cal. App. 4th 495, 506 (2013) (pointing out that the CUTSA "by its terms does not displace a contract claim, even if it is based on the misappropriation of a trade secret" (citing Cal. Civ. Code § 3426.7(b)(1))).

The elements of a cause of action for breach of contract are "(1) the existence of the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to the plaintiff." *Oasis W. Realty, LLC v. Goldman*, 51 Cal. 4th 811, 821 (2011). The Complaint identifies the four contracts at issue, and sets forth specific provisions from each contract that Defendants have breached. ECF No. 1 ¶¶ 35, 29–31, 33. The Complaint alleges Collateral Analytics' performance under the contracts. *Id.* ¶¶ 111, 118, 125, 132. The Complaint provides examples of Defendants' breaches. *Id.* ¶¶ 50–52, 62–65, 72–73, 91–92. And the Complaint alleges damages in the form of lost sales to Nationstar and Xome and harm in the marketplace. *Id.* ¶¶ 75–76, 112–113, 119–120, 126–127, 133–134. These allegations set forth a plausible claim for breach of contract. Thus, the Court should deny Defendants' motion to dismiss Counts 3 through 6.

V. THE FALSE-ADVERTISING CLAIMS ARE WELL PLED

A. The Pleading Standard For False Advertising Is Relaxed Where, As Here, The Relevant Facts Are Within Defendants' Control.

Although the Ninth Circuit has ***not*** ruled on whether Rule 9(b) applies to false-advertising claims,[5] the Ninth Circuit ***has*** "relax[ed] pleading requirements where the relevant facts are known only to the defendant," *Concha v. London*, 62 F.3d 1493, 1503 (9th Cir. 1995), including in connection with a claim of false advertising. *Rubenstein v. Neiman Marcus Grp. LLC*, 687 F. App'x 564, 568 (9th Cir. 2017) (reversing district court's dismissal of California false-advertising claim and reasoning that the

[5] *See Oracle Am., Inc. v. TERiX Comput. Co.*, No. 5:13-CV-03385-PSG, 2014 WL 31344, at *10 (N.D. Cal. Jan. 3, 2014) (noting that although some district courts in California have applied Rule 9(b) to Lanham Act claims, "the Ninth Circuit itself has never held as such").

plaintiff "need not specifically plead facts to which she cannot 'reasonably be expected to have access'" (quoting *Concha*, 62 F.3d at 1503)); *see also E & E Co. v. Kam Hing Enters., Inc.*, 429 F. App'x 632, 633 (9th Cir. 2011) ("[Rule 9(b)] may be relaxed as to matters within the opposing party's knowledge. For example, in cases of corporate fraud, plaintiffs will not have personal knowledge of all of the underlying facts." (quoting *Moore v. Kayport Package Express, Inc.*, 885 F.2d 531, 540 (9th Cir. 1989)). In those circumstances, the plaintiff need only plead those facts surrounding the misconduct "to which [the plaintiff] can reasonably be expected to have access," and the pleading is sufficient "if it identifies the circumstances constituting fraud so that a defendant can prepare an adequate answer from the allegations." *Rubenstein*, 687 F. App'x at 568 (quoting *Concha*, 62 F.3d at 1503 & *Moore*, 885 F.2d at 540).

As set forth in the Complaint, the false-advertising claims arise from communications among Quantarium, Nationstar, and Xome. ECF No. 1 ¶¶ 42–43. Collateral Analytics learned of these communications only because a Xome executive shared some limited information about them with Collateral Analytics, including a copy of the false or misleading chart that Quantarium provided to Nationstar and Xome. *Id.* Thus, Collateral Analytics has access only to limited information about Quantarium's false advertising, and should not face a heightened pleading burden on the undisclosed communications among the Defendants. *See Rubenstein*, 687 F. App'x at 568.

B. Regardless Of The Pleading Standard, Collateral Analytics' False-Advertising Claims Are Sufficient Because They Notify Defendants Of The Alleged Misconduct.

Regardless of the applicable pleading standard, allegations of false advertising are sufficient if they are "specific enough to give defendants notice of the particular misconduct so that they can defend against the charge and not just deny that they have done anything wrong." *O'Shea v. Epson Am., Inc.*, No. CV 09-8063 PSG (CWx), 2010 WL 11459911, at *6 (C.D. Cal. Mar. 5, 2010) (internal quotation marks and alteration omitted) (quoting, among others, *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003)). Collateral Analytics' Complaint provides sufficient notice of the false-advertising claims for Defendants to respond. Specifically, Collateral Analytics alleges:

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- Before using a vendor's AVM for its real-estate valuations, Nationstar requires that the vendor's AVM be independently tested and that its performance meet certain criteria. ECF No. 1 ¶ 83.

- In order to convince Nationstar and Xome that Quantarium had met these criteria and was a viable replacement for Collateral Analytics, Quantarium presented certain information to Nationstar and Xome in September 2016. ECF No. 1 ¶¶ 42–44, 83.

- The information included a chart, purporting to show the results of independent testing. The chart is reproduced in the Complaint. ECF No. 1 at 12:11–23.

- In connection with the chart, "Quantarium told Xome and Nationstar that it had developed three models, QM3, QM2, and QM1, which were among the most accurate in the entire tested universe of AVMs, with the highest hit rate (or coverage) and lowest mean error rate." ECF No. 1 ¶ 43.

- These representations were false because Quantarium in fact lacked the experience and capabilities to independently develop such high-performing models and to leapfrog the performance of the entire AVM industry in a matter of months. The chart was either a forgery of the independent-testing results, or Quantarium misrepresented how it had achieved these results, and therefore, its capacity to achieve comparable results in the future. ECF No. 1 ¶¶ 42–43, 83, 144–145, 150–151.

Contrary to Defendants' characterization, these allegations are not generic or overbroad: they identify a particular communication, a particular timeframe, and the manner in which the promotion was false. In this respect, Defendants' citation to *Architectural Mailboxes, LLC v. Epoch Design, LLC*, ***supports*** Collateral Analytics' claim and shows how the false-advertising allegations are sufficient. In that case, the plaintiff alleged that the defendant had made false and misleading statements concerning the plaintiff's product on the defendant's website. No. 10CV974 DMS (CAB), 2011 WL 1630809, at *5 (S.D. Cal. Apr. 28, 2011). The defendant argued that the complaint failed to sufficiently allege which statements were false and how they were false. *Id.* The court rejected this argument and denied the defendants' motion to dismiss because the complaint identified specific statements from the defendant's website and explained how the statements mischaracterized the purpose of the plaintiff's products. *Id.*; *see also Davidson v. Kimberly-Clark Corp.*, 873 F.3d 1103, 1110–11 (9th Cir. 2017) (claim under California False Advertising law was sufficiently pled because it identified a specific statement—that defendant's cleansing wipes were "flushable"—and explained why that statement was false). Likewise, in this case, Collateral Analytics has identified a particular false and misleading communication—it has even reproduced the chart in the body of the complaint, ECF No. 1 at 12:11–23—and Collateral Analytics has explained how the false and misleading communication mischaracterizes Quantarium's products, experience, and capabilities relative to those of Collateral Analytics. This affords Defendants a

sufficient opportunity to respond, which is all that is required at this stage. *See Vess*, 317 F.3d at 1106.

Defendants are also incorrect when they assert that the Complaint fails to allege sufficient dissemination or promotion of the false statements to "the relevant purchasing public" for a claim of false advertising. *See* ECF No. 27 at 15. Once again, the very case that Defendants cite in their argument—*Coastal Abstract Service, Inc. v. First American Title Insurance Co.*—recognized that "[w]here the potential purchasers in the market are relatively limited in number, even a single promotional presentation to an individual purchaser may be enough to trigger the protections of the [Lanham] Act." 173 F.3d 725, 735 (9th Cir. 1999) (quoting *Seven-Up Co. v. Coca-Cola Co.*, 86 F.3d 1379, 1386 (5th Cir. 1996)). And in that case, the Ninth Circuit agreed with the district court's conclusion that a single representation could constitute a "promotion," where the relevant purchasing public consisted of "customers operating nationwide programs for the refinancing of residential mortgages." *Id.*

Under the allegations of the Complaint, the market for Collateral Analytics' products includes mortgage loan servicers such as Nationstar and appraisal-management companies such as Xome. *See* ECF No. 1 ¶¶ 21–22; *see also* ECF No. 1 ¶ 39 (referring to the market as "the mortgage-servicing and appraisal-management industries"). False statements to those entities ***are*** therefore false statements to important customers in a relatively limited market. And to the extent that Defendants disagree with this characterization of the market as a ***factual*** matter, their argument is premature.

VI. QUANTARIUM IS NOT A PARTY TO ITS PARENTS' CONTRACTS AND CAN INTERFERE WITH THEM

Under California law, the tort of intentional interference with contract "does not lie against a party to the contract." *Asahi Kasei Pharma Corp. v. Actelion Ltd.*, 222 Cal. App. 4th 945, 961 (2013) (quoting *Applied Equip. Corp. v. Litton Saudi Arabia Ltd.*, 7 Cal. 4th 503, 513 (1994) (emphasis omitted)). However, this limitation applies only to those who are "a party to the contract or an agent of a party to the contract"; other third parties—including related corporations—are proper defendants for a claim of tortious interference. *Asahi Kasei*, 222 Cal. App. 4th at 963–64. For this reason, California courts have concluded that a plaintiff may bring a tortious interference claim against a noncontracting corporate relative or owner of the contracting party. *Id.* (rejecting defendant's argument that it could not be liable for interfering with wholly owned subsidiary's contract); *Woods v. Fox Broad. Sub., Inc.*, 129

Cal. App. 4th 344, 356 (2005) (rejecting defendant's argument that it could not be liable for interfering with the contract of a company of which it was an owner); *see also Powerhouse Motorsports Grp. v. Yamaha Motor Corp.*, 221 Cal. App. 4th 867, 884 (2013) (rejecting franchisor's argument that it could not be liable for interfering with franchisee's contract to sell the franchise).

Under these principles, Quantarium is a proper defendant for Collateral Analytics' tortious interference claim. Defendants do not dispute that Quantarium is a ***subsidiary*** of Xome, which is in turn a ***subsidiary*** of Nationstar. ECF No. 1 ¶¶ 3–4. Quantarium is therefore a distinct legal entity from both Nationstar and Xome, and it is not a party to Collateral Analytics' contracts with Nationstar and Xome. *See* ECF No. 1 ¶ 21–36 (describing Collateral Analytics' contracts with Nationstar and Xome). Although Defendants assert that, as "part of the same corporate family, Quantarium is effectively a party to the[se] contracts," ECF No. 27 at 10, Defendants do not (and, indeed, cannot) provide any supporting authority for this incorrect statement of law. *See, e.g.*, *Retail Clerks Union, Local 770, AFL-CIO v. Thriftimart, Inc.*, 59 Cal. 2d 421, 426 (1963) (absent showing of alter ego, subsidiary is not party to and is not bound by or liable for parent's contract); *Royal Indus. v. St. Regis Paper Co.*, 420 F.2d 449, 453 (9th Cir. 1969) (same) (applying California law); 1 Fletcher Cyclopedia of the Law of Corporations § 43, *Parent and Subsidiary Corporations and Affiliated Corporations* ("A contract in the name of one corporation cannot be treated as that of another if they are in law separate entities . . . ."). And to the extent that Defendants argue that Quantarium must be a complete "stranger," removed from the entire transaction in order to interfere with the contract, that too is a misstatement of the law. In particular, although *Applied Equipment* used the term "stranger" to refer to a party who is capable of interfering with a contract, the term "stranger" in this context simply means "a noncontracting party." *Woods*, 129 Cal. App. 4th at 353 (2005) ("When *Applied Equipment* did use the term 'stranger to a contract,' it did so interchangeably with the terms 'noncontracting parties' and 'third parties.'" (citing *Applied Equipment*, 7 Cal. 4th at 513–14, 516–17) (internal citations omitted)).[6]

The fact that Collateral Analytics' contracts with Nationstar and Xome are terminable at will also

[6] Nor do Defendants appear to contend that Quantarium was Nationstar's or Xome's agent with respect to their contracts with Collateral Analytics. Nor could they, given that Collateral Analytics never dealt with Quantarium and instead understood it to be a potential competitor. *See* ECF No. 1 ¶¶ 46, 54.

does not insulate Quantarium from liability for tortious interference. Collateral Analytics alleges ***breach*** of the contracts, not ***termination*** of the contracts. ECF No. 1 ¶¶ 86–87, 92, 107–142. For this reason, Defendants' reliance on *Reeves v. Hanlon*, 33 Cal. 4th 1140 (2004) is misplaced. *Reeves* was an employee-mobility case, concluding that the mere act of hiring away an at-will employee does not constitute tortious interference, absent another "independently wrongful act." *Id.* at 1152–53. The court expressly stated that its holding did not apply to conduct that induces ***breach*** of an at-will contract, *id.* at 1153 n.7, and in such a circumstance, a defendant may be liable for tortious interference. *E.g.*, *NuVasive, Inc v. Madsen Med., Inc.*, No. 13CV2077 BTM(RBB), 2015 WL 10943609, at *9 (S.D. Cal. July 20, 2015) (distinguishing *Reeves* and denying defendants' motion for summary judgment on a claim of tortious interference "premised on the breach of specific contractual terms" rather than termination of the at-will relationship). In any event, the Complaint ***does*** allege "independently wrongful act[s]," namely theft of trade secrets, false advertising, and computer fraud. Those acts would support a claim for tortious interference, even if the claim were about the termination of an at-will contract. *See Reeves*, 33 Cal. 4th at 1152–53.

Defendants' remaining cases do not support their argument. In *Reddy v. Nuance Communications, Inc.*, a former employee brought a wrongful-termination suit against her former employer, including a claim of intentional interference with contract and prospective economic advantage based on the theory that the employer marked her as "ineligible for rehire" and did not rehire her after she was laid off. No. C 11-05632 PSG, 2012 WL 6652491, at *1–*3 (N.D. Cal. Dec. 20, 2012). The former employee sued both Focus Informatics (from which she received her offer letter) and Nuance Communications (the parent corporation of Focus) which later merged with Focus and laid her off. *Id.* at *1, *3. The former employee herself "admit[ted] that Nuance acquired Focus and refer[red] to them interchangeably throughout her briefing." *Id.* at *3. Because the two entities had ***merged***, the court concluded that the former employee could not maintain her claim against Nuance for intentionally interfering with her contract by "affecting her chances of employment with the later-merged Focus/Nuance entity" because that would require Nuance to have interfered with itself. *Id.* This case is, of course, nothing like that—there is no allegation that the interfering entity merged with and was the same as the allegedly interfering entity. To the contrary, Collateral Analytics alleges that Quantarium

was and is a distinct legal entity from the other defendants and that it interfered with the actions of an entity ***other than itself***.

Kasparian v. County of Los Angeles also does not help the defendants. That case stands for the familiar proposition that a party may not bring a claim for interference with prospective economic advantage against a party to the prospective economic relationship. 38 Cal. App. 4th 242, 262 (1995). In *Kasparian*, a limited partner of a general partnership sued a general partnership and two of its general partners for conspiracy to interfere with negotiations in which the plaintiff hoped the general partnership would purchase his interest in a real-estate project. *Id.* at 256–57, 267. The court concluded that these defendants could not be liable for the tort of interference with prospective economic advantage—and therefore could not be liable for conspiracy to commit the tort—because the tort cannot be asserted "against a party to the relationship from which the plaintiff's anticipated economic advantage would arise." *Id.* at 262. This is true because a party to the prospective economic relationship has no ***duty*** to do business with the plaintiff, so its refusal to enter into the relationship is not wrongful. *Id.* at 266. But nothing about this principle or the holding in *Kasparian* purports to say whether the general partners ***themselves*** could be liable for interference. *See id.* at 262–66. Indeed, more recent California appellate decisions have recognized that *Kasparian*'s holding only bars a claim against the entity that was party to the prospective economic relationship and does ***not*** stand for the proposition for which Defendants are attempting to read it here. *See Asahi Kasei*, 222 Cal. App. 4th at 965 ("To the extent *Kasparian* implicitly holds that the owners of a business entity are automatically deemed to be exempt from interference liability because their economic interest means they are not 'strangers,' we disagree."); *Woods*, 129 Cal. App. at 354 (reaching the same conclusion regarding *Kasparian*).

In this case, Collateral Analytics has alleged that Quantarium has tortiously interfered with relationships to which it is ***not*** a party—namely the economic relationships between Collateral Analytics on the one hand and Xome and Nationstar on the other. Thus, *Kasparian* is inapposite.

VII. THE CUTSA DOES NOT PREEMPT COUNTS 7, 9, AND 11 BECAUSE EACH CLAIM ALLEGES FACTS THAT GO BEYOND TRADE-SECRET MISAPPROPRIATION

The CUTSA's preemption provision does not affect "civil remedies that are not based upon misappropriation of a trade secret." Cal. Civ. Proc. Code § 3426.7(b). Thus, under the CUTSA,

"preemption is not triggered where the facts in an independent claim are similar to, but distinct from, those underlying the misappropriation claim." *Bladeroom Grp. v. Facebook, Inc.*, No. 5:15-CV-01370-EJD, 2018 WL 452111, at *6 (N.D. Cal. Jan. 17, 2018); *see also Kovesdy v. Kovesdy*, No. C 10-02012 SBA, 2010 WL 3619826, at *3 (N.D. Cal. Sept. 13, 2010) (stating that CUTSA preemption applies "where there is no material distinction between the wrongdoing underlying the UTSA claim and the non-UTSA claim" (internal quotation marks omitted)). Counts 7, 9, and 11 of Collateral Analytics' Complaint allege misconduct that is distinct from and does not require the theft of trade secrets. Thus, they are not preempted by the CUTSA.

A. Intentional Interference With Contract (Count 7)

Courts have recognized that the CUTSA does not preempt a claim of intentional interference where the claim alleges misconduct that goes beyond the misappropriation of trade secrets. For example, in *Titan Global LLC v. Organo Gold International, Inc.*, the plaintiffs asserted claims for intentional interference with contract and prospective economic advantage based on: (a) allegations of misappropriation of trade-secret employee and customer lists and (b) allegations of defamatory and misleading statements. No. 12-CV-2104-LHK, 2012 WL 6019285, at *9 (N.D. Cal. Dec. 2, 2012). The court concluded that, given the allegations of misleading and defamatory statements, the claims were "based on facts that go beyond trade secret misappropriation" and therefore were not preempted. *Id.* at *10; *see also Zayo Grp. LLC v. Hisa*, No. SACV 13-752-JST (JPRx), 2013 WL 12201401, at *5 (C.D. Cal. Sept. 17, 2013) (the CUTSA did not preempt claim for tortious interference with prospective economic advantage where plaintiff alleged that defendant made false representations to a prospective customer); *Kovesdy*, 2010 WL 3619826, at *3 (the CUTSA did not preempt claim of intentional interference where plaintiff alleged, in relevant part, that Defendants interfered with business relationships by "soliciting [plaintiff's] clients and misleading [] them").

Collateral Analytics alleges not only that Quantarium improperly obtained Collateral Analytics' confidential information from Nationstar and Xome, but also that Quantarium lied to Nationstar and Xome about its experience, achievements, and capabilities in order to divert business from Collateral Analytics. ECF No. 1 ¶¶ 138–142; *see also* ECF No. 1 ¶¶ 42–43, 83 (setting forth additional allegations of Quantarium's misrepresentations). As in *Titan*, Quantarium's lying is separate and distinct from its

misappropriation, and the intentional interference claim is therefore not preempted.

K.C. Multimedia, Inc. v. Bank of America Technology and Operations, Inc., 171 Cal. App. 4th 939, 960 (2009), on which Defendants rely, is not to the contrary because in that case, the claim for tortious interference "rest[ed] on the same legal and factual basis as [the] trade secret misappropriation claim." Specifically, the claim alleged that the defendants interfered with the plaintiff's contract with a former employee by helping and encouraging the employee to misappropriate the plaintiff's trade secrets and luring him to work for the defendants. *Id.* at 960–61. In an earlier proceeding in the case, the plaintiff had even ***conceded*** that the claim was "predicated on the same operative facts" as the misappropriation claim in order to avoid the statute of limitations. *Id.* at 959 n.8. Here, by contrast, Collateral Analytics alleges that Quantarium lied to Nationstar and Xome to divert their business; that lie was an act of misconduct that is distinct from Quantarium's wrongful taking of Collateral Analytics' trade secrets. ECF No. 1 ¶ 138.

B. False Advertising (Count 9)

A claim of false advertising bears little resemblance to a claim for misappropriation of trade secrets or a breach of confidentiality, and it is therefore unsurprising that Defendants have failed to identify a single case in which a court has concluded that a claim of false advertising is preempted by the CUTSA. *See*, *e.g.*, *VP Racing Fuels, Inc. v. Gen. Petroleum Corp.*, 673 F. Supp. 2d 1073, 1088 (E.D. Cal. 2009) (elements of false advertising under California law are: (1) that statements in an advertisement are untrue or misleading, and (2) that the defendant knew or should have known that the statements were untrue or misleading) (citing *People v. Lynam*, 253 Cal. App. 2d 959, 965 (1967)). To the contrary, in the few cases in which the issue has arisen, courts have concluded that such a claim is not preempted. *E.g.*, *Epicor Software Corp. v. Alternative Tech. Sols., Inc.*, No. SACV 13-00448-CJC (RNBx), 2015 WL 12724073, at *4 (C.D. Cal. Apr. 2, 2015); *Silicon Image, Inc. v. Analogix Semiconductor, Inc.*, No. C-07-0635 JCS, 2007 WL 1455903, at *9 (N.D. Cal. May 16, 2007).

Collateral Analytics' false-advertising claim is also not preempted by the CUTSA because the claim is not limited to allegations that are based on misappropriation of trade secrets, as Defendants incorrectly state. *See* ECF No. 27 at 10. As set forth in Count 9 of the Complaint: "Quantarium's false advertising under California Business & Professions Code § 17500 *et seq*. includes at least its intentional

and false promotion of its ability to deliver the same or better quality AVMs relative to Plaintiff and its intentional and false promotion of its experience and achievements in developing AVM products to Nationstar and Xome." ECF No. 1 ¶ 150; *see also id.* ¶¶ 42–43, 83 (setting forth allegations of Quantarium's misrepresentations in additional detail). That is, the alleged falsehoods include Quantarium's misrepresentation that it had achieved certain metrics of success and was qualified to replace Collateral Analytics for Nationstar's and Xome's business needs. Collateral Analytics' false-advertising claim is therefore based on the harm of competing with a dishonest competitor for Nationstar's and Xome's business, and not the solely competitor's acts of misappropriation. The claim is therefore not preempted.

C. Comprehensive Computer Data Access And Fraud Act (Count 11)

The Comprehensive Computer Data Access and Fraud Act, Cal. Penal Code § 502, is not a trade-secret misappropriation statute; rather, "[s]ection 502 is an anti-hacking statute intended to prohibit the unauthorized use of any computer system for improper or illegitimate purpose." *Regents of the Univ. of Cal. v. Aisen*, No. 15-CV-1766-BEN (BLM), 2016 WL 4097072, at *7 (S.D. Cal. Apr. 18, 2016) (quotation omitted); *see also Farmers Ins. Exch. v. Steele Ins. Agency, Inc.*, No. 2:13-CV-00784-MCE-DAD, 2013 WL 3872950, at *11 (E.D. Cal. July 25, 2013) (noting that the federal counterpart to section 502, the Computer Fraud and Abuse Act, "is an 'anti-hacking' statute and not a misappropriation statute"). Thus, the CUTSA generally does not preempt claims under section 502. *Aisen*, 2016 WL 4097072, at *8. This is particularly true here, where Collateral Analytics alleges liability based not solely on the unauthorized ***taking of data***, but also based on the unauthorized ***trafficking in protected computer credentials***, the unauthorized ***execution of a scheme to defraud***, and the unauthorized ***use of computer services***. ECF No. 1 ¶¶ 166, 167, 170, 171.

Although at least one court has concluded that a claim under section 502 may be preempted by the CUTSA, the allegations were distinguishable from those at issue here. In *Henry Schein, Inc. v. Cook*, No. 16-CV-03166-JST, 2017 WL 783617, at *5 (N.D. Cal. Mar. 1, 2017), the plaintiff alleged a violation of the Comprehensive Computer Data Access and Fraud Act based on section 502(c)(2) only, which prohibits unauthorized acts of taking, copying, or making use of data. The court concluded that the claim under section 502(c)(2) was preempted because it relied on the same facts as the misappropriation claim,

namely unauthorized copying and making use of the trade-secret data. *Id.* Here, by contrast, Collateral Analytics has also alleged violations of subsections (c)(1), (c)(3), (c)(6), (c)(7), and (c)(13)—none of which require or relate to the taking of information. ECF No. 1 ¶¶ 166, 167, 170, 171. Accordingly, Defendants' motion to dismiss Count 11 based on CUTSA preemption should be denied.

VIII. DEFENDANTS HAVE CONSENTED TO CALIFORNIA LAW BY STIPULATION AND CONTRACT

Defendants move to dismiss Counts 9 and 11, which raise California false advertising and computer fraud claims, on the basis that Defendants are not subject to California law. They are wrong.

Defendants waived their objection to California law by stipulation. In particular, prior to filing the Complaint, Collateral Analytics, Nationstar, Xome, and Quantarium together executed an agreement in which all parties agreed that any state law claims arising from their dispute would be brought pursuant to California law, without regard to conflict-of-law principles. Roberts Decl. Ex. 2 (Sept. 15, 2017 Stipulation) (hereinafter, the "Stipulation"). Specifically, the parties consented to personal jurisdiction in the state of California, agreed to venue in the Northern District of California, and agreed that all state law claims "related to" their dispute would be brought pursuant to California law, without regard to conflict-of-law principles. *Id.*; *see also* ECF No. 1 ¶¶ 9, 10 (alleging Defendants' consent to jurisdiction and venue pursuant to the parties' agreement dated September 15, 2017).[7] By entering into the Stipulation, Defendants waived any objection to the applicability of California law as to any claims "related to" their dispute. *See Lynch v. Cal. Coastal Comm'n*, 3 Cal. 5th 470, 475 (2017), *reh'g denied* (Aug. 9, 2017) (under California law, "waiver means the intentional relinquishment or abandonment of a known right" that "requires an existing right, the waiving party's knowledge of that right, and the party's actual

[7] The Court may consider documents that are central to the claims of a pleading during a motion to dismiss if the document is incorporated by reference in the complaint and no party disputes its authenticity. *Sanders v. Brown*, 504 F.3d 903, 910 (9th Cir. 2007) ("Review is generally limited to the contents of the complaint, but a court can consider a document on which the complaint relies if the document is central to the plaintiff's claim, and no party questions the authenticity of the document."). Collateral Analytics expressly referenced the Stipulation in the Complaint. *See also* ECF No. 1 ¶¶ 9, 10 (alleging Defendants' consent to jurisdiction and venue pursuant to the parties' agreement dated September 15, 2017). Defendants do not dispute the authenticity of the Stipulation. Roberts Decl. Ex. 3.

intention to relinquish the right" (internal citations and quotation marks omitted)).[8]

The Stipulation defined "the Dispute" broadly as "a business dispute regarding Collateral Analytics' trade secrets and confidential information" and provided, in relevant part:

> The Parties agree that all state law claims related only to the Dispute will be governed by and construed in accordance with the laws of the State of California, without regard to the principles of conflicts of laws thereof, including, but not limited to, any breach of contract claims brought pursuant to either of the Agreements.

Roberts Decl. Ex. 2 ¶ 2.

Counts 9 and 11 are clearly "related to" the dispute. *See Schoenduve Corp. v. Lucent Techs., Inc.*, 442 F.3d 727, 732 (9th Cir. 2006) (finding that arbitration clause with "relating to or arising out of" language is broad enough to cover extra-contractual claims); *Nedlloyd Lines B.V. v. Sup. Ct.*, 3 Cal. 4th 459, 470 (1992) ("[A] valid choice-of-law clause, which provides that a specified body of law 'governs' the 'agreement' between the parties, encompasses all causes of action arising from or related to that agreement . . . including tortious breaches of duties emanating from the agreement or the legal relationships it creates."). In particular, Collateral Analytics' claim for false advertising under California Business and Professions Code § 17500 in Count 9 is "related to" the "business dispute concerning Collateral Analytics' trade secrets and confidential information" because it is based in part—though by no means exclusively (*see* Section IV(B))—on an allegation that Quantarium falsely claimed it developed its AVM and achieved its independent-testing results without reference to Collateral Analytics' trade secrets and confidential information. ECF No. 1 ¶¶ 41–44, 83. Likewise, Collateral Analytics' claim for Defendants' violation of Comprehensive Computer Data Access And Fraud Act under Count 11 is "related to . . . the Dispute" because Collateral Analytics alleges that Quantarium stole Collateral Analytics' trade secrets and confidential information—in part—through acts of computer fraud. *Id.* ¶ 168.

The Court should also note that the Nationstar MSA provides for the application of California substantive law, without regard to conflict-of-law principles. The Nationstar MSA is the principal

[8] After Defendants filed their motion to dismiss, Collateral Analytics brought the Stipulation regarding California law to their attention, asking Defendants to withdraw Section V in light of it. Roberts Decl. Ex. 3. Defendants would not agree to withdraw this section of the motion or explain why they thought they should not have to. *Id.*

contract governing Collateral Analytics' business relationship with Nationstar, which is in turn the ultimate corporate parent of Xome and Quantarium. Section 14.7 of that contract—which Defendants filed at ECF No. 31-04—provides that:

> This Agreement shall be governed by and construed in accordance with the internal laws of the State of California, without regard to the principles of conflicts of law thereof.

A provision such as this authorizes the application of California law with respect to Collateral Analytics' contract causes of action ***and*** the related tort causes of action. *Nedlloyd*, 3 Cal 4th at 489–90 (contractual choice-of-law provision providing that "[t]his Agreement shall be governed by and construed in accordance with Hong Kong law" governed both contractual and tort claims).

IX. CONCLUSION

For these reasons, Defendants' motion to dismiss Counts 1 through 9 and Count 11 of Collateral Analytics' Complaint should be denied in its entirety.

Dated: March 19, 2018

DURIE TANGRI LLP

By: */s/ Clement S. Roberts*
CLEMENT S. ROBERTS

Attorney for Plaintiff
COLLATERAL ANALYTICS, LLC

CERTIFICATE OF SERVICE

I hereby certify that on March 19, 2018 the within document was filed with the Clerk of the Court using CM/ECF which will send notification of such filing to the attorneys of record in this case.

/s/ Clement S. Roberts
CLEMENT S. ROBERTS