

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

SEATTLE SPERM BANK, LLC,

Plaintiff,

v.

CRYOBANK AMERICA, LLC;  
MICHAEL BLAINE; and SANJAY  
KUMAR,

Defendants.

CASE NO. C17-1487 RAJ

ORDER

**I. INTRODUCTION**

This matter comes before the Court on Defendants' Motion to Dismiss. Dkt. # 21. Plaintiff Seattle Sperm Bank, LLC opposes the Motion. Dkt. # 24. For the reasons set forth below, the Court **GRANTS in part and DENIES in part** Defendants' Motion.

**II. BACKGROUND**

The following is taken from Plaintiff's Complaint, which is assumed to be true for the purposes of this motion to dismiss. *Sanders v. Brown*, 504 F.3d 903, 910 (9th Cir.

1 | 2007); *see also Dole Food Co. v. Watts*, 303 F.3d 1104, 1107 (9th Cir.2002) (holding that  
2 | in the context of a Rule 12(b)(2) motion for lack of personal jurisdiction, the court is to  
3 | take as true the allegations of the non-moving party and resolve all factual disputes in its  
4 | favor); *Murphy v. Schneider Nat'l, Inc.*, 362 F.3d 1133, 1139 (9th Cir. 2004) (holding that  
5 | in the context of a 12(b)(3) motion the trial court must draw all reasonable inferences in  
6 | favor of the non-moving party and resolve all factual conflicts in favor of the non-moving  
7 | party).

8 | Plaintiff is a limited liability company organized under the laws of the state of  
9 | Washington with its principal place of business in Seattle, Washington. Dkt. # 1 at ¶ 1.  
10 | Plaintiff also operates in Phoenix, Arizona. *Id.* Defendant Cryobank America, LLC  
11 | (“Cryobank”) is a Texas limited liability company with its principal place of business in  
12 | Arlington, Texas. *Id.* at ¶ 2. Defendant Michael Blaine and Defendant Sanjay Kumar are  
13 | residents of Arlington, Texas and former employees of Plaintiff. *Id.* at ¶¶ 3, 4. Plaintiff  
14 | is a sperm bank that also employs a human-tissue and genetic panel screening process.  
15 | *Id.* at ¶ 8. As a sperm bank, Plaintiff is required to comply with U.S. Food and Drug  
16 | Administration (“FDA”) rules and regulations for the operation of a sperm donor and  
17 | cryobank business. *See* 21 C.F.R. § 1271. Pursuant to 21 C.F.R. § 1271.180, a sperm  
18 | donor business must keep and maintain a list of Standard Operating Procedures (“SOP”).  
19 | *Id.* at ¶ 9. Plaintiff is required to prepare over 50 SOP’s with over 100 regulated forms  
20 | that must be reviewed and updated on a regular basis. *Id.*

21 | Plaintiff’s business operations expanded to Phoenix, Arizona in April of 2015. *Id.*  
22 | at ¶ 12. Plaintiff hired Defendants Blaine and Kumar to work in their Phoenix, Arizona  
23 | facility. Blaine was hired in May of 2015 as Lead Biological Analyst and Kumar was  
24 | hired in June of 2015 as a Biological Analyst. *Id.* at ¶ 13. Blaine and Kumar both signed  
25 | an acknowledgment that that they received and reviewed Plaintiff’s Employee Handbook  
26 | after they were hired. *Id.* Both Defendants were tasked with managing the Phoenix  
27 | facility’s laboratory, equipment calibration, test result analysis, genetic reviews, and

1 adherence to FDA guidelines for tissue banking. *Id.* They also had access to Plaintiff's  
2 network and file servers. *Id.* at ¶ 14.

3 On September 19, 2015, Kumar registered for the web domain name:  
4 CryobankAmerica.com. *Id.* at ¶ 16. In March of 2016, Kumar and Blaine obtained a  
5 business license with the Texas Secretary of State to operate Cryobank. Kumar is  
6 identified as "CEO and Co-Owner" and Blaine is identified as "CFO and Co-Owner." *Id.*  
7 In December of 2016 and April of 2017, Kumar purchased two cryo-storage tanks from  
8 Plaintiff through his father-in-law. *Id.* On April 20, 2017, Blaine provided written notice  
9 of resignation to Plaintiff. *Id.* at ¶ 17. Blaine stated that he was leaving his employment  
10 with Plaintiff because his wife was graduating from medical school and received a  
11 residency in Texas. *Id.* On that same day, Kumar also provided written notice of  
12 resignation to Plaintiff. *Id.* at ¶ 18. Kumar stated that he was resigning because he  
13 received "an offer as a manager at a biotech company." *Id.* Following their departure,  
14 Plaintiff engaged in an audit of its computer systems and discovered that between  
15 December 15, 2016 and May 2, 2017, Kumar and Blaine copied 10 folders onto a  
16 removable hard drive. *Id.* at ¶ 20. The folders contained more than 1,500 documents,  
17 including 67 SOP documents and 149 forms. *Id.* These materials were housed on a  
18 server in Seattle, Washington. *Id.* at ¶ 21.

19 On October 2, 2017, Plaintiff filed a complaint alleging that Defendants violated  
20 the Defend Trade Secrets Act, 18 U.S.C. 1836, *et seq.* ("DTSA") and the Washington  
21 Uniform Trade Secrets Act, RCW Ch. 19.108 ("UTSA"). Plaintiff also alleges state law  
22 unfair competition and breach of fiduciary duty claims. Dkt. # 1. Defendants filed this  
23 Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(2), 12(b)(3), and  
24 12(b)(6). Alternatively, Defendants request transfer of this case to the Northern District  
25 of Texas. Dkt. # 21.

### 26 **III. DISCUSSION**

#### 27 **A. Personal Jurisdiction**

1 Plaintiff has the burden of establishing personal jurisdiction. *Ziegler v. Indian*  
2 *River County*, 64 F.3d 470, 473 (9th Cir. 1995). “It is well established that where the  
3 district court relies solely on affidavits and discovery materials, the plaintiff need only  
4 establish a *prima facie* case of jurisdiction.” *Rano v. Sipa Press, Inc.*, 987 F.2d 580, 587  
5 n.3 (9th Cir. 1993). “Federal courts apply state law to determine the bounds of their  
6 jurisdiction over a party.” *Williams v. Yamaha Motor Co.*, 851 F.3d 1015, 1020 (9th Cir.  
7 2017) (citing Fed. R. Civ. P. 4(k)(1)(A)). Washington’s long-arm statute, RCW  
8 4.28.185, “extends jurisdiction to the limit of federal due process.” *Shute v. Carnival*  
9 *Cruise Lines*, 113 Wn. 2d 763, 771, 783 P.2d 78 (1989). The due process clause grants  
10 the court jurisdiction over defendants who have “certain minimum contacts . . . such that  
11 maintenance of the suit does not offend ‘traditional notions of fair play and substantial  
12 justice.’” *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

13 Personal jurisdiction can be found on either of two theories: general jurisdiction  
14 and specific jurisdiction. *Bancroft & Masters, Inc. v. Augusta Nat’l Inc.*, 223 F.3d 1082,  
15 1086 (9th Cir. 2000). A defendant with “substantial” or “continuous and systematic”  
16 contacts with the forum state is subject to general jurisdiction. *Id.* “The inquiry whether  
17 a forum State may assert specific jurisdiction over a nonresident defendant focuses on the  
18 relationship among the defendant, the forum, and the litigation.” *Axiom Foods, Inc. v.*  
19 *Acerchem Int’l, Inc.*, 874 F.3d 1064, 1068 (9th Cir. 2017) (internal quotations omitted).  
20 As Plaintiff does not assert that Defendants are subject to general jurisdiction, the Court  
21 will consider whether Defendants are subject to specific jurisdiction.

22 The court applies a three-part test to determine whether the exercise of specific  
23 jurisdiction over a non-resident defendant is appropriate: (1) the defendant has either  
24 purposefully directed his activities toward the forum or purposely availed himself of the  
25 privileges of conducting activities in the forum, (2) the plaintiff’s claims arise out of the  
26 defendant’s forum-related activities, and (3) exercise of jurisdiction is reasonable. *Axiom*  
27 *Foods, Inc. v. Acerchem Int’l, Inc.*, 874 F.3d 1064, 1068 (9th Cir. 2017). Plaintiff bears

1 the burden of satisfying the first two prongs. *Schwarzenegger v. Fred Martin Motor Co.*,  
2 374 F.3d 797, 802 (9th Cir. 2004). The burden then shifts to defendant to make a  
3 “compelling case” that the exercise of jurisdiction would not be reasonable. *Id.*

4 *a. Purposeful Direction*

5 Where, as here, a case sounds in tort, the Ninth Circuit employs the purposeful  
6 direction test. *Axiom Foods, Inc. v. Acerchem Int'l, Inc.*, 874 F.3d 1064, 1069 (9th Cir.  
7 2017). The test derives from the *Calder* effects test, which examines whether the  
8 defendant (1) committed an intentional act, (2) expressly aimed at the forum state, (3)  
9 causing harm that the defendant knows is likely to be suffered in the forum state. *Id.*  
10 (citing *Calder v. Jones*, 465 U.S. 783 (1984)). It is undisputed that Kumar and Blaine  
11 copied documents from Plaintiff’s server onto a flash drive and “walked out with them.”  
12 Dkt. # 50 at ¶ 51. As this is an intentional act, the first prong is satisfied. Plaintiff must  
13 next demonstrate that Defendants expressly aimed their intentional acts at the forum. The  
14 express aiming requirement is not satisfied by a defendant’s knowledge of the plaintiff’s  
15 forum connections and the foreseeable harm the plaintiff suffered in that forum. *Axiom*  
16 *Foods Inc.*, 874 F.3d at 1069. Instead, the analysis focuses on the defendant’s own  
17 contacts with the forum. *Id.* at 1070. In this case, Plaintiff alleges that Defendants  
18 misappropriated its trade secrets in order to use them in the creation of a competing  
19 business in Texas. Although Kumar and Blaine spent a limited amount of time  
20 physically in Washington, physical presence is not a jurisdictional prerequisite.  
21 Defendants worked for a company whose principal place of business is in Seattle,  
22 Washington, a fact that they had knowledge of, as Defendants attest that Blaine  
23 interviewed for his job there and Kumar had his initial training there. Dkt. # 22. Kumar  
24 and Blaine downloaded the allegedly misappropriated information from servers located in  
25 Seattle, Washington. Not only is Plaintiff headquartered in Seattle, but Defendants’  
26 actions allegedly caused harm likely to be suffered in Washington. Plaintiff alleges that  
27 it operates in Washington and in Arizona, therefore the harm to Plaintiff would likely be

1 suffered in either of those states. “[I]n appropriate circumstances a corporation can suffer  
2 economic harm both where the bad acts occurred and where the corporation has its  
3 principal place of business.” *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218,  
4 1231 (9th Cir. 2011) (internal quotations omitted). While Defendants were not in  
5 Washington when they allegedly accessed Plaintiff’s server, they allegedly  
6 misappropriated trade secrets from a Washington company, while knowingly working for  
7 a Washington-based company, from a server located in Washington; all of which leads to  
8 the assumption that Defendants knew that Plaintiff would likely suffer harm in  
9 Washington.

10 *b. Arising Out Of*

11 The Ninth Circuit has adopted a “but for” analysis to determine whether the claims  
12 at issue arose from a defendant’s forum-related conduct. *Menken v. Emm*, 503 F.3d  
13 1050, 1058 (9th Cir. 2007). Plaintiff’s claims arise out of Defendants’ actions,  
14 specifically, Defendants’ alleged copying of over 1,500 documents from Plaintiff’s  
15 servers in Washington. Defendants do not dispute that documents were copied, but  
16 instead argue that it is possible that Defendants could have copied paper versions of the  
17 documents on site in Arizona, therefore Plaintiff’s claims could have arisen from conduct  
18 that did not occur in Washington<sup>1</sup>. Dkt. # 5. This argument is nonsensical and its  
19 premise is unsubstantiated. Defendants do not make any allegations to support this  
20 possibility nor do they assert that this is what they actually did. Further, they do not deny  
21 that they copied the documents at issue.

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25 <sup>1</sup> Plaintiff requests that the Court strike the new “facts” and arguments raised in  
26 Defendants’ Reply. Defendants do not contend that they copied paper versions of the  
27 documents, but instead argue that they *could* have. These particular arguments at issue are not  
new. They were raised in response to arguments made by Plaintiff. The Court declines  
Plaintiff’s request.

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2 *c. Exercise of Jurisdiction is Reasonable*

3 As Plaintiff has satisfied the first two prongs required to establish specific  
4 jurisdiction, the burden shifts to Defendants to make a “compelling case” that exercise of  
5 jurisdiction is not reasonable. *Schwarzenegger*, 374 F.3d at 802. There are seven factors  
6 a court must consider when determining whether exercise of jurisdiction is reasonable:  
7 “(1) the extent of the defendants' purposeful interjection into the forum state's affairs; (2)  
8 the burden on the defendant of defending in the forum; (3) the extent of conflict with the  
9 sovereignty of the defendants' state; (4) the forum state's interest in adjudicating the  
10 dispute; (5) the most efficient judicial resolution of the controversy; (6) the importance of  
11 the forum to the plaintiff's interest in convenient and effective relief; and (7) the existence  
12 of an alternative forum.” *CE Distribution, LLC v. New Sensor Corp.*, 380 F.3d 1107,  
13 1112 (9th Cir. 2004).

14 Defendants present no argument regarding this aspect of the specific jurisdiction  
15 analysis in their Motion. While Defendants make a cursory argument that exercise of this  
16 jurisdiction would be inconvenient in their Reply, “a movant may not raise new facts or  
17 arguments in his reply brief.” *United States v. Puerta*, 982 F.2d 1297, 1300 n.1 (9th Cir.  
18 1992). Therefore, Defendants’ new arguments will not be considered for the purposes of  
19 evaluating whether they are subject to specific jurisdiction. Defendants have not made a  
20 “compelling case” that this Court’s jurisdiction would not be reasonable. Therefore,  
21 Plaintiff has met its burden to establish a *prima facie* case that this Court has jurisdiction  
22 over Defendants<sup>2</sup>.

23 **B. Failure to State a Claim**

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25 <sup>2</sup> Defendants also argue that Plaintiff’s case should be dismissed because Plaintiff fails to  
26 plead damages sufficient to establish diversity jurisdiction. As Plaintiff asserts federal question  
27 jurisdiction pursuant to its DTSA claim and, as noted below, has sufficiently pled that claim, the  
Court need not consider that argument here.

1 Fed. R. Civ. P. 12(b)(6) permits a court to dismiss a complaint for failure to state a  
2 claim. The rule requires the court to assume the truth of the complaint's factual  
3 allegations and credit all reasonable inferences arising from those allegations. *Sanders v.*  
4 *Brown*, 504 F.3d 903, 910 (9th Cir. 2007). A court "need not accept as true conclusory  
5 allegations that are contradicted by documents referred to in the complaint." *Manzarek v.*  
6 *St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). The plaintiff must  
7 point to factual allegations that "state a claim to relief that is plausible on its face." *Bell*  
8 *Atl. Corp. v. Twombly*, 550 U.S. 544, 568 (2007). If the plaintiff succeeds, the complaint  
9 avoids dismissal if there is "any set of facts consistent with the allegations in the  
10 complaint" that would entitle the plaintiff to relief. *Id.* at 563; *Ashcroft v. Iqbal*, 556 U.S.  
11 662, 679 (2009).

12 A court typically cannot consider evidence beyond the four corners of the  
13 complaint, although it may rely on a document to which the complaint refers if the  
14 document is central to the party's claims and its authenticity is not in question. *Marder v.*  
15 *Lopez*, 450 F.3d 445, 448 (9th Cir. 2006). A court may also consider evidence subject to  
16 judicial notice. *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003).

17 *a. Defend Trade Secrets Act Claims*

18 Under the DTSA, "[a]n owner of a trade secret that is misappropriated may bring a  
19 civil action . . . if the trade secret is related to a product or service used in, or intended for  
20 use in, interstate or foreign commerce." 18 U.S.C. § 1836(b)(1). A trade secret is  
21 defined as:

22 all forms and types of financial, business, scientific, technical, economic, or  
23 engineering information, including patterns, plans, compilations, program  
24 devices, formulas, designs, prototypes, methods, techniques, processes,  
25 procedures, programs, or codes, whether tangible or intangible, and  
26 whether or how stored, compiled, or memorialized physically,  
electronically, graphically, photographically, or in writing if—

27 (A) the owner has taken reasonable measures to keep such information

1 secret; and

2 (B) the information derives independent economic value, actual or  
3 potential, from not being generally known to, and not being readily  
4 ascertainable through proper means by, another person who can obtain  
5 economic value from the disclosure or use of the information.

6 18 U.S.C. § 1839(3)(A)(B). “Misappropriation” includes both acquisition and disclosure  
7 of trade secrets. 18 U.S.C. §§ 1839(5)(A) & (B). Defendants argue that the Complaint  
8 fails to state a DTSA claim because Plaintiff does not allege what “reasonable measures”  
9 it took to keep the information at issue secret. Plaintiff alleges that it took “precautions to  
10 prevent the misuse of its confidential information, including its SOP’s.” Dkt. # 1 at ¶ 11.  
11 Plaintiff further alleges that all of its employees are required to verify receipt and review  
12 of an employee handbook by signature. *Id.* The employee handbook contains the  
13 following provisions:

14 Confidential and proprietary information concerning Seattle Sperm Bank’s  
15 business, or clients/customers which is not generally available to the public,  
16 must not be disclosed to anyone outside the Company, either during  
17 employment or after termination.

18 Such confidential and proprietary information includes, but is not limited  
19 to, the Company’s trade secrets, method of conducting or obtaining  
20 business, business or operating plans, finances and financial information  
21 . . . technical know-how . . . or any other information or confidences  
22 relating to the Company.

23 You may not disclose this information or use this confidential information  
24 to further your personal interest or that of any person or entity other than  
25 the Company.

26 *Id.* Plaintiff also alleges that access to Plaintiff’s network and file servers was limited to  
27 certain employees that played “important roles.” *Id.* at ¶ 14. The Ninth Circuit has found  
that “reasonable efforts” include advising employees of the existence of a trade secret,  
limiting access to a trade secret, and controlling access to the trade secret. *See Buffets,*

1 *Inc. v. Klinke*, 73 F.3d 965, 969 (9th Cir. 1996). Plaintiff's allegations that it limited full  
2 access to the network and file servers to employees with specific roles and asked  
3 employees to keep Plaintiff's "trade secrets, method of conducting or obtaining business,  
4 business or operating plans" confidential are sufficient to support Plaintiff's contention  
5 that it took reasonable measures to keep the information at issue secret.

6 Plaintiff also alleges Defendants gained a competitive advantage in the industry  
7 because the development of the required SOP's represents a large initial investment on  
8 the part of a company. Dkt. # 1 at ¶¶ 9, 10. Plaintiff further alleges that its competitors  
9 and other new industry entrants would find these SOP's valuable if they were shared. *Id.*  
10 As any new company in Plaintiff's industry would need to either obtain or develop its  
11 own SOP's in order to be in compliance with federal regulation, a possible shortcut into  
12 that process has economic value. Plaintiff has sufficiently alleged that the information at  
13 issue derives its economic value from not being generally known to other companies in  
14 the industry. Assuming the truth of Plaintiff's factual allegations, Plaintiff sufficiently  
15 states a claim pursuant to the DTSA.

16 *b. Washington Uniform Trade Secrets Act Claims*

17 Washington's Uniform Trade Secrets Act ("UTSA"), RCW 19.108.030(1),  
18 provides a "complainant may recover damages for the actual loss caused by  
19 misappropriation" of trade secrets. UTSA defines "trade secret" as:

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21 ... information, including a formula, pattern, compilation, program,  
22 device, method, technique, or process that:

23 (a) Derives independent economic value, actual or potential, from not being  
24 generally known to, and not being readily ascertainable by proper means  
25 by, other persons who can obtain economic value from its disclosure or  
26 use; and

27 (b) Is the subject of efforts that are reasonable under the circumstances to  
maintain its secrecy.

1 RCW 19.18.010(4). As noted above, Plaintiff has sufficiently alleged that the  
2 information at issue derives its economic value from not being generally known to others  
3 in the industry and that it took reasonable efforts to maintain its secrecy.

4         However, Defendants argue that under Washington law, an employee that has not  
5 signed a non-compete agreement can use “general knowledge, skills, and experience  
6 acquired under his former employer” to engage in competitive employment as long as  
7 that information is not a trade secret acquired in the course of previous employment, and  
8 he is not using that trade secret to the detriment of the former employer. Dkt. # 21 at 11;  
9 *see also Ed Nowogroski Ins., Inc. v. Rucker*, 137 Wash. 2d 427, 450, 971 P.2d 936, 948  
10 (1999). Defendants argue that they are not in violation of UTSA because they did not  
11 sign a non-compete agreement and are not generally competing against Plaintiff due to  
12 their location in Texas. Accepting Defendants’ argument is to accept their contention  
13 that the information they acquired is not a trade secret. Whether or not Defendants  
14 signed a non-compete or are now competing with Plaintiff is irrelevant unless they first  
15 establish that threshold issue.

16         Defendants argue that the information at issue is not a trade secret because it was  
17 commercially available from many sources. Defendants submit an exhibit that they  
18 contend is a price quote for the value of the standard operating procedures at issue in this  
19 case. Dkt. # 22 Ex. A. The document submitted by Defendants is not a document that is  
20 central to Plaintiff’s claims, the authenticity of which is not in question. Defendants also  
21 did not request that the Court take judicial notice of this exhibit. Therefore, the Court  
22 will not consider this exhibit for the purposes of this Motion. Whether the SOP’s at issue  
23 are readily commercially available, or whether Plaintiff invested considerable time,  
24 money, and resources in developing SOP’s specific to its company, are all questions that  
25 would be inappropriate to consider at this stage in these proceedings. Plaintiff need only  
26 state a claim to relief that is plausible on its face to defeat a motion to dismiss.

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1 Defendants provide no other persuasive argument that Plaintiff fails to state a claim under  
2 UTSA<sup>3</sup>.

3 *c. Unfair Competition Claims*

4 Defendants argue that Plaintiff's unfair competition claim should be dismissed as  
5 vague because it does not provide the legal basis on which Plaintiff makes its claim.  
6 Federal Rule of Civil Procedure 8(a) states that "[a] pleading which sets forth a claim for  
7 relief ... shall contain ... a short and plain statement of the claim showing that the pleader  
8 is entitled to relief." Fed. R. Civ. P. 8. To comply with Rule 8, Plaintiffs must plead a  
9 short and plain statement of the elements of their claims, identifying the transaction or  
10 occurrence giving rise to the claim and the elements of the prima facie case. *Bautista v.*  
11 *Los Angeles Cty.*, 216 F.3d 837, 840 (9th Cir. 2000). The Court finds that Plaintiff's  
12 Complaint does not comply with the requirements of Rule 8 with regards to its unfair  
13 competition claim. Plaintiff merely states that Kumar and Blaine breached their fiduciary  
14 duties to Plaintiff and "engaged in and continue to engage in unfair competition against  
15 Plaintiff." Plaintiff incorporates all of its prior allegations into its unfair competition  
16 claim but does not sufficiently allege how Defendants engaged in or are engaging in  
17 "unfair competition." Plaintiff's Response to Defendants' Motion similarly provides no  
18 further explanation, simply stating that Kumar and Blaine accepted salary from Plaintiff  
19 while "conspiring to compete". The Complaint does not provide "fair notice of what . . .  
20 the claim is and the ground upon which it rests." *Johnson v. Riverside Healthcare Sys.,*  
21 *LP*, 534 F.3d 1116, 1122 (9th Cir. 2008). Defendant's Motion is **GRANTED** as to  
22 Plaintiff's unfair competition claim.

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25 <sup>3</sup> Defendants contend that Plaintiff's UTSA claim fails because "no improper means were  
26 used to acquire the alleged secrets," but provide no details or further explanation to support this  
27 contention. The Court cannot presume to know the substance of Defendants' argument where  
none is provided. This argument will not be considered for the purposes of this Motion.

### 1 C. Venue

2 The district court has discretion to adjudicate motions to transfer according to an  
3 individualized case-by-case consideration of convenience and fairness under 28 U.S.C. §  
4 1404(b). *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498 (9th Cir. 2000). Section  
5 1404(a) requires that (1) the district to which defendant seeks to have the action  
6 transferred is one in which the action might have been brought, and (2) the transfer be for  
7 the convenience of the parties and witnesses and in the interest of justice. 28 U.S.C. §  
8 1404(a). The court may weigh the following factors in its determination whether transfer  
9 is appropriate in a particular case: “(1) the location where the relevant agreements were  
10 negotiated and executed, (2) the state that is most familiar with the governing law, (3) the  
11 plaintiff's choice of forum, (4) the respective parties’ contacts with the forum, (5) the  
12 contacts relating to the plaintiff's cause of action in the chosen forum, (6) the differences  
13 in the costs of litigation in the two forums, (7) the availability of compulsory process to  
14 compel attendance of unwilling non-party witnesses, and (8) the ease of access to sources  
15 of proof.” *Jones*, 211 F.3d at 498–99. “The defendant must make a strong showing of  
16 inconvenience to warrant upsetting the plaintiff's choice of forum.” *Decker Coal Co. v.*  
17 *Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986).

18 Defendants argue that venue is improper in Washington because none of the  
19 Defendants or Defendants’ witnesses reside in Washington and Plaintiff has not  
20 established that a substantial part of the alleged events giving rise to this matter occurred  
21 in this District. Defendants argue that this case should be transferred to the Northern  
22 District of Texas but provides no argument that this case could have been brought in that  
23 District, or that the transfer would be for the convenience of *both* parties and in the  
24 interest of justice. Plaintiff is a resident of Washington and is incorporated under the  
25 laws of Washington. Plaintiff’s headquarters are in Seattle, Washington. The events that  
26 gave rise to this matter occurred in part, in Washington. This Court would also be most  
27 familiar with the governing law, as Plaintiff brings most of its claims under Washington

1 state law. Defendants fail to make the strong showing of inconvenience required to  
2 overrule Plaintiff's choice of forum. Therefore, Defendants' Motion to Transfer is  
3 **DENIED.**

4 **IV. CONCLUSION**

5 For the foregoing reasons, the Court **GRANTS** Defendants' Motion to Dismiss  
6 with respect to Plaintiff's unfair competition claim and **DENIES** Defendants' Motion  
7 with respect to Plaintiff's DTSA and UTSA claims. Defendants' Motion to Transfer is  
8 **DENIED.** Dkt. # 21.

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10 Dated this 9th day of August, 2018.

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14 The Honorable Richard A. Jones  
15 United States District Judge  
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