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by SA'ID VAKILI and ROBERT M. ZABB

SECRET PREEMPTION

Silvaco ignores principles of statutory interpretation and California trade secret law

TRADE SECRET LAW is rooted in state law, so original jurisdiction in trade secret claims is generally reserved to state courts, while federal trade secret claims arise with supplemental or diversity jurisdiction.[1] Uneven development of trade secret misappropriation law among states, however, led to the introduction of the 1979 model Uniform Trade Secrets Act (UTSA),[2] which was drafted to provide "a legal framework for improved trade secret protection." California codified its version of the UTSA as the California Uniform Trade Secrets Act (CUTSA).[3]

The UTSA defines "trade secret" broadly and contains a preemption clause intended to preempt duplicative trade secret claims made under common law.[4] The preemption clause, however, was clearly not intended to render the CUTSA "a comprehensive statement of civil remedies."[5] When codifying the UTSA in 1984, the California Legislature purposely deleted the UTSA's preemption clause with the objective of extending protection to commercially valuable information that does not qualify as a trade secret under the UTSA's definition.[6]

The lack of a preemption clause in the CUTSA, however, has led courts to look to the act's two savings clauses in order to infer what preemption the CUTSA may allow. Courts appear to overlook, however, that although the CUTSA includes the UTSA's savings clauses verbatim,[7] it does so not to limit preemption but as a protection against preemption. In 2012, a court in the Northern District of California acknowledged the discordance in California case law as "to whether the CUTSA's savings clause applies only to claims that allege misappropriation of trade secrets, or whether it also applies to other common law claims alleging misappropriation of confidential information that does not enjoy trade secret protection."[8]

Case law offers differing views as to the extent to which the CUTSA[9] preempts other claims. One view is that the CUTSA can be read to preempt common law trade secret claims while preserving other causes of action.

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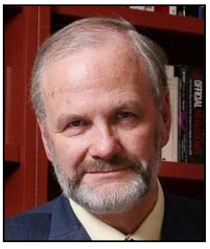

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A second is that the statute can be read as preempting non-trade secret common law claims that are based on the same facts as trade secret claims, but only if the CUTSA definition of "trade secret" is met. This second view preserves actionability under the CUTSA or common law. A third view, found in *Silvaco Data Systems v. Intel Corporation,* is that the CUTSA preempts broadly.[10]

Silvaco

In *Silvaco*, a software company sued a manufacturer of integrated circuits, alleging misappropriation of trade secrets. The defendant, Intel, prevailed on summary judgment. The trial court found, and the appellate court affirmed, that the CUTSA claim against Intel was fallacious because Intel merely purchased and used software that utilized source code that the plaintiff's former employees had stolen and that Intel never possessed or had access to the source code itself. The plaintiff's claims that were not actionable under the CUTSA were dismissed on preemption grounds at the pleading stage. *Silvaco* discusses the preemption issue and reaches the conclusion that there can be no property rights for otherwise commercially valuable information that does meet the CUTSA's definition of a trade secret. The court specified that the CUTSA claims preempt "the field," so if a claim is based on intellectual property that is conceptually a trade secret but does not meet the CUTSA's definition, the claim is not actionable.

The reasoning of *Silvaco* is puzzling. Its reading of the CUTSA's savings clauses overlooks a far simpler one—namely, that the CUTSA preempts trade secrets claims under common law but preserves other intellectual property rights. Unfortunately, this commonly accepted interpretation predating *Silvaco* has been shunted aside. *Silvaco*'s radical decision has shifted the terms of debate from whether or not the CUTSA granted preemption of non-trade secret claims (such as conversion) to whether claims are preempted for anything that could be conceptually categorized as a trade secret.

An alternative reading of the CUTSA upholds uniformity of result while preserving a much broader scope of intellectual property rights. The CUTSA preemption applies only if the CUTSA definition of "trade secret" is found to apply to the intellectual property in question. Under this approach, even if common law claims are preempted, an injured party could maintain an actionable claim, either under CUTSA or under pre-CUTSA common law. *Silvaco* ignores the California Legislature's purposeful deletion of the preemption clause from the UTSA. *Silvaco* has led courts to shift the debate from whether non-trade secret common law claims are preempted to whether they are always preempted even if there is no trade secret, forcing the decision's opponents into a weaker position.

Before and after *Silvaco*

Originally, preemption involved determining whether there was any preemption of non-trade secret claims and not whether the definition of "trade secret" under the CUTSA had to apply. The first decision to address this question was a federal case. In *Callaway Golf Company v. Dunlop Slazenger Group Americas, Inc,* the court concluded that "all state law claims based on the same nucleus of facts as the trade secrets claim are preempted under California's UTSA."[11] Following *Callaway,* other cases, such as *Digital Envoy v. Google, Inc.,* discuss whether the CUTSA preemption covers only common law trade secret claims or other state law claims. In *Digital Envoy,* the plaintiff asserted that preemption "is limited to a common law claim for trade secret misappropriation and that the decision does not apply to alternative claims for relief, such as those it has pled for unfair competition and unjust enrichment."[12] Purporting to follow *Callaway* and distinguishing prior Ninth Circuit precedent as unpersuasive, *Digital Envoy* holds that preemption is broad.[13]

The issue was first taken up in a California state court action in *K.C. Multimedia, Inc. v. Bank of America Technology & Operations, Inc.*, in which the court takes note of the "two views…on UTSA preemption."[14] One, the "broad view," extends preemption to other non-trade secret causes of action based upon the same facts as the trade secrets claim.[15] Taking the "broad view," *K.C. Multimedia* explains that the non-trade secret causes of action at issue were based on underlying trade secrets. This was grounds for dismissal. *K.C. Multimedia* left unanswered whether a fact pattern not meeting the CUTSA's definition of "trade secret" is still actionable under other state law.[16]

Cases after *Silvaco*

ThinkVillage-Kiwi, LLC v. Adobe Systems holds that in the CUTSA preemption cases, including *K.C. Multimedia,* "the proponent of the common law claim either alleged common law trade secrets misappropriation or had a viable claim under CUTSA. The court finds no authority holding that CUTSA preempts common law claims.…."[17] By "trade secret" the *ThinkVillage-Kiwi* court meant intellectual property falling within the CUTSA definition. The non-trade secret claim may proceed "so long as the confidential information at the foundation of the claim is not a trade secret as defined in CUTSA."[18] Under this ruling, when the CUTSA definition of "trade secret" is not met, but a protectable interest actionable under California common law exists, there is no preemption.[19] The holdings in *ThinkVillage-Kiwi* and in *First Advantage Background Services Corporation v. Private Eyes, Inc,*[20] diverge from *Silvaco*'s conclusion that no actionable claim exists when it is based on information having protectable value beyond that of a trade secret as defined in the CUTSA. *Leatt Corporation v. Innovative Safety Technology, LLC*—one of the first decisions subsequent to *Silvaco*—directly rejects the view that the CUTSA preempts the field.[21]

Other decisions have not resolved the debate. For example, *MedioStream, Inc. v. Microsoft Corporation* notes that "while it is clear that the CUTSA preempts certain claims related to the misappropriation of secret information…the preemptive scope of the statute remains a somewhat unsettled area of California law."[22] This was noted as recently as December 2012, when a Northern California district court commented, "There has been some dispute among courts with regard to whether the CUTSA's savings clause applies only to claims that allege misappropriation of trade secrets, or whether it also applies to other common law claims alleging misappropriation of confidential information that does not enjoy trade secret protection."[23] This divergence of authority bears on the issue of whether common law state claims may be dismissed at the pleading stage or later.

For example, *Amron International Diving Supply, Inc. v. Hydrolinx Diving Communications, Inc.*, appears to hold that the preemption issue cannot be addressed at the pleading stage under any circumstances.[24] This embraces the least severe concept of preemption, i.e., failing to meet the CUTSA definition of trade secret will allow non-trade secret common law claims to be asserted.[25] Other cases hold that, on a preemption challenge, courts can decide at the pleading stage depending on whether a complaint includes allegations of other non-trade secret facts. This would be permissible under a somewhat weaker reading of preemption.[26] Under this view, failure to allege non-trade secret facts eliminates a plaintiff's right to proceed past the pleading stage, even if there is a factual issue of whether the claims could be and were pleaded.[27]

Cases that follow *Silvaco* find that the issue must be decided at the pleading stage. This is premised on *Silvaco*'s ruling that there is no protection for information-based property not encompassed by the CUTSA's trade secret definition. Whether the information in question is a CUTSA-defined trade secret is irrelevant to the preemption issue. For example, *Sunpower Corporation v. Solarcity Corporation* approved that "[w]ith regard

MCLE Test No. 227

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1. Trade secret law is a traditional province of the federal government rather than the states.
True.
False.

2. The model Uniform Trade Secrets Act was drafted to provide more consistent trade secret protection among the states.
True.
False.

3. *Silvaco Data Systems v. Intel Corporation* holds that a plaintiff may make a trade secret claim under the California Uniform Trade Secrets Act (CUTSA) or California's laws protecting proprietary customer lists .
True.
False.

4. *Silvaco* holds that if an alleged trade secret does not fall within the CUTSA's definition of "trade secret," a factual determination may be made regarding whether the trade secret claim may be preserved.
True.
False.

5. Under *Silvaco,* the CUTSA's preemption of trade secret claims also preempts other statutory or common law claims.
True.
False.

6. *Silvaco* does not specify whether trade secret claims may be preserved if the CUTSA's definition of "trade secret" is not met.
True.
False.

7. Under *Silvaco*, there can be no property rights for otherwise commercially valuable information that does meet the CUTSA's definition of a trade secret.
True.
False.

8. *Silvaco*'s holding on the scope of CUTSA preemption of common law and statutory remedies rests on analysis of the policy underlying the CUTSA and its express savings clauses.
True.
False.

9. *Silvaco* holds that preemption under the CUTSA is a fact-specific issue.
True.
False.

10. *Silvaco* holds that preemption under the CUTSA depends on whether the act's definition of "trade secret" is met.
True.
False.

11. *ThinkVillage-Kiwi, LLC v. Adobe Systems* as well as *First Advantage Background Services Corporation v. Private Eyes, Inc.,* agree with *Silvaco* that no actionable claim exists when it is based on information having protectable value beyond that of a trade secret as defined in the CUTSA.
True.
False.

12. In *K.C. Multimedia, Inc. v. Bank of America Technology & Operations, Inc.,* the court rejected the plaintiff's argument for a narrow interpretation of preemption.
True.
False.

13. *MedioStream, Inc. v. Microsoft Corporation* notes that the scope of the CUTSA's preemption "remains a somewhat unsettled area of California law."
True.
False.

14. *Amron International Diving Supply, Inc. v. Hydrolinx Diving Communications, Inc.,* arguably holds that the preemption issue cannot be addressed at the pleading stage.
True.
False.

15. Cases that follow *Silvaco*'s reasoning should find that the preemption issue must be decided at the pleading stage.
True.
False.

16. *Reeves v. Hanon* may be cited to argue that misappropriation of trade secrets can form the basis of an intentional interference claim without being limited by any preemption.
True.
False.

17. *Silvaco* arguably does not limit the application of Business and Professions Code Section 17200.
True.
False.

18. *Silvaco* arguably undermines case law concerning proprietary interest in customer lists.
True.
False.

19. Under *Silvaco*, a plaintiff may be left without remedy for conversion of confidential business information.
True.
False.

20. Under *Cadence Design Systems, Inc. v. Avantil Corporation,* even after passage of the CUTSA, a cause of action for common law trade secrets misappropriation survived as to pre-CUTSA fact patterns.
True.
False.

MCLE Answer Sheet #227

SECRET PREEMPTION

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15.	☐ True	☐ False
16.	☐ True	☐ False
17.	☐ True	☐ False
18.	☐ True	☐ False
19.	☐ True	☐ False
20.	☐ True	☐ False

to the breach of confidence claim, CUTSA preempts other claims based on misappropriation of confidential information, regardless of whether the information ultimately meets the statutory definition of a trade secret," so further factual development of the claim was not necessary, and the court ordered immediate dismissal.[28]

Circular Reasoning

Silvaco goes beyond *K.C. Multimedia* by holding that even falling short of the CUTSA's trade secrets definition does not avoid preemption. A review of these two cases exposes their circular reasoning. Both interpret the breadth of the savings clauses but fail to employ their plain meaning. Instead, the cases presume legislative intent to foster uniform law in order to draw presupposed conclusions.

The court in *Silvaco* acknowledged that the perplexing nature of the CUTSA stems from its deletion of the UTSA's preemption clause and simultaneous inclusion of a savings clause. "This language is all the more puzzling since part of it replaces language…in the proposed Uniform Trade Secrets Act, which would have affirmatively declared the Legislature's intent to 'displace[] conflicting tort, restitutionary, and other law of this State' with respect to civil remedies."[29] The court then logically concludes that there must be some preemption or there would be no savings clause.[30]

In *K.C. Multimedia*, the court reasoned that when preserving claims "not based upon trade secret misappropriation," the term "based upon" must be understood factually. The court rejected the plaintiff's argument for "a narrow interpretation of preemption," instead sharing the view that the CUTSA's breadth suggests a legislative intent to "occupy the field."[31] The court concluded that the statutory language "would appear… meaningless if…claims…based on trade secret misappropriation are not preempted."[32] Citing *Callaway* and *Digital Envoy,* the *K.C. Multimedia* court holds that "the determination of whether a claim is based on trade secret misappropriation is largely factual."[33]

The *K.C. Multimedia* court assumed that the statute's "based upon" language requires "a factual inquiry." That assumption is necessary to conclude that the statute's language would be "rendered meaningless" by a narrower preemption rule.[34] *Silvaco* takes the opposite tack. Instead of viewing "based upon" broadly, *Silvaco* interprets it narrowly. *Silvaco* also interprets the savings clauses according to the presumed legislative intent rather than their plain language. Claiming to enshrine precedent, the court held, "We thus reaffirm that CUTSA provides the exclusive civil remedy for conduct falling within its terms.…"[35] *Silvaco*'s reach is radically beyond that of prior case law, however. *Silvaco* specifies that even when the CUTSA definition of "trade secret" is not met, the CUTSA still preempts common law claims based on intellectual property secrets. The logic is that "trade secret," as used in the CUTSA savings clause, addresses all legal actionability for intellectual property.[36]

This is circular reasoning. The court conceptualized the term "trade secret," as used in the CUTSA savings clause, to include all potential intellectual property rights, whether or not they are recognized under law as trade secrets. Only with this unstated assumption could the *Silvaco* court find that the wording of the savings clause connoted such a broad preemptive effect. The plaintiff's counterargument—that actionability survived for a claim if CUTSA's definition of "trade secret" did not apply—was harshly dismissed as "*a priori* sophistry."[37]

Flawed Methodology

Silvaco's holding is based upon statutory interpretation rather than any pretense of applying the scanty pre-existing case law. *Silvaco*'s errors include, most conspicuously, its starting point. By looking first at the meaning of the CUTSA's savings clauses, the case ignores the legislature's deletion of the CUTSA's express preemption clause. That omission shows an affirmative intent to limit preemption. *Silvaco*, however, never asks why the omission was enacted. *Silvaco* should have attempted to harmonize the savings clauses with the legislature's express intent to delete the UTSA's preemption clause.

The deletion eliminated "language [that] would have affirmatively declared the Legislature's intent to 'displace[] conflicting tort, restitutionary, and other law of this State' with respect to civil remedies."[38] By removing an overt elimination of conflicting remedies, the legislature implicitly intended to preserve, rather than preempt, alternate remedies.

Case law offers differing views as to the extent to which the CUTSA preempts other claims. One view is that the CUTSA can be read to preempt common law trade secret claims while preserving other causes of action. A second is that the statute can be read as preempting non-trade secret common law claims that are based on the same facts as trade secret claims, but only if the CUTSA definition of "trade secret" is met.

Silvaco's second critical error is to ignore the plain meaning of the CUTSA. "Trade secret" is a defined term in the statute. The savings clause's reference to preserving claims "not based upon misappropriation of a trade secret" should be taken as employing the statutory definition of "trade secret." Doing so implies preservation of non-trade secret common law causes of action.

Third, *Silvaco* generously applies its own reading of the legislature's intentions about uniformity of intellectual property law. Noting that California's legislature had adopted the "declaration that the act should be 'applied and construed to effectuate its general purpose to make uniform the law.…'"[39] *Silvaco* concludes, "That purpose would be grossly subverted by leaving alternative bases for liability intact."[40]

This ignores fundamental principles of statutory interpretation. *Silvaco* overrides the legislature's express statutory change (deletion of the preemption clause) and statutory plain meaning (applying the CUTSA's definition of "trade secret") in favor of a presumed version of legislative intent. Since express statutory language and plain meaning sufficed, *Silvaco* should not even have addressed the question of legislative intent.

The intent to differentiate the California law from the UTSA, as indicated by the deletion of the UTSA's preemption clause, should prevail. California enacted a narrower uniformity of trade secret law, preempting non-statutory trade secret claims while leaving non-trade secret claims intact. Claims "not

based upon trade secrets" as defined in the CUTSA were to be left intact, as Section 3426.7(a) of the Civil Code plainly states.

Fourth, another glaring error in *Silvaco* is that the centerpiece of its holding is dictum. The plaintiff's claims concerned Intel's use of software that incorporated the plaintiff's source code, which was a trade secret as defined in the CUTSA. The case did not present any issue of preemption to which CUTSA's definition of "trade secret" was not applicable.[41]

Soon after *Silvaco*, the court in *Leatt Corporation* held that "[a] careful reading of the *Silvaco* decision reveals that it does not undermine the conclusion that the UTSA only preempts additional claims that depend on the misappropriation of a trade secret…."[42] Likewise, *Sunpower Corporation v. SolarCity Corporation* states, "In *Silvaco* there does not actually appear to have been any allegation by plaintiff that the information plaintiff was seeking to protect was not a trade secret and therefore not subject to trade secret law."[43]

Inconsistent Precedent

Silvaco does not write on an entirely blank slate, as the opinion implies.[44] The two California Supreme Court cases that are applicable also signify that CUTSA's preemption extends only to common law claims for misappropriation of trade secrets when the CUTSA is definitionally applicable, and not to other types of claims. *Cadence Design Systems, Inc. v. Avantil Corporation* holds that a plaintiff is required to bring a common law action for pre-CUTSA trade secret misappropriation and a CUTSA claim for subsequent wrongful trade secret abridgment.[45] *Reeves v. Hanon* suggests that misappropriation of trade secrets can form the basis of an intentional interference claim without being limited by any preemption.[46] While *Reeves* does not directly consider the preemption issue, the supreme court could not reasonably be viewed as oblivious to that important facet of CUTSA. The overall picture presented by these two supreme court cases is that only the pre-CUTSA action for common law trade secret misappropriation is preempted by CUTSA.

Other California cases predating *Silvaco* are also inconsistent with its broad sweep. *Courtesy Temporary Service, Inc. v. Camacho* holds that if a trade secret is infringed under CUTSA, the court can issue an injunction against the infringement.[47] *ReadyLink Heathcare v. Cotton* also finds that a CUTSA trade secret claim is actionable under Section 17200 of the Business and Professions Code.[48]

Federal Cases

In federal court, decisions under California law are also inconsistent with *Silvaco*, although unlike the state court precedent, these cases undermine *Silvaco* only to the extent it preempted non-CUTSA claims not sharing the same factual basis as trade secret claims. In *City Solutions v. Clear Channel Communications, Inc.,* the Ninth Circuit rejected the defendant's argument that, because the jury did not find it liable on the UTSA claim, it could not have found it liable for unfair competition.[49] Rather, the circuit concluded that an intellectual property claim that was not actionable as a trade secret was the basis of an unfair competition claim.[50] By finding that an unfair competition claim was based on property rather than trade secrets and therefore actionable, *City Solutions* is in direct conflict with *Silvaco*. "Once the jury found that Eller misappropriated CSI's property, it may have awarded damages to compensate CSI for its worry regarding Eller's misuse of its confidential information."[51]

District court cases preceding *Silvaco* also allowed claims not factually grounded in trade secrets to go forward. *Sunpower Corporation v. SolarCity Corporation*[52] cites three: *First Advantage Background Services Corporation v. Private Eyes, Inc.*,[53] *Ali v. Fasteners for Retail, Inc.*,[54] and *Terarecon, Inc. v. Fovia, Inc.*[55]

Against Settled Expectations

According to the reasoning of *Silvaco,* a statute that is silent on preemption nevertheless nullifies non-CUTSA informational property rights. The CUTSA's definitional requirements for preservation of a trade secret are specific and not necessarily required under common law.[56] For example, *Silvaco*'s ruling is inconsistent with California law, which regards customer lists as protected information that is not a trade secret. The court in *ReadyLink Heathcare* found that customer information was not a trade secret because it was public, but that it was protected under Section 17200 of the Business and Professions Code as the product of substantial time, effort, and expense.[57] The court similarly held that customer lists that are not trade secrets under the CUTSA must be protected. The reasoning of these cases reflects longstanding California law holding that customer lists are protectable because of the effort involved in their compilation, not necessarily because they are nonpublic.[58]

Silvaco's narrowing of a cause of action under Section 17200 of the Business and Professions Code is also highly questionable. The purpose of the California's unfair competition law (UCL) is to give courts equitable powers to stop deceptive practices that have not necessarily been anticipated and thus do not fit within any statutory definition.[59] Lack of coverage by another statutory scheme cannot remove conduct from the UCL's oversight. As the court in *Barquis v. Merchants Collection Association, Inc.* observed, the UCL "undeniably established only a wide standard to guide courts of equity.…the Legislature evidently concluded that a less inclusive standard would not be adequate."[60]

Silvaco is a troubling decision. Its conception of legislative intent assumes that uniformity of law was desired, rather than beginning with the primary principles of statutory interpretation: plain meaning and express changes from the UTSA. It is implausible that the legislature would leave businesses having pre-CUTSA rights without remedy, contrary to settled expectations under California law. Yet *Silvaco* derives that result by negative implication, from a savings clause, ignoring that the express preemption clause was deleted in California's version of the statute. The elaborate reasoning in *Silvaco* is unnecessary. The desire of the intellectual property bar for nationwide uniformity should be addressed legislatively and not accomplished by court rulings that conflict with the plain meaning of the law. ■

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[1] David S. Almeling et al., *A Statistical Analysis of Trade Secret Litigation in State Courts,* 46 GONZ. L. REV. 57 (2000) (citing JAMES POOLEY, TRADE SECRETS §10.07[2] (2010)); DAVID W. QUINTO & STUART H. SINGER, TRADE SECRETS: LAW & PRACTICE 1 (2009).

[2] *See* http://www.uniformlaws.org/Act.aspx?title=Trade%20Secrets%20Act.

[3] CIV. CODE §§3426, 3426.11. *See also* Uniform Law Commission, Legislative Fact Sheet: Trade Secrets Act, *available at* http://www.uniformlaws.org.

[4] *See* Uniform Trade Secrets Act with 1985 Amendments , §7(a), *available at* http://www.uniformlaws.org/shared/docs/trade%20secrets/utsa_final_85.pdf. "Except as provided in subsection (b), this [Act] displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret."

[5] *See Id.,* §7 cmt.

[6] CIV. CODE §3426.7(a). "Except as otherwise expressly provided, this title does not supersede any statute relating to misappropriation of a trade secret, or any statute otherwise regulating trade secrets."

[7] CIV. CODE 3426.7(b). The CUTSA savings clause reads: "(b) This title does not affect (1) contractual remedies, whether or not based upon misappropriation of a trade secret, (2) other civil remedies that are not based upon misappropriation of a trade secret, or (3) criminal remedies, whether or not based upon misappropriation of a trade secret."

[8] Sunpower Corp. v. Solarcity Corp., 2012 U.S. Dist. LEXIS 176284 (N.D. Cal. Dec. 11, 2012).

[9] CIVIL CODE §§3426, 3426.11.

[10] Silvaco Data Sys. v. Intel Corp., 184 Cal. App. 4th 210 (2010).

[11] Callaway Golf Co. v. Dunlop Slazenger Group Ams., Inc., 318 F. Supp. 2d 216, 219-20 (D. Del. 2004).

[12] Digital Envoy, Inc. v. Google, Inc., 370 F. Supp. 2d 1025, 1034 (N.D. Cal. 2005) (citing Callaway, 318 F. Supp. at 219).

[13] *Id.*

[14] K.C. Multimedia, Inc. v. Bank of Am. Tech. & Operations, Inc., 171 Cal. App. 4th 939 (2009).

[15] *Id.* at 957, n.7.

[16] *Id.*

[17] ThinkVillage-Kiwi, LLC v. Adobe Sys., 2009 U.S. Dist. LEXIS 32450, at *8 (N.D. Cal. Apr. 1, 2009).
[18] *Id.* at *6, 7 (citing FirstAdvantage Background Servs. Corp. v. Private Eyes, Inc., 569 F. Supp. 2d 929, 942 (N.D. Cal. 2008)).
[19] *See also* Phoenix Techs. v. Device VM, 2009 U.S. Dist. LEXIS 1114996 at *12 (N.D. Cal. Dec. 8, 2009) (allowing claims to go forward when the gravamen of the claims does not rest on the misappropriation of trade secrets).
[20] FirstAdvantage Background Servs. Corp., 569 F. Supp. 2d at 942.
[21] *See* Leatt Corp. v. Innovative Safety Tech., LLC, 2010 U.S. Dist. LEXIS 71362, at *20, n.5. (S.D. Cal. Jul. 15, 2010).
[22] MedioStream, Inc. v. Microsoft Corp., 869 F. Supp. 2d 1095, 1116 (N.D. Cal. 2012).
[23] Sunpower Corp. v. Solarcity Corp., 2012 U.S. Dist. LEXIS 176284 (N.D. Cal. Dec. 11, 2012); FormFactor, Inc. v. Micro-Probe, Inc., 2012 U.S. Dist. LEXIS 79359, at *40 (N.D. Cal. June 7, 2012).
[24] Amron Int'l Diving Supply, Inc. v. Hydrolinx Diving Commc'ns, Inc., 2011 U.S. Dist. LEXIS 122420, at *27-28. (S.D. Cal. Oct. 21, 2011).
[25] *See also* Bryant v. Mattel, 2010 U.S. Dist. LEXIS 103851, at *74 (C.D. Cal. Aug. 2, 2010) (citing Silvaco Data Sys. v. Intel Corp., 184 Cal. App. 4th 210, 239 n.22 (2010)). *See also* Kovesdy v. Kovesdy, 2010 U.S. Dist. LEXIS 100940 at *8, 9 (N.D. Cal. Sept. 13, 2010); CIV. CODE §3426.7(b).
[26] E-Smart Techs., Inc. v. Drizin, No. C-06-05528, 2009 U.S. Dist. LEXIS 272 (N.D. Cal. Jan. 5, 2009) (Patel, J.) (conversion claim based on misappropriation of business opportunities and tangible items were not preempted); Leatt Corp. v. Innovative Safety Tech., LLC, 2010 U.S. Dist. LEXIS 71362 (2010); *See also* Leatt Corp., 2010 U.S. Dist. LEXIS 71362, Supplemental First Amended Complaint 32, 36-7, 41, 50, 62-3, 89 (S.D. Cal. Jul. 15, 2010).
[27] RSPEAudio Solutions, Inc. v. Vintage King Audio, Inc., 2013 U.S. Dist. LEXIS 2909 (C.D. Cal. Jan. 7, 2013); Ernie Ball Inc. v. Earvana, 2010 U.S. Dist. LEXIS 123517, at *2-3 (C.D. Cal. Nov. 8, 2010); SOAProjects, Inc. v. SCM Microsystems, Inc., 2010 U.S. Dist. LEXIS 133596, at *27 (N.D. Cal. Dec. 7, 2010).
[28] Sunpower Corp. v. Solarcity Corp., 2012 U.S. Dist. LEXIS 176284, at *20 (2012) (quoting Form Factor, Inc. v. Micro-Probe, Inc. 2012 WL 2061520, at *15 (N.D. Cal. June 7, 2012)).
[29] Silvaco Data Sys. v. Intel Corp., 184 Cal. App. 4th 210, 233 (2010) (citations omitted).
[30] *Id.*
[31] K.C. Multimedia, Inc. v. Bank of Am. Tech. & Operations, Inc., 171 Cal. App. 4th 939, 957 (2009).
[32] *Id.* at 958.
[33] *Id.*
[34] *Id. See also* CIV. CODE §3426.7(b).
[35] Silvaco Data Sys. v. Intel Corp., 184 Cal. App. 4th 210, 234-36 (2010).
[36] *Id.*
[37] *Id.* at 237 (italics in original).
[38] *Id.* at 233.
[39] *Id.* (quoting Uniform Trade Secrets Act with 1985 Amendments, §8). *See also* CIVIL CODE §3426.8
[40] Silvaco Data Sys. v. Intel Corp., 184 Cal. App. 4th at 233-34.
[41] *See id.* at 238, 240-41.
[42] Leatt Corp. v. Innovative Safety Tech., LLC, 2010 U.S. Dist. LEXIS 71362, at *20 (S.D. Cal. Jul. 15, 2010).
[43] Sunpower Corp. v. SolarCity Corp., 2012 U.S. Dist. LEXIS 176284, at *1415 (N.D. Cal. Dec. 11, 2012).
[44] *See* Silvaco, 184 Cal. App. 4th at 238-40 (citing Ali v. Fasteners for Retail, Inc., 544 F. Supp. 2d 1064, 1072 (E.D. Cal. 2008); Cenveo v. Slater, No. 06CV2632 (E.D. Pa. Feb. 12, 2007); ClearOne Commc'ns, Inc. v. Chiang, 2007 WL 4376125 (D. Utah 2007)).
[45] Cadence Design Sys., Inc. v. Avantil Corp., 29 Cal. 4th 215 (2002).
[46] Reeves v. Hanon, 33 Cal. 4th 1140 (2004).
[47] Courtesy Temporary Serv., Inc. v. Camacho, 222 Cal. App. 3d 1278, 1287 (1990).
[48] ReadyLin Heathcare v. Cotton, 126 Cal. App. 4th 1006, 1021 (2005).
[49] City Solutions v. Clear Channel Commc'ns, Inc., 365 F. 3d 835 (9th Cir. 2004).
[50] *Id.* at 842.
[51] *Id.*
[52] Sunpower Corp. v. SolarCity Corp., 2012 U.S. Dist. LEXIS 176284, at *22 (2012).
[53] First Advantage Background Servs. Corp. v. Private Eyes, Inc., 569 F. Supp. 2d 929, 942 (N.D. Cal. 2008).
[54] Ali v. Fasteners for Retail, Inc., 544 F. Supp. 2d 1064, 1072 (E.D. Cal. 2008).
[55] Terarecon, Inc. v. Fovia, Inc., 2006 U.S. Dist. LEXIS 48833, at *10 (N.D. Cal. July 6, 2006).
[56] *See* CIVIL CODE §3426.1(d).
[57] ReadyLink Heathcare v. Cotton, 126 Cal. App. 4th 106, 1021 (2005); *see also* Courtesy Temporary Serv., Inc. v. Camacho, 222 Cal. App. 3d 1278 (1990).
[58] *See, e.g.*, Klamath-Orleans Lumber, Inc. v. Miller, 87 Cal. App. 3d 458, 465 (1978).
[59] *See* Kwikset Corp. v. Superior Court, 51 Cal. 4th 310, 320 (2022); Kasky v. Nike, Inc., 27 Cal. 4th 939, 949 (2002).
[60] Barquis v. Merchants Collection Ass'n, Inc., 7 Cal. 3d 94, 111-12 (1972); *see also* Cel-Tech Commc'ns, Inc. v. Los Angeles Cellular Tel. Co., 20 Cal. 4th 163, 181 (1999) (citing People ex rel. Mosk v. National Research Co. of Cal., 201 Cal. App. 2d 765, 772 (1962)).