

1 Roman M. Silberfeld, Bar No. 62783
 RMSilberfeld@rkmc.com
 2 Michael A. Geibelson, Bar No. 179970
 MAGEibelson@rkmc.com
 3 Yakub Hazzard, Bar No. 150242
 YHazzard@rkmc.com
 4 Daniel G. Stone, Bar No. 265397
 DGStone@rkmc.com
 5 ROBINS, KAPLAN, MILLER & CIRESI L.L.P.
 2049 Century Park East, Suite 3400
 6 Los Angeles, CA 90067-3208
 Telephone: 310-552-0130
 7 Facsimile: 310-229-5800

8 Attorneys for Defendants

9 UNITED STATES DISTRICT COURT
 10 CENTRAL DISTRICT OF CALIFORNIA

11
 12 TECHFORWARD, INC.,
 13 Plaintiff,
 14 v.
 15 BEST BUY CO., INC., BEST BUY
 16 ENTERPRISE SERVICES, INC.,
 and BEST BUY PURCHASING
 17 LLC,
 18 Defendants.

Case No. CV 11-01313 ODW (JEMx)

**DEFENDANTS BEST BUY CO.,
 INC.'S, BEST BUY ENTERPRISE
 SERVICES, INC.'S, AND BEST BUY
 PURCHASING LLC'S NOTICE OF
 MOTION AND MOTION TO
 DISMISS; MEMORANDUM OF
 POINTS AND AUTHORITIES IN
 SUPPORT THEREOF**

**[Declaration of Michael A. Geibelson
 and Request for Judicial Notice Filed
 Concurrently Herewith]**

Date: June 20, 2011
 Time: 1:30 p.m.
 Ctrm.: 11
 Before: Hon. Otis D. Wright, II,
 Judge of the United States
 District Court

23 TO THIS HONORABLE COURT, AND TO ALL PARTIES AND THEIR
 24 ATTORNEYS OF RECORD:

25 PLEASE TAKE NOTICE that on June 20, 2011 at 1:30 p.m., or as soon
 26 thereafter as the Motion may be heard at the United States District Court, located at
 27 312 N. Spring Street, Courtroom 11, Los Angeles, CA 90012, Defendants will and
 28 hereby do move this Court for an Order under Fed. R. Civ. P. 12(b) dismissing the

1 Amended Complaint on the grounds that Plaintiff TechForward, Inc.'s Amended
2 Complaint fails to state a claim upon which relief can be granted.

3 The Motion is based on this Notice of Motion, Memorandum of Points and
4 Authorities, the attached Declaration of Michael A. Geibelson, the accompanying
5 Request for Judicial Notice, the Proposed Order lodged herewith, the Court's file
6 on this matter, and such other evidence or argument presented before or at the
7 hearing on this Motion.

8 Pursuant to L.R. 7-3, this Motion is made following conferences of counsel
9 that took place on April 28, 2011 and May 12, 2011.

10 Respectfully submitted,
11 Dated: May 18, 2011 Robins, Kaplan, Miller & Ciresi L.L.P.

12
13 By: /S/
14 Roman M. Silberfeld
15 Yakub Hazzard
16 Michael A. Geibelson

17 ATTORNEYS FOR DEFENDANTS
18 BEST BUY CO., INC., BEST BUY
19 ENTERPRISE SERVICES, INC., AND
20 BEST BUY PURCHASING LLC
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ROBINS, KAPLAN, MILLER & CIRESI L.L.P.
ATTORNEYS AT LAW
LOS ANGELES

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TABLE OF CONTENTS

	Page
I. INTRODUCTION.....	1
II. FACTUAL BACKGROUND	2
III. STANDARD OF REVIEW.....	4
IV. PLAINTIFF HAS NOT ADEQUATELY PLED A CLAIM FOR MISAPPROPRIATION OF TRADE SECRETS.....	5
A. The Amended Complaint Inadequately Alleges Misappropriation By Acquisition.....	6
B. The Amended Complaint Inadequately Alleges Misappropriation By Disclosure or Use.....	8
V. PLAINTIFF’S PURPORTED CAUSES OF ACTION FOR BREACH OF CONTRACT FAIL TO STATE VALID CLAIMS AGAINST THE DEFENDANTS	11
A. The Amended Complaint Inadequately Alleges Any Active Breach Of the Contract Claim at Issue.....	12
B. BBCI Is Improperly Included in Plaintiff’s Second Cause of Action for Breach of the 2008 Agreement.....	12
VI. CONCLUSION	13

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.
ATTORNEYS AT LAW
LOS ANGELES

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

Cases

Ashcroft v. Iqbal,
129 S.Ct. 1937 (2009).....5, 8, 13

Balistreri v. Pacifica Police Dep't.,
901 F.2d 696 (9th Cir. 1990)4

Bell Atl. Corp. v. Twombly,
550 U.S. 554 (2007).....5, 8, 11

Branch v. Tunnell,
14 F.3d 449 (9th Cir. 1994)5

Brocade Communs. Sys. v. A10 Networks, Inc.,
2011 U.S. Dist. (N.D. Cal. Mar. 23, 2011).....8

Cadence Design Sys. v. Avant! Corp.,
29 Cal. 4th 215 (2002)6

Commercial Assocs., Inc. v. Work Connection, Inc.,
712 N.W.2d 772 (Minn. App. 2006).....12, 13

Magellan Int'l Corp. v. Salzgitter Handel GmbH,
76 F. Supp. 2d 919 (N.D. Ill. 1999)8

Reichert v. General Ins. Co.,
68 Cal.2d 822, 69 Cal. Rptr. 321 (1968)12

Sprewell v. Golden State Warriors,
266 F.3d 979 (9th Cir. 2001)5

Stanley v. Univ. of Cal.,
178 F.3d 1069 (9th Cir. 1999)13

United States v. Bestfoods,
524 U.S. 51 (1998).....13

Wagner v. Access Cash Int'l,
212 F. Supp. 2d 886 (C.D. Ill. 2002)7

Statutes

California Civil Code § 1427.....12

California Civil Code § 1428.....12

California Civil Code §3426.1(b).....6, 7, 9, 11

Other Authorities

5 C. Wright & A. Miller, Federal Practice and Procedure § 1216 (3d ed.2004).....11

Rules

Federal Rule of Civil Procedure 12(b)(6).....1, 4, 14

I.

INTRODUCTION

1
2
3 Plaintiff TechForward’s Amended Complaint (“Amended Complaint”) levels
4 very serious allegations of wrongdoing against three entities: Best Buy Co., Inc.
5 (“BBCI”), Best Buy Enterprise Services, Inc. (“BBES”), and Best Buy Purchasing,
6 LLC (“BBPL”). But, TechForward apparently believes that the presence of the
7 words “Best Buy” in each Defendant’s name relieves it of the obligation to allege
8 facts giving rise to a plausible claim against each Defendant.

9 In particular, the Amended Complaint purports to allege the misappropriation
10 of trade secrets by all the Defendants, although much of the information alleged to
11 have been misappropriated appears on Techforward’s own website, and none is
12 specifically alleged to have been improperly acquired, disclosed or used in any but
13 the vaguest and most conclusory terms. And, the Amended Complaint attempts to
14 allege the breach of two different contracts with different Best Buy entities – one
15 with BBES, and one with BBPL. Yet, the Amended Complaint does not specify
16 what information was improperly acquired, disclosed or used in breach of either
17 agreement, nor how BBCI, which is not a party to either agreement, could possibly
18 be liable for any such breaches.

19 To make matters worse, the Amended Complaint lumps all three defendants
20 together under the single moniker “Best Buy,” and alleges misappropriation and
21 breaches of contract in the broadest of legal conclusions. Plaintiff’s Amended
22 Complaint lacks any of the necessary specificity about who did what and how they
23 did it. It never states in any terms that any particular Best Buy entity actually
24 disclosed or used any trade secrets or confidential information—a vital element of
25 Plaintiff’s misappropriation and breach of contract claims. Defendants therefore
26 respectfully request that the Court dismiss the action under Rule 12(b)(6).

1 II.

2 **FACTUAL BACKGROUND**

3 This case concerns Best Buy's Buy Back Program that launched in January
4 2011. Under that program, Best Buy's customers can return products to Best Buy
5 stores within set time periods after their initial purchase in exchange for a Best Buy
6 gift card of a predetermined value. TechForward sells its own buy-back plan
7 through other retailers and directly to the general public.

8 Over a period of years, two different Best Buy subsidiaries entered into
9 agreements with TechForward to explore the sale of TechForward's plan at Best
10 Buy retail stores. To do so, a pilot program was run in a handful of stores in the
11 Inland Empire, and discussions ensued about selling TechForward's buy-back plan
12 nationally. However, because of TechForward's precarious financial situation, the
13 accounting treatment required if done with TechForward, and TechForward's lack
14 of any unique and meaningful information or capabilities, Best Buy stores
15 implemented their own buy back program that it had developed independently. The
16 Best Buy program was based upon independent market research, pricing work and
17 market testing. Insurance was obtained for the risk one of the Best Buy entities
18 would have been required to take if it proceeded with TechForward. In the process,
19 none of the Best Buy entities disclosed nor used any trade secret or confidential
20 information provided by TechForward.

21 Plaintiff alleges that "Best Buy" misappropriated trade secrets and breached
22 contracts signed by Best Buy entities in 2008 and 2010. Plaintiff defines "Best
23 Buy" to include BBCI, BBES and Best Buy Purchasing, LLC (BBPL). (Amended
24 Complaint at 2:1-3.) The Amended Complaint acknowledges that BBES and BBPL
25 are separate wholly-owned subsidiaries of BBCI, but does nothing to differentiate
26 between them in the charging allegations. (Amended Complaint ¶¶ 4-7.)

27 As alleged by Plaintiff, starting in the summer of 2005, it began discussing
28 the possibility of launching a buy back program at Best Buy. Eventually,

1 TechForward and BBES signed an agreement on February 25, 2008. Two years
2 later, TechForward and BBPL signed an operating agreement to conduct a buy back
3 pilot program at a handful of Best Buy stores in the Southern California area.
4 (Amended Complaint ¶¶ 25, 30.)¹

5 Plaintiff then alleges a series of communications and meetings with various
6 “Best Buy” executives and employees during which TechForward divulged its
7 so-called trade secrets. (Amended Complaint ¶¶ 33-49). TechForward describes
8 these alleged trade secrets in paragraph 42 of the Amended Complaint as:

- 9 (a) Exercise Rates²;
- 10 (b) Profit Center Comparison to Warrant Programs;
- 11 (c) Strategies to Influence Exercise Behavior;
- 12 (d) Cash, Cycle and Reserves³;
- 13 (e) Pricing;
- 14 (f) Resale, Pricing, Scalability, Depreciation and Risk⁴; and
- 15 (g) Propriety Systems and Historical Predictions⁵.

16 According to TechForward, these items were discussed and provided during
17 and after the day-long September 1, 2010 meeting at Best Buy’s corporate
18 headquarters. (Amended Complaint ¶¶42-49.) Thereafter, as alleged by Plaintiff,
19 “Best Buy” terminated its relationship with TechForward and announced its
20 intention to launch its own program. According to the Plaintiff, the Best Buy plan
21

22
23 ¹ The 2008 and 2010 contracts are referenced in Plaintiff’s complaint and attached
24 as Exhibits “A” and “B,” respectively, to the Declaration of Michael A. Geibelson
25 filed herewith (“Geibelson Decl.”).

26 ² The percentage of customers who actually exercise their rights under the buy back
27 plan (also referred to as exercise behavior).

28 ³ The amount of cash needed to cover anticipated obligations under the plan.

⁴ Information about the used goods market and product depreciation.

⁵ Actually, an amalgamation of Plaintiff’s other alleged “trade secrets” plan. (*Id.* at
¶52.)

1 is nearly identical to TechForward's in that it copies the precise term structure of
 2 TechForward's plan by providing for a store credit of fifty percent (50%) for a
 3 return within six months of purchase, forty percent (40%) for a return within 12
 4 months, thirty percent (30%) for a return within 18 months, and twenty percent
 5 (20%) for a return within twenty four months. The Best Buy plan also includes a
 6 category admittedly not part of TechForward's plan – ten percent (10%) for
 7 televisions returned within forty eight months of purchase. (Amended Complaint at
 8 ¶53.) The buyback amounts that TechForward offers and which it contends were
 9 misappropriated by Best Buy are all publicly available as part of the plan itself, as
 10 well as on TechForward's website, <http://techforward.com> in various places. (*See,*
 11 *also* RJN. Ex. 8)

12 TechForward also alleges that Best Buy's plan uses the same terminology as
 13 the TechFoward plan – “good,” “poor” and “substantially impaired” – in calculating
 14 the credit given based on the condition of the returned item. Again, these very
 15 terms are part of Plaintiff's plan which it sells to the public, and therefore cannot be
 16 a secret. The terminology is also available on TechForward's website (*Id.*)

17 The only other alleged misappropriation alleged by TechForward appears in
 18 paragraphs 60 and 61 of the Amended Complaint. In these paragraphs, after
 19 acknowledging a fundamental difference between the two plans (Best Buy obtained
 20 insurance to underwrite its risk as opposed to TechForward's cash reserve model),
 21 TechForward implies that the information Best Buy obtained from TechForward
 22 would have been useful to the insurance company (*Id.* at ¶¶59-60.)

23 III.

24 STANDARD OF REVIEW

25 Dismissal under Rule 12(b)(6) is proper when there is either a lack of a
 26 cognizable legal theory or an absence of sufficient facts alleged under a cognizable
 27 legal theory. *Balistreri v. Pacifica Police Dep't.*, 901 F.2d 696, 699 (9th Cir. 1990).
 28 Courts do not accept as true “threadbare recitals of a cause of action's elements,

1 supported by mere conclusory statements.” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1940
2 (2009). Also insufficient are allegations that are “unwarranted deductions of facts,”
3 “unreasonable inferences,” or statements contradicting matters subject to judicial
4 notice. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). The
5 complaint must allege sufficient factual matter to “state a claim that is plausible on
6 its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 554, 570 (2007). “Facial
7 plausibility” requires the plaintiff to include sufficient “factual content that allows
8 the court to draw the reasonable inference that the defendant is liable for the
9 misconduct alleged.” *Iqbal*, 129 S.Ct. at 1429. Thus, “a plaintiff’s obligation to
10 provide the ‘grounds’ of his ‘entitle[ment] to relief requires more than labels and
11 conclusions, and a formulaic recitation of the elements of a cause of action will not
12 do.” *Twombly*, 550 U.S. at 555 (citations omitted). “Factual allegations must be
13 enough to raise a right to relief above a speculative level, on the assumption that all
14 the allegations in the complaint are true” *Id.* at 555-56 (citations omitted).

15 In assessing the adequacy of the complaint, a court may consider documents
16 on which its complaint is based without turning the motion into one for summary
17 judgment, and a defendant may attach those documents in a motion to dismiss to
18 show that they do not support the plaintiff’s claim. *See Branch v. Tunnell*, 14 F.3d
19 449, 454 (9th Cir. 1994). Accordingly, in deciding this motion, the Court may
20 consider Plaintiff’s allegations, as well as the 2008 and 2010 Agreements
21 specifically referenced in Plaintiff’s complaint and claimed to have been breached
22 (Geibelson Decl. Exs. 1, 2), and other documents of which the Court may take
23 judicial notice.

24 IV.

25 PLAINTIFF HAS NOT ADEQUATELY PLED A CLAIM FOR 26 MISAPPROPRIATION OF TRADE SECRETS.

27 Like the rest of TechForward’s Amended Complaint, the First Cause of
28 Action fails to allege any specifics about who did what. TechForward attempts to

1 cure the vagaries of these allegations by obliquely referring to “Best Buy” as the
2 culprit for all of them. However, the reference obscures, rather than demonstrates,
3 the existence of a cause of action for misappropriation of trade secrets.

4 “Misappropriation” under the Uniform Trade Secrets Act (UTSA) is defined
5 as the acquisition, disclosure and use of trade secrets under specified circumstances.
6 *Cal. Civ. Code* §3426.1(b). Simply put, misappropriation is the “initial acquisition
7 of the trade secret by wrongful means . . . [and] each misuse or wrongful disclosure
8 of the secret.” *Cadence Design Sys. v. Avant! Corp.*, 29 Cal. 4th 215, 223 (2002).
9 However, which of these types of misappropriation provides the basis for
10 TechForward’s claim against each of the defendants remains unclear based on their
11 conclusory allegations in the Amended Complaint.

12 Because Plaintiff does not allege that the Defendants received information
13 from Plaintiff wrongfully, and because Plaintiff does not allege that any of the
14 Defendants disclosed or used trade secrets from Plaintiff, the First Cause of Action
15 is insufficiently pled.

16 **A. The Amended Complaint Inadequately Alleges Misappropriation By**
17 **Acquisition**

18 With respect to acquisition, the Amended Complaint alleges that “Best Buy”
19 acquired TechForward's trade secrets *directly or indirectly* from TechForward and
20 not from generally available information or through its own independent research
21 and efforts,” and “under circumstances giving rise to a duty to maintain the
22 secrecy” of the information. (Amended Complaint ¶¶65.) Plaintiff does not, because
23 it cannot, allege that the acquisition of the information was by wrongful means.

24 First, both BBES and BBPL had contracts contemplating (and permitting) the
25 disclosure of information to them by TechForward. (Amended Complaint ¶¶ 26, 30;
26 RJN Exs. 1-2.) Indeed, TechForward has expressly alleged that it was pursuant to
27 those contracts that it disclosed the claimed trade secrets to “Best Buy.” (See
28 Amended Complaint at ¶¶ 25-49 and specifically ¶¶41-45.) Thus, if TechForward

1 intends to pursue a theory of misappropriation based upon improper acquisition, it
2 must allege some theory that renders those entities' acquisition (and alleged
3 disclosure) of the alleged trade secrets improper. It must allege what alleged trade
4 secrets were acquired other than pursuant to those contracts. Alternatively,
5 TechForward must allege why a Best Buy entity obtaining information *directly*
6 from TechForward, i.e. with TechForward's approval and consent, could ever
7 constitute unlawful acquisition. Without such allegations, any claim based upon
8 acquisition under Civil Code Section 3426.1(b)(1) is inadequately pled and should
9 be dismissed.

10 Second, nowhere in the allegations that "Best Buy Obtains TechForward's
11 Trade Secrets" (Amended Complaint at ¶¶ 33-49) are any of the Best Buy entity(-
12 ies) identified as the one(s) who acquired information improperly. Nor are any of
13 the people who TechForward identifies by name identified by their corporate
14 affiliation(s). If misappropriation by acquisition is intended to be pled, then the
15 entities who are alleged to have improperly acquired information, and the trade
16 secrets allegedly misappropriated by them, must be alleged.

17 The allegations contained in the Amended Complaint would never pass
18 muster if the Defendants' names did not all start with the words "Best Buy." The
19 allegations fare no better because the Defendants' names do. Plaintiff has not even
20 attempted to allege specific facts showing an agency or alter ego relationship under
21 which it intends to assert liability.⁶ Without any allegations tying improper
22 acquisition of specific information to a specific defendant, TechForward's
23

24
25 ⁶ In this regard, it bears noting that "In law, it is good policy to never plead
26 what you need not, lest you oblige yourself to prove what you can not." *Wagner v.*
27 *Access Cash Int'l*, 212 F. Supp. 2d 886 (C.D. Ill. 2002) (quoting Abraham Lincoln,
28 Letter to Usher F. Linder (Feb. 20, 1848), in COMPLETE WORKS OF
ABRAHAM LINCOLN, 3 (John G. Nicolay and Johns Hay, eds., New York:
Francis D. Tandy Co., 1894)).

1 misappropriation claim based upon acquisition cannot survive. *Iqbal*, 129 S.Ct. at
2 1950.

3 **B. The Amended Complaint Inadequately Alleges Misappropriation By**
4 **Disclosure or Use**

5 For TechForward to state a misappropriation claim based upon “disclosure,”
6 it must allege what was disclosed, and by which of the defendants, to meet the
7 requirements of *Twombly* and *Iqbal, supra*. Courts do not accept as true
8 “threadbare recitals of a cause of action’s elements, supported by mere conclusory
9 statements.” *Iqbal*, 129 S.Ct. at 1940. And as one court put it long before
10 *Twombly/Iqbal*, “even though the federal notice pleading regime makes conclusory
11 allegations permissible..., such mere rote repetition of the statutory language [of
12 misappropriation] does not suffice.” *Magellan Int’l Corp. v. Salzgitter Handel*
13 *GmbH*, 76 F. Supp. 2d 919, 927 (N.D. Ill. 1999) (citations omitted). Despite all of
14 the hand waving, TechForward’s allegations simply do not contain any of the
15 specificity that district courts in this circuit have found adequate (and necessary) to
16 state a claim for misappropriation. *See Brocade Communs. Sys. v. A10 Networks,*
17 *Inc.*, 2011 U.S. Dist. LEXIS 30227 (N.D. Cal. Mar. 23, 2011) (and cases cited
18 therein).

19 Like the conclusory allegations about acquisition, nowhere in the Amended
20 Complaint does TechForward allege what was allegedly *disclosed* in violation of
21 the UTSA, much less by whom or to whom. Nor does it allege who *used* what trade
22 secrets improperly. All it alleges, again referring to the three Defendants
23 collectively and tracking the language of the UTSA, is that “Best Buy revealed
24 TechForward's trade secrets to unauthorized recipients, without the express or
25 implied consent of TechForward, and has used and intends to continue to use the
26 trade secrets for its own benefit, without the express or implied consent of
27 TechForward and to the detriment of TechForward.” (Amended Complaint ¶67.) To
28 this TechForward adds the legal conclusion that “Best Buy’s misappropriation of

1 TechForward's trade secrets has caused and will continue to cause TechForward to
2 suffer substantial damages, including but not limited to losses suffered as a result of
3 the disclosure of its confidential and proprietary trade secrets, as well as the loss of
4 current and future business that could have been derived from the use of its
5 confidential and proprietary trade secrets." (Amended Complaint ¶¶69.)

6 Even if Plaintiff were allowed to treat all Best Buy entities as one and the
7 same, Plaintiff's allegations still do not adequately allege a violation of the UTSA.
8 Paragraph 42 of the Amended Complaint lists the entirety of the information that
9 could be characterized as trade secrets given to "Best Buy": "Exercise Rates;"
10 "Profit Center Comparison to Warrant Programs;" "Strategies to Influence Exercise
11 Behavior;" "Cash Cycle and Reserves;" "Pricing;" "Resale Pricing, Scalability,
12 Depreciation and Risk;" and "Proprietary Systems and Historical Predictions."
13 Paragraph 43 through 49 concern other communications in which allegedly
14 confidential information was disclosed. Assuming *arguendo* that such information
15 is nonpublic, confidential, trade-secret information, Plaintiff still makes no
16 allegation that any Best Buy entity actually disclosed or used that information.
17 Allegations of at least one of them is required to state a claim under the UTSA. Cal.
18 Civ. Code. § 3426.1(b) (requiring "disclosure" or "use" of purported trade secret).
19 Without it, no claim for disclosure or use can survive.

20 A careful reading of the Amended Complaint's Paragraphs 50 through 60—
21 titled "Best Buy Wrongfully Uses TechForward's Trade Secrets"—reveals no
22 allegation that any Best Buy entity gave any of the alleged trade secrets to any other
23 person, or used them in the Best Buy Buy Back Plan in any way:

24 ¶¶ 50-51. These paragraphs note BBES's and BBPL's decision to end their
25 agreements, which both were expressly permitted to do under the agreement's
26 terms. (Geibelson Decl. Ex. X ¶ PP.) They do not relate to the misappropriation of
27 any alleged trade secret.

28 ¶¶ 52-54. These paragraphs discuss Best Buy's version of its plan. While

1 these paragraphs note some similarities between Best Buy's and TechForward's
2 plans, they do not contain any allegations that Best Buy's plan actually uses any of
3 the alleged trade secrets described in paragraph 42 of the Amended Complaint. In
4 fact, the two similarities highlighted by TechForward: the structure of the store
5 credits (50/40/30), and the "good," "poor," and "substantially impaired"
6 terminology cannot be trade secrets because they are publicly available. Cal. Civ.
7 Code. § 3426.1, subd. (d) (defining "trade secret" as, inter alia, "not being known to
8 the public"). As a review of Plaintiff's website confirms, the company's
9 terminology, prices, and credit percentages have always been advertised and
10 available to the public. (*See* RJN Exs. 1-8.)

11 ¶¶ 55-56. These paragraphs discuss the promotion of the Best Buy Buy Back
12 Program. They are irrelevant to any claim of the misappropriation of any trade
13 secret.

14 ¶¶ 59-60. In these paragraphs Plaintiff hypothesizes how an insurance
15 underwriter behind a program like the Best Buy Buy Back Program "would have
16 inquired" into the risks of such a service, and allege that the information
17 TechForward provided could possibly have satisfied the insurer's requirements.
18 First, Plaintiff's allegations of what a hypothetical insurance underwriter would
19 request are conclusory, inexact, and insufficiently pled. Second, and most
20 importantly, these paragraphs do not actually allege that Best Buy entities disclosed
21 any confidential information to an underwriter. Because no such evidence exists,
22 plaintiff cannot possess any evidence or information upon which to allege that any
23 of the defendants wrongfully disclosed or used alleged trade secrets to procure
24 insurance. For sure, it has not done so. And rather than launching into rank
25 speculation, Plaintiff teeters at the edge with baseless insinuation.⁷

26
27 7 Plaintiff must know that Best Buy's subsidiary DealTree has been reselling used
28 consumer electronics, and Best Buy stores have had their own Trade-In Program for

1 Plaintiff's insinuation falters under Rule 12 because the UTSA claim requires
2 an allegation that each Defendant disclosed or used the alleged trade secrets. Cal.
3 Civ. Code § 3426.1(b). Plaintiff's reliance on mere circumstance to show trade-
4 secret misappropriation is deficient: "[t]he pleading must contain something more
5 than a statement of facts that merely creates a suspicion of a legally cognizable
6 right of action." *Twombly*, 127 S. Ct. at 1965 (parenthetically quoting, with
7 alterations, 5 C. Wright & A. Miller, Federal Practice and Procedure § 1216 (3d
8 ed.2004)). The trade secret cause of action should be dismissed against all of the
9 Defendants for this reason.

10 V.

11 **PLAINTIFF'S PURPORTED CAUSES OF ACTION FOR BREACH OF**
12 **CONTRACT FAIL TO STATE VALID CLAIMS AGAINST THE**
13 **DEFENDANTS.**

14 Plaintiff's breach of contract claims arise out of its 2008 agreement with
15 BBES and its 2010 agreement with BBPL. (Amended Complaint ¶¶ 26, 30, 73, 80;
16 Geibelson Decl. Exs. 1, 2.) These allegations fail to adequately state a claim against
17 any of the Defendants.

18 Certainly, the allegations are insufficient to state a claim against BBCI which
19 is not even a signatory of the 2008 agreement which it is alleged to have breached.
20 TechForward acknowledges that BBCI never signed the 2008 agreement. And as
21 set forth above, no facts are specifically alleged as against BBCI concerning
22 information that was disclosed to it, or disclosed or used by it. Thus, Plaintiff has
23 not adequately alleged improper receipt, disclosure, or use of information in breach
24 of the agreement by BBCI.

25
26
27 the better part of a decade. In fact, Plaintiff objectively references DealTree in
28 paragraph 28 of the Amended Complaint.

1 **A. The Amended Complaint Inadequately Alleges Any Active Breach Of**
2 **the Contract at Issue**

3 In addition to showing the existence of a contract, plaintiff must plead facts
4 to show defendants received confidential or trade secret information under the
5 contract, breached the contract, and that damages resulted from that breach.

6 *Reichert v. General Ins. Co.*, 68 Cal.2d 822, 830, 69 Cal. Rptr. 321 (1968);
7 *Commercial Assocs., Inc. v. Work Connection, Inc.*, 712 N.W.2d 772, 782 (Minn.
8 App. 2006). Plaintiff's breach of contract causes of action assert that the Best Buy
9 entities breached the 2008 and 2010 agreements in the language of the contracts,
10 including by failing to maintain confidentiality, disclosing information, showing it
11 to those who did not have a need to know, etc. (Amended Complaint ¶¶ 77, 84.)

12 However, these allegations are bare legal conclusions, and are not supported
13 with any factual allegations of breach—namely, allegations detailing what or how
14 any Best Buy entity disclosed or used nonpublic information that was obtained
15 from TechForward. (*See generally* Amended Complaint ¶¶ 1-60.) Indeed, the only
16 hint of a liability theory alleged by Plaintiff is its sheer suspicion that an insurance
17 underwriter would find Plaintiff's information useful. (*Id.* ¶¶ 59-60.) Just as this is
18 insufficient to allege misappropriation of trade secrets, it fails to state a claim for
19 breach of contract. At most, the allegations reflect TechForward's suspicion that
20 Best Buy entities had a motive to disclose information. Because Plaintiff has not
21 pled any breach with specificity, its contract causes of action must be dismissed.

22 **B. BBCI Is Improperly Included in Plaintiff's Second Cause of Action for**
23 **Breach of the 2008 Agreement**

24 BBCI is not a signatory to the 2008 agreement that it is alleged to have been
25 breached in the Second Cause Of Action, and TechForward has not alleged that
26 BBCI was a party to the 2008 agreement. Indeed, TechForward only alleges that
27 BBES entered into the 2008 agreement. (Amended Complaint ¶ 73.)

28 TechForward does allege that BBES did so on behalf of itself and its

1 affiliates, all of which (apparently including BBCI) breached the agreement.
2 (Amended Complaint ¶¶ 73, 77.) However, it is self-evident that only parties to a
3 contract can be bound by it. *See Cal. Civ. Code* §§ 1427-1428; *see generally* Corbin
4 on Contracts §§ 1.2, 1.3 (defining “legal obligation” and “contract”). It is also a
5 “general principle of corporate law deeply ingrained in our economic and legal
6 systems that a parent corporation is not liable for the acts of its subsidiaries.”
7 *United States v. Bestfoods*, 524 U.S. 51, 61 (1998) (quotations omitted). Thus,
8 BBCI has no legal obligation under an agreement to which it was not a party. *See*
9 *e.g., Stanley v. Univ. of Cal.*, 178 F.3d 1069, 1077 (9th Cir. 1999) (affirming
10 summary judgment of contract claim because defendant was not a party to the
11 contract); *Commercial Assoc. v. Work Connection*, 712 N.W.2d 772, 783 (Minn.
12 App. 2006) (finding appellant cannot breach a contract to which he was not a
13 party).

14 Even if BBCI were considered a party to the 2008 agreement, TechForward’s
15 claim is insufficiently alleged. Because TechForward has nowhere specifically
16 alleged what information BBCI supposedly received information under the 2008
17 agreement, the Amended Complaint fails to provide BBCI with notice of the
18 information it is alleged to have failed to maintain in confidence and to have
19 disclosed. Moreover, nowhere is it alleged how BBCI used purportedly confidential
20 information, much less in breach of the agreement. Thus, the second cause of action
21 for breach of contract leaves solely to guesswork what TechForward believes BBCI
22 did to breach an agreement to which it is not a signatory. Substantially more is
23 required to state a plausible claim for relief against BBCI. *See Iqbal*, 129 S.Ct. at
24 1950. Without more, the cause of action must be dismissed as against BBCI.

25 **VI.**

26 **CONCLUSION**

27 Plaintiff wages serious allegations of wrongful conduct against the
28 Defendants. Yet at the same time, Plaintiff is imprecise regarding which Best Buy

