

JAN 26 2024

David W. Slayton, Executive Officer/Clerk of Court

By: K. Mason, Deputy

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES – CENTRAL DISTRICT
DEPARTMENT 53

FOREX EXPRESS CORP., d/b/a
WIRECASH;

Plaintiff,

vs.

INTER & CO. PAYMENTS, INC., f/k/a
PRONTO MONEY TRANSFER, INC., d/b/a
PONTUAL, et al.;

Defendants.

Case No.: 22STCV38301

Hearing Date: January 26, 2024

Time: 10:00 a.m.

~~TENTATIVE~~ ORDER RE:

- (1) PLAINTIFF'S MOTION TO SEAL IDENTIFICATION OF TRADE SECRETS
- (2) PLAINTIFF'S MOTION TO SEAL AMENDED IDENTIFICATION OF TRADE SECRETS
- (3) DEFENDANT'S DEMURRER TO SECOND AMENDED COMPLAINT
- (4) DEFENDANT'S DEMURRER TO SECOND AMENDED COMPLAINT
- (5) DEFENDANT'S MOTION TO STRIKE PORTIONS OF SECOND AMENDED COMPLAINT
- (6) DEFENDANT'S DEMURRER TO SECOND AMENDED COMPLAINT

MOVING PARTY: Plaintiff Forex Express Corp., d/b/a WireCash

RESPONDING PARTIES: Defendant Eliran Grushkowsky (joined by (1) defendants Inter & Co. Payments, Inc. and Inter & Co., Inc. on November 27, 2023, and (2) defendant Fernando Fayzano on November 28, 2023)

(1) Motion to Seal Identification of Trade Secrets

MOVING PARTY: Plaintiff Forex Express Corp., d/b/a WireCash

RESPONDING PARTIES: Defendant Eliran Grushkowsky (joined by (1) defendants Inter & Co. Payments, Inc. and Inter & Co., Inc. on November 21, 2023, and (2) defendant Fernando Fayzano on November 21, 2023)

(2) Motion to Seal Amended Identification of Trade Secrets

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MOVING PARTY: Defendant Fernando Fayzano

RESPONDING PARTY: Plaintiff Forex Express Corp., d/b/a WireCash

(3) Demurrer to Second Amended Complaint

MOVING PARTY: Defendant Eliran Grushkowsky

RESPONDING PARTY: Plaintiff Forex Express Corp., d/b/a WireCash

(4) Demurrer to Second Amended Complaint

(5) Motion to Strike Portions of Second Amended Complaint

MOVING PARTIES: Defendants Inter & Co. Payments, Inc., and Inter & Co., Inc.

RESPONDING PARTY: Plaintiff Forex Express Corp., d/b/a WireCash

(6) Demurrer to Second Amended Complaint

The court considered the moving, opposition, joinder, and reply papers filed in connection with (1) the motion to seal identification of trade secrets, and (2) the motion to seal amended identification of trade secrets.

The court considered the moving, consolidated opposition, and reply papers filed in connection with each of the three pending demurrers.

The court considered the moving, opposition, and reply papers filed in connection with the motion to strike.

REQUEST FOR JUDICIAL NOTICE

The court grants defendant Eliran Grushkowsky's requests for judicial notice. (Evid. Code, § 452, subds. (c), (d).)

The court grants defendants Inter & Co. Payments, Inc., and Inter & Co., Inc.'s request for judicial notice as to Exhibit A. (Evid. Code, § 452, subd. (c).)

The court denies defendants Inter & Co. Payments, Inc., and Inter & Co., Inc.'s request for judicial notice as to Exhibit B because they have not shown that the discovery responses that are the subject of this request contain statements that are inconsistent with the allegations of the Second Amended Complaint. (*Bounds v. Superior Court* (2014) 229 Cal.App.4th 468, 477 ["It

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1 is true that a court may take judicial notice of the pleading party's discovery responses (or those
2 of the party's authorized agent) *to the extent* 'they contain statements of the [party] or his agent
3 which are inconsistent with the allegations of the pleading before the court'' [emphasis added].)

4 **BACKGROUND**

5 Plaintiff Forex Express Corp., d/b/a WireCash ("Plaintiff") filed the operative Second
6 Amended Complaint in this action on October 16, 2023,¹ against defendants Inter & Co.
7 Payments, Inc., f/k/a Pronto Money Transfer, Inc., d/b/a Pontual ("Pontual"), Eliran
8 Grushkowsky ("Grushkowsky"), Fernando Fayzano ("Fayzano"), and Inter & Co., Inc. ("Inter &
9 Co.").

10 Now pending before the court are (1) two motions to seal Plaintiff's identification and
11 amended identification of trade secrets and (2) three sets of responsive pleadings directed to the
12 Second Amended Complaint.

13 First, on September 18, 2023, Plaintiff filed its motion to seal its identification of trade
14 secrets.

15 Second, on October 13, 2023, Plaintiff filed its motion to seal its amended identification
16 of trade secrets.

17 Third, on November 7, 2023, defendant Fayzano filed his demurrer to the Second
18 Amended Complaint.

19 Fourth, on November 8, 2023, defendant Grushkowsky filed his demurrer and motion to
20 strike to the Second Amended Complaint.

21 Fifth, on November 13, 2023, defendants Pontual and Inter & Co. (collectively, the "Inter
22 Defendants") filed their demurrer to the Second Amended Complaint.

23 **PLAINTIFF'S MOTION TO SEAL IDENTIFICATION OF TRADE SECRETS**

24 Plaintiff moves the court for an order sealing its Identification of Trade Secrets, lodged
25 conditionally under seal on September 8, 2023, by defendant Inter & Co. In light of the court's
26 October 18, 2023 order, Plaintiff moves to seal only the following portions of the Identification

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¹ Thereafter, pursuant to the court's December 20, 2023 order, Plaintiff filed (1) on December 20, 2023, the
unredacted Second Amended Complaint under seal, and (2) on December 21, 2023, a revised public Second
Amended Complaint redacting materials from the sealed record.

1 of Trade Secrets: (1) page 2, lines 1-4; (2) page 2, lines 6-7; (3) page 2, lines 8-13; (4) page 2,
2 lines 20-22; (5) page 2, lines 25-27; (6) page 3, lines 4-5; (7) page 3, lines 8-21; (8) page 3, lines
3 23-24; (9) page 3, lines 27-28; (10) page 4, lines 4-13; (11) page 4, lines 17-27; (12) page 5, lines
4 2-5; and (13) page 5, lines 13-24. (Ancone Reply Decl. filed Dec. 1, 2023, Ex. 1.)

5 Generally, court records are presumed to be open unless confidentiality is required by
6 law. (Cal. Rules of Court, rule 2.550, subd. (c).) If the presumption of access applies, the court
7 may order that a record be filed under seal “if it expressly finds facts that establish: (1) There
8 exists an overriding interest that overcomes the right of public access to the record; (2) The
9 overriding interest supports sealing the record; (3) A substantial probability exists that the
10 overriding interest will be prejudiced if the record is not sealed; (4) The proposed sealing is
11 narrowly tailored; and (5) No less restrictive means exist to achieve the overriding interest.”
12 (Cal. Rules of Court, rule 2.550, subd. (d).)

13 The court finds that (1) there exists an overriding interest that overcomes the right of
14 public access to the record as to the information set forth on (i) page 3, between lines 10-16 (all
15 of paragraph 4, subdivision (b), but excluding the last sentence), (ii) page 4, between lines 6-11
16 (all of paragraph 4, subdivision (f), but excluding the last sentence), (iii) page 4, between lines
17 21-26 (all of paragraph 5, but excluding the last sentence of paragraph 5, located between lines
18 25-27), (iv) page 5, between lines 5-6 (the first sentence of paragraph 7), (v) page 5, lines 14-18
19 (all of paragraph 9, but excluding the last sentence), and (vi) page 5, between lines 19-23 (all of
20 paragraph 10, but excluding the last sentence), because the information set forth therein includes
21 descriptions that may constitute Plaintiff’s trade secrets; (2) the overriding interest supports
22 sealing the record to prevent disclosure of that information; (3) a substantial probability exists
23 that the overriding interest will be prejudiced if the record is not sealed; (4) the proposed sealing
24 (as set forth in the reply declaration) is narrowly tailored; and (5) no less restrictive means exist
25 to achieve the overriding interest. (Cal. Rules of Ct., rule 2.550, subd. (d); Cooper Decl., ¶¶ 7-
26 12.) The court therefore grants Plaintiff’s motion as to those portions of the Identification of
27 Trade Secrets.

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1 The court denies the motion as to the information set forth in all other redacted
2 paragraphs.

3 **PLAINTIFF'S MOTION TO SEAL AMENDED IDENTIFICATION OF TRADE**

4 **SECRETS**

5 Plaintiff moves the court for an order sealing (1) its Amended Identification of Trade
6 Secrets, and (2) the Declaration of Geoffrey Mottram Regarding Inadequacy of Plaintiff's
7 Amended Identification of Trade Secrets, lodged by the Inter Defendants on October 4, 2023.

8 In light of the court's October 18, 2023 order, Plaintiff now seeks to seal the following
9 portions of the Amended Identification of Trade Secrets: (1) page 2, lines 1-4; (2) page 2, lines
10 7-8; (3) page 2, lines 8-12; (4) page 2, lines 19-28; (5) page 3, lines 1-26; (6) page 3, line 28; (7)
11 page 4, lines 2-3; (8) page 4, lines 7-9; (9) page 4, lines 13-16; (10) page 4, lines 17-28; (11)
12 page 5, lines 2-4; (12) page 5, lines 5-6; (13) page 5, lines 9-10; (14) page 5, lines 14-15; (15)
13 page 5, lines 16-22; (16) page 5, lines 27-28; (17) page 6, lines 1-10; (18) page 6, lines 12-13;
14 (19) page 6, lines 14-15; (20) page 6, lines 22-23; (21) page 6, lines 24-28; and (22) page 7, lines
15 1-7. (Ancone Reply Decl. filed Nov. 29, 2023, Ex. 1.)

16 Generally, court records are presumed to be open unless confidentiality is required by
17 law. (Cal. Rules of Court, rule 2.550, subd. (c).) If the presumption of access applies, the court
18 may order that a record be filed under seal "if it expressly finds facts that establish: (1) There
19 exists an overriding interest that overcomes the right of public access to the record; (2) The
20 overriding interest supports sealing the record; (3) A substantial probability exists that the
21 overriding interest will be prejudiced if the record is not sealed; (4) The proposed sealing is
22 narrowly tailored; and (5) No less restrictive means exist to achieve the overriding interest."
23 (Cal. Rules of Court, rule 2.550, subd. (d).)

24 First, as to the Amended Identification of Trade Secrets (attached as Exhibit A to the
25 declaration of Byung-Kwan Park, filed on October 4, 2023), the court finds that (1) there exists
26 an overriding interest that overcomes the right of public access to the information set forth on
27 (i) page 2, between lines 19-28, through page 3, lines 1-27, (ii) page 4, between lines 20-27 (but
28 excluding the last sentence of paragraph 5, subdivision (b)), (iii) page 5, between lines 16-21,

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1 (iv) page 6, between lines 4-10, (v) page 6, between lines 14-16, (vi) page 6, between lines 24-
2 28, through page 7, lines 1-2 (but excluding the last sentence of paragraph 10), and (vii) page 7,
3 between lines 3 and 7 (but excluding the last sentence of paragraph 11 as set forth between lines
4 6-8), because the information set forth therein includes descriptions that may constitute
5 Plaintiff's trade secrets; (2) the overriding interest supports sealing the record to prevent
6 disclosure of this information; (3) a substantial probability exists that the overriding interest will
7 be prejudiced if the record is not sealed; (4) the proposed sealing (as set forth in the reply
8 declaration) is narrowly tailored; and (5) no less restrictive means exist to achieve the overriding
9 interest. (Cal. Rules of Ct., rule 2.550, subd. (d).) The court therefore grants Plaintiff's motion
10 as to those portions of the Amended Identification of Trade Secrets. The court denies the motion
11 as to the information set forth in all the other redacted paragraphs.

12 Second, as to the Geoffrey Mottram declaration, the court finds that (1) there exists an
13 overriding interest that overcomes the right of public access to the information set forth on page
14 3, line 24 through page 31, line 11, because it discusses information that may constitute
15 Plaintiff's trade secrets; (2) the overriding interest supports sealing the record to protect this
16 information; (3) a substantial probability exists that the overriding interest will be prejudiced if
17 the record is not sealed; (4) the proposed sealing is narrowly tailored; and (5) no less restrictive
18 means exist to achieve the overriding interest. (Cal. Rules of Ct., rule 2.550, subd. (d).) The
19 court therefore grants Plaintiff's motion as to those portions of the declaration of Geoffrey
20 Mottram.

21 **FAYZANO'S DEMURRER TO SECOND AMENDED COMPLAINT**

22 Defendant Fayzano moves the court for an order sustaining his demurrer to Plaintiff's
23 first and sixth causes of action.

24 The court overrules Fayzano's demurrer to the first cause of action for misappropriation
25 of trade secrets because it states facts sufficient to constitute a cause of action since Fayzano has
26 not shown that this cause of action is necessarily barred by the statute of limitations on the face
27 of the Second Amended Complaint. (Code Civ. Proc., § 430.10, subd. (e); *Raja Development*
28 *Co., Inc. v. Napa Sanitary District* (2022) 85 Cal.App.5th 85, 92 ["A demurrer based on a statute

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1 of limitations will not lie where the action may be, but is not necessarily, barred”] [internal
2 quotations omitted]; Civ. Code, § 3426.6 [“An action for misappropriation must be brought
3 within three years after the misappropriation is discovered or by the exercise of reasonable
4 diligence should have been discovered”].)

5 The court acknowledges that Plaintiff has alleged that Pontual and Grushkowsky
6 misappropriated Plaintiff’s trade secrets “[o]n January 1, 2020[.]” (SAC ¶ 135.) However,
7 Plaintiff did not allege that *Fayzano* misappropriated its trade secrets on that date, or any other
8 specific date. Thus, *Fayzano* has not shown how this allegation bars Plaintiff’s cause of action
9 against him. Moreover, even if Plaintiff had alleged that *Fayzano* also misappropriated its trade
10 secrets on January 1, 2020, the court finds that Plaintiff has alleged sufficient facts, for purposes
11 of this demurrer, establishing that it did not discover, or should not have discovered through the
12 exercise of reasonable diligence, the misappropriation until July 2022 based on (1) the multiple
13 representations made by Grushkowsky that he did not possess Plaintiff’s trade secret and
14 confidential information, and (2) Plaintiff’s reasonable reliance thereon. (SAC ¶¶ 27-29, 31-32,
15 35; *MGA Entertainment, Inc. v. Mattel, Inc.* (2019) 41 Cal.App.5th 554, 561, 563 [inquiry is
16 whether the plaintiff is on notice of a potential claim].)

17 The court overrules *Fayzano*’s demurrer to the sixth cause of action for aiding and
18 abetting breach of fiduciary duty because it states facts sufficient to constitute a cause of action
19 since (1) Plaintiff has sufficiently alleged that (i) Grushkowsky, while acting as Plaintiff’s CEO,
20 CTO, and Director, breached his fiduciary duties to Plaintiff by putting his interests ahead of
21 Plaintiff’s, by conspiring with *Fayzano* to build a competing business (Pontual) to undermine
22 Plaintiff, and by recruiting Plaintiff’s employees to work for Pontual, including by offering them
23 stock in Pontual (SAC ¶¶ 184, 189), (ii) *Fayzano* assisted and encouraged Grushkowsky to
24 breach those duties in an effort to undermine Plaintiff, including by offering Pontual stock to
25 Plaintiff’s employees (SAC ¶ 191), and (iii) Plaintiff was damaged, and (2) this cause of action is
26 not based solely on the alleged misappropriation of Plaintiff’s trade secrets because it is also
27 based on other alleged misconduct, and therefore *Fayzano* has not shown that this cause of action
28 is preempted by the Uniform Trade Secrets Act (Civ. Code, § 3426 et seq.). (Code Civ. Proc.,

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1 § 430.10, subd. (e); *Nasrawi v. Buck Consultants LLC* (2014) 231 Cal.App.4th 328, 343
2 [elements of cause of action for aiding and abetting breach of fiduciary duty]; *Angelica Textile*
3 *Services, Inc. v. Park* (2013) 220 Cal.App.4th 495, 499 [“UTSA does not displace other claims
4 when they are not based on an alleged misappropriation of a trade secret”].)

5 **GRUSHKOWSKY’S DEMURRER TO SECOND AMENDED COMPLAINT**

6 Defendant Grushkowsky moves the court for an order sustaining his demurrer to
7 Plaintiff’s first, fifth, seventh, and eighth causes of action.

8 The court overrules Grushkowsky’s demurrer to the first cause of action for
9 misappropriation of trade secrets because it states facts sufficient to constitute a cause of action.
10 (Code Civ. Proc., § 430.10, subd. (e).)

11 First, the court finds that this cause of action is not “necessarily barred” by the statute of
12 limitations. (*Raja Development Co., Inc., supra*, 85 Cal.App.5th at p. 92; Civ. Code, § 3246.6.)

13 As set forth above, the court finds that Plaintiff has alleged sufficient facts to show that it
14 did not discover, or should not have discovered earlier, the alleged misappropriation of its trade
15 secrets until July 2022 (within three years of the date that Plaintiff obtained its certificate of
16 revivor) based on (1) the multiple representations made by Grushkowsky that he did not possess
17 Plaintiff’s trade secret and confidential information, and (2) Plaintiff’s reasonable reliance
18 thereon. (SAC ¶¶ 27-29, 31-32, 35.) Further, although Grushkowsky contends that the Second
19 Amended Complaint is a sham and contradicts the First Amended Complaint and the allegations
20 establishing discovery notice as of January 2020 therein, the court disagrees. (Grushkowsky
21 Dem., p. 5:3-5.) Grushkowsky has cited paragraphs 82, 88, 96, 136, and 138 of the First
22 Amended Complaint in support of this assertion. (Grushkowsky Dem., p. 5:12-16, 5:16-19.)
23 However, these portions of the First Amended Complaint do not “admit[.]” that Plaintiff was
24 already aware of Grushkowsky’s misappropriation or allege facts establishing that Plaintiff was
25 on notice of a potential claim or should have, by the exercise of reasonable diligence, discovered
26 the misappropriation. (*MGA Entertainment, Inc., supra*, 41 Cal.App.5th at pp. 563-564.)

27 Instead, these paragraphs allege only that Grushkowsky kept the laptop and Plaintiff’s trade
28 secrets in January 2020. They do not allege that Plaintiff discovered such misappropriation at

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1 that time or should have discovered, by the exercise of reasonable diligence, the alleged
2 misappropriation. (*Ibid.*; RJN, Ex. B, FAC ¶¶ 82, 88, 96, 136, 138; RJN Ex. D [Certificate of
3 Revivor for Plaintiff effective July 26, 2023].)

4 Second, Plaintiff has sufficiently alleged that it owned the trade secrets that are the
5 subject of this action. (SAC ¶ 134 [Plaintiff “is the owner of certain Trade Secrets and
6 confidential information, as alleged in paragraphs 1 through 119”]; *AMN Healthcare, Inc. v. Aya*
7 *Healthcare Services, Inc.* (2018) 28 Cal.App.5th 923, 943 [elements of cause of action for
8 misappropriation of trade secrets].)

9 The court overrules Grushkowsky’s demurrer to the fifth cause of action for breach of
10 fiduciary duty because it states facts sufficient to constitute a cause of action since (1) Plaintiff
11 has sufficiently alleged that Grushkowsky breached his fiduciary duties of loyalty to Plaintiff by,
12 *inter alia*, by taking acts to injure Plaintiff for his own benefit while acting as Plaintiff’s CEO,
13 CTO, and Director, including (i) by encouraging employees to fail to develop Plaintiff’s
14 business, (ii) soliciting Plaintiff’s shareholders to invest in Pontual, and (iii) recruiting Plaintiff’s
15 employees “so that [Plaintiff] would not have the resources to compete with Pontual after
16 Grushkowsky left” (SAC ¶¶ 184-196), which harmed Plaintiff (SAC ¶ 186), and (2) this cause of
17 action is not solely based on Grushkowsky’s alleged misappropriation of trade secrets and
18 therefore it is not preempted by the Uniform Trade Secrets Act. (Code Civ. Proc., § 430.10,
19 subd. (e); *O’Neal v. Stanislaus County Employees’ Retirement Assn.* (2017) 8 Cal.App.5th 1184,
20 1215 [elements of cause of action for breach of fiduciary duty]; *Angelica Textile Services, Inc.*,
21 *supra*, 220 Cal.App.4th at pp. 509 [corporate officers and directors “are not permitted to use their
22 position of trust and confidence to further their private interests”] [internal quotations omitted],
23 499 [“UTSA does not displace other claims when they are not based on an alleged
24 misappropriation of a trade secret”].)

25 The court overrules Grushkowsky’s demurrer to the seventh cause of action for violation
26 of California Computer Fraud and Abuse Act because it states facts sufficient to constitute a
27 cause of action. (Code Civ. Proc., § 430.10, subd. (e).)

1 First, the court finds that Grushkowsky has not shown that this cause of action is
2 preempted by the Uniform Trade Secrets Act.

3 Generally, the Uniform Trade Secrets Act “preempts common law claims that are ‘based
4 on the same nucleus of facts as the misappropriation of trade secrets claim for relief.’” (*K.C.*
5 *Multimedia, Inc. v. Bank of America Technology & Operations, Inc.* (2009) 171 Cal.App.4th
6 939, 958.) However, Civil Code section 3426.7 states that it does not affect, *inter alia*, “criminal
7 remedies, whether or not based upon misappropriation of a trade secret.” (Civ. Code, § 3426.7,
8 subd. (b).) The court finds persuasive several federal opinions concluding that claims under
9 Penal Code section 502 seek criminal remedies and therefore are not preempted by the Uniform
10 Trade Secrets Act. (*Lacagnina v. Comprehend Systems, Inc.* (2018) 25 Cal.App.5th 955, 971, n.
11 15 [“Unreported federal court cases may be cited in California as persuasive authority”].)

12 “California Penal Code section 502 is a criminal statute that is contained within Part 1 of
13 the Penal Code entitled ‘Of Crimes and Punishments,’ Title 13 entitled, ‘Of Crimes against
14 Property, and Chapter 5 entitled, ‘Larceny [Theft].’ Consequently, there is no dispute that Penal
15 Code section 502 is a criminal statute that contains criminal remedies.” (*Heieck v. Federal*
16 *Signal Corp.* (C.D. Cal. 2019) 2019 WL 6873869 at *4.) Thus, because Plaintiff’s cause of
17 action under Penal Code section 502 seeks criminal remedies, the court finds that it is not
18 preempted by the Uniform Trade Secrets Act. (Civ. Code, § 3426.7, subd. (b); *Heieck, supra*,
19 2019 WL 6873869 at *4; *R.R. Donnelley & Sons Company v. Pappas* (E.D. Cal. 2021) 2021 WL
20 3488502 at *3 [some courts have dismissed claims under this statute as preempted but “several
21 other courts have found that the [Uniform Trade Secrets Act] . . . cannot preempt a [Penal Code]
22 § 502(c) claim”], *4 [declining to dismiss cause of action for computer crimes].)

23 Moreover, Plaintiff has also alleged that Defendants violated Penal Code section 502,
24 subdivision (c)(7), which makes it a crime to “[k]nowingly and without permission access[] . . .
25 any computer, computer system, or computer network.” (SAC ¶ 197; Pen. Code, § 502, subd.
26 (c)(7).) Thus, the violation of this statutory provision is not based on the alleged
27 misappropriation of trade secrets and instead is based solely on the unlawful access to Plaintiff’s
28

1 computer, computer system, or computer network and therefore would not be preempted by the
2 Uniform Trade Secrets Act. (*Ibid.*)

3 Second, the court finds that this cause of action is not necessarily barred by the three-year
4 statute of limitations for the same reasons as set forth in connection with the court's ruling on the
5 demurrer to the first cause of action. (*Raja Development Co., Inc., supra*, 85 Cal.App.5th at p.
6 92; Pen. Code, § 502, subd. (e)(5) [action must be brought within three years of the date of the
7 act complained of or the date of the discovery of the damage]; SAC ¶¶ 26-29, 31-33, 196-197.)

8 The court overrules Grushkowsky's demurrer to the eighth cause of action for unfair
9 business practices because it states facts sufficient to constitute a cause of action since
10 (1) Plaintiff has alleged sufficient facts establishing a violation of the California Computer Fraud
11 and Abuse Act (Pen. Code, § 502, subdivision (c)(7)) and therefore has alleged a business act
12 forbidden by statute under the "unlawful" prong; (2) Grushkowsky has not shown that this cause
13 of action is preempted by the Uniform Trade Secrets Act; and (3) Plaintiff has properly requested
14 available remedies by requesting an injunction and restitution. (Code Civ. Proc., § 430.10, subd.
15 (e); *Adhav v. Midway Rent A Car, Inc.* (2019) 37 Cal.App.5th 954, 970 [“'Unlawful' conduct
16 includes any business practice or act forbidden by local, state or federal statutes”]; Bus. & Prof.
17 Code, § 17203; SAC ¶¶ 203 [alleging that Defendants violated the California Computer Fraud
18 and Abuse Act], 205 [requesting restitution and an injunction].)

19 **GRUSHKOWSKY'S MOTION TO STRIKE PORTIONS OF SECOND AMENDED**
20 **COMPLAINT**

21 Grushkowsky moves the court for an order striking the following from the Second
22 Amended Complaint: (1) Plaintiff's requests for punitive damages as set forth in paragraphs 143,
23 187, 194, 200, and the prayer for punitive damages; (2) paragraphs 182 through 184 in their
24 entirety; (3) the allegations “encouraging Grushkowsky to force through the illusory Pontual
25 offer and undermine WireCash's business” and “so that the business of their competitor
26 WireCash would be undermined” as set forth in paragraph 191; and (4) the allegation “because
27 as a result of Grushkowsky's breaches, Pontual built a competing money remittance business that
28 Pontual eventually sold for \$157 million to INTR” as set forth in paragraph 192.

1 The court denies Grushkowsky's motion to strike Plaintiff's requests and prayer for
2 punitive damages because Plaintiff has alleged facts establishing that Grushkowsky (1) willfully
3 and maliciously misappropriated Plaintiff's trade secrets and (2) is guilty of malice within the
4 meaning of Civil Code section 3294. (Civ. Code, §§ 3426.3 ["If willful and malicious
5 misappropriation exists, the court may award exemplary damages"], 3294, subds. (a), (c)(1).)

6 The court denies Grushkowsky's motion to strike paragraphs 182 through 184 in their
7 entirety because Grushkowsky has not shown (1) that paragraph 182, in alleging that
8 Grushkowsky put his own personal interests above those of Plaintiff, is irrelevant, false, or
9 improper, and (2) Grushkowsky has not shown that the entirety of paragraphs 182-184 refer to
10 his alleged misappropriation of Plaintiff's trade secrets and therefore has not shown that these
11 allegations must be stricken as preempted by the Uniform Trade Secrets Act. (Code Civ. Proc., §
12 436, subd. (c); SAC ¶¶ 183-184.)

13 The court denies Grushkowsky's motion to strike the allegations "encouraging
14 Grushkowsky to force through the illusory Pontual offer and undermine WireCash's business"
15 and "so that the business of their competitor WireCash would be undermined" as set forth in
16 paragraph 191 because Grushkowsky has not shown that this allegation is irrelevant, false, or
17 improper. (Code Civ. Proc., § 436, subd. (a); *PH II, Inc. v. Superior Court* (1995) 33
18 Cal.App.4th 1680, 1683 [motions to strike should not be used as "a procedural 'line item veto'
19 [by] the civil defendant".])

20 The court denies Grushkowsky's motion to strike the allegation "because as a result of
21 Grushkowsky's breaches, Pontual built a competing money remittance business that Pontual
22 eventually sold for \$157 million to INTR" as set forth in paragraph 192 because Grushkowsky
23 has not shown that (1) this allegation refers solely to a preempted claim, or (2) this allegation is
24 irrelevant, false, or improper. (Code Civ. Proc., § 436, subd. (a); *PH II, Inc., supra*, 33
25 Cal.App.4th at p. 1683.)

26 **INTER DEFENDANTS' DEMURRER TO SECOND AMENDED COMPLAINT**

27 Inter Defendants move the court for an order sustaining their demurrer to Plaintiff's first,
28 sixth, seventh, eighth, and ninth causes of action.

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1 The court overrules Inter Defendants' demurrer to the first cause of action for
2 misappropriation of trade secrets because it states facts sufficient to constitute a cause of action
3 since this cause of action is not "necessarily" barred by the statute of limitations on the face of
4 the Second Amended Complaint for the reasons set forth in connection with the court's ruling on
5 defendants Fayzano and Grushkowsky's demurrers. (Code Civ. Proc., § 430.10, subd. (e); Civ.
6 Code, § 3426.6; *Raja Development Co., Inc., supra*, 85 Cal.App.5th at p. 92; SAC ¶¶ 26-29, 31-
7 32.)

8 The court overrules Pontual's demurrer to the sixth cause of action for aiding and
9 abetting breach of fiduciary duty because it states facts sufficient to constitute a cause of action
10 since Pontual has not shown that this cause of action is solely based on the alleged
11 misappropriation of Plaintiff's trade secrets and therefore has not shown that this cause of action
12 is preempted by the Uniform Trade Secrets Act. (Code Civ. Proc., § 430.10, subd. (e); SAC
13 ¶¶ 191-192 [alleging that Pontual aided and abetted Grushkowsky's breaches of fiduciary duties
14 by, *inter alia*, encouraging Grushkowsky to fail to develop Plaintiff's business, recruiting
15 Plaintiff's employees, offering Pontual's stock thereto]; *Angelica Textile Services, Inc., supra*,
16 220 Cal.App.4th at p. 499 ["UTSA does not displace other claims when they are not based on an
17 alleged misappropriation of a trade secret"].)

18 The court overrules Pontual's demurrer to the seventh cause of action for violation of the
19 California Computer Fraud and Abuse Act (Pen. Code, § 502) because it states facts sufficient to
20 constitute a cause of action since (1) the court has found, for the reasons set forth in connection
21 with the court's ruling on Grushkowsky's demurrer, that this cause of action is not preempted by
22 the Uniform Trade Secrets Act, and (2) the court has found, for the reasons set forth in
23 connection with the court's ruling on Grushkowsky's demurrer, that this cause of action is not
24 barred by the statute of limitations for the same reasons that the first cause of action is not barred
25 by the statute of limitations. (Code Civ. Proc., § 430.10, subd. (e); Civ. Code, § 3426.7, subd.
26 (b); *Heieck, supra*, 2019 WL 6873869 at *4; *R.R. Donnelley & Sons Company, supra*, 2021 WL
27 3488502 at *3-4.)

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1 The court overrules Pontual's demurrer to the eighth cause of action for unfair business
2 practices because it states facts sufficient to constitute a cause of action since (1) this cause of
3 action is based on, at least in part, the alleged violation of the Computer Fraud and Abuse Act,
4 (2) the court has concluded that the Computer Fraud and Abuse Act cause of action is not
5 preempted by the Uniform Trade Secrets Act, and (3) therefore Pontual has not shown that this
6 cause of action is preempted by the Uniform Trade Secrets Act. (Code Civ. Proc., § 430.10,
7 subd. (e).)

8 The court sustains Pontual's demurrer to the ninth cause of action for declaratory
9 judgment because it does not state facts sufficient to constitute a cause of action. (Code Civ.
10 Proc., § 430.10, subd. (e).)

11 In support of this cause of action, Plaintiff alleges that Pontual is liable for Plaintiff's
12 liabilities because Pontual "is a 'mere continuation' of" Plaintiff. Thus, Plaintiff requests
13 declarations that (1) Pontual is liable for Plaintiff's debts and liabilities, and (2) Pontual's profits
14 belong to Plaintiff's shareholders. (SAC ¶¶ 207, 209, 215.) However, Plaintiff has not alleged
15 facts establishing that Pontual is liable under a theory of successor liability. The court notes that,
16 in opposition, Plaintiff asserts that it has pleaded the two elements of successor liability by
17 pleading that no adequate consideration was given for its assets and that one or more persons
18 were officers, directors, or shareholders of both Plaintiff and Pontual. (Opp., p. 42:26-2.)
19 However, the case on which Plaintiff relies sets forth those two elements in evaluating cases
20 under a "third basis for successor liability—where 'the *purchasing* corporation is a mere
21 continuation of the seller . . .'" (*Cleveland v. Johnson* (2012) 209 Cal.App.4th 1315, 1327
22 [emphasis added].) Plaintiff has not alleged that Pontual is a purchasing corporation of Plaintiff,
23 and instead has based this cause of action on the allegation that Pontual has unlawfully acquired
24 its trade secrets and confidential information. (SAC ¶¶ 209, 213.)

25 Thus, the court finds that Plaintiff has not alleged facts to support the ninth cause of
26 action under a theory of successor liability.

27 The burden is on the plaintiff "to articulate how it could amend its pleading to render it
28 sufficient." (*Palm Springs Villas II Homeowners Assn., Inc. v. Parth* (2016) 248 Cal.App.4th

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1 268, 290.) To satisfy that burden, a plaintiff “must show in what manner he can amend his
2 complaint and how that amendment will change the legal effect of his pleading.” (*Goodman v.*
3 *Kennedy* (1976) 18 Cal.3d 335, 349.) The court finds that Plaintiff has not met its burden to
4 show how it could amend the ninth cause of action to render it sufficient and therefore sustains
5 the demurrer to that cause of action without leave to amend.

6 **ORDER**

7 The court grants in part plaintiff Forex Express Corp., d/b/a WireCash’s motion for order
8 to seal identification of trade secrets.

9 The court orders that the unredacted version of the “Notice of Lodging,” lodged by
10 defendants Inter & Co. Payments, Inc. and Inter & Co., Inc. on September 8, 2023, attaching as
11 Exhibit C the document entitled “Plaintiff Forex Express Corp. dba WireCash’s Identification of
12 Trade Secrets” shall remain filed under seal.

13 The court orders plaintiff Forex Express Corp., d/b/a WireCash to file a revised public
14 redacted version of the “Notice of Lodging” attaching as Exhibit C the document entitled
15 “Plaintiff Forex Express Corp. dba WireCash’s Identification of Trade Secrets” that (1) includes
16 a cover identifying it as “Public-Redacts materials from sealed record,” and (2) redacts the
17 portions of this document in a manner that is consistent with the order set forth above, by no later
18 than February 14, 2024.

19 The court grants in part plaintiff Forex Express Corp., d/b/a WireCash’s motion
20 for order to seal amended identification of trade secrets.

21 The court orders that the unredacted versions of the following documents shall be filed
22 under seal by the clerk: (1) the “Declaration of Byung-Kwan Park in Support of Defendants Inter
23 & Co. Payments Inc. and Inter & Co., Inc.’s Answer to Request for Informal Discovery Office,”
24 lodged by defendants Inter & Co. Payments Inc. and Inter & Co., Inc. on October 5, 2023, and
25 (2) the “Declaration of Geoffrey Mottram Regarding Inadequacy of Plaintiff Forex Express
26 Corp. dba WireCash’s Amended Identification of Trade Secrets,” lodged by defendants Inter &
27 Co. Payments Inc. and Inter & Co., Inc. on October 5, 2023.

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1 The court orders plaintiff Forex Express Corp., d/b/a WireCash to file a revised public
2 redacted version of the “Declaration of Byung-Kwan Park in Support of Defendants Inter & Co.
3 Payments Inc. and Inter & Co., Inc.’s Answer to Request for Informal Discovery Office,” filed
4 by defendants Inter & Co: Payments Inc. and Inter & Co., Inc. on October 4, 2023, that
5 (1) includes a cover identifying it as “Public-Redacts materials from sealed record,” and
6 (2) redacts the portions of this document in a manner that is consistent with the order set forth
7 above, by no later than February 14, 2024.

8 The court orders plaintiff Forex Express Corp., d/b/a WireCash to file a revised public
9 redacted version of the “Declaration of Geoffrey Mottram Regarding Inadequacy of Plaintiff
10 Forex Express Corp. dba WireCash’s Amended Identification of Trade Secrets,” filed by
11 defendants Inter & Co. Payments Inc. and Inter & Co., Inc. on October 4, 2023, that (1) includes
12 a cover identifying it as “Public-Redacts materials from sealed record,” and (2) redacts the
13 portions of this document in a manner that is consistent with the order set forth above, by no later
14 than February 14, 2024.

15 Pursuant to California Rules of Court, rule 2.551, subdivision (e), the court directs the
16 clerk to file this order, maintain the records ordered sealed in a secure manner, and clearly
17 identify the records as sealed by this order.

18 The court **overrules** defendant Fernando **Fayzano’s** demurrer to plaintiff Forex Express
19 Corp., d/b/a WireCash’s Second Amended Complaint.

20 The court **overrules** defendant Eliran **Grushkowsky’s** demurrer to plaintiff Forex Express
21 Corp., d/b/a WireCash’s Second Amended Complaint.

22 The court **denies** defendant Eliran **Grushkowsky’s** motion to strike.

23 The court **overrules** defendants **Inter & Co. Payments, Inc. and Inter & Co., Inc.’s**
24 demurrer to plaintiff Forex Express Corp., d/b/a WireCash’s first, sixth, seventh, and eighth
25 causes of action.

26 The court **sustains** defendants **Inter & Co. Payments, Inc. and Inter & Co., Inc.’s**
27 demurrer to plaintiff Forex Express Corp., d/b/a WireCash’s ninth cause of action for declaratory
28 judgment **without leave** to amend.

1 The court orders defendants Fernando Fayzano, Eliran Grushkowsky, Inter & Co.
2 Payments, Inc., f/k/a Pronto Money Transfer, Inc., d/b/a Pontual, and Inter & Co., Inc. to file an
3 answer to plaintiff Forex Express Corp., d/b/a WireCash's Second Amended Complaint within
4 10 days of the date of this order.

5
6 The court orders plaintiff Forex Express Corp., d/b/a WireCash to give notice of this
7 ruling.

8 IT IS SO ORDERED.

9
10 DATED: January 26, 2024

11 
12 _____
13 Robert B. Broadbelt III
14 Judge of the Superior Court

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