UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

International Medical Devices, Inc. v. Robert Cornell

No. 2:20-cv-03503-CBM (RAOx) (C.D. Cal. Mar. 14, 2025) · No. 2:20-cv-03503-CBM (RAOx) · Decided March 14, 2025

SUMMARY

The United States District Court for the Central District of California denied Defendants' motion under Federal Rules of Civil Procedure 52(a) and 59(e) for amended or additional findings and to alter or amend the judgment. The court upheld its findings concerning reasonable-royalty compensatory damages, willful and malicious trade-secret misappropriation, exemplary damages, joint and several liability, and a five-year permanent injunction. The action involved claims under the California Uniform Trade Secrets Act.

CASE DETAILS

COURT	United States District Court for the Central District of California
JURISDICTION	United States District Court for the Central District of California
DECIDED	March 14, 2025
DOCKET	2:20-cv-03503-CBM (RAOx)
DISPOSITION	other
PROCEDURAL POSTURE	Defendants moved under Federal Rules of Civil Procedure 52(a) and 59(e) for amended or additional findings and to alter or amend the court's post-trial judgment awarding compensatory and exemplary damages and imposing a permanent injunction in a trade-secrets misappropriation action.
STANDARD OF REVIEW	A Rule 59(e) motion requires a substantive change of mind and is an extraordinary remedy to be used sparingly; the district court has considerable discretion in granting or denying such a motion. Review of the terms of an injunction is correspondingly narrow.
PRECEDENTIAL VALUE	unpublished district-court opinion; persuasive authority only

TOPICS

misappropriation of trade secrets · trade secrets · motion for reconsideration · injunctions · damages

PRACTICE AREAS

trade secrets · intellectual property · commercial litigation · civil procedure · remedies

QUESTIONS PRESENTED

1. Whether the court's post-trial findings regarding the reasonable-royalty award and exemplary damages satisfied Federal Rule of Civil Procedure 52(a).
2. Whether defendants established a basis under Federal Rule of Civil Procedure 59(e) to alter or amend the compensatory-damages award.
3. Whether the court could determine that the trade-secret misappropriation was willful and malicious and award exemplary damages without a jury finding.
4. Whether the California Uniform Trade Secrets Act required a separate willfulness finding for each defendant before exemplary damages could be imposed.
5. Whether exemplary damages could be imposed jointly and severally under the California Uniform Trade Secrets Act.
6. Whether the permanent injunction's five-year duration was authorized to eliminate the commercial advantage obtained through misappropriation.

HOLDINGS

1. The court's post-trial order sufficiently stated the factual findings and reasoning supporting the reasonable-royalty and exemplary-damages awards, and therefore complied with Rule 52(a).
2. Defendants failed to establish any Rule 59(e) ground warranting alteration or amendment of the reasonable-royalty award.
3. On the record presented, the district court could determine whether the misappropriation was willful and malicious; defendants did not preserve a jury-trial challenge by stipulating that the court would determine harm and appropriate damages and failing to raise the issue before the jury was excused.
4. The court rejected defendants' argument that the CUTSA categorically requires a separate willful-and-malicious finding for each defendant before exemplary damages may be imposed; in any event, the record supported the court's finding as to all defendants.
5. The court rejected defendants' contention that the CUTSA prohibits joint and several liability for exemplary damages.
6. The five-year permanent injunction was within the court's discretion because it was designed to eliminate the commercial advantage defendants obtained through misappropriation and did not exceed the period needed to replicate legitimate development of the product.

KEY QUOTATIONS

> *"amending a judgment after its entry remains an extraordinary remedy which should be used sparingly."* (at 2)

> *"allowing misappropriators to gamble with other people's trade secrets would undermine 'important standards of commercial ethics'"* (at 5)

> *"allow the district court to make an independent judgment about whether [the] misappropriation was 'willful and malicious.'"* (at 7)

FACTUAL BACKGROUND

International Medical Devices, Inc., Menova International, Inc., and James Elist, M.D. sued multiple defendants for misappropriation of trade secrets relating to the Penuma product and the development of the competing Augmenta product. Following trial, the court awarded a reasonable royalty of $5,772,044, exemplary damages based on willful and malicious misappropriation, and a permanent injunction. Defendants challenged the findings and remedies, but the record included evidence that defendants learned confidential information during Penuma training, signed or knew of nondisclosure obligations, and began developing Augmenta shortly afterward.

PROCEDURAL HISTORY

Plaintiffs obtained post-trial relief, including a reasonable-royalty award, exemplary damages, and a permanent injunction. Defendants challenged the sufficiency of the Rule 52(a) findings and sought reconsideration under Rule 59(e), arguing that the damages and injunction rulings were legally or factually erroneous. The district court denied the motion in its entirety.

DISPOSITION

other

CASES CITED

- United States ex rel. Hoggett v. Univ. of Phoenix, 863 F.3d 1105, 1108 (9th Cir. 2017)
- Allstate Ins. Co. v. Herron, 634 F.3d 1101, 1111 (9th Cir. 2011)
- Simeonoff v. Hiner, 249 F.3d 883, 891-92 (9th Cir. 2001)
- Atl. Inertial Sys. Inc. v. Condor Pac. Indus. of California, Inc., 2015 WL 3825318, at *5 (C.D. Cal. June 18, 2015)
- Ajaxo Inc. v. E*Trade Fin. Corp., 187 Cal. App. 4th 1295 (2010)
- LaserDynamics, Inc. v. Quanta Computer, Inc., 694 F.3d 51, 69 (Fed. Cir. 2012)
- LinkCo, Inc. v. Fujitsu Ltd., 232 F. Supp. 2d 182, 188-89 (S.D.N.Y. 2002)
- Carborundum Co. v. Molten Metal Equip. Innovations, Inc., 72 F.3d 872, 882 (Fed. Cir. 1995)
- Sinclair Ref. Co. v. Jenkins Petroleum Process Co.
- Yeti by Molly, Ltd. v. Deckers Outdoor Corp., 259 F.3d 1101, 1112 (9th Cir. 2001)
- Rsch. Corp. Techs. v. Microsoft Corp., 536 F.3d 1247, 1255 (Fed. Cir. 2008)
- Uroplasty, Inc. v. Advanced Uroscience, Inc., 239 F.3d 1277, 1280 (Fed. Cir. 2001)
- Intellisoft, Ltd. v. Acer Am. Corp., 955 F.3d 927, 933 (Fed. Cir. 2020)

- Halo Elecs., Inc. v. Pulse Elecs., Inc., 579 U.S. 93, 103-04 (2016)
- Neal v. Farmers Ins. Exch., 21 Cal. 3d 910, 923 n.6 (1988)
- Ajaxo Inc. v. E*Trade Grp., Inc., 135 Cal. App. 4th 21, 66-67 (2005)
- Advanced Fluid Sys., Inc. v. Huber, 295 F. Supp. 3d 467, 494 (M.D. Pa. 2018)
- Brocade Commc'ns Sys., Inc. v. A10 Networks, Inc., 873 F. Supp. 2d 1192, 1217-18 (N.D. Cal. 2012)
- Lamb-Weston, Inc. v. McCain Foods, Ltd., 941 F.2d 970, 974 (9th Cir. 1991)
- Rockwell Int'l, 549 U.S. 474
- S. California Retail Clerks Union & Food Emps. Joint Pension Tr. Fund v. Bjorklund, 728 F.2d 1262, 1264 (9th Cir. 1984)
- Eagle v. American Telephone and Telegraph Co., 769 F.2d 541, 548 (9th Cir. 1985)
- Lisle Corp. v. A.J. Mfg. Co., 398 F.3d 1306, 1317 (Fed. Cir. 2005)
- BMW of N. Am., Inc. v. Gore, 517 U.S. 559, 582 (1996)
- State Farm Mut. Auto. Ins. Co. v. Campbell, 538 U.S. 408 (2003)
- Magallanes v. Superior Ct., 167 Cal. App. 3d 878, 888 (Ct. App. 1985)

OPINION

1 O 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 CENTRAL DISTRICT OF CALIFORNIA 10 11 International Medical Devices, et al, Case No.: 2:20-cv-03503-CBM (RAOx) 12 Plaintiffs, ORDER RE: DEFENDANTS' v. 13 MOTION FOR AMENDED OR Robert Cornell, MD, an individual, et ADDITIONAL FINDINGS, AND TO 14 al, ALTER OR AMEND 15 Defendants. 16 17 18 19 20 21 22 23 24 25 26 27 28 1 The matter before the Court is Motion for Amended or Additional Findings, 2 and to Alter or Amend, under Federal Rules of Civil Procedure 52(a) and 59(e).

3 (Dkt. No. 715 ("Motion").) 4 I. BACKGROUND 5 This is a trade secrets case filed by Plaintiffs International Medical Devices, 6 Inc., Menova International, Inc., and James Elist, MD against multiple Defendants.1 7 (Dkt. No. 578.)

The parties are familiar with the factual and procedural background 8 of the case; therefore, the Court does not repeat the relevant facts herein. On June 9 13, 2024, Defendants filed the instant Motion, and on June 24, 2024, Defendants 10 filed an amended version of the Motion. (Dkt. Nos. 712, 715.) 11 II. STATEMENT OF THE LAW 12 Federal Rule of Civil Procedure 52(a) states that "[i]n an action tried on the 13 facts without a jury or with an advisory jury, the court must find the facts specially 14 and state its conclusions of law separately.

The findings and conclusions may be 15 stated on the record after the close of the evidence or may appear in an opinion or a 16 memorandum of decision filed by the court." 17 Federal Rule of Civil Procedure 59(e) states that a "motion to alter or amend 18 a judgment must be filed no later than 28 days after the entry of judgment." "To 19 alter or amend the judgment requires a substantive change of mind by the court." 20 Id. (internal quotations, ellipses, and brackets omitted).

United States ex rel. Hoggett v. Univ. of Phoenix, 863 F.3d 1105, 1108 (9th Cir. 2017) (internal quotations and brackets omitted). Thus, “amending a judgment after its entry remains an extraordinary remedy which should be used sparingly.” Allstate Ins. Co. v. Herron, 634 F.3d 1101, 1111 (9th Cir. 2011). “In general, there are four basic grounds upon which a Rule 59(e) motion may be granted: (1) if such motion is necessary to correct manifest errors of law or fact upon which the judgment rests; (2) if such motion is necessary to present newly discovered or previously unavailable evidence; (3) if such motion is necessary to prevent manifest injustice; or (4) if the amendment is justified by an intervening change in controlling law.” Id. “A court considering a Rule 59(e) motion is not limited merely to these four situations, however.” Id. “Since specific grounds for a motion to amend or alter are not listed in the rule, the district court enjoys considerable discretion in granting or denying the motion.” Id.

III. DISCUSSION

A. Failure to Comply with Rule 52(a)

Defendants argue that the Court “failed to provide the necessary findings of fact to support” the compensatory and exemplary damages and permanent injunction it ordered. (Mot. at 6.) In the Court’s Order re Plaintiffs’ Post-Trial Motion for Award, the Court included a section titled “The Court’s Findings re Reasonably Royalty” which set forth the facts upon which the Court found a reasonably royalty of $5,772,044. (Dkt. No. 698 at 12–13 (citing Trial Ex. 6-020; Trial Tr. 1190:21-1191:8; Trial Exs. 29, 78).) Based on these facts, the Court found that “the nature and extent of Defendants’ use of IMD’s trade secrets weighs in favor of a reasonable royalty higher than that proposed by Dr. Hatch [Defendants’ expert witness],” and adopted Mr. Arst’s approach to finding reasonable royalties instead. (Id.) The Court also explained its reasoning in calculating the royalty award using Mr. Arst’s calculations. (Id. at 13.) Finally, the Court found “the conduct in which the Defendants engaged amounted to a willful and malicious misappropriation,” which was the basis for the Court’s award of exemplary damages. See Cal. Civ. Code § 3426.3(c). Thus, the Court properly analyzed and made factual findings regarding the nature of the misconduct and the amount of compensatory damages.

The Court did not make any findings as to Defendants’ financial condition, but, as Plaintiffs explain, this “was not considered by the Court because the Parties stipulated at the October 25, 2023 post-trial hearing that neither side would offer evidence of Defendants’ net worth, and that

1 Defendants are Robert Cornell, MD; Augmenta, LLC; Robert J. Cornell M.D., P.A.; Jonathan Clavell Hernandez, MD; Clavell Urology, PLLC; OAM LLC; Cornell Cosmetic Urology, LLC; David Louis Nichols; Huck Medical Technologies, Inc.; Hans Mische; Hans Mische, LLC; Run Wang, MD; RW Global Men’s Health Consulting Services, PLLC; Richard B. Finger; and Lata Lignum

Defendants would not challenge an exemplary 7 damages award for such lack of evidence." (Opp. at 24.)

The transcript of the 8 October 25, 2023 evidentiary hearing confirms this: 9 The parties agree that neither side will offer or be required to offer any 10 evidence of net worth for Dr. Robert Cornell, Richard Finger, Robert J. Cornell, M.D., PA, Cornell Cosmetic Urology, LLC, Augmenta, LLC, 11 or Augmenta Investors, LLC. Defendants agree that, should the Court 12 make an award of any exemplary damages against Dr. Robert Cornell, Richard Finger, Robert J. Cornell, M.D., PA, Cornell Cosmetic 13 Urology, LLC, Augmenta, LLC, or Augmenta Investors, LLC, 14 defendants will not challenge such finding on the basis that plaintiffs did not adduce any evidence of net worth for Dr. Robert Cornell, 15 Richard Finger, Robert J. Cornell, M.D., PA, Cornell Cosmetics 16 Urology, LLC, Augmenta, LLC, or Augmenta Investors, LLC. Defendants further agree not to challenge on appeal any such 17 exemplary damages award on the basis that there is no evidence of net 18 worth.

19 (Dkt. No. 733-3 ("Evid. Hearing Tr.") at 247:14-248:8.) 20 The Court's Order re Plaintiffs' Post-Trial Motion for Award sufficiently 21 details how the Court calculated the award such that an appellate court can 22 "adequately resolve objections raised regarding validity of an award." Simeonoff v. 23 Hiner, 249 F.3d 883, 891–92 (9th Cir. 2001) (rejecting appellant's Rule 52(a) 24 challenge because his arguments "are merely observations that the district court's 25 award for past and future economic damages are lump sum awards" and "[l]ump 26 sum damage awards are not per se insufficient under Rule 52(a)").

Accordingly, 27 the Court's ruling complied with Rule 52(a). 28 1 B. Compensatory Damages 2 Defendants contend that the Court "offered an inadequate reasoning for" 3 adopting Plaintiffs' expert Mr. Arst's model for calculating reasonable royalties 4 over Defendants' expert Dr. Hatch's model. (Mot. at 9.) Defendants contend that 5 the Court should "reconsider its findings regarding the award of compensatory 6 damages" because '[t]here are several critical deficiencies in Mr. Arst's opinion." 7 (Id.)

Defendants essentially attempt to re-litigate issues regarding the validity of 8 Arst's expert opinion that the Court has already ruled on multiple times.2 These 9 arguments are no more convincing on the third try.3 The fact that there were no 10 sales of the Augmenta product and the preliminary injunction in this case barred 11 Defendants from profiting off Agumenta does not preclude an award of reasonable 12 royalties.4 See Atl.

Inertial Sys. Inc. v. Condor Pac. Indus. of California, Inc., 2015 13 WL 3825318, at *5 (C.D. Cal. June 18, 2015) ("section 3426.3(b) permits a royalty 14 award even where a defendant was not found as a matter of fact to have profited 15 16 2 (See Dkt. Nos. 539 (finding Arst's reliance on statements by Dr. Elist and Mr. Elist 17 sufficient, his apportionment of value attributable to the trade secrets proper, and his reliance on the October 2018 projection sufficient); 698 (noting Dr.

Hatch's 18 criticisms of Arst's model and finding that the "nature and extent of Defendants' 19 use of IMD's trade secrets weighs in favor" of adopting Arst's model rather than Hatch's).)

20 3 Defendants' cites to LaserDynamics, Inc. v. Quanta Computer, Inc., 694 F.3d 51, 21 69 (Fed. Cir. 2012) and LinkCo, Inc. v. Fujitsu Ltd, 232 F. Supp. 2d 182, 188–89 (S.D.N.Y. 2002) were already addressed by the Court in an earlier order (Dkt. No. 22 539 at 2) and are inapposite. Defendants' cite to Carborundum Co. v. Molten Metal 23 Equip. Innovations, Inc., 72 F.3d 872, 882 (Fed.

Cir. 1995) does not support its position that IMD can only seek damages for "past sales" and not "future sales"— 24 the Carborundum court noted that because Metaullics "did not attempt to obtain 25 damages for future repair parts sales" because of an injunction, Metaullics "was not fully compensated for the infringement because the damages award did not include 26 future lost sales of repair parts for which Metaullics had established entitlement." 27 4 Sinclair Ref.

Co. v. Jenkins Petroleum Process Co., does not state what Defendants contend it states—nothing in the case holds that use of projected sales in 28 1 from his misappropriation," "allowing misappropriators to gamble with other 2 people's trade secrets would undermine 'important standards of commercial 3 ethics,'" and "even if a defendant does not profit from a misappropriated trade 4 secret, he may nonetheless achieve non-pecuniary benefits from the secret") 5 (discussing Ajaxo Inc. v. E*Trade Fin.

Corp., 187 Cal. App. 4th 1295 (2010)). 6 Defendants provide no evidence that there has been a "manifest error of law 7 or fact upon which the judgment rests," "newly discovered or previously 8 unavailable evidence," a "manifest injustice," or an "intervening change in 9 controlling law" that would warrant a "substantive change of mind by the Court" 10 on the compensatory damages awarded.

Allstate, 634 F.3d at 1111. Accordingly, 11 amendment of findings on this basis is unwarranted. 12 C. Exemplary Damages 13 Defendants contend that the Court erred in awarding exemplary damages for 14 trade secret misappropriation because (1) Plaintiffs "waived any right to recover 15 exemplary damages by omitting it from the Final Pretrial Order"; (2) whether 16 misappropriation was "willful and malicious" is an issue for the jury, not the Court; 17 (3) exemplary damages requires a finding that a "particular defendant" engaged in 18 willful and malicious appropriation; (4) a finding of willful misappropriation only 19 permits the Court to exercise discretion in awarding damages and does not 20 "automatically lead[]" to exemplary damages; and (5) joint and several liability is 21 inappropriate.

(Mot. a 12–18.) Each of these arguments is addressed in turn below. 22 Waiver of Right to Exemplary Damages 23 Defendants contend that Plaintiffs waived their right to recover exemplary 24 damages because they omitted it from the Final Pretrial Order, and that because the 25 Final

Pretrial Order “supersedes the pleadings and governs the course of the trial of 26 this cause,” Plaintiffs forfeited any claim for exemplary damages.

(Mot. at 12 27 (brackets omitted).) This argument is not credible given the parties’ stipulation 28 during the evidentiary hearing, in which Defendants made no mention that they 1 believed exemplary damages were waived altogether by way of the Final Pretrial 2 Conference Order and in fact acknowledged that the Court may make an award of 3 exemplary damages against Defendants.5 (See Evid.

Hearing Tr. at 247:11-248:8 4 (“Defendants agree that, should the Court make an award of any exemplary 5 damages against [Defendants]...”).) Therefore, this is not a basis for amending 6 the Court’s findings on exemplary damages. 7 Willful and Malicious Determination 8 Defendants contend that Plaintiffs also forfeited exemplary damages “by 9 failing to secure (or even request) a jury finding that any misappropriation was 10 willful and malicious” because this question is “a triable issue by a jury in federal 11 court.” (Mot. at 13.)

Defendants contend that under federal patent law (section 12 284), there is a right to a jury trial on the question of willfulness—therefore, there 13 is also a right to jury trial on the question of willful and malicious misappropriation 14 under the CUTSA, and the Court “violate[d] Defendants’ rights to a jury trial under 15 the Seventh Amendment” by deciding the issue itself.

(Id.) Defendants contend 16 that Ninth Circuit precedent is not controlling because “[t]his case will be decided 17 on appeal by the Federal Circuit,” which holds that the willfulness question “must 18 19 5 The cases cited by Defendants are inapposite, and none held that exemplary damages are forfeited when not included in the final pretrial conference order.

See 20 Rockwell Int’l, 549 U.S. at 474 (discussing final pretrial order precluding claims); 21 S. California Retail Clerks Union & Food Emps. Joint Pension Tr. Fund v. Bjorklund, 728 F.2d 1262, 1264 (9th Cir. 1984) (finding defendant failed to preserve 22 “the issue of whether Warren was acting as an agent of the plaintiff Trust Funds”); 23 Eagle v. American Telephone and Telegraph Co., 769 F.2d 541, 548 (9th Cir.

1985) (finding pretrial conference order precluded plaintiff from raising a new theory of 24 damages); Lisle Corp. v. A.J. Mfg. Co., 398 F.3d 1306, 1317 (Fed. Cir. 2005) 25 (finding defendant waived affirmative defenses that were not included in the final pretrial order); Arriaga v. Logix Fed. Credit Union, 2022 WL 3098495 (C.D. Cal. 26 Apr. 22, 2022) (same); Asfall v. Los Angeles Unified Sch.

Dist., 2020 WL 2951920 27 (C.D. Cal. Feb. 11, 2020) (finding it would prejudice defendant to allow plaintiff to obtain injunctive relief when defendant “was not on notice that the adequacy of its 28 1 be decided by the jury.” (Id. at 8.) 2 Defendants’ argument is belied by the parties’ stipulation prior to trial that the Court, not the jury, would consider harm and appropriate damages for trade secret liability (see Dkt.

No. 599), and the parties' stipulation at the October 25, 2023 evidentiary hearing that acknowledged that the Court may award exemplary damages. If Defendants wished for the jury to determine whether conduct was willful and malicious, they could have raised the issue before the Court excused the jury. They did not—consequently, the issue was not preserved for the jury.

In any case, Ninth Circuit law appears to allow district courts to determine whether misappropriation was willful and malicious. The CUTSA states that "[i]f willful and malicious misappropriation exists, the court may award exemplary damages in an amount not exceeding twice any award made under subdivision (a) or (b)." Cal. Civ. Code § 3426.3(c).

CACI 4411 commentary states that "[n]o reported California state court case has addressed whether the jury or the court should decide whether any misappropriation was "willful and malicious." Yeti by Molly, Ltd. v. Deckers Outdoor Corp. involved the Montana Unfair Trade Practices Act, not the CUTSA—but the MUTSA contains the same comment in the CUTSA Defendants rely on to argue that the Court should find "willful and malicious misappropriation" is a question for the jury.

259 F.3d 1101, 1112 (9th Cir. 2001) (noting MUTSA's official commentary states the exemplary damages provision "follows federal patent law in leaving discretionary trebling to the judge even though there may be a jury"). Despite this commentary, the Ninth Circuit still "reverse[d] the district court's refusal to consider plaintiff's motion for exemplary damages and attorney's fees" and remanded to "allow the district court to make an independent judgment about whether [the] misappropriation was 'willful and malicious.'" Id. Defendants' argument that this issue is governed by Federal Circuit law is incorrect. "The Federal Circuit applies its own law with respect to issues of substantive patent law and certain procedural issues pertaining to patent law, but applies the law of our sister circuits to non-patent issues." Rsch.

Corp. Techs. v. Microsoft Corp., 536 F.3d 1247, 1255 (Fed. Cir. 2008). In Uroplasty, Inc. v. Advanced Uroscience, Inc., 239 F.3d 1277 (Fed. Cir. 2001), the Federal Circuit held that the plaintiff's "state law trade-secrets claim" was "not governed by federal patent law" because although the relevant "patent may be evidence in support of Uroplasty's allegations, [] the mere presence of the patent does not create a substantial issue of patent law." Id. at 1280; see also Intellisoft, Ltd. v. Acer Am.

Corp., 955 F.3d 927, 933 (Fed. Cir. 2020) ("We have made clear that a plaintiff's reliance on a patent as evidence to support its state law claims does not necessarily require resolution of a substantial patent question").

Thus, Ninth Circuit law applies here.6 Therefore, amendment of the findings on this basis is unwarranted. Willfulness of Each Defendant Defendants contend that the “CUTSA allows for exemplary damages only against a particular defendant that engaged in willful and malicious appropriation,” and that Plaintiffs needed but failed to “present evidence of... willful and malicious appropriation for each defendant separately for each trade secret.” (Mot. at 15.)

But nothing in the CUTSA statutory provision states that there must be a finding of willful and malicious misappropriation as to each Defendant separately before imposing exemplary damages. See Cal. Civ. Code § 3426.3(c).

The only case Defendants cite in support is an out-of-circuit case where the district court found that certain defendants’ conduct did not “evince willfulness or malice” because “their motives were purely competitive, in the interest of acquiring a valuable new customer.” Advanced Fluid Sys., Inc. v. Huber, 295 F. Supp. 3d 467, 494 (M.D. Pa. 2018).

6 Defendants’ cases from the Federal Circuit involved federal patent claims, not Under CACI 4411, “willful” conduct is where the defendant “acted with a purpose or willingness to commit the act or engage in the conduct in question, and the conduct was not reasonable under the circumstances at the time and was not undertaken in good faith.” “Malicious” conduct is where a defendant “acted with an intent to cause injury, or that [defendant’s] conduct was despicable and was done with a willful and knowing disregard for the rights of others.” CACI 4411; see also Halo Elecs., Inc. v. Pulse Elecs., Inc., 579 U.S. 93, 103–04 (2016) (“[t]he sort of conduct warranting enhanced damages has been variously described in our cases as willful, wanton, malicious, bad-faith, deliberate, consciously wrongful, flagrant or... characteristic of a pirate.”).

Malice may be proven either expressly by direct evidence probative of the existence of ill-will, or by implication from indirect evidence. Neal v. Farmers Ins. Exch., 21 Cal.3d 910, 923 n.6 (1978); Ajaxo Inc. v. E*Trade Grp., Inc., 135 Cal. App. 4th 21, 66–67 (2005). The Court’s Order Granting the Motion for Award cites to evidence supporting its finding of willful and malicious misappropriation as to each Defendant.

(See Dkt. No. 698 at 13–14 (citing Trial Tr. 1254:1-25, 1061:20-1065:2; Trial Exs. 6, 14, 17, 206).) The direct and indirect evidence cited by Plaintiffs also support a finding of willfulness.7 Based on this record, all Defendants (1) knew that 7 (See Trial Tr. at 354:11-357:9, 1088:19-1097:9, 1605:24-1610:12, 1773:16- 1779:25, Exs. 123, 308 (testimony and exhibits re Cornell’s attendance at Penuma training session, taking notes “to document his theft” of trade secrets, and signing an NDA); 1254:1-25 (testimony regarding Cornell’s correspondence with Mische); 1090:18-1091:20, 1100:2-25, Ex. 123 (testimony and exhibits regarding HMT’s involvement with Augmenta); 1192:13-1195:16; Exs.

24, 25, 511, 531 (testimony and exhibits regarding Cornell's personal medical practice advertising and using 24 Penuma trademark and maintaining a patient waiting list based on inquiries received 25 from advertising); 1060:18-20, 1040:24-1042:7, 1043:19-22, 1048:21-1049:1, Exs. 206, 324 (testimony and exhibits related to Finger's involvement in Augmenta 26 Investors and that Finger knew Cornell's Penuma training was covered by an NDA); 27 Ex. 280 (email from Finger to Wang noting that Wang provided "invaluable design input" to Augmenta); Ex. 258 (flow chart of Augmenta Investors LLC 28 1 Cornell learned certain information during the Penuma training, and (2) aimed to 2 introduce a competing product into the market.

The evidence also indirectly 3 suggests that all Defendants knew the Penuma training was part of how Cornell 4 developed the technology for Augmenta. Therefore, the Court's finding of willful 5 and malicious misappropriation was supported by evidence, and amendment of the 6 findings on this ground is unwarranted. 7 Discretion in Awarding Damages 8 Defendants contend that the Court "erroneously impl[ied] that willful and 9 malicious misappropriation automatically leads to exemplary damages of twice the 10 compensatory damages." (Mot. at 16.)

Defendants' argument is unpersuasive for 11 the reasons addressed above. The Court's Order addressed the nature and extent of 12 the misconduct and the amount of compensatory damages. The third factor was not 13 addressed because the parties stipulated that they would not submit evidence related 14 to Defendants' net worth. Further, nothing in the Order indicates that the Court 15 "automatically" applied exemplary damages after finding willful and malicious 16 misappropriation.

Therefore, amendment of the findings on this ground is 17 unwarranted. 18 Joint and Several Liability 19 Finally, Defendants argue that joint and several liability for exemplary 20 damages is inappropriate and "has no basis in CUTSA," and that exemplary 21 damages "must be tailored to the specific situation of each individual actor." (Mot. 22 at 18.) Nothing in the text of the CUTSA provision supports this position, and the 23 statute does not prohibit the Court from imposing joint and several liability.

24 Defendants' cited cases do not involve the CUTSA or trade secret misappropriation, 25 but rather stand for the general proposition that punitive damages must be tied to 26 the egregiousness of a defendant's conduct.8 In contrast, Brocade Communications 27 8 See Magallanes v. Superior Ct., 167 Cal. App. 3d 878, 888 (Ct. App. 1985) (noting 28 1 Systems., Inc. V. A10 Networks, Inc. addressed whether joint and several liability is 2 appropriate in the context of CUTSA and concluded that it is.

873 F. Supp. 2d 1192 3 (N.D. Cal. 2012) on reconsideration in part, 2012 WL 12925716 (N.D. Cal. July 8, 4 2012). Like here, the individual defendants in Brocade argued that "Brocade had 5 not established damages as against each of them to support a claim of trade secret 6 misappropriation." 873 F. Supp. 2d at 1217.

The district court concluded that “the 7 rule allowing joint and several liability in trade secret misappropriation cases likely 8 survived the adoption of CUTSA.” Id. at 1218 (noting that “[c]ommentators on 9 trade secret law also suggest that, in general, liability for misappropriation claims is 10 joint and several”). Defendants do not cite any authority holding that liability for 11 exemplary damages should be treated differently than compensatory damages.

12 Therefore, amendment of the findings on this basis is unwarranted. 13 D. Permanent Injunction 14 “A district court has considerable discretion in fashioning suitable relief and 15 defining the terms of an injunction. Appellate review of those terms ‘is 16 correspondingly narrow.’” Lamb-Weston, Inc. v. McCain Foods, Ltd., 941 F.2d 17 970, 974 (9th Cir. 1991).

California Civil Code section 3426.2(a) states that “[u]pon 18 application to the court, an injunction shall be terminated when the trade secret has 19 ceased to exist, but the injunction may be continued for an additional period of time 20 in order to eliminate commercial advantage that otherwise would be derived from 21 22 mind of the particular defendant while committing the alleged wrongful act”); BMW 23 of N. Am., Inc. v. Gore, 517 U.S. 559, 582 (1996) (holding a $2 million punitive damages award was “grossly excessive” when considering “the degree of 24 reprehensibility of the nondisclosure,” that $2 million was “500 times the amount 25 of [] actual harm as determined by the jury,” and “the difference between this remedy and the civil penalties authorized or imposed in comparable cases”); State 26 Farm Mut.

Auto. Ins. Co. v. Campbell, 538 U.S. 408 (2003) (reversing judgment of 27 Utah Supreme Court where “most relevant civil sanction under Utah state law for the wrong done” was a $10,000 fine, “an amount dwarfed by the $145 million 28 1 | the misappropriation.” Therefore, the Court had discretion to enter an injunction in 2 | order to eliminate the commercial advantage Defendants would otherwise derive 3 | from their misappropriation.

The Court’s Order Granting Permanent Injunction 4 || stated that the five-year limit is “the period of time during which IMD could have 5 | prohibited Dr. Cornell from using the trade secrets based on the duration of the 6 | [NDA]... signed on March 30, 2018.” (Dkt. No. 699 at 6.) This is actually shorter 7 | than “it would have taken [the defendant], either by reverse engineering or by 8 | independent development, to develop [the product] legitimately without use of 9 | [plaintiff's] trade secrets.” Lamb-Weston, 941 F.2d at 974.

The NDA would only 10 | have prevented Defendants from using the trade secrets to develop Augmenta for 11 | five years; instead, Cornell began developing the product only weeks after the 12 | Penuma training. Therefore, the record reflects that the head start Defendants 13 | obtained was about five years. 14 Defendants raise the same arguments they raised in Defendants’ Motion to 15 | Dissolve Paragraphs la-1b of Preliminary Injunction.

(See Dkt. No. 666.) The Court already considered and found these arguments unpersuasive. (See Dkt. No. 699 (granting permanent injunction and denying Defendants’ Motion to Dissolve).) Defendants provide no new arguments that warrant a different conclusion. Therefore, the Court finds that amendment of the permanent injunction is unwarranted.

IV. CONCLUSION

Accordingly, the Court DENIES Defendants’ Motion.

IT IS SO ORDERED.

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DATED: March 14, 2025.

UNITED STATES DISTRICT JUDGE