UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No.	**CV 16-7223 DMG (JCx)**	Date	February 10, 2017
Title	***Earthbound Corp. & Intact Structural Supply, LLC v. MiTek USA, Inc., et al.***	Page	1 of 10

Present: The Honorable DOLLY M. GEE, UNITED STATES DISTRICT JUDGE

KANE TIEN	NOT REPORTED
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiff(s) None Present	Attorneys Present for Defendant(s) None Present

Proceedings: IN CHAMBERS - ORDER RE DEFENDANTS' RENEWED MOTION TO DISMISS [98]

This matter is before the Court on Defendants MiTek USA, LLC ("MiTek"), Ken Keyse, James Miller, and Jason Birdwell's (collectively, "Defendants") renewed motion to dismiss ("MTD") [Doc. # 98] Plaintiffs Earthbound Corporation ("Earthbound") and Intact Structural Supply, LLC's ("ISS" and, together, "Plaintiffs") amended complaint ("FAC") [Doc. # 12]. In their FAC, Plaintiffs allege (1) violations of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030 *et seq.*; (2) violations of the Economic Espionage Act, as amended by Defend Trade Secrets Act, 18 U.S.C. § 1831 *et seq.*; (3) misappropriation of trade secrets under the Washington Uniform Trade Secrets Act ("WUTSA"), Wash. Rev. Code § 19.108.010(4); (4) unfair business practices; (5) conversion and trespass of chattel; (6) unjust enrichment; (7) tortious interference; (8) breach of fiduciary duty and duty of loyalty; (9) civil conspiracy; and (10) accounting.[1] FAC at ¶¶ 4.1–13.2. Defendants now move to dismiss only the claims for unfair business practices, conversion and trespass, unjust enrichment, tortious interference, and breach of fiduciary duty and duty of loyalty. MTD at 2.

I.
FACTUAL BACKGROUND[2]

Plaintiffs and MiTek are direct competitors in the structural framing tie-down systems industry. *See* FAC at ¶ 1.2. Earthbound, a Washington corporation, manufactures tie-down products and provides tie-down services and systems, and ISS markets and sells Earthbound products and services in California and elsewhere. *Id.* at ¶ 3.1. MiTek, a Missouri corporation,

[1] The FAC does not specify the governing law for the alleged unfair business practices, conversion and trespass of chattel, unjust enrichment, tortious interference, breach of fiduciary duty and duty of loyalty, or civil conspiracy claims. The parties appear to agree, however, that Washington law controls. *See* MTD at 4; Opposition at 5 [Doc. # 114].

[2] The Court accepts as true all material factual allegations in the FAC for the purpose of ruling on the MTD. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

competes directly with Plaintiffs in Washington and California, and is one of only two Earthbound competitors in the California market. *Id.* at ¶¶ 1.2, 3.3.

Keyse, Miller, and Birdwell are former ISS employees who, together, made up all of the ISS sales team and served all of ISS's market. *Id.* at ¶¶ 1.3–1.5, 3.2. Holding positions of "trust and confidence," Keyse, Miller, and Birdwell had access to the following proprietary information: Plaintiffs' customer names, contact information, and purchasing requirements and preferences; supplier and vendor information; designs and design methods; job files; prior, current, and pending bids; technical project data; customer price lists, revenue, costs, and profit margins; pending project lists; financial goals and strategic planning information; sales projections; and technology. *Id.* at ¶ 3.11. While employed by ISS, Keyse, Miller, and Birdwell could remotely access Plaintiffs' Washington servers through remote desktop portals, and they had company computers and cell phones, on which they stored company and customer data, so that they could fulfill their job duties while out of the office. *Id.* Of the three employee defendants, Keyse was in the highest position at ISS, as he was responsible for all of ISS's California operations. *Id.* at ¶ 3.12.

In 2014, MiTek and Earthbound entered into negotiations for the purchase of Earthbound. *Id.* at ¶ 3.4. The parties executed nondisclosure agreements ("NDAs"), which protected both companies' confidential and proprietary business information and trade secrets, and prohibited each company from using information gained in the negotiations to the competitive disadvantage of the other. *Id.* at ¶ 3.4. In negotiations, Plaintiffs shared information about their "key" employees, customer base, marketing strategy and pending projects, sales history, and profit/loss statements. *Id.* at ¶¶ 3.4–3.5. Negotiations were unsuccessful, and MiTek did not purchase Earthbound.

Following the unsuccessful negotiations, MiTek and its agents recruited Keyse, Miller, and Birdwell in an effort to eliminate competition. *Id.* at ¶ 3.7. In early 2016, Defendants planned to have Keyse, Miller, and Birdwell leave their employment at ISS and join MiTek's team, and to use Plaintiffs' trade secrets and other confidential, proprietary information to Plaintiffs' disadvantage. *Id.* at 3.8. Specifically, in March 2016, MiTek flew Keyse to its headquarters to discuss the exodus strategy and job offer, where Keyse agreed to deliver Miller and Birdwell in exchange for compensation. *Id.* On April 11, 2016, MiTek paid Keyse, who was still employed by ISS, a large sum that enabled him to buy a yacht. *Id.* at ¶¶ 3.8–3.9. Additionally, MiTek paid for Keyse, Miller, and Birdwell, while all three were still employed by ISS, to travel to St. Louis during the workweek to transfer ISS's trade secrets and proprietary information. *Id.* at ¶ 3.10. Keyse, Miller, and Birdwell also received ISS wages for that time, as ISS believed the employees were performing their job responsibilities while out of state. *Id.*

In his last months of employment with ISS before he resigned, Keyse did not forward promised sales reports and forecasts to Plaintiffs. *Id.* at ¶ 3.12. Instead, he held back critical

business information and resigned without notice. *Id.* Plaintiffs allege that this conduct was designed to put them in a negative competitive position in relation to MiTek, and to force Plaintiffs to sell to MiTek. *Id.*

In May 2016, MiTek extended formal job offers to Keyse, Miller, and Birdwell, who accepted the offers days later. *Id.* at ¶ 3.14. The employee defendants did not inform Plaintiffs of their MiTek employment and, instead, remained on ISS payroll but stopped working on ISS projects. *Id.* Miller helped draft the MiTek signing bonus and stipend agreements for all three employee defendants, and the three employees met with ISS clients on MiTek's behalf. *Id.*

In June 2016, Keyse continued to access and share with MiTek Plaintiffs' confidential information by using three flash drives to copy proprietary information and delete that information from ISS servers. *Id.* at ¶¶ 3.15, 3.19. Miller and Birdwell similarly used their company computers and phones to communicate and share with MiTek ISS information. *Id.* at ¶ 3.16. Birdwell also used an external hard drive to copy Plaintiffs' proprietary information, despite not having authority to do so. *Id.* at ¶ 3.20. Miller accessed Plaintiffs' servers to upload and forward Plaintiffs' proprietary and confidential information to his wife's personal email account. *Id.* at ¶ 3.21

On June 13, 2016, the three employees emailed their resignations. *Id.* at ¶ 3.17. Keyse told Earthbound management that it "had to accept that MiTek would eventually purchase Earthbound." *Id.* at ¶ 3.18. After resigning, Keyse and Miller continued to copy ISS information, despite not having authorization to do so after their resignation, and transfer that information to MiTek. *Id.* at ¶¶ 3.19–3.21. Since leaving ISS and joining MiTek, Keyse and Birdwell have refused to return the flash drives or the external hard drive. *Id.* at ¶ 3.19–3.20. Miller has refused to return the forwarded information. *Id.* at ¶ 3.21.

After Keyse, Miller, and Birdwell resigned, Plaintiffs discovered that Miller had been performing construction work on Keyse's house during ISS work hours, while being paid by ISS, even though ISS had already told Miller he could not conduct residential construction side work while employed by ISS. *Id.* at ¶ 3.22. Plaintiffs also investigated the employee defendants' electronic activities and discovered that customer emails had not been forwarded to ISS headquarters, explaining a drop-off in sales. *Id.* After they realized Plaintiffs' investigations, Keyse, Miller, and Birdwell transferred the information on their ISS cell phones and deleted and reset them. *Id.* at ¶ 3.23. Plaintiffs later retained a forensic expert, who found evidence of some of the conduct discussed, including details about Keyse's activity. *Id.* at ¶ 3.24.

On July 15, 2016, Plaintiffs asked that Defendants stop using the proprietary information, return the flash drives, and cooperate in the protection, return, and deletion of Plaintiffs' data that is in Defendants' possession, custody, or control. *Id.* at ¶ 3.26. Defendants did not cooperate. *Id.* at ¶¶ 3.27–3.28. Also on July 15, Plaintiffs learned from an ISS client that MiTek submitted

a last-minute, unsolicited bid on a project that Plaintiffs were going to be awarded. *Id.* at ¶ 3.26. Keyse, Miller, and Birdwell were aware of that project and the bid amounts. *Id.*

II.
LEGAL STANDARD

Pursuant to Federal Rule of Civil Procedure 12(b)(6), a defendant may seek dismissal of a complaint for failure to state a claim upon which relief can be granted. A court may grant such a dismissal only where the plaintiff fails to present a cognizable legal theory or fails to allege sufficient facts to support a cognizable legal theory. *Shroyer v. New Cingular Wireless Servs., Inc.*, 622 F.3d 1035, 1041 (9th Cir. 2010) (quoting *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001)). On a motion to dismiss, a court can consider documents attached to the complaint, documents incorporated by reference in a complaint, or documents subject to judicial notice. *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003).

To survive a Rule 12(b)(6) motion, a complaint must articulate "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Although a pleading need not contain "detailed factual allegations," it must contain "more than labels and conclusions" or "a formulaic recitation of the elements of a cause of action." *Id.* at 555 (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). In evaluating the sufficiency of a complaint, courts must accept all factual allegations as true. *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 555). Legal conclusions, in contrast, are not entitled to the assumption of truth. *Id.*

III.
DISCUSSION

Defendants argue that Plaintiffs' claims for unfair business practices/competition and conversion and/or trespass to chattel should be dismissed because the FAC does not satisfy all the elements. MTD at 5–9. Defendants also argue that the WUTSA preempts Plaintiffs' claims for unfair business practices, conversion and trespass, unjust enrichment, tortious interference, and breach of fiduciary duty and duty of loyalty. *Id.* at 9–15. Plaintiffs respond that it would be premature to dismiss claims on trade secret preemption grounds where the Court has not yet determined whether the alleged misuse of information constitutes a violation of the WUTSA, and where the FAC alleges misuse of confidential information that may not constitute trade secrets. Opposition at 6–12. Plaintiffs also argue that the individually challenged claims are sufficiently pled to survive the Rule 12(b)(6) motion. *Id.* at 13–17. Because a determination that Plaintiffs'

claims are preempted would foreclose the need to resolve the Rule 12(b)(6) standard, the Court begins with the question of preemption under the WUTSA.

A. Plaintiffs' Common Law Claims Are Not Preempted

The WUTSA states that it "displaces conflicting tort, restitutionary, and other law of this state pertaining to civil liability for misappropriation of a trade secret," but that it "does not affect[] [c]ontractual or other civil liability or relief that is not based upon misappropriation of a trade secret." Rev. Wash. Code. § 19.108.900(1)–(2)(a). Washington courts have interpreted this to "preempt[] common law actions based on trade secret misappropriation." *Thola v. Henschell*, 140 Wash. App. 70, 85 (2007); *see also id.* at 82 ("A plaintiff 'may not rely on acts that constitute trade secret misappropriation to support other causes of action.'" (quoting *Ed Nowogroski Ins., Inc. v. Rucker*, 88 Wash. App. 350, 358 (1997), *aff'd*, 137 Wash. 2d 427 (1999))). To determine whether a plaintiff's claim is preempted, courts "(1) assess the facts that support the plaintiff's civil claim; (2) ask whether those facts are the same as those that support the plaintiff's [WUTSA] claim; and (3) hold that the [WUTSA] preempts liability on the civil claim unless the common law claim is factually independent from the [WUTSA] claim." *Id.* at 82.

Plaintiffs challenge Defendants' preemption defense, arguing that where no misappropriation-of-trade-secrets determination has been made, it is inappropriate to dismiss claims on trade-secret-preemption grounds. Opposition at 6–11. Plaintiffs point to *Fidelitad, Inc. v. Insitu, Inc.*, which denied the defendant's motion to dismiss on preemption grounds because such action would be "premature." No. 13-CV-3128-TOR, 2014 WL 5421214, at *4 (E.D. Wash. Oct. 24, 2014). The Court explained that "[a] conclusion of whether a claim is preempted by the WUTSA is generally reserved for later in litigation because it requires a factual analysis and facts are poorly developed at the pleading stage." *Id.* (citing *Int'l Paper Co. v. Stuit*, No. C11–2139JLR, 2012 WL 3527932, at *3 (W.D. Wash. Aug. 15, 2012); *First Advantage Background Servs. Corp. v. Private Eyes, Inc.*, 569 F. Supp. 2d 929, 942 (N.D.Cal. 2008); *Thola*, 140 Wash. App. at 81–83; *Ed Nowogroski Ins., Inc. v. Rucker*, 88 Wash. App. 350, 355 (1997)). Plaintiffs also contend that other jurisdictions follow this general rule. Opposition at 7 (citing *Burbank Grease Servs., LLC v. Sokolowski*, 294 Wis. 2d 274, 295–96 (2006); *N. Am. Commc'ns v. Sessa*, No. 3:14-227, 2015 WL 5714514 (W.D. Pa. Sept. 29, 2015) (citing several jurisdictions)).

Although *Fidelitad* is not squarely on all fours with this case, Plaintiffs' contention is persuasive. The WUTSA defines "trade secret" as "information, including a formula, pattern, compilation, program, device, method, technique, or process" that "[d]erives independent

economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use" and that "[i]s the subject of efforts that are reasonable under the circumstances to maintain its secrecy." Wash. Rev. Code § 19.108.010(4). The FAC identifies Plaintiffs' alleged trade secrets as "including the profits and losses for ISS and key staff," and it further identifies Plaintiffs' "confidential, proprietary information" to include the following expansive list:

> Plaintiffs' customer names and contact information, customer requirements and preferences, negotiated supplier and vendor costs, self-designed parts, proprietary design methods, job files, prior, current and pending bids/estimates, technical project data, customer price lists, revenue, costs and profit margins, pending project lists, financial goals, strategic planning, sales projections, the technology used by Plaintiffs, and other confidential, competitive information.

FAC at ¶¶ 3.4, 3.11.

Some of this information may constitute trade secrets under the WUTSA, thereby preempting Plaintiffs' common law claims. *See Thola*, 140 Wash. App. At 78 ("Generally, taking an employer's confidential customer list without permission is a trade secret misappropriation."). On the other hand, some of Defendants' conduct may not qualify as trade secret misappropriation. Because the Court cannot make that determination on the pleadings alone, and was not asked to do so here, dismissing Plaintiffs' claims on the basis of preemption would be premature. *See Nowogroski*, 88 Wash. App. At 358 ("*Because we have decided that [defendants'] acts constituted trade secret misappropriation*, we affirm the lower court's ruling that liability and damages are governed exclusively by the UTSA." (emphasis added)). This is especially true where the FAC bases the common law claims broadly on Defendants' actions involving both alleged trade secrets and other confidential business information. *See* FAC at ¶¶ 7.2–7.3 (unfair business practices based on Defendants' deceptive and unfair conduct involving Plaintiffs' "trade secret[s] and confidential, business information," including "Plaintiffs' customer and contact information, financial information including revenue, costs and profits, customer-specific pricing information, bids/estimates, pending projects, pricing methodology, negotiated vendor and supplier discounts and information, product technology, and other confidential and proprietary customer information"), 8.2 (conversion and/or trespass of chattel based on Defendants' interference with precisely the same information), 9.2 (unjust enrichment based broadly on inequitable circumstances), 10.4–10.5 (tortious interference based on misappropriation of "trade secrets and other confidential information"), 11.3–11.5 (several

grounds for breach of fiduciary duty and duty of loyalty); *see also Fidelitad*, WL 2014 5421214, at *4 (viewing plaintiff's tortious interference and WUTSA claims "as alternatives").

Accordingly, the Court **DENIES** the MTD to the extent it is based on preemption.[3]

B. Plaintiffs State a Claim for Unfair Business Practices/Competition under Washington Revised Code Section 19.86.040

Defendants assert that Plaintiffs failed to plead all of the elements for unfair business practices/competition under Washington law. Defendants advance three theories: the FAC fails to allege that (1) Defendants' conduct affected the public interest, pursuant to Washington Revised Code section 19.86.020; (2) Defendants "intended to form an agreement with another entity for monopolistic purposes" pursuant to Washington Revised Code section 19.86.030; or (3) Defendants' conduct resulted in causal antitrust injury so as to state a claim under Washington Revised Code section 19.86.040. MTD at 5–8. Plaintiffs respond that they only intend to allege a claim for monopolization under section 19.86.040. Opposition at 13–15.

As an initial matter, Plaintiffs' failure to provide the statutory ground for their unfair business practices/competition claim does not automatically warrant dismissal. *See Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009) (facial plausibility occurs "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged" (quoting *Iqbal*, 556 U.S. at 678)); *Rains v. Criterion Sys., Inc.*, 80 F.3d 339, 343 n.2 (9th Cir. 1996) ("The label that a plaintiff places on his pleadings, however, does not determine the nature of his cause of action."); *Villegas v. United States*, 926 F. Supp. 2d 1185, 1207 (E.D. Wash. 2013) ("If Plaintiff intends to rely on violations of [a] statute[] as a basis for his claim, he must properly identify and provide the necessary *factual support* for such a claim in his Complaint." (emphasis added)).

The elements of unlawful monopolization or attempted monopolization under section 19.86.040 are "(1) specific intent to monopolize; (2) predatory or anticompetitive conduct directed to accomplishing an unlawful purpose; and (3) causal antitrust injury." *Boeing Co. v. Sierracin Corp.*, 108 Wash. 2d 38, 59 (1987). To show antitrust injury, Plaintiffs must allege "that [their] loss flows from an *anticompetitive* aspect or effect of [Defendants'] behavior, since it is inimical to the antitrust laws to award damages for losses stemming from acts that do not

[3] The Court observes that Plaintiffs base some of their common law tort claims on strikingly similar facts as their WUTSA claim. Today's ruling does not mean that, as a matter of law, the WUTSA does not preempt some (or all) of those claims, but rather that, on a motion to dismiss and the standard applicable thereto, it is unclear whether the common law actions are based on trade secret misappropriation. Significantly, in concluding that the WUTSA preempted some common law tort claims, the *Thola* Court reviewed a jury determination that the defendant violated the WUTSA, a finding this Court has not yet made. *See* 140 Wash. App. at 76.

hurt competition. If the injury flows from aspects of [Defendants'] conduct that are beneficial or neutral to competition, there is no antitrust injury, even if the defendant's conduct is illegal *per se*." *Pool Water Prods. V. Olin Corp.*, 258 F3d 1024, 1034 (9th Cir. 2001) (quoting ***Rebel Oil Co. v. ARCO***, 51 F.3d 1421, 1433 (9th Cir.1995)).

Defendants contend the claim under section 19.86.040 fails for lack of the third element because "*even if* MiTek engaged in competitive pricing activity by using ISS information to undercut ISS's prices . . . , this activity would ***benefit*** consumers, not harm them." MTD at 7. In opposition, Plaintiffs argue that Defendants' unlawful anticompetitive conduct "was intended to force Earthbound to submit to acquisition by MiTek or to deprive Earthbound of business to the point [that] Earthbound must close its operations," which would reduce the California tie-down systems market from three competitors to two competitors, thereby "dramatically" increasing prices and harming consumers. Opposition at 14; *see also* FAC at ¶¶ 3.6–3.10, 7.2–7.3 (alleging that MiTek orchestrated a plan between Defendants to draw Keyse, Miller, and Birdwell from ISS's employ and to take possession of Plaintiffs' confidential business information and/or trade secrets, in order to eliminate Plaintiffs as competitors).

While a single instance of undercutting a competitor's price may benefit consumers in that instance—for example, MiTek's last-minute bid, which undercut ISS' bid and resulted in the award of a project to MiTek, may result (or have resulted) in lower consumer prices on that project—that is not the extent of Plaintiffs' allegations. Rather, Plaintiffs allege that MiTek endeavored to eliminate them altogether to reduce the viable competitors in an already small market. *See* Opposition at 13–14; FAC at ¶¶ 3.3, 3.6–3.7, 3.12. It is reasonably likely that such conduct would harm not only Plaintiffs, but also consumers generally. *See Brantley v. NBC Universal, Inc.*, 675 F.3d 1192, 1198 (9th Cir. 2012) (reducing the market may injure competition for antitrust injury purposes by "reducing the competitive threat th[e eliminated competitor] would pose"). In a market with only three competitors, one competitor's attempt to dominate the market, ultimately reducing consumer choice to two companies, negatively affects consumers rather than benefiting them.

Plaintiffs have stated a claim for unfair business practices/competition under section 19.86.040. The Court therefore **DENIES** the MTD as to this cause of action.[4]

[4] In their Reply, Defendants challenge (for the first time) the remaining elements of a section 19.86.040 claim by arguing that Plaintiffs failed to show MiTek "has to attempted to unreasonably restrain trade for an unlawful purpose" and that MiTek "acted in concert with any other person or entity." Reply at 6–7 [Doc. # 119.] This argument, coming as it does for the first time in the reply, deprives Plaintiffs of the opportunity to respond. The Court therefore declines to consider it.

C. Plaintiffs Have Stated a Claim for Conversion and/or Trespass to Chattel under Washington law

Under Washington law, "[c]onversion is 'the act of willfully interfering with any chattel, without lawful justification, whereby any person entitled thereto is deprived of the possession of it.'" *Levine v. City of Bothell*, 904 F. Supp. 2d 1124, 1133 (W.D. Wash. 2012) (quoting *Judkins v. Sadler-Mac Neil*, 61 Wash. 2d 1, 3 (1962)). Thus, to state a claim for conversion (or trespass of chattel), the plaintiff must plead that "(1) he was entitled to possess the chattel, (2) he was deprived of such possession[] (3) due to the defendant's willful interference, and (4) such interference was not justified." *Exxon Mobil Corp. v. Freeman Holdings of Wash., LLC*, 779 F. Supp. 2d 1171, 1180 (E.D. Wash. 2011). Defendants challenge this claim on two grounds: (1) conversion requires the defendant to have taken "physical control" over the property at issue, which, according to Defendants, was not alleged here; and (2) the FAC fails to allege the employee defendants took or destroyed "the *only* copy" of the information they took and shared with MiTek without authorization. MTD at 8–9. Plaintiffs counter that Defendants' argument regarding physical possession and control is overly limited, and Plaintiffs identify specific paragraphs in the FAC alleging the employee defendants copied information and then deleted that information from ISS servers, so that ISS was dispossessed of and prevented from using such information. Opposition at 15–17.

Plaintiffs present the more persuasive arguments. Defendants' narrow interpretation of conversion comes from two non-Washington cases, *Gary Friedrich Enterprises, LLC v. Marvel Enterprises, Inc.*, 713 F. Supp. 2d 215, 230 (S.D.N.Y. 2010), and *MCI Worldcom Network Services, Inc., v. W.M. Brode Co.*, 411 F. Supp. 2d 804, 810 (N.D. Ohio 2006). Not only are these cases not controlling, they are also factually distinct. In *Friedrich*, the plaintiffs alleged the defendants took possession of Friedrich's ideas for a story, and the court concluded both that the plaintiffs failed to allege that defendants "assumed 'physical control' over the intellectual property" and that, the property at issue being ideas, the defendants could not "wholly deprive" plaintiffs of the ideas' use. 713 F. Supp. 2d at 231. In *MCI*, by contrast, the court adopted the Restatement (Second) of Torts section 217's requirement that to commit trespass on chattel the defendant must have intentionally come into "physical contact with" the plaintiff's chattel, and the plaintiff did not allege that the defendant intentionally came into contact with the severed fiber optic cables at issue in the claim. 411 F. Supp. 2d at 806, 810.

Washington law, on the other hand, permits a more metaphysical claim for conversion to survive a motion to dismiss. For example, in *In re Marriage of Langham & Kolde*, the Supreme Court of Washington defined property broadly as "everything that has exchangeable value, and every interest or estate which the law regards of sufficient value for judicial recognition," and it defined convertible property (i.e., chattel) to include intangibles such as a patent and stock options. 153 Wash. 2d 553, 564–65 (2005). The court went on to adopt the "modern view" of

conversion presented in *Meyers Way Development Limited Partnership v. University Savings Bank*, 80 Wash. App. 655, 674–76 (1996), where the claimant bank's security interest in sale proceeds was converted when the borrowers sold sand from the mortgaged property without submitting the proceeds to the bank. *In re Marriage*, 153 Wash. 2d at 565–66. Holding in *In re Marriage* that the plaintiff's stock options were converted when the defendant exercised them, the court effectively rejected Defendants' physical-contact requirement. *Id.* at 566 ("The modern view of conversion more readily fits the reality that stock options are valuable property and are converted when exercised by limiting the owner's available choices.").

Here, Plaintiffs' confidential business information—like a patent, a security interest, and stock options—is sufficiently valuable to be converted, even if some of it is not tangible property. Moreover, the FAC repeatedly alleges that the employee defendants copied *and deleted* confidential business information from Plaintiffs' servers and devices. *See* FAC at ¶¶ 3.13, 3.15, 3.16, 3.23, 3.24, 8.2. Even if the FAC alleged only the unauthorized dispossession of copies of Plaintiffs' information, as opposed to the originals, Plaintiffs would still state a claim for conversion under Washington law. *See Aventa Learning, Inc. v. K12, Inc.*, 830 F. Supp. 2d 1083, 1105–06 (W.D. Wash. 2011) ("The fact that [employer] has access to another copy of the files at issue does not mean that it was not deprived of its possession of the copies accessed, made, or destroyed by [former employees]. Further, the court can find no logical basis for distinguishing between theft of copy and theft of the original electronic document. After all, the copy of the original (although allegedly created by [the employees]) would belong to [the employer] as well.").

Because Plaintiffs have sufficiently alleged conversion, the Court **DENIES** the MTD as to this claim.

IV.
CONCLUSION

In light of the foregoing, Defendants' MTD is **DENIED**. Defendants inexplicably filed an Answer contemporaneously with the MTD. [Doc. # 99.] Therefore, they need not file another one.

IT IS SO ORDERED.